

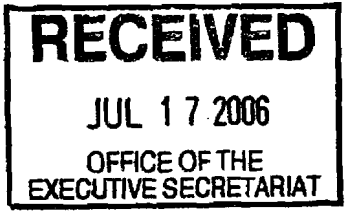
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**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of the Proposed )  
Title V Operating Permit )  
Issued by the )  
South Dakota Department of Environment )  
and Natural Resources )  
to )  
American Colloid Company to operate a )  
bentonite clay processing plant near )  
Belle Fourche, South Dakota )

Permit No. 28.1101-15



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**PETITION FOR OBJECTION TO ISSUANCE OF OPERATING PERMIT  
FOR AMERICAN COLLOID BENTONITE PROCESSING PLANT**

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Pursuant to Section 505(b)(2) of the Clean Air Act ("CAA"), 40 CFR § 70.8(d), and the applicable federal and state regulations, Biodiversity Conservation Alliance, Rocky Mountain Clean Air Action, Defenders of the Black Hills, Native Ecosystems Council, Center for Native Ecosystems, Nancy Hilding, Brian Brademeyer, Jeremy Nichols (hereafter "Petitioners") hereby petition the Administrator of the U.S. Environmental Protection Agency ("EPA") to object to the Title V operating permit (hereafter "Title V permit") issued by the South Dakota Department of Environment and Natural Resources ("DENR") for American Colloid Company to operate a bentonite clay processing plant near Belle Fourche, South Dakota (hereafter "bentonite plant"), Permit Number 28.1101-15.<sup>1</sup> Petitioners request the EPA object to the issuance of Permit Number 28.1101-15 for the bentonite plant and/or find reopening for cause for the reasons set forth within this petition.

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<sup>1</sup> The Proposed Permit and the accompanying Statement of Basis are attached as Exhibits 1 and 2, respectively.

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## INTRODUCTION

American Colloid Company operates a bentonite clay processing plant that has the potential to emit into the air of western South Dakota numerous pollutants that endanger public health and welfare. The bentonite plant has the potential to emit nearly 604,000 pounds of particulate matter per year. Of this, 302,000 pounds of particulate matter less than 10 microns in size ("PM<sub>10</sub>"), or 1/7 the width of a human hair, are released into the air near Belle Fourche, South Dakota. Particulate matter less than 10 microns in size is small enough to get into human lungs and is closely linked to respiratory ailments and the incidence of asthma.<sup>2</sup> The mill also has the potential to emit 164,000 pounds per year of sulfur dioxide ("SO<sub>2</sub>"), 170,000 pounds per year of nitrogen oxides ("NO<sub>x</sub>"), and 284,000 pounds per year of carbon monoxide ("CO"), which at high levels can kill people.<sup>3</sup> The plant also has the potential to emit over 20,000 pounds of hydrogen chloride ("HCl"), a hazardous air pollutant ("HAP") that forms hydrochloric acid upon contact with water, a year.

Pollution from American Colloid's bentonite plant also affects the Black Hills region of western South Dakota, including the scenic vistas of Wind Cave National Park and Badlands National Park, both of which are protected as Class I areas under the CAA. 42 USC § 7472(a)(4). The Black Hills region of western South Dakota consists of over a million acres of public lands, including the Black Hills National Forest, and is vital to the health and sustainability of many communities. A forested island within the sea of the Great Plains, the Black Hills also support a unique, isolated ecosystem that hosts a diversity of plants and animals found nowhere else in the world. The Black Hills are also sacred to countless indigenous

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<sup>2</sup> See, [www.epa.gov/airtrends/pm.html](http://www.epa.gov/airtrends/pm.html).

<sup>3</sup> See, [www.epa.gov/iaq/pubs/cofsh.html](http://www.epa.gov/iaq/pubs/cofsh.html).

peoples who have lived around the Black Hills region for millennia, relying upon the health and sustainability of the surrounding land, air, and water for survival and cultural well-being. Air pollution from the bentonite plant threatens to degrade the irreplaceable scenic, natural, and cultural values of the region.

The DENR submitted the proposed Title V permit for American Colloid's bentonite plant to the EPA for review on or around March 29, 2006. The EPA's 45 day review period thus ended on or around May 13, 2006. During the EPA's review period, the agency did not object to the issuance of the Title V permit. The final Title V permit was issued May 17, 2006. This petition is thus timely filed within 60 days following the conclusion of EPA's review period and failure to raise objections.

This petition is based on the objections to the Title V permit raised with reasonable specificity during the public comment period. To the extent the EPA may somehow believe this petition is not based on comments raised with reasonable specificity during the public comment period, Petitioners request the Administrator also consider this a petition to reopen the Title V permit for American Colloid's bentonite plant in accordance with 40 CFR § 70.7(f).<sup>4</sup> A permit reopening and revision is mandated in this case because of one or both of the following reasons:

1. Material mistakes or inaccurate statements were made in establishing the terms and conditions in the permit. See, 40 CFR § 70.7(f)(1)(iii). As will be discussed in more detail, the Title V permit for the bentonite plant suffers from material mistakes that render several terms and conditions meaningless, ambiguous, unenforceable as a practical matter, in violation of applicable requirements, etc.; and

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<sup>4</sup> To the extent the Administrator may not believe citizens can petition for reopening for cause under 40 CFR § 70.7(f), Petitioners also hereby petitions to reopen for cause in accordance with 40 CFR § 70.7(f) pursuant to 5 USC § 555(b).

2. The permit fails to assure compliance with the applicable requirements. See, 40 CFR § 70.7(f)(1)(iv). As will be discussed in more detail, the Title V permit for the bentonite plant fails to assure compliance with several applicable requirements.

## **PETITIONERS**

Biodiversity Conservation Alliance is a Laramie, Wyoming based nonprofit organization dedicated to protecting and restoring ecological health and sustainability in the Black Hills region of western South Dakota. Members and supporters of Biodiversity Conservation Alliance depend upon clean air in the Black Hills region to ensure unimpaired visibility, healthy plant and animal communities, successful wildlife viewing, and enjoyable recreational experiences.

Rocky Mountain Clean Air Action is a newly founded, Denver, Colorado based citizens group dedicated to protecting clean air in the western United States for the health and sustainability of local communities.

Defenders of the Black Hills is a nonprofit organization, without racial or tribal boundaries, whose mission is to ensure that the provisions of the Fort Laramie Treaties of 1851 and 1868 are upheld by the federal government of the United States. Defenders' actions seek to restore and protect the environment of the Black Hills to the best of their ability.

Native Ecosystems Council is a Rapid City, South Dakota based, unincorporated, non-profit, science-based conservation organization dedicated to protecting and restoring the health of the Black Hills ecosystem. Members and supporters of Native Ecosystems Council use and enjoy the Black Hills for wildlife viewing, recreation, and scientific study.

Center for Native Ecosystems is a Denver, Colorado based non-profit, science-based conservation organization dedicated to protecting and recovering native and naturally

functioning ecosystems in the Greater Southern Rockies and Great Plains. Using the best available science, the Center for Native Ecosystems participates in policy and administrative processes, legal actions, and public outreach and education programs to protect and restore imperiled native plants and animals and the air, land, and water they depend upon.

Nancy Hilding is a Blackhawk, South Dakota resident who depends upon clean air for her health and happiness. Ms. Hilding suffers from asthma, which is exacerbated by air pollution, and is most happy when she can breathe clean, clear air. Ms. Hilding is also the President of Prairie Hills Audubon Society of Western South Dakota and in this capacity works to protect and restore the health and sustainability of the Black Hills ecosystem. In her capacity as President of Prairie Hills Audubon Society of Western South Dakota, Ms. Hilding takes great pleasure in educating others about the natural values of the Black Hills and depends upon clean air to carry out the educational goals of the organization.

Brian Brademeyer is a Rapid City, South Dakota resident who depends upon clean air for his health and happiness. Mr. Brademeyer enjoys hiking in the Black Hills and working on his home, located in Palmer Gulch in the Black Hills near Mt. Rushmore. Several years ago, Mr. Brademeyer underwent open heart surgery. Mr. Brademeyer now depends upon clean air to ensure pure oxygen, free of poisonous compounds, reaches his heart to help this sensitive organ regain its strength and stamina. Mr. Brademeyer also has a home in the Black Hills and enjoys viewing the peaks within the Black Elk Wilderness and Norbeck Wildlife Preserve. Clean air is essential to ensuring unimpaired views of these peaks.

Jeremy Nichols is a resident of Denver, Colorado, an avid bicycle rider, outdoor enthusiast, and regular visitor to the Black Hills region of western South Dakota who is deeply concerned about air quality in the Black Hills region and its effects on the health and welfare of

people, plants, and animals. Mr. Nichols is also the founder of Rocky Mountain Clean Air Action and in this capacity works carry out the mission of the group to ensure protection of clean air for communities throughout the Rocky Mountains, including the Black Hills.

On March 10, 2006, Petitioners submitted comments to the DENR by certified mail in regards to the proposal to renew the Title V permit for the bentonite plant.<sup>5</sup>

### **GROUND FOR OBJECTION**

#### **I. The Permit Fails to Limit Hydrogen Chloride, a Hazardous Air Pollutant, Below the Major Source Threshold and Fails to Ensure Compliance with Hazardous Air Pollutant Control Requirements**

American Colloid's bentonite plant has the potential to emit more than 10 tons/year of hydrogen chloride, also known as hydrochloric acid, from its rotary dryers, or Units #1 and #2. See, **Ex. 2 at 23**. Hydrochloric acid is a hazardous air pollutant under the CAA. See, 42 USC § 7412(b)(1). The plant was also recently modified and potentially reconstructed to allow Unit #2 rotary dryer to burn coal, which led to an increase in hydrochloric acid emissions. See, Statement of Basis at 23. According to the CAA, a source of air pollution that has the potential to emit more than 10 tons per year of any single hazardous air pollutant is a major source of HAP emissions. See, 42 USC § 7412(a)(1). Further, any modification and/or reconstruction of a major source of HAP emissions must achieve the maximum achievable control technology ("MACT") limit for HAP emissions. See, 42 USC § 7412(g)(2) and 40 CFR § 63.40.

Unfortunately, in the case of the Title V permit for the bentonite plant, despite recognizing that the source has the potential to emit more than 10 tons/year of hydrochloric acid, and also that the source has undergone a modification and/or been reconstructed, the DENR failed to subject the plant to MACT requirements. The DENR instead claims that the source will limit hydrochloric acid emissions to 9.5 tons per year, a mere 0.5 tons below the major source

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<sup>5</sup> These comments are attached as Exhibit 3.

threshold. The DENR's claim, however, is baseless due to the fact that HCl limits in the Title V permit are unenforceable as a practical matter and fail to ensure compliance as follows. The Administrator must object to the issuance of the Title V permit for its failure to either 1) ensure HCl emissions will remain below the major source threshold or 2) ensure compliance with MACT requirements under the CAA. Petitioners raised concerns over this issue with reasonable specificity. See, **Ex. 3 at 3-4**.

**A. The Title V Permit Inappropriately Relies on a Blanket Emission Limit**

To begin with, although the Title V permit limits hydrochloric acid emissions to 9.5 tons per year at Condition 6.14, a mere 0.5 tons per year below the major source threshold, no operation or production limits and/or requirements are enumerated in the Title V permit that would in any way ensure this limit is not violated. Instead, the Title V permit seems to rely on a blanket HCl emission limit, which is prohibited. This clearly indicates the 9.5 ton per year limit is unenforceable as a practical matter and that the source is subject to MACT requirements.

Indeed, while the DENR states in the Statement of Basis that Units #1 and #2 have the potential to release upwards of 13 tons per year of hydrochloric acid, (see, **Ex. 2 at 19**), the DENR asserted that emissions will remain below 9.5 tons per year. How is this possible? In neither the Statement of Basis nor the Title V permit does the DENR point to or impose any control requirement for HCl emissions, any limitation on coal consumption in the rotary dryers to ensure compliance with the HCl emission limit, or any process requirements that would reduce HCl emissions below the major source threshold. In fact, in response to Petitioners' comments that the Title V permit failed to include any operation or production limits, the DENR merely asserted that Condition 6.14 would "maintain plant wide hydrogen chloride emissions



less than or equal to 9.5 tons per 12-month rolling period.” Ex. 4 at 4.<sup>6</sup> The DENR also characterized Condition 6.14 as an “operational restriction” at Condition 9.2 in the Title V permit, yet nothing in Condition 6.14 actually limits and/or restricts operations, an apparent attempt to mischaracterize the HCl limit. **The DENR failed to point to any actual operation or production limits and/or requirements that would actually limit HCl emissions to 9.5 tons per year or less.** It is monumentally unclear how HCl emissions will, in fact, remain at or below the major source threshold when no operation or production limits and/or requirements have been imposed in the Title V permit.

The DENR seems to be relying on a blanket emission limit to ensure HCl emissions remain below the major source threshold, which the EPA and federal courts have expressly disallowed. Indeed, echoing federal courts, the EPA has expressly taken the position that, “blanket emission limits [are] not enforceable as a practical matter.”<sup>7</sup> See also, United States v. Louisiana-Pacific Corporation, 682 F. Supp. 1122 (D. Colo. 1987) and 682 F. Supp. 1141 (D. Colo. 1988). The improper reliance on blanket emission limit, coupled with the lack of any operation or production limits and/or requirements that would actually limit HCl emissions below the major source threshold for any single HAP, means that the Title V permit fails to ensure compliance with MACT requirements under the CAA and thus the Administrator must object to its issuance.

**B. The Title V Permit Fails to Require Sufficient Periodic Monitoring of Actual HCl Emissions**

The Title V permit further fails to require sufficient periodic monitoring of HCl emissions from Units #1 and #2 to ensure compliance with the 9.5 tons per year limit. In fact, Condition 7.9 of the Title V permit only requires monitoring of HCl emissions from Unit #1

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<sup>6</sup> The DENR’s Response to Comments are attached as Exhibit 4.

<sup>7</sup> See, <http://www.epa.gov/reg3airtd/permitting/limitPTEmmo.htm>.

once every five years, or once-per-permit term, through a performance test, which fails to ensure sufficient periodic monitoring that ensures compliance with the 9.5 tons per year limit in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1). **The Title V permit entirely fails to require any monitoring of HCl emissions from Unit #2.**

As a preliminary matter, one-time performance testing of HCl emissions from Unit #1 simply fails to constitute sufficient periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B). Indeed, in Appalachian Power Co. v. Environmental Protection Agency, the Court of Appeals for the D.C. Circuit specifically held that a one-time performance test failed to constitute sufficient periodic monitoring, stating:

State permitting authorities therefore may not, on the basis of EPA's Guidance or 40 CFR § 70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or Federal standard, unless that standard requires no periodic testing, specifies no frequency, or requires only a one-time test.

Appalachian Power Co. v. Environmental Protection Agency, 208 F.3d 1015 (D.C. Cir. 2000) (emphasis added). Thus, on its face and in accordance with the applicable requirements, one-time performance testing does not constitute sufficient periodic monitoring.

Indeed, Condition 7.9 only requires monitoring for HCl emissions from Unit #1 once during the permit term, or once every five years, thereby failing to provide data from the representative time period. Condition 6.14 explicitly requires a rolling 12-month total of HCl emissions to be calculated. Monitoring only once every five years fails to provide monthly HCl emissions data in order to maintain rolling 12-month totals and ensure compliance with the 9.5 ton per year limit on hydrochloric acid emissions. Furthermore, the failure of the Title V permit

to require any HCl monitoring from Unit #2 means that an accurate rolling 12-month total of HCl emissions cannot possibly be maintained.

Condition 7.9 also fails to provide data that is representative of the source's compliance with the yearly HCl limit. Indeed, monitoring HCl emissions only once-per-permit term, or in essence one day (or even one or two hours) every five years, fails to provide data that indicates whether or not the source is in compliance with annual HCl limits based on a 12-month rolling average as required by the Title V permit. Monitoring only one day, and perhaps less, every five years as required under Condition 7.9 cannot possibly provide data representative of the source's compliance as it does not provide actual monthly HCl emissions data for use in assessing compliance with the annual HCl limit. **At best, monitoring under Condition 7.9 provides actual HCl emissions data from one day.** It is difficult, if not impossible, to believe one day of HCl emissions monitoring data can be representative the source's compliance with annual HCl limit of 9.5 tons per year, especially when this limit is based on rolling 12-month averages. This is especially impossible to believe given the lack of any HCl monitoring for Unit #2. Further, as a practical matter, monitoring only once every five years allows the source to exceed annual HCl limits. Monitoring once every five years allows the source to exceed annual HCl limits for up to four years as a practical matter. Thus, Condition 7.9 fails to ensure compliance in violation of 40 CFR § 70.6(c)(1).

Conducting a performance test only once every five years also fails to ensure that HCl emissions resulting from emergency conditions, startup, shutdowns, and malfunctions are accounted for. Indeed, Conditions 7.3 and 6.15 of the Title V permit explicitly allows American Colloid to exceed emission limits in the event of an startups, shutdowns, malfunctions, and/or emergency conditions. Testing once every five years fails to ensure that the HCl emission limit

set forth at Condition 6.14 is met in light of startups, shutdowns, malfunctions, and emergency conditions that may occur. Performance testing required by Condition 7.9 therefore fails to provide reliable data representative of the source's compliance with the 9.5 tons per year limit on HCl emissions set forth under Condition 6.15 in light of the startup, shutdown, malfunction, and emergency conditions exemptions at Conditions 7.3 and 6.15.

Furthermore, it is unclear how Condition 7.9 provides reliable data on HCl emissions given the potential range of emission rates from the bentonite plant. As the EPA itself has noted:

Because emission factors essentially represent an average of a range of facilities and of emission rates, they are not necessarily indicative of the emissions from a given source at all times; with a few exceptions, use of these factors to develop source-specific permit limits or to determine compliance with permit requirements is generally not recommended.

*See, In the Matter of Chevron Products Company, Richmond, California Facility*, Petition No. IX-2004-8 (March 15, 2005) at 23-24 (emphasis added). For one thing, it is difficult, if not impossible, to believe the rotary dryers at the bentonite plant will emit HCl at a consistent rate throughout the life of the permit. As a practical matter, the only way emission factors—especially emission factors derived from once-per-permit term performance testing—can provide reliable data is if emission rates are consistent. Unfortunately, the Title V permit fails to require consistent operation rates, thereby failing to ensure consistent CO emissions. The use of emission factors derived from once-per-permit term performance testing to monitor HCl emissions therefore fails to provide reliable data in accordance with 40 CFR § 70.6(a)(3)(i)(B).

Additionally, the Title V permit only requires a performance test for Unit #1 to be conducted “while operating the unit at or greater than 90 percent of its maximum design capacity, unless otherwise specified by the Secretary.” **Ex. 1 at 18**. This requirement is problematic for two reasons. First, “maximum design capacity” is not explained and/or defined

in the Title V permit in relation to the Unit #1 rotary dryer. Thus, while the permit requires performance tests to be conducted while operating at or greater than 90% of maximum design capacity, it is unclear, based on the Title V permit, what this actually means. Second, Condition 7.1 inappropriately and arbitrarily gives the Secretary of the DENR the authority to allow the source to conduct performance tests at any operational capacity, including at much lower than 90% of maximum design capacity. While it is unclear from what applicable requirement this authority stems from, the Title V permit also fails to explain under what circumstances the Secretary may allow performance tests at alternative operating capacities and fails to limit and/or define the boundaries of this authority in any way. For example, as a practical matter, Condition 7.1 gives the Secretary the authority to allow the source to conduct performance tests on the rotary dryer at only 10% of maximum design capacity. Because Condition 7.1 gives the Secretary unreasonably broad authority to define the operating conditions under which performance tests may be undertaken, Condition 7.9 fails to provide reliable data regarding HCl emissions from the Unit #1 rotary dryer.

Compounding the aforementioned flaws is that the DENR has provided no explanation as to how and/or why emission factors for the Unit #1 rotary dryer, which will be derived from a once-per-permit term performance test, provide reliable data representative of the source's compliance with the established HCl limit from the representative time period. In neither its response to comments nor the Statement of Basis for the Title V permit does the DENR explain how and/or why it determined the use of emission factors to monitor HCl emissions constitutes sufficient periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B). Indeed, in the response to comments, DENR simply asserts that once-per-permit term performance testing will yield reliable data. See, **Ex. 4 at 4**. Nowhere does the DENR explain how and/or why it

determined the use of emission factors provides data that is indicative of the source's actual HCl emissions in light of the range of emission rates at the bentonite plant. The failure of the DENR to explain how and/or why the HCl monitoring set forth at Conditions 7.9 constitutes sufficient periodic monitoring renders the Title V permit fatally flawed and the HCl limit at Condition 6.14 further unenforceable as a practical matter.

Finally, in its response to comments, the DENR points to Conditions 5.5 and 5.8 as requiring monthly HCl emissions monitoring. The DENR states, "Permit condition 5.5 and 5.8 require American Colloid Company to determine its hydrogen chloride emissions on a monthly basis and report the monthly emissions on a quarterly basis to DENR." **Ex. 4 at 4.** Conditions 5.5 and 5.8, however, do not actually require any monitoring of HCl emissions. Rather, Conditions 5.5 and 5.8 rely on emission factors derived from once-per-permit term monitoring, which, as already explained, fails to provide reliable data from the relevant time period that is representative of the source's compliance in violation of 40 CFR § 70.6(a)(3)(i)(B).

### **C. Chlorine Content Monitoring Also Fails to Ensure Compliance**

The DENR also claims that monitoring the chlorine content of the coal, as required under Condition 8.4, will ensure compliance with HCl limits. See, **Ex. 4 at 4.** The reliance on chlorine content monitoring in this case is problematic for several reasons.

To begin with, the Title V permit contains no limits on the amount of chlorine that coal can contain. If the purpose of chlorine content monitoring is to ensure compliance with the HCl limit of 9.5 tons per year limit in accordance with 40 CFR § 70.6(c)(1), then a limit must be imposed.

Second, nothing in the Title V permit or the Statement of Basis explains how chlorine content monitoring is to be used to determine actual HCl emissions. For instance, in neither the

Statement of Basis, the Title V permit, nor the response to comments does the DENR explain whether all chlorine within the coal is converted to HCl, or whether there is some other direct relationship between chlorine content and HCl emissions.

In its response to Petitioners' comments, DENR claims that:

As noted from the United States Geological Survey, the chlorine emissions from sub-bituminous coal from the Powder River Basin is approximately 100 parts per million. Assuming that all of the chlorine in the coal converts to hydrogen chloride emissions, using the maximum coal firing rate and assuming an operation of 24 hours a day, 7 days a week, and 365 days a year, the hydrogen chloride emissions rate is 0.4 pounds per hour or 1.8 tons per 12-month period.

**Ex. 4 at 4.** This response is flawed for several reasons and does not serve to justify reliance upon chlorine content monitoring. To begin with, we have no idea what U.S. Geological Survey study the DENR is referencing, making it difficult to simply believe what the DENR is claiming. We have no idea whether the U.S. Geological Survey study includes coals used by the bentonite plant, or whether the 100 parts per million chlorine content is representative of all coals in the Powder River Basin of northeastern Wyoming. Additionally, based on U.S. Geological Survey studies reviewed by the Petitioners', the DENR appears to have grossly over-generalized. For instance, in a 2002 Open File Report entitled "Quality of Economically Extractable Coal Beds in the Gillette Coal Field as Compared With Other Tertiary Coal Beds in the Powder River Basin, Wyoming and Montana," the U.S. Geological Survey discloses that while the chlorine content of Powder River Basin coals average around 150 parts per million, it can be as high as 700 parts per million.<sup>8</sup> See, **Ex. 5 at 17.** Assuming that all of the chlorine in the coal converts to HCl emissions, using the maximum coal firing rate and assuming an operation of 24 hours a day, 7 days a week, and 365 days a year, the HCl emissions rate is 2.8 pounds per hour or 12.264 tons

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<sup>8</sup> This study is attached as Exhibit 5.

per year. As is evident, this level of HCl emissions exceeds the 9.5 tons per year limit in the Title V permit, as well as the major source threshold for HAPs.

Thus, while no chlorine content limits exist in the Title V permit that would ensure the 9.5 tons per year HCl limit is not exceeded, the DENR also relied on unsupported assumptions regarding the chlorine content of the coals used at the bentonite plant. There is no support for the DENR's assertion that HCl emissions will remain at or below the 9.5 tons per year limit, or that emissions will remain below the major source threshold. The Administrator must therefore object to the issuance of the Title V permit due to its failure to either ensure compliance with the HCl emissions limit, or require compliance with MACT

## **II. The Permit Fails to Require Sufficient Periodic Opacity Monitoring and/or Monitoring that Ensures Compliance with the 20% and 7% Opacity Limits**

The Title V permit fails to require sufficient periodic monitoring of opacity and/or fails to require monitoring that ensures compliance with the applicable requirements, in violation of 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1). Petitioners raised concerns with reasonable specificity over the adequacy of opacity monitoring in their comments on the draft Title V permit. See, **Ex. 2 at 11-12.**

### **1. A. The Permit Fails to Require Continuous Opacity Monitoring**

To begin, the Title V permit fails to require sufficient periodic monitoring of opacity and/or fails to require monitoring that ensures compliance with the applicable requirements, in violation of 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1) because the permit fails to require continuous opacity monitoring at Condition 8.1. According to the Title V permit, the 20% opacity limit set forth at Condition 6.1 applies at all times. Thus, as a practical matter, in order to ensure compliance with this continuous limit, the Title V permit must require continuous opacity monitoring. The Administrator must object to the issuance of the Title V permit due to



the failure to require continuous opacity monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1).

Similarly, Condition 8.1 fails to ensure compliance with the opacity limit at Condition 6.2, which applies to Unit #13. According to the Title V permit and the NSPS, the 7% opacity limit set forth at Condition 6.2 applies at all times. It is important to note that, while the NSPS limits opacity to 7%, the NSPS do not set forth any specific requirements related to opacity monitoring. The only monitoring requirements explicitly set forth under the NSPS for nonmetallic mineral processing facilities is set forth at 40 CFR § 60.674 and only applies to facilities that use a wet scrubber to control emissions. The bentonite plant does not use a wet scrubber to control emissions. Thus, given that the applicable requirements, in this case the NSPS for nonmetallic processing facilities, fail to require periodic monitoring of opacity emissions, 40 CFR Part 70 monitoring requirements apply to the operation of Unit #13.

As a practical matter, in order to ensure compliance with this continuous opacity limit of 7%, the Title V permit must require continuous opacity monitoring. The Administrator must object to the issuance of the Title V permit due to the failure to require continuous opacity monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1).

**B. The Title V Permit Fails to Require Sufficient Periodic Opacity Monitoring and/or Monitoring that Ensures Compliance with Opacity Limits in Other Ways**

Even if continuous opacity monitoring may not be required, Condition 8.1 further fails to require sufficient periodic monitoring of opacity and/or fails to require monitoring that ensures compliance with opacity limits as it fails to ensure continuous compliance with the applicable opacity limit at Conditions 6.1 and 6.2 in other ways.

To begin with, the monitoring set forth at Condition 8.1 fails to require actual monitoring of opacity using quantitative measurements. Condition 8.1 only requires monitoring for visible emissions, which does not indicate whether or not the source is in compliance with the 20% and 7% opacity limit. Although Step 2 of Condition 8.1 requires Method 9 observations if a visible emission is observed, as a practical matter, this allows the source to exceed the applicable opacity limit. Indeed, visible emissions could exceed the 20% and/or 7% limits, but until such time as a Method 9 observation is conducted, it would be impossible to determine the opacity of any visible emissions and impossible to determine the compliance status of the source. The visible emissions monitoring required by Condition 8.1 cannot substitute for Method 9 readings and as such, the Title V permit fails to require sufficient periodic monitoring and/or monitoring that ensures compliance with the 20% and 7% opacity limits. The Administrator must therefore object to the issuance of the Title V permit.

Although Condition 8.1 is flawed because it relies upon visible emissions monitoring to ensure compliance with the 20% and 7% opacity limits, the monitoring set forth at Condition 8.1 is further flawed because it only requires monitoring for visible emissions once-per-month. As a practical matter, such infrequent monitoring allows the source to violate opacity limits. Indeed, monitoring visible emissions once-per-month allows the source to exceed the 20% and 7% opacity limits for 30 days, depending on the month, or even more, and as such fails to ensure compliance with the 20% and 7% opacity limit set forth in the Title V permit.

The EPA itself has noted that monitoring of visible emissions must occur at least on a daily basis. In an April 18, 1997 memo from EPA Region 7, the EPA stated:

[T]he permit authority should require the source to certify at least annually—or more frequently—that they conducted a visible emissions survey each day the plant operated

and that they were in compliance with, or in violation of, with the applicable opacity requirements.

**Ex. 6.**<sup>9</sup> On its face, the monitoring set forth at Condition 8.1 is insufficient as it fails to ensure monitoring of opacity at least on a daily basis from the Units subject to Conditions 6.1 and 6.2 in the Title V permit, and the Administrator must object to the issuance of the Title V permit.

**C. The Title V Permit Inappropriately Allows for Less Frequent Opacity Monitoring**

The Title V permits further fails to require sufficient periodic monitoring and/or monitoring that ensures compliance with the 20% and 7% opacity limits set forth in Conditions 6.1 and 6.2 because Condition 8.1 allows for visible emissions monitoring only once every six months to only once every year. Under Condition 8.1, visible emissions monitoring frequency can be reduced to semiannually if “no visible emissions are observed from a unit in six consecutive monthly visible emission readings” and to annually if “no visible emissions are observed from a unit in two consecutive semiannual visible emission readings.” **Ex. 1 at 20.**

The fact that visible emissions may not be observed during the required monthly observations for six consecutive months or for one consecutive year does not justify and/or support less frequent monitoring. Indeed, nothing in the Statement of Basis, the Title V permit, or the response to comments explains why such infrequent monitoring can possibly be allowed. The EPA itself has determined that a large margin of compliance alone is insufficient to demonstrate that emissions will not change over the life of the permit. See *In the Matter of Fort James Camas Mill*, Petition No. X-1999-1 (December 22, 2000) at 17-18. As a practical matter, by allowing the source to conduct less frequent visible emissions monitoring, such as semiannually or annually, the Title V permit increases the chances of exceedances and/or

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<sup>9</sup> This policy document is attached as Exhibit 6.

violations occurring undetected. Furthermore, by allowing such infrequent monitoring, Condition 8.1 fails to provide data representative of the source's compliance with the 20% and 7% opacity limit, which applies at all times. The Administrator must object to the Title V permit because Condition 8.1 inappropriately allows monitoring of opacity from the applicable units only semiannually and even annually, thereby failing to require sufficient periodic monitoring and/or monitoring that ensures compliance with the applicable requirements and the limits and conditions in the Title V permit in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1).

**D. There is no Reasonable Explanation as to how the Monitoring Constitutes Sufficient Periodic Monitoring and/or Ensures Compliance with the 20% and 7% Opacity Limits**

Finally, compounding the aforementioned flaws is that the DENR has provided no explanation as to how and/or why the opacity monitoring set forth at Condition 8.1 constitutes sufficient periodic monitoring and/or how the monitoring ensures compliance with the 20% and 7% opacity limits set forth at Conditions 6.1 and 6.2. In neither its response to comments nor the Statement of Basis for the Title V permit does the DENR explain how and/or why it determined the monitoring set forth at Condition 8.1 constitutes sufficient periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B) or ensures compliance with the 20% opacity limit in accordance with 40 CFR § 70.6(c)(1).

In its response to comments, the DENR merely asserted that, "Periodic monitoring required in permit condition 8.1 is similar to the visible emission monitoring required for Portland cement plants under the federal maximum achievable control technology standards."

**Ex. 4 at 8.** This rationale is baseless and for several reasons. For one thing, the Portland cement MACT standards at 40 CFR § 63.1350 require that affected sources use continuous opacity

monitors (“COMs”) to monitor opacity from kilns and clinker coolers, which burn coal or other fuels to dry clays and other minerals similar to the rotary dryers at the bentonite plant. The Portland cement MACT standards at 40 CFR § 63.1350 also require Method 22 readings to assess visible emissions. The Title V permit does not require Method 22 to be used to assess visible emissions. While it is unclear how the DENR determined the monitoring at 8.1 was similar to that found in the Portland cement MACT standards, regardless, the DENR does not explain why it was appropriate in the first place to rely on the Portland cement MACT standards for the bentonite plant.

The failure of the DENR to explain how and/or why the opacity monitoring set forth at Condition 8.1 constitutes sufficient periodic monitoring and/or ensures compliance with the 20% and 7% opacity limits renders the Title V permit fatally flawed. The Administrator must therefore object to the issuance of the Title V permit.

#### **IV. The Permit Fails to Require Prompt Reporting of Permit Deviations**

The Title V permit fails to require prompt reporting of permit deviations, in violation of 40 CFR § 70.6(a)(3)(iii)(B). The Administrator must therefore object to the issuance of the Title V permit.

##### **A. The Permit Only Requires Reporting of Permit Violations**

The Title V permit requires American Colloid to report only permit violations at Condition 5.10, not deviations. See, **Ex. 1 at 15**. Thus, on its face, the permit fails to ensure compliance with 40 CFR § 70.6(a)(3)(iii)(B). Deviations are not necessarily Title V permit violations and thus, would not be reported under Condition 5.10. The Administrator must object to the issuance of the Title V permit due to its failure to require prompt reporting of permit deviations in accordance with 40 CFR § 70.6(a)(3)(iii)(B).

**B. The Permit Fails to Require Prompt Reporting of Opacity Deviations**

Condition 6.4 of the Title V permit exempts compliance with opacity limits during startups, shutdowns, malfunctions and, in some cases, soot blowing. See, **Ex. 1 at 15**. Unfortunately, the Title V permit fails to require prompt reporting of opacity deviations in the event of startups, shutdowns, malfunctions, and soot blowing. Petitioners raised concerns over this issue with reasonable specificity in their comments. See, **Ex. 3 at 5-6**.

While the Title V permit requires reporting of permit violations under Condition 5.10, according to Condition 6.4, opacity deviations during soot blowing, startups, shutdowns, and malfunctions may not be violations and thus, would not be required to be reported under Condition 5.10. This, despite the fact that they are deviations from opacity limits. Furthermore, although the DENR may claim that Condition 5.4 requires visible emissions to be recorded in a monitoring log, this requirement does not fulfill prompt permit deviation reporting requirements under 40 CFR § 70.6(a)(3)(iii)(B). Indeed, Condition 5.4 only requires American Colloid to record visible emissions, but requires no reporting to the state, the EPA, or the public, and certainly does not require prompt reporting of deviations.

**B. The Permit Does not Require “Prompt” Reporting**

Finally, Condition 5.10 of the Title V permit requires reporting of permit violations. Unfortunately, this Condition fails to require prompt reporting of permit violations, as required by 40 CFR § 70.6(a)(3)(iii)(B). Of concern is that the Condition allows the Secretary to extend the submittal deadline for a written report of permit violations up to 30 days. **Thirty days is not “prompt” in relation to prompt reporting.**

Compounding the fact that 30-days is not prompt is that nowhere in the Statement of Basis, the Title V permit, or the Response to Comments does the DENR explain why it considers

ensure compliance with the limits and conditions of the permit, as well as the applicable opacity requirements, in violation of 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1). As written, American Colloid could claim that uncombined water is the cause for opacity violations and since no monitoring requirements exist in the Title V permit to verify this claim and/or ensure compliance with the exemption, it would be impossible to refute this claim and enforce opacity standards. The Administrator must object to the Title V permit because Condition 6.1 is unenforceable as a practical matter as no monitoring requirements exist to ensure compliance with the uncombined water exemption.

**B. Condition 6.6**

Limits for PM<sub>10</sub> emissions at Condition 6.6 are unenforceable as a practical matter due to a lack of sufficient periodic monitoring and/or monitoring requirements that ensure compliance with applicable requirements and permit conditions and limits. The Title V permit and Condition 6.6 therefore violate 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1) and the Administrator must object to the issuance of the Title V permit. Petitioners' raised concerns with reasonable specificity regarding this issue. See, **Ex. 3 at 7-9**.

To begin with, Condition 5.5 requires American Colloid to record monthly PM<sub>10</sub> emissions, yet no monthly PM<sub>10</sub> monitoring is required or set forth in the Title V permit. It is unclear how American Colloid will track monthly PM<sub>10</sub> emissions.

Regardless, the PM<sub>10</sub> limit set forth in the Title V permit necessitates continuous PM<sub>10</sub> monitoring. Condition 6.6 clearly requires American Colloid to limit PM<sub>10</sub> emissions from Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22a, 22b, 23, and 24 to 0.02 grains per dry standard cubic meter at all times (i.e., on a continuous basis). See, **Ex. 1 at 16**. There is nothing in the Title V permit that indicates PM<sub>10</sub> limits at Condition 6.6 apply only on

30 days to be prompt in relation to all permit violations. As the EPA recently noted in regards to a Title V permit issued to Onyx Environmental Services:

The permit record does not include IEPA's explanation of why the deviation reporting required for the applicable emissions limitations is prompt "in relation to the degree and type of deviation likely to occur and the applicable requirements." In this case, Onyx incinerates hazardous and toxic materials and IEPA has not explained why it considers a thirty day reporting period to be prompt for all deviations. For this reason, U.S. EPA is granting on this issue. U.S. EPA directs IEPA to explain how a thirty day reporting requirement for all deviations is prompt or require a shorter reporting period for deviations as is provided for in 40 C.F.R. Part 71.

See, In the Matter of Onyx Environmental Services, Petition No. V-2005-1 (February 1, 2006) at 15 (emphasis added). In this strikingly similar case, the DENR has failed to explain why 30 days is "prompt" in relation to the degree and type of violations likely to occur and the applicable requirements and the Administrator must object to the Title V permit and direct the DENR to explain how a 30 day reporting requirement for all violations is prompt or require a shorter reporting period for violations.

## **V. Problems with Other Permit Conditions Warranting Objection by the Administrator**

### **A. Condition 6.1**

Petitioners raised with reasonable specificity concerns over the adequacy of Condition 6.1 in their comments on page 5. Condition 6.1 states that, "This provision does not apply when the presence of uncombined water is the only reason for failure to meet the requirement." Title V Permit at Condition 6.1. Unfortunately, this statement renders Condition 6.1 unenforceable as a practical matter. Indeed, no monitoring requirements within the Title V permit actually require monitoring the presence of uncombined water and/or its effects on opacity to ensure that this exemption (hereafter "uncombined water exemption") is properly utilized and not abused by American Colloid. The Title V permit therefore fails to require sufficient periodic monitoring to



an hourly basis, a monthly basis, or even a yearly basis. All indications are that these limits apply at **all times**, thereby necessitating **continuous monitoring** to provide reliable data that is representative of the source's compliance with the applicable requirements in accordance with 40 CFR § 70.6(a)(3)(i)(B); and 40 CFR § 70.6(c)(1). Thus, the failure of the Title V permit to require continuous PM<sub>10</sub> monitoring violates 40 CFR § 70.6(a)(3)(i)(B); and 40 CFR § 70.6(c)(1).

Although the Title V permit requires American Colloid to conduct a performance test for PM<sub>10</sub> at Conditions 7.7 and 7.9, these Conditions also fails to meet sufficient periodic monitoring requirements to ensure compliance with particulate limits at Condition 6.6. For one thing, performance testing is not even required for Units 3, 7, 11, 14, 15, 16, 17, 18, 20, 21, 22a, 22b, 23, and 24. Second, performance testing is required only once every five years. One-time performance testing, however, fails to constitute sufficient periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B). Indeed, in Appalachian Power Co. v. Environmental Protection Agency, the Court of Appeals for the D.C. Circuit specifically held that a one-time performance test failed to constitute sufficient periodic monitoring, stating:

State permitting authorities therefore may not, on the basis of EPA's Guidance or 40 CFR § 70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or Federal standard, unless that standard requires no periodic testing, specifies no frequency, or requires only a one-time test.

Appalachian Power Co. v. Environmental Protection Agency, 208 F.3d 1015 (D.C. Cir. 2000)

(emphasis added). Thus, one-time testing, such as the performance testing required by Condition 7.7 in the Title V permit, fails to constitute sufficient periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B). Testing once every five years fails to constitute sufficient periodic

monitoring as it fails to provide data from the relevant time period in which PM<sub>10</sub> limits are measured and fails to provide data that is representative of the source's compliance with PM<sub>10</sub> limits once every five years. It is impossible to see how monitoring once every five years provides sufficient periodic monitoring data, especially since particulate limits set at Condition 6.6 apply at all times and require continuous monitoring.

Conducting a performance test only once every five years also fails to ensure that PM<sub>10</sub> emissions resulting from emergency conditions, startups, shutdowns, malfunctions, and soot blowing are accounted for. Indeed, Condition 6.15 of the Title V permit explicitly allows American Colloid to exceed emission limits in the event of an emergency condition. Condition 7.3 also provides an exemption during startup, shutdown, and malfunction, stating:

Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in this permit.”

**Ex. 1 at 18.** Condition 6.4 also allows opacity limits to be exceeded during startups, shutdowns, malfunctions, and soot blowing. As opacity is closely related to particulate emissions, this strongly indicates that exceedances of PM<sub>10</sub> limits are likely to occur in the event that opacity is exceeded during startups, shutdowns, and malfunctions.<sup>10</sup> Testing once every five years fails to ensure that PM<sub>10</sub> emissions limits set forth at Condition 6.6, which according to the Title V permit apply at all times, are met during emergency conditions, startups, shutdowns, malfunctions, and soot blowing. Performance testing required by Conditions 7.7 and 7.9

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<sup>10</sup> The website <http://www.epa.gov/region5/air/naaqs/opacity.htm> explains the relationship between opacity and particulate matter emissions.

therefore fails to provide reliable data representative of the source's compliance with the PM<sub>10</sub> limits established by Condition 6.6.

Although the DENR may claim that estimated emissions derived from performance testing would be based on the source operating 24 hours a day, seven days a week for an entire year, it is unclear how such estimates can yield data representative of the source's compliance with PM<sub>10</sub> limits during startup, shutdown, malfunction, soot blowing, and emergency conditions. Even if it is assumed the source is operating 24 hours a day, seven days a week for an entire year, this assumption is still based on the source operating normally (i.e., not in startup, shutdown, malfunction, or emergency conditions) according to Condition 7.1. Thus, such monitoring fails to provide data that is representative of the source's actual operational conditions.

The DENR also implies in its response to comments that visible emissions monitoring will be used to ensure compliance with the PM<sub>10</sub> limit at Condition 6.6. However, this argument is baseless because nothing in the Title V permit states that compliance with opacity limits indicates and/or can be used as a surrogate for compliance with PM<sub>10</sub> limits in this case. Nothing in the Statement of Basis or any other supporting permit documentation indicates that compliance with the 20% or the 7% opacity limits will, in fact, limit PM<sub>10</sub> emissions below the allowable limits set forth at Condition 6.6. The DENR cannot simply claim, without any supporting information, such as basic correlation data, that compliance with the 20% and 7% opacity limits automatically indicates compliance with the PM<sub>10</sub> limits set forth at Condition 6.6.

In order to support the use of opacity to demonstrate compliance with the applicable PM<sub>10</sub> limits, the DENR must show a correlation exists between opacity and PM<sub>10</sub> emissions that would ensure compliance with the limits at Condition 6.6. Furthermore, the Title V permit must

explicitly state that compliance with the PM<sub>10</sub> limits at Condition 6.6 is based on compliance with the opacity limits at Conditions 6.1 and 6.2. In this case, no correlation has been demonstrated by the DENR and the Title V permit fails to state that compliance with PM<sub>10</sub> limits is based on compliance with the 20% and 7% opacity limits.<sup>11</sup> The Administrator must therefore object to the issuance of the Title V permit.

Finally, although the DENR may claim that baghouse maintenance requirements will ensure compliance with PM<sub>10</sub> limits, the Title V permit fails to ensure proper operation and maintenance of the baghouses. To begin with, Condition 5.4 in the Title V permit only requires that a “maintenance schedule” be maintained in a monitoring log. Condition 5.4 does not actually require that any specific maintenance actions be undertaken or even that the schedule be followed. Nothing in Condition 5.4 or the Title V permit requires the development and implementation of a “preventative maintenance plan for each baghouse,” which the Statement of Basis indicates on page 29 is necessary to meet compliance assurance monitoring (“CAM”) requirements.

Although Condition 5.4 states that the maintenance schedule “shall meet the manufacturer’s recommended schedule,” the manufacturer’s recommended maintenance schedule is not explained or defined. Although the DENR stated in its response to comments that, “Words and phrases that are not defined are to be understood in their ordinary sense” (see, **Ex. 4 at 2**), this response misses the point. Manufacturer’s recommendations vary and may be subject to change and revision. Without more specific detail, Condition 5.4 is vague and unenforceable and it is unclear exactly how American Colloid will develop an adequate maintenance schedule for the baghouses. Furthermore, nothing in Condition 5.4 or the rest of the

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<sup>11</sup> As already explained in this petition, the Title V permit also fails to require sufficient periodic opacity monitoring and/or monitoring that ensures compliance with opacity limits. Thus, the reliance upon opacity monitoring to ensure compliance with PM<sub>10</sub> limits is further inappropriate.

Title V permit explains how the baghouses are to be operated in order to ensure proper operation of the baghouses, and proper control of PM<sub>10</sub> emissions to ensure compliance with Condition 6.6. As a practical matter, the DENR cannot assert the effectiveness of baghouses in controlling PM<sub>10</sub> emissions unless the Title V permit requires the control devices to be operated and maintained in a manner that ensures proper, consistent, and continuous control of emissions.

In sum, the Title V permit fails to require sufficient periodic monitoring of PM<sub>10</sub> emissions and/or monitoring that ensures compliance with the PM<sub>10</sub> limits at Condition 6.6 in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1). The Administrator must therefore object to the issuance of the permit because of its failure to comply with the applicable requirements.

### **C. Condition 6.15**

Condition 6.15 is flawed because it implies an affirmative defense to American Colloid with respect to injunctive relief in relation to the operation of the new baghouse. Petitioners' raised concerns with reasonable specificity over this issue in their comments. See, **Ex. 3 at 11**. An affirmative defense to excess emissions may be permitted only with respect to civil penalties, not to injunctive relief, and only when no single source or small group of sources has the potential to cause exceedance of National Ambient Air Quality Standards ("NAAQS") or PSD requirements and when there is no violation of federally promulgated performance standard or emission limitation. Indeed, if an affirmative defense was provided with respect to injunctive relief, American Colloid would be allowed to exceed the NAAQS and/or violate PSD requirements with respect to its mica plant, in clear contravention to the CAA.

EPA has also stated on numerous occasions that **all** excess emissions are considered violations of the CAA. For example, in 1978 EPA adopted a policy which considers all periods

of excess emissions to be violations of the CAA. In subsequent EPA policy statements, CAA interpretations, guidance documents, and administrative rules and orders, EPA has consistently and clearly reaffirmed that position. See, Mich. Dep't of Env'tl. Quality v. Browner, 230 F.3d 181, 183 (6th Cir. 2000) (citing, 42 Fed Reg 21472 (Apr. 27, 1977)); see also, Memorandum from Eric Shaeffer, Dir., Office of Regulatory Enforcement, and John S. Seitz, Dir., Office of Air Quality Planning and Standards, to Reg'l Adm'rs, Regions I-X (Dec. 5, 2001); Memorandum from Steven A. Herman, Assistant Adm'r for Enforcement and Compliance Assurance, to Reg'l Adm'rs, Regions I-X (Sept. 20, 1999); Memorandum from Kathleen M. Bennett, Assistant Adm'r for Air Noise, and Radiation, to Reg'l Adm'rs, Regions I-X (Sept. 29, 1982). EPA has also stated that automatic exemptions will not be allowed. Memorandum from Kathleen M. Bennett, Assistant Adm'r for Air Noise, and Radiation, to Reg'l Adm'rs, Regions I-X, 1 (Sept. 28, 1982). EPA has specifically stated that it "has a fundamental responsibility under the Clean Air Act to ensure that SIPs provide for attainment and maintenance of the national ambient air quality standards (NAAQS) and protection of prevention of significant deterioration (PSD) increments. Thus, an affirmative defense provision that would undermine the fundamental requirement of attainment and maintenance of the NAAQS, or any other requirement of the Clean Air Act," is illegal. Memorandum from Steven A. Herman, Assistant Adm'r for Enforcement and Compliance Assurance, to Reg'l Adm'rs, Regions I-X, 3 (Sept. 20, 1999) (citing, 42 USC § 7410(a) and (1)).

Petitioners do not object to the inclusion of an affirmative defense with respect to emergency conditions in the Title V permit. Indeed, the South Dakota SIP appears to provide for such an affirmative defense. However, neither the South Dakota Administrative Code at 74:35:05:16:01(18) nor 40 CFR § 70.6(g) explicitly state when the emergency condition

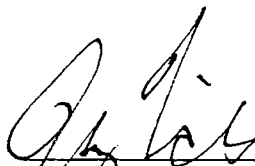
exemption is applicable as an affirmative defense. Thus, the applicable requirements related to Title V operating permits demand that Condition 6.15 explicitly state that the emergency conditions affirmative defense applies only with respect to civil penalties and not with injunctive relief. Because the Title V permit fails to explain that Condition 6.15 applies only as an affirmative defense with respect to civil penalties and not injunctive relief, the Administrator must object to the issuance of the Title V permit for the bentonite plant.

### **CONCLUSION**

The Title V permit for American Colloid's bentonite clay processing plant fails to control hazardous air pollutants, fails to prevent significant deterioration of air quality, fails to follow permit modification procedures, fails to require adequate opacity monitoring, fails to ensure prompt reporting of permit deviations, fails to ensure compliance with particulate matter limits, and fails to ensure compliance with the CAA in other ways. Petitioners therefore request the Administrator object to the Title V operating permit issued by DENR for American Colloid's bentonite processing plant. As thoroughly explained, the Title V permit fails to comply with the requirements of the CAA and other applicable requirements. The Administrator thus has a nondiscretionary duty to issue an objection to the proposed permit within 60 days in accordance with Section 505(b)(2) of the CAA.

Dated this 13<sup>th</sup> day of July, 2006.

Respectfully Submitted,



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