

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
BP Exploration (Alaska), Inc.)	
GATHERING CENTER #1)	ORDER RESPONDING TO PETITIONER'S
)	REQUEST THAT THE ADMINISTRATOR
Permit No. 182TVP01)	OBJECT TO ISSUANCE OF A STATE
(Revision 1))	OPERATING PERMIT
Issued by the Alaska Department)	
of Environmental Conservation)	
_____)	

ORDER DENYING PETITION
FOR OBJECTION TO PERMIT

On February 17, 2004, the State of Alaska Department of Environmental Conservation (ADEC) issued Revision 1 to the State operating permit to BP Exploration (Alaska), Inc. - Gathering Center #1 (GC1) at Prudhoe Bay, Alaska (Revision 1 to the GC1 Permit or Revision 1), pursuant to title V of the Clean Air Act (CAA), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507. On April 14, 2004, the Environmental Protection Agency (EPA) received a petition from Public Employees for Environmental Responsibility on behalf of Bill MacClarence (Petitioner) requesting that EPA object to the issuance of this permit pursuant to section 502(b)(2) of the CAA, the federal implementing regulations, 40 C.F.R. part 70, and the State of Alaska implementing regulations, 18 Alaska Administrative Code (AAC) Ch. 50.

The petition alleges that:

- (1) Revision 1 to the GC1 Permit violates title V of the CAA because Revision 1 does not explain the departure from ADEC's March 7, 2003 draft permit and because the provisions of Prevention of Significant Deterioration (PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards

(NSPS) are all based on the aggregated impact of air emissions and this permit did not aggregate all facilities within the Prudhoe Bay Unit (PBU);

(2) The pollution consequences of this violation are significant because elevated levels of nitrogen oxide on the North Slope of Alaska present a serious health problem for workers and native communities in the region and have been created by not aggregating facilities within the PBU; and

(3) ADEC and EPA failed to exercise proper regulatory oversight in this matter by issuing the final permit with no public notice or discussion.

The Petitioner has requested that EPA object to the issuance of Revision 1 to the GC1 permit pursuant to section 505(b)(2) of the CAA for the reasons identified above.

Based on a review of available information, including Revision 1 to the GC1 Permit; the statement of basis for Revision 1; the original GC1 Permit and statement of basis; the permit application; and information provided by the Petitioner in his petition, EPA denies the petition.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the CAA requires each state to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted interim approval to the title V operating permit program submitted by the State of Alaska effective December 5, 1996, 61 FR 64463 (December 5, 1996), and full approval effective November 30, 2001, 66 FR 63184 (December 5, 2001). See 40 C.F.R. part 70, appendix A. Major sources of air pollution and other sources covered by title V are required to obtain an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the CAA. See CAA §§ 502(a) and 504(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as “applicable requirements”), but does require that permits contain monitoring, recordkeeping, reporting, and other compliance requirements when not adequately required by existing applicable requirements to assure compliance by sources with existing applicable emission control requirements. 57 FR 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, the permitting authority, EPA, and the public to better understand the applicable requirements to which the

source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is better assured.

Under section 505(a) of the CAA, permitting authorities are required to submit all proposed title V operating permits to EPA for review. Section 505(b)(1) of the CAA authorizes EPA to object if a permit contains provisions not in compliance with applicable requirements. Section 505(b)(2) of the CAA states that if EPA does not object to a permit, any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. To justify exercise of an objection by EPA to a title V permit pursuant to section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with the requirements of the CAA. See 40 C.F.R. § 70.8(c)(1); NYPIRG v. Whitman, 321 F.3d 316, 333 n.11 (2d Cir. 2003).

Petitions must be based “only on objections to the permit that were raised with reasonable specificity during the public comment period...unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for the objection arose after the public comment period.” 40 C.F.R. § 70.8(d); see also CAA § 505(b)(2). A public petition for administrative review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of the objection. 40 C.F.R. § 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, the permitting authority or EPA will modify, terminate, or revoke and reissue such a permit using the procedures in 40 C.F.R. § 70.7(g) for reopening a permit for cause. The permitting authority has 90 days from receipt of EPA's objection letter to propose a determination of termination, modification, or revocation and reissuance, as appropriate, in accordance with EPA's objection. 40 C.F.R. § 70.7(g)(4). If the permitting authority fails to resolve EPA's objection, EPA will terminate, modify, or revoke and reissue the permit after providing at least 30 days' notice to the permittee. 40 C.F.R. § 70.7(g)(5)(i).

II. BACKGROUND

BP Exploration (Alaska), Inc. - Gathering Center #1 (GC1) is an existing oil and gas production facility within the PBU on the North Slope of Alaska. GC1 processes crude oil production fluids from various crude oil accumulations on the North Slope, primarily well pads D, E, F, G, K, Y, and P. Since April 2002, BP Exploration (Alaska), Inc. (BPX) has operated the entire PBU on behalf of the other owners in accordance with a mutual agreement. According to Alaska's Department of Natural Resources, BPX currently has a 26.35% ownership interest in the PBU; the other owners are: ExxonMobil (36.40 %), ConocoPhillips Alaska (36.07%), ChevronTexaco (1.16%), and Forest Oil (0.02%).¹

Three-phase crude oil is extracted from the ground at 38 individual drill sites and pumped to one of six dedicated production centers within the PBU (GC1, GC2, GC3, FC1, FC2, and FC3). At the production centers, the three-phase crude oil is separated into crude oil, produced water, and hydrocarbon gases. The crude oil is distributed to the Trans-Alaska Pipeline for sale; the produced water is pumped into disposal wells or injected back into the production reservoir on the well pads, and the hydrocarbon gases are dispatched to both the central gas facility and central compressor plant for further processing prior to reinjection. Other facilities located within the PBU include a central power station that generates electricity for the entire PBU; seawater treatment and injection plants to enhance oil recovery; a crude oil topping unit that supplies diesel fuel throughout the PBU and greater North Slope; an operations center that includes administrative offices, water and waste-water treatment plants, emergency power generation, health and safety facilities, repair and storage facilities, and dining and recreational facilities for up to 450 camp residents; and a main camp that provides dining, health, recreational, and other facilities for up to 675 camp residents.

ARCO, then the owner/operator of GC1, submitted a title V permit application to ADEC in November 1997. ADEC issued a draft permit for public comment on February 22, 2002, and the Petitioner submitted comments on March 23, 2002. In the initial draft permit, ADEC did not aggregate GC1 with any other facilities in the PBU for purposes of title V or for other CAA programs. ADEC issued a revised draft permit on March 6, 2003, in which ADEC aggregated

¹http://www.dog.dnr.state.ak.us/oil/products/maps/northslope/images/NS_%20Pool_Ownership.pdf

GC1 with the other oil production facilities in the PBU operated by BPX for purposes of determining the applicability of the modification requirements of ADEC's new source review regulations, including the PSD program. The public comment period on the revised draft permit closed on May 7, 2003, and Petitioner did not submit comments during that time.

After responding to comments received on the revised draft CG1 permit, ADEC further revised the draft permit and submitted to EPA a proposed title V permit dated July 2, 2003, which EPA received on July 9, 2003. In that July 2003 proposed permit, ADEC did not aggregate GC1 with any other facilities in the PBU. After discussions with EPA regarding the proposed permit and other title V permits for North Slope operations, ADEC issued the final permit for GC1 on October 20, 2003, which EPA received on October 23, 2003. In the final GC1 Permit, ADEC made revisions to the statement of basis for the GC1 Permit to clarify that ADEC considered the stationary source for purposes of the title V permit to be GC1 and all surface structures with their associated emission units located on the GC1 production pad, as well as well pads D, E, F, G, Y, and P, and to explain its approach to aggregating facilities within the PBU.² However, ADEC did not make any changes to the terms and conditions contained in the July 2003 proposed permit when issuing the October 2003 GC1 Permit, because ADEC determined that emission units on the well pads, if any, were not subject to any emission unit-specific applicable requirements.

In response to an inquiry from the Petitioner, Region 10 advised the Petitioner that, because of changes ADEC made to the statement of basis between the proposed permit sent to EPA on July 9, 2003, and the final permit issued on October 20, 2003, EPA considered the permit issued by ADEC on October 20, 2003, and received by EPA on October 23, 2003, to be the proposed permit for purposes of filing a petition under section 505(b) of the CAA. Region 10 further advised the Petitioner that it would consider the Petitioner's petition to be timely if received by EPA within 105 days (45 days for EPA review plus the 60 day petition period) of EPA's receipt of the final GC1 Permit on October 23, 2003. On February 5, 2004, EPA received

² On August 26, 2005, ADEC again revised the title V permit for GC1 to add well pad K to the GC1 "major source"/"major stationary source" after BPX and ADEC realized that BPX's title V application and the GC1 permit mistakenly omitted well pad K. ADEC stated that there was no need to modify any permit conditions because no significant emission units are located on well pad K. According to ADEC, the only changes to the permit and

Petitioner's request that EPA object to the October 20, 2003 GC1 Permit (February 2004 Petition). The February 2004 Petition alleged that:

- (1) The GC1 Permit violates title V of the CAA because the provisions of PSD, NESHAPS, and NSPS are all based on the aggregated impact of air emissions and this permit did not aggregate all facilities within the PBU;
- (2) The pollution consequences of the violation are significant because elevated levels of nitrogen oxide on the North Slope of Alaska present a serious health problem for workers and native communities in the region and have been created by not aggregating facilities within the PBU; and
- (3) ADEC and EPA failed to exercise proper regulatory oversight in this matter by issuing the final permit with no public notice or discussion.

On December 31, 2003, ADEC forwarded to EPA a proposed Revision 1 to the GC1 Permit for EPA's 45 day review period. The proposed Revision 1 added to the permit itself the definition of the title V source, which was previously only in the statement of basis; added language to the permit and to the statement of basis stating that the permit did not apply to temporary emission units and facilities, such as drill rigs and associated activities and equipment that periodically operates at the well pads covered by the permit; made minor changes to the aggregation discussion in the statement of basis; and made revisions to three permit terms to make them consistent with other permits issued to BPX sources. ADEC stated that it was revising the permit under its informal agency review provisions of 18 AAC 15.185. ADEC issued the final Revision 1 to GC1 Permit on February 17, 2004, and the Petitioner filed the instant petition on April 14, 2004 (April 2004 Petition). The April 2004 Petition stated that, because Revision 1 did not explain the departure from ADEC's March 7, 2003 draft permit for GC1 that proposed to aggregate all facilities within the PBU and did not address the Petitioner's original objections to the October 2003 GC1 final permit, the Petitioner was resubmitting the objections raised in his February 2004 Petition.

statement of basis were the listing of well pad K as within the group of well pads associated with GC1, and an updated website reference in Condition 66 regarding the location of forms

EPA's 45-day review period for Revision 1 ended on February 14, 2004. The 60th day following that date was April 14, 2004. Accordingly, EPA finds that the April Petition was timely filed.³

III. ISSUES RAISED BY THE PETITIONER

A. Aggregation of Oil and Gas Facilities in the PBU

The Petitioner alleges that Revision 1 violates title V because, as explained in his comments on the initial draft permit, the permit did not aggregate all facilities within the PBU. The Petitioner argues this failure is important because the provisions of PSD, NESHAP, and NSPS are all based on the aggregated impact of air emissions at the source. February 2004 Petition, p. 2 (incorporated by reference in the April 2004 Petition). According to the Petitioner, the analysis ADEC included with the draft permit ADEC proposed on March 7, 2003, which called for the aggregation of all facilities in the BPU, complies with federal requirements for aggregation and is based on EPA directives, whereas the permit decisions referenced by ADEC in the final permit are at variance with EPA guidance on aggregation. February 2004 Petition, p. 2 (incorporated by reference in the April 2004 Petition). In his comments on the initial February 2002 draft permit during the State public comment process, which Petitioner refers to in the February 2004 Petition, the Petitioner stated that all of the facilities within the PBU are under common control, are interdependent, and share the same SIC code and pointed to language from the Statement of Basis for the draft February 22, 2002 permit stating that GC1 processes fluids received from other well pads and other production centers within the PBU. Thus, the Petitioner asserts, "Gathering Center 1 should not be identified as the 'facility,' but rather, as a unit of the Prudhoe Bay Facility." E-Mail from Bill MacClarence to John Kuterbach and Kathy Stringham, dated March 23, 2002.

After consideration of all available information, EPA concludes that the Petitioner has failed to provide adequate information to support his claim that the entire PBU should be

³ In EPA's April 23, 2004 letter to Petitioner acknowledging receipt of the April 2004 Petition, EPA stated that it did not intend to take further action on the February 2004 Petition, since the April 2004 Petition resubmitted, in full, the February 2004 Petition.

aggregated and has also failed to demonstrate that the failure to aggregate all facilities within the PBU has led to a deficiency in the content of the permit. As discussed above, ADEC initially took public comment on a draft permit which did not aggregate GC1 with any other facilities within the PBU and then took public comment on a draft permit that aggregated GC1 with most other facilities within the PBU for PSD purposes. In issuing the final permit in October 2003 and Revision 1 in February 2004, ADEC aggregated GC1 with its associated well pads, but not with any other facilities within the PBU. Statement of Basis, p. 2; Revision 1 Statement of Basis, p. 2. ADEC provided a detailed explanation of its aggregation decision in the statement of basis for the final permit for GC1 issued in October 2003, as well as in the statement of basis for Revision 1 issued in February 2004. ADEC discussed in great detail why it decided, based on the applicable statutes, regulations, and EPA guidance and the specific facts before ADEC, that it was not appropriate to aggregate all facilities within the entire PBU.

The April 2004 Petition, as well as the February 2004 Petition and Petitioner's March 2002 comments on the February 2002 initial draft permit, make only generalized statements that all facilities in the PBU must be aggregated and do not provide adequate references, legal analysis, or evidence in support of these general assertions. In arguing that such aggregation is necessary, the February and April 2004 Petitions generally point to the Statement of Basis provided in support of the March 2003 revised draft permit, but Petitioner does not provide any argument as to why ADEC's decision not to aggregate, which is described in great detail in the Statement of Basis for the final Revision 1 permit, is unreasonable. Moreover, neither Petition identifies any flaw under the Clean Air Act in the Revision 1 permit that resulted from the allegedly deficient decision not to aggregate all facilities in the PBU.

As discussed above, Section 502(b)(2) of the CAA places the burden on the petitioner to "demonstrate[] to the Administrator that the permit is not in compliance" with the applicable requirements of the CAA or the requirements of part 70. See also 40 C.F.R. § 70.8(c)(1); *NYPIRG*, 321 F.3d at 333 n.11. I find that the general allegations of the Petitioner in the April 2004 Petition, which incorporates the February 2004 Petition and his March 2002 comments, fail to demonstrate a basis for Petitioner's claim that Revision 1 to the GC1 Permit violates the CAA, because the permit fails to aggregate all facilities within the PBU for purposes of PSD, NESHAPS, and NSPS. Therefore, EPA denies the Petition on this issue. See Tesoro Refining

and Marketing Co., Petition No. IX-2004-6, at 11 (March 15, 2005) (denying title V petition where petitioner failed to substantiate its “generalized contention” that the permit was flawed and the permit’s statement of basis provided an explanation of the allegedly flawed permit requirement).

B. Pollution Consequences of Not Aggregating All Facilities Within the PBU

The Petitioner asserts that the pollution consequences of not aggregating all facilities within the PBU are significant because elevated levels of nitrogen oxide and other pollutants on the North Slope of Alaska present a serious health problem for workers and native communities in the region and have been created by not aggregating facilities within the PBU. February 2004 Petition, pp. 2-3 (incorporated by reference in the April 2004 Petition).

Petitioner’s second claim is in essence an extension of the first issue raised by the Petitioner: that the Clean Air Act requires aggregation of all facilities within the PBU. As discussed above, Petitioner has failed to provide adequate information to support his claim that the entire PBU should be aggregated and has also failed to demonstrate that failure to aggregate all facilities within the PBU has led to a deficiency in the content of the permit, i.e. that a CAA applicable requirement is missing from the Revision 1 permit.

Moreover, title V does not authorize a permitting authority to impose substantive new requirements on a permittee, see 40 C.F.R. § 70.1(b), and Petitioner again fails to provide support for his claim that the alleged pollution consequences arising from ADEC’s failure to aggregate all facilities within the PBU are significant and result in a permit that is not in compliance with the requirements of the CAA. Therefore, to the extent that Petitioner’s pollution consequences allegation could be read to raise an issue separate and apart from his first claim, EPA denies the Petition on this issue. See generally Shintech, Inc., Permit Nos. 2466-VO, 2467-VO, 2468-VO (Sept. 10, 1997) (denying petitioners’ claims with regard to various alleged permit deficiencies, including those resulting in negative health consequences, because

petitioners had failed to provide specific information demonstrating how the permits' provisions did not comply with the Clean Air Act).⁴

C. Alleged Lack of Public Notice or Discussion

The Petitioner alleges that the proposed permit issued on July 3, 2003,⁵ was issued without public notice and with no public discussion of the pollution consequences of the permit or the decision not to aggregate all facilities within the PBU. The Petitioner contends that ADEC's decision not to aggregate all facilities within the PBU and EPA's acquiescence in that decision occurred behind closed doors in consultation with the oil and gas industry. The Petitioner further asserts that EPA reversed its position on this permit due to aggressive lobbying of the Alaska oil and gas industry, because an August 14, 2003, letter from EPA to ADEC expressed reservations about ADEC's decision not to aggregate all facilities within the PBU. The Petitioner concludes that proper regulatory oversight was lost because EPA did not object to issuance of the permit. February 2004 Petition, pp. 3-4 (incorporated by reference in the April 2004 Petition).

At the outset, it is important to note that the procedural concerns raised by the Petitioner in his petition relate to the process of issuing the initial GC1 Permit on October 23, 2003, and not to the issuance of Revision 1 of the GC1 Permit on February 17, 2004. As discussed above, ADEC issued an initial draft permit for public comment in February 2002 in which ADEC proposed to consider GC1 as a separate title V and PSD source and not to aggregate GC1 with any other facilities in the PBU. In response to public comment on the initial draft permit, including those made by Petitioner, ADEC issued for public comment a revised draft permit in March 2003 in which ADEC proposed to aggregate GC1 with essentially all facilities within the PBU. After considering public comment on the second draft permit, including comments from the permit applicant arguing that aggregation of all facilities within the PBU was inconsistent with the Clean Air Act as well as impractical, ADEC submitted a proposed title V permit to EPA

⁴ EPA also notes that the North Slope of Alaska is currently designated attainment with the National Ambient Air Quality Standards (NAAQS) for all criteria pollutants, including nitrogen dioxide.

⁵ The petition states that the proposed permit was issued on July 3, 2002. The proposed permit was in fact issued on July 3, 2003 and received by EPA on July 9, 2003

for review in July 2003 in which ADEC aggregated GC1 with well pads D, E, F, G, Y, and P, but not with any other facilities in the PBU.

Thereafter, in response to further discussions with EPA, ADEC issued a final permit for GC1 on October 20, 2003, which EPA received on October 23, 2003. In the final GC1 Permit, ADEC made revisions to the Statement of Basis for the GC1 Permit to clarify that ADEC considered the stationary source for purposes of title V and PSD to be GC1 and all surface structures with their associated emission units located on the GC1 production pad, as well as well pads D, E, F, G, Y, and P, and to explain its approach to aggregating facilities within the PBU. However, ADEC did not make any changes to the terms and conditions contained in the July 2003 proposed permit when issuing the October 2003 GC1 Permit, because ADEC determined that emission units on the well pads, if any, were not subject to any emission unit-specific applicable requirements.

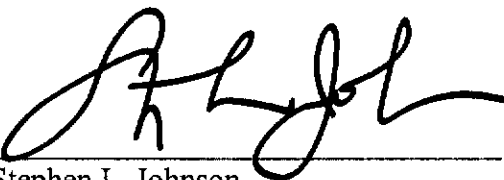
EPA believes that, in issuing the final GC1 Permit in October 2003, ADEC complied with the public notice and comment requirements of title V and ADEC's title V regulations. Part 70 requires that issuance of a title V permit be subject to adequate procedures for public notice, including offering an opportunity for public comments and a hearing on the draft permit. ADEC's approved title V program requires public notice and a 30 day public comment period on draft permits as do the new title V regulations recently adopted by Alaska. See 18 AAC 50.340(e)(2000); 18 AAC 50.040(2005); 18 AAC 50.326(k)(2005). The Alaska Supreme Court has held that a final agency decision subject to public notice and comment requirements can vary from the original proposal if the subject matter remains the same and the public has been reasonably notified that the proposed action might affect its interests. Trustees for Alaska v. State Department of Natural Resources, 795 P.2d 805, 808 (Alaska 1990). The court specifically noted that Alaska law on this point is similar to the approach followed by federal courts in reviewing the actions of federal agencies, which is referred to as the "logical outgrowth" test. The question under the "logical outgrowth" test is whether the final action is in character with the original proposal and a logical outgrowth of the notice and comments. Environmental Defense Center, Inc. v. U.S. E.P.A., 344 F.3d 832, 837 (9th Cir. 2003); Hodge v. Dalton, 107 F.3d 705, 712 (9th Cir. 1997). Accordingly, a new opportunity for public comment is not generated every time the agency reacts to public comments that it receives. Id.

In this case, ADEC provided two opportunities for public comment on two different versions of the permit: one version considering GC1 a source in and of itself and another version aggregating GC1 with essentially all other facilities within the PBU. In the end, the final permit issued by ADEC fell between the two alternative proposals: the final permit aggregated GC1 with well pads D, E, F, G, Y, and P, but not with any other facilities within the PBU. During both opportunities for public comment, the issue of how GC1 should be aggregated under the various CAA programs was clearly an issue ripe for comment. In fact, ADEC considered all public comments it received regarding aggregation and, in issuing the final permit, explained why the final permit did not aggregate all facilities within the PBU into a single facility. Because the aggregation decision contained in the October 2003 GC1 Permit was a logical outgrowth of the prior draft permits and related public comments, EPA believes that ADEC satisfied the public notice and comment requirements of title V and ADEC's approved title V program in issuing the final GC1 Permit in October 2003. Accordingly, EPA denies the Petition on this issue.⁶

III. CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, EPA is denying the Petitioner's petition requesting the Administrator to object to the issuance of Revision 1 of the GC1 Permit.

APR 20 2007
Dated



Stephen L. Johnson
Administrator

⁶ Furthermore, EPA disagrees that it altered its position on aggregation on the North Slope because of aggressive lobbying by the Alaska oil and gas industry or failed to exercise proper regulatory oversight because it did not object to the October 2003 GC1 Permit. EPA did meet with the applicant, at the applicant's request, on two occasions to discuss aggregation of facilities within the PBU. Notes of the meetings are in the record for this petition response. On each occasion, EPA advised the applicant that because of the procedural posture of the permitting decisions and pending title V petitions raising aggregation issues, EPA would listen to the applicant's concerns and would take notes of the meeting, but EPA could not respond to the merits of the applicant's presentation as it related to aggregation of sources.