

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
TITLE V OPERATING PERMIT)	PETITION NO. VIII-2002-1
FOR)	
BUCKINGHAM LUMBER COMPANY,)	ORDER RESPONDING TO
BUCKINGHAM LUMBER MILL.)	PETITIONER'S REQUEST THAT
)	THE ADMINISTRATOR OBJECT
)	TO ISSUANCE OF STATE
WYOMING PERMIT NO. 31-080)	TITLE V OPERATING PERMIT
_____)	

ORDER PARTIALLY GRANTING AND PARTIALLY DENYING
PETITION FOR OBJECTION TO PERMIT

On April 24, 2002, the Buffalo Committee to Stop Sawmill Burning ("Petitioner") petitioned the United States Environmental Protection Agency ("EPA" or "the Agency") to object to the renewal of an operating permit for Buckingham Lumber Company ("Buckingham" or "the Company") under the authority of Title V of the Clean Air Act, 42 U.S.C. sections 7661-7661f. On March 1, 2002, the Wyoming Department of Environmental Quality ("WDEQ") issued a final operating permit ("Permit") to Buckingham for a "teepee" burner located near Buffalo, Wyoming. The Buckingham teepee burner is essentially a metal cone, several stories high, with a hemispherical metal screen cap on top, in which wood waste is burned, rather than recycled, reused, or disposed of in some other fashion. Teepee burners have generally been phased out in the wood products industry and, to EPA's knowledge, are rarely used at facilities of this size. Permit No. 31-080 constitutes a State operating permit under authority of Wyoming regulations implementing Chapter 6, section 3 of the Wyoming Air Quality Standards and Regulations ("WAQSR"), Title V of the Act, and federal regulations at 40 C.F.R. Part 70.

The petition raises three objections to the State permit. First, the petition alleges that the operating permit fails to assure continuous compliance with opacity limits applicable to teepee burners under Wyoming Chapter 6, §3(h)(i)(C)(I)(2) of the WAQSR, and 40 C.F.R. § 70.6(a)(3)(i)(B).

Second, the petition alleges that the provisions providing for emissions exceptions during "malfunction," "abnormal

conditions," and "breakdown of a process, control or related operating equipment" are inconsistent with EPA policy.

Finally, the petition alleges that "new information" about emissions at the Town of Buffalo shows a need for continuous monitoring. For the above reasons, the Petitioner requests that EPA revoke the State permit and reopen it to ensure that the permit contains adequate monitoring.

Based on a review of the all the information before me, including the Buckingham Lumber Company Permit, the Permit application and statements of basis, comments on the proposed Permit issued by EPA Region 8, and the information provided by the Petitioner, I grant the Petitioner's request in part and deny the remainder.

I. STATUTORY AND REGULATORY FRAMEWORK

Major stationary 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 Act. See CAA sections 502(a) and 504(a). Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. The State of Wyoming submitted a Title V program governing the issuance of operating permits on November 19, 1993. In January, 1995, EPA granted interim approval of the Wyoming Title V program, which became effective on February 21, 1995. See 64 Fed. Reg. 3766 (Jan. 19, 1995); 40 C.F.R. Part 70, Appendix A. In February, 1999, EPA granted Wyoming full approval of its Title V program, effective April 23, 1999. See 64 Fed. Reg. 8523 (Feb. 22, 1999).

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 permits to contain monitoring, record keeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, states, and the public to clearly understand the regulatory requirements applicable to the source and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for assuring that existing air quality control requirements are appropriately applied to facility emission units in a single document and assuring compliance with these requirements.

Under section 505(a) of the Act and 40 C.F.R. § 70.8(a), states are required to submit to EPA for review all operating permits proposed for issuance, following the close of the public comment period. EPA is authorized under section 505(b)(1) of the Act and 40 C.F.R. § 70.8(c) to review proposed permits, and object to permits that fail to comply with applicable requirements of the Act, including the State's implementation plan ("SIP"), and the associated public participation requirements, or the requirements of 40 C.F.R. Part 70.

If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. Petitions must, in general, be based on objections to the permit that were raised with reasonable specificity during the public comment period.¹ When a Petitioner asks EPA to object to a title V permit, a Petitioner must provide enough information for EPA to discern the basis for its petition. The statute provides that a petition for 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 prior to an EPA objection. 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 consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

For the reasons set forth below, in my capacity as Administrator of the U.S. Environmental Protection Agency, I grant in part and dismiss in part Petition NO. VIII-2002-1.

II. Opacity Monitoring

A. Background

Federal regulations at 40 C.F.R. § 70.6 set forth requirements for operating permits issued by state programs established under Title V of the Clean Air Act. Under the "periodic monitoring" provisions of 40 C.F.R. § 70.6(a)(3)(i)(B)

¹ See 42 U.S.C. § 7661d(b)(2). Petitioner satisfied this threshold requirement by commenting on the Permit during the public comment period. See Letter from Ross Elliot, President, Buffalo Committee to Stop Sawmill Burning, dated September 21, 2001.

and WAQSR Chapter 6, § 3(h)(i)(C)(I)(2), "[w]here the applicable requirement does not require periodic testing or non-instrumental monitoring," an operating permit must include such monitoring as is "sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit...."²

The Permit issued by Wyoming to Buckingham contains two provisions that limit emissions from the teepee burner.³ First, Permit condition (F1)(a) states that "visible emissions from the wood waste burner shall not exceed an opacity of 20 percent for a period or periods aggregating more than six minutes in any one hour, except during startup and building of fires." This opacity limit is mandated by the Wyoming SIP, WAQSR Chapter 10, section 3(a)(i).

Second, Permit Condition (F1)(b) continues, "during startup and building of fires, the particulate, opacity, and darkness limits specified in (F1)(a) may be exceeded by not more than 60 minutes in eight hours." This opacity limit is also mandated by the Wyoming SIP, WAQSR Chapter 10, section 3(c).

² The scope of applicability of this regulation, known as the periodic monitoring rule, was addressed by the US Court of Appeals for the DC Circuit in Appalachian Power v. EPA, 208 F.3d 1015 (D.C. Cir. 2000). The court concluded that, under section 40 C.F.R. §70.6(a)(3)(i)(B), the periodic monitoring rule applies only when the underlying applicable rule requires "no periodic testing, specifies no frequency, or requires only a one-time test." *Id.* at 1020. The Appalachian Power court did not address the content of the periodic monitoring rule where it does apply, i.e., the question of what monitoring would be sufficient to "yield reliable data from the relevant time period that are representative of the source's compliance with the permit," as is required by 40 C.F.R. §70.6(a)(3)(i)(B) and WAQSR Chapter 6, section 3(h)(i)(C)(I)(2). It is this issue that is raised by the petition at bar.

³ For purposes of Wyoming's SIP, the teepee burner is regulated under section 3 of Chapter 10 of the WAQSR, as a "wood waste burner." Wood waste burners are defined as "devices commonly called teepee burners, silos, truncated cones, wigwam burners, and burners commonly used by the wood product industry for the disposal by burning of wood wastes."

There are no provisions in the Wyoming SIP requiring opacity monitoring for wood waste burners such as that operated by Buckingham Lumber Company.⁴ Since the Wyoming SIP provisions do not require any periodic testing or monitoring to assure compliance with the opacity limits, Wyoming properly exercised its authority to add "periodic" monitoring into Buckingham's title V permit. See supra notes 2 and 4. Specifically, the permit contains several provisions relating to monitoring:

- Permit condition F(6) requires the Company to "conduct a ten minute Method 9 observation to measure the opacity of visible emissions" for each day the burner is in operation. Wyoming's Method 9 is identical to and copied from EPA's own Method 9. (40 C.F.R. Part 60, Appendix A-4, October 25, 1999). Permit Condition F(6)(i) also states that "the visibility observation shall not take place during start up or the building of the fire."
- Permit Condition F6(ii) requires that "[i]f any single opacity measurement during the ten minute reading exceeds 20 percent, the permittee shall continue the Method 9 observation for one hour."
- Permit conditions F(7) and (8) require that Buckingham install a thermocouple and recording pyrometer, and perform proper burner maintenance, operation and control.

⁴ Wyoming's SIP requires that wood waste burners install a thermocouple (a temperature measuring sensor) and a recording pyrometer (an instrument for measuring and recording extremely high temperatures), maintain a daily written log of burner operation and utilize a continuous flow conveying method to convey process wood waste to the combustion chamber. WAQSR Chapter 10, Section 3(b)(i), (ii) and (iv). However, the SIP does not require that the thermocouple or pyrometer be operated. In addition, the SIP neither establishes nor requires any relationship between these parameters and the opacity standard. As such, none of these requirements constitute monitoring, which inherently involves establishing or demonstrating a relationship between the measured values and compliance with the applicable emissions limit and using those data to assure compliance. See 40 C.F.R. §64.1. Since the SIP does not require that wood waste burners perform any monitoring to assure compliance with the opacity emissions limit, Wyoming must require periodic monitoring, consistent with 40 C.F.R. 70.6(a)(3)(i)(B) and WAQSR Chapter 6, § 3(h)(i)(C)(I)(2), as part of Buckingham's permit.

Petitioner alleges that, together, the above Permit conditions "[fail] to assure continuous compliance with the applicable opacity limit for the teepee burner." See Petition, page 2. Specifically, petitioner alleges that a once per day opacity reading of ten minutes, controlled solely by the Company, is not sufficient to establish compliance for the following reasons:

- (1) Under Permit condition (F6), the 20 percent opacity limit established by WAQSR Ch.10 § 3(a) and Ch. 6, §3(h)(i)(C)(1) applies only after an aggregate six minute "period or periods" of readings greater than 20 percent in one hour; therefore, at least one continuous hour of readings excluding this six minute period is necessary to allow an aggregation of hourly non-startup opacity values,
- (2) Continuous monitoring for one hour on either side of each allowed six minute period of excused opacity exceedance is necessary to prevent a possible aggregation of two six minute periods into one twelve minute period of non-compliance,
- (3) Compliance with the 20 percent opacity limit is not possible where the Permit allows an exceedance of the limit for any consecutive or non-consecutive 60 minute period during "start-up," which itself is allowed to last up to eight hours, unless monitoring is required for eight consecutive hours on either side of the 60 minute period, and
- (4) The Permit illegally relaxes the State opacity limit by requiring compliance with opacity during only one percent of the total time of operation.

For all of the above reasons, Petitioner contends that the monitoring in the permit is inadequate, and requests that EPA require "continuous" opacity monitoring at the Buckingham Lumber Company Teepee Burner.

B. Monitoring During Operation

As discussed in greater detail below, I find that the monitoring included in Buckingham's Permit is not sufficient to meet the requirements of section 70.6(a)(3) and WAQSR Chapter 6, §3(h)(i)(C)(I)(2). Specifically, a single ten-minute Method 9 observation each day the unit is in operation is inadequate to encompass the relevant time period, nor would such monitoring

yield data that are representative of the source's compliance with its Permit Conditions and the Wyoming SIP.

In Condition (F6) of Wyoming Permit No. 31-080, as it was proposed on August 17, 2001, the Buckingham Teepee burner was allowed an exemption of up to six minutes in any one hour from complying with the 20 percent opacity limit established by WAQSR, Chapter 10, section 3. Compliance was to be determined using an observation by a qualified individual but Chapter 10, Section 3 did not specify how often the source was required to conduct such monitoring.

On February 27, 2002, EPA Region 8 submitted comments on the proposed Buckingham Lumber Mill Title V Permit by letter to Mr. Dan Olson, Administrator of the Air Quality Division of the Wyoming Department of Environmental Quality. In that letter, EPA asked that the Permit require at least a twelve minute Method 9 observation during every hour of operation in order to: (1) allow for potential variability in fuel moisture, and (2) account for both the six minute exemption period and a six minute observation period.

When Permit No. 31-080 was issued on March 1, 2002, condition (F6) required the operator to perform one ten minute Method 9 observation for "any day the burner is operated." In its January 9, 2002, explanation of changes between the Permit as proposed and the Permit as finally issued, WDEQ said, "The regulatory requirement for periodic monitoring does not require continuous monitoring for a source but only that representative monitoring be specified." WDEQ went on to say that, to its knowledge, continuous monitoring with instrumentation is not technically feasible.

EPA agrees with the Petitioner that the monitoring required in the permit is inadequate to assure compliance. Simply put, a single ten minute monitoring period per day of operation is not "sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. §70.6(a)(3)(i)(B) and WAQSR Chapter 6, § 3(h)(i)(C)(I)(2).

First, data from a single daily visual observation are unlikely to be representative of this source's emissions. Such a monitoring plan leaves open the question of assuring compliance during the remainder of the period of burning. This is particularly true for Buckingham Lumber due to the significant variability that is inherent in the type of the fuel used (wood waste) and the consequent variability in combustion temperatures

and other operating parameters that may well affect emissions. For example, a single ten minute reading during the morning may not be representative of the facility's opacity emissions during the afternoon when the type of wood and other operation conditions have changed.

Permit condition (F6)(ii) partially addresses this concern by requiring that, "if any single opacity measurement during the ten minute reading exceeds 20 percent, the permittee shall continue Method 9 observation for one hour." Thus, if a single 15 second increment reading during the 10-minute Method 9 observation exceeds 20 percent, Buckingham must perform Method 9 observation for one hour. While helpful, this provision is insufficient to fully ameliorate the fact that a daily test at a source with a variable feedstock does not provide sufficient data representative of the full range of Buckingham's operations to assure compliance with a continuous opacity limit. As discussed in section C below, this problem may be compounded by the exemption allowed for start up and fire building, which can last up to eight hours. Consequently, the permit is insufficient to meet the periodic monitoring requirements of 40 C.F.R. §70.6(a)(3) or WAQSR Chapter 6, §3(h)(i)(C)(I)(2).

A single ten minute observation per day of this unit's emissions also fails to satisfy another element of the periodic monitoring rule, namely that the monitoring yield "reliable data from the relevant time period." Given the different types of wood waste burned at Buckingham Lumber and the variability in combustion temperatures and other operating parameters, a once-a-day observation is insufficient to reflect the relevant time period for an opacity emissions limit that must be complied with at all times other than the specified periods of exemption. Specifically, Permit Condition F(1) provides an exemption for periods aggregating less than six minutes in any one hour. Due to the variability of this unit's emissions, neither the source nor the State would be able to assure compliance with such a standard based only on a daily Method 9 observation.

Finally, the Method 9 visual emissions monitoring as set forth in Buckingham's Permit is inappropriate with respect to Wyoming's opacity emissions standard. EPA-approved Method 9 monitoring requires that "[o]pacity shall be determined as an average of 24 consecutive observations recorded at 15-second intervals." (emphasis added) Method 9, ¶ 2.4. In contrast, the visible emissions limit imposed in the Wyoming SIP, WAQSR Chapter 10, section 3(a)(i), and included as Permit Condition (F1)(a) focuses on an aggregate of time for which the opacity exceeds 20 percent (namely, periods aggregating more than six minutes in any

one hour). Monitoring based on six minute averages of opacity is not appropriate for a standard expressed as aggregation of minutes per hour during which the opacity exceeds 20 percent. To make an appropriate comparison, the readings from the Method 9 opacity observations collected over an hour would need to be converted into a format more appropriate for Wyoming's opacity standard (such as by summing the total of each of the interval readings per hour to determine how many minutes the opacity standard may have exceeded 20 percent).

In summary, the nature of the continuous opacity emissions limitation and Buckingham's operations requires more than one ten minute monitoring period per day to be "sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. §70.6(a)(3)(i)(B) and WAQSR Chapter 6, § 3(h)(i)(C)(I)(2). Therefore, I object to the Buckingham permit on this ground.⁵ Buckingham's permit must be modified to incorporate adequate periodic monitoring, including utilizing methods that address the measurements associated with the Wyoming SIPs time aggregation limit. Region 8 is hereby directed to provide technical assistance to WDEQ, as requested, to resolve this concern.

C. Monitoring During Start-Up and Fire Building

Permit condition (F1)(b) states that emissions from the Company's teepee burner may not exceed the Wyoming SIP's 20 percent opacity limit for more than 60 minutes in eight hours during fire starting and buildup. As discussed above, the EPA-approved Wyoming SIP does not include any monitoring requirements for wood waste burners during start-up and fire building. As such, the periodic monitoring requirements of 40 C.F.R. § 70.6(a)(3)(i)(B) and WAQSR Chapter 6, §3(h)(i)(C)(I)(2) apply. Regrettably, the WDEQ has not incorporated sufficient provisions in Buckingham's permit to fully satisfy this requirement.

Under Permit condition F(6)(i), monitoring for emissions in excess of opacity limits during start up and fire building is excused. Neither "fire start up" nor "building of the fire" is

⁵ Even if the periodic monitoring rule at 40 C.F.R. §70.6(a)(3)(i)(B) did not apply, the permit would still be deficient since the monitoring provisions are not sufficient to "assure compliance" with the Permit's terms and conditions, and the State's Implementation Plan, as required under Clean Air Act sections 504(a) and 504(c) and EPA's implementing regulations at 40 C.F.R. § 70.6(c)(1).

defined in the Permit, although "Startup" is defined in the Chapter 5, section (2)(e)(i) of the Wyoming SIP as "the setting in operation of an affected source for any purpose." This definition does not place any limit on the duration of startup or building of the fire. Without further clarification, current Permit condition (F1)(b), which prohibits any violation of the 20 percent opacity limit for more than 60 minutes in eight hours during fire starting and buildup, might be interpreted such that "Startup" can last up to eight hours. Provisions F(6)(i) and F1(1) , taken together, could be interpreted to mean that the source would not be required to obtain any monitoring data to show compliance during a Startup of up to eight hours. Because the duration of startup and fire building under the Permit may include an entire day's duration of burner operation, and because monitoring for emissions in excess of opacity limits is not required during startup and fire building, the 20 percent opacity limitation set forth in Permit condition F1(b) may be unenforceable for what would amount to a full day of burner operation.

In addition, as discussed in section B above, even if monitoring were required during startup and fire building, a monitoring plan that provides only for a single ten minute Method 9 reading per day of burner operation, coupled with allowing the source to aggregate time periods for the purpose of determining compliance, would make it difficult for the source to obtain data sufficiently reliable to show compliance with applicable Permit and SIP conditions over the full duration of burner operation.

As the Permit is currently written, condition F(6)(ii) requires the source to continue monitoring for one hour if a single opacity measurement during the daily ten minute Method 9 opacity reading shows an exceedance. However, continuous monitoring for a period of one hour after an exceedance would also be insufficient to show compliance with the Permit if that exceedance continued for more than one hour after its discovery. Therefore, additional monitoring in the event of an exceedance must be included in the Permit, such as monitoring for one hour or until compliance with Permit conditions is documented, whichever is longer.⁶

⁶ As discussed more fully in section III below, Permit condition (F6)(i) may present an additional problem if the prohibition against opacity monitoring during start up and fire building constitutes an "automatic exemption," contrary to EPA's interpretation of title I of the Clean Air Act. I do not need to reach this issue, however, because I am already objecting to this

For the reasons set forth above, EPA grants the petition on this issue. With respect to WDEQ's Permit No. 31-080, and pursuant to the requirements of 40 C.F.R. Part 70, the State is ordered to modify, terminate, or revoke and reissue a corresponding permit to Buckingham that resolves these concerns. Such termination, revocation, re-issuance must be consistent with the procedures set forth in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause, and consistent with the provisions of this order, as set forth above.

D. Recommended Opacity Monitoring Approaches

There are a number of possible monitoring approaches that WDEQ could incorporate into Buckingham's permit that would be sufficient to meet the periodic monitoring requirements of 40 C.F.R. § 70.6(a)(3)(i)(B) and WAQSR Chapter 6, § 3(h)(i)(C)(I)(2). The choice of monitoring approach upon permit reopening is a decision to be made by WDEQ. However, I encourage WDEQ to work with the Buckingham facility and EPA Region 8 to develop a monitoring procedure tailored to the unique technical and operational considerations at the source. To assist in this endeavor, the following recommendations are intended as examples of approaches that would provide adequate monitoring for Buckingham's teepee burner.

The petitioner advocated that Buckingham perform continuous method 9 opacity monitoring whenever the unit is in operation. I understand that WDEQ previously rejected this approach as unduly burdensome in this case. Nevertheless, as a technical matter, this approach would be adequate to satisfy the requirements of the periodic monitoring rule.⁷

Alternatively, EPA believes a single, six minute, Method 9 observation per hour of operation (including start up, fire building and shutdown) would be adequate, providing that monitoring continues in the event that any exceedance of the 20 percent opacity limit is observed. This approach can be achieved by:

permit condition for failure to comply with the periodic monitoring requirements of 40 C.F.R. § 70.6(a)(3)(i)(B) and WAQSR Chapter 6, §3(h)(i)(C)(I)(2).

⁷ As EPA Region 8 noted in its February 27, 2002 comments, additional permit conditions would be needed if the teepee burner is authorized to operate at night.

- (1) modifying permit condition (F6)(ii) to include one six minute Method 9 opacity monitoring observation per hour, and
- (2) modifying permit condition (F6)(ii), to state that "If any single opacity measurement during the six minute observation exceeds 20 percent, the permittee shall continue the Method 9 observations for one hour to demonstrate compliance or, if the opacity limit is exceeded in that hour, continue the measurements for one hour or longer until the source demonstrates compliance." EPA interprets this provision to mean that, in the event any exceedance of the 20 percent opacity limit is discovered during any single 15 second portion of each six minute per hour monitoring observation, monitoring will continue for one hour. If that monitoring indicates that opacity exceeds 20 percent for a total of more than six minutes, then the source is in violation of the opacity standard and must continue monitoring for an additional hour or longer until the facility is once again shown to be in compliance.

By combining hourly Method 9 opacity monitoring observations with the requirement for additional monitoring if any single fifteen second opacity measurement exceeds 20 percent, this approach would provide reliable data from the relevant time period that is representative of the full range of the source's operations and, as such, would satisfy the periodic monitoring rule.

Another alternative approach would be for WDEQ to work with the source to identify operational parameters that correlate with opacity. By controlling the appropriate parameters, Buckingham may be able to demonstrate that it is in compliance with the opacity standard and reduce the need for as frequent (e.g., hourly) method 9 visibility emissions monitoring. For example, permit condition (F7) requires Buckingham to install and maintain a thermocouple and recording pyrometer or another temperature measurement and recording device to appropriately measure the source's maximum effluent gas temperatures. Permit condition (F10) requires the permittee to maintain written logs showing the start and end of fire building, as well as the optimum operational patterns for different fuel and atmospheric conditions. If Buckingham is able to use this information to accurately correlate fuel type, fuel feed rate, burning temperature, and other operational factors with emissions opacity in such a way that the emissions can be effectively controlled and the opacity limit met during start up, building of fire

normal operations and shut down, then a monitoring approach measuring these parameters may be feasible at this source. Such a correlation must be documented to the satisfaction of the Wyoming Department of Environmental Quality for each type of fuel burned. In EPA's experience, monitoring parameters such as temperature can yield reliable data relative to a source's compliance with an opacity standard, but is typically most reliable when supplemented with daily method 9 visibility emissions observation for each type of fuel burned.

Under each of these approaches, the technical concerns regarding converting method 9 monitoring data into an aggregate of time would need to be properly addressed (as discussed on page 8). In addition, in the event there is an exceedance of the 20 percent opacity limit, whether during start-up, fire building, or during normal operation, the permit should require the source to take appropriate remedial action (e.g., modify fuel type or amount, burn temperature) to bring the burner back into compliance with the terms of the permit and applicable SIP provisions.

Once again, the approaches recommended above are offered as suggested guidelines for establishing a monitoring procedure for Buckingham that is sufficient to show compliance with the terms of Permit No. 31-080. Since the current opacity monitoring requirements of Permit No. 31-080 are not sufficient to show compliance with applicable permit conditions and SIP provisions, I grant the petition and require that the permit be modified accordingly.

III. Wyoming SIP "Malfunction" Provision and the Opacity Limit Exemption During Startup and Fire Building

Condition (G21) of Buckingham's permit states that emissions in excess of established limits due to "malfunction or abnormal conditions or breakdown of a process, control or related operating equipment" beyond the control of the owner or operator shall not be deemed a violation of emission limits, providing the Division is notified and an acceptable corrective action program is "furnished." This permit provision is based on an essentially identical provision in Wyoming's SIP, at WAQSR Chapter 1, §5(a).

Petitioner alleges that "the 'malfunction,' 'abnormal conditions,' and 'breakdown of a process, control or related operating equipment' exceptions set forth at condition G21 of [the] operating permit are inconsistent with EPA policy and must not be allowed"

In its comment letter of February 27, 2002, EPA Region 8 acknowledged that this issue was raised by the Petitioner during the public comment period, and also in a previous citizen's petition, filed by the Wyoming Outdoor Council, concerning operating permits for the PacifiCorp Jim Bridger and Naughton coal-fired power plants.⁸ In that case, Petitioners asked EPA to object to two Title V operating permits because, in part, those permits improperly allowed an "automatic" exemption from SIP emission limits on the basis of a "malfunction provision" that is similar, if not identical, to the one at issue here.

Petitioner in this matter makes the same claim, adding that SIP emission limits are established to ensure the public health and safety, and that it is EPA's policy that any exemption from SIP emissions limits must be the result of an "unavoidable" event.

EPA agrees with the Petitioner that the CAA, as interpreted in EPA's longstanding policy, prohibits automatic exemptions from compliance with emissions limitations during periods of excess emissions.⁹ See EPA Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation,

⁸ In the Matter of: PacifiCorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Permit Nos. 30-120 and 30-121, Petition No. VIII-00-1, Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Title V Operating Permits, November 16, 2000 (available at <http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/woc020.pdf>).

⁹ At the same time, EPA recognizes that states may exercise enforcement discretion to refrain from taking enforcement actions and seeking penalties where circumstances beyond a facility owner or operator's control result in excess emissions, and EPA further recognizes that states have the discretion to provide for appropriately tailored affirmative defenses to actions for penalties brought for excess emissions that occur during startup, shutdown, and malfunction episodes. See EPA Memorandum from Eric Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, to Regional Administrators, Regions I-X, *Re-Issuance of Clarification - State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* (Dec. 5, 2001).

to Regional Administrators I-X, *State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* (Sept. 20, 1999); EPA Memorandum from Kathleen M. Bennett to Assistant Administrator for Air, Noise and Radiation and Regional Administrators, Regions I-X, *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (SSM) (Sept. 28, 1982).

As the Petitioner points out, under Title I of the Clean Air Act, as interpreted by EPA, to qualify for special treatment as excess emissions during SSM, the source first has the burden of proof to demonstrate that the excess emissions were beyond the control of the source. Under EPA policy, the Agency does not approve SIP provisions containing automatic exemptions because excess emissions can contribute to a violation of Prevention of Significant Deterioration increments and/or National Ambient Air Quality Standards. Also, under EPA policy, SSM provisions may not apply to excess emissions arising from poor equipment operation, maintenance, or design.

In this case, the petitioner points out that, while Permit Condition (G21) states that it applies only to problems beyond the control of the operator, it only requires the source to "advise" the Air Quality Control Division of the "circumstances" leading to the excess emissions and furnish an acceptable "corrective program." The condition is said to be less stringent than that addressed by EPA guidance because it does not put the burden on the operator to demonstrate that the excess emissions were in fact the result of objective factors beyond the source's control. Although this provision properly places the burden of qualifying for the exemption on the source, the nature of the source's burden lacks objective criteria, such as the nature of the showing, a deadline for filing a written report, and parameters for what is an "acceptable" corrective program.

In her Order in In the Matter of: PacifiCorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Permit Nos. 30-120 and 30-121, Petition No. VIII-00-1, November 16, 2000 (available at <http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/woc020.pdf>), the Administrator affirmed that the Clean Air Act, as interpreted by EPA, "does not allow for automatic exemption from compliance for periods of excess emissions and that improper operation and maintenance practices do not qualify as malfunctions" ¹⁰

¹⁰ November 16, 2000, Order, p. 22.

Moreover, the Administrator also said that:

[S]IPs should provide that the burden of proof is on the owner or operator of a source to demonstrate that excess emissions are a result of unavoidable events beyond the owner's or operator's control, for purposes of enforcement discretion or an affirmative defense before a neutral trier of fact in an enforcement action. To the extent that a malfunction provision broadly excuses sources from compliance with emission limitations during periods of malfunction, EPA believes it should not be approved as part of the federally approved state implementation plan.¹¹

The Administrator declined, however, to decide whether the particular "malfunction provision" in question was one that violated EPA policy and should not be included in the approved Wyoming SIP. The Administrator said:

[e]ven if the provision were found not to satisfy the Act, EPA could not properly object to a permit term that is derived from a provision of the federally approved SIP. Such a provision is inherently a part of an "applicable requirement" as that term is defined in 40 C.F.R. § 70.2, and the Administrator may not, in the context of reviewing a potential objection to a Title V permit, ignore or revise duly approved SIP provisions.¹²

Inasmuch as the Administrator could not ignore or revise a duly authorized SIP provision under these circumstances, she directed EPA Region 8 to review the Wyoming SIP to determine whether section 19 of the WAQSR, entitled "Abnormal conditions and equipment malfunction," is consistent with title I of the Clean Air Act. Region 8 was further directed to work with the State of

¹¹ Id., at 23.

¹² Id., at 24. See also EPA Memorandum from Eric Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, to Regional Administrators, Regions I-X, *Re-Issuance of Clarification - State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* (Dec. 5, 2001).

Wyoming to ensure that any "corrections" to the SIP, if necessary, are made.

To date, EPA Region 8 has not conducted a review of section 19 of the Wyoming SIP regulations. Therefore, even if the provision were found not to satisfy the Act, it is still not possible for the Administrator to grant the Petitioner's request with respect to Wyoming's "malfunction provision." In response to this petition, however, and as provided for in the Administrator's Order of November 16, 2000, I hereby direct Region 8 to complete a substantive review, in consultation with the State of Wyoming, of Wyoming Air Quality Standards and Regulations, Section 19, entitled "Abnormal Conditions and Equipment Malfunction," as approved by EPA as part of the federally approved SIP in 1974. EPA Region 8 is hereby ordered to complete this review within ninety (90) days of the date of this Order, and to initiate necessary corrective measures, if any, as soon as practicable thereafter.

IV. New Information and the Need for Continuous Monitoring

Petitioner includes with its petition a letter from Pat McDowell, a citizen of Buffalo, Wyoming, where the Buckingham lumber teepee burner is located. In the letter (Petition Attachment 8), Ms. McDowell alleges that during the week of April 10, 2002, smoke from the Buckingham teepee burner filled the town of Buffalo, Wyoming, prompting her to complain to the Wyoming Department of Environmental Quality. During that conversation, she alleges, she learned that the operator of the teepee burner apparently failed to take even one opacity reading per day as required by the current Permit. Based on this event, Petitioner asserts that this source presents a hazard to the health and well being of the residents of Buffalo, Wyoming, and concludes that, "to ensure that the inspection of opacity from this source is not subject to the whim of the operator, and is done on a consistent and objective basis, EPA must require continuous, instrumental monitoring."

Having carefully considered both the citizen's letter and Petitioner's allegation, and in light of the discussions above, the Petitioner's request is hereby denied because: (1) to the extent the petition concerns inadequate monitoring, I have addressed it above, and (2) Ms. McDowell failed to demonstrate that any other applicable requirement is missing from the permit or that the permit otherwise fails to comply with the requirements of 40 C.F.R. part 70.

To the extent there may be exceedances of the opacity limit during operation of the Buckingham Lumber Company teepee facility, the Wyoming Department of Environmental Quality should investigate citizen's complaints, with the assistance of EPA Region 8's Office of Enforcement, Compliance and Environmental Justice, if necessary and appropriate. Investigators should consider any credible evidence that might be presented by the citizens, as provided for under section 113(e)(1) of the Clean Air Act, 42 U.S.C. §7413(e)(1) and 40 C.F.R. §52.12(c).

V. CONCLUSION

For the reasons set forth above, I partially grant the April 24, 2002, petition from the Buffalo Committee to Stop Sawmill Burning, and I hereby object to Wyoming Permit No. 31-080 to the extent that it does not provide for periodic monitoring that would be sufficient to yield reliable data for the relevant time period that are representative of the source's compliance with the permit. I deny the remainder of the April 24, 2002 petition from the Buffalo Committee to Stop Sawmill Burning.

Pursuant to sections 505(b) and 505(e) of the Clean Air Act, 42 U.S.C. §§ 7661d(b) and (e), and 40 C.F.R. §§ 70.7(g) and 70.8(d), the WDEQ shall have 90 days from receipt of this Order to resolve the objections identified in II.B. and C, above, and to terminate, modify or revoke and reissue the Permit in accordance with this objection.

Date: NOV 1 2002

Christine Todd Whitman
Administrator