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March 19, 2002

Christine T. Whitman
Administrator
U.S. Environmental Protection Agency
1101A
Ariel Rios Building
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

RE: Petition to Object to Cargill's Gainesville Vegetable Oil Mill & Refinery
Proposed Clean Air Act Title V Operating Permit
Permit No: 2075-139-0002-V-01-0
Proposed by the Georgia Environmental Protection Division

Dear Administrator Whitman:

On behalf of the Newtown Florist Club, and pursuant to 40 CFR § 70.8(d) and 42 U.S.C. § 7661d(b)(2), we are requesting that you object to the proposed Title V permit that the Georgia Environmental Protection Division (Georgia EPD) issued to Cargill's Gainesville Vegetable Oil Mill & Refinery. Georgia EPD has assigned this permit No: 2075-139-0002-V-01-0.

We believe the Georgia EPD proposed the permit to March 4, 2002. However, U.S. Environmental Protection Agency (EPA) Region 4 has refused to confirm that Georgia EPD did indeed propose the Title V permit on March 4, 2002. In the past, Georgia EPD has claimed to have proposed a Title V permit to EPA while EPA has claimed that Georgia EPD did not propose the permit. This inconsistency resulted in forcing us to sue you in *Sierra Club v. Whitman*, Civil Action No.01CV1991(ESH)(D.D.C. 2002). Although the Judge ruled in our favor in that case, she did state that it would be advisable for petitioners to file a protective petition. *Id.* at 13, n.9. This document constitutes our protective petition. We reserve the right to file a supplemental petition at a later date, if we are able to confirm that Georgia EPD did indeed propose the Cargill Title V permit on March 4, 2002. However, we still believe we are entitled to a response to this petition within 60 days of the filing of this petition.

We sincerely hope the EPA will work with us to develop a system in Georgia whereby the public can be informed by reliable information of when Title V permits, which they commented on, are proposed by Georgia EPD to EPA. In any event, the grounds for our petition are as follows:

The Newtown Florist Club is a 50-year-old community based organization that focuses on ensuring environmental justice for a low-income community in Gainesville, Georgia, and adjoining neighborhoods. The Newtown Florist Club promotes youth development, and organizes for social, economic, and environmental justice in Gainesville.

The Newtown Florist Club and its members are very concerned with Cargill's operating and construction permit because of the history of the company. They have had numerous spillages that were released into the air and community. Grain dust, noise and odor occur everyday. People live in fear of the Cargill facility having another major accident.

Our comments are divided into two sections.

- General Comments: These comments are likely to apply across the board to the Georgia Title V program or at least a significant portion of the program. We would like to work with EPD and EPA in quickly resolving these issues so that we do not continually debate these issues in the context of each Title V permit.

- Specific Comments: These are comments that probably apply only to the particular permit at issue.

GENERAL COMMENTS

1) EPD'S PUBLIC NOTICE PROCEDURES ARE NOT ADEQUATE

The Environmental Protection Division (EPD) did not undertake the required public participation activities for this draft permit. Therefore, EPD may not issue the final permit. 40 CFR § 70.7(a)(1)(ii). Rather, EPD must re-notice the draft permit for a new public comment period that follows, at a minimum, the public participation processes specified in the law.

For example, 40 CFR § 70.7(h)(1) requires that EPD give notice of this draft permit by mailing such notice to a mailing list that includes people that have requested to be on that mailing list. EPD did not mail notice to people on the mailing list. In fact, EPD did not have such a mailing list when this draft permit was released.

As to the end date of EPA's review period, it is not sufficient for EPD to put this date in the public notice as 45 days after the public comment period begins. The reality is that the end date for EPA's review period changes. As such, by stating that the review

period ends "45 days" after the public comment period commences, EPD could potentially provide inaccurate information. Failing to provide accurate information regarding EPA's review of the proposed permit greatly inhibits the ability of the public to participate in the permitting process because the end date of EPA's review period is the first day of the public's 60-day period to petition EPA to object to the permit. It is important that the public know when this time period begins and whether EPA has already objected to the permit in order for them to be able to determine whether to file a petition to EPA. To remedy this dilemma and provide accurate information, we recommend that EPD add two more entries on its web page. First, EPD should provide a timely entry indicating whether or not EPA has objected to the permit with the following possible answers: yes, no and has not decided. Second, EPD should create an entry indicating the precise date that EPA's review period ends. While EPD can initially calculate this date as 45 days after the date the public comment period begins, in order to comply with the IA and 40 CFR § 70.7(h), EPD must continue to update this information on day 46 and thereafter depending on whether EPA's review period has truly expired.

In addition, 40 CFR § 70.7(h)(2) states that the public notice will explain where the public can review all relevant supporting documents. EPD's public notice states that all relevant information is available at the Air Protection Branch in Suite 120. This may not be accurate. For example, relevant information may be located in an EPD regional office. In addition, information relevant to accidental releases under Clean Air Act § 112(r) may be located at other agencies. EPD has recently stated an intent to provide the public with a list of where all of the information is available. However, we are unaware that such information has been made available.

Finally, the public notice also contains inaccurate information. For example, the notice states "[t]his permit will be enforceable by the Georgia EPD and the U.S. Environmental Protection Agency." This statement is incomplete. The permit will also be enforceable by any "person." 42 U.S.C. § 7604(a). The Clean Air Act defines "person" to include an individual, corporation, partnership, association, State, municipality, and a political subdivision of a state. 42 U.S.C. § 7602(e).

While this oversight may appear insignificant, correcting this misstatement is important for at least two reasons. To begin with, it is inherently important for the government to always provide the public with accurate information regarding implementation of air pollution laws. In addition, EPD has recognized that public involvement in the Operating Permit program has been limited. The onus is on the state agency to involve people in this regulatory process. 40 C.F.R. § 70.7(h). It is only with full and meaningful public participation that we can hope to have clean air here in Georgia. See generally Ashley Schannauer, Science and Policy in Risk Assessment: The Need for Effective Public Participation, 24 Vermont Law Review 31 (1999). In order to involve the public in the Operating Permit program, an important first step is to convince the public that this program is a legitimate means by which the public can participate to achieve the goal of attaining clean air. If the public is aware of their right to enforce a permit, they are more likely to put effort into ensuring that the permit is adequately protective of the environment.

Furthermore, the public notice states that "[a]fter the comment period has expired, the EPD will consider all comments, make any necessary changes and issue the Title V operating permit." This statement is inaccurate. Specifically, the statement suggests that, while changes may be made, in the end, the permit *will* be issued. However, under certain circumstances, EPD is required to refuse to issue a Title V permit. 40 CFR § 70.7(a). As such, the aforementioned statement could be interpreted as an indication of EPD's predisposition to issue Title V permits regardless of whether the permit complies with the law. See American Wildlands v. Forest Service, CV 97-160-M-DWM (D.Mont. Apr. 16, 1999)(Denying government deference because of evidence of predisposition towards a predetermined outcome). Therefore, we suggest that EPD include an additional statement that it will make a determination of whether to issue the permit.

2) THE PERMIT IMPERMISSIBLY LIMITS ENFORCMENT TO "CITZIENS OF THE UNITED STATES."

Section 8.2.1. of the draft permit claims to limit enforcement to citizens of the United States. However, the Clean Air Act states that any person can take an enforcement action. 42 U.S.C. § 7604(a). Therefore, the permit must be changed to state that any person can enforce this permit. Furthermore, the permit is misleading by including mention of the public's right to sue under a section entitled "EPA Authority." We recommend that EPD create a separate section, which discusses the public's right to sue under a heading such as "Public's Enforcement Authority."

3) THE PERMIT MATERIALS SHOULD BE MADE AVAILABLE IN THE AFFECTED COMMUNITY AS WELL AS AT EPD'S OFFICE.

EPD does not appear to have a consistent policy of making permit materials available in the local community. For this permit, EPD did not provide a copy of the relevant materials at the County Courthouse in Hall County. EPD should re-notice this permit and provide a copy of all the relevant materials in the Hall County Courthouse.

4) THE PERMIT MUST REQUIRE THE PERMITTEE TO SUBMIT ALL MONITORING INFORMATION TO EPD

40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661(c)(a) require that permits issued by state agencies include a requirement for submittal of reports of any required monitoring at least every 6 months. The permit does not contain any such requirement.

EPD may claim that condition 6.1.4 of the permit satisfies the requirements of § 70.6(a)(3)(iii)(A). However, condition 6.1.4 requires reporting of excess emissions, exceedances and/or excursions. The reporting of these deviations is required by § 70.6(a)(iii)(**B**). However, § 70.6(a)(iii)(**A**) requires reporting of all monitoring. It is a cardinal rule of statutory and regulatory interpretation that a regulation should be

interpreted in such a manner as to not render any provision of the regulation meaningless. However, EPD's claim that reporting of deviations constitutes reporting of any required monitoring renders § 70.6(a)(iii)(A) meaningless as it would be redundant to § 70.6(a)(iii)(B).

It is true that Condition 6.1.4(b) does require bi-annual reporting of total process operating time during each reporting period. While this certainly is a small step towards compliance with § 70.6(a)(iii)(A), that subsection requires reporting of *all* monitoring. Total processing time is just one monitoring requirement. However, Condition 5.2.5 requires daily recording of the presence of any visible emissions from the baghouses This is exactly the type of monitoring that § 70.6(a)(iii)(A) requires to be reported at least bi-annually and that Cargill's permit does not require. Therefore EPD should change the draft permit to include a requirement for bi-annual reporting of all monitoring data.

5) THE PERMIT CANNOT LIMIT CREDIBLE EVIDENCE FROM BEING USED IN AN ENFORCEMENT ACTION

As emphasized by the United States Environmental Protection Agency's (EPA) Credible Evidence Rule, 62 FR 8314 (Feb. 24, 1997), the Clean Air Act (CAA) allows the public, EPD, EPA, and the regulated facility to rely upon any credible evidence to demonstrate violations of or compliance with the terms and conditions of a Title V operating permit. Specifically, EPA revised 40 CFR § 51.212, 51.12. 52.30, 60.11 and 61.12 to "make clear that enforcement authorities can prosecute actions based exclusively on any credible evidence, without the need to rely on any data from a particular reference test." 62 FR at 8316. EPD must ensure that no permit purports to limit the use of credible evidence. Moreover, the permit should include standard language stating that all credible evidence may be used.

A. EPD Must Remove Language that Purports to Limit Credible Evidence

EPD must ensure that its Title V permits contain no language that could be interpreted to limit credible evidence. For example, condition 4.1.3. in Cargill's permit states that "[t]he methods for the determination of compliance with emissions limits listed under Sections 3.4 and 3.5 which pertains to the emission units listed in Section 3.1 are as follows:" One could read this provision to stand for the proposition that when a government agency or member of the public takes an enforcement action for a permittee violating its permit, the enforcer can only rely on information from the methods of determination listed in the permit. This position is directly contrary to the Clean Air Act requirements in CAA §§ 113(a), 113(e)(1) and 40 CFR § 51.212, 51.12. 52.30, 60.11 and 61.12 which allow anyone taking an enforcement action to rely on any credible evidence. Therefore, the aforementioned sentence in Section 4.1.3 should be stricken.

Another example of the permit's attempt to limit credible evidence is found in the second sentence of condition 8.17.1. This condition claims to limit usable evidence to

information that is available to EPD. Of course, the public or EPA may obtain information about a facility from sources other EPD such as information from a "whistleblower" or from people that live near the facility. As such, it is inappropriate to limit credible evidence to exclude such information. Therefore, the aforementioned provision must be removed from the permit. Of course, the preferred option is to simply remove the sentence. A less desirable option is to re-write it to state that "EPD may determine . . .."

Similarly, Condition 6.1.3 of the permit, which states that "failures shall be determined through observation, data from any monitoring protocol, or by any other monitoring which is required by the permit," could be considered to limit the use of credible evidence. To correct the problem, this Condition should include an additional clause requiring reporting of any failure based on any credible evidence, as well as observation, data from monitoring protocols and other monitoring required by the permit.

B. EPD Should Include Standard Language in the Permit that Explicitly States that Anyone Can Use Any Credible Evidence

The permit does not affirmatively state that any credible evidence may be used in an enforcement action. EPA supports the inclusion of credible evidence language in all Title V permits. As explained by the Acting Chief of US EPA's Air Programs branch:

> It is the United States Environmental Protections Agency's position that the general language addressing the use of credible evidence is necessary to make it clear that despite any other language contained in the permit, credible evidence can be used to show compliance or noncompliance with applicable requirements. . . . [A] regulated entity could construe the language to mean that the methods for demonstrating compliance specified in the permit are the only methods admissible to demonstrate violation of the permit terms. It is important that Title V permits not lend themselves to this improper construction.

Letter from Cheryl L. Newton, Acting Chief, Air Programs Branch, EPA, to Robert F. Hodanbosi, Chief, Division of Air Pollution Control, Ohio Environmental Protection Agency, dated October 30, 1998. In fact, EPA apparently sent a letter in May 1998 specifically directing EPD to amend its SIP to include language clarifying that any credible evidence may be used. Nevertheless, while three years have elapsed since EPA's request, the permit does not contain the necessary language.

While anyone may rely on *all* credible evidence regardless of whether this condition appears in the permit, EPD should include credible evidence language in the permits and permit template to make the point clear. Specifically, EPA has recommended that the following language be included in all Title V permits:

> Notwithstanding the conditions of this permit that state specific methods that may be used to assess compliance or noncompliance with applicable

requirements, other credible evidence may be used to demonstrate compliance or noncompliance.

Letter from Stephen Rothblatt, Acting Director, Air and Radiation Division, US EPA, to Paul Deubenetzky, Indiana Department of Environmental Management, dated July 28, 1998. We request that EPD include this provision in the permit to clarify the availability of any credible evidence to demonstrate noncompliance with permit requirements.

6) THE PERMIT MUST REQUIRE THE PERMITTEE TO REPORT ALL EXCEEDANCES, EXCURSIONS AND EXCESS EMISSIONS.

Condition 6.1.7. limits the exceedances, excursions and excess emissions that the facility must report. This needs to be removed because 40 C.F.R. § 70.6(a)(3)(iii)(B) and (6)(i) mandates that the permit require the permittee to report all exceedances, excesses and excursions.

7) THE PERMIT DOES NOT FULLY INCLUDE THE ACCIDENTAL RELEASE REQUIREMENTS

Section 112(r) of the Clean Air Act sets out the requirements for stationary sources to avoid and address the accidental release of hazardous substances. 42 U.S.C. § 7412(r). Section 112(r) is an applicable requirement under Title V and therefore must be included in Title V permits. 40 C.F.R. § 70.2(Applicable Requirements (4)).

However, the permit does not contain this requirement in its entirety. While Cargill's Permit does state that "the Permittee shall submit a Risk Management Plan (RMP) in accordance with the 40 CFR Part 68, when and if, such requirement becomes applicable," Section 7.10.1, it fails to require that the permit comply with its Risk Management Plan or with any other requirement under Part 68 or Section 112(r). For example, 42 U.S.C. § 7412(r)(7)(E) requires that the operator of a source subject to Part 68 operate its facility in compliance with Part 68. Therefore, EPD needs to completely incorporate Section 112(r) and Part 68 into Section 7.10 of the permit.

Moreover, the public has never had an opportunity to review this risk management plan. EPD did not make the risk management plan available for public review in violation of 40 CFR § 70.7(h)(2). To the extent there is no risk management plan, then EPD should have included a compliance schedule for the permittee to create one.

SPECIFIC COMMENTS

8) THE PERMIT SHOULD INCLUDE A COMPLIANCE SCHEDULE

The permittee has repeatedly demonstrated a problem meeting its particulate matter standards. Releases that affected the surrounding community have occurred on February 4, 1997, September 8, 1997, July 1, 1998, and August 30, 1998. The September 8 release even prompted EPD to issue a Consent Order to Cargill. However, two more releases have occurred since that date. In light of these repeated violations, EPD should include a compliance schedule in the permit requiring Cargill to fix this problem.

In addition, the permittee never obtained a construction permit for the high-pressure boiler. Therefore the permit should include a compliance schedule for New Source Review.

9) THE PERMIT SHOULD INCLUDE NSR

The coal boiler was built after 1977 and the facility is a major source of criteria pollutants. Therefore the coal boiler has to comply with New Source Review requirements including having Best Available Control Technology (BACT) and doing air modeling of incremental increases and effects on Class 1 airsheds..

10) INCOMPLETE REFERENCE TO IMPACT ON CLASS I AREAS

While the narrative states that the facility is within 100 miles of the Cohutta Class I area, it fails to state that the facility is also within 100 miles of Great Smoky Mountains National Park. This affects the profile of the facility's emissions and should be included in the permit.

11) ALL FILES PERTAINING TO THE PERMIT WERE NOT MADE AVAILABLE

Though we submitted a request to view monitoring data held at the Cargill facility, this request was denied. Furthermore, we requested to view older files that included inspection reports. EPD claimed these files were at the State Archives. However, when we went to the State Archives, they claimed that EPD had never sent them the files. Therefore, it was not possible to review all relevant files and fully determine whether or not the facility is in compliance. EPD's failure to provide us with the relevant documents is a violation of 40 CFR § 70.7(h)(2)

12) THE PERMIT CANNOT ALLOW THE PERMITTEE TO SUBMIT MONITORING INFORMATION AFTER THE FINAL PERMIT IS ISSUED.

Condition 5.2.6 of the permit requires the permittee to submit a plan 60 days after the permit is issued which includes the permittee's proposed plans for a Preventative

Maintenance Program for the baghouses. There are several problems with this. To begin with, the fact that the permittee must submit its proposed plans for a Preventative Maintenance Program 60 days after the permit is issued is an admission that the permit does not contain adequate monitoring for the baghouses as required by 40 CFR § 70.6(a)(3). In addition, the public and EPA are required to have an opportunity to comment on draft permits. 40 CFR §§ 70.6(a) & (h). However, the public and EPA are not going to have an opportunity to comment on the monitoring through the Preventative Maintenance Program because it does not exist. Therefore, EPD should include conditions for monitoring baghouse emissions in a new draft permit that is re-noticed for public comment.

13) THE PERMIT FAILS TO INCLUDE THE RELEVANT MACT STANDARD

On April 12, 2001, the U.S. Environmental Protection Agency (EPA) promulgated a final rule for the national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production. See 66 FR 19006 (April 12, 2001). Cargill is a vegetable oil mill that uses solvent extraction. Cargill is a major source of HAPs. Therefore, Cargill's permit should include this MACT standard.

14) THE PERMIT DOES NOT ADEQUATELY PROTECT PUBLIC HEALTH

The current limits in the permit on particulate matter (PM), sulfur oxides (SOx), and hexane and hexane isomers do not prevent the facility from producing air pollution that is injurious and which unreasonably interferes with the enjoyment of life and use of property of the members of the Newtown Florist Club. The EPD should lower the PM, SOx and hexane and hexane isomer emission limits to prevent these adverse affects as required by R 391-3-1-.02(2)(a)1.

Therefore, we respectfully request that the EPA object to this proposed permit for the above stated reasons.

Sincerely,

Robert Ukeiley

Cc: Ms. Faye Bush, Newtown Florist Club
Jimmy Johnston, Georgia EPD
Cargill