The Great Lakes Environmental Law Center

Protecting the world's greatest freshwater resource and the communities that depend upon it

440 Burroughs Street, Box 70
Detroit, Michigan 48202
www.glelc.org

Administrator Lisa P. Jackson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

September 26, 2011

Re: Petition Requesting that the Administrator Object to the Issuance of the Proposed Title V Operating Permit for the Detroit Renewable Power Waste Incinerator, Permit No. MI-ROP-M4148-2011

Dear Administrator Jackson,

Please find the enclosed Petition, together with three attachments, objecting to the Title V Renewable Operating Permit issued by the Michigan Department of Environmental Quality for the stationary source Detroit Renewable Power waste incinerator pursuant to Section 505(b)(2) of the Clean Air Act and 40 CFR § 70.8(d).

If you have questions about this matter, please contact me at any time. We look forward to your response.

Very truly yours,

Nicholas Schroeck
Executive Director
Great Lakes Environmental Law Center

cc: MI DEQ AQD
Detroit Renewable Power, LLC
Cheryl Newton
Pam Blakley
Susan Hedman
Remilando Pinga

Certificate of Service

I, Nicholas J. Schroeck, hereby certify that on September 26, 2011 the foregoing **Petition Requesting that the Administrator Object to the Issuance of the Proposed Title V Operating Permit for the Detroit Renewable Power Waste Incinerator, Permit No. MI-ROP-M4148-2011**, together with attachments, was served via first-class mail upon the following:

Michigan Department of Environmental Quality
Air Quality Division, Lynn Fiedler
Constitution Hall, 3rd Floor
525 West Allegan Street
P.O. Box 30473
Lansing, MI 48909-7973

Detroit Renewable Power, LLC
5700 Russell St.
Detroit, MI 48211

I declare that the above statement is true to the best of my information, knowledge, and belief.

Nicholas J. Schroeck

SUBSCRIBED and SWORN to me on May 11, 2011.

Tania Y. Allen

Notary Public, Wayne County

My Commission Expires: 7-3-2015

TANIA YVETTE BENNETT ALLEN
NOTARY PUBLIC
COUNTY OF WAYNE
My Commission Expires
July 3, 2015
Acting in the County of
STATE OF MICHIGAN

BEFORE THE ADMINISTRATOR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Proposed Operating Permit for:

DETROIT RENEWABLE POWER, LLC to

operate the issued modified source located at 5700 Russell Street, Detroit, Michigan 48211, known as the DETROIT INCINERATOR

Permit No. MI-ROP-M4148-2011

Petition No.: V-2011- _____

Issued by the Michigan Department of Environmental Quality Air Quality Division

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PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR THE DETROIT INCINERATOR

Nicholas Schroeck
Executive Director
Great Lakes Environmental Law Center
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Detroit, MI 48202
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Dated: September 26, 2011

On behalf of:

GREAT LAKES ENVIRONMENTAL LAW CENTER, SIERRA CLUB ENVIRONMENTAL JUSTICE PROGRAM, ZERO WASTE DETROIT, THE ECOLOGY CENTER, ROSEDALE RECYCLES, SOUTHWEST DETROIT ENVIRONMENTAL VISION, DETROIT AUDOBON SOCIETY, DETROITERS WORKING FOR ENVIRONMENTAL JUSTICE, EAST MICHIGAN ENVIRONMENTAL ACTION COUNCIL, MICHIGAN ENVIRONMENTAL COUNCIL, BAGLEY COMMUNITY COUNCIL, 12th PRECINCT NEIGHBORHOOD COALITION, GREENACRES-WOODWARD CIVIC ASSOCIATION, GREAT LAKES BIONEERS DETROIT

I. Introduction

Pursuant to Section 505(b)(2) of the Clean Air Act and 40 CFR § 70.8(d), Petitioners, GREAT LAKES ENVIRONMENTAL LAW CENTER, SIERRA CLUB ENVIRONMENTAL JUSTICE PROGRAM, ZERO WASTE DETROIT, THE ECOLOGY CENTER, ROSEDALE RECYCLES, SOUTHWEST DETROIT ENVIRONMENTAL VISION, DETROIT AUDOBON SOCIETY, DETROITERS WORKING FOR ENVIRONMENTAL JUSTICE, EAST MICHIGAN ENVIRONMENTAL ACTION COUNCIL, MICHIGAN ENVIRONMENTAL COUNCIL, BAGLEY COMMUNITY COUNCIL, 12th PRECINCT NEIGHBORHOOD COALITION, GREENACRES-WOODWARD CIVIC ASSOCIATION, GREAT LAKES BIONEERS DETROIT, hereby petition the Administrator of the United States Environmental Protection Agency ("the Administrator" or "EPA") to object to the Title V Renewable Operating Permit ("Permit") issued by the Michigan Department of Environmental Quality ("DEQ") for the stationary source, the Detroit Renewable Power waste incinerator ("Incinerator"). A true and accurate copy of the Permit is attached hereto as **Exhibit 1**.

The Incinerator is located in Wayne County, at 5700 Russell Street, Detroit, Michigan 48211, a highly industrial area of the City of Detroit just east of the Chrysler Freeway (Interstate 75) and south of Edsel Ford Freeway (Interstate 94). The Incinerator shares a neighborhood with other industries and residential communities of southeast Detroit. It is adjacent to the Detroit Department of Public Works Solid Waste Management Facility, immediately east of the Incinerator is Schlafer Iron & Steel, a smelting and refining company, and within a mile radius are the homes, playgrounds and schools of southeast Detroit residents.

The Incinerator was originally a publicly owned facility that was envisioned to reduce the cost of waste collection services in the City of Detroit by converting the city's waste into electricity. Its construction began in 1989 and test burns began in 1990. Once the facility began to operate, the health and environmental effects of its air pollution were immediately apparent to people within Detroit. As a result, the Wayne County Air Quality Division (now defunct) placed pollution control requirements on the facility's operations at the City's expense. As the City lacked funds to install the required pollution control equipment, they were forced to sell the facility to private companies in 1991 to address the budget shortfall. Therefore, the City of Detroit's original prediction of making money from the operation of the Incinerator never materialized. The cost of landfill disposal plummeted and the City was stranded with a vastly underused financial and environmental disaster as the responsible party for paying the bond debts.

The Incinerator has been known as the Greater Detroit Resource Recovery Facility. However, in November 2011, its current owner, Detroit Renewable Power, LLC, was formed to purchase and operate the facility.

The Administrator is required to object to the Permit because, as demonstrated below:

1) the Permit fails to set adequate standards for the emission of PM2.5 that are sufficient to prohibit the Incinerator from violating NAAQS and compliance with the Clean Air Act;
2) the Permit cannot unlawfully use PM10 emission limits as a surrogate for PM2.5 emission limits;

3) the unlawful PM2.5 emission limits contribute to the cumulative and disparate impacts on the public health of people in low-come and minority communities; and

4) the DEQ failed to determine whether applicable GHG BACT requirements should be included in the Permit.

Petitioners provided comments on the draft Permit to the DEQ on June 3, 2010. A true and accurate copy of comments relevant to this Title V petition is attached as **Exhibit 2**. Additional comments relevant to the issues raised in this Petition were also filed by Petitioners and others with the DEQ during the public comment period, as referenced in the DEQ's Response to Comments document, attached as **Exhibit 3.** The U.S. EPA completed its 45-day review period on July 29, 2011. This petition is filed within sixty days following the end of U.S. EPA's 45-day review period, as required by Clean Air Act § 505(b)(2).

Petitioners request that EPA Region 5 object to the Permit issued by the Michigan DEQ, under Title V of the Clean Air Act, and either modify, terminate, or revoke the Permit in accordance with this petition.

II. Background

The operating permit program is a permitting system administered by each state as required by Title V of the CAA. Every major polluting source is subject to the Title V operating permit program and is required to renew their operating permit every five (5) years. Detroit Renewable Power, LLC, is a major polluting source located in Wayne County, State of Michigan that applied for a Title V ROP.

Currently, Wayne County is in violation of the National Ambient Air Quality Standards ("NAAQS") for fine particulate matter ("PM2.5"), and thus the Incinerator is located within a region of **non-attainment** for the PM2.5. Recognizing the unique characteristics of and harms from fine particulate matter, in 1997, U.S. EPA promulgated new annual and 24-hour NAAQS for $PM_{2.5}$. 62 Fed. Reg. 38,652, 38,711 (July 18, 1997); 40 C.F.R. § 50.7. The EPA regulates course particulate matter ("PM10) and PM2.5 as distinct criteria pollutants. The EPA's bases for regulating PM_{10} and $PM_{2.5}$ separately under distinct NAAQS were, and remain, differences in people's exposure, where the particles lodge in the body ($PM_{2.5}$ penetrates deeper into the lungs), and the health effects associated with each. 71 Fed. Reg. 61,144, 61,147 (Oct. 17, 2006).

Pursuant to the CAA, a Title V permit must include requirements sufficient to prohibit the source's emissions from causing or contributing to a violation of ambient air quality standards. 42 U.S.C. § 7475(a)(3); 326 IAC 2-2-4; 316 IAC 2-2-5; 326 IAC 2-2-16; 326 IAC 2-1.1-5; and the NAAQS. The use of a surrogate permit does not and cannot relieve the permitting authority and the permit applicant from the duty to ensure that the permit includes limits reflecting the maximum degree of reduction of PM2.5 through BACT limits and other conditions sufficient to ensure that the facility will not cause or contribute to violations of the PM2.5 air quality standards. A permit that fails to contain such requirements is legally flawed.

III. Standard of Review

In 1990 Congress amended the CAA to include the Title V Operating Permit Program. *Clean Air Act Amendments of 1990*, Pub. L. No. 101-549, §§ 501-507, 104 Stat. 2399, 2635-48 (1990). Title V permits are supposed to consolidate all CAA

requirements for the facility into a single permit including reporting and monitoring conditions to ensure that the agency and its permittee are complying with the permit. "The intent of Title V is to consolidate into a single document (the operating permit) all of the clean air requirements applicable to a particular source of air pollution." *Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008) (citing *Sierra Club v. Ga. Power Co.*, 443 F.3d 1346, 1348-49 (11th Cir.2006, *see also* Operating Permit Program, 57 Fed.Reg. 32,250, 32,251 (July 21, 1992) (codified at 40 C.F.R. § 70)). Congress called on the states to design and enforce their own Title V permitting programs and to submit those programs to the EPA for approval. 42 U.S.C. § 7661(a).

If an operating permit was not issued in compliance with the requirements of the Clean Air Act, the EPA will object to its issuance. 40 C.F.R. § 70.8(c). If the EPA does not object to the proposed permit, then "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). Furthermore, petitions to the EPA to object to the issuance of a proposed permit "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part." 40 C.F.R. § 70.8(d); 42 U.S.C. § 7661d(b)(2). The EPA Administrator has a non-discretionary duty to grant a petitioner's request to object to a proposed permit where the petitioner "demonstrates to the Administrator that the permit is not in compliance with the requirements of [the Clean Air Act]." 42 U.S.C. § 7661d(b)(2); *see also Sierra Club v. Johnson*, 541 F.3d 1257, 1265 (11th Cir. 2008). The conference report that accompanied the bill that became Title V states: "Simply put, the Administrator is required to object to permits that violate the

Clean Air Act. This duty to object to such permits is a nondiscretionary duty. Therefore, in the event that a petitioner demonstrates that a permit violates the Act, the Administrator must object to that permit." 136 Cong. Rec. S16895 (1990). Lastly, any denial of a petition submitted to the EPA pursuant to 40 C.F.R. § 70.8(d) is subject to judicial review in federal court. 42 U.S.C. § 7607.

IV. Argument

A. The Administrator must object to the Permit as it fails to set adequate standards for the emission of PM2.5 that are sufficient to prohibit the Incinerator from violating NAAQS and compliance with the Clean Air Act.

Pursuant to the CAA, a Title V permit must include requirements sufficient to prohibit the source's emissions from causing or contributing to a violation of ambient air quality standards. 42 U.S.C. § 7475(a)(3). Furthermore, although Title V permits do not impose substantive emission control requirements, they consolidate and require all "applicable requirements" as defined in Michigan Administrative Rule 336.1101(o), to include: "(viii) A standard or other requirement under the clean air act." Mich. Admin. Code r. 336.1101. One major requirement under the CAA is the attainment of EPA promulgated NAAQS. The US EPA requires each state to establish a State Implementation Plan in order to ensure that the air quality within its jurisdiction is in compliance with the NAAQS. *See* 42 U.S.C.A. § 7410. Furthermore, when a stationary source requests permission to pollute, it is up to each state to establish permit guidelines that will ensure the state will not exceed the threshold NAAQS. When an area within a state is found to violate the NAAQS, the EPA will designate that region as being in non-attainment.

Currently the DEQ has failed to establish and enforce adequate emission limits in the Permit, required by R 336.1101(o), for PM2.5. The need to control PM2.5 limits from the Incinerator is especially pressing given that the Incinerator is located in a region that is designated by the EPA as out of attainment of the CAA's public health standards for PM2.5. The Permit, as of now, **only requires particulate matter limits on the course fraction – PM10, and fails to set adequate permit limits for the emission of fine particulate matter – PM2.5.** Although the Permit requires limits for PM10 as required by the Code of Federal Regulations (40 CFR 60 and 40 CFR 62), R 336.1932, it completely omits PM2.5 emission limits required by the Federal CAA. Consequently, the Incinerator's PM2.5 emissions will contribute to the highly polluted area of Wayne County, currently affecting its non-attainment status for PM2.5. Unless the DEQ places greater limitations on the Incinerator's allowable PM2.5 emissions through this ROP, it will continue to significantly contribute to the region's violation of the NAAQS.

The DEQ failed to comply with 42 U.S.C. § 7475(a)(3), and establish standards to ensure Wayne County's compliance with NAAQS. In this case, the Administrator should object to the Permit and advise the DEQ to reconsider PM2.5 standards in consideration that Wayne County is currently in **non-attainment** under the CAA.

B. The Administrator must object to the Permit as the DEQ unlawfully used PM10 emission limits as a surrogate for PM2.5 emission limits.

Particulate matter is made up of particles of varying sizes, and particle size determines, to a large extent, its health impacts. Prior to 1997, EPA regulated all particulate matter up to 10 microns in diameter under its PM_{10} standards. The fine particle component of PM_{10} – those up to 2.5 microns in diameter – are the most harmful to health. Accordingly, EPA promulgated a separate NAAQS for $PM_{2.5}$ in 1997

because it found that the PM_{10} standards did not adequately protect public health and welfare. *See* 62 Fed. Reg. 38,652, 38,667 (July 18, 1997). Michigan has incorporated the 1997 $PM_{2.5}$ NAAQS into its rules.

DEQ claims it complied with $PM_{2.5}$ permitting requirements by conducting a BACT analysis for PM_{10} and demonstrating compliance with PM_{10} NAAQS. DEQ's position is based on a misinterpretation of EPA's now-defunct PM_{10} surrogate policy. The surrogate policy has always been governed by D.C. Circuit law on surrogates, which requires a case-by-case reasonableness inquiry. This interim policy, announced fourteen years ago in the Seitz Memo, advised that permitting authorities could use PM_{10} as a surrogate for $PM_{2.5}$ only as long as it proved "administratively impracticable" to directly address $PM_{2.5}$ due to "technical and informational deficiencies." Memorandum from John S. Seitz at 2 (October 21, 1997).[1] Those deficiencies of fourteen years ago present no difficulties today – as EPA has recognized. The interim surrogate policy did not justify DEQ's failure to analyze $PM_{2.5}$ and its failure to perform a reasonableness analysis of a PM_{10} surrogate.

The law has been well-established for many years that agency may use surrogates only in limited circumstances, and only after a thorough reasonableness inquiry demonstrates that use of the surrogate satisfies legal requirements for the original pollutant. *E.g., National Lime v. EPA*, 233 F.3d 625, 639 (D.C. Cir. 2000). EPA has acknowledged, in its recent objection to a Kentucky Title V operating permit for the Trimble County Generating Station, that this case law governs use of its PM10 Surrogate Policy. *In re Louisville Gas & Electric Co., Order Responding to Issues raised in April 28, 2008 and March 2, 2008 Petitions, and Denying in part and Granting in*

[1] Available at http://www.epa.gov/ttn/oarpg/t1/memoranda/pm25.pdf

Part Requests For Objection to Permit (August 12, 2009), at 43-44 (hereinafter "Trimble").

In *National Lime*, the D.C. Circuit established a rigorous three-part reasonableness test to determine whether use of a surrogate to establish emission limits for a regulated pollutant meets legal requirements. The record must clearly show that: (1) the primary pollutant is invariably present in the surrogate pollutant; (2) the control technology for the surrogate pollutant "indiscriminately captures" the primary pollutant; and (3) the control technology for the surrogate pollutant "is the only means by which facilities 'achieve' reductions" of the primary pollutant. 233 F.3d at 639. Courts routinely reject the use of surrogates when the record lacks an adequate explanation of why the surrogate satisfies statutory requirements for the original pollutant. For example, in *American Trucking Ass'n v. EPA*, 175 F.3d 1027, 1054-55 (D.C. Cir. 1999) , rev'd on other grounds, EPA's revised NAAQS rule was vacated and remanded in part because EPA offered no explanation in the record why PM10 could be used as a surrogate for PM2.5. *Id.* Likewise, in *Mossville Envt'l Action Now v. EPA*, 370 F.3d 1232, 1242-43 (D.C. Cir. 2004), EPA's polyvinyl chloride rule was remanded because EPA failed to provide any support for why vinyl chloride could act as a surrogate to satisfy requirements for all other HAPs emissions. The court highlighted the fact that the record must reflect such an evaluation for the public and the court to review.

> While EPA may be able to know that a correlation exists between one known pollutant and some other unknown pollutants, it has not memorialized that knowledge in such a fashion that commenters, interested members of the public, regulated entities, or most importantly, a reviewing court, can assess.

Id. at 1243.

D.C. Circuit cases specifically addressing particulate matter surrogacy allow use of a PM10 surrogate only based on a rigorous factual analysis demonstrating that the agency is complying with the law. *American Trucking Ass'n*, 175 F.3d at 1054; *American Farm Bureau v. EPA*, 559 F.3d 512, 534-35 (D.C. Cir. 2009) (finding that EPA offered adequate factual and scientific justification to show that use of PM10 as an indicator for coarse PM met health-based statutory standards for NAAQS).

In *Trimble*, the EPA stated that any permitting authority seeking to use the PM10 surrogate policy must undertake a rigorous, individualized assessment of the appropriateness of surrogacy as applied to the proposed unit. The DEQ must apply *Trimble* to this case.

Trimble provides detailed instructions for state permitting authorities on how to show PM_{10} provides a reasonable surrogate for $PM_{2.5}$ in a particular case.

> First, the source or the permitting authority establishes in the permit record a strong statistical relationship between PM_{10} and $PM_{2.5}$ emissions from the proposed unit... A strong statistical relationship could be established in a variety of ways....[but] a simple ratio of AP-42 emissions factors...would not appear to be sufficient...
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> Second, the source or the permitting authority demonstrates that the degree of control of $PM_{2.5}$ by the control technology selected in the PM_{10} BACT analysis will be at least as effective as the technology that would have been selected if a BACT analysis specific to $PM_{2.5}$ emissions had been conducted....The first [possible method] would be to perform a $PM_{2.5}$ –specific BACT analysis, in which case the requirement is met if the control technology selected through the PM_{10} BACT analysis is physically the same as what is selected though the $PM_{2.5}$ BACT analysis...
> The second path would be to perform a $PM_{2.5}$–specific BACT analysis, and show that while the type and/or physical design of the control technology may be different, the efficiency for $PM_{2.5}$ control of the technology selected through the PM_{10} BACT analysis is equal to or better than the efficiency of the technology selected through the $PM_{2.5}$ BACT analysis...

Trimble at 45. The permit record must include this reasonableness analysis. *Id.*

Like the Kentucky permitting authority in the Trimble case, DEQ did not undertake an individualized assessment of PM10 as a surrogate in this case and therefore has not shown it is a reasonable and legal substitute. Nothing in the Permit Application, DEQ's Application Analysis, or its Response to Comments shows any correlation between PM10 and PM2.5 emissions from the Detroit Incinerator, nor any demonstration that the chosen PM10 controls will effectively control PM2.5.

Wayne County is currently in non-attainment status for PM 2.5. Therefore, it is critical that DEQ regulate these emissions from the Detroit Incinerator so that attainment status is not further degraded.

It is clear from the record that the Permit fails to provide support for using PM10 as a surrogate for regulating PM2.5. The assumption of using PM10 as a surrogate is further improper as non attainment status for PM2.5 evidences the need to monitor and control PM2.5 levels in Wayne County. Accordingly, it is imperative that the Administrator object to the Permit as it is unlawful pursuant to the CAA, its regulations, and case law.

C. The Administrator must object to the Permit as the lack of PM2.5 emission limits and inadequate mercury emission limits contribute to the cumulative and disparate impacts on public health in communities of people of color and low-income.

i. The Incinerator's PM and mercury emissions have serious effects on public health.

The public's health concerns are pressing in this case as high levels of PM2.5 and mercury are emitted from the Incinerator. PM2.5 public health concerns are particularly critical as the Incinerator is located in a region of non-attainment for PM2.5,

meaning the air quality is in violation of the safe levels of PM2.5 established by the EPA; the NAAQS. High levels of mercury emissions are also of extreme concern in Michigan as at least 10,000 newborns per year potentially have been exposed to elevated mercury levels and more than 844 miles of rivers, including the Detroit River, have fish consumption advisories due to elevated mercury levels.[2]

The size of particulate matter is directly related to their potential for causing health problems. Small particles, such as those of diameter 2.5 micrometers pose the greatest problems as they have the capability to get deep into the lungs, and some may even get into the bloodstream.[3] According the US EPA, the PM2.5 fraction of particulate matter pose the "largest health risks," distinguishable from the course fraction of particulate matter, PM10.[4] Exposure to PM2.5 has been linked to premature death in people with heart or lung disease, asthma, aggravation of heart disease, changes in lung function, and increased respiratory symptoms.[5] Furthermore, children are especially susceptible to harms caused by inhalation of PM2.5 because of higher ventilation and higher levels of physical activity. Disturbingly, the exposure to high levels of PM2.5 impedes lung growth in children and the damage is irreversible, which subjects them to a likelihood of respiratory problems as adults.

Mercury is a toxic pollutant that has serious effects on human health and the environment. When mercury is released into the atmosphere, deposits into rivers, lakes, and streams, it converts into methylmercury. The toxic methylmercury bioaccumulates

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[2] Michigan Dept. of Comm. Health, 2007 Michigan Family Fish Consumption Guide, *available at* http://www.michigan.gov/documents/FishAdvisory03_67354_7.pdf.
[3] *See* www.epa.gov/air/urbanair/.
[4] U.S. EPA, "PM2.5 NAAQS Implementation, US EPA Office of Air Quality Planning and Standards, "Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information." Staff Paper (July 1996), at V-58 to V-77.
[5] Clean Air Fine Particle Implementation Rule, 72 Fed. Reg. 20586, 20586-20587 (Apr. 25, 2007).

in fish living in polluted affected water bodies, and the ingestion of that fish can lead to impair neurological development in fetuses and young children.[6] Children who are exposed to elevated levels of methylmercury in the womb are prone to experience detrimental impacts on cognitive thinking, memory, attention, language, and fine motor and visual spatial skills.[7]

ii. The Incinerator's emissions disparately impact an environmental justice community in Wayne County, Michigan.

Pursuant to the Title V permitting process, the DEQ is required to provide a 30-day public comment period for public participation opportunities for citizens to address environmental justice concerns that arise under provisions of the CAA. Environmental justice is the fair treatment and involvement of all people regardless of their race and income during the implementation and enforcement of environmental laws such as the CAA. During the 30-day period for the Permit at issue, the public submitted serious fact-based concerns regarding the Incinerator's PM2.5 and mercury emissions and their resulting impacts on the health and economy of Michigan residents, particularly in southeastern Michigan.

The detrimental health impacts resulting from PM2.5 and mercury exposure will have a greater affect on the neurological respiratory and cardiovascular health of immediate community surrounding the location of the Incinerator, which primarily consists of people of color and of low-income. As a result, there are disparate health impacts on a suspect class ensuing from exposure to high emission levels of PM2.5 that

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[6] Mergler et al., *Methylmercury Exposure and Health Effects in Humans: A Worldwide Concern*, Ambio, Vol. 36 No. 1(Feb. 2007).

[7] Toxicological Effects of Methylmercury, Executive Summary, National Academics Press, 2000, *available at* http://www.nap.edu/openbook.php?isbn=0309071402; US EPA, Mercury Study Report to Congress, EPA-452/R-97-003 (Dec. 1997).

violate NAAQS and high levels of mercury that have detrimental health impacts. The DEQ claimed that "although the facility's air emissions do result in air quality impacts in an area that is a higher priority potential [environmental justice] area, those impacts are not considered to be "disparate impacts" because "there is a lack of evidence that the facility has caused adverse impacts." *See* DEQ Renewable Operating Staff Report, 19 (April 12, 2010). However, the public submitted substantive comments demonstrating that children living in the low-income, people of color communities have high susceptibility rates of asthma. Moreover, although the DEQ claims that their air monitor sources "do not suggest that the facility emissions cause significant cumulative impacts on community health," their "air monitor sources" may not be the best tool to determine the existence of cumulative impacts on the community, and the submitted public comments made a strong showing to the contrary. The public submitted comments addressing environmental justice and public health concerns. The public is physically and economically affected by unlawful levels of harmful air pollutants emitted from the Incinerator, and their evidence of adverse health impacts from those pollutants are serious and should be considered by the Administrator. In contrast, "air monitor sources" cannot collect data on the impacts of the lungs and development of young children and the health of entire families living in southeastern Michigan.

Although the public was provided the opportunity to participate in the 30-day comment period, environmental justice principles do not end there. The public's concerns with respect to their health and well being should be seriously considered by the DEQ during the administrative process. Unfortunately, the Permit was not altered to take into account environmental justice concerns. Accordingly, the Administrator should

consider the public's serious concerns of the impacts of the PM2.5 and mercury emission limits on a suspect class set by the Permit as they participated in the 30-day public comment period required by the CAA. Furthermore, the Administrator should object to the Permit as the DEQ failed to address environmental justice and public health concerns in the issued Permit.

D. The Administrator must object to the Permit as the DEQ failed to request from the Incinerator any information deemed necessary to determine or impose applicable GHG requirements under the CAA.

The New Tailoring Rule for GHG emissions applies to a stationary source's GHG emissions only if the source is already subject to PSD or Title V due to their non-GHG pollutants. If that is the case, as of January 2, 2011, the applicable requirements of Best Available Control Technology (BACT) will apply to sources that increase net GHG emissions by at least 75,000 tpy carbon dioxide equivalent. *See* Federal Register, Vol. 75, No. 106, p. 31516, Thursday, June 3, 2010. As the Incinerator is subject to Title V permitting process due to their non-GHG emissions, it is necessary to determine the Incinerator's net GHG emissions and therefore whether the GHG Tailoring Rule applies to the Incinerator. According to the *PSD and Title V Permitting Guidance For Greenhouse Gases*, the EPA states that permitting authorities need to request from sources any information deemed necessary to determine or impose GHG applicable requirements. *See* PSD and Title V Permitting Guidance For Greenhouse Gases, U.S. E.P.A. Office of Air and Radiation, pg. 53, March 2011.

Here, it is very likely that the Incinerator is subject to applicable Title V, GHG requirements because (1) it is a source that is already regulated under the Title V permitting system for non-GHG pollutants; and (2) based on Detroit Renewable's claim

that their net CO2 emissions are 837 lbs/MWh, the facility will exceed the Tailoring Rule's 75,000tpy CO2 emission quota. The EPA's estimate of CO2 produced per MWh of electricity produced using municipal solid waste ("MSW") as a fuel is now 3,685 lbs/MWh revised upward from its previous estimate of 2,988 lbs/MWh.[8] The Incinerator's published goal of generating a minimum of 253,000 MWh of electricity per year (GDRRA SOAR) and historical average of about 450,000 MWh/year[9] means generating an estimated minimum of 466,000 tons of CO2 per year and a historical average of over 800,000 tons of CO2 per year. Even if you accept the incinerator industry's claim that the net CO2 emissions are 837 lbs/MWh (by claiming that burning paper is a biogenic source) the rates are still 106,000 tons CO2 per year minimum and 188,000 tons CO2 per year historical average - both of which exceed the 75,000 tons CO2 per year threshold set by EPA. The DEQ must request information necessary to determine the Incinerator's net GHG emissions. Accordingly, the Administrator must object to the Permit as DEQ failed to properly determine whether applicable GHG requirements are required in the Permit.

V. Conclusion

For the above reasons, the Permit fails to comply with the Clean Air Act and all applicable requirements of the Title V consolidated permitting process, and the Administrator must object. Petitioners have demonstrated that the permit does not include adequate PM2.5 emission limits in order to acquire attainment status of NAAQS in Wayne County, Michigan, it fails further address environmental justice concerns

[8] *See* "Air Impacts" at http://www.epa.gov/cleanenergy/energy-and-you/affect/municipal-sw.html
[9] *Detroit Renewable Power Calls Back Prior Owner Employees to Energy-from-waste Plant to Restart New Level of Operations*, Dec. 6, 2010, http://www.detroitrenewablepower.com/news/?id=2.

regarding the discriminatory health impacts that unsafe PM2.5 and mercury emissions will have on a low-income, people of color in the community; and the DEQ failed to consider the Incinerator's net-GHG emissions in order to determine whether applicable GHG requirements should be included in the Permit. To this end, the Administrator must include in her order specific terms and conditions necessary to remedy the inadequacies described in this petition. *See* 40 C.F.R. § 70.8(c)(2) ("Any EPA objection under paragraph (c)(1) of this section *shall* include... a description of the *terms and conditions that the permit must include* to respond to the objections" (emphasis added)). Petitioners urge the Administrator to require DEQ to add any terms and conditions that she deems necessary and appropriate to ensure compliance with all applicable requirements of the CAA.

Respectfully Submitted,

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On Behalf of Petitioners