

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
LUKE PAPER COMPANY, a Subsidiary	)	
of NEW PAGE CORPORATION	)	
	)	
Permit No. 24-001-00011	)	ORDER RESPONDING TO
	)	PETITIONERS' REQUEST THAT
	)	THE ADMINISTRATOR OBJECT
	)	TO THE ISSUANCE OF A
	)	TITLE V OPERATING PERMIT
ISSUED BY:	)	
MARYLAND DEPARTMENT OF	)	
THE ENVIRONMENT	)	
JANUARY 22, 2009	)	

**ORDER PARTIALLY GRANTING AND PARTIALLY DENYING  
THE PETITION FOR OBJECTION TO PERMIT**

**INTRODUCTION**

On March 5, 2009, the United States Environmental Protection Agency ("EPA") received a petition from Environmental Integrity Project (EIP) and Environment Maryland (Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The petition requests that EPA object to the CAA title V operating permit issued by the Maryland Department of the Environment (MDE) on January 22, 2009, to Luke Paper Company (formerly MeadWestvaco), a wholly owned subsidiary of New Page Corporation (Luke Paper), for the operation of a pulp and paper mill, located at 300 Pratt Street in Luke, Maryland.

As discussed in greater detail below, Petitioners allege that the EPA Administrator must object to the title V permit because: (1) it does not include monitoring requirements for Luke Paper's power and recovery boilers that assure compliance with particulate matter (PM) emission limits; (2) it does not include a compliance assurance monitoring (CAM) plan for boiler Nos. 24 and 25; and (3) it does not include emission limits for hazardous air pollutants (HAPs) for boiler Nos. 24 and 25, pursuant to section 112(j) of the Act<sup>1</sup>.

In considering the allegations made by Petitioners, EPA reviewed several documents, including the title V permit, the petition, MDE Response to Comments dated May 14, 2008, and Petitioners comments to MDE dated August 17, 2007. Based on a review of all the information before me, and for the reasons detailed in this order, I grant in part and deny in part the issues raised by Petitioners.

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<sup>1</sup> In their petition, Petitioners also claimed that the permit should not contain an exemption from compliance with section 112 emission limits during startup, shutdown, and malfunction (SSM) events, but they withdrew that claim by letter dated June 19, 2009.

## STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a (d)(1), calls upon each state to develop and submit to EPA an operating permit program intended to meet the requirements of CAA title V. EPA published a final rule on January 15, 2003, (68 FR 1974) granting full approval to the state of Maryland for the title V (part 70) operating program.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable State Implementation Plan (SIP). *See* CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a). The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as “applicable requirements”), but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992) (EPA final action promulgating part 70 rule). One purpose of the title V program is to “enable the source, states, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under section 505(a), 42 U.S.C. § 7661d(a), of the CAA and the relevant implementing regulations (40 C.F.R. § 70.8(a)), states are required to submit each proposed title V operating permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements under title V. 40 C.F.R. § 70.8(c). If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act provides that any person may petition the Administrator, within 60 days of expiration of EPA’s 45-day review period, to object to the permit. 42 U.S.C. § 7661d(b)(2), *see also* 40 C.F.R. § 70.8(d). The petition must “be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period).” Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2). In response to such a petition, the CAA requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the CAA. 42 U.S.C. § 7661d(b)(2). *See also* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group (NYPIRG) v. Whitman*, 321 F.3d 316, 333 n.11 (2<sup>nd</sup> Cir. 2003). Under section 505(b)(2), the burden is on petitioner to make the required demonstration to EPA. *Sierra Club v. Johnson*, 541 F.3d 1257, 1266-1267 (11<sup>th</sup> Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677-678 (7<sup>th</sup> Cir. 2008); *Sierra Club v. EPA*, 557 F.3d 401, 406 (6<sup>th</sup> Cir. 2009)

(discussing the burden of proof in title V petitions); *see also* *NYPIRG*, 321 F.3d at 333 n.11. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures set forth in 40 C.F.R. §§ 70.7(g)(4) and (5)(i) – (ii), and 40 C.F.R. § 70.8(d).

## **BACKGROUND**

### **The Facility**

Luke Paper, a wholly owned subsidiary of New Page Corporation, operates a pulp and paper mill located at 300 Pratt Street in Luke, Maryland, 21540 (the “Facility”). Luke Paper began operations in 1888 and manufactures softwood and hardwood pulp to produce approximately 550,000 short tons of coated paper annually. The mill contains two coal-fired power boilers which emit from a single tall stack (boiler Nos. 24 and 25) and two black liquor recovery units (boiler Nos. 2 and 3) in its power and recovery area, an area used for pulping chemical recovery, heat recovery in the form of steam, and fuel burning. Luke Paper is a major emitter of numerous air pollutants, including sulfur oxides (SO<sub>x</sub>) nitrogen oxides (NO<sub>x</sub>), PM, and HAPs.

### **The Permit**

Luke Paper submitted an application for an initial part 70 permit to MDE on August 4, 1997. MDE issued an initial draft title V permit for the Luke Paper Facility on July 19, 2007, for public comment. Petitioners submitted timely comments on the initial draft title V permit on August 17, 2007. MDE responded to Petitioners’ comments on May 14, 2008. On May 29, 2008, MDE opened a new comment period for the revised draft Luke Paper permit. Petitioners submitted comments to MDE. MDE responded to these comments in the May 29, 2008, revised draft of the title V permit. MDE submitted the proposed title V operating permit for the Luke Paper Facility to EPA on July 3, 2008. The EPA review period ended on August 18, 2008; EPA did not object to the title V permit. On January 22, 2009, MDE issued the title V permit (No. 24-001-00011) to Luke Paper, pursuant to the state title V program.

## **THRESHOLD REQUIREMENTS**

Section 505(b)(2) of the Act provides that a person may petition the Administrator of EPA, within sixty days after expiration of EPA’s 45-day review period, to object to the issuance of a proposed permit. The state issued the revised draft permit on July 3, 2008. EPA’s 45-day review period for the Luke Paper title V permit expired on August 18, 2008. Thus, the 60-day petition period began on August 19, 2008, and ended on October 17, 2008. The subject petition, though dated February 27, 2009, was not actually received by EPA until March 5, 2009. Although the petition was filed after October 17, 2008, EPA agreed to respond to the petition in a settlement agreement.

Section 505(b)(2) provides that the “petition shall be based only on objections to

the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates . . . that it was impractical to raise such objections within such time period or unless the grounds for such objection arose after such period.)” 42 U.S.C. § 7661(b)(2). Except as noted below, EPA finds that Petitioners’ objections to the title V permit were raised with reasonable specificity during the public comment period provided by MDE or the grounds arose after such period.

## **ISSUES RAISED BY THE PETITIONERS**

### **Claim I. The Permit Must Include Monitoring Requirements for Luke Paper’s Power and Recovery Boilers that Assure Compliance with PM Emission Limit**

Petitioners claim that Luke Paper’s title V permit does not include monitoring requirements that ensure compliance with PM emission limits for boiler Nos. 2, 3, 24 and 25. Petition at 9.

In support of this claim, Petitioners argue that the court in *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008) “specifically noted that annual testing is unlikely to assure compliance with a daily emission limit.” Petition at 9. Therefore, according to Petitioners, “the frequency of monitoring must bear some relationship to the averaging time used to determine compliance,” but Luke Paper’s permit does not include such requirements. Petition at 9. As an example, Petitioners assert that boiler Nos. 24 and 25 are subject to a PM emission limit that must be met at all times, but that the title V permit requires a PM test every two years. Petition at 9.

Petitioners also claim that the permit “should require continuous monitoring for PM emissions at Luke Paper’s power and recovery boilers” because “[c]ompliance with an emission limit that has to be met at all times should be measured hourly or daily, not every two years.” Petition at 10. Petitioners note that EPA has certified continuous monitors in its recent consent decree resolving opacity violations at power plants in Maryland. Petition at 10.

Petitioner EIP made similar arguments in comments submitted to MDE on August 17, 2007, during the comment period on the initial draft permit. See petition at Appendix A. In response, MDE stated:

The Department disagrees with the statement that continuous emissions monitoring for particulate matter should be required. The company has recently installed two fabric filters to replace the existing electrostatic precipitators on the Nos. 24 and 25 Boilers. The construction of these fabric filters was necessary to comply with Subpart DDDD MACT standards. Although the court vacated the MACT standards, Luke Paper Company notified the Department that it planned to complete installation of the fabric filters. In fact, as of April 2008, both new fabric filters have been installed.

An air quality permit to construct for these fabric filters was issued on 5/17/06; this permit incorporated the MACT requirements. As you are aware, the U.S. Court of Appeals for the District of Columbia vacated the boiler MACT in July 2007. Maryland is awaiting guidance from EPA regarding initiating implementation of Section 112(j) under this vacatur.

Since the 2006 permit to construct for the fabric filters incorporated the MACT standards for emission limits and testing, monitoring, reporting and record-keeping requirements, the permit was reissued in April 2008 to incorporate Maryland emission requirements and to establish testing, monitoring, reporting and record keeping requirements as allowed under Maryland regulations.

Once EPA issues its guidance, and then Maryland will take the appropriate steps to implement EPA requirements.

The fabric filters should provide a high level of emission control. If the company is unable to demonstrate consistent compliance with particulate emission standards through periodic stack tests, then the issue of continuous emission monitoring can be revisited during the next Title V air operating permit renewal.

Petition at Appendix B.

***EPA's Response:*** EPA grants this claim in part and denies this claim in part. EPA agrees that MDE does not have the discretion to issue a permit without specifying the monitoring methodology needed to assure compliance with applicable requirements in the title V permit. As Petitioners note, *Sierra Club v. EPA* made it clear that section 504(c) of the Clean Air Act requires all title V permits to contain monitoring requirements to assure compliance with permit terms and conditions. EPA discussed this case and its implications at length in two title V orders issued on May 29, 2009, approximately five months after MDE issued the final Luke Paper permit. *In the Matter of CITGO Refinery and Chemicals Company L.P.*, Petition VI-2007-01 (May 28, 2009) (*CITGO Order*); *In the Matter of Premcor Refining Group, Inc.*, Petition VI-2007-2 (May 28, 2009).

In the CITGO Order, EPA noted:

If an applicable requirement contains a periodic monitoring requirement that is inadequate to assure compliance with a term or condition of the title V permit, the Court concluded, title V of the Act requires that "somebody must fix these inadequate monitoring requirements." *Id.* at 678. The Court overturned EPA's interpretative rule, but found that EPA's current regulation at 40 C.F.R. § 70.6(c)(1) – requiring that each permit contain monitoring requirements sufficient to assure compliance with permit terms and conditions – may, and must, be interpreted consistent with the Act. *Id.* at 680.

To summarize, EPA's part 70 monitoring rules (40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1)) are designed to satisfy the statutory requirement that "[e]ach permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions." CAA § 504(c). As a general matter, permitting authorities must take three steps to satisfy the monitoring requirements in EPA's part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. Second, if the applicable requirement contains no periodic monitoring, permitting authorities must add "periodic monitoring 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). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.F.R. § 70.6(c)(1).

*CITGO Order* at 6-7.

EPA also noted that "the rationale for the selected monitoring requirements must be clear and documented in the permit record" and that "the determination of whether monitoring is adequate in a particular circumstance generally will be a context specific determination." *CITGO Order* at 7. EPA reiterated this discussion more recently in other title V orders, including *In the Matter of Wheelabrator Baltimore, L.P.*, (April 14, 2010) (*Wheelabrator Order*).

The permit conditions at issue here for boiler Nos. 2, 3, 24 and 25 do not include adequate monitoring to assure compliance with hourly PM limits because: (1) the permit itself identifies the monitoring requirements for these limits as "None"; (2) the only testing requirement is a stack test every two years; and (3) the permit record does not explain how this monitoring regimen ensures compliance with the applicable PM limits. EPA agrees that such an infrequent testing requirement is not adequate to assure compliance with an hourly limit. The permit relies on a control device to achieve compliance with the SIP limits (see COMAR 26.11.09.06, COMAR 26.11.09.09 and COMAR 26.11.06.03(B)(1)(b)), and EPA agrees that a biannual testing requirement by itself is not adequate to assure compliance with these limits. The monitoring must provide timely compliance information commensurate with the SIP limits. § 7661c.(b).

Because EPA agrees that the title V permit must include additional monitoring requirements to assure compliance with hourly limits, EPA grants this claim in part. However, EPA denies Petitioners' claim that MDE should require the use of certified continuous monitors at Luke Paper's power and recovery boilers. While such monitors may be one appropriate monitoring technology, EPA cannot conclude at this time that it is the only monitoring technology that can assure compliance with hourly PM limits. Moreover, Petitioners failed to point to any applicable requirements to these boilers that

require CEMs. Instead, EPA directs MDE to revise the permit, after public review and comment, to add monitoring requirements sufficient to assure compliance with the hourly PM limits for boiler Nos. 2, 3, 24 and 25.<sup>2</sup>

### **Claim II. The Permit Must Include a CAM Plan for Boiler Nos. 24 and 25**

Petitioners claim that the CAM rule requirements found at 40 C.F.R. §64 et seq., apply to “Luke Paper boilers No. 24 and No. 25, because they are subject to federally enforceable PM emission limits, use a control device to achieve compliance with its PM limit, and have pre-control PM emissions greater than the amount required to be classified as a major source” (citing 40 CFR 64.2, CFR 70.2, and MD. Code Ann.2611.02.01(C)). Thus, Petitioners argue, “these units must comply with the CAM Rule.” Petition at 11.

Petitioners acknowledge that the “CAM requirements only apply to facilities that submit Title V applications after April 20, 1998,” citing 40 C.F.R. §64 et seq. and 62 Fed. Reg. 54900, 54927 (October 22, 1997) and note that MDE responded to their comments by claiming that the CAM rule is not applicable because a title V application was received prior to April 20, 1998. However, Petitioners argue in response that the CAM rule applies to boiler Nos. 24 and 25 because: (1) “Luke Paper Company significantly revised its initial Title V application to account for major facility changes, including the installation of baghouse pollution controls, and re-submitted the application to MDE on May 31, 2002,” and (2) MDE determined that the revised title V permit application was administratively complete on July 23, 2002. *Id.* at 12. Petitioners conclude that “[t]hus, Luke Paper is subject to the CAM requirements because they submitted a substantially revised Title V application, which includes the addition of pollution controls, after April 20, 1998.” *Id.* Therefore, according to Petitioners, “EPA must object to the Luke Paper Permit as there are no CAM methods specified to ensure that the Luke Paper boilers No. 24 and No. 25 are not violating PM emission limits... and MDE’s failure to include CAM methods in the Title V operating permit is a violation of the Clean Air Act.” *Id.*

Petitioner EIP raised similar arguments in their comments on the draft permit. Specifically, Petitioner EIP argued that “MDE received a Title V application from Luke Paper more than five years ago [in 2002], and that application should have specified CAM methods for particulate matter and other pollutants” and “Maryland has spent more than five years developing the draft permit, which allowed plenty of time to identify

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<sup>2</sup> Petitioners also assert that “[t]o the extent that there are other emission limits in the Luke Paper title V permit that do not have adequate monitoring, these provisions would also violate title V of the Clean Air Act.” Petition at 10. With respect to this assertion, 40 C.F.R. §70.7(d) provides that “[a]ny petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period.” This assertion by the Petitioner is not an objection to any identifiable provision in the permit and was not raised with reasonable specificity during the public comment period. Even if it had been raised with reasonable specificity, the claim would be denied because such a generalized statement does not meet Petitioners’ burden under section 505(b)(2) of the Clean Air Act to demonstrate to the Administrator that the permit is not in compliance with the Clean Air Act. *MacClarence v. EPA*, 596F.3d 1123 (9<sup>th</sup> Cir. 2010).

monitoring methods that can assure that the pollution controls are working properly.” Petition at Appendix A. In response to Petitioners’ comments that the permit and application did not address CAM methods for the power boilers and that Maryland has had more than 5 years to identify [CAM] monitoring methods for the pollution controls, MDE disagreed, stating that:

Compliance Assurance Monitoring does not apply to the Luke Paper mill because the initial application for the Part 70 permit was received and determined to be complete prior to April 20, 1998. The CAM regulation CFR §64.5(b) requires an owner or operator to submit a CAM plan as part of the application for renewal of a Part 70 permit if the owner or operator is not subject to §64.5(a). §64.5(a) sets the April 20th date. The Luke Paper mill will be required to submit a CAM plan upon permit renewal or at such time the owner or operator submits an application for a significant permit revision.

***EPA’s Response:*** EPA denies this claim. As discussed below, Petitioners have not demonstrated that the permit is not in compliance with CAM requirements. See CAA section 505(b)(2); *see also MacClarence V. EPA*, 596 F.3d 1123, 1131 (9th Cir. 2010) (stating that “[b]ecause a petition that properly demonstrates that a permit is not in compliance with the CAA requires the Administrator and state permitting authority to take certain action, the Administrator’s requirement that [the Petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.”). In general, the CAM rule requires title V applicants to submit monitoring information to the permitting authority, which uses the information to establish permit terms or conditions that specify monitoring to assure compliance with the applicable requirements. See 40 C.F.R. 64.4 and 64.6. It applies to initial title V permits, significant permit revisions, and renewals of existing permits. See 64.5(a). Applicants for initial and renewal title V permits and significant title V permit revisions must provide CAM information (“CAM application”) as part of their part 70 or 71 permit applications.

When EPA promulgated the CAM rule on October 22, 1997, it chose to phase in the CAM submittal requirement for an initial title V permit if the title V application was being processed at the time the CAM rule became effective. *See* 62 Fed. Reg. 54,900 at 54,927-28 (Oct. 22, 1997). Accordingly, the CAM regulation provides that the requirement to submit a CAM application applies to initial title V permits as of April 20, 1998, if, by that date, the title V application for an initial permit:

either:

- (i) Has not been filed; or
- (ii) Has not yet been determined to be complete by the permitting authority.

40 C.F.R. 64.5(a)(1).

In the preamble to the CAM rule, EPA explained further that:

if the permit application has been found complete but the permit has not issued, and the owner or operator proposes to revise the application to include a change of a type that would have been subject to the significant permit revision process, had the permit been issued, then the owner or operator must include part 64 required information for the pollutant-specific emissions unit(s) identified in the application revision. This circumstance triggers part 64 implementation because this type of permit application revision would require a second completeness determination by the permitting authority, and the implementation provision of § 64.5(a)(1)(ii) would be applicable.

62 Fed. Reg. at 54,927.

The Petitioners believe that CAM should apply for two reasons: (1) significant revisions were made to the application to account for major facility changes, including the installation of baghouse pollution controls; and (2) MDE determined a revised application was complete on July 23, 2002 (citing the permit fact sheet). However, Petitioners do not adequately analyze or support their assertions that these reasons inevitably lead to the conclusion that the CAM rule applies to this permit. For example, in their petition, Petitioners note MDE's claim that the CAM rule does not apply to this permit because the title V application was received prior to April 20, 1998; yet Petitioners do nothing more than assert – without any analysis – that Luke Paper “significantly revised its initial Title V application to account for major facility changes, including the installation of baghouse pollution controls.” Petitioners conclude, again without any analysis, that as a result of those changes “Luke Paper is subject to the CAM requirements because they submitted a substantially revised Title V application.” Petition at 12. Although Petitioners cite to the CAM rule and preamble, they do not apply them to the facts here. For example, they do not explain why the installation of the baghouse should have been considered “a change of a type that would have been subject to the significant permit revision process.” 62 Fed. Reg. at 54, 927. Without more, EPA cannot conclude that such a change, had it been made after the permit was issued, would necessarily be considered a significant permit revision under the regulations governing the determination as to whether a modification is a significant permit modification, a minor permit modification, or an administrative change (see 40 C.F.R. 70.7(d) and (e)).

Similarly, Petitioners do not adequately address MDE's assertion that it determined Luke Paper's title V application was complete prior to April 20, 1998. Instead, Petitioners merely state that according to the permit fact sheet, “MDE determined that Luke Paper's revised Title V permit application was administratively complete on July 23, 2002.” Petition at 12. Petitioners failed to provide any legal analysis or evidence demonstrating that a completeness determination made on July 23, 2002, would somehow negate the completeness determination made prior to the effective date of the rule, and that CAM should have applied as of that date.<sup>3</sup> Under these facts and circumstances, EPA denies the petition with respect to Claim II. Petitioners have not

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<sup>3</sup> EPA notes that the 2002 completeness determination letter was sent at a time when Maryland's part 70 title V program approval had expired and became a federal part 71 program that was delegated to Maryland.

met their burden under CAA section 505(b)(2) to demonstrate in the petition that the permit is not in compliance with the Clean Air Act.

**Claim III. The Permit Must Include Emission Limits for Hazardous Air Pollutants for Boiler Nos. 24 and 25**

Petitioners argue that EPA must object to the Luke Paper title V permit because it does not contain emission limits for HAPs for boiler Nos. 24 and 25 pursuant to the provisions in section 112(j) of the CAA. Also known as the “MACT hammer” provision, section 112(j) requires that major sources in a category or subcategory for which Maximum Achievable Control Technology (MACT) standards are not promulgated by the relevant deadline set out in CAA section 112(e) must submit permit applications for case-by-case MACT limits. Federal or state title V permit writers must then determine on a case-by-case basis an emission limitation equivalent to the limitation that would apply if an emission standard had been issued in a timely manner under section 112(d) or (h) of the Act. See CAA 112(j)(2)-(5). Section 112(j) applies to this permit, Petitioners argue, because there are no validly promulgated emission standards for the relevant listed source category – industrial boilers and process heaters. Petitioners acknowledge that EPA promulgated a National Emissions Standard for Hazardous Air Pollutants (“NESHAP”) for industrial boilers and process heaters, but argue that because that rule was vacated by the U.S. Court of Appeals, there is no NESHAP that was “validly promulgated or currently exists.” Petition at 13.

Therefore, according to the Petitioner, the “MACT Hammer” provisions of the CAA are triggered and “an affected owner/operator must submit an application containing emission limitations equivalent to the limitations that would have been set had the standard properly promulgated...” Petition at 13-14.

Petitioners argue that Luke Paper was required to “submit an application proposing MACT standards for these boilers no later than May 15, 2001, 18 months after EPA was required to promulgate all MACT standards under the Clean Air Act.” Petition at 14. “Alternatively, the deadline for Luke Paper Company to submit a MACT application passed on December 8, 2008, 18 months after the D.C. Circuit Court of Appeals vacated the NESHAP for industrial boilers and process heaters.” Petition at 14.

Petitioners note that “even if the deadline for Luke Paper to submit a MACT application under section 112(j) is dictated by EPA’s two-part process pertaining to section 112(j) MACT applications, that date has long since passed.” Petition at 15. Petitioners assert, further, that sources with affected industrial boilers must submit a complete part 2 application no later than April 28, 2004 (citing 40 C.F.R. part 63, Subpart B, Table 1.) Thus, Petitioners argue that “the deadline for Luke Paper Company to submit a complete MACT application is long overdue, and the Luke Paper Title V Permit must include emission limits for HAPs for boilers No. 24 and 25.” Petition at 15. Alternatively, Petitioners argue that the Luke Paper title V permit must contain a schedule of compliance designed to bring Luke Paper into compliance with section 112(j). Petition at 16.

Petitioners EIP made similar arguments in their comments to MDE on the initial draft permit. In its Response to Comments, MDE stated:

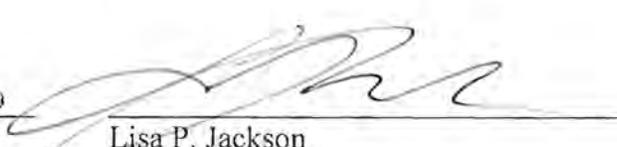
The Department, like other states in the county, is waiting for guidance from EPA, which is supposed to address this issue. We were hopeful that this guidance would have been available by now; unfortunately this has not happened. Maryland is also participating in an effort by the National Association of Clean Air Agencies (NACAA) to develop a Model Boiler MACT for state and local agencies to use in establishing case-by-case MACT under section 112(j).

**EPA's Response:** EPA denies this claim. Subsequent to the date the petition was filed, Luke Paper submitted an amended part 1 and a part 2 section 112(j) application, on August 9, 2009. Thus, even assuming that Petitioners' view of Luke Paper's obligation to submit its part 1 and part 2 applications is correct, because Luke Paper has already submitted both applications, Petitioners' claim with respect to this issue is moot. With respect to Petitioners' claim that the permit must include section 112(j) limits, EPA notes that MDE would incorporate a 112(j) limit through a title V permit amendment. Further, Petitioners have not demonstrated that compliance with any such limit would be required during the current permit term, and it is possible it would not. Thus, EPA denies the claim that the title V permit that is the subject of this petition is required to address 112(j). See *In the Matter of: Wisconsin Power and Light, Columbia Generating Station, Petition No. V-2008-1*.

## CONCLUSION

For the reasons set forth above, and pursuant to section 505(b) of the Act, 42 U.S.C. § 7661(b), and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the petition and remand the permit to MDE for revisions consistent with this Order.

Dated: October 18, 2010

  
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Lisa P. Jackson  
Administrator