

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF )  
ROOSEVELT REGIONAL LANDFILL )  
REGIONAL DISPOSAL COMPANY ) ORDER RESPONDING TO PETITIONER'S  
 ) REQUEST THAT THE ADMINISTRATOR  
Permit No. DE 98AOP-C242 ) OBJECT TO ISSUANCE OF A STATE  
Issued by the Washington ) OPERATING PERMIT  
Department of Ecology, )  
Central Regional Office )  
\_\_\_\_\_ )

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

On February 26, 1999, the Environmental Protection Agency ("EPA") received a petition from TPS Technologies, Inc. ("TPST" or "Petitioner") requesting that EPA object to the issuance to Roosevelt Regional Landfill, Regional Disposal Company of a state operating permit issued pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507 ("Roosevelt Landfill Permit"). The Roosevelt Landfill Permit was issued by the Washington Department of Ecology, Central Regional Office ("Ecology"), on December 30, 1998, pursuant to title V of the Act, the federal implementing regulations, 40 CFR Part 70, and the State of Washington implementing regulations, Washington Administrative Code ("WAC") Chapter 173-401.

The petition alleges that the Roosevelt Landfill Permit failed to: (1) adequately identify all emissions units at the facility; (2) adequately calculate emissions of volatile organic compounds ("VOCs") from the handling of petroleum contaminated soil ("PCS") and the use of PCS as daily cover; (3) explain the basis for establishing different types of controls on PCS at two similar landfill facilities; and (4) reflect the comments of Region X's new source review ("NSR") personnel regarding controls on PCS to reflect that the facility is either currently out of compliance with NSR requirements or will be subject to NSR in two years. The Petitioner has requested that EPA object to the issuance of the Roosevelt Landfill Permit pursuant to section 505(b)(2) of the Act for these reasons.

Based on a review of all the information before me, including the Roosevelt Landfill Permit, the permit application, and Statement of Basis; additional information provided by the permitting authority in response to inquiries; and the information provided by the Petitioner in the petition, I deny the Petitioner's request for the reasons set forth below.

#### **I. STATUTORY AND REGULATORY FRAMEWORK**

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. EPA granted interim approval to the title V operating permit program submitted by the State of Washington effective December 9, 1994. 59 Fed. Reg. 55813 (Nov. 9, 1994); see also 60 Fed. Reg. 62992 (Dec. 8, 1995) (final interim approval after remand on unrelated issue); 40 CFR Part 70, Appendix A. 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 §§ 502(a) and 504(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, 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 better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document and that compliance with these requirements is assured.

Under section 505(b) of the Act and 40 CFR § 70.8(c), states are required to submit all operating permits proposed pursuant to title V to EPA for review and EPA will object to permits determined by the Agency not to be in compliance with applicable

requirements or the requirements of 40 CFR Part 70. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 CFR § 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. To justify exercise of an objection by EPA to a title V permit pursuant to section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with the requirements of the Act, including the requirements of Part 70. Petitions must, in general, be based on objections to the permit that were raised with reasonable specificity during the public comment period.<sup>1</sup> 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 before receipt of the objection. If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

## **II. ISSUES RAISED BY THE PETITIONER**

Petitioner first alleges that the Roosevelt Landfill Permit does not adequately identify all emissions units at the facility. TPST Petition at 2. Petitioner indicates that "even if the transfer station area of the landfill had only fugitive VOC emissions, those emissions needed to be identified with more specificity as potential emissions units." Id. The petition references an objection to a draft title V permit by another EPA Region on the basis that all emission units were not accounted for in that permit. (citing Region IV objection to draft Mississippi Department of Environmental Quality permit for First Chemical Corporation (April 18, 1997) ("First Chemical Objection")) Id.

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<sup>1</sup> See CAA § 505(b)(2); 40 CFR § 70.8(d). Except as noted infra at page 6, Petitioner here satisfied the threshold requirement to have commented during the public comment period on concerns with the draft operating permit that are the basis for this petition. See Letter from David Dabroski et al., Attorneys for TPST, to Lynnette Haller, Washington Dep't of Ecology (June 11, 1998) ("TPST Comment Letter").

With one exception, Petitioner does not specify the emission units claimed not to be adequately identified in the permit. EPA's review has not uncovered any emissions units subject to applicable requirements that should have been but were not identified and included in the permit. Accordingly, Petitioner's general and unsubstantiated claim that emissions units are not adequately identified in the permit fails to demonstrate that the permit is not in compliance with the requirements of the Act, including the requirements of Part 70.

The one specific example of inadequate identification of an emission unit alleged by Petitioner is "the transfer station area of the landfill." TPST Petition at 2. Although it is not entirely clear what emission unit Petitioner is referring to as "the transfer station area of the landfill," EPA believes that this reference is intended to encompass the transfer of material at the Roosevelt Intermodal Yard. This emission unit,<sup>2</sup> which is discussed in the permit's Statement of Basis at section 11.50 on page 41 of 54, involves the transfer of closed containers filled with municipal solid waste ("MSW")/PCS from railcars to trucks.

In the case of the Roosevelt Landfill Permit, EPA believes that it is unnecessary to specifically identify the "transfer station area of the landfill" or the Intermodal Yard in the permit as a separate emission unit in order to assure compliance with the relevant applicable requirements for these operations. Section 5.1 of the Roosevelt Landfill Permit identifies seventeen different requirements that apply to all emission units at the facility, including the "transfer station area of the landfill" or the Intermodal Yard. No specific applicable requirements apply uniquely to the transfer station area or the Intermodal Yard. The seventeen facility-wide requirements include a twenty percent limit on opacity from all sources and a requirement to use reasonable precautions to control fugitive dust. See Roosevelt Landfill Permit conditions 5.1.4. and 5.1.6. Although a title V permit generally must identify each emission unit and

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<sup>2</sup> The Part 70 regulations define "emissions unit" as "any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." See 40 CFR § 70.2; see also WAC 173-401-200(11).

link it to its corresponding applicable requirements in order to assure compliance with those requirements, EPA believes that the use of generic groupings of emission units in a permit may be used for applicable requirements that apply in the same way at all units at a facility. See, e.g., White Paper for Streamlined Development of Part 70 Permit Applications (July 10, 1995), section II.4 ("White Paper 1"). EPA believes that permit drafting in this fashion will assure compliance with these types of facility-wide applicable requirements.

Petitioner's invocation of EPA Region IV's objection to a proposed permit issued by the State of Mississippi to First Chemical Corporation is misplaced. The relevant passage of the Region IV objection letter states:

The proposed permit and the permit application fail to adequately account for all emission units and all points of emissions in sufficient detail to establish a basis for applicability of requirements under the Clean Air Act (42 U.S.C. §§ 7401-7671q). Thus, the proposed permit and supporting information fail to account for all HAP [hazardous air pollutant] emissions which are [relevant] to the demonstration of minor source HAP emissions. [40 C.F.R. § 70.5(c)(3)].

First Chemical Objection at 2. Region IV objected to the proposed First Chemical Corporation permit in part because, by failing to identify all emission units in the permit and permit application, Region IV concluded that the permitting authority had incorrectly determined that First Chemical Corporation was a minor source of HAPs and that the permit therefore failed to impose applicable emission limitations related to a National Emission Standard for Hazardous Air Pollutants. As discussed in more detail in response to the fourth allegation below, EPA has not concluded at this time either that the permit fails to adequately identify emission units or that it fails to assure compliance with any applicable requirements for the Roosevelt Landfill.

For the reasons stated above, Petitioner's first claim does not demonstrate that the Roosevelt Landfill Permit fails to

comply with requirements of the Act or Part 70.<sup>3</sup>

Petitioner's second claim alleges that the permit fails to adequately calculate VOC emissions from the handling of PCS and the use of PCS as daily cover. In support, the petition cites to the same Region IV objection, for the proposition that objection to a permit is warranted for the permit's failure to "contain sufficient data regarding emissions from a facility." TPST Petition at 2.

As noted above, EPA will object to a permit in response to a petition where a petitioner has demonstrated that the permit is not in compliance with applicable requirements of the Act or the requirements of Part 70. Here, Petitioner fails to show any applicable requirement that has been omitted from the Roosevelt Landfill Permit because of the alleged failure of the permit to adequately calculate VOC emissions.<sup>4</sup> In addition, EPA's review has not uncovered missing applicable requirements resulting from the infirmities alleged by Petitioner. Therefore, Petitioner has failed to demonstrate that the permit warrants objection by EPA.

Again, Petitioner's reliance on EPA Region IV's objection to the First Chemical Corporation permit is misplaced. Region IV objected to the First Chemical Corporation permit because the permit and supporting documentation failed to include information needed to determine the basis for the applicability of Clean Air Act requirement. This stemmed from the lack of an adequate demonstration there that the company's potential to emit HAP

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<sup>3</sup> To the extent that Petitioner is alleging that the failure of the permit to identify specific emission units, such as the "transfer station area of the landfill," has resulted in an underestimation of emissions, which has in turn resulted in a failure of the permittee to comply with federal NSR requirements, this issue is discussed below under the Petitioner's fourth allegation.

<sup>4</sup> Again, to the extent that Petitioner is alleging that VOC emissions from this facility have been underestimated, which has in turn resulted in a failure by the permittee to comply with federal requirements for NSR, this issue is discussed below under the Petitioner's fourth allegation.

emissions was below the major source applicability threshold. As discussed in more detail in response to the fourth allegation below, EPA has not concluded at this time that emissions from the facility have been underestimated and that this has in turn resulted in a failure to include all applicable requirements in the title V permit for the Roosevelt Landfill.

Petitioner's third claim alleges that the permit and its supporting documentation fail to "explain any basis for establishing vastly different types of controls on PCS at two similar landfill facilities in Central Washington (the Roosevelt Landfill and the Ryegrass landfill near Ellensburg, Washington)." TPST Petition at 2. Neither Petitioner nor any other party raised the specific issue of the difference in controls between the Ryegrass Landfill and the Roosevelt Landfill in public comments to Ecology on the draft permit.<sup>5</sup> Accordingly, the Petitioner's third claim is not based upon an objection that was raised with reasonable specificity during the public comment period on the draft operating permit. As a result of this failing, and because the grounds for this objection were present and practicable for Petitioner to raise during the comment period, Petitioner's third claim is hereby denied. See CAA § 505(b)(2); 40 CFR § 70.8(d).

Even if Petitioner had established the basis for this claim during the prior comment period, however, or even if Petitioner's public comments could be read to preserve its ability to raise this claim, EPA nonetheless believes that this claim should be rejected on its merits. Addressing Petitioner's implicit criticism of the PCS controls at the Roosevelt Landfill,<sup>6</sup> EPA

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<sup>5</sup> Petitioner did, however, comment on the difference in emissions estimates, and the resulting difference in required controls, between the Roosevelt Landfill and two PCS treatment facilities in Grant County, Washington. See TPST Comment Letter at 15.

<sup>6</sup> As above, to the extent that Petitioner is alleging that emissions from the Roosevelt Landfill are actually higher than originally thought to be during the minor NSR permitting process and that the Roosevelt Landfill should have been permitted as a major source under the Prevention of Significant

concludes that Petitioner has failed to demonstrate that the permit does not assure compliance with applicable requirements of the Act or Part 70.

The merits of minor NSR issues (and issues under other federal preconstruction review programs such as Prevention of Significant Deterioration ("PSD") and major nonattainment NSR) can be ripe for consideration in a timely petition to object under title V. See Order *In re Shintech Inc.*, at 3 n.2 (Sept. 10, 1997). Under 40 CFR § 70.1(b), "all sources subject to Title V must have a permit to operate that assures compliance by the source with all applicable requirements." Applicable requirements are defined in 40 CFR § 70.2 to include: "(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act...."<sup>7</sup> Such applicable requirements include the requirement to obtain preconstruction permits that comply with applicable preconstruction review requirements under the Act, EPA regulations, and State Implementation Plans ("SIPs"). See generally CAA §§ 110(a)(2)(C), 160-69, & 173; 40 CFR §§ 51.160-66 & 52.21. Thus, the applicable requirements of the Roosevelt Landfill Permit include the requirement to obtain a minor NSR permit that in turn complies with applicable minor NSR requirements under the Act, EPA regulations, and the Washington SIP.

The Roosevelt Landfill has a minor NSR permit that reflects best available control technology ("BACT") imposed pursuant to the Washington SIP.<sup>8</sup> The Roosevelt Landfill operating permit

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Deterioration program, that issue is discussed in response to the fourth allegation below.

<sup>7</sup> The Ecology regulations define "applicable requirement," in relevant part, to include "any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under title I of the Federal Clean Air Act." WAC 173-401-200(4)(a)(i).

<sup>8</sup> Under the Washington SIP's minor NSR program, any proposed new source or modification must employ BACT for all

properly reflects the conditions of its minor NSR permit as "applicable requirements" under 40 CFR Part 70 and WAC Chapter 173-401. Petitioner here criticizes the controls on PCS (or absence of such controls) drawn from the Roosevelt Landfill's minor NSR permit and reflected in the facility's operating permit. Petitioner bases its criticism on a comparison between the controls at the Roosevelt Landfill and the Ryegrass facility, making the implicit contention that the Roosevelt Landfill's controls are deficient as compared to the controls reflected in the Ryegrass facility's minor NSR permit. EPA will evaluate such criticism under title V's standard that operating permits must assure compliance with applicable requirements of the Act.

In determining BACT under a minor NSR program, as in implementing other aspects of SIP preconstruction review programs, a State exercises considerable discretion. Thus, EPA lacks authority to take corrective action merely because the Agency disagrees with a State's lawful exercise of discretion in making BACT-related determinations. State discretion is bounded, however, by the fundamental requirements of administrative law that agency decisions not be arbitrary or capricious, be beyond statutory authority, or fail to comply with applicable procedures. Consequently, state-issued pre-construction permits - such as minor NSR permits - must conform to the applicable requirements of the Clean Air Act and the SIP, and failure to do so may result in corrective action by EPA. Such corrective action may take the form of an objection to an operating permit in response to a public petition.

Having evaluated the minor NSR permit conditions reflected in the Roosevelt Landfill Permit and accompanying materials, EPA concludes that Petitioner has failed to demonstrate that the

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pollutants not previously emitted or whose emissions would increase as a result of the new source or modification. WAC 173-400-112 & -113. For the PSD and major NSR permit programs, preconstruction review requirements include use of BACT or lowest achievable emission rates, respectively, for each regulated pollutant that would be emitted in significant amounts and at each emissions unit at which an emissions increase would occur. CAA § 165(a)(4) and 40 CFR §§ 52.21(b)(12), (i), & (j); CAA § 173(a)(2) and 40 CFR §§ 51.165(a)(1)(xiii) & (a)(2).

permit does not assure compliance with relevant applicable requirements, including the requirement to obtain a pre-construction permit that complies with applicable pre-construction review requirements under the Act, EPA regulations, and the Washington SIP. EPA does not believe that differences between PCS controls in the Roosevelt Landfill Permit and the Ryegrass minor NSR permit evince an arbitrary or otherwise unlawful minor BACT determination by the State for the Roosevelt facility. To the contrary, EPA concludes that the Roosevelt Landfill Permit reflects a reasoned determination that is well within the State permitting authority's discretion to reach. Reasons for this conclusion follow.

First, the Roosevelt Landfill's 1990 minor NSR permit, and in turn the facility's operating permit, do not require treatment of PCS before it can be used as cover. By contrast, the 1995 minor NSR permit issued to Taneum Recovery Corporation ("Taneum"), located at the Ryegrass Landfill, does specify such treatment.<sup>9</sup> Taneum remediates PCS at a treatment facility located on a specific portion of the Ryegrass Landfill. However, the minor NSR permit for Taneum does not preclude other disposition of the PCS, including disposal of untreated PCS, at the co-located and separately permitted Ryegrass Landfill. The landfill itself does not restrict the disposal of PCS and may use both treated and untreated PCS from the treatment facility for daily cover. EPA does not believe that the two *landfills* have significantly different control requirements related to PCS disposal. Furthermore, while the Roosevelt Landfill is required to dispose of the PCS once it is accepted, Taneum may ship the bioremediated PCS offsite for usage or disposal (and may ship offsite any un-remediated soil for disposal or treatment elsewhere). In other words, the different control requirements appear to be a reflection of the allowable different end uses of the PCS.

Second, the Roosevelt Landfill is required to collect and

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<sup>9</sup> Although the Petitioner refers to the Ryegrass Landfill permit, we presume that the intent was to compare the Roosevelt Landfill controls to those imposed upon the Taneum facility located at the Ryegrass Landfill, since the Ryegrass Landfill itself has not recently been permitted.

destroy landfill gases, whereas the Ryegrass Landfill is not. The Roosevelt Landfill's 1990 minor NSR permit requires the collection of landfill gases, and its 1993 minor NSR permit requires 99% destruction of the collected gases.<sup>10</sup> Subsequent to receipt of its minor NSR permits, the Roosevelt Landfill became subject to the MSW Landfill New Source Performance Standard ("NSPS") promulgated in 1996, which also requires the collection of landfill gases and 98% destruction of the collected gases. The Ryegrass Landfill is not subject to any requirement to collect and destroy landfill gases. EPA therefore concludes that the Roosevelt Landfill minor NSR permit contains more stringent requirements than those required at the older Ryegrass Landfill, a difference in control requirements that is appropriate due to the improvements in technology since the opening of the Ryegrass Landfill.

Third, the Roosevelt Landfill minor NSR permit includes a three million ton per year limit on total MSW - which includes PCS, nonhazardous commercial and industrial waste, oily sludge, dry cleaning sludge, agricultural waste, asbestos, pharmaceutical waste, as well as household waste - that the landfill can accept. Historically, PCS has constituted about 15% of the MSW disposed of at the Roosevelt Landfill. The Taneum treatment facility has a 60,000 ton per year limit on total PCS, of which no more than 15,000 tons per year may be gasoline contaminated soil. There is no limit on the amount or type of PCS that may be disposed at the Ryegrass Landfill. In any event, these limits appear to be largely reflective of the differences in size among the Roosevelt Landfill, the Taneum treatment facility and the Ryegrass Landfill.

Finally, EPA notes that disposal of PCS at landfills is not generally regulated except through NSR permitting and by a few jurisdictions with significant ozone nonattainment problems,

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<sup>10</sup> Landfill gases are the gases generated by the decomposition of organic waste deposited in the landfill and the gases derived from the evolution of organic compounds in the waste, and would include some of the VOCs remaining in the PCS used as daily cover in the landfill. The gases are collected by a system of pipes installed in the landfill. The collected gases are then directed to a combustion unit.

whereas treatment of PCS is frequently regulated. The areas in which these Washington landfills are located have never been found to be in nonattainment with the federal ozone standard, so it was reasonable for the State not to require the disposal of PCS to be treated separately from other waste allowed in MSW landfills. EPA's Region X reasonably concluded in a letter to the permitting authority that "if PCS is in a MSW landfill, collection and 98 percent control as part of the landfill gas would be appropriate." Letter from Anita Frankel, EPA Region X, to Lynnette Haller, Washington Dep't of Ecology (July 31, 1998), at 3.

Based on the foregoing reasons, EPA does not believe that the permitting authority has been arbitrary or otherwise unlawful in establishing the control requirements in the Roosevelt Landfill's minor NSR permit that are reflected in its operating permit. Petitioner has failed to demonstrate that the Roosevelt Landfill Permit does not assure compliance with relevant applicable requirements, and the petition's third claim seeking objection to the permit is hereby denied.

Petitioner's final claim alleges that the permit "fails to reflect the comments of [EPA] Region 10's New Source Review personnel regarding controls on PCS, or to reflect the fact that the facility is either currently in noncompliance with New Source Review requirements or will be facing new source requirements within two years." TPST Petition at 2. The petition asserts that "if the facility is currently not in compliance with the New Source Review requirements either because it fails to address all emissions units or because it incorrectly calculates and greatly underestimates VOC emissions, then the [operating] Permit is issued illegally by wholly failing to address issues of noncompliance." Id.

This last allegation appears to be at the heart of the Petitioner's concern with the Roosevelt Landfill Permit. EPA's Part 70 regulations and the corresponding Washington operating permit regulations require that, for sources that are not in compliance with all applicable requirements at the time of permit issuance, the permit must contain a schedule of compliance that includes "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source

will not be in compliance at the time of permit issuance." 40 CFR §§ 70.5(c)(8)(iii)(C) & 70.6(c)(3); WAC 173-401-510(2)(h)(iii) & -630(3).

The crux of Petitioner's allegation is that the permittee and Ecology underestimated the VOC emissions from this facility, and that the Roosevelt Landfill is a major source of VOC because its potential to emit is greater than 250 tons per year. As a major source of VOC, the Roosevelt Landfill would have been required to obtain a PSD permit prior to construction. If the Roosevelt Landfill were a major source of VOC, because it did not obtain a PSD permit prior to construction, it would then not be in compliance with all applicable requirements of the Act, specifically PSD permitting requirements under CAA section 165, 40 CFR § 52.21 and the Washington SIP. Accordingly, if this allegation were true, the Roosevelt Landfill Permit should not have been issued unless it contained a compliance schedule requiring the permittee to go through the PSD permitting process.

EPA has carefully considered the Petitioner's claim that the Roosevelt Landfill is a major source of VOC emissions. The permitting authority, in consultation with EPA, calculated total VOCs for the Roosevelt Landfill by using a published emission factor for non-methane organic compound ("NMOC") emissions from MSW landfills. The resulting estimate of non-fugitive emissions was less than 250 tons per year. Additional calculations by the permitting authority, which include the fugitive component of the NMOC estimation and the VOC emissions from PCS handling on the working face of the landfill, as estimated by the permittee, also result in an estimate that is less than 250 tons per year.

In contrast, the Petitioner appears to be advocating that the total VOC emissions (fugitive and non-fugitive) for the Roosevelt Landfill be calculated by adding the NMOC emissions from the municipal solid waste to total VOC emissions from all PCS. TPST Comment Letter at 27-31. The Petitioner would calculate the PCS emissions based on the total tonnage of soil disposed of at the landfill (not just the working face component) and the type and level of contamination. The Petitioner does not specify how fugitive and non-fugitive emissions will be

apportioned for PSD applicability purposes.<sup>11</sup>

Although EPA is conducting a technical analysis and comparison of the two different methods for estimating emissions from this source, EPA was unable to conclude at the time of permit issuance, and is unable to conclude at this time, that one method more accurately estimates VOC emissions from the Roosevelt Landfill. Moreover, EPA is uncertain whether either method accurately apportions fugitive and non-fugitive emissions for applicability purposes. Petitioner has also made no satisfactory showing that its PCS emissions calculation method estimates or apportions VOC emissions more accurately than the method employed by Ecology. Therefore, Petitioner has failed to demonstrate that the permit warrants objection by EPA due to the improper exclusion of a compliance schedule requiring the permittee to undergo PSD permitting.

Accordingly, EPA is not prepared to conclude at this time that the Roosevelt Landfill is out of compliance with the requirements of PSD. However, EPA intends to continue to evaluate the emissions from this facility. As noted in EPA Region X's December 30, 1998 letter to Ecology indicating that EPA did not object to issuance of the Roosevelt Landfill Permit, if Ecology or EPA later determines that the Roosevelt Landfill is a major source of VOC and should have gone through PSD permitting prior to construction, the Roosevelt Landfill Permit will be reopened to incorporate an appropriate compliance schedule and any new applicable requirements that may result from the PSD permitting process. In fact, the operating permit's Statement of Basis discusses the ongoing nature of two compliance determinations (see 3.5 on page 8 of 54), one of which is this PSD permitting issue.

In drafting the Roosevelt Landfill title V permit, Ecology consulted extensively with EPA and other state agency offices.

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<sup>11</sup> For PSD applicability purposes, landfills are not required to include fugitive emissions in determining whether the stationary source is a major stationary source. See 40 CFR §§ 51.166(b)(1)(i)(c)(iii) & 51.166(i)(4)(ii); see also generally Memorandum from John Seitz, Classification of Emissions from Landfills for NSR Applicability Purposes (Oct. 21, 1994).

Region X provided comments, both oral and written, on the Roosevelt Landfill Permit on a number of occasions over an extended period of time. Because the Petitioner does not specify which of EPA's comments it believes are not reflected in the Roosevelt Landfill Permit, EPA is unable to substantively respond to Petitioner's allegation that "the Permit fails to reflect the comments of Region 10's New Source Review Personnel." At any rate, the petition's vague reference to unspecified Region X comments fails to demonstrate that the permit is currently not in compliance with applicable requirements of the Act or requirements under Part 70.

EPA does believe, however, that the Roosevelt Landfill Permit reflects Region X's comments regarding PCS. Because the PCS issues raised are complex, are still to some extent unresolved, and were discussed over a period of time, it may be that there are discrepancies between the comments of some EPA staff and the contents of the permit. These could be attributed to a number of factors, including issues that, upon further discussion with Ecology, were resolved differently than originally suggested by EPA, or comments presented as recommendations or nonbinding technical advice rather than as binding interpretation of law, or Petitioner may be interpreting comments made by EPA out of context. In any event, EPA is unaware of any outstanding issue regarding PCS that is not reflected in the Roosevelt Landfill Permit.

The Petitioner also asserts that the Roosevelt Landfill Permit fails to acknowledge that the facility will be facing new source requirements within two years. EPA is perplexed by this comment, because Condition 2.25 (page 10 of 51) of the Roosevelt Landfill Permit prohibits new construction or modification without prior new source review approval (which includes PSD) and condition 4.0 (page 12 of 51) requires that the permittee meet all applicable requirements on a timely basis that become effective during the permit term. In addition, condition 2.24.1.1 (page 10 of 51) of the permit requires that the permit be reopened to address new applicable requirements to which the source becomes subject if more than three years remain on the permit term. The Statement of Basis also discusses the fact that Roosevelt Landfill has filed a PSD application with Ecology in connection with a proposal to install, at some future date, additional landfill gas flares (see last paragraph of 11.53 on page 44 of 54).

**III. Conclusion**

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I deny the petition of TPST requesting the Administrator to object to issuance of the Roosevelt Landfill Permit.

May 4, 1999

Dated:

                  /s/                    
Carol M. Browner,  
Administrator.