



TULANE ENVIRONMENTAL LAW CLINIC

December 8, 2010

Via E-mail (jackson.lisa@epa.gov) and Certified Mail (No.7008 1830 0002 8233 3873)

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Second Petition to the Administrator to Object to Waste Management's Title V Permit No. 1740-00025-V1

Dear Administrator Jackson:

This Petition on behalf of Louisiana Environmental Action Network (LEAN), Concerned Citizens of Livingston Parish, Inc., Mr. O'Neal Couvillion, and Mr. Harold Wayne Breaud (the "Petitioners") asks EPA to object to LDEQ's August 25, 2010 response to EPA's May 27, 2010 objections and permit No. 1740-00025-VI (the "Permit"). This petition incorporates in full the previous petition that Petitioners submitted on January 2, 2009 (the "2009 Petition"), upon which EPA based its May 27, 2010 objections.

INTRODUCTION

LDEQ cannot legitimize an unlawful permit by supplementing its decision record without an opportunity for public participation. When EPA objects to a permit, LDEQ has 90 days to "resolve any objection" and "to modify, terminate, or revoke and reissue *the permit.*" 40 C.F.R. § 70.7(g)(4) (emphasis added). Reopening the permit is necessary to meet Clean Air Act public participation requirements because it allows an opportunity for public review and comment on the agency's proffered fix of the permit. *See* 40 C.F.R. 70.7(h). Here, LDEQ did not reopen the Permit in response to EPA's May 27, 2010 objections (the "Objections"). Instead, LDEQ's August 25, 2010 Response (the "Response") stated that it merely "supplement[ed] the permit record" and that the "Permit . . . will not be revised."

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Moreover, the Response did not resolve EPA's objections. EPA's objected to the Permit on two bases. First, LDEQ "did not articulate a rationale for its conclusions that the permit provides for monitoring sufficient to ensure compliance with all applicable requirements. LDEQ also failed to respond to Petitioners' contention that continuously monitoring the composition of the gas entering the flare is necessary to determine the pollutants being emitted and thereby assure compliance with permit limits." Objections at p. 9. EPA directed LDEQ to explain how the monitoring contained in the permit is sufficient and "why it is not necessary to continuously monitor the composition of the gas entering the flare." *Id.* at p. 10. If LDEQ found the monitoring insufficient, then EPA directed it to revise the Permit. *Id.* LDEQ, however, did not show that monitoring in the Permit is sufficient or that continuous monitoring of the flare is unnecessary. Instead, LDEQ's Response continues to rely on estimated levels of Toxic Air Pollutants based on assumptions from non-site specific data. And it is based on those same assumptions that LDEQ asserts it does not need to monitor emissions to ensure compliance. In other words, LDEQ's Response presents the same faulty logic to "resolve" the objections as EPA objected to on the original Permit: that it can assume compliance with monitoring because it assumes that the landfill will not emit pollutants beyond the level of its estimates – estimates based on non-site specific data. This type of circular reasoning—assuming that a facility is in compliance with emission limits that are themselves based on assumptions—is insufficient to meet 40 C.F.R. § 70.6(c)(1)'s mandate for "monitoring . . . sufficient to assure compliance with the terms and conditions of the permit." *See also* 42 U.S.C. § 7661c(c) (requiring that each permit set forth "monitoring . . . requirements to assure compliance").

Second, EPA objected to the Permit because "LDEQ has not provided a reasonable technical basis for the revised determination of CO [Carbon Monoxide] emissions." Objections at p. 12. These revisions lowered the estimates for Woodside's CO emissions from 621.06 tons/year to 237.73 tons/year, and allowed Woodside to avoid the "major source" classification for facilities emitting 250 tons/year that would trigger additional environmental review. EPA directed LDEQ to provide a "sound technical rationale for concluding that the emission factors it is proposing to use are replicable and are representative of the waste and gas production for the lifetime of this facility, and that the CO emissions . . . are in fact below the major source threshold." *Id.* Instead of providing such information through site-specific or other factual and representative data, LDEQ's Response merely cites *draft* regulatory CO estimates that do not correlate to the actual permit. Because LDEQ's Response failed to reopen the permit, failed to provide for public participation, and failed to resolve the Objections, EPA must object to the Permit under CAA § 505(b), 42 U.S.C. § 7661d(b).

FACTUAL BACKGROUND

On December 17, 2004, LDEQ issued a Part 70 permit (No. 1740-00025-V0) for air pollutant emissions to Woodside Landfill, which sought to expand its capacity. Petitioners sued LDEQ for issuing that permit without performing required Prevention of Significant Deterioration (“PSD”) review and for failing to include monitoring sufficient to assure compliance with the permit limits. On August 22, 2007, the Louisiana First Circuit Court of Appeals vacated Woodside Landfill’s air permit, finding that LDEQ had issued the permit without federally mandated Prevention of Significant Deterioration Review (“PSD Review”). *In re Waste Management of Louisiana, L.L.C., Woodside Landfill Air Permitting Decision*, Case No. 206 C.A. 1011, at (La. 1st Cir., Aug. 22, 2007).

Instead of performing PSD review, LDEQ issued a new permit No. 1740-00025-VI (the “Permit”) with lower Carbon Monoxide (“CO”) estimates so that Woodside Landfill could avoid major source classification and the attendant PSD review. Although the Permit allowed Woodside Landfill to double its size, it reduced CO estimates from 621.06 to 237.73 tons/year. The Permit did not rely on site-specific data to support this change and provided no monitoring to ensure or confirm that the Woodside landfill would meet those lower limits.

On January 2, 2009, Petitioners petitioned EPA to object to the Permit pursuant to 42 U.S.C. § 7661d(b)(2). EPA’s May 27, 2010 response granted in part the 2009 Petition, and objected to the Permit on the basis that, among other things, **A)** LDEQ failed to show that the Permit includes monitoring sufficient to ensure compliance with all applicable requirements, and **B)** the LDEQ had not provided a reasonable technical basis for the revised determination of CO emissions. LDEQ’s response to the Objections, dated August 25, 2010, (the “Response”) failed to provide for public participation but instead purported to “supplement[] the permit record” and stated that the “Permit . . . will not be revised.”

OBJECTIONS

Petitioners ask EPA to object to the title V operating permit No. 1740-00025-V1 (the “Permit”) that LDEQ issued on December 5, 2008, because: **A)** LDEQ failed to revoke, reissue, or revise the permit, **B)** LDEQ failed to provide for public participation in the permit proceedings, and **C)** LDEQ failed to resolve EPA’s objections (“EPA Objections”) to the permit.

Petitioners file this petition within sixty days following the end of EPA’s 45-day review period following LDEQ’s response, dated August 25, 2010, (the “Response”) as required by Clean Air Act § 505(b)(2), 42 U.S.C. §7661d(b)(2); 40 C.F.R. § 70.8(d). This Petition is based

only on objections to the Permit that were raised with reasonable specificity during the initial public comment period or were “impracticable to raise” within the initial public comment period because their underlying facts did not occur until after that comment period (to the extent that a comment period may have been available in the first place). The Administrator must grant or deny this Petition within sixty days after it is filed. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2). To the extent that Petitioners are raising the same objections as EPA order granted in the 2009 Petition, that Petition is incorporated in full.

A. Objection # 1: EPA Must Object to the Permit because LDEQ failed To Revoke, Reissue, or Revise the Permit.

EPA must object to the Permit because supplementing the permit record is not a lawful method to revoke, reissue, or revise a permit. Federal law requires LDEQ, within 90 days of an EPA objection, “to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue *the permit*.” 40 C.F.R. § 70.7(g)(4) (emphasis added). Here, LDEQ did not terminate, modify, or revoke the Permit. Instead, LDEQ’s Response merely “supplement[ed] the *permit record*” and stated that the “Permit . . . will not be revised.” Response at Cover (emphasis added). Therefore, EPA must object to the permit because LDEQ failed to promulgate the Permit in accordance with the law.

B. Objection # 2: EPA Must Object to the Permit because LDEQ Failed To Provide for Public Participation.

EPA must object to the Permit because LDEQ’s supplement to the record failed to provide an opportunity for public comment and a hearing. Federal law requires that “all permit proceedings, including initial permit issuance, [and] significant modifications . . . shall provide adequate procedures for public notice including . . . public comment and a hearing.” 40 C.F.R. § 70.7(h). Here, LDEQ’s Response purported to resolve EPA’s May 27, 2010 objections to an initial permit issuance. Accordingly, LDEQ’s Response is part of the initial permit issuance and requires public participation. Similarly, because LDEQ’s Response purports to resolve an unlawful permit issuance, it is a significant modification and requires public participation. Therefore, EPA must object to the Permit because LDEQ’s Response violated 40 C.F.R. § 70.7(h) when it failed to provide adequate procedures for public participation.

C. Objection # 3: EPA Must Object to the Permit because LDEQ’s Response Failed To Resolve EPA’s Objections.

1. EPA Must Object to the Permit because LDEQ Did Not Show that Monitoring in the Permit is Sufficient to Ensure Compliance or that

Continuously Monitoring the Gas Flare Is Unnecessary and because the Permit Fails To Include Monitoring Sufficient to Assure Compliance with Permit Terms and Limits.

The Permit continues to violate the requirements of the Clean Air Act because LDEQ's Response failed to require Waste Management to monitor its emissions or to ensure compliance with emissions limits and did not include monitoring sufficient to assure compliance with permit terms and limits. The Clean Air Act requires that all permits include "monitoring...requirements to assure compliance with the permit terms and conditions. 42 U.S.C. § 7661c(c). Federal regulations likewise mandate that "[a]ll permits shall contain...monitoring...requirements sufficient to assure compliance with the terms and conditions of the permit." 40 C.F.R. § 70.6(c)(1). On May 27, 2010, EPA objected to the Permit because LDEQ had not shown that the Permit met these requirements. EPA ordered LDEQ to address the issue and make appropriate changes to the Permit.

LDEQ's Response did not include data, monitoring requirements, or an explanation assuring compliance with the Permit's specific emission limitations. The Permit sets specific numeric emissions limits for the criteria pollutants (CO, NO_x, PM₁₀, SO₂, and VOC) and for 30 toxic and/or hazardous air pollutants. *See* Permit "Emission Rates for Criteria Pollutants & "Emission Rates for TAP/HAP & Other Pollutants." However, the Permit does not require monitoring that will provide data to demonstrate its compliance with those specific emission limits. Rather than requiring such data, LDEQ's Response, like the original permit decision, relies on assumptions and generalizations.

For example, EPA found that LDEQ could not lawfully rely on the assumption that the "permit was sufficient because it contained the monitoring required by NSPS WWW" and called for LDEQ to "explain how the monitoring required by NSPS WWW would assure compliance with other permit limits contained in the title V permit pursuant to applicable requirements other than NSPS WWW." EPA Objections at 9. LDEQ's response to the objection, however, failed to provide such an explanation. Instead, after listing basic NSPS WWW requirements, LDEQ stated

However, NSPS WWW regulates only non-methane organic compounds (NMOC), whereas [the Permit] also establishes limitations for 30 other compounds known as toxic air pollutants (TAP). These compounds are *typically found in landfill gas* in very small quantities and are components of NMOC. As such, NSPS WWW ensures that they too are collected and routed to the flare for destruction.

LDEQ Response at 2 (emphasis added). LDEQ relies on an assumption about what is “typically found in a landfill” rather than monitoring what gases are being collected and burned at *this landfill*. Similarly, LDEQ’s “explanation” that it has estimated Toxic Air Pollutant limits based on default values does not provide a sufficient basis to ensure that LDEQ knows either what levels of pollutants are going into or coming out of the burner. *See* LDEQ Response at 2-3. In short, LDEQ has not shown that the Permit includes monitoring sufficient to assure compliance with air pollutant limitations.

2. EPA Must Object to the Permit because LDEQ Did Not Provide a Reasonable Technical Basis for Its Revised Estimate or Show that CO Emissions Will Not In Fact Exceed the Major Source Threshold and because the Permit Does Not Require Monitoring Sufficient To Assure Compliance with Emission Limits.

The Permit is unlawful because LDEQ has not provided “a reasonable technical basis” for lowering estimated CO emissions (allowing the landfill to avoid PSD review) without assuring that the landfill can or will meet those limitations. EPA objected to the Permit and directed LDEQ “to provide a sound technical rationale for concluding that the emission factors it is proposing to use are replicable and representative of the waste and gas production for the lifetime of this facility, and that the CO emissions from the GCCS are in fact below the major source threshold.” EPA Objections at 12. LDEQ’s Response failed to resolve this objection because it did not **A)** use site-specific data to show that the facility could or would meet the lower emission requirements, **B)** support its determination that the landfill will emit no more than 237.73 tons/year with the data provided, or **C)** include any consideration of emissions over the lifetime of the facility or of whether the facility’s CO emissions are in fact below the major source threshold (*i.e.* 250 tons/year of CO).

A) LDEQ Failed to Use Site Specific Data to Determine Whether the Landfill Can Meet the Lower Emission Requirements.

LDEQ’s Response did not resolve the Objections because it failed to use site-specific data as a basis for its new CO limitations and failed to explain why it did not use such data. EPA’s AP-42 Development of Emission Estimation Methods states that “controlled emissions of CO₂ and sulfur dioxide (SO₂) are *best estimated using site-specific* LFG constituent concentrations and mass balance methods.” *Emission Factor Documentation for AP-42 Section 2.4, Solid Waste Landfills (Revised)*, pt. 4.3.2, available at <http://www.epa.gov/ttnchie1/ap42/ch02/bgdocs/b02s04.pdf> (emphasis added). “*If site-specific data are not available*, data in Tables 4-5 through 4-7 can be used with the mass balance

methods that follow.” *Id.* (emphasis added). EPA’s AP-42 acknowledges that “[g]reater precision in emission rates can be achieved with the use of site-specific data” and states that “[t]he use of site specific data rather than . . . landfill model defaults is preferred.” *Id.* at pt. 4.2.1. Here, LDEQ has not used site specific data. Moreover, LDEQ has not determined that site-specific data are not available or obtainable. On the contrary, Waste Management ran tests in 2000 and 2004 to determine the constituents of landfill gas. In other words, such data is or can be available, but LDEQ has opted not to use it. LDEQ has not explained why it refuses to require Waste Management to perform those tests on a regular basis to assure compliance with emissions limits. Because such site specific data is or can be available, LDEQ cannot lawfully rely on estimates based on default values to ensure compliance with new CO limitations.

B) Current emission factors show that Woodside Landfill will emit Carbon Monoxide at levels that exceed the major source threshold.

The current AP-42 emissions factors for CO estimates for gas flares supports a finding that the Woodside Landfill is a major source that emits an estimated 621.06 tons of CO per year. *See* LDEQ Resp at p. 4 (noting current AP-42 factors estimate CO at 750lbs/10⁶ dscf CH⁴ and that this factor was the basis for the estimate in the original permit). Rather than recognizing current standards, LDEQ’s Response relies on *draft* revisions to AP-42 in its effort to support an emission limit that the agency actually based on inapplicable vendor guarantees. EPA rejected LDEQ’s use of a vendor guarantee on industrial flares as a basis for the Woodside Landfill emission limitations. Objections at p. 11-12. Nevertheless, LDEQ did not revise those limitations or present reliable data to support its assertion that the Woodside Landfill will meet a limitation less than 13 tons per year below major source review.

LDEQ cannot justify its CO estimates by looking to *draft* AP-42 emission factors. These draft factors have not been finalized and are not an appropriate basis for removing major source reviews from a landfill that is doubling its size. Moreover, LDEQ does not explain how it uses any of its data – the inapplicable industrial flare factor or the unfinalized AP-42 factor – to determine its final estimate. Therefore, LDEQ has failed to provide a sound technical rationale for determining that the Woodside Landfill will emit no more than 237.73 tons per year of Carbon Monoxide.

C) LDEQ does not show that the emissions from this landfill are in fact below the major source threshold and does not consider emissions over the lifetime of the facility.

LDEQ's Response provides no new information showing that the Woodside Landfill's CO emissions are below the major source threshold. See *In re Waste Management of Louisiana, L.L.C., Woodside Landfill Air Permitting Decision*, Case No. 2006 CA 1011, at 6 (La. 1st Cir., Aug. 22, 2007) ("The landfill expansion and flare installation at issue qualifies as a major modification to a major stationary source and, thus, must undergo preconstruction review, namely PSD.").

LDEQ also failed to include any evidence of operational changes that would have lowered the CO emissions below the major source threshold. Indeed, LDEQ has admitted that "neither LDEQ nor Waste Management claims an emission reduction is associated with the revised . . . Permit. The permit simply reflects a recalculation of potential emissions." LDEQ Response to Public Comments, dated December 5, 2008, at p. 21.¹

Therefore, in light of *a*) the doubling of Woodside Landfill's capacity, *b*) LDEQ's admission that the lower emissions limits, which remove major source status and so allow the landfill to avoid PSD review, are not attributable to any changes at the landfill *c*) LDEQ's refusal to use site specific data to determine emissions limitations, and *d*) LDEQ's refusal to require monitoring that could assure that emission limitations below the major source threshold are being met, LDEQ has not provided a sound technical rationale for concluding that the Woodside Landfill's CO emissions are in fact below the new source threshold.

Conclusion

For the foregoing reasons, Petitioners ask that EPA object to the preconstruction and initial Part 70 Air Operating Permit (No. 1740-00025-V1) for Woodside Landfill.

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¹ LDEQ EDMS Doc No. 6201193 (formerly Doc. No. 38887767), page 78 of 106, available at <http://edms.deq.louisiana.gov/app/doc/querydef.aspx>.

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