

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of a Part 70 Air Quality Operating Permit
Issued by North Carolina Department
of Environment and Natural Resources
CPI-USA North Carolina- Roxboro Plant
Roxboro, North Carolina
Permit No. 05846T13
AIRS No. 37104500056

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THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S PETITION
TO THE ENVIRONMENTAL PROTECTION AGENCY
TO OBJECT TO THE TITLE V AIR QUALITY PERMIT
ISSUED TO CPI-USA NORTH CAROLINA-ROXBORO PLANT

The Blue Ridge Environmental Defense League ("BREDL") hereby petitions the United States Environmental Protection Agency ("EPA") to object to the issuance of the Title V permit¹ ("Permit") issued by the North Carolina Department of Environment and Natural Resources

¹ Permit No. 05846T13

("NC DENR") to CPI-USA North Carolina-Roxboro Plant ("CPI") on October 19, 2011. The grounds for this petition are set forth in the following: (1) Letter of June 10, 2011 by BREDL to Ed Martin, Air Quality Permit Engineer, Division of Air Quality, NC DENR, ("Exhibit 1"), (2) Comments dated June 20, 2011 by Therese Vick, BREDL, to Sheila Holman, Director, Division of Air Quality ("DAQ"), NC DENR ("Exhibit 2"), (3) Comments dated June 19, 2011 by Lou Zeller, Science Advisor, BREDL, to Sheila Holman, Director, Division of Air Quality ("DAQ"), NC DENR ("Exhibit 3"), (4) "Public Notice and EPA Review" , DAQ ("Exhibit 4"), (5) Letter of August 24, 2011, from Sheila Holman, Director, DAQ, NC DENR ("Exhibit 5"), (6) "NC DENR Environmental Equity Initiative", October 19, 2000, ("Equity"), ("Exhibit 6"), and (7) the United States Environmental Protection Agency Title V and New Source Review ("NSR") program evaluation, September 28, 2006 ("Final") ("Exhibit 7"). Pursuant to the Clean Air Act ("CAA") § 505(b) (2), this petition is based on comments filed by Blue Ridge Environmental Defense League during the public comment period provided by NC DENR.

BREDL hereby petitions the Administrator to object to the issuance of the Permit due to DAQ's failure to assure compliance with applicable requirements under the Clean Air Act.

Specifically, DAQ fails to:

- Provide for meaningful public participation
- Appropriately address environmental justice issues
- Show compliance with North Carolina's Title V program

Blue Ridge Environmental Defense League is a nonpartisan, grassroots, nonprofit membership organization dedicated to environmental democracy, social justice, and governmental accountability. BREDL works with our member Chapters as well as other concerned citizens on environmental problems throughout the Southeastern United States.

Introduction

CPI incinerates tired derived fuel (“TDF”), coal, adulterated and unadulterated wood in order to generate electricity that is then sold to Progress Energy of North Carolina. In late April 2011, BREDL chapter Person County People Rising in Defense of the Environment (“PC PRIDE”) contacted us concerning CPI’s Roxboro facility. PC PRIDE was responding to a request from residents living near CPI asking for their assistance in addressing air quality issues from the plant.

PC PRIDE held a meeting with representatives from BREDL and residents living near CPI on May 19, 2011. Neighbors of the facility described fugitive emissions from both the site and the trucks hauling fly ash from the site. Additionally, tire shred being brought to the facility was falling out of trucks and landing on the road and in people’s yards. The citizens complained of increased illness and problems subsequent to the time CPI had started burning TDF. BREDL advised the community that when a facility’s Title V air quality permit came up for renewal there would be opportunity for public participation, and during that time concerns could to be expressed to DAQ. BREDL agreed to inquire when CPI’s permit would be coming up for renewal.

The public notice for CPI’s draft permit was posted on DAQ’s website on May 20, 2011. Citizens in Person County along with BREDL requested that DAQ hold a public hearing on the draft Permit (Exhibit 1). In addition to requesting a public hearing, BREDL submitted comments on the draft Permit on June 19 and 20, 2011 (Exhibits 2 and 3).

Issues

I. The Division Failed to Provide for Meaningful and Adequate Public Participation

The CAA's implementing regulations provide opportunities for public participation at Part 70 of Title 40 of the Code of Federal Regulations ("CFR"). 40 CFR § 70.7(h) requires that permitting authorities allow the public to request a hearing on a draft permit. North Carolina statutes also have a provision for public hearings. 15A. NCAC 02Q .0521 (g) states: "If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public hearing to be held on the draft permit". DAQ Director Sheila Holman denied BREDL's request for a hearing on August 24, 2011(Exhibit 5).

BREDL and Person County citizens requested a public hearing on CPI's draft permit at the proper time (Exhibit 1). BREDL raised several issues in the request. In the comments filed with DAQ, BREDL also stated that further information would be presented at the public hearing (Exhibits 2 and 3). For example:

- Community members had videos of fugitive emissions, pictures and samples of soot deposited on their vehicles, yard furniture and homes, and tire shreds picked up out of yards and the road near the facility.

This issue was raised both by BREDL and in correspondence from other commenters filed with DAQ (Exhibit 4). This type of evidence is not easily mailed and impossible to email. According to EPA's "Final Report", DAQ "has dedicated resources to train citizens on public participation during the Title V permitting process and has dedicated staff to assist in issuance of the public notice documents" (Exhibit 7). Additionally, in response to the community's frustration that no one was responding to their problems and their questions, BREDL requested that DAQ send someone who was very familiar with the Title V permitting process to the public hearing

(Exhibit 2). However, despite multiple requests and the submission of credible evidence of ongoing permit violation by BREDL, PC-PRIDE and other interested parties, the DAQ held no public hearing and issued CPI-USA's permit number 05846T13.

II. The Division Failed to Consider Potential Environment Justice Impacts

Executive Order 12898 requires that:

To the greatest extent possible and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice a part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States [.] Executive Order 12898, Section 101.1-101.

NC DENR's Equity Policy states in part: "To meet the goals DENR will:

- Promote greater use and analysis of demographic information to identify communities that may be disproportionately impacted by sources of pollution
- Use demographic information to determine whether there is: 1) A need for greater outreach to community in order to encourage more meaningful participation, or 2) special health risks based on the nature of the population." (Exhibit 6, page 2)

In its Final Title V Evaluation, EPA comments that:

"The DAQ does not have an environmental justice (EJ) strategic plan or an in-house coordinator charged with oversight of EJ related activities, but the DAQ permit writers have access to demographic information necessary for EJ assessments" (Exhibit 7 page 7).

In comments submitted to DAQ (Exhibit 2), BREDL recommended that the Division:

- Review available demographic information
- Assess the potential for cumulative impacts
- Translate future notices on permit activity into Spanish
- Translate the draft permit and permit review into Spanish
- Send notice of future permit activity to local media outlets

However, the DAQ did not address these environmental justice concerns; in fact, DAQ's response to BREDL's comments was dismissive. DAQ stated, "The commenter did not meet the burden of proof that a disproportionate impact will result from this facility" (Exhibit 4). While BREDL is morally charged with working for social justice, we are not the regulating and enforcing agency. The federal Executive Order and the state Equity Policy provide the mandate to EPA and DAQ. The state's failure here is one of omission. The DAQ's indifference is an example of the mindset that sparked the environmental justice movement. It appears that the Division does not understand or take seriously their responsibility to ensure that People of Color and the poor are not unfairly targeted with polluting facilities, and that they are allowed participate meaningfully in the public process.

In response to DAQ's remarks, BREDL has obtained the October 2011 Person County Community Health Assessment². Although this information was not presented as part of BREDL's comments, it was nevertheless available to DAQ. Had DAQ conformed to its legal obligation, the assessment would have provided ample demographic information to determine the need for greater outreach to the community in order to encourage more meaningful

² http://health.personcounty.net/pchd/healthy_personians/2011_CHA_Vol_1.pdf

participation and the presence of special health risks based on the nature of the population. .

Some of the findings in this report were:

- The City of Roxboro is predominately African American
- The largest proportion of Native Americans reside in the Roxboro Township and Holloway Township
- The largest proportion of Hispanic/Latino population reside in Roxboro Township, primarily in the City of Roxboro
- Almost 30% of the minority population in Person County are not registered to vote— 27% of this number are African Americans
- 21.6 % of African Americans are in poverty as opposed to 7.7% of Whites
- Almost 10% of Person County residents are “linguistically isolated”
- The asthma rate is 32% higher than the state average

Further, US EPA’s Envirofacts shows that within a 5-mile radius of CPI there are numerous state and EPA “facilities of interest.” EPA’s EJ View shows that within a 5-mile radius of the facility over 40 % of the residents are minority, and that 3.9% do not speak English at all. Several of the citizens who met with BREDL expressed concern about those who neither spoke nor read English. All of this information is readily available to DAQ, and according to NC DENR’s Equity Policy, should be investigated by all DENR divisions. DAQ’s position that BREDL did not meet the burden of proof is vague, fails to address environmental justice impacts and attempts to avoid its own lawful responsibility. Under the Executive Order, the EPA is obligated address the effects of its activities on minority populations and to ensure environmental justice measures are carried out in its agreement states.

III. The Division Is Not Enforcing Permit Conditions

States are allowed to administer their own Title V program pending EPA approval of the State Implementation Plan (SIP). North Carolina's SIP can be found on EPA Region IV's website.³* In accordance with NC General Statute 143-215 and implementing regulations, DAQ may issue a permit only after it receives reasonable assurance that the installation will not cause air pollution in violation of requirements. However, DAQ issued to CPI-USA North Carolina–Roxboro Permit No. 05856T13 after credible evidence of an ongoing air quality violation was submitted to the agency during the public comment period. Therefore, pursuant to the applicable federal law, the North Carolina SIP and 15A NCAC 2Q .0517 the EPA must revoke this permit to assure compliance with the law. The Administrator cannot permit an ongoing violation.

The CPI-USA facility is subject to 15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS which applies to all air pollution sources, both combustion and non-combustion. Further, this regulation requires sources to be in compliance prior to beginning operation and to be operated in such manner that the source shall not cause the ambient air quality standards to be exceeded at any point beyond the premises on which the source is located. Authority NC G.S. 143-215.3(a)(1); 143-215.107(a)(5).

Rule .0540 “Particulates from Non-Process Fugitive Dust Emission Sources” states *inter alia*:

(a) “For the purpose of this Rule the following definitions shall apply:

³ <http://www.epa.gov/region4/air/sips/nc/content.htm>

* Current regulations may vary slightly from this version

1. "Fugitive non-process dust emission" means particulate matter that is not collected by a capture system and generated from areas such as pit areas, process areas, haul roads, stockpiles, and plant roads."
2. "Substantive complaints" means complaints that are verified with physical evidence acceptable to the Division." ⁴

The Permit is subject to this requirement:

MM. Fugitive Dust Control Requirement [15A NCAC 2D .0540]

As required by 15A NCAC 2D .0540 "Particulates from Fugitive Dust Emission Sources," the Permittee shall not cause or allow fugitive dust emissions to cause or contribute to substantive complaints or excess visible emissions beyond the property boundary. If substantive complaints or excessive fugitive dust emissions from the facility are observed beyond the property boundaries for six minutes in any one hour (using Reference Method 22 in 40 CFR, Appendix A), the owner or operator may be required to submit a fugitive dust plan as described in 2D .0540(f).

"Fugitive dust emissions" means particulate matter from process operations that does not pass through a process stack or vent and that is generated within plant property boundaries from activities such as: unloading and loading areas, process areas stockpiles, stockpile working, plant parking lots, and plant roads (including access roads and haul roads).

BREDL and citizens addressed this issue both in the request for a public hearing and in submitted comments. CPI neighbors informed BREDL representatives that black dust was seen in the air around CPI, drifting onto their property and being deposited on their homes and

⁴ <http://www.epa.gov/region4/air/sips/nc/2D%20.0501-.0542%20updated%20101105.pdf>

vehicles, sometimes even preventing them from going outside. The fugitive dust and fly ash was also seen billowing from trucks on the haul road (Exhibits 1 and 2). In frustration, people from the community had even contacted law enforcement. The renewal of CPI's Title V permit should have given the community an opportunity for this very serious air quality issue to be corrected. DAQ instead refused to conduct a public hearing, ignore the comments from BREDL and the community, and to abrogate their responsibility to enforce a condition that *was already stipulated in the draft permit*.

Conclusion

For these reasons the Administrator should object to the Permit within 60 days after receiving this petition as required by § 505 of the Clean Air Act because it violates the applicable requirements of the Act and the North Carolina implementation plan. The Administrator should revoke the permit upon objection.

Respectfully submitted on December 9, 2011⁵ by

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⁵ Paper copy to follow