

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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| IN THE MATTER OF |) | PETITION No. V-2017-1 |
| |) | |
| ESSROC CEMENT CORP. |) | ORDER RESPONDING TO |
| PORTLAND CEMENT MANUFACTURING PLANT |) | PETITION REQUESTING |
| CLARK COUNTY, INDIANA |) | OBJECTION TO THE ISSUANCE OF |
| PERMIT No. 019-35535-00008 |) | A TITLE V OPERATING PERMIT |
| |) | |
| ISSUED BY THE INDIANA DEPARTMENT OF |) | |
| ENVIRONMENTAL MANAGEMENT |) | |

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated January 4, 2017 (the Petition) from Vicki L. Whittinghill (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act)¹, 42 U.S.C. § 7661d(b)(2). The Petition requests that the EPA Administrator object to the proposed operating permit No. 019-35535-00008 (the Permit) issued by the Indiana Department of Environmental Management (IDEM) to the ESSROC Cement Corp. facility (ESSROC or the facility) in Clark County, Indiana. The operating permit was proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and IC 13-17-8. *See also* 40 C.F.R. part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

Based on a review of the Petition, and as explained further below, the EPA denies the Petition requesting that the EPA Administrator object to the Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA’s implementing regulations at 40 C.F.R. part 70. The state of Indiana submitted a title V program governing the issuance of operating permits on August 10, 1994, and amendments on May 22, 1996. The EPA granted full approval of Indiana’s title V operating permit program in 2001. 66 Fed. Reg. 62969 (December 4, 2001). This program, which became effective on November 30, 2001, is codified in 326 IAC 2.

¹ The Petitioner did not specifically cite to section 505(b)(2) of the CAA or any other statutory or regulatory provision as the basis for the submission. Nonetheless, without waiving any claim that this submission was not properly filed, the EPA is responding as if it were a petition to object under CAA section 505(b)(2).

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 other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable state implementation plan. CAA §§ 502(a), 504(a), 42 U.S.C. §§ 7661a(a), 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source’s emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit proposed title V operating permits to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA’s 45-day review period, petition the Administrator to object to the permit. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

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 authority (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). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).² Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.³

The petitioner’s demonstration burden is a critical component of CAA § 505(b)(2). Certain aspects of the petitioner’s demonstration burden are discussed below. A more detailed discussion

² *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

³ *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

can be found in *In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers several criteria in determining whether a petitioner has demonstrated noncompliance with the Act. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority’s decision and reasoning. The EPA expects the petitioner to address the permitting authority’s final decision, and the permitting authority’s final reasoning (including the state’s response to comments), where these documents were available during the timeframe for filing the petition. Another factor the EPA examines is whether a petitioner has provided the relevant analyses and citations to support its claims.

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) on a proposed permit generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement of basis for the draft and proposed permits; the permitting authority’s written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; relevant supporting materials made available to the public according to 40 C.F.R. § 70.7(h)(2); and all other materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). If a final permit and a statement of basis for the final permit are available during the agency’s review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition.

III. BACKGROUND

A. The ESSROC Cement Facility

The facility, formerly owned by ESSROC Cement Corp.⁴, is a Portland cement manufacturing plant located in Clark County, Indiana. The Permit authorizes the facility to use liquid waste derived fuel (LWDF) in the combustion zone of kiln #2. The LWDF is to be blended, analyzed, certified and shipped from ESSROC’s Logansport, Indiana facility and transported to the facility by tanker truck.

B. Permitting History

IDEM issued a title V permit renewal, operating permit No. 019-26989-00008, to ESSROC for the facility on June 28, 2012. On February 27, 2015, IDEM received an application from ESSROC requesting a modification to the permit. IDEM issued a draft permit for public comment on December 26, 2015, and held a public meeting on February 17, 2016, to discuss air permitting for the facility. The public comment period ended on February 22, 2016. IDEM issued a proposed permit to the EPA on November 30, 2016. The EPA did not object to the

⁴ In late 2016, ESSROC Cement Corp.’s was acquired by Heidelberg Cement AG who is the parent company to Lehigh Cement Company, LLC (Lehigh). On August 16, 2017, IDEM issued an Administrative Amendment (Permit No. 019-38495-00008) reflecting Lehigh as the owner of the facility.

permit during the 45-day proposed period, which ended on January 14, 2017. IDEM issued this significant modification on January 24, 2017.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Petitioner's Claim: The Petitioner presented concerns about “an explosion or leakage of liquid and or vapors from the hazardous waste ESSROC plans to burn.” In support of their concerns, the Petitioner has cited an example of such an event that occurred at a separate facility that is also owned by ESSROC. During this event, the Petitioner asserted that a tanker car carrying hazardous material ruptured causing an explosion and engulfing the area in fire. The Petitioner also raised concerns with the location of the facility, in particular its proximity to schools, homes, churches, and businesses and the need to evacuate a large number of people in the event of a similar incident. The Petitioner also questioned the effect of exposure to the chemicals that ESSROC burns on the youngest members of the community.

EPA's Response: For the following reason, the EPA denies the Petitioner's request for an objection on this claim.


A fundamental part of the petition process is identifying applicable requirements with which the permit does not comply. As stated previously,⁵ the burden is on the petitioner to make this required demonstration to the EPA. In this instance, the Petitioner has raised general concerns without specifically identifying how the Permit might not be in compliance with the requirements of the CAA.⁶ While the Petitioner mentions events that occurred at another ESSROC facility, they have not identified applicable CAA requirements that are not included in the Permit for this facility, or with which the Permit for this facility does not comply or assure compliance. In fact, the EPA is aware of no title V applicable requirements regarding the transportation of the fuel for nor the siting of the facility within the community, and this may be because such considerations are usually outside the scope of the title V permit.

The EPA appreciates the Petitioner's concerns with the use of LWDF at the facility. However, these concerns present no basis pursuant to section 505(b)(2) of the CAA for an EPA objection to the Permit, nor could the EPA resolve these concerns by objecting to the Permit.

V. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby deny the Petition as described above.

Dated: 04/01/2020



Andrew R. Wheeler
Administrator

⁵ See Supra Pg. 2

⁶ See 42 U.S.C. § 7661d(b)(2), stating that the Administrator shall object “if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter.”