

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

IN THE MATTER OF:)
)
Part 70 Air Quality Operating Permit)
Amendment)
) Permit No. 2499-161-0023-V-02-4
)
For Hazlehurst Wood Pellets, LLC)
)
Prepared by the Environmental Protection)
Division of the Georgia Department of)
Natural Resources)

**PETITION TO OBJECT TO THE TITLE V OPERATING PERMIT FOR
HAZLEHURST WOOD PELLETS, LLC**

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Environmental Integrity Project, on behalf of itself and the Sierra Club and its Georgia Chapter, Dogwood Alliance, the Rachel Carson Council, Partnership for Policy Integrity, Natural Resources Defense Council, and Our Children’s Earth Foundation (“Petitioners”) hereby respectfully petitions the Administrator of the U.S. Environmental Protection Agency (“EPA”) to object to the above-referenced Title V permit modification prepared by the Environmental Protection Division of the Georgia Department of Natural Resources (“Georgia EPD”) for the Hazlehurst Wood Pellets, LLC wood pellet mill (“Hazlehurst Wood Pellets”) located at 430 Hulett Wooten Farms Road, Hazlehurst, Georgia.¹

Petitioners submitted timely comments on the draft permit during the public comment period, which closed on October 4, 2019.² Georgia EPD responded to public comments and forwarded a proposed permit to EPA for its 45-day review period, which ended on February 14, 2020 without EPA’s objection. Petitioners submit this petition within 60 days of the close of EPA’s 45-day review period (April 14, 2020) as required by 42 U.S.C. § 7661d(b)(2).

I. BACKGROUND

A. Petitioners

Environmental Integrity Project (EIP): EIP is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or

¹ Final Modified Title V Permit for Hazlehurst Wood Pellets, Permit No. 2499-161-0023-V-02-4 (Attachment A).

² Comments by Environmental Integrity Project on Draft Part 70 Air Quality Operating Permit No. 2499-161-0023-V-02-4 for Hazlehurst Wood Pellets, LLC, dated Oct. 4, 2019 (Attachment B).

comply with environmental laws; and (3) to help communities obtain protections guaranteed by environmental laws.

Sierra Club: The Sierra Club is a national nonprofit organization with 67 chapters and about 780,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass protecting our air, water, land, and communities from pollution. The Club's particular interest in this petition and the issues which the petition concerns stem from the risk that accidental releases of extremely hazardous substances from the Hazlehurst Wood Pellets plant poses to the local community. The Georgia Chapter of the Sierra Club has approximately 12,000 members.

The Rachel Carson Council (RCC): RCC, founded in 1965, is the national environmental organization envisioned by Rachel Carson to carry on her work. RCC promotes Carson's ecological ethic that combines scientific concern for the environment and human health with a sense of wonder to build a more sustainable, just, and peaceful future. RCC engages and empowers its members to take effective action in their communities and campuses on the local, state and national level.

The Dogwood Alliance: Dogwood Alliance mobilizes diverse voices to protect Southern forests and communities from destructive industrial logging. Dogwood Alliance opposes industrial wood pellet facilities for their negative impacts on our forests, environment, and communities. The production of wood pellets creates fine particulates and other air pollutants that have been linked to respiratory illness, heart disease, and cancer.

Natural Resources Defense Council (NRDC): NRDC is a national, non-profit, environmental organization that works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. We combine the power of more than three million members and online activists with the expertise of some 500 scientists, lawyers, and policy advocates across the globe to ensure the rights of all people to the air, the water, and the wild.

Partnership for Policy Integrity (PFPI): PFPI is a non-profit corporation that provides scientific and legal support so that citizen groups, environmental organizations, and policymakers can better understand energy development impacts on air quality, ecosystems, and the climate.

Our Children's Earth Foundation (OCE): OCE advocates on behalf of children, who are most vulnerable to pollution, to enable them to breathe clean air and use clean water. OCE educates the public about health problems caused by pollution in their neighborhoods, and empowers affected communities to take action to reduce pollution. Throughout its history, OCE has successfully challenged and exposed governmental agencies that fail to meet their responsibility to protect and serve the public. This pro-transparency work reflects our commitment to educate communities about environmental issues, to investigate noncompliant and negligent polluters, and to enforce environmental laws and regulations.

B. The Hazlehurst Wood Pellet Plant: Description and Permitting History

Hazlehurst Wood Pellets, LLC is the wholly owned subsidiary of Fram Renewable Fuels, LLC. The Hazlehurst wood pellet mill produces wood pellets that are either trucked out or loaded on to rail cars for shipment to the port of Savannah. They are then shipped to Europe, where they are burned to produce electricity.

Hazlehurst Wood Pellets commenced operation in late 2013. The mill originally consisted of three wood dryer lines, three pellet lines, and three pellet coolers, and was designed to produce up to 525,600 oven dried tons (ODT)/year of wood pellets. The mill received its initial Title V operating permit on August 18, 2015.³ Prior to the permit modification addressed by this petition, the facility's Title V permit was amended three times.

On May 6, 2019, Hazlehurst Wood Pellets applied for a construction permit and Title V permit modification authorizing a substantial facility renovation. In particular, the company applied to replace the mill's three wood dryer lines with one single wood-fired burner/furnace providing direct heat to a new dryer. The application also sought approval to add two new green hammermills, seven new dry hammermills, three new pelletizing lines, and other new equipment. The company explained that nearly all of the facility's existing units would either be scrapped or repurposed. In short, Hazlehurst Wood Pellets is essentially tearing down its existing facility and rebuilding it. All of the new and repurposed units emit significant levels of particulate matter and combustible wood dust. The permit modification authorizing these changes, Permit No. 2499-161-0023-V-02-4, is the subject of this petition ("the Final Modified Title V Permit"). Because of the significance of the proposed changes to the facility, the permit requirements changed dramatically. Thus, the modified permit deletes and replaces all conditions in Sections 2 through 6 of the original Title V permit and its amendments.⁴

II. GROUNDS FOR OBJECTION

For the reason set forth below, the Final Modified Title V Permit fails to comport with the Clean Air Act. Petitioners raised this issue on pages 15-18 of their comments on the draft permit.

The Final Modified Title V Permit Fails to Assure Compliance with the Facility's General Duty to Prevent Accidental Releases under Clean Air Act § 112(r)(1).

A. Relevant Permit Condition

The Final Modified Title V Permit lacks any permit condition addressing Hazlehurst Wood Pellets' general duty to prevent accidental releases under Clean Air Act § 112(r)(1). The most closely related permit condition is Condition 7.10, which was included in the facility's original Title V permit, Permit No. 2499-161-0023-V-02-0 (effective Aug. 15, 2015). Permit Condition 7.10 does not mention Clean Air Act § 112(r)(1), but instead addresses only the requirements of 40 C.F.R. Part 68, which pertain to the Risk Management Plan (RMP) requirements of Clean Air Act section 112(r)(7). It does not appear that Hazlehurst Wood Pellets is currently subject to

³ Initial Title V Permit for Hazlehurst Wood Pellets, LLC, Permit No. 2499-161-0023-V-02-0 (Attachment C).

⁴ Permit Narrative and Response to Comments for Permit No. 2499-161-0023-V-02-4, at 3 (Attachment D).

RMP requirements; indeed, the proposed permit states that the requirements set forth in permit condition 7.10 apply only “[w]hen and if the requirements of 40 C.F.R. Part 68 becomes applicable.” In any event, permit condition 7.10 does not even mention the facility’s General Duty Clause obligations and certainly is not sufficient to assure compliance with Clean Air Act section 112(r)(1).

B. Specific Permit Deficiency

The Final Modified Title V Permit is deficient in that it does not even mention, let alone assure compliance with, Hazlehurst Wood Pellets’ general duty under Clean Air Act § 112(r)(1) “to identify hazards which may result” from the accidental release of extremely hazardous substances, and “to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.” 42 U.S.C. §7412(r)(1). EPA has explained that § 112(r)(1), commonly referred to as the “General Duty Clause,” is “a self-executing statutory requirement” that “requires no regulations or other EPA action to take effect.” 61 Fed. Reg. 31668, 31680/3 (June 20, 1996).

As a Clean Air Act § 112 requirement, the General Duty Clause constitutes an “applicable requirement” that must be addressed in a facility’s Title V permit if it applies. *See* 40 C.F.R. § 70.2 (defining “[a]pplicable requirement” to include [a]ny standard or other requirement under section 112 of the Act”). Nonetheless, the Final Modified Title V Permit fails to identify Clean Air Act § 112(r)(1) as an “applicable requirement” for Hazlehurst Wood Pellets, and likewise, lacks conditions sufficient to “assure compliance” with this critical public safeguard.

The General Duty Clause applies to any facility that produces, processes, handles, or stores any “extremely hazardous substance,” which includes, but is not limited to, any chemical listed pursuant to Clean Air Act § 112(r)(3) (at 40 C.F.R. § 68.130) or pursuant to Section 302 of the Emergency Planning and Community Right-to-Know Act at 40 C.F.R. Part 355, Appendices A and B. Hazlehurst Wood Pellets produces several of the hazardous substances listed at 40 C.F.R. § 68.130, including acetaldehyde, methanol, formaldehyde, hydrochloric acid, and acrolein. But the greatest risk related to accidental release is posed by mill’s production of copious amounts of wood dust, which qualifies as an extremely hazardous substance due to its flammability and propensity to cause explosions.⁵ In fact, Hazlehurst Wood Pellets has previously suffered a wood dust explosion—or what the company called a “flash fire”—that sent four employees to the hospital, two of which had significant burns.⁶ Moreover, this was at least the second fire at Hazlehurst Wood Pellets since beginning operations in 2013.⁷ While it is fortunate that there

⁵ Fletcher, Katie, “Combustible Dust is an Explosive Issue,” *Biomass Magazine* (Dec. 25, 2014) (available at <http://biomassmagazine.com/articles/11334/combustible-dust-an-explosive-issue>) (Attachment E); *see also* Stelte, Wolfgang, Danish Technological Institute, *Guideline: Storage and Handling of Wood Pellets* (Dec. 2012), at 9 (explaining that “Fires and explosions can occur along the whole supply chain of wood pellet production and delivery and can take place in the production plan, transport vessels, transfer facilities and at the consumer site...An accumulation of dust ... due to improper maintenance and cleaning can increase the risk of fires and dust explosions.”) (Attachment F).

⁶ “2 Burn Victims Remain Hospitalized after Hazlehurst Flash Fire,” WALB, (June 4, 2015), (available at <http://www.walb.com/story/28983516/4-seriously-burned-after-fire-at-hazlehurst-wood-pellets>) (Attachment G).

⁷ *Id.*

have been no fatalities from wood dust explosions at pellet mills in the United States, a wood dust explosion at a Canadian mill in 2012 killed an employee.⁸

Dust is present along with other elements that could lead to an explosion at every stage of the pellet-making process. Indeed, the risk of explosions and fires caused by combustible dust at wood pellet plants is well-documented in the wood pellet industry.⁹ All of the new and

⁸ “Fatal Sawdust Blast in B.C. Comes After Five Explosions at Similar Plants Since 2009,” National Post (Apr. 28, 2012) (available at <http://nationalpost.com/news/canada/fatal-sawdust-blast-in-b-c-comes-after-five-explions-at-similar-plants-since-2009>) (Attachment H).

⁹ Simet, Anna, *Biomass Magazine*, “Dusting Up on Risk & Regulation” (Jan. 26, 2016) (“Dust explosions resulting in injuries, fatalities and facility destruction are not uncommon at . . . biomass facilities that utilize pulverized or ground wood material to make energy or wood pellets.”), <http://biomassmagazine.com/articles/12794/dusting-up-on-risk-regulation> (Attachment I); Harrington Group, “Fire Prevention Tips for Wood Pellet Plants” (“The amount of wood, dust, various ignition sources inherent in the wood pellet production process presents a high risk of explosion and fire. However, there are strategies that can be implemented to reduce the risk of fire and explosions and to mitigate the impact should they occur.”), <http://hgi-fire.com/blog/fire-prevention-tips-for-wood-pellet-plants/> (Attachment J); NBC 10 News, “Fire Chief: Dust Caused Pellet Company Explosion,” (Aug. 20, 2013), <http://turnto10.com/archive/fire-reported-at-east-providence-wood-pellet-company> (Attachment K); Griffin, Jeff, Fauske & Associates, LLC, “Managing Combustible Dust & Safety Concerns in Biomass/Wood Pellet Industry” (Nov. 1, 2013), <http://blog.fauske.com/blog/bid/346875/Managing-Combustible-Dust-Safety-Concerns-in-Biomass-Wood-Pellet-Industry> (Attachment L); DalSanto, Dominick, Baghouse.com, “Dust Collector Fire and Explosion Highlights Need for Combustible Dust Consideration in System Designs” (May 16, 2012) (“A massive fire and explosion in the dust collection system of a New Hampshire wood pellet manufacturer demonstrates the need for adequate system design to prevent combustible dust explosions in general industry.”), <https://www.baghouse.com/2012/05/18/dust-collector-fire-and-explosion-highlights-need-for-combustible-dust-considerations-in-system-designs/> (Attachment M); Melin, Staffan, Wood Pellet Association of Canada, Determination of Explosibility of Dust Layers in Pellet Manufacturing Plants (Aug. 30, 2012) (“Dust explosions and fires has become a major issue in the pellets industry as well as in other woodworking industries with devastating consequences in many cases.”) (Attachment N); Biomass Handling, *Biomass Dust Fire and Explosion Control* (Apr. 24, 2013), at 2 (“Historically, wood pellet production was a small industry with more than its share of fires and explosions. However with the emphasis on green energy, wood pellet production has skyrocketed and very large plants are being constructed. There have been several recent major fires and explosions within the wood pellet manufacturing, shipping, receiving, storage and power plant facilities. These new facilities are learning that they have to employ safe handling practices for dry wood materials.”) (Attachment O); Taylor, Stephanie. “Aliceville Plant Closed After Explosion.” *Tuscaloosa News* (Oct. 24, 2016), <http://www.tuscaloosanews.com/news/20161024/aliceville-plant-closed-after-explosion> (Attachment P); *The Florida Times-Union*, Jacksonville.com, “Overheated Assembly Caused Georgia Biomass Explosion,” (July 13, 2011) (“Wood pellet production should resume today at Georgia Biomass, which was crippled by a dust explosion last month.”) (Attachment Q); Mypanhandle.com, “Cottondale Pellet Plant Back in Business After Fire” (June 12, 2017), <https://www.mypanhandle.com/news/cottandale-pellet-plant-back-in-business-after-fire/> (Attachment R); Voegelé, Erin “Fire at Enviva Facility Not Expected to Result in Major Downtime,” *Biomass Magazine* (Jan. 9, 2014) (available at <http://biomassmagazine.com/articles/9882/fire-at-enviva-facility-not-expected-to-result-in-major-downtime>) (Attachment S); Waldrep, Emily. “Firefighters Respond to Second Fire at Woodville German Pellet Plant.” *Tyler County Booster* (May 07, 2015), <https://www.tylercountybooster.com/index.php/news/1848-firefighters-respond-to-second-fire-at-woodville-german-pellet-plant> (Attachment T); Stepzinski, Teresa, “Explosion Damages Waycross Plant; No Injuries Reported,” *Jacksonville.com* (June 21, 2011), <https://www.jacksonville.com/article/20110621/NEWS/801249374> (Attachment U); Index-Journal, “Firefighters Put Out Blaze at Enviva” (Mar. 8, 2020), http://www.indexjournal.com/news/breaking/firefighters-put-out-blaze-at-enviva/article_f1e0e262-7e9f-5f1b-9994-e5ae453ac973.html (Attachment V); Berendt, Chris, “Enviva Fire: Plant

repurposed units addressed by the permit modification at issue in this petition emit significant levels of particulate matter and combustible wood dust. Due to the significant risk posed by combustible dust at the Hazlehurst Wood Pellets, it is critical that the plant's Title V permit be amended to state that the General Duty Clause applies to the facility's handling of combustible wood dust, and to require the plant to perform specific steps that are sufficient to ensure that workers and others who live, work, recreate, or simply commute in the facility's vicinity are protected from the dangers posed by wood dust.¹⁰ The permit also must include monitoring, recordkeeping, and reporting to assure the plant's compliance with these requirements.

Combustible wood dust at the Hazlehurst Wood Pellets easily qualifies as an "extremely hazardous substance" that is subject to the General Duty Clause.¹¹ According to Clean Air Act section 112(r)(1), the General Duty Clause applies to "owners and operators of stationary sources producing, processing, handling or storing any extremely hazardous substances." The legislative history of this provision indicates that an accidental release is one which causes or may cause immediate (or near term) death, serious injury or substantial property damage as the result of exposure to an extremely hazardous substance over limited periods of time.¹² Although the Clean Air Act does not define "extremely hazardous substances," the legislative history provides criteria which EPA may use to determine if a substance is extremely hazardous. Specifically, the Senate Report states that "extremely hazardous substance" would include any agent "which may or may not be listed or otherwise identified by any Government agency which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity."¹³ Further, the Senate Report states, "the release of any substance which causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or which causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous."¹⁴ There is ample evidence that wood dust generated by pellet plants is flammable and can be explosive, leading to death, injury, or substantial property damage.¹⁵

Offline Temporarily" (Apr. 8, 2020), <https://www.clintonnc.com/news/48212/enviva-fire-plant-offline-temporarily> (Attachment W).

¹⁰ See 40 C.F.R. § 70.6(a)(1) (Each permit must include "those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."), see also 40 C.F.R. §§ 70.6(a)(3) and (c)(1).

¹¹ EPA has previously applied the General Duty Clause to a facility's handling of explosive and flammable dust. For example, in 2013, EPA announced its settlement of General Duty Clause claims against AL Solutions, Inc. arising from the company's mishandling of the combustible metals Titanium and Zirconium, which EPA contended "can be extremely hazardous substances when they are in a 'combustible form' such as dusts, powders, or other finely divided material." Consent Decree in *U.S. v. AL Solutions, Inc.*, Civil Action No. 5:13-cv-00169-FPS, at 5 (Attachment X) (also available at <https://www.epa.gov/enforcement/al-solutions-inc-settlement> along with EPA's press release and background information). See also Notice of Filing of Proposed Consent Decree Under the Clean Air Act, 78 Fed. Reg. 78,384 (Dec. 26, 2013).

¹² Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989) ("Senate Report"), at 210-211.

¹³ Senate Report at 211.

¹⁴ *Id.*

¹⁵ See note 9, *supra*.

The only EPA Title V order addressing what must be included in a Title V permit to assure compliance with the General Duty Clause appears to be *In re Shintech, Inc*, Order on Petition (1997). In *Shintech*, the EPA concluded that while the General Duty Clause is an “applicable requirement” for Title V purposes, the Shintech permit did not need to include detailed information regarding how the facility must comply with the General Duty Clause. *Shintech* at 12. Rather, the EPA concluded that it was enough for the Shintech permit to include a generic permit condition consistent with 40 C.F.R. § 68.215. *Id.* Neither 40 C.F.R. Part 68 nor *Shintech* apply in this case, however, because the Hazlehurst Wood Pellets is not currently subject to 40 C.F.R. Part 68.¹⁶ Thus, it would not make sense to incorporate the language from 40 C.F.R. § 68.215 into the Hazlehurst Wood Pellets permit, and the reasoning provided in the *Shintech* Order does not apply here.

Even if Hazlehurst Wood Pellets were subject to Part 68, simply incorporating the language of 40 C.F.R. § 68.215 would not be enough to assure compliance with the facility’s General Duty Clause obligations under Clean Air Act section 112(r)(1). First, there is no indication in either the Part 68 regulations or in the preamble to those regulations that the EPA promulgated those regulations to address how Title V permits are to assure compliance with a facility’s General Duty Clause obligations under Clean Air Act section 112(r)(1).¹⁷ Indeed, 40 C.F.R. § 68.215 does not even mention the General Duty Clause obligations under Clean Air Act section 112(r)(1). A permit that does not identify the source’s obligations under section 112(r)(1) obviously cannot assure the source’s compliance with those obligations. Furthermore, many years after *Shintech*, the D.C. Circuit confirmed in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), that a permitting authority is obligated to add monitoring, recordkeeping, and reporting requirements to a source’s Title V permit where needed to assure the source’s compliance with an applicable requirement. Clarifying a source’s obligations under the Clean Air Act’s General Duty Clause and developing monitoring, recordkeeping, and reporting sufficient to assure a source’s compliance with those obligations falls squarely within what Congress intended by enacting the Title V operating permit program in 1990. The fact that a source’s specific obligations under this requirement may be unique from those of other sources strongly supports the argument that a Title V permit must clarify what the source’s obligations are and incorporate any conditions needed to assure the source’s compliance with those obligations.¹⁸

To assure Hazlehurst Wood Pellets’ compliance with the General Duty Clause, the permit must be revised to, at a minimum:

¹⁶ According to 40 C.F.R. 68.215(a), “These requirements apply to any stationary source subject to this part 68 and parts 70 or 71 of this Chapter.” Therefore, by the express regulatory terms, 40 C.F.R. 68.215 is not applicable to a source that is not subject to part 68.

¹⁷ In the preamble, EPA noted that sources must comply with the General Duty Clause in Clean Air Act section 112(r)(1), but explained that the clause is “a self-executing statutory requirement” that “requires no regulations or other EPA action to take effect.” 61 Fed. Reg. 31668, 31680/3 (June 20, 1996). The EPA further stated in the preamble that “[a]s appropriate at a future date, EPA may issue policies or guidance on application of the general duty clause.” *Id.*

¹⁸ Additional information on implementation of General Duty Clause requirements is provided in the EPA’s guidance document, “Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1),” available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>.

- (1) Identify Clean Air Act section 112(r)(1) as an applicable requirement with respect to the facility's handling of combustible dust.
- (2) Specifically require the facility to prepare a hazard analysis identifying the hazards associated with explosive dust and the facility's processes, potential fire and explosion scenarios, and the consequences of a fire or explosion.
- (3) Establish specific design and operation standards that the facility must meet to prevent a dust-related fire or explosion.
- (4) Establish recordkeeping and reporting requirements sufficient to demonstrate that the facility is meeting its General Duty Clause obligations.

C. Georgia EPD's Insufficient Response to Public Comments

Georgia EPD's response to EIP's comments on the draft permit raising the above permit deficiency is insufficient to justify its refusal to include conditions in the final permit sufficient to assure Hazlehurst Wood Pellets' compliance with its General Duty Clause obligations. Specifically, Georgia EPD responded that the General Duty Clause is not "an applicable requirement for purposes of Title V Permitting" because "the General Duty Clause is not a regulation and compliance cannot be checked against a regulation or submission of data."¹⁹ But, contrary to Georgia's EPD's suggestion, a requirement in Clean Air Act § 112 need not be incorporated into a regulation or be verifiable via "submission of data" to qualify as an "applicable requirement" for Title V purposes. Rather, the federal Title V regulations at 40 C.F.R. § 70.2 define "applicable requirement" to include, as they apply to a particular source, "[a]ny standard or other requirement under section 112 of the Act." Georgia's EPA-approved Title V regulations incorporate this definition by reference. Ga. Comp. R. & Regs. R. 391-3-1-.03(10)(a)(4). EPA's use of the term "any" in defining which section 112 requirements constitute an "applicable requirement" for purposes of Title V permitting unambiguously demonstrates EPA's intent to include all section 112 requirements that apply to a source. *See, e.g., Harrison v. PPG Indus.*, 446 U.S. 578, 589 (1980) (holding Clean Air Act § 307(b)(1)'s language authorizing judicial review of "any other final action" by the Administrator "must be construed to mean exactly what it says, namely, any other final action."). And in fact, EPA's *Shintech* Order, discussed above, does not dispute that the General Duty Clause obligations are "applicable requirements" with respect to which a Title V permit must assure compliance.²⁰

D. Importance of Clarifying and Assuring Compliance with Hazlehurst Wood Pellet's Obligation to Comply with the General Duty Clause.

When Congress enacted Title V in 1990, it intended for the program to "better enforce the requirements of the law by applying them more clearly to individual sources and allowing better tracking of compliance."²¹ One of the most important of these requirements is Clean Air Act § 112(r)(1)'s General Duty Clause, which was also enacted in 1990 following two disastrous

¹⁹ Permit Narrative and Response to Comments for Permit No. 2499-161-0023-V-02-4, Addendum at 3 (Attachment D).

²⁰ *Shintech* Order at 11-12.

²¹ S. Rep. No. 101-228, at 346 (1989). *See also* H.R. Rep. No. 101-490, at 351 (1990) ("There should not be matters applicable to the source under the Act that are not addressed in the permit ... [T]he permit is the document that everyone should look at to know what a permittee should do to comply with the Clean Air Act.").

chemical releases: the 1984 release of highly toxic methyl isocyanate from a chemical plant in Bhopal, India that killed more than 2,000 people and injured more than 200,000 others, and the 1985 release of toxic chemicals from a Union Carbide plant in Institute, West Virginia, which sent 409 residents and workers to the hospital.²² The Senate Report accompanying the 1990 Clean Air Act Amendments observed that “[s]udden, catastrophic events that result in the release of extremely hazardous substances are a significant (and perhaps increasing) threat to public health and safety in the United States.”²³ Likewise, the 1990 House Report observed that “[a]ccidental releases of air toxics occur with surprising frequency” and that existing law at the time contained “few provisions regulating the prevention, detection, or response to accidental releases.”²⁴ The new Clean Air Act § 112(r) provisions would “establish accident prevention and mitigation as a general study of those who own and operate facilities handling extremely hazardous substances.”²⁵

Unfortunately, Congress’ goal of achieving a widespread national focus on preventing accidental releases has yet to be achieved. Recently, EPA announced that “EPA inspections have revealed significant noncompliance and an ongoing need for additional compliance assistance” with respect to the requirements of Clean Air Act section 112(r), including the General Duty Clause.²⁶ And, while EPA sometimes brings General Duty Clause enforcement actions and levies substantial penalties, these enforcement actions frequently take place only *after* a serious accident occurs. For example:

- EPA settled a national Clean Air Act § 112(r)(1) claim against Chevron U.S.A., Inc. in 2018.²⁷ EPA’s initial investigation began after a fire involving high-temperature hydrocarbons at Chevron’s Richmond, California refinery prompted a shelter-in-place order for the surrounding community and caused 15,000 local residents to seek medical attention.²⁸ While the investigation was ongoing, Chevron accidentally released regulated chemicals at two other refineries, including a 2013 explosion and fire in Pascagoula, Mississippi that caused the death of an employee.²⁹
- EPA reached a settlement with a food processor in San Francisco addressing General Duty Clause violations after the facility had had a release of anhydrous ammonia from its

²² S. Rep. 101-228 (1989) at 134; *as reprinted in* A Legislative History of the Clean Air Act Amendments of 1990 (1993) (“Leg. Hist.”), 8474

²³ *Id.* at 143, Leg. Hist. 8483.

²⁴ H.R. Rep. No. 101-490, at 154, 156; Leg. Hist. 3178, 3180.

²⁵ *Id.* at 144; Leg. Hist. 8484.

²⁶ U.S. EPA website, “National Compliance Initiative: Reducing Accidental Releases at Industrial and Chemical Facilities,” <https://www.epa.gov/enforcement/national-compliance-initiative-reducing-accidental-releases-industrial-and-chemical> (last visited Apr. 14, 2020 (Attachment Y)).

²⁷ Consent Decree, *United States of America and the State of Mississippi v. Chevron U.S.A. Inc.* (N.D. Cal.) (available at <https://www.epa.gov/sites/production/files/2018-10/documents/chevron-cd.pdf>).

²⁸ EPA Press Release, “EPA, Justice Department and State of Mississippi Reach Settlement with Chevron U.S.A. Inc. Requiring Nationwide Safety and Chemical Accident Prevention Measures,” Oct. 24, 2018 (available at <https://archive.epa.gov/epa/newsreleases/epa-justice-department-and-state-mississippi-reach-settlement-chevron-usa-inc-requiring.html>) (Attachment Z).

²⁹ *Id.*

refrigeration system, resulting in evacuation of the facility and several neighboring businesses and hospitalization of 17 people.³⁰

- EPA settled a case against AL Solutions, Inc. for failing to comply with the General Duty Clause with respect to its handling of the combustible metals Titanium and Zirconium after zirconium dust ignited and exploded in 2010, killing three employees.³¹
- EPA settled a case against Bayer CropScience that included alleged General Duty Clause violations after a 2008 explosion at its facility in Institute, West Virginia, killed two people.³²
- In 2016, EPA settled a case with a Swanton, Vermont cheese manufacturing plant for violating the General Duty Clause and other environmental requirements following a February 2015 incident in which three employees were sprayed with ammonia, an extremely hazardous substance that is corrosive to skin, eyes, and lungs.³³
- In 2018, EPA settled a case with a Sanger, California winemaking facility after an anhydrous ammonia release caused the death of a worker, triggered evacuations and required a fire department response. EPA inspectors found that the facility lacked readily available devices designed to prevent an ammonia release, had inadequate operating procedures and employee training, and lacked adequate labeling identifying ammonia refrigeration system pipes and equipment.³⁴
- In 2015, EPA settled a case against DuPont for General Duty Clause violations associated with a vinyl fluoride leak at its chemical plant in Tonawanda, New York. The leak caused a fire and explosion that killed one worker and badly burned another.³⁵

While it is laudable that EPA pursued the above enforcement actions, it is far better for facility owners and operators to be held accountable for General Duty Clause compliance *before* their

³⁰ U.S. Department of Justice, Press Release, “South San Francisco Food Processing Factory Will Pay Nearly \$700,000 in Penalties, Spend \$6 Million to Update Refrigeration System Safety,” (Jan. 31, 2012) (available at <https://www.justice.gov/opa/pr/south-san-francisco-food-processing-factory-will-pay-nearly-700000-penalties-spend-6-million>) (Attachment AA).

³¹ See *infra* n. 11.

³² EPA News Release, “Court Approves Settlement, Bayer CropScience to Enhance Safeguards at Chemical Facilities for Violations at W. Va. Plant,” (Aug. 12, 2016) (available at <https://archive.epa.gov/epa/newsreleases/court-approves-settlement-bayer-cropscience-enhance-safeguards-chemical-facilities.html>) (Attachment BB).

³³ EPA News Release, “Chemical Accident Prevention Requirements are Met and Settlement Agreed to in Swanton, Vt.,” (Mar. 16, 2016), available at <https://archive.epa.gov/epa/newsreleases/chemical-accident-prevention-requirements-are-met-and-settlement-agreed-swanton-vt.html> (Attachment CC).

³⁴ EPA News Release, “U.S. EPA, U.S. Department of Justice Finalize Settlement with Sanger, Calif., Winery over Deadly Ammonia Release,” (Feb. 5, 2018) (available at <https://archive.epa.gov/epa/newsreleases/us-epa-us-department-justice-finalize-settlement-sanger-calif-winery-over-deadly.html>) (Attachment DD).

³⁵ EPA News Release, “EPA and DuPont Reach Major Settlement After Fatal Chemical Explosion in Tonawanda, N.Y.,” (Oct. 1, 2015), available at <https://archive.epa.gov/epa/newsreleases/epa-and-dupont-reach-major-settlement-after-fatal-chemical-explosion-tonawanda-ny.html> (Attachment EE).

poorly designed and maintained facilities injure and kill workers and community residents.³⁶ On its plain terms, Clean Air Act § 112(r)(1) requires facility owners to act proactively to “*prevent*” accidental releases, to “identify hazards which *may* result from such releases,” and to plan ahead to minimize the consequences of any releases that do occur. 42 U.S.C. § 7412(r)(1) (emphasis added). Title V permits present the ideal mechanism to achieve Congress’ intent. By requiring permitting authorities to include sufficiently detailed requirements in Title V permits to put facility operators on notice of their General Duty Clause obligations, U.S. EPA would decrease the likelihood of a violation, thereby decreasing the likelihood of a serious accident causing death, serious injury, or significant property damage. Likewise, by requiring states to include reporting requirements in Title V permits requiring permittees to file publicly available reports documenting whether they are complying with General Duty Clause requirements, EPA would enable at-risk communities to ensure source compliance.

Conclusion

For the foregoing reason, the Final Modified Title V Permit is deficient, and EPA must object to its issuance. Petitioners request that EPA instruct Georgia EPD that it must revise the permit to clarify that the General Duty Clause applies to Hazlehurst Wood Pellets, to detail what the facility must do to achieve compliance, and to require the permittee to submit reports documenting its ongoing compliance.

Respectfully submitted,

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³⁶ Petitioners recognize that EPA recently identified “Reducing Accidental Releases at Industrial and Chemical Facilities” as a national compliance initiative, and accordingly, has been inspecting certain priority facilities to ensure General Duty Clause compliance. See <https://www.epa.gov/enforcement/national-compliance-initiative-reducing-accidental-releases-industrial-and-chemical>. While this is an important initiative that hopefully will increase the safety of many industrial facilities, it simply is not possible for EPA to inspect enough facilities to achieve widespread compliance given the vast number of facilities in the United States that handle extremely hazardous substances. Engaging state Title V permitting authorities in identifying sources that are subject to the General Duty Clause and clarifying their obligations in their Title V operating permits is critical to ensuring that facilities are implementing this critical statutory requirement.

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*On behalf of the Sierra Club and its Georgia Chapter,
Dogwood Alliance, the Rachel Carson Council,
Partnership for Policy Integrity, Natural Resources
Defense Council, and Our Children's Earth
Foundation*

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Attachments: Comment Attachments A-EE

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