

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Proposed Title V Operating Permit Issued to)	Permit Number: 2260-00012-V1
AI ID 38867 Louisiana Generating LLC - Big Cajun II Power Plant)	Petition to Object to Issuance of Part 70 Operating Permit for Big Cajun II Power Plant
Issued by the Louisiana Department of Environmental Quality)	

INTRODUCTION

Pursuant to § 505(b)(2) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Petitioners Sierra Club, Louisiana Environmental Action Network, and the Alliance for Affordable Energy hereby petition the Administrator (“Administrator”) of the United States Environmental Protection Agency (“EPA”) to object to the issuance of Title V Permit No. 2260-00012-V1 for the Big Cajun II Power Plant, owned or operated by Louisiana Generating LLC .

Petitioner Sierra Club is a conservation organization with approximately 600,000 members, including members in the State of Louisiana, dedicated to protecting natural resources, including clean air and water. On behalf of its members, Sierra Club works to protect and enhance the quality of air throughout the country. Sierra Club has members statewide, including members who live, work, or recreate in the area affected by the permit.

Petitioner Louisiana Environmental Action Network (“LEAN”), is a non-profit corporation organized and operating under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN’s purpose is to preserve and protect the State’s land, air, water, and other natural resources, and to protect its members

and other residents of the state from threats of pollution. LEAN has members statewide, including members who live, work, or recreate in the area affected by the permit.

Petitioner Alliance for Affordable Energy, is a non-profit Louisiana corporation that acts as a watchdog for the legal, financial, and technical activities of Louisiana’s electric utilities. The Alliance is dedicated to creating fair, affordable, environmentally-responsible energy policy for the citizens of Louisiana. The Alliance for Affordable Energy has members who live, work, or recreate in the area affected by the permit.

This petition is based upon comments made regarding the draft Title V permit for this facility by EPA Region 6.

This petition is filed within sixty days following the end of U.S. EPA’s 45-day review period as required by Clean Air Act § 505(b)(2). The Administrator must grant or deny this petition within sixty days after it is filed.

If the Administrator determines that this permit does not comply with the requirements of the Clean Air Act (“CAA”) or 40 C.F.R. Part 70, he must object to issuance of the permit. *See* 40 C.F.R. § 70.8(c)(1) (“The [U.S. EPA] Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part.”).

GROUND FOR OBJECTION

The Administrator Must Object to the Proposed Permit Because it Fails to Incorporate PSD Program Requirements and Lacks a Compliance Schedule Designed to Bring the Facility into Compliance with those Requirements.

1. Statutory and Regulatory Background

Under 40 C.F.R. § 70.1(b) and Clean Air Act § 504(a), each facility that is subject to Title V permitting requirements must obtain a permit that “assures compliance by the source

with all applicable requirements.” LAC 33:III.507.B.2 of Louisiana’s Title V rule incorporates by reference 40 C.F.R. § 70.6(a). This section provides in part that:

Each permit issued under this part shall include the following elements:

- (1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

Applicable requirements include the requirement to comply with state implementation plan (“SIP”) requirements and the requirement to obtain a preconstruction permit that complies with preconstruction review requirements under the Clean Air Act, U.S. EPA regulations, and the SIP. *See* LAC 33:III.507.A.3 and LAC 33:III.502.A. LAC 33:III.507.H.3 and LAC 33:III.517.E.4 also require that, if a facility is in violation of an applicable requirement at the time of permit issuance, the facility’s permit must include a compliance schedule. The schedule must contain “an enforceable sequence of dates by which specific actions will occur at the source, leading to compliance with all applicable requirements.” *Id.* Thus, if a power plant is in violation of PSD or SIP requirements, the plant’s operating permit must include an enforceable compliance schedule designed to bring the plant into compliance with those requirements. The plant is then bound to comply with that schedule or risk becoming the target of an enforcement action for violating the terms of its permit. (This violation would be in addition to the original violation resulting from the plant’s failure to obtain a PSD permit). Such an enforcement action could be brought by the permitting authority (usually the state or local environmental agency), U.S. EPA, or the public.

The Louisiana SIP contains PSD permitting requirements. LAC 33:III.509. In particular, subsection (j) provides that “major modifications” are subject to emission limitations known as Best Available Control Technology (“BACT”). Also, before making a major

modification, an owner or operator must conduct monitoring and through modeling show that the emissions increases from the plant will not adversely impact any NAAQS, increments, or air quality related values. Emission limitations established by the state on a plant as a result of the PSD process insure that the NAAQS, increments, and air quality related values will be adequately protected.

The Clean Air Act (“CAA”) directs the EPA Administrator to object to a permit in response to a citizen petition “if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of [the Act], including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b). The United States Court of Appeals for the Second Circuit has held that if a state has issued a notice of violation finding that an owner or operator has made a major modification without complying with PSD requirements, then a petitioner is entitled to rely on that state NOV in making a demonstration that the Title V permit is inadequate. Consequently, that Second Circuit held that faced with a petition pointing out the state’s finding that PSD requirements had been violated, EPA must object to a Title V permit that failed to contain PSD requirements and failed to contain the requisite compliance schedule. *New York Public Interest Research Group, Inc., v. Johnson*, 427 F.3d 172 (2d Cir. 2005) (hereinafter “NYPIRG”).

The NYPIRG court relied upon the Title V permit objection issued by EPA for a permit issued by the state of Kentucky. *August 7, 2000, Notification to Kentucky Department of Environmental Protection of EPA Objection to Title V Permit issued to Gallatin Steel Company pursuant to 40 C.F.R. § 70.8©*, available at http://www.epa.gov/region4/air/permits/TitleVObjectionLetters/KY_ObjectionLetters/GallatinSteel-Warsaw.pdf (last visited August 19, 2008). NYPIRG, 427 F.3d at 182. In the *Gallatin Steel*

matter, EPA objected to the Title V permit issued by the State of Kentucky because it did not contain a compliance schedule even though EPA had issued a civil judicial complaint and a notice of violation. Thus, in circumstances in which EPA has found, through a notice of violation, that a source is in violation of the Clean Air Act, a Title V permit for that source must include a compliance schedule.

2. EPA's Finding of Violation Regarding Big Cajun Units 1 and 2 Must Ultimately Be Reflected in the Title V Permit for the Facility.

In this case, in 2005 and again in 2006, EPA issued a notice of violation to Louisiana Generating finding that the subject of this permit, the Big Cajun II Power Plant, is in violation of the Clean Air Act. EPA specifically found that Louisiana Generating had violated Louisiana's new source review requirements by modifying Units 1 and 2 in 1998 and 1999 without obtaining a PSD permit. Furthermore, in its comments on this Title V permit, EPA Region 6 specifically stated that the Title V permit was inadequate because it fails to reflect these new source review requirements. In spite of these modifications, Louisiana Generating has never obtained a PSD permit and never applied Best Available Control Technology ("BACT") for sulfur dioxide or nitrogen oxides.

The Title V permit at issue here, however, does not contain emission limitations for Units 1 and 2 that refer to Louisiana's PSD rule, nor could they be described as Best Available Control Technology. Furthermore, since Louisiana Generating never submitted a PSD permit application for the Unit 1 and 2 modifications, there is no assurance that the emission limitations established by the Title V permit adequately protect the NAAQS, increments, or air quality related values. Furthermore, the permit fails to include a compliance schedule to bring Big Cajun II into compliance with Louisiana's PSD requirements.

Accordingly, this Title V permit is deficient under LAC 33:III.507.B.2 and 40 C.F.R. § 70.6(a) because it does not incorporate all applicable requirements, and it is also deficient under LAC 33:III.507.H.3 and LAC 33:III.517.E.4 because it fails to include a compliance schedule. EPA Region 6 pointed out these deficiencies in its public comments, but LDEQ did not amend the permit.

Petitioners here, relying upon EPA's own findings regarding the inadequacy of the Title V permit, have consequently demonstrated that this Title V permit fails to comport with the requirements of the Act. Therefore, under 42 U.S.C. § 7661d(b), EPA must object to this permit.

CONCLUSION

For the reasons set forth above, this Petition should be granted.

Respectfully submitted,



Corinne J. Van Dalen
TULANE ENVIRONMENTAL LAW CLINIC
6329 Freret Street
New Orleans, LA 70118-6231
tel. 504-862-8818
fax 504-862-8721
cvandale@tulane.edu

Cc:

I hereby certify that I have this 4th day of January, 2008, served a copy of this Petition to those listed below.

Stephen Johnson, Administrator (U.S. certified mail)
U.S. EPA Headquarters
Ariel Rios Bldg.
1200 Penn. Ave., NW
Mail Code 1101A
Washington, D.C. 20460

Harold Leggett, Ph.D.
Secretary
Louisiana Department of Environmental Quality
602 N. Fifth Street
Baton Rouge, LA 70802

Ms. Cheryl S. Nolan
Administrator
LDEQ, Air Permits Division
P.O. Box 4313
Baton Rouge, LA 70821-4313

Mr. Jeffery Robinson
Chief, Air Permits Section (6PD-R)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Ms. Shannon Snyder
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Mail Code: 6PDR
Dallas, TX 75202-

Richard Greene, Regional Administrator, EPA Region VI
Shannon Snyder, EPA Region VI
Jeffrey Robinson, EPA Region VI
Louisiana Department of Environmental Quality

Michael A. Chernekoff
Jones, Walker, Waechter, Poitevent, Carrere
and Denegre, LLP
JP Morgan Chase Tower
600 Travis Street, Suite 6601
Houston, Texas 77002