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

| | |
|---|---|
| In The Matter Of<br>Caldwell Tanks Alliance, LLC<br>Lower Fayetteville Facility (GA)<br>Title V Operating Permit<br>No. 3443-077-0005-V-01-0<br><br>Issued by the Georgia<br>Environmental Protection Division | Petition No. IV-2001-1<br><br>Order Responding To Petitioner's Request That The Administrator Object To Issuance Of A State Title V Operating Permit |

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

The United States Environmental Protection Agency (EPA) received a petition from the Georgia Center for Law in the Public Interest on behalf of the Sierra Club (Petitioner) on May 9, 2001, requesting that EPA object to a state operating permit issued by the Georgia Environmental Protection Division ("Georgia EPD") to Caldwell Tanks Alliance, LLC (Caldwell Tanks) pursuant to Title V of the federal Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7661-7661f (Title V). The permit (the Caldwell Tanks permit) was issued on March 26, 2001 for the Lower Fayetteville facility located in Newnan, Coweta County, Georgia.

Petitioner requested that EPA object to the Caldwell Tanks permit on four grounds: (1) that the permit does not require the submittal of reports of any required monitoring at least every six months, as required under 40 C.F.R. § 70.6(a)(3)(iii)(A); (2) that the permit impermissibly limits those persons who may enforce violations of the permit to "citizens of the United States"; (3) that the Georgia EPD's public notice of the permit was incomplete and inadequate because it stated only that the permit is enforceable by EPA and the Georgia EPD without also stating that the permit is enforceable by members of the public; and (4) that the permit does not include an emission limit or require monitoring to assure that no visible emissions result from a shot blasting and baghouse operation that the permit classifies as an insignificant activity. For the reasons set forth below and in the attached correspondence from EPA Region 4 to Petitioner's counsel, I deny Petitioner's request.

## I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the CAA and 40 C.F.R. Part 70 (Part 70) require each state or other permitting authority to develop and submit to EPA an operating permits program designed to meet the requirements of Title V. See 40 C.F.R. § 70.4. The State of Georgia submitted its Title V operating permits program to EPA on November 12, 1993, and EPA granted the program interim approval. 60 Fed. Reg. 57,836 (Nov. 22, 1995). EPA subsequently granted the program full approval. 65 Fed. Reg. 36,358 (June 8, 2000). Under the program, which is now incorporated into Georgia's Air Quality Rule 391-3-1-.03(10), all major stationary sources of air

pollution and certain other sources are required to apply to the Georgia EPD for Title V operating permits that include emission limitations and standards and such other conditions as are necessary to assure compliance with applicable requirements of the CAA, including those of the applicable implementation plan. See CAA §§ 502(a), 504(a).

Title V and Part 70 provide for public comment on and EPA review of permits before they are issued by the permitting authority. Specifically, permitting authorities are required to provide at least 30 days for public comment on each draft Title V permit and to give notice of any public hearing at least 30 days in advance. 40 C.F.R. § 70.7(h); see CAA 502(b)(6). Permitting authorities are required to submit each proposed permit to EPA for review. CAA § 505(a)(1)(B); 40 C.F.R. § 70.8(a). The Administrator has 45 days after receiving a copy of the proposed permit to object to its final issuance. The Administrator shall object if the permit is not in compliance with applicable requirements of the CAA. CAA § 505(b)(1); 40 C.F.R. § 70.8(c). The Administrator's authority under section 505(b)(1) has been delegated to the Regional Offices.

If EPA does not object to the issuance of a permit on its own initiative, any person may petition the Administrator to object to the permit within 60 days after the expiration of EPA's 45-day review period. The Administrator shall grant or deny such a petition within 60 days after the petition is filed, and the Administrator shall object to the permit within that period if the petitioner demonstrates that the permit is not in compliance with the requirements of the CAA, including the requirements of the applicable implementation plan. CAA § 505(b)(2); 40 C.F.R. § 70.8(d). Section 505(b)(2) of the CAA further provides that the Administrator's duties under that paragraph may not be delegated to another officer. If the Administrator objects to a permit pursuant to section 505(b)(2), the permitting authority may not issue the permit until it is revised and issued in accordance with section 505(c). CAA § 505(b)(3); 40 C.F.R. § 70.8(d).

In addition to these objection provisions, section 505(e) of the CAA authorizes the Administrator to terminate, modify, or revoke and reissue a permit for cause at any time. EPA's regulations at 40 C.F.R. §§ 70.7(f) and 70.7(g), respectively, require that each Title V permit specify the conditions under which it shall be reopened and revised during its effective term and outline procedures for reopenings for cause by EPA. Any person may petition EPA to reopen a permit for cause. There is no deadline by which EPA is required to respond to such petitions.

## II. FACTUAL AND PROCEDURAL BACKGROUND AND LITIGATION

### A. Factual Background

The Georgia EPD received a Title V permit application for the Caldwell Tanks Lower Fayetteville facility, which manufactures components of elevated steel water storage tanks, on July 12, 1999. The Georgia EPD gave public notice providing for a 30-day public comment period on a draft permit for the facility on October 31, 2000, and transmitted the proposed permit to the appropriate regional office, the EPA Region 4 office in Atlanta, on November 1, 2000. Petitioner's counsel faxed comments on the draft permit to the Georgia EPD on November 30,

2000, the last day of the public comment period. During the 45-day statutory review period, EPA did not object to the proposed Caldwell Tanks permit.

On March 16, 2001, EPA Region 4 received a copy of an e-mail transmission sent by the Georgia EPD to Petitioner's counsel which stated that the Caldwell Tanks permit had been re-proposed to EPA on March 12, 2001. However, the permit was never re-proposed, and the Georgia EPD issued the final permit on March 26, 2001. On May 9, 2001, Petitioner filed a petition requesting that the Administrator object to the Caldwell Tanks permit pursuant to CAA § 505(b)(2) for the reasons that Petitioner had provided to the Georgia EPD during the public comment period on the draft permit. The petition was filed at least 113 days after the Administrator's 45-day review period ended, well beyond the 60-day statutory period provided for filing petitions for objection.

B. Procedural Background and Litigation

On July 11, 2001, Petitioner's counsel submitted to EPA a 60-day notice of intent to sue pursuant to section 304(b)(2) of the CAA to compel the Agency to act on the petition. Because the petition had been filed well beyond the 60-day statutory deadline for timely petitioning the Administrator to object to a Title V permit, EPA concluded that the petition was not timely filed and that the Administrator had no duty to respond to the petition within the 60-day time frame mandated by section 505(b)(2). However, EPA informed Petitioner that EPA intended to exercise its discretion to treat the petition as a petition to reopen the permit for cause and to respond on the merits. Such a response would ensure that the erroneous information that the Georgia EPD had conveyed to Petitioner indicating that the permit had been re-proposed to EPA would not preclude Petitioner from requesting that EPA consider Petitioner's objections to the permit.

On September 19, 2001, Petitioner filed a lawsuit in the United States District Court for the District of Columbia pursuant to section 304(a)(2) of the CAA seeking to compel the Administrator to respond to its untimely petition. On November 5, 2001, Petitioner moved the court for summary judgment on the merits. On December 3, 2001, EPA filed an answer to Petitioner's complaint and a cross-motion for summary judgment with the court.

By letter dated January 28, 2002, from Winston A. Smith, Director of EPA Region 4's Air, Pesticides & Toxics Management Division, to Petitioner's counsel, EPA stated that the petition was not timely filed under section 505(b)(2) and 40 C.F.R. § 70.8(d) and that EPA was treating it as a petition to reopen the permit for cause in accordance with 40 C.F.R. §§ 70.7(f) and 70.7(g). EPA also denied the petition to reopen on the merits. Two days later, on January 30, 2002, the district court filed a memorandum opinion and order in Petitioner's lawsuit disposing of the motions for summary judgment. (There is no indication that the court was aware of Region 4's action on the petition before issuing its order.) The court's January 30 order: (1) granted Petitioner's motion for summary judgment; (2) denied EPA's cross-motion for summary judgment; (3) ordered, pursuant to section 505(b)(2) of the CAA, the Administrator to consider and, within 60 days of the court's order, grant or deny the petition requesting that EPA

object to the Title V permit issued to the Caldwell Tanks Lower Fayetteville facility; and (4) ordered, pursuant to section 304(d) of the CAA, that Petitioner is entitled to litigation costs, including reasonable attorneys' fees, from EPA. Sierra Club v. Whitman, Civil Action No. 01-01991 (ESH) (D.D.C. Jan. 30, 2002) (order granting plaintiff's motion for summary judgment and denying defendant's cross-motion for summary judgment).

In its memorandum opinion, the court held that the doctrine of equitable tolling applies to the 60-day statutory period for filing petitions for objection to Title V permits under section 505(b)(2) of the CAA. Sierra Club v. Whitman, slip op. at 6-7. The court further held that application of equitable tolling was warranted against EPA in the Caldwell Tanks case, where Petitioner had filed a late petition in reliance on incorrect information provided by the state permitting authority. Therefore, equitable tolling rendered Petitioner's petition timely under section 505(b)(2). Id. at 12, 18.

As noted above, section 505(b)(2) expressly prohibits the Administrator from delegating her authority to grant or deny petitions for objection. In light of the court's ruling that Petitioner's petition was timely, it appears that EPA Region 4's January 28, 2002 letter responding to the petition, although issued in good faith, has not fulfilled the Administrator's obligation to act on the petition. Accordingly, I have undertaken an independent review of the issues raised by Petitioner and the relevant statutory and regulatory authorities and facts. Based on this review, I have concluded that it is appropriate to adopt the reasoning and conclusions of EPA Region 4 as set forth in its January 28, 2002 letter. I hereby incorporate that letter, a copy of which is attached, by reference and deny the petition.

## III. ISSUES RAISED BY PETITIONER

As indicated previously, Petitioner requested that EPA object to the Caldwell Tanks permit on four grounds concerning: (1) semi-annual monitoring reports; (2) those persons entitled to enforce violations of the permit; (3) the Georgia EPD's public notice of the draft permit; and (4) the permit's treatment of a shot blasting and baghouse operation as an insignificant activity. For the reasons set forth in the January 28, 2002 letter from EPA Region 4, I deny Petitioner's request. The denial is based on my determinations that:

- Conditions 5.3.1 and 6.1.3 of the Caldwell Tanks permit require the submission of detailed information in semi-annual monitoring reports and reflect a reasonable interpretation by the Georgia EPD of the information required to be submitted in such reports pursuant to 40 C.F.R. § 70.6(a)(3)(iii)(A).

- Condition 8.2.1 of the Caldwell Tanks permit, which originally limited those persons who could enforce the permit's terms and conditions to "citizens of the United States," was inconsistent with both the CAA and Part 70. Yet, because the Georgia EPD deleted the phrase "of the United States" from Condition 8.2.1 of the Caldwell Tanks permit through an administrative amendment that became effective on September 10, 2001 (Permit Amendment No. 3443-077-0005-V-01-

1), it is not necessary to object to the amended permit with respect to this issue.

- The Georgia EPD's public notice of the draft Caldwell Tanks permit, which stated that the permit was enforceable by EPA and by the Georgia EPD without also stating that it was enforceable by any "person," met the requirements of 40 C.F.R. § 70.7(h)(2) and did not limit the effectiveness of the notice.

- The Lower Fayetteville facility's shot blasting and baghouse operation is properly classified as an insignificant activity under Georgia Rule 391-3-1-.03(10)(g)(7)(iii)(III) based on Caldwell Tanks' certification in its Title V permit application that the operation results in no visible emissions to the outdoor atmosphere. Nonetheless, the shot blasting operation is subject to a generic visible emissions limit of 40 percent pursuant to a State Implementation Plan requirement, Georgia Rule 391-3-1-.02(2)(b). Given the nature of the baghouse, which is integral to the shot blasting operation, and the permittee's incentive to maintain the baghouse to reclaim steel shot and steel dust for recycling, there is a high margin of compliance with the 40 percent visible emissions limit and violations are unlikely. Therefore, monitoring is not necessary to assure compliance with this applicable emissions limit.

Because Petitioner has not demonstrated that the Caldwell Tanks permit is not in compliance with the requirements of the CAA, including those of the applicable implementation plan, there is no basis for objecting to the permit under section 505(b)(2). I therefore deny the petition.

## IV. CONCLUSION

For the reasons set forth above and in the attached letter, I deny Petitioner's request that I object to the Title V operating permit issued by the Georgia EPD to Caldwell Tanks for its Lower Fayetteville facility located in Newnan, Georgia, pursuant to section 505(b)(2) of the CAA and the district court's order in Sierra Club v. Whitman.

Dated: April 1, 2002

Christine T. Whitman, Administrator

January 28, 2002

4 APT-APB
Mr. Robert Ukeiley
Counsel for Sierra Club
Georgia Center for Law in the Public Interest
175 Trinity Avenue, S.W.
Atlanta, Georgia 30303

Dear Mr. Ukeiley:

This letter is in response to your petition, addressed to Administrator Christine Todd Whitman on behalf of the Sierra Club, requesting that the U.S. Environmental Protection Agency (EPA) object to the issuance of a title V operating permit issued by the Georgia Environmental Protection Division to Caldwell Tanks Alliance, LLC for its Lower Fayetteville facility, located in Newnan, Georgia (Permit No. 3443-077-0005-V-01-0).

The petition was not timely filed as required under 40 CFR § 70.8(d) and section 505(b)(2) of the Clean Air Act. Thus, EPA is not treating it as a petition to object pursuant to said provisions. However, EPA is exercising its discretion to consider the petition as a petition to reopen the permit for cause pursuant to 40 CFR §§ 70.7(f) and (g). The issues raised in your petition are addressed on their merits in the enclosed determination.

If you have any questions or comments regarding this matter, please direct them to either Art Hofmeister at (404) 562-9115 or Gregg Worley at (404) 562-9141. Thank you.

Sincerely,

Winston A. Smith
Director
Air, Pesticide & Toxics
Management Division

Enclosure

# DENIAL OF PETITION TO REOPEN FOR CAUSE

On May 9, 2001, the U.S. Environmental Protection Agency (EPA) received a petition from the Georgia Center for Law in the Public Interest (GCLPI) on behalf of the Sierra Club (Petitioner), requesting that EPA object to the permit issued by the Georgia Environmental Protection Division (EPD or the Department) to Caldwell Tanks Alliance, LLC (Caldwell Tanks) for its facility located in Newnan (Coweta County), Georgia. The permit is a state operating permit issued March 26, 2001, pursuant to title V of the Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7661-7661f.

Petitioner challenged the adequacy of the permit's reporting requirements, the permit's apparent limitation of enforcement authority, the adequacy of the public notice, and the permit's completeness with respect to applicable requirements. Petitioner has requested that EPA object to the Caldwell Tanks permit pursuant to CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2). Because the petition was not timely filed within the period prescribed by CAA section 505(b)(2), EPA is not treating the petition as a petition for objection filed pursuant to that statutory provision. Rather, EPA is exercising its discretion to consider the petition as a petition to reopen the Caldwell Tanks permit for cause pursuant to 40 CFR §§ 70.7(f) and (g). EPA addresses Petitioner's concerns on the merits and, for the reasons set forth below, denies the petition to reopen the Caldwell Tanks permit.

## I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each state to develop and submit to EPA an operating permit program intended to meet the requirements of CAA title V. The State of Georgia originally submitted its title V program governing the issuance of operating permits on November 12, 1993. EPA granted interim approval to the program on November 22, 1993. See 60 Fed. Reg. 57836 (November 22, 1993). Full approval was granted by EPA on June 8, 2000. See 65 Fed. Reg. 36358 (June 8, 2000). The program is now incorporated into Georgia's Air Quality Rule 391-3-1-.03(10). 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 Act, including the applicable implementation plan. See CAA sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements") on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. See 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." Id. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document, therefore enhancing compliance with the requirements of the Act.

Permitting authorities must provide at least 30 days for public comment on draft title V

permits and give notice of any public hearing at least 30 days in advance of the hearing. 40 CFR § 70.7(h). Following consideration of any comments received during this time, Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 CFR § 70.8(a) require that states submit each proposed permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements of title V. 40 CFR § 70.8(c). If EPA does not object to a permit on its own initiative, CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. These sections also provide that petitions shall be based only on objections to the permit raised with reasonable specificity during the public comment period (unless the petitioner demonstrates that it was impracticable to raise such objections within that period or the grounds for such objections arose after that period).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR Part 70 and the applicable implementation plan. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. See 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR §70.8(d).

## II. PROCEDURAL BACKGROUND

### A. Permitting Chronology

EPD received a title V permit application submitted by Caldwell Tanks on July 12, 1999. The Department determined that the application was complete on September 1, 1999. On April 28, 2000, EPD published the first public notice providing for a 30-day public comment period on the draft title V permit for Caldwell Tanks. A second public notice was published on October 31, 2000. The Petitioner submitted (via facsimile) comments to EPD in a letter dated November 30, 2000, which serves as the basis for this petition. EPD stated to the Petitioner that it had reproposed the permit to EPA on March 12, 2001. See Exhibit 2. However, contrary to EPD's statement to the Petitioner that it had reproposed the permit, EPD subsequently issued the final permit to Caldwell Tanks on March 26, 2001.

### B. Timeliness of Petition

EPA's 45-day review period for the Caldwell Tanks permit ended on January 16, 2001. Therefore, the 60th day following that date was March 19, 2001. As noted above, on May 9, 2001, EPA received a petition from GCLPI on behalf of the Petitioner requesting that EPA object to the permit. The petition was not timely filed. Petitioner argues that it relied on EPD's statement that EPD had reproposed the permit and, thus, Petitioner delayed submission of its petition in the expectation that the petition period would be restarted. EPD does not refute the Petitioner's claim that it provided notice (to the Petitioner) of reproposal to EPA on March 22, 2001; however, such action was never taken. EPA believes that it is incumbent upon the permitting authority to provide complete, accurate, and up-to-date public notice and information to the public regarding the current procedural status of permitting actions, including notice of reproposals, reopenings, etc. Moreover, the public should not be placed in the position of having to reconcile conflicting information or guess at the procedural status of specific actions which bear on public rights. As noted previously, Petitioner's petition was untimely and, therefore, EPA is not treating it as a petition for objection filed pursuant to CAA section 505(b)(2) and subject to the 60-day deadline for a response that is set forth in that provision. Nevertheless, to ensure that EPD's error does not inadvertently frustrate public participation, EPA is exercising its discretion to consider the petition as a petition to reopen the permit for cause pursuant to 40 CFR §§ 70.7(f) and (g). The Petitioner's concerns are addressed on their merits as follows.

## III. FACILITY BACKGROUND

Caldwell Tanks manufactures steel structural components for elevated water storage/supply tanks. The basic operations involving steel include: cutting, forming, welding, shot blasting, and painting. The cutting of steel is accomplished with a plasma-arc cutting machine. Arc welding equipment is then used to weld steel parts into large, pre-fabricated, structural components of the tanks. During blasting, the surfaces of the structural components are prepped using a steel shot material. After blasting, the structural components are painted using a paint booth. Supporting equipment include a parts washer and a paint distillation unit.

The primary air emissions from this facility are volatile organic compounds (VOC) resulting from the use of paints, thinners, and cleaning solvents. There are no add-on controls for VOC emissions. Exhaust from the paint booth is directed through two vertical stacks to the atmosphere. Also, the paint booth is not totally enclosed; therefore, it is assumed to have a relatively low capture efficiency. The facility is subject to a voluntary federally-enforceable emissions cap of 50 tons per year for VOC emissions, which was taken to avoid being subject to major non-attainment New Source Review. Particulate matter emissions are generated mainly by the blasting, welding, and painting operations. Dry filtration systems are utilized on both the paint booth (filters) and shot blasting unit (baghouse) to minimize particulate matter emissions. The facility is subject to State Implementation Plan (SIP) requirements relating to opacity, process weight rate, and surface coating operations. Georgia Rules 391-3-1-.02(2)(b), (e), and

(ii). See Title V Application Review, Caldwell Tanks Alliance, LLC., Permit No. 3443-077-0005-V-01-0.

## IV. ISSUES RAISED BY THE PETITIONER

### A. Reporting

Petitioner's comment: Caldwell Tanks' permit does not contain a requirement for "submittal of reports of any required monitoring at least every 6 months." 40 CFR § 70.6(a)(3)(iii)(A). Although Condition 5.3.1 requires the reporting of excess emissions, exceedances, and excursions, this does not satisfy the requirement to report *all* monitoring. EPA should require EPD to include a provision which requires the "submittal of reports of any required monitoring at least every 6 months."

EPA's response: The part 70 rule cited by Petitioner, § 70.6(a)(3)(iii)(A), states that each permit shall require "[s]ubmittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports." This rule implements Section 504(a) of the CAA which requires that each title V permit include "a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring." EPD included Condition 5.3.1 in the Caldwell Tanks permit to satisfy this requirement. This condition requires semiannual reporting of information related to deviations, malfunctions, operating time, monitor down time, and other information.

Petitioner argues that since § 70.6(a)(3)(iii)(**B**) requires reporting of deviations, the position EPD has taken that permit Condition 5.3.1 satisfies § 70.6(a)(3)(iii)(**A**) would render that rule meaningless as it would be redundant to § 70.6(a)(3)(iii)(**B**). The EPA disagrees with this assessment because § 70.6(a)(3)(iii)(**B**) is a requirement for "prompt" reporting of deviations and is separate from the semiannual reporting requirements. The Caldwell Tanks permit addresses the "prompt" reporting requirement through Conditions 6.1.2. and 6.1.3.

Petitioner also points out that, in complying with § 70.6(a)(3)(iii)(A), the permittee may submit to the State, at least every six months, the actual monitoring data recorded by the source. Petitioner cites daily pressure drop readings from spray paint booth filters and usage and/or production records of all VOC-containing materials used by the facility as examples of the kind of data the rule requires to be reported. However, 40 CFR Part 70 does not specify what form the report of monitoring results must take.

The Caldwell Tanks permit, like other title V permits issued by Georgia, includes considerable detail in Condition 5.3.1 regarding what must be included in semiannual monitoring reports. Specifically, the reports must include: a summary of all excess emissions, exceedances, and excursions and monitor downtime, including any failure to follow work practice standards; total process operating times; the magnitude of all excess

emissions, exceedances, and excursions; specific identification of each such episode, including the nature and cause and the corrective action taken; specific identification of each period during which a required monitoring system or device was inoperative, including information of when the system or device has not been inoperative, repaired, or adjusted. Also, as required by part 70, the reports must include a certification by a responsible official that the contents of the reports are true, accurate, and complete.

Although the semiannual monitoring reports required by EPD focus on information related to deviations and monitor operation, one can conclude that all monitoring results not reported as deviations show compliance with applicable permit terms or conditions. This interpretation is supported by the fact that the permit requires the reports to state that there were no deviations when there were, in fact, no deviations for a given reporting period. The emissions units and activities being monitored and the applicable emission limits and standards addressed in such reports are clearly described in the permit itself. In addition, Condition 6.1.3 of the permit requires the facility to provide with their semiannual monitoring reports a statement regarding any failure to comply with or complete a work practice standard or requirement contained in the permit. Therefore, the facility must describe in its reports any monitoring that was not conducted in accordance with the permit for any reason. The reports must also contain the probable cause of such failure, the duration of failure, and corrective actions or preventive measures taken.

Petitioner maintains that the permit should be revised to include a provision that requires "submittal of reports of any required monitoring at least every 6 months." Indeed, many permitting authorities simply include this phrase, taken precisely from § 70.6(a)(3)(iii)(A), in their permits. However, they provide no description of what information such reports must include, thus leaving it up to the source to decide what is appropriate. EPD, on the other hand, has described in detail what a monitoring report must contain. Adding the provision suggested by Petitioner would not improve upon those requirements.

Within the language of § 70.6(a)(3)(iii)(A), the State has permissibly interpreted the provision to require detailed information regarding the operation of monitoring devices and deviations from monitoring requirements. Note that deviations reported by a facility are not necessarily violations of emission limits, but are generally indicators that a source has operated close to a limit and that corrective action may be warranted. The Caldwell Tanks permit provides such corrective actions to help prevent actual emission limit violations. In addition, information provided in the semiannual monitoring reports indicates to the State whether a source has been operating well within its emission limitations or that more effective emission controls or more frequent monitoring is needed.

As well as identifying all emission units at the facility and describing the monitoring requirements for each, the Caldwell Tanks permit does require semiannual reports regarding all required monitoring. EPA believes Georgia has reasonably interpreted

40 CFR § 70.6(a)(3)(iii)(A) in specifying the information needed from such reports to remain informed of a facility's compliance status and potential problem areas. Reopening of the permit is therefore denied with respect to this issue.

## B. Enforcement Authority

Petitioner's comment: Caldwell Tanks' permit impermissibly limits who may enforce against violations of the permit. The Act provides that any "person" may take civil action to stop a violation of a title V permit. 42 U.S.C. § 7604(a). The Act defines "person" to include "an individual, corporation, partnership, association, State, municipality, political subdivision of a state..." 42 U.S.C. § 7602(e). However, Caldwell Tanks' permit limits those who can take enforcement actions to "citizens of the United States." This is contrary to statute; therefore, the phrase "of the United States" must be deleted from Condition 8.2.1.

EPA's response: EPA agrees with Petitioner that Condition 8.2.1's language limiting those persons who can enforce the terms and conditions of the Caldwell Tank permit to "citizens of the United States" is contrary to the CAA and EPA's part 70 regulations, which provide for broad public enforcement of title V permits and contain no such limitation. However, because EPD has removed the phrase "of the United States" from Condition 8.2.1 of the Caldwell Tanks permit, as discussed below, EPA finds that it is not necessary to reopen the permit with respect to this issue.

The plain language of the statutory citizen suit provision and the definition of the term "person" contains no requirement that a person be a United States citizen in order to bring a citizen suit under the CAA. The relevant provision, section 304(a), states that "any person may commence a civil action" for certain violations of the CAA, including violations of emission standards or limitations such as those identified in a title V permit. 42 U.S.C. § 7604(a)(1)(A) (emphasis added). The term "person" is defined in section 302(e) to include "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof." 42 U.S.C. § 7602(e). Significantly, the definition of "person" refers to "an individual," rather than a "citizen of the United States." In the definition, Congress used the limiting language "of the United States" to modify the terms "agency, department, or instrumentality" and "officer, agent, or employee," but not to modify the reference to "an individual." This distinction makes clear that Congress did not intend to limit those individuals who can use the citizen suit provision to United States citizens, and it would be wrong to read such a limitation into the statute.

In addition, the statutory and regulatory provisions that authorize judicial review, administrative petitions for review, and enforcement of title V permits contain no citizenship requirement. Section 502(b)(6) of the CAA requires that title V operating permit programs provide "an opportunity for judicial review in State court of the final

[part 70] permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." 42 U.S.C. § 7661a(b)(6) (emphasis added); see 40 CFR § 70.4(b)(3)(x) (restating similar language). Section 302(e)'s broad definition of "person" applies to this provision, indicating that any "individual" who satisfies the requirements of section 502(b)(6) may seek judicial review of a part 70 permit in State court.[1] Similarly, section 505(b)(2) of the CAA, 42 U.S.C. § 7661d(b)(2), which authorizes "any person" to petition the Administrator to object to a title V permit, contains no citizenship requirement. The plain language of section 505(b)(2), together with section 302(e)'s broad definition of "person," provides further support for the conclusion that Congress did not intend to limit enforcement of title V permits to "citizens of the United States." Finally, EPA's part 70 regulations provide that all terms and conditions in a part 70 permit are enforceable by the Administrator and "citizens" under the CAA. 40 CFR § 70.6(b)(1). While the regulatory language uses the word "citizens," rather than "person," the part 70 regulations do not define "citizens" and § 70.6(b)(1) is imperfectly drafted. The regulatory use of the word "citizens" appears to be a shorthand reference to the statutory citizen suit provision, the heading of which is "Citizen Suits." 42 U.S.C. § 7604. As discussed previously, the text of the statutory citizen suit provision uses the broadly defined term "person" rather than the word "citizen." Nothing in the part 70 regulations refers to "citizens of the United States" and it would be unreasonable to read EPA's title V implementing regulations more narrowly than the CAA itself.

EPD, however, deleted the phrase "of the United States" from Condition 8.2.1 in the Caldwell Tanks permit by an administrative amendment effective September 10, 2001 (Permit Amendment No. 3443-077-0005-V-01-1). See Letter from Terry Johnson, Manager, VOC Permitting Unit, Stationary Source Permitting Program, EPD, to Brian S. Hope, Caldwell Tanks Alliance, LLC (Sept. 10, 2001) (transmitting the amendment).

---

[1]Any person who participated in the public comment process and has standing under Article III of the United States Constitution to sue in federal court may seek judicial review of a final permit action pursuant to section 502(b)(6). Virginia v. Browner, 80 F.3d 869, 877 (4th Cir. 1996) (rejecting Virginia's narrow interpretation of this provision as requiring States to grant standing to participants in the public comment process only if those persons otherwise would have standing under State law).

Therefore, there is no cause to reopen the Caldwell Tanks permit with respect to this issue because the issue is moot.[2]

**C. Public Notice**

Petitioner's comment: EPD's public notice is inadequate because it contains inaccurate information. The public notice is incomplete because it only states that the permit is enforceable by the EPA and EPD. The permit shall also be enforceable by any "person." 42 U.S.C. § 7604(a). Therefore, because 40 CFR § 70.7(a)(1)(ii) prohibits the issuance of a title V permit unless all the requirements for public participation pursuant to § 70.7(h) are satisfied, EPA should object and require a new 30-day public comment period with a public notice which clarifies that the public can also enforce this permit.

EPA's response: Although the public notice does not specifically name "persons" as being designated enforcers of the title V permit, it still satisfies the requirements of 40 CFR Part 70 regarding the contents of an adequate notice. The public notice requirements detailed at 40 CFR § 70.7(h)(2) do not include stating who may enforce a permit, and EPA does not believe that the omission cited by Petitioner would have compromised the effectiveness of the public notice. However, for clarification purposes, EPD has changed future notices to include "persons" as designated enforcers. See Public Notice for Shaw Industries, Inc. Plant No. 4 (Permit No. 2273-313-0084-V-01-0). Neither the Petitioner's Supplement to Petition, dated August 8, 2001, nor EPD's response, received by EPA on August 24, 2001, contains any new information regarding this issue since EPA was already aware of EPD's agreement to voluntarily revise future public notices. For all these reasons, reopening of the Caldwell Tanks permit is denied with respect to this issue.

**D. Permit Completeness**

Petitioner's comment: The Caldwell Tanks permit treats the shot blasting and baghouse as an insignificant activity. In order for this operation to be classified as an insignificant activity, it must not emit visible emissions to the outdoor atmosphere. Georgia Rule 391-3-1-.03(10)(g)(7)(iii)(III). However, the permit does not require that there be no visible emissions from this operation. Specifically, the permit must contain a provision which states that the opacity from the baghouse stack must be zero (0). Furthermore, the permit must contain monitoring and reporting requirements for this condition.

---

[2]In addition, EPD provided EPA with a written commitment to delete the phrase "of the United States" from Condition 8.2.1 in EPD's title V permit template and to include the revised condition in every final title V permit not yet signed by the Director of EPD and in future renewals of previously issued title V permits. See Letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to Stanley Meiburg, Acting Regional Administrator, EPA Region 4 (Sept. 6, 2001).

EPA's response: EPA approved Georgia's *Insignificant Activities List* through rulemaking on its part 70 permit program and the State incorporated the list into their rules as Georgia Rule 391-3-1-.03(10)(g). Pursuant to Georgia Rule 391-3-1-.03(10)(g)(7)(iii)(III), shot blasting operations must exhibit "no visible emissions to the outdoor atmosphere" to qualify as an insignificant activity. While this is a condition for the unit to be treated as an insignificant activity, it is not an "applicable requirement," as defined at 40 CFR § 70.2 and Georgia Rule 391-3-1-.03(10)(a)4, that should be included in the title V permit. Among other things, the definition of applicable requirement includes "[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act..." Georgia's part 70 permit program [Georgia Rule 391-3-1-.03(10)] is not part of the State's approved SIP, nor is it intended to be. However, the shot blasting operation is subject to a generic visible emissions limit of 40 percent pursuant to Georgia Rule 391-3-1-.02(b), which is contained in the Georgia SIP.

Caldwell Tanks, in filling out its title V permit application, certified that the shot blasting unit operates with no visible emissions to the outdoor atmosphere. EPA agrees that this is normally the case because the unit's baghouse, when properly maintained, effectively eliminates visible emissions. Also, the baghouse is an integral part of the shot blast unit, not a device that has been added for the purpose of meeting an emission standard. Proper operation and maintenance of the baghouse is assured by the facility's interest in reclaiming valuable steel shot and steel dust for recycling. Since the unit normally operates without visible emissions and the facility has an incentive to promptly correct any malfunctions of the baghouse, exceedances of the 40 percent visible emissions limit are considered unlikely. Based upon our knowledge of this source, including its expected high margin of compliance and the nature of the baghouse operation, EPA believes that violations are so unlikely that monitoring is not necessary to assure compliance with the applicable opacity limit. Therefore, because the applicable emission limit for this unit is 40 percent, not zero percent, and because monitoring is not needed to assure the unit will comply with that limit, there is no cause for reopening the Caldwell Tanks permit with respect to this issue.

## V. CONCLUSION

For the reasons discussed above and pursuant to 40 CFR §§ 70.7(g)(4) and (5), EPA hereby denies the petition of the Sierra Club concerning the Caldwell Tanks Alliance, LLC (Lower Fayetteville) title V operating permit, finding no cause to reopen the permit.

1-28-2002
Date

Winston A. Smith
Director
Air, Pesticides & Toxics Management Division