

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF )		
KING FINISHING )		
DOVER, GEORGIA )		ORDER RESPONDING TO PETITIONER'S
COTTON FABRIC FINISHING )		REQUEST THAT THE ADMINISTRATOR
PETITION IV-2001-6 )		OBJECT TO ISSUANCE OF A STATE
)		OPERATING PERMIT
)		
PERMIT No. 2261-251-0008-V-01-0 )		
ISSUED BY THE GEORGIA )		
ENVIRONMENTAL PROTECTION )		
DIVISION )		
)		

**ORDER DENYING PETITION FOR OBJECTION TO PERMIT**

On October 9, 2001, the United States 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 King Finishing (the “Permittee”) for its facility located in Dover, Screven County, Georgia. The permit is a state operating permit issued on July 9, 2001, pursuant to title V of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7661-7661f.<sup>1</sup>

Petitioner challenged the adequacy of the public participation process and the public notice of the draft permit; the permit’s apparent limitations on enforcement authority and the use of credible evidence; the adequacy of the permit’s reporting requirements; and the validity of the use of prediction methodology for nitrogen oxides emissions monitoring. Petitioner has requested that EPA object to the King Finishing permit pursuant to CAA section 505(b)(2),

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<sup>1</sup>Since the original King Finishing title V permit was issued, the facility’s name was changed from King Finishing to King America Finishing, Inc., and its ownership changed from Spartan Mills to Westex Holding, Inc. By an administrative amendment, EPD revoked and reissued the original permit, Permit No. 2261-151-0008-V-01-0, and a prior administrative amendment, Permit No. 2261-251-0008-V-01-1 (discussed below in section IV(B)), as Permit No. 2261-251-0008-V-02-0 to reflect these changes. See EPD Narrative for King America Finishing, Inc., Application No. TV-13506, § II(A). Consistent with the petition, this order uses the “King Finishing” name to refer to the facility. The permit conditions that were included in the original permit and that are raised in the petition were not changed in connection with the changes in facility name and ownership.

42 U.S.C. § 7661d(b)(2). For the reasons set forth below, I deny the Petitioner's request.

## 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, 1995. See 60 Fed. Reg. 57836 (Nov. 22, 1995). 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 King Finishing on October 5, 1996 (updated November 3, 2000). EPD determined that the application was administratively complete on April 11, 1997. On April 26, 2001, EPD published a public notice providing for a 30-day public comment period on the draft title V permit for King Finishing. The public comment period for the draft permit ended on May 29, 2001. The Petitioner submitted comments to EPD in a letter, dated May 28, 2001, which serves as the basis for this petition. EPD notified the Petitioner via an e-mail message, dated June 19, 2001, that EPD intended to re-propose the permit to EPA. On June 26, 2001, the permit was re-proposed to EPA. See Exhibit 6 of the Petition. EPD subsequently issued the final permit to King Finishing on July 9, 2001.

### **B. Timeliness of Petition**

EPA's 45-day review period for the King Finishing permit ended on August 10, 2001. The sixtieth day following that date and the deadline for filing any petitions requesting that the Administrator object to this permit was October 9, 2001. As noted previously, on that date EPA received a petition from GCLPI on behalf of the Petitioner requesting that EPA object to the permit. Therefore, EPA considers this petition to be timely.

## **III. FACILITY BACKGROUND**

The King Finishing plant, a textile finishing facility, is involved in the bleaching, dyeing, finishing, and printing of cotton and manmade fabrics. There are four primary areas: preparation, dyeing, finishing, and printing. Based on the specific product required, portions of each sub-process can or will be used in numerous combinations to meet a customer specification.

The purpose of preparation is to increase dimensional stability, to remove chemicals used in the weaving or fiber preparation, to improve dye affinity or uptake, and to improve strength of the fabric. There can be several steps involved. These include singeing, desizing, heat setting, mercerization, bleaching, and washing.

The dyeing department involves a continuous process and typically consists of dye application, dye fixation with chemicals or heat, washing, and drying.

Finishing refers to any operations (other than preparation and coloring) that improve the appearance and/or usefulness of fabric after it has been woven or knitted. Finishing encompasses any of several mechanical and chemical processes performed on fiber, yarn, or fabric to improve its appearance, texture or performance. The fabric then passes through the finish pad where the chemicals are applied, pre-dryer, and another set of dry cans before entering the tenter house. The tenter house uses tension to stretch the fabric to the desired width. The finish desired and the placement in the overall process are dependent on the conditions given by the customer.

The primary air emissions from this facility are particulate matter, sulfur dioxide and nitrogen oxides (“NO<sub>x</sub>”). The facility is subject to the following federal requirements: 40 CFR Part 60, Subpart Db, *Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units* (boiler B002), and Subpart Kb, *Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced After July 23, 1984* (storage tanks T003, T004 and T005). The facility is also subject to the following State Implementation Plan (“SIP”) requirements: Georgia Rules 391-3-1-.02(2)(b), *Visible Emissions*; (d), *Fuel-burning Equipment*; (e), *Particulate Emission from Manufacturing Processes*; and (g), *Sulfur Dioxide*. See Title V Application Review, King Finishing Permit No. 2261-251-0008-V-01-0.

#### **IV. ISSUES RAISED BY THE PETITIONER**

##### **A. Inadequate Public Notice and Participation**

Petitioner’s comment: EPD did not undertake the required public participation activities for this permit. First, 40 CFR § 70.7(h)(1) requires that EPD give notice of the draft permit to individuals on a mailing list developed by the permitting authority, including those who have requested to be on such a list. EPD, however, did not provide notice to people on the mailing list.

Second, EPD did not inform the public where the public can review all relevant supporting materials and “all other materials available to the permitting authority that are relevant to the permit decision” as 40 CFR § 70.7(h)(2) requires. EPD’s public notice states that “[t]he draft permit and all information used to develop the draft permit are available for review.” Since the public notice only addressed the availability of those relevant documents which were used rather than those which could have been used by EPD to develop the draft permit, the public notice is inadequate. Furthermore, much of the information the public needs to review to determine whether a compliance schedule is required or whether conditions are adequate is maintained at the permitted facility, rather than at EPD’s office, and EPD must notify the public of this fact so that they can review such information. In particular, the Risk Management Plan

("RMP"), if it exists, would be at the RMP Reporting Center in Virginia, and should be available for public review.

Third, the public notice itself is inadequate because it incorrectly states that the permit is enforceable only by EPA and EPD. The permit shall also be enforceable by any "person." 42 U.S.C. § 7604(a).

Finally, the public notice states that "[a]fter the comment period has expired, the EPD will consider all comments, make any necessary changes and issue the Title V operating permit." This statement is inaccurate. Specifically, the statement suggests that, while changes may be made, in the end, the permit will be issued. However, under certain circumstances, EPD is required to refuse to issue a title V permit. 40 CFR § 70.7(a). As such, the aforementioned statement could be interpreted as an indication of EPD's predisposition to issue title V permits regardless of whether the permit complies with the law.

Therefore, because § 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 to the permit and require a new 30-day public comment period and a public notice that clarifies that the public also can enforce the permit.

EPA's response: EPD has issued a number of final title V permits without first notifying the public of the draft permits via a mailing list required to be developed and maintained pursuant to 40 CFR § 70.7(h)(1). As of June 2001, however, EPD addressed the requirement for a mailing list by creating one. See E-mail message from Jimmy Johnston, EPD, to Art Hofmeister, EPA (June 19, 2001). Although 40 CFR § 70.7(a)(1)(ii) requires that the permitting authority comply with the requirements of § 70.7(h) prior to permit issuance, EPA is not convinced that the existence of a mailing list would have significantly increased the public participation related to previously issued permits. Therefore, EPA does not believe that re-noticing previously issued permits, including the King Finishing permit, is warranted.

Second, 40 CFR § 70.7(h)(2) requires that the public notice provide contact information for an individual from whom the public may obtain additional information, "including ... all relevant supporting materials" and "all other materials available to the permitting authority that are relevant to the permit decision." The public notice for the King Finishing permit explicitly designated a central location where the public could review relevant documents as follows:

"The draft permit and all information used to develop the draft permit are available for review. This includes the application, all relevant supporting materials and all other materials available to the permitting authority used in the permit review process. This information is available for review at the office of the Air Protection Branch, 4244 International Parkway, Atlanta Tradeport - Suite 120, Atlanta, Georgia 30354."

Furthermore, in accordance with § 70.7(h)(2), the public notice identified Jimmy Johnston, Stationary Source Permitting Program Manager at EPD, as the person to contact for more

information. This permit language meets the requirements of § 70.7(h)(2), which does not distinguish between materials that a permitting authority did use and those that a permitting authority could have used. It simply requires that the public notice address the availability of all “relevant” materials. EPD’s public notice for the King Finishing draft permit satisfied this requirement of § 70.7(h)(2). Therefore, there is no basis for objecting to the permit on this issue.

The Petitioner further asserts that EPD must notify the public of additional information that EPD may not have reviewed in drafting the facility’s title V permit, such as information that is maintained at the facility itself (e.g., “much of the monitoring information required under the pre-construction permit”), so that the public can review such information during the public comment period to determine whether a compliance schedule is required or whether draft permit conditions are adequate. If part 70 or applicable requirements such as SIP provisions require that such information be submitted to permitting authorities or EPA, EPA expects that it would be available for public review.<sup>2</sup> EPA assumes that the public has access to all of the information contained in EPD’s files, except for trade secrets or other information that EPD has determined is protected from disclosure under Georgia law. Also, permitting authorities are encouraged to respond to reasonable requests that they look beyond a permit application and supporting documents and/or requests for additional information during the comment period on a draft permit. For instance, if a citizen presents a permitting authority with credible information indicating that certain applicable requirements are missing from a permit application or that specific violations have occurred at a facility, the citizen may have a reasonable expectation that additional information will be made available for title V review. Otherwise, information that is required to be maintained only at a permitted facility generally need not be made available to the public at the start of the comment period on the facility’s draft title V permit. In this case, the Petitioner has not alleged that EPD failed to make the materials listed in the public notice for the draft King Finishing permit available for review. Nor has the Petitioner alleged that it requested, or that EPD failed to make available, any other particular information. Therefore, there is no basis for objecting to the King Finishing permit on this ground.

With respect to an RMP and related submittals, EPD is not required to maintain such information at its offices for public review. 40 CFR § 68.150(a) states that “[t]he RMP shall be submitted in a method and format to a central point as specified by EPA...” Pursuant to 40 CFR § 68.150(a), EPA established guidance detailing the RMP submittal process, including the location where RMPs are to be sent. (See <http://www.epa.gov/ceppo/pubs/genguid/G-Chap-09.pdf> and <http://www.epa.gov/ceppo/pubs/srmp/manual.pdf>.) Condition 7.10.1 of the King Finishing permit adequately addresses the requirements relating to RMPs, including the designation of the RMP Reporting Center in Virginia as the central location for submittals. Therefore, there is no basis for objecting to the permit on this issue. Nonetheless, the public may contact EPD or EPA to request information related to particular RMPs.

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<sup>2</sup>For instance, EPA notes that consistent with part 70, the King Finishing permit requires the facility to submit reports of required monitoring and deviations and other information to EPD. See, e.g., Part 6.0 (Other Recordkeeping and Reporting Requirements).

Although the public notice for the King Finishing permit did not specifically name “persons” as being designated enforcers of the title V permit, it satisfied the requirements of part 70 regarding the contents of an adequate notice. The public notice requirements specified under § 70.7(h)(2) do not require a statement of who may enforce a permit. Nevertheless, the public notice accurately stated that the permit would be enforceable by EPD and EPA. The public notice did not preclude “persons” from enforcing the permit since it did not state that the permit would be enforceable only by EPD and EPA. EPA does not believe that the omission of “persons” compromised the effectiveness of the public notice. For clarification purposes, however, EPD has agreed to change future notices to include “persons” as designated enforcers. See EPD’s Public Notice for Shaw Industries, Inc. Plant No. 4, Permit No. 2273-313-0084-V-01-0 as an example of a revised notice.

EPA does not agree with the Petitioner that the statement contained in the public notice summarizing the post-comment period proceedings is an indication of EPD’s predisposition to issue title V permits regardless of their legality. Rather, EPA interprets the phrase “make any necessary changes” to include those changes that are needed to ensure that the title V permit meets the requirements of the CAA and part 70 prior to issuance by EPD. Therefore, EPA considers the statement to be an accurate one because the title V permit may then be issued in accordance with § 70.7(a)(1).

For the reasons discussed above, the Petitioner has not demonstrated that the King Finishing permit does not comply with the CAA’s requirements because of EPD’s public notice, and the petition is denied with respect to the issue of inadequate public notice and participation.

## **B. Limitation of Credible Evidence**

Petitioner’s comment: The King Finishing permit contains language that appears to limit the use of credible evidence in enforcement actions, specifically Conditions 4.1.3, 6.1.3 and 8.17.1. EPD must remove language that is intended or appears to limit the use of credible evidence. EPA should further require EPD to affirmatively state in the permit that any credible evidence may be used in an enforcement action.

EPA’s response: EPA believes that the King Finishing permit as amended (see the discussion below) appropriately provides for the use of reference test methods as the benchmark for determining compliance with applicable requirements and for the use of other credible evidence in enforcement actions and in compliance certifications. By way of background, EPA in 1997 issued final changes to 40 CFR Parts 51, 52, 60, and 61 to clarify the appropriate roles of reference test methods and of other credible evidence. 62 Fed. Reg. 8314 (Feb. 24, 1997). The final regulations made clear: (1) that the reference test methods set forth or cited to in federal emissions standards and SIP emission limits remain the official benchmark for determining compliance with those standards; and (2) that other credible evidence such as emissions data, parametric data, engineering analyses, or other information must be taken into account in compliance certifications under title V and may be used for enforcement purposes. For example, 40 CFR § 60.11(g) was amended to provide that such other data could be used for these purposes

if it were “relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.” In addition, 40 CFR § 70.6(c)(5)(iii)(B) specifies that other material information, in addition to the methods and other means required under § 70.6(a)(3) that form the basis of a compliance certification, must be included in the certification where failure to do so would constitute a false certification of compliance. Here, it appears that Petitioner has mistakenly concluded that permit conditions specifying that certain test methods are the relevant reference test methods for the emission units in question – which as explained above are entirely proper – actually have the intent or effect of excluding the use of other credible evidence for compliance certification and enforcement purposes. As explained below, EPA believes that the permit as amended adequately provides for the use of other credible evidence to show whether the source would have been in compliance if the reference test had been performed at some particular time.

Condition 4.1.3 of the King Finishing permit identifies the required reference methods to be used to satisfy any testing requirements; it is not intended, in any way, to limit the use of credible evidence. In fact, Condition 4.1.3 provides for the use of all credible evidence and information. Georgia Rule 391-3-1-.02(3)(a), which serves as the underlying authority for Condition 4.1.3, references EPD’s *Procedures for Testing and Monitoring Sources of Air Pollutants*, which permits the use of all credible evidence. Section 1.3(g) of this document states that “nothing. . . shall preclude the use, including the exclusive use, of any credible evidence or information.” Both the rule and referenced procedures are approved parts of the Georgia SIP. In addition, Condition 8.14.1.d of the King Finishing permit adequately provides for the inclusion of credible evidence in compliance certifications by reciting the language from EPA’s own regulation at 40 CFR § 70.6(c)(5)(iii)(B) that was promulgated expressly for that purpose.

Condition 6.1.3, which requires the submission of deviation reports, provides in relevant part that failures to meet applicable emission limitations or standards or to comply with or complete work practice standards or requirements “shall be determined through observation, data from any monitoring protocol, or by any other monitoring which is required by this permit.” Although the language in Condition 6.1.3 may appear to limit the use of credible evidence, EPA believes that this was not the intention of EPD and that such language does not ultimately limit the use of credible evidence because the Georgia SIP expressly prohibits such an exclusion. Condition 8.17.1 does not limit the use of credible evidence because it allows the use of “any information available to the Division” and the phrase “but is not limited to” renders the listed forms of acceptable information not exclusive.<sup>3</sup>

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<sup>3</sup>Condition 8.17.1 provides: “At all times, including periods of startup, shutdown, and malfunction, the Permittee shall maintain and operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on any information available to the Division, which may include, but is not limited to, monitoring results, observations of the opacity or other characteristics of emissions, review of operating and maintenance procedures or records, and



Nonetheless, for further clarification, EPD added a general condition to the King Finishing title V permit via a minor modification which expressly states that nothing shall preclude the use of any credible evidence. See King America Finishing Minor Permit Modification No. 2261-251-0008-V-02-1. Furthermore, EPD added this condition to the permit template to ensure that such language will be included in future title V permits issued by EPD.<sup>4</sup> The petition is therefore denied with respect to the issue of limiting credible evidence.

### C. Limitation of Enforcement Authority

Petitioner's comment: The King Finishing 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, the King Finishing permit limits those who can take enforcement actions to "citizens of the United States." This is contrary to the statute; therefore, the phrase "of the United States" must be deleted from Condition 8.2.1.

EPA's response: EPA agrees with the Petitioner that the original language contained in Condition 8.2.1 limiting those persons who can enforce the terms and conditions of the King Finishing permit to "citizens of the United States" was 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. EPD, however, removed the phrase "of the United States" from Condition 8.2.1 of the King Finishing permit by an administrative amendment effective November 30, 2001. See Permit Amendment No. 2261-251-0008-V-01-1.<sup>5</sup> Furthermore, EPD removed the phrase "of the United States" from Condition 8.2.1 of the permit template to prevent the inclusion of the phrase in future title V permits.<sup>6</sup> Therefore, the petition is denied with respect to this issue because the

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inspection or surveillance of the source."

<sup>4</sup>EPD provided EPA with a written commitment to add a general condition to the title V permit template, which expressly states that nothing shall preclude the use of any credible evidence, and to include this condition in every final title V permit not already signed by the Director of EPD by the date of said letter. Existing title V permits will be revised upon renewal to include the new condition. See Letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to James I. Palmer, Jr., Regional Administrator, EPA Region 4 (March 22, 2002).

<sup>5</sup>See Letter from Anna C. Aponte, Environmental Engineer, Stationary Source Permitting Program, EPD, to William R. Ferguson, Facilities Engineer Manager, King Finishing (Nov. 30, 2001) (transmitting the amendment). The change resulting from administrative Permit Amendment No. 2262-252-0008-V-01-1 has been incorporated into the current permit, Permit No. 2261-251-0008-V-02-0.

<sup>6</sup>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

issue is moot.

#### **D. Inadequate Reporting**

Petitioner's comment: 40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661c(a) require that permits include a requirement for submittal of reports of any required monitoring at least every six months. The King Finishing permit does not contain such a requirement. EPA should object to this permit and modify it to include a provision that requires the “submittal of reports of any required monitoring at least every 6 months.” 40 CFR § 70.6(a)(3)(iii)(A).

EPA's response: The part 70 rule cited by the 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 King Finishing permit to satisfy this requirement. This condition, in conjunction with Condition 6.1.4, requires quarterly rather than semi-annual reporting of information related to deviations, malfunctions, operating time, monitor down time, and other information.

The Petitioner argues that since § 70.6(a)(3)(iii)(B) requires reporting of deviations, the position EPD has taken that 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). 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 semi-annual monitoring reporting requirements. The King Finishing permit addresses the “prompt” reporting requirement under Conditions 6.1.2 and 6.1.3.

The King Finishing permit, like other title V permits issued by EPD, includes considerable detail in Condition 6.1.4 regarding what must be included in the monitoring reports. Specifically, the reports must include: a summary of all excess emissions, exceedances, and excursions; any failure to follow work practice standards; total process operating times; the magnitude of all excess emissions, exceedances, and excursions; specific identification of each episode, including the nature and cause and the corrective action taken; and 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 the responsible official that the contents of the reports are true, accurate and complete. See 40 CFR § 70.6(a)(3)(iii)(A), 70.5(d).

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condition in every final title V permit not already signed by the Director of EPD by the date of said letter. See letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to Stanley Meiburg, Acting Regional Administrator, EPA Region 4 (Sept. 6, 2001).

Although the monitoring reports required by EPD focus on information related to deviations and monitoring device operation, it can reasonably be concluded that all monitoring results not reported as deviations show compliance with applicable permit terms and conditions. This interpretation is supported by the fact that the permit requires reports to affirmatively state when there are no deviations during a given reporting period. In addition, 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. Condition 6.1.3 of the permit requires the facility to provide a statement regarding any failure to comply with or complete a work practice standard or requirement contained in the permit with the semi-annual monitoring reports. Therefore, the facility is required to describe any monitoring that was not conducted in accordance with the permit for any reason. The reports also must contain the probable cause of any such failure, the duration of the failure, and any corrective action or preventive measures taken.

The 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 provided specific requirements for what a monitoring report must contain. Adding the provision suggested by the Petitioner would not improve upon those requirements.

Within the language of § 70.6(a)(3)(iii)(A), EPD 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 King Finishing permit provides such corrective actions to help prevent actual emission limit violations. The information provided in the quarterly monitoring reports is also used by EPD to determine whether a source has been operating within its emission limitations and whether more effective emission controls or more frequent monitoring is needed.

In addition to identifying all emission units at the facility and describing the monitoring requirements for each, the King Finishing permit requires semi-annual reports regarding all required monitoring. Thus, EPA believes EPD reasonably interpreted § 70.6(a)(3)(iii)(A) when it specified what the reports must contain to keep EPD informed of a facility’s compliance status and potential problems.

For the reasons discussed above, the petition is denied with respect to the issue of inadequate reporting.

#### **E. Inadequate Nitrogen Oxides Monitoring**

Petitioner’s comment: The King Finishing permit does not provide for adequate

monitoring of NO<sub>x</sub> emissions. 40 CFR § 70.6(a)(3)(i)(A) requires that title V permits contain “[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements.” 40 CFR Part 60, Subpart Db is an applicable requirement for boiler B002. § 60.49b(g) requires the permittee to record the average hourly NO<sub>x</sub> emission rates either by measuring the emission rates or predicting the emission rates. § 60.48b(g)(2) allows the use of a “prediction mechanism” for NO<sub>x</sub> emissions in place of actual measurements. However, pursuant to § 60.49b(c), such predictions must follow a plan submitted to the permitting authority for approval that identifies the operating conditions to be monitored and the relationships between the conditions and the emissions to be predicted. Since the permit does not contain the requirement for submission of this plan, EPA should object to the permit.

EPA’s response: The Petitioner correctly states that the King Finishing permit does not require the submittal of a monitoring plan pursuant to 40 CFR § 60.49b(c). Nevertheless, the requirement has already been satisfied because such a plan was submitted to and approved by EPD prior to the issuance of the permit. The plan identifies the operating parameters to be monitored (air flow rate, fuel input rate) and the relationships between such parameters and the emissions to be predicted (equations for NO<sub>x</sub> emissions based on air flow rate and natural gas or fuel oil input rate) in accordance with § 60.49b(c). Conditions 5.2.1.b and 5.3.2 of the permit establish the requirement for the predictive continuous monitoring system, which is the result of the submitted and approved plan, pursuant to § 60.48b(g)(2). Therefore, the petition is denied with respect to this issue because: (1) a plan was submitted to and approved by EPD prior to the issuance of the title V permit; (2) the plan, in conjunction with Conditions 5.2.1.b and 5.3.2, assures compliance with the requirements of 40 CFR Part 60, Subpart Db, particularly §§ 60.48b(g)(2) and 60.49b(c); and (3) there is no requirement for the facility to resubmit the plan.

Nonetheless, for clarity EPD amended the title V permit by a minor permit modification effective on August 28, 2002, to refer to the monitoring plan. As amended, Condition 5.2.1.b provides:

In accordance with the requirements of 40 CFR 60.48b(g)(2), a Continuous Monitoring System (CMS) to predict NO<sub>x</sub> emission rates as described in **Report of the Relative Accuracy Test Audit of the NO<sub>x</sub> Predictive Emission Monitoring System King Finishing Boiler B002 dated December 3, 1999**. The output of the predictive CMS shall be in terms of pounds NO<sub>x</sub> per million Btu. At approximately 12-month intervals, a Relative Accuracy Test Audit (RATA) shall be conducted on the NO<sub>x</sub> CMS using the procedures of **Performance Specification 2 of the Division’s Procedures for Testing and Monitoring Sources of Air Pollutants**. Results of the RATA shall be submitted to the Division within 30 days of completion of the RATA.

See King America Finishing Inc. Minor Permit Amendment No. 2261-251-0008-V-02-2. In addition, EPD will maintain a copy of the monitoring plan in the facility’s title V permit file so that it is available for public review along with the permit itself.

**V. CONCLUSION**

For the reasons discussed above and pursuant to section 505(b) of the CAA, 42 U.S.C. § 505(b), and 40 CFR § 70.8(d), I hereby deny the petition of GCLPI on behalf of the Sierra Club concerning the King Finishing title V operating permit.

So ordered.

Dated: October 9, 2002

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Christine Todd Whitman  
Administrator