

IN THE MATTER OF)	
EASTMAN KODAK COMPANY)	AMENDMENT TO ORDER
)	Petition No.: II-2003-02
Permit ID: 8-2614-00205/01801)	
Facility DEC ID: 8261400205)	
)	
Issued by the New York State)	
Department of Environmental Conservation)	
Region 8)	

Order Amending In the Matter of Eastman Kodak Company,
Petition II-2003-02, dated February 18, 2005

I. Background

By Order dated February 18, 2005, the Administrator granted in part and denied in part a petition brought by the New York Public Interest Research Group (“NYPIRG”), requesting that EPA object to the issuance of a state operating permit, pursuant to title V of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, to the Eastman Kodak Company, Kodak Park facility (“Kodak Park”), located in Rochester, New York. In the Matter of Eastman Kodak Company, Petition II-2003-02, Order Responding to Petitioner’s Request that the Administrator Object to Issuance of a State Operating Permit (February 18, 2005)(“February 18, 2005 Order” or “2005 Order”).

In preparing revisions to the permit in response to the Administrator’s Order, the New York State Department of Environmental Conservation (“DEC”) requested that EPA reconsider certain aspects of the Order.¹ By letter dated December 6, 2005, EPA concluded that three issues may warrant amending the 2005 Order and requested additional information from DEC in order to complete a review of the request. On December 23, 2005, DEC provided EPA with additional information, in response to this request.²

EPA has thoroughly examined and considered the information provided by DEC to support its request, and for the reasons set forth in amended Sections IX.E.1, IX.I, IX.N.1 and IX.N.2, below, there continue to be sufficient bases on which to grant Petitioner’s claims regarding each of these issues. However, these amendments do affect the monitoring that will be incorporated into Kodak’s modified permit to satisfy EPA’s objections. The changes to the 2005 Order are as follows:

¹ See letter from Thomas Marriott, Division of Air Resources, DEC Region 8, to Ray Werner, Chief, Air Programs Branch, EPA Region 2, dated August 16, 2005.

² See letter from Ray Werner, Chief, Air Programs Branch, EPA Region 2, to Thomas Marriott, Division of Air Resources, DEC Region 8, dated December 6, 2005; and letter from Thomas Marriott, Division of Air Resources, DEC Region 8, to Ray Werner, Chief, Air Programs Branch, EPA Region 2, dated December 23, 2005.

- (A) The change to Section IX.E.1, p. 27 of the 2005 Order, provides flexibility in setting the averaging period for the annual cap on the benzene quantity from facility waste. In the 2005 Order, EPA imposed a 12-month rolling total, without allowing for consideration of actual process data.
- (B) The change to Section IX.I, p. 35 of the 2005 Order, provides flexibility in determining periodic monitoring for processes within emission units F-AC001, U-00018 and U-00020 that qualify as insignificant emission units. In the 2005 Order, EPA required periodic inspections and logs for all subject equipment, and did not apply EPA's existing policy considerations regarding insignificant emission units. *See Note 4, infra.*
- (C) The change to Section IX.N, subsections 1 and 2, pp. 44-46 of the 2005 Order, provides flexibility in the frequency for performing Reference Test Method 24 in compliance determinations for volatile organic compounds (VOC) in coatings and fountain solutions, in terms of periodic monitoring at emission units U-00004, Process P40 and U-00018, Process R02. In the 2005 Order, EPA did not consider the use of Method 24 that is specified in the New York State Implementation Plan ("SIP"), nor did EPA allow for consideration of actual process data in determining the monitoring frequency.

Accordingly, today's Order amends EPA's response to three of the issues raised in the petition. All other sections of EPA's February 18, 2005 Order remain unchanged.

The Kodak Park facility is a large, integrated manufacturing plant that produces photographic films, papers and synthetic organic chemicals. Among the 68 emission units covered by the Kodak Park title V permit³ are surface coating lines, silver operations, chemical reactors, lithographic printing lines, thermoplastic manufacturing operations, semiconductor manufacturing equipment, two hazardous waste incinerators and research and development activities.

II. Revised Sections of the 2005 Order

A. Revised Section IX.E.1

The first of two issues that NYPIRG identified in its petition, with respect to the National Emission Standard for Hazardous Air Pollutants (NESHAP) at 40 CFR 61 subpart FF for Benzene Waste Operations, addressed Kodak's exempt status from this rule.

National Emission Standard for Benzene Waste Operations

³ A separate permit was issued to Trigen Cinery Solutions to operate the boilers and associated equipment for providing steam and electricity to support the manufacturing activities. EPA addressed a separate NYPIRG petition on these support activities in a separate Order. In the Matter of Kodak Park Division Power and Steam Generation, Petition II-2003-01, Order Responding to Petitioner's Request that the Administrator Object to Issuance of a State Operating Permit (February 18, 2005).

Exempt Benzene Producer

Petitioner alleges that the permit must be revised to clarify that Kodak is an exempt benzene producer according to 40 CFR § 61.342(a). Petitioner notes that draft permit condition 23 sets out requirements for “exempt benzene producers,” but fails to clearly state the regulation’s applicability to Kodak, and does not require Kodak to document its exempt or non-exempt status. Petition at 31.

The Permit Review Report (PRR) that DEC submitted to EPA with the proposed Kodak title V permit states, “Conditions under this rule outline the requirements for chemical manufacturing plants . . . to show that they manage less than 10 megagrams (10⁶ grams, or Mg) per year of benzene from facility waste. Staying below this threshold exempts the plant from the substantive requirements of the Benzene Recovery NESHAP. The Kodak Park facility is exempt because the permit caps the facility below the threshold.” PRR at 47 of 91.

Final modified permit conditions 19-23 address the requirements of 40 CFR subpart FF that were addressed in draft permit conditions 23-27. Final modified permit condition 19 (draft condition 23) describes the methods for determining whether a facility is exempt from this regulation, and how frequently to calculate this. Final modified permit condition 19 also states that the “Upper Permit Limit” benzene mass flow rate is an annual total of 10 Mg. Final modified permit conditions 20-23 include requirements to calculate, record, and report which of Kodak’s benzene containing waste streams are exempt from substantive requirements of subpart FF. For example, see final modified permit condition 21, stating the recordkeeping requirements of 40 CFR § 61.356(b)(1) subpart FF. Thus, Petitioner’s concern that Kodak is not required to document its exempt status is unfounded.

However, EPA finds that the cap of 10 Mg placed in final modified permit condition 19 (draft condition 23) may not be practically enforceable. According to this permit condition, data used to calculate the total annual benzene quantity from facility waste need only be compiled annually. Depending on specific process information, this may be insufficient to assure that the facility will at no time exceed this limit. Thus, EPA is granting this aspect of Petitioner’s request, and requiring DEC to increase the monitoring if warranted, and justify its monitoring decision in the PRR, whether or not the monitoring is increased. In this case, consistent with EPA’s periodic monitoring rule, the monitoring should be sufficient to yield reliable data from the relevant time period that are representative of a source’s compliance with the permit (40 CFR § 70.6(a)(3)(i)(B)). Therefore, if DEC determines that the monitoring in the permit is adequate and need not be increased, DEC should explain its determination to the public, discussing the relevant source-specific factors supporting DEC’s decision, such as the margin of compliance and/or other provisions in the permit that DEC believes otherwise assure compliance with the cap.

B. Revised Section IX.I.

Petitioner alleged that several permit conditions are either lacking in any monitoring, or contain other language that is insufficient to assure compliance. Specifically, Petitioner claimed

that conditions 37, 40, 41, 253, 265 and 266, among others, lack any type of monitoring, and the permit can not assure compliance where there is no monitoring. Petition at 34. EPA grouped the listed conditions into six categories, with the five above-named conditions grouped into the VOC Work Practice Issues category, identified as Section IX.I. in the 2005 Order.

Lack of Monitoring: VOC Work Practice Issues

The types of VOC sources addressed by the conditions identified by NYPIRG include: solvent metal parts cleaners (emission unit F-AC001, final permit conditions 28, 31, 32 (draft conditions 37, 40, 41)); lithographic and screen printing processes (emission unit U-00018, final permit condition 269 (draft condition 253)); and miscellaneous metal parts cleaning and degreasing (emission unit U-00020, final permit conditions 278 and 279 (draft conditions 265 and 266, respectively)). The sources in emission units F-AC001 and U-00020 are subject to 6 NYCRR part 226 and the sources in emission unit U-00018 are subject to 6 NYCRR part 234.

Final condition 28 identifies the general requirements for solvent metal cleaning such as maintaining equipment to minimize leaks, the posting of proper operating procedures, and covering degreasers when not in use as outlined in 6 NYCRR § 226.2. Conditions 31, 32 and 279 incorporate the requirements of 6 NYCRR §§ 226.4(a) and (c) and outline operating requirements for cold cleaners and conveyORIZED degreasers. Condition 269 incorporates the requirements of 6 NYCRR § 234.6. This provision prohibits the use of open containers for the handling, storage and disposal of volatile organic compounds. Finally, condition 278 incorporates the requirements of 6 NYCRR § 226.3(a) which specifies the types of control equipment required for various degreasing operations. None of these underlying applicable requirements imposes monitoring of a periodic nature.

As previously discussed, when the underlying applicable requirement imposes no monitoring of a periodic nature, the permit must contain periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). While the draft permit lacked monitoring to assure the facility's compliance with these requirements, the March 1, 2004 revised permit requires the facility to conduct daily observations that these requirements are being followed and maintain records of instances when the appropriate criteria have not been met. In addition, condition 269 requires logs for each inspection, even when the criteria are met. Each condition specifies that these monitoring results are required to be included in the semiannual monitoring reports and the annual compliance certifications.

In its Order dated February 18, 2005, EPA agreed with DEC that a daily observation is appropriate as periodic monitoring for solvent cleaners and degreasers. However, EPA did not mandate that the frequency be daily. In its February 18, 2005 Order, EPA granted the petition, requiring Kodak to, "keep logs of each inspection, including but not limited to: (1) the date and time of each . . . inspection, (2) the areas and/or items observed and (3) any corrective actions taken," at emission units F-AC001 and U-00020.

EPA recognizes that some of the above-described equipment may appropriately be classified as insignificant emission units, according to 40 CFR § 70.5(c). EPA notes that the

equipment in emission unit F-AC001, small solvent cleaning activities located throughout the facility, would otherwise be considered exempt or trivial consistent with 6 NYCRR § 201-3, except that it is subject to these generally applicable requirements regarding work practices, as described in permit conditions 28, 31 and 32. Thus, EPA has determined that it is appropriate to treat the sources in emission unit F-AC001 as insignificant activities for monitoring purposes.⁴ Should DEC determine that additional equipment (at other emission units) at the Kodak Park facility warrants this classification, DEC may rely on EPA's existing policy statements (*see* Note 4, *infra*) regarding monitoring for any such equipment. If DEC makes such a determination, it must explain its reasons in the PRR.

There remains sufficient basis for EPA to grant the petition to require Kodak to keep logs of each inspection at emission unit U-00020. EPA notes that DEC has the authority to revise the inspection frequency for the above-described emission units, through the permit modification process. *See* 40 C.F.R. § 70.7(e)(4). If DEC relaxes the monitoring to less than daily for significant processes at emission units U-00018 or U-00020, DEC must explain its rationale in the PRR, including how the new monitoring will assure that Kodak complies with the applicable requirement.

C. Revised Sections IX.N.1 and IX.N.2

Petitioner alleges that some permit conditions are unenforceable because they impose no requirements on Kodak. Rather, they impose requirements on some entity other than Kodak. Petition at 32. Two of Petitioner's examples of permit conditions with this alleged deficiency are described below.

1. No Requirements Imposed on Kodak: Surface Coating Supplier Certifications

Petitioner's first example is draft permit condition 16. This condition states the requirements of 6 NYCRR § 228.6(b), relating to suppliers and users of coatings containing volatile organic compounds, and is located in the facility-wide portion of the title V permit. The condition states, "Any person selling a coating for use in a coating line subject to 6 NYCRR Part 228 must, upon request, provide the user with certification of the volatile organic compound content of the coating supplied." Petitioner claims the permit must be revised to prohibit Kodak from buying a coating the sale of which is violating § 228.6(b). Petition at 32.

In its Responsiveness Summary, DEC stated that, "Kodak, in its chemical manufacturing processes, may in certain cases also be a supplier to of [sic] certain coatings and inks. The

⁴ The solvent cleaning activities included in emission unit F-AC001 are described in Kodak's application as exempt under 6 NYCRR 201-3.2(c)(39). According to Kodak's application, these sources include, but are not limited to 51 non-vapor phase solvent cleaning activities, which are exempt based either on size/throughput, or on solvent boiling point, or on low VOC content. For the treatment of insignificant emission units, EPA provides permitting authorities with broad discretion in determining the nature of any periodic monitoring. This policy is based on the belief that these emissions points are typically associated with minimal or inconsequential environmental impacts. *See Clean Air Act Proposed Approval of Revision to Operating Permits Program in Washington*, 67 Fed. Reg. 43575, 43577 (June 28, 2002); *See, e.g., White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* at 3 - 4 (March 5, 1996).

requirements in condition 16 (6 NYCRR § 228.6) apply to this facility and the recordkeeping necessary for compliance is covered in conditions for 6 NYCRR § 228.5(a), also in the permit.” Appendix G, page 35 of 40.

In the final modified permit, the facilitywide portion of the permit no longer contains a general condition citing 6 NYCRR § 228.6(b). Instead, this regulation has been included as a unit-specific condition for those emissions units that are subject to this provision. Further, the draft and final modified permits both contain unit-specific conditions as described by DEC in its Responsiveness Summary. The permits contain numerous conditions requiring Kodak to maintain production records as well as supplier certifications for coating materials associated with processes conducted by Kodak that are subject to 6 NYCRR § 228.5(a).

For example, final modified permit condition 56 cites 6 NYCRR § 228.6(b) and contains the same language as draft permit condition 16, and applies to Kodak’s paper and plastic web coating activities identified as emission unit U-00004, process P40. To assure compliance with this condition, final modified permit condition 51 sets forth Kodak’s recordkeeping requirements for this process, and requires reports semiannually. Condition 57 also requires Kodak to perform a VOC analysis using reference test method 24 of 40 CFR part 60 Appendix A upon request by the DEC. Both conditions 51 and 57 require Kodak to keep records of coating materials produced. Thus, the threshold question raised by Petitioner is satisfied; namely that Kodak, in its capacity as a supplier, must meet obligations set forth in the permit.

Thus, EPA reaches a second question. That is, whether these obligations in the permit are consistent with part 70. In this case, EPA finds that the underlying applicable requirement contains no monitoring that is of a periodic nature. While DEC did add monitoring to the permit, requiring Kodak to maintain records and test the VOC content of its coatings upon request, EPA finds this does not satisfy the requirements of 40 CFR § 70.6(a)(3)(i)(B). This conclusion is based on EPA’s determination that the added monitoring does not specify a frequency, and thus is not of a periodic nature.

For this reason, EPA is granting the petition on this point, and requiring DEC to revise the permit to include a frequency of recordkeeping requirements. For example, in Condition 57, Item 57.2, a frequency may be specified for “purchase, usage and/or production records of the coating material including solvents.” In addition, DEC should consider specifying a frequency of testing in accordance with Method 24 of 40 CFR part 60, Appendix A, for coatings where the VOC content is near to the applicable SIP limit. This will assure Kodak’s compliance with 6 NYCRR § 228.6(b) for Kodak’s paper and plastic web coating activities at process P40.

2. No Requirements Imposed on Kodak: Graphic Arts Supplier Certifications

Petitioner’s second example is draft permit condition 252 (final modified permit condition 268). This condition states the requirements of 6 NYCRR § 234.5(b), relating to suppliers and users of coatings or inks containing volatile organic compounds, and applies to Kodak’s offset lithographic printing equipment, identified as emission unit U-00018. Condition 268 states, “Any person selling a coating or ink for use at a printing process subject to 6 NYCRR

Part 234 must, upon request, provide the user with certification of the volatile organic compound content of the coating or ink supplied.” Petitioner’s concerns are similar to those expressed above in section N.1.

In its Responsiveness Summary, DEC stated that, “Kodak, in its chemical manufacturing processes, may in certain cases also be a supplier to of [sic] certain coatings and inks. The requirements in condition 252 (6 NYCRR § 234.5) apply to this facility and the recordkeeping necessary for compliance is covered in conditions for 6 NYCRR § 234.(b)(3), [sic] also in the permit.” Appendix G, page 35 of 40.

Kodak’s draft permit included the recordkeeping described by DEC in its Responsiveness Summary at condition 256. This condition, citing 6 NYCRR § 234.4(b)(3), required Kodak to keep a monthly log identifying each material used in the lithographic printing process, the quantity used and its VOC content.

In the final modified permit, DEC imbedded this type of record keeping requirement in permit conditions citing other sections of the part 234 regulations. For the lithographic printing process described above, final modified permit condition 270 addresses the requirements of 6 NYCRR § 234.5(b). This condition requires Kodak to maintain records of formulation data pursuant to 6 NYCRR § 234.4(b)(3), including production records as well as supplier certifications for fountain solutions and solvents. Any other parameter used to verify compliance must also be kept, and reporting is required semiannually. Further, condition 270 requires Kodak to perform a VOC analysis using reference test method 24 of 40 CFR part 60 Appendix A upon request by the DEC.

As in section N.1, the threshold question raised by Petitioner is satisfied; namely that Kodak, in its capacity as a supplier, must meet obligations set forth in the permit. *See* condition 270. Further, EPA is reaching the related question of whether these obligations in the permit are consistent with part 70.

In this case, EPA finds that the underlying applicable requirement contains no monitoring that is of a periodic nature. While the draft permit did include monthly recordkeeping, the final modified permit includes monitoring that does not specify a frequency, and thus is not of a periodic nature. On February 18, 2005, EPA granted the petition on this point, and required DEC to revise the permit to include periodic Method 24 testing for emission unit U-00018. However, when EPA granted this issue on February 18, 2005, it did so for all of emission unit U-00018, overlooking the shutdown of process R01.

By letter dated May 4, 2004, Kodak notified DEC and EPA that a lithographic printer, the sole air pollution source in process R01 at emission unit U-00018, had been sold and physically removed from the plant. The May 4, 2004 notification letter was submitted to DEC in accordance with Kodak Park’s Operational Flexibility Plan’s Protocol. *See* Condition 8, Item 8.2, Part III. Under the Protocol, Kodak may proceed with its stated change 30 days after DEC’s receipt of the notification, unless DEC determines that a more detailed review is required. *Id.* at

III.C.1. It is EPA's understanding that DEC considers this change to fall within the scope of the Protocol.

Accordingly, EPA finds no basis to object to the permit regarding monitoring for this printer that has been removed. The permit will be updated to reflect the removal of this equipment, at the time of the next modification. In the interim, Kodak shall comply with the amended permit conditions that were proposed in its notification letter. *Id.* at III.D.1. Therefore, Petitioner's claims related to process R01 are moot.

One of the changes incorporated in the modification of Kodak's title V permit was the addition of a second process under emission unit U-00018. A screen printing process is now described as process R02 under U-00018. Recordkeeping requirements similar to those described in final modified permit condition 270 are included for this process at condition 1-43, citing 6 NYCRR § 234.3(c).

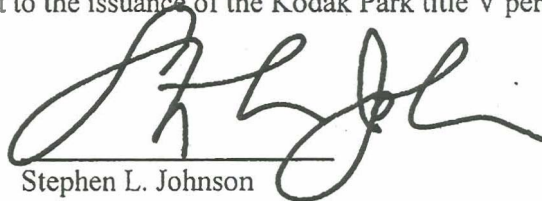
For the reasons explained above, EPA finds that the permit's requirements for Kodak to maintain records and test the VOC content of its inks/coatings or adhesives upon request do not satisfy the requirements of 40 CFR § 70.6(a)(3)(i)(B). Therefore, EPA is granting the petition on this point, and requiring DEC to revise the permit to include a frequency of recordkeeping requirements. For example, in Condition 1-43, Item 1-43.2, a frequency may be specified for "purchase, usage, and/or production records of the inks/coatings, or adhesives." In addition, DEC should consider specifying a frequency of testing in accordance with Method 24 of 40 CFR 60, Appendix A, for materials where the VOC content is near to the applicable SIP limit. This will assure Kodak's compliance with 6 NYCRR § 234.3(c) for Kodak's screen printing process R02.

III. Conclusion

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I amend EPA's February 18, 2005 Order, which denied in part and granted in part NYPIRG's petition requesting the Administrator object to the issuance of the Kodak Park title V permit.

APR 4 2006

Date



Stephen L. Johnson
Administrator