

BEFORE THE ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of Noranda Alumina, LLC  
Title V Air Operating Permit  
for its Alumina Processing Facility  
Gramercy, St. James Parish, Louisiana

Permit No.: 2453-V2

Issued to Noranda Alumina, LLC  
By the Louisiana Department of Environmental Quality

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**PETITION REQUESTING THE ADMINISTRATOR TO OBJECT  
TO TITLE V OPERATING PERMIT NO. 2453-V2  
ISSUED TO NORANDA ALUMINA, LLC**

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Pursuant to section 505(b) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2) and 40 C.F.R. § 70.8(d), Louisiana Environmental Action Network (LEAN) and Sierra Club petition the Administrator of the U.S. Environmental Protection Agency to object to the Title V Air Operating Permit (No. 2453-V2, "Title V Permit") issued on February 15, 2011 by the Louisiana Department of Environmental Quality ("LDEQ") to Noranda Alumina, LLC for the Bauxite Processing, Products, and Power Areas of Noranda's alumina processing facility in Gramercy, St. John Parish, Louisiana.

Sierra Club and LEAN base this Petition on comments they filed with LDEQ on September 23, 2010, during the public comment period on the draft Title V Permit. Sierra Club and LEAN also base this Petition on comments submitted to LDEQ by EPA Region 6 on October 4, 2010.

## SUMMARY

“[W]ithin 60 days after the petition is filed[,] [t]he Administrator shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of [the Clean Air Act], including the requirements of the applicable implementation plan.” 42 U.S.C. 7661d(b)(2). In reviewing a Title V petition, the Administrator will “generally look to see whether the Petitioner has shown that the state did not comply with its SIP-approved regulations governing PSD permitting or whether the state's exercise of discretion under such regulations was unreasonable or arbitrary.”<sup>1</sup> This inquiry includes whether the permitting authority “(1) follow[ed] the required procedures in the SIP; (2) [made] PSD determinations on reasonable grounds properly supported on the record; and (3) describe[d] the determinations in enforceable terms.”<sup>2</sup>

Noranda’s Title V Permit violates the following Clean Air Act and the Louisiana SIP for the following reasons:

1. The Title V Permit fails to incorporate applicable PSD requirements because LDEQ violated the PSD public participation requirements; the stack tests show the NOx emissions exceed PSD thresholds, yet LDEQ failed to require PSD requirements for NOx emissions; and LDEQ failed to support its conclusion that emissions from the yield improvement project do not trigger PSD review.

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<sup>1</sup> *In the Matter of Louisville Gas and Electric Company*, Trimble County, Kentucky (hereinafter “*Trimble*”), Part 70/PSD Air Quality Permit # V-02-043 Revisions 2 and 3, Order Responding to Issues Raised in April 28, 2008 and March 2, 2006 Petitions, and Denying in Part and Granting in Part Requests for Objection to Permit, August 12, 2009, at 5 (citing *In re East Kentucky Power Cooperative, Inc. (Hugh L. Spurlock Generating Station)*, Petition No. IB-2006-4 (Order on Petition) (August 30, 2007); *In re Pacific Coast Building Products, Inc.* (Order on Petition) (December 10, 1999); *In re Roosevelt Regional Landfill Regional Disposal Company* (Order on Petition) (May 4, 1999)).

<sup>2</sup> *Trimble* at 5 (citing 68 Fed. Reg. 9,892 (March 3, 2003) and 63 Fed. Reg. 13,795 (March 23, 1998)).

2. LDEQ failed to include emission limits for PM2.5 emissions.
3. The Title V Permit fails to include Maximum Achievable Control Technology Standards for Noranda's Industrial Boilers.

For these reasons, the Administrator should object to the Title V Permit within 60 days upon receipt of this Petition, as required by § 505 of the Act, because it violates the applicable requirements of the Act and the Louisiana implementation plan. 42 U.S.C. 7661d(b)(2). The Administrator should revoke the Title V Permit upon her objection. 42 U.S.C. 7661d(b)(3).

### **PROCEDURAL REQUIREMENTS**

LDEQ transmitted a draft Title V Permit and response to comments to the Administrator for review on December 14, 2010, triggering EPA's 45-day review period as required by CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2). Sierra Club and LEAN file this Petition within the sixty days following the end of EPA's review period as required by CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2). The Administrator has sixty days to grant or deny this Petition. *Id.* Since LDEQ has issued the Title V Permit, "the Administrator shall modify, terminate, or revoke such permit" upon its objection. 42 U.S.C. § 7661d(b)(3).

### **OVERVIEW OF PROJECT**

The purpose of this permitting procedure is twofold:

First, LDEQ "incorporated the stack tests for the three Kilns, Gas Turbine/Waste Heat Boiler No. 3, and the Power Boiler No. 2." Final Preliminary Determination Summary, 2/15/11, p. 2. LDEQ revised NOx emission limitations for these units following stack tests conducted after it issued the initial PSD permit in 2003.

Second, LDEQ permitted emissions that result from the “increase of the maximum annual throughput of the Bauxite resulting from a yield improvement project independent of the rebuild project from 1.25 to 1.28 million metric tons per year, as alumina.” *Id.*

### **SPECIFIC OBJECTIONS**

#### **I. EPA MUST OBJECT TO THE TITLE V PERMIT BECAUSE IT FAILS TO INCORPORATE APPLICABLE PSD REQUIREMENTS.**

##### **A. LDEQ Issued the Permits in Violation of the PSD Public Participation Requirements.**

Louisiana SIP regulations implementing PSD require LDEQ to “provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.” LAC 33:III.509.Q.2.e. During the public comment period, Petitioners requested a public hearing on the proposed PSD Permit PSD-LA-684 (M-1) and Title V Permit 2453-V2. *See* Sierra Club and LEAN Hearing Request Letters, Exh. A. LDEQ denied Petitioners’ request for a public hearing. *See* LDEQ 10-26-11 Ltr Denying Hearing, Exh. B. By denying Petitioners’ request for public hearing, LDEQ violated LAC 33:III.509.Q.2.e.

LDEQ also violated Louisiana SIP requirements for public participation by failing to provide an opportunity for public comment on its preliminary determination on PSD applicability for stack test emissions changes and yield improvement project. *See* LAC 33:III.509.Q.2.a-c (requiring LDEQ to provide its “preliminary determination” and “a copy or summary of other materials, if any, considered in making the preliminary determination” for public comment prior to its permit decision). The preliminary determination that LDEQ published for public comment in connection with draft PSD-LA-684 (M-1) and the preliminary

determination that LDEQ released when it issued the final PSD-LA-684 (M-1) are entirely different. Compare LDEQ's Final Preliminary Determination Summary issued 2/15/11 with final PSD permit to Draft Preliminary Determination Summary issued 8/19/10 with proposed PSD permit. The public had no opportunity to comment on the preliminary determination on which LDEQ based its final decision.

For example, LDEQ said in the determination released for public comment that it based the Projected Actual Emissions for the project on the stack test results *as well as* the yield improvement project.<sup>3</sup> When it issued the final PSD permit, LDEQ announced that "this is incorrect," stating that the yield improvement project emissions are not included in the emissions estimate it made available for public comment. Resp. to EPA Cmmts, p. 4; Resp. to Petitioners' Cmmts, p. 3. LDEQ also claimed that it was a mistake to provide "Projected Actual Emissions" figures for the stack test emissions as it had in the preliminary determination it released for public comment "[b]ecause the definition of this term was not adopted by LDEQ until December 20, 2005, [and therefore] should not be used in the PSD analysis associated with reconstruction of the [Bauxite Processing Area]." *Id.*

Therefore, although the preliminary determination that LDEQ published for public comment shows a change in Projected Actual Emissions for NO<sub>x</sub> at +549.91 tpy, with a net

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<sup>3</sup> Draft Preliminary Determination Summary, pp. 3 & 7, Exh. Note that the Preliminary Determination Summary further states that the PM, NO<sub>x</sub>, and VOC emission "from the initial project, and supported by the test results, are above PSD significance levels and a netting analysis is required." *Id.* at 2. To determine these emissions, LDEQ compared Projected Actual Emissions before the project (reflecting corrected proposed project emissions reported in the initial PSD Permit No. PSD-LA-684) and after the project (based on the stack tests results of the kilns, power boiler 2 and the gas turbine *and* an increase in the annual bauxite production from 1.25 to 1.28 million metric tons per year). *Id.* at 3, table 1, fn. 1 & 2. Note that LDEQ determined that PM and VOC emissions net out of PSD review, but that NO<sub>x</sub> emissions must undergo a PSD analysis. *Id.* at 3-4 (showing modifications at the facility result in a net NO<sub>x</sub> emissions increase of 1,349 tons per year).

increase of +1349.90 tpy, LDEQ has now decided to ignore those figures without giving the public the opportunity to comment on the new figures. *See* Final Preliminary Determination Summary. LDEQ likewise failed to provide the emissions estimates associated with the yield improvement project that it considered when making its final PSD decision. *Id.*

Indeed, one of the stated purposes of PSD is to "assure that any decision to permit increased air pollution in any area to which [PSD] applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process." 42 U.S.C. § 7470(5). LDEQ failed to allow for public participation in this PSD decision because it did not provide the public with the PSD information on which it made its decision *before* it made its decision. As such, EPA should object to the Title V Permit because it does not incorporate emissions limits and standards from a valid PSD review. A Title V permit must "include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable [state] implementation plan." 42 U.S.C. § 7661c(a); LAC 33:III.507.A.3 ("Any permit issued under the requirements of this Section shall incorporate all federally applicable requirements for each emissions unit at the source."); 40 C.F.R. § 70.2 ("Applicable requirements" include "[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 [which includes the PSD program] that implements the relevant requirements of the Act.")

B. Noranda's Stack Tests Show NO<sub>x</sub> Emissions Exceed the PSD Threshold.

In its final PSD permit decision, LDEQ provides no emissions analysis for the stack test emissions. *See* Final Preliminary Determination Summary. Instead, LDEQ claims:

NOx emissions from the kilns were found to be higher than originally permitted, whereas NOx emissions from the gas/turbine/HRSG and power boiler were shown to be substantially lower. In total, permitted emissions from these five sources decreased by 681.79 tons per year.

*Id.* at 5. Not only did LDEQ fail to make this information available to the public during the comment period, it failed to support it in its final decision.

LDEQ arrived at these NOx emission figures by eliminating Projected Actual Emissions for stack test PSD emissions analysis because LDEQ asserted in its response to comments that “[b]ecause the definition of this term was not adopted by LDEQ until December 20, 2005, [it] should not be used in the PSD analysis associated with reconstruction of the [Bauxite Processing Area].” Resp. to EPA Cmmts, p. 4; Resp. to Petitioners’ Cmmts, p. 3. LDEQ provides no support for its retroactive application of its air regulations. In fact, LDEQ admits that neither the Louisiana SIP nor Clean Air Act regulations addresses retroactive PSD review. Resp. to EPA Cmmts, p. 4. LDEQ does cite a 1996 EPA Region 6 letter. *Id.* (citing Ltr from J. Luehrs, EPA R6, to A Saitas, Texas NRCC, 4/11/96). But this letter does not support LDEQ’s position. Instead it says: “The reviewing authority should treat the [additional emissions discovered after permit issuance] as new construction, and process the permit accordingly. These emissions should be treated as new emissions and permitted under current BACT.” Ltr from J. Luehrs, EPA R6, to A Saitas, Texas NRCC, 4/11/96. Likewise, here, LDEQ must analyze the emissions increases from the stack tests using Projected Actual Emissions as it had in the preliminary determination that LDEQ released for public comment. There, NOx emissions result in an increase of +549.91 tpy, exceeding the PSD threshold. And Noranda was unable to net out with a net increase of NOx emissions at +1349.90 tpy. Draft Preliminary Determination Summary, p. 3.

Because of LDEQ's failed PSD review for the stack emissions, the Title V Permit fails to include applicable PSD requirements—though emission rates from performance stack tests conducted in 2003 show the plant is a major source of NO<sub>x</sub> emissions. Instead of conducting the appropriate Best Achievable Control Technology analysis as required by Louisiana's PSD regulations for its NO<sub>x</sub> emissions, and meeting the other requirements for a major source of NO<sub>x</sub>, Noranda asked LDEQ to modify its Title V permit to incorporate higher emission limitations to accommodate the plant's actual NO<sub>x</sub> emissions. This scheme violates the Clean Air Act. Noranda cannot obtain a synthetic minor source permit based on low/inaccurate emissions estimate, and then ask LDEQ to update its Title V permit to include the higher emissions rate without meeting PSD requirements for those emission sources that Noranda discovered do in fact trigger PSD.

Furthermore, upon discovering the plant's true NO<sub>x</sub> emissions rate, LDEQ should have reopened and revised the PSD and Title V permits it issued in 2003. The regulations provide that LDEQ may reopen and revise any Title V or PSD permit if any person demonstrates that:

[T]he permit contains a material mistake, that inaccurate statements were made in establishing the terms of or conditions of the permit, or that the permit must be revised to assure compliance with any federally applicable requirement or any applicable provision of LAC 33:III, Air Quality Regulations.

LAC:III.529.A. Here, the emissions tests—which the plant submitted to LDEQ in 2003—show that the emissions estimate on which LDEQ granted the minor source permit was grossly inaccurate. Noranda used the wrong emissions factor when it applied for the PSD and Title V permits that LDEQ issued in 2003. *Compare* Emissions Calculations for Kiln Cap 4-01. This is a material mistake that requires LDEQ to reopen the permits to address all PSD requirements including BACT for the plant's NO<sub>x</sub> emissions.



C. LDEQ Fails to Support its Conclusion that Emissions from the Yield Improvement Project Do Not Trigger PSD Review.

In its final decision, LDEQ used the actual-to-projected-actual PSD applicability test<sup>4</sup> from 2005 and 2006 to determine if the yield improvement project will result in a significant emissions increase. *Id.* at 6. Reversing itself from its draft Preliminary Determination Summary, LDEQ concluded that NO<sub>x</sub> emissions for the yield improvement project do not exceed the PSD significance level. *Id.*<sup>5</sup> Again, the public had no opportunity to comment on LDEQ's revised conclusion that the yield improvement project would not exceed PSD threshold limits.

LDEQ explains that the “[b]aseline actual emissions are based on 2005 and 2006 data, during which the [Bauxite Production Area] produced an average of 1.173 million metric tons per year.” LDEQ Resp. to EPA Cmmts, p. 2. LDEQ, however, provides no support for the average production figure of 1.173. LDEQ also explains:

In determining “projected actual emissions,” the owner or operator shall exclude, in calculating any increase in emissions that result from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the conservative 24-month period used to establish “baseline actual emissions” and that are also unrelated to the particular project, including any increased utilization due to product demand growth.<sup>6</sup>

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<sup>4</sup> The actual-to-projected-actual applicability test for projects that only involve existing emissions units under LAC 33:III.509.A.4.c is as follows: “A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions, as defined in Subsection B of this Section, and the baseline actual emissions, as defined in Subparagraphs B. Baseline Actual Emissions a and b of this Section, for each existing emissions unit, equals or exceeds the significant amount for that pollutant, as defined in Subsection B of this Section.”

<sup>5</sup> Note that LDEQ said in its draft Preliminary Determination Summary that the project’s emissions are above PSD levels—and later in the final Preliminary Determination Summary, LDEQ says the same thing. *Id.* at 7.

<sup>6</sup> *Id.* at 2-3 (citing LAC 33:III.509.B (In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source: . . . c. shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions as defined in this Subsection and that are also unrelated to the particular project, including any increased utilization due to product demand growth.”)).

Relying on this exclusion, LDEQ said that it “discounted” “any emissions increases attributed to the difference between the observed throughput in 2005 and 2006 and the area’s capacity prior to the yield improvement project.” *Id.* at 3. However, LDEQ fails to provide information on the emissions that it eliminated from the analysis. *Id.* at 3.

Indeed, the only information in the record on “accommodated emissions” is Noranda’s emissions calculations for the yield improvement project where it says that it excluded “that portion of the emissions from the impacted units following the yield improvement project that those units could have accommodated during the 24-month consecutive period used to establish the baseline actual emissions and that are unrelated to the yield improvement project.”<sup>7</sup>

Noranda, however, excluded emissions that the effected units *could not legally accommodate* during 2005 and 2006. That is, practically enforceable conditions in Noranda’s Title V permit in effect during the 24-month period provide that “[t]o maintain emissions from Emission Points 1-70, 1-73, 2-73. . . [and] [e]mission Cap[] 4-01, . . . *permittee shall maintain maximum throughput of the Bauxite Processing (BP) Area to 1.25 million metric tons per year (as alumina).*” Permit No. 2453-V1, Special Condition 7 (emphasis added). PSD-LA-648, issued April 2003, also contains a practically enforceable limit on yield production at 1.25 tons per year. PSD—LA-648, Special Condition 3. Therefore, these permits require Noranda to limit

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<sup>7</sup> Noranda lists the plant’s three kilns as units with NOX emissions increases due to the yield improvement project. Noranda calculates the following NOx emissions for the kilns in tons per year:

Kiln #1 (**1-73**) has a PAE of 111.47 and a BAE of 105.79  
Kiln #2 (**2-73**) has a PAE of 125.61 and a BAE of 118.98  
Kiln #3 (**1-70**) has a PAE of 202.99 and a BAE of 192.06

*Id.* By excluding NOx emissions from the kilns in calculating the PAE, Noranda claims that the emission increases from the project do not exceed the PSD threshold for NOx. Application, Appendix 2, NSR Analysis, EDMS # 48810181, pp. 556-561 (relying on section c. of the Louisiana SIP definition of PAE, LAC 33:III.509.B).

throughput to 1.25 tons per year *as a means to maintain emission limits* for the very units that Noranda now claims could have accommodated the additional throughput.<sup>8</sup>

Noranda cannot have it both ways. In 2003, Noranda asked for a cap in its Title V and PSD permits so that it can avoid PSD requirements. Now Noranda wants to remove that cap—or synthetic minor limit—to show that it was “capable of accommodating” the increased emissions associated with the yield improvement project all along. This is illegal under the Clean Air Act. Noranda cannot claim that the existing kilns (Emission Points 1-70, 1-73, 2-73), which Noranda lists as impacted units, could have “accommodated” emissions from the yield improvement project because the kilns could not have “accommodated” emissions that violate the permits.

D. LDEQ Wrongfully Concluded that BACT Does Not Apply to NOx Emissions.

LDEQ claims on page 7 of its final preliminary determination that BACT does not apply to the NOx emissions from the project:

LDEQ states:

The existing kilns and dryer support the additional production without any physical modification or change in method of operation to the units. . . . Therefore this activating is not considered a physical modification or change in method of operation [and] BACT is not required for emissions from the kilns, gas turbines, and boilers.”

Final Preliminary Determination Summary at 7.

LDEQ’s conclusion is incorrect. Louisiana regulations implementing PSD define “major modification” as “[a] physical change or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.” LAC

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<sup>8</sup> Note that Permit No. 2453-V1 caps Kiln emissions (4-01) at 545.31 tons per year. This is based on, among other things, a maximum production rate of 1,375,000 tons of alumina per year. The proposed Title V permit caps Kiln emissions (4-01) at 1,353.67 tons per year. This is based in part on a higher feed rate of 1,408,000 tons of alumina per year.

33:III.509.B; *see also* 40 CFR 52.21(b)(2)(i). The regulations further provide: “A physical change or change in the method of operation shall not include . . . [a]n increase in the hours of operation or in the production rate, *unless such change would be prohibited under any federally enforceable*<sup>9</sup> *permit condition* which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166.” LAC 33:III.509.B (emphasis added); 40 CFR 52.21(b)(2)(iii)(f) (identical). By definition, then, the regulations define a “change in the method of operation” as including an increase in the hours of operation or in the production rates that would be prohibited by a federally enforceable permit condition established pursuant to 40 CFR 52.21 (PSD regulations), or 40 CFR 51.166 (SIP PSD regulations).

PSD permit PSD-LA-684 (M-1) authorizes an increase of the maximum annual throughput of the Bauxite resulting from a yield improvement project from 1.25 to 1.28 million metric tons per year. PSD permit PSD-LA-684 issued April 22, 2003 restricts annual throughput to 1.25 tons per year. *See* Specific Condition 7 in PSD-LA-684 (“Permittee shall maintain maximum throughput of the bauxite Processing (BP) Area to 1.25 million metric tons per year (as alumina).”). And the current Title V permit 2453-V1 provides: “*To maintain emissions . . . ,* permittee shall maintain maximum throughput of the Bauxite Processing (BP) Area to 1.25 million metric tons per year (as alumina). Specific Condition 7 (emphasis added). Since Noranda seeks an increase in its production rate from 1.25 to 1.28 million metric tons per year

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<sup>9</sup> LAC 33:III.509 defines “federally enforceable” as: “[A]ll limitations and conditions that are enforceable by the administrator, including those requirements developed in accordance with 40 CFR Parts 60, 61, and 63, requirements within any applicable State Implementation Plan, any permit requirements established in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.”

and this increase is prohibited by federally enforceable permit conditions, the change is, by definition, a “physical change or change in method of operation.”

EPA addressed a similar issue regarding the East Kentucky Cooperative Spurlock facility. There the EPA said: “[T]he PSD regulations specifically provide that operating a source . . . in a manner that is inconsistent with a prior permit application is considered by definition to be a ‘change in the method of operation.’” Plaintiff United States’ Memo in Support of Its Fourth Motion for Summary Judgment, *U.S. v. East Kentucky Power Cooperative, Inc.*, Case No. 04-34 KSF, pp 32-33 (E.D. Ky., filed January 17, 2006). EPA further concluded that “operation not in accordance with a PSD application or authority to construct (as required by 40 CFR 52.21(r)(1)) or operation not in or operation not in accordance with a state operating permit application or permit . . . constitutes, by definition, a change in the method of operation of a source.” *Id.* EPA stressed that the exclusion “clearly defines operation not in accordance with a previously submitted PSD application or PSD permit, or state operating permit application or permit, as a regulatory ‘change in the method of operation.’” *Id.*

## II. LDEQ MUST REJECT THE PERMITS BECAUSE LDEQ FAILED TO INCLUDE EMISSION LIMITS FOR PM2.5.

LDEQ failed to include limits for PM2.5 emissions in the Title V Permit. Neither the permits nor the application identify the facility as a source of direct PM2.5 emissions or as a PM2.5 source by virtue of significance thresholds for its precursor NO<sub>x</sub>. LDEQ said “conservatively assumed” that PM2.5 = PM10 and that because PM10 is below the threshold, then PM2.5 must also be below the threshold. Resp. to Petitioner Cmmts, p. 6. But LDEQ failed to provide a case specific demonstration its use of PM10 as a surrogate for PM2.5 is reasonable under the facts and circumstances of this permit.

In 1997, the EPA set forth an interim policy that allowed permitting authorities to use “PSD and NSR program requirements for controlling PM10 emissions” as a surrogate approach for reducing PM2.5 emissions,” where it proved “administratively impracticable” to directly address PM2.5 due to “technical and information deficiencies.” However, in 2008, the EPA announced that as a result of technical developments and EPA actions, those technical “difficulties have largely been resolved,” but allowed some continued use of the surrogate policy. 73 Fed. Reg. 28,321, 28,340-41 (May 16, 2008).

On August 12, 2009 EPA issued an order that a permit applicant may not avoid its obligation to assess the impacts of, and controls for, PM2.5 merely by providing an analysis of PM10. *In re: Louisville Gas & Electric Co., Trimble County, Kentucky, Petition No. IV-2008-3, Order Responding to Issues Raised in April 28, 2008 and March 2, 2006 Petitions, and Denying in Part and Granting in Part Requests for Objection to Permit* at 42 (Aug. 12, 2009), at 44. In order to use EPA’s PM10 surrogate policy, the permit applicant would have to provide a case specific demonstration that such use is reasonable under the facts and circumstances of the permit. *Id.* The EPA stated that this demonstration must include: (1) a showing of sufficient correlation between the plant’s PM10 and PM2.5 emissions so as to provide “confidence that the statutory requirements will be met for PM2.5 using the controls selected through a PM10 NSR analysis” and (2) a showing “that the degree of control of PM2.5 by the control technology selected in the PM10 BACT analysis will be at least as effective as the technology that would have been selected if a BACT analysis specific to PM2.5 had been considered.” *Id.* at 45.

Although the EPA may sometimes allow use of the surrogate policy, this is dependent upon “a case-by-case evaluation of the use of PM10 in individual permits.” *See* Letter from

Stephen Johnson to Paul Cort, (Jan. 14, 2009) at 3.<sup>10</sup> This case-by-case analysis is also required by governing case law. *E.g.*, *National Lime Assoc. v. EPA*, 233 F.3d 625, 637 (D.C. Cir. 2000) (stating agency may substitute control of surrogate substance only where it shows (1) that regulated pollutant is invariably present in surrogate, (2) surrogate control technology indiscriminately captures regulated pollutant, and (3) surrogate control technology are only means by which regulated pollutant may be reduced); *Mossville Env'tl. Action Now v. EPA*, 370 F.3d 1232, 1242-43 (requiring reasoned explanation of correlation between surrogate and regulated pollutant).

EPA must object to the Title V Permit for failure to include PM2.5 limits and failure to provide an appropriate analysis on the pollutant.

III. THE TITLE V PERMIT FAILS TO INCLUDE MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY STANDARDS FOR NORANDA'S INDUSTRIAL BOILERS.

As LDEQ acknowledges, the Noranda Alumina facility is a “major source” of hazardous air pollutants under § 112 of the Clean Air Act. LDEQ Air Permit Briefing Sheet, p. 8 (“contiguous facility is a major source of hazardous air pollutants (HAPs) under federal rules.”). Section 112 defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” 42 U.S.C. 7412(a)(1). The proposed Title V permit would allow the facility to emit 32.78 tons per year of hazardous air pollutants, which is more than the 25 tons per year threshold limit. This is an increase of 9.64 tons per year from the permitted limit of 23.14 tons per year in the current Title V Permit. 2453-VI, 4/22/03, Annual Emission Rates for TAPs.

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<sup>10</sup> Available at <http://www.epa.gov/nsr/documents/20090115cort.pdf>.

The proposed permit violates Clean Air Act § 112(j) by failing to impose case-by-case MACT standards for the facility's industrial boilers. *See* 42 U.S.C. § 7412(j)(5) (requiring that the “permit . . . shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply [if EPA had timely promulgated a standard].”).

Under §112(c) of the Clean Air Act, EPA created source categories for major sources that emit one or more hazardous air pollutants listed in §112(b).<sup>11</sup> The category of industrial boilers is defined as “[A] boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.” 40 C.F.R. 63.7575 (2009). Noranda's three waste heat boilers (EQT 167, 168, & 169) and three gas turbine/waste heat boilers (RLP 159-GTW-1, RLP 159-GTW-2, & RLP 159-GTW-3) all fit within the EPA's definition of industrial boilers.

EPA was required under the Clean Air Act to set maximum achievable control technology (MACT) standards for all major industry source categories by November 15, 2000.<sup>12</sup> EPA failed to meet this deadline to establish MACT standards for the industrial boilers category. It was not until January 13, 2003 that EPA proposed a rule for industrial boiler standards.<sup>13</sup> EPA's final rule for industrial boilers was published December 6, 2006.<sup>14</sup> However, on July 30, 2007 the D.C. Circuit vacated and remanded EPA's Boilers Rule.<sup>15</sup> EPA has promulgated new rules, but those are not yet effective.

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<sup>11</sup> Robert J. Martineau, Jr., *Hazardous Air Pollutants in Clean Air Act Handbook*, 227, 239 (Robert J. Martineau, Jr. and David P. Novello eds., 2004).

<sup>12</sup> 58 Fed. Reg. 63941 (Dec. 3, 1993).

<sup>13</sup> 68 Fed. Reg. 1660 (Jan. 13, 2003).

<sup>14</sup> 71 Fed. Reg. 70651 (Dec. 6, 2006).

<sup>15</sup> *NRDC v. EPA*, No. 04-1385, (D.C. 2007).

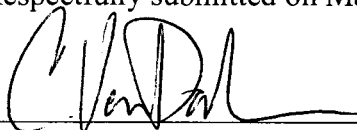


The fact that EPA's MACT rule for industrial boilers is not yet effective does not mean that states and regulated parties are off the hook for regulating boilers. Section 112(j) of the Clean Air Act provides that in the event EPA fails to meet its deadline to promulgate standards, regulated parties are required to submit permit applications beginning 18 months after the deadline date.<sup>16</sup> This 18-month period after the deadline for industrial boiler standards ended on May 15, 2002. Therefore, under §112(j) of the Clean Air Act, regulated parties are required to submit permit applications as of May 15, 2002 that include MACT standards for industrial boilers.

Because there are currently no effective MACT standards for industrial boilers provided by the EPA, the Clean Air Act requires that MACT determinations be done on a case-by-case basis.<sup>17</sup> Noranda must submit a MACT Hammer Part 2 application. 40 C.F.R. § 63.52(e).

Section 112(j) and 40 C.F.R. §§ 63.50-63.56 are applicable requirements, and EPA must object to the Title V Permit because LDEQ failed to require them.

Respectfully submitted on March 28, 2011 by,



Corinne Van Dalen, Supervising Attorney  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, Louisiana 70118  
Phone (504) 865-8814  
Fax (504) 862-8721

*On behalf of Louisiana Environmental Action Network,  
Sierra Club, and O'Neil Couvillion*

---

<sup>16</sup> Clean Air Act, 42 U.S.C. §7412(j)(1-3).

<sup>17</sup> *Id.*

Cc:

Lisa P. Jackson, Administrator  
U.S. EPA Headquarters  
Ariel Rios Bldg.  
Mail Code 1101A  
1200 Penn. Ave., NW  
Washington, D.C. 20460

Dr. Alfredo Armendariz  
Regional Administrator, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202  
(214) 665-6444

Peggy Hatch, Secretary  
Louisiana Department of Environmental Quality  
602 N. Fifth Street  
Baton Rouge, LA 70802

Mr. Charles Preston  
Environnemental Manager  
Noranda Alumina, LLC  
1111 N. Airline Hwy, Ste., 3370  
Gramercy, LA 70052



**Louisiana Office**  
716 Adams St.  
New Orleans, LA  
USA 70118

20 September 2010

Ms. Soumaya Ghosn  
LDEQ Public Participation Group  
PO Box 4313  
Baton Rouge, LA 70821-4313  
[soumaya.ghosn@la.gov](mailto:soumaya.ghosn@la.gov)  
FAX (225) 219-3309

RE: Proposed Part 70 Air Operating Permit Renewal/Modification

Noranda Alumina, LLC/Bauxite Processing, Products and Power Areas  
1111 Airline Hwy in Gramercy  
St. James Parish, Louisiana  
AI Number: 1388  
Permit Number: Permit NO. 2453-V1  
PSD-LA-684 (M1)  
Activity Number: PER20080001

Noranda Alumina, LLC/Cajunite  
1111 Airline Hwy in Gramercy  
St. James Parish, Louisiana  
AI Number: 1388  
Permit Number: Permit NO. 2453-V2  
PSD-LA-684 (M1)  
Activity Numbers: PER20040005 and PER20070006, 2387-VO

Dear Ms. Ghosn:

On behalf of our members, the Sierra Club is requesting that the Louisiana Department of Environmental Quality hold a public hearing on the above referenced Proposed Part 70 Air Operating Permit Renewals/Modifications for both Noranda Alumina, LLC/Bauxite Processing, Products and Power Areas and Noranda Alumina, LLC/Cajunite.

I appreciate your attention and consideration of this matter.

Best Regards,

Jordan Macha  
Sierra Club  
504.861.4837  
[jordan.macha@sierraclub.org](mailto:jordan.macha@sierraclub.org)

Exhibit A

# Louisiana Environmental Action Network

Helping to make Louisiana safe for future generations

## LEAN

August 31, 2010

Ms. Soumaya Ghosn  
LDEQ Public Participation Group  
P. O. Box 4313  
Baton Rouge, LA 70821-4313

**MAIN FILE**

original to  
copy to

JOA  
MFG/GH Ghosn  
PS Ghosn

RE: Proposed Part 70 Air Operating Permit Renewal/Modification

Noranda Alumina, LLC/Bauxite Processing, Products and Power Areas  
1111 Airline Hwy in Gramercy  
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2010 SEP - 7 AM 10: 51  
DEQ - OES

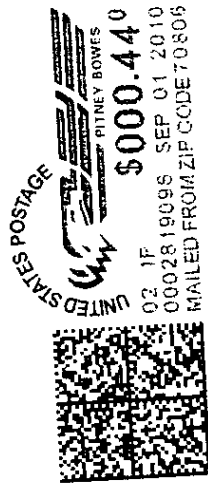
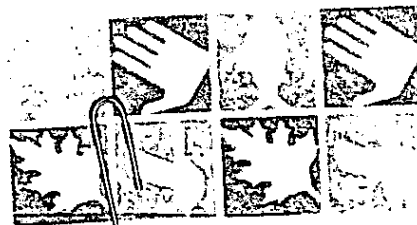
Dear Ms. Ghosn:

The on behalf of our members the Louisiana Environmental Action Network/LEAN is requesting that the Louisiana Department of Environmental Quality hold a public hearing on the above referenced Proposed Part 70 Air Operating Permit Renewals/Modifications for both Noranda Alumina, LLC/Bauxite Processing, Products and Power Areas and Noranda Alumina, LLC/Cajunite.

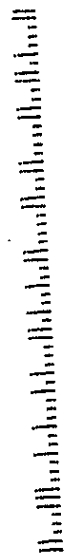
Yours truly,

Marylee Orr, Executive Director  
Louisiana Environmental Action Network/LEAN  
Lower Mississippi Riverkeeper/LMRK

Louisiana Environmental Action Network  
POST OFFICE BOX 66323  
BATON ROUGE, LOUISIANA 70896  
(225) 928-1315  
WWW.LEANWEB.ORG



Ms. Soumaya Ghosn  
LDEQ Public Participation Group  
P. O. Box 4313  
Baton Rouge, LA 70821-4313



70821-4313

BOBBY JINDAL  
GOVERNOR



PEGGY M. HATCH  
SECRETARY

**State of Louisiana**  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL SERVICES

Certified Mail No.: 7005 0390 0006 1022 1158

Agency Interest No. 1388

Activity No.: PER20040005, PER20070006, PER20080001

Ms. Jordan Macha  
Sierra Club  
Louisiana Office  
716 Adams St.  
New Orleans, Louisiana 70118

RE: Request for Public Hearing  
Noranda Alumina, LLC- Bauxite Processing, Products, and Power Areas and Cajunite Area  
Gramercy, St. James Parish, Louisiana

Dear Mr. Macha:

By letter dated September 20, 2010, you requested that LDEQ hold a public hearing on the Proposed Part 70 Air Operating Permit Renewals/Modifications for both Noranda Alumina, LLC Bauxite Processing, Products, and Power Areas (AI No. 1388; PER20040005 and PER20070006) and Noranda Alumina, LLC Cajunite Area (AI No. 1388; PER20080001). This letter is to advise you that a public hearing will not be granted.

Sincerely,

A handwritten signature in black ink, appearing to read "CSNL", written over a horizontal line.

Cheryl Sonnier Nolan  
Assistant Secretary

26 October 2010  
Date

CSN:AHG

BOBBY JINDAL  
GOVERNOR



PEGGY M. HATCH  
SECRETARY

**State of Louisiana**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**ENVIRONMENTAL SERVICES**

Certified Mail No. : 7005 0390 0006 1022 1165

Agency Interest No. 1388

Activity No.: PER20040005, PER20070006, PER20080001

Ms. Marylee Orr  
Executive Director  
Louisiana Environmental Action Network/LEAN  
Lower Mississippi Riverkeep/LMRK  
P. O. Box 66323  
Baton Rouge, Louisiana 70896-6323

RE: Request for Public Hearing  
Noranda Alumina, LLC- Bauxite Processing, Products, and Power Areas and Cajunite Area  
Gramercy, St. James Parish, Louisiana

Dear Ms. Orr:

By letter dated August 31, 2010, you requested that LDEQ hold a public hearing on the Proposed Part 70 Air Operating Permit Renewals/Modifications for both Noranda Alumina, LLC Bauxite Processing, Products, and Power Areas (AI No. 1388; PER20040005 and PER20070006) and Noranda Alumina, LLC Cajunite Area (AI No. 1388; PER20080001). This letter is to advise you that a public hearing will not be granted.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Nolan".

Cheryl Sonnier Nolan  
Assistant Secretary

26 October 2010  
Date

CSN:AHG