

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
Pope and Talbot, Inc., Lumber Mill)	
Spearfish, South Dakota)	
)	ORDER RESPONDING TO
)	PETITIONERS' REQUEST THAT
Permit Number: 28.4401-09)	THE ADMINISTRATOR OBJECT
)	TO ISSUANCE OF A
)	STATE OPERATING PERMIT
Issued by the South Dakota Department of)	
Environment & Natural Resource,)	
Air Quality Program)	
)	Petition Number: VIII-2006-04
)	
)	

ORDER PARTIALLY GRANTING AND PARTIALLY DENYING
PETITION FOR OBJECTION TO PERMIT

The United States Environmental Protection Agency ("EPA") received a petition on April 11, 2006, from Biodiversity Conservation Alliance, Rocky Mountain Clean Air Action, Defenders of the Black Hills, Native Ecosystems Council, Prairie Hills Audubon Society of Western South Dakota, Center for Native Ecosystems, Nancy Hilding, Brian Brademeyer, and Jeremy Nichols (hereafter "Petitioners"). Petitioners requested that EPA object, pursuant to section 505(b)(2) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7661d(b)(2), to the issuance of a state operating permit to Pope and Talbot, Inc., for operation of a lumber mill facility located at 1501 West Oliver Street, Spearfish, South Dakota. The permittee will be referred to as "Pope and Talbot" for purposes of this Order. Pope and Talbot is a wood products company that produces finished lumber and wood pellets from raw logs. The Pope and Talbot facility ("Facility") includes a wood waste boiler, a 1980 Lamb Debarker, a rotary drier, chip grinder, cooling tower and associated equipment. The various plant operations include: wood waste combustion, lumber drying in kilns, chip grinding, bark transfer and storage. The modified and renewed permit was issued by the South Dakota Department of Environment & Natural Resources ("DENR") Air Quality Program on February 15, 2006, pursuant to Title V of the Act, the federal implementing regulations at 40 C.F.R. Part 70, and chapter 34A-1-21 of the South Dakota Codified Laws and the Air Pollution Control Regulations of the State of South Dakota.

The petition alleges that the February 15, 2006 Pope and Talbot, Inc. renewed and modified Title V permit fails to: (1) ensure compliance with Carbon Monoxide (CO)

emissions limits, (2) require sufficient periodic monitoring of CO emissions, (3) comply with Title V and South Dakota's State Implementation Plan (SIP) permit modification requirements, (4) require sufficient opacity monitoring, (5) require prompt reporting of deviations, (6) adequately support the determination that the Facility is not subject to Maximum Achievable Control Technology ("MACT") requirements for emissions of hazardous air pollutants, and (7) contains several problematic permit conditions that warrant objection. Petitioners have requested that EPA object to the issuance of the Pope and Talbot Title V permit for the foregoing reasons and pursuant to the requirements of section 505(b)(2) of the Act, 40 CFR § 70.8(d) and the applicable substantive federal and state regulations.

EPA has reviewed these allegations in accordance with the standard set forth by section 505(b)(2) of the Act, which places the burden on the Petitioners to "demonstrate to the EPA Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of 40 C.F.R. Part 70. *See also*, 40 C.F.R. § 70.8(c) (1); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002).

In reviewing the merits of the various allegations made in the petition, EPA considered information in the permit record including: the petition; pertinent sections of the permit application; Mr. Nichols' November 11, 2005 comments to DENR in response to DENR's solicitation for public comment; DENR's December 22, 2005 response to Mr. Nichols comments (hereafter "Response to Comment"); final Operating Permit (Permit #28.4401-09) for Pope and Talbot, Inc. issued by DENR in February 15, 2006; Statement of Basis Document for Renewal with Modification of the Operating Permit issued by DENR in September 2005 (hereafter "Statement of Basis") and the Pope and Talbot Stack Test Report, February 2006. Based on the review of all the information before me, I grant in part and deny in part the Petitioners' request for an objection to the issuance of the renewed and modified Title V operating permit to Pope and Talbot, Inc. to operate a lumber mill in Spearfish, South Dakota for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of Title V. EPA granted final interim approval to the Title V operating permit program submitted by the State of South Dakota effective April 21, 1995. 60 Fed. Reg. 15066 (March 22, 1995). EPA also granted final full approval to South Dakota's Title V operating permit program effective February 28, 1996. 61 Fed. Reg. 2720 (January 29, 1996). *See also* 40 C.F.R. Part 70, Appendix A. Major stationary sources of air pollution and other sources covered by Title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a).

The Title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements") but

does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable emission control requirements. *See* 57 Fed. Reg. at 32250, 32251 (July 21, 1992). One purpose of the Title V program is to enable the source, EPA, States, and the public to better understand the applicable requirements to which the source is subject and to readily discern whether the source is meeting those requirements. Thus, the Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to a facility's emission units and that compliance with these requirements is assured.

Under section 505(a) of the Act and 40 C.F.R. § 70.8(a), States are required to submit all proposed Title V operating permits to EPA for review. Section 505(b)(1) of the Act authorizes EPA to object if a Title V permit contains provisions that are not in compliance with applicable requirements, including the requirements of the applicable SIP. *See also* 40 C.F.R. § 70.8(c)(1).

Section 505(b)(2) of the Act states that if the EPA does not object to a permit, any member of the public may petition the EPA to take such action, and the petition shall be based on issues that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to do so or unless the grounds for objection arose after the close of the comment period. *See also* 40 C.F.R. § 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

In a letter dated November 11, 2005, Petitioners submitted comments to the DENR during the public comment period, raising concerns with the draft Title V operating permit that provided a partial basis for this petition. DENR responded to the comments in a letter to the Petitioners dated December 22, 2005.

ISSUES RAISED BY PETITIONERS

I. Carbon Monoxide (CO) Facility-wide Limit

Petitioners raise several issues concerning the facility-wide CO limit contained in Pope and Talbot's permit. Petitioners claim that the permit fails to ensure compliance with the CO limit, because it does not contain conditions to ensure that the limit is not exceeded and does not require sufficient periodic monitoring of CO emissions. Petitioners assert further that because of these deficiencies with the CO limit, the Facility is not currently in compliance with Prevention of Significant Deterioration ("PSD") requirements at 40 CFR §52.21 et. seq. and a schedule of compliance may be needed.

Permit Condition 6.9 provides that Pope and Talbot shall not emit greater than or equal to 238 tons of CO per 12 months rolling period. DENR's Statement of Basis and Response to Comment states that DENR considers Pope and Talbot to be a major

stationary source for PSD purposes based on CO emissions, but that a PSD permit review and permit were not required because Pope and Talbot was constructed before the 1974 promulgation of the PSD program. (Statement of Basis at 11). DENR also determined that the proposed addition of a grinder and cyclone (units #12 and #13) were not major modifications for PSD purposes. Id.

DENR's Response to Comment further states "Pope and Talbot proposed equipment is not subject to the PSD program.... There are no federal or state regulations that require Pope and Talbot to accept limitations to avoid the PSD program if they are not applicable to it." (Response to Comment at 4). DENR explains the origin of the CO emission limit (despite its determination that PSD requirements do not apply) as follows: Pope and Talbot does not believe that DENR's estimated carbon monoxide emissions from the boiler are accurate and does not believe it should be considered an existing major source under the PSD program. Pope and Talbot has agreed to accept a facility-wide carbon monoxide limit...until it can be demonstrated through a stack test that the carbon monoxide emissions are not above the major source threshold under the PSD program." Id. at 2.

Based on DENR's Response to Comments and the discussion in the Statement of Basis, it appears that the limit established in Condition 6.9 is not required under the PSD program or required to avoid PSD requirements because the Pope and Talbot facility is considered a grandfathered source, and has not undergone a major modification for PSD purposes and thus is not subject to 40 C.F.R. § 52.21. However, there is also language in the permit suggesting that DENR established the condition based on a belief that it was required to avoid PSD applicability. Condition 9.1 of the permit provides that the Facility's exemption from PSD requirements is based on Condition 6.9.

EPA notes that DENR staff informed EPA staff in a recent (October 31, 2006) phone conversation that the source conducted a stack test and has demonstrated to the satisfaction of DENR that the CO emissions are below the PSD major source threshold. (February 2006 Stack Test Report, available from the South Dakota Department of Environment and Natural Resources (DENR), PMB 2020, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501-3182)

I (A) Permit Fails to Ensure Compliance with CO Limits

Petitioners allege that the Title V permit fails to ensure compliance with the 238 tons per year (tpy) CO limit established in the permit to avoid PSD requirements. Petitioners argue that based on the operating rates allowed by the Title V permit, CO emissions can greatly exceed 238 tpy because the permit did not limit wood waste consumption, natural gas consumption and/or the hours of operation of the lumber mill. Petitioners allege that Condition 6.9 establishes the potential to emit ("PTE") emissions on the basis of an emission factor of 0.6 lb/MMBtu and that if the boiler were to operate 24 hours a day, seven days a week, CO emissions would amount to 267 tpy. Petitioners conclude that in order to ensure compliance with the permit limit of 238 tpy, there should be a limit on wood and natural gas consumption that correspond to such limit.

The Facility is required under Condition 6.9 together with Condition 5.8.4 of the Title V permit to monitor and record compliance with the plantwide CO synthetic minor source tpy limit (i.e., a limit established to keep the source's emissions below the major source threshold) established at the request of the Facility by the State under authority of the State operating permit requirements, ARSD 74:36:05:16.01(8). Condition 6.9 of the Title V permit establishes the plantwide CO emission limits at 238 tpy on a 12-month rolling average and specifies three equations prescribing exactly how the Facility must calculate total monthly CO emissions for the Boiler (unit #1) and the Dryer (unit #10). The permit requires the Facility to demonstrate that it is meeting limits on CO emissions by requiring monthly monitoring, recordkeeping and reporting of fuel usage (wood waste usage and natural gas fuel usage); recorded monthly fuels usage is multiplied by prescribed fuels emissions factors for CO, and this is summed with the previous months on a 12 month rolling basis to demonstrate continuous compliance with the annual 238 tpy CO limit. (See Permit Conditions 1.1, 5.1, 5.4, 5.8.4, and 6.9). Permit Standard Condition 1.1, Table 1, describes the emissions units, operations and processes at the Facility, including the 2 units with the potential to emit CO, the Dryer and the Boiler, their maximum operating emissions rate, and the associated controls.

In light of these Conditions, and in particular the 12-month rolling limit and terms of Condition 6.9, EPA does not agree that a specific limit on the amount of wood and natural gas consumed at the Facility is necessary to ensure compliance with Condition 6.9. Instead, the Facility has a 238 tpy annual limit on CO; compliance with this limit is assured by the monitoring requirements for CO emissions using the equations prescribed in Condition 6.9. Other conditions such as the annual compliance certification in Condition 5.6, recordkeeping and reporting requirements of Condition 5.1, monitoring log requirement of 5.8.4 and annual records requirements of Condition 5.4 can serve to assure compliance with the emission limit. Therefore, I deny the petition on this issue.

I (B) Permit Lacks Sufficient Periodic Monitoring of CO Emissions

Petitioners allege that limits on CO emissions are unenforceable as a practical matter due to the lack of sufficient periodic monitoring of CO emissions. Petitioners cite Condition 6.9 as deficient because, they argue, it only requires monitoring of CO emissions once every five years in accordance with Condition 7.6 and that it is insufficient under 40 C.F.R. § 70.6(a)(3)(i)(B). They further argue that one-time performance testing fails to constitute sufficient periodic monitoring in accordance with 40 C.F.R. § 70.6(a)(3)(i)(B). Petitioners cite the *Appalachian Power Co. v. Environmental Protection Agency*, 208 F. 3d 1015 (D.C. Cir 200) case to support their claim that one time test does not constitute periodic monitoring.

Petitioner's allegations regarding Conditions 6.9 and 7.6 are incorrect. The permit as discussed above requires the Facility to demonstrate that it is meeting the 238 tpy limit on plantwide CO emissions every month based on required monthly monitoring and recordkeeping of fuel usage (wood waste usage and natural gas fuel usage). (See Permit Conditions 5.1, 5.4, 5.8.4, and 6.9). For the reasons discussed above, we find that Conditions 5.4, 5.8.4, 5.1 and 6.9 requiring monitoring and recordkeeping, and prompt

deviation reporting meet the periodic monitoring requirement for demonstrating compliance with CO emissions. I, therefore, deny Petitioners' request on this issue.

I(C) Schedule of Compliance May Need to be Included in the Title V Permit

Petitioners allege that because the Title V permit fails to ensure that CO emissions are limited below the major source threshold under PSD, the permit is currently not in compliance with PSD requirements. Petitioners argue that because the Facility is in violation of an applicable requirement at the time of permit issuance, the permit must include a schedule containing a sequence of actions with milestones, leading to compliance with any applicable requirement in accordance with 42 U.S.C. § 7661b (b) (1) and 40 C.F.R. § 70.5(c) (8) (iii) (C).

I deny the petition on this claim because, for the reasons discussed above, the permit terms and conditions assure compliance with the 238 tpy CO limit; moreover, test results documented in the February 2006 stack test report prepared for the Facility seem to indicate the Facility plant-wide CO emissions are approximately 210 tpy; thus the emissions appear to be below the PSD major source level of 250 tpy. This suggests that, even in the absence of this 238 tpy limit, the Facility is not subject to PSD.

II. Permit Fails to Ensure Compliance with South Dakota SIP and Title V Permit Modification Procedure

Petitioners claim that the Condition 6.9 of the Title V permit allows CO emission factors for the boiler and the dryer to be changed through minor permit amendments, regardless of the significance of the changes in relation to CO emissions and regardless of the criteria set forth at Condition 3.4 in the Title V permit, which is also enumerated in the South Dakota SIP at ARSD 74:36:05:35¹. Petitioners argue that the permit cannot automatically authorize a minor permit amendment as it does in Condition 6.9.

¹ **74:36:05:35. Requirements for minor permit amendments.** A minor permit amendment is an amendment to an existing permit and is issued by the secretary. A minor permit amendment may be issued by the secretary if the proposed revision meets the following requirements:

- (1) It does not violate any applicable requirement;
- (2) It does not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;
- (3) It does not require or change a case-by-case determination of an emission limit or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (4) It does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement that the source has assumed to avoid an applicable requirement, a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I, and an alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Clean Air Act; and

EPA agrees with Petitioners that the statement in Condition 6.9 that “The change in the emission factor will be considered a minor permit amendment,” is inappropriate if not properly limited. Many changes in emission factor as result of future performance tests conducted in accordance with the requirement of Condition 7.0 could be considered a minor permit amendments. However, if such change results in a higher CO emission factor which would cause a change to a permit limit and/or permit term, that could not be allowed as a minor permit amendment. Furthermore, ARSD 74:36:05:35 (see footnote 1) lists various provisions, under which changes could not be accomplished through a minor permit amendment if the PTE limit were to increase. Based on this discussion, I grant Petitioners’ claim that Condition 6.9 as currently written contradicts the provisions of Condition 3.4 and the ARSD 74:36:05:35. Therefore, I direct DENR to remove from Condition 6.9 the language “The change in the emission factor will be considered a minor permit amendment” or appropriately limit the term to circumstances that are allowable as minor permit amendments.

III. Permit Fails to Require Sufficient Periodic Opacity Monitoring; Monitoring that Ensures Compliance with 20% Opacity Limit.

Petitioners allege that the Title V permit fails to require sufficient periodic monitoring of opacity and/or fails to require monitoring that ensures compliance with applicable requirements, in violation of 40 C.F.R. § 70.6(a)(3)(i)(B) and 40 C.F.R. § 70.6(c)(1) because the permit Condition 8.1 fails to require continuous opacity monitoring.

Petitioners allege that the two-step requirement of conducting monthly visible emissions test (step 1) and the subsequent Method 9 (step 2) if any visible emissions are detected as required by Condition 8.1 is inadequate to ensure compliance with the 20% opacity limit established in Condition 6.0 for all emitting units because visible emissions monitoring is not an adequate means to ensure compliance. Petitioner argues that compliance can only be determined by a Method 9 observation and that visible emissions monitoring cannot substitute for Method 9.

Petitioners further allege that, even if the two-step monitoring strategy were appropriate, monthly visible emissions reading is not adequate and such readings must be required daily. Petitioner also objects to provisions in the permit that allow the frequency of visible emission monitoring to be reduced to semi-annually or annually.

The DENR response to comment document at page 13 states “The monitoring frequency and methods used to determine opacity compliance in permit condition 8.1 were developed based on the federal requirements in 40 CFR, Part 63, Subpart LLL. The procedures in the permit condition reflect monitoring approaches that were deemed sufficient by EPA’s rule for determining compliance with the opacity requirements for

(5) It does not constitute a modification under Title I of the Clean Air Act.

portland cement plants. Therefore, DENR believes that the opacity procedures in permit condition 8.1 are sufficient in demonstrating compliance with the opacity limits in permit condition 6.1.”

Condition 8.1 establishes periodic monitoring in accordance with ARSD 74:36:13:07² to demonstrate compliance with opacity limits in Condition 6.0 (Condition 6.1 establishes 20 % opacity limit for all emission points in Table 1). The DENR response fails to address why the monitoring EPA specified for portland cement plants is appropriate for use in this permit for a lumber mill. While, as a general principle, EPA believes routine source surveillance pursuant to visible emissions survey, along with recordkeeping and reporting of such surveillance followed by Method 9 readings when visible emissions monitoring suggests an exceedance can provide assurance that sources are meeting their visible emissions requirements, there is a need to justify the monitoring frequency on a case specific basis. The justification should be provided in the permit’s statement of basis or other documents contained in the permit’s administrative record.

Petitioners question the appropriateness of step 1 of Conditions 8.1(a), (b) and (c) by citing EPA’s position that a large margin of compliance alone is insufficient to demonstrate that emissions will not change over the life of the permit.³ Petitioner asserts that visible emission/opacity monitoring must occur on at least a daily basis. EPA believes that the possibility of significant variability in the types of fuel (wood waste) may result in significant variability of emissions. The DENR has failed to address this issue in its response on the comment.

² 74:36:13:07. **Credible evidence.** Notwithstanding any other provision, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of a plan. Credible evidence is as follows:

(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(a) A monitoring method approved for the source pursuant to 40 C.F.R. § 70.6(a)(3) (July 1, 2005) and incorporated in a federally enforceable operating permit;

(b) Compliance methods specified in the applicable plan; and

(2) The following testing, monitoring, or information gathering methods are presumptively credible testing, monitoring, or information-gathering methods;

(a) Any federally enforceable monitoring or testing methods, including those in 40 C.F.R. Parts 51, 60, 61, and 75 (July 1, 2005);

(b) Other testing, monitoring, or information-gathering methods that produce information .

(c) Comparable to that produced by any method in subdivision (1) or (2)(a) of this section.

³ See In Matter of Fort James Camas Mill, Petition No. X-1999-1 (December 22, 2000) at 17-18.

Petitioners also argue that although step 2 of Condition 8.1 requires Method 9 observations if a visible emission is observed, such scenario would allow the source to exceed the applicable opacity limit as a practical matter. Petitioners concluded that visible emissions could exceed the 20% opacity limit, but such exceedance would not be detected until a Method 9 observation is conducted. As discussed above, Condition 8.1's two-step requirement of conducting visible emissions test and subsequent Method 9 if any visible emissions are detected is an acceptable approach. Petitioner has not supported its claim that such an approach fails to assure compliance. Although, we find that monthly visible emissions monitoring has not been adequately justified, we disagree with Petitioners' conclusion that relying on visible emissions monitoring in step 1 allows the source to exceed the 20% opacity limit without detection until the Method 9 test is performed. Condition 8.1 requires a Method 9 test to be performed within one hour if and when any visible emission from any emission unit is detected.

Therefore, I grant in part and deny in part Petitioners' request with reference to this issue. In granting Petitioners' request, I direct DENR to justify in the Statement of Basis or elsewhere in the permit's administrative record why monthly observations (or observations on a different frequency) are appropriate and to eliminate the provisions in condition 8.1, step 1, paragraph b. and c. that allow the frequency of visible emissions monitoring to be reduced to semi-annually or annually.

IV (A) Permit fails to Require Prompt Reporting of Opacity Deviations

Petitioners allege that the permit fails to require prompt reporting of opacity deviations as required by 40 C.F.R. § 70.6(a)(3)(iii)(B) in the event of soot blowing, startups, shutdowns, and malfunction. Petitioners noted that Condition 5.7 requires prompt reporting of permit violations, but expressed concern that such violations may not be reported during soot blowing, startup, shut-down, or malfunction. Condition 6.2 of the Pope and Talbot permit, "Visibility exceedances," states that an exceedance of the operating permit limit of 20% opacity established in Condition 6.1 for all permitted units, operation, or processes listed in Table 1 (See Permit at 1) is not considered a violation during soot blowing, start-up, shutdown, or malfunction. This Condition is established in accordance with the SIP ARSD 74:36:12:02(3)⁴. Thus, Petitioners are correct in concluding that exceedances during these brief periods of soot blowing, start-up, shut-

⁴ 74:36:12:02. Exceptions to restrictions. The provisions of § 74:36:12:01 do not apply in the following circumstances:

- (1) If the presence of uncombined water is the only reason for failure to meet the requirements of § 74:36:12:01;
- (2) If smoke is emitted for the purpose of training or research and is approved by the department;
and
- (3) For brief periods during such operations as soot blowing, start-up, shut-down, and malfunctions.

down and malfunction are not violations and need not be reported as violations under the terms of the Condition 5.7 of the permit. I note that the provisions specify that the exceptions are for brief periods during specific activities.

However, as Petitioners correctly point out, 40 C.F.R. § 70.6(a)(3)(iii)(B) requires “prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations and any corrective actions or preventive measures taken.”(emphasis added). I deny the petition on this point, however, because compliance is not a deviation.

In response to comment on this issue, the State said “An opacity reading during soot blowing, startup, shutdown and malfunction is not considered a deviation; it is exempt under federal law. Therefore reporting of such an event is not required.”

(Response to Comment at 9)

Based on the discussion above, I grant the petition on the issue of the permit’s failure to properly reflect the provisions of ARSD 74:36:12:02(3) and I direct DENR to revise Condition 6.2 so that it applies only during “brief periods during such operations as soot blowing, start-up, shut down, and malfunction.” To ensure compliance with this provision, I direct DENR to require Pope and Talbot to keep appropriate records of the events with event duration and make such records available for DENR inspection upon request.

IV (B) Permit does not require “Prompt” Reporting

Petitioners allege that Condition 5.7 fails to require prompt reporting of permit violations, as required by 40 C.F.R. § 70.6(a) (3) (iii) (B). Petitioners also express concern that Condition 5.7 allows the Secretary to extend the submittal deadline for a written report of permit violations up to 30 days. They concluded that “thirty days is not ‘prompt’ in relation to prompt reporting.”

Condition 5.7 of the permit “Reporting permit violations” states “in accordance with ARSD 74:36:05:16.01(9), the owner or operator shall report all permit violations. A permit violation should be reported as soon as possible, but no later than the first business day following the day the violation was discovered...The permit violation may be reported by telephone to the South Dakota Department of Environment and Natural Resource at (605) 773-3151 or by FAX at (605) 773-5286... A written report shall be submitted within five days of discovering the permit violation...upon prior approval from Secretary, the submittal deadline for the written report may be extended up to 30 days.” (Permit at 8).

Our review of 40 C.F.R. § 70.6(a) (3) (iii) (B)⁵ and ARSD 74:36:05:16.01(9) (e) (ii)⁶ does not support Petitioners' argument that DENR's determination as to appropriate timing of reports is inappropriate. We note that 40 C.F.R. § 70.6 (a) (3) (iii) (B) allows the permitting authority to define prompt, which DENR defined in the permit as "as soon as possible but no later than first business day following the day the violation was discovered." Condition 5.7 requires the source to submit a written report within five days of discovering the permit violation. Petitioners base their argument on the provision in the permit authorizing the Secretary to grant extensions up to 30 days to submit written reports. Given the stringent reporting requirement for verbal notification, EPA believes that the provision allowing for the Secretary to grant an extension of time up to 30 days for the written report to be submitted is not inconsistent with the requirement for prompt reporting of a violation. I therefore deny Petitioners' request to object to the permit on this basis.

V. Lumber Mill is subject to Maximum Achievable Control Technology

Petitioners allege that Hazardous Air Pollutants (HAPs) emissions factors and the PTE calculations in the permit are inaccurate, thus rendering as unsupported the DENR's finding that the lumber mill is not a major source of HAPs and not subject to Maximum Achievable Control Technology ("MACT"). More specifically, Petitioner claims that DENR inappropriately relied on emission factors derived from AP-42 and that EPA has stated that AP-42 emission factors do not yield accurate emissions estimates for individual sources.

The Statement of Basis estimates the HAPs uncontrolled potential emissions to be 23 tpy. (See section 4.0 "Potential Emissions"). DENR identified in the Statement of Basis that its estimates differed with SECOR's (Pope and Talbot's) HAPs estimates inventory for both the Boiler and the Dryer – the primary sources of HAP emissions at the Facility. In both instances, DENR's analyses showed higher HAP estimates than the Facility's estimates. Nonetheless, DENR states that it relied on the speciated HAP analysis in AP-42 – Chapter 1.6 (Wood Residue Combustion in Boilers) as well as the facility HAP estimates inventory to establish "that methanol will be the most abundant single HAP emitted at 1.3 pounds per hour or 5.7 tons per year" (Statement of Basis at 9). AP-42 – Chapter 1.6, however, does not list an emission factor for methanol. Thus, the basis for establishing the 5.7 tpy methanol limit is unclear. Based on these reasons, EPA agrees with the Petitioners that HAP emission calculations are not properly documented - in particular the emission factor used for methanol - and therefore I grant on this issue. I direct DENR to provide additional information on the methanol emission factor and if necessary based on any changes to that factor, provide additional analysis to determine whether this source is a major source of HAPs and thus subject to MACT.

⁵ 40 CFR 70.6(a)(3)(iii)(B) - Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. (emphasis added)

⁶ ARSD 74:36:05:16.01(9) (e) (ii) - Deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations and any corrective actions or preventive measures taken must be promptly reported and certified by a responsible official

VI. Problems with Other Permit Conditions Warranting Objection by the Administrator

Condition 5.4 – Petitioners allege that while Condition 5.4.1 requires the source to maintain a monitoring log that contains information such as the amount of fuel burned and/or the operating hours for various units at the Facility, nothing in the permit explains how the source shall calculate and record such data. Petitioners state that the Administrator must object to the permit due to the failure of the permit to explain how the source shall “calculate and record” the data required in Condition 5.4.

This Condition is established pursuant to ARSD 74:36:05:16:01(9) which contains the requirements for complying with monitoring, recordkeeping and reporting requirements. 40 C.F.R. § 70.6 (a)(3)(ii) provides that the permit shall include, with respect to recordkeeping, where applicable, analytical techniques or methods used and certain record retention requirements. The permit contains an appropriate amount of detail to meet the conditions of these two rules and, therefore, I deny Petitioners’ request on this issue.

Condition 6.1 – Petitioners allege that the permit fails to require sufficient periodic monitoring to ensure compliance with the opacity limits set out in Condition 6.1. of the permit in violation of 40 C.F.R. § 70.6(a) (3) (i) (B) and 40 C.F.R. § 70.6(c) (1). Petitioners cite to the fact that the permit does not include monitoring requirements for the presence of uncombined water and/or its effects on the opacity to ensure that this exemption is properly utilized and not abused by Pope and Talbot.

This Condition is established under ARSD 74:36:12(01) which allows for this exemption for uncombined water. (See Permit at 9) Furthermore, 40 CFR Part 60, Appendix A, Method 9 also grants this exemption. Condition 8.1, step 2 requires that if there are any visible emission observed from a unit, a certified observer shall perform a Method 9 visible emission test. Method 9 requires that a “certified observer” be able to distinguish between steam and opacity plumes and require such observer to take a reading at a point not impacted by the steam plume. Reliance on expertise of the certified reader trained to determine whether uncombined water is impacting an opacity reading is appropriate and adequately assures compliance with the underlying opacity limit. The recordkeeping requirements are designed to ensure accountability for the readings. Condition 5.8 requires the Facility to maintain a monitoring log that records information on each visible emission reading required by Condition 8.1. Such entry must be signed by the person performing the reading or evaluation. Therefore, I deny the Petitioners’ request.

Condition 6.3 - Petitioners allege that the permit fails to require sufficient periodic monitoring of Total Suspended Particulates (TSP) and/or monitoring that ensures compliance with TSP limits. Petitioners claim that the permit does not require actual monitoring of the amount of TSP emissions released into the atmosphere.

This Condition is established in accordance with ARSD 74:36:06:02(1)(b) and ARSD 74:36:06:03 which authorizes the State's limits for fuel burning units and processes (See Permit Condition 6.3, Table #2 at 10). These State's limits are established in accordance with emission equations in the above SIP citations in conjunction with unit capacities and process rates established in Condition 1.1 (See Permit Condition 1.1 – Description of permitted Units, Operations, and Processes). To demonstrate compliance with these limits, Condition 7.6 requires performance tests on units #1, #5 and #10, Condition 7.1 allows DENR to require additional stack tests if one is warranted, Condition 8.0 requires visible emissions monitoring and Condition 5.8 requires recordkeeping and reporting associated with such monitoring. EPA agrees with DENR's determination in its Response to Comment at 11 that such requirements are adequate to demonstrate compliance in this case with TSP limits in Table #2. (See Permit Condition 6.3 at 10).

Petitioners also argue that “nothing in the Statement of Basis or any other supporting permit documentation indicates that compliance with the 20% opacity limit will, in fact, limit TSP emissions below the allowable limits set forth at Condition 6.3”. Petitioners suggests that in order to support the use of opacity to demonstrate compliance with applicable TSP limits, DENR must show a correlation exists between opacity and TSP emission that would ensure compliance with the limits at Condition 6.3.

EPA disagrees with Petitioners' suggestion that correlation data between TSP limits and opacity limits is necessary. EPA believes Condition 8.1's two-step test of daily visible emission test and subsequent Method 9 to characterize opacity when there are any visible emissions is adequate. This is a more stringent requirement than would be likely to be established through a correlation between TSP limits and opacity limits.

In addition, EPA's evaluation of Table 4 (Statement of Basis at 13) reveals that, generally, there is a wide margin of compliance⁷ between the Facility's PTE and the limits established in Condition 6.3. EPA has stated that “considering a substantial difference between controlled emissions and allowable emissions, periodic observations which verify the absence of visible emissions will provide reasonable assurance of compliance with particulate matter emissions standards.”⁸

For the reasons cited above, I deny Petitioners' request.

Condition 6.5 – Petitioners allege that Condition 6.5 is unenforceable as a practical matter because “manufacturer's specification” are not defined and/or referenced. The manufacturer's specifications are considered for guidance purposes only and are not an enforceable requirement. EPA has explained its position on manufacturers' specification in other orders responding to Title V petitions. In *Lovett Generating Station*, EPA explained that “...most manufacturers' recommendations are intended to be guidelines and are frequently updated to improve operator and equipment performance as

⁷ See Fort James Camas Mill, Petition No. X-1990-1, (December 22, 2000) for further discussion of the relationship between margins of compliance and acceptable monitoring approaches.

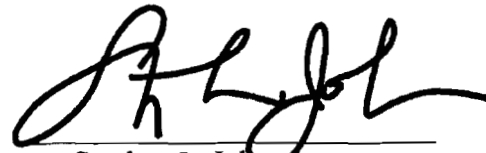
⁸ See Kerr-McGee Chemicals, LLC, Petition No. IV-2000-1, (February 1, 2002).

time goes on, therefore, EPA does not require that the specification manual itself be incorporated into a Title V permit.”⁹ Noting that frequent revisions to manufacturers’ recommendations could trigger many unnecessary permit re-openings to adopt the latest changes, EPA generally believes that incorporation of these recommendations into a permit would not be practical. *Id.* The permit, however, should clarify that the manufacturers’ specification are not enforceable and merely guidance. Therefore, I deny Petitioners’ request to object to the issuance of this permit based on this matter.

CONCLUSION

For the reasons set forth above and pursuant to section 505(b) (2) of the Clean Air Act, I grant in part and deny in part the Petitioners’ requests for an objection to the issuance of the Pope and Talbot, Inc. Title V permit.

Dated: MAR 22 2007



Stephen L. Johnson
Administrator

⁹ Petition Order # II-2001-07; In the Matter of the Lovett Generating Station, Petition at 26.