

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
401 M STREET  
WASHINGTON, D.C. 20406**

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In the Matter of the Final Operating Permit for

VIM RECYCLING, INC. located in Elkhart, Indiana

Part 70 Operating Permit Renewal  
No. 039-24536-00538

Issued by the Indiana Department of Environmental  
Management

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**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE  
OF THE TITLE V OPERATING PERMIT FOR VIM RECYCLING, INC.**

<p>Kim E. Ferraro LEGAL ENVIRONMENTAL AID FOUNDATION OF INDIANA, INC. 150 Lincolnway, Suite 3002 Valparaiso, IN 46383 219/464-0104</p>	<p>On behalf of:  BAUGO NORTH NEIGHBORHOOD GROUP by its representative members, Joyce Bellows, Edgar Bellows, Wayne Stutsman, Barbara Stutsman</p>
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Date: May 12, 2009

Petitioners, Baugo North Neighborhood Group by its representative members Joyce Bellows, Wayne Stutsman, Barbara Stutsman and Edgar Bellows (“Neighborhood Group”), and its individual members who live near the VIM Recycling facility located at 29861 Old U.S. Highway 33, in Elkhart, Indiana (the “VIM Site”), by and through their counsel, hereby Petition the Administrator of the United States Environmental Protection Agency ("Administrator" or "EPA") pursuant to the Clean Air Act ("CAA") § 505(b)(2) and 40 CFR § 70.8(d) to Object to the Issuance of the Part 70 Operating Permit Renewal No. 039-24536-00538 (the “Permit”) issued to VIM Recycling, Inc. by the Indiana Department of Environmental Management (“IDEM”) for the VIM Site.

## I. INTRODUCTION:

The CAA is designed to protect and enhance the quality of the Nation’s air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1). Pursuant to section 109 of the Act, 42 U.S.C. § 7409, the EPA has established National Ambient Air Quality Standards ("NAAQS") to protect human health and the environment for seven "criteria pollutants," including sulfur dioxide, nitrogen oxides, particulate matter, carbon monoxide, and ozone. 40 C.F.R. Part 50.

VIM Recycling, Inc. ("VIM") owns and operates a stationary landscape mulch, animal bedding and wood for fuel manufacturing operation at the VIM Site. VIM's operations at the VIM Site have been and continues to emit excessive amounts of criteria pollutants that pose a threat to human health and welfare, including particulate matter (PM/PM10 and PM2.5), nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), and volatile organic compounds (VOCs).

Section 502 of the CAA makes it unlawful for anyone to operate a facility such as the VIM facility without a permit issued under Title V. 42 U.S.C. § 7661a. Specifically, VIM is a stationary source and required to have Title V permit because it is a major source as defined in 40 C.F.R. § 70.2 and it is a source in a source category designated by the United States Environmental Protection Agency ("EPA" or "Administrator") under 40 CFR § 70.3.

On April 8, 2009, the Indiana Department of Environmental Management issued a Title V Permit to VIM that fails to comply with the CAA. "If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter, . . . the Administrator shall . . . object to its issuance." 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c)(1). In addition, EPA is required to reopen and revise a permit if "EPA determines that the permit contains a *material mistake*. 40 C.F.R. § 70.7(f)(emphasis added).

If the Administrator does not object within 45 days after a permit has been proposed, any person may petition the Administrator (within 60 days of the expiration of the 45-day period) to take such action and the Administrator “shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b)(2).

Baugo North Neighborhood Group ("Neighborhood Group"), is a community grass roots group comprised of ninety-nine (99) individuals and a business, including their representative members, Joyce Bellows, Edgar Bellows, Barbara Stutsman and Wayne Stutsman, who live, work and recreate in

Elkhart, Indiana in close proximity to the VIM Site and are adversely impacted by air emissions from VIM's activities. Some of these members' households include children, elderly citizens, and others who are particularly sensitive to the health impacts of the air pollution that has been and will continue to be emitted by VIM's operations at the VIM Site. These members and their households will continue to suffer significant harm if air emissions from the VIM Site are not limited in accordance with CAA and Indiana's State Implementation Plan ("SIP") requirements.

This petition is filed within 60 days following the end of EPA's 45-day review period pursuant to the above provisions. Furthermore, the Neighborhood Group and its members have reserved their ability to petition EPA to object to the VIM permit by submitting written and oral comments to IDEM during the public comment period for the Permit.<sup>1</sup> The Neighborhood Group's comments raised the following issues:

## **II. THE PERMIT ALLOWS VIM TO ILLEGALLY STORE AND PROCESS SOLID WASTE IN VIOLATION OF RCRA AND INDIANA'S SOLID WASTE MANAGEMENT LAWS**

Under section 110(a) of the CAA, 42 U.S.C. § 7410(a), states are responsible for implementing many of the regulatory requirements of the CAA including Title V permitting requirements through SIPs. SIP provisions must satisfy the requirements of the CAA before they are approved by EPA. On June 22, 1978, EPA approved the Indiana Air Pollution Control Board regulation and all resolutions adopted thereunder as part of the federally enforceable Indiana SIP. 43 Fed. Reg. 26721 (June 22, 1978).

Indiana's SIP prohibits IDEM from issuing a Title V permit that "allow[s] for the circumvention or violation of any federal law or regulation." 326 IAC 2-1.1-4. However, the Permit issued by IDEM allows VIM to violate the federal Resource Conservation and Recovery Act (RCRA) and Indiana's solid waste management laws which implement Subtitle D of RCRA.

Specifically, RCRA prohibits "any solid waste management practice or disposal of solid waste . . . which constitutes open dumping." 42 USC § 6945. An "open dump" is defined as "any facility or site where solid waste is disposed of which is not a sanitary landfill . . . and which is not a facility for disposal of hazardous waste." 42 USC § 6903(14). "Disposal" means "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 USC §6903(3); 40 CFR§ 260.10.

Implementing Subtitle D of RCRA, Indiana regulation requires "any person who constructs or operates a solid waste processing facility . . . [to] have a solid waste processing facility permit. 329 IAC 11-9-1. A "solid waste processing facility" includes: "a transfer station, a solid waste baler; a solid waste shredder; a resource recovery system; a composting facility; a garbage grinding facility; a medical or infectious waste treatment facility; a solid waste solidification facility that is not located on an operating permitted land fill; a facility that uses plasma arc or another source of heat to treat solid waste." I.C. §13-11-2-212; 329 IAC 11-2-43.

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<sup>1</sup> See Addendum to the Permit's TSD.

In September of 2000, VIM Defendants began storing ground gypsum outdoors despite repeated warnings by IDEM inspectors that "open aggregate piles must consist of only landscape mulch and scrap wood."<sup>2</sup> IDEM inspectors repeatedly reported that large piles of gypsum and other solid waste materials were being stored outdoors and repeatedly warned VIM that "this material cannot be stored outside and must be removed."<sup>3</sup> Nevertheless, VIM continued to amass and dump gypsum, industrial scrap wood, treated and untreated lumbar (e.g. plywoods, particle boards, veneered woods), plastic, steel, glass, carpet, scrap components from the manufacture and demolition of mobile homes, and bio-solids from the City of Elkhart's wastewater treatment plant on bare ground in very large, outdoor waste piles.

On August 2, 2005, IDEM's Office of Land Quality (OLQ) conducted a multi-media inspection of the VIM Site and determined that waste piles of "C grade" wood were being stored in such a way as to constitute "disposal of solid waste" and that the "C grade" solid waste pile constitutes an "open dump."<sup>4</sup> On December 17, 2008, OLQ sent VIM a letter "clarify[ing] the regulatory status of activities at the VIM [Site], relative only to the state's solid waste regulations" as follows:

Three different waste materials exist at the facility. "A" waste which consist of trees, brush, recently live wood and uncontaminated lumber, which is ground up and used as mulch; "B" Waste which is a mixture of wood scraps containing laminated wood and plywood collected from various manufacturers in the area that is ground up to make animal bedding; and "C" waste which is "B" Waste that is no longer suitable for use in making animal bedding, and which was proposed for use under a Marketing and Distribution permit.

All of the wastes identified above are subjected to some level of grinding and processing at your facility. Currently, the processing of "A" Waste is excluded from the Solid Waste Regulations under 329 IAC 11-3-1(7), so no solid waste permits or approvals are needed for this activity.

***As has been relayed to you in previous meetings with IDEM staff, processing of "B" Waste does require the issuance of a Solid Waste Processing Permit under 329 IAC 11. To date, the Office of Land Quality has not received an application for a Solid Waste Processing Permit for your facility. It is expected that you will cease and desist from grinding "B" Waste at your facility until the appropriate permit is obtained. If the processed "B" Waste is going to be utilized as animal bedding you must also obtain a beneficial use approval from IDEM under 329 11-3-1(15).***

Grinding and processing of "C" Waste was going to be addressed under the Marketing and Distribution for which you applied. Given ***that permit has been denied any grinding or processing of "C" Waste will also require the issuance of a Solid Waste Processing Permit. It is expected that you will cease and desist from grinding "C" Waste at your facility until the appropriate permit is obtained.***<sup>5</sup>

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<sup>2</sup> See public records maintained by the Indiana Department of Environmental Management.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* (emphasis added).

Indeed, in response to comments received on the draft permit, IDEM admits:

The processing of solid waste, as it pertains to the processing at VIM Recycling, Inc., is not regulated under Indiana air regulations. The source is required to have a solid waste processing permit issued by IDEM, Office of Land Quality.<sup>6</sup>

Despite this acknowledgment and RCRA's prohibition against open dumping, the renewal Permit issued by IDEM's Office of Air Quality (OAQ) allows VIM to grind and screen "B" solid waste material.<sup>7</sup> Likewise, the TSD states that VIM is "temporarily allow[ed] . . . to shred 'C' grade waste" until VIM is "able to remove all 'C' grade waste." In order to grind and screen "B" and "C" waste, VIM necessarily stores (open dumps) the "B" and "C" waste on site in violation of RCRA. In addition, there is no PTE data or enforceable limits in the permit for emissions of criteria and/or hazardous air pollutants released from the stored outdoor solid waste piles; nor does the permit contain PTE data for criteria and/or hazardous air pollutants released from grinding and processing of "B" and "C" solid waste materials. Because the Permit allows for "circumvention or violation" of RCRA and state implementing regulations, the Permit contains a "material mistake" and violates Indiana's SIP requirement set forth in 326 IAC 2-1.1-4. Therefore, EPA must object to the permit and require IDEM to remove all conditions that allow VIM to store or process solid waste at the site.

### **III. THE PERMIT FAILS TO ACCOUNT FOR AND LIMIT EMISSIONS RELEASED FROM OPEN BURNING**

The CAA prohibits "open burning" defined as "the combustion of solid waste without (1) control of combustion air to maintain adequate temperature for efficient combustion, (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and (3) control of the emission of the combustion products." 42 U.S.C. § 7410; 40 C.F.R. § 257.3-7. Indiana's SIP defines "open burning" as the "combustion of any matter in the open or in an open dump."

The massive solid waste piles at the VIM Site generate smoke as a result of internal combustion which constitutes open burning in violation of 40 C.F.R. § 257.3-7. IDEM has observed and is aware that smoke emanates from the waste piles. For example, IDEM's compliance inspection report of October 2, 2008 states:

The tour of the operations at the covered "C" pile waste area revealed the facility to be unearthing "C" pile wastes and shifting (shaking) the wastes into three (3) size types; fines (< three inches in size), medium sizes (~three to six inches in size) and larger pieces (> six inches in size). A large crane was on top of the buried "C" pile waste, excavating the wastes from the upper portion of the pile. While the crane was unearthing the "C grade" waste and also while the wastes were being shifted (shakened), the waste was observed emitting a lot of smoke, from internal combustion within the pile.

<sup>6</sup> See Addendum to the Permit TSD.

<sup>7</sup> See Permit Section D.2.4, Compliance Determination Requirements and Attachment A, Fugitive Dust Control Plan.

Indeed, on May 8, 2009, EPA issued a Notice of Violation (NOV) to VIM for "open burning" at the Elkhart site in violation of the Clean Air Act and Indiana's SIP.<sup>8</sup>

It is well-established in the scientific literature that smoldering combustion of wood waste and/or disruption of charred remains cause emissions of a class of compounds known as oxygenated volatile organic compounds ("VOCs")<sup>9</sup> including formaldehyde, a listed hazardous air pollutant under the CAA. Processing and smoldering combustion of wood wastes also releases emissions of particulate matter (PM), categorized either as PM10 or PM2.5.<sup>10</sup> Nowhere in the renewal Permit or TSD documents is there any analysis or accounting for emissions released from the storage or combustion of solid waste at the VIM site, nor are there any corresponding conditions or limits for these emissions in the Permit.

VIM's prior Title V Permit at least contained conditions for inspection of VIM's outdoor waste piles for signs of spontaneous combustion and required documentation of all inspections. In response to comments, IDEM states that these conditions were removed from the renewal Permit because they do not meet the definition of "applicable requirement" as defined by 326 IAC 2-7-1(6). Because the permit allows VIM to grind and screen "B" and "C" solid waste material, it follows that VIM will continue to store such material at the VIM Site. Thus, inspection and record keeping requirements designed to prohibit spontaneous combustion and open burning of this stored solid waste material are clearly applicable requirements under 40 C.F.R. § 257.3-7. In addition, because VIM has violated these inspection and reporting requirements in the past, IDEM is required to include a schedule of compliance in the permit renewal. CAA § 503(b)(1); 40 CFR 70.5(c)(8)(iii)(C). Accordingly, EPA must object to the permit for these reasons and require IDEM to account for and place limits and conditions to control emissions released from outdoor storage and internal combustion of waste piles.

#### **IV. THE PERMIT FAILS TO PROTECT PUBLIC HEALTH**

Indiana's SIP prohibits the issuance of a permit that is not "protective of public health." 326 IAC 2-1.1-5. This prohibition is *independent* of the requirement that permits ensure compliance with ambient air quality standards, PSD increments, and all other applicable air pollution control rules. VIM's previous Title V permit required VIM to grind and screen all "A", "B" and "C" material indoors "using a baghouse for control of particulate matter emissions and exhausting to one [of three designated] stack[s]." Outdoor operations were conspicuously limited to grinding and screening of "recently live" wood or "A" material only and "controlling emissions of fugitive particles through means described in the Fugitive Dust Control Plan." The renewal permit now allows grinding of all wood waste materials, including "B" and "C" solid waste materials outdoors without the use of a baghouse for control of particulate matter and other emissions.

<sup>8</sup> U.S. EPA, Region V, Air and Radiation Division, Notice of Violation: EPA-5-09-IN-12 (May 8, 2009).

<sup>9</sup> See United States Forest Service, *Review of Potential Air Emissions from Burning Polyethylene Plastic Sheeting with Piled Forest Debris: Final Report*, 5.1 Mechanisms of Wood Pyrolysis and Combustion, (Oct. 2003); See also Lemeiux, P.E., et. al., *Emissions of Organic Air Toxics From Open Burning: a Comprehensive Review*, Progress in Energy and Combustion Science, 30:1-32 (2004); See also Yokelson, R.J., et. al., *Emissions from Smoldering Combustion of Biomass Measured by Open-Path Fourier Transform Infrared Spectroscopy*, J. Geophys. Res., 102:18865-18877 (1997); See also Faroon, O., et. al., *Acrolein Environmental Levels and Potential for Human Exposure*, Toxicology and Industrial Health 24: 543-564 (2008).

<sup>10</sup> *Id.*

IDEM acknowledges in response to public comments that the "recently live" restriction on outdoor grinding activity was "intended to reduce the amount of fugitive dust created as a result of [VIM's] outdoor grinding operations."<sup>11</sup> Fugitive Dust emissions include emissions of PM, PM<sub>10</sub>, and harmful PM<sub>2.5</sub>. The public health threat associated with PM<sub>2.5</sub> is well known and documented. USEPA warns that fine particles are believed to pose the "largest health risks" due to their ability to lodge deeply in the lungs.<sup>12</sup> PM<sub>2.5</sub> is associated with aggravation of respiratory and cardiovascular disease, lung disease, asthma attacks, cardiovascular problems such as heart attack and arrhythmia, and even premature death.<sup>13</sup> Children and the elderly are particularly susceptible to the negative impacts of PM<sub>2.5</sub>, the former because their immune and respiratory systems are still developing and the latter because their systems are weak and compromised. Since PM<sub>2.5</sub> clearly poses a threat to public health, the Permit must require whatever measures are necessary to mitigate that threat. Simply requiring wet suppression of fugitive dust while grinding B and C material outdoors is not adequate.

Undermining protection of public health the Permit alters or completely removes the following conditions and limits on facility and emissions units operations and fugitive dust controls that were required under VIM's prior permit:

- a. Section D.1.7 removes the requirement for monthly baghouse inspections.
- b. Sections D.1.9, Section D.1.10(d), D.2.7 and D.2.8(c) requiring inspections of all outdoor storage piles for signs of spontaneous combustion and recordkeeping of all inspections have been omitted from the draft permit. This is particularly troubling in light of the June, 2007 explosion and fire that resulted from failure to inspect and maintain baghouse equipment. Furthermore, all references for the need to comply with previous AOs relative to these requirements must be included in the Permit just as they were included in VIM's prior permit.
- c. Section D.2.4 and the Fugitive Dust Control Plan allow grinding of "A" and "B" material outdoors whereas Section D.2.4 and Fugitive Dust Control Plan of the prior permit expressly limited outdoor grinding to "recently live" wood only. Clearly, this limit was imposed to control particulate matter emissions as "recently live" wood has a higher moisture content. Furthermore, emissions calculations and limits in the Permit do not address the increased PM/PM<sub>10</sub> (and PM<sub>2.5</sub>) emissions from outdoor grinding of "A" and "B" materials.
- d. The TSD states that VIM is allowed to "temporarily shred 'C' grade waste" outdoors using the Mobark grinder "until the source is able to remove all 'C' grade waste" with no corresponding limits or conditions placed *anywhere* in the Permit to control those emissions. Specifically, the Permit's Section D.2.1 or D.2.2 do not address emissions from outdoor grinding of "C" pile known to contain "*scrap wood veneers from the manufacture of mobile homes . . . [and] plastic, steel, glass, carpet and drywall.*"

VIM has a long, well-documented history of wilful non-compliance with air permit limits and

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<sup>11</sup> See Addendum to the Permit's TSD.

<sup>12</sup> USEPA, *PM<sub>2.5</sub> NAAQS Implementation*, available at [www.epa.gov/ttnnaqs/pm/pm25\\_index.html](http://www.epa.gov/ttnnaqs/pm/pm25_index.html).

<sup>13</sup> *Id.*

solid waste management laws. Thus, to the extent the foregoing altered or omitted conditions provide greater flexibility and reliance on VIM's good faith or judgment they should not be allowed. To the extent they are insufficient to protect public health they are deficient, impermissible and a violation of the Clean Air Act and Indiana law.

Uncontrolled emissions released from outdoor storage (open dumping) and grinding of regulated solid waste poses a significant health risk to residents known to live in exceedingly close proximity to the facility. However, VIM is allowed to store and grind B grade waste under the terms of the Permit. The Permit's TSD which is unenforceable indicates that VIM is allowed to grind "C" material "until the source is able to remove all C grade waste." There has been no demonstration that outdoor grinding constitutes proper disposal of the "B" or "C" grade solid waste or that outdoor storage and grinding of this solid waste will emit less than 10 tons per year of a single HAP and less than 25 tons per year of a combination of HAPs which would require compliance with NESHAPs. 326 IAC 2-4.1. Indeed, the Permit and TSD wholly fail to provide PTE data or place limits on criteria or hazardous air pollutants from this dangerous outdoor activity *at all* or require any testing, monitoring or recordkeeping to assure that emissions releases comply with CAA requirements and protect public health.

Public comments submitted by members of the Neighborhood Group reveal the ongoing, severe, adverse impact VIM's operations have had and continue to have on the surrounding community.<sup>14</sup> The neighbors' complaints are consistent with known health and environmental impacts from exposure to uncontrolled emissions of criteria air pollutants as follows<sup>15</sup>:

Emissions of sulfur dioxide ("SO<sub>2</sub>") lead to the formation of sulfate aerosols. Illness and mortality from lung disorders, such as asthma and bronchitis, are associated with exposure to sulfate aerosols. Emissions of nitrogen oxides ("NO<sub>x</sub>") contribute to the production of ground-level ozone. Severe health problems in humans, including breathing constrictions and lung damage in healthy persons and dangerous aggravations of severe respiratory diseases such as asthma, emphysema, and chronic bronchitis, are associated with exposure to ozone smog. NO<sub>x</sub> emissions are also transformed into nitrogen dioxide ("NO<sub>2</sub>"). Severe health problems in humans, including constriction of breathing passages, weakening of the immune system, and increased susceptibility to pulmonary and other infections, are associated with exposure to NO<sub>2</sub>. NO<sub>x</sub> emissions also interact with sunlight and other pollutants to form photochemical smog, which in turn contributes to haze and reduces visibility. Emissions of SO<sub>2</sub> and NO<sub>x</sub> lead to the creation of fine nitrate and sulfate particles. Inhalation of these acid particles is associated with respiratory distress, cardiovascular disease, and premature mortality.

Emissions of SO<sub>2</sub> and NO<sub>x</sub> interact in the atmosphere with water and oxygen to form sulfuric and nitric acids, commonly known as acid rain. Acid rain and other acid deposition can impair the water quality of freshwater bodies, rendering them uninhabitable for aquatic life, both by directly acidifying the water body and by increasing the bioavailability of mercury, lead, and other toxic metals. Acid deposition also contributes to the damage of trees and accelerates the decay of buildings and other outdoor structures. Emission of volatile organic compounds ("VOCs") are often toxic, and also react

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<sup>14</sup> Reference is made to numerous comments and complaints noted in the Addendum from neighboring residents indicating that they are suffering from asthma-like symptoms, bronchitis, strange skin rashes, nose bleeds, wheezing, coughing, sore throats, headaches, burning eyes, burning throats - symptoms they did not experience prior to VIM's operations in their neighborhood.

<sup>15</sup> USEPA, Six Common Air Pollutants, Chief Causes for Concern available at [www.epa.gov/air/urbanair](http://www.epa.gov/air/urbanair).



with NO<sub>x</sub> to produce ground level ozone, the health impacts of which are described in preceding paragraphs.

Particulate matter (“PM”) is the term for solid or liquid particles found in the air. PM with a diameter of 10 micrometers or less is referred to as “PM10,” and PM with a diameter of 2.5 micrometers or less is referred to as “PM2.5.” Breathing PM10 or PM2.5 at levels above existing ambient air standards may increase the chances of premature death, cancer, respiratory disease, and lung damage. EPA has found that PM2.5 poses even greater health risks than PM10. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM2.5 and PM10. PM may also exacerbate the effects of acid deposition.

Emission of carbon monoxide (“CO”) can cause harmful health effects by reducing oxygen delivery to the body’s organs (like the heart and brain) and tissues. EPA has found that the health threat from lower levels of CO is most serious for those who suffer from heart disease, like angina, clogged arteries, or congestive heart failure. For a person with heart disease, a single exposure to CO at low levels may cause chest pain and reduce that person’s ability to exercise; repeated exposures may contribute to other cardiovascular effects.

Given the serious public health implications posed by unregulated emissions of criteria air pollutants not to mention potential hazardous air pollutants that may be emitted, EPA must require IDEM to account for and place limits on the potential emissions released from VIM's outdoor storage and processing of solid waste to protect public health.

## **V. THE PERMIT USES PM10 AS A SURROGATE FOR PM2.5 IN VIOLATION OF THE CLEAN AIR ACT**

The Permit impermissibly substitutes regulation of PM10 for PM2.5.<sup>16</sup> VIM's facility is located in an air quality control region designated as attainment/unclassifiable for fine particulate matter (PM2.5).<sup>17</sup> As a result of formal rulemaking by USEPA, the designation determines the applicable NSR program unless and until USEPA redesignates the area or the designation is overturned by a court of law. *See* 326 IAC 2-3-2 (nonattainment NSR); 326 IAC 2-2-2 (PSD); 40 CFR 81.300 (revision procedure for designations). Thus, VIM's permit must comply with the attainment PSD rules for PM2.5.

Since 1997, USEPA has distinguished PM2.5 from PM10, most importantly by setting different NAAQS for each. 62 Fed.Reg. 38652 (July 18, 1997); 40 CFR 50.6 (PM10); 40 CFR 50.13 (PM2.5). Furthermore, USEPA has expressly recognized that fine particles, or those less than 2.5 micrometers in diameter are "very different" from coarse particles in terms of sources, characteristics, and potential health effects.<sup>18</sup> These differences mean that states will have to "evaluate different sources for controls, to consider controls of one or more precursors in addition to direct PM emissions, and to adopt

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<sup>16</sup> TSD at 4 ("US EPA has not yet established the requirements for PSD. . .for PM2.5 emissions. Therefore, until the U.S. EPA adopts specific provisions for PSD review for PM2.5 emissions, it has directed states to regulate PM10 emissions as a surrogate for PM2.5 emissions.")

<sup>17</sup> TSD at 4.

<sup>18</sup> USEPA Fact Sheet: NAAQS for Fine Particles: Guidance for Designating Areas (July 17, 1997); see also USEPA, Clean Air Fine Particle Implementation Rule, 72 Fed. Reg. 20586, 20589 (April 25, 2007) ("PM2.5 also differs from PM10 in terms of atmospheric dispersion characteristics, chemical composition, and contribution from regional transport.").

different control strategies" in order to implement the PM2.5 NAAQS compared to the PM10 NAAQS.<sup>19</sup> Both the federal and Indiana PSD program treat PM2.5 and PM10 separately in terms of attainment designations in relation to these separate standards. Grounding these needs is the engineering reality that controls designed for capture of PM10 (consisting primarily of filterable particles) do not effectively capture PM2.5 (made up on large part of condensable particles).

Indiana law prohibits IDEM from issuing a permit unless the permit is protective of the public health and will not cause or contribute to a violation of the NAAQS. 326 IAC 2-1.1-5(a)(1) and (4). As stated previously, USEPA has issued separate NAAQS for PM2.5 and PM10 based on the differences between them. IDEM cannot rely on USEPA guidance that does not have the force of law where, as here, that guidance is in conflict with statutory and regulatory requirements. *See e.g. Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1020 (D.C. Cir. 2000). Furthermore, USEPA's recommended use of PM10 as a surrogate for PM2.5 expired by its own terms when USEPA published the final PM2.5 implementation rule in September 2007.<sup>20</sup> Therefore, EPA must object to the permit and require IDEM to determine whether VIM's operations will comply with NAAQS for PM2.5 and include permit limits accordingly.

## **VI. THE PERMIT LACKS A SCHEDULE OF COMPLIANCE FOR PAST VIOLATIONS**

TSDs and Addendums to VIM's prior air permit from August, 2000 to the present (including Title V source and permit modifications) document extensive, ongoing and repeated violations of the CAA and permit requirements. At least since LEAF's involvement in representing the Neighborhood Group, IDEM has received weekly complaints from neighbors with photographs evidencing VIM's failure to use water for dust suppression, allowing smoke and fugitive dust to cross property lines, outdoor grinding and processing when wind-speeds are in excess of ten (10) miles per hour, open burning and other permit violations. None of these documented violations addressed in the Permit.

The renewal Permit must include a schedule of compliance to address these violations as well as the recent NOV for open burning issued by EPA. CAA § 503(b)(1) requires that permit applicants "submit with the permit application a compliance plan describing how the source will comply with *all* requirements under this chapter." 40 CFR 70.5(c)(8)(iii)(C), promulgated pursuant to this provision, states that a permit application must include:

A schedule of compliance for sources that are not in compliance with *all* applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an *enforceable sequence of actions with milestones*, leading to compliance with any applicable requirements the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be *at least as stringent as that contained in any judicial consent decree or administrative order* to which the source is subject. (emphasis added).

Regulations make clear that the term "applicable requirement" is very broad, and includes, among other things, any standard or requirement under Section 111 of the Act or "[a]ny term or

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<sup>19</sup> See Final PM2.5 Implementation Rule, 72 Fed.Reg. 20586, 20589 (April 25, 2007).

<sup>20</sup> USEPA, Proposed Rule to Implement the Fine Particle NAAQS, 70 Fed. Reg. 65984 and 66052 (Nov. 1, 2005)(stating "Upon promulgation of this rule, EPA will no longer accept the use of PM10 and as surrogate for PM2.5.").

condition of any preconstruction permit” or “[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 [Clean Air] Act.” 40 C.F.R. § 70.2. “Applicable requirements” consequently include, among others, NSPS standards under Clean Air Act Section 111, PSD and NNSR requirements, and requirements contained in the state implementation plan.

In *New York Public Interest Research Group v. Johnson*, 427 F.3d 172 (2nd Cir. 2005), the court made clear that where noncompliance has been demonstrated, agencies are obligated under the CAA to require a schedule of compliance in a Title V permit regardless of whether there has been an adjudicated determination of liability. However, none of VIM's past and ongoing violations have been addressed in the renewal Permit. Accordingly, EPA must object to VIM's Title V permit, remand the permit to IDEM, and require incorporation into the permit a schedule of compliance to address all violations identified in VIM's prior permitting documents, ongoing violations documented by the Neighborhood Group, and EPA's May 8, 2009 NOV.

## **CONCLUSION:**

The renewal permit issued to VIM by IDEM allows VIM to illegally store and process solid waste, fails to account for and control all air emissions released from open dumping, open burning and processing of solid waste, fails to protect public health, improperly uses PM10 and as surrogate for PM2.5 and lacks a schedule of compliance for VIM's past and ongoing CAA violations. For these reasons, EPA must object to the renewal Permit in accordance with 40 C.F.R. § 70.8(c)(1) and require IDEM not to re-issue the Permit until and unless the renewal Permit is revised to include any and all appropriate limits and requirements consistent with this Petition.

Respectfully submitted,

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Baugo North Neighborhood Group

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Petition Requesting the Administrator to Object to VIM's Title V Permit has been served upon the following individuals and parties of record by United States mail postage prepaid, this 12th day of May, 2009 and that the U.S. Environmental Protection Agency was served by Certified Mail this date of the Petition:

Cheryl L. Newton, Director  
U.S. Environmental Protection Agency  
Region 5, Air and Radiation Division  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Mr. Thomas W. Easterly, Commissioner  
Indiana Department of Environmental  
Management  
Indiana Government Center-North  
100 N. Senate Ave.  
Indianapolis, IN 46204

VIM Recycling, Inc.  
29861 Old U.S. Highway 33  
Elkhart, IN 46516  
Responsible Official: President, Kenneth R.  
Will

Ms. Valerie Tachtiris  
Deputy Attorney General  
Indiana Office of the Attorney General  
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