

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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| IN THE MATTER OF |) | |
| |) | |
| Walter Coke, Inc. |) | |
| Jefferson County, Alabama |) | PETITION FOR OBJECTION |
| |) | |
| Walter Coke Facility |) | |
| Title V Major Source Operating Permit |) | |
| No. 4-07-0355-03 |) | |
| |) | |
| Issued by Jefferson County |) | |
| Department of Health |) | |
| _____ |) | |

Pursuant to section 505(b)(2) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), GASP, an Alabama non-profit membership corporation, petitions the Administrator of the U.S. Environmental Protection Agency (EPA) to object to the Title V Major Source Operating Permit No. 4-07-0355-03 issued by the Jefferson County Department of Health to Drummond Company, Inc. for operation of the Walter Coke Facility. As required by these cited provisions, Petitioner is providing this Petition to the EPA Administrator, the Jefferson County Department of Health, and Walter Coke, Inc. Petitioner is also providing this Petition to the Regional Administrator of EPA Region 4.

EPA must object to the Permit because it is not in compliance with the Clean Air Act (“CAA”). Specifically, the Permit is not in compliance with the CAA in the following respects, which will be discussed in detail below. First, the permit does not comply with the provisions of Alabama’s approved State Implementation Plan. Second, the Permit fails to assure compliance with and practical enforceability of the emission limits applicable to the Walter Coke

Facility. And, third, the Jefferson County Department of Health failed to comply with procedural requirements of the CAA.

BACKGROUND

Walter Coke, Inc. applied to the Jefferson County Department of Health for reissuance of a Major Source Operating Permit on or about December 20, 2013. After a public notice and comment period, the Jefferson County Department of Health submitted proposed Major Source Operating Permit No. 4-07-0355-03 to EPA Region 4 for review on or about August 21, 2014.

During the public comment period on the draft Major Source Operating Permit No. 4-07-0355-03, GASP timely submitted written comments to the Jefferson County Department of Health on June 16, 2014. (Exhibit A). GASP raised all issues in this Petition in its comments to the Jefferson County Department of Health.

EPA received the proposed Title V Permit from the Jefferson County Department of Health on August 21, 2014. EPA's 45-day review period ended on October 4, 2014. EPA did not object to the proposed Permit during the review period, despite a request dated October 2, 2014 from GASP that it do so. The Jefferson County Department of Health issued Major Source Operating Permit No. 4-07-0355-03 to Drummond Company, Inc. on October 3, 2014. (Exhibit B).

This Petition is timely filed since Petitioners submitted it within 60 days following the end of EPA's 45-day review period (October 3, 2014) as required by CAA §505(b)(2), 42 U.S.C. § 7661d(b)(2).

BASES FOR OBJECTION

A. **General Permit Condition 14 does not assure compliance with particulate emission requirements of SIP**

40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include emission limitations on particulates necessary to achieve ambient air quality standards for PM10 and PM2.5. General Permit Condition 61 of Major Source Operating Permit No. 4-07-0355-03 does not assure compliance with Part 6.2 of the Jefferson County Air Pollution Control Rules and Regulations (“Fugitive Dust”) or Ala. Admin. Code r. 335-3-4-.02 (“Fugitive Dust and Fugitive Emissions”). The latter rule is part of the Alabama State Implementation Plan to achieve ambient air quality standards for PM10 and PM2.5. General Permit Condition 61 does not assure compliance with emission limitations on particulates because it is unconstitutionally vague and unconstitutionally restrictive. In Ross Neely Express, Inc. v. Alabama Department of Environmental Management, 437 So.2d 82 (Ala. 1983), the Alabama Supreme Court struck down a nearly identical State rule governing fugitive dust. The Court held that the requirement to take “reasonable precautions” to prevent particulate matter from becoming airborne was unconstitutionally vague and the prohibition against causing the discharge of visible fugitive dust emissions beyond the lot line was unreasonably and unconstitutionally restrictive. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke, Inc.* (June 16, 2014) at 41-42 (Exhibit A) (incorporated herein by reference). While some “reasonable precautions” have been identified in the final Permit, all unspecified “reasonable precautions” are unenforceable because they are unconstitutionally vague. Condition 61 also continues to include

the unenforceable and unconstitutionally restrictive prohibition against “the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.” Thus, General Permit Condition 61 of Major Source Operating Permit No. 4-07-0355-03 does not assure compliance with applicable requirements.

B. Permit requirements do not assure compliance with prohibition against “air pollution” (toxic air pollutants, particulates, odors) in SIP

40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include provisions of the Alabama State Implementation Plan, specifically Ala. Admin. Code r. 335-3-1-.08 (“Prohibition of Air Pollution”). *See also* Jefferson County Board of Health Air Pollution Control Rules and Regulations Part 1.13 (prohibition against causing “air pollution”). Major Source Operating Permit No. 4-07-0355-03 does not assure compliance with r. 335-3-1-.08 or Part 1.13 because it allows Walter Coke, Inc. to permit or cause the emission of toxic air pollutants in such quantities and duration as are, or tend to be, injurious to human health; to permit or cause the emission of particulates in such quantities and duration as are, or tend to be, injurious to welfare or would interfere with the enjoyment of life or property; to permit or cause the emission of odors which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke, Inc.* (June 16, 2014) at 26-40 (Exhibit A) (incorporated herein by reference). The evidence demonstrates that existing

pollution controls do not eliminate “air pollution,” *i.e.*, toxics pollutants in such quantities and duration as are, or tend to be, injurious to human health, particulates in such quantities and duration as are, or tend to be, injurious to welfare or would interfere with the enjoyment of life or property, and odors which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. *Id.* Thus, Major Source Operating Permit No. 4-07-0355-03 does not assure compliance with all applicable requirements.

C. General Permit Condition 45 does not assure compliance with prohibition against “air pollution” (odors) in SIP

40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include provisions of the Alabama State Implementation Plan, specifically Ala. Admin. Code r. 335-3-1-.08 (“Prohibition of Air Pollution,” including odors). *See also* Jefferson County Board of Health Air Pollution Control Rules and Regulations Part 1.13 (prohibition against causing “air pollution”). General Permit Condition 45 (Abatement of Obnoxious Odors) in Major Source Operating Permit No. 4-07-0355-03 does not assure compliance with r. 335-3-1-.08 or Part 1.13 because it allows Walter Coke to permit or cause the emission of unlawful odors when such odors have not been characterized as “obnoxious” by a Department inspector or when the Health Officer has not determined that such odors may be abated by measures that are “technically and economically feasible” for the company to implement. Thus, General Permit Condition 45 of Major Source Operating Permit No. 4-07-0001-03 does not assure

compliance with all applicable requirements. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke, Inc.* (June 16, 2014) at 42-43 (Exhibit A) (incorporated herein by reference). In addition, the requirements of General Permit Condition 45 are vague and unenforceable.

D. Permit lacks monitoring and reporting requirements sufficient to determine compliance with prohibition against “air pollution” (toxic air pollutants)

40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include provisions of the Alabama State Implementation Plan, specifically Ala. Admin. Code r. 335-3-1-.08 (“Prohibition of Air Pollution”). *See also* Jefferson County Board of Health Air Pollution Control Rules and Regulations Part 1.13 (prohibition against causing “air pollution”). Prohibited air pollution includes the emission of toxic air pollutants in such quantities and duration as are, or tend to be, injurious to human health. Major Source Operating Permit No. 4-07-0355-03 lacks monitoring and reporting requirements sufficient for the public and government regulators to determine whether the Walter Coke facility is in compliance with r. 335-3-1-.08 and Part 1.13 because it fails to require the measurement of air toxics that are emitted by the Walter Coke facility and the measurement of air toxics to which the public are exposed. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke* (June 16, 2014) at 26-34; 40-41 (Exhibit A) (incorporated herein by reference). Thus, Major Source Operating Permit No. 4-07-0355-03 does not assure compliance with all applicable requirements.

E. Jefferson County Department of Health did not comply with procedural requirements of Clean Air Act.

On April 23, 2014, GASP submitted to the Jefferson County Department of Health a written request to review the Walter Coke permit application, emissions testing data, emissions estimates and bases, application and company-provided analyses, and other documents. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke* (June 16, 2014) at 46. In response, the Department provided Walter Coke's Title V permit application to GASP with nearly all emissions data and signatories redacted. These redactions are not permissible under Jefferson County Air Pollution Control Regulations, Part 1.6; the Alabama Air Pollution Control Act, Ala. Code § 22-28-20; and the Clean Air Act, 42 U.S.C. §§ 7414(c) and 7661b(e).

On May 12, 2014, GASP demanded that the Health Officer provide GASP with Walter Coke's justification for the redactions made in the application. GASP also requested that the Health Officer provide a copy of his determination that the "showing" made by Walter Coke, Inc. is "satisfactory." *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke* (June 16, 2014) at 46. No response has been received from the Health Officer.

Until the application – with the unlawful redactions removed – has been made available and the public has had a fair and meaningful opportunity to comment on the application, EPA should object to the permit.

CONCLUSION

For the foregoing reasons, GASP requests that EPA issue an objection to Major Source Operating Permit No. 4-07-0355-03.

DATED: December 2, 2014

Respectfully submitted,

A handwritten signature in cursive script that reads "David A. Ludder".

David A. Ludder
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CERTIFICATE OF SERVICE

I, David A. Ludder, hereby certify that I have served the foregoing "Petition for Objection" on the following persons by placing the same in the U.S. Mail, postage prepaid and addressed as follows:

Hon. Gina McCarthy, Administrator
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Mail Code 1101A
Washington, D.C. 20004

Hon. Heather McTeer Toney, Regional Administrator
Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

C T Corporation System
Registered Agent for Walter Coke, Inc.
2 North Jackson St., Suite 605
Montgomery, AL 36104

Dr. Mark E. Wilson, Health Officer
Jefferson County Department of Health
1400 Sixth Avenue South
Birmingham, AL 35233

Done this 2nd day of December, 2014.



David A. Ludder