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November 12, 2013

Gina McCarthy, Administrator
United States Environmental Protection Agency
MC4101M
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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OFFICE OF THE
EXECUTIVE SECRETARY

Re: Petition - Proposed Title V/Illinois CAAPP Permit, Meyer Steel Drum, Inc., 3201 S. Millard Avenue, Chicago, Illinois, ID No. 031600APY, Permit No. 95120079

To The Administrator:

Please be advised that I represent the Little Village Environmental Justice Organization ("LVEJO"), a not-for-profit organization that advocates for the Little Village neighborhood and other nearby communities in Chicago, Illinois. LVEJO advocates for policy, provides programs, and coordinates local residents on environmental, health, housing, neighborhood safety and economic equity issues. LVEJO is comprised of residents of Little Village and other nearby neighborhoods, including residents who live in homes that are immediately adjacent to the Meyer Steel Drum facility. LVEJO's office is located at 2856 S. Millard, Chicago, IL 60623, approximately four blocks from Meyer Steel Drum.

Please accept this as a formal Petition pursuant to 42 U.S.C. §7661d(b)(2), commonly cited as Section §505(b)(2) of the Clean Air Act ("CAA §505(b)(2)"). As you know, this section of the Clean Air Act allows any person to petition for your review of a Title V operating permit as long as the Petition is timely filed and is based on objections that were raised during the public comment period. Under this Section, you must grant or deny this Petition within 60 days after the Petition is filed. A denial is subject to judicial review.

On August 23, 2013 LVEJO submitted written comments in response to the IL EPA's Public Notice about a proposed renewal of the Title V/CAAPP permit for the Meyer Steel Drum facility located at 3201 S. Millard Avenue in Chicago, Illinois. A true and accurate copy of LVEJO's comments is attached and incorporated by reference into this Petition. The 45-day period during which U.S. EPA could have objected to the proposed permit

concluded on September 15, 2013. Upon information and belief, no objections were made by U.S. EPA by this deadline. This Petition is being submitted to the Administrator within the subsequent 60-day period during which members of the public can petition U.S. EPA to review and object to the proposed Title V permit. Although IL EPA has not issued a final permit or a response to LVEJO's comments, this Petition is being filed to request U.S. EPA's review of the proposed permit and to preserve LVEJO's rights under 42 U.S.C. §7661d(b)(2) and 42 U.S.C. §7607.

LVEJO respectfully requests the Administrator to review this permit record, grant the Petition, and make objections for the reasons described in this Petition.

Background:

- On or about September 8, 2009, the Meyer Steel Drum facility submitted a CAAPP permit renewal application to the IL EPA.
- On or about December 20, 2011 the U.S. EPA sent the facility a Notice of Violation asserting nine counts of ongoing CAA violations, some dating as far back as 2007.
- On or about September 26, 2012, the U.S. EPA and Meyer Steel Drum entered into a Consent Agreement and Final Order regarding the violations noted in the Notice of Violation.
- On or about July 25, 2013, the IL EPA prepared a Statement of Basis and proposed CAAPP permit in response to the facility's September 8, 2009 application.
- On August 1, 2013 the IL EPA submitted the proposed permit to the U.S. EPA and provided public notice regarding the proposed permit.
- August 23, 2013, LVEJO submitted to the IL EPA written comments and a formal request for a public hearing.
- The public comment period ended August 31, 2013.
- The U.S. EPA's 45-day review period concluded on September 15, 2013.

As of the date of this Petition, IL EPA has not issued a final permit for the facility. In the absence of a final permit and in light of the deadline for filing this Petition, LVEJO is submitting this Petition to ensure its objections to the proposed permit are asserted to U.S. EPA, and preserved for purposes of the record of this matter.

Objection One: The community in proximity to Meyer Steel Drum is an environmental justice community. IL EPA has not granted LVEJO's request to undertake measures to ensure meaningful public participation. Consequently, LVEJO requests U.S. EPA to object to the proposed permit because the record does not include full and complete public participation. In addition, LVEJO requests U.S. EPA to mandate measures necessary to ensure there is not a significant, adverse and disproportionate harm as a result of deficiencies in the proposed permit.

The area immediately surrounding the Meyer Steel Drum facility is an environmental justice community. According to information derived from the EJView feature of U.S. EPA's ECHO database, 95% of the 55,419 people who live within a one mile radius of Meyer Steel Drum are Hispanic (87.8%) or African-American (7.2%). Notably, this same database indicates that 82.8% of these nearby residents do not speak English at home, and that roughly two-thirds of nearby residents speak English not at all, not well or less than well. U.S. EPA's ECHO database further reveals that the environmental justice community also extends in a three mile radius from the facility, consisting of 86.61% minority residents including 63.11% of residents who are Hispanic.

In light of these environmental justice considerations, LVEJO's written comments included a formal request for a public hearing. The prevalence of Spanish speakers living in the neighborhoods adjacent to the facility provides a compelling justification for a public hearing where bilingual services are available. Nearby residents – who will most directly bear the consequences of IL EPA's permitting decisions – should be afforded an opportunity receive and provide information in Spanish. This would provide IL EPA and the permit applicant (if it chooses) to provide information about the proposed CAAPP permit for this facility. IL EPA and the permit applicant (if it chooses) would be able to respond to questions from community residents. Most importantly, it would provide an opportunity for these residents through testimony to contribute to the record on which IL EPA will make its final decisions, and which should be available to U.S. EPA as part of its review process. In light of the composition of the surrounding neighborhood, a public hearing with bilingual services is the only way that a full and complete record that includes meaningful community participation can be assembled.

LVEJO cannot predict the full range of questions and testimony that will be offered at a public hearing. However, based on its interaction with nearby residents, it believes there are several matters that will be directly relevant to the CAAPP permit.

Nearby residents directly experience the consequences of uncontrolled or poorly controlled air emissions from the facility. For these nearby residents, these air quality problems are experienced as odors and dust that emanate from facility operations into the nearby community. Given the array of criteria and hazardous pollutants that are emitted by this source, local residents are legitimately concerned that the odors and dust are not solely nuisance conditions, but rather, reflect inadequate or ineffective air pollution control technologies and techniques at this facility. They are concerned about the local and residual risks that are posed by these emissions in this urban context. They are also concerned about whether emissions are adequately monitored to ensure permit compliance.

These concerns are relevant to the terms and conditions that may be imposed under the proposed permit. Provisions of Illinois law that are part of the approved Illinois SIP characterize these kinds of emissions as contaminants that should not be released in such a manner to jeopardize the health and well-being of nearby residents. Under 415 ILCS §5/9(a):

No person shall: (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, so as to violate regulations or standards adopted by the Board under this Act.

This same provision is repeated in 35 Illinois Administrative Code 201.102, approved as part of the federally enforceable SIP for the State of Illinois on May 31, 1972. 37 Fed. Reg. 10842. This SIP approval also included 35 Illinois Administrative Code 201.101, which defines air pollution as "...the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonable interfere with the enjoyment of life or property." Moreover, 35 Illinois Administrative Code 212.301 states:

No person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source."

U.S. EPA approved 35 Illinois Administrative Code 212.301 as part of the Illinois SIP on February 21, 1980. 45 Fed. Reg. 11493. Please note, the requirements of the "applicable implementation plan" are an appropriate basis for objections under 42 U.S.C. § 7661d(b)(2).

The concerns of the members of the local environmental justice community are legally relevant to the proposed permit. In the absence of the public participation measures requested by LVEJO, the members of this environmental justice community are being denied the opportunity to contribute to a full and complete record on which IL EPA should base its final permit decisions. The request for a full and complete opportunity for public participation is consistent with U.S. EPA and IL EPA commitments to environmental justice, and to the broader purposes of the Title V and IL CAAPP permit programs. 415 ILCS §5/39.5(8)(a).

Consequently, LVEJO requests the Administrator to object to the proposed permit because the record does not include a full and complete opportunity for public participation as requested by LVEJO. Further, LVEJO requests the Administrator to object to the proposed permit because, particularly in the absence of public participation, IL EPA cannot ensure the proposed permit will comply with legally relevant requirements imposed under the approved Illinois State Implementation Plan. Moreover, in the absence of a full and complete record on these issues, IL EPA cannot provide assurances that the permit will not create a significant, adverse and disproportionate harm on the surrounding environmental justice community.

of the evidence. LVEJO requests that U.S. EPA's Administrator object to the proposed permit on this basis. LVEJO requests that the Administrator direct IL EPA to issue a permit that includes an enforceable schedule of compliance, and/or terms and conditions consistent with the actual compliance history of the permittee, which are designed to ensure compliance during the duration of the permit.

Objection Three: In light of non-compliance and the potential impacts of air emissions on immediately adjacent residential neighborhoods, LVEJO requests the U.S. EPA Administrator to object to IL EPA's decision to permit periodic monitoring protocols at this facility.

Given the history of non-compliance and potential impacts of air emissions on the nearby community, LVEJO requests U.S. EPA's Administrator to object to IL EPA's proposal to permit periodic monitoring protocols at this facility. IL EPA repeatedly asserts that this facility has a substantial margin of compliance, a small likelihood of an exceedance, and "has not exhibited a history of non-compliance". As pointed out, IL EPA's statements are directly contrary to the manifest weight of evidence assembled by U.S. EPA as part of the NOV/FOV, which encompassed the period from September, 2007 to August, 2012. Local residents have every reason to question IL EPA's basis for periodic monitoring and for insisting on enhanced air monitoring protocols that generate continuous, empirically verifiable emissions data. Periodic monitoring will not provide a credible, verifiable basis for ensuring compliance with the emission limits and controls in the proposed CAAPP permit, particularly in the absence of compliance measures. Periodic monitoring will not provide a credible, verifiable basis for ensuring that mandated emissions limits and controls are operating in such a way to prevent a violation of the provisions of the Illinois SIP, and are not creating a significant, adverse and disproportionate harm on nearby residents.

LVEJO requests the U.S. EPA Administrator to object to the use of periodic monitoring as a basis to demonstrate compliance with visible emission standards (Conditions 3.1(a)(ii) and 4.1.2(a)(ii)(A) and 4.3.2(a)(ii)(A) and 4.4.2(a)(ii)(A)), particulate matter emissions (Conditions 4.1.2(b)(ii)(A) and (B) and 4.3.2(c)(i)(A)), sulfur emissions (Conditions 4.1.2(c)(ii)(A) and 4.1.2(h)(i)(C)), carbon monoxide emissions (Condition 4.1.2(h)(i)(F) and 4.4.2(d)(ii) and (e)(i)(A)), organic material emissions (Condition 4.1.2(d)(ii)(A) and (B)), and nitrogen oxides emissions (Condition 4.4.2(b)(ii)(A)).

Objection Four: Illinois EPA withheld information regarding emissions testing of the regenerative thermal oxidizer. LVEJO requests the U.S. EPA Administrator to object to the proposed permit on the basis that information about the effectiveness of this pollution control equipment and carbon monoxide source was not included in the public record.

IL EPA acknowledges that it has new information in its possession regarding emissions testing of the facility's regenerative thermal oxidizer, but is declining to make this report available as part of the permitting process (see: IL EPA Statement of Basis, Section 3.2). In IL EPA's view, the RTO "is used only for odor control and is not required for

Objection Two: Despite U.S. EPA's assertions that the facility was in non-compliance with its permit obligations for almost five years, IL EPA's proposed permit does not include a schedule of compliance nor measures to ensure the permittee maintains compliance. LVEJO requests the U.S. EPA Administrator to object to the proposed permit because it does not contain measures sufficient to ensure compliance.

In its written comments, LVEJO expressed concerns about the compliance status of this facility, an issue that is also directly relevant to the CAAPP permit (see 415 ILCS §5/39.5(5)); 42 U.S.C. §7651g. LVEJO emphasized that concerns about compliance are not merely speculation. LVEJO noted that despite the operators' compliance certification in its renewal application, on December 20, 2011 U.S. EPA issued a wide-ranging Notice of Violation and Finding of Violation alleging multiple violations of the Clean Air Act (In The Matter of Meyer Steel Drum, Chicago, Illinois, EPA-5-12-IL-02). A true and accurate copy of this NOV/FOV is attached to LVEJO's written comments and labeled as LVEJO Exhibit One.

The September 26, 2012 Consent Agreement and Final Order concluding U.S. EPA's enforcement case does not address some fundamental community concerns about compliance at Meyer Steel Drum. First, U.S. EPA concludes that Meyer violated multiple permit conditions from "approximately September 2007 to August 2012" (see: In The Matter of Meyer Steel Drum, Chicago, Illinois, EPA-5-12-IL-02, Consent Agreement and Final Order, p.5; a true and accurate copy of this CAFO is attached to LVEJO's written comments and labeled as LVEJO Exhibit Two). This constitutes a substantial portion of the period since the last renewal CAAPP permit issued to Meyer Steel Drum on July 20, 2005. LVEJO is legitimately concerned that IL EPA's determination that the facility is (momentarily) in compliance is naïve in light of a protracted period of non-compliance. To the contrary, IL EPA's Statement of Basis repeatedly asserts "the source has not exhibited a history of non-compliance" as a basis for its permitting decisions (see IL EPA's rationale for permitting decisions on pp. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 in its Statement of Basis).

Second, in the context of the permit and in light of the history of non-compliance, LVEJO asserts the measures that were implemented by the facility should be incorporated into a Schedule of Compliance. U.S. EPA's CAFO is devoid of any ongoing measures which Meyer Steel Drum must implement to maintain compliance, citing only Meyer's "prompt return to compliance." No specific, ongoing measures are mandated by U.S. EPA's CAFO. Despite this, IL EPA concludes that merely incorporating Construction Permit #06030011 – the terms and conditions of which U.S. EPA asserts Meyer Steel Drum violated for almost 5 years – is adequate to ensure ongoing compliance. After almost 5 years of non-compliance, local residents have every reason to question what measures are necessary to avoid an equally prompt return to another protracted period of non-compliance.

Multiple provisions of IL EPA's proposed permit are based on a factual conclusion ("the source has not exhibited a history of non-compliance") that is against the manifest weight

regulatory compliance.” *Id.* In fact, the RTO is subject to terms and conditions in the proposed permit (see, for example, Condition 4.1 – RTO is cited as the device to control VOM, PM, SO₂ and HAPs from the coating lines; see also, Condition 4.1.2(h)(i)(F) and Condition 4.1.2(e) (ii)(A) and (B) (RTO is also a source of CO emissions)). In light of this, IL EPA’s rationale for not including this emissions testing report in the public record is arbitrary and capricious and against the manifest weight of the evidence. Given the nature of the volatile and hazardous emissions from the facility that create odors, this discretionary IL EPA decision defeats meaningful public review of relevant emissions testing information. The U.S. EPA Administrator should object to the proposed permit on the basis that information about the effectiveness of this pollution control equipment and carbon monoxide source was not included in the public record, an apparent violation of 42 U.S.C. §7661b(e).

Thank you for your consideration of this Petition. Please contact me if you have any questions or require any additional information regarding this matter.

Sincerely,



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Attorney for Little Village Environmental Justice Organization

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cc Lisa Bonnett
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