

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

-----x
In the matter of the Proposed Title V
Operating Permit for

Camden Cogeneration Plant
570 Chelton Avenue & Broadway
Camden, NJ 08104
Permit ID: BOP990001

Proposed by the New Jersey Department of
Environmental Protection

-----x

DEPP-APB

2005 OCT 26 PM 12:42

ENVIRONMENTAL PROTECTION
AGENCY REGION 7

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO
ISSUANCE OF THE TITLE V OPERATING PERMIT FOR
CAMDEN COGENERATION PLANT LOCATED IN CAMDEN, NJ**

Pursuant to the Clean Air Act § 505(b)(2) and 40 CFR § 70.8(d), the South Jersey Environmental Justice Alliance ("SJEJA") and the New Jersey Public Interest Research Group ("NJPIRG") (collectively referred to as Petitioners), hereby petitions the Administrator of the United States Environmental Protection Agency ("U.S. EPA") to object to the Title V Operating Permit issued to the Camden Cogeneration facility located at 570 Chelton Avenue, Camden. On or about July 7, 2005, the Title V permit was finalized and proposed to the U.S. EPA by David Olson of the Bureau of Operating Permits of the N.J. Department of Environmental Protection ("DEP"). The U.S. EPA's 45-day review period ended on approximately August 28, 2005. See July 7, 2005

DEP letter attached hereto as Exhibit A. This petition is filed within sixty (60) days following the end of U.S. EPA's forty five day review period as required by Clean Air Act § 505(b)(2).

Introduction

On June 22, 2004, Petitioners testified and submitted comment letters on the draft Title V permit at a public hearing. See SJEJA June 22, 2004 letter attached hereto as Exhibit B.

The Camden Cogeneration facility is located in South Camden, New Jersey. There are already several "Title V" facilities located within a mile radius of the residential core of South Camden. See Ex. B at 1. South Camden already has very poor air quality, with PM 10 readings among the highest in the state. Id. Former Governor McGreevy issued an Executive Order on Environmental Justice ("McGreevey E.O.") which states, *inter alia*, that programs and policies designed to protect the environment " . . . meet the needs of low-income and communities of color, and seek to address disproportionate exposure to environmental hazards." The Executive Order mentions the City of Camden as one of these communities.

The Title V permit issued to the Camden Cogeneration facility has several deficiencies and does not adequately ensure that Camden air quality is not impacted by the facility. Therefore, it is vital that the U.S. EPA object to the final Title V permit for the Cogeneration plant and address the

concerns raised by the Petitioners in their testimony and comment letters.

I. Statement of Basis

This permit lacks a statement of basis, as required under 40 CFR §70.7(a)(5). A statement of basis sets forth the "legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). Id. "The permitting authority shall send this statement to EPA and to any other person who requests it." Id.

The statement of basis must include a description of the facility, with all of the emission units and the pollutants from the emission units, including any pollution control equipment or limitations on operations to ensure compliance with the Clean Air Act and New Jersey state law.

In addition, one of the primary purposes of the statement of basis is to provide an explanation of the Permitting Authority's periodic monitoring decisions, especially if a facility is required to perform less monitoring than one would normally expect to be required. This explanation is essential in order to ensure the public understands that this facility is complying with its permit.

Furthermore, the statement of basis for this facility must discuss the past violations and the compliance schedule with the corrective actions taken and fines paid. It must state how the compliance schedule will bring the facility into compliance or

how it will ensure compliance with all applicable conditions in the future.

II. Compliance plan and schedule

Camden Cogeneration applied for the operating permit in February, 1998. See Draft Operating Permit for Camden County Energy Recovery Associates Fact Sheet No. 1 at 2, attached hereto as Exhibit C. At that time, the facility certified that it met all applicable requirements of the Clean Air Act and New Jersey Air Pollution Control Act. See Ex. C at 3. Since then, the facility "has been cited six times for permit violations for exceeding allowable emission concentrations for nitrogen oxides." June 2004 letter, p. 2. Under 40 CFR §70.5(b)(8), there is a duty to supplement or correct the application, thus, this facility should have filed additional information about these permit violations. The DEP should then have required a compliance plan containing:

- Applicable requirements with which the facility is in compliance, a statement that the source will continue to comply with such requirements. 40 CFR §70.5(b)(8)(ii)(A).
- Requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements. 40 CFR §70.5(b)(8)(ii)(C) (emphasis added).

Because there were emission units not in compliance, a compliance schedule was needed. This schedule should contain:

...remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of the 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.

40 CFR §70.5(b)(8)(iii)(C).

Accordingly, the permit must be modified to include the compliance schedule and a schedule for "compliance certification". Yesterday, on October 24, 2005, the Second Circuit Court of Appeals specifically found that once there is a determination that a source is out of compliance the permitting authority is "obligated to include a compliance schedule." See NYPIRG v. Stephen Johnson, Administrator, EPA, Docket NO. 03-40846; 03-40848, (2nd Cir. Oct.24, 2005).

III. Past Violations

DEP must consistently assess penalties against the Camden Cogeneration plant for violating its permit, as "[a]ny permit noncompliance constitutes a violation of the Act and is grounds for enforcement action: for permit termination, revocation and re-issuance, or modification;" 40 C.F.R. §70.6(a)(6)(i). If the DEP has chosen to enter into an administrative consent order to address these violations and exceedances, then the Statement of Basis must provide an explanation of how DEP determined that the violations have been addressed and the measures taken to avoid further violations.

In addition, the DEP has the authority to add remedial provisions to ensure compliance and prevent further violations. These discretionary inclusions by DEP would not substantially change the underlying existing provisions and would ensure that

the facility is taking remedial action to ensure compliance on a continual basis.

IV. Strengthen Monitoring and Reporting Requirements

In order to prevent Camden Cogeneration from violating its Title V permit, the DEP must strengthen the monitoring, recording and reporting requirements.

DEP agreed that monitoring, recordkeeping and reporting needed to be strengthened and included a "new" requirement for a six month deviation report and annual certification report. See DEP Hearing Report responses to Public Comments at p.11. However, the facility is already required to submit reports of any required monitoring at least every six months and all instances of deviations from permit requirements must be identified in these reports. See 40 CFR 70.6(a)(3)(iii)(A). Moreover, there is no indication that these "new" requirements are in response to Camden Cogeneration's violations or how they will prevent violations in the future.

In addition, to better monitor the facility's actual emissions, the DEP should require increased frequency of stack testing from one every five years to once a year. Although the DEP implies that this is not necessary due to the *relatively cleaner, more stable* nature of natural gas and light oil firing, five years is too long a period to go without a general emissions test. Stack testing is one of the primary methods of determining compliance with emission limits and is of increased importance in an area such as Camden, where there are several pollution

emitting facilities. See www.epa.gov/oig/reports/2000/stack.pdf. Optimally, a Continuous Emission Monitoring System ("CEMS") should be required so that pollutant data will be readily available, collectible, and to ensure the equipment can be calibrated according to the most recent air emission regulations. See www.epa.gov/oig/reports/2000/stack.pdf.

In the interim, annual stack testing should be mandated. In light of the past violations and the area's poor air quality, DEP should not wait for the facility's non-compliance to add this condition, as suggested in the Fact Sheet. See Ex. C, DEP Fact Sheet at 5. DEP should require stringent and frequent monitoring now and maybe after five years of continued compliance, then the DEP could consider modifying the permit when it is submitted for renewal.

V. Reduce facility emissions

In response to a public comment about dust regularly deposited on neighborhood homes and inhaled by residents, the DEP instructs the public to promptly report specific incidents by calling a Hotline. See DEP Hearing Report at page 10. Unfortunately, when soot and dust are emitted on a regular basis, there is no discernible event for people to describe. Dust and/or soot is usually a result of high levels of particulate matter, which is a pollutant regulated under the CAA. The DEP is charged with protecting people from air pollution and must reduce facility emissions to ensure that the facility does not cause unsafe

ambient air levels for PM-10 or PM 2.5 and the air toxins identified in the Air Toxics study.

Although the DEP has concluded that the Waterfront South neighborhood generally has high concentrations of PM 2.5, it is delaying any action until after the US EPA has finalized the PM 2.5 implementation rule in 2006, which will not have a final implementation plan until, the earliest, 2008. The DEP can take the steps now to begin addressing the impacts of PM 2.5, especially given the health studies and air quality studies of this Camden neighborhood. Under the McGreevey E.O., the DEP can take initiatives such introducing limits for continuous opacity monitors, that will reduce PM 2.5 emissions from this facility.

VI. Comply with the State and Federal Environmental Justice Executive Orders

State and Federal laws prohibit environmental discrimination against low-income, minority communities. Title VI of the Civil Rights Act of 1964 and the U.S. EPA's enforcing regulations mandate the DEP to consider the unequal burden already placed on these communities and take special measures to limit pollution. The Presidential Executive Order 122898, signed in 1994, directs federal agencies to address disproportionately high and adverse human health effects of their policies on minority and low-income populations. ("Clinton E.O."). Governor McGreevey's Order on Environmental Justice requires the DEP to identify facilities in low-income communities and address their impact on the community. In issuing an air permit under the federal Clean Air Act, DEP has

an obligation to meet the obligations under both the Clinton E.O. and the McGreevey E.O.

The Camden community is a low income minority community consisting of high populations of African American and Hispanic residents. They suffer disproportionately from a high percentage of asthma and other lung related diseases. There exists high incidences of cancer as a result of the accumulation of toxins and dangerous pollutants that are emitted from the many facilities that are located in this community. These effects are evident in the health of the residents in the Camden area, especially those in close proximity to facilities, such as the Camden Cogeneration plant, and its high level of emissions.

The Petitioners brought these environmental justice issues to the attention of DEP in its letters of June, 2004. The DEP, in its Hearing Report, says it is committed to improving the quality of life for residents in the Camden Waterfront South neighborhood. It also says that it is working hard to address environmental concerns in Camden. However, it is not decreasing the number of Title V facilities in the area nor reducing the allowable emissions from these facilities. Although DEP could implement measures today to reduce the impacts associated with PM 2.5, DEP intends to wait until 2008 to implement regulation of PM 2.5. DEP admittedly realizes that PM 2.5 is unsafe, and is still proposing to wait three or more years to reduce this type of emission.

Petitioners demand that DEP heed the sense of urgency in the community and respond to the environmental justice orders currently in place by including strict conditions in the Title V permits to help reduce the health and environmental impacts associated with this Title V facility.

Conclusion

In light of the significant violations and deficiencies of 40 CFR Part 70 identified in this Petition, the Administrator must object to the proposed Title V permit for Camden Cogeneration facility.

Respectfully Submitted,
For the
SOUTH JERSEY ENVIRONMENTAL JUSTICE ALLIANCE
and NEW JERSEY PUBLIC INTEREST RESEARCH GROUP

Karen Hughes, Paralegal
Lisa Garcia, Esq.
Rutgers Law School - Newark
Environmental Law Clinic
123 Washington Street
Newark, NJ 07010

Dated: October 25, 2005
Newark, NJ