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Subject: PETITION TO OBJECT; TITLE V PERMIT NO. 469033840-P20

To: Gina McCarthy, EPA Administrator
Robert A. Kaplan, Acting Regional Administrator EPA Region 5
Edward Nam, EPA Region 5 Acting Director, Air and Radiation Division

cc: US Senator Tammy Baldwin

Fr: Philip Nolan, Petitioner

December 1, 2016

Re: PETITION TO OBJECT: Title V Permit No. 469033840-P20

The Administrator will object to the issuance of any proposed permit that does not comply with applicable requirements ⁽¹⁾. If the Administrator does not object in writing any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period .Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in §70.7(h) of this part ⁽²⁾.

On October 15, 2016 Wisconsin DNR submitted the proposed final permit-renewal to EPA. EPA did not object according to paragraph 70.8(c).

Wisconsin DNR issued the final permit-renewal on November 28, 2018. was issued does not comply with applicable requirements of 40 CFR 63 Subpart EEEEE. The Wisconsin DNR mistakenly applied Ch. NR 445, Wis. Adm Code during its permit-renewal determination. The Administrator is petitioned to object to this permit-renewal by January 29, 2017 ⁽³⁾.

The petitioner submitted the attached appropriate comments during the permit-renewal's public hearing. The comments properly affirm that DNR title V permit-renewal determinations must follow 40 CFR Part 63, Subpart EEEEE. Subpart EEEEE Table 1 lists hazardous air contaminants. Legend 40 CFR s. 63.7760 specifies that major sources like this foundry operation must follow, comply with, all Section 112 definitions. Section 112(b) definition of Benzene / CASRN 71-43-2 specifies the effects of quantifiable, measurable benzene concentrations on human health ⁽⁴⁾. Since this permit-renewal must comply with Subpart EEEEE the definition of Benzene ⁽⁵⁾ must apply, be part of this title V permit-renewal.

Wisconsin DNR refuted: "The commenter alleges the permit will contravene Title V of the federal Clean Air Act because the permit allows emissions of hazardous air contaminants specifically as it relates to ch. NR 445, Wis. Adm. Code. The commentator has misinterpreted the requirements. Ch. NR 445, Wis. Adm. Code, is a state only rule and is not a requirement of Title V permitting requirements under the Clean Air Act. As such, EPA has no authority over how the state of Wisconsin interprets or implements the requirements of ch. NR 445, Wis. Adm. Code. Wisconsin is a SIP approved state and the Department is the permitting authority. EPA correspondence is not required for the Department to make a final determination."

* The commenter affirms he has interpreted the requirements correctly: Ch. NR 445, Wis. Adm. Code / rules are not applicable for any title V permit-renewal determination. The commenter agrees that EPA correspondence is not required for DNR tomato determinations for new title V permits or modifications to existing title V permits. The commenter continues to affirm that DNR may not use Ch. NR 445, Wis. Adm. Code for title V permit-*renewal* determinations. Petitioner notes that, according to NR 445.01(1)(b): "The emission and control requirements in this chapter do not apply to HAP emission regulated by a section 112 emission standard." This means Section 112 "surrogate" contaminants, i.e. those toxic contaminants which are regulated by the name of another named contaminant. Section 112, Benzene / CASRN 71-43-2 definition, is the surrogate for toxic HAP contaminants.

* Only 40 CFR 63 Subpart EEEEE is applicable to this title V permit-renewal determination,. No part of Ch. NR 445, Wis. Adm. Code is applicable.

SUMMATION

1) EPA has delegated authority to DNR for managing / implementing the Act in ways that are consistent with Wisconsin Statute 285.

2) EPA has due-diligence, authority to intervene during title V permit renewals. EPA must ensure that DNR procedure accords with consolidated federal regulation..

The Wisconsin DNR received commenter's objections during the permit's public hearing and has refuted them. EPA has grounds for objection. The Administrator ought to object.

CONCLUSION

The petitioner requests the Administrator's prompt timely objection, notes that the final permit must not issue until the EPA objection has been resolved.

If Wisconsin DNR issues the final permit after December 1, 2016 the Administrator ought to modify, terminate, or revoke the permit consistent with the procedures in §70.7(g) (4) or (5) (i) and (ii). Wisconsin DNR may only issue a revised final permit that satisfies the Administrator's objection.

There is no condition under which Waupaca Foundry will be found in violation of the requirement to have submitted a timely and complete application.

(1) Title 40: Protection of Environment PART 70—State Operating Permit Programs §70.8(c) Permit review by EPA and affected States.

(2) ¶70.8(d) Public petitions to the Administrator

3) The EPA Administrator has written: “NR 445.08 regulations are not part of Wisconsin’s SIP, are not applicable requirements under title V, and are therefore not appropriate to address in a title V petition” (see attached EPA ORDER, page 9.) Since NR 445.08 regulations are not appropriate in a title V petition they must not have been appropriate / applied during this title V permit-renewal determination.

(4) For more than fifteen years DNR has routinely applied CASRN 71-43-2 and California Air Board emission factors to evaluate/regulate the off-site, ground-level effects of HAP emission during its determinations for new and modified title V permits. Exhibits 3 and 4 tabulate NR 438 actual annual emission inventories. These inventories show that Waupaca Foundry Plant 2/3 actual emission has inadvertently created and sustained lethal HAP concentration in Waupaca County that exceeds federal definition CASRN 71-43-2. Part of this definition informs / states that benzene concentration greater than $4.95 \mu\text{g}/\text{m}^3$ creates significant human inhalation risks for cancer.

(5) Wisconsin DNR asserts the commenter provided an analysis of the hazardous air pollutant emission from Waupaca Foundry Inc. Plant 2/3 using a methodology that is not recognized or approved by the Department. The commenter’s procedure resulted from a discussion with US EPA screening and air dispersion model section consultant (Hans Plugge, MD, MPH.) The commenter’s procedure (Exhibit 3, footnote 2) follows, accords with this consultation, is consistent with Section 112(b), i.e. Benzene / CASRN 71-43-2 definition.
