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Title V/Clean Air Act: U.S. Environmental Protection Agency Administrator Addresses Petition Objecting to Cass County, Indiana, Zinc Oxide/Iron Product Production Facility

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The United States Environmental Protection Agency (“EPA”) Administrator issued a March 14th Order denying a Petition for Objection to Permit (“Order”) for a Waelz Sustainable Products, LLC, (“Waelz”) production facility in Cass County, Indiana. See Petition No. V-2021-10.

The Title V Petition objected to the Indiana Department of Environmental Management (“IDEM”) issuance of a Title V Permit to Waelz’s zinc oxide and iron product production facility (“Facility”).

The Petition was filed by Cass County Citizens Coalition (“Petitioner”).

Title V of the Clean Air Act requires certain stationary sources of air pollutants to obtain operating permits. States that administer Title V do so through adopted implementation plans. Those plans are submitted to and approved by EPA. The intent of a Title V Permit is to organize in a single document all the requirements which apply to the permit holder. 42 U.S.C. § 7661 requires that states submit each proposed Title V Permit to EPA for review. Section 505(v)(1) of the Clean Air Act requires that EPA object to the issuance of a proposed Title V Permit in writing within 45 days of the receipt of the proposed Permit (and all necessary supporting information) if the agency determines it is not in compliance with the applicable requirements of the Clean Air Act.

If EPA does not object to the permit, Section 505(v)(2) provides that any person may petition the EPA Administrator, within 60 days of the expiration of the 45-day review period, to object to the permit.

The Waelz Facility is described as a new facility that will produce zinc oxide and iron product from electric arc furnace dust generated from steel mini-mills. It is stated to consist of a number of emission units, including:

- Various buildings
- Silos
- Material transfer systems associated with raw materials
- Two natural gas-fired Waelz kilns
- Various structures and processes associated with finished products
- Several diesel-fired and natural gas-fired emergency generators

The Facility is permitted as a major source under Title V but accepted limitations to restrict its potential emissions below the major stationary source thresholds for prevention of significant deterioration ("PSD").

The EPA Administrator addressed each component (i.e., Claim) of the objection to the Title V Permit as follows:

Claim 1: Petitioner claimed that the Permit is unlawful because Waelz is a secondary metal production plant subject to PSD. (EPA concludes that a Title V Permit is not the appropriate forum for reviewing the merits of Petitioners' new source review-related claims even though IDEM's decision to issue a single permit document that contains both new source-review and-Title V-based requirements.)

Claim 2: Petitioner claims that the Permit is unlawful for the reason provided in EPA comments on the Draft Permit. (Petitioner is deemed not to have demonstrated that the Permit fails to satisfy the Clean Air Act or assure compliance with any Clean Air Act requirements simply because it does not define "as expeditiously as practicable" or "normal or usual manner" in greater detail.)

Claim 3: The Petition claims that the Permit is unlawful because it relies on deficient and erroneous calculations. (EPA again determines that a new source review permitting decision is not subject to its review in the present Title V Petition response and therefore to the extent this claim involves emission calculations related to PSD applicability it is denied.)

Claim 4: Petitioner claims that the permit is unlawful because it fails to assure continuous compliance with emission limitations. (This claim is referenced as being partially deficient because some of the issues were not raised in the comments or, if raised, not with reasonable specificity during the public comment period.)

Claim 5: Petitioner claims that the Permit is unlawful because its issuance violated public participation requirements. (EPA states that no public comments from the Petitioner or other entities alleged that the public was deprived of information concerning the project's emission implications in violation of a cited Indiana Code provision.)

A copy of the Order can be downloaded [here](#).