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## Title V/Clean Air Act: U.S. Environmental Protection Agency Grants In Part and Denies In Part Two Petitions Objecting to a Crossett, Arkansas, Papermill Permit Renewal

05/10/2023

The Administrator of the United States Environmental Protection Agency (“EPA”) issued a February 22nd Order Granting In Part and Denying In Part two Petitions objections to the issuance of a Clean Air Act Title V Operating Permit (“Permit”) for Georgia-Pacific Consumer Operations LLC in Crossett, Arkansas. See Petition Nos. VI-2018-3 & VI-2019-12.

Georgia-Pacific Consumer Operations LLC is stated to now be known as Georgia-Pacific Crossett LLC (“Georgia-Pacific”).

The Petitions were submitted by Crossett Concerned Citizens for Environmental Justice (“Petitioner”).

The federal Clean Air Act Title V program includes a provision that allows the EPA Administrator to object to a Title V permit issued by a delegated state. In other words, Congress provided EPA a Clean Air Act oversight role by mandating that every Title V permit be subject to a 45-day EPA review period before the Title V permit is finalized.

The EPA Administrator can object to a Title V permit at two points.

An objection may be made during the 45-day review period and in response to a public petition within 60 days after the end of the 45-day review period. Further, even if EPA fails to object to a proposed Title V permit, a right to petition the agency to reconsider its failure to object to the permit is potentially available. However, only those persons who have submitted comments to the draft permit during the applicable public comment period have a right to petition.

The right to petition EPA arises at the close of the agency’s 45-day review period.

Georgia-Pacific is stated to own and operate a papermill in Crossett, Arkansas. The EPA Order notes that the facility produced a variety of products. However, it also indicates that significant portions of the facility’s operations have been shut down. Therefore, the facility is stated at the time of the Order to only produce consumer bath tissues.

Emission units stated to remain operational include:

- Pulp storage chests formerly associated with the Bleach Plant
- Four Tissue Machines and associated Repulpers and Cooling Towers

- Several boilers associated with Steam Generation
- Wastewater Treatment
- Miscellaneous activities

The facility remains a major source subject to Title V and other Clean Air Act requirements involving:

- New Source Performance Standards
- National Emission Standards for Hazardous Air Pollutants

The Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”) finalized a Title V renewal permit for the facility on September 26, 2019. Due to the partial shutdown of the facility, DEQ is stated to have processed a number of permit revisions that involved removing permit terms associated with shutdown emission units. The latest permit revision involving the removal of emission units was issued on October 24, 2022 (designated the R-25 permit).

EPA states the Petitioner submitted a 2018 objection preemptively challenging a November 2017 draft permit. Such permit is stated to have been submitted based on the understanding that it was a proposed permit subject to a petition opportunity.

The Order states that a July 2019 proposed permit replaced and superseded the 2017 permit as the “proposed permit” subject to EPA’s 45-day review and public petition authority.

DEQ’s submission of the July 2019 proposed permit to EPA is stated to have restarted the timeline for EPA’s review and opportunity for the public to submit a petition on the permit. Ultimately, EPA determined that the Petitioner timely filed the 2019 petition.

The Petitioner raised the following objections:

- Claim I: DEQ Unlawfully Circumvented the Public’s Right to a Full 60-Day Petition Period

EPA denies Petitioner’s objection on this claim.

EPA states the Petitioner did not demonstrate that 40 CFR § 70.7(h) specifically requires a state to notify the public that it has transmitted a proposed permit to EPA or that the public petition period has begun. Further, EPA states that the Petitioner did not identify any requirements in 40 CFR § 70.8 with which DEQ did not comply. In addition, the Petitioner was stated to have not demonstrated that the public was deprived of the full 60-day petition period. It notes:

. . . Petitioner had several means of ascertaining that ADEQ had provided EPA a proposed permit and that a new petition period would begin 45 days later (citing EPA’s public website and the possibility of contacting DEQ of EPA for status updates).

- Claim II(A): Permit Unlawfully Excludes the Results of Recordkeeping Requirements Designed to Assure Compliance with Applicable Requirements from the Six-Month Monitoring Reports Required by General Provision #7.

EPA denies Petitioner’s objection on this claim.

EPA states that General Provision 7 does not, in and of itself, exclude the results of recordkeeping requirements from 6-month reporting requirements. Further, cited permit terms are deemed to not indicate that corresponding recordkeeping requirements would be excluded from General Provision 7.

- Claim II(B): The Permit Unlawfully Fails to Specifically Identify the State Implementation Plan Provisions on Which the Permit Conditions are Based

EPA denies Petitioner’s objection on this claim.

EPA notes that all but one of the permit terms subject to the alleged flaws has been removed. The remaining term is not based on any State Implementation Plan authority (i.e., it is a state-only-enforceable limitation).

- Claim II(C): The Permit Unlawfully States that Any Permit Condition Citing to the Arkansas Water and Air Pollution Control Act as the Sole Origin of and Authority for that Condition is Not Federally Enforceable.

EPA denies Petitioner's objection on this claim.

EPA Notes that 40 CFR § 70.6(b)(2) states that:

... the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.

- Claim II(D).1: The Permit's Production/Process Limits are Insufficient to Assure Compliance with the Applicable Pound per Hour Emission Limits.

EPA grants in part and denies in part the Petitioner's objection on this claim.

Certain units have been shut down and corresponding permit terms have been removed. Therefore, the claim with respect to such units and permit terms are deemed moot by EPA.

The EPA response addresses the remaining units. The federal agency directs DEQ to revise the permit and/or permit record to ensure it contains sufficient monitoring and/or recordkeeping to assure compliance with all federally enforceable applicable requirements. This is stated to include certain emission limits identified by the Petitioner.

EPA suggests that DEQ could accomplish this by way of example:

- Revising the permit to align the time periods associated with emission limits and the production or process limits designed to assure compliance with the emission limits (and the monitoring associated with those production or process limits)
- Specifically explain why the time periods associated with the permit's compliance assurance provisions are sufficient to assure compliance with the hourly emission limits
- If determined that it is impossible for the source to violate an emission limit, explain the technical basis for this conclusion and consider whether any assumptions underlying this conclusion should be embodied in enforceable permit terms.
- Claim II(D).2: The Permit Fails to Specify a Monitoring Methodology for Determining Compliance with the Permit's Various Production/Process Limits and Fails to Require Monitoring Results to be Provided for the Relevant Time Period of the Applicable Requirement.

EPA grants in part and denies in part Petitioner's objection on this claim.

EPA states that DEQ must revise the permit and permit record to ensure that it contains sufficient monitoring and/or recordkeeping to assure compliance with all federally enforceable applicable requirements (including the specific production of process limits identified by Petitioner).

EPA again provides examples of how DEQ may be able to address this requirement stating:

- Clearly identify what parameters the facilities must keep records of
- Consider whether the permit should specify additional details regarding monitoring or recordkeeping requirements
- Revise the permit to align time periods associated with the rolling 30-day production or process limits and the accompanying monthly monitoring or recordkeeping provisions designed to assure compliance with such limits
- Specifically explain why the monthly time periods associated with the permit's compliance assurance provisions are sufficient to assure compliance with the rolling 30-day production process limits
- If DEQ determines it is possible for the source to violate a production or process limit, explain the technical basis for this conclusion and consider whether any assumptions underlying this conclusion should be embodied in enforceable permit terms
- Claim II(D).3: The Permit Condition Requiring That

Woodyard Engines and Control Equipment be Operated in Accordance with Manufacturer's Specifications or Other Procedures Approved by the Engine Manufacturer are Unenforceable as a Practical Matter and Fail to Specify Monitoring Sufficient to Assure the Facility's Compliance.

- Claim II(D).3: The Permit Condition Requiring That Woodyard Engines and Control Equipment be Operated in Accordance with Manufacturer's Specifications or Other Procedures Approved by the Engine Manufacturer are Unenforceable as a Practical Matter and Fail to Specify Monitoring Sufficient to Assure the Facility's Compliance.

EPA denies Petitioner's objection on this claim.

The Woodyard has been shut down and the permit term at issue removed.

- Claim II(D).4: The Permit Unlawfully Authorizes Bypass of the Incinerator's Sulfuric Acid Mist Eliminator During Emergency Maintenance.

EPA denies Petitioner's objection to this claim.

The Pulp Mill Incinerator has been shut down and the permit term at issue removed from the permit.

- Claim II(D).5.: Numerous Permit Emission Limits are Unenforceable Because They Merely Declare That the 'Permittee Estimates' That They Will Not Be Exceeded and That Emission Rates Are 'Effectively Limited' By Other Conditions That Do Not Apply to the Same Period as the Emission Limits."

EPA denies the Petitioner's objection on this claim.

EPA notes agreement with DEQ that specific conditions at issue in this claim are not Title V applicable requirements. Because they are state-only permit terms they are not federally enforceable and are correctly designated as such in the permit. As a result, they are not subject to EPA's review or the public petition opportunity.

- Claim III.A: ADEQ Failed to Include a Compliance Schedule for Non-Compliant Operations Identified Prior to the Draft Permit's Release.

EPA denies Petitioner's objection on this claim.

A referenced enforcement action (January 9, 2017, Administrative Order on Consent) is closed. Further, a 2015 EPA investigation did not establish noncompliance with any applicable requirements at the time of permit issuance.

- Claim III.B: DEQ Failed to Include a Compliance Schedule Addressing Ongoing Violations Identified in the 2018 Enforcement Action.

EPA denies Petitioner's objection on this claim.

Because of the partial shutdown of the facility, a referenced proposed Consent Decree to which Petitioner referenced was amended. The Consent Decree was finalized on June 5, 2020. EPA states that because the alleged noncompliance was resolved by the facility's partial shutdown of the emission units implicated by the 2018 EPA complaint, Claim III.B is deemed moot.

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