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Title V/Clean Air Act: US Environmental Protection Agency Grants in Part and Denies in Part Petition Objecting to Delaware County, Pennsylvania Municipal Waste Incinerator Permit

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The Administrator of the United States Environmental Protection Agency (“EPA”) issued a November 2nd Order (“Order”) granting in part and denying in part a Petition objecting to the issuance of a Clean Air Act Title V Operating Permit (“Permit”) for Covanta Delaware Valley LP, Delaware Valley Resource Recovery (“Covanta”). See Petition No. III-2023-10.

Covanta owns a municipal waste incinerator (“Facility”) that is the subject of the Petition.

The Petition was submitted by the following organizations:

- Environmental Integrity Project
- Clean Air Council
- Sierra Club
- (“collectively, Petitioners”)

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 before the Title V permit is finalized.

The EPA administrator can object to a Title V permit at 2 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 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, have a right to petition.

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

The municipal waste incinerator is located in Delaware County, Pennsylvania. It is described as having six rotary waterwall combustors. Each combustor has the capacity to burn 448 tons per day of municipal waste. This produces steam for power generation.

The facility is stated to be a major source under Title V for the following emissions:

- Particulate matter
- Nitrogen Oxides
- Carbon Monoxide
- Volatile organic compounds
- Sulphur dioxides

The Pennsylvania Department of Environmental Protection (“Pennsylvania”) originally issued a Title V permit for the facility in 2001. It was subsequently renewed. The Petition focuses on the fourth renewal of the Title V permit.

The Petitioners raised the following objections:

- Claim A: Renewal permit fails to identify the origin and underlying authority from any of its terms and conditions/fails to identify which federal regulations apply to the facility’s municipal waste combustor units.

EPA grants in part, denies in part the Petitioners’ request for an objection on these claims. The agency cites certain permit conditions in which a Pennsylvania code cite is the only identified regulation. No authority is stated to have been provided for certain identified permit conditions. Cited in particular is the Petitioners’ argument that the permit record is unclear as the applicability of 40 C.F.R. § 60 (Eb) and the Pennsylvania Department of Environmental Protection’s failure to clarify a related issue. For example, EPA states that the permit record does not indicate whether the combustors were modified at any time after the applicability date of (Eb). The Agency instructs the State to clearly identify all applicable requirements for streamlined permit conditions.

- Claim B: Renewal permit does not include adequate testing, monitoring, or reporting requirements sufficient to ensure continuous compliance with the hourly limit for particulate matter applicable to the municipal waste combustors and Pennsylvania has not adequately explained why CAMs cannot be utilized at the facility.

EPA grants Petitioners’ objection on this claim. The federal agency states that the permit record is inadequate for determining whether the permit “sets forth” monitoring requirements that assure compliance with the hourly PM limit applicable to the facility’s combustors. It agrees with Petitioners’ argument that the permit does not state that continuous opacity monitoring assures compliance with the hourly BM limit. Further, the Agency states that the permit record does not sufficiently explain how continuous opacity monitoring assures compliance with the PM limit. Pennsylvania is required to amend the permit record and as necessary, the permit, to ensure that it assures compliance with the hourly PM limit applicable to the facility’s combustors. Examples are provided by EPA.

- Claim C: Pennsylvania must revise the renewal permit to include a compliance assurance monitoring plan for the hourly PM limits applicable to the combustors, in the event that Pennsylvania does not require CAMs.

EPA grants the Petitioners’ request for an objection on this claim.

The federal agency contends that the permit record is inadequate for it to determine whether the permit incorporates all applicable requirements related to CAM. It concludes that there is confusion as to whether or not a cited exemption is applicable to the facility’s combustors. Pennsylvania is required to review the permit record and determine whether CAM requirements associated with the PM limit are applicable to the facility’s combustors. If they are determined to be exempt, the permit record is required to be amended to clearly state the specific exemption that applies (in a rationale for its application).

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