

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF)	PETITION FOR OBJECTION
)	
Clean Air Act Title V Permit (Federal)	
Operating Permit) No. 503-6001)	
)	
Issued to Epic Alabama Maritime)	Permit No. 503-6001
Assets LLC, Alabama Shipyard LLC)	
)	
Issued by the Alabama Department of)	
Environmental Management)	

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE
ISSUANCE OF TITLE V OPERATING PERMIT NO. 503-6001 FOR THE
EPIC ALABAMA MARITIME ASSETS LLC, ALABAMA SHIPYARD LLC**

Pursuant to section 505(b)(2) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. §7661(b)(2), and CAA implementing rules, 40 C.F.R. §70.8(d), Mobile Environmental Justice Action Coalition (“MEJAC”) and GASP (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Title V Operating Permit No. 503-6001 (“Renewal Permit”) issued by the Alabama Department of Environmental Management (“ADEM” or “Department”) on January 31, 2024, to the Alabama Shipyard, LLC (“Facility” or “AL Shipyard”), owned and operated by EPIC Alabama Maritime Assets, LLC (attached as Attachment 1). *See also* Letter from Ronald W. Gore, Chief, Air Division, ADEM, to Anthony G. Toney, Acting Director, Air and Radiation Division, EPA Region 4, “Epic Alabama Maritime Assets LLC, Alabama Shipyard LLC Facility No. 503-6001, Petition Nos. IV-2023-1 and IV-2023-3, (Dec. 15, 2023) (attached as Attachment 2) [hereinafter “Gore Letter”]. ADEM issued this

most recent version of the Renewal Permit to address objections contained in the September 18, 2023 Order by the EPA Administrator responding to a previous Title V petition filed by Petitioners and other parties regarding Title V permits issued to five sources in the Mobile area, including the AL Shipyard. *In the Matter of Plains Marketing LP et al*, Order on Petition Nos. IV-2023-1 & IV-2023-3 (Sept. 28, 2023) [hereinafter “Administrator’s Order”].

The Alabama Shipyard is located at 660 Dunlap Drive, Mobile, Alabama. The Facility is a shipyard that maintains, overhauls, repairs, converts, and disposes of ships. The Facility is a major source under title V for particulate matter (“PM”), volatile organic compounds (“VOCs”), and hazardous air pollutants (“HAPs”). Administrator’s Order at 10. EPA’s EJScreen tool shows a total population of approximately 22,733 residents within a 5-kilometer radius of the facility, of which approximately 73 percent are people of color and 52 percent are low income. *Id.* As required, Petitioners are filing this Petition with the Administrator via the Central Data Exchange and providing copies via email and certified U.S. mail to ADEM and via certified mail to AL Shipyard.

As discussed below, EPA must object to the Renewal Permit because of administrative/public participation issues and technical/regulatory issues. First, ADEM’s permit process for issuing the Renewal Permit is not in compliance with the legal requirements because it failed to offer the public an opportunity to comment on the significant modifications to the Renewal Permit and failed to follow the reopening procedures with public notice and opportunity for comment,

which were required under both federal and state law in response to the Administrator's Order. Instead, ADEM applied an improper and nonexistent "not significant" standard to avoid any public review of the modifications to the AL Shipyard Renewal Permit. Second, ADEM failed to respond to the Administrator's Order that it

[M]ust revise the permit to resolve the apparent conflict between the "Compliance and Performance Test Methods and Procedures" and the "Emission Monitoring" terms for the Indoor Blasting Unit and the Shape Blasting Line.¹ ADEM should either remove the phrase "someone familiar with Method 9" from the monitoring terms, as this would remove the ambiguity and require the facility to follow all Method 9 requirements (Method 9 itself contains the requirements for certification). Or, if ADEM did not intend Method 9 to be the compliance assurance procedure, ADEM must specify a different test method which does not require certification (*e.g.*, Method 22).

Administrator's Order at 53. Instead, ADEM's revised Renewal Permit allowed the permit applicant to disconnect the Indoor Blasting and Shape Blasting Line Units (Emission Units 002, 004, and 006) from the control devices and the emitting units remaining at the Facility. ADEM also removed the permit provisos that apply to these emission units from the Renewal Permit. Third, ADEM processed an incomplete permit application because the legally required certification by a responsible official of truth, accuracy, and completeness was not included in the information submitted by AL Shipyard to support this revision – the "NESHAPS Compliance Plan for Shipbuilding and Ship Repair (Surface Coating)" (Nov. 10,

¹ EPA noted that the permit terms for the Indoor Blasting Machine are similarly in conflict, and ADEM should revise these as well.

2023) [hereinafter “AL Shipyard NESHAP Compliance Plan”] (attached here as Attachment 3); and Letter from Lee Stokes, Chief Operating Officer, Alabama Shipyard, to Hal Brock, ADEM Air Division, (Nov. 14, 2023) [hereinafter “AL Shipyard Letter”] (attached here as Attachment 4)). Fourth, ADEM entirely ignored the Administrator’s objections regarding the need to “revise the permit record and/or permit as necessary to respond to the Petitioners’ comments on work practice provisos for baghouse maintenance and repair.” Administrator’s Order at 55.

I. PETITIONERS

MEJAC is a nonprofit organization formed in 2013 by residents of Africatown, Alabama (an extraordinarily historic and predominately Black area in Mobile County) in partnership with regional stakeholders and advocates. MEJAC’s mission is to engage and organize with others in Mobile, Alabama’s most threatened communities in order to defend the inalienable rights to clean air, water, soil, health, and safety; to promote environmental justice; and to take direct action when the government fails to do so, ensuring community self-determination, including environmental justice.

GASP is a nonprofit organization with a mission to enhance the health and well-being of Alabamians by reducing air pollution, advancing environmental justice, and promoting climate solutions through education, advocacy, and collaboration. That mission includes actively engaging impacted communities on air pollution issues, reviewing air pollution permits, and addressing concerns related to

air quality, including environmental justice issues. GASP advocates for more robust public participation and community involvement in matters that affect community members.

II. PROCEDURAL BACKGROUND

Petitioners previously filed a Title V objection petition with EPA on the fourth Title V Renewal Permit for the AL Shipyard, which EPA's Administrator addressed in the September 2023 Administrator's Order. That Order objected to several issues for this Facility, which required ADEM action. Administrator's Order at 53-55. ADEM's modifications to revised Title V Renewal Permit No. 503-6001 for AL Shipyard, which are at issue in this Petition, appear to be ADEM's attempt to respond to the Administrator's objections. Notably, ADEM's modifications to the Title V Renewal Permit failed to offer the public an opportunity to comment on the significant changes to the Permit and did not provide for the public participation procedures required under 40 C.F.R. § 70.7(f) regarding reopening for cause. The public was not provided with an opportunity to comment on ADEM's modifications that responded to the Administrator's Order. The failure of ADEM to offer the opportunity for public comment is not only required by the regulations but absolutely vital to well informed and meaningful public participation. ADEM's failure to offer the public an opportunity to participate in the process means that the public was deprived of procedural due process rights as well as statutory and constitutional rights. Moreover, because the public was not made aware of the significant modifications to the revised Renewal Permit, "it was impracticable to

raise such objections within such period,” and the grounds for our current objections “arose after such period.” 40 C.F.R. § 70.8(d).

EPA’s 45-day review period began on December 14, 2023, and ended on January 28, 2024 without EPA action. On January 31, 2024, ADEM issued the revised Renewal Permit. Because EPA did not object to the revised Renewal Permit during its 45-day review period, the 60-day public petition period ends on March 28, 2024. Accordingly, this Petition is timely filed.

III. LEGAL REQUIREMENTS

Title V permits, which must list and assure compliance with all federally enforceable requirements that apply to each major source of air pollution, are the primary method for enforcing and assuring compliance with the CAA’s pollution control requirements for major sources. *Operating Permit Program*, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). One of the primary purposes of Title V is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result.” *Id.* at 32,251. “The [Title V] permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all [Clean Air Act] requirements relevant to the particular source.” *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996). All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to

assure compliance with applicable requirements of the CAA. EPA's implementing rules at 40 C.F.R. Part 70 govern the State Operating Permit Programs and require that Title V permits include all "applicable requirements." *See* 40 C.F.R. §§ 70.1(b), 70.3(c)(1), 70.7(a)(1)(iv).

A primary purpose of the Title V program is to increase public understanding of air quality regulation as it applies to stationary sources, and to involve the public in permit development and enforcement. "Public participation is an important part of the title V process, and is an appropriate subject of an objection by EPA pursuant to 40 CFR § 70.8(c)(3)(iii)." *In Re: Orange Recycling & Ethanol Production Facility*, Pencor-Masada Oxynol, LLC, II-2000-07, at 4 (May 2, 2001). Public involvement is required throughout the CAA title V permit process (*see, e.g.*, 42 U.S.C. §§ 7661a(b), 7661b(e), and 7661d(b)) and EPA's implementing regulations (*see* 40 C.F.R. §§ 70.7 and 70.8).

If EPA does not object to a Title V permit, "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). The Administrator "shall issue an objection" if the petitioner demonstrates "that the permit is not in compliance with the requirements of [the Clean Air Act]." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1). The Administrator "shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2).

IV. GROUNDS FOR OBJECTION

For all the reasons discussed below, EPA must object to the revised Title V Renewal Permit for the AL Shipyard.

A. ADEM Failed to Follow the Public Participation Procedures and Did Not Provide Public Notice and Opportunity for Comment on the Significant Modifications to the Renewal Permit that Responded to the Administrator's Order.

1. Specific Grounds for Objection, Including Citation to Permit Record.

ADEM's issuance of the Revised Renewal Permit is deficient because it failed to provide for public notice and an opportunity for comment on the revisions it made to the Renewal Permit and accompanying record in response to the Administrator's Order. 40 C.F.R. §§ 70.7(a)(1)(ii), 70.7(f)(1)(iii), 70.7(f)(2). Therefore, the Part 70 regulations make it illegal for ADEM to issue the final permit. 40 C.F.R. § 70.7(a)(1)(ii). Rather, based on the reasons provided below, EPA must object to this Renewal Permit and require ADEM to notice the draft revised Renewal Permit for a new public comment period that follows, at a minimum, the public participation processes specified in the law.

According to ADEM, despite the fact that the modifications to the Renewal Permit were in response to the Administrator's Order, ADEM decided that its revisions to the Renewal Permit were "not considered significant" and thus "[a] 30-day public comment period will not be required." ADEM, Statement of Basis, Alabama Shipyard, LLC, Mobile, Alabama, Mobile County, Facility Number 503-6001 (Nov. 15, 2023) [hereinafter "SOB"], at 2 (attached here as Attachment 5). ADEM's SOB did not provide a citation to the legal authority it relied on to exempt

the revised Renewal Permit from public notice. ADEM's SOB further failed to provide a basis for why it decided that the modifications to the Renewal Permit were "not considered significant." Notably, there is not a category of permit processing procedures called "not significant" – instead ADEM crafted a category to exempt the permit modifications from public participation *out of thin air*.

Complicating matters, the letter accompanying ADEM's transmittal of the proposed modifications of the AL Shipyard Renewal Permit to EPA provided a different basis for the permit processing procedure. ADEM explained that the modifications would be processed as "minor" modifications. Gore Letter at 2. However, ADEM did not provide a basis for how the modifications met one of the two permit processing options that are exempt from the public participation requirements. ADEM did not explain how the modifications were classified either as "minor permit modifications" or as "administrative permit amendments," 40 C.F.R. §§ 70.7 (e)(2) and (d), nor could they.²

ADEM also failed to adhere to the public participation requirements inherent in General Permit Proviso 13 "Reopening for Cause." Attachment 1 at 0-4, citing Ala. Admin. Code r. 335-3-16-.13(5).³ The state rules cited in the Renewal Permit

² The modifications ADEM made to the Renewal Permit in response to the Administrator's Order do not meet the requirements in either of these regulations. For example, the modifications make significant changes – i.e., wholesale deletions – to existing monitoring, reporting, and recordkeeping requirements for Emission Units 002, 004, and 006 and thus are not minor permit modifications under 40 C.F.R. § 70.7(e)(2)(i)(A)(2). Nor are ADEM's modifications the correction of typographical errors, incorporation of *more* frequent monitoring, or other types of minor changes allowed as administrative permit amendments under 40 C.F.R. § 70.7(d)(1).

³ We note that the prior fourth Renewal Permit, which was the subject of the Administrator's Order, contained a similar "Reopening for Cause" provision. See ADEM, Major Source Operating Permit Renewal, Alabama Shipyard, LLC, Facility/Permit Number 503-6001 (November 9, 2022), at 0-4, General Permit Proviso 13 (attached here as Attachment 7).

and Part 70 regulations require that when EPA determines the “permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of this permit[,]” the permit is reopened and “[p]roceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance.” 40 C.F.R. 70.7(f)(2), (3), 70.7(h)(1)-(6); Ala. Admin. Code r. 335-3-16-.13(5); Ala. Admin. Code r. 335-3-16-.13(5)(b). The Administrator’s Order found that in establishing the terms of the Renewal Permit a mistake was made in excluding the NESHAP implementation plan from the Title V Permit and that there were inaccurate statements regarding permit provisos for the Indoor Blasting Unit and the Shape Blasting Line. Administrator’s Order at 52, 53. Accordingly, ADEM was required to reopen the permit and to issue the revised Renewal Permit following the same procedures that applied to its initial issuance of the Renewal Permit, which was issued following a public notice and comment process. Administrator’s Order at 11.

Instead, ADEM failed to provide an opportunity for public participation on the significant modifications it made when it revised the Renewal Permit. ADEM failed to provide the public with an opportunity to comment on the AL Shipyard NESHAP Compliance Plan, the permit provisos that it removed from the Revised Permit for the three emission units that remain onsite, or the changes it made to the Response to Comments that accompanied the fourth Title V Renewal Permit addressed in the September 2023 Administrator’s Order. *See* ADEM, Alabama Shipyard, LLC, Response to comments concerning proposed renewal of the Major

Source Operating Permit number 503-6001 (undated) (attached here as Attachment 6).⁴ Neither the revised Renewal Permit nor the SOB provide a reasoned explanation as to how ADEM's process followed the required public participation requirements.

2. Applicable Requirement or Part 70 Requirement Not Met.

A permitting authority's issuance of a Title V permit must be in accordance with the applicable public participation requirements. The Clean Air Act requires that the permitting authority provide "for public notice, including offering an opportunity for public comment and a hearing ... including applications, renewals, or revisions." 72 U.S.C. § 7661a(b)(6). Additionally, the EPA's regulations specify that when EPA determines the "permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of this permit[,] the permit is reopened and "[p]roceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance." 40 C.F.R. 70.7(f)(2), (3), 70.7(h)(1)-(6); Ala. Admin. Code r. 335-3-16-.13(5); Ala. Admin. Code r. 335-3-16-.13(5)(b). The procedures that apply to

⁴ Without any explanation provided by ADEM, we can only assume that the bolded text in the undated Response to Comments represents the changes made in response to the Administrator's Order. Attach. 6 at Response 21 (describing the inclusion of the NESHAP Compliance Plan and related provisos into the Renewal Permit). We also note that ADEM did not make any other changes to the Response to Comments to "respond to the Petitioners' comments on work practice provisos for baghouse maintenance and repair" as required by the Administrator's Order, *id.* at 55, or to address the disconnection of the Indoor Blasting and Shape Blasting Line Units (Emission Units 002, 004, and 006) from the control devices and the emitting units remaining at the Facility and related removal from the Renewal Permit of the provisos that applied to these emission units.

initial permit issuance include public notice, 30-day comment period, and opportunity for the public to request a hearing.

3. Inadequacy of ADEM's Permit Issuance Process.

ADEM's permit issuance process was inadequate because it failed to provide an opportunity for public comment and to request a public hearing on the significant modifications to the revised Renewal Permit for AL Shipyard. ADEM did not issue a public notice for the actions it took to modify the AL Shipyard that were in response to the Administrator's Order. ADEM did not accept public comments and provide an opportunity to request a hearing; they conducted the significant modifications to the Renewal Permit behind closed doors without the knowledge of the public. The lack of public notice and opportunity to comment means that the neighboring communities had no means to review and comment on the significant modifications to the Renewal Permit. Petitioners and other members of the public are keenly interested in these significant permit modifications because they were the result of adverse comments made on and a successful Title V petition regarding the fourth Renewal Permit previously issued by ADEM. The lack of public participation for the significant modifications to the Renewal Permit in response to the Administrator's Order results in a revised Renewal Permit that does not comply with Title V procedural requirements. Because ADEM was responding to the Administrator's Order, it was required to reopen the permit and provide for public notice and comment. 40 C.F.R. §§ 70.7(f)(2)-(3), 70.7(h); Ala. Admin. Code r. 335-3-16-.13(5)(a)(3), (4), (b). Moreover, the modifications to the Renewal Permit were

“significant” because they were modifications under the NESHAP regulations and added an updated compliance plan, which had not been included as part of the Title V permit in the past. 40 C.F.R. § 70.7(e)(4)(i), Ala. Admin. Code r. 335-3-16-.13(4) (defining significant modifications to include “modifications under the NSPS or NESHAPS regulations [and] must be incorporated in the Operating Permit using the requirements for sources initially applying for an Operating Permit, including those for applications, public participation, review by affected States, and review by EPA, as described in Rules 335-3-16-.04 and .14.”).

4. ADEM Prohibited the Public from Raising these Issues in Public Comment.

As ADEM failed to provide public participation opportunities in issuing the revised Renewal Permit, they failed to provide Petitioners with an opportunity to raise these issues. EPA must object to ADEM’s issuance of the revised Renewal Permit for AL Shipyard and direct ADEM to comply with the public participation requirements, which include public notice, opportunity to comment, and opportunity to request a hearing.

B. The Revised Renewal Permit Action Failed to Satisfy the EPA Administrator’s Objection Regarding Three Emitting Units, Instead Erroneously Removed the Emitting Units from the Renewal Permit.

1. Specific Grounds for Objection, Including Citation to Permit Term and Record.

ADEM failed to respond to the Administrator’s Order. The Administrator’s Order directed that ADEM:

[M]ust revise the permit to resolve the apparent conflict between the “Compliance and Performance Test Methods and Procedures” and the

“Emission Monitoring” terms for the Indoor Blasting Unit and the Shape Blasting Line. ADEM should either remove the phrase “someone familiar with Method 9” from the monitoring terms, as this would remove the ambiguity and require the facility to follow all Method 9 requirements (Method 9 itself contains the requirements for certification). Or, if ADEM did not intend Method 9 to be the compliance assurance procedure, ADEM must specify a different test method which does not require certification (*e.g.*, Method 22).

Administrator’s Order at 53. Instead of revising the Renewal Permit consistent with the Administrator’s Order, ADEM instead removed the three emission units from the Renewal Permit while allowing the permit applicant to retain the Indoor Blasting and Shape Blasting Line Units (Emission Units 002, 004, and 006) onsite at the Facility. Attachment 1 at 1, Letter from Ronald W. Gore, to Bryan Mugg, Environmental Manager, Alabama Shipyard, LLC, “Title V Permit Modification, Facility Number 503-6001” (Jan. 31, 2024). Furthermore, ADEM noted and allowed the permit applicant to disconnect these emission units from the baghouse control devices. SOB at 2.

The revised Renewal Permit erroneously removed the permit provisos that apply to Indoor Blasting and Shape Blasting. ADEM’s SOB explained that “Alabama Shipyard has not recently used the Indoor Blasting and Shape Blasting Line Units (Emission Units 002, 004, and 006) and has no plans to do so in the future.” SOB at 2. ADEM’s SOB references the Facility’s letter dated November 14, 2023, where AL Shipyard indicated it “authorize[d] ADEM to remove the indoor blasting units with the associated baghouses (emission unit 2. 4 and 6) from the Title V permit.” AL Shipyard Letter at 1. The permit applicant further explains that “[t]he baghouses will be disconnected, so the units are inoperable.” AL Shipyard

Letter at 1. ADEM offers that AL Shipyard “has no plans to” use these three emission units “in the future” SOB at 2, but there are no statements from the applicant that support ADEM’s assertion. Finally, the applicant indicates that if it needs to start up similar operations it “will apply for a Title V modification.” AL Shipyard Letter at 1.

Because the Indoor Blasting and Shape Blasting Line Units remain physically onsite at the Facility with the potential to emit particulate matter, Emission Units 002, 004, and 006 must be covered by the Renewal Permit. These emission units have *not* been removed from the Facility site. According to the letter from the Facility, the applicant merely disconnected the control devices from the emission units. Disconnecting the baghouse control devices does not mean that the Indoor Blasting and Shape Blasting Line Units are inoperable. The applicant took no action to render the three emission units inoperable. ADEM’s unsupported suggestion that the applicant does not plan to use the emission units in the future is irrelevant as far as the Part 70 legal requirements. The Part 70 regulatory test is whether the three units are emission units have the potential to emit regulated pollutants, and if so, they must be included in the Renewal Permit. 40 C.F.R. §§ 70.2, 70.3(c)(1). As the Indoor Blasting and Shape Blasting Line Units (Emission Units 002, 004, and 006) still have the potential to operate and emit regulated pollution, ADEM must include in the revised Renewal Permit the provisos that applied to these three emission units that appeared in the fourth Renewal Permit. *See* ADEM, Major Source Operating Permit Renewal, Alabama Shipyard, LLC,

Facility/Permit Number 503-6001 (November 9, 2022) at 2-1 to 2-2 (PDF pages 24-25), 4-1 to 4-3 (PDF pages 32-34), and 6-1 to 6-3 (PDF pages 42-44) (attached here as Attachment 7).⁵

2. Applicable Requirement or Part 70 Requirement Not Met, ADEM Erroneously Removed the Permit Provisos from the Renewal Permit.

A permitting authority must respond to an Order from the Administrator and issue a revised permit that satisfies the EPA's objection. 40 C.F.R. §70.8(d). The Administrator directed ADEM to resolve apparent conflict in the Permit regarding compliance with EPA Test Method 9. ADEM's revised Renewal Permit SOB and accompanying record fail to satisfy EPA's objections regarding Indoor Blasting and Shape Blasting Line Units. Instead, ADEM's revised Renewal Permit deletes the permit provisos that EPA directed ADEM to resolve.

Furthermore, because the AL Shipyard is a major source and subject to Part 70, the Renewal Permit must contain *all* emission units at the Facility. 40 C.F.R. § 70.3(c), 40 C.F.R. § 70.2 (definitions of "potential to emit," "emissions unit," "regulated air pollutant," "stationary source").

3. Inadequacy of the Permit Terms.

As discussed above, ADEM's revised Renewal Permit did not respond to the issues identified in the Administrator's Order objections for the three emission

⁵ We also note that ADEM provides no information regarding the underlying Title I construction permits that initially authorized construction of these three emission units, and whether those permits were revoked.

units. Moreover, ADEM deleted from the revised Renewal Permit the permit provisos that applied to the Indoor Blasting and Shape Blasting Line operations at issue (Emission Units 002, 004, and 006). These units remain onsite at the AL Shipyard Facility – they have neither been removed from the site nor have the operations of the units been rendered permanently inoperable so that they no longer have the potential to emit particulate matter or other regulated pollutants. ADEM’s unsupported suggestion that the applicant does not plan to use the emission units in the future is irrelevant. The Part 70 regulatory test is whether the three units are emitting units that have the potential to emit regulated pollutants, 40 C.F.R. § 70.2, if so, they must be included in the Renewal Permit, 40 C.F.R. § 70.3(c)(1). Additionally, ADEM provides no information regarding the underlying Title I construction permits that initially authorized construction of these three emission units, and whether those permits were revoked. Since the three emitting units remain onsite and have not been permanently rendered inoperable, ADEM must include the permit provisos that apply to these three emission units in the permit, which it erroneously removed, include a response to the Administrator’s objection, and provide public notice and comment on its action.

4. ADEM Prohibited the Public from Raising these Issues in Public Comment.

As discussed above, ADEM failed to provide the public with an opportunity to comment on these significant permit modifications of deleting permit provisos from the Renewal Permit, including the materials submitted by the Facility. EPA must

direct ADEM to include the permit provisos that it deleted⁶ and to respond to the Administrator's Order on these issues, including providing public notice and comment for the public.

C. ADEM Failed to Respond to the Administrator's Objection Regarding Work Practice Provisos for Baghouse Maintenance and Repair.

1. Specific Grounds for Objection, Including Citation to Permit Record

The Administrator's Order provided explicit direction to ADEM that it

[M]ust revise the permit record and/or permit as necessary to respond to the Petitioners' comments on work practice provisos for baghouse maintenance and repair. If any of the general conditions in the Alabama Shipyard Final Permit are relevant to this issue (e.g., General Proviso 16 for Operation of Capture and Control Devices), ADEM should so state in its response. ADEM should also clarify the apparent conflict between the Alabama Shipyard Final SOB and Final Permit concerning inspections of the baghouse for the Indoor Blasting Unit. See Alabama Shipyard Final SOB at 3 ("The baghouse shall be inspected at least annually, and whenever emissions are observed."). If ADEM has determined these inspections are necessary to assure compliance with applicable requirements, then ADEM should revise the permit to include them.

Administrator's Order at 55. The Order further indicated that "EPA also notes that it is unclear whether the Alabama Shipyard Final Permit should include CAM requirements related to these baghouses pursuant to 40 C.F.R. § 64.6(c). In

⁶ See Attachment 7 at 2-1 to 2-2 (PDF pages 24-25), 4-1 to 4-3 (PDF pages 32-34), and 6-1 to 6-3 (PDF pages 42-44).

considering the work practice provisos, ADEM should ensure that the title V permit also contains all the necessary requirements, if any, related to CAM.” *Id.*, n.60.

ADEM’s SOB completely fails to summarize and address the Administrator’s direction regarding baghouse maintenance and repair. SOB at 2. ADEM’s transmittal letter to EPA includes a short summary of EPA’s direction but does not respond to that direction. Gore Letter at 2. Rather, ADEM explains that “the facility requested that these units be removed from the MSOP and stated their plans to disconnect the units and the associated baghouses so that they cannot be used. The removal of these units from the permit will be processed alongside the minor modification regarding the Implementation Plan.” *Id.*

2. Applicable Requirement or Part 70 Requirement Not Met.

A permitting authority must respond to an Order from the Administrator and issue a revised permit that satisfies the EPA’s objection. 40 C.F.R. §70.8(d). The Administrator directed ADEM to revise the permit record and/or permit as necessary to respond to the Petitioners’ comments on work practice provisos for baghouse maintenance and repair. ADEM’s revised Renewal Permit SOB and accompanying record fail to satisfy EPA’s objections regarding work practice

provisos for baghouse maintenance and repair.⁷ Instead, ADEM's revised Renewal Permit deletes the permit provisos that EPA directed ADEM to resolve.

Furthermore, because the AL Shipyard Facility is a major source and subject to Part 70, the Renewal Permit must contain *all* emission units. 40 C.F.R. § 70.3(c), 40 C.F.R. § 70.2 (definitions of "potential to emit," "emissions unit," "regulated air pollutant," "stationary source").

3. Inadequacy of the Permit Record, Analysis of ADEM's Action.

For the same reasons discussed in section B.3, since the Indoor Blasting and Shape Blasting Line units (Emission Units 002, 004, and 006) remain onsite, have not been permanently rendered inoperable, and continue to have the potential to operate and emit regulated pollutants, the issues regarding baghouse compliance addressed in the Administrator's Order are still relevant. ADEM must respond to the Administrator's Order regarding work practice standards for the baghouse maintenance and repair.

4. ADEM Prohibited the Public from Raising this Issue in Public Comment.

As discussed above, ADEM failed to provide the public with an opportunity to comment on its plans to ignore the Administrator's Order direction on baghouse work practice standards. EPA must direct ADEM to include the permit provisos

⁷ See Attach. 6 at Response 13 (making no changes to the Response to Comments for the prior Renewal Permit addressing Petitioners' comments on work practice provisos for baghouse maintenance and repair related to Emission Units 002, 004, and 006.)

that it deleted⁸ and to respond to the Administrator's Order on these issues, including providing public notice and comment for the public.

D. The Revised Renewal Permit is Based on an Incomplete Permit Application.

1. Specific Grounds for Objection, Including Citation to Permit Record

The revised Renewal Permit is deficient because the applicant did not submit a complete permit application to support the revision in accordance with the Clean Air Act, 40 C.F.R. § 70.5(d), and Ala. Admin. Code r. 335-3-16-.04(9), particularly as these provisions insure compliance with 42 U.S.C. § 7414(a)(3)(C). Specifically, the AL Shipyard Letter and AL Shipyard NESHAP Compliance Plan lack certification by the responsible official.

2. Applicable Requirement or Part 70 Requirement Not Met.

40 C.F.R. § 70.5(d) requires that any application form, report, or compliance certification submitted pursuant to Part 70 “shall contain certification by a responsible official of truth, accuracy, and completeness.” The regulation further requires that “[t]his certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.” *Id.* The AL Shipyard Letter and the NESHAP Compliance Plan are both part of the Facility's permit application, and as such they were required to be

⁸ See Attachment 7 at 2-1 to 2-2 (PDF pages 24-25), 4-1 to 4-3 (PDF pages 32-34), and 6-1 to 6-3 (PDF pages 42-44).

submitted under the truth, accuracy, and completeness requirements. They were not.

3. Inadequacy of the Permit Record, Analysis of ADEM's Action

There is nothing in the record to demonstrate that ADEM directed the Facility to submit the materials under the truth, accuracy, and completeness statement. Furthermore, ADEM did not require that the responsible official resubmit the AL Shipyard letter and AL Shipyard NESHAP Compliance Plan and attest to the truth, accuracy, and completeness requirements of the information contained in them. 40 C.F.R. § 70.5(d), Ala. Admin. Code r. 335-3-16-.04(9).

4. ADEM Prohibited the Public from Raising this Issue in Public Comment.

As discussed above, ADEM failed to provide the public with an opportunity to comment on these significant permit modifications, including the materials submitted by the Facility, which were incomplete. EPA must direct ADEM to require that any information supplied by the applicant to support the revised Renewal Permit be submitted in accordance with the truth, accuracy, and completeness requirements.

V. CONCLUSION

For the foregoing reasons, ADEM's issuance of and the contents in the revised Renewal Permit are deficient. ADEM failed to follow the applicable requirements. Accordingly, the Clean Air Act requires the Administrator to object to the Renewal Permit for AL Shipyard.

Respectfully submitted this 28th day of March 2024 on behalf of MEJAC and
GASP.



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List of Attachments

- 1 Final Renewal Permit (Jan. 31, 2024).
- 2 Letter from Ronald W. Gore, Chief, Air Division, ADEM, to Anthony G. Toney, Acting Director, Air and Radiation Division, EPA Region 4, “Epic Alabama Maritime Assets LLC, Alabama Shipyard LLC Facility No. 503-6001, Petition Nos. IV-2023-1 and IV-2023-3, (Dec. 15, 2023).
- 3 Alabama Shipyard, “NESHAPS Compliance Plan for Shipbuilding and Ship Repair (Surface Coating),” (Nov. 10, 2023).
- 4 Letter from Lee Stokes, Chief Operating Officer, Alabama Shipyard, to Hal Brock, ADEM Air Division, (Nov. 14, 2023).
- 5 Statement of Basis (Nov. 15, 2023).
- 6 Revised Response to Comments (undated).
- 7 Final Renewal Permit (Nov. 9, 2022).