

IN THE MATTER OF)	PETITION FOR OBJECTION
)	
Proposed Clean Air Act Title V)	Permit Number 24-023-0042
Operating Permit Issued to Mettiki Coal,)	
LLC)	
)	
)	

Petitioner Environmental Integrity Project (“EIP”) is a Washington, D.C. based non-profit organization founded to advocate for the effective enforcement of state and federal environmental laws, with a specific focus on the Clean Air Act and large stationary sources of air pollution like the Mettiki plant. As one method of achieving its mission, EIP participates in permitting procedures for major sources of air pollution in the State of Maryland. EIP filed comments on the Draft Permit during the official notice and comment period on September 17,

2012.¹ EIP's ability to carry out its mission of improving the enforcement of environmental laws is adversely impacted if states like Maryland issue Title V permits to large sources of air pollution that fail to comply with the Clean Air Act and EPA fails to object.

Petitioner Benjamin Feldman owns real property located approximately two miles from the Mettiki plant. Mr. Feldman's property has been adversely affected by the Mettiki plant during air pollution events which have resulted in visible deposition from the plant falling on Mr. Feldman's house, automobile, and personal effects left outdoors. Mr. Feldman filed comments on the Draft Permit during the notice and comment period on October 5, 2012.² MDE extended the notice and comment period to allow Mr. Feldman to submit comments because MDE initially failed to give Mr. Feldman, who had asked to receive public notices about Mettiki's Title V renewal, notice of its tentative determination to issue the Draft Permit as required by COMAR 26.11.03.07(B)(2)(b).³

Petitioners Brenda Lambert and Shayne Lambert own real property that is located in close proximity to the Mettiki plant. Mr. and Mrs. Lambert's property has been adversely impacted by air pollution from the Mettiki plant, which has caused visible deposition on the interior and exterior of their home. Additionally, this air pollution has caused Mrs. Lambert to experience difficulty in breathing. Mr. and Mrs. Lambert did not submit comments on the Draft Permit during the notice and comment period. However, the Clean Air Act allows "any person" to petition the Administrator for an objection if the the petition is timely and is "based . . . on objections to the permit that were raised with reasonable specificity during the public comment

¹ See Attachment A.

² See Attachment B.

³ See Email from Shannon Heafey, Title V Coordinator, MDE, to Benjamin Feldman (September 18, 2012) at Attachment C.

period provided by the permitting agency.”⁴ Mr. and Mrs. Lambert’s objections were raised in Mr. Feldman’s comments, which were timely submitted to MDE during the notice and comment period.

EPA must object to the Draft Permit because it is not in compliance with the Clean Air Act. Specifically, the Permit fails to include monitoring requirements sufficient to assure compliance with air quality-based limits for sulfur dioxide (SO₂) and particulate matter (PM).

BACKGROUND

The Mettiki coal cleaning/preparation plant is located in Garrett County, Maryland.⁵ The Mettiki plant consists of four emissions units: a thermal dryer (EU-1), a coal handling system (EU-2), a 6000-gallon gasoline storage tank (EU-3), and a 150 ton per hour coal crusher (EU-4).⁶ The thermal dryer (EU-1) is subject to air quality-based Prevention of Significant Deterioration (PSD) emissions limits for SO₂ and PM, which appear to have been set forth in the original PSD approval issued by EPA for the thermal dryer in 1978.⁷ The PSD permit was reissued in 1982 by the State of Maryland and revised in 1983 to correct the daily emissions limit for SO₂.⁸

MDE issued the Draft Permit for the Mettiki plant on August 17, 2012. EIP submitted timely comments on the Draft Permit on September 17, 2012. Mr. Feldman, for whom MDE extended the notice and comment deadline, submitted timely comments on the Draft Permit on October 5, 2012. All issues raised in this Petition were raised in Mr. Feldman’s comments to MDE, which EIP assisted in drafting. MDE responded to comments by cover letter dated

⁴ 42 U.S.C. § 7661d(b)(2).

⁵ Air & Radiation Mgmt. Admin., MDE, LLC, Draft Part 70 Operating Permit Fact Sheet Permit No. 24-023-0042 (“Fact Sheet”) at 1.

⁶ *Id.* at 4.

⁷ *Id.* at 7.

⁸ *Id.*; see also 1982 and 1983 Mettiki PSD Permits appended to Mr. Feldman’s comments at Attachment B.

January 14, 2013.⁹ According to the EPA Region III Title V website, MDE submitted a proposed Title V permit for the Mettiki plant to EPA on October 24, 2012 and the EPA review period ended on December 7, 2012.¹⁰ It is unclear as to whether MDE has issued a final Title V Permit for the Mettiki plant as of the date of this Petition.

SPECIFIC OBJECTIONS

“If any [Title V] permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter...the Administrator *shall*...object to its issuance.”¹¹ The EPA “does not have discretion whether to object to draft permits once noncompliance has been demonstrated.”¹²

I. The Draft Permit does not include testing and monitoring requirements sufficient to assure compliance with limits for SO₂ and PM emissions from the thermal dryer.

MDE has failed to include monitoring requirements in the Draft Permit that assure compliance with air quality-based PSD limits for SO₂ and PM emissions from the thermal dryer.

The Clean Air Act requires that “each permit issued under [Title V] shall set forth ... monitoring, compliance certification, and reporting requirements sufficient to assure compliance with the permit terms and conditions.”¹³ In 2008, the D.C. Circuit Court of Appeals struck down an EPA rule that would have prohibited MDE and other state and local authorities from adding monitoring provisions to Title V permits if needed to “assure compliance.”¹⁴ The Court emphasized the statutory duty to include adequate monitoring in Title V permit, stating: “[b]y its

⁹ Air & Radiation Mgmt. Admin., MDE, Response to Public Comments for the Proposed Part 70 Operating Permit Renewal for Mettiki Coal, LLC (“MDE Response to Comments”) (Attachment D).

¹⁰ U.S. Env’tl. Prot. Agency, Mid-Atlantic Air Protection, Title V Air Operating Permits Database: Deadlines for Public Petitions to the Administrator for Permit Objections, <http://www.epa.gov/reg3artd/permitting/petitions3.htm> (last visited February 4, 2013).

¹¹ 42 U.S.C. § 7661d(b)(1) (emphasis added).

¹² See *N.Y. Pub. Interest Group v. Whitman*, 321 F.3d 316, 334 (2d Cir. 2003) (holding that EPA is required to object to Title V permits once petitioner has demonstrated that permits do not comply with the Clean Air Act).

¹³ 42 U.S.C. § 7661c(c).

¹⁴ See *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008).

terms, this mandate means that a monitoring requirement insufficient ‘to assure compliance’ with emission limits has no place in a permit unless and until it is supplemented by more rigorous standards.”¹⁵ The Court specifically noted that annual testing is unlikely to assure compliance with a short term emission limit, and found that state permitting authorities have a statutory duty to include monitoring requirements that ensure compliance with emission limits in Title V operating permits.¹⁶ The Draft Permit for Mettiki contains testing and monitoring requirements that are insufficient to meet these mandates.

A. The Draft Permit does not require monitoring sufficient to assure compliance with SO₂ and PM emissions limits for the thermal dryer

The Draft Permit is deficient because it does not include monitoring sufficient to assure that emissions limits for SO₂ and PM from the thermal dryer will be met at all times, including during daily startup and shutdown events and during malfunctions. The Draft Permit establishes SO₂ limits of 78.6 lbs/hour and 1258 lbs/day and PM limits of 0.02 gr/scfd and 760 lb/day.¹⁷ Because these are PSD limits, they apply at all times. The Draft Permit requires monitoring of SO₂ and PM emissions from the thermal dryer by annual stack testing and by monitoring of pollution control technology parameters set forth in the Compliance Assurance Monitoring (CAM) plan. There is an additional set of parametric monitoring requirements for PM emissions. However, none of these monitoring requirements can assure compliance with the corresponding SO₂ and PM emissions limits.

The SO₂ and PM limits for the thermal dryer air quality-based limits established in Mettiki’s PSD permit, and, therefore, apply at all times, including during startup, shutdown and

¹⁵ *Id.* at 677.

¹⁶ *See id.* at 675.

¹⁷ Draft Permit at 33, 34.

malfunction (“SSM”) events. MDE has acknowledged that these limits apply at all times.¹⁸ Further, EPA has a long-held policy that air quality based emission limits apply at all times—including during SSM events.¹⁹ In a memorandum disallowing blanket exemptions from compliance with State Implementation Plan (SIP) limits during SSM events, EPA notes that “because excess emission might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation.”²⁰ This rationale applies to PSD emission limits “not only because PSD is ambient-based but also because generally, the PSD program is part of the SIP. Even in States where the PSD program is not SIP approved, the emissions limits are established to protect increments and the national ambient air quality standards [NAAQS].”²¹

The Draft Permit does not include monitoring requirements that assure compliance with the SO₂ and PM emissions limits for the thermal dryer. The annual stack tests required in the Draft Permit²² are inadequate to assure compliance with the concentration-based PM limit which must be met at all times and the SO₂ limit, which must be met hourly.²³ Additionally, the parametric monitoring required for PM pursuant to 40 C.F.R. § 256(a)(1) cannot assure

¹⁸ MDE Response to Comments at 2 (“MDE agrees with the comment that PSD limits apply at all times, including periods of SSM.”)

¹⁹ See, e.g., Memorandum from John B. Rasnic, Dir., Stationary Source Compliance Div., U.S. Env’tl. Prot. Agency, on Automatic of Blanket Exemptions for Excess Emissions During Startup, and Shutdowns Under PSD to Linda M. Murphy, Dir., Air, Pesticides & Toxics Mgmt. Div., U.S. Env’tl. Prot. Agency (Jan. 28, 1993) (“Rasnic Memorandum”).

²⁰ Memorandum from Steven A. Herman, Asst. Adm’r for Enforcement & Compliance, U.S. Env’tl. Prot. Agency, on State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown to Regional Administrators, Regions I – X (Sept. 20, 1999) (“Herman Memorandum.”)

²¹ Rasnic Memorandum, *supra* note 19.

²² Draft Permit at 35.

²³ See *Sierra Club v. EPA*, 536 F.3d at 675 (noting that annual testing is unlikely to assure compliance with a short term emission limit).

compliance with the PM limit because it does not require Mettiki to stay within any values for the parameters being measured.²⁴

The CAM plan also falls short because it does not require Mettiki to take corrective action for deviations from parametric indicator ranges (which are correlated to stack tests demonstrating compliance with SO₂ and PM emission limits)²⁵ during certain SSM events, most of which are frequent and foreseeable.²⁶ Specifically, Mettiki is not required to take corrective action for deviations from SO₂ and PM indicator ranges during startup and shutdown events of up to 30 minutes per incident.²⁷ Because the plant is restricted to a 16-hour operating day,²⁸ startup and shutdown events each occur at least once daily, meaning that Mettiki may emit excess SO₂ and PM emissions for up to an hour each day, or 365 hours per year, without taking corrective action. Additionally, Mettiki is not required to take corrective action for deviations from the SO₂ indicator ranges during malfunction events of unlimited duration.²⁹ These exemptions render the CAM plan insufficient to assure compliance with the SO₂ and PM emissions limits.

B. MDE's Response to Comments does not show that the Draft Permit requires monitoring sufficient to assure compliance with SO₂ and PM limits for the thermal dryer

MDE's Response to Comments fails to show that the Draft Permit requires monitoring sufficient to assure compliance with SO₂ and PM limits for the thermal dryer. MDE states that

[b]ecause there is no compliance [stack] testing performed during periods of SSM, there is no correlation between the selected [CAM] operational parameters

²⁴ See Draft Permit at 36.

²⁵ “[I]t is the use of operating parameters in the CAM plan to [sic] determine whether or not the emission control devices, the ventur[i] scrubbers, are performing in a manner as when compliance stack testing was conducted.” MDE Response to Comments at 2.

²⁶ See Herman Memorandum *supra* note 20 (“In general, because excess emissions that occur [during startup and shutdown] are reasonably foreseeable, they should not be excused.”)

²⁷ Draft Permit at 49, 52.

²⁸ *Id.* at 32, 33, 34.

²⁹ *Id.* at 49.

and compliance with the standards for these periods. Compliance for SSM periods is handled in a manner different from determining compliance with normal operation. As discussed in response to Comment I.B, the Title V permit requires the reporting of incidents of excess emissions and periods of SSM in the monthly monitoring reports as required by the CAM plan. When MDE reviews report and suspects excess emissions in violation of an emission standard/limit, a source such as Mettiki is required to provide an estimate of the quantity of excess emissions during the occurrence, operating data and calculations used in determining the quantity. The Department uses this information to determine the appropriate enforcement action. Startup and shutdown periods are limited to 30 [m]inutes, so there is a limit on the duration of excess emissions that may occur during start up and shut down periods.³⁰

This response fails to show that MDE has set monitoring requirements that assure compliance with PSD limits for SO₂ and PM emissions during daily startup and shutdown events and during malfunctions. Instead, Mettiki is merely required to report excess emissions, and MDE has the discretionary authority to ask for follow-up data and then to take enforcement action based on that information.

As an initial matter, MDE's discretionary enforcement authority is not an adequate substitute for the Clean Air Act's mandate that monitoring requirements be set forth in a Title V permit which assure compliance with each emission limit therein.³¹ EPA has stated that:

As a general matter, permitting authorities must take three steps to satisfy the monitoring requirements in EPA's part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. Second, if the applicable requirement contains no periodic monitoring, permitting authorities must 'add periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.' 40 C.F.R. § 70.6(a)(3)(i)(B). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure compliance. 40 C.F.R. § 70.6(c)(1).³²

³⁰ MDE Response to Comments at 3-4.

³¹ 42 U.S.C. § 7661c(c); see *Sierra Club*, 536 F.3d at 677.

³² *CITGO Order; In the Matter of Premcor Refining Group, Inc.*, Petition-VI-2007-2, 6-7 (May 28, 2009).

Thus, MDE must supplement the monitoring requirements in the Draft Permit in order to ensure compliance with SO₂ and PM limits during the frequent and foreseeable daily startup and shutdown events and to ensure compliance with SO₂ limits during malfunctions.

Additionally, it is entirely unclear how MDE would use the information reported by Mettiki to determine whether Mettiki is violating the SO₂ and PM emissions limits during SSM events. EPA has stated that “the rationale for the selected monitoring requirements must be clear and documented in the permit record.”³³ EPA recently objected to the Wheelabrator, Baltimore, L.P. Title V Permit because MDE proposed to establish and approve a method for converting Continuous Emissions Monitoring System (CEMS) data into mass emissions data for demonstrating compliance with short-term PSD emission limits outside of the permit record. EPA stated that “this is inconsistent with the requirements of section 504(c) of the CAA to include – *in the title V permit* – monitoring to assure compliance with applicable requirements.”³⁴

In the present case involving the Mettiki plant, MDE indicates that it has a method for determining compliance with Mettiki’s SO₂ and PM limits during SSM events, stating that

[w]hen MDE reviews reports and suspects excess emissions in violation of an emission standard/limit, a source such as Mettiki is required to provide an estimate of the quantity of excess emissions during the occurrence, operating data and calculations used in determining the quantity. The Department uses this information to determine the appropriate enforcement action.³⁵

³³ *CITGO Order* at 7.

³⁴ *Wheelabrator Order, In the Matter of Wheelabrator Baltimore, L.P.*, Permit No. 24-510-01886, 11 (June 1, 2009) (emphasis in original).

³⁵ MDE Response to Comments at 4.

If MDE has established a method or methods for determining Mettiki's compliance with SO₂ and PM limits during SSM, these must be set forth in the Title V Permit.³⁶ It would appear that such methods may exist, as the Draft Permit requires corrective action for deviation from indicator ranges during startup and shutdown incidents that last longer than 30 minutes.

C. MDE's Response to Comments does not show or state that it is impossible to measure SO₂ and PM emissions from the thermal dryer during startup, shutdown and malfunction events

Finally, MDE has failed to show, or even claim, that it is not possible to measure SO₂ and PM emissions during start up and shut down of the thermal dryer. There are a number of options for measuring such emissions. For instance, CEMS is available for both SO₂ and PM (either as PM CEMS or as Continuous Opacity Monitoring System (COMS)), and values for those systems could be correlated to Mettiki's SO₂ and PM emissions limits through a series of stack tests. MDE is requiring the use of SO₂ CEMS and either COMS or PM CEMS at emissions units BS-1 and BS-2 at the Brandon Shores coal-fired power plant in Anne Arundel County. MDE is also requiring SO₂ CEMS for the new Energy Answers incinerator in Baltimore City. Additionally, if there is a linear relationship between the CAM parameters and SO₂ and PM emissions, it is unclear why values cannot be derived for startup and shutdown periods that would assure compliance with emissions limits during those events. If the relationship between the CAM parameters and SO₂ and PM emissions is nonlinear, this calls into question the usefulness of the CAM parameters in assuring compliance at any time. MDE must either establish monitoring requirements which assure compliance with the SO₂ and PM limits for the thermal drying during SSM events, particularly the frequent and foreseeable daily startups and shutdowns, or it must show that it is impossible to do so.

³⁶ See *Wheelabrator Order* at 11.

CONCLUSION

EPA must object to the proposed Permit because it is not in compliance with the Clean Air Act. Without changes to this Permit, Title V's purpose of increasing enforcement and compliance will be defeated. Title V aims to improve accountability and enforcement by "clarify[ing], in a single document, which requirements apply to a source." 57 Fed. Reg. 32250, 32251 (July 21, 1992).

For all of these reasons, Petitioners respectfully request that the Administrator object to the proposed Fort Smallwood Title V Permit and require MDE to revise the proposed Permit in

DATED: February 5, 2013

Respectfully submitted,



Leah Kelly
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*On behalf of Environmental Integrity
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Attachment A



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September 17, 2012

VIA E-MAIL AND FEDERAL EXPRESS

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sheafey@mde.state.md.us

**RE: PART 70 OPERATING PERMIT FOR METTIKI COAL, LLC FACILITY,
PERMIT NO. 24-023-0042**

Dear Ms. Heafey:

The Environmental Integrity Project (EIP) thanks you for the opportunity to submit comments on the draft Title V permit (Draft Permit) for the coal preparation and processing plant (Plant) operated in Oakland, Maryland by Metikki Coal, LLC (Mettiki). We appreciate the considerable effort that the Maryland Department of Environment (MDE) has made to organize and explain the requirements for this facility, and to make emission limitations and monitoring methods reasonably transparent for the public. Our specific comments are as follows:

I. The Permit Must Include An Emissions Limit for Nitrogen Oxides (NO_x)

Mettiki's Draft Permit should contain an emissions limit for nitrogen oxides (NO_x) emitted from the thermal dryer because such a limit should have been included in the PSD permit for the facility.

All new major stationary sources constructed after August 7, 1977 must comply with the PSD regulations set forth at 40 C.F.R. § 52.21. 42 U.S.C. § 7475(a). A PSD permit for a stationary source "which emit[s], or ha[s] the potential to emit, one hundred tons per year or more of any air pollutant from . . . [a] coal cleaning plant[] (thermal dryer[])" must contain an emissions limit based on the Best Available Control Technology (BACT) for each regulated new source review pollutant. 42 U.S.C. §§ 7479(1), 7475(a)(4); 40 C.F.R. § 52.21(b)(1)(i)(a), -(j)(2). The PSD threshold for "coal cleaning plants (with thermal dryers)" is "100 tons per year or more of any pollutant subject to regulation under the [Clean Air] Act." 40 C.F.R. § 52.21(b)(1)(i) (2002); Md. Code Regs. 26.11.01.01B(37).

The draft renewal Title V permit, however, does not include an emission limit based on BACT for NO_x. In fact, there is no NO_x emission limit specified for the thermal dryer. The failure to include a BACT limit for NO_x emissions in the PSD permit is significant. The Mettiki Part 70 Operating Permit Fact Sheet (Fact Sheet) shows that annual NO_x emissions at the plant have been increasing significantly since 2006, and the plant emitted 216 tons of NO_x in 2010. Fact Sheet at 2.

We have communicated with MDE about this issue before, and our understanding is that MDE does not believe it can correct through Title V review a deficiency that was approved in the PSD permit. This is not the case.

Title V permits must "assure compliance by the source with all applicable requirements." 40 C.F.R. § 70.1(b). "Applicable requirements" include

(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [[40 C.F.R.] Part 52.

40 C.F.R. § 70.2.

The PSD requirements, including the BACT-based emissions limit requirement, are set forth in 40 C.F.R. § 52.21, which is incorporated by reference in COMAR 26.11.06.14. COMAR 26.11.06.14 is part of Maryland's EPA-approved State Implementation. 40 C.F.R. § 52.1070. Therefore, MDE may not approve a Title V permit that fails to set emission limits that are required under 40 C.F.R. § 52.21, and may not approve the Draft Permit for the Mettiki plant without a BACT-based emissions limit for NO_x.

II. Metikki Must Submit a Fugitive Coal Dust Emissions Control Plan Meeting New Source Performance Standards If Open Storage Piles Or Associated Equipment Are Modified

In May of 2009, Metikki received a permit to construct a new 150 ton per hour portable coal crusher. The Permit Fact Sheet states that this coal crusher will be used to crush coal for use at the North Branch Power Station. Permit Fact Sheet at 4. The Permit Fact Sheet also states that the coal crusher has been installed at the facility but has not yet begun operation, and that Metikki will inform MDE when it commences operation. It appears likely that the installation of this crusher will increase the coal throughput at the Plant, and the throughput at Emissions Unit 2 (EU-2), the Coal Handling System. If the throughput at EU-2 increases, Mettiki will need to prepare, and comply with, a fugitive coal dust emissions plan that meets the requirements of 40 C.F.R. § 60.254(c).

The Clean Air Act New Source Performance Standards (NSPS) at 40 C.F.R. Part 60 Subpart Y require that

The owner or operator of an open storage pile, which includes the equipment used in the loading, unloading, and conveying operations of the affected facility, constructed, reconstructed, or modified after May 27, 2009, must prepare and operate in accordance with a submitted fugitive coal dust emissions control plan that is appropriate for the site conditions as specified in paragraphs (c)(1) through (6) of this section.

40 C.F.R. § 60.254(c). Additionally, modification, as defined in the NSPS regulations, “means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility.” 40 C.F.R. § 60.2.

There are several open storage piles operating as part of the Plant. Draft Permit at 39; Fact Sheet at 1. In fact, there appear to be two temporary raw coal storage piles (MCC03 and MCC04), two “clean coal” storage piles (MCC08 and MCC10), a low BTU coal pile (MCC14), and a storage pile for middling from the thermal dryer (MCC06). Draft Permit at 39. The Draft Permit indicates that these piles produce fugitive dust, which is an air pollutant to which a standard for visible emissions applies. 40 C.F.R. § 252(c); Draft Permit at 49. There are currently no controls required for fugitive dust emissions from these coal piles. Id. Additionally, EIP has heard reports by citizens of major problems with fugitive dust emissions from the unenclosed storage piles.

Any physical change in the storage piles themselves that results in additional emissions of fugitive dust will subject Mettiki to the fugitive coal dust emissions control plan requirement set forth in the NSPS. 40 C.F.R. § 60.254(c). This includes increasing the size of the piles as a result of increased throughput. Similarly, any physical change in, or changes to the method of operating, the loading, unloading and conveying operations associated with the open storage piles will also subject Mettiki to this requirement. Id.

The language of 40 C.F.R. § 60.254(c) should be made an enforceable condition for EU-2 under Mettiki’s Title V permit as it appears likely that the installation of the new 150 ton per day coal crusher will lead to a modification of the open storage piles and/or associated loading, unloading and conveying equipment. If MDE believes that no such modification has been made since May 27, 2009 or is likely to be made in the foreseeable future, it should explain the basis for this opinion.

Thank you for considering our comments.

Respectfully,

A handwritten signature in black ink, appearing to read 'Leah Kelly', with a long, sweeping horizontal stroke extending to the right.

Leah Kelly
Attorney

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Attachment B

Mr. Benjamin Feldman
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October 5, 2012

Via email and US Mail

Ms. Shannon Heafey
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*RE: PART 70 OPERATING PERMIT FOR METTIKI COAL, LLC FACILITY,
PERMIT NO. 24-023-0042*

Dear Ms. Heafey,

Thank you for the opportunity to comment on Mettiki Coal LLC's (Mettiki) application for a Title V permit (renewal).

I am a landowner with property proximate to Mettiki's coal processing plant and, like my neighbors, am directly impacted by Mettiki's operations and consistent failure to control coal particulate and ash emissions from its operations.

We have experienced numerous instances where emissions of coal dust and ash, either from coal waste or product piles, the thermal dryer or other site processes, are deposited on our property to the extent that our houses are discolored, the snow on the ground is turned grey/black and covered with large particles and residents fear for the health of their children.

These coal dust and ash episodes result in deposition of regulated particulates on our property that have the potential to cause immediate respiratory discomfort and long term health problems. In fact, many of the children in the neighborhood suffer from asthma and parents are concerned that this condition is either caused by or aggravated by emissions from Mettiki's operations.

These emissions are supposed to be controlled as a condition of permit but the conditions of the current permit, or the enforcement thereof, has not resulted in adequate control of particulate emissions from the facility. It is not clear if these incidents result from start-up activities, failure to properly manage coal piles—one of which may now be the highest point in Maryland, failure of emissions control technologies or a combination of factors. Whatever the underlying set of causes, the renewed permit must contain provisions that both subject the facility to proper emissions limitations as required by the Clean Air Act and amendments thereto, and ensure that

facility will, operate in a manner that results in appropriate performance with respect to these particulate emission and criteria pollutant limitations. The facility must also be subject to monitoring requirements and enforcement provisions commensurate with its potential to harm and history of violations.

This is particularly important given Mettiki's well-established history as a bad environmental actor in the State. This history includes being subject to the largest environmental fine in Maryland history for unlawful exceedance of its SO₂ emissions limitation. The settlement of this case also involved a consent decree requiring Mettiki to install additional controls if it once again fails to operate within lawful limits. The conditions of this consent decree must be included in the current permit. Further, the presence of a consent decree due to previous unlawful violation of emissions limitations argues for the State to impose more stringent monitoring requirements than in the current permit given the permittee's history of violations. My understanding is that there have been numerous instrument and monitoring equipment malfunctions since the consent decree was entered into and it is unclear why MDE has not already required Mettiki to install additional controls as contemplated in the original consent decree.

I have worked with the Environmental Integrity Project (EIP) on the preparation of the specific comments contained in the enclosure below, and also incorporate by reference EIP's September 17, comments on this permit application.

Sincerely,

Benjamin Feldman

Enclosure: Comments prepared with assistance from EIP, PSD Permit.

I. The Draft Title V Permit Illegally Weakens PSD Limits For SO_x and PM

The Draft Title V Permit illegally weakens Prevention of Significant Deterioration (PSD) Permit Limits by treating plant-wide emission limits set in the PSD Permit as applicable only to the thermal dryer and by exempting Mettiki from complying with those limits during startup, shutdown and malfunction.

Section 116 prohibits states from enforcing emission standards or limits that are less stringent than its state implementation plan (SIP). 42 U.S.C. § 7416. The terms "emission limitation" and emission standard" are defined broadly, and include any "requirement established by the State or Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the

operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard” Id. § 7602(k). PSD permits in Maryland are issued pursuant to requirements established in Maryland’s SIP. See Md. Code Ann. § 26.11.02; 40 C.F.R. § 52.1070(c).

Thus, MDE may not weaken emission limits in a PSD permit unless EPA approves a SIP amendment that reflects the less stringent limits. 42 U.S.C. § 7416; Duquesne Light Co. v. U.S. Env’tl. Prot. Agency, 698 F.2d 456, 468 n. 12 (D.C. Cir. 1983). If MDE believes that limits set forth in the PSD Permit are not feasible, then it may “seek to revise the PSD permit through appropriate procedures, and reflect any revised PSD permit terms in the [T]itle V permit.” In re: Wheelabrator Baltimore, L.P., at 8 (EPA April 14, 2010) (ordering MDE to respond to petitioners’ substantive claims with respect to weakening PSD emission limits in Title V Permit for the Wheelabrator, Baltimore, L.P. incinerator).

**A. The Draft Title V Permit Treats Plant-Wide Emissions Limits
For SO_x and PM As Applicable Only To the Thermal Dryer**

The PSD Permit (attached as Appendix A) states that “[t]otal plant emissions shall not exceed” daily and hourly sulfur oxides (SO_x) limits and daily and concentration-based limits for particulate matter (PM). The PSD Permit states that the limits are applicable to the installation, and identifies the installation as a “10,000 ton/hour coal preparation facility, comprised principally of 2 – rotary breakers, 12- (6 ft.) raw coal screens, 12 – (7 ft.) raw coal screens, 3- crushers, 18- cycloids, 1- thermal dryer, 1-centrifuges, 4- primary collectors, and 2- venturi scrubbers.” PSD Permit at 2. The attached letter from the EPA dated May 6, 1983 also states that the SO_x and PM limits are applicable to the entire facility. PSD Permit at 1.

However, the Draft Title V Permit lists the SO_x and PM limits only under the emissions limits for the thermal dryer. Draft Title V Permit at 33-34. The SO_x and PM limits are not set forth under Section III, Plant-Wide Conditions or under Section IV, Part 1.0, which identifies the facility-wide operating limit of 16 hours. The SO_x and PM limits are also not set forth under the Applicable Standards/Limits for Emissions Unit EU-2, the Coal Handling System, which includes the rotary breaker and screening as well as open coal piles, the storage silos and other units. Additionally, there is no method provided of assuring that EU-2 or the other emissions units comply with the SO_x and PM limits, which, under the PSD Permit, were applicable to the entire plant.

MDE must make the SO_x and PM emissions limits applicable to the entire plant by placing them under Section III, Plant-Wide Conditions, in the Draft Title V Permit. MDE must also provide monitoring methods for the other emissions units (EU-2, EU-3 and EU-4) that will assure that emissions from the coal-handling system¹ and gasoline storage tank, both of which were part of the plant at the time that the revised PSD permit was issued in 1983. Fact Sheet at 4.

**B. The Draft Title V Permit Effectively Exempts Mettiki
From Complying With SO_x and PM Limits For the
Thermal Dryer During Startup, Shutdown and Malfunctions**

Additionally, the Draft Title V Permit further weakens the PSD limits for PM and SO_x, as they have been applied to the thermal dryer, by effectively exempting Mettiki from complying with those limits during malfunction events of unlimited duration, and startup and shutdown events of less than 30 minutes. We understand that the parametric monitoring requirements were established in the 2007 Consent Decree, and we appreciate the efforts made by MDE in its enforcement action and establishment of the Consent Decree. However, exempting Mettiki from compliance with the parametric monitoring requirements during malfunctions and startup and shutdown events of less than 30 minutes weakens the PSD limits for SO_x and PM.

As stated above, the PSD Permit sets daily and hourly SO_x limits and daily and concentration-based limits for PM, both based on a 16-hour operating day. The PSD permit does not allow exemptions from these emission limits at any time, and states that they were established based on an EPA analysis of hourly limits necessary to avoid violation of PM standards. PSD Permit at 3. In other words, the PM and SO_x emission limits set in the PSD Permit apply at all times.

The Draft Title V Permit, however, effectively exempts Mettiki from these limits during malfunction events of unlimited duration, and startup and shutdown events of less than 30 minutes. The Compliance Assurance Monitoring (CAM) plan establishes parametric monitoring methods for demonstrating compliance with the SO_x and PM emissions from the thermal dryer. However, Mettiki is exempt from taking corrective actions for deviations from the parameter values during all malfunctions, and during startup and shutdown events of less than 30 minutes. Draft Title V Permit at 49, 52. This effectively exempts Mettiki from complying during those times with the PM and SO_x limits for the thermal dryer. Mettiki may emit unlimited emissions during these events without taking corrective action. Given that the plant is limited to operating

¹ The coal handling system, EU-2, was modified in 2005 and 2006. Fact Sheet at 4. We request that MDE explain if it considers these portions of the coal-handling system exempt from the facility-wide limit due to receipt of PSD Permits in 2005 and 2006.

for 16 hours a day, and must, therefore, start up and shut down at least once per day, it is exempt from the PM and SO₂ limits for at least an hour every day. This impermissibly weakens the SO_x and PM limits, which were set in the PSD permit based on an EPA analysis of standards necessary to ensure compliance with PM standards.

Additionally, EPA has a long held policy that air quality based emission limits apply at all times—including during SSM events.² In a memorandum disallowing blanket exemptions from compliance with State Implementation Plan (SIP) limits during SSM events, EPA notes that “because excess emission might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation.”³ This rationale applies to PSD emission limits “not only because PSD is ambient-based but also because generally, the PSD program is part of the SIP. Even in States where the PSD program is not SIP approved, the emissions limits are established to protect increments and the national ambient air quality standards [NAAQS].”⁴

MDE must revise the Draft Title V Permit to remove the exemptions for startup, shutdown and malfunction from the CAM plan. If Mettiki cannot meet the SO₂ and PM limits during startup, shutdown and malfunction events, then it should be required to quantify the likely emissions during those events, assess their impacts on air quality standards and control technology requirements, and MDE should revise the Draft Title V Permit accordingly.

II. Monitoring Requirements Fail to Assure Compliance With SO_x, PM and Visible Emissions Limits For the Thermal Dryer

The startup, shutdown and malfunction exemptions in the CAM plan also fail to assure compliance with the PM, SO_x and visible emissions (expressed as opacity) limits for the thermal dryer. The visible emissions limit is relevant because the Draft Title V Permit states that Mettiki shall demonstrate compliance with the visible emissions standard [for the thermal dryer] through compliance with the . . . [CAM] plan for control of PM.” Draft Title V Permit at 36.

² See, e.g., Memorandum from John B. Rasnic, Dir., Stationary Source Compliance Div., U.S. Env'tl. Prot. Agency, on Automatic of Blanket Exemptions for Excess Emissions During Startup, and Shutdowns Under PSD to Linda M. Murphy, Dir., Air, Pesticides & Toxics Mgmt. Div., U.S. Env'tl. Prot. Agency (Jan. 28, 1993) (“Rasnic Memorandum”).

³ Memorandum from Steven A. Herman, Asst. Adm'r for Enforcement & Compliance, U.S. Env'tl. Prot. Agency, on State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown to Regional Administrators, Regions I – X (Sept. 20, 1999) (emphasis added).

⁴ Rasnic Memorandum, *supra* note 2.

The Clean Air Act requires that “each permit issued under [Title V] shall set forth ... monitoring, compliance certification, and reporting requirements sufficient to assure compliance with the permit terms and conditions” 42 U.S.C. §7661c(c). On August 19, 2008, the D.C. Circuit Court of Appeals struck down an EPA rule that would have prohibited MDE and other state and local authorities from adding monitoring provisions to Title V permits if needed to “assure compliance.” See Sierra Club v. EPA, 536 F.3d 673 (D.C. Cir. 2008). The opinion emphasized the statutory duty to include adequate monitoring in Title V permits:

Title V is a complex statute with a clear objective: it enlists EPA and state and local environmental authorities in a common effort to create a permit program for most stationary sources of air pollution. Fundamental to this scheme is the mandate that “[e]ach permit...shall set forth...monitoring...requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(c). By its terms, this mandate means that a monitoring requirement insufficient ‘to assure compliance’ with emission limits has no place in a permit unless and until it is supplemented by more rigorous standards.

Id. at 677.

As set forth in the Applicable Standards/Limits section of the Draft Title V Permit for the thermal dryer, the concentration-based PM limit for the thermal dryer must be met at all times, and the SO_x limit must be met on an hourly basis. The visible emissions limit for the thermal dryer, expressed as 20 percent opacity, must be met at all times except during start-up, shutdown, process modification, or adjustments, or occasional cleaning of control equipment if the visible emissions are not greater than 40 percent opacity and the visible emissions do not occur for more than 6 consecutive minutes in any 60-minute period. Draft Title V Permit at 56.

The CAM plan allows Mettiki to deviate from parametric monitoring values for PM and SO_x for up to an hour a day due to startup and shutdown, and on an unlimited basis during malfunction. It does not appear that the CAM plan can assure compliance with PM and SO_x limits that must be met at all times if it allows an exemption from those limits for an hour out of a maximum 16-hour operating day. It also appears that the CAM plan cannot assure compliance with visible emissions limits which must be met at all times unless certain conditions are met during startup, shutdown and certain maintenance events.

MDE should explain how the CAM plan can assure compliance with these emissions limits, given the startup and shutdown exemptions of up to an hour a day and the operating limit of 16 hours per day.



OFFICE OF ENVIRONMENTAL PROGRAMS
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201 • Area Code 301 • 383-776

TTY FOR DEAF: Balto. 383-7555
D.C. Metro. 565-0451

Charles R. Buck, Jr., Sc.D. Secretary

William M. Eichbaum, Assistant Secretary

May 6, 1983

Mr. Blucher Allison, P.E.
Chief Engineer
Mettiki Coal Corporation
Route 3, Box 125A
Deer Park, Maryland 21550

Dear Mr. Allison:

On October 1, 1982, the Department issued a revised PSD permit to replace the previous permit issued by EPA in 1978. The permit covers your 1000 ton/hour coal preparation facility located 3 miles south of Table Rock in Garrett County. On the attachment to your permit, it was stated that the facility could not emit more than 1,886 pounds of sulfur oxides per day. This value was based on a maximum hourly emission rate of 78.6 pounds and a daily operating schedule of 24 hours per day. Since one of the conditions on the revised approval is a maximum operating schedule of 16 hours per day, the maximum allowable daily emission rate of 1,886 pounds/day is incorrect and should be 1,258 pounds/day.

Enclosed is the new revised attachment for your PSD approval which includes the conditions that your coal preparation plant not emit more than 78.6 pounds/hour of sulfur oxides and not operate more than 16 hours/day. These conditions lead directly to the daily emission limit of 1,258 pounds/day.

A copy of this letter and the revised attachment to your permit are being sent to the EPA in Philadelphia. They have agreed to these changes and will rescind their PSD permit which was issued on July 5, 1978.

If you have any questions, do not hesitate to call Mr. Carl York at (301) 383-2776.

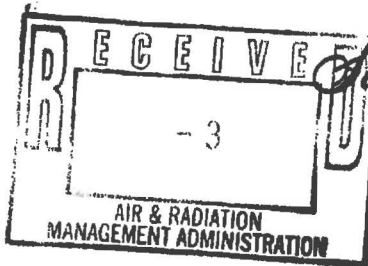
Sincerely,


George P. Ferreri, Director
Air Management Administration

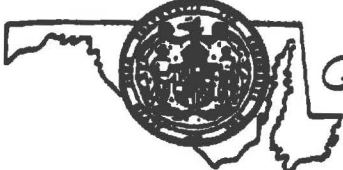
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Enclosure

cc: James B. Topsale (3WA10),
U.S. EPA



State of



Maryland

RECEIVED

OCT 8 1982

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
OFFICE OF ENVIRONMENTAL PROGRAMS
201 W. PRESTON STREET
BALTIMORE, MARYLAND 21201

AIR MANAGEMENT
ADMINISTRATION

William M. Eichbaum
Assistant Secretary for
Environmental Programs

Charles R. Buck, Jr., Sc.D.
Secretary

☒ Revised PSD Approval

☐ Construction Permit

☐ Operating Permit

☐ DHS Facility Permit

AIR MANAGEMENT ADMINISTRATION

PERMIT NO. N/A

Date Issued October 1, 1982

PERMIT FEE None

Expiration Date N/A

LEGAL OWNER & ADDRESS

Mettiki Coal Corporation
Box 124A, Route 3
Deer Park, Maryland 21550

SITE

3 miles south of Table Rock
Garrett County

INSTALLATION DESCRIPTION

1000 ton/hour coal preparation facility, comprised principally of:

2 - rotary breakers, 12 - (6 ft.) raw coal screens, 12 - (7 ft.) raw coal screens, 3 - crushers, 18 - cycloids, 1 - thermal dryer, 13 - centrifuges, 4 - primary collectors, and 2 - venturi scrubbers

This revised PSD approval is issued with the proviso that full and continuous compliance is achieved with the conditions specified on the attachment.

Donald P. Anderson

Administrator, Engineering and Enforcement Program

George P. Ferraro

Director, Air Management Administration

(NOT TRANSFERABLE)

Revised PSD Approval for Mattiki Coal Corporation, Garrett County

- (1) The Company shall operate and maintain the subject installations in compliance with all air pollution control regulations and other requirements set forth within this permit.
- (2) The analysis performed by the U.S. Environmental Protection Agency indicated a limitation of 31.7 lbs/hr. (24 hrs/day basis) in order to prevent a violation of standards for particulate matter. The corresponding SO₂ limit was 78.6 lbs/hr. Stack tests indicated an ability to comply continuously with a particulate grain loading of less than 0.02 gr./scfd. Therefore, the installation shall not be operated in excess of 16 hrs/day at the production rate specified in the Company's application dated July 6, 1982. Total plant emissions shall not exceed the levels indicated in the table below:

<u>Particulate (TSP)</u>	
<u>lbs/day</u>	<u>gr/scfd</u>
760	0.02

<u>Sulfur Oxide (SO_x)</u>	
<u>lbs/hr.</u>	<u>lbs/day</u>
78.6	1258

- (3) At the request of the Department, the stacks shall be retested to demonstrate compliance with the requirements set forth in Item 2 above. A stack test shall be conducted at a frequency of not more than once per year or less than once per three years.
- (4) The Company shall install within 120 days of the date of this approval a recording hour meter in the control circuit of the dryer feeder. The recorded charts shall be made available for inspection by the Department.



OCT 8 1982

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
OFFICE OF ENVIRONMENTAL PROGRAMS
201 W. PRESTON STREET
BALTIMORE, MARYLAND 21201

AIR MANAGEMENT
ADMINISTRATION

Charles R. Buck, Jr., Sc.D.
Secretary

William M. Eichbaum
Assistant Secretary for
Environmental Programs

☒ Revised PSD Approval

☐ Construction Permit

☐ Operating Permit

☐ DHS Facility Permit

AIR MANAGEMENT ADMINISTRATION

PERMIT NO. N/A

Date Issued October 1, 1982

PERMIT FEE None

Expiration Date N/A

LEGAL OWNER & ADDRESS

Mettiki Coal Corporation
Box 124A, Route 3
Deer Park, Maryland 21550

SITE

3 miles south of Table Rock
Garrett County

INSTALLATION DESCRIPTION

1000 ton/hour coal preparation facility, comprised principally of:

2 - rotary breakers, 12 - (6 ft.) raw coal screens, 12 - (7 ft.) raw coal screens, 3 - crushers, 18 - cycloids, 1 - thermal dryer, 13 - centrifuges, 4 - primary collectors, and 2 - venturi scrubbers

This revised PSD approval is issued with the proviso that full and continuous compliance is achieved with the conditions specified on the attachment.

Donald P. Anderson

Administrator, Engineering and Enforcement Program

George P. Ferraro

Director, Air Management Administration

(NOT TRANSFERABLE)

Revised PSD Approval for Mettiki Coal Corporation, Garrett County, Permit No.

- (1) The Company shall operate and maintain the subject installation in compliance with all applicable air pollution control regulations and other requirements set forth within this permit.
- (2) The analysis performed by the U.S. Environmental Protection Agency indicated a limitation of 31.7 lbs/hr. (24 hrs/day basis) in order to prevent a violation of standards for suspended particulate matter. The corresponding SO₂ limit was 78.6 lbs/hr. Stack tests indicated an ability to comply continuously with a particulate grain loading of less than 0.02 gr/scfd. Therefore, the installation shall not be operated in excess of 16 hrs/day at the production rate specified in the Company's application dated July 6, 1982. Total plant emissions shall not exceed the levels indicated in the table below:

<u>Particulate (TSP)</u>		<u>Sulfur Oxide (SOx)</u>
<u>lbs/day</u>	<u>gr/scfd</u>	<u>lbs/day</u>
760	0.02	1886

- (3) At the request of the Department, the stacks shall be retested to demonstrate compliance with the requirements set forth in Item 2 above. A stack test shall be conducted at a frequency of not more than once per year or less than once per three years.
- (4) The Company shall install, within 120 days of the date of this approval, a recording hour meter in the control circuit of the dryer feeder. The recorder charts shall be made available for inspection by the Department.



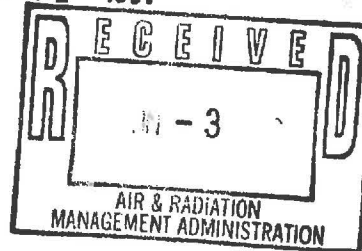
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

6TH AND WALNUT STREETS
PHILADELPHIA, PENNSYLVANIA 19106

In Reply Refer To: 3EN12

JUN 1 1981



RECEIVED

JUN 3 1981

METTIKI COAL CORP.
ENGINEERING DEPT.

Mr. Lonnie V. Waller
Chief Engineer
Mettiki Coal Corporation
Route 3, Box 124A
Deer Park, Maryland 21550

Re: Permit to construct and operate dated July 5, 1978
CDS No. 21-0800-60001

Dear Mr. Waller:

On July 5, 1978, Region III of the U.S. Environmental Protection Agency (EPA) issued Mettiki Coal Corporation a permit to construct and operate a coal preparation plant in Garrett County, Maryland. This permit was issued pursuant to regulations for the prevention of significant air quality deterioration ("PSD"), 40 C.F.R. § 52.21. In addition, coal preparation plants on which construction commences after October 24, 1974 are subject to EPA's new source performance standards (NSPS) for coal preparation facilities, 40 C.F.R. § 60.250 et seq.

In order to determine whether your company is in compliance with its PSD permit and the NSPS for coal preparation plants, you are hereby required pursuant to § 114 of the Clean Air Act, 42 U.S.C. § 7414, to submit the following information:

1. Has a coal thermal dryer been constructed at this site?
2. The date on which construction of the preparation facilities commenced.
3. The date on which operation of the preparation facilities physically commenced or will commence.
4. A copy of every particulate or sulfur dioxide emission test conducted at the preparation plant.

The information hereby required must be submitted no later than 14 calendar days after receipt of this letter. Failure to provide the information may result in the imposition of sanctions set forth in Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

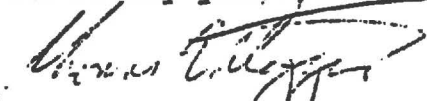
Pursuant to regulations appearing at 40 C.F.R. Part 2, Subpart B (41 Fed. Reg. 36907, September 1, 1976, as modified at 43 Fed. Reg. 39997, September 8, 1978) you are entitled to assert a claim of business confidentiality covering any part of the submitted information which is not "emission data" as defined at 40 C.F.R. Section 2.301(a)(2). Unless such a confidentiality claim is asserted at the time requested information is submitted, EPA may make this information available to the public without further notice to you. Information subject to a claim of business confidentiality will be made available to the public only in accordance with the regulations appearing at 40 C.F.R. Part 2, Subpart B.

All correspondence to this office should contain the file number referenced above.

The Maryland Air Management Agency has requested that you provide them with a copy of your response to this letter. You may send a copy of your response to Mr. Carl York, Maryland Air Management Administration, Office of Environmental Programs, P.O. Box 13387, Baltimore, Maryland 21203.

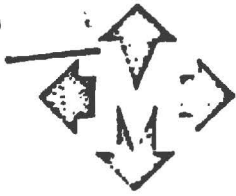
If you have any questions concerning this matter, please contact Gary Gross, Air Enforcement Branch, at (215) 597-8907. Thank you for your cooperation.

Sincerely yours,



Thomas C. Voltaggio
Acting Director, Enforcement Division

cc: Carl York
Maryland Air Management Administration



METTIKI COAL CORPORATION
a division of mapco inc.

June 15, 1981

United States Environmental Protection Agency
Region III
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

Attention: Thomas C. Voltaggio, Acting Director,
Enforcement Division

Subject: Permit to Construct and Operate dated
July 5, 1978 CDS NO. 21-0800-60001

Dear Sir:

In reply to your letter dated June 1, 1981, (Reference: 3EN12), the following is the information that you requested:

- (1) A coal thermal dryer has been constructed at this site.
- (2) Construction of the preparation facility commenced March of 1976.
- (3) The preparation facility physically commenced operation in September of 1978.
- (4) A copy of the results of a test done on particulates and sulfur dioxide is attached.

At the time of this test, the coal being burned in the thermal dryer was the Middlings (secondary) coal product, having an analysis of Sulfur-2.35%, Ash-14.68%, and BTU 13,200/lb. Since such time, we have changed thermal dryer fuel. We now use our metalurgical (premium) grade coal product, having an analysis of Sulfur - 1.15%, Ash - 7.0%, and BTU - 14,500/lb.

Attachment C

Leah Kelly

Subject:

FW: Draft Title V Renewal conditions Mettiki Coal

From: **Shannon Heafey** <sheafey@mde.state.md.us>

Date: Tue, Sep 18, 2012 at 11:00 AM

Subject: Re: Draft Title V Renewal conditions Mettiki Coal

To: Ben <benjamin.n.feldman@gmail.com>

Good morning Ben,

I spoke with my bosses this morning about your concerns; after discussing the issues that you and I discussed last evening, we believe a very important step for you would be to speak with the compliance engineer who monitors Mettiki and raise your concerns with him to get answers. I would like to call you to discuss this further, please let me know a good time and phone number to call you.

Regarding the comment period, I will ask for the two weeks, which I expect would be ok; again, I'll discuss that too with you when I call.

Thanks,
Shannon

Shannon L. Heafey
Title V Coordinator
Air Quality Permits Program
Air and Radiation Management Administration
[410-537-4433](tel:410-537-4433)

>>> On 9/18/2012 at 9:36 AM, in message <C8CC9306-6340-4A2F-8009-80F2B33DEA90@gmail.com>, Ben <benjamin.n.feldman@gmail.com> wrote:

Dear Shannon,

I reviewed the draft permit last night and would like to request 2 weeks to formulate and submit my comments.

Based upon my initial review, I have significant concerns about the lack of NOx emissions limitations and control requirements, the language regarding triggers for additional control requirements (which I believe should already have been triggered under the consent decree) and particulate control requirements at all of the piles and in the event the new crusher is brought into service.

It will take me a bit of time to get all of this into proper form, but I am willing to limit myself to two weeks rather than the full 30 days that I had planned on when I registered as an interested party.

I look forward to your response.

Sincerely,

Ben

Sent from my iPad

On Sep 17, 2012, at 4:25 PM, "Shannon Heafey" <sheafey@mde.state.md.us> wrote:

Hi Ben,

Please find attached the draft permit conditions for the renewal Mettiki Part 70 operating permit and the Fact Sheet.

Shannon

Shannon L. Heafey
Title V Coordinator
Air Quality Permits Program
Air and Radiation Management Administration
[410-537-4433](tel:410-537-4433)

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank You

<Mettiki Coal Part 70 Fact Sheet 2012.pdf>

<Mettiki Coal Renewal Part 70 Operating Permit Draft Conditions 2012.pdf>

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank You

Attachment D



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Robert M. Summers PhD
Secretary

Anthony Brown
Lt. Governor

JAN 14 2013

Dear Concerned Citizen:

Thank you for your participation in the Part 70 Operating permit application process for Mettiki Coal, LLC located in Oakland, MD.

Enclosed please find the Department's Response to Comments document, which addresses questions and concerns raised during the hearing and submitted directly to the Department during the comment period.

The proposed documents have been submitted to EPA Region III for approval. The EPA forty-five day review period ends on December 7, 2012. Citizens have the opportunity to petition EPA regarding this proposed permit within 60 days after the end of the EPA forty-five day review period. The petition period dates can be found on the EPA Region III website at <http://www.epa.gov/reg3artrd/permitting/petitions3.htm>

Please feel free to contact me at 410-537-4433 or sheafey@mde.state.md.us with any questions.

Sincerely,

Shannon L. Heafey, Title V Coordinator
Air Quality Permits Program
Air and Radiation Management Administration

SLH/jm

Enclosure

**MARYLAND DEPARTMENT OF THE ENVIRONMENT (MDE)
AIR AND RADIATION
MANAGEMENT ADMINISTRATION (ARMA)**

**RESPONSE TO PUBLIC COMMENTS FOR THE
PROPOSED PART 70 OPERATING PERMIT RENEWAL FOR
METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550**

- I. The Permit must include an emission limit for nitrogen oxides (NOx) because a limit should have been included in the PSD permit for the facility.**

MDE Response:

EPA Region III issued the PSD approval in 1978 at the onset of the PSD program and several years prior to the time when the Department received EPA approval for its PSD program. Given the timing of the permit's issuance, it is possible that one of the exemptions at 40 CFR 52.21(i) could have applied to Mettiki's original PSD permit. MDE was not directly involved with the drafting of the PSD permit, and therefore, has no knowledge or documentation relating to the issuance. In absence of any clear evidence to the contrary, MDE can only assume that EPA appropriately implemented its own regulations at the time of the permit's issuance, and that if a NOx BACT emission limit was required under the CAA at the time that the PSD permit was issued in 1978, EPA would have included the NOx BACT limit in the permit. We therefore disagree with the commenter's assertion that a NOx limit is an applicable requirement that must be included in Mettiki's title V operating permit.

- II. Mettiki must submit a fugitive coal dust emissions control plan meeting New Source Performance Standards if open storage piles or associated equipment are modified.**

MDE Response:

MDE disagrees with this comment. The installation of the portable crusher was for the purpose of satisfying the needs of a perspective customer. The customer, the Dominion North Branch Electric Generating Station, required a unique type of sizing. The existing middlings storage pile would have been the source for the coal and would not have been modified. Therefore, the throughput of the facility would not have increased beyond the original capacity of Mettiki coal preparation plant. Finally, the power plant has ceased operation and no new customer that needs the same unique type of sizing has come forward. Because the middlings storage pile has not been modified as a result of the installation of the portable crusher, Mettiki is not subject to the requirements of 40 CFR §60.254(c).

- III. We have experienced numerous instances where emissions of coal dust and ash, either from coal waste or product piles, the thermal dryer or other site processes, are deposited on our property to the extent that our houses are discolored, the snow on the ground is turned grey/black and covered with large particles and residents fear for the health of their children.**

MDE Response:

MDE is unaware of any recent allegations of fugitive dust incidents other than the one you reported in January 2012. Prior to this, the Department received one other complaint in July 2007 of dust fall out. Complaints are handled by the ARMA Compliance Program. During inspections performed in response to air complaints and during routine compliance inspections, the Department has not found fugitive dust issues or problems at the Mettiki Table Rock facility. At this time the Compliance program believes that the current Part 70 permit conditions are sufficient to prevent fugitive dust.

- IV. The draft Title V Permit illegally weakens PSD limits for SOx and PM by exempting Mettiki from complying with limits during startup, shutdown, and malfunction.**

MDE Response:

MDE disagrees with this comment. The Draft Title V permit does not specify that the PSD PM and SOx limits do not apply during periods of startup, shutdown, and malfunction (SSM). In fact, nowhere in the permit or the supporting statement of basis (Fact Sheet) is there language to state that the PSD emission limits do not apply during periods of SSM. MDE agrees with the commenter that the PSD limits apply at all times, including periods of SSM.

- V. The draft Title V Permit treats plant-wide emissions limits for SOx and PM as applicable only to the thermal dryer**

MDE Response:

MDE disagrees with this assertion. The PSD emission limits for PM and SOx apply to the total of all point sources at the plant. While fugitive emissions would have been subject to a BACT review, the BACT for fugitive emissions would have been best management practices and have excluded a short term emission limit or annual emissions cap. The PSD permit which was issued by EPA Region III in 1979 limits PM for the only point source at the facility, i.e. the thermal dryer. Similarly, for SOx emissions, the only point source of emissions at the plant is the thermal dryer.

The particulate (TSP) limit is 760 lbs/day (31.7 lbs/hr) based on an emissions limit of 0.02 gr/scfd. The mass/volume standard of 0.02 gr/scfd can only apply to a point source such as the stacks for the thermal dryer. This emission standard would have no meaning for the coal handling operations at Mettiki because they are all fugitive sources. The revised 1982 PSD permit states "At the request of the Department, the stacks shall be retested to demonstrate compliance with the

requirements set forth in Item 2 above". "Item 2 above" is the total plant emissions limits for PM and SOx. In this instance, "total plant" means the "total of all point sources".

VI. The draft Title V Permit effectively exempts Mettiki from complying with SOx and PM limits for the thermal dryer during startup, shutdown, and malfunction.

MDE Response:

MDE disagrees with this comment. It is not compliance with the PSD limits that is exempted for periods of startup, shutdown, and malfunctions (SSM). Rather it is the use of operating parameters in the CAM plan to determine whether or not the emission control devices, the venture scrubbers, are performing in a manner as when compliance stack testing was conducted. The quality and accuracy of the operating parameters cannot be validated for periods of SSM because compliance testing is never performed during periods of SSM.

It is clear that malfunctioning of equipment may cause or contribute to excess emissions at a facility. With respect to potential violations of emission standards, Mettiki is required to report periods of excess emissions and malfunctions. COMAR 26.11.01.07B states: "Unless otherwise required by law, the Department will consider any period of excess emissions to be a violation of law, regardless of the cause". MDE has a history of taking enforcement action for excess emissions caused by malfunctions. MDE will typically review the facts surrounding the incident and determines an appropriate enforcement action. For Mettiki, the requirement to report excess emissions and malfunctions is found in condition 4. Report of Excess Emissions and Deviations in Section III Plant Wide Conditions of the Title V permit. In addition, the monthly reports required by the Compliance Assured Monitoring (CAM) plans require Mettiki to identify periods when parameter monitoring data is excluded because of SSM. MDE evaluates the reports of excess emissions and malfunctions to determine the appropriate enforcement action.

VII. Monitoring requirements fail to assure compliance with SOx, PM, and visible emission limits for the thermal dryer.

MDE Response:

MDE disagrees that the CAM plan in the Title V permit should be revised to remove the exclusion of startup and shutdown periods of less than 30 minutes and malfunctions. CAM plans are required for sources that require a pollution control device to comply with an emission limit. CAM plans include indicators such as operational parameters that represent proper operations of the pollution control and have been correlated to compliance with an emission limit during compliance stack testing. Because there is no compliance testing performed during periods of SSM, there is no correlation between the selected operational parameters and compliance with the standard for these periods. Compliance for SSM periods is handled in a manner different from determining compliance during normal operation.

As discussed in response to Comment I.B, the Title V permit requires the reporting of incidents of excess emissions and periods of SSM in the monthly monitoring reports as required by the CAM plan. When MDE reviews reports and suspects excess emissions in violation of an emission standard/limit, a source such as Mettiki is required to provide an estimate of the quantity of excess emissions during the occurrence, operating data and calculations used in determining the quantity. The Department uses this information to determine the appropriate enforcement action. Startup and shutdown periods are limited to 30 Minutes, so there is a limit on the duration of excess emissions that may occur during start up and shut down periods.

The strategy MDE selected for demonstrating compliance with the visible emissions limitation focuses on the CAM plan which is used for the compliance demonstration for PM from the thermal dryer. The visible emission standard does not apply during startup and shutdowns which matches the CAM plan. For PM there is no exemption for malfunctions in the CAM plan. Compliance with the PM standard will assure compliance with the V.E. standard. The venturi scrubbers emit a steam plume which makes it difficult to make an accurate visual observation. One has to observe visible emissions that remain after the steam plume dissipates. MDE believes the continuous monitoring of the pressure drop across the venturi to demonstrate that the scrubber is operating properly is a better compliance demonstration alternative than a periodic observation of the steam plume.