

December 19, 2005

Ms. Laura Tracey
41 Washington Avenue
Elmwood Park, NJ 07407

Dear Ms. Tracey:

The United States Environmental Protection Agency ("EPA") received your petition dated, October 29, 2003, via electronic mail requesting EPA to object to the issuance of a state operating permit, pursuant to title V of the Clean Air Act ("CAA"), CAA §§ 501-507, 42 U.S.C. §§ 7661-7661f, to the Prime Energy Limited Partnership ("PELP") located at 15 River Road, Elmwood Park, New Jersey 07407. The PELP facility is a cogeneration facility engaged in the production of electricity and steam. The initial operating permit for PELP was issued on August 29, 2001, by the New Jersey Department of Environmental Protection ("NJDEP"), and significantly modified on September 2, 2003, pursuant to title V of the Act, the federal implementing regulations, 40 C.F.R. part 70, and the New Jersey State implementing regulations, N.J.A.C. 7:27-22. The petition for objection was submitted vis-a-vis the permit modification.

Based on the public record for the PELP permit, the PELP title V significant permit modification was issued in draft and announced in The Ridgewood News, on May 6, 2003, commencing a 30-day public comment period which ended on June 10, 2003. During this period, there is no record of any comments being submitted to the NJDEP concerning the draft title V permit issued to PELP relevant to the issues you raised in your petition. In fact, the applicant was the sole commenter. NJDEP transmitted the response to public comments document, dated July 9, 2003, to EPA. Consistent with 40 C.F.R. § 70.8(d), NJDEP submitted the proposed permit to EPA for a 45-day review subsequent to the close of the public comment period. The EPA review period began on July 15, 2003 and concluded on August 29, 2003. 40 C.F.R. § 70.8(d) affords a 60-day period to petition for an EPA objection on the permit if EPA does not object to its issuance. Therefore, the 60-day petition period for the PELP modified permit began on August 30, 2003 and concluded on October 29, 2003. The petitioner submitted her request for an objection to the EPA via electronic mail on October 29, 2003, the sixtieth day of the petition period. After the close of the EPA 45-day review period and receiving no objection from EPA, NJDEP issued the final approval on September 2, 2003. Barring an EPA objection to the proposed permit during the EPA 45-day review period, NJDEP is free to take final action on the proposed permit as provided in 40 C.F.R. § 70.8(d).

Although the petition was submitted within the 60-day petition period, whether or not you have properly submitted a petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) must be determined. Specifically, 40 C.F.R. § 70.8(d) states, "[a]ny petition shall be based only on

objections to the permit that were raised with reasonable specificity during the public comment period provided for in 40 C.F.R. § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” Thus, EPA first evaluates whether the petition was based on objections/comments that were raised with reasonable specificity by any parties during the public comment period. Based on EPA’s review, this petition does not meet the regulatory criteria because the issues within the petition were not raised during the public comment period.

EPA also evaluates whether the grounds for an objection arose after the close of the public comment period. In this case, the basis for the objection request was stack test violations of PELP’s nearby facility, Marcal Paper Company, which became known to petitioner after the public comment period. In other words, according to the petition, you would not have requested an objection to the PELP permit, if Marcal Paper Company had not failed its stack test. In general, violations at a nearby facility that were disclosed after the public comment period cannot be construed as “grounds for [such] objection that arose after such period” as allowed in 40 C.F.R. § 70.8(d). Notwithstanding, EPA does not believe violations of a nearby facility would constitute grounds for denying a facility an operating permit. Any alleged violations by Marcal Paper needs to be resolved independent of the PELP permit. The resolution of Marcal’s alleged non-compliance is more appropriately handled through an enforcement action.

The second issue raised in the petition concerns the perceived failure on the part of NJDEP to require air emissions reduction given that PELP is located in an Ozone non-attainment area. PELP is located in a non-attainment area for Ozone subject to offset emissions of NO_x and VOC. However EPA’s review shows that the increases in NO_x and VOC emissions are below the significance level pursuant to NJ’s Emission Offset Rule, stipulated in N.J.A.C. 7:27-18. Therefore, the PELP modification is not subject to the non-attainment rules. The third issue raised in the petition concerns your being denied access to Marcal’s air model and the preconstruction permits for Marcal’s Kaofin dryer, information that pertained to the nearby facility. Please note the accessibility to Marcal’s information is irrelevant to the review of the PELP operating permit and is outside the scope of this permitting action. The claim of denied access to Marcal’s air model and preconstruction permits should be directed to the NJDEP under separate cover.

The last claim is that Marcal’s Kaofin dryer emits harmful substances such as PCBs and Mercury placing the children who live nearby at risk. You assert the combined emissions from PELP and Marcal make them the fourth highest emitter in NJ and facilities of this nature are more suitable in an industrial park setting. It should be noted that the emissions of hazardous air pollutants from the Marcal facility are not related to the PELP facility and are outside the scope of the permit issued to PELP. Your concerns should be directed to NJDEP under separate cover.

Thank you for your interest in the permitting process for the PELP operating permit.

Sincerely,

Alan J. Steinberg
Regional Administrator

cc: William O'Sullivan
NJDEP

bcc: John Preczewski, NJDEP
Steven Riva, 2DEPP-AP
Argie Cirillo, 2ORC-AIR
Suilin Chan, 2DEPP-AP