BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of the Proposed Title V
Operating Permit for

ACTION PACKAGING CORP. Permit ID: DEC 2-6105-00168/00002
to operate a flexographic printing facility
located in Brooklyn, New York

Proposed by the New York State Department of
Environmental Conservation
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PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR ACTION PACKAGING CORP.

Pursuant to Clean Air Act § 505(b)(2) and 40 CFR § 70.8(d), the New York Public Interest Research Group, Inc. ("NYPIRG") hereby petitions the Administrator ("the Administrator") of the United States Environmental Protection Agency ("U.S. EPA") to object to issuance of the proposed Title V Operating Permit for Action Packaging.[1] The permit was proposed to U.S. EPA by the New York State Department of Environmental Conservation ("DEC") via a letter to Mr. Steven C. Riva (Chief, Permitting Section, Air Programs Branch, U.S. EPA Region 2) dated December 17, 1999. This petition is filed within sixty days following the end of U.S. EPA's 45-day review period as required by Clean Air Act § 505(b)(2). The Administrator must grant or deny this petition within sixty days after it is filed. Id.

In compliance with Clean Air Act § 505(b)(2), NYPIRG's petition is based on objections to Action Packaging's draft permit that were raised during the public comment period provided by DEC. NYPIRG's comments on the draft permit (minus attachments) are included in Appendix A for reference purposes, only.[2]

[1] Throughout this petition, the permittee will be referred to as "Action Packaging."

[2] The original comments on the draft permit are attached to this petition for reference, only. NYPIRG does not wish for all issues raised in the original comments on the draft permit to be incorporated into this petition. Some of the original comments were recommendations for how DEC could make the permit more understandable and useful to the public. DEC's refusal to consider these recommendations is unfortunate, but not illegal. This petition focuses on aspects of the proposed permit that violate federal law.

NYPIRG is a not-for-profit research and advocacy organization that specializes in environmental issues. NYPIRG has more than 20 offices located in every region of New York State. Many of NYPIRG's members live, work, pay taxes, and breathe the air in Kings County, where Action Packaging is located.

The U.S. EPA Administrator must object to the proposed Title V permit for Action Packaging because it does not comply with 40 CFR Part 70. In particular:

(1) DEC violated the public participation requirements of 40 CFR § 70.7(h) by inappropriately denying NYPIRG's request for a public hearing (see p. 3 of this petition);

(2) the proposed permit is based on an incomplete permit application in violation of 40 CFR § 70.5(c) (see p. 5 of this petition);

(3) the proposed permit entirely lacks a statement of basis as required by 40 CFR § 70.7(a)(5) (see p. 7 of this petition);

(4) the proposed permit repeatedly violates the 40 CFR § 70.6(a)(3)(iii)(A) requirement that the permittee submit reports of any required monitoring at least every six months (see p. 9 of this petition);

(5) the proposed permit distorts the annual compliance certification requirement of Clean Air Act § 114(a)(3) and 40 CFR § 70.6(c)(5) (see p. 10 of this petition);

(6) the proposed permit does not assure compliance with all applicable requirements as mandated by 40 C.F.R. § 70.1(b) and 40 C.F.R. § 70.6(a)(1) because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance, and upset conditions (see p. 11 of this petition);

(7) the proposed permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B) (see p. 16 of this petition); and

(8) the proposed permit does not assure compliance with all applicable requirements as mandated by 40 C.F.R. § 70.1(b) and 40 C.F.R. § 70.6(a)(1) because many individual permit conditions lack adequate periodic monitoring and are not practically enforceable (see p. 17 of this petition).

If the U.S. EPA Administrator determines that a proposed permit does not comply with legal requirements, he or she must object to the proposed permit. See 40 CFR § 70.8(c)(1) ("The [U.S. EPA] Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part."). The numerous and significant violations of 40 CFR Part 70 discussed below require the Administrator to object to the proposed Title V permit for Action Packaging.

Discussion of Objection Issues

The Title V permitting program offers an unprecedented opportunity for concerned citizens to learn what air quality requirements apply to a facility located in their community and whether the facility is complying with those requirements. Unfortunately, a poorly written Title V permit may make enforcement under the Clean Air Act even more difficult than it already is, because each of New York's Title V permits include a permit shield. Under the terms of the permit shield, a permittee is protected from enforcement action so long as the permittee is complying with its permit, even if the permit incorrectly applies the law.[3] Thus, a defective permit may prevent NYPIRG's members as well as other New Yorkers from taking legal action against a permittee who is illegally polluting the air in their community. Furthermore, a Title V permit that lacks appropriate monitoring, recordkeeping, and reporting requirements denies NYPIRG's members and all New Yorkers their right to know whether the permittee is complying with legal requirements.

The proposed Title V permit does not assure Action Packaging's compliance with applicable requirements. U.S. EPA must require DEC to remedy the flaws in the proposed permit that are identified in this petition. If DEC refuses to remedy these flaws, U.S. EPA must draft a new permit for Action Packaging that complies with federal requirements.

A. DEC Violated the Public Participation Requirements of 40 CFR § 70.7(h) by Inappropriately Denying NYPIRG's Request for a Public Hearing

40 CFR § 70.7(h) provides that "all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit." The public notice announcing the availability of Action Packaging's draft permit neither gave notice of a public hearing nor informed the public how to request a public hearing. NYPIRG requested a public hearing in written comments submitted to DEC during the applicable public comment period. See Appendix A at 2.

Despite NYPIRG's extensive comments on the draft permit, DEC denied NYPIRG's request for a public hearing. It is difficult to imagine what a member of the public must allege in order to satisfy DEC's standard for holding a public hearing.

In denying NYPIRG's request for a public hearing, DEC asserted that:

> A public hearing would be appropriate if the Department determines that there are substantive and significant issues because the project, as proposed, may not meet statutory or regulatory standards. Based on a careful review of the subject application and comments received thus far, the Department has determined that a public hearing concerning this permit is not warranted.

[3] The permit shield only applies to requirements that are specifically identified in the permit.

See DEC Responsiveness Summary (cover letter). An examination of the applicable state regulation, 6 NYCRR § 621.7, reveals that DEC applied the wrong standard in denying NYPIRG's request for a public hearing. § 621.7 provides:

> §621.7 Determination to conduct a public hearing.
> (a) After a permit application for a major project is complete (see provisions of sections 621.3 through 621.5 of this Part) and notice in accordance with section 621.6 of this Part has been provided, the department shall evaluate the application and any comments received on it to determine whether a public hearing will be held. If a public hearing must be held, the applicant and all persons who have filed comments shall be notified by mail. This shall be done within 60 calendar days of the date the application is complete. A public hearing may be either adjudicatory or legislative.
> (b) The determination to hold an adjudicatory public hearing shall be based on whether the department's review raises substantive and significant issues relating to any findings or determinations the department is required to make pursuant to the Environmental Conservation Law, including the reasonable likelihood that a permit applied for will be denied or can be granted only with major modifications to the project because the project, as proposed, may not meet statutory or regulatory criteria or standards. *In addition, where any comments received from members of the public or other interested parties raise substantive and significant issues relating to the application, and resolution of any such issue may result in denial of the permit application, or the imposition of significant conditions thereon, the department shall hold an adjudicatory public hearing on the application.*
> (c) *Regardless of whether the department holds an adjudicatory public hearing, a determination to hold a legislative public hearing shall be based on the following:*
>
> *(1) if a significant degree of public interest exists*

(emphasis added). In denying NYPIRG's request for a public hearing, DEC applied the standard that governs when the agency can hold a hearing upon its own initiative, rather than the standard that governs when the agency must grant a public request for a hearing. Moreover, though DEC can hold a legislative hearing "if a significant degree of public interest exists," DEC apparently determined that NYPIRG's request for a public hearing (made on behalf of NYPIRG's student members at colleges and universities across the state) failed to demonstrate the requisite degree of public interest.

Apparently, DEC will hold a public hearing on a draft Title V permit only if public comments make it reasonably likely that the "project" (as opposed to the permit) must undergo major modifications.[4] Because a Title V permit is meant to assure that a facility complies with existing

[4] 6 NYCRR § 621.1(q) defines "project" as "any action requiring one or more permits identified in section 621.2 of this Part." (The Title V permit is one of the permits identified in section 621.2). 6 NYCRR § 621.1(o) defines "permit" as "any permit, certificate, license or other form of department approval, suspension, modification, revocation, renewal,

requirements, not to subject the facility to additional applicable requirements, the vast majority of existing facilities will not need to undertake major modifications before receiving a Title V permit. This does not obviate the need for a public hearing. In the context of a Title V permit proceeding, the objective of a public commenter is to ensure that the Title V permit holds the permit applicant accountable for violations of applicable requirements. Typically, the issue is whether significant modifications need to be made to the *permit*, not whether significant modifications need to be made to the *project*. DEC's interpretation of its regulations constructively denies the public an opportunity for a hearing on virtually any Title V permit application submitted by an existing facility. This clear violation of 40 CFR § 70.7(h) requires the Administrator to object to the proposed permit for Action Packaging.

B. The Proposed Permit is Based on an Incomplete Permit Application

The Administrator must object to the proposed Title V permit for Action Packaging because Action Packaging did not submit a complete permit application in accordance with the requirements of Clean Air Act § 114(a)(3)(C), 40 CFR §70.5(c), and 6 NYCRR § 201-6.3(d).

First, Action Packaging's permit application lacks an initial compliance certification. Action Packaging is legally required to submit an initial compliance certification that includes:

(1) a statement certifying that the applicant's facility is currently in compliance with all applicable requirements (except for emission units that the applicant admits are out of compliance) as required by Clean Air Act § 114(a)(3)(C), 40 CFR §70.5(c)(9)(I), and 6 NYCRR § 201-6.3(d)(10)(I);

(2) a statement of the methods for determining compliance with each applicable requirement upon which the compliance certification is based as required by Clean Air Act §114(a)(3)(B), 40 CFR § 70.5(c)(9)(ii), and 6 NYCRR § 201-6.3(d)(10)(ii).

The initial compliance certification is one of the most important components of a Title V permit application. This is because the initial compliance certification indicates whether the permit applicant is currently in compliance with applicable requirements. If Action Packaging is currently in violation of an applicable requirement, the proposed Title V permit must include an enforceable schedule by which it will come into compliance with the requirement (the "compliance schedule"). Because Action Packaging failed to submit an initial compliance certification, neither government regulators nor the public can feel confident that Action Packaging is currently in compliance with every applicable requirement. Therefore, it is unclear whether Action Packaging's Title V permit must include a compliance schedule.

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reissuance or recertification, including any permit condition and variance, that is issued in connection with any regulatory program listed in section 621.2 of this part." Thus, "project" and "permit" are given distinct definitions under state regulations promulgated by DEC. When DEC asserts that a hearing is warranted only when "the project, as proposed, may not meet statutory or regulatory standards," this statement can only be interpreted as requiring a demonstration that the underlying action that requires the permit--the operation of the facility--may not meet statutory or regulatory standards.

In the preamble to the final 40 CFR part 70 rulemaking, U.S. EPA emphasized the importance of the initial compliance certification, stating that:

> [I]n § 70.5(c)(9), every application for a permit must contain a certification of the source's compliance status with all applicable requirements, including any applicable enhanced monitoring and compliance certification requirements promulgated pursuant to section 114 and 504(b) of the Act. This certification must indicate the methods used by the source to determine compliance. This requirement is critical because the content of the compliance plan and the schedule of compliance required under § 70.5(a)(8) is dependent on the source's compliance status at the time of permit issuance.

57 FR 32250, 32274 (July 21, 1992). Despite the importance of knowing whether a permit applicant is in compliance with all requirements at the time of permit issuance, Action Packaging is not required to submit a compliance certification until one full year after the permit is issued. A permit that is developed in ignorance of a facility's current compliance status cannot possibly assure compliance with applicable requirements as mandated by 40 CFR
§ 70.1(b) and § 70.6(a)(1).

In addition to omitting an initial compliance certification, Action Packaging's permit application lacks certain information required by 40 CFR § 70.5(c)(4) and 6 NYCRR § 201-6.3(d)(4), including:

(1) a description of all applicable requirements that apply to the facility, and

(2) a description of or reference to any applicable test method for determining compliance with each applicable requirement.

The omission of this information makes it significantly more difficult for a member of the public to determine whether a draft permit includes all applicable requirements. For example, an existing facility that is subject to major New Source Review ("NSR") requirements should possess a pre-construction permit issued pursuant to 6 NYCRR Part 201. Minor NSR permits, Title V permits, and state-only permits are also issued pursuant to Part 201. In the Title V permit application, a facility that is subject to any type of pre-existing permit simply cites to 6 NYCRR Part 201. Because DEC does not require the applicant to describe each underlying requirement, it virtually impossible to identify existing NSR requirements that must be incorporated into the applicant's Title V permit. The draft permit fails to clear up the confusion, especially since requirements in pre-existing permits are often omitted from an applicant's Title V permit without explanation.

The lack of information in the permit application also makes it far more difficult for the public to evaluate the adequacy of periodic monitoring included in a draft permit, since the public permit reviewer must investigate far beyond the permit application to identify applicable test methods. Often, draft permit conditions are unaccompanied by any kind of monitoring requirement. Again, there is never an explanation for the lack of a monitoring method.

Action Packaging's failure to submit a complete permit application is the direct result of DEC's failure to develop a standard permit application form that complies with federal and state statutes and regulations. Nearly a year ago, NYPIRG petitioned the Administrator to resolve this fundamental problem in New York's Title V program. In the petition, submitted April 13, 1999, NYPIRG asked the Administrator to make a determination pursuant to 40 CFR § 70.10(b)(1) that DEC is inadequately administering the Title V program by utilizing a legally deficient standard permit application form. The petition is still pending. U.S. EPA must require Action Packaging and all other Title V permit applicants to supplement their permit applications to include an initial compliance certification and additional background information as required under state and federal law.

The entire April 13, 1999 petition is incorporated by reference into this petition and is attached hereto as Appendix B.

The Administrator must object to final issuance of the proposed permit to Action Packaging because the proposed permit is based upon a legally deficient permit application and therefore does not assure Action Packaging's compliance with applicable requirements.

C. The Proposed Permit Entirely Lacks a Statement of Basis as Required by 40 CFR § 70.7(a)(5)

The Administrator must object to the proposed Title V permit for Action Packaging because it lacks a statement of basis as required by 40 CFR § 70.7(a)(5).[5] According to § 70.7(a)(5), every Title V permit must be accompanied by a "statement that sets forth the legal and factual basis for the draft permit conditions." Without a statement of basis, it is virtually impossible for the public to evaluate DEC's periodic monitoring decisions (or lack thereof) and to prepare effective comments during the 30-day public comment period.

U.S. EPA's Periodic Monitoring Guidance ("PMG"), dated September 15, 1998, provides that "in all cases, the rationale for the selected periodic monitoring method must be clear and documented in the permit record." PMG at 8. Similarly, U.S. EPA's Draft Periodic Monitoring Technical Reference Document ("TRD"), dated April 30, 1999, states "You need to make the rationale for the selected periodic monitoring method clear, usually in a written document submitted with the permit application. The permitting authority is responsible for including this documentation in the permit record . . . Documentation of the rationale in the permit record is important for references in future Title V permitting actions." TRD at 3-3.

According to U.S. EPA Region 10:

[5] 40 CFR § 70.7(a)(5) provides that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory and regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it."

The statement of basis should include:

> i. Detailed descriptions of the facility, emission units and control devices, and manufacturing processes including identifying information like serial numbers that may not be appropriate for inclusion in the enforceable permit.
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> ii. Justification for streamlining of any applicable requirements including a detailed comparison of stringency as described in white paper 2.
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> iii. Explanations for actions including documentation of compliance with one time NSPS and NOC requirements (e.g. initial source test requirements), emission caps, superseded or obsolete NOCs, and bases for determining that units are insignificant IEUs.
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> iv. Basis for periodic monitoring, including appropriate calculations, especially when periodic monitoring is less stringent than would be expected (e.g., only quarterly inspections of the baghouse are required because the unit operates less than 40 hours a quarter.)

Elizabeth Waddell, Region 10 Permit Review, May 27, 1998 ("Region 10 Permit Review"), at 4. Region 10 also suggests that:

> The statement of basis may also be used to notify the source or the public about issues of concern. For example, the permitting authority may want to discuss the likelihood that a future MACT standard will apply to the source. This is also a place where the permitting authority can highlight other requirements that are not applicable at the time of permit issuance but which could become issues in the future.

Region 10 Permit Review at 4. In New York, this information is never provided.

NYPIRG is not alone in asserting that the statement of basis is an indispensable part of Title V proceedings. According to Joan Cabreza, EPA Region 10 Air Permits Team Leader:

> In essence, this statement is an explanation of why the permit contains the provisions that it does and why it does not contain other provision that might otherwise appear to be applicable. The purpose of the statement is to enable EPA and other interested parties to effectively review the permit by providing information regarding decisions made by the permitting authority in drafting the permit.

Joan Cabreza, Memorandum to Region 10 State and Local Air Pollution Agencies, Region 10 Questions & Answers #2: Title V Permit Development, March 19, 1996.

The Statement of Basis that accompanies the Final Air Operating Permit for Goldendale Compressor Station (Northwest Pipeline Corporation), a facility located in Washington State, is attached to petition as Appendix C. This document is provided as an example of effective supporting documentation for a Title V permit. The statement of basis was prepared by the Washington State Department of Ecology, located in Yakima, Washington.

DEC responded to NYPIRG's comment that the draft permit lacked a statement of basis by making the conclusory statement that "[i]t is the DEC's position that the permit application and draft permit provide the legal and factual background and explanation for the draft permit conditions." Responsiveness Summary, Re: General Permit Conditions, at 2. No reasonable person could conclude that information provided in Action Packaging's permit application and draft permit suffices as the statement of basis. No information is provided to justify DEC's determination that it is unnecessary to require any type of periodic monitoring to assure Action Packaging's compliance with NOx limits. No information is provided that indicates whether Action Packaging previously performed stack tests that verify compliance with emission limits. No information is provided that indicates whether Action Packaging is subject to New Source Review requirements. Moreover, the permit application and draft permit are inappropriate vehicles for the type of information that should be provided in the statement of basis. Assertions made by the applicant in the permit application cannot suffice as DEC's rationale for permit conditions; DEC must make its own statement. In addition, since the statement of basis is not meant to be enforceable, the statement of basis should not be part of the enforceable permit. Rather, Action Packaging's Title V permit must be accompanied by a separate statement of basis.[6]

In the absence of a statement of basis, the proposed permit for Action Packaging violates Part 70 requirements. The Administrator must object to the issuance of the proposed permit and insist that DEC draft a new permit that includes a statement of basis.

D. The Proposed Permit Repeatedly Violates the 40 CFR § 70.6(a)(3)(iii)(A) Requirement that the Permittee Submit Reports of any Required Monitoring at Least Every Six Months

Part 70 requires a permitted facility to submit reports of any required monitoring at least once every six months. See 40 CFR § 70.6(a)(3)(iii)(A). Though a blanket statement about the required six month reports is tucked away in the general conditions of the proposed permit, most individual monitoring conditions are followed by a statement that reporting is required only "upon request by agency."

[6] Shortly after the close of the public comment period on Action Packaging's draft permit, DEC began providing a "permit description" to accompany draft permits released for facilities located in New York City. These permit descriptions do not satisfy the requirement for a statement of basis because they fail to explain DEC's rationale for periodic monitoring decisions. Nevertheless, a permit description is at least a start toward creating a statement of basis as required by Part 70.

Under Part 70, the "monitoring" covered by the six month monitoring reports includes any activity relied upon for determining compliance with permit requirements, including general recordkeeping (e.g., maintaining records of gasoline throughput), compliance inspections (e.g. inspections to ensure that all equipment is in place and functioning properly), and emissions testing. Because the proposed permit is contradictory regarding when Action Packaging must submit monitoring results under particular permit conditions, it is unclear what, if anything, will be included in the six-month monitoring reports. A permit cannot assure compliance with applicable requirements without making it clear that reports of *all* required monitoring must be submitted to the permitting authority at least once every six months.

In response to NYPIRG's comments on the draft permit with respect to reporting requirements, DEC points to the general condition requiring reports of any required monitoring at least every six months. DEC then asserts that "[I]ndividual permit conditions default to the 6-month reporting requirement unless a more frequent reporting period is required by a rule. Individual monitoring conditions specify reporting requirements." See Responsiveness Summary, Re: General Permit Conditions, at 3. This explanation is unacceptable. First, the proposed permit does not include the "default" language. Second, other draft permits released by DEC for public comment include monitoring conditions that specifically require submittal of reports on an annual basis rather than every six months, even though the same six month reporting requirement is included as a general condition in those permits. This contradicts DEC's assertion that monitoring reports are always due every six months unless "a more frequent reporting period is required by a rule." A better characterization of DEC's position is that monitoring reports are due every six months unless a *different* reporting period is required by a rule. Following this logic, if a rule only requires reporting "upon request," DEC considers this to be the applicable reporting requirement. If DEC wanted Action Packaging to submit reports of a particular type of monitoring every six months, it would say so in the space next to "reporting requirements." DEC clearly believes that it can circumvent the six-month reporting requirement at will. Unless this proposed permit is modified to clearly identify the monitoring results that must be included in Action Packaging's six month monitoring reports, the reports are unlikely to be useful in assuring the facility's compliance with applicable requirements.

The Administrator must object to issuance of this proposed permit because it contains repeated violations of Part 70's clear cut requirement that reports of all required monitoring must be submitted at least once every six months.

E. The Proposed Permit Distorts the Annual Compliance Certification Requirement of Clean Air Act § 114(a)(3) and 40 CFR § 70.6(c)(5)

Under 6 NYCRR § 201-6.5(e), a permittee must "certify compliance with terms and conditions contained in the permit, including emission limitations, standards, or work practices," at least once each year. This requirement mirrors 40 CFR §70.6(b)(5). The general compliance certification requirement included in Action Packaging's proposed permit (identified as Condition 16 in the draft permit) does not require Action Packaging to certify compliance with all permit conditions. Rather, the condition only requires that the annual compliance certification identify "each term or condition of the permit that is the

basis of the certification." DEC then proceeds to identify certain conditions in the proposed permit as "Compliance Certification" conditions. Requirements that are labeled "Compliance Certification" are those that identify a monitoring method for demonstrating compliance. There is no way to interpret this designation other than as a way of identifying which conditions are covered by the annual compliance certification. Those permit conditions that lack periodic monitoring (a problem in its own right) are excluded from the annual compliance certification. This is an incorrect application of state and federal regulations. Action Packaging must certify compliance with every permit condition, not just those permit conditions that are accompanied by a monitoring requirement.

DEC's only response to NYPIRG's concerns regarding deficiencies in the compliance certification requirement is that "[t]he format of the annual compliance report is being discussed internally and with EPA." DEC Responsiveness Summary, Re: General Conditions, at 3. DEC's response is unacceptable. The annual compliance certification requirement is the most important aspect of the Title V program. The Administrator must object to any proposed permit that fails to require the permittee to certify compliance (or noncompliance) with all permit conditions on at least an annual basis.

F. The Proposed Permit Does Not Assure Compliance With All Applicable Requirements as Mandated by 40 C.F.R. § 70.1(b) and 40 C.F.R. § 70.6(a)(1) Because it Illegally Sanctions the Systematic Violation of Applicable Requirements During Startup/Shutdown, Malfunction, Maintenance, and Upset Conditions

The Administrator must object to the proposed permit for Action Packaging because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance, and upset conditions. On its face, 6 NYCRR § 201-1.4 (New York's "excuse provision") conflicts with U.S. EPA guidance regarding the permissible scope of excuse provisions and should not have been approved as part New York's State Implementation Plan ("SIP"). U.S. EPA must remove this provision from New York's SIP and all federally-enforceable operating permits as soon as possible. Meanwhile, Action Packaging's proposed permit must be modified to include additional recordkeeping, monitoring, and reporting obligations so that U.S. EPA and the public can monitor application of the excuse provision (and thereby be assured that the facility is complying with applicable requirements).[7]

The loophole created by exceptions for startup/shutdown, maintenance, malfunction, and upset (the "excuse provision") is so large that it swallows up applicable emission limitations and makes them extremely difficult to enforce. It is common to find monitoring reports filled with potential violations that are allowed under the excuse provision. Agency files seldom contain information about why violations are deemed unavoidable. In fact, there is no indication that regulated facilities take steps to limit excess emissions during startup/shutdown and maintenance activities.

[7] The excuse provision is identified as Condition 5 in the proposed permit.

U.S. EPA guidance explains that facilities are required to make every reasonable effort to comply with emission limitations, even during startup/shutdown, maintenance and malfunction conditions. (U.S. EPA guidance documents are attached hereto as Appendix D). According to U.S. EPA, an excuse provision only applies to infrequent exceedances. This is not the case for facilities located in New York State. New York facilities appear to possess blanket authority to violate air quality requirements so long as they assert that the excuse provision applies.

40 CFR § 70.6(a)(a) provides that each permit must include "[e]mission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." The proposed permit does not assure compliance with applicable requirements because it lacks (1) proper limitations on when a violation may be excused, and (2) sufficient public notice of when a violation is excused.

A Title V permit must include standards to assure compliance with all applicable requirements. The Administrator must object to the proposed permit for Action Packaging unless DEC adds terms to the permit that prevent abuse of the excuse provision. Specific terms that must be included in any Title V permit issued to Action Packaging are described below.

1. Any Title V permit issued to Action Packaging must include the limitations established by recent U.S. EPA guidance.

In a memorandum dated September 20, 1999 ("1999 memo"), U.S. EPA's Assistant Administrator for Enforcement and Compliance Assurance clarified U.S. EPA's approach to excuse provisions. In particular:

(1) The state director's decision regarding whether to excuse an unavoidable violation does not prevent EPA or citizens from enforcing applicable requirements;

(2) Excess emissions that occur during startup or shutdown activities are reasonably foreseeable and generally should not be excused;

(3) The defense does not apply to SIP provisions that derive from federally promulgated performance standards or emission limits, such as new source performance standards and national emissions standards for hazardous air pollutants.

(4) Affirmative defenses to claims for injunctive relief are not allowed.

(5) A facility must satisfy particular evidentiary requirements (spelled out in the 1999 memo) if it wants a violation excused under the excuse provision.[8]

[8] In the case of an exceedance that occurs due to startup, shutdown, or maintenance, the facility must demonstrate that:

Action Packaging's proposed permit does not include the restrictions set out in (1), (3), and (4). Moreover, the proposed permit lacks most of the evidentiary requirements referred to in (5). As for (2), both the language of the proposed permit and the DEC's own enforcement policy conflict with U.S. EPA's position that excess emissions during startup, shutdown, and maintenance activities are not treated as general exceptions to applicable emission limitations.

The Administrator must object to Action Packaging's proposed permit and require DEC to draft a new permit that includes the limitations described in the 1999 memo.

2. The proposed permit makes it appear that a violation of a federal requirement can be excused even when the federal requirement does not provide for an affirmative defense. Any Title V permit issued to Action Packaging must be clear that violation of such a requirement may not be excused.

The proposed permit apparently allows the DEC Commissioner to excuse the violation of any federal requirement by deeming the violation "unavoidable," regardless of whether an "unavoidable" defense is allowed under the requirement that is violated. U.S. EPA was concerned about this issue when it granted interim approval to New York's Title V program. In the Federal Register notice granting program approval, 61 Fed. Reg. 57589 (1996), U.S. EPA noted that before New York's program can receive full approval, 6 NYCRR §201-6.5(c)(3)(ii) must be revised "to clarify that the discretion to excuse a violation under 6 NYCRR Part [sic] 201-1.4 will not extend to federal requirements, unless the specific federal requirement provides for affirmative defenses during start-ups, shutdowns, malfunctions, or upsets." 61 Fed. Reg. at 57592. Though New York incorporated clarifying language into state regulations, the proposed permit lacks this language. Any Title V permit issued to Action Packaging must be clear that a violation of a federal requirement that does not provide for an affirmative defense will not be excused.

- The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;
- The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- At all times, the facility was operated in a manner consistent with good practice for minimizing emissions;
- The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;
- All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;
- All emissions monitoring systems were kept in operation if at all possible;
- The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and
- The owner or operator properly and promptly notified the appropriate regulatory authority.

The factual demonstration necessary to justify a defense based upon an unavoidable malfunction is similar to that for startup/shutdown. See 1999 Memo.

3. Any Title V permit issued to Action Packaging must define significant terms.

For a Title V permit to assure compliance with applicable requirements, each permit condition must be "practically enforceable." Limitations on the scope of the excuse provision are not practically enforceable because the proposed permit lacks definitions for "upset," and "unavoidable."

A definition for "upset" is elusive. The SIP-approved version of 6 NYCRR Part 201 does not even include the word "upset." "Upset" shows up mysteriously in the current regulation. Current § 201-1.4 lacks a definition. Current § 200.1 lacks a definition. 40 CFR Part 70 lacks a definition. A definition of this term must be included in the permit. Since no statutory or regulatory authority provides a definition for "upset," the only logical definition of "upset" is the definition for "malfunction," above. Otherwise, "upset" should be deleted from the permit.

NYPIRG cannot locate the definition of "unavoidable" in any applicable New York statute or regulation. A definition must be included in the permit because otherwise this condition is impermissibly vague. U.S. EPA's policy memorandum on excess emissions during startup, shutdown, maintenance, and malfunction, dated February 15, 1983. ("1983 memo") defines an unavoidable violation as one where "the excesses could not have been prevented through careful and prudent planning and design and that bypassing was unavoidable to prevent loss of life, personal injury, or severe property damage." Memorandum from Kathleen Bennett, Assistant Administrator for Air, Noise and Radiation, to Regional Administrators, dated Feb. 15, 1983. Either this definition or an alternative definition with the same meaning must be included in the permit.

In response to NYPIRG's comments on the draft permit regarding the need for definitions, DEC responded by asserting that:

> Definitions for the terms "upset" and "unavoidable" are contained in most, if not all, standard English dictionaries and are unnecessary for this permit. These terms are not defined under Federal regulations, therefore, the definitions in the dictionary will suffice for this permit. . . . Unavoidable is defined in the American Heritage dictionary as "Not capable of being avoided". Trying to define all of the circumstances under which an exceedance of an air permit limit would be unavoidable would be impossible. It is up to the permittee (Action Packaging) to explain to the satisfaction of this Department why the exceedance was unavoidable. If the explanation is unacceptable to the Department, then appropriate enforcement action will be taken.

DEC Responsiveness Summary, Re: Facility Level Conditions at 2. DEC's implication that abuse of the excuse provision will not take place because the permittee must explain to the satisfaction of the Department "why the exceedance was unavoidable" is unsatisfactory. As discussed below in section (F)(5), the excuse provision in this proposed permit does not require that facility to submit written reports of "unavoidable" violations unless DEC specifically requests such a report. Thus, the public is never provided with an opportunity to evaluate whether DEC applies the excuse provision in a responsible fashion. DEC's refusal to define critical terms in the excuse provision makes it even more

difficult for the public to assess the appropriateness of a decision by the Commissioner to excuse a violation (in the rare situation that a member of the public actually manages to discover that a violation was excused).

The problems caused by the vagueness of the excuse provision could be partially resolved by making it clear that the excuse provision does not shield the facility in any way from enforcement by the public or by U.S. EPA, even after a violation is excused by the commissioner. In addition to the right to bring an enforcement action against facility that illegally pollutes the air, however, the public must be able to evaluate the propriety of a decision by the DEC Commissioner to excuse a violation. Since the public has the right to bring an enforcement action against a permit violator, the public should have access to any information relied upon by DEC is determining that a violation could not be avoided.[9] If the permit provides only scanty details about the types of violations that may be excused, DEC and the permittee are unlikely to provide the public with any information justifying the excuse.

4. Any Title V permit issued to Action Packaging must define "reasonably available control technology" as it applies during startup, shutdown, malfunction, and maintenance conditions.

Though 6 NYCRR § 201-1.4(d) requires facilities to use "reasonably available control technology" ("RACT") during any maintenance, start-up/shutdown, or malfunction condition, the proposed permit does not define what constitutes RACT under such conditions or how the government and the public knows whether RACT is being utilized at those times. Any Title V permit issued to Action Packaging must define RACT as it applies during startup, shutdown, malfunction, and maintenance conditions. Also, the permit must include monitoring, recordkeeping, and reporting procedures designed to provide a reasonable assurance that the facility is complying with this requirement.

5. Any Title V permit issued to Action Packaging must require prompt reporting of deviations from permit requirements due to startup, shutdown, malfunction and maintenance as required under 40 CFR § 70.6(a)(3)(iii)(B).

Any Title V permit issued to Action Packaging must require the facility to submit timely written reports of any deviation from permit requirements in accordance with 40 CFR § 70.6(a)(3)(iii)(B). 40 CFR § 70.6(a)(3)(iii)(B) demands:

> Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define

[9] It is interesting that while some state agencies and industry representatives assert that citizen suits are sometimes brought against facilities for "minor" violations, DEC's position with respect to the excuse provision in this permit means that the public is denied information about the environmental seriousness of a violation and whether the violation was actually unavoidable. Thus, the public's ability to analyze the significance of a violation is severely contrained.

"prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

Action Packaging's proposed permit does not require prompt reporting of all deviations from permit requirements. Furthermore, in most cases the proposed permit allows reports to be made by telephone rather than in writing. Thus, a violation can be excused without creating a paper trail that would allow U.S. EPA and the public to monitor abuse. The proposed permit would leave the public completely in the dark as to whether DEC is excusing violations on a regular basis. An excuse provision that keeps the public ignorant of permit violations cannot possibly satisfy the Part 70 mandate that each permit assure compliance with applicable requirements.

Any Title V permit issued to Action Packaging must include the following reporting obligations:

(1) *Violations due to Startup, Shutdown and Maintenance*.[10] The facility must submit a written report whenever the facility exceeds an emission limitation due to startup, shutdown, or maintenance. (The proposed permit only requires reports of violations due to startup, shutdown, or maintenance "when requested to do so in writing").[11] The written report must describe why the violation was unavoidable, as well as the time, frequency, and duration of the startup/shutdown/maintenance activities, an identification of air contaminants released, and the estimated emission rates. Even if a facility is subject to continuous stack monitoring and quarterly reporting requirements, it still must submit a written report explaining why the violation was unavoidable. (The proposed permit does not require submittal of a report "if a facility owner/operator is subject to continuous stack monitoring and quarterly reporting requirements").[12] Finally, a deadline for submission of these reports must be included in the permit.

(2) *Violations due to Malfunction*. The facility must provide both written notification and a telephone call to DEC within two working days of an excess emission that is allegedly unavoidable due to "malfunction." (The proposed permit only requires notification by telephone, which means that there is no documentation of the exchange between the facility operator and DEC and there is no way for concerned citizens to confirm that the facility is complying with the reporting requirement).[13] The facility must submit a detailed written report within thirty days after the facility exceeds an emission limitations due to a malfunction. The report must describe why the violation was unavoidable, the time, frequency, and duration of the malfunction, the corrective action taken, an identification of air contaminants released, and the

[10] NYPIRG interprets U.S. EPA's 1999 memorandum as prohibiting excuses due to maintenance.

[11] See Condition 5(a) in the proposed permit.

[12] Id. Item 18.2(iv) of the proposed permit, which governs "Monitoring, Related Recordkeeping and Reporting Requirements" contains the same flaw.

[13] See Condition 5(b) in the proposed permit.

estimated emission rates. (The proposed permit only requires the facility to submit a detailed written report "when requested in writing by the commissioner's representative).[14]

G. The Proposed Permit Does Not Require Prompt Reporting of All Deviations From Permit Requirements as Mandated by 40 CFR § 70.6(a)(3)(iii)(B)

Item 18.2 of the proposed permit governs the reporting of all types of violations under the permit, not just those that might be considered excusable under 6 NYCRR § 201-1.4. As discussed above, 40 CFR § 70.6(a)(3)(iii)(B) requires prompt reporting of any violation of permit requirements. Item 18.2 violates this clear-cut reporting requirement.

At first glance, Item 18.2 appears to comply with the prompt reporting requirement. It states:

> To meet the requirements of this facility permit with respect to reporting, the permittee must: . . .
>
> ii. Report promptly (as prescribed under Section 201-1.4 of Part 201) to the Department:
> - deviations from permit requirements, including those attributable to upset conditions,
> - the probable cause of such deviations, and
> - any corrective actions or preventive measures taken.

Unfortunately, the only reporting required by Item 18.2 is the reporting required by 6 NYCRR § 201-1.4. As discussed above, § 201-1.4 only governs "Unavoidable Noncompliance and Violations." A facility is required to comply with § 201-1.4 only if it wants the violation excused as "unavoidable." 6 NYCRR § 201-6.5(c)(3)(ii) explains that "all other permit deviations shall only be reported as required under 201-6.5(c)(3)(i) unless the Department specifies a different reporting requirement within the permit." 6 NYCRR § 201-6.5(c)(3)(i) states that the permit must include "submittal of reports of any required monitoring at least every 6 months."

Thus, if the permittee could avoid a violation but failed to do so, the proposed permit allows the permittee to withhold information about the violation from government authorities for six months. Six months cannot possibly be considered "prompt reporting" The Administrator must object to the proposed permit because it does not require prompt reporting of all deviations from permit limits.

H. The Proposed Permit Does Not Assure Compliance With All Applicable Requirements as Mandated by 40 C.F.R. § 70.1(b) and 40 C.F.R. § 70.6(a)(1) Because Many Individual Permit Conditions Lack Adequate Periodic Monitoring and are not Practically Enforceable

[14] Id.

1. A Title V permit must include periodic monitoring that is sufficient to assure the government and the public that the permitted facility is operating in compliance with all applicable requirements.

A basic tenet of Title V permit development is that the permit must require sufficient monitoring and recordkeeping to provide a reasonable assurance that the permitted facility is in compliance with legal requirements. The periodic monitoring requirement is rooted in Clean Air Act § 504, which requires that permits contain "conditions as are necessary to assure compliance." 40 CFR Part 70 adds detail to this requirement. 40 CFR §70.6(a)(3) requires "monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance" and §70.6(c)(1) requires all Part 70 permits to contain "testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." Part 70's periodic monitoring requirements are incorporated into 6 NYCRR § 201-6.5(b).[15]

2. Every condition in a Title V permit must be practicably enforceable.

In addition to containing adequate periodic monitoring, each permit condition must be "enforceable as a practical matter" in order to assure the facility's compliance with applicable requirements. See U.S. EPA's Periodic Monitoring Guidance, September 15, 1998, at 16 ("Monitoring methods approved by the permitting authority must result in information that is enforceable as a practical matter."). To be enforceable as a practical matter, a condition must (1) provide a clear explanation of how the actual limitation or requirement applies to the facility; and (2) make it *possible* to determine whether the facility is complying with the condition.

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[15] 6 NYCRR § 201-6.5(b) states that:

> Each Title V facility permit issued under this Part shall include the following provisions pertaining to monitoring:
>
> (1) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods for compliance assurance monitoring as required by the Act shall be specified in the permit;
>
> (2) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall specify the periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the major stationary source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirements; and
>
> (3) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods.

6 NYCRR § 201-6.5(e)(2) further provides that a Title V permit must include "[a] means for assessing or monitoring the compliance of the stationary source with its emission limitations, standards, and work practices."

The following analysis of specific proposed permit conditions identifies requirements for which periodic monitoring is either absent or insufficient and permit conditions that are not practicably enforceable.

3. Analysis of specific proposed permit conditions

a. Facility Level Permit Conditions

Condition 3, Item 3.1 (Maintenance of Equipment):

The proposed permit recites the general requirement under 6 NYCRR § 200.7 that pollution control equipment be maintained according to ordinary and necessary practices, including manufacturer's specifications. This condition must be supplemented with periodic monitoring. The condition does not describe Action Packaging's pollution control equipment or explain the manufacturer's specifications for maintenance. Nor does the condition require Action Packaging to perform specific maintenance activities or document inspections. Under circumstances where an applicable requirement lacks monitoring requirements sufficient to provide a reasonable assurance of compliance, periodic must be added. Thus, this requirement must not be stated generally, but must be applied specifically to this facility. The permit must explain exactly what qualifies as reasonable maintenance practices and spell out the manufacturer's specifications. Furthermore, the proposed permit must require Action Packaging to perform periodic monitoring that assures the facility's compliance with maintenance requirements.

In response to NYPIRG's comments on the draft permit with respect to this permit condition, DEC asserted:

> As noted in the comment, this is a general requirement under 6 NYCRR § 200.7 which is applied to all air permits. While this condition may appear in some instances where no pollution control equipment is in operation, the condition will be retained as is in order to ensure that maintenance is addressed for those instances where control equipment is in place. Source owners may install control equipment voluntarily, that is, without having the permit address the specific control equipment. The condition would apply without having the permit address the specific control equipment. Maintenance plans are typically submitted as part of documentation in support of the application. Based on engineering judgment, we believe that incorporating this information as enforceable permit conditions would be both onerous and unnecessary. If required control equipment fails to operate and permit limits are exceeded an enforcement action would be initiated.

DEC Responsiveness Summary, re: General Permit Conditions, at 3.[16]

[16] DEC responded twice to many of NYPIRG's comments.

DEC's response does not justify the agency's failure to identify whether the requirement applies to Action Packaging and, if the requirement applies, the agency's failure to include sufficient periodic monitoring to assure compliance. First, a "general requirement" is a requirement that applies to all facilities in the same way. This is not a general requirement because it may not even apply to Action Packaging. A Title V permit must identify the requirements that apply to the permitted facility, not provide a shopping list of requirements that might apply. DEC's assertion that it is proper to include an inapplicable requirement in a permit without explanation simply because there is a slight chance that the facility may voluntarily install equipment that would subject it to this requirement at some point during the permit term is unacceptable. In the off chance that the facility does voluntarily install pollution control equipment during the permit term, this requirement will apply to the facility even if it is not included in the permit. Part 70 requires a Title V permit to include all requirements that apply to the facility as of the date of permit issuance, not all requirements that might somehow become applicable to the facility during the permit term.

Second, section 504 of the Clean Air Act makes it clear that each Title V permit must include "conditions as are necessary to assure compliance with applicable requirements of [the Clean Air Act], including the requirements of the applicable implementation plan." Here, the proposed permit lacks conditions designed to assure Action Packaging's compliance with an applicable SIP requirement. DEC does not provide a valid justification for its determination that no periodic monitoring is necessary to assure compliance with this condition. Instead, DEC simply alleges that based upon "engineering judgment," periodic monitoring would be "onerous and unnecessary."

Finally, the point of requiring a facility to maintain pollution control equipment properly is to prevent an exceedance of applicable pollution limits. DEC dismisses the preventative nature of this applicable requirement and simply asserts that if the control equipment fails AND Action Packaging violates an emission limitation, an enforcement action will be initiated. Notice that DEC says nothing about the possibility of an enforcement action brought to enforce the requirement that pollution control equipment be maintained properly. This is because DEC will have no way of knowing whether Action Packaging complies with this requirement because the permit condition is not supported by periodic monitoring.

DEC's refusal even to identify whether this requirement applies to Action Packaging, let alone the agency's failure to include sufficient periodic monitoring to assure compliance with this requirement, is a clear violation of Part 70 requirements and justifies the Administrator's objection to this proposed permit.

Condition 4, Item 4.1 (Unpermitted Emission Sources):

The proposed permit states that if the owner failed to apply for a necessary permit, the owner must apply for the permit and the facility will be subject to all regulations that were applicable at the time of construction or modification. We have several concerns.

First, if Action Packaging is currently subject to a New Source Review ("NSR") or "Prevention of Significant Deterioration ("PSD") permit, the terms of that permit must be included in the Title V permit and the permit must be cited as the basis for the requirements. If Action Packaging does not have a NSR or PSD permit, DEC must not issue Action Packaging a Title V permit until it has made a reasonable investigation into whether Action Packaging is required to have such a permit. The results of this investigation must be explained in a "statement of basis." Our confusion over whether Action Packaging is subject to a NSR or PSD permit is based upon the fact that neither DEC's standard permit application form nor DEC's draft permits make it clear whether a facility is subject to a pre-existing permit.

Second, based upon the language of Item 4.1, it appears that the only penalty Action Packaging will face in the event that DEC discovers that the facility lacks a required permit is the requirement to obtain the permit. In other words, the facility will not be penalized. If Item 4.1 remains in the permit, it is essential that a clause be added that states that if it is discovered that Action Packaging lacks a required permit, Action Packaging will be subject to all penalties authorized by state and federal law. Otherwise, there is a possibility that the permit shield will block DEC, U.S. EPA, and the public from imposing such penalties.

NYPIRG recognizes that Condition 4 is simply a recitation of 6 NYCRR § 201-1.2. While this approach may work for some regulatory requirements, it does not work for this one because of the existence of the permit shield. Under the permit shield, compliance with the terms of the condition are tantamount to compliance with the law. In this case, it appears that if the facility goes ahead and applies for a permit that it should have applied for earlier, it will be in compliance with the law and penalties cannot be assessed. While it is possible (and perhaps likely) that a court would not interpret the permit shield in this manner, there is no reason to take that risk.

Condition 7, Condition 8 (air contaminants collected in air cleaning devices):

Conditions 7 and 8 both apply to the handling of air contaminants collected in an air cleaning device. If Action Packaging relies upon an air cleaning device that collects air contaminants, this permit must include recordkeeping requirements sufficient to assure that Action Packaging handles air contaminants in compliance with permit requirements. If these requirements do not apply to Action Packaging, they must be deleted from the permit. Alternatively, the currently non-existent statement of basis could explain that while this requirement does not currently apply to Action Packaging, the rule will apply in the event that such a device is installed. Including inapplicable requirements in a permit without explanation only serves to confuse the public.

In response to NYPIRG's comments on the draft permit with respect to these permit conditions, DEC asserted that "[t]his condition is a mandatory condition that is included in all Title V permits, even where air cleaning devices are not currently installed. There is no need to change this

condition in this permit." DEC Responsiveness Summary, Re: Facility Level Conditions at 3. DEC's refusal even to identify whether this requirement applies to Action Packaging, let alone the agency's failure to include sufficient periodic monitoring to assure compliance with this requirement, is a clear violation of Part 70 requirements and justifies the Administrator's objection to this proposed permit.

Condition 13, Item 13.1 (Applicable Criteria):

Condition 13 is a generic condition stating that the facility must comply with any requirements of an accidental release plan, response plan, or compliance plan. NYPIRG is concerned that requirements in these documents might not be incorporated into the permit. If such documents exist, they are applicable requirements and must be included as permit terms. Furthermore, any enforceable requirements contained in "support documents submitted as part of the permit application for this facility" must be incorporated directly into the permit. DEC responded to NYPIRG's comment on this permit condition twice. First, DEC asserted that "[a]ll of the relevant requirements of any supporting documents have been fully incorporated into the draft permits." DEC Responsiveness Summary, Re: General Permit Conditions at 7. Even if all relevant requirements are *not* incorporated into Action Packaging's proposed permit, there is no reason to include this unenforceable condition in the proposed permit. Because of its vagueness, this permit condition adds absolutely nothing to the proposed permit.

In its second response to NYPIRG's comments on the draft permit with respect to this condition, DEC alleged that:

> The first sentence of this conditions states 'Operation of this facility shall take place in accordance with the approved criteria, emission limits, terms, conditions and standards in this permit. This shall include: Any reporting requirements and operations under an accidental release plan, response plan and compliance plans as approved as of the date of the permit issuance, …' By reference, the requirements that may be contained in any of these plans are included in the permit. No changes will be made to the permit.'

DEC Responsiveness Summary, Re: Facility Level Conditions at 4. DEC's second response illustrates the agency's flawed understanding of the limits Part 70 places upon incorporation by reference. As U.S. EPA's White Paper #2 explains:

> Referenced documents must also be specifically identified. Descriptive information such as the title or number of the document and the date of the document must be included so that there is no ambiguity as to which version of which document is being referenced. Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.

U.S. EPA, *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Progr*am, March 5, 1996, at 37. The proposed permit's vague reference to "[a]ny reporting requirements and operations under an accidental release plan, response plan and compliance plans as approved as of the date of the permit issuance" (documents that may or may not exist) cannot possibly satisfy the White Paper #2 requirement that referenced documents be specifically identified and detailed enough that the manner in which the material applies to Action Packaging is clear.

Condition 15, Item 15.3 (Compliance Requirements):

The proposed permit makes reference to "risk management plans" if they apply to the facility. Somewhere in the permit, it needs to say whether or not CAA § 112(r) applies to this facility. The permit must tell us what requirements apply to the facility, not simply indicate what might apply. If DEC does not know whether the rule applies, it must say so in the statement of basis.

Conditions 30 (Visible emission limited):

NYPIRG's comments on the draft permit with respect to the condition identified in the proposed permit as Condition 30 pointed out that the draft permit lacked any kind of periodic monitoring to assure Action Packaging's compliance with the applicable opacity limitation. (6 NYCRR § 211.3).

DEC responded to NYPIRG's comment by providing the following information:

> This requirement is part of the SIP and applies to all sources however it should be replaced by two separate monitoring conditions (see A and B below). The conditions specify the limit that is not to be exceeded at any time together with an averaging time, monitoring frequency and reporting requirement. To date, EPA has not provided guidance as to the method and frequency of monitoring opacity for general category sources that do not require continuous opacity monitors. This is a nationwide issue that is being dealt with on a source category-by-source category basis. At this point in time we have established a periodic monitoring strategy for oil-fired boilers that are not otherwise required to have COMs. The rest of the emission point universe is divided between those emission points where there is no expectation of visible emissions and those where there are some visible emissions. This category is further subdivided into those source categories where opacity violations are probable and those where opacity violations are not likely. We are currently working to establish engineering parameters that will result in an appropriate visible emission periodic monitoring policy.

DEC Responsiveness Summary, Re: General Conditions at 6. While NYPIRG is encouraged by the fact that DEC plans to develop an appropriate visible emission periodic monitoring policy, the periodic monitoring required to demonstrate Yeshiva's compliance with 6 NYCRR § 211.3 remains inadequate.

First, the additional conditions described by DEC in its response to NYPIRG's comments appear to be missing from the proposed permit.[17]

Second, conditions A and B as referred to in DEC's responsiveness summary do not constitute periodic monitoring. Neither requirement specifies what kind of monitoring is to be performed (other than stating that the averaging method is a 6-minute average). Neither requirement specifies how often any monitoring is to be performed, other than stating "as required." Neither requirement specifies a regular reporting requirement, except "upon request by regulatory agency." It cannot be argued that these conditions suffice as periodic monitoring.[18]

Third, NYPIRG is concerned by DEC's position that so long as a national policy has not been developed, DEC is free to issue Title V permits that lack periodic monitoring sufficient to assure compliance. This is a clear violation of 40 CFR Part 70. While a national policy would certainly be helpful to DEC, such a policy is not a prerequisite for inclusion of appropriate periodic monitoring in each individual Title V permit.[19]

Finally, it is unclear how the information provided by DEC in the responsiveness summary regarding the "emission point universe" relates to Action Packaging. Action Packaging's Title V permit must assure compliance at each emission point. DEC may not omit required periodic monitoring from Action Packaging's permit on the basis that DEC has not gotten around to developing appropriate periodic monitoring.

The Administrator must object to this proposed permit because the permit lacks sufficient periodic monitoring as required by the Clean Air Act and 40 CFR Part 70.

Conditions 32, 41, 48 (Recordkeeping of VOC's in ink):

This condition requires Action Packaging to keep records of ink and solvent purchases, as well as records of the VOC components of inks and solvents. It specifies that VOC emissions would be recorded with and without operation of the add on control (the catalytic fume incinerator required under Part 234). NYPIRG's comments on the draft version of this condition asserted that the permit needs to

[17] A copy of the proposed permit was provided to NYPIRG by U.S. EPA Region 2. DEC does not provide public commenters with a copy of a proposed permit when it responds to comments. In light of the fact that the proposed permit is different from the draft permit (and that the proposed permit doesn't always match up with the changes described in DEC's response to comments), NYPIRG requests that U.S. EPA direct DEC to provide commenters with a copy of the proposed permit when it is forwarded to U.S. EPA for review.

[18] It also doesn't appear necessary to break the conditions into two sub-conditions. The only difference between the two sub-conditions is that one specifies that the "upper limit" is 20 percent while the other specifies that the "upper limit" is 57 percent. In all other respects the two conditions are identical.

[19] In fact, the Clean Air Act scheme of providing state agencies with responsibility for and a degree of discretion over the design of Title V programs operates as an incentive for each state permitting authority to make determinations regarding issues that have not been fully resolved by U.S. EPA.

explain how the VOC content of inks and solvents are measured, as well as how actual VOC emissions from the facility would be measured. NYPIRG also reminded DEC that a reports of required monitoring must be submitted at least once every six months.

DEC responded by stating:

> The methods of calculation and emissions recording are included in 6 NYCRR Part 234 and are already incorporated into the permit. Submitting this information every 6 months is not required in the regulation and will not be included in the permit.

DEC Responsiveness Summary, Re: Facility Level Conditions at 4. 6 NYCRR § 234.4(b)(3), the regulation that is cited in the proposed permit as the basis for this permit condition, provides:

> Purchase, usage and/or production records of inks, VOC, and solvents must be maintained in a format acceptable to the commissioner's representative, and upon request, these records must be submitted to the Department's representative. In addition, any other information required to determine compliance with this Part must be provided to the commissioner's representative in a format acceptable to him. Records must be maintained at the facility for a period of five years.

§ 234.4(b)(3) says nothing about the method by which VOC content of inks must be calculated or the method by which VOC emissions must be measured. An examination of the rest of § 234 reveals that § 234 sets out a broad assortment of options for measuring or calculating VOC emissions. There is no indication as to which method Action Packaging must use. The permit must explain how VOC content of inks and VOC emission are to be measured. Moreover, Action Packaging must submit a report of VOC monitoring to DEC every six months even if the underlying requirement does not specify a reporting requirement. Part 70 and 6 NYCRR § 201-6 mandate that reports of monitoring required under the permit be submitted at least every six months.

As discussed below, DEC has granted a variance to Action Packaging that allows it to shut down its catalytic fume incinerator for much of the year. Thus, it is particularly important for Action Packaging to keep track of VOC emissions. The Administrator must object to this proposed permit because it lacks adequate periodic monitoring to assure compliance with Part 234.

Condition 33 (Recordkeeping of HAP components of ink and HAP emissions):

Condition 33 is the same as Condition 32 but it applies to HAPs. The comments on Condition 32 also apply to this condition.

b. Emission unit level requirements

Condition 36, Condition 39, Condition 40 (Indicates that Action Packaging operates pursuant to a seasonal variance from the use of the catalytic fume incinerator from November 1 to March 31 yearly)

All of these conditions provide that Action Packaging is allowed to operate under a variance from the VOC RACT requirements in 6 NYCRR Part 234. In particular, Action Packaging is allowed to turn off its catalytic catalytic fume incinerator from November 1st through March 31st each year. When Action Packaging operated the incinerator year round in 1993, VOC emissions totaled 1.03 tons. In 1994, before receiving a variance, Action Packaging stopped operating the incinerator from November 1st to March 31st.[20] It appears that DEC granted the variance in 1996. The 1997 emissions inventory for New York indicates that in that year, Action Packaging's VOC emissions jumped to 54.6 tons.

NYPIRG's review the file that DEC maintains on Action Packaging raises questions about the legality of this variance.

First, does not appear that U.S. EPA ever approved this variance. On January 25, 1996, DEC issued a Certificate to Operate for Action Packaging on January 25 that provided:

> The catalytic incinerator must be operated from October 31 to April 1 as per Part 234.3(f)(3). During off-season, incinerator will be activated upon notification by New York State Department of Environmental Conservation.

A special condition of the certificate explained that "This Certificate to Operate is issued subject to the approval of the United States Environmental Protection Agency." There is no indication in DEC's files, in the proposed permit, or in the permit application that U.S. EPA ever granted this approval. This variance may need approval from U.S. EPA as a SIP revision before becoming applicable.[21]

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[20] In the years 1994 and 1995, it appears that Action Packaging did not operate the catalytic incinerator between November 1st and March 31st, even though a variance had not been approved. Apparently, incinerator shutdown prior to the approval of a variance is acceptable to DEC. According to a November 17 memorandum from Art Fossa (DEC):

> A facility will be allowed to shut down its natural gas fired afterburners during the period November 1st to March 31st with the approval of the Commissioner or if the source owner has not received any response from the Regional Office and it has submitted the required air quality demonstration and permit form at least 60 days prior to shut down on the presumptive bases that an adequate demonstration has been made. This does not preclude the Regions from reviewing at a later date the submitted information and determining that the demonstration is inadequate and notifying the source owner accordingly and required the continued use of the natural gas fired afterburners.

[21] See 62 FR 67004, 67004 ("EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision.")

A second problem with this variance is that is does not appear that Action Packaging submitted evidence with its permit application that the variance would not jeopardize air quality.

6 NYCRR § 234.3(f)(3) provides that:

> The commissioner may allow sources which use natural gas fired afterburners as control devices for processes subject to this Part, to shut down these natural gas fired afterburners from November 1st through March 31st for the purposes of natural gas conservation, provided that the commissioner has determined that this action will not jeopardize air quality. Such evidence shall be submitted with the application for a permit to construct, a certificate, or renewal of a certificate to operate for an existing source under the provisions of Part 201 of this Title

NYPIRG's review of Action Packaging's file failed to uncover any evidence that issuance of a variance "will not jeopardize air quality." Furthermore, nothing in the file indicates that the Commissioner ever made a determination that approving a variance for Action Packaging would not jeopardize air quality. In comments on the draft permit, NYPIRG alleged that if no such demonstration was made, the variance must not be included in Action Packaging's Title V permit. If such a demonstration was made, NYPIRG asserted that the evidence provided in that demonstration must be included in the statement of basis.

DEC responded to NYPIRG's comments by stating that:

> Action Packaging performed an air quality analysis, in November 1995, that evaluated air quality in New York City when the catalytic incinerator is not in use. This analysis was conducted using the guidelines set forth in New York State Air Guide 1: Guidelines for the Control of Toxic Ambient Air Contaminants. This analysis was reviewed and accepted by this Department.

This information must be included in the statement of basis that must accompany Action Packaging's permit. In addition, the statement of basis must describe why the results of the analysis demonstrate that turning off the incinerator does not jeopardize air quality (the computer printouts for this type of analysis seldom make any sense to the layperson). Also, the statement of basis must explain why it is not a problem that VOC's in general (as opposed to the subset of VOC's that are also HAPs) are emitted at a much higher level once the incinerator is turned off. If a demonstration that the variance would not jeopardize air quality was not made, this variance must not be included in Action Packaging's Title V permit.

Finally, it appears that New Source Review requirements might apply to Action Packaging as a result of issuance of a variance. Action Packaging is a "major source" for purposes of nonattainment NSR because in the permit application it indicated that its Potential to Emit VOCs is $\geq$ 100tpy but < 250 tpy. Before the variance was approved, Action Packaging was operating the catalytic incinerator pursuant to a SIP-approved state rule. Thus, prior to approval of a variance, PTE for Action

Packaging would be calculated based upon the efficiency of the incinerator at reducing VOC emissions.[22] While we NYPIRG lacks access to calculations demonstrating Action Packaging's PTE before the variance, it seems likely that PTE before the variance would be much lower than after the variance because by Action Packaging's own account, the incinerator has a 98.94% VOC destruction efficiency. And, as explained earlier, Action Packaging's VOC emissions jumped by more than 50 TPY after issuance of the variance.

> According to a DEC memorandum dated June 1, 1995:
>
> [R]egarding the issue of Seasonal Variance (SV) (shutting off the control equipment during the winter months), as per current Subpart 231-2, an applicant who requests SV along with the application to install control equipment, is not subject to Subpart 231-2 since there will be no increase in the Maximum Annual Potential (MAP). . . However, if the applicant requests SV after operating the control equipment, then the MAP of the emission source will increase and hence this change will be subject to review under Subpart 231-2. . . In such cases, we cannot allow an exemption for SV based on the following reasons:
>
> 1. Since SV results in an increase in MAP of an emission source, it would be inequitable to exempt such an increase as compared to any other increase which would be subject to Subpart 231-2.
>
> 2. Since CAAA considers annual emissions for new source review purposes and does not allow any exemptions for seasonal variances, Part 231 cannot allow any such exemption either.

See Memorandum from John Higgins, DEC, to Melanie Dupuis, DED, dated June 1, 1995. Based upon our review of DEC's file on Action Packaging, Action Packaging began operating the incinerator in 1991 or 1992, but did not submit an application for a seasonal variance until the summer of 1994. Thus, we see no reason why the requirements of 6 NYCRR Part 231 do not apply to this modification of Action Packaging's operations. Nothing in Action Packaging's Title V permit application or draft Title V permit indicates that Part 231 requirements have been applied to this facility. Furthermore, nothing in Action Packaging's DEC file indicates that NSR requirements were fulfilled. Any final Title V permit issued to Action Packaging must either include NSR requirements, or provide an explanation in the statement of basis for why NSR requirements do not apply.

CAM Rule Applicability:

The proposed permit mentions nothing about the applicability of the Compliance Assurance Monitoring Rule found at 40 CFR Part 64. Under the 40 CFR § 64.2(a) , a facility must comply with CAM if:

[22] See EPA's Draft New Source Review Workshop Manual, October 1990 at A.19.

(1) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under paragraph (b)(1) of this section;
(2) The unit uses a control device to achieve compliance with any such emission limitation or standard; and
(3) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source.

Under 40 CFR § 64.1, "Emission limitation or standard" means:

> Any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions . . . or as the relationship of uncontrolled to controlled emissions (e.g. percentage capture and destruction efficiency of VOC or percentage reduction of SO2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement.

It appears that Action Packaging meets all of these requirements. As indicated by the Title V permit application submitted by Action Packaging, the facility's PTE makes it a major source for VOCs, even after the control device is operated. (Under Part 70, the Major Source Threshold for emission of VOCs in a serious nonattainment area is 50tpy. The PTE listed for VOCs in the permit application is >100tpy but <250tpy. Furthermore, Action Packaging operates a catalytic incinerator to control VOC emissions as required by 6 NYCRR §234.3(a)(3)(iii). Part 234 is federally enforceable as approved by EPA into New York's SIP on December 23, 1997, and therefore is an "applicable requirement" under 40 CFR Part 70 and 40 CFR Part 64.

40 CFR § 64.5(a) provides that:

> For all pollutant-specific emission units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in §64.1) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under § 64.4 at the following times:
>
> (1) On or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial part 70 or 71 permit if, by that date, the application either:
> (i) Has not been filed; or

(ii) Has not yet been determined to be complete by the permitting authority.

Because Action Packaging is relying upon a seasonal variance, its potential to emit remains above the major source threshold even after including reductions provided by the catalytic incinerator. In fact, the actual emissions still exceed major source threshold.

Though Action Packaging submitted its original Title V permit application on December 5, 1997, the permit application was incomplete at that time. In fact, as late as August 19, 1998 (4 months after the deadline for completeness to avoid CAM), Action Packaging received a formal "Notice of Incomplete Application" from DEC. See Notice of Incomplete Application from Meena George (DEC) to Adam Kulger (Action Packaging) dated August 19, 1998. In light of that notice, it is likely that Action Packaging is required to submit a CAM plan pursuant to 40 CFR Part 64. The requirements of this plan must be incorporated into Action Packaging's Title V permit.

Condition 36 (episodic conditions):

Under the Process description for the catalytic incinerator, the proposed permit states that "Normal conditions require 214 days of operation per year, however, this may be extended upon request from DEC during episodic conditions." This possibility for extension should be included as a requirement in the permit, not as part of the description of the process. It must be stated affirmatively. For example, the condition could state that "Upon request by DEC, the facility may be required to operate the catalytic incinerator during the period covered by the seasonal variance."

In response to this comment, DEC stated:

> The key words here are ". . . may be extended upon request from DEC during episodic conditions". The possibility for extension of operation of the incinerator is already included in the permit. It provides DEC the flexibility to require the use of the incinerator during episodic conditions. Therefore, the condition is acceptable as currently written and no change will be made.

With all due respect to whoever wrote DEC's response to our comments, we were capable of reading the sentence and in fact quoted it in our comments. The issue was whether inclusion of this sentence in "process description" created an enforceable requirement, or whether it needed to be included in one of the conditions labeled "compliance certification," whatever that is supposed to mean. Because of the permit shield, it is very important that requirements be incorporated into the permit so that they are actually enforceable.

Condition 37, Condition 42 (air cleaning device pollution reduction):

This condition states that the capture system and air cleaning device must provide for an overall reduction in VOC emissions of at least 60.0 %. In commenting on the draft permit, NYPIRG pointed out that the proposed permit does not state how frequently Action Packaging must test the air cleaning

device to see that it is functioning properly. "Upon request by agency" is insufficient to satisfy periodic monitoring requirements. If Method 25 testing cannot realistically be performed on a regular basis, then this proposed permit must incorporate some other form of periodic monitoring sufficient to provide a reasonable assurance of ongoing compliance. Otherwise, Action Packaging must commit to performing Method 25 testing on a regular basis. Even if alternative periodic monitoring is employed, Action Packaging should be required to perform Method 25 testing at certain, defined times.

In response to this comment, DEC responded by stating:

> Condition 28 requires emission testing at this facility. When this test is performed the operating temperature will be recorded. As long as the temperature stays within the range recorded during this test, the facility will be deemed to be in compliance. The facility has a temperature recorder on the cleaning device and this temperature will be continuously monitored. Therefore, no changes will be made to this condition.

Condition 28 of the draft permit (Condition 27 of the proposed permit) requires:

> An acceptable report of measured emissions shall be submitted, as may be required by the commissioner, to ascertain compliance or noncompliance with any air pollution code, rule, or regulation. Failure to submit a report acceptable to the commissioner within the time stated shall be sufficient reason for the commissioner to suspend or deny an operating permit. Notification and acceptable procedures are specified in 6 NYCRR Part 202-1.

We see that Condition 47 requires continuous monitoring of exhaust gas. DEC must explain in the statement of basis why measuring the temperature of the exhaust gas assures that the incinerator is achieving the appropriate destruction rate. Moreover, DEC must make it clear in the permit that temperature measurement is how compliance with conditions 37 and 42. The public must not be left to guess as to the periodic monitoring associated with this condition. DEC must keep in mind that this is permit is for the public as well as for the facility and the agency. Finally, condition 28 cannot serve as periodic monitoring for anything because it does not specify when, if ever, emissions must be measured. It simply provides that a report of measured emissions must be submitted as may be required by the commissioner.

Condition 38, Condition 44 (opacity):

These conditions prohibit a source subject to Part 234 from exceeding a10% opacity for any consecutive six minute period. They specify Method 9 as the required monitoring method, but again fail to specify the frequency of monitoring. This condition must be supplemented with periodic monitoring sufficient to provide a reasonable assurance that Action Packaging is complying with the 10% opacity limit.

In response to this comment, DEC said, "Condition 44 specifies continuous monitoring of opacity."

It is not clear from the proposed permit that this facility operates a Continuous Opacity Monitoring System, and NYPIRG would be surprised if it did. Moreover, next to "continuous" the permit specifies "method 9" as the monitoring method. NYPIRG is of the impression that method 9 refers to a visible emissions test. The permit must specify whether the facility operates COMs or if an employee is paid to watch for opacity emissions 24 hours a day. Also, the permit must specify that the results of this monitoring must be submitted to DEC at least once every six months. The permit must specify what kind of records need to be maintained to keep track of opacity monitoring.

Condition 43, Condition 49 (open containers):

NYPIRG appreciates that DEC added periodic monitoring to these conditions in response to comments. Reporting requirements must be specified in the conditions, including when reports must be submitted to DEC and what must be included in these reports.

Condition 46 (control requirement):

This condition also relates to how the facility must assure compliance with the requirement that the incinerator operate efficiently and remove a certain percentage of air contaminants from facility exhaust. DEC claims that "[t]his Department does not specify how a facility is operated in the absence of an affirmative regulatory requirement." NYPIRG is not asking DEC to dictate how the facility is operated. Rather, NYPIRG is asking DEC to require the facility to perform periodic monitoring that assures compliance with applicable requirements. This is an explicit mandate in both 40 CFR Part 70 and 6 NYCRR Part 201. NYPIRG understands that DEC is reluctant to add periodic monitoring conditions to permits—that's why we end up submitting such extensive comments on every draft permit we have time to review. As for this particular condition, DEC must explain why the only monitoring that they have offered to demonstrate compliance, temperature monitoring, is sufficient to assure compliance. As per condition 46, this means that DEC must show that temperature monitoring "determine[s] both the efficiency of the capture system and of the subsequent destruction and/or removal of these air contaminants by control equipment prior to their release to the atmosphere."

Condition 48 (exhaust temperature):

The draft version of this condition stated that continuous monitors to measure the exhaust gas temperature of all incinerators shall be installed, periodically calibrated, and operated at all times the incinerator is operating. NYPIRG asked that the statement of basis accompanying this permit state whether Action Packaging has already installed continuous monitors to measure exhaust gas temperature. Also, NYPIRG stated that it appears that Action Packaging is also required to monitor the temperature rise across the catalytic incinerator bed pursuant to § 234.4(c)(2). Because uniformity of inlet temperature across the bed directly affects not only the destruction efficiency, but the life of the

catalyst, this information could be incorporated into Action Packaging's periodic monitoring requirements.

In response, DEC stated that Action Packaging does have a temperature monitor for the catalyst incinerator beds, and that the condition would be changed to require continuous monitoring of this temperature. NYPIRG appreciates this change. However, when DEC changed this condition they still stated that the exhaust gas temperature will be measured, not the temperature rise across the incinerator bed. NYPIRG is of the impression that exhaust temperature is a different measurement from temperature rise across the incinerator bed. If this is so, both temperatures must be measured to demonstrate that the incinerator is operating properly. Also, the permit condition simply states that the "lower limit of monitoring" is 550 degrees Fahrenheit. To be practicably enforceable, this condition must specify that the temperature may not fall below 550 degrees Fahrenheit. "Lower limit of monitoring" is too vague to be enforceable. Finally, a report of this monitoring must be submitted at least every six months.

Conclusion

In light of the numerous and significant violations of 40 CFR Part 70 identified in this petition, the Administrator must object to the proposed Title V permit for Action Packaging.

Respectfully submitted,

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New York, New York

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