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Sent via Facsimile and First Class Mail

Mr. John Iani
Regional Administrator
Environmental Protection Agency
Region X
1200 Sixth Avenue
Seattle, WA 98101

Re: Proposed Air Quality Control Operating Permit for BP Exploration (Alaska) Inc.,
Crude Oil Topping Unit at Prudhoe Bay

Dear Mr. Iani:

On behalf of Alaska Community Action on Toxics and the Alaska Conservation Alliance, we hereby petition you to object to the proposed Air Quality Control Operating Permit ("Permit") which the Alaska Department of Environmental Conservation ("ADEC") proposes to issue to BP Exploration (Alaska) Inc. ("BP") for a crude oil topping unit operated by BP at Prudhoe Bay. *See* 40 C.F.R. § 70.8(d). We are concerned about the environmental and human health impacts of the emissions from this facility. As the following comments show, the proposed permit is deficient in several ways. We therefore oppose the issuance of the proposed permit in its present form.

Petitioners objected to the issuance of this proposed permit during the public comment period. Among other objections, Petitioners specifically objected on the ground that the permit failed to quantify emissions of hazardous air pollutants. Further, Petitioners specifically objected that the permit failed to consider the possibility that the BP facility may fit within the definition of a "major source" if it is part of a "group of stationary sources located within a contiguous area and under common control" that, in the aggregate, emits or has the potential to emit in excess of the threshold amount. *See* 42 U.S.C. § 7412(a)(1); 40 C.F.R. § 70.2(12). Petitioners object to the proposed permit again on these same grounds.

Hazardous Air Pollutants

The proposed permit identifies the emissions from the crude oil topping unit as including a number of regulated air contaminants. Permit at 5. The Statement of Legal and Factual Basis (Basis), however, summarizes and quantifies the facility's emissions of only five of these contaminants: nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter (PM), sulfur dioxides (SO₂), and volatile organic compounds (VOC). (Basis at 4). The Basis does not summarize or quantify emissions from the other contaminants, which include hazardous air pollutants benzene and toluene, and it fails to provide an explanation for this omission. Section 112 of the Clean Air Act requires that:

After the effective date of a permit program under subchapter V of this chapter in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met.

42 U.S.C. § 7412(g)(2)(B). The Act defines "major source" as:

any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

Id. § 7412(a)(1). Thus, any facility that meets the definition of "major source" must obtain a permit for emissions of hazardous air pollutants and must meet the "maximum achievable control technology" (MACT) standards.

Benzene and toluene are among the pollutants that will be emitted by the crude oil topping unit. Yet the permit fails to provide any additional information about, and more specifically any quantification of, potential or actual emissions of these pollutants. Without such quantification, it is impossible to tell whether regulation of these emissions under Section 112 is required. We request that you object to the permit because it fails to quantify hazardous air pollutants.

If the reason for the lack of quantification of hazardous air pollutants is that BP failed to provide this data in its permit application, then the petitioners request that you exercise EPA's statutory duty to determine that the proposed permit is inadequate to meet the requirements of the Clean Air Act. 42 U.S.C. § 7661(c).

“Contiguous Area” and “Common Control” Criteria

The BP facility may also fit within the definition of a “major source” if it is part of a “group of stationary sources located within a contiguous area and under common control” that, in the aggregate, emits or has the potential to emit in excess of the threshold amount. *See* 42 U.S.C. § 7412(a)(1); 40 C.F.R. § 70.2(12). The proposed permit fails to consider this possibility and indeed fails to provide the information needed to make this determination.

This crude oil topping unit produces naphtha and diesel fuels for the oil producing facilities on the North Slope. It is likely that the crude oil topping unit occurs within a contiguous area to at least some of the oil producing facilities on the North Slope. In addition, because the facility apparently is owned by some of the major operators on the North Slope (BP, Exxon, Phillips, and Forcenergy), it is likely that the crude oil topping unit and at least some of the oil producing facilities on the North Slope are “under common control.”

If the crude oil topping unit meets the definition of a “major source” under Section 112, then its hazardous air pollutant emissions must be regulated as required under that section. We request that you make an explicit determination as to whether the facility meets the “contiguous area” and “common control” criteria so as to require regulation as a “major source” under Section 112.

Lack of Specific Requirements

The proposed permit fails to identify specific CAA requirements. EPA regulations state that each state operating permit “shall 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.” 40 C.F.R. § 70.6(a)(1). In addition EPA indicated, in its White Paper II, that a CAA permit must at least specify the applicable emission limit or standard, and the emissions unit to which the limit or standard applies. Letter from John S. Seitz, Director of Office of Air Quality Planning and Standards, to Robert Hodanbasi and Charles Lagges (May 20, 1999) (on file with Alaska Dept. of Environmental Conservation). However, the proposed permit fails to identify specific CAA requirements. Instead, it requires merely general compliance with the CAA by the permit applicant. The proposed permit is deficient because it does not state specifically what the permit applicant must do to comply with the CAA. Thus, the proposed permit fails to impose any effective CAA requirements on the permit applicant. Because the proposed permit fails to impose specific CAA requirements on the permit applicant, petitioners request that you object to it.

Failure to Address Compliance History

The Statement of Basis for the proposed permit fails to include the facility’s compliance history. CAA regulations require that each draft of a permit be accompanied by “a statement that sets forth the legal and factual basis for the draft permit conditions.” 40 C.F.R. § 70.7(a)(5). Statements of Basis must include “(c)ompliance history, including inspections, any violations noted, a listing of consent decrees into which the permittee has entered and corrective actions(s) taken to address noncompliance.” Letter from Stephen Rothblatt, Chief of Air

Programs Branch, to Robert F. Hodanbosi, Chief of Division of Air Pollution Control of Ohio Environmental Protection Agency (Dec. 20, 2001). However, the Basis for the proposed crude oil topping unit permit fails to detail adequately the compliance history of the permit applicant. The Basis merely notes that the facility had no permit and was not routinely inspected. In fact, the previous owner admitted that the facility was violating EPA regulations on the CAA. *See* Basis at 3. The petitioners request that you object to the proposed permit because the facility has ongoing violations of the CAA and because the Basis fails to explain the permit applicant's compliance history.

Conclusion

Petitioners oppose the proposed permit in its present form and urge you to object to its issuance for four reasons: the proposed permit fails to quantify emissions of several hazardous air pollutants; the permit applicant may qualify as a "major source" under CAA Section 112; the proposed permit fails to impose specific requirements for compliance with the CAA; and the Basis fails to explain adequately the permit applicant's compliance history. Thank you for addressing Petitioners' concerns about this permit.

Sincerely,

Rebecca L. Bernard
Staff Attorney

William R. Warnock
Legal Intern

cc: Elizabeth Waddell, U.S. Environmental Protection Agency, Region X
Tom Chappell, Alaska Department of Environmental Conservation