

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

In the Matter of )  
Caldwell Tank Alliance - )  
Lower Fayetteville Facility's )  
Title V Operating Permit No. )  
3443-077-0005-V-01-0 )      Petition No: 04-01-\_\_\_\_\_  
)  
Issued by the Georgia Environmental )  
Protection Division )

PETITION TO HAVE THE ADMINISTRATOR OBJECT TO CALDWELL TANK  
ALLIANCE'S TITLE V PERMIT

I. INTRODUCTION

Air pollution is causing a public health crisis in Georgia. Recent scientific studies reveal that air pollution kills thousands of Georgians each year. Literally millions more suffer other adverse health effects such as asthma attacks and decreased lung capacity. The economic consequences of Georgia's dismal air pollution are also staggering. The United States Environmental Protection Agency (EPA) estimates that air pollution costs Georgians billion of dollars in hospital bills, lost work due to sickness and lessened productivity from Georgia's workforce and agriculture. The air pollution issue is of such importance that it consistently garners front page headlines in the major newspapers. See e.g. May 1, 2001 Atlanta Journal, "Bad air days: Atlanta ranks sixth in pollution."

Interposed between Georgians and the air pollution is the Clean Air Act. In simple terms, the Clean Air Act sets standards for safe air and then issues permits to major stationary sources of air polluters as well as implements regulations for mobile sources. The permits are designed to ensure that aggregate air pollution does not create unhealthy air. According to

EPA, Title V operating permits are a vehicle to ensure that facilities comply with all of the applicable Clean Air Act requirements. However, the Georgia Environmental Protection Division has derailed this purpose by issuing Caldwell Tank Alliance a Title V permit that (1) fails to require Caldwell Tank to report monitoring information of the air pollution emitted from the facility, (2) erroneously claims that one has to be a citizen of the United States in order to enforce the permit, (3) misleads the public through a public notice that does not inform the public that they can enforce the permit, and (4) does not contain a crucial limit for soot that will be emitted from the facility.

## II. PARTIES

The Sierra Club, a non-profit corporation, is one of the nation's oldest and largest environmental organizations. The Sierra Club has long been involved in air pollution issues in Georgia and throughout the nation. The Georgia Chapter of the Sierra Club has approximately 12,000 members in Georgia. Sierra Club members live, work, farm, recreate, grow food, own land and structures, and obtain spiritual and aesthetic pleasure from locations that are adversely affected by the air pollution from Caldwell Tank Alliance's Lower Fayetteville Road Facility. ("Caldwell Tank")<sup>1</sup>.

## III. PREVIOUS PROCEEDINGS

---

<sup>1</sup> Caldwell Tank Alliance has two facilities in Georgia that require Title V permits. They are the Lower Fayetteville Road Facility and the Broad Street Facility. Petitioner will hereinafter refer to the Caldwell Tank Alliance Lower Fayetteville Road Facility as "Caldwell Tank," as the Broad Street Facility is not relevant to this petition.

The United States Environmental Protection Agency (EPA) granted final approval of the Georgia Title V operating permit program on June 8, 2000. 65 FR 36398 (June 8, 2000). The Environmental Protection Division (EPD) of the Georgia Department of Natural Resources is the agency responsible for issuing Title V operating permits in Georgia. O.C.G.A. §§12-9-3(12), 12-9-4, 12-9-6(b)(3).

EPD issued a draft Title V operating permit for Caldwell Tank and granted the public thirty days to comment on the draft permit. Petitioner assumes that EPD issued the Caldwell Tank proposed permit to EPA for its 45-day comment period on the same day as it issued the draft permit for public comment.

On November 30, 2000, the Sierra Club submitted comments to EPD on the Caldwell Tank draft permit. A copy of these comments is attached as Exhibit 1. EPD rejected every one of Sierra Club's suggestions. However, EPD did accept several of the suggested changes made by the permittee. EPD changed the permit to accommodate the permittee and repropose the permit to EPA on March 12, 2001. See Exhibit 2. EPD issued the final permit on March 26, 2001. See Exhibit 3. However, EPA's 45-day review period did not expire until April 26, 2001. The Petitioner notes that EPD issuing the final permit before EPA's 45-day review period expired appears to be a violation of 40 CFR § 70.7(a)(1)(v). In any event, the public's period to petition the EPA to object to the Caldwell Tank permit expires on June 25, 2001. 40 CFR § 70.8(d). Thus, this petition is timely.

#### IV. FACTS

Caldwell Tank manufactures components of elevated steel water storage tanks. Permit at Section 1.3 available at <http://www.air.dnr.state.ga.us/sspp/titlev/permits/0770005/tv11593/0770005p.pdf> and attached as Exhibit 3. The main operations at the facility include steel cutting, forming, welding, shot blasting and painting. Id. The primary air pollutant Caldwell Tank emits is volatile organic compounds (VOCs) from the use of paints, thinners and clean-up solvents. See Narrative at 3 available at <http://www.air.dnr.state.ga.us/sspp/titlev/permits/0770005/tv11593/0770005n.pdf> and attached as Exhibit 4.<sup>2</sup> The facility is located in the Metro Atlanta Non-Attainment Area for ground level ozone. Ex. 4 at 2. Of course, ground level ozone is caused by a chemical reaction involving VOCs, such as those emitted from Caldwell Tank, and nitrogen oxides (NO<sub>x</sub>).

#### IV. SUMMARY OF THE ARGUMENT

1. Caldwell Tank's permit does not require it to report the results of all monitoring, contrary to requirements in 40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661(c)(a).
2. The Clean Air Act provides that any "person" can take an enforcement action to stop a violation of a Title V permit. 42 U.S.C. § 7604. The Act defines "person" to include "an individual, corporation, partnership, association, State, municipality, political subdivision of a state . . . ." 42 U.S.C. 7602(e). However, Caldwell Tank's permit limits those who can take

---

<sup>2</sup> "Narrative" is the title EPD has applied to the document that others call a "statement of basis" that is required by 40 CFR § 70.7(a)(5).

enforcement actions to “citizens of the United States.” This is contrary to the statute and therefore must be removed from the permit.

3. The EPD provided inadequate public notice for Caldwell Tank’s permit because it misled the public by not informing them that they are able to enforce the Title V permit.

4. The Caldwell Tank permit failed to include the emissions limitation from the Georgia State Implementation Plan (SIP) that requires that there be no visible emissions from the shot blaster and bag house. Furthermore, the permit does not include monitoring to assure compliance with this emission limitation.

## V. ARGUMENT

### A. LEGAL BACKGROUND AND STANDARD OF REVIEW

The Clean Air Act is “Congress’s response to well-documented scientific and social concerns about the quality of the air that sustains life on earth and protects it from . . . degradation and pollution caused by modern industrial society.” Delaware Valley Citizens Council for Clean Air v. Davis, 932 F.2d 256, 260 (3rd Cir. 1991). A key component to achieve the Clean Air Act’s goal of protecting our precious air is the Title V operating permit program. Title V permits are supposed to consolidate all of the requirements for facilities into a single permit and provide for adequate monitoring and reporting to ensure the regulatory agencies and the public that the permittee is complying with its permit. See generally S. Rep. No. 101-228 at 346-47. See also In re: Roosevelt Regional Landfill, (EPA Administrator May 11, 1999) at 64 FR 25336.

When a state or local air quality permitting authority issues a Title V operating permit, the EPA will object if the permit is not in compliance with any applicable requirement or requirements under 40 CFR Part 70. 40 CFR § 70.8(c). However, if the EPA does not object, then “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 40 CFR § 70.8(d); 42 U.S.C. § 7661d(b)(2)(CAAA § 505(b)(2)). “To justify exercise of an objection by EPA to a [T]itle V permit pursuant to Section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with applicable requirements of the Act, including the requirements of Part 70. [40 CFR] § 70.8(d).” In re: Pacificorp’s Jim Bridger and Naughton Plants, VIII-00-1 (EPA Administrator Nov. 16, 2000) at 4.

**B. CALDWELL TANK’S PERMIT IS NOT IN COMPLIANCE WITH APPLICABLE REQUIREMENTS OF THE CLEAN AIR ACT.**

**1. CALDWELL TANK’S PERMIT DOES NOT REQUIRE IT TO REPORT THE RESULTS OF ITS MONITORING<sup>3</sup>**

40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661(c)(a) require that permits issued by state agencies include a requirement for submittal of reports of any required monitoring at least every 6 months. Caldwell Tank’s permit does not contain any such requirement. See Exhibit

1.

EPD claims that condition 5.3.1 of the permit satisfies the requirements of § 70.6(a)(3)(iii)(A). See Narrative at Addendum to Narrative at 4, attached as Ex. 4. However,

---

<sup>3</sup> This issue was raised in Petitioner’s Comment 5 at page 3 attached as Exhibit 1. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

condition 5.3.1 requires reporting of excess emissions, exceedances and/or excursions. Ex. 3 at 7, Condition 5.3.1. The reporting of these deviations is required by § 70.6(a)(iii)(B). However, § 70.6(a)(iii)(A) requires reporting of all monitoring. It is a cardinal rule of statutory and regulatory interpretation that a regulation should be interpreted in such a manner as to not render any provision of the regulation meaningless. However, EPD's claim that reporting of deviations constitutes reporting of any required monitoring renders § 70.6(a)(iii)(A) meaningless as it would be redundant to § 70.6(a)(iii)(B).

It is true that Condition 5.3.1.b does require bi-annual reporting of total process operating time during each reporting period. Ex. 3 at 7. While this certainly is a small step towards compliance with § 70.6(a)(iii)(A), that subsection requires reporting of *all* monitoring. For example, Condition 5.2.1.a requires daily recording of the pressure drop reading for the exhaust/overspray filters serving the paint spray booth PB01. Ex. 2 at 6. This is exactly the type of monitoring that § 70.6(a)(iii)(A) requires to be reported at least bi-annually and that Caldwell Tank's permit does not require. Condition 6.2.1. is yet another example of monitoring that must be reported monthly but is not required by Caldwell Tank's permit.

There is a related issue that will arise if EPA requires EPD to include a requirement of providing monitoring information. Therefore, it is the best use of resources to address this issue now rather than have Petitioner once again appeal this permit. EPD appears to take the position in its narrative that even if it did include a requirement to provide monitoring information, § 70.6(a)(iii)(A) only requires a report of the monitoring information rather than submission of the actual monitoring information. While this may be a fair interpretation of the regulation, Petitioner is not sure that there is any difference between a report on the monitoring

information and the actual monitoring information. It would seem that it would be the least onerous requirement on the permittee to have it simply photocopy the monitoring information, such as the log books, rather than having to convert the information into some unspecified report format.

In conclusion, EPA should object to the Caldwell Tank permit and require EPD to include a permit provision that requires “submittal of reports of any required monitoring at least every 6 months.” 40 CFR § 70.6(a)(3)(iii)(A).

2. CALDWELL TANK’S PERMIT IMPERMISSIBLY LIMITS WHO MAY ENFORCE AGAINST VIOLATIONS OF THE PERMIT.<sup>4</sup>

“The Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document and that compliance with these requirements is assured.” In re: Roosevelt Regional Landfill, (EPA Administrator May 11, 1999) at 64 FR 25336. There are three entities that are permitted to take action to assure compliance with a Title V permit. Specifically, the following entities may take such action: the EPA pursuant to 42 U.S.C. § 7413, the State pursuant to state law or 42

---

<sup>4</sup> This issue was raised in Petitioner’s Comment 2 at pages 2-3 attached as Exhibit 1. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

U.S.C. § 7604, and any “person” pursuant to 42 U.S.C. § 7604. Of course, 42 U.S.C. § 7604 is labeled “citizen suits.” However, “citizen” in this context includes all members of the public.

Citizen suits are a particularly important method of assuring compliance with Title V permits. As the Supreme Court has noted:

Yet the pressures on agencies for favorable action one way or the other are enormous. The suggestion that Congress can stop action which is undesirable is true in theory; yet even Congress is too remote to give meaningful direction and its machinery is too ponderous to use very often. The federal agencies of which I speak are not venal or corrupt. But they are notoriously under the control of powerful interests who manipulate them through advisory committees, or friendly working relations, or who have that natural affinity with the agency, which in time develops, between the regulator and the regulated. As early as 1894, Attorney General Olney predicted that regulatory agencies might become 'industry-minded,' as illustrated by his forecast concerning the Interstate Commerce Commission:

The Commission . . . is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of railroads, at the same time that that supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things.' M. Josephson, *The Politicos* 526 (1938).

Years later a court of appeals observed, 'the recurring question which has plagued public regulation of industry (is) whether the regulatory agency is unduly oriented toward the interests of the industry it is designed to regulate, rather than the public interest it is designed to protect.' *Moss v. CAB*, 430 F.2d 891, 893.

*Sierra Club v. Morton*, 405 U.S. 727, 745-47 (1972). See also *Molokai Chamber of Commerce v. Kukui (Molokai), Inc.*, 891 F. Supp. 1389, 1402 (D. Haw. 1995) (Congress intended that citizen suits would serve as "an integral part of [the Clean Water Act's] overall enforcement scheme"); *Sierra Club v. Chevron U.S.A., Inc.*, 834 F.2d 1517, 1525 (9th Cir.

1987) ("citizens should be unconstrained to bring [Clean Water Act] actions") (quoting S. Rep. No. 92-414 (1971), reprinted in 1972 U.S. Code Cong. & Admin. News 3668, 3746); see also id. ("Congress intended Clean Water Act citizen suits to be "handled liberally, because they perform an important public function"); Marbled Murrelet v. Babbitt, 182 F.3d 1091, 1095 (9th Cir. 1999) (noting Congress' intent to promote citizen enforcement of ESA); Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 560, 106 S.Ct. 3088 (1986) (Congress enacted Clean Air Act's attorney's fees provision "to promote citizen enforcement of important federal policies.").

EPD's Title V permit seriously undermines the citizen suit provision of the Clean Air Act. Condition 8.2.1 of the permit states:

Except as identified as "State-only enforceable" requirements in this Permit, all terms and conditions contained herein shall be enforceable by the EPA and citizens **of the United States** under the Clean Air Act[.]

Ex. 3 at Condition 8.2.1 (Emphasis added). However, the relevant section of Part 70 provides that "all terms and conditions in a part 70 permit, are enforceable by the Administrator and citizens under the Act." 40 CFR § 70.6(b)(1). This section clearly does not limit who may bring enforcement actions to citizens of the United States. Furthermore, the Clean Air Act ends any debate on this issue. It provides that "any person" may bring a citizen suit. 42 U.S.C. § 7604(a). The Act goes on to define person as including "an individual, corporation, partnership, association, State, municipality, political subdivision of a state . . . ." 42 U.S.C. § 7602(e). Thus, the impact of this oversight is significant. Specifically, "citizens of the United States" represents a small subset of those that fall under the statutory definition of "person." As

written, the EPD permit excludes corporation, both for and non-profit, counties, not to mention resident aliens and others whose immigration status is other than citizens of the United States.<sup>5</sup>

Nevertheless, EPD argues that the use of the term “citizens of the United States,” does not affect the fact that any person, as authorized by the Act, can enforce the permit. Ex. 4, Narrative, at Addendum to Narrative 3 of 7. EPD cites no authority for its argument. In addition, EPD ignores the permit shield in condition 8.16.1. Even assuming that EPD’s position is correct, a plaintiff may be forced to litigate the issue. Even if a court would ultimately rule that any person, and not only a citizen of the United States, can enforce this permit, what could possibly be the value of forcing parties to expend valuable resources litigating an issue that could have been expeditiously addressed in the context of the permit? Surely draining public and private resources through protracted litigation does nothing to assure compliance with the provisions of a Title V permit. Moreover, given the misleading language contained in the permit, an individual untrained in the law may actually conclude that he or she cannot enforce the permit based on the plain language of the permit. Again, there is no value in allowing room for this confusion. Rather, the purpose of Title V permits assuring compliance is served by modifying the language.

Of course, the remedy is so simple that it is difficult to conceive any legitimate reasons for EPD to refuse Petitioner’s request to modify the language. EPD simply needs to delete the phrase “of the United States,” out of condition 8.2.1.

---

<sup>5</sup> The fact that Georgia’s Title V permits claim to limit the rights of non-citizens of the United States raises serious environmental justice and equal protection issues.

3. THE PUBLIC NOTICE OF CALDWELL TANK'S PERMIT  
INCORRECTLY STATES THAT THE PERMIT IS ONLY  
ENFORCABLE BY THE EPA AND EPD.<sup>6</sup>

40 CFR § 70.7(a)(1)(ii) provides that the permitting authority may not issue a Title V permit until it has complied with the requirements for public participation under paragraph (h) of Section 70.7. 40 CFR § 70.7(h) provides that the permitting authority shall provide “adequate” procedures for public notice. While the Part 70 rules and the Act do not define “adequate,” it is clear that EPD failed to meet this standard. For example, EPD’s public notice is inadequate because it contains inaccurate information. The public notice stated: “[t]his permit will be enforceable by the Georgia EPD and the U.S. Environmental Protection Agency.” This statement is incomplete. The permit will also be enforceable by any “person.” 42 U.S.C. § 7604(a). “Person” includes an individual, corporation, partnership, association, State, municipality, and a political subdivision of a state. 42 U.S.C. § 7602(e).

While this oversight may appear insignificant, correcting this misstatement is important for at least two reasons. To begin with, it is inherently important for the government to always provide the public with accurate information regarding implementation of air pollution laws. In addition, EPD has recognized that public involvement in the Georgia Operating Permit program has been very limited. It is only with full and meaningful public participation that we can hope to have clean air here in Georgia. See generally Ashley Schannauer, Science and Policy in Risk Assessment: The Need for Effective Public Participation, 24 Vermont Law Review 31 (1999).

---

<sup>6</sup> This issue was raised in Petitioner’s Comment 2 at pages 2-3 attached as Exhibit 1. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

In order to involve the public in the Operating Permit program, an important first step is to convince the public that this program is a legitimate means by which the public can participate in the effort to achieve the goal of attaining clean air. If the public is aware of their right to enforce a permit, they are more likely to put effort into ensuring that the permit is adequately protective of the environment. Therefore, EPA should object to the permit as a public notice that contains inaccurate information about a critical point is not adequate. The EPA should require the EPD to re-notice the Caldwell Tank permit for a new 30-day comment period with a public notice that accurately explains to the public that they, as well as EPD and EPA, can enforce this permit.

4. THE PERMIT DOES NOT INCLUDE THE SIP PROVISIONS APPLICABLE TO THE SHOT BLASTING AND BAG HOUSE.<sup>7</sup>

A Title V permit's failure to include an applicable emissions limit or standard from a SIP is grounds for an EPA objection to the permit. See In re Monroe Electric, 6-99-2 (EPA Administrator August 12, 1999) noticed at 64 FR 44009 at 1. Georgia's Rules for Air Quality (Rule) 391-3-1-.03(10)(g)(7)(iii)(III) require that in order for the shot blasting and its bag house to be considered an insignificant source, it must not emit visible emissions to the outdoor

---

<sup>7</sup> This issue was raised in Petitioner's Comment 7 at page 5 attached as Exhibit 1. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

atmosphere. The Caldwell Tank permit treats the shot blasting and bag house as an insignificant activity. Ex. 3 at Attachment B, second page. However, the permit does not require that there be no visible emissions to the outdoor atmosphere from this insignificant source. See Ex. 3. The permit should include such a requirement. Specifically, the permit must contain a provision that states that the opacity from the bag house stack must be zero (0).

In addition, the permit must contain monitoring and reporting requirements for this condition. EPD claims that there does not need to be any monitoring because there is little likelihood of these units exceeding the applicable emission standards. Ex 4 at Addendum to Narrative, page 6. However, it actually appears that the opposite is true; that it is unlikely that the facility will comply with an opacity emission standard of zero. In any event, EPD offered no data to support its position. Therefore, monitoring is required. See In re Fort James Camas Mill, V-1999-1 (EPA Administrator Dec. 22, 2000) at 14 (requiring monitoring even when the agency had stack tests showing emissions at 68% to 79% percent of the standard); See also 40 CFR § 70.6(a)(3)(B)(requiring monitoring that is representative of the source's compliance for all conditions).

## VI. CONCLUSION

For the reasons explained above, the EPA should object to the Caldwell Tank Title V operating permit and provide EPD with 90 days to resolve EPA's objection and to terminate, modify, or revoke and reissue the permit in accordance with the EPA's objection. See 40 CFR § 70.8(d).

Respectfully Submitted,

---

Robert Ukeiley  
Georgia Center for Law in the Public  
Interest  
175 Trinity Avenue, SW  
Atlanta, GA 30303  
Tel: 404.378.8350  
Fax: 404.688.5912

Counsel for Petitioner Sierra Club

Dated: May 8, 2001

CC: Acting Regional Administrator, EPA Region 4  
Art Hofmeister, EPA Region 4  
Congresswoman Cynthia McKinney  
Curt Smith, Sierra Club  
Jimmy Johnston, EPD (w/o attachments)