

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

In the Matter of the Title V )  
Operating Permit No. AQM-001/00016 )  
Issued to )  
 )  
Dow Reichhold Specialty Latex, LLC )  
to operate a chemical and )  
allied products plant )  
located in Cheswold, Delaware )  
 )  
Issued by the Delaware Natural Resources )  
And Environmental Control Authority )

**PETITION REQUESTING THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE  
TITLE V OPERATING PERMIT FOR DOW REICHHOLD SPECIALTY LATEX, LLC  
CHESWOLD, DELAWARE**

Pursuant to Section 505(b)(2) of the Clean Air Act ("Act"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Clean Air Council ("Council" or "Petitioner") hereby petitions the Administrator ("Administrator") of the United States Environmental Protection Agency ("EPA") to object to issuance of the Title V Operating Permit ("permit") for Dow Reichhold Specialty Latex, LLC ("Reichhold"), Permit No. AQM-001/00016. EPA should object to this permit because: 1) the permit does not require an adequate compliance schedule; 2) the permit does not require adequate monitoring or prompt notification; and 3) Reichhold has emitted ammonia from its facility after the close of the comment period on this permit.

This petition is filed within sixty days following the expiration of the EPA's 45-day review period, as required by Section 505(b)(2) of the Act. See 42 U.S.C. § 7661d(b)(2). The Administrator must grant or deny this petition within sixty days after it is filed. Id.

In compliance with Section 505(b)(2) of the Act, this petition is based on comments submitted by Reichhold to the Delaware Natural Resources and Environmental Control Authority ("DNREC") during the public comment period, which ended September 9, 2002. Additionally, the petition relies on information made public by DNREC after the close of the public comment period. Petitioner is entitled to base this petition on such information because it would have been

1 impracticable to raise the following objections during the public  
2 comment period, and grounds for such objections arose after the  
3 comment period ended. See 42 U.S.C. § 7661d(b)(2).

3 **I. Parties**

4 The Council is a member-supported, non-profit environmental  
5 organization dedicated to protect everyone's right to breathe clean  
6 air. Founded in 1967, the Council is the oldest member-supported  
7 environmental organization in the Mid-Atlantic region. The Council  
8 works through public education, community advocacy, and government  
9 oversight to ensure enforcement of environmental laws. The Council has  
10 members who live, work, recreate, and breathe air in the state of  
11 Delaware and throughout the Mid-Atlantic region.

12 The Mid-Atlantic Environmental Law Center ("MAELC") represents  
13 the Council in this matter. MAELC is a not-for-profit environmental  
14 law firm that provides legal services to individuals and public  
15 interest organizations in environmental matters. MAELC works to ensure  
16 that environmental requirements are met, and that legislation and  
17 regulations are adequately implemented by responsible federal, state  
18 and local agencies. MAELC is located at Widener University School of  
19 Law and works in tandem with students in Widener's Environmental and  
20 Natural Resources Law Clinic.

17 **II. Basis for Objection**

18 The Council requests the Administrator object to the final permit  
19 for Reichhold because it does not comply with 40 C.F.R. Part 70 and  
20 the Clean Air Act. In particular:

- 21 1) In contravention of 40 C.F.R. 70.5(c)(8), Reichhold's permit does  
22 not provide an adequate compliance schedule;
- 23 2) Reichhold's permit does not require adequate monitoring and prompt  
24 notification according to 42 U.S.C. § 7661c and 40 C.F.R. Part 70;  
and
- 25 3) An ammonia release has occurred at Reichhold's facility since  
the close of the public comment period.

If EPA determines that a permit does not comply with legal  
requirements, it must object to its issuance. See 40 C.F.R.  
70.8(c)(1) ("The Administrator will object to the issuance of any

1 proposed permit determined by the Administrator not to be in  
2 compliance with applicable requirements of this part.") The  
3 significant violations discussed herein require the Administrator to  
4 object to the permit issued by DNREC.

5 A. In Contravention of 40 C.F.R. 70.5(c)(8), Reichhold's  
6 Permit Does Not Provide an Adequate Compliance Schedule.

7 The Code of Federal Regulations ("Part 70") requires Title V  
8 permits have a compliance schedule. 40 C.F.R. 70.5(c)(8)(iii). The Act  
9 defines a "'schedule of compliance'" as a "schedule of remedial  
10 measures, including an enforceable sequence of actions or operations,  
11 leading to compliance with an applicable implementation plan, emission  
12 standard, emission limitation, or emission prohibition." 42 U.S.C. §  
13 7661(3). However, according to Condition Five of Reichhold's permit,  
14 no compliance schedule has been included. See Regulation No. 30 (Title  
15 V) Operating Permit No. AQM 001/00016, Condition 5, page 170. This is  
16 in direct violation of both Part 70 and the Act.

17 The need for such a schedule is shown not only by the regulation,  
18 but also by a recent ammonia release. On October 29, 2002, Reichhold  
19 released at least 100 pounds of ammonia. See DNREC Online:  
20 Environmental Releases (Attached as Exhibit A). This release was  
21 classified as extremely hazardous by DNREC. Id. By omitting the  
22 required compliance schedule, Reichhold may continue to violate clean  
23 air laws without consequence. This is not consistent with the Act's  
24 purpose - "to protect and enhance the quality of the Nation's air."  
25 See 42 U.S.C. § 7401(b)(1).

Moreover, during the comment period, Reichhold specifically  
requested the Leak Detection and Repair requirements "be revised to  
include: ... [a] compliance schedule and reporting requirements of [40  
C.F.R. Part 63] Subpart U." See Comment 13, Reconciliation of  
Reichhold, Inc. Draft Permit Comments (Feb. 13, 2001). But, DNREC  
replied, "[n]o compliance schedule was required for Subpart U." Id.  
Reichhold's recent hazardous ammonia release demonstrates how vital a  
compliance schedule is to a Title V Operating Permit. Since  
Reichhold's permit fails to incorporate a compliance schedule, the

1 Administrator should object to the permit because it fails to comply  
2 with proper legal requirements.

3 B. Adequate Monitoring, Reporting and Recordkeeping  
4 Requirements are Needed in the Permit.

5 Adequate monitoring and prompt notification are essential to a  
6 Title V permit because, without these, states and the public cannot  
7 know whether a facility is complying with air quality and public  
8 health protections. The law is clear in this area, "each permit issued  
9 under [Title V] shall set forth inspection, entry, monitoring,  
10 compliance certification, and reporting requirements to assure  
11 compliance with the permit terms and conditions." See 42 U.S.C. §  
12 7661c(c). Moreover, prompt reporting of violations is one of the main  
13 objectives of the Act's facility permitting: potentially dangerous  
14 illegal pollution or operational problems must be promptly reported to  
15 a responsible agency; the agency can then determine the response,  
16 ranging from further evaluation to immediate action. Part 70 requires  
17 that Title V permits include "[p]rompt reporting of deviations from  
18 permit requirements, including those attributable to upset conditions  
19 as defined in the permit, the probable cause of such deviations, and  
20 any corrective action or preventive measures." 40 CFR §70.6(a)(3)  
21 (iii)(B).

22 Although Reichhold did request that reporting requirements be  
23 included under Leak Detection and Repair, it objected to the  
24 "extensive monitoring recordkeeping requirements of Emission Unit 1  
25 and Section C of Emission Unit No. 2" considering these requirements  
"overly burdensome and unnecessary." See Comment 4, Reconciliation of  
Reichhold, Inc. Draft Permit Comments (Feb. 13, 2001).

Reichhold's recent violation in 2002 shows that more frequent  
monitoring, reporting and recordkeeping requirements in the permit are  
needed to assure compliance with federal and state air regulations.  
The permit mandates Reichhold submit "any required monitoring not  
later than ... the first day of February (covering the period July 1  
through December 31)." See Regulation No. 30 (Title V) Operating  
Permit No. AQM 001/00016, Condition 3(c)(2)(i), page 20. Here, more

1 frequent monitoring is needed for Emission Units 1 and 2 to provide  
2 data to ensure compliance. Leak Detection Systems or other monitoring  
3 should be required to identify leaks when they occur. Semi-annual  
4 monitoring reports are not sufficient to demonstrate compliance. EPA  
5 interim Rules state that infrequent monitoring (e.g. quarterly  
6 monitoring) is likely insufficient for demonstrating compliance with  
7 an hourly emission limit. 67 Fed. Reg. 58529-36, (Sept. 17, 2002).  
8 Therefore, the Administrator should object to issuance of the permit.

9 C. Reichhold Violated the Act By Its Release of Ammonia.

10 On October 29, 2002, Reichhold released 100 pounds of ammonia  
11 into the air, which created an extremely hazardous situation. See  
12 DNREC Online: Environmental Releases (Exhibit A). When such a chemical  
13 is emitted into the air, the vapors may cause the eyes and respiratory  
14 tract to become irritated. Id. If a person comes in direct contact  
15 with the ammonia, the skin and eyes may burn. Id. Moreover, if the  
16 fumes of the chemical are inhaled, it may be fatal. Id.

17 This release took place after the comment period closed on the  
18 permit, so Petitioner could not have raised the ammonia problem at  
19 that time.

20 **IV. Conclusion**

21 In light of the permit's failure to require a compliance  
22 schedule, its failure to require adequate monitoring and reporting,  
23 and because a violation has occurred since the public comment period  
24 ended, the Administrator should object to the Title V permit.

25 Dated: March 7, 2003

---

Lyman C. Welch, General Counsel  
Mid-Atlantic Environmental Law Center  
c/o Widener University School of Law  
4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803  
(302) 477-2167

Amy Shellenberger, Clinic Intern  
James R. May, Esq., Director  
Widener University School of Law  
Envtl. & Natural Resources Law Clinic  
**On behalf of the Clean Air Council**