

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Permit No.: 241008680-P10

The Title V Air Operating Permit for
a Gray and Ductile Iron Foundry
Milwaukee County, Wisconsin

Facility ID No.: 241008680

EI Facility No. 241006810

Motor Castings Company
1323 South 65th Street
West Allis, Wisconsin 53214-0996

Permit proposed by the Department of Natural
Resources

**PETITION OF A-C EQUIPMENT SERVICES AND JOHN VITAS
REQUESTING THAT THE ADMINISTRATOR OBJECT
TO THE ISSUANCE OF THE PROPOSED TITLE V OPERATING
PERMIT FOR THE MOTOR CASTINGS COMPANY FACILITY**

Pursuant to Clean Air Act ("CAA") §505(B)(2) and 40 C.F.R. §70.8(d) A-C Equipment Services ("A-C") and John Vitas ("Vitas"), by their attorneys, Davis & Kuelthau, s.c. and Christopher J. Jaekels, petition the Administrator of the United States Environmental Protection Agency ("EPA") to object to the proposed Title V Operating Permit for Motor Castings Company ("Motor Castings"), Permit No. 241008680-P10 ("Permit") for failure to satisfy applicable requirements. The Wisconsin Department of Natural Resources ("WDNR") proposed the permit to the EPA on October 8, 2012. A copy of the proposed permit is attached as Exhibit A. A-C and Vitas provided comments

to the WDNR on October 11, 2011; October 26, 2011; May 21, 2012; and June 28, 2012. True and correct copies of A-C and Vitas' comments are attached as Exhibit B. Vitas also appeared at a public hearing regarding the proposed permit on July 27, 2012 to present comments in person and provide demonstrative evidence, including but not limited to samples of Motor Castings' deposited particulate matter and the impacts of those deposits on automobile nearby finishes. A copy of WDNR's Response to Comments is attached as Exhibit C.

Petitioners filed this petition within sixty (60) days of the end of the forty-five (45) day review period set forth in CAA §505(B)(2). As the Administrator is aware, she must grant or deny this petition within sixty (60) days after it is filed. The Administrator is required to object to the issuance of the permit if it does not comply with the requirements of the CAA. 42 U.S.C. §7661D(b); 40 C.F.R. §70.8(C)(1), or other applicable requirements.

GROUND FOR OBJECTION

This petition seeks an objection from the Administrator for the following reasons:

1. The emissions limits and permit terms are vague and do not specifically address fugitive particulate matter;
2. WDNR did not adequately respond to A-C and Vitas' comments and evidence on this issue;

3. WDNR failed to impose emissions limits or permit terms to adequately address the issues raised in a Notice of Violation and Finding of Violation issued against Motor Castings on September 27, 2012; and

4. WDNR failed to consider the environmental justice impact of the permit by failing to identify and address disproportionately high and adverse human health or environmental effects of the permit on minority and low income populations located in the vicinity of Motor Castings.

BACKGROUND

A-C is located directly adjacent to the east of Motor Castings. Vitas is employed full-time at that location as President of A-C. Motor Castings has, as a result of its operations, deposited iron oxide and silicate particulate matter (a/k/a dust) throughout the entire neighborhood for the 30 plus years that A-C has operated in the neighborhood and the 15 years that Vitas has been employed at that location (Exhibit B, generally). Indeed, Motor Castings has admitted responsibility for the PM deposits in the neighborhood and has paid for repairs to automobile finishes resulting therefrom. In most instances, however, A-C, Vitas, or A-C's individual employees have borne the cost damages from these deposits.

After having to pay for the repair of damaged automobiles dozens of times and feeling concern over the threats to public health and the environment, A-C commissioned GZA GeoEnvironmental, Inc. of Cincinnati, Ohio and Waukesha, WI ("GZA") to conduct

a study of particulate matter deposition from Motor Castings at the A-C property ("Report" Exhibit D). That report was submitted to WDNR by A-C and Vitas in January 2012.

DISCUSSION

1. The Emissions Limits and Permit Terms Improperly Limits The Ability of Citizens To Enforce The Permits' Terms Because They Are Vague

Both courts and the EPA have routinely recognized that an agency cannot issue permit terms that are vague and therefore unenforceable. *See e.g., Ariz Cattle Growers Ass'n v. U.S. Fish and Wildlife*, 273 F.3d 1229, 1233, 1250-51 (9th Cir. 2001). In this case, it is what WDNR did not address that renders the Permits' terms vague and raises additional questions. Additional violations of the area source Foundry Maximum Achievable Control Technology (MACT), 40 CFR 63 Subpart ZZZZZ, may also exist at the Motor Castings facility. The Iron Foundry area source MACT for large sources imposes additional requirements as follows:

1) the operation of a capture and collection system for each metal melting furnace that meet accepted engineering standards, such as those published by the American Conference of Governmental Industrial Hygienists,

2) an emission limit of 0.8 pounds of particulate matter (PM) per ton of metal charged or 0.06 pounds of total metal HAP per ton of metal charged for each furnace at an existing iron and steel foundry, with compliance demonstrated through a performance test,

3) compliance with an opacity limit of 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 30 percent, using Method 9 or method 22 during the metal melting furnace performance tests and every 6 months thereafter. Foundry operations covered by the fugitive emissions opacity limit include all process equipment and practices used to produce metal castings for shipment including mold or core making and coating; scrap handling and preheating; metal melting and inoculation; pouring, cooling, and shakeout; shotblasting, grinding and other metal finishing operations; and sand handling.

4) An initial and periodic inspections of the baghouse used to control metal melting furnace emissions pursuant to the requirements in § 63.10897.

5) An operation and maintenance (O&M) plan that meets the requirements of § 63.10896.

The Administrator has granted a petition in a case where the permitting authority “did not articulate a rationale for its conclusions that the monitoring requirements for opacity are sufficient to assure compliance emissions limitations for opacity, or are sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit. “*In Re: Citgo Refining and Chemicals Company* (EPA Administrator February, 2007). In *Citgo*, petitioners argued the frequency of monitoring for visible emissions from a refinery should be more frequent than the permit stipulated (annually for stationary vents and quarterly for buildings, enclosed facilities, and other structures). Petitioners also argued that the visual emissions from the refinery should be

recorded continuously in order to assure compliance under Title V. The permitting authority in *Citgo* claimed the monitoring requirements in the initial permit did demonstrate compliance with applicable requirements. However, the permitting authority did not explain how the monitoring requirements for opacity are sufficient. Thus, EPA granted the petition *because the state agency never addressed emissions monitoring adequacy. Id.: see also In Re: Premcor Refining Group* (EPA Administrator January 8, 2007). This is exactly the case at hand. WDNR never addressed the issues raised by A-C and Vitas.

There is no information in the Title V permit renewal or the preliminary determination prepared by WDNR indicating Motor Casting's compliance status with regard to the above listed MACT requirements. The failure to include meaningful compliance data, terms, and monitoring in this regard renders the permits' terms impermissibly vague and precludes citizens from determining whether violations or exceedences are occurring.

2. The WDNR Did Not Address A-C and Vitas' Comments

The Report identified elements and specific compounds consistent with iron foundry processes and provided additional historic evidence that the particulate matter ("PM") deposition at the A-C site has resulted from emissions from Motor Castings. The Report also indicated that fugitive emission sources discharging PM through roof, fence, and louvered windows, other uncontrolled ventilation activities, front-end loaders used for scrap activities, and other sources should be investigated as to their impact on the A-C

property and other neighbors. The Report and A-C and Vitas' comments asked WDNR to impose strict permit conditions regarding control device monitoring procedures and maintenance performed by Motor Castings to mitigate the impacts of the PM deposition on A-C and areas surrounding the Motor Castings facility. The Report, testimony, and other submittals documented ongoing PM deposits on A-C and Vitas' property as well as other neighbors causing damage to property and threatening public health and the environment.

WDNR did not respond to this Report. No permit conditions were imposed as a result of the Report and comments. No additional investigations of operations were undertaken. Fugitive dust is to be addressed in permits under Wis. Admin. Code NR415.04. Fugitive dust was not addressed. Indeed, the final permit did not impose appropriate monitoring requirements based on the Report and comments, such as bag break detectors or opacity monitors for sources affected by the CAM Rule that would provide a real time indicator of operational anomalies. A Fugitive dust plan could have defined the best management practices for containing and controlling Fugitive dust emissions.

WDNR has an obligation to respond adequately to significant comments on the draft Permit. CAA § 502(b)(6) requires that all Title V permit programs include adequate procedures for public notice regarding the issuance of Title V permits, "including offering an opportunity for public comment." 42 U.S.C. § 7661a(b)(6); *see also* 40 C.F.R. § 70.7(h). It is a general principle of administrative law that meaningful notice

means a response by the regulatory authority to public comments. *See e.g. Home Box Office v. FCC*, 567 F.2d 9, 35-36 (D.C. Cir. 1977). EPA has objected to WDNR issued Title V permits in the past due to WDNR's failure to adequately respond to comments. (Order Granting Petition for Objection to Permit Issued to Wisconsin Public Service Corporation's J.P. Pulliam Power Plant Order Granting in Part and Denying in Part Petition for Objection to Permit Issued to Alliant Energy; WPL Edgewater Generating Station; Order Granting in Part and Denying in Part Petition for Objection to Permit Proposed to be issued to WE Energies Oak Creek Power Plant (USEPA Title V Petition Database; www.epa.gov/region5/air/title5/petitiondb).

3. WDNR Failed To Address Motor Castings' Ongoing Non Compliance.

WDNR ignored the Notice of Violation issued to Motor Castings fifteen (15) days before it issued the Permit. An existing Calciner in the Sand Reclaim System installed in 1998 at Motor Castings operated in violation of New Source Performance Standards that required a continuous opacity monitor for 14 years; a new Sand Reclaim System and Calciner system was installed in 2012 without a permit, operated without a continuous opacity monitor and proper record retention; and the Induction Melt Furnace baghouse operated without proper calibration of the instrument used to measure pressure drop in violation of Federal National Emission Standards for Hazardous Air Pollutant standards (NESHAP)(these issues existed and were on record before WDNR issued the permit). This indicates that other violations of the NESHAP may also exist. A Title V permit must include a compliance schedule "for requirements for which the source is not

in compliance at the time of permit issuance.” 40 CFR §§ 70.6©(3) and 70.5©(8)(iii)©; see also 10 CSR 10-6.065(6)(B)3.1.(III)(c). WDNR ignored these issues and issued the permit with no terms to address them.

4. The Permit Has A Disproportionate Impact On Minority and Low Income Populations

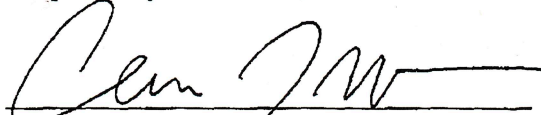
WDNR failed to consider the nature of the neighborhood surrounding Motor Castings, and the impact this permit would have on that neighborhood. This census tract qualifies for New Markets Tax credits as a Qualified Low Income Community. In fact, 11.63% of that Census tract lives below the poverty level. The population within a three (3) mile radius of Motor Castings, according to the EPA website, is 6,584 persons of which twenty-nine (29%) are minorities (see attached Exhibit F). Under EPA policy as set forth in Executive Order 12898, the impacts of the Motor Castings permit require consideration of disproportionately high and adverse human health or environmental effects of the permit on minority populations. There is no mention at all of the impact this permit will have on minority or lower income populations. WDNR failed to satisfy the spirit and the letter of Executive Order 12898, resulting in environmental injustice.

CONCLUSION

For the reasons set forth above, Motor Castings’ permit fails to address applicable requirements and should be subject to objection by the Administrator. The WDNR should amend the permit to comply with applicable requirements and resubmit it to USEPA and the public for proper approval.

Dated this 6 day of December, 2012.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Chris J. Jaekels", written over a horizontal line.

Christopher J. Jaekels
Attorney for A-C Equipment Services and
John Vitas