

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

IN THE MATTER OF	*	PETITION FOR
	*	OBJECTION
Clean Air Act Title V Permit No. 2520-00048-V5	*	
	*	
Issued to Bunge North America Inc.	*	Permit No. 2520-00048-V5
	*	
Issued by the Louisiana Department of Environmental Quality	*	
	*	

Petition Requesting That the Administrator Object to Issuance of the Modification to Title V Permit for the Bunge Grain Elevator, Permit No. 2520-00048-V5

Pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Ms. Cynthia Portera and Ms. Toni Offerman petition the Administrator of the U.S. Environmental Protection Agency (EPA) to object to the renewal and modification to the Title V air operating air permit no. 2520-00048-V5 (Title V Permit) issued to Bunge North America Inc. for the construction activities at its grain elevator in Destrehan, Louisiana.

Petitioners respectfully request that EPA object to the Title V Permit for the Bunge plant because it does not comply with the Clean Air Act. The Title V Permit is illegal because Bunge North America Inc. is currently out of compliance with its permit, therefore a compliance schedule should have been included in both the application and the permit, but no compliance schedule was included. Further, EPA describes this permit as a “Major Modification,”¹ therefore LDEQ should have classified this construction activity as a substantial modification and required Bunge North America, Inc. to complete an Environmental Assessment Statement.

¹ CAA Permitting in EPA's South Central Region; Operating Permit Timeline for Louisiana; <http://yosemite.epa.gov/r6/Apermit.nsf/AirLA?OpenView&Start=1&Count=4000&Expand=1#1>.

The Clean Air Act mandates that EPA “shall issue an objection ... if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the ... [Clean Air Act].” 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(c)(1). EPA must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2). As shown below, Petitioners demonstrate that the Title V permit issued to Bunge does not comply with the Act’s requirements.

I. Statutory and Regulatory Framework

Section 502(d)(1) of the Clean Air Act, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to EPA an operating permit program intended to meet the requirements of Title V of the Act. Louisiana’s approved Title V program is incorporated into the Louisiana Administrative Code at LAC 33:III.507.

Any person wishing to construct a new major stationary source of air pollutants must apply for and obtain a Title V permit before commencing construction. 42 U.S.C. § 7661b(c); *see also* LAC 33:III.507.C.2.1. The Title V permit must “include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with *applicable requirements* of [the Clean Air Act and applicable State Implementation Plan (“SIP”).]” 42 U.S.C. § 7661c(a) (emphasis added). The Title V operating permit program does not generally impose new substantive air quality control requirements (i.e., “applicable requirements”), but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992) (EPA final action promulgating the Part 70 rule). A central purpose of the Title V program is to “enable the source, states, EPA, and the public to better understand the requirements to which the source is subject, and whether the

source is meeting those requirements.” *Id.* Thus, the Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

II. Ms. Cynthia Portera and Ms. Toni Offerman meet the procedural requirements for this Title V Petition.

Bunge North America Inc. submitted an application to LDEQ in June 2015 to modify its grain elevator in Destrehan, Louisiana. LDEQ issued a proposed permit for public comment on September 10, 2015. The public comment period for the proposed permit ended on October 12, 2015. Petitioners filed timely public comments with LDEQ regarding the proposed permit on October 12, 2015.

Under section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 C.F.R. § 70.8(a), the relevant implementing regulation, states are required to submit each proposed title V operating permit to EPA for review. On October 12, 2015, LDEQ submitted the proposed permit to EPA Region 6 for review. EPA had 45 days from receipt of the proposed permit to object to final issuance of the permit if it determines the permit is not in compliance with applicable requirements of the Act. EPA did not object to the proposed permit within its 45-day review period.

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), provides that, if EPA does not object to a permit, any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. *See also* 40 C.F.R. § 70.8(d). Petitioners file this Petition within 60 days after the expiration of the Administrator's 45-day review period. The petition must “be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such

objections within such period or unless the grounds for such objection arose after such period).”

42 U.S.C. § 7661d(b)(2). Petitioners base this petition on the comments submitted on their behalf during the public comment period. Ex. A, Comments.

III. EPA must object to the permit because both the permit application and the permit must include a compliance schedule.

Bunge has repeatedly violated the terms of its Permit, including a violation that resulted in an enforcement action which commenced in 2013. This enforcement action has not concluded and there is no indication that the facility has been brought into compliance with the Louisiana Environmental Quality Act. The chart below notes the facility’s extensive non-compliance history in recent years.

<u>Date</u>	<u>Document ID</u>	<u>Function</u>	<u>Description of the Document</u>
9/22/2015	9936402	Legal	Enforcement Tracking No. AE-CN-13-00028 Conference Report and Order Regarding an Enforcement Action Telephone conference with Judge Kopynec and Mr. Ward of the DEQ without appearance by Bunge. Mr. Ward informed Judge Kopynec that “DEQ is still in the process of reviewing the documentation Bunge submitted. DEQ also believes that additional enforcement actions may possibly be considered in this matter.”
8/19/2015	9899264	Warning Letter	Enforcement Tracking No. AE-L-15-00682 This document is a warning letter addressed to Cal Williams, the plant manager of the Destrehan Grain Elevator. It informs the facility that DEQ is investigating the facility for potential civil enforcement and that areas of concern have been found during an inspection.
3/9/2015	9666346	Legal	Agency No. AE-CN-13-00028 Conference Report and Order Regarding an Enforcement Action

			Telephone conference with Judge Kopynec and Mr. Ward of the DEQ without appearance by Bunge. Mr. Ward informed Judge Kopynec that “DEQ is still in the process of reviewing the additional documentation Bunge submitted. The additional review is due to a change in the technical personnel reviewing the matter for DEQ’s Office of Environmental Compliance as well as two new violations that could result in a new or revised Compliance Order.”
4/24/2015	9743188	Inspection	Field Interview Form “During document review it was noted that the facility did not have records for oil change for emergency engines (EQT0092 + 0093). This has been added to work order & will be performed in June.”
3/31/2015	9785867	Inspection Report	This inspection report was filed with the enforcement division, which then instituted enforcement proceedings. The report noted two violations: (1) “Facility did not take all reasonable precautions to prevent particulate matter from becoming airborne during maintenance activities. The facility stated that in the future, they will utilize more burlap sacks to control the dust and have someone monitor the area for excess dust and stop work immediately. This is an area of concern with LAC 33:III.1305.A.” (2) “Facility did not have any records of oil changes for their two emergency diesel engines (EQT 0092 and EQT 0093). This is an area of concern with specific condition 93, 306 and 307 of Permit No. 2520-00048-V4; 40 CFR 63,6602; 40 CFR 63.6660; and LAC 33:III.501.C.4.”
2/19/2015	9688267	Inspection	On this occasion, an inspector for the LDEQ was driving by and “observed dust discharging from the upper portion of the elevator/belt inside the property.” The inspector also noted that pictures would be sent upon return to the office, but they are not attached to the document or otherwise located in EDMS.
10/1/2014	9488387	Warning Letter	Enforcement Tracking No. AE-L-14-00896 This document is a warning letter addressed to Matthew Kerrigan, the plant manager of the Destrehan Grain Elevator. It informs the facility that DEQ is investigating the facility for potential civil enforcement and that areas of concern have been found during an inspection.

9/10/2014	9478565	Incidents- Non- Emergency	Field Interview Form After a complaint regarding excess dust emissions, there was a site inspection that revealed that “dust was seen originating from a barge during loading operations”. After questioning, the inspector found that the operators were following SOPs.
12/5/2013	9167439	Inspections	Field Interview Form After two dust complaints, surveillance revealed “dust crossing levee & dust film on levee, trees (indistinguishable)”. The inspector met with the facility officials to explain enforcement proceedings.
12/4/2013	9898997	Inspection Report	This inspection report was filed with the enforcement division, which then instituted enforcement proceedings. The report noted one major violation: “On December 04 and 05, 2013, Bunge Destrehan failed to employ adequate controls and/or take all reasonable precautions required to keep particulate matter from becoming airborne. This is an area of concern with respect to LAXC 33.III.905, and LAC 33.III.1305.” Incident No.: 152601, 152622
06/13/2013	8901290	Inspections	Field Interview Form During a Title V air inspection, an inspector noticed “visible emissions from the ISE belt at tower 6.” The inspector was told that there were maintenance activities taking place at that belt, and promised documentation of activities when entered into facility system.

Because Bunge is not in compliance with its existing permits, it must include a compliance schedule in this permit application, and LDEQ must include a compliance schedule in Bunge’s permit. Under LAC 33:III §517(E)(4):

E. Additional Application Requirements for Part 70 Sources. In addition to those elements listed under Subsection D of this Section, each application pertaining to a Part 70 source shall include the following:

4. for applicable requirements with which the source is not in compliance at the time of permit application submittal, a narrative description of how the source will achieve compliance and a compliance schedule. The compliance schedule shall include an enforceable sequence of dates by which specific actions will occur at the source, leading to compliance with all applicable requirements. The compliance schedule shall include dates for submittal of certified progress reports no less frequently than every six months. The schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order or compliance order to which the source is subject. The schedule shall be supplemental to and shall not sanction noncompliance with the applicable requirements on which it is based.

In addition, under federal law, a Title V permit must include a compliance schedule for “requirements for which the source is not in compliance at the time of the permit issuance.” 40 C.F.R. § 70.5(c)(8)(iii)(C); § 70.6(c)(3) (requiring draft permits to contain a "schedule of compliance consistent with § 70.5(c)(8)"); *see also* 42 U.S.C. § 7661c(a) (“Each permit issued under this subchapter shall include ... a schedule of compliance”). Accordingly, permits must contain “a description of the compliance status of the source,” “a narrative description of how the source will achieve compliance” with requirements for which it is in noncompliance, and a “schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance.” 40 C.F.R. § 70.5(c)(8); § 70.6(c)(3). The schedule itself must “include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance.” 40 C.F.R. § 70.5(c)(8)(ii)(C); § 70.6(c)(3). Additionally, compliance schedules are intended to be rigorous: they “shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.” *Id.* As such, Title V permits must spell out enforceable, specific steps to be taken by sources with histories of noncompliance in order to return those sources to compliance.

IV. EPA must object to the permit because it the construction activity at issue ought to have been determined to be a “Substantial Modification,” requiring an Environmental Assessment Statement.

The EPA has labeled this a permit for a “Major Modification.”² In Louisiana, when applying for a “Substantial Modification,” an applicant must complete an Environmental Assessment Statement:

“If applying for an initial Part 70 Regular Operating Permit or for a Substantial Modification (see definition earlier in this chapter), a copy of the applicant’s Environmental Assessment Statement associated with the project (also known as answers to the “IT” questions) must be submitted to LDEQ. Per R.S. 30:2018(C), copies must also be forwarded to the local governmental authority and to the designated public library at no additional cost to the local governmental authority or the designated public library. The questions that must be answered as part of the Environmental Assessment Statement can be found in Section 25 of the Louisiana Application for Approval of Emissions from Part 70 Sources.”

Air Permits Division, *Louisiana Guidance for Air Permitting Actions* 65 (LDEQ January 14, 2013) (available at deq.louisiana.gov/portal/DIVISIONS/AirPermitsEngineeringandPlanning.aspx). A “Substantial Modification” is defined as:

Substantial Modification: Any modification that results in a significant increase in the amount of any regulated air pollutant or results in the significant emission of any air pollutant not previously emitted (from LAC 33:I.Chapter 15). It should be noted that this is NOT the same as a Significant Modification.

Id. at 154. But here, LDEQ has labeled this activity a “Significant Modification,” which is defined in Louisiana Administrative Code 33:III, §527:

A. Significant Modification Criteria

1. Significant modification procedures shall be used for any permit revision needed to incorporate a change which does not qualify as an administrative amendment and does not qualify as a minor modification.

A “Substantial Modification” and a “Significant Modification” are not the same thing under Louisiana Law. By defining Bunge’s construction activity as a “Significant Modification” but not

² CAA Permitting in EPA's South Central Region; Operating Permit Timeline for Louisiana; <http://yosemite.epa.gov/r6/Apermit.nsf/AirLA?OpenView&Start=1&Count=4000&Expand=1#1>.

a “Substantial Modification,” LDEQ did not require Bunge to complete the Environmental Assessment Statement. Because EPA has determined this construction activity is a Major Modification, the Petitioners believe it is a “Substantial Modification” and therefore an Environmental Assessment Statement should be required.

Conclusion

For the foregoing reasons, EPA should object to the modification to the Title V air operating air permit no. 2560-00295-V0 (Title V Permit) issued to Bunge North America, Inc. for construction at its grain elevator in Destrehan, Louisiana.

Sincerely yours,

A handwritten signature in black ink that reads "Machel Lee Hall". The signature is written in a cursive, flowing style.

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