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July 19, 2016

Gina McCarthy, Administrator
United States Environmental Protection Agency
MC 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Petition - Proposed Title V/Illinois CAAPP Permit, BWAY, Inc., 3200 S. Kilbourn Avenue, Chicago, Illinois, ID No. 031600ACQ, Permit No. 95100031

To The Administrator:

Please be advised that I represent the Little Village Environmental Justice Organization ("LVEJO'), a not-for-profit organization that advocates for the Little Village neighborhood and other nearby communities in Chicago, Illinois.[1] LVEJO advocates for policy, provides programs, and coordinates local residents on environmental, health, housing, neighborhood safety and economic equity issues. LVEJO is comprised of residents of Little Village and other nearby neighborhoods, including residents who live in homes, attend the high school and use the public park that are immediately adjacent to the BWAY facility.

Please accept this as a formal Petition pursuant to 42 U.S.C. §7661d(b)(2), commonly cited as Section §505(b)(2) of the Clean Air Act ("CAA §505(b)(2)"). As you know, this section of the Clean Air Act allows any person to petition for your review of a Title V operating permit as long as the Petition is timely filed and is based on objections that were raised during the public comment period. Under this Section, you must grant or deny this Petition within 60 days after the Petition is filed. A denial is subject to judicial review.

On May 10, 2016 LVEJO submitted written comments in response to the IL EPA's Public Notice about a proposed renewal of the Title V/CAAPP permit for the BWAY facility located at 3200 S. Kilbourn Avenue in Chicago, Illinois. A true and accurate copy of LVEJO's comments is attached and incorporated by reference into this Petition. The 45-day period during which U.S. EPA could have objected to the proposed permit concluded on May 29, 2016. Upon information and belief, no objections were made by U.S. EPA by this deadline. This Petition is being submitted to the Administrator within the subsequent 60-day period during which members of the public can petition U.S. EPA to review and object to the proposed Title V permit. Although IL EPA has not issued a final permit or a response to LVEJO's comments, this Petition is being filed to request U.S. EPA's

[1] Kimberly Wasserman, Executive Director, 2445 S Spaulding Ave, Chicago, IL 60623; (773) 762-6991; http://lvejo.org/

review of the proposed permit and to preserve LVEJO's rights under 42 U.S.C. §7661d(b)(2) and 42 U.S.C. §7607.

LVEJO respectfully requests the Administrator to review this permit record, grant the Petition, and make objections for the reasons described in this Petition.

Background:

- On or about September 25, 2009, the BWAY facility submitted a CAAPP permit renewal application to the IL EPA.
- On or about September 4, 2012 the U.S. EPA sent the facility a Notice of Violation/Finding of Violation asserting multiple counts of ongoing CAA violations, some dating as far back as 2007.
- On or about September 13, 2013, the U.S. EPA and BWAY entered into a Consent Agreement and Final Order regarding the violations noted in the Notice of Violation.
- On or about April 6, 2016, the IL EPA prepared a Statement of Basis and proposed CAAPP permit in response to the facility's September 25, 2009 application.
- On April 14, 2016 the IL EPA submitted the proposed permit to the U.S. EPA and provided public notice regarding the proposed permit.
- On May 10, 2016, LVEJO submitted to the IL EPA written comments and a formal request for a public hearing.
- The public comment period ended on May 14, 2016.
- The U.S. EPA's 45-day review period concluded on May 29, 2016.

As of the date of this Petition, IL EPA has not responded in any way to LVEJO's request for a public hearing and a written comment period nor issued a final permit for the facility. In the absence of a final permit and in light of the deadline for filing this Petition, LVEJO is submitting this Petition to ensure its objections to the proposed permit are asserted to U.S. EPA, and preserved for purposes of the record of this matter.

Objection One: The community in proximity to BWAY is an environmental justice community. IL EPA has not granted LVEJO's request to undertake measures to ensure meaningful public participation. Consequently, LVEJO requests U.S. EPA to object to the proposed permit because the record does not include full and complete public participation. In addition, LVEJO requests U.S. EPA to mandate measures necessary to ensure there is not a significant, adverse and disproportionate harm as a result of deficiencies in the proposed permit.

The area immediately surrounding the BWAY facility is an environmental justice community. According to information derived from the demographic feature of U.S. EPA's ECHO database, 96% of the 30,489 people who live within a one mile radius of BWAY are Hispanic (94.41%) or African-American (1.68%).[2] There are 8,067 households within this one mile radius. U.S. EPA's ECHO database further reveals that the environmental justice community also extends in a three mile radius from the facility, consisting of 339,045 minority residents including 66.88% of residents

[2] https://echo.epa.gov/detailed-facility-report?fid=110000434708

who are Hispanic. BWAY operates in the midst of a densely populated residential area that includes 8,067 households within one mile and 94,260 households within 3 miles.

In addition, the BWAY facility is immediately adjacent to Little Village Lawndale High School and its outdoor recreation areas.[3] The facility is also in close proximity to Piotrowski Park, a public park operated by the Chicago Park District that attracts youth and young adults from the surrounding community to use its playing fields.[4] ECHO indicates that 10,190 children ages 17 or younger live within a one mile radius of the BWAY facility.

In light of these environmental justice considerations, LVEJO's written comments included a formal request for a public hearing. The prevalence of Spanish speakers living in the neighborhoods adjacent to the facility provides a compelling justification for a public hearing where bilingual services are available. Nearby residents – who will most directly bear the consequences of IL EPA's permitting decisions – should be afforded an opportunity receive and provide information in Spanish. This would provide IL EPA and the permit applicant (if it chooses) to provide information about the proposed CAAPP permit for this facility. IL EPA and the permit applicant (if it chooses) would be able to respond to questions from community residents. Most importantly, it would provide an opportunity for these residents through testimony to contribute to the record on which IL EPA will make its final decisions, and which should be available to U.S. EPA as part of its review process. In light of the composition of the surrounding neighborhood, a public hearing with bilingual services is the only way that a full and complete record that includes meaningful community participation can be assembled.

LVEJO cannot predict the full range of questions and testimony that will be offered at a public hearing. However, based on its interaction with nearby residents, it believes there are several matters that will be directly relevant to the CAAPP permit.

Nearby residents directly experience the consequences of uncontrolled or poorly controlled air emissions from the facility. For these nearby residents, these air quality problems are experienced as chemical odors that emanate from facility operations into the nearby community. Given the array of criteria and hazardous pollutants[5] that are emitted by this source, local residents are legitimately concerned that the chemical odors are not solely nuisance conditions, but rather, reflect inadequate or ineffective air pollution control technologies and techniques at this facility. They are concerned about the local and residual risks that are posed by these emissions in this urban context. They are also concerned about whether emissions are adequately monitored to ensure permit compliance.

These concerns are relevant to the terms and conditions that may be imposed under the proposed permit. Provisions of Illinois law that are part of the approved Illinois SIP characterize these kinds of emissions as contaminants that should not be released in such a manner to jeopardize the health and well-being of nearby residents. Under 415 ILCS §5/9(a):

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[3] http://www.lvlhs.org/

[4] http://www.chicagoparkdistrict.com/parks/Piotrowski-Park/

[5] BWAY's TRI reports include several toxic substances that have an odor, including glycol ethers, xylene, toluene, n-butyl alcohol, ethylbenzene, methyl isobutyl ketone and 1,2,4-trimethylbenzene. See: https://www3.epa.gov/enviro/facts/tri/ef-facilities.html#Release/60623CNTRL3200S

> No person shall: (a) Cause of threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, so as to violate regulations or standards adopted by the Board under this Act.

This same provision is repeated in 35 Illinois Administrative Code 201.102, approved as part of the federally enforceable SIP for the State of Illinois on May 31, 1972. 37 Fed. Reg. 10842. This SIP approval also included 35 Illinois Administrative Code 201.101, which defines air pollution as "…the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonable interfere with the enjoyment of life or property." Please note, the requirements of the "applicable implementation plan" are an appropriate basis for objections under 42 U.S.C. § 7661d(b)(2).

The concerns of the members of the local environmental justice community are legally relevant to the proposed permit. In the absence of the public participation measures requested by LVEJO, the members of this environmental justice community are being denied the opportunity to contribute to a full and complete record on which IL EPA should base its final permit decisions. The request for a full and complete opportunity for public participation is consistent with U.S. EPA and IL EPA commitments to environmental justice, and to the broader purposes of the Title V and IL CAAPP permit programs. 415 ILCS §5/39.5(8)(a).

Consequently, LVEJO requests the Administrator to object to the proposed permit because the record does not include a full and complete opportunity for public participation as requested by LVEJO. Further, LVEJO requests the Administrator to object to the proposed permit because, particularly in the absence of public participation, IL EPA cannot ensure the proposed permit will comply with legally relevant requirements imposed under the approved Illinois State Implementation Plan. Moreover, in the absence of a full and complete record on these issues, IL EPA cannot provide assurances that the permit will not create a significant, adverse and disproportionate harm on the surrounding environmental justice community.

Objection Two: Despite U.S. EPA's assertions that the facility was in non-compliance with its permit obligations for almost five years, IL EPA's proposed permit does not include a schedule of compliance nor measures to ensure the permittee maintains compliance. The proposed permit does not acknowledge or include measures contained in a 2013 U.S. EPA Consent Agreement and Final Order with BWAY. LVEJO requests the U.S. EPA Administrator to object to the proposed permit because it does not contain measures sufficient to ensure compliance.

In its written comments, LVEJO expressed concerns about the compliance status of this facility, an issue that is also directly relevant to the CAAPP permit (see 415 ILCS §5/39.5(5)); 42 U.S.C. §7651g). LVEJO emphasizes that concerns about compliance are not merely speculation. LVEJO notes that despite the operators' compliance certification in its renewal application, on September 4, 2012 U.S. EPA issued a wide-ranging Notice of Violation and Finding of Violation alleging multiple violations of the Clean Air Act (In The Matter of BWAY Corporation and Central Can Company, Chicago, Illinois, EPA-5-12-IL-13). A true and accurate copy of this NOV/FOV is attached to this letter and labeled as LVEJO Exhibit Two.

U.S. EPA's September 4, 2012 Notice and Finding of Violation alleged two major categories of violations.

BWAY failed to comply with regulatory requirements mandated by NESHAP (National Emission Standards for Hazardous Air Pollutants) for the "Surface Coating of Cans" and "Surface Coating of Miscellaneous Metal Parts and Products" source categories.

The first category of violations is based on BWAY's failure to operate in a manner consistent with safety and good air pollution control practices, as mandated by federal regulations. For example, U.S. EPA alleged BWAY operated a thermal oxidizer below the minimum temperature established during a 2006 test to determine appropriate operating parameters. EPA also alleged BWAY operated this oxidizer below the minimum inlet temperature, as well as the minimum temperature difference across the catalyst bed, established during this 2006 test. U.S. EPA further alleged that BWAY failed to operate its emission monitoring system for long periods of time, including 26 days in 2007, 11 days in 2008, 18 days in 2009, 211 days in 2010, 66 days in 2011, and 1 day in 2012. U.S. EPA also alleged that BWAY failed to include all of the deviations from emission limits and operating standards in its semi-annual compliance reports. This occurred four times from January, 2008 to February, 2010.

BWAY failed to comply with requirements in its Title V Permit.

The second category of violations includes violations of permit terms and conditions. U.S. EPA alleged BWAY's VOC emissions exceeded its permit limits 12 different times from May, 2010 to February, 2012. Additional permit violations occurred when BWAY operated a thermal oxidizer below the minimum temperatures established in the permit at various times from May 2007 to September 2011. BWAY also failed to operate its continuous emission monitoring system for 26 days in 2007, 11 days in 2008, 18 days in 2009, 211 days in 2010, and 1 day in 2012 during periods when coating lines were operating. The last category of permit violations occurred when BWAY failed to adequately maintain its equipment, thus creating conditions that could lead to violations.

U.S. EPA alleged that BWAY's violations resulted in an increase of VOC and HAP emissions that could cause serious health, environmental and ecological effects. U.S. EPA specifically identified the human health, air quality and ecological threats posed by VOC and HAP emissions –including contributing to regional ozone nonattainment - and asserted BWAY's emissions caused or contributed to these threats.

The September 13, 2013 Consent Agreement and Final Order concluding U.S. EPA's enforcement case does not address some fundamental community concerns about compliance at BWAY. First, U.S. EPA concludes that facility operations violated multiple permit conditions from May, 2007 to March, 2012(see: In The Matter of BWAY Corporation and Central Can Company, Chicago, Illinois, EPA-5-12-IL-13, Consent Agreement and Final Order, pp.9, 10-11 and 12; a true and accurate copy of this CAFO is attached to this letter and labeled as LVEJO Exhibit Three). This constitutes a substantial portion of the period since the last renewal CAAPP permit issued for facility operations on August 29, 2005 and subsequent to the application for a renewal permit submitted on September 25, 2009 that included a compliance certification by the facility operator. This enforcement action is directly contrary to IL EPA's assertion that: "There is no historical non-compliance for this source." Statement of Basis, p.6, repeated as the justification for specific terms and conditions at pp. 12, 13, 14, 15, 16, 17, 18 and 19. Any aspects of the resulting permit that are based on this fundamental, factual error are arbitrary, capricious and against the manifest weight of the evidence.

LVEJO is legitimately concerned that IL EPA's determination that the facility is (momentarily) in compliance is naïve in light of a protracted period of non-compliance. Second, in the context of the permit and in light of the history of non-compliance, LVEJO asserts the measures that were implemented by the facility should be incorporated into a Schedule of Compliance. U.S. EPA's CAFO is devoid of any ongoing, specific measures which BWAY must implement to maintain compliance, citing only that "BWAY will utilize the control efficiency/outlet concentration option set forth in 40 C.F.R. §63.3491(d) as the sole means of complying with the Can Coating NESHAP." No specific, ongoing measures are mandated by U.S. EPA's CAFO. After almost 5 years of non-compliance, local residents have every reason to question what permit-mandated measures are necessary to avoid an equally prompt return to another protracted period of non-compliance.

The IL EPA's proposed permit does not acknowledge BWAY's protracted period of noncompliance, U.S. EPA's subsequent NOV/FOV or the requirements of the Consent Order that BWAY entered into to resolve U.S. EPA's NOV/FOV. Instead, IL EPA's Statement of Basis asserts that beyond federal and state regulatory requirements "[T]here are no other applicable requirements for this source." Statement of Basis, p. 7. In fact, the U.S. EPA issued a Consent Order to resolve BWAY's alleged violations of the Clean Air Act on September 13, 2013. This Consent Order included requirements for BWAY to completely enclose four coating lines and to achieve continuing compliance by maintaining the efficiency of pollution control equipment. The Consent Order imposed several measures on BWAY to facilitate compliance with regulatory requirements. These requirements include the Can Coating NESHAP standards, which require the owner or operator of a source to meet emission limits, to meet the operating limits for any capture and control devices used for compliance, to monitor such operating limits using a continuous parameter monitoring system, and to submit reports, notifications, and maintain certain records. There are also Illinois-specific requirements that coating lines must be equipped with a capture system and control device that provides 75% reduction in overall emissions of VOCs from the coating line and a control device that achieves 90% efficiency.

The Consent Order mandates the implementation of a compliance program to meet these standards. Within 30 days of the Consent Order, BWAY was required to apply to the IL EPA for a construction permit for the permanent, total enclosure of coating lines one through four. BWAY was also required to apply to the IL EPA to amend its permit to incorporate control efficiency/outlet concentration requirements as the means to demonstrate compliance with the Can Coating NESHAP. BWAY was required to send all reports and correspondence demonstrating compliance with the Consent Order to the U.S. Environmental Protection Agency, Region 5 which, in turn, will make the documents available to members of the public through FOIA.

The IL EPA's proposed permit is fundamentally flawed because it does not acknowledge BWAY's protracted period of noncompliance, U.S. EPA's subsequent NOV/FOV, or the requirements of the Consent Order that BWAY entered into to resolve U.S. EPA's NOV/FOV.

Objection Three: In light of non-compliance and the potential impacts of air emissions on immediately adjacent residential neighborhoods, schools and parks LVEJO requests the U.S. EPA Administrator to object to IL EPA's decision to permit periodic monitoring protocols at this facility.

Given the history of non-compliance and potential impacts of air emissions on the nearby community, LVEJO requests U.S. EPA's Administrator to object to IL EPA's proposal to permit periodic monitoring protocols at this facility. IL EPA repeatedly asserts that this facility has a substantial margin of compliance, a small likelihood of an exceedance, and "has not exhibited a history of non-compliance". As pointed out, IL EPA's statements are directly contrary to the manifest weight of evidence assembled by U.S. EPA as part of the NOV/FOV, which encompassed the period from September, 2007 to August, 2012. U.S. EPA alleged that BWAY failed to operate its emission monitoring system for long periods of time, including 26 days in 2007, 11 days in 2008, 18 days in 2009, 211 days in 2010, 66 days in 2011, and 1 day in 2012. U.S. EPA also alleged that BWAY failed to include all of the deviations from emission limits and operating standards in its semi-annual compliance reports. This occurred four times from January, 2008 to February, 2010.

Local residents have every reason to question IL EPA's basis for periodic monitoring and for insisting on enhanced air monitoring protocols that generate continuous, empirically verifiable emissions data. Periodic monitoring will not provide a credible, verifiable basis for ensuring compliance with the emission limits and controls in the proposed CAAPP permit, particularly in the absence of compliance measures. Periodic monitoring will not provide a credible, verifiable basis for ensuring that mandated emissions limits and controls are operating in such a way to prevent a violation of the provisions of the Illinois SIP, and are not creating a significant, adverse and disproportionate harm on nearby residents, school children and park users.

LVEJO requests the U.S. EPA Administrator to object to the use of periodic monitoring as a basis to demonstrate compliance with visible emission standards (Conditions 3.1(a)(ii) and 4.1.2(a)(ii)(A) and 4.2.2(a)(ii)(A)), particulate matter emission standards (Conditions 4.1.2(b)(ii)(A)), sulfur emission standards (Conditions 4.1.2(c)(ii)(A) and 4.2.2(b)(ii)(A)), carbon monoxide emission standards (Condition 4.2.2(c)(ii)(B)), and organic material emission standards (Condition 4.1.2(d)(ii)(A) and(B)).

Thank you for your consideration of this Petition. Please contact me if you have any questions or require any additional information regarding this matter.

Sincerely,

Keith Harley

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Attorney for Little Village Environmental Justice Organization

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cc Director, IL EPA
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