

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

IN THE MATTER OF	*	PETITION FOR
	*	OBJECTION
Clean Air Act Title V Permit No. 0840-00021-V5	*	
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	*	
for Oxbow Calcining, LLC	*	Permit No. 0840-00021-V5
	*	
Issued by the Louisiana Department of Environmental Quality	*	
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PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF THE PROPOSED RENEWAL/MODIFICATION TITLE V AIR PERMIT NO. 0840-00021-V5 ISSUED BY LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY TO OXBOW CALCINING, LLC FOR ITS BATON ROUGE CALCINING PLANT

Pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Louisiana Environmental Action Network (“LEAN”) petitions the Administrator of the United States Environmental Protection Agency to object to the proposed renewal/modification Title V air operating air permit no. 0840-00021-V5 (“proposed permit”) issued to Oxbow Calcining, LLC for its Baton Rouge Calcining Plant. (“plant” or “facility”).

I. INTRODUCTION

The Clean Air Act mandates that the Administrator “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). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

LEAN respectfully requests that the Administrator object to the proposed permit for Oxbow's Baton Rouge Calcining Plant because it does not comply with the requirements of the Clean Air Act for the following reasons, which are detailed below in Section VI:

- The proposed permit impermissibly exempts limits established in the Louisiana State Implementation Plan ("SIP) for particulate matter and opacity during startups of the plant's kilns.
- The Clean Air Act prohibits LDEQ from authorizing kiln startup and shutdown emissions separately and without establishing enforceable limits for those emissions.
- The current stack test requirements are not adequate to assure compliance with permitted emission limits.
- The proposed permit fails to include monitoring to assure compliance with emission limits on baghouses.

II. STATUTORY & 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 regulations make clear that the term "applicable requirement" is broad and includes, among other things, "[a]ny term or condition of any preconstruction permit" or "[a]ny standard or other requirement provided for in the applicable implementation plan approved or

promulgated by EPA through rulemaking under title I of the [Clean Air] Act.” 40 C.F.R. § 70.2; *see also* LAC 33:III.507.A.3 (“Any permit issued under the requirements of this Section shall incorporate all federally applicable requirements for each emissions unit at the source.”).

U.S. EPA policy requires Title V permits to be “enforceable as a practical matter.”¹ Thus, to be enforceable, the permit must create mandatory obligations (standards, time periods, methods). Specifically, a permit condition must: (1) provide a clear explanation of how the actual limitation or requirement applies to the facility; and (2) make it possible for the [state agency], the U.S. EPA, and citizens to determine whether the facility is complying with the condition.² Title V permits must contain monitoring and reporting requirements to allow citizen enforcement, in addition to State and Federal Regulators’ ability to enforce the Title V permits.

The Title V operating permit program does not generally impose new substantive air quality control 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.

¹ See U.S. Environmental Protection Agency, Region 9, Title V Permit Review Guidelines: Practical Enforceability, September 9, 1999, (hereafter “Region 9 Guidelines”) ; Available at: http://webcache.googleusercontent.com/search?q=cache:P7YnEX6ssOkJ:itepsrv1.itep.nau.edu/itep_course_downloads/TitleV_Resources/R9TitleVPermitReviewGuidelines_FULLL.pdf+&cd=1&hl=en&ct=clnk&gl=us.

² See, e.g., *Sierra Club v. Ga. Power Co.*, 365 F. Supp. 2d 1297, 1308 (D. Ga. 2004) (citing *Sierra Club v. Public Serv. Co.*, 894 F. Supp. 1455, 1460 (D. Colo. 1995)).

III. LEAN'S INTEREST IN THE PROPOSED PERMIT.

LEAN is a non-profit corporation organized under the laws of the State of Louisiana. Its purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. One way LEAN works to protect the environment and the health of state residents is to comment on and challenge air permits issued by LDEQ that do not conform to the law.

The plant is located approximately two miles from the residential areas of Alsen and Alsen Heights, which are predominantly African-American neighborhoods. LEAN has members who reside, work, and recreate in these residential areas and in other areas where they will be exposed to excess pollutants allowed by the proposed permit against the Clean Air Act.

IV. LEAN MEETS THE PROCEDURAL REQUIREMENTS FOR THIS TITLE V PETITION.

On December 11, 2014, Oxbow submitted an application for a renewal/modification of Title V permit no. 0840-00021-V4, along with supplemental application information on December 2, 2015. LDEQ issued proposed renewal/modification Title V permit no. 0840-00021-V5 for public comment on November 9, 2016.³ The public comment period for the proposed permits ended on December 14, 2016.⁴ LEAN filed timely public comments with LDEQ regarding the proposed permit on December 14, 2016.⁵

Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 C.F.R. § 70.8(a) requires states to submit each proposed Title V operating permit to EPA for review. LDEQ submitted the

³See Public Notice, <http://www.deq.louisiana.gov/apps/pubNotice/show.asp?qPostID=9056&SearchText=oxbow&startDate=1/1/2016&endDate=3/20/2017&category=>

⁴ *Id.*

⁵ See LDEQ Electronic Document Management System ("EDMS), Doc. # 10534383, <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10534383&ob=yes&child=yes>

proposed permit to EPA Region 6 on December 7, 2016.⁶ EPA had 45 days from receipt of the proposed permit to object to the final issuance of the permit if it had determined that the proposed 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, which ended on January 21, 2017.

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 to object to the permit within 60 days of the expiration of EPA's 45-day review period. *See also* 40 C.F.R. § 70.8(d). LEAN files 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). LEAN bases this petition on the comments that it submitted to LDEQ during the public comment period. *See* LEAN Comments, Dec. 14, 2017, Attachment 1. LEAN attached several exhibits to its comments, designated as Exhibits A-E. LEAN has included those exhibits as part of Attachment 1. LEAN cites to those exhibits in this petition as LEAN Cmmts, Attachment 1, Ex. A, LEAN Cmmts. Attachment 2, Ex. B, etc.

Louisiana law requires LDEQ to provide notification of a final permit decision to anyone who submits comments on the proposed permit. LEAN has not received notification that LDEQ has issued a final permit to Oxbow, nor is there a record of a final permit decision on LDEQ's Electronic Document Management System ("EDMS").

⁶ *See* EPA Region 6 database of Louisiana Title V submissions, <https://yosemite.epa.gov/r6/Apermit.nsf/AirLA?OpenView&Start=1&Count=4000&Expand=1#main-content>

V. PERMIT DESCRIPTION

Oxbow’s Baton Rouge Calcined Coke Plant is located at 2200 Brooklawn Drive, Baton Rouge, Louisiana. The “[p]lant produces calcined petroleum coke (CPC) by feeding green petroleum coke (GPC) into one of four rotary kilns. . . . In the kiln[s], the GPC is subjected to high temperatures whereby moisture and volatiles are removed. The high temperature of the kiln is sustained by the combustion of natural gas, volatiles, and GPC in the presence of excess air.”⁷ The proposed permit deletes “the Compliance Assurance Monitoring (CAM) regulatory requirements for the baghouses (EQT008, EQT009, EQT010, EQT011, EQT013, and EQT042),” among other proposed changes.⁸ Anticipated emissions are as follows:⁹

Pollutant	Before	After	Change
PM ₁₀	276.28	281.59	+ 5.31
PM _{2.5} ^a	-	258.65	+ 258.65
SO ₂	21,051.02	21,051.02	-
NO _x	1,238.45	1,237.69	- 0.76
CO	86.51	91.66	+ 5.15
VOC	27.76	25.50	- 2.26
^a Existing but not previously required to report			

Emission sources designated as EQT 0004, EQT 0005, EQT 0006, and EQT 0007 are the four kilns. The kilns are by far the greatest sources of emissions at the plant. As in the current permit, the proposed permit establishes the following limits for emissions from the kilns.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

EMISSION RATES FOR CRITERIA POLLUTANTS AND CO2e

AI ID: 29884 - Oxbow Carbon & Minerals Holdings - Baton Rouge Calcined Coke Plant

Activity Number: PER20140003

Permit Number: 0840-00021-V5

Air - Title V Regular Permit Renewal

Subject Item	PM10			PM2.5			SO2			NOx		
	Avg lb/hr	Max lb/hr	Tons/Year	Avg lb/hr	Max lb/hr	Tons/Year	Avg lb/hr	Max lb/hr	Tons/Year	Avg lb/hr	Max lb/hr	Tons/Year
Baton Rouge Calcined Coke Plant												
EQT 0004 1	14.46	15.05	63.34	14.46	15.05	63.34	1201.50	1201.50	5262.71	70.49	77.68	308.73
EQT 0005 2	14.46	15.05	63.34	14.46	15.05	63.34	1201.50	1201.50	5262.71	70.49	77.68	308.73
EQT 0006 3	14.46	15.05	63.34	14.46	15.05	63.34	1201.50	1201.50	5262.71	70.49	77.68	308.73
EQT 0007 4	14.46	15.05	63.34	14.46	15.05	63.34	1201.50	1201.50	5262.71	70.49	77.68	308.73

In addition, the following EPA-approved SIP limits apply to the kilns:

- Total suspended particulate \leq 42.50 lb/hr.¹⁰
- Opacity \leq 20 percent, except for emissions that have an average opacity in excess of 20 percent for not more than one six-minute period in any 60 consecutive minutes.¹¹

VI. DETAILED REASONS WHY THE PROPOSED TITLE V PERMIT IS NOT IN COMPLIANCE WITH THE CLEAN AIR ACT.

A. Exemptions from SIP limits for particulate matter (“PM”) and opacity during kiln startups violate the Clean Air Act.

Chapter 13 of the Louisiana Air Regulations governs standards for particulate matter.

Chapter 13, Section 1311 establishes emission limits for various sources—including Oxbow’s plant. EPA approved Section 1311 on March 8, 1989, and incorporated it into the Louisiana State Implementation Plan (“SIP”). Approval and Promulgation of Air Quality Implementation Plans; Louisiana, 54 FR 9783-01 (Mar. 8, 1989) (codified at 40 C.F.R. § 52.970(c)(49)). The limits under Sections 1311.B and 1311.C are mandated under the Louisiana SIP and thus are applicable requirements under the Clean Air Act.

These limits apply to emissions from Oxbow’s kilns. Section 1311.B provides:

¹⁰ Proposed permit, Specific Requirement 17.

¹¹ Proposed permit, Specific Requirement 16.

No person shall cause, suffer, allow, or permit the emission of particulate matter to the atmosphere from any process or process equipment in excess of the amount shown in LAC 33:III.1321, Table 3 for the process weight rate allocated to such source. The rate of emission shall be the total of all emission points from the source.

LAC 33:III.1311.B. Based on Oxbow's process weight rate of 40 tons per hour, its rate of emissions under Table 3 is 42.5 lbs./hr. for particulate matter for each of its four kilns. This limit is in the proposed permit in Specific Requirement 17, which covers the kilns.

In addition, section 1311.C provides:

The emission of particulate matter from any source other than sources covered under Subsection D of this Section shall be controlled so that the shade or appearance of the emission is not denser than 20 percent average opacity (see LAC 33:III.1503.D.2, Table 4); except the emissions may have an average opacity in excess of 20 percent for not more than one six-minute period in any 60 consecutive minutes.

LAC 33:III.1311.C. This limit is in the proposed permit in Specific Requirement 16, which covers the kilns.

Because these limits are in an EPA-approved SIP, LDEQ does not have the authority to suspend or modify them. Despite this, however, the proposed permit unlawfully allows for an exemption from these limits during cold startups of the kilns. *See* Proposed Title V Permit, Specific Requirement 17 (“[D]uring periods of cold startup, the kiln is exempt from the emission rate requirement of LAC 33:III.1311.B as allowed by LAC 33:III.1311.G.”) & Specific Requirement 18 (“[D]uring periods of cold startup, the kiln is exempt from the opacity requirement of LAC 33:III.1311.C as allowed by LAC 33:III.1311.G.”).

The proposed permit states that LAC 33.III.1311.G¹² allows for these exemptions and that Oxbow “was granted this exemption by letter dated May 30, 1980.” Specific Requirements 17 & 18 (referencing LDNR letter to Reynolds Aluminum, May 30, 1980).¹³ But use of the LAC 33:III.1311.G variance provision as a complete exemption from SIP emission limits violates Clean Air Act requirements.

1. LDEQ cannot waive SIP limits.

Section 116 of the Clean Air Act makes clear that LDEQ cannot remove or weaken emission limits established in the SIP. The provision states that “if an emission standard or limitation is in effect under an applicable implementation plan . . . , such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than [the SIP].” 42 U.S.C. § 7416. States may change SIP provisions but only after public notice and EPA review and approval process. *See* 42 U.S.C. § 7410(i). LDEQ has not gone through that process to exempt the kiln emissions from the plant from the emission requirements under section 1311(B)-(C). Therefore, the exemption during startups violates the Clean Air Act. *See Gen. Motors Corp. v. United States*, 496 U.S. 530, 540 (1990) (recognizing “that the approved SIP is the applicable implementation plan during the time a SIP revision proposal is pending”).

Furthermore, in 1978 when EPA approved the variance provision in 1311.G (then in section 19.0 of the Air Quality Regulations and codified in the Louisiana Administrative Code as

¹² “Where upon written application of the responsible person or persons the administrative authority finds that by reason of exceptional circumstances strict conformity with any provisions of these regulations would cause undue hardship, would be unreasonable, impractical or not feasible under the circumstances, the administrative authority may permit a variance from or consider a change in these regulations upon such conditions and with such time limitations as it may prescribe for prevention, control or abatement of air pollution in harmony with the intent of the act.”

¹³ EDMS No. 7443923, LEAN Cmnts, Attachment 1, Ex. A.

LAC 14-11:19.5.2),¹⁴ EPA explicitly stated that its approval “does not imply automatic approval of any variances which may become granted [and] [a]ny variance under Section 19.5.2 must comply with the requirements of 40 CFR 51.34 and be approved by the EPA before it becomes a recognized revision to the State Implementation Plan (SIP).” Emission Standards for Particulate Matter, 44 Fed. Reg. 13,479-01 (Mar. 12, 1979) (emphasis added), LEAN Cmnts, Attachment 1, Ex. B. LDEQ certainly knows about this procedure. It has followed it in other instances. *See e.g.*, Air Programs; Louisiana Variance; Kaiser Aluminum & Chemical Corp. (Norco), 44 Fed. Reg. 35224-01 (providing EPA approval of a variance to Louisiana Regulation 19.5 for a limited period to allow completion of pollution controls), LEAN Cmnts, Attachment 1, Ex. C. But, here, there is no evidence that EPA has ever approved LDEQ’s exemption from section 1311 SIP limits for Oxbow plant. The approval that LDEQ granted in the May 30, 1980 letter that Oxbow references is not part of the SIP and the SIP does not authorize that approval.

2. The exemptions violate the Clean Air Act’s requirement that emission limits must apply on a continuous basis.

The exemptions in Specific Requirements 17 & 18 waiving particulate matter limits and opacity requirements during periods of cold startup also violate the Clean Air Act requirement that emission limits apply on a “continuous” basis, and thus even during startups. 42 U.S.C. § 7602(k); *see also Sierra Club v. EPA*, 551 F.3d 1019, 1027 (D.C. Cir. 2008) (“Congress has required that there must be continuous section 112–compliant standards.”); *Sierra Club v.*

¹⁴ The regulations governing emissions standards for particulate matter were originally promulgated by the Louisiana Department of Natural Resources, Air Control Commission under Regulation 19.0 of the Air Quality Regulations. Indeed, the variance requirements under former regulation 19.5.2 are the same as current 1311.G, except for reference to the appropriate permitting agency at the time and the requirement that a variance cannot constitute a nuisance, which is codified elsewhere under the general variance provision LAC 33:III.917. Former Regulation 19.0 as amended on December 20, 1979 is available on the EDMS as Doc. # 5977037, <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=5977037&ob=yes&child=yes>, and is incorporated herein. *See also* Attachment 2, providing a copy of Former Regulation 19.0.

Dairyland Power Co-op., No. 10-CV-303-BBC, 2010 WL 4294622, at *13 (W.D. Wis. Oct. 22, 2010) (“PSD sources must apply best available control technology emission limits continuously, once PSD is triggered.”); H.R. Rep. 95–294, at 92 (1977), as reprinted in 1977 U.S.C.C.A.N. 1077, 1170 (“By defining the terms ‘emission limitation,’ ‘emission standard,’ and ‘standard of performance,’ the committee has made clear that constant or continuous means of reducing emissions must be used to meet these requirements.”).

Clean Air Act section 302(k), 42 U.S.C. 7602(k), defines the term “emission limitations” as “a requirement established by the State or Administrator which limits the quantity, rate, or concentration of emissions of air pollutants *on a continuous basis*, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this Act.” (Emphasis added). A federal circuit court has confirmed this requirement in the context of a Clean Air Act hazardous air pollutant requirement. *See Sierra Club v. EPA*, 551 F.3d at 1028 (finding that the SSM exemption violates the Clean Air Act’s requirement that some emission standards must apply continuously). Even accepting that “continuous” for purposes of the definition of “emission standards” under Clean Air Act section 302(k) does not mean unchanging, the court found exemptions violate the Clean Air Act requirement that some emissions limitation standard apply at all times. *Id.* at 1021.

Here, the exemptions in the proposed permit are complete exemptions from the SIP limits in sections 1311(B)-(C). There are no alternative limits for cold startups. Thus, these exemptions violate Clean Air Act 302(k), 42 U.S.C. 7602(k), requirements.

3. The 1980 variance application does not support a current variance under LAC 33.III.1311.G.

The application on which the variance relies is over *36 years old* and cannot support a current determination under LAC 33.III.1311.G. *See* Reynolds Metals letter to LDEQ, May 12, 1980.¹⁵ LAC 33.III.1311.G provides:

Where upon written application of the responsible person or persons the administrative authority finds that by reason of exceptional circumstances strict conformity with any provisions of these regulations would cause undue hardship, would be unreasonable, impractical or not feasible under the circumstances, the administrative authority may permit a variance from or consider a change in these regulations upon such conditions and with such time limitations as it may prescribe for prevention, control or abatement of air pollution in harmony with the intent of the act.

First, it was Reynolds Metals Company—the former plant owner—who submitted the variance application on May 12, 1980.¹⁶ LDEQ’s predecessor agency, Louisiana Department of Natural Resources, granted the variance on May 30, 1980.¹⁷ But instead of terminating the variance after the permit term—or even after new ownership, LDEQ has allowed the variance to live on for more than 36 years without requiring Oxbow to provide a new application that shows that “strict conformity” with emissions limitations would cause it “undue hardship, would be unreasonable, impractical, or not feasible under the circumstances.” LAC 33.III.1311.G.

¹⁵ EDMS No. 7443923, pdf 2-3, LEAN Cmmts, Attachment 1, Ex. A.

¹⁶ The application and variance decision dates from 1) more than 3.5 years before creation of LDEQ, 2) more than 17.5 years before Great Lakes Carbon Corporation purchased the facility from Reynolds Metals Company on May 27, 2002, and 3) more than 22.5 years before Oxbow Carbon and Mineral Holdings, Inc. purchased Great Lakes Carbon LLC as a wholly owned subsidiary on March 28, 2007. *See* Excerpt from EDMS Doc. 1563810, pdf. 203-209, LEAN Cmmts, Attachment 1, Ex. D; EDMS Doc. 5853924, LEAN Cmmts, Attachment 1, Ex. E. Great Lakes Carbon LLC changed its name to Oxbow Calcining LLC on July 18, 2007. *Id.*

¹⁷ *See* Ltr from LDNR to Reynolds Aluminum, LEAN Cmmts, Attachment 1, Ex. A.

Indeed, Reynolds Metals Company based the May 12, 1980 variance request on a 1980 cost estimate and 1980s technology.¹⁸ Reynolds Metals based its request on the “unreasonable” cost of compliance with these limits. At the time, Reynolds determined “the only way the combustion chambers can be brought up to efficient operating temperature in a shorter period of time would be to install start-up burners in each combustion chamber.”¹⁹ Reynolds estimated that the cost to add startup burners would be \$400,000 for all kilns, which it claimed to be “unreasonable given the fact that they will only be used an average of three times per year per kiln.” *Id.* LDNR granted the exemption, finding only that “[t]he expenditure required to insure compliance of [] four (4) kilns during cold startup is substantial considering the limited number of cold startups anticipated,” i.e., 12 total startups per year. LDNR letter to Reynolds Aluminum, May 30, 1980.²⁰ Pollution control equipment and/or the cost of such equipment has undoubtedly changed since LDNR made this determination. Moreover, LDEQ’s document database shows that Oxbow has conducted 25 cold startups of its kilns over the past 12 months—more than double the number of startups on which LDNR based its decision to exempt the emissions. The number of startups changes the analysis as to whether “strict conformity” with emissions limitations would cause it “undue hardship, would be unreasonable, impractical, or not feasible under the circumstances.” LAC 33.III.1311.G. See below for a list of all startups listed on the EDMS for the plant from February 10, 2016 through February 20, 2017.

2/20/17	Kiln 1, Kiln 2, Kiln 3, Kiln 4 – Startup	EDMS # 10523340 ²¹
2/14/17	Kiln Startup (kiln number not indicated)	EDMS # 10523316 ²²

¹⁸ EDMS No. 7443923, pdf 2, LEAN Cmmts, Attachment 1, Ex. A.

¹⁹ *Id.* at 1.

²⁰ EDMS No. 7443923, pdf 1, LEAN Cmmts, Attachment 1, Ex. A.

²¹ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10523340&ob=yes&child=yes>

²² <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10523316&ob=yes&child=yes>

1/26/17	Kiln Startup (kiln number not indicated)	EDMS # 10494570 ²³
1/21/17	Kiln 1, Kiln 2, Kiln 3, Kiln 4 – Startup	EDMS # 10494562 ²⁴
1/19/17	Kiln 3 – Startup	EDMS # 10532962 ²⁵
1/17/17	Kiln 1 – Startup	EDMS # 10530005 ²⁶
12/17/16	Kiln 3 – Startup	EDMS # 10466297 ²⁷
11/28/16	Kiln 4 – Startup	EDMS # 10425696 ²⁸
11/20/16	Kiln 2 – Startup	EDMS # 10425700 ²⁹
10/18/16	Kiln 4 – Startup	EDMS # 10377719 ³⁰
9/4/16	Kiln Startup (kiln number not indicated)	EDMS # 10347404 ³¹
8/19/16	Kiln 2 – Startup	EDMS # 10337351 ³²
8/12/16	Kiln 1, Kiln 4 – Startup	EDMS # 10377697 ³³
8/9/16	Kiln 4 – Startup	EDMS # 10347414 ³⁴
6/7/16	Kiln 3 – Startup	EDMS # 10263836 ³⁵
5/25/16	Kiln 1 – Startup	EDMS # 10216600 ³⁶
4/25/16	Kiln 4 – Startup	EDMS # 10182015 ³⁷
2/10/16	Kiln Startup (kiln number not indicated)	EDMS # 10105109 ³⁸

LDEQ has not made the requisite findings under Subsection G and therefore the exemption is not valid. The proposed Title V permit therefore does not meet Clean Air Act

²³ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10494570&ob=yes&child=yes>

²⁴ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10494562&ob=yes&child=yes>

²⁵ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10532962&ob=yes&child=yes>

²⁶ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10530005&ob=yes&child=yes>

²⁷ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10466297&ob=yes&child=yes>

²⁸ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10425696&ob=yes&child=yes>

²⁹ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10425700&ob=yes&child=yes>

³⁰ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10377719&ob=yes&child=yes>

³¹ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10347404&ob=yes&child=yes>

³² <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10337351&ob=yes&child=yes>

³³ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10377697&ob=yes&child=yes>

³⁴ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10347414&ob=yes&child=yes>

³⁵ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10263836&ob=yes&child=yes>

³⁶ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10216600&ob=yes&child=yes>

³⁷ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10182015&ob=yes&child=yes>

³⁸ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10105109&ob=yes&child=yes>

requirements because it invalidly exempts Oxbow from having to meet SIP emission limits for PM and opacity.

4. The 1980 variance is invalid because it is not temporary.

Any variance sought under LAC 33.III.1311.G must be temporary. The plain wording of LAC 33.III.1311.G makes clear that the variance cannot be permanent as it requires “time limitations.” Indeed, the title of this provision is “Variance” and the plain language of this provision makes clear that it governs “variances.” LAC 33.III.1311.G (“[T]he administrative authority may permit *a variance* from or consider a change in these regulations.”) (emphasis added). Clean Air Act regulations define “variance” as the “temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applied to an individual source.” 40 C.F.R. 51.500(y).

The variances in the proposed permit do not meet this definition as they are neither a temporary deferral of a final compliance date nor a temporary change of an approved regulation. Use of this variance provision to permanently exempt emission limits during startup events is therefore against Clean Air Act regulations.

B. The proposed Title V Permit violates the Clean Air Act because it authorizes kiln startup and shutdown emissions separately without applying enforceable limits.

The proposed permit authorizes emissions from kiln startups/shutdowns under General Conditions XVII Activities. *See* Proposed Permit, Air Permit Briefing Sheet, section VIII, p. 5.

General Conditions XVII Activities provides that:

Very small emissions to the air, resulting from routine operations, that are predictable, expected, periodic, and quantifiable and that are submitted by the permitted facility to, and approved by, the Office of Environmental Services are considered authorized discharges. Approved activities are noted in the Louisiana General Condition XVII Activities List of the permit. To be approved as an authorized discharge, such very small releases must:

1. generally be less than 5 TPY of criteria and toxic air pollutants;
2. be less than the minimum emission rate (MER);
3. be regularly scheduled (e.g., daily, weekly, monthly, etc.); or
4. be necessary prior to plant start-up or after shutdown (line or compressor pressuring/depressuring, for example).

LAC 33:III.537, Table 1. LDEQ cannot use General Condition XVII to authorize emissions from sources that are subject to emission limits. It is a violation of Clean Air Act section 302(k), 42 U.S.C. 7602(k), to exempt startup/shutdown emissions from limitations that apply to the kilns by separating out those emissions and giving them a general authorization under General Conditions XVII Activities. This is an end-run around 302(k) requirements that emission limitations apply on a continuous basis (see discussion above under VI.A.2). The SIP emission limits that apply to the kilns must apply at all times—i.e., during regular operations, during periods of startup and shutdown, and during malfunctions. All emission rates for all pollutants—including average/max lbs./hr. and tons per year—apply to all sources subject to these limits at all times.

C. The testing requirements for Oxbow’s kilns are not sufficient to assure compliance with the permit.

LAC 33:III.507.H.1 provides that each Title V permit must include “compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit as required by 40 CFR 70.6(a)(3).”

The proposed permit only requires periodic testing of kiln emissions “within five years, plus or minus 6 months, of when the previous performance test was performed.” Specific Requirement 32; *see also* Compliance Method/Provision for Nos. 1-4 Kilns. The provision allows the testing of “any two out of the four kilns . . . to demonstrate compliance” because the kilns are “identical in nature.” *Id.* This requirement does not assure compliance with permit

terms and conditions. Furthermore, the proposed permit does indicate which emission limits (annual or hourly or both) the stack tests will be used to determine compliance.

First, the stack results show that the kilns are not “identical in nature.” Stack tests from 2015, 2009, and 2001 show varying results for Nitrogen Oxides and Sulfur Dioxide lb./hr. emissions estimates (see table below). Because the kilns produce varying results, they are not identical in nature and the permit must require testing of each kiln to assure compliance with emissions limitations.

	Kiln 1	Kiln 2	Kiln 3	Kiln 4
NOX STACK TEST RESULTS				
2001 NOX³⁹		46.55	Not tested	
2009 NOX⁴⁰	75.72			65.53
2015 NOX⁴¹		62.39	77.68	
SO2 STACK TEST RESULTS				
2001 SO2		892.0	Not tested	
2009 SO2	505.32			615.02
2015 SO2		398.49	1201.50	

Second, LDEQ must require more frequent testing or other methods to assure compliance with emissions limitations. For most pollutants, the stack test is the only method required to determine compliance. A snapshot taken many years apart cannot assure compliance with the hourly limits established for these pollutants. Stack testing alone therefore does not assure compliance with permit limits. Kilns 1 and 4, for example, have only been tested once in the last 15 years. That is

³⁹ 2001 Stack Testing of Kiln 2, EDMS #2354903.

⁴⁰ 2009 Stack Testing of Kilns 1 and 4, EDMS #6696590.

⁴¹ 2015 Stack Testing of Kilns 2 and 3, EDMS # 9979251.

wholly inadequate. See *In the Matter of Yuhuang Chemical Inc., Order on Petition No. VI-2015-03*, Aug. 31, 2016, at 18 (objecting to permit where record lacks justification for 5-year stack testing frequency); *In the Matter of Consolidated Edison Co. of NY, Inc., Ravenswood Steam Plant, Order on Petition No. 11-2001-08* (September 30, 2003) at 19-21 (indicating that a single stack test every 5 years, when used alone, would not constitute adequate monitoring for purposes of demonstrating compliance with permitted emission limits).

Furthermore, during the last emissions test in 2009, Kiln 1 exceeded the Nitrogen Oxides limit (≤ 75.70 lbs./hr. average). Given that Oxbow is likely performing the stack tests under ideal conditions, it is possible that Kiln 1 cannot meet this NOx emissions limit. For this reason alone, the permit must require additional testing or methods to assure compliance with the NOx limit.

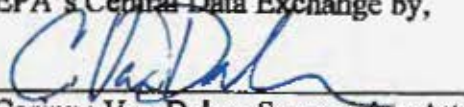
D. The proposed Title V Permit fails to require monitoring to assure compliance with baghouse emissions.

The proposed permit eliminates Compliance Assurance Monitoring (CAM) requirements for the baghouses (EQT008, EQT009, EQT010, EQT011, EQT013, and EQT042). But by doing so, these sources now have no monitoring to assure compliance with emission limits. The permit thus violates Clean Air Act requirements that “[e]ach permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(c). LDEQ must revise the permit to include monitoring for these baghouse sources and an additional baghouse source (EQT0045) to assure compliance with the emission limits for these sources.

IV. CONCLUSION

For the foregoing reasons, EPA should object to the proposed renewal/modification Title V permit No. 0840-00021-V5 for Oxbow’s Baton Rouge Calcining Plant.

Respectfully submitted on March 22, 2017 via
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