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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

July 28, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator Scott Pruitt:

This letter provides notice that the Ho-Chunk Nation and Sierra Club, and its John Muir Chapter, (“Plaintiffs”) intend to file suit against you in your official capacity as the Administrator of the U.S. Environmental Protection Agency for your failure to respond to their petition to object to the Title V Operating Permit Number 603110860-P01 issued by the Wisconsin Department of Natural Resource for the Superior Silica Sands—Arland Plant. The Clean Air Act imposes upon the EPA Administrator a non-discretionary duty to grant or deny such petitions within 60 days of their filing. 42 U.S.C. § 7661d(b)(2).

The Title V petition to object, which is included with this notice letter (minus the petition's attachments), was timely filed on October 25, 2016—within 60 days following the end of EPA's 45-day review period for the Permit. *See* 42 U.S.C. § 7661(b)(2) (providing that “any person may petition the Administrator within 60 days after the expiration of the 45-day review period”). Pursuant to 42 U.S.C. § 7661d(b)(2), “[t]he Administrator *shall* grant or deny such petition within 60 days after the petition is filed.” (emphasis added). As of the date of this letter, more than 60 days have passed since Plaintiffs filed their Title V petition to object and you have not provided any response.

MIDWESTADVOCATES.ORG

612 W MAIN STREET, SUITE 302 P 608.251.5047
MADISON, WISCONSIN 53703 F 608.268.0205

Section 304(a)(2) of the Clean Air Act authorizes a person to sue the Administrator of the EPA “where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.” 42 U.S.C. § 7604(a)(2). Accordingly, because more than 60 days have passed without a response from you, Plaintiffs may bring suit to compel your response to their Title V petition. If the violation remains unresolved at the end of the 60-day notice period, as provided in 42 U.S.C. § 7604(b)(2), Plaintiffs intend to file suit and seek the following relief:

1. A declaration that the Administrator has violated the Clean Air Act by failing to grant or deny the Petition filed by Ho-Chunk Nation and Sierra Club, and its John Muir Chapter, requesting that EPA object to the Title V Operating Permit Number 603110860-P01 issued by the Wisconsin Department of Natural Resource for the Superior Silica Sands—Arland Plant;
2. An order compelling the Administrator to grant or deny the Petition filed by Ho-Chunk Nation and Sierra Club, and its John Muir Chapter, requesting that EPA object to DNR’s proposed Title V operating permit for the Superior Silica Sands—Arland Plant;
3. An order retaining jurisdiction over this matter until the Administrator fulfills his nondiscretionary duty under the Clean Air Act;
4. An order awarding the Ho-Chunk Nation and Sierra Club, and its John Muir Chapter, attorneys’ fees and other litigation costs; and
5. Such other and further relief as the Court deems appropriate.

As required by 40 C.F.R. § 54.3, the persons providing this notice are:

Ho-Chunk Nation
P.O. Box 667
Black River Falls, WI 54615
Tel: (715) 284-9343

Sierra Club
2101 Webster St. Suite 1300
Oakland, CA 94612
Tel: (415) 977-5680

John Muir Chapter of the Sierra Club
754 Williamson St.
Madison, WI 53703
Tel: (608) 256-0565

While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

If you have any questions regarding this notice letter or would otherwise like to discuss settlement of this matter, please contact me directly at jparra@midwestadvocates.org or (608) 251-5047 ext. 6.

Sincerely,



James Parra

jparra@midwestadvocates.org

Sarah Geers

sgeers@midwestadvocates.org

Midwest Environmental Advocates

612 W Main Street, Suite 302

Madison, Wisconsin 53703

Tel: (608) 251-5047

Fax: (608) 268-0205

Attachment

cc: Jeff B. Sessions, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Robert A. Kaplan, Acting Regional Administrator
U.S. EPA Region 5
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604-3590

Kristin Hart, Section Chief
WDNR Air Permits & Modeling Section
101 S Webster Street
P.O. Box 7921
Madison, WI 53707-7921

Capitol Corporate Services, Inc.
Registered Agent for Superior Silica, LLC
301 S Bedford St., Suite 1
Madison, WI 53703

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the matter of the proposed air pollution control permits for))
)) Petition No.
SUPERIOR SILICA SANDS – ARLAND PLANT)) Facility I.D. No. 603108330
)) Permit Nos. 603110860-P01
Proposed by the Wisconsin Department of Natural Resources on July 12, 2016))
))
))

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE
ISSUANCE OF THE PROPOSED TITLE V PERMIT FOR SUPERIOR SILICA
SANDS – ARLAND PLANT**

Petitioners, the Ho-Chunk Nation and Sierra Club—John Muir Chapter, hereby petition the Administrator of the United States Environmental Protection Agency (“EPA”) to object to a proposed Title V Operating Permit proposed by the Wisconsin Department of Natural Resources (“DNR”) for the Superior Silica Sands – Arland plant. The DNR proposed issuance of Title V Permit No. 603110860-P01 to EPA on July 12, 2016. The proposed Title V Permit is attached as Exhibit 1. Pursuant to Clean Air Act § 505(b)(2) and 40 C.F.R. § 70.8(d), EPA must object to the proposed Title V Permit because it does not comply with the Clean Air Act (“CAA”).

I. INTERESTS OF THE PETITIONERS

Petitioner the Ho-Chunk Nation has a direct interest in protecting air quality and public health for its lands and people in Western Wisconsin. The Ho-Chunk Nation is one of the strongest indigenous Nations in the United States. The Nation's land extends throughout the Midwest, including significant tribal and trust lands in Western Wisconsin. Ho-Chunk members live throughout the state, and their history and culture is tied to Wisconsin's lands. The Nation's government is dedicated to protecting its people and lands for this and future generations.

Petitioner Sierra Club—John Muir Chapter represents over 15,000 members and supporters living throughout Wisconsin. Its members hike, canoe, kayak, bird and in many other ways enjoy the natural resources in Wisconsin including the area affected by the Superior Silica Sands - Arland Plant.

II. BACKGROUND

Superior Silica Sands ("SSS") operates an industrial sand mining and processing facility in Barron County, Wisconsin that is collectively referenced as Superior Silica Sand – Arland Plant in the proposed Title V Permit. This source includes the Arland dry sand processing plant, the FLS mine & wet plant, the LP mine & wet plant, and the Church Road mine & wet plant (hereinafter, "SSS Arland"). (Exh. 2 at 1-4.) SSS Arland currently operates under Construction Permit No. 14-MHR-069.

On April 14, 2014, SSS applied to the DNR for an air pollution construction permit and waiver to commence construction prior to receiving the construction permit. (Exh. 3.) The DNR issued a waiver to commence construction at SSS Arland prior to obtaining an air

pollution control construction permit. (Exh. 4.) The DNR issued an air pollution control construction permit to SSS Arland on December 8, 2014. (Exh. 5.)

On April 8, 2015, SSS applied to the DNR for a construction permit revision to expand capacity at its FLS and LP mines, both part of SSS Arland. (Exh. 6.) The DNR issued a Preliminary Determination on September 25, 2015, proposing to issue a Title V operating permit and revised construction permit to SSS Arland. (Exh. 7.) The draft permits and Preliminary Determination included emission limits for particulate matter less than 2.5 microns in diameter (“PM2.5”) and estimated the source’s PM2.5 emissions. On January 6, 2016, the DNR issued a memo amending the Preliminary Determination for the SSS Arland air pollution permits to account for changes in state air regulations, Wis. Admin. Code § NR 407.02(4)(b)27. (Exh. 8.) The DNR published notice of the Preliminary Determination and draft air permits for SSS Arland on January 15, 2016. (Exh. 9.) The DNR received and responded to comments on the draft air permits and Preliminary Determination. (Exh. 10.)

On April 28, 2016, DNR released a revised Preliminary Determination and revised draft air permits for SSS Arland. (Exh. 2.) The DNR removed emission limits for PM2.5, and did not include PM2.5 emission estimates except for fuel combustion from Process P01. (Exh. 2 at 3.) DNR based this change on the Technical Support Document (“TSD”) attached to the Preliminary Determination and the related Air Dispersion Modeling guidance documents, (hereinafter “PM2.5 Guidance”) (Exh. 12). The DNR explained, “based on an examination of the current scientific literature concerning particle pollution, as well as an analysis of the available ambient air monitoring data for PM2.5 in the State of Wisconsin, the Department has determined that mechanical or low temperature industrials [sources] do not directly emit PM2.5 in quantities that have a potential to cause or

contribute to the violation of the National Ambient Air Quality Standards (NAAQS).” (Exh. 2 at 3.)

The DNR published notice of the draft permits and Preliminary Determination on May 5, 2016. Both MEA and the EPA Region 5 submitted written comments on the DNR’s draft permits and Preliminary Determination. (Exhs. 13, 14.) The deficiencies identified in this Petition were raised with reasonable specificity in public comments to the DNR on the draft permits and Preliminary Determination.

On June 28, 2016, DNR responded to comments by the public and EPA Region 5, and the DNR modified the Preliminary Determination for the SSS Arland draft air permits. (Exh. 15.) The DNR sent the proposed Title V permit for SSS Arland to the EPA on July 12, 2016.¹ The EPA did not object to the permit within 45 days following receipt of the proposed SSS permits. Petitioners timely submit this Petition to Object to Proposed Title V Permit for SSS Arland (“Petition”) on October 25, 2016, within 60 days after the EPA’s deadline for objecting.

III. ARGUMENT

The EPA Administrator must object to a proposed Title V permit if it does not comply with CAA requirements or any “applicable requirement,” including the Wisconsin State Implementation Plan or any standard or requirement under CAA sections 111, 112, 114(a)(3) or 504. This Petition, based in part on EPA Region 5’s comments, establishes that the SSS Arland proposed Title V permit fails to comply with minimum CAA requirements. In contravention of the CAA, the proposed Title V permit does not include PM_{2.5} emission

¹ See DNR Air Permit Tracking, Permit Milestones for Permit No. 603110860-P01, available at http://dnr.wi.gov/cias/am/amexternal/AM_PermitTracking2.aspx?id=21284 (confirming that SSS Arland Title V permit proposed to EPA on July 12, 2016).

estimates, does not demonstrate that the proposed Title V permit will assure compliance with NAAQS, and does not sufficiently demonstrate continuous compliance with permit limits. Thus, the Administrator must object to and revise the permit pursuant to 42 U.S.C. § 7661d(e) and 40 C.F.R. §§ 70.7(g) and 70.8.

A. The Clean Air Act requires air permit applications to include emission estimates, but the SSS permit record does not estimate PM2.5 emissions.

All applications for Clean Air Act permits must include an estimate of “all emissions of pollutants for which the source is major, and all emissions of regulated air pollutants.” 40 CFR 70.5(c)(3)(i). Federal law defines regulated air pollutants as “any pollutant for which a national ambient air quality standard has been promulgated,” thereby including PM2.5. 40 CFR § 70.2(2)(13)(2)(3)(iv)(2)(2). Additionally, all Part 70 major source permits must include emissions estimates from both stack and fugitive sources.

- 1. The SSS proposed air permit records do not include PM2.5 emission estimates from mechanical sources at the facility.*

The DNR did not require SSS to estimate PM2.5 emissions in its application and such estimates are not included in the SSS Arland air permit record for the proposed Title V permit, contrary to the CAA. U.S. EPA identified this deficiency during the public comment period, noting, “WDNR’s failure to consider PM2.5 emissions from mechanical sources, including fugitive emissions, is not allowable under Title V of the CAA and the permit record is currently deficient.” (Exh. 14 at 1.) DNR has not corrected this deficiency in the proposed permits.

On June 28, 2016, following the public comment period, DNR issued an addendum to the Apr. 28, 2016, Preliminary Determination, but did not correct this error. (Exh 15.)

DNR responded to EPA's concern about the lack of PM_{2.5} emission estimates, but did not include any such estimates. The DNR explained:

Based on an examination of current scientific literature concerning particulate matter pollution, the department has concluded that PM-2.5 emissions from mechanical and low temperature industrial operations are negligible. The department has also examined a more recent study performed by Dr. John Richards and Todd Brozell published in 2015 in the journal *Atmosphere* titled, "Assessment of Community Exposure to Ambient Respirable Crystalline Silica near Frac Sand Processing Facilities," which provides further evidence that PM-2.5 emissions from mechanical and low temperature operations at industrial sand processing facilities are negligible."

(Exh. 15 at 1-2.) In further response to EPA's comments, the DNR explained,

In summary, the department has provided emission estimates of PM-2.5 for this permit review where credible emission factors and calculation methods are available. Where no credible emission factors or methods for estimating emissions were available, the WDNR has used engineering judgment, its TSD, and other peer-reviewed research results to conclude that PM-2.5 emissions from mechanical and low temperature operations are negligible.

(Exh. 15 at 6.)

These assertions do not qualify as PM_{2.5} emission estimates as required by the Clean Air Act. As EPA Region 5 explained in comments on a draft Title V Operating Permit for another facility, Wisconsin Proppants,

WDNR's statement that [PM_{2.5} emissions from] mechanical units are unlikely to negligible does not address the explicit Part 70 requirements to quantify emission rates. As WDNR's TSD relies upon an analysis of regional ambient air monitoring and provides little analysis of PM_{2.5} emissions at the source level, EPA does not believe that the TSD provides sufficient evidence to substantiate the claim that there are zero or negligible emissions of PM_{2.5} from mechanical sources. Similarly, while the study cited by WDNR² may

² Richards, J and Todd Brozell, (2015) "*Assessment of Community Exposure to Ambient Respirable Crystalline Silica near Frac Sand Processing Facilities.*" *Atmosphere* 6:960-982.

indicate that activities associated with sand mining are unlikely to have significant effects on the ambient concentration of particulate matter of less than 4 micrometers, the study does not provide direct evidence that there are zero or negligible emissions of PM2.5.

(Exh. 16 at 1-2.)

In the SSS Arland Title V permit record, and other recently proposed air permits, the DNR relies on its new PM2.5 Guidance and TSD that advises permit applicants that “mechanical processes such as crushing, grinding, sanding, sizing, evaporation of sprays, suspension of dusts, etc. are not sources of PM2.5” and consequently that “PM2.5 emissions will not be estimated in an air permit review for fugitive dust sources, mechanical handling, grain handling, and other low temperature particulate sources.” (Exh. 12.) As explained above, and in EPA’s and MEA’s comments on the SSS air permits, the DNR’s assertions are not sufficient to demonstrate compliance with the Part 70 CAA requirement that all facilities estimate emissions based on the best available information.

The DNR’s abovementioned policy directly conflicts with the EPA’s May 20, 2014, “Guidance for PM2.5 Permit Modeling,” which specifies that “each permitting action will be considered on a case-by-case basis.” Consequently, the DNR’s reliance on its PM2.5 Guidance and TSD is not appropriate because it offers a broad exemption for mechanical sources from estimating PM2.5 emissions. Furthermore, EPA Region 5 made the DNR aware that issuing a Title V Operating Permit without including PM2.5 emission estimates would violate the Clear Air Act. (Exh. 14.) Therefore, we respectfully request that EPA object to the proposed Title V permit on the grounds that SSS air permit record fails to evaluate the source’s emissions of PM2.5 for major source applicability.

2. *Mechanical processes, such as those at the SSS facility, can emit significant amounts of PM2.5 and there are methods to estimate those emissions.*

The EPA's comments to the DNR on another draft Title V permit for Wisconsin Proppants, No. 627026620-P01, dated July 21, 2016, (Exh. 16) cites scientific data to refute the DNR's allegation that mechanical processes are not sources of PM2.5 and are not likely to cause or contribute to a violation of the national ambient air quality standards. EPA Region 5 asserted, "[e]ven if the studies used to develop AP-42 are excluded, several scientific studies give EPA reason to believe that mechanical sources such as haul roads do emit some level [of] PM2.5. EPA has provided several of these studies in Attachment A." (Exh. 16 at 2 n.2.)

Furthermore, a request by Midwest Environmental Advocates to the DNR for all stack test reports and/or results from testing for PM2.5 revealed that the DNR has sampling data confirming that mechanical processes emit PM2.5. (Exh. 19.) These results were included in MEA's comments to the DNR on the draft SSS Arland permits. (*See* Exh. 13.) Results from EOG Resources show that 70 percent of total particulate matter sampled was comprised of PM2.5. (Exh. 19.) Additionally, the Chippewa Sand Company test results demonstrated that PM2.5 made up 100 percent of the particulate matter in one sample and 75 percent of the particulate matter in another sample. (Exh. 19.) Further, Chieftain Sand and Proppant, LLC reported that PM2.5 made up 36 percent of one sample and 17 percent of another sample. (Exh. 19.)

The evidence gleaned from the open records request, coupled with the EPA's cited scientific data, do not support the DNR's conclusion that mechanical sources do not have quantifiable PM2.5. Rather, the aforementioned data supports the conclusion that

mechanical sources do emit PM2.5 and may cause or contribute to violations of the national ambient air quality standards for PM2.5.

B. Wisconsin's State Implementation Plan prohibits issuance of the proposed permits because DNR has not made a defensible finding that the proposed permits will not cause or contribute to an exceedance of any ambient air quality standard.

Wisconsin Statute § 285.63 sets forth criteria for air permit approvals and is part of Wisconsin's approved State Implementation Plan ("SIP"). Subsection (1)(b) allows the DNR to approve the application of a permit if it finds that the "source will not cause or exacerbate a violation of any ambient air quality standards." Included among these ambient air quality standards is an annual standard for PM2.5.

According to the DNR, SSS requested modification of pollution emission limits for a variety of activities, including production rates, vehicle miles travelled, dry sand loading to truck, and blasting explosive usage. (Exh. 2 at 29.) Despite statutory requirements, the DNR failed to model the ambient air quality impacts of the proposed permit on the basis that the modifications will not cause potential *hourly* emissions to increase. (Exh. 2 at 29.) However, these permit modification undoubtedly increase the facility's potential *annual* emissions of not only PM2.5, but also PM2.5 precursors such as nitrogen oxides.

In EPA's comments to the DNR, EPA raised concerns about DNR's proposal to remove PM2.5 limits for several processes at the SSS facility, including the rotary sand dryer, dust collection system and product storage silos:

These limits were adopted because when emissions were limited to those emission rates modeling showed that the NAAQS were not violated. This seems to imply that modeling using the maximum theoretical emission rate for each emissions unit would result in modeled a violation of the NAAQS. WDNR justifies the decision to remove the PM2.5 limits by stating that the TSD leads it to the conclusion that mechanical sources . . . do not have the

potential to cause or contribute to a violation of the NAAQS. In the case of SSS, site specific data lead WDNR to conclude that if limits were not imposed on these emission units then the facility could cause or contribute to a violation of the NAAQS . . . EPA believes that prior to removing the emission limits, WDNR must provide additional, site-specific justification explaining why the removal of the PM2.5 limits would not cause or contribute to a violation of the NAAQS.

(Exh. 14 at 2.) Essentially, EPA Region 5 came to the reasonable conclusion that PM2.5 limits in construction permit No. 14-MHR-069 were based on the results of modeling to demonstrate that PM2.5 emissions that would not violate the PM2.5 NAAQS. Increased particulate matter emissions in the proposed Title V permit and the lack of modeling to demonstrate compliance with PM2.5 NAAQS raises serious questions about compliance with Wisconsin's SIP.

The air permit record for SSS Arland supports this conclusion. DNR's Preliminary Determination for construction permit No. 14-MHR-069 (Exh. 17) shows that air dispersion modeling of PM2.5 emissions from SSS Arland in addition to background levels takes up 90% of the PM2.5 24-hour NAAQS. (Exh. 17 at 26.) The DNR did not estimate PM2.5 emissions for the proposed Title V permit, but did estimate PM10 emissions under the proposed permit. Potential stack emissions of PM10 will increase from 62.2 tons per year (tpy) under construction permit No. 14-MHR-069 to 89.3 tpy under the proposed Title V permit. (compare Exhs. Stated otherwise, potential annual stack emissions of PM10 will increase by a factor of 1.435. Comparing the DNR's Preliminary Determinations for construction permit No. 14-MHR-069 (Exh. 17), the Sept. 25, 2015, Preliminary Determination (Exh. 7), which included PM2.5 estimates, and the Apr. 28, 2016, Preliminary Determination (Exh. 2), which did not, it is evident that estimated PM2.5

emissions increase along with estimated emissions of PM and PM10. The following table compares estimated emissions from the entire facility, including the modifications proposed:

Pollutant	PD 11/6/14³	PD 9/25/15⁴	PD 4/28/16⁵	Factor increase from 11/6/14 to 9/25/15	Factor increase from 9/25/15 to 4/28/16	Factor increase from 11/6/14 to 4/28/16
PM	145.9	161.7	203.4	1.108	1.258	1.394
PM10	62.2	72.4	89.3	1.164	1.233	1.435
PM2.5	47.5	52.2	0.3	1.099	0.006	0.006

Table 1. Total facility emissions (Potential to Emit) in tons per year from stack sources at SSS Arland.

Where DNR estimated particulate matter emissions using traditional resources such as AP-42 emission factors,⁶ it is evident that there is a correlation between emission factors of PM, PM10, and PM2.5. See Table 1. For example, when estimated PM emissions increased by a factor of 1.108 from Nov. 6, 2014, to Sept. 25, 2015, PM10 and PM2.5 emissions increased by factors of 1.164 and 1.099 respectively, roughly averaging to an increase by a factor of 1.1. Table 1. Similarly, comparing Sept. 25, 2015, to Apr. 28, 2016, PM increased by a factor of 1.258, PM10 increased by a factor of 1.233. Table 1. Finally, the factor increase of estimated emissions between Nov. 6, 2014, and Apr. 28, 2016, was 1.394 for PM and 1.435 for PM10. The outliers come from DNR's PM2.5 emission

³ Exh. 17 at 33 (Preliminary Determination for construction permit No. 14-MHR-069 for SSS Arland, signed November 6, 2014).

⁴ Exh. 7 at 20 (Preliminary Determination for construction permit No. 15-MHR-064 & operation permit No. 603108330-P01 for SSS Arland, signed September 25, 2015).

⁵ Exh. 2 at 34 (Preliminary Determination for construction permit No. 15-MHR-064 & operation permit No. 603108330-P01 for SSS Arland, signed April 28, 2016).

⁶ See EPA, Emission Factors & AP 42, Fifth Edition, Vol. I, ch. 11: Mineral Products Industry, available at <https://www3.epa.gov/ttn/chief/ap42/ch11/index.html>.

estimates for 2016 when DNR assumes that PM2.5 emissions from mechanical sources are negligible.

Applying the average rate of increase in estimated emissions between the DNR's iterations of the Preliminary Determination, it is likely that traditional PM2.5 emission estimates for the proposed Title V permit would be in the range of 62.64 to 66.5 tpy.⁷ This is an increase in total estimated PM2.5 emissions from 47.5 tpy in 2014 and 52.2 tpy in 2015. Table 1.

The potential for increased PM2.5 emissions raises concerns regarding compliance with the PM2.5 NAAQS when comparing total PM2.5 emissions between 2014, when the DNR conducted modeling, to 2016, when the DNR did not. The 2014 air dispersion modeling for Permit No. 14-MHR-069 estimated that the facility's potential emissions plus background would consume 64 percent of the annual PM2.5 NAAQS when that standard was 15mcg/m³. (Exh. 17 at 26.) Using the current annual PM2.5 NAAQS of 12 mcg/m³, the rough estimate of PM2.5 emissions for the proposed Title V Permit, and the 2014 modeling, the proposed Title V permit may result in PM2.5 emissions that take up 83 percent of the annual PM2.5 NAAQS.⁸ (See Exh. 17 at 26.) There is even greater reason for concern regarding compliance with the 24-hour PM2.5 NAAQS. Using the same analysis for the 24-hour PM2.5 NAAQS, it is possible that modeling would show that PM2.5 emissions under the proposed Title V permit would take up 98 percent of the 24-hour PM2.5 NAAQS.

⁷ Estimates based on multiplying PM2.5 emission estimates from 2014 and 2015, see Table 1, by factors of 1.4 and 1.2, respectively.

⁸ Estimate generated by multiplying facility impact under NAAQS PM2.5 annual from 2014 modeling by factor of 1.4, combining that with background, and comparing that to the current annual PM2.5 NAAQS.

This is only a rough estimate and not sufficient to demonstrate that the proposed Title V permit will not cause or exacerbate a violation of the PM2.5 NAAQS. The air permit record is not complete without PM2.5 emission estimates based on the best available information and modeling to demonstrate compliance with the PM2.5 NAAQS. If PM2.5 emissions were estimated in the proposed Title V permit, it would likely show an increase in PM2.5 emissions relative to the last permit and raises concerns that authorized PM2.5 emissions could violate air standards. Wisconsin's SIP authorizes the DNR to issue an air permit only where it makes a defensible finding that a source will not violate or exacerbate violation of an air quality standard.⁹ For the reasons explained above and supported by the attached documents, the proposed Title V permit violates the CAA and Wisconsin's SIP because the air permit record does not establish that the permit will not cause or contribute to a violation of ambient air standards.

C. Contrary to the Clean Air Act, the proposed Title V permit does not include monitoring to ensure continuous compliance with New Source Performance Standard particulate matter limits.

EPA explained in its comments to the DNR that it does not believe that the initial stack test included in the proposed SSS permit is sufficient to demonstrate continuous compliance. (Exh. 14 at 3.) The manufacturer only guarantees compliance with its specified limit if the device is operated in accordance with manufacturer's specifications. Thus, EPA asked the DNR to either include a requirement "to operate per the manufacturer's design manual and per the design parameters included in the application which were relied upon in determining the manufacturer's guarantee." (Exh. 14 at 3.) If the DNR did not include these

⁹ Wis. Stat. § 285.63(1)(b).

requirements in the permit, EPA requested that, in the alternative, DNR include alternative monitoring to ensure continuance compliance.

In response to EPA's comments, DNR notes that "[t]he vendor's guarantee mentions that bin vent filters consist of filter bags, and recommends that the average pressure drop not exceed 6 inches of water column on a continual basis." (Exh. 15 at 8.) DNR then suggest that changes made to the proposed Title V permit satisfy EPA's concern. "[T]he department has replaced the requirement that the permittee keep and maintain a copy of the manufacturer's or vendor's guarantee with requirements that the permittee maintain the pressure drop across each bin vent filter between 1-6 inches of water column, or an alternate range approved by the department." (Exh. 15 at 8.) But this is not the same thing as including all design parameters and manufacturer specifications as enforceable permit conditions. Further, this pressure drop range is required of only some of the sources with particulate matter filters.

The proposed permit does not specify the manufacturer or model of the dust collector and filter bags that it will use to comply with permit requirements I.A.1.b, I.B.1.b, and I.C.1.b. The permit record for the SSS Arland proposed permit includes two manufacturers' guarantees, one from Louisville Dryer Company, and another from Donaldson Filtration Solution. (Exhs. 11, 18.) The Louisville Dryer manufacturer's guarantee warrants that the filtration system will not exceed 0.025 grains of particulate material per dry standard cubic foot. (Exh. 11 at 7-8.) The Donaldson Filtration Solution manufacturer's guarantee warrants that the filtration system will not exceed 0.004 grains per dry standard cubic foot. (Exh. 18 at 9-10.)

The Louisville Dryer guarantee warrants compliance with the emission limit for Stack S01 in permit condition I.A.1.a.(1)(a). (Exh. 11 at 7.) Only the Donaldson Filtration Solution guarantee warrants compliance with the emission limits for Stacks S02-07 in permit conditions I.B.1.a.(1)(a), and I.C.1.a.(1)(a). (Exh. 18 at 9.) The proposed Title V permit does not demonstrate continuous compliance with these emission limits because the permit does not include all operating requirements and design parameters in the manufacturers' guarantees. The guarantees are conditioned on the use of specified dust collector and filter bag models, proper operation and maintenance, specified temperature and production ranges, maximum inlet grain loads, and a specified pressure drop range. (Exhs. 11, 18.)

The DNR's reliance on a manufacturer's guarantee for an air filtration device does not sufficiently demonstrate compliance with emission limits when the final permit does not specify which air filtration device the facility must use and under what conditions specified in the guarantee. While the DNR did modify permit condition I.C.1.a.(1)(b) to require that SSS maintain a pressure drop between 1 and 6 inches for processes C03-C07, the DNR did not include other critical conditions and assumptions underlying the manufacturers' guarantees. Further, the manufacturer's guarantee for compliance with the emission limit in I.B.1.a.(1)(a) requires a pressure drop range of between 1 and 6 inches, but permit condition I.B.1.a.(1)(b) allows a pressure drop range of between 1 and 10 inches. (Exh. 18 at 10.) The Administrator must object to the proposed Title V permit because it does not include the design parameters and operating conditions of the manufacturers' guarantees in the permit, nor does the permit include alternative monitoring to ensure continuance compliance.

IV. CONCLUSION

For the foregoing reasons, the proposed SSS Arland Title V permit fails to comply with the federal Clean Air Act. Each of the issues identified in this Petition were raised in comments to the DNR and demonstrate that the SSS air permit record is deficient. Pursuant to the Clean Air Act, the Administrator must object to issuance of the permit. 40 C.F.R. § 70.8(c)(1). Therefore, Petitioners respectfully request that the EPA object to the DNR's proposal to issue the SSS Arland proposed Title V permit.

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