BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
	)	
CARGILL, INC	)	ORDER RESPONDING TO
BLOOMINGTON SOYBEAN PROCESSING PLANT	)	PETITION REQUESTING
MCLEAN COUNTY, ILLINOIS	)	OBJECTION TO THE ISSUANCE OF
PERMIT NO. 96030019	)	A TITLE V OPERATING PERMIT
	)	
ISSUED BY THE ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY	)	
	)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated July 11, 2014, (the Petition), from Michelle Ford (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to operating permit No. 96030019 issued on April 21, 2014, (the Permit) by the Illinois Environmental Protection Agency (IEPA) to Cargill, Inc. for its Bloomington soybean processing facility. This operating permit was issued pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and 415 ILCS 5/39.5. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further in Section IV below, the EPA denies the Petition requesting an EPA objection.[1]

[1] In addition to requesting an EPA objection to the Permit, the Petitioner also states that "the EPA must reopen and revise the Permit pursuant to 42 U.S.C. § 7661c1(e) and 40 CFR § 70.7(g) and 70.8." No statutory provision is codified at 42 U.S.C. § 7661c1(e). The Petitioner may have intended to cite 42 U.S.C. § 7661d(e), which allows the EPA to initiate proceedings to terminate, modify, or revoke and reissue an operating permit if the EPA Administrator finds that cause exists for such action. Finding cause to reopen (that is, terminate, modify, or revoke and revise) a permit under 42 U.S.C. § 7661d(e) and 40 C.F.R. §§ 70.7(f) and (g) is a discretionary action distinct from objecting to the issuance of a permit under 42 U.S.C. § 7661d(b) and 40 C.F.R. § 70.8. *See* 56 Fed. Reg. 21712, 21744–45 (May 10, 1991); *see also* 57 Fed. Reg. 32250, 32256 (July 21, 1992). The EPA is responding to the Petitioner's request for an EPA objection in this Order. The EPA declines to exercise its discretion to initiate the process to reopen the Permit for cause.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The state of Illinois submitted a title V program governing the issuance of operating permits in 1993. The EPA granted interim approval of the state's program in 1995, and full approval in 2001, effective November 30, 2001. *See* 66 Fed. Reg. 62946 (December 4, 2001). This program is codified in 415 ILCS 5/39.5.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. CAA §§ 502(a), 503, 504(a), 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition to Object

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Such petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority, 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. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C.

§ 7661d(b)(2); 40 C.F.R. § 70.8(c)(l).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[3] The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). Certain aspects of the petitioner's demonstration burden are discussed below. A more detailed discussion can be found in *In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the state's response to comments), where these documents were available during the timeframe for filing the petition.[4] Another factor the EPA examines is whether a petitioner has provided adequate analyses and citations to support its claims.[5] Relatedly, the EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard.[6] Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit.[7]

The information that the EPA considers in making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) on a proposed permit generally includes, but is not limited to, the administrative record for the proposed permit and the petition itself, including attachments to the petition. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement of basis for the draft and proposed permits; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; relevant supporting materials made available to the public according to 40 C.F.R. § 70.7(h)(2); and all other materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered as the EPA determines whether to grant or deny the petition.

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[2] *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) *(NYPIRG).*

[3] *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

[4] *See MacClarence*, 596 F.3d at 1132–33; *see also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. Appx. *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012).

[5] *See* MacClarence, 596 F.3d at 1131; *see also In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007).

[6] *See, e.g.*, *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013) (*Luminant Sandow Order*).

[7] *See, e.g.*, *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).

III. BACKGROUND

A. The Cargill Facility

Cargill, Inc. owns and operates a soybean processing plant at 115 South Euclid Street in Bloomington, Illinois. The Cargill Bloomington soybean facility (Cargill or the facility) produces several products and includes various processes with emission units, including soybean handling operations, soybean processing (oil extraction and desolventizing) equipment, and boilers used for producing process steam. The facility is a major source under title V of the CAA due to its emissions of particulate matter (PM), volatile organic compounds, and hazardous air pollutants. The facility also emits various other pollutants in smaller quantities.

B. Permitting and Petition History

IEPA released the draft title V permit renewal on September 4, 2013, subject to a public comment period that ended on October 4, 2013. IEPA transmitted the proposed title V permit modification, along with a document containing its response to public comments (RTC), to the EPA on March 31, 2014. The EPA's 45-day review of the proposed permit ended on May 15, 2014, during which time the EPA did not object to the Permit. IEPA issued the final permit on April 21, 2014.[8] The Petition was dated July 11, 2014, which was within 60 days of the expiration of the EPA's 45-day review period.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Petitioner's Claims: The Petitioner first alleges deficiencies with various permit terms, which the Petitioner asserts "should be used only as initial evidence for the basis of revising the entire permit." Citing page 4 of the Permit, the Petitioner claims that the terms "properly operated" and "reasonable steps" are too vague to be enforceable and need to be further defined. Citing page 6 of the Permit, the Petitioner makes the same claim with respect to the terms "reasonable times," "any records," "other parameters," and "standard test methods." Citing page 7 of the Permit, the Petitioner asserts that "procedures adopted by the IEPA" are not outlined and there is no reference to these procedures. Citing pages 8-9 of the Permit, the Petitioner asserts that a statement regarding the permittee's ability to extend the deadline of submitting records needs to be further defined. Additionally, the Petitioner claims that "in the Permit Shield section, there is an error where the date USEPA notice started should appear." Citing page 9 of the Permit, the Petitioner contends that "timely" submittal of the renewal application should be explicitly defined.

The Petitioner next states that, according to a Compliance Monitoring Report (Exhibit 2 of the Petition), Cargill is forewarned of any inspections, may delay inspections, and has ample opportunity to correct any issues that would be found during inspection.

The Petitioner also states that the Compliance Monitoring Report illustrates the "outdated" pre-1973 machinery currently in use. The Petitioner alleges that in 2011, Cargill emitted 57% more PM over the allowable limit. The Petitioner suggests that this indicates the need for more

[8] The Permit was subsequently modified on October 1, 2014, October 18, 2016, and November 14, 2016.

inspections and restrictions. The Petitioner also asserts that upgrades to equipment should be mandated to ensure compliance with permit limits.

The Petitioner claims that if a daily limit is set based on an average calendar month, the amount of grain processed per day should be recorded. For support, the Petitioner states that inspections from the surrounding neighborhood indicate there may be days of increased production, and that daily recordkeeping would facilitate compliance by making the facility more aware of its output.

The Petitioner also notes that area residents have reported various health symptoms and property damage allegedly related to Cargill's emissions. The Petitioner claims that area residents' quality of life, including the ability to open windows or enjoy their property outdoors, is severely impacted by Cargill's continued operation.

The Petitioner concludes by stating that "[t]he aforementioned reasons contribute to the permit lacking the requirements necessary for accurate monitoring."

EPA's Response: For the following reasons, the EPA denies the Petitioner's request for an objection.

As a threshold requirement to submitting an actionable title V petition to object, the CAA requires that:

> The petition shall 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); *see* 40 C.F.R. § 70.8(d).[9]

Here, the Petition claims related to vague or undefined terms, the alleged exceedance of a PM limit, and the requested daily recordkeeping of grain processing were not raised to IEPA during the public comment period at all, much less with reasonable specificity. The Petitioner has not attempted to demonstrate that it was impracticable to raise these issues during the public comment period, and there is no basis for determining that the issues arose after the public comment period. Thus, any concerns regarding vague or undefined terms, the alleged exceedance of a PM limit, or the need for daily recordkeeping of grain processing could have, and should have, been raised during the public comment period, and the failure to do so presents a sufficient basis for the EPA's denial of these portions of the Petition. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. §70.8(d).

In addition to not raising these claims with reasonable specificity during the public comment period, and to the extent that other claims—including those related to facility inspections,

[9] *See also* 56 Fed. Reg. 21712, 21750 (May 10, 1991); *In the Matter of Phillips 66 San Francisco Refinery*, Order on Petition No. IX-2018-4 at 7–10 (August 8, 2018); *Luminant Sandow Order* at 5–6.

upgrades to "outdated" equipment, and health impacts allegedly attributable to Cargill's emissions—were raised during the comment period, the Petitioner has not demonstrated that any of these issues resulted in the Permit not complying with the requirements of the Act.

First, with respect to the Petitioner's claims that certain permit terms are too vague to be enforceable or need to be further defined, the Petitioner has not demonstrated why this is necessary to assure compliance with any applicable requirements of the Act. Each of the Petitioner's arguments comprise very brief, conclusory allegations, unsupported by citation to any regulatory authority or analysis of why the given terms must be further defined. The Petitioner does not identify any portion of the CAA containing relevant applicable requirements. This type of general, conclusory allegation is insufficient to demonstrate that the Permit does not comply with, or assure compliance with, applicable requirements of the Act.[10]

Regarding the Petitioner's statements related to the timing of inspections at the facility, the Petitioner does not allege—much less demonstrate—that any issues related to the timing of inspections at the facility result in the Permit not complying with requirements of the Act. Additionally, the Petitioner failed to address IEPA's RTC on this point (which was available during the petition period).[11] As noted above, the EPA expects petitioners to address the state's final reasoning if it was available during the petition period.[12]

The Petitioner briefly asserts that the facility previously emitted 57% more PM than allowed by a permit limit but provides no evidence to support this allegation. Moreover, the Petitioner fails to demonstrate any relationship between this alleged emissions event and any particular applicable requirement or permit term (*e.g.,* which permit limit was allegedly violated).[13]

The Petitioner's related claims asserting the necessity of additional inspections, restrictions, or equipment upgrades are similarly presented without any reference to applicable requirements or permit terms, nor any demonstration that existing permit terms do not comply with the requirements of the Act.[14] Likewise, in asserting that recordkeeping of daily grain processing is necessary, the Petitioner provides no citation to any applicable requirement or permit term[15] that

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[10] *See supra* notes 5, 6, and accompanying text.

[11] *See* RTC at 2–3 ("The Illinois EPA conducts regular inspections of the CAAPP sources based on an agreed upon Compliance Management System (CMS) that is administered through the Illinois EPA's Compliance and Field Operations Sections. The Illinois EPA does not have authority to specify a type or frequencies of inspections by the Illinois EPA outside of the CMS. In addition, inspections may result from a complaint to the Illinois EPA. Depending on the nature of an inspection it may be announced or unannounced.").

[12] *See supra* note 4 and accompanying text.

[13] Moreover, whether a source has violated a permit term is a different issue than whether a permit complies with the requirements of the Act. Here, the Petitioner has not alleged, much less demonstrated, that the purported violation by Cargill of the unidentified PM limit resulted in the Permit itself not complying with the CAA.

[14] Additionally, the Petitioner failed to address IEPA's RTC regarding these claims. *See* RTC at 3 ("The Illinois EPA and the permitting programs run by the Illinois EPA do not have authority to impose requirements on what type of industrial/manufacturing equipment to use at a stationary source nor the involvement of outside contractors in the operations of the plant. In addition, the use of the equipment has no relevance to whether a source can or cannot be issued a permit. The age of equipment becomes critical for regulatory purposes as the source itself upgrades or replaces equipment triggering more stringent requirements."); *see also supra* note 4 and accompanying text.

[15] Instead, the Petitioner cites only to a Compliance Monitoring Report.

she believes is not supported by adequate monitoring, recordkeeping, or reporting. The adequacy of monitoring in a title V permit is a highly fact-specific inquiry, and here, the Petitioner has not provided any citation or analysis to demonstrate that the current permit terms are insufficient. *See, e.g.*, *In the Matter of CITGO Refining and Chemicals Co. L.P.*, Order on Petition No. VI-2007-01 at 6–8 (May 28, 2009).

With respect to the Petitioner's observations regarding the alleged health impacts associated with the facility, the Petitioner has not explained how these impacts are relevant to evaluating whether the Permit complies with applicable requirements of the CAA.

Finally, the Petitioner's broad allegation that "[t]he aforementioned reasons contribute to the permit lacking the requirements necessary for accurate monitoring" is unaccompanied by any reference to permit terms or applicable requirements in need of additional monitoring, and is not supported by further analysis.

In summary, throughout all of these claims, the Petitioner neither identifies any applicable requirements with which the Permit does not comply or assure compliance, nor does the Petitioner identify any specific permit terms that do not comply with the requirements of the Act. These unsupported claims fail to demonstrate a basis for an EPA objection.[16] For the foregoing reasons, the EPA denies the Petitioner's request for an objection.

V. CONCLUSION

For the reasons set forth above, I hereby deny the Petition as described above.

Dated: MAR 20 2019

Andrew R. Wheeler
Administrator

[16] *See supra* notes 5, 6, and accompanying text.