

Carol Browner
Environmental Protection Agency
401 M Street SW
Washington, DC 20460

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We recently sent you a letter, dated April 22, 1997, describing some serious problems with Title V permitting in Louisiana. In return we received a letter from John Seitz's Office of Air Quality Planning and Standards (OAPQS) that was filled with bureaucratic double-talk. These issues are too important to Louisiana's future to spend this amount of time and effort in simply trying to dodge blame. In any large, new program there will be problems. All parties must concentrate on solving the problems and doing the best they can moving forward.

We only wrote our letter to notify the EPA that there were problems and to ask that these problems be addressed. We did not write to accuse or impugn the EPA in any way. You are our biggest ally in Title V permitting and we desperately need your help. A response to the OAPQS letter follows.

1. The EPA's role in Title V permitting.

On this issue the OAPQS manages to contradict themselves in just a few paragraphs. They first understate the EPA's role in Title V permitting. This is mixed with vague claims that the states are almost entirely responsible for Title V permitting.

You know, the OAPQS knows, and we know what the EPA's involvement in Title V permitting is. It is explicitly called out in Section 505(b)(1) of the clean air act. This section requires:

"(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance."

We recognize that there will be too many permits for Region VI to thoroughly review them all, nor are we asking them to. We will insist, however, that the Region review the 15 permit applications that we know have problems, and that the Region be technically and organizationally capable of reviewing the permits and acting accordingly.

2. The facts about the Shintech case.

Despite the letter from OAPQS there were significant problems with the Regions handling of the Shintech proposed permit. The OAPQS employs revisionist history that makes Region VI look like they did their job effectively.

The region didn't adequately review the proposed permit in the 45 day review period despite our efforts to help them identify the problems. It was only after the 45 day review period ended that the Region realized that they had made a mistake and there were significant technical problems with the permit. Shintech has since taken the lead in attempting to resolve the problems.

We have every expectation that this was an anomalous event related to a new program and that the Region will be in a better position to handle the next problem case. It was to this end that we contacted your office.

3. Section 505 of the Clean Air Act, permit review, and public petitions.

A more troubling problem is the position OAPQS takes on how a revision to a proposed permit is to be handled. OAPQS recognizes that the DEQ issued a final permit to Shintech on May 23, and that "communications between the Region and the State" have been ongoing. OAPQS should also know that the DEQ made substantial changes between the proposed permit and the final permit. What OAPQS fails to state is that changes to the original proposed permit create a new proposed permit that is subject to another EPA 45 day review period and another public petition period. This is required in Section 505(a)(1)(B), which states,

(1)Each permitting authority-

"(B) shall provide to the Administrator a copy of each permit proposed to be issued". ;

and Section 505(b)(1). This is also stated explicitly in the Louisiana Administrative Code 33:III Chapter 5 Section 533(B)(3) and (4) and 533(C)(1).

Failure to adhere to these statutes denies the EPA and the public the right to review and comment on the proposed permit. This review is a fundamental principle of the CAA.

4. MACT standards and the meaning of "statistically based" standards.

Here's an idea the EPA seems intent on co-opting. We didn't say that MACT standards are statistically based, congress did. They put the statistical language in the CAA as:

"the average emission limitation achieved by the best performing 12 percent of the existing sources".

Maybe the OAPQS can perform some linguistic magic and make the above statement not be related to statistics, but they can't change the law no matter how hard they try.

Our point was that the administrator never defined the best controlled HON source as required in the CAA Section 112(d)(3). This states

"The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator."

Source here refers to entire major sources, not emissions points.

We are simply requesting that the determination of the best controlled source and the best performing 12 percent of sources in the SOCOMI and Refinery categories be given the highest priority and that these are determined as quickly as possible. When this is done the EPA will find that process vents and flares will not be allowed under the above definitions of MACT. Also, the elimination of flares and process vents will not create a serious financial burden for the industries. The current requirements encourage the use of vents and flares, which is counter to the interests of the people of Louisiana.

5. Maximum potential to emit.

The OAPQS correctly stated that this can be determined using "sound engineering practice". We want to know who's going to do the engineering work? Specifically, we have three or four facilities in Louisiana that want to take advantage of the Title V permitting process and use it to obtain increased permitted emissions levels. These are all facilities that admit they did not meet MACT in 1990.

We don't ask that the EPA try to evaluate each proposed permit for maximum potential to emit, only those three or four that are trying to abuse the permitting process.

In closing, let us agree that implementing the 1990 Clean Air Act amendments is a daunting task for all parties. We can also agree that this implementation will have positive, lasting effects for the people of Louisiana. What we want to do is establish a cooperative working relationship with the EPA, and specifically with Region VI, concerning Title V permitting. We have no intention of placing undue strain on the EPA's available resources. Instead, we only want the EPA to concentrate resources on those 15 Title V permits that are known to present problems.

Please let us know who to give a list of these problem permit applications to. We also ask that you give us guidance in how we can most effectively work with Region VI to get the most out of the resources available for implementing the 1990 Clean Air Act and the Title V permitting process in particular.

Sincerely,

Marylee Orr
Executive Director

cc: Al Gore, Vice President of the United States