

December 17, 2001

Via U.S. Mail and Facsimile

Ms. Carolyn Laney
LDEQ-OES, Environmental Assistance Division
Post Office Box 82135
Baton Rouge, Louisiana 70884-2135

RE: Comments on Behalf of the Louisiana Environmental Action Network and Ms. Juanita Stewart on Port Hudson Operations, Georgia-Pacific Corporation, Zachary, East Baton Rouge Parish, Louisiana, Proposed Air Permit Modifications, Part 70 Operating Permit, Emission Reduction Credits, and Environmental Assessment Statements, Review Nos. 17973, 27801, 30487, 31305/Agency Interest No. 2617

Dear Ms. Laney:

Please consider the following comments on Louisiana Proposed Air Permit Modifications, Part 70 Operating Permit, Emission Reduction Credits, and Environmental Assessment Statements Review Nos. 17973, 27801, 30487, 31305/Agency Interest No. 2617 submitted on behalf of the Louisiana Environmental Action Network (“LEAN”) and Ms. Juanita Stewart. LEAN is an incorporated, non-profit community organization that serves as an umbrella organization for environmental and citizen groups. LEAN was organized for the express purpose of preserving and protecting the state’s land, air, water, and other natural resources, as well as protecting the organization’s members and other residents of Louisiana from threats of pollution. LEAN members breathe air in and around East Baton Rouge Parish and are injured by the state’s failure to attain national health-based standards. Ms. Juanita Stewart is a LEAN member and resident of East Baton Rouge Parish.

These comments are based on the Louisiana regulations governing emissions reductions that were in place throughout the public comment period. In a document dated December 10, 2001, Louisiana Department of Environmental Quality (“LDEQ”) gave notice that “emergency” rules will go into affect on December 20, 2001. If LDEQ intends to apply the emergency regulations to this permit, then it should publish notice of its intent and reopen the comment period for an additional 30 days from the date of that

notice. Aside from concerns regarding the lack of any “emergency” as well as the fact that the rules are inconsistent with federal law in many respects, changing the rules applying to the permit without reopening the comment period would eviscerate the purpose behind public comment periods and violate fundamental principles of administrative law.

INTRODUCTION

On November 8, 2001, LDEQ published a notice of public hearings and request for public comment on proposed air permits, emission reduction credits, and environmental assessment statements for Georgia-Pacific Corporation’s (“Georgia-Pacific”) Port Hudson Operations located in Zachary, East Baton Rouge, Louisiana. Georgia-Pacific requested approval for a retroactive Prevention of Significant Deterioration (“PSD”) permit for production increase projects during 1986-1992, a PSD permit for a No. 6 Through Air Dried Towel Machine, a Part 70 operating permit, and emission reduction credits. Because of significant flaws in the emissions reduction credits which render the permits and credits illegal, as well as violations of Part 70 regulations, LDEQ cannot approve the permits and the emission reduction credits.

Under the Clean Air Act, industrial growth in an area that fails to meet health protection standards for ozone air pollution must be analyzed with the strictest scrutiny. In this case, LDEQ has given cursory review at best and has disregarded its own regulations by proposing to allow emissions reduction credits for changes that are either required by law, required under the terms of a settlement agreement or both. The proposed permits and credits will allow Georgia-Pacific to benefit from its illegal action while at the same time hampering ozone attainment in the Baton Rouge Non-attainment Area, thereby harming public health and welfare.

LDEQ must begin a new era of compliance with the Clean Air Act and attainment of minimum health standards. The following specifically demonstrates that the proposed air permits and emission reduction credits for Georgia-Pacific’s Port Hudson facility in Zachary, East Baton Rouge Parish, Louisiana are illegal:

- I. LDEQ SHOULD DENY THE PROPOSED PERMITS AND EMISSION REDUCTION CREDITS BECAUSE GEORGIA-PACIFIC EMISSIONS REDUCTIONS MAY NOT LEGALLY BE USED AS OFFSETS.
 - A. **LDEQ Must Deny Permit PSD-LA-544(M-1) Because It Improperly Allows Georgia-Pacific To Avoid New Source Review for Volatile Organic Compounds By Using Invalid Offsets.**

Permit PSD-LA-544(M-1) is a retroactive permit that would cover emissions due to production increases at the Port Hudson facility during 1986-1992. As part of the permit, Georgia-Pacific claimed decreases in Volatile Organic Compounds emissions of

770 tons per year, including 742 tons generated by routing noncondensable gas to lime kilns in order to comply with the NSPS Subpart BB rules (governing the processes for kraft pulp mills like Georgia-Pacific's) for controlling Total Reduced Sulfur emissions. The rerouting is said to have occurred in 1989. Georgia-Pacific claims that these reductions are more than enough to offset increases in Volatile Organic Compounds emissions during the 7-year period covered by the permit. In fact, Georgia-Pacific may not claim these reductions as offsets because: (1) they were not surplus and (2) many of the so-called offsets were not contemporaneous with emission increases.

1. *LDEQ Must Deny the Permit Because the Emission Reductions Relied Upon by Georgia-Pacific Have Never Been Surplus.*

Georgia-Pacific's offsets are improper because they are not surplus, as required by law. The federal Clean Air Act forbids offsets based on credits that represent legally required emission reductions. Specifically, section 173(c)(2) of the Act states: "emission reduction credits otherwise required by this chapter shall not be creditable as emission reductions for purposes of any such offset requirement." 42 U.S.C. § 7503(c)(2). This prohibition is incorporated into LDEQ's own regulations, which acknowledge that "emission reductions otherwise required by the Federal Clean Air Act or by state regulations shall *not* be credited for purposes of satisfying the offset requirement." L.A.C. 33:III.504.F.10 (emphasis added).

EPA has explained:

EPA approved Louisiana's permitting and banking regulations (L.A.C. 33:III.504.F.10 and 623.B.1) on the basis that the regulations required that ERC's [i.e., "emission reduction credits"] *must be surplus at the time of use* as offsets. Any other interpretation of the State's regulations would not have been consistent with Section 173(c)(2) of the Act, which requires that "emissions reductions otherwise required by [the Act]" cannot be used as offsets. Relying *explicitly* on this interpretation of the Clean Air Act, EPA proposed to approve Louisiana's banking regulations, explaining that "the requirement that the emission reductions be surplus when actually used is adequately addressed by [Louisiana's] regulations." [i.e., the State's NSR regulations]. 63 Fed. Reg. 44192, 44200 n.2 (Aug. 18, 1998).

EPA, Order Responding to Petitioner's Request that the Administrator Object to the Issuance of a State Operating Permit, at 18 (emphasis added) ("EPA Order"),

http://www.epa.gov/rgytgrnj/programs/artd/air/title5/petitiondb/petitions/borden_response1999.pdf.

Further, under the Clean Air Act § 502(a), it is unlawful for any person to violate any requirement of a permit or to operate an affected source except in compliance with a permit issued by a permitting authority. EPA's policy, as outlined in the New Source Review Workshop Manual at A.41, is that "[a] source cannot receive emission reduction credit for reducing any portion of actual emissions which resulted because the source was operating out of compliance."

In this case, state and federal law required the emission reductions because Georgia-Pacific was not in compliance with its permit for Volatile Organic Compounds emissions. At the time Georgia-Pacific made the cuts in 1989, it was flagrantly violating its air emissions permit by emitting several times allowable levels of Volatile Organic Compounds. Until August 2001, Georgia-Pacific was still permitted to emit only 102.8 tons per year of Volatile Organic Compounds. If Georgia-Pacific was able to cut 770 tons, it must mean that it was emitting more than seven times the amount of Volatile Organic Compounds it was legally allowed to emit; and that assumes that Georgia-Pacific cut its emission to near zero in 1989. It is more likely that Georgia-Pacific was emitting at closer to its current permit level, 2368.94 tons per year.¹ That means that all of the emissions it "cut" were illegal in first place.

Any cuts made by Georgia-Pacific simply brought it closer to compliance and so cannot be said to be surplus by any reasonable definition of that term. Allowing Georgia-Pacific to use illegal emissions as offsets is like allowing a bank robber to pay off his criminal fine with money he stole. Only after all the money has been returned can any real compensation be said to begin. Similarly, Georgia-Pacific simply reduced some of its illegal emissions at roughly the same time it was increasing other illegal emissions. This is not sufficient for Georgia-Pacific to escape the New Source Review that would have been required had it been complying with the law at the time the changes were made.

LDEQ has a duty to certify the emission reductions as surplus before Georgia-Pacific may use the credits to offset emissions. EPA Order, *supra*, at 19 ("[E]ven if an ERC certificate has been validly issued, LDEQ must certify the ERCs as surplus at the time the credits are used to account for any new federal or state statutes, regulations, or

¹ LDEQ claimed that the August 2001 permit was simply reconciling permitted emissions with actual emissions and did not result from any production increases. See Response to Comments at 1, attached as Exhibit A. If this is the case, Georgia-Pacific must have been violating its previous permit. If this is not the case and the emission increases resulted from production increases, Georgia-Pacific should have undergone New Source Review and LDEQ should have submitted the permit to the Environmental Protection Agency for its review. See Clean Air Act, § 505; 42 U.S.C. § 7661d(a) (requiring a permitting authority to provide permit applications and "a copy of each permit proposed to be issued" to the Environmental Protection Agency Administrator).

permits which establish new baseline emission limits.”). LDEQ cannot do so here and thus must deny the permit.

2. *LDEQ Should Deny The Permit Because the Offsets Were Not Emission Reduction Credits and Were Not Contemporaneous with the Increases*

Many of Georgia-Pacific’s Volatile Organic Compounds emissions reductions postdated increases and so may not properly be used for netting. Netting is defined as the “use of an [emission reduction credit] . . . to compensate for emission increases associated with a proposed modification at the same facility [where the credits were generated].” L.A.C. 33.III.605. The netting proposed here fails both because the reductions were never proper emission reduction credits and because they did not pre-date the increases.

The emissions reductions used by Georgia-Pacific for netting are improper because they are not emission reduction credits. To qualify as an emission reduction credit, an emission reduction must be “surplus, enforceable, permanent and quantifiable.” *Id.* As explained above, the emissions reductions in this case are not surplus. In addition, the emissions reductions do not meet the requirements to be enforceable or permanent.

To be enforceable, an emission reduction must be “approved by the state and be federally enforceable.” *Id.* One method of rendering a reduction “enforceable” is to include it in a new or modified Part 70 operating permit, by lowering the total allowable emissions by the amount of the reduction. *See id.* To be “permanent,” an emission reduction must be “guaranteed through enforceable permit limitation confirming the amount and duration of the decrease.” *Id.* In the instant case, Georgia-Pacific was operating well outside of its permit and neither the emissions reductions nor the emissions increases were approved by the state or incorporated into a permit until August 2001. Because the emissions were not permitted, they were neither enforceable nor permanent and may not be used as emission reductions credits

Finally, proper netting requires that reductions occur before the increases. However, Georgia-Pacific is attempting to use reductions occurring after the increase in emissions. As noted above, netting requires that the reductions be tied to a *proposed* modification. *Id.* In this case, the reductions were achieved in 1989, but the increases began in 1986. Hence, if some of the increases predate the reductions, then they may not be netted-out by the reductions. Furthermore, none of the modifications were ever “proposed” in a legal sense, because they were never properly presented to LDEQ as requests for new or modified permits. For all of the above reasons, the netting used here was improper and the permit request should be denied.

B. Permit PSD-LA-544(M-2) Should Be Denied Because it Improperly Avoids Review Required by the Clean Air Act for Volatile Organic Compounds, Oxides of Nitrogen, and Total Reduced Sulfur Emissions by Using Invalid Offsets

The proposed permit to construct a Through Air Dried Towel Machine contains significant flaws. When completed, the project will emit 267.66 tons per year of Oxides of Nitrogen (“NO_x”), 409.41 tons per year of Volatile Organic Compounds, and 10.87 tons per year of Total Reduced Sulfur into the already polluted air of East Baton Rouge Parish. Normally, these new emissions would trigger strenuous review requirements, forcing Georgia-Pacific to adopt the newest and cleanest technology.² However, Georgia-Pacific is attempting to avoid this process by using emission reductions as offsets. These reductions, however, are the result of an administrative order and so may not be used as offsets.

The emissions reductions are invalid as offsets because Georgia-Pacific did not make the reductions voluntarily. As mentioned above, emission reduction credits are proper only when they are “surplus.” L.A.C. 33.III.605. LDEQ regulations define “surplus emission reductions” as those “that are *voluntarily* created...and have not been required by any . . . order.” *Id.* (emphasis added). A settlement agreement between LDEQ and a polluter is just such an order.

The settlement agreement in this case was signed by Georgia-Pacific on March 17, 2000. Georgia-Pacific agreed to perform certain actions, including upgrading the black liquor oxidation (BLO_x) system, upgrading Lime Kilns No. 1 & No. 2, and controlling emissions from washer vents in the No. 3 Brown Stock Washing System. *See* Exhibit B at 2 (Settlement Agreement). In exchange, LDEQ agreed not to take further enforcement actions against Georgia-Pacific for GP’s past violations. *See id.* at 12. The emission reductions in NO_x, Total Reduced Sulfur, and Volatile Organic Compounds that Georgia-Pacific now wants to claim as offsets appear entirely the result of the changes required by the settlement agreement. Until Georgia-Pacific has conducted the proper analysis or found valid offsets, it should not be permitted to build the No. 6 Through Air Dried Towel Machine. The permit must be denied.

C. The Part 70 Operating Permit Should Be Denied Because It Ratifies Improper Emission Reduction Credits and Allows Construction of a New Project Without Proper Offsets.

Georgia-Pacific’s Part 70 operating permit application seeks to ratify some of the improper actions mentioned above. The Part 70 operating permit includes the Volatile

² In the case of Volatile Organic Compounds and NO_x, Non-attainment New Source Review would be necessary. In the case of Total Reduced Sulfur, a PSD analysis would be required. NO_x is covered by NNSR in this case, because LDEQ requested that Georgia-Pacific use an NNSR analysis.

Organic Compounds emission reductions that Georgia-Pacific seeks to use as netting for PSD-LA-581(M-2) and as emission reduction credits for banking. While LEAN and Ms. Stewart support reducing Volatile Organic Compounds and other emissions at the Port Hudson facility, they object to the use of improper offsets to further expand the facility and, in the process, nullify much of the benefit that would occur from emissions reductions.

The Part 70 operating permit would ratify Georgia-Pacific's claim of 897.88 tons per year of creditable reductions in its Volatile Organic Compounds emissions – all of which it intends to use for netting or as emission reduction credits.³ However, 748.67 tons of these emission reductions are the result of changes made pursuant to the settlement agreement mentioned above. Because these changes were not surplus they may not be used as credits. The other 159.5 tons per year in claimed reductions are also potentially improper. The draft permit contains too little information to properly evaluate these credits. Specifically, those credits may not be used for netting or banking unless and until LDEQ develops a record that credits are a result of voluntary changes not made pursuant to any compliance order or state or federal law and are permanent and enforceable. Even if valid, these credits would be grossly insufficient to offset the new emissions from the Though Air Dried Towel Machine. Because the Part 70 operating permit is based on improper and illegal offsets, it should be denied.

D. LDEQ Must Deny the Permit Because Georgia-Pacific Has Not Demonstrated That its Proposed Emission Reduction Credits Represent Reductions from Baseline Emissions under Louisiana's State Implementation Plan.

Georgia-Pacific seeks credit for reductions from emission levels that violated its permit. Upon information and belief, these levels were not part of the baseline emissions of LDEQ's State Implementation Plan. As EPA has ruled "emission reductions must be below the emissions baseline in the SIP in order to be used as offsets." EPA Order, *supra*, at 25. EPA explained that a "requirement that must be considered in determining the validity of ERCs for use as offsets is the 'baseline' for calculating [emission reduction credits]." Under 40 C.F.R. § 51.165(a)(3)(i), each State Implementation plan must:

provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emission reductions is the emissions limit in the applicable SIP in effect at the time the application to construct is filed.

³ In either case, the facility will expand and these "reduced" emissions will be returned to atmosphere.

As EPA has noted, “the amount of emissions which can be used as offsets from a source will be based on emission reductions below these SIP limits.”

Because LDEQ has not certified that the emission reductions at issue reduce Georgia-Pacific’s emissions below the State Implementation Plan’s emissions baseline, this permit must be denied.

E. The Application to Bank Emission Reduction Credits Should Be Denied Because Georgia-Pacific Has No Valid Credits to Bank.

For the reasons mentioned above, Georgia-Pacific should not be allowed to bank any credits at this time. The vast majority of the credits it seeks to use as offsets, whether for netting or banking, are clearly illegal. The remaining 159.5 tons per year may or may not be legal. If Georgia-Pacific wishes to bank these credits, as opposed to using them for netting, it should be required to make this fact clear and to justify these credits individually in a new application.

Second, Georgia-Pacific did not specify which of the large pool of mostly illegitimate credits it intends to use for banking and which for netting. While none of the credits claimed here are valid, it is important to know which specific offsets will be used for each stated purpose (banking and netting). Allowing a facility to rely on credits, without specifying which credits will be allocated to the facility, damages both the public participation process and the integrity of the offsetting and banking systems.

Regarding public participation: It is incompatible with the public participation process to require members of the public to analyze and comment on “dummy” credits. The public’s burden is already substantial. To comment intelligently, members of the public must analyze permit applications and prepare and submit comments within a very short time frame – typically only 30 days. Furthermore, they must do so using a state database for tracking credits that even professionals at EPA find to be confusing and incomplete. *See infra* pp. 9-10. LDEQ should not allow the further burden of sifting through excess credits to be shifted to the public. Instead, LDEQ should deny the permit and require Georgia-Pacific to identify precisely which credits will be used to offset the pollution and which credits it proposes to bank.

Regarding the integrity of the offsetting and banking systems: If LDEQ allows Georgia-Pacific to be vague about the credits used now, Georgia-Pacific presumably will allocate its most questionable credits to the proposed permits, once they are issued. The next time a facility uses these Volatile Organic Compounds credits to obtain a permit, it will presumably reply to any objection by arguing that the most questionable credits were used in the current permit and are therefore no longer subject to challenge. This approach turns the new source review process into a type of shell game. Thus, in addition to denying the proposed permits, LDEQ must deny the application to bank emission reductions credits until Georgia-Pacific submits a detailed accounting of its credits.

F. The Emission Reduction Credit Bank Must Be Audited and Any Valid Credits in That Bank Must be Allocated First to Facilities that Released Pollutants Pursuant to Permits Based on Credits that Cannot Be Certified As Valid.

1. LDEQ's Bank of Emission Offset Credits Violates Federal Law.

In July 1999, EPA approved Louisiana's regulations on the banking and use of credits for voluntary emission reduction with the understanding that the credits would be "surplus" at the their time of use. 63 Fed. Reg. 44,192, 44,200. In other words, past credits must be reduced or eliminated when changes in law render emission reductions mandatory rather than voluntary. Since EPA's approval, however, LDEQ has announced that it "intended, interprets and has applied [its regulations] to prohibit such a reduction in quantity of emission reduction credits" and instead only requires that credits be surplus "when generated" to be valid for crediting. Exhibit C, Letter from Bliss Higgins, Assistant Secretary of LDEQ, to Carl Edlund, EPA Region VI (October 5, 2000), at 1.

As mentioned above, EPA has already announced its opinion that Louisiana's "banking" program is illegal. *See supra* pp. 3-4. LDEQ has acknowledged that its regulations do not meet the standard announced by EPA. Exhibit C, *supra*, at 2. DEQ admits that its Emission Reduction Banking System establishes definitions and procedures for calculating credits that set forth a "surplus when generated" approach and further provides for the protection of credits once approved. LAC 33:III.605, 607.G and 621. Such an interpretation harms public health by permitting emissions to exceed the maximum allowed under federal law. Clearly, LDEQ's "bank" is illegal and LDEQ may not use the bank until its Emission Reduction Banking System is revised to meet minimum federal standards.

2. LDEQ Has Mismanaged the Bank.

EPA has specifically found that "it is difficult to access data documenting the amount of valid CAA offset credits in Louisiana's bank and that there are insufficiencies in the banking database." Exhibit D, Joint Motion for Voluntary Remand, *LEAN, et al. v. U.S. EPA*, 99-60570 (5th Cir. October 9, 2000).

LDEQ's management provides a confusing array of documents and numbers that show an overall uncertainty as to what is, and what is not, in the bank. In fact, LDEQ itself often does not know what is in the bank and what is not. For example, on March 15, 2000, LDEQ submitted to the 19th Judicial District Court a document entitled "VOC Emissions Reduction Credits Banked in The Baton Rouge Ozone Nonattainment Area As of March 13, 2000," which revealed LDEQ's lack of record-keeping. Barry Brooks of LDEQ certified the list as being a true copy of the books, records, papers, or other documents that were in the custody of LDEQ and as being a reflection of the data known

by LDEQ as of that date. According to LDEQ, a total of 6,787.2 emission reduction credits were available for use as offsets or netting, including 4,051.7 listed credits for Dow Chemical Company. However, in the Louisiana emission reduction database, dated one day before LDEQ's submission of this document to the court, there were no Dow Chemical Company credits listed.

This submission by LDEQ to a court of law of an obviously inaccurate document destroys LDEQ's credibility as the administrator of the bank. This action demonstrates that LDEQ's bank is "broken." LDEQ cannot even keep track of what credits are in, or not in, the bank. Given LDEQ's inability to keep track of Bank credits or to provide the public with adequate information to determine the validity of credits, Georgia-Pacific should not be allowed to bank any credits until the system complies with the Clean Air Act.

3. *Because of These "Insufficiencies," It Is Impossible For a Concerned Citizen to Determine if the Particular Credits Were Properly Banked, if the Bank Has Sufficient Credits in Reserve to Meet the Requirements of the State Implementation Plan, or Even if the Credits Were Previously Used or Sold.*

Until a full audit of the bank is performed, neither EPA nor LDEQ have any way of determining how many, if any, valid credits remain in the bank. Clearly, before they are used to justify new emissions, valid credits, if any, must first be allocated to existing facilities with permits that LDEQ issued based on invalid credits. LDEQ must not issue any permits based on credits from the emission reduction bank until it has demonstrated that all past and present emissions pursuant to permits based on credits that cannot be certified as valid are not offset with valid credits from the Bank.

II. THE PROPOSED PERMITS CONTAIN SEVERAL SPECIFIC CONDITIONS WHICH DO NOT COMPLY WITH THE CLEAN AIR ACT AND AGENCY REGULATIONS

A. **The PSD Permit for the Towel Drying Machine (PSD-LA-544(M-2)) Should Require PSD Review if Georgia-Pacific Exceeds The Firing Rates and Lime Throughput Limits.**

Specific Conditions #2 and #3 require Georgia-Pacific to maintain firing rates⁴ and lime throughput,⁵ respectively, below certain annual levels. The limits on these

⁴ Specific Condition #2 states: "To maintain NOx emissions increases from the No. 6 Tissue/Towel Machine project below the PSD significance level of 40 tons/year and to ensure compliance with emission limits of this permit, permittee shall maintain the total annual firing rates of the recovery furnaces, Emission Points 72 and 73, less than 1,216,000 tons of black liquor solids"

annual levels allow NO_x emissions from the No. 6 Towel Machine project to stay below PSD significance levels. Specific Conditions #2 and #3 require Georgia-Pacific to monitor and record each month the firing rates and lime throughput, as well as monitor and record the “total for the last twelve months.” If the firing rates or lime throughput exceeds the annual levels set forth in the specific conditions for any twelve month period, the violation must be reported to the Office of Environmental Compliance, Enforcement Division.

Requiring Georgia-Pacific to report its violations is insufficient. The Specific Conditions allow Georgia-Pacific to escape PSD review for NO_x by maintaining certain annual firing rates and lime throughput, but do include a mandatory requirement for Georgia-Pacific to undergo PSD review if it exceeds those limits. Not only should Georgia-Pacific be required to report the violation, it should be required to undergo PSD review the first time it violates the annual limits. As the specific conditions now stand, Georgia-Pacific could escape PSD review, violate the annual limits repeatedly, and only face discretionary enforcement actions by LDEQ or perhaps a citizen suit. Instead, the specific conditions should clearly require PSD review once Georgia-Pacific exceeds the annual limits.

B. The Part 70 Operating Permit is Incomplete, Contains Periodic Monitoring Insufficient to Ensure Compliance, and Contains Specific Conditions That Are Not Practically Enforceable.

1. LDEQ Failed to Provide an Adequate Statement of Basis Which Hampers Effective Public Comment.

LDEQ violated Part 70 requirements by failing to include a statement of basis for the permit requirements. Without an adequate statement of basis, the 30-day public comment period is short-circuited because it is impossible for concerned citizens to evaluate and provide meaningful comments on the permit conditions. Part 70 regulations require that “the Permitting Authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions including references to the applicable statutory and regulatory provisions. The Permitting Agency shall send this statement to U.S. EPA and to any other person who requests it.” LAC 33:III.531.A.4; 40 C.F.R. § 70.7(a)(5).

LEAN requested the statement of basis and was told by Donald Trahan that the Air Briefing Sheet coupled with the legal citations in the proposed permit satisfy the requirement for a statement of basis. *See* Exhibit E (email response from Donald Trahan to the request by Dr. Gary Miller). However, neither the Air Briefing Sheet nor the

⁵ Specific Condition #3 states: “To maintain NO_x emissions increases from the No. 6 Tissue/Towel Machine project below the PSD significance level of 40 tons/year and to ensure compliance with emission limits of this permit, permittee shall maintain the total annual throughput of the lime kilns, Emission Points 10 and 11, less that 162,500 tons of lime. . . .”

proposed permit includes a legal or factual basis for various conditions, such as periodic monitoring, aside from simply citing to relevant statutes and regulations. This failure makes it impossible to evaluate the monitoring required in the proposed permit. For example, a draft permit available for public review required daily visual inspections of the cyclones at Emission Points 65 and 98. *See* Exhibit F at 5, Specific Condition #2. The proposed permit changes that requirement to weekly inspections, yet LDEQ offers no explanation for the more lenient inspection requirement. Additionally, the statement of basis must be sent to anyone who requests it. If, as LDEQ states, the entire permit constitutes the statement of basis, the permit should be provided “to any other person who requests it” free of charge. Currently, LDEQ charges for copying the permit.

Because LDEQ’s failure to include a statement of basis hampers public comment, LDEQ should develop an adequate statement of basis for the proposed permit and re-release it for a new public comment period.

2. *The Emissions Limits in the Part 70 Operating Permit Are Based on an Illegal Permit that LEAN and Ms. Stewart Are Currently Challenging In Court.*

On June 27, 2001, the LDEQ published notice of Georgia-Pacific’s permit modification application to establish facility-wide baseline emissions for its Port Hudson facility. The application requested an emission increase of over 2266 tons of Volatile Organic Compounds per year. Although the Louisiana Environmental Quality Act requires the party seeking a permit to perform an environmental assessment, Georgia-Pacific did not submit an environmental assessment. La. R.S. 30:2018(A). Further, LDEQ violated its duty as public trustee under the Louisiana Constitution, as well as express Louisiana Supreme Court precedent, by failing to determine whether the permit served the best interests of the environment and society before granting approval. *See Save Ourselves v. Louisiana Env’tl Control Comm’n*, 452 So. 2d 1152 (La. 1984). As a result of these violations, LEAN and Ms. Stewart have filed a Petition in the Nineteenth Judicial District challenging the permit. *See LEAN v. LDEQ*, No. 488025 (19th Jud. Dist. Sept. 21, 2001).

LDEQ does not remedy its violations here. The environmental assessment submitted by Georgia-Pacific for the Part 70 operating permit does not address the huge increases in baseline emissions that occurred less than a year ago. Instead, Georgia-Pacific states that the Part 70 operating permit will have no adverse consequences, even though the proposed permit incorporates the inflated baseline emissions. It is now apparent that neither LDEQ nor Georgia-Pacific intends to take a hard look at the environmental consequences resulting from over 2260 tons of Volatile Organic Compounds emissions.

Because the proposed Part 70 operating permit incorporates the baseline emissions from the illegally issued permit, LDEQ should deny the proposed Part 70 operating permit.

3. *Specific Conditions #2 and #3 Provide Insufficient Periodic Monitoring To Ensure Compliance and Are Not Practically Enforceable.*

Specific Conditions #2 and #3 contain inadequate monitoring requirements to ensure compliance with particulate emissions limits. The Clean Air Act requires that permits contain “conditions . . . necessary to assure compliance.” CAA § 504, 42 U.S.C. § 7661c(a). All Part 70 permits must contain “testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.” L.A.C. 33:III:507.H.1; 40 C.F.R. § 70.6(c)(1). The proposed permit contains monitoring requirements for particulate emissions limits compliance but only requires Georgia-Pacific to conduct *visual inspections* of emissions from the cyclones and baghouses. Visual inspections of microscopic (in other words, *invisible*) particulate emissions do not constitute an adequate monitoring method to ensure compliance with the particulate emissions limits. Further, as noted above, a draft permit required daily inspections while the proposed permit only requires weekly inspections. *See supra*, p. 6. Because LDEQ failed to provide a statement of basis for the monitoring requirements in the permit, the public cannot assess the reasons, if any, behind such weak monitoring requirements.

Further, the permit conditions are not practically enforceable for several reasons. First, cyclones require cleaning and preventive maintenance to be effective, yet Permit Condition #2 requires neither. Second, both permit conditions require that parts “shall be replaced as required.” The permit should contain manufacturers’ specifications to clarify when parts should be replaced. Third, the cyclone and baghouses “shall be inspected annually and whenever visual checks indicate an inspection is warranted.” The permit should clearly state under what conditions an inspection “is warranted.” As currently written, the permit contains no clear indication as to when a visual check would trigger an inspection.

Because Specific Conditions #2 and #3 are contain inadequate monitoring requirements and are not practically enforceable, the proposed permit violates the Clean Air Act and Part 70 regulations.

CONCLUSION

The proposed permits and emission reduction credits violate numerous provisions of the Clean Air Act and state and federal regulations. For the reasons set forth above, LEAN and Ms. Stewart request that LDEQ deny the proposed permits and emission reduction credits.

Ms. Carolyn Laney
LDEQ-OES, Environmental Assistance Division
December 16, 2001
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Very truly yours,

TULANE ENVIRONMENTAL LAW CLINIC

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LDEQ-OES, Environmental Assistance Division
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**SUPERVISING ATTORNEY'S INTRODUCTION OF STUDENT ATTORNEY
AND NOTICE OF APPROVAL OF STUDENT APPEARANCE**

Undersigned counsel respectfully introduces student attorney Benjamin DeMoux. As the student attorney's supervising attorney, I approve of the student attorney's appearance in this matter. Written consent of the applicable client, Ms. Juanita Stewart, to an appearance by a student attorney in this matter has also been submitted.

Very truly yours,

TULANE ENVIRONMENTAL LAW CLINIC

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