



Oregon

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RE: Petition for Reconsideration of Oregon Department of Environmental Quality's Issuance of Air Contaminant Discharge Permit 05-0023-ST-01 to Cascade Kelly Holdings LLC, dba Columbia Pacific Bio-Refinery

Cascade Kelly Holdings, LLC, applied to DEQ for a new Standard Air Contaminant Discharge Permit (ACDP or Permit) for a bulk organic liquid products terminaling operation at 81200 Kallunki Road, Clatskanie, Oregon. Cascade Kelly Holdings, LLC, does business as Columbia Pacific Bio-Refinery (CPBR or Permittee). DEQ prepared a draft ACDP and proposed it for public review and comment on February 28, 2014. In response to multiple requests DEQ extended the end date of the public comment period until May 5, 2014. The public process included a public hearing that DEQ held for the proposed permit on April 3, 2014 at Clatskanie High School in Clatskanie, Oregon. During the comment period DEQ received comments from approximately 1,400 parties. DEQ found that none of the comments submitted during the public review process identified applicable regulatory limitations that were omitted, or design elements of the facility that would prevent it from complying with the air quality regulatory requirements that are in effect and enforceable by DEQ. DEQ issued the Permit to CPBR, with noted changes, on August 19, 2014.

On October 17, 2014, DEQ received a petition for reconsideration from Northwest Environmental Defense Center, Center for Biological Diversity, Neighbors for Clean Air, Sierra Club and Columbia Riverkeeper (Petitioners) requesting DEQ reconsider its decision to issue ACDP 05-0023-ST-01 to CPBR. The Petitioners presented three principal grounds for reconsideration in the petition and each is addressed individually below.

I. Given substantial revisions to the permit terms based on information not disclosed during the public comment period, DEQ must provide a new opportunity for public comment.

DEQ added over three pages of new permit provisions to the final ACDP after the close of public comment (permit pages 8-11, additional provisions 2.5(e) through (h)). The agency then failed to identify these changes in its response to comments.

DEQ response: During the public comment period for the draft permit, Petitioners submitted comments identifying concerns associated with DEQ's applicability analysis for 40 CFR 63 Subpart Y, *National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Marine Tank Vessel Loading Operations*, with regard to the CPBR terminal facility (page 15 of DEQ's Response to Comments). In the course of responding to this comment made by the Petitioners, DEQ determined that, while Subpart Y remained inapplicable to the facility, it is reasonable for DEQ to require CPBR to perform the practices of Subpart Y that are currently part of CPBR's normal operations. This was the basis for our adding provisions 2.5(e) through (h) to the final permit. DEQ specifically identified the addition of these changes to the Permit on page 18 of the Response to Comments in item 4 of the Conclusion section. DEQ also specifically identified the addition of these changes to the final permit on page 12, item 27.d. of the final review report. The changes were made to the Permit in accordance with OAR 340-209-0080 and did not require an additional period for public review and comment.

II. DEQ should reconsider the issuance of the ACDP because the Clatskanie oil terminal is a new federal major source that requires a preconstruction permit.

DEQ response: The Petitioners submitted similar comments to DEQ during the public comment period (pages 11-13 of DEQ's Response to Comments). DEQ reasserts all statements made in our original response to the Petitioners' comments.

DEQ performed two separate analyses of potential to emit, one related to the violation we assessed against CPBR, and the second for this permit action. The comments made by Petitioners appear to confuse and conflate these two separate analyses. As clarified in the original response to comments (pages 11-13), to establish the scope of the violation DEQ had to estimate the facility's potential to emit (PTE - OAR 340-200-0020(100)). That PTE consideration had to be contemporaneous with the period of violation. For reasons stated in DEQ's Response to Comments, that first analysis determined the PTE of the then-existing CPBR ethanol facility based on its full oil-transloading operating capacity and concluded that it was a major source (OAR 340-200-0020(72)) of air contaminant emissions, but not a federal major source (OAR 340-200-0020(55)). CPBR's build-out actions, planned and taken under the new permit, had not commenced during the period of violation, so it was not appropriate for DEQ to include them in the PTE analysis for the violation. The violation was documented and addressed independently of this permit action and was not a consideration proposed for public comment.

The new ACDP issued to CPBR exclusively addresses terminaling activities for organic liquids (crude oil and ethanol) that are not manufactured on site. Storage and distribution emitting activities for product that is manufactured on site (ethanol) is appropriately addressed in the CPBR ethanol manufacturing plant permit (05-0006-ST-01). In the permit application for the new ACDP, CPBR appropriately addressed all existing and proposed emitting activities for the terminaling facility (OAR 340-216-0040), including its proposed expansion. The new permit includes PSEs that limit the PTE and allowable emissions of the new terminaling facility. The PSEs in the new permit represent the maximum allowed emission rate increase [above an emission netting basis (OAR 340-200-0020 (76)) of zero] for each respective pollutant that will result from the proposed construction and operation of the ethanol and crude oil transloading facility. The Oregon Air Quality program will not allow CPBR to “piecemeal” facility changes over time to avoid federal major source determination. All equipment and emitting activities are, and will continue to be, considered new under Oregon’s program. PSD will be triggered for the CPBR facility at any time in the future that plant site emissions equal or exceed the federal major source threshold.

As stated in DEQ’s Response to Comments, Oregon’s Air Quality program issues permits for stationary sources of air contaminant emissions. Emissions that do not come from the source itself are “secondary emissions,” as defined in OAR 340-200-0020(109). Trains and marine vessels are mobile sources. DEQ only treats train and ship emissions as part of the source’s emissions when the emissions are the result of activities that are directly integrated with the source’s operations, such as providing power to operate a product transfer process. “Emissions from ships and trains coming to or from a facility” (OAR 340-200-0020(109)(a)), including emissions from ships and trains resulting from moving into location to be loaded or unloaded, and emissions from ship engines that provide power to “hotel” the ship in place at a dock, are considered secondary emissions and are not included in the source’s emissions. This is consistent with determinations made in other DEQ permitting actions and it would have been inappropriate for DEQ to consider such emissions from trains and marine vessels for the CPBR permit action.

III. The ACDP unlawfully allows Cascade Kelly to violate federal and state law.

Cascade Kelly’s [CPBR’s] permit application was incomplete because it failed to identify the type of volatile organic liquid it plans to receive. Understanding the type of volatile organic liquid Cascade Kelly [CPBR] will handle is essential to determining the amount and type of air contamination the facility will emit.

The ACDP improperly authorizes future hypothetical operations. Cascade Kelly’s [CPBR’s] records, submitted to DEQ, demonstrate that it has not handled ethanol since before the change of ownership in 2010. To consider ethanol under this ACDP borders on absurd.

DEQ response: The Petitioners submitted similar comments to DEQ during the public comment period (refer to page 10 of DEQ’s Response to Comments). DEQ reasserts all statements made in our original response to the Petitioners’ comments. CPBR’s permit application adequately identified the company’s intentions to receive and transload the volatile organic liquids crude oil and ethanol. The crude oil that is terminalled by the facility is from the Bakken region. Crude oil from the Bakken region has been demonstrated to have substantially higher vapor pressures than crudes from other areas. Bakken crude oil also has higher vapor pressure than ethanol. The greater the vapor pressure of volatile organic liquids, the greater the emissions from terminaling operations. Therefore, CPBR’s permit

application projected maximum annual emissions for the facility using the assumption that 100% of the facility's annual volatile organic liquid throughput is Bakken crude oil with the Reid Vapor Pressure (RVP) of 12.75. The identified RVP was not intended to be a limit for the facility; it was selected because it was achievable and notably high. Emissions estimated using RVP 12.75 were annualized (i.e. the calculation assumed that the facility handled nothing but product with an RVP of 12.75 for an entire year) for projecting the facility's maximum annual emissions for review purposes as well as for setting PSELs (OAR 340-222). For any permit action it is necessary to project maximum annual emissions for the purpose of setting the facility's PSELs. The use and purpose of PSELs in the Oregon program is to establish both the maximum allowable emissions from a facility and an enforceable limitation on its potential to emit. A PSEL may be set at a level less than a facility's capacity. The PSELs of CPBR's permit establish the maximum amount, by type, of air contamination the CPBR terminal facility may emit.

The CPBR terminal facility was designed and permitted as a terminal for organic liquids. Crude oil and ethanol are both organic liquids that CPBR's permit application specifically identified as products the company intends to terminal. DEQ's permit actions are based on the forward-looking intentions of permittees; they permit future intended actions by their very nature. To not address and allow ethanol terminaling in CPBR's permit would significantly conflict with the design of DEQ's permitting program and DEQ's responsibilities and obligations.

Conclusion

DEQ reviewed the assertions made by the Petitioners in their request for reconsideration and determined the Petitioners did not establish grounds for DEQ to grant their request. DEQ is therefore denying the Petitioners' request for reconsideration of ACDP 05-0023-ST-01, as issued to CPBR. The permit DEQ issued to CPBR will remain in effect as issued.

Sincerely,

A handwritten signature in black ink, appearing to read "David Monroe". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Monroe
Northwest Region AQ Manager