Title V/Clean Air Act: U.S. Environmental Protection Agency Grants Petition Objecting to Robertson County, Texas, Lignite-Fired Electric Power Plant Permit

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Administrator of the United States Environmental Protection Agency ("EPA") issued an October 15th Order granting a Petition objecting to the issuance of a Clean Air Act Title V Operating Permit ("Permit") for the Oak Grove Management Company steam electric station in Robertson County, Texas. See Petition No. VI-2017-12.

The Petition had been submitted by the Environmental Integrity Project and Sierra Club (collectively, "EIP").

The Federal Clean Air Act Title V program includes a provision that allows the EPA Administrator to object to a Title V permit issued by a delegated state. In other words, Congress provided EPA a Clean Air Act oversight role by mandating that every Title V permit be subject to a 45-day EPA review period before the Title V permit is finalized.

The EPA Administrator can object to a Title V permit at two points.

An objection may be made during the 45-day review period and in response to a public petition within 60 days after the end of the 45-day review period. Further, even if EPA fails to object to a proposed Title V permit, a right to petition the agency to reconsider its failure to object to the permit is potentially available. However, only those persons who have submitted comments to the draft permit during the applicable public comment period have a right to petition.

The right to petition EPA arises at the close of the agency's 45-day review period.

The Oak Grove Station is described as an electric utility power plant consisting of two lignite-fired pulverized coal boilers and ancillary equipment. Further, the facility is classified as a major source of certain air pollutants subject to National Ambient Air Quality Standards along with hazardous air pollutants. The emission units within the station are stated to be subject to the Clean Air Act Prevention of Significant Deterioration, other preconstruction permitting requirements, and various New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

The Texas Commission of Environmental Quality ("TCEQ") (i.e., a delegated state agency) is stated to have transmitted the proposed permit along with its Response to Comments and Statement of Basis to EPA for

its 45-day review on April 7, 2017. EPA did not object to the proposed Permit during the 45-day review period. Consequently, TCEQ issued the final Title V Permit for the station on June 6, 2017.

EIP submitted a Petition to Object within 60 days after the expiration of EPA's review period.

EIP's Petition raised the following objections:

- Claim A – the proposed Permit omits enforceable requirements in Oak Grove's written maintenance, startup, and shutdown plan.

EPA grants EIP's objection on this claim.

EIP is stated to have demonstrated that the requirement to develop and implement a Maintenance Startup and Shutdown ("MSS") plan is a requirement of the NSR permit. As a result, the MSS plan needs to be included as part of the Title V Permit. The federal agency further states that the MSS plan must be included in a way that ensures there is sufficient information for EPA, TCEQ, and the public to be able to tell what is required by the plan and how compliance is determined.

EPA directs TCEQ to evaluate what Best Available Control Technology requirements the station must comply with to minimize emissions during startups and shutdowns and ensure they are clearly identified in the Permit. Further, it states that:

. . . If the MSS plan contains terms that are necessary to impose or demonstrate compliance with applicable requirements, TCEQ should amend the Permit to include those terms directly in the Permit or incorporate by reference as appropriate.

- Claim B – the proposed Permit omits limits and representations in Oak Grove's certified Permit by Rule Regulation, which are applicable requirements.

EPA grants EIP's objection on this claim.

EPA's stated basis for granting the objection is the Permit does not contain direct references to certain source-specific requirements (e.g., certified emission limits) derived from registered Permit By Rules ("PBRs") Further, the agency asserts that it is not clear the Permit currently includes or incorporates all requirements applicable to the facility as stated to be required by:

- Clean Air Act
- EPA regulations
- TCEQ regulations
- Agreements underlying EPA's approval of IBR in Texas
- EPA's longstanding position concerning IBR

EPA directs TCEQ to modify the Permit to incorporate certified PBR registrations in a manner that clearly identifies each registration and the emission units to which it applies.

- Claim C (1) – the proposed Permit fails to assure compliance with emission limits and operating requirements established by Oak Grove's New Source Review permits, including permits by rule.

EPA grants EIP's objection on this claim.

EPA concludes that EIP demonstrates that with regard to the monitoring, recordkeeping, and reporting requirements for PBRs, the Oak Grove Permit does not assure compliance with the Clean Air Act, Part 70, and Texas's Title V program. Specifically cited are certain PBRs incorporated by reference into the Title V Permit that do not contain any additional PBR-specific monitoring, recordkeeping, and reporting and solely rely on the general requirements and Special Conditions 12 and 13.

EPA directs TCEQ to specify the monitoring, recordkeeping, and reporting that assures compliance with the requirements of the PBRs that apply to non-insignificant units in the Permit.

- Claim C (2) – the proposed Permit fails to assure compliance with the opacity limit established by Oak Groves's PSD Permit.

EPA grants EIP's objection on this claim.

A Special Condition of the Permit is cited which states:

Opacity of emissions from EPNs E-OGU 1 & E-OGU 2 must not exceed 10 percent averaged over a six-minute period, except for those periods described in Title 30 of the Texas Administrative Code § 111.111(a)(1)(E), 40 C.F.R. § 60.11(c), or as otherwise allowed by law.

EIP's claim is characterized as involving monitoring established to assure compliance with a 10 percent opacity limit found in the PSD Permit and incorporated in the Title V Permit. They are stated to have asserted that using PM CEMS for demonstrating compliance with the opacity limit is not adequate to the differences in averaging periods. TCEQ is alleged to have failed to address their concerns.

EPA concludes that EIP demonstrated that the administrative record for the Permit, including Response to Comments, did not adequately explain the rationale for the selected monitoring requirements, specifically to assure compliance with the 10 percent opacity limit.

EPA directs TCEQ to either explain how the Permit provides adequate monitoring for the 10 percent opacity limit or monitor the Permit to ensure that it contains monitoring sufficient to assure compliance with that limit.

- Claim C (3) – the proposed Permit fails to assure compliance with performance standards and emission limits for H2O4, HCl, HF, VOC, and Total PM/PM10 established by Oak Grove's PSD Permit.

EPA grants EIP's objection on this claim.

EIP is stated to have contended that the Permit fails to assure compliance with the above-referenced emission limits because:

- Annual stack testing is too infrequent to provide a representative indication of the plant's performance over the relevant averaging period
- The Permit contains a loophole to the stack-testing requirements that erodes the enforceability of applicable emission limits and performance standards

TCEQ had argued that this claim was beyond the scope of Oak Grove's Title V Permit.

EPA disagrees and states that EIP demonstrated that TCEQ failed to explain how the additional stack testing is used to ensure compliance with the applicable requirement of the Permit. TCEQ is directed to ensure the Permit has adequate monitoring to demonstrate continuous compliance with permitted emission limits found in Special Condition 11.B and the MAERT.

- Claim C (4) – the proposed Permit fails to assure compliance with PM/PM10 emission limits in Oak Grove's PSD Permit.

EPA grants EIP's objection on this claim.

EIP argued that the Permit fails to specific a method to assure compliance with hourly and annual PM/PM10 emission limits for the main boilers during planned MSS activities. TCEQ rejected this argument stating that the monitoring issue was beyond the scope of the Title V Permit.

EPA disagrees stating:

With respect to parametric monitoring, EPA has previously stated that if it is used to help assure compliance with PM standards, the values for these parameters must be included in the Permit.

EPA directs TCEQ to evaluate the chosen monitoring for PM/PM10 emissions during periods of MSS to determine if monitoring is sufficient. If so, it is required to include justification in the Permit record along with an explanation of how it ensures compliance with these emission limits.

A copy of the Order can be downloaded here.