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Title V/Clean Air Act: U.S. Environmental Protection Agency Denies Petition Objecting to a Chicago Department of Aviation Permit

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The Administrator of the United States Environmental Protection Agency (“EPA”) issued a September 29th Order Denying a Petition objecting to the issuance of a Clean Air Act Title V Permit (“Permit”) to the City of Chicago Department of Aviation (“CDA”) in Cook County, Illinois. See Petition No. V-2023-2.

The CDA is stated to operate airport support operations, such as boilers and emergency/standby engine generators, at O’Hare International Airport in Cook County, Illinois.

The CDA facility is described as a major source of nitrogen oxides and carbon oxides. Further emission units in the facility are subject to:

- New Source Performance Standards
- National Emission Standards for Hazardous Air Pollutants
- Other Preconstruction Permitting Requirements

A Petition is stated to have been submitted by an anonymous Petitioner identified as C23D32 (“Petitioner”).

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 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, the 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.

CDA first obtained a Title V permit in 2001. The permit was renewed in 2022. On July 22, 2022, a minor modification of the facility’s Title V permit was requested. The application sought to incorporate two previously-issued construction permits, authorized the installation of new emergency engines and high temperature water generators, into the title V permit.

The Illinois Environmental Protection Agency submitted the Proposed Permit reflecting CDA's requested minor modification to EPA for its 45-day review. EPA did not object to the Proposed Permit.

The Petitioner subsequently submitted its Petition which was deemed timely by EPA.

Petitioner raised the following objections:

Claim 1: This Section Added an Entirely New Section 4.5 for Six New Engines That Never Existed Before.

EPA denies the Petitioner's request for an objection on this claim.

EPA determined that the Petitioner did not demonstrate how the creation of Section 4.5 in the permit is a significant modification to the permit. EPA takes the position that Petitioner's brief critiques of the modification of the permit did not demonstrate that the Illinois Environmental Protection Agency wrongly processed the permit change as a minor modification instead of a significant modification under the relevant legal authorities

Claim 2: The Summary of Changes Says That All This Modification Has Done Is Incorporate a Couple Construction Permits.

EPA denies the Petitioner's request for an objection on this claim.

Similar to the analysis under EPA's response to Claim 1, the federal agency takes the position that the Petitioner failed to demonstrate that the Illinois Environmental Protection Agency should have considered this modification to be a significant modification of the permit. The response states in part:

- Section 2 is not entirely new to the permit
- Petitioner's one-sentence summaries of "some of these new additions" to Section 4.2 do not explain why or how any of these additions would qualify as a significant modification under any relevant regulations

Claim 3: The Illinois Environmental Protection Agency Deems the Upon Request to Test is Obsolete . . . Because 2.4 Already Requires It.

EPA denies the Petitioner's request for an objection on this claim.

EPA states that the Petitioner did not provide any explanation or analysis to demonstrate that the modification referenced is a "relaxation of testing requirements" under any EPA or Illinois rules or regulations.

Claim 4: The Summary of Changes Has No Mention That This Area is an Environmental Justice Community.

EPA denies the Petitioner's request for an objection on this claim.

EPA states that the Illinois Environmental Protection Agency did in fact publish a statement of basis for the permit modification that explained the changes made to the permit. Again, the federal agency takes the position that the Petitioner has not demonstrated that the Illinois Environmental Protection Agency should have processed the permit modification as a significant modification instead of a minor modification. Further, EPA states the Petitioner does not cite to any relevant regulations or rules that the Illinois Environmental Protection Agency violated by not including environmental justice related information in the Summary of Changes/ Statement of Basis.

Claim 5: There Does Not Appear to Have Been Any Outreach Initiated Regarding This Permit Modification by the Illinois Environmental Protection Agency.

EPA denies the Petitioner's request for an objection on this claim.

EPA states it will only object to an Illinois Environmental Protection Agency's issuance of a permit in response to a Petition if it is demonstrated that the state agency did not comply with applicable requirements under the Clean Air Act. State-specific laws and policies are not applicable requirements under the Clean Air Act.

Claim 6: The U.S. EPA Has Failed to Be Responsive to Comments Submitted to Them and . . . Allowed for Issuance of [the] Permit to “ExxonMobil” 40 Without Objection.

EPA denies the Petitioner’s request for an objection on this claim.

EPA states that the Petitioner did not determine that the Illinois Environmental Protection Agency or EPA violated any relevant rules or regulations by not responding to Petitioner’s comments on this permit modification. The federal agency states that the Petitioner did not demonstrate that the Illinois Environmental Protection Agency should have processed the modification of the permit as a significant modification.

Claim 7: There Was No Compliance Schedule Which Would Have Required a Significant Modification.

EPA denies the Petitioner’s request for an objection on this claim.

EPA states that the Petitioner has not demonstrated that the facility is not in compliance with any applicable requirements, nor did it demonstrate that a compliance schedule is necessary for the facility according to any relevant rules or regulations. It characterizes Petitioner as presenting the hypothetical situation where the engines at the facility may not be in compliance with applicable requirements. No factual information about the facility’s actual compliance status is provided.

A copy of the Order can be downloaded [here](#).