

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

)	
IN THE MATTER OF:)	
)	
OPERATING PERMIT)	PETITION NO. 6-00-1
POLYPROPYLENE UNIT)	
BATON ROUGE POLYOLEFINS PLANT)	ORDER RESPONDING TO
EXXON CHEMICAL AMERICAS)	PETITIONERS' REQUEST
THAT)	
BATON ROUGE)	THE ADMINISTRATOR OBJECT
EAST BATON ROUGE PARISH)	TO THE ISSUANCE OF A
STATE)	
LOUISIANA)	OPERATING PERMIT
)	
PERMIT NO. 2581-VO)	
_____)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

On December 30, 1998, Ms. Marylee Orr, Executive Director of the Louisiana Environmental Action Network (LEAN), petitioned the United States Environmental Protection Agency (EPA) to object to the issuance of a permit for a polypropylene unit at Exxon Chemical Americas' Baton Rouge Polyolefins Plant in Baton Rouge, Louisiana (Exxon Permit). The petition was submitted on behalf of the North Baton Rouge Environmental Association and the Louisiana Environmental Action Network (collectively, Petitioners or LEAN).

The Louisiana Department of Environmental Quality (LDEQ) issued the final Exxon Permit on November 24, 1998. The

permit constitutes both a preconstruction permit issued pursuant to the Nonattainment New Source Review (NNSR) requirements of the Clean Air Act (Act), 42 U.S.C. § 7503, and a State operating permit issued pursuant to Title V of the Act, 42 U.S.C. §§ 7661 - 7661f. Ms. Orr also submitted a letter supplementing the petition on behalf of LEAN on January 5, 1999, and another letter on March 1, 1999 requesting that the Exxon Permit be reopened.

Petitioners have requested that EPA object to the issuance of the Exxon Permit pursuant to Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2). For the reasons set forth below, I deny the Petitioners' request. Petitioners also have requested that the Exxon Permit be denied or revoked based on alleged discrimination under Title VI of the Civil Rights Act. Today's order does not dispense with the Title VI complaint. EPA's Office of Civil Rights is reviewing Petitioners' Title VI complaint to determine whether to accept the complaint for investigation. EPA's OCR will be notifying Petitioners about its decision.

II. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating

permit program intended to meet the requirements of Title V. The State of Louisiana submitted a Title V program governing the issuance of operating permits on November 15, 1993, and subsequently revised this program on November 10, 1994. 40 C.F.R. Part 70, Appendix A. In September of 1995, EPA granted full approval of the Louisiana Title V operating permits program, which became effective on October 12, 1995. 60 *Fed. Reg.* 47296 (September 12, 1995); 40 C.F.R. Part 70, Appendix A. This program is codified in Louisiana Administrative Code (L.A.C.), Title 33, Part III, Chapter 5, Sections 507 *et seq.* Major stationary sources of air pollution and other sources covered by Title V are required to obtain an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with all applicable requirements of the Act. 42 U.S.C. §§ 7661a(a) and 7661c(a).

Under Section 505(b) of the Act, 42 U.S.C. § 7661d(b), the Administrator is authorized to review state operating permits issued pursuant to Title V and to object to permits that fail to assure compliance with applicable requirements of the Act. In particular, under Section 505(b)(1) of the Act, 42 U.S.C. § 7661d(b)(1), EPA is to object to the issuance of a proposed Title V permit if the Agency determines

that the issuance of the permit is "not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan." For the purposes of the Administrator's review and objection opportunity pursuant to Section 505(b), 42 U.S.C. § 7661d(b), the applicable requirements include the substantive and procedural requirements of the Louisiana NNSR program.¹

When EPA does not object to a Title V permit on its own initiative, Section 505(b)(2) of the Act, 42 U.S.C.

§ 7661d(b)(2), provides that any person may petition the Administrator to object to the issuance of the permit by

¹ Sections 110(a)(2)(C) and 172(c) of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and 7502(c), require each state to revise its State Implementation Plan (SIP) to include a NNSR program. EPA approved Louisiana's NNSR SIP revision for major sources on October 10, 1997. 62 *Fed. Reg.* 52948; 40 C.F.R. § 52.970(c)(68).

Under 40 C.F.R. § 70.1(b), "all sources subject to Title V must have a permit to operate that assures compliance by the source with all applicable requirements." Applicable requirements are defined in 40 C.F.R. § 70.2 to include "(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R.] Part 52."

Louisiana defines "federally applicable requirement" in relevant part, to include "any standard or other requirement provided for in the Louisiana State Implementation Plan approved or promulgated by EPA through rulemaking under title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in 40 C.F.R. Part 52, subpart T." L.A.C. 33:III.502. Thus, the applicable requirements of the Exxon Permit include the requirement to obtain an NNSR (preconstruction) permit that in turn complies with the applicable NNSR requirements under the Louisiana SIP.

demonstrating that it is not in compliance with all applicable requirements. See also 40 C.F.R. § 70.8(d). Pursuant to Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), petitions "shall be based only on objections that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)."

III. BACKGROUND

Exxon Chemical Americas, a division of the Exxon Chemical Company (Exxon), proposed to construct a polypropylene unit at the existing Baton Rouge Polyolefins Plant in Baton Rouge, Louisiana. Paxon Polymer Company, L.P. II is the owner of this facility; Exxon became the operator on January 1, 1998. Exxon submitted an application to LDEQ dated December 23, 1997 for a Part 70 Operating Permit (Title V Permit). Exxon also submitted additional information to LDEQ dated April 7, April 15, April 20, May 2, May 6, June 10, and June 15, 1998.

LDEQ submitted a proposed permit² for the polypropylene unit to EPA Region VI for review on June 25, 1998. The permit went out for public comment on July 7, 1998. EPA Region 6 provided written comments to LDEQ by a letter dated July 23, 1998. LDEQ faxed responses to EPA on August 6, 11, and 17, 1998. A letter dated August 4, 1998 (received by LDEQ on August 7, 1998) requested a public hearing. Notice of a public hearing was published in The Advocate, Baton Rouge, Louisiana, on September 15, 1998. LDEQ held a public hearing at the Alsen Community Center, Alsen, Louisiana on October 14, 1998. The public comment period ended October 30, 1998. On November 24, 1998, LDEQ issued the final permit to Exxon.

Under the authority of the permit, Exxon proposes to construct and operate a 700 million pound per year polypropylene unit at an existing polyolefins plant. The facility is subject to NNSR, Louisiana Air Quality Regulations, New Source Performance Standards, and is located in a nonattainment area.³ The net increase associated with

² Even though the permit was marked "draft", it met the definition of "proposed permit" in L.A.C. 33:III.502. "Proposed permit" is defined as "the version of a permit for which the permitting authority (DEQ) offers public participation, affected state review, or EPA review."

³ The Baton Rouge area is designated as a serious nonattainment area for ozone. See 40 C.F.R. § 81.319.

the unit is 32.54 tons per year (TPY) of volatile organic compounds (VOC). Exxon applied emission reduction bank credits to offset emissions from the polypropylene unit.⁴

IV. ISSUES RAISED

Petitioners request that the Exxon permit be denied or revoked on two general grounds: (1) alleged discrimination under Title VI of the Civil Rights Act; and (2) that the Baton Rouge ozone nonattainment area is not making reasonable further progress towards attainment, and that the additional emissions from the proposed polypropylene unit will adversely affect the ozone situation.⁵ Petition at 2 - 3. Each of these two grounds is discussed in more detail below.

A. Alleged Discrimination Under Title VI of the Civil Rights Act

Section 601 of the Civil Rights Act of 1964 provides the following:

No person in the United States shall, on the ground of race, color or national origin, be excluded from

⁴ See Letter from Frank E. Bains, Manager, Safety & Environmental Affairs, Exxon Americas, to Gustave A. Von Bodungen, Assistant Secretary, Air Quality Division, LDEQ (April 20, 1998) (submitting Feb. 18, 1998 LDEQ Emissions Reduction Credit Certificate for 40 tons of VOC for proposed polypropylene unit).

⁵ These objections were raised during the public comment period by a letter to LDEQ from Ms. Marylee Orr, Executive Director of LEAN, dated October 14, 1998.

participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d. Petitioners allege that the Exxon Permit should be denied because of the "discriminatory effects resulting from the issuance of pollution control permits by the State of Louisiana and [LDEQ] in and near the Alsen area of Louisiana, including the north Baton Rouge area," within the meaning of Title VI of the Civil Rights Act. Petition at 2. Petitioners further allege that the granting of a permit allowing air emissions from the proposed Exxon polypropylene unit will be a discriminatory act and will create a disparate impact that adds to an existing disparate impact on a racial or ethnic population, or creates a disparate impact on a racial or ethnic population. *Id.* Finally, Petitioners request that "EPA and the Department of Justice investigate all permitting efforts by the State of Louisiana and determine if civil rights violations have occurred due to effects resulting from the issuance of pollution control permits by . . . LDEQ in the Alsen and north Baton Rouge areas." *Id.*

Along with the alleged civil rights violations, Petitioners also raise environmental justice concerns. On February 11, 1994, the President issued Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in

Minority Populations and Low-Income Populations," 59 *Fed. Reg.* 7629 (February 16, 1994), and an accompanying memorandum, 30 *Weekly Comp. Pres. Doc.* 279-80 (February 11, 1994), to the heads of federal departments and agencies. Executive Order 12898 establishes the Administration's policy for identifying and addressing disproportionately high and adverse human health or environmental effects of federal agency programs, policies, and activities on minority communities and low-income communities.⁶ As noted in the Presidential memorandum that accompanies Executive Order 12898, it is designed to focus the attention of federal agencies on the human health and environmental conditions in these communities to realize the goal of achieving environmental justice. The Presidential memorandum emphasizes several provisions of environmental, civil rights, and other statutes that provide opportunities for agencies to address environmental hazards in minority communities and low-income communities. In relevant part, it identifies Title VI of the Civil Rights Act as a tool for promoting environmental justice in programs or activities

⁶ While Executive Order 12898 was intended for internal management of the executive branch and not to create legal rights, federal agencies are required to implement its provisions "consistent with, and to the extent permitted by, existing law." Sections 6-608 and 6-609, 59 *Fed. Reg.* at 7632-33.

affecting human health or the environment that receive federal financial assistance.

As a recipient of EPA financial assistance, the programs and activities of LDEQ, including its issuance of the Exxon Permit, are subject to the requirements of Title VI of the Civil Rights Act and EPA's implementing regulations (40 C.F.R. Part 7). As stated earlier, today's order does not dispense with the Title VI complaint filed with EPA's Office of Civil Rights (OCR). EPA's OCR is reviewing Petitioners' Title VI complaint to determine whether to accept the complaint for investigation. EPA's OCR will be notifying Petitioners about its decision.

To justify exercise of an objection by EPA to a Title V permit pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), Petitioners must demonstrate that the permit is not in compliance with the requirements of the Act, including the requirements of the Louisiana SIP. While there may be authority under the Clean Air Act to consider civil rights issues in some circumstances to justify objection to a Title V permit, Petitioners have not shown that their particular civil rights concerns are grounds under the Clean Air Act for objection to the Exxon Permit. Thus, the request to object on this ground is denied.

B. Reasonable Further Progress Towards Attainment

Petitioners also assert that the Exxon Permit should be denied because:

- (1) the Baton Rouge ozone nonattainment area is not making reasonable further progress towards attainment and doesn't adhere to the requirements of Title I of the Clean Air Act; and
- (2) the addition of air emissions from the proposed polypropylene facility will not help and will only hinder the area in achieving ozone attainment, and in meeting the ozone attainment and overall air quality requirements of Title I; this will not allow reasonable further progress for the purpose of ensuring attainment of the applicable national ambient air quality standard.

Petition at 2 - 3. Petitioners support their arguments through a discussion of the ozone exceedances days in the Baton Rouge area during 1998 and 1999. Petition at 3. These two issues will be discussed separately.

1. Reasonable Further Progress

As previously stated, to justify exercise of an objection by EPA to a Title V permit pursuant to Section 505(b)(2) of the Act, Petitioners must demonstrate that the permit is not in compliance with "applicable requirements" of the Act, which include the requirements of the Louisiana SIP. Petitioners' argument that the Exxon Permit should be denied because the Baton Rouge ozone nonattainment area is not making reasonable further progress is not a valid basis for objection to the permit, because the Title I reasonable further progress

obligation is not an "applicable requirement" for particular sources within the meaning and purview of the Title V operating permit program.

SIP requirements for nonattainment areas generally include an obligation that States meet reasonable further progress (RFP) milestones.⁷ RFP is a planning obligation for States required by the Act. See 42 U.S.C. §§ 7502(c)(2) & 7511a(b)(1). States meet this RFP obligation by adopting specific control measures applicable to particular sources through their SIPs. The RFP obligation itself, however, is not imposed directly on any particular source. Accordingly, this programmatic SIP obligation is not an applicable requirement intended to be implemented as a term or condition of Title V permits held by individual sources. See 40 C.F.R. § 70.2 (definition of applicable requirement). By comparison, the specific SIP control measures applicable to particular sources that are adopted in furtherance of the State's RFP

⁷ Reasonable further progress means "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 U.S.C. § 7501(1).

States with ozone nonattainment areas classified as moderate or higher under Section 181(a)(1) of the Act are required to include SIP provisions mandating specific amounts of reductions in ozone precursors within specified periods of time. See 42 U.S.C. §§ 7511(a)(1), 7511a(b)(1) & 7511a(c)(2)(B). The Baton Rouge area has been designated nonattainment for ozone and classified as serious. See 40 C.F.R. § 81.319.

obligation will be applicable requirements for particular permits. *Id.* With the possible exception of the issue addressed in section IV.B.2 below, however, Petitioners have not challenged the unlawfulness of any particular permit term in the Exxon Permit in support of its broader RFP claims.

In the preamble to the final rule promulgating 40 C.F.R. Part 70 (State Operating Permit Programs), EPA stated the following:

The EPA proposed that the NAAQS is a SIP requirement, not an "applicable requirement" for title V permits. In the case of large, isolated sources such as power plants or smelters where attainment of the NAAQS depends entirely on the source, EPA proposed that the NAAQS may be an applicable requirement and solicited comment on this position.

An environmental group commented that excluding protection of ambient standards, PSD increments or visibility requirements as applicable requirements are unlawful and bad policy. It argued that section 504(e) expressly defines "requirements of the Act" as "including, but not limited to, ambient standards and compliance with applicable increment or visibility requirements under part C of title I." Although this provision applies only to temporary sources, the group asserts that it would be anomalous for Congress to impose more comprehensive permit requirements for temporary sources than for permanent sources.

The EPA disagrees with the comment that would apply section 504(e) to permanent sources. Temporary sources must comply with these requirements because the SIP is unlikely to have performed an attainment demonstration on a temporary source. To require such demonstration as (sic) on every permitted

source would be unduly burdensome, and in the case of area-side (sic) pollutants like ozone where a single source's contribution to any NAAQS violation is extremely small, performing the demonstration would be meaningless. Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source. In its final rule, EPA clarifies that the NAAQS and the increment and visibility requirements under part C of title I of the Act are applicable requirements for temporary sources only.

57 *Fed. Reg.* 32250, 32276 (July 21, 1992); see also 40 C.F.R.

§ 70.2 (definition of applicable requirement). Like programmatic SIP demonstrations to attain the national ambient air quality standards (NAAQS), RFP is a broad SIP planning obligation for the State and not a Title V applicable requirement for a particular source. Finally, even if RFP were an applicable requirement for temporary sources under Section 504(e) of the Act, the Polyolefins Plant is not a temporary source. Even though these broader RFP issues cannot be addressed in this forum, I understand that the Region 6 Regional Administrator plans to address these concerns in a separate response.

2. Additional Air Emissions from the Proposed Facility

Petitioners also claim that "the addition of air emissions from the proposed polypropylene facility will not help and only hinder the area from achieving ozone attainment and in meeting the ozone attainment and overall air quality

requirements of Title I and not allow reasonable further progress for the purpose of ensuring attainment of the applicable national ambient air quality standard." Petition at 3. Since Petitioners do not object to any particular provision of the Exxon Permit, EPA has interpreted this concern about additional air emissions as raising the issue whether Exxon obtained the proper emissions offsets under Louisiana's NNSR regulations.⁸ NNSR requirements are applicable requirements and issues relating to NNSR may be addressed in a Title V petition. *See supra* at 4, n.1.

The NNSR program is a preconstruction review and permitting program for major stationary sources that is addressed in title I of the Act. The program regulates the

⁸ This interpretation is supported by the March 1, 1999 letter from Ms. Orr, which criticizes the Exxon Permit emissions offsets as an inadequate degree of reduction for the Baton Rouge area to achieve attainment with the ozone NAAQS. *See* Letter from Marylee Orr, Executive Director, LEAN, to Carol Browner, U.S. EPA Administrator (March 1, 1999).

This letter also raises a separate argument, not raised in the December 30, 1998 petition, contending that the Exxon Permit's 1.2:1 ratio of emissions offsets do not represent reasonable further progress within the meaning and requirements of Section 173(a)(1)(A) of the Act, 42 U.S.C. § 7503(a)(1)(A). These same petitioners have developed this argument more fully in an August 24, 1999 petition to EPA to object to the issuance of a permit by LDEQ to Borden Chemicals, Inc., for the construction and operation of a new formaldehyde plant in Geismar, Louisiana (Borden Permit). In the petition on the Borden Permit, Petitioners also challenge the 1.2:1 offsets ratio reflected there under Section 173(a)(1)(A). Because Petitioners' Section 173(a)(1)(A) arguments are more fully developed in the Borden petition, and because EPA's responses there will be accordingly more comprehensive, we will address those arguments in the order for the Borden petition rather than in today's order.

construction and modification of major stationary sources of air pollutants in areas designated nonattainment for a particular criteria pollutant. The particular Exxon project is located in an area that is classified as a serious nonattainment area for ozone; volatile organic compounds (VOC)⁹ are regulated as the surrogate air pollutants for ozone. Under the Act, permits to construct in a nonattainment area may only be issued to major new and modified sources if certain requirements set forth in Part D of Title I of the Act are met.¹⁰ Section 173(a)(1)(A) of the Act, 42 U.S.C.

§ 7503(a)(1)(A), provides that a preconstruction (NNSR) permit may be issued if the permitting authority determines that:

sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be significantly less than total emissions from existing sources . . . so as to represent . . . reasonable further progress (as defined in section [171] of [title I]). . . .

Thus, Exxon must obtain emission offsets in such an amount

⁹ EPA approved a petition for exemption from nitrogen oxides (NO_x) requirements for the serious ozone nonattainment area of Baton Rouge pursuant to Section 182(f) of the Act, 42 U.S.C. § 7511a(f). Therefore, NO_x NNSR is not required in this area. See 62 Fed. Reg. at 52949.

¹⁰ EPA approved the State of Louisiana's NNSR SIP revision (which implemented the requirements of Part D) on October 10, 1997. 62 Fed. Reg. 52948. The NNSR requirements for major sources are set forth in L.A.C. 33:III:504.

that represents reasonable further progress.¹¹ In addition,

EPA interprets section 173(a)(1)(A) to ratify current EPA regulations requiring that the emissions baseline for offset purposes be calculated in a manner consistent with the emission baseline used to demonstrate RFP. Regarding the amount that is necessary to show noninterference with RFP, EPA will presume that so long as a new source obtains offsets in an amount equal to or greater than the amount specified in the applicable offset ratio . . . the new source will represent RFP.

57 *Fed. Reg.* 13498, 13552 (April 16, 1992).

The net increase associated with the polypropylene unit is 32.54 TPY of VOC. The Louisiana SIP requires offsets at the ratio of 1.2:1, or 39.05 TPY. L.A.C. 33:III.504.Table 1. The Polyolefins Plant received 40 TPY of VOC emission credits from the nearby Exxon-Baton Rouge Chemical Plant on January 20, 1998. LDEQ issued an Emission Reduction Credit Bank Certificate on February 18, 1998 for 40 tons of VOC.¹² Exxon

¹¹ In this case, emissions offsets designed to meet RFP are implemented through a NNSR permit program required under Louisiana's SIP. Thus, the State carries out its programmatic RFP obligation, in part, through a SIP permit program applicable to individual sources. The terms and conditions of those SIP permits are applicable requirements of a Title V permit, and the substantive and procedural validity of those requirements may be challenged through Title V procedures. As noted earlier, however, the programmatic RFP obligation is not itself a Title V applicable requirement and may not be challenged through this petition process.

¹² See Letter to Gustave A. Von Bodungen, Assistant Secretary, Air Quality Division, LDEQ from Frank E. Bains, Manager, Safety & Environmental Affairs, Exxon Americas (April 20, 1998), with attached LDEQ Emissions Reduction Credit Certificate (Feb. 18, 1998). L.A.C. 33:III.607.F requires that emission reduction credits be surplus emission reductions. Surplus

(continued...)

applied these credits to offset emissions from the polypropylene unit.¹³ This means that these credits are retired, resulting in a net reduction in area wide baseline emissions. Since offsets greater than 39.05 TPY were obtained, EPA presumes that RFP has been met. See 57 Fed. Reg. at 13552. Petitioners failed to provide any evidence to overcome the presumption that RFP has been met. *Id.* Therefore, the request to object on this ground is denied.

V. CONCLUSION

For the reasons set forth above, I deny the petition of LEAN requesting the Administrator to object to issuance of the Exxon Permit pursuant to Section 505(b) of the Act, 42 U.S.C. § 7661d(b).

Date:

Carol M. Browner
Administrator

(...continued)

emission reductions are those "emission reductions that are voluntarily created for an emissions unit and have not been required by any local, state, or federal law, regulation, order or requirement and are in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards." L.A.C. 33:III.605.

¹³ See *supra* at 7, n.4.