

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 4
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NOTICE OF INTENT TO RESCIND NEGATIVE DECLARATION

NOTICE OF INCOMPLETE APPLICATION

May 21, 2015

Tom Keefe, Director
Environmental Health & Safety Operations
Global Companies, LLC
800 South Street
Waltham, MA 02454

RE: Global Companies, LLC
Albany Terminal
50 Church Street- Port of Albany
Albany, New York 12202
DEC Application: 4-010-00112/00029

Dear Mr. Keefe,

For all of the reasons outlined below, including without limitation new information identified in public comments and changes in circumstances not previously considered, the Department is hereby announcing its intention to rescind the November 21, 2013 Negative Declaration (the Negative Declaration) issued in connection with Global's September 8, 2013 Title V Permit Modification Application (Modification Application). In addition, the Department is hereby rescinding its November 21, 2013 Notice of Complete Application.

Background

On June 12, 2013, Global submitted its initial Modification Application. On July 25, 2013 the Department sent Global a Notice of Incomplete Application (NOIC). On September 6, 2013, Global resubmitted its response to the NOIC which included a Long Form Environmental Assessment. On November 8, 2013, Global resubmitted its Modification Application.



Department of
Environmental
Conservation

Thereafter, on November 21, 2013, following the Department's initial review of the Modification Application, the Department issued a Notice of Complete Application (NOCA) and Negative Declaration. The NOCA was published in the Albany Times Union during the week of November 24, 2014. On November 27, 2013, the Department published the NOCA and Draft Title V Permit Modification in the Environmental News Bulletin (ENB).

The NOCA's original 30 day public comment period was scheduled to expire on December 27, 2013, but was extended by 60 days and then subsequently extended four additional times until December 1, 2014. The extensions were made public by press releases and ENB notices. By the close of the public comment process on December 1, 2014, 19,000 comments were submitted.

I. Basis for Rescinding Negative Declaration

The Department initially concluded that, as of November 21, 2013, Global's Modification Application did not have significant adverse impacts on the environment. However, 6 NYCRR § 617.7(f) provides that the Department "must rescind a negative declaration when substantive: (i) changes are proposed for the project; or (ii) new information is discovered; or (iii) [when] changes in circumstances arise; that were not previously considered and the lead agency determines that a significant adverse impact may result." (emphasis added). Here, all three categories set forth in § 617.7(f) have been triggered and the Department is compelled to rescind the Negative Declaration.

A. Project Changes Made After the Submission of the Modification Application Require Rescission of the Negative Declaration.

On August 3, 2014 Global proposed removing tank 118 from the project. In addition, Global also proposed to substitute a more stringent emission cap for its barge loading vapor combustion unit (VCU).¹ As discussed below, Global did this to avoid triggering a new source review (NSR).

¹ Global submitted a stack test and statement from the commercial vendor that supplied the VCU in support of this new emission limit. However, the long term performance of the VCU at this lower emission rate remains unproven.

This change resulted in a new configuration of the facility that may increase the environmental impacts on nearby residents. This new configuration of Global's facility was not considered when the Department issued its Negative Declaration on November 21, 2013. Altering the operating limits of the VCU might not be significant under all circumstances. However, because of the close proximity of the 137 unit Ezra Prentice Homes residential housing development to Global's facility, the potential for these proposed changes to have significant adverse impacts on the environment must be fully analyzed. These changes, which were only made after issuance of the Negative Declaration, provide a legally sufficient basis to rescind the Negative Declaration.

B. New Information Received During the Public Comment Period Warrants Rescission of the Negative Declaration.

The permit application proposed the installation of seven boilers that would be used to heat bitumen. The bitumen is too thick to be easily unloaded from the rail cars during the colder months and must be heated.

Hydrogen sulfide is present at relatively high levels in the bitumen as compared to the Bakken crude oil now being transported to the Global facility from North Dakota. Bakken crude oil and bitumen are formed in different types of geologic formations and, unlike Bakken crude oil, the bitumen naturally contains more sulfur. There is a documented variability in the hydrogen sulfide (H_2S) content in bitumen. Hydrogen sulfide has a strong disagreeable odor which, according to the Agency for Toxic Substances & Disease Registry, can be detected at low concentrations in air ranging from 0.0005 to 0.3 parts per million.

During the public comment process, Albany County Department of Health, Earthjustice and others expressed concerns about potential emissions of sulfur compounds such as H_2S and mercaptans, which are found in crude oil and cause potential adverse health impacts, odors and corrosion. These comments and related materials provided the Department information concerning odor and other problems at a crude oil refinery and transfer station in New Brunswick, Canada, that processes thicker crude oils. That information was not considered when the Department issued its initial Negative Declaration.

The Department's review of these public comments and documents reveals little experience with heating diluted bitumen in major oil storage facilities in an urban setting in North America. Importantly, the residential units in the South End of Albany are less than one-quarter mile from Tank 33 which is to be reconstructed with a floating roof and refitted with heating coils to store heated bitumen. This new information suggests that the proposed project has the potential for at least one significant adverse environmental impact that was not considered in the Negative Declaration.

Accordingly, the Department must rescind the Negative Declaration on this basis alone.

C. Changed Circumstances Including Recent "Dilbit" Spills Require Rescission of the Negative Declaration

Between 2007 and 2011, the sixteen above ground storage tanks at Global's terminal were used to store gasoline, ethanol, distillate, butane, additive and crude oil. In 2011, Global was authorized to store crude oil in their existing petroleum storage tanks and to load crude oil at its marine loading rack. The proposed Permit Modification would allow Global to add natural gas fired boilers to provide heat that would allow the transport of more viscous crude oil and biofuel. The existing offloading facility would also be equipped to heat the viscous crude oil to facilitate its offloading, storage and loading onto barges for transport to East Coast refineries. Since the Negative Declaration was issued in 2013 it has become increasingly apparent that as a result of the series of modifications to Global's permits the mix of materials stored at this facility would likely change to include increased volumes of tar sands oil and other heavy crudes.

The tar sands oil and other heavy crudes which could be heated at Global's facility if a permit were issued are generally heavier than water. Due to the viscosity of tar sands oil it is normally diluted with a less viscous petrochemical for shipping. The resultant mixture is referred to as "dilbit". It can have a specific gravity greater (heavier) than water.²

² Dilbit can contain a range of bitumen from 50-90% and a range of diluent from 10-50%. The greater the percentage of bitumen the higher the specific gravity. Dilbit MSDS sheets can vary in stating the specific gravities because of this variability in content of bitumen and diluent. A

A 2013 pipeline spill of dilbit in Michigan raised concerns beyond the expected issues and impacts from a typical oil spill because the oil sank to the bottom of the Kalamazoo River.³ The Kalamazoo spill was the first spill response and damage assessment involving dilbit for the National Oceanic and Atmospheric Administration (NOAA). Oil that sinks below the surface of a waterbody becomes much harder to recover. Dilbit is a heavy crude mixture but it is different from naturally occurring heavy crudes because of the addition of lighter hydrocarbons as the diluents. NOAA determined that four to five times more dilbit evaporated than intermediate fuel oil (heavy oil with no diluent). The evaporation creates denser petroleum which, over time, weathers to the specific gravity of freshwater.

For dilbit spills where the petroleum will weather and sink, other approaches are needed to remove the oil from bottom sediments and the shoreline. In some circumstances, agitation of sediments on the bottom and shorelines may be necessary to recover oil.⁴

The Negative Declaration did not fully consider the adequacy of Global's Spill Prevention, Control and Countermeasures Plan (SPCC Plan) to address potential spills of dilbit into the Hudson River and consequently must be rescinded.⁵

Cenovus Energy Inc. MSDS for dilbit identified the specific gravity range from 0.91-.94 below that of water.

³ The May 18, 2015 oil spill at Global's operations at the Port of Albany demonstrates the potential for significant adverse impacts to the environment and public health. The spill resulted in 400 gallons of crude sludge being spilled when a fitting on the containment device failed. Two people were transported to Albany Medical Center after being exposed to the spilled crude.

⁴ NOAA, Office of Response and Restoration website: "As Oil Sands Production Rises, What Should We Expect at Diluted Bitumen (Dilbit) Spills?" June 20, 2014
<http://response.restoration.noaa.gov/about/media/oil-sands-production-rises-what-should-we-expect-diluted-bitumen-dilbit-spills.html>

⁵ The April 10, 2015 MOSF license for this facility contains special conditions concerning the SPCC. However, these conditions are not a substitute for a comprehensive assessment of the adequacy of that plan.

II. The NOCA Must Be Rescinded

A. Comments Received Suggest that the Application Is Not Complete

The 19,000 comments submitted during the public comment period raised numerous issues which suggested that the Modification Application was not complete and the NOCA was not appropriate. Several commenters claimed that they were unable to evaluate how the proposed project would comply with the H₂S ambient air quality standard at 6 NYCRR 257-10.3. This issue was also raised during public information sessions and Global's representatives failed to explain how the project would comply with the H₂S standard. In addition, numerous commenters criticized the Modification Application for failing to provide sufficient information to determine the net emissions increase associated with the proposed project under the nonattainment NSR program. Several sophisticated parties stated that they were unable to determine whether this project triggers nonattainment NSR. These comments all suggest that because of the numerous changes to Global's application the record available for public review during most, and perhaps all, of the public comment period did not include an adequate description of the proposed project and all potential permit conditions necessary to satisfy applicable criteria.

B. EPA's Actions and Comments Indicate that the Application Is Not Complete

EPA's actions in this matter also indicate that the Modification Application is incomplete or was too cumbersome to be useful for public comment, or both. On April 28, 2014, EPA responded to the NOCA and draft permit by submitting a twelve-page letter with eleven comments (each with numerous subparts) plus numerous suggestions for monitoring. Importantly, EPA's comments indicated that Global's NSR analysis was inadequate. Then, on May 15, 2015, EPA took the unusual step of submitting a written request for an informal draft prior to the Department's issuance of a proposed permit. EPA's actions have special significance because the Clean Air Act (CAA) establishes a framework under which EPA has an oversight role in the issuance of air permits and can object to any permit conditions. If EPA objects, the Department cannot proceed until the objection is resolved. The CAA also requires the Department to submit proposed permits to EPA for review and approval prior to issuance. 42 U.S.C. § 7661(d).

EPA's May 15, 2015 letter suggests that EPA was unable to efficiently assemble and evaluate the application materials and supports the conclusion the Modification Application is incomplete.

C. The Modification Application Failed to Make Its Ambient Air Quality Standard Modeling for Hydrogen Sulfide Public

The Modification Application proposes to reconstruct Tank 33 with a floating roof and refit this tank with heating coils to store the heated bitumen. The bitumen would be heated to 120 degrees Fahrenheit according to the Modification Application. The installation of an internal floating roof is intended to mitigate the emissions of volatile organic chemicals during the loading and unloading of the tank but the tank will have no other control mechanism to treat gases such as hydrogen sulfide. Although Global has the burden to demonstrate its compliance with all regulatory standards including the Hydrogen Sulfide standard under 6 NYCRR 624.9(b), it has not submitted any actual hydrogen sulfide emissions data from a heated crude oil storage tank with an internal floating roof.

Although Global modeled projected hydrogen sulfide ambient emissions by assuming different concentrations of hydrogen sulfide in the bitumen, the hydrogen sulfide modeling was not publically available at the time the NOCA was issued. Moreover, the draft permit released at that time did not include any emission limit for H₂S. Therefore, the Modification Application is incomplete.

D. Compliance with New Source Review Requirements

Pursuant to DEC's NSR regulations, a plant modification with the potential to increase annual emissions of volatile organic compounds by more than 40 tons must demonstrate compliance with the new source review requirements of 6 NYCRR Part 231. In its permit application, Global concluded that the "project emission potential" was 39.59 tons and was, therefore, below the 40 ton threshold.

In reaching the conclusion that the projected emission increase was less than 40 tons, Global erroneously subtracted a 4.27 ton emission decrease attributable to converting one of its tanks (Tank 118) from volatile petroleum products such as gasoline to less volatile products. EPA

pointed out this error in its April 28, 2014 comment letter to the Department. EPA concluded that this deduction is not permissible under New York's NSR regulations. Restoring the emissions that Global improperly deducted in its permit application leaves a project emission potential of 43.83 tons, in excess of the 40 tons per year threshold that triggers NSR. Based upon EPA's comment, the Department has concluded that the NSR provisions in the Modification Application are incomplete.

Conclusion

Pursuant to 6 NYCRR 617.7(f)(2) you are allowed a reasonable opportunity to respond to the portion of this letter that announces the Department's intention to rescind the Negative Declaration. Any such response must be in writing and must state the factual and legal basis for your objection. Any response must be received within ten calendar days of the date of this letter. The Department reserves all of its rights, including those available pursuant to 6 NYCRR 617, to make additional findings or take additional action concerning the Negative Declaration.

Please contact me if you have any questions.

Sincerely Yours,

A handwritten signature in dark ink, reading "William J. Clarke". The signature is fluid and cursive, with the first name "William" and last name "Clarke" clearly legible.

William J. Clarke
Regional Permit Administrator
Region 4

Cc: Dean S. Sommer, Esq.