



GROUP AGAINST SMOG & POLLUTION

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February 6, 2017

VIA EMAIL (abinder@pa.gov)

Mr. Alan Binder
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222

**Re: Comments of Group Against Smog and Pollution Regarding Proposed
Title V Operating Permit for Blue Moon Compressor Station
(“Blue Moon C.S.”, Plan Approval (PA-63-00999A))**

Dear Mr. Binder:

Please accept these comments regarding the proposed plan approval referenced above, which I am submitting on behalf of the Group Against Smog and Pollution. According to the notice published in the Pennsylvania Bulletin on January 7, 2017, the Department is accepting comments on the proposed plan approval through February 6, 2017.

My address and telephone number are provided above.

Very truly yours,

/s

John K. Baillie

**COMMENTS OF THE GROUP AGAINST SMOG AND POLLUTION (“GASP”)
REGARDING THE DRAFT PLAN APPROVAL FOR
RICE POSEIDEN MIDSTREAM LLC’S BLUE MOON C.S. COMPRESSOR STATION
(#PA-63-00999A)**

I. LEGAL BACKGROUND

New stationary sources in Pennsylvania that have the potential to emit at least 50 tons per year of volatile organic compounds (“VOCs”) or 100 tons per year of oxides of nitrogen (“NOx”) are subject to New Source Review (“NSR”) requirements.¹ To satisfy Pennsylvania’s NSR requirements, a new major source must show that it will: implement the Lowest Achievable Emission Rate², offset its potential to emit with Emission Reduction Credits,³ and conduct an alternatives analysis to demonstrate that the benefits produced by the facility will “significantly outweigh” the “environmental and social costs” that it imposes within Pennsylvania.⁴ The new facility’s operator must also show that its other facilities in Pennsylvania are being operated in compliance with applicable air pollution laws.⁵ NSR requirements were established to ensure that new major sources of air pollution would not, at a minimum, detract from the attainment of the National Ambient Air Quality Standards,⁶ and compliance with NSR requirements is mandated by the Clean Air Act.⁷

“An operator may not phase, stage, or delay a project or engage in incremental construction” to circumvent NSR requirements and thereby frustrate the purpose of those

¹ See 25 Pa. Code § 127.201(c).

² 25 Pa. Code § 127.205(1).

³ 25 Pa. Code § 127.205(4).

⁴ 25 Pa. Code § 127.205(5).

⁵ See 25 Pa. Code § 127.205(2).

⁶ *United Ref. Co. v. Pennsylvania Dept. of Envntl. Prot.*, 2008 E.H.B. 434, 445 (Aug. 7, 2008).

⁷ See 42 U.S.C. §§ 7502(c)(5) and 7503.

requirements.⁸ Accordingly, the Department is tasked with the responsibility of “guarding against efforts to disguise major projects as something less to avoid [NSR] requirements by breaking up what is in reality a major project into a potentially infinite series of smaller parts.”⁹ The Department may not abdicate that responsibility by deferring to an applicant’s proposed separation of tasks for permitting purposes.¹⁰ Rather, the Department must independently determine whether multiple tasks should be treated as a single major project, by considering “such factors as the relationship of the various tasks measured in time and space, the tasks’ operational, technical, and economic interdependence, whether the tasks are geared toward achieving a shared objective, whether the tasks were conceived originally as part of a common plan, and other relevant considerations.”¹¹

Those factors are consistent with the framework that the United States Environmental Protection Agency (“USEPA”) has used to determine whether projects should be aggregated for the purpose of determining whether NSR or Prevention of Significant Deterioration (“PSD”) requirements apply. Specifically, USEPA has analyzed five factors to make such aggregation determinations:

1. Has the applicant filed more than one application for a minor source or modification in a short time period (meaning, twelve to eighteen months)?
2. Has the applicant combined the projects for the purpose of financing them?
3. Has the applicant reported demand for the projects’ production that exceeds production levels that could be met by a minor source?
4. Have the applicant’s authorized representatives characterized the projects as a single source? And,

⁸ *United Ref. Co.*, at 445.

⁹ *Id.*

¹⁰ *See id.*

¹¹ *Id.*

5. Does the permitting authority's own analysis of the projects' economic realities, considered together, suggest that they should be aggregated? More specifically:
- Has the applicant undertaken the projects to accomplish the same overall goal?
 - Was the applicant aware of that goal as it undertook the projects? And,
 - Do the projects depend on each other to accomplish that goal?¹²

It is also important to note that an applicant's good faith intention to keep minor source projects separate for permitting purposes does not excuse the applicant's obligation to comply with NSR requirements if the projects aggregate emissions meet NSR thresholds and if the projects are consistent with the facility's "overall production goals or plans for a short planning period."¹³ Thus, if a facility originally envisioned as a minor source expands to become a major source in a short period to meet demand that could reasonably been anticipated, the facility must comply with NSR requirements.¹⁴

II. FACTUAL BACKGROUND

RPM submitted a plan approval application to install five compressor engines, two dehydrators, and four water storage tanks at Blue Moon C.S. on May 7, 2015 (the "May 7, 2015 Project"). The Department authorized the plan approval for the May 7, 2015 Project on October 6, 2015, and the project was installed and operating by April 2016. The May 7, 2015 Project

¹² See Letter from Kate Kelly, Director, Office of Air, Waste and Toxics, USEPA Region 10, to Alan Prouty, Director, Env'tl. & Reg. Affairs, J.R. Simplot Co. (Aug. 29, 2013), at 5-9, available at <https://www.epa.gov/sites/production/files/2015-07/documents/simplot.pdf>; accord Memorandum from John B. Rasnic, Director, Stationary Source Compliance Div., Office of Air Quality Planning and Standards, USEPA, to George Czerniak, Chief, Air Enforcement Branch, USEPA Region 5, regarding "Applicability of New Source Review Circumvention Guidance to 3M-Maplewood, Minnesota" (June 17, 1993), at 3-4, available at <https://www.epa.gov/sites/production/files/2015-07/documents/maplwood.pdf>.

¹³ Rasnic Memorandum, *supra* note 12, at 4.

¹⁴ *Id.*

purportedly was needed to fulfill a gas gathering contract between Rice Drilling B LLC, Rice Midstream Partners LP (RPM is a subsidiary of Rice Midstream Partners LP), and Alpha Shale Resources LP. That contract was finalized on December 22, 2014.¹⁵

On February 3, 2016, RPM submitted a plan approval application to install an additional five compressor engines, an additional two dehydrators, an additional four water storage tanks, and other miscellaneous tanks and equipment at Blue Moon C.S. (the “February 3, 2016 Project”). The February 3, 2016 Project purportedly was needed to fulfill a December 18, 2015 gas gathering contract between RPM, EQT Energy LLC, and EQT Production Company.¹⁶

The equipment included in the May 7, 2015 Project has the potential to emit approximately 93.78 tons per year of NOx and 30.06 tons per year of volatile organic compounds VOCs.¹⁷ The equipment included in the February 3, 2016 Project has the potential to emit approximately 82.87 tons per year of NOx and 20.74 tons per year of VOCs.¹⁸ Treated separately, neither Project is a major source of NOx or VOCs. However, if the Projects are aggregated, their emissions of NOx and VOCs will exceed major source thresholds (which are 100 tons per year for NOx and 50 tons per year for VOCs) and trigger NSR requirements.

III. THE PROJECTS ARE SUBJECT TO NSR REQUIREMENTS

The Department apparently determined that it is not necessary for RPM to aggregate the May 7, 2015 Project and the February 3, 2016 Project for NSR purposes because RPM did not originally anticipate a need for the February 3, 2016 Project.¹⁹ However, the fact that RPM

¹⁵ See Review Memorandum for Blue Moon C.S. (Dec. 9, 2016) (the “Review Memo”), at 16-17.

¹⁶ See *id.*

¹⁷ *Id.*, at 25(Table 14).

¹⁸ See *id.*, at 26 (Table 15) (providing aggregated emissions totals for the Projects).

¹⁹ See *id.*, at 17.

intended to conduct more limited operations at Blue Moon C.S. on May 7, 2015, when it applied for its first plan approval, does not excuse its obligation to comply with NSR requirements after its intent changed by February 3, 2016. Other natural gas producers operate in the vicinity of Blue Moon C.S., it was reasonable to anticipate that the Blue Moon C.S.'s capacity might be expanded to serve them.²⁰

The Department's analysis is also flawed because it failed to analyze all of the factors that were recognized as being relevant to an NSR aggregation analysis in the *United Refining* appeal. In fact, proper consideration of all of such factors compels the conclusion that the Projects should be aggregated.

First, the Projects are closely related in both time and space; they occupy the same site and would be authorized by plan approval applications that were submitted less than one year apart.

Second, it appears that the Projects share the same objectives: to gather gas produced at nearby wells; to process that gas; and to discharge it downstream to a transmission pipeline.

Third, it also appears that the Projects are operationally, technically, and economically interdependent. Indeed, the Projects will eventually be permitted to operate under the same Title V Operating Permit.²¹ Further, every indication is that the equipment at Blue Moon C.S. will be used interchangeably to process gas from different suppliers' wells, that the processed gas will be commingled when it is discharged to the transmission pipeline, and that RPM will gain

²⁰ Cf. Rasnic Memorandum, *supra* note 12, at 4 (recognizing that several minor modifications would require NSR "that may in good faith be intended to be separate" when the aggregate increases met NSR thresholds, occurred in a time period of "one year or 18 months," and could be reasonably anticipated given the nature of the facility's work).

²¹ See *id.*, at 11.

economies of scale and operational flexibility by combining the equipment from each of the two Projects at a single site.

The Department must perform an NSR applicability analysis for Blue Moon C.S. that gives proper consideration to all relevant factors, including the factors identified in the *United Refining* appeal and the factors that USEPA has identified as being relevant to such an analysis. It appears that proper consideration of all such relevant factors will result in the conclusion that Blue Moon C.S. is subject to NSR requirements.