



GROUP AGAINST SMOG & POLLUTION

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VIA e-Mail (pubcomment-ees.enrd@usdoj.gov)

Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Re: Comments on the Consent Decree in *United States v. MarkWest Liberty Midstream & Res., L.L.C.*, Civil Action No. 2:18-cv-00520-LPL (W.D.Pa.)
D.J. Ref. No. 90-5-2-1-11374

Dear Sir or Madam:

Please accept these comments regarding the proposed Consent Decree in the above-referenced action, which I am submitting on behalf of the Group Against Smog and Pollution. According to the notice published in the April 27, 2018 Federal Register, the Department of Justice is accepting comments on the proposed Consent Decree through May 29, 2018.

Thank you for your consideration of these comments. If you have any questions regarding them, please email (john@gasp-pgh.org) or call (412-924-0604 x 202) me.

Very truly yours,

/s

John K. Baillie
Senior Attorney

**COMMENTS OF THE GROUP AGAINST SMOG AND POLLUTION
REGARDING THE PROPOSED CONSENT DECREE IN
UNITED STATES v. MARKWEST LIBERTY MIDSTREAM & RESOURCES, L.L.C.**

The Attorney General is required to consider written comments regarding proposed consent orders and settlement agreements under the Clean Air Act to which the United States is a part, “and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with” the Act’s requirements.¹

The Complaint alleges that Defendant MarkWest Liberty Midstreams & Resources, L.L.C. (“MarkWest”) owns and/or operates certain compressor stations in Pennsylvania² (“MarkWest’s Pennsylvania Compressor Stations”) and stand-alone “pigging stations,”³ also in Pennsylvania (“MarkWest’s Pennsylvania Stand-Alone Pigging Stations”). The Complaint also alleges that MarkWest failed to comply with New Source Review (“NSR”) and Title V permitting requirements that apply to its Pennsylvania Compressor Stations because they are “major emitting facilities” and “major sources,” respectively, of volatile organic compounds (“VOCs”).⁴ The Complaint further alleges that MarkWest failed to obtain required “plan approvals” and operating permits for its Pennsylvania Stand-Alone Pigging Stations.⁵ Although

¹ See 42 U.S.C. § 7413(g).

² Complaint, ¶ 43.

³ Complaint, ¶ 44. “Pigging stations” are located along midstream natural gas pipelines like the ones that MarkWest operates in Pennsylvania; at a pigging station, a device called a “pig” may be “launched” into the pipeline to clean it. Pigs are taken out of pipelines at “pig receivers” along the pipeline. Complaint, ¶¶ 38-42

⁴ See Complaint, ¶¶ 47-56. In a nutshell, stationary sources of VOCs in the areas of Pennsylvania that are relevant to this action and that have the potential to emit at least fifty tons per year of VOCs are required to obtain an NSR permit from the Pennsylvania Department of Environmental Protection (“DEP”) before they are constructed, and may not be operated unless they have applied to DEP for a Title V Operating Permit.

⁵ See Complaint, ¶¶ 57-68. In Pennsylvania, each source of air pollution that does not qualify as a “major VOC emitting facility” is required to obtain a “plan approval” from DEP before it is constructed, unless the source is otherwise exempted from the “plan approval” requirement. Similarly, each source of air pollution in Pennsylvania

the Complaint alleges that VOCs are released by pigging operations each time a pipeline is opened to launch or receive a pig,⁶ and that lines may be “pigged” on a daily basis,⁷ it does not allege the quantity of VOCs that may be emitted by such operations.⁸ Critically, the Complaint does not allege whether NSR and Title V permitting requirements were triggered at MarkWest’s Pennsylvania Compressor Stations because the VOC emissions from those facilities actually exceeded NSR and Title V thresholds, or, whether potential emissions of VOCs from those facilities exceed those thresholds.

The Complaint’s vague allegations permit inferences that, if true, would render the Consent Decree inadequate and inconsistent with the Clean Air Act and Pennsylvania’s SIP. First, MarkWest’s Pennsylvania Compressor Stations might have had actual VOC emissions that exceeded the NSR permitting threshold of fifty tons per year. However, the Consent Decree does not fully impose NSR permitting requirements on those facilities, which would contravene long-standing guidance from the United States Environmental Protection Agency (“EPA”). Second, each of MarkWest’s Pennsylvania Stand-Alone Pigging Stations might emit VOCs in quantities sufficient to trigger NSR and Title V permitting requirements. However, the Consent Decree does not purport to impose such requirements on any of those facilities.

The United States should not enter into the Consent Decree unless it eliminates the possibility that MarkWest’s Pennsylvania Compressor Stations had actual VOC emissions that actually exceeded the NSR threshold of fifty tons per year. If it is determined that actual emissions of VOCs from the Pennsylvania Compressor Stations did exceed that threshold, the

does not qualify as a “major source” may not be operated unless they have applied to DEP for an operating permit. Pigging operations are not exempted from either the plan approval or operating permit requirement.

⁶ Complaint, ¶ 42.

⁷ Complaint, ¶ 41.

⁸ Complaint, ¶ 42.

Consent Order must be modified so that MarkWest must comply fully with Pennsylvania’s NSR permitting requirements. Further, the United States should not enter into the Consent Order unless it determines that VOC emissions from MarkWest’s Pennsylvania Stand-Alone Pigging Stations do not exceed NSR and Title V permitting thresholds. If the emissions do exceed those thresholds, the Consent Decree must be modified to impose NSR and Title V permitting requirements on the Pennsylvania Stand-Alone Pigging Stations.

I. IF ACTUAL EMISSIONS OF VOCs FROM MARKWEST’S PENNSYLVANIA COMPRESSOR STATIONS EXCEEDED THE NSR THRESHOLD, MARKWEST SHOULD BE REQUIRED TO COMPLY FULLY WITH PENNSYLVANIA’S NSR PERMITTING REGULATIONS

A stationary source in Pennsylvania that emits, or has the potential to emit, at least fifty tons per year of VOCs is a “major facility.”⁹ The Clean Air Act requires that any new “major VOC emitting facility” in an area that does not attain one or more of the National Ambient Air Quality Standards obtain an NSR permit before it is constructed or operated.¹⁰ Pennsylvania implements this requirement through the regulations at 25 Pa. Code §§ 127.121 – 127.218, which have been approved by EPA and incorporated into Pennsylvania’s State Implementation Plan,¹¹ as required by the Clean Air Act.¹² Those regulations require that the owner or operator of a new “major facility” in a Pennsylvania nonattainment area demonstrate at least the following to obtain an NSR permit before construction:

⁹ See Complaint, ¶ 18 (discussing 42 U.S.C. §§ 7511c(a) and 7511c(b)(2)); see also 25 Pa. Code § 121.1 (defining “major `facility”).

¹⁰ See 42 U.S.C. § 7503(a).

¹¹ See 40 C.F.R. § 52.2020(c)(1).

¹² See 42 U.S.C. § 7410(a)(2).

- that the new source or modification complies with the “lowest achievable emission rate” (“LAER”);¹³
- that all of the owner or operator’s facilities in Pennsylvania are in compliance with Pennsylvania’s air pollution regulations, or are subject to a compliance schedule approved by DEP;¹⁴
- that the increased emissions from the new facility or modification be offset with emission reduction credits (“ERCs”);¹⁵ and
- that an alternatives analysis be performed for the new facility or modification, and that such analysis demonstrates that the benefits of the proposed new facility will outweigh its environmental and social costs in Pennsylvania.¹⁶

EPA’s long-standing “Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements” (the “NSR Guidance”) states that a source that failed to obtain a required NSR permit before construction and that has emissions that actually exceed the applicable NSR threshold “should be required to comply fully with all applicable NSR requirements, including major NSR permitting, control technology, air quality impact analysis and offsets.”¹⁷ On the other hand, if a facility that failed to obtain a required NSR permit before construction is subject to NSR based on its potential to emit, but has actual emissions lower than the applicable NSR threshold, it “should be required to achieve [LAER]-equivalent emission reductions” at a minimum, and may be required to comply with other NSR requirements at the discretion of the enforcement agency.¹⁸

¹³ 25 Pa. Code § 127.205(1).

¹⁴ 25 Pa. Code § 127.205(2).

¹⁵ 25 Pa. Code § 127.205(3) and (4).

¹⁶ 25 Pa. Code § 127.205(5).

¹⁷ Eric V. Shaffer, Director, Office of Regulatory Enforcement, United States Env’tl. Prot. Agency, “Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements” (November 17, 1998), at 3, available at <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>.

¹⁸ *Id.*, at 4.

It is not clear from the Complaint whether MarkWest violated NSR at its Pennsylvania Compressor Stations based on their actual emissions of VOCs or their potential emissions of VOCs – the Complaint alleges only that those compressor stations are “major emitting facilities” subject to NSR¹⁹ and that MarkWest constructed and operated them without obtaining NSR permits.²⁰

More importantly, it also is not clear that the Consent Decree follows EPA’s NSR Guidance. The Consent Decree does not purport to require that MarkWest comply fully with Pennsylvania’s NSR requirements, by demonstrating its compliance with Pennsylvania’s air pollution laws, obtaining emissions offsets, and performing an air quality analysis. Although the Consent Decree does require that MarkWest implement new control technologies at its Pennsylvania Compressor Stations and Stand-Alone Pigging Stations, there is no indication that those technologies satisfy the LAER requirement in 25 Pa. Code § 127.205(1).²¹

The LAER requirement applies to “major sources” in Pennsylvania regardless of whether they are “major” due to actual or potential emissions. Thus, the United States should not enter into the Consent Decree until it at least determines that the new control technologies that are required by Paragraphs 12-15 of the Consent Decree satisfy the LAER requirement in 25 Pa. Code § 127.205(1). Further, the United States should not enter the Consent Decree until it determines whether actual emissions from any of MarkWest’s Pennsylvania Compressor Stations and Stand-Alone Pigging Stations exceeded applicable NSR thresholds. If they did, the Consent Decree should be modified so that MarkWest is required to comply fully with the Pennsylvania NSR requirements that apply to such “major VOC emitting facilities.”

¹⁹ Complaint, ¶ 48.

²⁰ Complaint, ¶ 49.

²¹ See Consent Decree, ¶¶ 12-15.

II. MARKWEST’S STAND-ALONE PIGGING STATIONS IN PENNSYLVANIA MAY BE SUBJECT TO NEW SOURCE REVIEW AND TITLE V PERMITTING REQUIREMENTS

Publicly-available information from DEP’s eFACTS website²² shows that MarkWest conducts pigging operations at each of the Pennsylvania Compressor Stations.²³ eFACTS also indicates that reported actual emissions of VOCs from MarkWest’s Pennsylvania Compressor Stations did not exceed, and in many cases did not approach, the fifty tons-per-year threshold that triggers Pennsylvania’s NSR and Title V permitting requirements:

Compressor Station	Location	2017 VOC Emissions (TPY)	2016 VOC Emissions (TPY)	2015 VOC Emissions (TPY)
Three Brothers	Smith Twp., Washington County	29	28	43
Brigich	Chartiers Twp., Washington County	Not available	12	16
Carpenter	Donegal Twp., Washington County	21	24	21
Dryer	Independence Twp., Washington County	15	15	15
Fulton	Mount Pleasant Twp., Washington County	19	17	17
Godwin	Canton Twp., Washington County	11	14	14
Hoskins	Blaine Twp., Washington County	15	18	20
Johnston	Chartiers Twp., Washington County	16	14	18
Lowry	Hopewell Twp., Washington County	26	19	23
Royal Oak	Forward Twp., Butler County	21	25	15
Shaw	Chartiers Twp., Washington County	14	13	15

²² <https://www.ahs.dep.pa.gov/eFACTSWeb/default.aspx>.

²³ However, eFACTS does not show that DEP has issued any Air Quality permits to MarkWest for the Trillith Compressor Station, so there is no information available on eFACTS showing the sources that might be installed there.

Smith	Smith Twp., Washington County	24	22	27
Stewart	Mount Pleasant Twp., Washington County	21	15	20
Trillith	Lancaster Twp., Butler County	Not available	Not available	Not available
Voll	Connoquenessing Twp., Butler County	4	7	7
Welling	Buffalo Twp., Washington County	21	40	42

Assuming that MarkWest did not report VOC emissions from pigging operations at its Pennsylvania Compressor Stations to DEP, it is possible that the VOC emissions from a stand-alone pigging operation might exceed NSR and Title V permitting thresholds. If, for example, the Voll Compressor Station (which reported only four tons of VOC emissions in 2017) qualifies as a “major VOC emitting facility” and “major source” because of unreported emissions from the pigging station located on site, then the VOC emissions from any pigging operation might by themselves exceed the NSR and Title V permitting thresholds of fifty tons per year.

If the VOC emissions from the pigging operations at the Pennsylvania Compressor Stations are significant enough to trigger NSR permitting requirements by themselves, then VOC emissions from MarkWest’s Pennsylvania Stand-Alone Pigging Stations might qualify them as “major emitting facilities” and “major sources” of VOCs. The United States should not enter into the Consent Decree until it determines whether any or all of MarkWest’s Pennsylvania Stand-Alone Pigging Stations qualify as “major emitting facilities” or “major sources” of VOCs. If any of them do, the Consent Decree should be modified so that MarkWest is obligated to comply with the NSR and Title V permitting requirements that apply to such facilities.