BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	)
	)
CertainTeed Corporation	)
	)
Permit No. MA0003531	)
	)

PETITION FOR REVIEW

TABLE OF CONTENTS PAGE NUMBER

Table of Authorities 2

Introduction 2

Threshold Procedural Requirements 4

Factual and Statutory Background 4

Issues Presented for Review 5

Argument 5

Statement of Compliance with Word Limitation..... 7

Conclusion 7

Certificate of Service..... 9

List of Attachments 10

INTRODUCTION

Pursuant to 40 C.F.R. § 124.19(a), CertainTeed Corporation ("Petitioner" or "CertainTeed") petitions for review of the conditions of the National Elimination Discharge Permit ("NPDES"), Permit No. MA0003531 ("the Permit"), which was date stamped on January 13, 2015 as being issued to ("Permittee" or "CertainTeed") by David M. Webster, Chief, Water Permits Branch, Office of Ecosystem Protection with the United States Environmental Protection Agency, Region 1 in Boston, MA.

The permit at issue in this proceeding authorizes CertainTeed to discharge from its facility to the Neponset River in accordance with the effluent limits, monitoring requirements and other conditions of the Permit. Petitioner contends that certain conditions are based on erroneous findings of fact and conclusions of law. Specifically, Petitioner challenges the following permit conditions:

With respect to Outfall 002:

- The Permit contains an average monthly limit of 20 mg/L and a maximum daily limit of 30 mg/L for TSS at Outfall 002. However, Outfall 001 has an average monthly limit of 40 mg/L and a maximum daily limit of 70 mg/L. In addition, Outfall 002 only discharges approximately once a year as CertainTeed has performed maintenance in the area that leads to Outfall 002 to reduce the likelihood of any discharges. We find no design data or historical record that supports these lower limits. We believe the original limits to have been established in error. Further the derived BPT and BAT for Outfall 001 support a higher TSS limit.
    - We request the TSS limit for Outfall 002 be changed to be equal to Outfall 001.

With respect to Outfall 003:

- The Permit contains a maximum daily limit of 15 mg/L for TSS at Outfall 003. However, Outfall 001 has a maximum daily limit of 70 mg/L. We find no design data or historical record that supports these lower limits. We believe the original limits to have been established in error. Further the derived BPT and BAT for Outfall 001 support a higher TSS limit.
    - We request the TSS limit for Outfall 003 be changed to be equal to Outfall 001.

With respect to Outfall 004:

- The Permit contains a maximum daily limit of 15 mg/L for TSS at Outfall 004. However, Outfall 001 has a maximum daily limit of 70 mg/L. We find no design data or historical record that supports these lower limits. We believe the original limits to have been established in error. Further the derived BPT and BAT for Outfall 001 support a higher TSS limit.
    - We request the TSS limit for Outfall 004 be changed to be equal to Outfall 001.

With respect to Whole Effluent Toxicity Test

- There is a discrepancy with the sampling requirements in the footnote and table. Footnote 16 lists sampling requirements that include total solids, dissolved solids and total chlorine. The table does not include these requirements.
    - This discrepancy needs to be clarified.

With respect to Parts I.A.1 through 4 footnote 3

- Footnote 3 for Parts I.A.1 through 4 requires that storm water samples be collected within the first 30 minutes of a storm event with a maximum collection time of three hours. In the Permit the requirement has been changed to collecting a sample in the first 15 minutes with a maximum collection time of one hour. The reason for this requirement is so that the sample is collected during the "first flush." Outfall 002 is a settling pond. It is not possible to capture the "first flush" at this Outfall. Collecting a sample within 15 minutes of discharge would be virtually impossible, especially given the winter weather in MA. Moreover, the Outfall rarely discharges so it would be virtually impossible to collect a sample during a "first flush" if the event occurred when the facility is not operating or no one is available to collect the sample.
    - We request that the sampling requirements in footnote 3 for Parts I.A.1 through 4 remain the same, that is, "storm water samples are be collected within the first 30 minutes of a storm event with a maximum collection time of three hours."

THRESHOLD PROCEDURAL REQUIREMENTS

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. part 124, to wit:

1. Petitioner has standing to petition for review of the permit decision because it commented in writing to EPA regarding the draft NPDES Permit *See* 40 C.F.R. § 124.19(a). A copy of the comments are attached hereto and incorporated herein.

2. The issues raised by Petitioner in its petition were raised in its comments. See comments attached.

FACTUAL AND STATUTORY BACKGROUND

The CertainTeed facility in question is an asphalt roofing and granule plant. The facility has several Outfalls that have been permitted. This permit involved in this appeal was, in part, a renewal of the existing permit.

ISSUES PRESENTED FOR REVIEW

The arguments and issues are set forth throughout this Petition. Some of the issues are set forth below:

1. Whether EPA errorred in treating Outfalls at the same facility differently for purposes of setting TSS limits.
2. Whether EPA errorred in deciding some, but not all of the conditions and limits for TSS were based on technical mistakes.
3. Whether EPA errorred in deciding to change the technical mistakes they believe occurred in prior permits for the CertainTeed facility for some, but not all of the outfalls.
4. Whether EPA errorred in not considering and commenting on the amount of discharge and how the discharge occurs for the outfalls when setting the limits for TSS.
5. Whether there are incorrect and inconsistent statements and limits based on improper technology and facts relating to TSS limits and Whole Effluent Toxicity Tests.
6. Whether EPA errorred in requesting sampling occur in a specific time period for an Outfall where a discharge rarely occurs.

ARGUMENT

Petitioner incorporates the arguments and facts set forth above in the INTRODUCTION and ISSUES PRESENTED FOR REVIEW sections as if fully set forth herein.

The Permit contains inconsistent limits for TSS. When reviewing the Permit, EPA concluded that there were technical errors in one or more of the NPDES permits for the site. EPA decided to change a limit for the TSS based on the perceived errors but they did not change other technical errors.

There are four Outfalls at the CertainTeed facility which are included in the Permit. They do not have the same limits for TSS. This is an error and the facts upon which the EPA based the different TSS limits are erroneous.

1. Outfall 001 has an average monthly limit of 40 mg/L and a maximum daily limit of 70 mg/L.
    a. Outfall 001 has the *highest and most consistent* discharge.
2. Outfall 002 has an average monthly limit of 20 mg/L and a maximum daily limit of 30 mg/L.
    a. Outfall 002 only discharges *approximately once a year.*
3. Outfall 003 has a maximum daily limit of 15 mg/L.
    a. Outfall 003 *only has a discharge when it is manually activated.*
4. Outfall 004 has a maximum daily limit of 15 mg/L.
    a. Outfall 004 *only has a discharge when it is manually activated.*

There is no design data or historical record that supports different TSS limits for the four Outfalls at the CertainTeed facility. EPA determined that one or more of the limits in a prior permit for Outfall 001 was a mistake. EPA chose to correct the alleged mistake but then did not recognize the other historic errors which resulted in differing TSS limits. The outfall with the highest and most consistent discharge, Outfall 001 has the highest TSS limit. Any historic limits for the other three Outfalls were in error and are not supported by the activity at the site. There was simply a mistake that was not corrected, but now EPA is attempting to correct one of the errors, but not all of them. To substantiate the error, it is clear that the derived Best Practicable Control Technology Currently Available (BPT) and Best Available Technology

Economically Achievable (BAT) for Outfall 001 support the use of the TSS limit for Outfall 001 for the other Outfalls at the CertainTeed facility; Outfalls 002, 003 and 004.

The Permit contains detailed information supporting the TSS limit for Outfall 001, but contains NO information for the TSS limits for Outfalls 002, 003 and 004. (see pages 13-15, 22-23 and 25 of the Permit attached hereto). In part, the Permit states:

"TSS discharged to receiving waters may contribute to turbidity, oxygen depletion, or loading of nutrients and other pollutants. From January 1, 2009 through December 31, 2013, daily maximum TSS concentrations reported ranged from 0.4 to 190 mg/L, and monthly average TSS concentrations reported range from 0.8 to 63.2 mg/L. The 2005 Permit contained a maximum daily limit of 70 mg/L and a monthly limit of 40 mg/L for TSS. These limits were maintained to meet anti-backsliding requirements for limits established in the previous permit, issued September 30, 1997. The permit issued September 30, 1997 contained these limits, also based on meeting anti-backsliding requirements for limits established in the previous permit, issued June 24, 1975, and modified July 26, 1976 and January 9, 1979. The June 24, 1975 permit contained both production-normalized limits based on National ELGs in the Paving and Roofing Materials Point Source Category, Subpart C, Asphalt Roofing Subcategory and concentration-based maximum daily and monthly average limits of 70 mg/L and 40 mg/L, respectively, based on the treatment technology applied to the effluent. The permit modification of July 26, 1976 updated the production-normalized limits to account for increased production at the Facility. *Therefore, EPA believes the carry-over of only concentration-based limits for TSS from the June 24, 1975 permit has been in error. EPA must establish technology-based limits for TSS under the ELGs based on the appropriate measure of production for the Facility. These limits are calculated using the appropriate measure of production in pounds produced per day and the applicable factor in pounds per 1,000 pounds produced as follows* (emphasis added):

BPT: Maximum Daily TSS: 2,421,204 pounds produced x 0.056 pounds day 1,000 pounds produced = 136 lbs/day

Average Monthly TSS: 2,421,204 pounds produced x 0.038 pounds day 1,000 pounds produced = 92 lbs/day

BAT: Maximum Daily TSS: 2,421,204 pounds produced x 0.028 pounds day 1,000 pounds produced = 68 lbs/day

Average Monthly TSS: 2,421,204pounds produced x 0.019 pounds day 1,000 pounds produced = 46 lbs/day

Because the TSS limits calculated for BAT are more protective than BPT, the Draft Permit includes a *maximum daily limit of 68 lbs/day and an average monthly limit of 46 lbs/day for TSS* based on BAT limitations. The TSS limits included in the Draft Permit meet anti-backsliding requirements under the exception described in 40 CFR §122.44(l)(2)(i) since the omission of the mass-based limits were a technical mistake according to 402(a)(1)(b).

The Neponset River is impaired and requires a TMDL for sedimentation/siltation, TSS, and turbidity. There are no quantitative criteria for TSS in the Massachusetts WQSs; however, Massachusetts WQSs for Class B waters include a narrative criterion for solids which states "*These waters shall be free from floating, suspended and settleable solids in concentrations and combinations that would impair any use assigned to this Class, that would cause aesthetically objectionable conditions, or that would impair the benthic biota or degrade the chemical composition of the bottom*" (see 315 CMR 4.05(3)(b)5). Accepting the support determinations employed by MassDEP during the Neponset River Resource Assessment and

Boston Harbor Hydrologic and Water Quality Investigation, 8 TSS levels greater than 80 mg/L have reasonable potential to cause or contribute to an excursion above the narrative WQC for Class B waters. Given the impairment to the Neponset River and the concentrations of TSS measured in effluent from the Facility, the Draft Permit maintains the concentration-based limits for maximum daily and monthly average TSS of 70 mg/L and 40 mg/L, respectively. In addition, the Facility must incorporate solids minimization best management practices (BMPs) into its stormwater pollution prevention plan (SWPPP) for this outfall. Given that the concentration-based TSS limits are more restrictive than the concentration noted in the Neponset River Resource Assessment as an interpretation of the narrative criterion for solids, and in accordance with the exception to antibacksliding under §402(a)(1)(b) for the mass-based TSS limits, EPA has concluded that concentrations of TSS in discharges from the Facility will not violate Massachusetts' WQSs. Further, these limits are sufficient to comply with the anti-degradation provisions in the Massachusetts WQSs and policy implementing these provisions."

But, while EPA went to great lengths to discuss the TSS limit for Outfall 001, it did not substantiate the TSS limits for Outfalls 002, 003 and 004, all of which have little to no discharge. (see Permit pages 13-15, 22-23 and 25).

With respect to Whole Effluent Toxicity Test there are some factually incorrect statements and requirements in the Permit.

1. There is a discrepancy with the sampling requirements in the footnote and table. Footnote 16 lists sampling requirements that include total solids, dissolved solids and total chlorine. The table does not include these requirements.

With respect to Parts I.A.1 through 4 the Permit requires that storm water samples be collected within the first 30 minutes of a storm event with a maximum collection time of three hours. In the new draft permit the requirement has been changed to collecting a sample in the first 15 minutes with a maximum collection time of one hour. The reason for this requirement is so that the sample is collected during the "first flush." Outfall 002 is a settling pond. It is not possible to capture the "first flush" at this Outfall. Collecting a sample within 15 minutes of discharge would be virtually impossible, especially given the winter weather in MA.

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

This Petition contains fewer words than are allowed in a permit appeal and therefore complies with the word limitation.

CONCLUSION

Based on the above information, it is clear that there were some errors committed by EPA in the issuance of the Permit. In addition to the errors, the Environmental Appeals Board should exercise its discretion to correct the inconsistent limits for TSS in the Permit. The Permittee respectfully requests the following:

With respect to Outfall 002:

- We request the TSS limit for Outfall 002 be changed to the TSS limit for Outfall 001.

With respect to Outfall 003:

- We request the TSS limit for Outfall 003 be changed to the TSS limit for Outfall 001.

With respect to Outfall 004:

- We request the TSS limit for Outfall 004 be changed to the TSS limit for Outfall 001.

With respect to Whole Effluent Toxicity Test

- Correct the discrepancy with the sampling requirements in the footnote and table. Footnote 16 lists sampling requirements that include total solids, dissolved solids and total chlorine. The table does not include these requirements.

With respect to Parts I.A.1 through 4 footnote 3

- Change the sampling requirements to require that "storm water samples are to be collected within the first 30 minutes of a storm event with a maximum collection time of three hours."

Lauren P. Alterman, VP, EHS and
In-House EHS Counsel for
CertainTeed Corporation's Parent,
Saint-Gobain Corporation
750 E. Swedesford Road
Valley Forge, PA 19482
610-341-7838

Date: February 13, 2015

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition For Review in the matter of CertainTeed Corporation relating to Permit No. MA MA0003531 was served by United States First Class Mail and via fax on the persons below, this 13th day of February, 2015. In addition, an electronic filing was made to/on the Clerk of the Board for U.S.EPA.

Bridget Munster, Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, Second Floor
Boston, MA 02108
FAX 617-574-6880

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Ave., N.W.
Mail Code – 1103M
Washington, D.C. 20460-0001
FAX 202-233-0121

Lauren P. Alterman, VP, EHS and
In-House EHS Counsel for
CertainTeed Corporation's Parent,
Saint-Gobain Corporation
750 E. Swedesford Road
Valley Forge, PA 19482
610-341-7838

Date: February 13, 2015

LIST OF ATTACHMENTS

1. FINAL NPDES PERMIT MA0003531

2. COMMENT LETTER TO EPA REGARDING DRAFT NPDES PERMIT MA0003531

3. USEPA REGION 1 FRESHWATER ACUTE TOXICITY TEST PROCEDURE AND PROTOCOL

4. NPDES PART II STANDARD CONDITIONS (January, 2007)

5. DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES PURSUANT TO THE CLEAN WATER ACT (CWA) - MA0003531