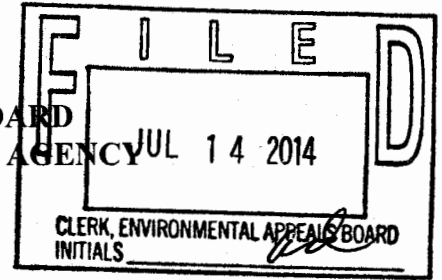


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC



\_\_\_\_\_)  
In re: )  
 )  
Footprint Salem Harbor )  
Development, LP ) PSD Appeal No. 14-02  
 )  
 )  
MassDEP Application No. 12-022 )  
MassDEP Transmittal No. X254064 )  
\_\_\_\_\_)

**ORDER DIRECTING SUPPLEMENTAL BRIEFING**

Four individuals (“Petitioners”) have jointly petitioned the Environmental Appeals Board (“Board”) for review of the Prevention of Significant Deterioration (“PSD”) permit issued by the Massachusetts Department of Environmental Protection (“MassDEP”) to Footprint Power Salem Harbor Development LP (“Footprint”) for the construction of an electric generating facility in Salem, Massachusetts. Both MassDEP and Footprint have filed responses to the petition. After examination of the petition and responses, the Board has determined that supplemental briefing from the U.S. Environmental Protection Agency’s Office of Air and Radiation (“OAR”) and Office of General Counsel (“OGC”) on one issue in the case would be helpful to the Board’s decision-making process. The issue in question concerns when best available control technology (“BACT”) must be applied to potential volatile organic compounds (“VOCs”) emissions from a new major stationary source.

Under the Clean Air Act regulations, a new major stationary source is required “to apply best available control technology for each regulated NSR [New Source Review] pollutant that it

would have the potential to emit in significant amounts.” 40 C.F.R. § 52.21(j)(2). Two critical defined terms in this requirement are “regulated NSR pollutant” and “significant.” “Regulated NSR pollutants” are defined as including pollutants “for which a national ambient air quality standard has been promulgated,” and designated precursors of such pollutants. *Id.*

§ 52.21(b)(50)(i). Ozone is the subject of a national ambient air quality standard, *id.* § 50.15, and the U.S. Environmental Protection Agency (“EPA”) has designated VOCs and nitrogen oxide as ozone precursors in all attainment and unclassifiable areas. *Id.* § 52.21(b)(50)(i)(a). The potential to emit in “significant” amounts is defined for “ozone” as a rate that would equal or exceed “40 tpy [tons per year] of volatile organic compounds or nitrogen oxides.” *Id.*

§ 52.21(b)(23)(i).

Petitioners claim that MassDEP erred by removing a proposed VOCs emission limit from the draft Permit. Amended Petition for Review at 20. According to Petitioners, the “plain language” of the applicable CAA regulations require that, if the aggregate weight of emissions of all ozone precursors (including VOCs) from a source exceed 40 tpy, then BACT must be applied to all ozone precursors whether or not they individually will exceed 40 tpy. *Id.* There appears to be no dispute between the parties that the Salem facility has the potential to emit two ozone precursors – nitrogen oxide (144 tpy) and VOCs (28 tpy) – at an aggregate level that well exceeds 40 tpy. However, MassDEP and Footprint argue that BACT requirements do not apply to the Salem project’s VOCs emissions because its VOCs emissions will not exceed the 40 tpy threshold. MassDEP’s Response to the Amended Petition for Review (“MassDEP Resp.”) at 45-46; Response from Footprint Power Salem Harbor Development LP to the Amended Petition for Review (“Footprint Resp.”) at 38-39.

The Board directs U.S. EPA's OAR and OGC to submit a supplemental brief that addresses the following question:

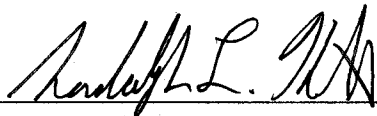
If a proposed new major stationary source has the potential to emit 40 tpy of either VOCs or nitrogen oxides but not both, what obligation does the permitting authority have, in applying BACT to ozone emissions, to apply BACT to the ozone precursor that does not exceed the 40 tpy standard?

EPA's OAR and OGC must file their supplemental brief on or before Friday, July 25, 2014. Petitioners, MassDEP, and Footprint may file a reply to U.S. EPA's brief, if they so desire, on or before Friday, August 1, 2014. Given the need for expeditious disposition of PSD permit appeals,<sup>1</sup> the Board will grant no extensions of time to these deadlines absent a showing of extraordinary circumstances.

So ordered.

Dated: JUL 14 2014

**ENVIRONMENTAL APPEALS BOARD**

By:  \_\_\_\_\_

for Kathie A. Stein  
Environmental Appeals Judge

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<sup>1</sup> See Order Governing Petitions for Review of Clean Air Act New Source Review Permits (EAB Apr. 19, 2011) available at [www.epa.gov/eab](http://www.epa.gov/eab).

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Directing Supplemental Briefing in the matter of Footprint Salem Harbor Development, LP, PSD Appeal No. 14-02, were sent to the following persons in the manner indicated:

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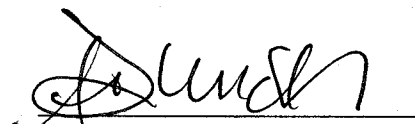
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Dated: JUL 14 2014

  
Annette Duncan  
Secretary

