

EXHIBIT D

Sierra Club's Request for Extension of Public Comment Period



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CLUB
FOUNDED 1892

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June 16, 2009

Via Electronic and U.S. Mail

Brad Frost, Hearing Officer
Illinois Environmental Protection Agency
121 North Grand Ave. East
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Springfield, IL 62794-9276

Laurel Kroack, Bureau Chief
Bureau of Air
Illinois Environmental Protection Agency
121 North Grand Ave. East
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**Re: Public Comment Period and Availability of Public Information
Vulcan Construction Materials, L.P., Permit No. 96020014**

Mr. Frost, Ms. Kroack:

On behalf of the Sierra Club and its members in Illinois, I write to request that the Illinois Environmental Protection Agency (IEPA) restart or extend the public notice and comment period for the Vulcan Construction Materials, L.P. Permit (Permit No. 96020014).

As you know, IEPA conducts permitting for major sources of air pollution located in attainment areas through a delegation of authority from the United States Environmental Protection Agency (U.S. EPA). *See* 40 C.F.R. § 52.21(u); Prevention of Significant Deterioration—Delegation of Authority to State Agencies, 46 Fed. Reg. 9580, 9582 (Jan. 29, 1981) (delegating federal PSD program authority within Illinois to the Illinois Environmental Protection Agency). IEPA is required to follow the procedures set forth in the Clean Air Act, 40 C.F.R. § 52.21 and Part 124. Those requirements include the following:

- An “analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility...,” which “shall be available at the time of the permit hearing on the application...” 42 U.S.C. § 7475(e)(3)(B), (C).
- That the agency must prepare a Statement of Basis, which includes, at a minimum, “the derivation of the conditions of the draft permit and the reasons supporting the tentative decision.” The Statement of Basis must be available to the public. 40 C.F.R. § 124.7.
- Public notice, including the name, address and phone number of a person from whom interested persons can obtain a copy of, *inter alia*, the application. 40 C.F.R. § 124.10(d)(1)(ii).
- That the public is to comment on “all ascertainable issues and submit all reasonably available arguments,” including “[a]ny supporting materials... in full... unless they are already part of the administrative record.” 40 C.F.R. § 124.13.

The Environmental Appeals Board has held that an opportunity for public comment on the basis for a state agency’s permit decision must be provided. *E.g., In re RockGen Energy Center*, 8 E.A.D. 536, 554-55 (EAB 1999) (holding that if the agency establishes a different BACT limit for startup and shutdown periods it must do so on the record and provide for public comment on the agency’s bases); *see also In re West Suburban Recycling & Energy Ctr., L.P.*, 6 E.A.D. 692, 710–11 (EAB 1996) (remanding PSD permit determination and requiring that state permit-issuing authority comply with permit decision process under part 124).

IEPA began the public comment period for the Vulcan Construction Materials (“Vulcan”) draft permit on April 17, 2009. The Public Notice for the permit states that the Statement of Basis (“project summary”) can be viewed at www.epa.gov/region5/air/permits/ilonline.html. However, that website only provides a copy of the Public Notice and the Draft Permit. The Statement of Basis is not linked.

Additionally, the Public Notice references that the permit allows restarting the facility and a summary of increment impacts. These considerations, and likely others that are raised in the Statement of Basis, require reference to the permit application, as well as historic permitting records for the facility. Sierra Club timely requested these documents from IEPA through a Freedom of Information Act (FOIA) request on or before May 4, 2009. IEPA’s response required Sierra Club to hire an outside contractor to make copies of the relevant documents at Sierra Club’s expense. Sierra Club received those copies today, June 16, 2009. Moreover, Sierra Club’s counsel received a call from IEPA stating that additional documents were located on micro fiche and that IEPA was printing those documents and would send them to Sierra Club separately. Sierra Club has not yet received those documents from IEPA.

Sierra Club believes that the files it was required to copy from IEPA, and those yet to be provided by IEPA, are critical to the public comment period because they are relevant to calculating available increment, the baseline concentration, BACT limits, and for assessing air quality impacts as well as impacts on vegetation, animals and soils.

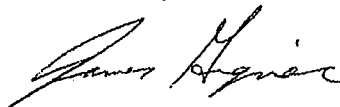
In short, although the applicable law requires public access to the application as an independent condition precedent to issuing a permit, as well as public access to the Statement of Basis, IEPA has not met these prerequisites. The Statement of Basis was not made available at the website that IEPA's Public Notice directs the public to. Additionally, the application and other relevant information was only made available today, due to the requirement on Sierra Club to hire a copying company to make copies of IEPA's records and to IEPA's need to obtain records from micro fiche and send them to Sierra Club.

Sierra Club has gone beyond its obligations by making copies of all relevant documents, including the Statement of Basis, despite IEPA's obligation to make these documents publically available.

Sierra Club believes that the failure to provide a Statement of Basis, and the delay in public access to the relevant files—including the application—would require a remand by the Environmental Appeals Board. However, in the interests of efficiency and full public comment opportunity, it would benefit the applicant, IEPA, and the public if IEPA addressed this issue now. IEPA should extend the public comment period for at least 30 days from the date all documents, including those that IEPA must locate from micro fiche, are provided.

If you have any questions about Sierra Club's position on this matter, please do not hesitate to contact me at (312) 251-1680 x147.

Sincerely,



James Gignac

cc: Sam Portanova, US EPA Region 5
(via email to portanova.sam@epa.gov)