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

In the Matter of:)
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Pio Pico Energy Center PSD Permit)
Docket no. EPA-R09-OAR-2011-0978)

PETITION FOR REVIEW

Introduction

Pursuant to 40 C.F.R. § 124.19(a), Helping Hand Tools, a California non-profit corporation (“Petitioner”) petitions for review of the conditions of Clean Air Act Prevention of Significant Deterioration Permit SD 11-01 (“the Permit”), which was issued to Pio Pico Energy Center, LLC (“PPEC”) on November 19, 2012 by Deborah Jordan, Director, Air Division, Region IX, Environmental Protection Agency. The Permit authorizes construction and operation of a 300 Megawatt natural gas-fired power plant in Otay Mesa, California.

Petitioner contends that EPA’s conclusion that the facility is not subject to PSD requirements for carbon monoxide (CO) is based on erroneous findings of fact and conclusions of law. Specifically, the calculation of CO potential emissions is based on the incorrect assumption that maximum CO emissions occur at the facility’s maximum capacity. This flaw causes the Permit to underestimate CO emissions to a level just below the PSD threshold. Petitioner requests that the Environmental Appeals Board (“Board”) review the Permit and remand to EPA with an order to cure deficiencies.

Factual and Statutory Background

Petitioner has been involved in the permitting of PPEC including CEC, CPUC, and the San Diego Air Pollution Control District (SDAPCD) proceedings. In July 2012 EPA Region 9 issued a proposed PSD permit and opened a public comment period lasting from June 20, 2012 to July 24, 2012. Petitioner timely submitted comments to EPA Region 9 on the proposed permit on July 24, 2012 via email.

EPA Region 9 issued this Final Permit at issue (PSD Permit No. SD 11-01), along with Responses to Public Comments (hereinafter “RTC”) on November 19, 2012. In the RTC, EPA responded to Petitioner’s comments, but did not adequately address some of Petitioner’s and other commenter’s concerns. Petitioner timely submits this permit appeal within 30 days of that November 19, 2012 notice date.

Threshold Procedural Requirements

Petitioner requests review of several permit conditions and the permit as a whole. Petitioner and others raised all issues below in comments, and these issues have therefore been preserved for review by the Board. All issues were raised during the public comment period to the extent required by the regulations at 40 CFR Part 124.

Argument

EPA's conclusion that PPEC is not subject PSD for CO is based on erroneous findings of fact.

Petitioner urges the Board to review whether the EPA erred in concluding PPEC is not subject to PSD for CO. Petitioner raised concerns in comments to EPA that the Permit underestimated maximum potential CO emissions, and therefore wrongly excused PPEC from CO PSD requirements. Specifically, CO potential emissions are calculated for the Permit using the assumption that CO emissions are at a maximum at the facility's maximum load. EPA acknowledged that this assumption, central to the Permit CO calculations, is false, but nevertheless accepted the result of the calculations. Petitioner is unsatisfied by EPA's explanation that the maximum CO emissions stated in the Permit applies to all loads.

It is likely that the PPEC has significant CO emissions as defined in 40 CFR 52.21, and the Board should direct EPA to review the faulty calculation showing otherwise. If PPEC is shown to have significant CO emissions, it should then be subject to PSD requirements for CO. 42 U.S.C. § 7475

As explained in detail in comments, the false assumption central to the faulty CO PTE calculation is that maximum CO emissions occur at 100% load, or maximum capacity at the facility. Carbon monoxide is a product of incomplete combustion and is emitted at higher rates at light and medium loads. EPA document AP42 Chapter 3.1-4. EPA acknowledged this dynamic, but nevertheless insists that applicant's CO calculations are still applicable.

The PSD Application states that CO PTE is 96.4 tons per year (tpy), as calculated using the maximum CO emission rate at 100% load. The application also claims that the maximum CO emissions at 100% load and 50% load are expected to be exactly the same. (See PPEC PSD Application, pages PSD-4.32, and PSD App -1.51) The reasoning behind this claim is unknown. EPA defends applicant's claim by saying that the same emission rates at different loads "reflects the control efficiency expected to be achieved by the oxidation catalyst." (see RTC #65, page 76) Control efficiency refers to how well the oxidation catalyst works. Even if control efficiency were the same for all loads, the CO emission rate would still be higher at lower loads. EPA fails to explain how oxidation catalyst control efficiency leads to identical emission rates at different loads. Petitioner urges the Board to remand the Permit to EPA to recalculate PPEC's PTE CO, perform PSD review including BACT analysis for CO, and cure any other deficiencies.

Petitioner suspects that the maximum CO emission rate for 100% load was used as a proxy for 50% load because the applicant falsely assumed that the 100% load figure was the maximum emission rate for any load. Absent a compelling explanation of the source

of the 50% figures, Petitioner maintains that the applicant, SDAPCD and EPA underestimated the PTE CO. Because the 96.4 tpy PTE is so close to the 100 tpy PSD threshold, Petitioner is concerned that the facility will avoid PSD due to this erroneous finding of fact.

EPA cannot rely on erroneous SDAPCD permit conclusions.

After purporting to validate the applicant's PTE CO calculations, EPA states that it can rely on the SDAPCD's 96.4 tpy CO permit limit as an "effective federally enforceable CO permit limit..." (RTC #65, page 76). As is shown above, the 96.4 tpy figure is based on false assumptions and therefore likely underestimates the facility's true potential to emit CO. It is unclear if EPA is claiming that it may rely on the 96.4 tpy permit limit even if the underlying calculation is flawed. The 96.4 tpy is meant to represent the facility's maximum potential CO emissions based on physical and operational design. *** If the plant cannot emit more than 96.4 tpy under the physical and operational design of the facility, then it is unnecessary to rely on a permit limit of 96.4 tpy. If EPA is attempting to allow PPEC to avoid PSD review for CO by relying on a permit limit of 96.4 tpy rather than a limit based on the facility's physical and operational design, this synthetic minor CO status must be made clear and examined in more detail.

The proposed monitoring of CO emissions with a continuous emission monitoring system (CEMS) does not alleviate any concerns regarding CO potential emissions. Even with a CEMS, which records actual emissions, there is nothing to show that the potential CO emissions are less than 100 tpy.

EPA did not adequately respond to other commenter's concerns.

Robert Sarvey submitted several comments within the comment periods to which EPA did not provide an adequate response. The first of these issues is that Environmental Justice considerations require on-site monitoring at the nearby correctional facilities. EPA responded to this comment by citing responses to other comments regarding on-site monitoring. (RTC comment # 59, page 65). None of the other responses cited refer to on-site monitoring at the correctional facilities to address the Environmental Justice concerns. EPA did not adequately respond to this comment.

The second issue Mr. Sarvey raised to which EPA's response is inadequate is that BACT for PM should be 5 lb/hr. Mr. Sarvey raised in comments that the CPV Sentinel project using the same equipment as PPEC achieving this limit in practice. EPA does not dispute this, but decided to issue PPEC the Permit with a PM emission limit of 5.5 lb/hr. (RTC comment # 50, page 50). EPA explains in response to comments that adding another significant figure (decimal place) maintains the same emission limit while reducing the margin of compliance because of rounding. While it is true that 5.49 lb/hr rounds to 5 lb/hr and 5.5 lb/hr for one and two significant figures, respectively, the same is not true for 5.54 lb/hr. 5.54 lb/hr constitutes compliance under 5.5 lb/hr but not for 5 lb/hr. 5.5 lb/hr may have a smaller margin of compliance, but it is a less restrictive limit than in currently being achieved in practice.

Conclusion

In conclusion, based on the above deficiencies, Petitioner requests the Board remand the Permit to EPA to cure any deficiencies as described above.

Thank you for reviewing this petition.

_____/s/_____

Johannes Hubert Epke

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