

Environmental Appeals Board
United States Environmental Protection Agency
Washington, D.C.

In Re Footprint Power Salem Harbor Development, LP)
_____)

PSD Appeal No. 14-02

MassDEP's Supplemental Brief

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Introduction

On July 25, 2014, EPA's Office of General Counsel (OGC) filed a supplemental brief on behalf of EPA's Office of Air and Radiation in which it concluded that the Massachusetts Department of Environmental Protection (MassDEP) acted correctly when it omitted volatile organic compounds (VOC) from Footprint Power Salem Harbor Development LP's (Footprint) Prevention of Significant Deterioration (PSD) Permit. MassDEP files this brief to voice its support for this conclusion. As more fully set forth below, the arguments made in the supplemental brief accurately reflect the reasons behind MassDEP's decision to omit VOC from Footprint's PSD Permit.

Argument

The Environmental Appeals Board Should Adopt the Conclusion Set forth in the Supplemental Brief that MassDEP Acted Correctly When It Omitted VOC from Footprint's PSD Permit.

On September 9, 2013, MassDEP issued a Draft PSD Permit (Exhibit 5),¹ a Draft PSD Fact Sheet (Exhibit 6) and a Proposed Plan Approval (Exhibit 25)² to Footprint in connection with a new natural gas-fired combined-cycle electric-generating facility in Salem, Massachusetts (SHR Project) and made these documents available to the public for review and comment. In the Draft PSD Fact Sheet, MassDEP made two determinations with regard to the SHR Project's VOC emissions.

First, MassDEP determined that the SHR Project's VOC emissions are not subject to PSD Review, because Massachusetts is designated as being in nonattainment with the 1997 8-hour

¹ Exhibit numbers refer to the number of the Exhibit attached to MassDEP's Response to the Petition for Review.

² The Plan Approval is a state permit that includes Non-Attainment New Source Review. See Exhibit 25, pp.5-11. See also Exhibit 23, p. 6-12 and Exhibit 5, p.2.

ozone standard. (Exhibit 13, p. 9). 40 CFR 52.21(b)(50)(i)(b)(1) defines VOC as an ozone precursor that is a New Source Review (NSR) regulated pollutant subject to PSD Review only if the source of the VOC is located in an area that is designated in attainment or unclassifiable with regard to ozone. Consistent with 40 CFR 52.21(b)(50)(i)(b)(1), the Draft PSD Fact Sheet expressly provides that review considerations with respect to nonattainment review are “not part of the PSD Review Process and are not addressed in this Fact Sheet.”³ (Exhibit 6, p. 5)

Second, MassDEP determined that the SHR Project’s VOC emissions are not subject to PSD review, since they are below the significant emission rate.⁴ 40 CFR 52.21(j)(2) expressly provides that a new major stationary source shall apply the best available control technology [BACT] for each NSR regulated pollutant that it would have the potential to emit in significant amounts.⁵ In the Draft PSD Fact Sheet, MassDEP included a chart that compared the significant emission rates set out in 40 CFR 52.21(23)(i) with the SHR’s potential emissions of these pollutants⁶. (Exhibit 6, p. 7). 40 CFR 52.21(23)(i) provides that the significant emission rate for

³ In the Proposed Approval, MassDEP determined that the SHR Project’s VOC emissions were not subject to nonattainment review because they were below the 50 tons per year (tpy) threshold. Consistent with state regulation, 310 CMR 7.02, MassDEP included a Best Available Control Technology (BACT) limit for VOC in the Proposed Plan Approval. Exhibit 25, p.5)

Because they are below the significant emission rate, the SHR Project’s VOC emissions would not be subject to PSD review even if Massachusetts were designated as being in attainment with the 1997 8-hour ozone standard.

⁴ 40 CFR 52.21(b)(50)(i) provides that NOx may be an NSR pollutant subject to PSD review for two reasons: (1) as an ozone precursor in areas that are in attainment or unclassifiable for ozone and (2) as a pollutant for which a national ambient air quality standard [NAAQS] has been promulgated. Unlike VOC emissions, emissions of NOx a pollutant for which a NAAQS has been promulgated, may be subject to PSD review, even if the source is located in an area that is designated as being in nonattainment for ozone, provided that the NOx emissions equal or exceed the significant emission rate. In this case, the SHR Project is located in an area that is classified as being in nonattainment with the 1997 8 hour ozone standard. MassDEP determined that the SHR Project’s NOx emissions are subject to PSD review and included a BACT limit for NOx in the PSD Permit. See Exhibit 5, pp. 5-7 and Exhibit 6, p.7. See also Exhibit 1, p.7 and Exhibit 24 pp. 5-7. Because Massachusetts is designated as being in nonattainment with the 1997 8-hour ozone standard, MassDEP also subjected the SHR Project’s potential NOx emissions to nonattainment new source review and included a limit based on LAER in the Plan Approval. See Exhibit 25, p. 5-7. See also Exhibit 23, pp. 6-8.

⁶ A similar chart appears in the Fact Sheet for the Pioneer Valley Facility Final PSD Permit issued by EPA Region 1. (Exhibit 27, p. 8).

ozone precursors is “40 [tons per year] tpy of volatile organic compounds or nitrogen oxides.”. Consistent with EPA practice, MassDEP compared the SHR Project’s potential VOC and NOx emissions with the significant emission rate of 40 tpy and determined that the SHR Project’s VOC emissions were not subject to PSD Review. *See* Exhibit 6, p. 7. *See also* permits cited on pp. 8-9 of EPA’s Supplemental Brief.⁷

MassDEP reviewed all the comments it received on the Draft PSD Permit and Draft Fact Sheet.⁸ On January 30, 2014, MassDEP issued to Footprint a final PSD Permit (Exhibit 24), PSD Fact Sheet (Exhibit 1), Plan Approval (Exhibit 23)⁹ and a Response to Comments Document. (Exhibit 20) The final PSD Fact Sheet contains the same two determinations with regard to VOC emissions included in the Draft PSD Fact Sheet. (Exhibit 1, pp. 5-7)¹⁰

On July 25, 2014, EPA’s Office of General Counsel filed the supplemental brief in which it concluded that MassDEP acted correctly when it omitted VOC from Footprint’s PSD Permit. In that brief, EPA cited two reasons for this conclusion. EPA noted that the significant emission rate PSD review threshold for the ozone precursors of 40 tpy is applied to VOC and NOx separately. Second, EPA pointed out that the SHR Project is an area that is classified as being in

⁷ Despite this determination, MassDEP included a BACT limit for VOC in the Draft PSD Permit. The same BACT limit is set forth in the Proposed Plan Approval. MassDEP also included limits for other pollutants that it determined were not subject to PSD review such as SO₂. (Exhibit 5 pp. 8-9).

⁸ MassDEP received no comments on the determinations in the Draft PSD Fact Sheet that the VOC emissions from the SHR Project are not subject to PSD review. Accordingly, this issue has not been preserved for review. *See* MassDEP’s Response to the Petition for Review p. 44.

⁹ The final Plan Approval includes a BACT limit for VOC. (Exhibit 23 p. 5).

¹⁰ Unlike the Draft PSD Permit, the final PSD Permit does not contain a BACT limit for VOC. (Exhibit 24, pp. 5-7). *See also* Exhibit 20 pp. 5-6.

nonattainment for ozone. MassDEP concurs with both of these reasons since they accurately reflect the reasoning set forth in the Draft PSD Fact Sheet, the PSD Fact Sheet and the Response to Comments. MassDEP respectfully requests that the Environmental Appeals Board adopt the conclusion set forth in the supplemental brief and rule that MassDEP acted correctly when it omitted VOC from Footprint's PSD Permit.

Respectfully submitted
On behalf of the Massachusetts Department of
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By its attorney,

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STATEMENT OF COMPLIANCE WITH WORD LIMITATION

Pursuant to 40 C.F.R. § 124.19(d)(iv), this Supplemental Brief complies with the word limits set by the Board. According to the word count function in Microsoft Word, this Supplemental Brief including the Table of Contents, the Table of Authorities Certificate of Service and Statement of Compliance with the word count contains 1,498 words.

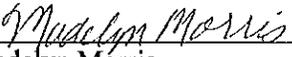
/s/



Madelyn Morris

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Supplemental Brief in Response to Board's Order of July 14, 2014, in the matter of Footprint Salem Harbor Development, LP, PSD Appeal No. 14-02, were sent to the persons listed below by United States mail this 31 day of July, 2014:



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