

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BUREAU OF AIR

September 2002

Responsiveness Summary
for Questions and Comments on the
Renewal of the Federally Enforceable State Operating Permit for
Griffith Laboratories U.S.A., Inc.

Site Identification No.: 031600CBW
Application No.: 75060048

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DECISION

Upon review of comments received during the public comment period and final review of the application, the Illinois Environmental Protection Agency (Illinois EPA) has determined that the Griffith Labs' application meets the standards for issuance. Accordingly, on September 18, 2002, the Illinois EPA renewed the Federally Enforceable State Operating Permit for Griffith Labs. Copies of the permit may be obtained from the contact at the bottom of this document or at www.epa.gov/region5/air/permits/ilonline.htm (look under All Permit Records, FESOP, Renewal).

BACKGROUND

Title V of the Clean Air Act was established in the 1990 amendments to the Clean Air Act. Title V establishes a federal permit program that applies to all major sources in the country. The Illinois Environmental Protection Agency Bureau of Air is delegated by the United States Environmental Protection Agency to administer the provisions of Title V in Illinois.

The Title V regulations apply to any "major" source. In Chicago, a major source is defined as a having the potential to emit 100 tons per year or more of any one criteria air pollutant or 25 tons per year of volatile organic material. The potential emissions are based on continuous operation at full capacity. Major sources are required to get a federal permit, called a Clean Air Act Permit Program Permit (CAAPP), for their current operations.

Many companies potentially have levels of emissions that exceed the major levels based on continuous operation at full capacity, however their actual emissions are less than the major level because they don't run at full capacity or 24 hours a day. These companies do not have to get a CAAPP permit if they take federally enforceable restrictions in their state operating permit limiting their hours of operation or throughput so that their emissions will not exceed the major source levels. These permits are called Federally Enforceable State Operating Permits (FESOP). Like CAAPP permits, FESOP permits must be renewed every five years.

Griffith Labs received a FESOP from the Illinois EPA in 1996 and applied for a renewal of that permit in 2001. Due to a request from the City of Chicago and local elected officials and based on complaints received from the neighborhood, the Illinois EPA scheduled a hearing to allow public comment on the draft renewal of the company's FESOP.

The public comment period began on February 13, 2002, with the publication of a notice in the Bridgeport News. Notices were also published in the Bridgeport News on February 20 and 27, 2002. Letters announcing the hearing were mailed out to local officials and interested citizens. A public hearing was held on April 3, 2002 at the

McKinley Park Branch of the Chicago Public Library District to receive oral comments and answer questions regarding the permit application and proposed permit issuance. The comment period remained open until May 3, 2002 to receive written comments.

QUESTIONS AND COMMENTS

Odors

- 1. The odor from the facility is terrible. I have been woken by the odor. Friends have had to leave my house because of the odor. There is odor once to a couple of times per week. There are days I cannot sit outside because of the smell. I have to shut my windows because of the smell. The odor has become worse in the last 5 years.**

These comments brought up at the hearing have indicated the severity of the problem at Griffith Labs to the Illinois EPA. The Illinois EPA field office will continue to monitor the facility and will determine if enforcement procedures need to be pursued.

In the past most complaints made by citizens in the area have gone to either Griffith Labs or the City of Chicago. This was an appropriate venue for citizen complaints, however, the Illinois EPA would also like to receive complaints so that we are fully aware of any nuisance complaints and can pursue legal action if that is the remedy required.

By complaining to Griffith Labs you are letting the company know when there is a particular odor so that they can possibly pinpoint what process they are running may be causing the odor.

The Illinois EPA on the other hand can only pursue enforcement through the legal process which although may result in larger fines or court ordered agreements to make changes to a facility, also usually take many years to resolve.

Once the IEPA decides for enforcement action, then the documents will be forwarded to the Attorney General Office, who will proceed with the legal action against the company.

- 2. What would be considered an unreasonable odor? How is that defined?**

There is no specific definition for “unreasonable odor” however, air pollution is defined by the Illinois Environmental Protection Act as “the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health or to property, or to unreasonably interfere with the enjoyment of life or property.” 415 ILCS 5/3.02 (1998). Illinois courts have recognized that this definition creates two distinct categories of air pollution: 1) air pollution which causes an injury to a person(s) life or property, and 2) air pollution which

“unreasonably interferes” with a person(s) enjoyment of life or property. See, Incinerator, Inc. v. Pollution Control Board, 59 Ill.2d 290, 319 N.E.2d 794 (Ill. 1974).

Most odor cases commonly involve the second category of air pollution. In evaluating this type of air pollution case, the Illinois Supreme Court has observed the following:

“There is little that any person can do which does not in some degree ‘interfere with the enjoyment of life or property’ of other persons. The very act of breathing consumes oxygen. In our opinion the word ‘unreasonably’ as used in Section 3(b) was intended to introduce into the statute something of the objective quality of the common law, and thereby exclude the trifling inconvenience, petty annoyance or minor discomfort.” [case citation omitted].

Processing and Books, Inc. v. Pollution Control Board, 64 Ill.2d 68, 351 N.E.2d 865 (Ill. 1976).

Because of the “reasonableness” standard inherent in the definition, a focal point of this type of air pollution case is those facts and circumstances that bear upon the severity or impact of the alleged odors. Thus, evidence that a complainant(s) cannot often enjoy a back-yard barbeque, must frequently close all windows to a house or business, or avoid participating in the normal social, economic or recreational pursuits because of the interference of odors are important considerations in any such lawsuit. The Pollution Control Board or reviewing court will then determine, based on the totality of the evidence presented at trial, whether a cause of action based on this category of air pollution can be sustained.

3. Has the company been able to pinpoint the processes that are responsible for most of the odor?

The company processes feed grade material either from soybeans or corn. There is not much variation on the process on day to day basis. The batch process involves cooking of grain which generates odor. The company uses air pollution control device known as scrubber. All process emissions are directed through this control device. The company is also in the process of improving the control efficiency of the system.

4. Is the odor safe? Is the odor a health problem?

Griffith Labs is involved in manufacturing food additives for human consumption and odors from this should not cause health problems. The human nose is very sensitive and can smell many chemicals in very small concentrations. For example, ammonia can be detected by the human nose at concentrations far below human exposure limits.

Complaints

- 5. Will the Illinois EPA still accept odor complaints or should they be directed to someone else? Will the Illinois EPA accept the odor complaints that the City of Chicago receives?**

Any odor complaints regarding Griffith Labs can be forwarded to the DAPC/FOS field inspector, Emilio Salis, in the Des Plaines regional office located at 9511 Harrison Street, Des Plaines, Illinois 60016. The phone number for the regional office is (847)294-4000. A more common practice in the past has involved local residents directing their complaints to the City of Chicago. The Illinois EPA is not aware of any reason why the latter practice should be discontinued for the present time.

- 6. Who should we call the City of Chicago or the State of Illinois?**

Citizens should call both the City of Chicago and the Illinois EPA. The City of Chicago has the authority to go out and immediately fine the company for odor violations. The Illinois EPA needs to know about complaints if it is to build an enforcement case.

- 7. We cannot get a hold of the Illinois EPA on the weekends.**

This is correct. The only part of the Illinois EPA that operates on the weekend is the Emergency Response Unit, which monitors environmental emergencies, such as hazardous chemical spills, around the state. This matters little anyway, as the Illinois EPA does not have the authority in itself, even in an emergency situation, to fine or shutdown a facility, whether it be on the weekend or during the week. To do this the Illinois EPA must go to court and seek an order or injunction against a facility. The purpose of Illinois EPA inspectors is to gather information that could then be used in an enforcement case. The Illinois EPA inspectors can get this information by having the residents provide the pertinent information to them.

Enforcement

- 8. It is more economical for the company to pay a fine than to control the odor. The company will pay the fine and violate again.**

The fines mentioned in this comment are fines issued by the City of Chicago not the Illinois EPA. Although the fines levied by the City of Chicago may not be large they are more timely than action that can be taken by the Illinois EPA. The Illinois EPA can only pursue enforcement through the legal process which although may result in larger fines or court ordered agreements to make changes to a facility also take a much longer amount of time. Any court order, besides including a monetary penalty, would also include a compliance plan to reduce odors.

9. We have gone through the complaint process and have not had a resolution of the odor problems.

In the past most of the complaints were filed with the City of Chicago. Chicago has jurisdiction to inspect and fine facilities within city boundaries. At that time the Illinois EPA was not aware of the extent of the odor nuisance.

The Illinois EPA's complaint process can be very long because it involves the Illinois EPA gathering enough documented instances of specific complaints when the odor from the facility is unreasonably interfering with a homeowner's enjoyment of his property. This is an ambiguous legal definition, so to bring an odor complaint to court the Illinois EPA and the Attorney General, who acts as the Illinois EPA's lawyer, must feel that they have enough evidence to support their case. Even then the legal case can take many years to complete. Until the hearing the Illinois EPA had not received many complaints about this facility. This is why we urge the residents to also make complaints to the Illinois EPA field office at 847/294-4000.

10. The City of Chicago has not handled complaints well against Griffith Labs.

It is not within the Illinois EPA's authority to review the operations of the City of Chicago. However, the hearing record indicates that the City of Chicago has responded in the past to citizen complaints and within the scope of its authority has fined Griffith Labs for nuisance odor violations. Also, the City of Chicago requested the hearing on the renewal of this permit. Based on this, it would seem that the City of Chicago has been working to try to resolve the problem of odor at the facility.

Permit Conditions and Decision

11. I would request that the company's permit either be rejected or reduced as a penalty because of the odors. Can the IEPA deny the permit because of the odor complaint.

While odor nuisance complaints can be pursued by the Illinois EPA, this is done outside of the permitting process through the inspection and enforcement process. The Illinois EPA does not have the authority to delay or deny permits based on odor complaints.

The Pollution Control Board and Illinois courts have recognized that the Illinois EPA's permitting authority is not absolute. Permitting and enforcement responsibilities vested in the Illinois EPA under the Illinois Environmental Protection Act have been deemed separate and distinct functions. For this reason, the Pollution Control Board and Illinois courts have held that the Illinois EPA cannot lawfully deny a permit as a substitute for enforcement. See, Environmental Protection Agency v. Pollution Control Board, 252 Ill.App.3d 828, 624 N.E.2d 402 (3rd Dist. 1993); ESG Watts, Inc., v. Pollution Control Board, 286 Ill.App.3d 325, 676 N.E.2d 299 (3rd Dist. 1997); Waste Management v.

Illinois Environmental Protection Agency, PCB Nos. 84-45, 84-61 and 84-68 (October 1, 1984); Centralia Environmental Services, Inc., v. Illinois Environmental Protection Agency, PCB No. 89-170 (October 25, 1990).

In those situations where a permit denial would rest upon alleged or un-adjudicated violations, the Pollution Control Board and courts have instructed the Illinois EPA to pursue enforcement instead of denying the permit. The Illinois EPA must confine its permitting determinations to the issue of whether the permit applicant has demonstrated that its equipment or facility will comply prospectively. While this rationale may be perceived as overly legalistic, the Illinois EPA is obligated to take such legal considerations into account, especially where the permitting decision is controversial and could involve separate or related litigation.

12. The permit is being issued for the status quo but the status quo is not acceptable. The company doesn't follow the rules.

Griffith Labs is in compliance with its current Federally Enforceable State Operating Permit and the Illinois EPA has not documented any permit violations at the facility. The regulations from which the FESOP is written are based on the process and size of a facility and may allow the company to have air emissions that can cause an odor nuisance.

The Illinois EPA does not enforce nuisance complaints such as odor complaints through the FESOP. In most odor nuisance cases the offending company is in compliance with its permit. Instead the Illinois EPA must enforce odor nuisances through Section 9(a) of the Illinois Environmental Protection Act. To do this the Illinois EPA must document the problem and take the case to court to show that the odor unreasonably interferes with the enjoyment of life or property.

13. Have the permitted emission limits in the FESOP increased?

Yes, new test data indicated that the rate of particulate matter emissions needed to be revised. Therefore particulate matter emissions in the permit have been increased based on new test data without an increase in production rate. However, the company's emissions are still below the emission levels allowed by the regulations.

14. Is the company exceeding their permitted limits?

No, the company has not exceeded its permitted limits. Many odors can be detected by the human nose at levels well below the thresholds set by the state and federal government for protection of human health.

15. They are increasing production without solving the odor problem.

This FESOP renewal does not allow an increase in production at the facility.

16. How does the state derive the emission limits in the permit? From a stack test? From rules on this type and size of facility?

The regulations allow for a certain amount of regulated pollutants to be emitted based on the amount of material processed. A larger company is allowed to emit more as compared to a smaller sized company. Particulate matter and volatile organic material emission limits may also be based on stack test data performed by the company.

General Questions

17. Was there a pilot test of the new cooker? Can we get the results of that test?

Based on the most recent information available to the Illinois EPA Griffith Labs has not tested the new cooker yet. Griffith Labs must obtain a construction permit for the new cooker prior to testing.

18. There is a haze that forms down the street from the facility because the stack is too short. Something is being incorrectly controlled when you can see a fog in the neighborhood.

Air emissions from the entire process are directed through the scrubbers (the air pollution control equipment) where water is being used to control emissions. The visible haze outside could be because of condensation of moisture as the gas cools off.

19. Are there regulations on stack height to keep a haze from forming?

There are no specific rules for stack height and stack height is not a factor in the formation of haze from a facility. Haze may also be visible from facilities with much higher stack heights than Griffith Labs.

FOR ADDITIONAL INFORMATION

Questions about the public hearing and permit decision should be directed as follows:

Public Hearing Procedures and Exhibits

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Responsiveness Summary (question on or extra copies)

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