



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590



REPLY TO THE ATTENTION OF:

Ms. Bonnie Nelson
Industrial Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Dear Ms. Nelson:

The U.S. Environmental Protection Agency has reviewed the draft Prevention of Significant Deterioration (PSD) permit No. 09100062-005 (Draft Permit) proposed by the Minnesota Pollution Control Agency (MPCA) for Valero Renewable Fuels Company, LLC, located at 1444 120th Street, Welcome, Minnesota. The facility is a dry mill fuel ethanol production plant. The Draft Permit authorizes construction of process equipment and an increase in their current facility-wide production limit. The facility has accepted limits to avoid major source classification with respect to 40 C.F.R. § 52.21 and 40 C.F.R. Part 63. Greenhouse gas emissions exceed the major source thresholds with respect to 40 C.F.R. § 52.21. However, increases in biogenic Greenhouse Gas emissions (GHG) have not been considered in the permit action. Increases from non-biogenic GHG emissions have been limited to less than 75,000 tons per year.

The Draft Permit's exemption of biogenic emissions of GHGs from PSD review is inconsistent with the July 12, 2013 D.C. Circuit decision that vacated EPA's rule deferring for a period of three (3) years the application of PSD and Title V permitting requirements to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources (Biogenic CO₂ Deferral Rule). In the case *Center for Biological Diversity v. EPA*, No. 11-1101 (decided July 12, 2013), the D.C. Circuit vacated the Biogenic CO₂ Deferral Rule. Although the D.C. Circuit Court has not yet issued the mandate vacating the rule, the Draft Permit, to the extent it relies on the Biogenic CO₂ Deferral Rule to exempt GHGs from PSD review, is inconsistent with the D.C. Circuit decision. If the mandate issues before MPCA issues a final permit decision, the vacatur would be final and effective at the time of that formal permit decision and MPCA would be unable to rely on the Biogenic CO₂ Deferral Rule to support its permitting decision. Even if the mandate has not issued at the time MPCA issues a final permit, a permit relying on the Biogenic CO₂ Deferral Rule may be difficult to defend if it is challenged. For these reasons, EPA recommends that MPCA not issue this permit as proposed.

We provide these comments to help ensure that the Draft Permit meets all federal requirements and that the record provides adequate support for the permit decision.

We look forward to working with you to address our comments. If you have any questions, please feel free to contact me at (312) 353-4761 or Jennifer Darrow, of my staff, at (312) 886-6315.

Sincerely,

A handwritten signature in cursive script that reads "Genevieve Damico". The signature is written in dark ink and is positioned above the typed name.

Genevieve Damico
Chief
Air Permits Section