

Response to Comments For  
G&K Services Inc. – Green Bay  
Title V Permit to Operate  
Permit No. V-ON-5500900021-2014-01

On December 5, 2014, the U.S. Environmental Protection Agency (EPA) issued for public comment a draft Title V Permit to Operate, permit number V-ON-5500900021-2014-01, for G&K Services Inc. – Green Bay. The public comment period for the draft permit ended on January 5, 2015. During the public comment period, EPA received several comments.

This document provides a summary of the comments received during the public comment period and EPA's response to each comment. This document also lists any changes made to the permit or statement of basis.

**Comments Submitted By G&K Services, Inc.**

G&K Services, Inc., submitted five comments during the public comment period.

**G&K Comment 1:** Section II, (B)(2), page 9: Please insert the word soiled between “and shop” to ensure consistency with the previous soiled print and soiled shop towels references.

**EPA's Response to G&K Comment 1:** The permit has been updated to include the word “soiled” between “and shop.” This will ensure consistency with previous references to soiled print and soiled shop towels.

**G&K Comment 2:** Section II, (C)(2), page 10: Please insert the wording soiled print or soiled shop between “any towels” to provide clarification.

**EPA's Response to G&K Comment 2:** The permit has been updated to include “soiled print or soiled shop” between “any towels.” This will provide added clarity to the permit condition.

**G&K Comment 3:** Section III, (D)(1), page 22: Please clarify this paragraph regarding the semiannual monitoring report as it states “...except that the first reporting period shall begin on the effective date of this permit and end on December 31.” We believe that since the Permit to Operate will first become effective sometime in early 2015, that this will need to be reworded.

**EPA's Response to G&K Comment 3:** The first reporting period will begin on the effective date of this permit and will end on either June 30, 2015, or December 31, 2015, depending on which date occurs first after the effective date of the permit.

40 C.F.R. § 71.6(a)(3)(iii)(A) requires the submittal of reports of any required monitoring at least every 6 months. This is known as the semiannual monitoring report. If the reporting period ended on December 31, 2015, then the reporting period will be longer than 6 months. If the first reporting period ends on June 30, 2015, then the first reporting period will be, at most, only 6 months long. Therefore, the first reporting period should end on June 30, 2015, and not December 31, 2015.

Section III, condition (D)(1) will be changed to say that the initial reporting period ends on June 30, 2015, or December 31, 2015, whichever occurs first after the effective date of the permit.

**G&K Comment 4:** Section IV, (B)(2), page 25: This permit condition requires the submittal of an annual air emission report along with the payment of fees associated with these emissions. It is our interpretation that since the Permit to Operate will be issued and become effective in early 2015 that the first annual report and fees will be due by June 11, 2016, for calendar year 2015. Please advise if our understanding of this permit condition is correct.

**EPA's Response to G&K Comment 4:** 40 C.F.R. § 71.9(a) requires the owner or operator of a Part 71 source to pay annual fees in accordance with the requirements described in 40 C.F.R. § 71.9. 40 C.F.R. § 71.9 (h)(1) requires each Part 71 source to submit an annual report of its actual emissions for the preceding calendar year, a fee calculation worksheet (based on the report), and full payment of the annual fee each year on the anniversary date of its initial fee calculation worksheet.

Since G&K Services, Inc. – Green Bay is a Part 71 source, and since the initial fee was submitted on June 11, 2013, an annual emissions report is due on June 11, 2015. The annual emissions report should include actual emissions of regulated pollutants (for fee calculation) emitted in calendar year 2014 and the annual fee based on the fee rate in effect for 2015. According to the September 18, 2014, memorandum entitled *Calculation of the Annual Part 71 Fee for Calendar Year 2015*, the fee rate for calendar year 2015 is \$49.93.

There are no changes to the permit as a result of this comment.

**G&K Comment 5:** Section IV, (D)(1), page 28: This permit condition requires the annual submittal of a Certification of Compliance by March 1<sup>st</sup> for the preceding calendar year. As the Permit to Operate will become effective in early 2015, it is our understanding that the first Certification of Compliance will be due by March 1, 2016 for calendar year 2015. Please advise if our understanding is incorrect.

**EPA's Response to G&K Comment 5:** This operating permit is likely to take effect in 2015. Therefore, the initial reporting period for the certification of compliance will begin on the effective date of the permit and end on December 31, 2015. The initial certification of compliance will be due by March 1, 2016.

40 C.F.R. § 71.6(c)(5) requires that a requirement for compliance certification with terms and conditions contained in the permit. Pursuant to 40 C.F.R. § 71.6(c)(5)(i), the permit is required to include the frequency of submissions of compliance certifications. The frequency of submission of compliance certifications cannot be less than annually or such more frequent period as specified in the applicable requirement or by the permitting authority.

Until this permit becomes effective, there are no terms or conditions which require a certification of compliance to be submitted. Pursuant to Section IV, Condition (D)(1) of the permit, a certification of compliance is due on March 1 of each calendar year. The initial reporting period

begins on the effective date of the permit and ends on December 31 of the year that the permit becomes effective. Since the permit will become effective in 2015, the initial reporting period will begin on the effective date of the permit (in 2015) and end on December 31, 2015. The initial certification of compliance will therefore be due by March 1, 2016.

There are no changes to the permit as a result of this comment.

### Comments Submitted by the U.S. Forest Service

The U.S. Forest Service submitted a letter dated December 18, 2014, stating that it had no comments on this permit action.

**EPA's Response to U.S. Forest Service:** EPA thanks the U.S. Forest Service for reviewing the draft permit. Since the U.S. Forest Service did not have any comments on this permit action, there are no changes to the permit.

### Changes Made to the Draft Permit and Statement of Basis Based on Comments

The following changes are being incorporated into the final permit based on comments received during the public comment period. Where practical, new additions will be indicated here in **bold**, while removals are indicated by ~~strikethrough~~.

- 1.) Permit, Section II, Condition (B)(2) has been rewritten to read as follows:

The Permittee shall sort and categorize soiled print and **soiled** shop towels using the procedure established in Section III of this permit.

- 2.) Permit, Section II, Condition (C)(2) has been rewritten to read as follows:

The Permittee shall not dry or heat any **soiled print or soiled shop** towels in any dryer unless they have first been washed in a washing machine included in Process P01 or Process P02.

- 3.) Permit, Section III, Condition (D)(1) has been rewritten to read as follows:

The Permittee shall submit to EPA semiannual reports of all required monitoring each six-month reporting period from January 1 to June 30 and from July 1 to December 31, except that the first reporting period shall begin on the effective date of this permit and end on **June 30 or December 31, whichever occurs first**. All instances of deviations from permit requirements must clearly be identified in the report. All required reports must be certified by a responsible official consistent with 40 C.F.R. § 71.5(d).

**Other Changes to the Permit and Statement of Basis**

In addition to the changes identified previously, EPA is making several additional revisions to the permit. The revisions and justification for the revisions are included below.

- 1.) Each page of the permit was changed to include the effective date of the permit. No permit conditions were modified as a result of this revision.
- 2.) In this final Part 71 permit, the EPA is not including the Emergency Provisions located in Section IV, Condition (Q) of the draft Part 71 permit. These provisions were modeled on the “emergency provision” in the regulations at 40 C.F.R. Part 71 applicable to federal operating permit programs. Specifically, in the regulations discussing the contents of Title V operating permits issued under the federal operating permits program, 40 C.F.R. § 71.6(g) provides that certain “emergency” events that can constitute “an affirmative defense in an action brought for non-compliance” with certain emission limits contains in the permit, when certain conditions are met. However, nothing in the CAA or 40 C.F.R. Part 71 requires that these types of emergency provisions be included as conditions in operating permits issued by the EPA, and for the reasons discussed below, we are exercising our discretion not to include them in this final Part 71 permit.

In 2014, a federal court ruled that the Clean Air Act (CAA or Act) does not authorize the EPA to create affirmative defense provisions applicable to certain enforcement actions. See *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014). The court ruled that Sections 113 and 304 of the Act preclude the EPA from creating affirmative defense provisions in the Agency's regulations imposing hazardous air pollutants emission limits on sources. The court concluded that those affirmative defense provisions purported to alter the jurisdiction of federal courts generally provided in the CAA to assess liability and impose penalties for violations of emission limits in private civil enforcement cases, and that the CAA did not provide authority for the EPA to do so. Consistent with the reasoning in the *NRDC v. EPA* court decision, EPA has determined that is also not appropriate under the CAA to alter the jurisdiction of the federal courts through affirmative defenses provisions in its Title V regulations, such as those contained in the emergency provisions of 40 C.F.R. § 71.6(g), and that such provisions are inconsistent with the CAA. In light of the above-described D.C. Circuit Court decision and the EPA's obligation to issue Title V permits consistent with the applicable requirements of the Act, it is no longer appropriate to include in operating permits issued by the EPA permit conditions modeled on affirmative defenses such as those contained in the emergency provisions of 40 C.F.R. § 71.6(g).

Although the EPA views the Part 71 emergency provisions as discretionary (i.e., neither the statute nor the regulations mandate their inclusion in Part 71 permits), the EPA is considering whether to make changes to the operating permit program regulations in order to ensure the EPA's regulations are consistent with the recent D.C. Circuit decision; and, if so, how best to make those changes. Until that time, as part of the normal permitting process, it is appropriate for the EPA permitting authorities to rely on the discretionary nature of the existing emergency provisions to choose not to continue to include permit terms modeled on those provisions in operating permits that we are issuing in the first instance or renewing. By doing so, we are not only fulfilling the EPA's obligation to issue Title V permits consistent with the applicable requirements of the Act, but we will also help ensure that permittees do not continue to rely on permit provisions that have been found legally invalid. Accordingly, in this final Part 71 permit, the EPA is exercising its discretion to not include the emergency provisions located in Section IV, Condition (Q) of the Part 71 permit, in order to ensure the Part 71 permit is in compliance with the applicable requirements of the Act.

Section IV, Condition (Q), Emergency Provisions, has been removed from the permit. Subsequent requirements have been renumbered appropriately and the table of contents has been updated accordingly. No other conditions have been modified as a result of removing this condition from the permit.

[...]

~~(Q) — Emergency Provisions [40 C.F.R. § 71.6(g)]~~

- ~~(1) — In addition to any emergency or upset provision contained in any applicable requirement, the Permittee may seek to establish that noncompliance with a technology-based emission limitation under this permit was due to an emergency. To do so, the Permittee shall demonstrate the affirmative defense of emergency through properly signed, contemporaneous operating logs, or other relevant evidence that:~~
  - ~~(a) — An emergency occurred and that the Permittee can identify the cause(s) of the emergency;~~
  - ~~(b) — The Permitted facility was at the time being properly operated;~~
  - ~~(c) — During the period of the emergency the Permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in this permit; and~~

- ~~(d) — The Permittee submitted notice of the emergency to EPA within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~
- ~~(2) — In any enforcement proceeding, the Permittee attempting to establish the occurrence of an emergency has the burden of proof.~~
- ~~(3) — An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.~~

~~— (R)(Q) Off Permit Changes [...]~~