
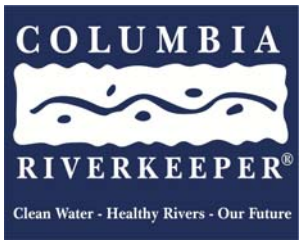

May 5, 2014

SUBMITTED VIA EMAIL TO: NWRAQPermits@deq.state.or.us

DEQ Northwest Region
Air Quality Permit Coordinator
2020 SW 4th Ave., Suite 400
Portland, Oregon 97201

Re: Comments on DEQ's Proposed Air Contaminant Discharge Permit for Cascade Kelly Holdings, LLC dba Columbia Pacific Bio-Refinery, Permit No. 05-0023-ST-01

Dear Oregon Department of Environmental Quality:

The Northwest Environmental Defense Center, Columbia Riverkeeper, Neighbors for Clean Air, the Center for Biological Diversity, and the Sierra Club (collectively, Commenters) submit these comments to the Oregon Department of Environmental Quality (DEQ) regarding the proposed Air Contaminant Discharge Permit for Cascade Kelly Holdings, LLC, dba Global Partners LP (hereafter Global). Commenters are all non-profit organizations, representing tens of thousands of members, dedicated to protecting public health, the environment, and natural resources. Commenters appreciate DEQ's willingness to extend the public comment period on this important air pollution permit.

Commenters have substantial concerns about the pollution emitted from Global's crude oil transloading facility, as well as DEQ's oversight of this significant source of air pollution in the Columbia River Estuary. Global operates a crude oil transloading terminal at the site of the Columbia Pacific Bio-Refinery near Clatskanie, Oregon. According to DEQ's March 27, 2014 administrative order, Global violated air pollution laws when it significantly expanded its crude oil operations without the agency's approval. In so doing, Global cut off the public's right to weigh-in on the company's decision to significantly increase air pollution in the Columbia River Estuary. Commenters strongly disagree with DEQ's decision to allow Global's continued crude oil operations, absent a valid air pollution permit as required by the Clean Air Act (CAA).

The Columbia River is at the epicenter of proposals to transload crude oil by rail, barges, and ocean-going vessels. Global is the only facility currently operating a large-scale crude oil terminal. If approved, Global's air pollution permit would authorize the facility to ship up to

1,839,600,000 gallons of crude oil each year (9.1 billion gallons at unrestricted capacity). This is a staggering amount of oil. The sharp increase in transporting crude oil by rail has come with a price. *See* New York State Department of Health, *Transporting Crude Oil in New York State: A Review of Incident Prevention and Response Capacity* (April 30, 2014), page x (listing Lac-Megantic, Quebec in July of 2013; Casselton, North Dakota in December of 2013; and the Mississippi River in February of 2014) (attached as Exhibit 23). The most recent crude oil train derailment occurred on April 30, 2014, in Lynchburg, Virginia. Huffington Post, *Lynchburg, Virginia Train Derailment Sparks Fire, Fills Air With Plumes of Black Smoke* (attached as Exhibit 24). Crude oil spilled into the James River, which serves as Lynchburg's primary drinking water source.

In addition to the significant risks of oil spills and impacts from rail traffic and associated pollution, Global's proposal has significant implications for local and regional air quality. Air pollution associated with Global's operations includes small and fine particulate matter, nitrogen oxides, sulfur dioxides, carbon monoxide, volatile organic compounds, greenhouse gases, and the hazardous air pollutant n-hexane. For the reasons explained below, Commenters urge DEQ to deny Global's application to operate the largest crude oil terminal on the Columbia River.

In reaching its decision, DEQ should consider the substantial concerns raised by the Washington Department of Health, other state and federal agencies, and Indian nations in public comments on the Tesoro Savage crude oil terminal, proposed for Vancouver, Washington. Tesoro Savage proposes handling 360,000 barrels of crude oil per day. Similar to Global's facility, Tesoro Savage proposes to transport crude oil via rail, store the crude oil on site, and ship oil in ocean-going vessels through the Columbia River Estuary. The Washington Department of Health raised a number of significant concerns about the impacts of a crude oil handling facility on air quality and public health. *See* December 17, 2013 Letter from John Wiesman, Washington Department of Health, to Stephen Posner, Energy Facility Site Evaluation Council Interim Manager (attached as Exhibit 9). In a December 18, 2013 letter to the Washington Energy Facility Site Evaluation Council (EFSEC), the Washington Department of Health called on EFSEC to prepare a Health Impact Assessment to assess the "far-reaching public health implications" of the Tesoro Savage project. Because Global's project is not subject to a state or federal environmental impact statement, DEQ should consider relevant input from state and federal agencies, as well as Indian nations, on Global's proposed expansion to its crude oil terminal in considering whether to issue the proposed Air Contaminant Discharge Permit.

Commenters urge DEQ to assess the public health and other environmental impacts associated with Global's permit application. Based on this assessment and for the reasons explained below, DEQ should deny Global's application, revoke the crude oil company's existing air pollution permit, and undertake the analysis required by the CAA.

Commenters

The Northwest Environmental Defense Center (NEDC) is a nonprofit environmental organization dedicated to protecting and conserving the environment and natural resources of the

Pacific Northwest. The construction and operation contemplated by Global's proposed permit will impact many of NEDC's members and supporters. Specifically, NEDC is concerned about the adverse environmental impacts and irreparable harm to the surrounding community that is likely to result from the construction and continued operation of Global's crude oil transport terminal, especially in light of Global's history of noncompliance under the CAA.

Columbia Riverkeeper's mission is to protect and restore the Columbia River and all life associated with it, from its headwaters to the Pacific Ocean. Riverkeeper represents over 7,000 members and supporters in Oregon and Washington and regularly comments on decisions impacting water quality, salmon habitat, and air quality. Riverkeeper's members boat, fish, and swim in the Columbia River nearby and downstream of Global's crude oil terminal.

Neighbors for Clean Air was founded in 2009 by residents of Northwest Portland who were concerned about the presence of air toxics in their local communities. Since its founding in Northwest Portland, NCA has expanded the scope of its mission. NCA is dedicated to helping communities around Oregon understand and address the affects of air pollution, especially hazardous air pollutants, in their neighborhoods.

The Center for Biological Diversity (Center) is a national, nonprofit conservation organization with more than 775,000 members and online activists dedicated to the protection of endangered species and wild places. At the Center we work to stem the tide of dirty fossil fuel energy and its negative impacts on wildlife, our members, and the fragile ecosystems upon which we all depend. Global's failure to comply with environmental laws in its efforts to transport crude in the U.S. is a grave a concern and threatens to harm our members and the natural resources they cherish.

The Sierra Club is the nation's largest environmental organization. Founded in 1892 by John Muir, Sierra Club now has more than two million members and supporters. Sierra Club has worked to ensure protection of the nation's wilderness by helping to pass the CAA, Clean Water Act, and Endangered Species Act. Sierra Club now focuses on leading the charge to move away from dirty fossil fuels that cause climate disruption and toward a clean energy economy.

Background on Global's Operations

In the late 2000s, advances in technology led to an oil rush in the Bakken shale formation in the North Dakota/Montana/Saskatchewan/Manitoba region. The rapid growth in crude oil production put pressure on pipeline capacity and pushed oil companies to start using rail to move crude to market. The Pacific Northwest is not immune to the market pressures. Global's application is one of many that will threaten Oregon's and Washington's airsheds and waterways with crude oil pollution.[1]

[1] Oil from Global's operations is currently bound for U.S. oil refineries. The future of the U.S. ban on overseas export of U.S. derived oil is uncertain. In addition, it is not clear that all Bakken crude reaching the terminal is subject to that ban because some of it may originate in Canada.

Global's Port Westward storage and loading facility is the first large-scale crude oil terminal to operate in Oregon or Washington in decades. *See* Global Partners LP website (attached as Exhibit 16); *see also* The Oregonian, *Ethanol Plant in Clatskanie, built with $36 million in Oregon loans and credits, now shipping crude oil* (attached as Exhibit 17). Global acquired the existing Port Westward ethanol refinery, which includes a bulk liquid trans-loading facility capable of handling crude oil, thereby largely circumventing the government oversight and public involvement process that would normally accompany the construction of a crude oil terminal.

Global operates under Standard ACDP No. 05-0006-ST-01 (hereafter, existing permit). The existing permit allows Global to receive corn and process it to produce ethanol and dry distiller's grain solubles, store and transfer 200 proof ethanol and denatured ethanol, and operate barge loadout operations for ethanol distribution. These activities are recognized under SIC code 2869 ("Industrial Organic Chemicals, Not Elsewhere Classified").

On May 23, 2012, Global submitted a "simple technical modification" request for Source No. 05-0006 in which it requested "operational flexibility" to transload crude from "rail to barge with storage in the two 3.8 million gallon storage tanks . . . ." Global Simple Technical Letter to DEQ at 1. The request acknowledged that transloading crude would increase VOC emissions by 0.62 tons/year. *Id.* These VOC emissions raised the facility's overall emissions 0.85 TPY over the PSEL.

On June 4, 2012, Global submitted Application No. 026864 requesting DEQ approval to receive and transload from railcars to barges a maximum of 50,000,000 gallons of crude oil per year and to store the crude oil in floating roof storage tanks. *See* Form AQ205, Page 6. DEQ authorized the modification to the existing permit on June 26, 2012 in Addendum No. 2 to ACDP No. 05-0006-ST-01. It is unclear whether and how much crude was transloaded at the facility prior to this permit application being submitted and while the application was pending before Oregon's Department of Environmental Quality ("DEQ").

On February 12, 2013, Global submitted its 2012 Annual Report to DEQ. In that report, Global acknowledge loading 9,222,773.70 gallons of crude onto barges and that its VOC emissions increased to 2.27 TPY.

On December 17, 2013, DEQ requested monitoring records from Columbia Pacific regarding the quantity of crude oil received into storage (recorded upon each receipt), quantity of crude oil loaded onto barges (recorded monthly), and monthly emission rate calculations from October 2012 through November of 2013.

Moreover, it is not even clear what type of crude oil Global proposes to receive and thus, what threats the transport and offloading of crude poses. *See, e.g.*, Permit Application (referring simply to volatile organic liquid terminal operations); *see also* DEQ, *Additional Information for the Air Quality Permit Application*, page 1 (noting that "[c]rude oil will be received at the facility from various sources which may contain variable fractions of light-end hydrocarbons and sulfur compounds").

On December 22, 2013, Global responded providing the information DEQ requested, which showed the facility had far exceeded the 50,000,000 gallons per year limit previously requested by Global.

On December 30, 2013, DEQ modified Global's existing permit to add Special Condition 2.4 to clarify that the existing permit prohibits transloading more than 50,000,000 gallons of crude oil in any 12-consecutive calendar month period. DEQ explained that if Global wished to transload more than 50 million gallons of crude per year, that would become "a new principal emitting" activity and be considered a new source requiring a new permit.

On January 10, 2014, DEQ issued Global a pre-enforcement notice. The letter documented that Global's "operating records demonstrate it achieved 294,495,686 gallons of crude oil transloading throughput in the first full year of transloading operations (the 12-consecutive month period ending November 30, 2013)," It went on to explain that the VOC emissions from these activities "exceeded the *de minimis* level of one ton per 12-month period beginning in March and continuing throughout the subsequent months." The letter went on to document many legal violations and to outline corrective action.

On March 27, 2014, DEQ issued Global a notice of civil penalty and administrative order for operating a new source (crude oil transloading operation) without the required Air Contaminant Discharge Permit from DEQ.

To date, DEQ has not revoked Global's air pollution permit. In turn, Global continues to handle crude oil at the site of the Columbia Pacific Bio-Refinery.

Air Pollution Associated with Crude Oil Handling

I. Hydrogen Sulfide Gas.

Bakken crude often contains high levels of hydrogen sulfide gas, a colorless, flammable, toxic and extremely hazardous gas formed by the breakdown of organic matter in the absence of oxygen. Chronic exposure to sulfide gas can cause lung, liver and kidney damage, infertility, immune system suppression, disruption of hormone levels, blood disorders, gene mutations, birth defects, and cancer. Utah Department of Environmental Quality, *Adverse Health Effects from Exposure to Crude Oil Mixtures* (June 2010) (attached as Exhibit 18). When mixed with air, hydrogen sulfide is explosive. According to the Occupational Safety and Health Administration, hydrogen sulfide is immediately dangerous to life and health at concentrations above 100 parts per million (ppm). The characteristic rotten egg smell is detectable at concentrations well under 1 ppm, and becomes sickly sweet at over 30 ppm. When the concentration rises over 100 ppm, hydrogen sulfide is odorless because it paralyzes the olfactory nerves in the nose. At concentrations of as low as 50-200 ppm, hydrogen sulfide can cause shock, convulsions, and coma.

Highlighting concerns regarding the content of Bakken crude, an oil shipping company recently asked the Federal Energy Regulatory Commission (FERC) to regulate the amount of hydrogen sulfide gas that could be contained in crude oil for rail transport. Reuters, *U.S. energy regulator approves sulfide gas limit in Bakken crude* (June 7, 2013) (attached as Exhibit 19). In 2013, the discovery of perilous concentrations of hydrogen sulfide gas in a crude oil tank "sparked a furious row" between pipeline operator Enbridge and Bakken crude shippers. Reuters, *Toxic gas in Bakken pipeline points to sour well problem* (May 29, 2013) (attached as Exhibit 20). Enbridge found 1,200 ppm in one of its storage tanks at its oil-loading rail terminal. Exposure to sulfide gas vapors at levels of 100 ppm can cause death. *Id.* The discovery led to a heated showdown between Enbridge and Bakken crude shippers after Enbridge asked the FERC to limit the amount of potentially harmful sulfide gas in crude oil shipped on its pipeline.

In addition, the Canadian Transportation Safety Board is still investigating the cause of the Lac-Mégantic disaster, in part to determine if unsafe levels of hydrogen sulfide gas or other substances in the Bakken crude contributed to the explosion and fires seen there. The Globe and Mail, *Probe of Lac-Mégantic train disaster turns to composition of oil* (July 19, 2013) (attached as Exhibit 22).

II. Other Regulated Air Pollutants.

In its permit application, Global identifies the loadout of volatile organic liquids onto water-borne vessels as the main source of emissions related to operation of the facility. Specifically, it identifies the proposed vapor combustion unit as the main source of GHG emissions. Global also identifies fugitive emissions from storage tanks, process tanks, and equipment leaks as sources of emissions. As noted in section IV below, Global's calculations should also include emissions from locomotives and barges while those sources are engaged as part of Global's facility. Finally, it is unclear from the permit application whether Global intends to use boilers to heat the crude oil in the rail cars or storage tanks, which would allow for quicker transloading operations. Use of boilers would dramatically increase the emissions from the facility. DEQ should require more clarity and information regarding Global's intended process flow for the facility.

Based on the information available to Commenters, Global's facility will be a major emitter of greenhouse gases (GHGs). EPA has defined GHGs as six a well-mixed gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbon, perfluorocarbon, and sulfur hexafluoride. Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31514 (June 3, 2010). GHGs trap the Earth's heat and form a greenhouse effect. Human activities "are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is the changing the climate in a way that endangers human health, society, and the natural environment." *Id.* Independently, emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride can also have direct adverse effects.

For example, carbon dioxide increases affect water use and water efficiency for plants by increasing the carbon-to-nitrogen ratio in forages, thus reducing the nutritional value of those plants. This in turn can affect animal weight and performance for grazing livestock or wildlife.

As surface waters that absorb greater concentrations of carbon dioxide, rates of photosynthesis in submerged aquatic vegetation increase leading to increased algal blooms and lower dissolved oxygen available to fish and shellfish. Elevated carbon dioxide concentrations also result in ocean acidification, which may affect marine ecosystems.

Nitrogen oxide (NOx) is a source of air pollution in the emissions from Global's facility. NOx is dangerous to human health and the environment. NOx are highly reactive gasses that can cause respiratory problems such as asthma attacks, respiratory tract syndrome, bronchitis, and decreased lung function. In addition to public health concerns, NOx emissions cause nitrogen deposition, which may cause soil acidification, water acidification, and eutrophication. These problems, in turn, reduce water quality and may render water unfit for aquatic life or human consumption. NOx also contributes to visibility impairment, global warming, acid rain, formation of ground-level ozone and formation of toxic chemicals. NOx is also a precursor chemical to fine particulate matter. The impacts of NOx on Oregon's protected parks and wilderness areas, including the Columbia River Gorge, has been well documented in DEQ's regional haze rulemaking process, and by studies by Dan Jaffe, a scientist at the University of Washington.

Global's facility will also emit large amounts of volatile organic compounds (VOCs). VOCs react with nitrogen oxides and oxygen in the presence of sunlight to form ozone. In the upper layers of the atmosphere, ozone provides a screen against harmful ultraviolet radiation. Near ground level, however, it presents a health hazard. Ground level ozone is a prime ingredient of smog. Exposure to ground level ozone can result in a wide range of adverse health effects, "including decreased lung function, primarily in children active outdoors; increased respiratory symptoms, particularly in highly sensitive individuals; hospital admissions and emergency room visits for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma; inflammation the lung, and possible long-term damage to the lungs." National Ambient Air Quality Standards for Ozone, 62 Fed. Reg. 38856 (July 18, 1997) (codified at 50 C.F.R. Part 50). Ozone may also impact vegetation by causing agricultural crop loss, damage to forests and ecosystems, and visible foliar injury to sensitive species. *Id.* EPA regulates VOCs to control ground level ozone.

Pollution from Global's facility includes similarly harmful small and fine particulate matter. Particulate matter is a broad class of substances that exist as particles of different sizes. *Natural Res. Def. Council v. EPA*, 706 F.3d 428, 429 n. 2 (D.C. Cir. 2013) (citing National Ambient Air Quality Standards for Particulate Matter, 62 Fed. Reg. 38,652, 38,653 (July 18, 1997)). Particles are naturally generated, but some come from human activity. Some of the smallest particles are formed in the atmosphere from NOx, sulfur oxides and volatile organic compounds reacting to form nitrates, sulfates and other small particles. *Id.* EPA has determined that pollution ceilings for $PM_{2.5}$ are necessary because of "evidence from numerous health studies demonstrating that serious health effects are associated with exposures to elevated levels of $PM_{2.5}$." PM2.5 Implementation Rule, 72 Fed. Reg. 20,586 (Apr. 25, 2007).

Those effects include premature death. 72 Fed. Reg. at 20,586-87 ("Epidemiological studies have shown statistically significant correlations between elevated PM2.5 levels and premature mortality."); 75 Fed. Reg. 22,896, 22,900 (Apr. 30, 2010) (EPA has determined that

"Both ozone and PM2.5 are associated with serious public health problems, including premature mortality…"); *Am. Farm Bureau Fed'n v. E.P.A.*, 559 F.3d 512, 515 (D.C. Cir. 2009) ("Studies have demonstrated that both fine and coarse PM can have negative effects on public health and welfare. For example, each is associated with increased mortality (premature death) rates and morbidity (illness) effects such as cardiovascular disease and decreased lung function."). $PM_{2.5}$ exposure also causes "increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days," due to aggravated cardiovascular and respiratory problems. *Id.* Sadly, the populations most at risk are the sick, the old, and children. *Id.*

In addition to particulate matter and nitrogen oxides, Global's operations will also increase sulfur dioxide emissions. High concentrations of sulfur dioxide (SO_2) can result in breathing problems for asthmatic children and adults who are active outdoors. Short-term exposure has been linked to wheezing, chest tightness and shortness of breath. Longer-term exposure to sulfur dioxide, in association with high levels of particulate matter, include respiratory illness, alterations in the lungs' defenses and aggravation of existing cardiovascular disease. In addition to public health impacts, sulfur dioxides and nitrogen oxides are the major precursors to acid rain.

Comments

I. Pursuant to its own regulations, DEQ must deny the proposed permit application as incomplete.

Global's application materials lack critical information.

a. Global fails to provide sufficient information to calculate the emission rate of air contaminants.

DEQ requires an application for a new ACDP to include "[a]n estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, or monthly and yearly rates, showing calculation procedures." OAR 340-216-0040(1)(g). Global admits in its application materials that it currently loads water-borne vessels with crude oil. Yet the proposed permit fails to quantify the emissions from existing operations. The materials only identify projected emissions. *See, e.g.*, Additional information provided for the application, page 47-48 (Form AQ402). Without a calculation of the current emission rates, it is impossible for DEQ or the public to quantify the proposed increase in emissions at the facility.

Global's application also fails to identify the rate of emissions that would result at maximum operational capacity of the facility. As explained more fully below, this information is required to make the threshold determination of whether the proposed operations constitute a new federal major source. Instead, Global's emissions rate calculations are all based on emission factor estimates, reduced by air pollution control equipment (ie, vapor combustion unit) and restrictions on operations. *See* Additional information provided for the application, page 6. Yet because those limitations are not federally or practically enforceable by the Administrator, the

numbers do not provide an adequate basis for determining the estimated emission rate for each air contaminant from the current facility.

b. Global fails to identify the type of volatile organic liquid it plans to receive.

Global's application fails to identify the type of volatile organic liquid it intends to receive and ship at the facility. Instead, Global notes that "[c]rude oil will be received at the facility from various sources which may contain variable fractions of light-end hydrocarbons and sulfur compounds." *See* DEQ, *Additional Information for the Air Quality Permit Application,* page 1. This is problematic for numerous reasons.

First, the type of volatile organic liquid received and shipped predetermines the outcomes of Global's emissions calculations. This is true as between Bakken crude oil and tar sands oils, but also as between different types of Bakken crude oil. For example, in its application to construct and operate a crude oil transloading facility at the Port of Vancouver, Tesoro Savage provided emissions calculations for six different crude oils with Reid Vapor Pressures ranging from 0.98 to 8.41, and four Bakken crudes (413, 413-light, 423, and 430). *See* Tesoro Savage Vancouver Energy Distribution Terminal, *Part 5 Applications for Permits and Authorizations* (Aug. 2013), page 5-473 and Attachment 2 (attached as Exhibit 12). The resulting emissions calculations for the crude oil storage tanks varied widely depending on the particular type of crude oil.

Second, assays for crude oil as provided by suppliers fail to provide the detail necessary to ensure safe handling. Global defers in its additional information documents to the assays provided by suppliers. Reliance on the assays from suppliers of the crude oil is insufficient because the assays do not indicate the type of crude oil Global intends to receive under the proposed permit. In fact, the Federal Railroad Administration has raised concerns as to the reliability and specificity of assays provided by suppliers. *See* July 29, 2013 Letter from Thomas Herrmann, Federal Railroad Administration, to Mr. Jack Gerard, American Petroleum Institute (attached as Exhibit 14a); *see also* Bloomberg News, *Bakken Crude More Dangerous to Ship Than Other Oil: U.S.* (Jan. 2, 2014) (attached as Exhibit 14b); Exhibit 23 at ix (explaining that "the classification and packaging of crude oil does not currently account for vapor pressure"). Reliance on the characterization from shippers is inadequate because when transported by rail, "it is likely that the temperature of the hazardous material loaded into the car is lower than the reference temperature," leading to overloaded tank cars, leaks from valve fittings or manway en route, and insufficient outage as required for safe transport. *See* Exhibit 14 at 3-4.

Recent changes in the composition of Bakken crude oil generally further complicate the lack of information Global has been willing to provide. The Reid Vapor Pressure of Bakken crude oil has been gradually increasing over the past 6 months and will likely exceed 11 psia in the summer of 2014. *See* Tesoro Logistics, *Changing Landscape of North Dakota Crude transportation routes and impacts to Quality*, page 17 (attached as Exhibit 13) (noting that the "[t]emperature at receipt point is what determines suitability for storage"). Plus, Bakken receipts have become increasingly volatile over the past year. *See* Exhibit 13 at 18. Thus the nature and

characteristics of Bakken crude oil itself has been evolving. Global's application must acknowledge these changes and account for such variances in its emissions calculations.

Finally, the type of crude oil received at Global's facility is a major concern for emergency first responders. Local governments are chiefly responsible as the first response to incidents. Without knowledge of the substance they are responding to, first responders put themselves at risk and will be ill-equipped to provide a proper reaction. *See* Oregonian, *As Oregon legislators grapple with oil train safety, Portland fire chief warns city is not equipped* (attached as Exhibit 25). *See also* Exhibit 23 at xv (stating that "oil producers have not been forthcoming" and "[w]ithout a clear understanding of the flammability, vapor pressure, and non-crude content of Bakken crude oil, USDOT cannot properly regulate its transport, to ensure public and environmental safety"); at x (stating that "the sheer volume of product being transported, coupled with its volatility and the inadequacy of the tank cars carrying this product, has plainly uncovered gaps in the regulatory regime that must be addressed.").

DEQ has the authority and obligation to remedy this void of information in the context of this permit application. DEQ must require Global to identify the type of crude oil it intends to receive at the facility to properly analyze the permit application and fully understand the proposed activities. The New York Department of Environmental Conservation requested this exact type of information from Global for its proposed facility expansion in Albany, New York. *See* March 24, 2014 Letter from James Eldred, DEC Region 3, to Thomas Keefe, Global Companies, LLC, page 6 (attached as Exhibit 15) (stating that "[i]nformation regarding what petroleum products will be stored in the various tanks needs to be submitted"). For crude oil, "relevant properties to properly classify the material include: flash point, corrosivity, specific gravity at loading and reference temperatures, and the presence and concentration of specific compounds such as sulfur (as found in sour crude oil)." Exhibit 14 at 2.

Plus, DEQ should require Global to monitor and report the classification and characterization of volatile organic liquid received at the facility. DEQ currently requires Global to record the crude oil received into storage (recorded upon each receipt) and quantity of crude oil loaded onto barges (recorded monthly) under the existing permit. DEQ can and should require Global to report this information, and also monitor and report the classification and characterization of that volatile organic liquid. We preserve our right to raise additional arguments regarding this permit due to the lack of complete information that has been provided to the public by Global.

c. DEQ must deny Global's application for the proposed new Air Contaminant Discharge Permit.

Lacking a proper basis for Global's emissions calculations or a way to identify the type of crude oil being received at the facility, DEQ and the public are unable to properly analyze the increased emissions that will result from the proposed construction and operation. DEQ's own rules state that "[a]pplications that are obviously incomplete, . . . or lacking the required exhibits . . . will be rejected by the Department and returned to the applicant for completion." OAR 340-216-0040(11). DEQ has the authority to request additional information from Global. *See* OAR 340-216-0040(12)-(13). In accordance with its own rules, DEQ must deny Global's permit

application as incomplete. DEQ must request that Global provide adequate information to determine current maximum operating capacity and revise the permit accordingly.

II. Global has operated and is operating without a permit in violation of the CAA, Oregon's SIP, and Oregon's regulations.

a. Global cannot rely on the air permit that authorized discharges from ethanol manufacturing to cover air discharges from crude oil transloading activities.

Under Oregon's own rules, the Air Contaminant Discharge Permit (ACDP) that was issued to the ethanol manufacturing facility does not cover Global's petroleum transport operations simply because the operations occur on the same site. Oregon's rules prohibit any person from constructing, installing, establishing, developing, or operating "any air contaminant source" without first obtaining an ACDP. OAR 340-216-0020(1). The rules define "source" as, *inter alia*, a "facility . . . that emits or is capable of emitting air contaminants to the atmosphere" and "includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual . . . or that support the major industrial group." OAR 340-200-0020(136). Thus Oregon's rules identify a source based on the applicable SIC code and operations supporting the industrial activities under that SIC code.

Global's crude oil transloading operations do not fall within the ambit of the ACDP that DEQ had previously authorized to the facility for ethanol manufacturing operations. Global's existing ACDP No. 05-0006-ST-01 (existing permit) authorized Global to "construct and operate a grain processing facility" that would "receive corn and process it to produce ethanol and dry distillers grain solubles." *See* DEQ Review Report/Permit No. 05-0006-ST-01. General condition 10.1 of the existing permit limits the scope of discharges authorized under the permit to the processes and activities related to ethanol manufacturing, which is recognized under SIC code 2869 ("Industrial Organic Chemicals, Not Elsewhere Classified"). Crude oil transloading is recognized within SIC code 5171 ("Petroleum Bulk Stations and Terminals"). Crude oil transloading does not belong to the same industrial group as ethanol manufacturing, nor is it a support activity of ethanol manufacturing. Thus Global has operated and is continuing to operate a crude oil transloading facility without a permit since it began crude oil operations in October of 2012.

Moreover, Global may not rely on DEQ's "simple technical modification" to the existing permit because that modification contravenes DEQ's own rules and the CAA. The most glaring error was for DEQ to consider crude oil transloading operations within the scope of the existing permit that authorized emissions from ethanol manufacturing operations. For the reasons set forth above, crude oil transloading operations do not belong under an ACDP issued for an ethanol manufacturing facility, regardless of the *operational flexibility* that a permittee might otherwise seek. *See* May 23, 2012 Letter from Global to DEQ (requesting a simple technical modification to the existing permit for "operating flexibility to transload crude oil from rail cars to barges). This error set the stage for Global to continue to take advantage of DEQ's lack of oversight. Even worse, Global was able to evade public review of its crude oil transloading

operations for more than a year. Similar crude oil transloading projects in Washington have proven to be extremely controversial once subject to public review. DEQ's error allowed Global to wrongfully bypass this scrutiny.

Next, DEQ improperly accepted at face value Global's assessments in its application that the additional crude oil transloading operations would not exceed the de minimis emissions threshold rate of 1 ton per year for VOCs. Global's analysis was flawed for numerous reasons.

By failing to conduct its own emissions calculation, DEQ allowed Global to avoid the regulatory process required by the CAA that would have required closer scrutiny of the activities at the facility and likely emissions. Further, by authorizing the change in a simple technical modification DEQ allowed Global to escape public scrutiny. What's more, the supposed operational limit of 50,000,000 gallons of crude oil throughput over any 12 month period was not federally enforceable and did not require the necessary monitoring and reporting to render the limitation practically enforceable. Global itself has admitted that the existing permit, following the simple technical modification, does not contain an operational limitation. *See* January 10, 2014 Pre-Enforcement Notice from DEQ to Global (noting that on May 8, 2013, Global representatives "asserted that under [the existing permit, as modified by Addendum No. 2] Global could transload any quantity of crude oil provided total source emissions remained below the PSELs in the permit"). An emission limit alone, without a federally enforceable production or operational limitation, is invalid and does not effectively limit a source's potential to emit. *See* EPA Mid-Atlantic Air Protection, *Limiting Potential to Emit (PTE) in New Source Review (NSR) Permitting* (attached as Exhibit 1).

b. The existing air permit is a sham permit that Global relied on to avoid the strict regulatory requirements under the CAA and bypass public scrutiny.

EPA has explained that permits with conditions that do not reflect a source's planned mode of operation are sham permits, and are void *ab initio*. *See* June 1993 Memorandum from John B. Rasnic, EPA Office of Air Quality Planning and Standards, to George T. Czerniak, EPA Region V (attached as Exhibit 2). EPA has also stated that it is a violation of the CAA to construct a source or a major modification with a minor source permit when there is intent to operate as a major source or major modification. *Id. See also* Exhibit 1. Global used the existing permit as a sham on two levels.

First, Global's request for a simple technical modification to its existing permit that allowed for crude oil transloading was a sham permit. Sham permits are not allowed by the definition of potential to emit. *See* 40 C.F.R. §§ 52.21(b)(4), 51.165(a)(1)(iii), 51.166(b)(4). EPA notes that "implicit in the application of these limitations [allowing a source to reduce emissions to minor source levels] is the understanding that they comport with the true design and intended operation of the project." *See* Exhibit 1, page 5. In June of 2012, Global submitted permit modification application no. 026864, requesting a "simple technical modification" to the existing permit for the ethanol manufacturing plant. The application and emissions calculations were based on a maximum throughput of 50,000,000 gallons of crude oil over any 12 month cumulative period. Based on this operational limit (which was void because it was not federally enforceable, see above), DEQ authorized the simple technical modification on June 26, 2012.

Immediately thereafter, however, Global indicated to DEQ its intent to significantly exceed the maximum throughput of 50,000,000 gallons of crude oil. *See* December 17, 2013 DEQ Letter to Global (noting that "[a]fter the identified permit modification became effective CPBR communicated its desire to increase crude oil transloading throughput significantly beyond 50 million gallons per 12-month period" and "CPBR and its attorneys have made statements to DEQ indicating the company has or is performing crude oil transloading activities at higher throughputs than what DEQ reviewed and approved").

In reality, Global loaded more than 300,000,000 gallons of crude oil onto barges in 2013. *See* Global, 2013 Annual Report. Global's actions and statements demonstrate that the facility never intended to comport with the design and operations identified in its application for the simple technical modification. Rather, Global used the existing permit as a sham to transload expansive amounts of crude oil, limited only by the operational capacity of the ethanol manufacturing facility's design. Thus the simple technical modification request to the existing permit was a sham permit that Global now relies on to justify its crude oil transloading operations well beyond the 50,000,000 gallon limit.

Second, Global used the existing permit for the ethanol manufacturing facility as a sham for its actual intent to operate exclusively as a crude oil transloading facility, operations which constitute a federal major source. In the May 23, 2012 letter to DEQ, Global requested "operating flexibility to transload crude oil from railcars to barges with storage in the two 3.8 million gallon storage tanks previously identified for storing ethanol products." *See* May 23, 2012 Letter from Global to DEQ. Global claimed "[n]o new emission sources, stack vents, or buildings are being proposed as a part of this modification." *Id.* Further, the letter admits that the EPA TANKS simulations "assume all crude oil is routed through TK6106 (TK05) and all ethanol-based materials are routed through TK6105 (TK04) but this is simply for simulation purposes" and in actuality, "[t]he tanks are identical and CPBR wishes to maintain the operating flexibility of storing these materials in either tank." *Id.*

Yet Global has not operated as an ethanol manufacturing facility since Cascade Kelly Holdings, LLC acquired the Clatskanie facility in 2010. *See* Annual Report for 2012 (stating that it "did not operate the ethanol facility during the calendar year of 2012"); Annual Report for 2013 (stating that it "did not operate the ethanol facility during the calendar year 2013"). *See also* Global's 2012 SEC Form 10-K Annual Report (stating that "[w]e believe we have created a 'virtual pipeline' solution for the transportation of crude oil from the mid-continent region of the United States and Canada to the East and West Coasts" that "consists of our strategically located terminal assets, our logistical capabilities and access to railroad and barge transportation" including "business with the Phillips 66, Basin Transload and Cascade Kelly transactions in early 2013"). Thus the *operational flexibility* that Global cited to was a front to conduct a completely separate crude oil transloading operation without the need to apply for a new permit.[2]

[2] Because Global has never operated the ethanol facility, and the ethanol facility has not operated for more than two years, DEQ should revoke the permit for the ethanol facility under EPA's Shutdown and Reactivation Policy. http://www.epa.gov/Region7/air/nsr/nsrmemos/watertwn.pdf. It is clear from Global's actions that it had no intention of restarting the ethanol facility when it was shutdown and the

As explained below, Global's emissions at maximum operating capacity likely render the facility a federal major source. Global still has not admitted that the existing permit was a sham. *See* Global's Application, page 1 (explaining that "[i]n order to most effectively conduct terminal operations without hindering ethanol plant operations," Global is proposing construction of four new 108,000 barrel storage tanks). Instead, in its proposal for the new ACDP No. 05-0023-ST-01 (proposed permit), Global claims that the crude oil transloading "operations can be independent of the ethanol production operations" and for that reason Global is applying for a separate crude oil ACDP while maintaining the existing permit for ethanol manufacturing. Unless Global can provide strong evidence that it intends to operate the ethanol manufacturing facility in the near future, we believe Global used the existing permit for ethanol manufacturing operations as a sham. Thus the existing permit is void *ab initio*, Global has and is operating without an air permit in violation of the CAA, Oregon's SIP, and Oregon's rules, and Global's crude oil transloading operations should be evaluated as a new federal major source.

III. DEQ may not issue the proposed permit because the crude oil transport facility is a federal major source that requires a preconstruction permit.

A proper calculation of the facility's emissions and proposed increased operational capacity will demonstrate that Global is a new federal major source. As such, the CAA PSD program requires a preconstruction permit rather than the proposed standard ACDP.

Global's potential to emit, and status as a federal major source, depends on its operational capacity. A major stationary source is "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant." 42 U.S.C. § 7602(j); *see also* OAR 340-200-0020(55) (defining "Federal Major Source" as "a source with potential to emit any individual regulated pollutant . . . greater than or equal to 100 tons per year" and "for greenhouse gases, a federal major source must also have the potential to emit CO2e greater than or equal to 100,000 tons per year" including fugitive emissions and insignificant activity emissions). Thus a source's potential to emit will determine whether the source is major and which permit is required to construct and operate the source. We caution DEQ against relying upon invalid limitations in the existing permit to determine Global is not a federal major source.

The "potential to emit" equals the lesser of either (1) the capacity of a stationary source; or (2) the maximum allowable emissions, including any physical or operational limitation if it is enforceable by the Administrator. OAR 340-200-0020(100); *see also* 40 C.F.R. §§ 52.21(b)(4), 51.165(a)(1)(iii), 51.166(b)(4) (defining "potential to emit" as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design" and "including air pollution control equipment and restrictions [on operations] . . . if the limitation or effect it would have on emissions is federally enforceable"). Global's potential to emit cannot be premised on the existing permit because the permit is invalid and does not apply to Global's crude oil transloading operations. Plus, the crude oil transloading activities are already in

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shutdown should be determined to be permanent. In the alternative, DEQ should request information from Global to rebut the presumption that the more than two year shutdown was not intended to be permanent.

operation. Even if DEQ finds the existing permit is valid, the operational limitation of 50,000,000 gallons throughput of crude oil in any consecutive 12 month period is not federally enforceable and thus not an appropriate limit on the facility's potential to emit.

Therefore, Global's potential to emit is the "capacity," or maximum operating capacity of the facility. As noted above, Global's permit application lacks the information critical to calculating the facility's maximum operating capacity. The following, however, provides an estimate of the maximum operating capacity and demonstrates that Global's potential to emit is likely well above the triggering threshold to constitute a federal major source.

Unfortunately, Global has not calculated the current facility's maximum operating capacity and DEQ has not requested information from Global sufficient to calculate whether the facility, as it currently exists, is or is not a federal major source. However, based on information that is available to the Commenters, it appears likely that the existing new crude oil transloading operation is a federal major new source.[3] Global's permit application and DEQ's Permit Review Report points to only three future potential sources of air emissions that are not currently in operation at the existing source: four (4) new storage tanks, two (2) process tanks, and a thermal oxidizer. However, it is essential that all the tanks and other equipment at the site be included within the definition of the "facility" and in Global's PTE.[4]

In Global's permit application, the annual, unrestricted, throughput is 219,000,000 barrels or 9.189 billion gallons per year. This is significantly higher than the proposed restricted throughput of 43,800,000 barrels or 1.8396 billion gallons per year used to calculate Global's PTE. While the emissions may not scale exactly with the increased capacity, the restricted emissions of 78 tons per year of VOCs is close enough to the 100 tons per year threshold for federal major new sources that it makes little difference. Therefore it is likely that the existing

[3] The juxtaposition of "existing facility" and "new major source" may seem odd since this is usually an either or consideration. However this comes about because Global is operating its crude oil transloading source without a permit, making it both physically "existing" and also "new" for permitting purposes.

[4] In order to move 9.189 billion gallons of crude, it is very likely that Global will need to use other equipment – namely tanks – that are present at the Columbia Pacific Bio-Refinery, as well as the "process" tanks for storage of crude. In light of Given Global's history of deception and the many tanks that are available at the refinery for transloading crude, it is imperative that the capacity of all equipment needed for Global's operations be accounted for in determining Global's PTE. Global has drawn arbitrary lines around equipment at the refinery in an attempt to define a "facility" that will not be a major federal source.

While we understand that Global is arguing for operational flexibility and the option to use the "ethanol facility," the reality of the situation is that the refinery is really one facility. Our primary concern is that it appears unlikely that Global can transload the proposed volume of crude without using tanks, if not other equipment, currently excluded from its "crude facility," but included in its "ethanol facility." Global says it does not plan to transload crude from rail directly to barge. However, its six storage tanks only have the capacity to hold 25,746,000 gallons. In April, May, September, October, and November 2013, Global moved more crude than this in a month. Therefore, it appears that Global is planning on using additional equipment that is not currently included within its definition of "facility." We ask that DEQ determine precisely how many tanks, etc. Global will need to move 9.1 billion gallons of crude a year, and designate an appropriate "facility" for CAA purposes based on Global's plans. The PTE for the facility must then be calculated.

Global crude oil transloading facility is a federal major new source of VOCs and therefore also a major source for ozone. 40 C.F.R. § 51.166(b)(2)(ii). This is especially true considering the arbitrary definition of "facility" Global used and the following argument documenting additional sources of emissions.

Plus, the restricted emissions of 68,814.11 tons per year of GHG[5] is close enough to the major source threshold of 75,000 tons per year (when triggering as major for another criteria pollutant; here, VOCs) that the existing source is also likely a new federal major source for GHGs. This is especially true considering the arbitrary definition of "facility" Global used and the following argument documenting additional sources of emissions.

Based on this analysis, Global's crude oil transloading operation is, at the very least, a new federal major source for VOCs and GHGs that must be subjected to New Source Review (NSR) and a visibility impact analysis. DEQ has therefore erred in proposing to issue a Standard ACDP that does not include analysis under OAR 340-224. Indeed, DEQ has not even analyzed whether the existing facility constitutes an unpermitted new federal major source. DEQ should withdraw this proposed permit, request information from Global necessary to calculate the existing facility's potential to emit absent any operational constraints, and complete an analysis of the maximum operating capacity of the facility. Only when armed with this information can DEQ properly analyze the correct type of permit to propose for Global's operations.

IV. Under Oregon law, and consistent with federal policy, emissions from the locomotives and barges while engaged as part of Global's facility must be included in the primary stationary source emissions calculation.

Global failed to consider emissions from locomotive and marine vessels when engaged in active loading and unloading operations in support of its crude oil facility's primary purpose in its potential to emit calculation. In Oregon "stationary source means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant." OAR 340-200-0020(141). When vessels dock and trains idle at a stationary source in order to further the purpose of the stationary source, the emissions from the vessels are attributed to the docking facility. This conclusion properly follows from a careful analysis of the interplay between various Oregon Regulations.

A source's potential to emit does not include all emissions associated with the facility. Oregon's regulations exclude secondary emissions. OAR 340-200-0020(91)(c). They are instead included in PSD emissions calculations only once the "major source" threshold has been met by primary emissions. OAR 340-224-0100. Secondary emissions are defined as "emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself." OAR 340-200-0020(100). They may include, but are not limited to emissions from ships and trains coming to or from the facility. *Id.* If Oregon wished to characterize emissions from onsite ships and trains as secondary, it could have done so by not expressly limiting the definition of secondary emissions to emissions from ships and trains coming to or from the facility. This omission is significant in that it indicates that emissions from

[5] Value found in Global's permit application that includes limits on throughput. Form AQ402, Page 3.

onsite ships and trains are not secondary but rather must be attributed to the stationary source itself. Thus in Oregon, emissions from trains and vessels at the proposed vessel loading operation are not secondary emissions and must be included in the stationary source's potential to emit calculation.

Indeed, DEQ itself has embraced this interpretation of its regulations. On January 17, 2008, DEQ determined that:

> emissions from LNG carriers that are directly associated with terminal activities are part of the stationary source's emissions. Emissions from the LNG carriers that are directly associated with terminal activities include, but are not limited to: emissions attributable to providing power for the ship-board LNG transfer system, including pumps used to transfer liquid or vapor LNG to or from the carrier; fugitive emissions from ship-board LNG piping and pumping systems; and any other emissions that can be directly attributed to terminal activities.

See Jordan Cove Energy and Pacific Connector Gas Pipeline Project, Final Environmental Impact Statement: Volume I 4.11-9 (excerpt attached as Exhibit 3).

Other permit applicants in Oregon have taken vessel emissions into account when determining which air quality provisions apply to their projects. For example, for the Federal Energy Regulatory Commission ("FERC") review, project developers of the Oregon Liquefied Natural Gas ("LNG") Terminal and Pipeline Project included emissions from vessels docked at port while transferring LNG between land and the vessel in the PSD analysis and dispersion modeling analysis. *See* Oregon LNG Terminal and Oregon Pipeline Project FERC Review Comment/Response Matrix, at 4-5 (attached as Exhibit 4). Transferring crude oil from trains to the facility and then from the facility to docked vessels is similar in nature to the LNG activities that DEQ determined were attributable to a stationary source's potential to emit calculation. As such, Global should take into account the emissions of docked vessels at the facility that are directly associated with the facility and further the purpose of the facility. Because Global has not identified and accounted for these emissions, DEQ must deny the permit application as incomplete.

Consideration of mobile source emissions when on-site and part of an industrial process as primary emissions is not only consistent with Oregon Law, but also with federal policy. It is true that federal policy decisions regarding ship and train emissions do not control in this situation because DEQ implements its own CAA program in the state, as governed by its SIP. However, federal case law and EPA's guidance documents are instructive in understanding how a court would interpret Oregon's regulations.

In 1980, EPA promulgated a definition of stationary source that would "encompass the activities of a marine terminal and only those dockside activities that would serve the purpose of the terminal directly and would be under the control of its owner or operator." *Natural Resource Defense Council v. U.S. Envtl. Prot. Agency*, 725 F.2d 761, 765 (D.C. Cir. 1984) (quoting 45 Fed. Reg. 52,696 (1980)). Under this definition, dockside activities were limited to "those activities in which ships would engage while docked at the terminal . . . [and which] would

directly serve the purpose of the terminal, such as loading and unloading . . . [and] over which the owner or operator of the terminal would have control." *Id.* "On June 25, 1982 EPA revoked the vessel emissions requirements in their entirety," meaning that emissions from docked vessels could never be considered direct emissions. *Id.* In *NRDC v. USEPA*, the D.C. Circuit vacated EPA's new regulations. *Id.* at 766-67. Looking at the statutory language and the legislative history of the 1977 amendments, the court disagreed with EPA that EPA could never regulate emissions from docked vessels because they were mobile sources. *Id.* at 768-71.

Since, *NRDC v. USEPA*, EPA has considered emissions from vessels when berthed at port in furtherance of the onshore facility to be attributable to the stationary source's potential to emit calculations. In 1990, John Calagni, the Director of the Air Quality Management Division for EPA Region VI, wrote a letter to the President of Waid and Associates explaining EPA's position on emissions from docked vessels. *See* Jan. 8, 1990 Letter from John Calcagni to Ken Waid (attached hereto as Exhibit 5). This letter briefly covers the history of EPA's regulations governing emissions from vessels and the outcome of the *NRDC* case. As a result of the *NRDC* case "the August 7, 1980 PSD regulations (with the exception of to and fro emissions counting) shall apply to determinations on how to treat vessel emissions." *Id.* at 2. The letter notes that the preamble to the 1980 regulations explain that "emissions from certain activities of a ship docked at a terminal (i.e., when the vessel is stationary) may be considered emissions of the terminal if the activities would 'directly serve the purpose of the terminal and be under the control of its owner or operator to a substantial extent.'" *Id.* EPA has consistently maintained this position since the NRDC case. *See, e.g.*, Oct. 28, 2003 Letter from Charles J. Sheehan to Michael Cathey and Diana Dutton, in EPA Title V Policy and Guidance Database, at 7 (attached as Exhibit 6) (stating that vessel emission associated with LNG regasification and the transfer of gas to the port should be included in the applicability determinations for CAA preconstruction and operating permits).

Other states with regulations similar to Oregon's include emissions from berthed vessels as emissions of the stationary facility in the potential to emit calculations. States have followed EPA's interpretation with regard to their own state regulations. For example, Texas, whose regulations are substantially similar to Oregon's, requires certain emissions from docked vessels to be included as direct emissions of a stationary source. *See* Texas Commission on Environmental Quality, *Air Permit Reviewer Reference Guide* 9 (attached as Exhibit 7) (explaining which emissions from docked vessels are considered primary emissions of a stationary source). Texas regulations define the term stationary source as "[a]ny building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under [the federal CAA]. 30 TAC § 116.12(35). Texas regulations further define "building, structure, facility, or installation" as "[a]ll of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent propertiers, and are under the control of the same person (or persons under common control." 30 TAC § 116.12(6). Under these regulations, certain emissions from docked vessels must be considered in a stationary source's potential to emit calculations. These emissions include "loading emissions, any vessel equipment meant to support the transfer of materials between the vessel and shore, and the emissions from the ship's boilers used to supply the transfer of materials between the vessel and shore facilities while the ship is docked." *See* Exhibit 7, page 9.

Under Oregon law and consistent with federal policy, Global must account for emissions from stationary vessels and trains whose operations further the purpose of the stationary source in its potential to emit calculations. Because Global has failed to account for these emissions, DEQ should deny the permit. A proper calculation will demonstrate that Global's crude oil transport facility is a new federal major source. By failing to consider this threshold determination, DEQ has ignored its duties under the CAA, Oregon's SIP, and its own regulations, and is proposing an improper air permit for CPBR's proposed air contaminant discharges.

V. DEQ failed to properly analyze the applicability of the National Emissions Standard for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations

In its permit application, Global states that because it is not a major source, it is not subject to the requirements of 40 C.F.R. 63 Subpart Y, the National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Marine Tank Vessel Loading Operations. Application 1.5.3. In the permit review report DEQ parrots this analysis by stating Subpart Y "is not applicable to the proposed source because the standard is only applicable to major sources." Review Report 21(a). Unfortunately, neither Global nor DEQ provide citation to the regulatory language of Subpart Y. 40 C.F.R. 63.560(a) states:

> (a) *Maximum achievable control technology (MACT) standards.* (1) The provisions of this subpart pertaining to the MACT standards in §63.562(b) and (d) of this subpart are applicable to existing and new sources with emissions of 10 or 25 tons, as that term is defined in §63.561, except as specified in paragraph (d) of this section, **and are applicable to new sources with emissions less than 10 and 25 tons**, as that term is defined in §63.561, except as specified in paragraph (d) of this section. (emphasis added)

The plain language of this section would seem to severely undercut Global's and DEQ's analysis of the applicability of Subpart Y. Global's permit application states that this applicability section is "Defined as a major source having aggregate actual HAP emissions from marine tank vessels loading operations at all loading berths less than 10 tpy for single HAP or 25 tpy for all HAPs." (emphasis in original).[6] And the definition in 40 C.F.R 63.561 does include the modifier "major source" indicating that the phrase highlighted above only applies to major sources that emit less than 10 tons of one HAP or 25 tons of total HAPs.

The Commenters are disappointed that DEQ did not take the time to explain how a source could be a major source for HAP emissions but emit less than the 10/25 threshold that is the definition of major source for NESHAP purposes. Perhaps if they did, DEQ would have recognized that their analysis—that the "proposed source" is not a major source—was lacking.

The MACT standards in Subpart Y do apply to only major sources. However, DEQ fails to properly analyze whether or not the crude oil transloading facility is located at a major source. EPA regulations define major source as:

[6] The Commenters assume that Global is referencing the definitions in 40 C.F.R. 63.561, though their assertion does not include a citation.

> any stationary source **or group of stationary sources located within a contiguous area and under common control** that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants . . .

40 C.F.R. 63.2 (emphasis added). Both Global and DEQ fail to analyze whether, when combined with the ethanol facility, the entire terminal constitutes a major source of HAPs. Recognizing that a marine tank vessel unloading operation can be but part of a facility is how to remedy the seeming incongruity of a marine tank vessel operation emitting less than 10/25, yet being a major source.

Before a permit may be issued, DEQ must provide the public with proper analysis of the applicability of Subpart Y, instead of focusing on solely on the crude oil transloading facility. In addition, as noted above, the potential of this facility to emit is significantly higher than the proposed permit limits because neither the limits in the proposed permit nor the limits in the ethanol facility permit act as enforceable limitations on the crude oil transloading facility. Therefore, DEQ must calculate HAP emissions at the maximum operating capacity of the crude oil transloading facility and add it to the capacity of the ethanol manufacturing facility in order to truly analyze the applicability of Subpart Y. The public has a right to review and critique this analysis since it was not done as part of this public comment period. DEQ therefore must withdrawal this proposed permit for failing to fully analyze all applicable requirements.

VI. Based on Global's blatant disregard for the requirements under the CAA, DEQ should revoke Global's existing permit and refuse to issue the proposed permit.

Global has a demonstrated history of non-compliance under the CAA. As explained above, Global used the existing permit as a sham to begin transloading massive amounts of crude oil without undergoing the requisite regulatory procedures, which would have provided for public scrutiny, and to avoid the more rigorous CAA requirements for new federal major sources.

For example, in March and April of 2012, Global installed a 192,000 gallon storage tank with an internal floating roof to store gasoline. *See* April 6, 2012 Letter from Paul R. Mordosrski, PE at Merjent, to Greg Grunow, DEQ (notification of initial startup of the denaturant tank, TK-6114). In January of 2013, Global removed and replaced four pumps on the vapor recovery unit for barge loading, and replaced existing pump skids. *See* Notice of Intent to Construct, submitted to DEQ Jan. 25, 2013. Because the existing permit does not cover Global's crude oil transloading operations, these modifications and structural changes to the facility to allow for crude oil transloading operations were completed without the requisite air permit. Since Global first received crude oil in October of 2012, the facility has and is continuing to operating a crude oil transloading facility without a permit.

Further, Global blatantly ignored DEQ's assessment that the true nature of its activities constituted a new source under the agency's air quality rules. *See* January 10, 2014 Pre-

Enforcement Notice from DEQ to Global (noting that even after being informed of the requirement to obtain a new standard ACDP, Global submitted an application for a new *simple* ACDP in August of 2012, then submitted an application for a complex technical permit modification in October of 2012, and that in May of 2013 Global representatives continued to assert that Global could trainload *any* quantity of crude oil under the existing permit despite DEQ's disagreement). Such blatant disregard demonstrates that Global has no intention of complying with DEQ's interpretation of the CAA.

DEQ, however, has given Global no reason to achieve compliance. The $117,292 penalty, touted by some as an "unusually big fine," barely scratches the surface of the economic advantage Global achieved by avoiding stricter regulations and public scrutiny. *See* Tony Schick, *Oregon Regulators Issue $117,000 Fine For Oil Terminal's Permit Violation* (attached as Exhibit 8). DEQ's penalty assessment letter recognized that operating an air source without an ACDP is a serious violation. The record demonstrates that Global gained an economic benefit by freely operating for more than a year without complying with the CAA. Yet the penalty assessment calculation includes an economic benefit factor of only $292 per week. DEQ explains is a reflection of the economic benefit gained by delaying the cost of the initial application fee and 2013 annual fee.

This calculation does nothing to "level the playing field" for Global and its competitors. It completely ignores the economic benefit Global gained by immediately operating as a crude oil transloading facility. Had Global sought the required permit initially, it would not have been able to operate during the notice and comment period. As the proposed crude oil transit projects in Washington have demonstrated, this type of project is extremely controversial and thus the delay in turning any profit likely would have been delayed even further. Instead, DEQ has provided Global a nearly-free pass to continue operating under the existing permit while the current permit is proposed as if the facility operated under a clean slate. Such lack of oversight fails to create an incentive for Global to ever comply with Oregon's air quality rules.

Nor did DEQ's penalty assessment require Global to bring its facility into full compliance with the law. Rather, the agency's recent penalty assessment fails to hold Global accountable for substantial violations of the CAA. DEQ's penalty enforcement notice identified two violations: (1) establishing and operating a new major source of air contaminant emissions in Oregon without the necessary new source permit, and (2) failing to amend application no. 026864 to appropriately correct the application to reflect Global's intended activities and associated emission rates. What's more, Commenters believe that the CAA requires Global to undergo New Source Review and obtain a preconstruction permit under the PSD program. The penalty assessment and order, however, merely assesses a penalty and requires Global to comply with the existing permit.

Given Global's history of non-compliance, and the fact that Global has largely succeeded in bypassing the required regulatory review, DEQ should seize this opportunity to revoke the existing permit and refuse to issue the proposed permit. OAR 340-216-0082(4)(a) authorizes DEQ to revoke an existing permit if the agency "determines that a permittee is in noncompliance with the terms of the permit, submitted false information in the application or other required documentation, or is in violation of any applicable rule or statute." Documents from Global's

permit files support that Global misrepresented its actions in various applications for permit modifications and structural changes to the facility since 2012. Under OAR 340-216-0082(4)(b), DEQ may immediately revoke or refuse to renew a permit if the agency "finds there is a serious danger to public health, safety or the environment caused by a permittee's activities."

Conclusion

Commenters request that DEQ analyze whether Global's facility is a new federal major source. For too long DEQ has allowed Global to play by its own rules, placing Oregon's health and environment at risk. It is not too late for DEQ to act on its authority and ensure improved air quality in Oregon by truly leveling the playing field and requiring Global to comply with the agency's rules.

Signed,

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