

INSIDE EPA

ACTIVISTS FIGHT REFINERY PERMITS TO ENFORCE STRICT AIR REQUIREMENTS

Date: April 27, 2007 -

Activists are launching a new effort targeting refinery air pollution by challenging individual plant clean air permits in a strategy aimed at forcing the facilities to meet requirements that go beyond recent EPA enforcement settlements.

Citizens for Environmental Justice and the Refinery Reform Campaign recently filed comments opposing three Texas refinery permits, and are urging the state to require the facilities to agree to stricter emissions monitoring requirements they say are required by the Clean Air Act, as well as to address global warming emissions and environmental justice concerns.

One environmentalist familiar with the new strategy says that challenges to local permits may help address concerns activists have previously raised about many of the settlements EPA negotiated with industry, particularly regarding emissions monitoring, recordkeeping and reporting requirements.

Unlike a long-term policy fight, or trying to get a federal regulation change, we have an opportunity that is extremely near term in filing individual challenges to permits. The leverage that communities have in the permitting process is very great, one activist says, acknowledging that pressuring EPA to broadly address the concerns is unlikely to succeed.

The groups are opposing proposed Texas Commission on Environmental Quality (TCEQ) permits for three refineries in Corpus Christi, TX. The groups seek a contested case hearing, which under Texas law allows citizens in a quasi-judicial hearing to raise objections and potentially block permit applications. Relevant documents are available on InsideEPA.com.

At the same time the groups, joined by the Environmental Integrity Project (EIP), have filed a petition with EPA objecting to a proposed Title V federal operating permit for a Citgo refinery in Texas, arguing that the permit's monitoring requirements violate Clean Air Act requirements.

The environmentalist says that the groups want TCEQ to impose stringent

monitoring and emission control requirements on refineries after failing to win similar requirements included in the recent Clean Air Act enforcement settlements that EPA entered into with refineries.

The environmentalists are focusing on permit challenges rather than seeking discussions with EPA over developing new refinery air rules because EPA tightening refinery standards during the Bush administration is never going to happen, the source says.

EPA is under a court-ordered deadline to issue by the end of this month revised new source performance standards (NSPS) for refineries. Activists have already said they are weighing litigation over the standards because they are unlikely to mandate any greenhouse gas reductions (Inside EPA, April 13, p1).

But because a lawsuit seeking to change EPA rules can take years, activists are eyeing refinery permit challenges as a quicker way to address their concerns.

The activist says that EPA's settlements focus on criteria pollutants and not on monitoring or controlling air toxics such as benzene which are more harmful to fence-line neighbors. The source adds that in some settlements, the emissions reductions that EPA and the refineries settled on will be wiped out by the massive expansions under way at some plants. One step forward and three steps back, the source adds.

A spokesman for Valero -- applicant for one of the refinery permits being challenged -- says, "We would prefer to work through the official application process rather than commenting directly on activists' remarks." Citgo, another targeted plant, has a permit that has appropriate mitigation systems and monitors, a Citgo spokesman says. A spokesman for Flint Hills Resources, the third targeted plant, did not return calls by press time.

At the same time, the activists say that the permits should also address concerns about refinery impacts on climate change and environmental justice. In the challenge to Valero's permit, the groups say that because global warming is largely a man-made problem, the company should work to decrease their emissions, not increase them. This draft permit application also seeks to increase [nitrogen oxide (NOx)], a greenhouse gas.

The activist says that the groups are developing a list of recommendations to refineries on how to reduce greenhouse gas emissions, but says there are clear steps that companies could include in their

permits to achieve this. These include covering wastewater treatment facilities to eliminate fugitive emissions of greenhouse gases, and replacing old boilers that have high carbon dioxide emissions with more efficient boilers.

The groups are also urging TCEQ to consider environmental justice concerns in the permits. A second activist acknowledges that the Clean Air Act does not expressly require air permits to include such measures, but believes it is still a key issue to raise in debating refinery expansion.

The first activist says that measures companies could take to address environmental justice concerns include creating buffer zones around refineries to relocate equipment and reduce the impact of emissions on communities living nearby, or providing assistance toward relocating local citizens.

An EPA spokesman declined to comment on the new effort and also touts the agency's oversight of the refinery sector, noting the agency has initiated enforcement actions against 85 plants in 25 states, cutting NOx by 80,000 tons and sulfur dioxide by 235,000 tons

Meanwhile, EPA has denied a petition filed by California environmentalists urging the agency to reconsider changes it made to a refinery rule that activists claim fails to require facility operators to minimize emissions during startup, shutdown and malfunction (SSM) events.

At issue is EPA's national emissions standards for hazardous air pollutants: general provisions. Activists charge that amendments finalized last April block public access to a facility's plans for reducing SSM emissions. They also claim that the changes fail to require refinery operators to minimize these emissions, which they say pose health risks to residents living near these facilities during blackouts or malfunctions.

The Coalition for a Safe Environment (CSAFE) filed a petition with EPA on June 19, 2006, urging the agency to reconsider its changes, noting it did not have opportunity to comment.

However, EPA in an April 18 Federal Register notice denied the petition. In a fact sheet accompanying the decision, the agency said that it believes the changes to the SSM requirements are appropriate. EPA says the changes allow sources to deviate from a SSM plan but do remove a general duty to minimize emissions at all times during SSM periods.

Earthjustice June 19 last year also filed a lawsuit against the rules in the U.S. Court of Appeals for the District of Columbia Circuit. The suit, filed on behalf of CSAFE and the Sierra Club, will now proceed. --
Anthony Lacey