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VIA EMAIL

March 20, 2018

Ms. Elena Guilfoil
Washington Department of Ecology

Subject: Comments on proposed Chapter 173-400 WAC, Chapter 173-401 WAC rulemaking.

Dear Ms. Guilfoil,

Longview Fibre Paper and Packaging, Inc. dba KapStone Kraft Paper Corporation (KapStone) appreciates the opportunity to provide comments on the proposed Chapter 173-400 WAC, Chapter 173-401 WAC rulemaking. We thank you for your outreach to our industry, and for the opportunity afforded to us to participate in this rule-making.

KapStone supports the industry comments submitted by the Northwest Pulp and Paper Association (NWPPA) on the proposed rulemaking. KapStone's comments on the proposed rulemaking are presented below.

Ecology should include alternative emission limitations for malfunctions as well as for startup and shutdown

The proposed rule language only provides for a process to establish an alternative emissions limit for startup and shutdown events. Note that alternative emission limitations, including work practices, can be used to address malfunctions as well as startups and shutdowns. Although EPA's policy statements contained in the startup, shutdown and malfunction (SSM) State Implementation Plan (SIP) Call Rule generally describe alternative emission limitations in the context of startup and shutdown, alternative emission limitations, including non-numerical limitations, applicable to malfunction events beyond the reasonable control of the source are not prohibited by EPA policy. Although the SSM SIP Call Rule expresses EPA's view that developing an alternative emission limitation for malfunctions is "problematic," EPA does not state that doing so is unlawful, and in fact EPA talks about the criteria that a state should apply when developing "a specifically designed alternative emission limitation." 80 Fed. Reg. 33,979. EPA has not identified any legal requirement that prevents a SIP from including alternative emission limitations addressing malfunctions, or that would limit such alternative limitations to "rare" occasions. Moreover, some of the concerns EPA describes about being able to foresee the particulars of a malfunction present less difficulty when the alternative emission limitation is in the form of a work practice standard.

In fact, the logic of EPA's endorsement of alternative emission limitations as a possible way of dealing with conditions during startup or shutdown that prevent meeting emission limitations based on normal operations—that some type of provision restricting

emissions has to apply at all times, and that limitations generally should be reasonable and reflect the performance of available technology—applies equally to malfunction conditions (when malfunction is defined as EPA has defined it in the past: an unplanned condition that results in higher emissions, which could not have been avoided with proper design, operation, and maintenance of the source).

The use of “work practice standards” is an appropriate way for Ecology to address startup, shutdown and malfunction conditions

Clean Air Act section 302(k) defines “emission limitation” and “emission standard” to be not solely a numerical limit on the quantity, rate, or concentration of emissions of an air pollutant on a continuous basis, but rather “a requirement...which limits” the quantity, rate, or concentration of emissions of air pollutants on a continuous basis. The statute does not say that this “requirement” must be expressed as a single, numerical, not-to-be-exceeded-at-all-times limitation. Moreover, the remainder of CAA section 302(k) provides an alternative to a specific limitation on the quantity, rate, or concentration of emissions: “any design, equipment, work practice or operational standard promulgated under” the Act (hereafter, a “work practice standard”).

Nothing in the Clean Air Act or EPA policy prevents use of work practice standards whenever the state determines that this is an appropriate way to limit emissions. In contrast to CAA § 112(h), § 302(k) does not contain any limitations on when work practice standards can be used as the “emission limitation” required in a SIP (i.e., there is no requirement that numerical limitations be infeasible, and indeed no preference for numerical limitations). The SSM SIP Call Rule recognizes, as it must, that work practice standards can satisfy the requirement that some form of emission limitation be applicable at all times (See, e.g., 80 *Fed. Reg.* 33,898).

Work practice standards are, in many cases, the logical choice to deal with the special circumstances associated with SSM events, such as the inapplicability of the reference test methods specified for compliance testing, or the unpredictable effect on emissions of the range of circumstances that could constitute an unavoidable malfunction. Clean Air Act and state law requirements that emission standards reflect what sources can achieve with available technology may make work practice standards the only workable regulatory approach, in fact, for SIP limitations directed at some sources or circumstances. EPA has recognized, in promulgating the more-stringent standards under section 112, the appropriateness of work practice standards to deal with situations where measurement of the emissions is not technically or economically practicable, such as when “emissions are not at steady state during startup and shutdown (a necessary factor for accurate emissions testing), and the varying stack conditions, gas compositions, and flow rates make accurate emission measurements impracticable,” or when the startup period “is too short a time to conduct source testing.” (See 80 *Fed. Reg.* 45,279, 45,290 (July 29, 2015) (Mineral Wool Production MACT standards); see also *id.* at 45,286-87.)

A work practice standard can apply to a limited category of sources or emitting processes during limited times (such as defined startup and shutdown periods), and can provide detailed, verifiable criteria that must be met. At the same time, though, part of the value of work practice standards is the ability to use them to address circumstances where emissions control performance cannot reasonably be predicted or monitored.


Ecology should consider using Title V operating permits to address site-specific numerical limitations or work practice standards. The requirement that an AEL established under Section WAC 173-400-082 is first approved in the SIP before it becomes effective is not practical.

Other than stating that EPA is not changing "emergency defense" provisions in EPA regulations for state and federal Title V permitting and in existing Title V permits at the time, the SSM SIP Call Rule is silent on whether alternative emission limitations for a source can be addressed through amendment of the source's operating permit issued under CAA Title V and the EPA permitting regulations at 40 C.F.R. Part 70. A SIP that states that certain emission limitations otherwise applicable to the source will not apply, and alternative emission limitations specified in the source's Title V permit will apply instead, in circumstances described in the permit, would appear to meet EPA's criterion that some (federally enforceable) emission limitation has to apply to a source at all times. So long as the alternative emission limitation in the permit was the subject of public notice and right to comment, and EPA did not exercise its right to object to the permit amendment, the alternative emission limitation would be federally enforceable and subject to public review. (Such a provision, in combination with other provisions of the SIP, would have to be drafted so as not to indicate that a Title V provision could alter the applicability of federal NSPS or NESHAP emission limitations.)

Accordingly, Ecology may wish to include in its SIP the possibility of a source developing, and obtaining state approval as a Title V permit amendment, alternative numerical emission limitations or alternative emission limitations in the form of work practice standards, that would apply during SSM events as specified in the permit. This would provide a mechanism, for example, for sources to prepare, and Ecology, EPA, and the public to review, a site-specific set of work practices that would minimize emissions associated with startups, shutdowns, or malfunctions. Ecology could evaluate whether the proposed alternative limitation reflects any applicable minimum technology requirements and otherwise meets CAA goals, using the state agency's own expertise, and considering the factors that EPA states in the SSM SIP Call Rule that it thinks states should apply in developing alternative emission limitations, at 80 *Fed. Reg.* 33,974-76, 33,978-80.

We appreciate this opportunity to comment on the proposed rules and welcome any questions that you might have about these comments.

Very truly yours,



Roberto Artiga
Environmental Services Manager