

**PETITION FOR CONTESTED CASE HEARING TO THE
MINNESOTA POLLUTION CONTROL AGENCY
Pursuant to Minnesota Rules §§ 7000.1800 and 7000.1900**

**Petitioner: Al-Corn Clean Fuel LLC
MPCA Permit No.: 03900028-102
797 5th Street
Claremont, Minnesota 55924-4706, Dodge County**

I. INTRODUCTION

Petitioner, Al-Corn Clean Fuel LLC (“Al-Corn”), by and through its undersigned counsel, hereby petitions the Minnesota Pollution Control Agency (“MPCA” or “Agency”) to hold a contested case hearing to address Al-Corn’s questions of disputed material fact related to Al-Corn’s Draft Air Individual Permit/Major Amendment, No. 03900028-102 as proposed by the Air Quality Permits Section, Industrial Division (the “Draft Permit”).

This contested case petition is based on, and hereby incorporates by reference: (1) the accompanying Affidavit of Colin Campbell; (2) the accompanying annotated Draft Permit raising line-item disputes of material fact (the “Annotated Permit”); (3) Al-Corn’s Comments and Additional Updated Comments on Draft Permit No. 03900028-102 (the “Comment Letters”); (4) all exhibits, attachments and all documents cited and referenced in the foregoing documents or otherwise attached to this Petition and all correspondence, exhibits, attachments and documents previously provided to the MPCA during the permit application process related to the Draft Permit (Application Related Materials).

**II. STATEMENT OF THE REASONS AND PROPOSED FINDINGS SUPPORTING
DECISION TO HOLD A CONTESTED CASE HEARING**

Pursuant to Minn. R. 7000.1900, Subp. 1, based on the evidence, analysis, reasoning, and argument articulated in the above-referenced Affidavit of Colin Campbell, Annotated Permit, Comment Letters, Application Related Materials and attachments, Al-Corn asserts the following proposed findings and reasons supporting a decision to grant a contested case hearing in this matter:

1. Al-Corn operates a fuel grade, dry-mill ethanol plant (the “Plant”), located at 797 5th Street, Claremont, Dodge County, Minnesota and is the sole Air Individual Permit holder for the Plant.
2. The Plant expects to use 1.4 million tons of corn per year to produce 140 million gallons of ethanol (undenatured).
3. There are material issues of fact in dispute between the Agency and Al-Corn concerning Al-Corn’s Draft Permit, as enumerated in this Petition and the Affidavit of Colin Campbell, Annotated Permit, Comment Letters, Application Related Materials and attachments.

4. The MPCA's commissioner has jurisdiction over this matter to make a determination on the disputed material issues of fact enumerated in the Affidavit of Colin Campbell, Annotated Permit, Comment Letters, Application Related Materials and attachments, and Section III of the Petition, pursuant to its authority in in Minn. Stat. ch. 116.
5. There is a reasonable basis underlying the disputed material issues of fact enumerated in the Affidavit of Colin Campbell, Annotated Permit, Comment Letters, Application Related Materials and attachments, and Section III of the Petition such that holding a contested case would allow the introduction of information that would aid the Agency in resolving such disputed facts and making a final decision on the matter, in that the Petitioners have presented or will present evidence, data, and analysis indicating the following, among other disputes of fact as outlined in the Annotated Permit:
 - i. That the MPCA improperly created "BACT-equivalent" limitations for regulating emissions from Fermenter #1 (EQUI 31), Fermenter #2 (EQUI 32) and Fermenter #3 (EQUI 33), without factual basis or authority.
 - ii. That the manner, method and assumptions used by MPCA to develop the revised "BACT-equivalent" limitations proposed for the emissions from Fermenter #1 (EQUI 31), Fermenter #2 (EQUI 32) and Fermenter #3 (EQUI 33) were without factual basis, contrary to reasonable industry practice, and contrary to scientific and technical knowledge and understanding.
 - iii. That Conditions 5.68.5 and 5.68.6 of the Draft Permit should be omitted from the final issued permit because they are not applicable requirements, are not needed to ensure compliance with all applicable requirements, and are not necessary to maintain the Plant's potential non-fugitive VOC emissions less than the applicable major stationary source threshold at 40 CFR § 52.21(b)(1).
 - iv. That Conditions 5.68.5 and 5.68.6 of the Draft Permit are not achievable from a technical standpoint.
 - v. That the MPCA's proposed requirement that the fermentation scrubber (TREA 16) operate and maintain control equipment such that it achieves a control efficiency for Volatile Organic Compounds of greater than or equal to 99.5%, or less than or equal to 20 parts per million if the inlet concentration is less than 200 parts per million, to avoid being considered a major source under 40 CFR 52.21(b)(1)(i) and Minn. R. 7007.3000 is without factual basis, contrary to reasonable industry practice, and contrary to scientific and technical knowledge and understanding.
 - vi. That the MPCA's proposed requirement that the fermentation scrubber (TREA 16) operate and maintain control equipment such that it achieves a control efficiency for Volatile Organic Compounds of greater than or equal to 99.7%, or less than or equal to 20 parts per million if the inlet concentration is less than 200 parts per million, to avoid being considered a major source under 40 CFR 52.21(b)(1)(i) and

Minn. R. 7007.3000 is without factual basis, contrary to reasonable industry practice, and contrary to scientific and technical knowledge and understanding.

- vii. That the minimum control efficiency requirements in Conditions 5.68.8 through 5.68.16 of the Draft Permit should be omitted from the final issued permit because they are not applicable requirements, are not needed to ensure compliance with all applicable requirements, and are not necessary to maintain the Plant's potential emissions of hazardous air pollutants less than the applicable major source threshold at 40 CFR § 63.2.
- viii. That the MPCA's conclusion that the Credible Evidence Rule is "[s]ubject to the limitations of Minn. R. 7007.1800 and 7017.0100, subp. 2," is without factual basis, contrary to reasonable industry practice, and contrary to scientific and technical knowledge and understanding.
- ix. That the MPCA's assumption that a pollution control device will become completely unable to control emissions if it operates outside of a parametric operating range defined in an air permit is without factual basis, contrary to reasonable industry practice, and contrary to scientific and technical knowledge and understanding.
- x. That the MPCA's assumption that a scrubber will become completely unable to control emissions if it operates outside of the minimum water flow rate defined in an air permit (*e.g.*, draft requirement 6.28.20) is without factual basis, contrary to reasonable industry practice, contrary to MPCA's own practice, and contrary to scientific and technical knowledge and understanding, as there can be credible evidence presented after the fact to demonstrate to a reasonable degree of scientific and engineering certainty that the emissions during the event were in compliance with applicable requirements.
- xi. That the MPCA's assumption that a flare will become completely unable to control emissions if it exhibits any visible emissions (*e.g.*, draft requirement 5.67.21) is without factual basis, contrary to reasonable industry practice, contrary to MPCA's own practice, and contrary to scientific and technical knowledge and understanding, as there can be credible evidence presented after the fact to demonstrate to a reasonable degree of scientific and engineering certainty that the emissions during the event were in compliance with applicable requirements.
- xii. That the MPCA's assumption that a regenerative thermal oxidizer ("RTO") will become completely unable to control emissions if it operates outside of the minimum 3-hour average combustion chamber temperature as defined in an air permit (*e.g.*, draft requirement 5.66.12) is without factual basis, contrary to reasonable industry practice, contrary to MPCA's own practice, and contrary to scientific and technical knowledge and understanding, as there can be credible evidence presented after the fact to demonstrate to a reasonable degree of scientific

and engineering certainty that the emissions during the event were in compliance with applicable requirements.

- xiii. That the MPCA's assumption that a scrubber will become completely unable to control emissions if it operates outside of the pressure drop range defined in an air permit (*e.g.*, draft requirement 5.68.24) is without factual basis, contrary to reasonable industry practice, contrary to MPCA's own practice, and contrary to scientific and technical knowledge and understanding, as there can be credible evidence presented after the fact to demonstrate to a reasonable degree of scientific and engineering certainty that the emissions during the event were in compliance with applicable requirements.
- xiv. That the MPCA's assumption that a baghouse will become completely unable to control emissions if it operates outside of the pressure drop range defined in an air permit (*e.g.*, draft requirement 5.82.40) is without factual basis, contrary to reasonable industry practice, contrary to MPCA's own practice, and contrary to scientific and technical knowledge and understanding, as there can be credible evidence presented after the fact to demonstrate to a reasonable degree of scientific and engineering certainty that the emissions during the event were in compliance with applicable requirements.
- xv. That the MPCA's assumption that a baghouse will become completely unable to control emissions during the entirety of any calendar day when visible emissions are observed, no matter how short the duration is without factual basis, contrary to reasonable industry practice, contrary to MPCA's own practice, and contrary to scientific and technical knowledge and understanding.
- xvi. That it would be impossible to comply with the Draft Permit if it were issued in its current form because Condition 5.83.4 of the Draft Permit, pertaining to TREA 42, requires that the condenser water flow rate be maintained at a rate equal to or greater than 45.0 gallons per minute, but the same permit condition provides that VOC emissions from the fermentation system emissions unit shall be considered uncontrolled during periods when the condenser water flow rate "is above the maximum flow rate limit

III. STATEMENT OF DISPUTED MATERIAL ISSUES OF FACT TO BE RESOLVED IN THE CONTESTED CASE HEARING

Petitioners hereby assert the below disputed material issues of fact that support holding a contested case hearing. The following statement of disputed material issues of fact is a summary, not an exhaustive list of the disputed material issues of fact identified and raised by Petitioners and their experts, as detailed in the Affidavit of Colin Campbell, Annotated Permit, Comment Letters, Application Related Materials and attachments.

1. Whether or not the MPCA improperly created Best Available Control Technology (“BACT”)-equivalent limitations for regulating emissions from Fermenter #1 (EQUI 31), Fermenter #2 (EQUI 32) and Fermenter #3 (EQUI 33)?
2. Whether or not Al-Corn should be subject to the revised “BACT-equivalent” limitations proposed for the emissions from Fermenter #1 (EQUI 31), Fermenter #2 (EQUI 32) and Fermenter #3 (EQUI 33) proposed in the Agency’s Draft Permit?
3. Whether or not Conditions 5.68.5 and 5.68.6 of the Draft Permit should be omitted from the final issued permit because they are not applicable requirements, are not needed to ensure compliance with all applicable requirements, and are not necessary to maintain the Plant’s potential non-fugitive VOC emissions less than the applicable major stationary source threshold at 40 CFR § 52.21(b)(1)?
4. Whether or not Conditions 5.68.5 and 5.68.6 of the Draft Permit are achievable from a technical standpoint?
5. Whether or not the fermentation scrubber (TREA 16) must operate and maintain control equipment such that it achieves a control efficiency for Volatile Organic Compounds of greater than or equal to 99.5%, or less than or equal to 20 parts per million if the inlet concentration is less than 200 parts per million, to avoid being considered a major source under 40 CFR 52.21(b)(1)(i) and Minn. R. 7007.3000?
6. Whether or not the fermentation scrubber (TREA 16) must operate and maintain control equipment such that it achieves a control efficiency for Volatile Organic Compounds of greater than or equal to 99.7%, or less than or equal to 20 parts per million if the inlet concentration is less than 200 parts per million, to avoid being considered a major source under 40 CFR 52.21(b)(1)(i) and Minn. R. 7007.3000?
7. Whether or not the minimum control efficiency requirements in Conditions 5.68.8 through 5.68.16 of the Draft Permit should be omitted from the final issued permit because they are not applicable requirements, are not needed to ensure compliance with all applicable requirements, and are not necessary to maintain the Plant’s potential emissions of hazardous air pollutants less than the applicable major source threshold at 40 CFR § 63.2?
8. Whether or not the Credible Evidence Rule is subject to the limitations of Minn. R. 7007.1800 and 7017.0100, subp. 2?
9. Whether or not Al-Corn is subject to a presumption that a pollution control device will become completely unable to control emissions if it operates outside of a parametric operating range defined in an air permit?
10. Whether or not Al-Corn is subject to a presumption that a scrubber will become completely unable to control emissions if it operates outside of the minimum water flow rate defined in an air permit (e.g., draft requirement 6.28.20)?

11. Whether or not Al-Corn is subject to a presumption that a scrubber will become completely unable to control emissions if it operates outside of the pressure drop range defined in an air permit (e.g., draft requirement 5.68.24)?
12. Whether or not Al-Corn is subject to a presumption that a flare will become completely unable to control emissions if it exhibits any visible emissions (e.g., draft requirement 5.67.21)?
13. Whether or not Al-Corn is subject to a presumption that an RTO will become completely unable to control emissions if it operates outside of the minimum 3-hour average combustion chamber temperature as defined in an air permit (e.g., draft requirement 5.66.12)?
14. Whether or not Al-Corn is subject to a presumption that a baghouse will become completely unable to control emissions if it operates outside of the pressure drop range defined in an air permit (e.g., draft requirement 5.82.40)?
15. Whether or not Al-Corn is subject to a presumption that a baghouse will become completely unable to control emissions during the entirety of any calendar day when visible emissions are observed, no matter how short the duration?
16. Whether or not it would be impossible to comply with the Draft Permit if it were issued in its current form where Condition 5.83.4 of the Draft Permit, pertaining to TREA 42, requires that the condenser water flow rate be maintained at a rate equal to or greater than 45.0 gallons per minute, but the same permit condition provides that VOC emissions from the fermentation system emissions unit shall be considered uncontrolled during periods when the condenser water flow rate “is above the maximum flow rate limit”?
17. Any other question(s) of disputed material fact or law raised in or by the Affidavit of Colin Campbell, the Annotated Permit, the Comment Letters and attachments and/or within the administrative record for the permit.

IV. STATEMENT OF REQUESTED RELIEF

Based on the issues, reasons and arguments articulated in this petition and Al-Corn’s supporting materials, Al-Corn requests an order granting the following relief in this matter:

1. Modifying Al-Corn’s Draft Permit consistent with the proposed findings enumerated above.
2. Granting Al-Corn’s contested case petition.
3. Ordering that MPCA request that the Administrative Law Judge identify the issues and determine the appropriate scope for the contested case hearing per Minn. R. 7000.1900, subp. 2.

4. Granting Al-Corn such further relief as deemed just and equitable.

V. PROPOSED WITNESS LIST

Al-Corn anticipates that the contested case hearing would require 2-3 days of testimony and argument. Preliminarily, Al-Corn proposes to call the below witnesses to present evidence at the contested case hearing. However, Al-Corn reserves its right to amend its witness list in any manner contemplated by Minn. R. 7000.1800, subp. 2. C. Subject to such future amendment, Al-Corn's proposed witnesses are as follows:

1. Mr. Colin Campbell, whose qualifications are set forth in his Affidavit. Mr. Campbell may testify to the items identified in sections II and III.
2. Mr. Thomas Harwood, CEO of Al-Corn Clean Fuel LLC. Mr. Harwood may testify to the items identified in sections II and III.

VI. CONCLUSION

Based on the foregoing, and the evidence, analysis, reasoning, and argument articulated in the above-referenced Affidavit of Colin Campbell, Annotated Permit, Comment Letters, Application Related Materials and attachments hereby incorporated into this petition, Al-Corn, by and through counsel, respectfully requests that the Agency hold a contested case hearing pursuant to Minn. R. §§ 7000.1800 and 7000.1900.

DATED: February 21, 2023

Michael Best & Friedrich, LLP



Ian Pitz (#23347X)
One South Pinckney St.
Madison WI 53703
Tel: (608) 283-0107
Fax: (608) 283-2275

ATTORNEYS FOR PETITIONERS

ATTACHMENTS

1. Affidavit of Colin Campbell
2. AI Corn Draft Permit Comments (2/21/23)
3. Email Enclosing AI-Corn Comments on Draft Permit (11/24/21)
4. AI-Corn Draft Permit Comments (11/24/21)
5. AI-Corn Additional Draft Permit Comments (03/23/22)
6. Draft Applicability Determination (5/29/20)
7. MPCA Part 70 Permit 09300028-101 (03/03/17)
8. Certification of Completion Supporting Termination of 2002 Consent Decree (10/24/05)