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March 1, 2019
Allegheny County Health Department
Attn: Mr. Max Slater, Esq.
Administrative Hearing Officer
Clark Health Center, Bldg. 7
301 39th Street Pittsburgh, PA 15201

Re: Post Hearing Brief December 5, 2017 Enforcement Order

Dear Mr. Slater,

Please accept this Post Hearing brief on behalf of Bunting Graphics, Inc. (BGI). The present matter arises from a December 5, 2017 Enforcement drafted by Allegheny County Health Department (ACHD) to BGI. Pursuant to the ACHD Administrative Hearing Rules BGI is not represented by legal counsel and comes before you through its President, Joshua Bunting.

I. Introduction

- a. On December 5, 2017 ACHD issued an enforcement order to BGI and on August 27, 2018 the enforcement order was narrowed to include only two (2) items from the enforcement order:
 1. The proposed installation of a thermal oxidizer by Bunting Graphics, Inc.
and
 2. The Civil Penalty at Issue in this Appeal
- b. BGI filed its appeal because it does not believe that it should be required to install a thermal oxidizer (RTO) at its facility for the following reasons:
 1. The RTO System would create more pollutants emissions than it removes; Thus rendering it ineffective as a control technology
 2. BGI has demonstrated that installing an RTO creates an adverse economic impact in comparison to similarly situated sources, whereas the actual cost/ton to remove a pollutant is \$103,484.00/ton
 3. The installation of the new equipment reduced actual emissions 47% at the facility from 6.20TPY to 4.60TPY. This improves air quality.
 4. In BGI's Permit Application Section 10 they have taken a 30 TPY restriction on VOC emissions to become a "Synthetic Minor" and not subject to Major source Regulations.
- c. Additionally, ACHD should not seek a Civil Penalty against BGI because:
 1. ACHD should not seek enforcement actions against organizations who install new equipment which reduce actual emissions.¹
 2. BGI and ACHD executed a consent order and agreement on June 15, 2016 in which Article III, Paragraph 5 states that the intended purpose of the agreement was "To resolve all outstanding issues between the Parties relating to Bunting's compliance with Article XXI and its obligation to obtain the requisite permits in Allegheny County." As a result any and all civil penalties for violations related to Article XXI and obtaining permits have been resolved. The hearing officer should not go against the plain language of the agreement.
 3. ACHD erred in its review of the Permit Application, specifically the in the review of the BACT Analysis provided by BGI. A source should not be assessed a civil penalty for errors made by a SIP.

¹ This is consistent with EPA December 7, 2017 Memorandum, Subject: New Source Review Preconstruction Permitting Requirements: Enforceability

4. In the event that the hearing officer would look past the EPA's guidance and the language of the consent order and agreement it should review Civil Penalties under the provisions of the small business concerns.

Because of the facts listed above BGI asks the hearing officer to decide in favor of Bunting, thus deciding that a thermal oxidizer should not be installed and that there be no civil penalty assessed against Bunting Graphics, Inc.

II. FACTS

On June 15, 2016 ACHD and BGI executed a consent order and agreement. This consent order and agreement states that in 2014 an annual VOC emission from paint was 6.22 TPY².

The Permit Application provided to satisfy the December 5, 2017 Enforcement Order includes the 2017 actual VOC emissions for surface coatings. The 2017 actual emissions for surface coatings were 4.60 TPY³. This is a 1.62 TPY, 26%, reduction in VOCs.

This demonstrates that after three (3) years from the implementation of the new equipment BGI has reduced its emissions and the realistic upper boundary limit for the actual emissions from the surface coating operations is likely between 4 to 8 TPY of VOC emissions based on the operational history of the facility⁴.

To gain an understanding of how little emission the source actual emits one need only look at Article XXI 2103.14.a.1.b a modification permit is not required if the emissions are less than the emissions noted in 2103.14.e de minimis emission increases.

Article 2103.14.e.4.E states the each unit allowed a One Ton increase per year in VOC's and 5 TPY increase in VOC for the source. The VOC levels indicated in the de minimis increase section Article XXI are greater than all of BGI's VOC emissions in 2017.

BGI is a natural minor; Exhibit B-11 demonstrates that the physical and operational constraints at the BGI facility prevent emissions beyond 50TPY in VOC's.

The actual emissions for the source are less than 8 TPY and Potential to Emit (PTE) less than 50 TPY. Under the Pennsylvania SIP BGI is exempted from even being required to obtain a permit⁵.

Despite of the facts above ACHD issued a determination⁶ stating BGI was required to obtain an installation and operating permit. Recognizing BGI is a small business with limited resources ACHD recommended a consultant to assist with the permit application, EMAP. Bunting retained EMAP to compile and submit the permit application.

In making its determination ACHD relying upon an unverified hearsay evidence from an SEGDC trade article. ACHD made no effort to substantiate the SEGDC article through BGI.

² See Exhibit B-003: Page 2 Line 5. Testimony Page 189 Line 12Ms. Graham Agrees that is the accurate emissions

³ See Table 7 in the Permit Application

⁴ See Exhibit B-018 ACHD BACT Guidance, Page B.38 – Paragraph 3 states the historical operating data is to used to define the baseline emissions in evaluating the cost effectiveness of a control technology.

⁵ See The Pennsylvania DEP Document: 275-2101-003, Page 15. ACHD does not post tables for sources to understand the permit exemptions limits. BGI relied upon a similar table without the notes prior to 2015.

⁶ See Exhibit B-004: Last Paragraph

Ultimately BGI provided in its Exhibit B-012, a sworn affidavit, by the witness Ralph Stehle, who is quoted in the SEGD article. This testimony refutes the SEGD article and ACHD's and consequently the PTE calculation. ACHD cannot rely on hearsay evidence under PA Code 225 Rule 802 Against Hearsay Evidence and BGI requests that the hearing officer ignore hearsay evidence.

As a result of the determination letter, and through its consultants, BGI submitted for an installation and operating permit as a "Synthetic Minor" as ACHD would not accept an application as a Minor Source.

Section 10 of the Permit states that a Major Source may place restrictions on its operations or emissions in order to become a "Synthetic Minor" source. BGI selected to take such restrictions.

BGI elected in this section of the Permit application to take restrictions on its emissions on VOCs which would make it a synthetic minor.

Bunting included the provisional language in Section 10 of the permit the following language: "Bunting Graphics believes they are a Natural Minor source".

A Natural Minor Source is a source whose Potential to Emit (PTE) emissions for VOCs is less than 50 TPY.

BGI's self-imposed restriction for PTE emissions of VOC is 30TPY is nearly half of the PTE of a Natural Minor Source.

The requirement of the December 5, 2017 Enforcement Order in Paragraph 32 was to submit a revised BACT Analysis with the Permit Application.

BGI completed and submitted a BACT Analysis as part of the Permit Application.

This is construed to mean that the hearing officer should ignore previous BACT Analysis and comments on BACT Analysis by ACHD and rely on the BACT Analysis submitted to satisfy the December 5, 2017 enforcement order, along with any supplements to the BACT, as requested by ACHD during their review.

Exhibit B-020 is the ACHD August 22, 2018 Order Concerning BACT Analysis for Paint Lines.

ACHD has argued that the BACT Analysis prior to December 5, 2017 should be reviewed. However the August 22, 2018 Order Concerning BACT Analysis for Paint Lines is the only Order ACHD has issued throughout the entire matter and it is the only one that is relevant to the December 5, 2017 Enforcement Order before the hearing officer as it was submitted to satisfy the Enforcement Order.

The December 5, 2017 Enforcement Order was narrowed to "Proposed installation of a thermal oxidizer" on August 27, 2018

Paragraph 33 of the December 5, 2017 Enforcement Order states BGI must demonstrate a 'BACT' cost estimate is not economically feasible in comparison to other similarly situated sources or it will be required to install a thermal oxidizer.

Bunting provided its Exhibit B-015, August 2018 BACT Resubmission. This Exhibit states ACHD provided two (2) similarly situated sources. One located in Butler County and in Ohio. Those sources are Kawneer Commercial Windows and Spectrum Metal Finishing. BGI has actual emissions of 4.60TPY while the comparative facilities have 80TPY and 99TPY respectively.

The cost to destruct per ton of VOC based on the actual emission and realistic upper boundary, which is the basis for determining cost effectiveness⁷, is \$103,484 per Ton. That is not economically feasible by any measure.

ACHD's head of the Program Ms. Jamie Graham testified that "If it came in at \$50,000.00 a ton or greater, certainly we would consider that too expensive⁸.

BGI's cost per ton to destruct emissions came in at more than double that amount.

The similarly situated sources cost per ton to destruct is \$4,303.67 and \$3,781.32 respectively.

This conclusively demonstrates that it is not economically feasible in comparison to similarly situated sources.

Beyond the economic impact a BACT Analysis is required to consider the environmental impact and the expected emission reduction.

Bunting provided an expert witness that testified that adding a thermal oxidizer to BGI's surface coating operations would actually increase emissions not reduce them and adversely impact the environment.

This was concluded because the amount of natural gas required would emit more emissions than the paint line due to the low volume of paint being sprayed.

There is a regulation Article XXI 2104.04 for Odor Emissions that would require an inclinor on the paint drying oven. However, the paint formulas have changed over the years and the paints used at BGI's facility do not emit odor. Therefore it does not make sense to create pollutants to remove odors that do not exist. This is consistent with the December 7, 2017 EPA memorandum⁹ which states the regulations should not stifle innovation when the opportunity to reduce emissions exist. Beyond all of that BGI did agree to put on an incinerator at the paint drying oven. However, it cannot proceed with such a task until the RTO system is determined because it would have to tie into each other.

To determine the Cost Effectiveness of a Control Technology one must consider the Tons of pollutant emissions removed and the annualized control cost. This results in the Cost per Ton to remove a pollutant, or in this case VOC.

Exhibit B-018 provides instructions for how to review a BACT Analysis for Cost Effectiveness. The first order of operation is to calculate a Baseline Emission.

The Baseline Emission rate represents a realistic scenario of upper boundary uncontrolled emissions for the source.

For Bunting this could be either the historic operating emissions or at an absolute maximum the emission restriction elected on Section 10 of the Permit Application.

The baseline emissions should consider any physical or operational constraints the source may have. BGI presented the both the physical and operational constraints, see Exhibit B-011 and B-012.

⁷ See Exhibit B-018 ACHD BACT Guidance, Page B.38 – Paragraph 3 states the historical operating data may be to define the baseline emissions in evaluating the cost effectiveness of a control technology.

⁸ See Transcript Page 195, Line 6

⁹

ACHD rejected the use any method offer on BACT Review instructions for “Calculating Baseline Emissions”. ACHD decided to calculate the Baseline Emission using the maximum output of the spray equipment using the highest VOC content paint and concluded this represented the operational constraints by discussion with a paint gun manufacturer who has likely never heard of Bunting let alone been to the facility to understand the operational constraints.

During her testimony Ms. Graham, who signed the Order Concerning BACT Analysis, stated she did not write the letter and did not know who wrote the letter¹⁰. What is certain that the methodology used by ACHD to determine the PTE of 327.05 TPY of VOC not representative of any realistic upper boundary limit nor did it conform to any reasonable method to determine a baseline emission.

ACHD calculates the uncontrolled baseline emissions using an absurd foundation that the spray equipment is continuously fed paint and that the paint guns work at the maximum flow rate with the highest VOC paint.

As BGI’s Exhibit B-012 so aptly demonstrates using the values in the ACHD Order Concerning BACT, BGI would need the entire city of Verona (452,192SQFT) to store just one week of coatings. A mere impossibility for a facility with only two (2) loading docks and only 1,000SQFT of area to store paint.

Exhibit B-018, which is the document that ACHD provided to BGI as the instructions on how to review a BACT Analysis, provides an example on page B.40, the 3rd Paragraph on what not to do when calculating baseline emissions.

It States “For example uncontrolled baseline emission rates could theoretically be defined for a spray coating operation as the maximum VOC content coating at the highest possible rate of application that the spray equipment could physically process, (even though use of such a coating with a VOC content or application rate would be unrealistic for the source). Assuming use of a coating with a VOC content and application rate greater than expected is unrealistic and would result in an overestimate in the amount of emission reductions to be achieved by the installation of various control technologies. Likewise, the cost effectiveness of the options could consequently be greatly underestimated.”

This is exactly what ACHD did when it proffered its Potential to Emit at 327 TPY. Thus greatly increasing the emissions that would be reduced and underestimating the cost to reduce a ton of emission.

To avoid these problems the EPA guidance Chapter B recommends that the highest realistic application rates be used with the highest realistic VOC content. BGI used its highest VOC content paint with its highest potential to emit. The hearing officer can easily review the historic application rates and VOC emissions and deduce it is not realistic to assume for cost effectiveness purposes in a BACT Analysis that BGI’s PTE to emit is 327.05 TPY of VOC Emissions.

III. Reasons Why Bunting Graphics, Inc. Should Prevail

a. Why Bunting Should not Install a Thermal Oxidizer

The EPA issued draft BACT guidance manual¹¹, the New Source Review Workshop Manual (The Draft NSR Manual). ACHD provided this guidance manual to BGI and stated in the email cover letter the manual is widely used to analyze BACT submissions and it is used by ACHD.

¹⁰ See Transcript Page 198 Lines 21 to 24.

¹¹ This is Exhibit B-018: ACHD BACT Analysis Guidance

During the hearing expert testimony was heard by the hearing officer from Mr. Joe Pezze. Mr. Pezze was deemed to be an expert. He was also a former DEP Permit Engineer and was the Southwest Regional Manager from 1985 to 2002. He currently is a Professor of Air Quality at Duquesne University.

It was Mr. Pezze's testimony that the document ACHD provided to Bunting, Exhibit B-018 & referenced in the paragraph above is used to review a BACT Analysis.

Mr. Pezze also testified that ACHD performed its BACT Review contrary to the BACT Guidance provided by the EPA and refused to look at BGI's self-imposed limits on PTE and the operational constraints of the facility¹².

The expert testimony also states that after a physical review of the source it would be physically impossible for the source to emit 327.05TPY of VOC emissions¹³

BGI should prevail because it has demonstrated through the experts BACT Analysis that the installation of an RTO system would not be effective. Effectiveness is measured in terms of tons of pollutant removed¹⁴. BGI just simple does not emit enough VOC for there to be an effective solution. The actual emission cost per ton to remove a VOC pollutant is \$103,484.00/ton. As Ms. Graham stated in her testimony an actual cost per ton to destruct at \$50,000/ton would be too expensive¹⁵ and BGI is over double that cost.

BGI also demonstrated in its BACT Analysis that relative to similarly situated sources there is an adverse economic impact to BGI as its cost to remove a ton of pollutant is 20 times more than that of closest similarly situated source using actual emissions and 4 times more than the closet similarly situated source using BGI's PTE against the other sources allowable emissions.

The simple reality is that the natural gas to run the thermal oxidizer would create more pollutants than it would remove because BGI is not emitting enough VOCs to offset the emissions of the RTO.

ACHD ignored this manual when reviewing the BGI BACT submission. In determining a baseline emission for Cost Effectiveness ACHD used the exact methodology the manual states not to use on page B.40 (3rd Paragraph) of the EPA BACT Guidance Manual. Under testimony ACHD admitted it did not know who reviewed the BACT Analysis. It is therefore incumbent on the hearing officer to rely on the expert testimony from the party who did perform the BACT Analysis for Bunting and their findings.

ACHD constructed uncontrolled baseline emission of 327.05 tpy of emissions for the source ignoring every aspect of the operations of BGI and the restrictions it took. Instead it relied upon hearsay evidence that has been refuted. As a result the approach overstated the VOC that would be reduced and underestimated the cost to remove a ton of pollutant. This figure is not a realistic upper boundary under any scenario and the hearing officer should decide that the BGI BACT analysis is correct.

In fact the ACHD baseline emission is over three (3) times greater than the two listed similarly situated sources ACHD provided. Each of which emit under 100 TPY of VOCs.

The hearing officer would not only harm BGI by relying on the ACHD Order Concerning BACT Analysis but would harm the environment as well.

¹² See Transcript Page 28, Line 18 to 25

¹³ Transcript Page 29, Line 10 to 16

¹⁴ Exhibit B-018 Instruction for BACT Analysis Review Page 36: IV.D.2.b Cost Effectiveness Paragraph 1

¹⁵ Transcript Page 195, Line 6

The hearing officer should decide with the expert, that the installation of an RTO is not cost effective and that BGI should not install a thermal oxidizer.

b. Why No Civil Penalty Should be Assessed

The hearing officer should not decide to impose a civil penalty against BGI as the plain language of the June 15, 2016 consent order and agreement clearly states the intention of the agreement was to resolve all article XXI violations and its obligation to obtain the requisite permits in Allegheny County. This would cover all prior violations of Article XXI. Obtain is a future tense, and the agreement contemplates the penalty for not being in compliance in the future as it relates to the not having requisite permits for Allegheny County.

The December 5, 2017 Enforcement Order incorporates this agreement and references that the order is related to obtaining permits that resulted from the consent order and agreement in Paragraph 6. While BGI recognizes now that should have submitted as a new source those penalties have resolved. Bunting has diligently and promptly complied with each and every request to obtain permits since the consent agreement and has not violated any conditions of the agreement.

In the December 5, 2017 Enforcement Order ACHD's stated reasons for rejecting the previous permit applications was due to alleged improper BACT Analysis proffered by BGI. However, the only Order Concerning BACT proffered by ACHD demonstrates that ACHD was, and is, not properly reviewing a BACT Analysis.

The Pennsylvania DEP Document: 275-2101-003 Air Quality Permit Exemptions list with an effective date of August 8, 2018 list in section 127.14(a)(8) part 7 states that the new oven did not require a permit. This same section under paragraph 31 states that sources of uncontrolled VOC emissions do not require a permit if the emission increases are less than 2.7 tpy. This is consistent with the ACHD regulations in Article XXI.

It is agreed in the June 2016 consent order and agreement that the emissions from the source in 2014 emitted 6.20tpy of VOC emissions in 2014. The installation of the new equipment was in 2015. The daily paint records from full year 2017 demonstrate the emissions were 4.60 tpy, which is a decrease. Relying upon the DEP Exemption list for uncontrolled VOC emissions a permit would not be required unless BGI increased VOC emissions that exceeded 8.90 tpy of VOC (Or 2.7tpy).

Because of these reasons under the regulation, and the consent order and agreement the hearing officer should not impose a civil penalty against BGI.

IV. Conclusion

Bunting Graphics, Inc. has demonstrated through its BACT Analysis, and the tables contained therein, that the installation of Thermal Oxidizer would not be economically effective and would create and adverse economic impact to Bunting Graphics, Inc. compared to similarly situated sources Spectrum Metal Finishing and Kawneer Commercial Windows.

Additionally, through its experts, it has demonstrated that the installation of an RTO at BGI's facility would create more emissions than it removes. BGI has placed restrictions on the operations to ensure that the potential to emit VOC emissions is in line with the maximum potential the facility could product with the operational design constraints in place.

Bunting Graphics Inc. requests that the Hearing decide that a thermal oxidizer not be installed.

Bunting Graphics, Inc. and Allegheny County Health Department executed a Consent Order and Agreement that is binding upon the parties. In that agreement it is stipulated and agreed that the intent of the agreement is to resolve all violations of Article XXI and the obligation to obtain future permits requisite in Allegheny County.

The December 5, 2017 Enforcement Order directed to submit revised permit applications that were deemed administratively complete. It confirmed with ACHD that it performed the December 5, 2017 enforcement order which is why the scope was narrowed to only the thermal oxidizer and civil penalty.

Based on the fact that emissions have decreases since the installation of the new equipment BGI would expect that the hearing officer not provide a second civil penalty for the same equipment installation that has been previously resolved. ACHD granted BGI the right to operate while the requisite permits are obtained. ACHD had confirmed that the permit applications are complete. What remains open is the dispute on the means used by ACHD review the BACT Analysis provided by BGI.

The hearing officer should rule that there is no civil penalty, that the BACT Analysis concludes that it is not economically effective to install thermal oxidizers at Bunting Graphics, Inc. Facility.

Joshua P. Bunting
President
Bunting Graphics, Inc.