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Response to Public Comments

Blue Racer Midstream, LLC Natrium Extraction and Fractionation Plant

**Permit Application No. R13-2896F
Facility ID No. 051-00142**

Date: April 10, 2019

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BACKGROUND INFORMATION

On February 18, 2019, the West Virginia Division of Air Quality (DAQ) provided notice to the public of a preliminary determination to issue Permit Number R13-2896F to Blue Racer Midstream, LLC (Blue Racer) for the modification of the Sodium Extraction and Fractionation Plant located at 14787 Energy Road, Proctor, Marshall County, WV (26055) at latitude 39.75996 and longitude -80.86101. At that time, the draft permit and Engineering Evaluation/Fact Sheet were made available to the public for review. The permit application had previously been made available for public review and remained so during the public comment period.

The first public notice was followed by a 30-day public comment period that was scheduled to end at 5:00 P.M. on March 20, 2019. However, after receiving three requests for a public meeting and the Acting Director's determination that a public meeting was warranted, a second public notice was run on March 22, 2019 notifying the public that the DAQ was going to conduct a public meeting on March 27, 2019 at the New Martinsville City Hall. This ad also stated that the public comment period was being extended until the conclusion of the public meeting. Both public advertisements were Class I Legal Advertisements that ran in *Moundsville Daily Echo*, a newspaper of general circulation in Marshall County. To provide information on the permitting action and to facilitate the submission of comments, the DAQ held, on March 27, 2019, and pursuant to §45-13-9, a public meeting concerning R13-2896F.

OVERVIEW OF COMMENTS RECEIVED

Apart from two (2) strictly public meeting requests, the DAQ received three (3) written comments via e-mail during the public comment period. An additional three (3) oral comments were made during the public meeting (one of which was similar to a written comment provided by the same individual). Pursuant to §45-13-8.8, all submitted comments (relevant to applicable air quality issues) received during the public comment period have been reviewed and are addressed in this document.

ORGANIZATION OF COMMENT RESPONSE

The DAQ's response to the submitted comments will include both a general and specific response section. The general response will define issues over which the DAQ has authority and by contrast, identify those issues that are beyond the purview of the DAQ. The general response will also describe the statutory basis for the issuance/denial of a permit, discuss the role of the pre-construction permitting process in the larger divisional goal of maintaining air quality in WV, and detail the current status of the ambient air quality of Marshall County.

While the DAQ believes the comments received on the Blue Racer's proposed modification are mostly answered under the general response to comments below, additional responses will be included for specific comments where appropriate under the specific response section. This document will not reproduce the comments here and instead each comment will be summarized and key points will be listed. Both the written comments (as part of the R13-2896F file) and a recording of the public meeting are available on DAQ's publically accessible database at: <https://documents.dep.wv.gov/AppXtender/DataSources/DEPAX/account/login?ret=Lw==>. This

database can be accessed by logging in with “DEP” as the user name and “DEP” as the password (ALL CAPS). Once on the site, click on PERMITS/AIR and find documents related to the Blue Race Natrium facility by selecting a “New Query” and entering “051-00142” into the PRIMARY ID field.

GENERAL RESPONSE TO COMMENTS

Statutory Authority of the DAQ

The statutory authority of the of the DAQ is given under the Air Pollution Control Act (APCA) - West Virginia Code §22-5-1, *et. seq.* - which states, under §22-5-1 (“Declaration of policy and purpose”), that:

It is hereby declared the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will [underlining and emphasis added] protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

Therefore, while the code states that the intent of the rule includes the criteria outlined in the latter part of the above sentence, it is clear by the underlined and bolded section of the above sentence that the scope of the delegated authority does not extend beyond the impact of air quality on these criteria. Based on the language under §22-5-1, *et. seq.*, the DAQ, in making determinations on issuance or denial of permits under 45CSR13, does not take into consideration substantive non-air quality issues such as job creation, economic viability of proposed product, strategic energy issues, non-air quality environmental impacts, nuisance issues, *etc.*

Statutory Basis for Permit Denial

The basis for issuance or denial of an air quality permit is given under WV Legislative Rule 45CSR13 - “Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation.” Pursuant to §45-13-5.7, the DAQ shall issue a permit unless:

a determination is made that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code §22-5-1 *et seq.*, in which case an order denying such construction, modification, relocation and operation shall be issued. The Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship.

It is clear under 45CSR13 that denial of a permit must be based on one of the above explicitly stated criteria or, as noted, is inconsistent with the intent of 45CSR13 or §22-5-1, *et. seq.* As is stated above, it is the DAQ’s position that the intent of both the APCA and 45CSR13 is to circumscribe the authority of the DAQ to air quality issues as outlined in the APCA and in West Virginia’s State Implementation Plan (SIP).

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Blue Racer Midstream, LLC

The air quality issues evaluated relating to Blue Racer's modification to the Sodium Extraction and Fractionation Plant are outlined in the DAQ's Engineering Evaluation/Fact Sheet made public on February 18, 2019. The issues covered under that document represent the extent of the substantive air quality issues over which the DAQ believes it has authority to evaluate under 45CSR13 and the APCA as relating to Blue Racer's Permit Application R13-2896F.

DAQ Permitting Process in Context

It is important to note here that the DAQ permitting process is but one part of a system that works to meet the intent of the APCA in WV. The DAQ maintains a Compliance/Enforcement (C/E) Section, a Monitoring Section, a Planning Section, *etc.* to accomplish this. Most pertinent to the permitting process, the C/E Section inspects permitted sources to determine the compliance status of the facility including compliance with all testing, parametric monitoring, record-keeping, and reporting requirements.

Ambient Air Quality Status of Marshall County

The quality of the air of a defined local area - in this case for Marshall County - is determined by its status with respect to the National Ambient Air Quality Standards (NAAQS). The Clean Air Act, which was last amended in 1990, requires the Environmental Protection Agency (EPA) to set NAAQS for pollutants considered harmful to public health and the environment. The Clean Air Act established two types of national air quality standards. Primary standards set limits to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. Secondary standards set limits to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings.

The EPA Office of Air Quality Planning and Standards (OAQPS) has set National Ambient Air Quality Standards for six principal pollutants, which are called criteria pollutants. They are listed at: <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

Counties that are known to be violating these standards are, for specific pollutants, designated by the EPA as in "non-attainment" with the NAAQS. Counties that are not known to be violating these standards are, for specific pollutants, designated by the EPA as in "attainment" with the NAAQS.

The Sodium Extraction and Fractionation Plant is located in Marshall County, WV. Marshall County is classified as "in attainment" with all National Ambient Air Quality Standards except for, in certain tax districts, SO₂. The Franklin Tax District, where the Sodium facility is located, is classified as "non-attainment" for SO₂. The DAQ has, however, monitoring data that shows Marshall County is now in attainment with the SO₂ NAAQS and has submitted an attainment demonstration to USEPA.

General Response Conclusion

In conclusion, in response to all commenters who referenced substantive non-air quality issues, the APCA and 45CSR13 does not grant the DAQ the authority to take into consideration such issues in determining to issue or deny the permit. Further, the requirements of 45CSR13 require the DAQ to, when denying a permit, explicitly state the reason pursuant to §45-13-5.7. Additionally, the permit is but the beginning of the involvement of the DAQ with a source. After issuance, the facility will receive inspections to determine compliance with the requirements as outlined in the applicable permit. Finally, with respect to the quality of the ambient air of Marshall County, the EPA has designated the county as in attainment with all the NAAQS with the exception of SO₂.

SPECIFIC RESPONSES TO COMMENTS

Written Comments

Written Comment #1 (e-mail)

Mr. Mike Widekind on March 17, 2019, via e-mail, made general comments concerning the negative environmental impact (including impacts to the air) of the Blue Racer's Natrium Plant. He included several questions not related to air quality issues such as questions concerning the disposal of waste from the facility.

DAQ Response

The DAQ has made a determination that the available information indicates that Blue Racer Midstream, LLC's proposed modification, in accordance with the plans and specifications filed in Permit Application R13-2896F (and any revisions thereto noted in the file), is in compliance with all applicable federal and state air quality regulations. As indicated above under "Statutory Authority of the DAQ," the DAQ has no authority to restrict industry to or from certain counties or areas and is not permitted to take into consideration non-air quality issues like jobs or general facility waste.

Written Comment #2 (e-mail)

Ms. Beverly Reed on March 17, 2019, via e-mail, made the following specific air quality comments relevant to R13-2896F: (1) the modification at the Natrium Facility will worsen the already bad air of the region, (2) cumulative effects of the oil and gas industry were not considered in the review of the modification, (3) Particulate matter less than 0.1 microns (PM_{0.1}) was not considered in the review of the modification, and (4) general concerns about the air quality from oil and gas industry activity including increased diesel traffic, and the affect of these emissions on Moundsville, where many elderly people reside.

DAQ Response

(1) See the general response to the Ambient Air Quality Status of Marshall County. Additionally, while the modification will have the potential to increase air emissions of the Natrium Facility as you have noted, the DAQ does not expect the potential increase to result in a change of attainment status of the County.

(2) Permit application R13-2896F was reviewed pursuant to the requirements of 45CSR13. This rule does not give the DAQ the statutory authority to include cumulative impacts of other sources in the determination to issue or deny the permit in question.

(3) Regulated pollutants are defined under 45CSR13, Section 2.20. $PM_{0.1}$ is not defined as a regulated pollutant under this rule and there is no NAAQS for this particulate matter classification.

(4) §45-13-1.1 states that “[t]his rule does not apply to . . . motor vehicles. . . or other emission sources regulated under Subchapter II of the federal Clean Air Act.” Direct vehicle emissions, such as diesel exhaust are considered mobile source/motor vehicle emissions and are not regulated by the DAQ (USEPA has retained the authority under 40CFR86 to regulate motor vehicles). For the air quality in Moundsville, see the general response to the Ambient Air Quality Status of Marshall County.

Written Comment #3 (e-mail)

(1) Dr. Duane Nichols on March 27, 2019, via e-mail, made a variety of general comments on the DAQ’s responsibility with respect to regional air quality issues and climate issues. Air quality comments potentially relevant to R13-2896F included were: (1) Public health is at risk because of the existing and proposed increases in emissions of the Blue Racer facility, (2) organic compounds heavier than ethane, along with soot, will settle in low-lying areas and add to the unhealthy conditions for residents of the area, (3) it is essential that combustion chambers or furnaces be used instead of flares to effect complete combustion of waste gases, (4) cumulative effects of the oil and gas industry were not considered in the review of the modification or on the effect on climate change, nor is there any long-term planning on oil and gas emissions in the region, and (5) a health study on the proposed Blue Racer emissions should be established.

DAQ Response

(1) See the general response to the Ambient Air Quality Status of Marshall County. Additionally, while the modification will have the potential to increase air emissions of the Natrium Facility, the DAQ does not expect the potential increase to result in a change of attainment status of the County.

(2) There is no evidence that the location and local topography of the Blue Racer facility will contribute to local hot spots of heavier-than-air organic compounds. As stated above under Response 1, the DAQ does not expect the potential increase to result in a change of attainment status of the County (including the ozone attainment status).

(3) Use of flares is considered a standard and very effective way of controlling waste gases in many industrial situations, including those in the oil and gas industry. The permit requires a minimum VOC destruction and removal efficiency (DRE) of 98% for each flare at the Blue Racer facility. This control methodology is considered appropriate for the applicable waste gas streams and meets the requirements of 45CSR6 and 45CSR13.

(4) Permit application R13-2896F was reviewed pursuant to the requirements of 45CSR13. This rule does not give the DAQ the statutory authority to include cumulative impacts of other sources in the determination to issue or deny the permit in question. Additionally, the DAQ does not have authority to set strategic energy goals and must review and make determinations on specific permit applications according to §45-13-5.7.

(5) There is no statutory basis to require Blue Racer to conduct a health study of the type described for the existing and proposed emissions from the Blue Racer facility. Additionally, there is also no statutory basis, administrative mechanism, or funding available for the DAQ to undertake a health study of the type described.

Oral Comments

Oral Comment #1

(1) Dr. Duane Nichols, specifically on behalf of the Mon Valley Clean Air Coalition, presented oral comments as well, some of which overlapped with his written comments above. Similar comments will not be addressed here. Additional comments potentially relevant to R13-2896F included were: (1) Prior to his formal comments, he requested that the question/answer session be conducted prior to the accepting of formal comments and, when, this was not done, made a formal objection on the record to the sequence of events, (2) requested an air quality hydrocarbon monitor on-site at Blue Racer with real-time access on the internet, (3) asked if there had been violations at the Blue Racer facility and who detected the violations, (4) asked if the DAQ considered Environmental Justice (EJ) issues when reviewing the modification, (5) commented that the documentation was confusing with respect to whether the Blue Racer facility is a major source, as it showed the increase in VOC emissions was itself over 250 TPY, which was the given major source threshold, (6) asked if the public meeting was advertised in Ohio, and (7) stated that the DAQ is influenced by political pressure.

DAQ Response

(1) The DAQ conducts public meetings pursuant to §45-13-9, which states under Section 9.1 that the function of the public meeting is to “provide information and receive comments.” Additionally, under Section 9.2 it states that the DAQ shall “assure that all interested parties have ample opportunity to present comments.” To satisfy these requirements the DAQ began with a presentation about the proposed modification and then accepted comments. After all who requested to provide comments had the opportunity to do so, and with time permitting, the DAQ representatives were available to answer relevant questions on R13-2896F. As stated at the public meeting by Ms. Beverly McKeone, NSR Program Manager, after the question/answer session, we would accept additional or amended comments if needed.

(2) The DAQ operates an air quality monitoring network across the state, with ambient air quality sites located throughout WV. The sampling sites are located to assess air quality levels based on population, exposure, and industry emissions to determine compliance with the NAAQS. The DAQ does not have the resources to monitor individual facilities. Information on DAQ’s statewide air monitoring system may be accessed at the following address: <https://dep.wv.gov/daq/air-monitoring/Pages/default.aspx>.

(3) The DAQ has issued two (2) Notice of Violations (NOVs) for compliance issues at the Blue Racer Natrium facility. Both NOVs were issued as a result of inspections made by DAQ Compliance/Enforcement (C/E) personnel. The relevant C/E documents are available on DAQ’s publically accessible database at (and using the login instructions as given above): <https://documents.dep.wv.gov/AppXtender/DataSources/DEPAX/account/login?ret=Lw==>.

(4) There are no state air quality regulations that relate to EJ issues. The EPA administers an EJ program, and they were provided with the copies of the public notice, Engineering Evaluation/Fact Sheet, and draft permit at the time these documents were made public.

(5) As the facility type - a natural gas processing facility - is not a "listed source" under §45-14-2.43(a), the individual major source applicability threshold for each criteria pollutant is 250 TPY. As given in Attachment A of the Engineering Evaluation/Fact Sheet, the facility-wide post-modification PTE of the Natrium Extraction and Fractionation Plant is only greater than 250 TPY for VOCs (388.98 TPY). All other pollutants are below the 250 TPY threshold. However, pursuant to §45-14-2.43(e), "the fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source is listed in Table 1." Therefore, when fugitive VOC emissions - in this case the fugitive VOC emissions from component leaks (176.27 TPY) - are removed from the facility-wide VOC emissions total, the VOC emissions are below 250 TPY (212.69 TPY). Therefore, *the facility* is not defined as a "major stationary source" under 45CSR14 and the rule does not apply to the changes evaluated herein. For a full discussion of the major source status of the facility prior to and after the modification, please see the discussion under 45CSR14 in the Regulatory Applicability section of the Engineering Evaluation/Fact Sheet.

(6) Pursuant to 45CSR13 Sections 8 and 9, both the "Notice of Intent to Approve" and the public meeting notification were placed as Class I Legal Advertisements in the *Moundsville Daily Echo*, a newspaper of general circulation in the area where the source is located.

(7) The DAQ reviews permit applications according to all applicable air quality rules and regulations and makes determination to issue or deny a permit pursuant to §45-13-5.7.

Oral Comment #2

(1) Mr. Dustin White, on behalf of both himself and the Ohio Valley Environmental Coalition (OVEC), presented the following oral comments potentially relevant to R13-2896F: (1) first, a formal objection was also made to accepting comments prior to conducting a Q/A session, (2) the DAQ did not take into consideration the cumulative effects of emissions from other facilities potentially related to the modification at the Blue Racer facility, (3) the DAQ relies on companies to self-monitor for compliance, (4) expressed concerned how the proposed modification will impact human health in the valley, (5) stated there was no health assessment performed as part of the review of the proposed Blue Racer modification, (6) commented that the DAQ is being dictated to by those above them that are industry friendly, and (7) stated that the DAQ shows that it always intends to issue the permit as it titles its public notice a "Notice of Intent to Approve."

DAQ Response

(1) The DAQ conducts public meetings pursuant to §45-13-9, which states under Section 9.1 that the function of the public meeting is to "provide information and receive comments." Additionally, under Section 9.2 it states that the DAQ shall "assure that all interested parties have ample opportunity to present comments." To satisfy these requirements the DAQ began with a presentation about the proposed modification and then accepted comments. After all comments were submitted, and time permitting, the DAQ representatives were available to answer relevant questions on R13-2896F. As stated at the public meeting by Ms. Beverly McKeone, NSR Program Manager, after the question/answer session, we would accept additional or amended comments if needed.

(2) Permit application R13-2896F was reviewed pursuant to the requirements of 45CSR13. This rule does not give the DAQ the statutory authority to include cumulative impacts of other sources in the determination to issue or deny the permit in question.

(3) A variety of methods are used to determine if a facility is in compliance with permit conditions including: (a) Periodic, full and/or partial, on-site inspections made by DAQ C/E inspectors; (b) Use of continuous emissions monitoring systems (CEMS) such as required for NO_x emissions from the Hot Oil Heater (S001); (c) Initial and periodic performance testing, conducted according to test methods approved by the DAQ and often with DAQ personnel on site, and (d) Requirements to submit periodic reports to DAQ or turn over record-keeping during a site inspection from DAQ C/E inspectors. It is important to note that all information and records submitted to the DAQ must be certified as accurate (and subject to criminal penalties if knowingly inaccurate) by a responsible official.

(4) See the general response to the Ambient Air Quality Status of Marshall County. Additionally, while the modification will have the potential to increase air emissions of the Natrium Facility, the DAQ does not expect the potential increase to result in a change of attainment status of the County.

(5) There is no statutory basis to require Blue Racer to conduct a health assessment of the type described for the existing and proposed emissions from the Blue Racer facility. Additionally, there is also no statutory basis, administrative mechanism, or funding available for the DAQ to undertake a health assessment of the type described.

(6) The DAQ reviews permit applications according to all applicable air quality rules and regulations and makes a determination to issue or deny a permit pursuant to §45-13-5.7.

(7) As stated in the public notice, at the time an Engineering Evaluation/Fact Sheet and draft permit is made available to the public, the DAQ has made a preliminary determination, after a review of the permit application, that the proposed modification will meet all state and federal air quality requirements. The public notice is titled a “Notice of Intent to Approve” as the DAQ has made such a preliminary determination and intends to approve the permit unless information is received that indicates such a determination is not warranted.

Oral Comment #3

Mr. Alex Cole of OVEC presented general comments on regional air quality, the expanding regional presence of the oil and gas industry, and the following oral comments potentially relevant to R13-2896F: (1) The Blue Racer should not be considered in isolation and should be seen as part of an expanding oil and gas industry.

DAQ Response

(1) Permit application R13-2896F was reviewed pursuant to the requirements of 45CSR13. This rule does not give the DAQ the statutory authority to include cumulative impacts of other sources in the determination to issue or deny the permit in question.