

Attachment 2

Title V Renewal Permit for Potrero Hills Landfill (Site # A2039, Application # 17480)

Summary of November 2012 Public Comments on Proposed Title V Renewal Permit and District Responses to Public Comments

This document presents the responses of the Bay Area Air Quality Management District (“Air District” or “District”) to comments received from members of the public on the District’s proposed renewal of the Title V Major Facility Review Permit (“permit”) for Potrero Hills Landfill, Inc. (Site # A2039).

The Title V Major Facility Review Permit is required by Title V of the Clean Air Act. The Title V program requires large industrial facilities to apply for federal air quality operating permits. These permits list all of the federal, state, and local air quality requirements that apply to the facility. Applicable requirements include emission limits and standards, and compliance requirements (i.e., monitoring, recordkeeping, and reporting requirements). The Title V permit does not place new limits on the facility’s air pollution emissions. Following initial issuance, applications for renewals are required every 5 years. These renewals must go through public and EPA review. In a Title V permit renewal, the Air District performs the following tasks: 1) adds new, modified, and exempt equipment 2) updates and reviews all federal, state, and local emission limits and standards applicable to the sources at the facility, 3) updates and reviews all monitoring, recordkeeping, and reporting requirements, and 4) reviews the compliance status for all applicable requirements. The existing Title V permit continues in force until the District takes final action on the renewal application.

The District published its proposal to renew the permit for Potrero Hills Landfill, Inc. on October 18, 2012 and received written comments from 2 individual members of the public as well as written comments from the facility. The District has reviewed and analyzed the comments it received during this process, and responds as set forth herein. For each comment received, this document provides the District’s rationale for either agreeing with the comment and modifying its proposal, or disagreeing and continuing with the proposal as originally published.

These Responses to Comments are organized by the subject matter of the comments received.

Table of Contents

<u>Topic:</u>	<u>Page:</u>
I. The District's Role In Renewing Title V Permits	3
II. Non-Air Quality Related Regulations	Error! Bookmark not defined.
III. Permits for Operations Other than the Potrero Hills Landifll....	Error! Bookmark not defined.
IV. Potrero Hills Landifll Expansion.....	Error! Bookmark not defined.
V. Odors	Error! Bookmark not defined.
VI. Dust	Error! Bookmark not defined.
VII. Fires	Error! Bookmark not defined.
VIII. Litter	Error! Bookmark not defined.
IX. Property Damage.....	Error! Bookmark not defined.
X. Roadways	Error! Bookmark not defined.

I. The Air District's Role In Renewing Title V Permits

Comment: A Commenter requested that the District deny the Title V permit and all permits for related or leased operations at the landfill.

District Response: The District's discretion in reviewing an application for renewal of a Title V permit is limited. The District can deny an application for a Title V permit renewal only if the facility is in violation of an air-quality regulatory requirement, and even then only if it finds that the facility will be incapable of coming back into compliance.

The federal Title V regulations at 40 CFR 70.5(c)(8), 40 CFR 70.6(c)(3 and 4), and state law at Health and Safety Code 42301(d) provide that when a facility is out of compliance, instead of denial, a schedule of compliance including milestones and deadlines must be included in the permit. The schedule of compliance will enable the facility to be in compliance within a reasonable period of time, but acknowledges that the facility is out of compliance.

The District cannot deny a Title V permit renewal for other reasons, such as a desire by members of the surrounding community to have the facility shut down.

As explained in greater detail in the following sections, the District has analyzed the Potrero Hills Landfill compliance status and found that it is operating in compliance with all applicable air-quality related requirements, except for the specific requirements identified in the Section V Schedule of Compliance of the proposed Title V renewal permit. The Schedule of Compliance contains specific milestones that must be met and that will enable the facility to return to compliance with these specific requirements within a reasonable period of time. As a result, the Air District has no discretion under Title V and its implementing regulations to deny the permit renewal.

II. Non-Air Quality Regulations and Permits

Comment: Two Commenters identified numerous concerns regarding a number of non-air quality related regulations, permits, and other concerns, including:

- Assembly Bill 845
- The Suisun Marsh Act/Marsh Protection Plan
- Solano County Measure E
- Solano County Zoning Ordinances, General Plan, and Zoning amendments
- The Clean Water Act
- The Endangered Species Act
- The National Defense Authorization Act
- The Williamson Act
- Solid Waste Facility Permit and related studies
- Land Use Permit
- Siting Element
- Bay Conservation and Development Commission (BCDC) Permit
- CA code for construction of new/expanded thermal electric generating plants within the Suisun Marsh
- Easements related to pipelines through private property
- Environmental Impact Reports, Initial Studies, and other CEQA related documentation related to these regulations and permits

- Run off water, leaching contaminants, protection of water quality of nearby ponds and creeks, use of chemicals for mosquito abatement

The Commenters expressed concerns about lack of public involvement in the regulatory and permit approval processes and alleged numerous violations of these non-air quality related regulations and permits.

District Response: The scope of a Title V operating permit is limited to federal, state, and local air quality requirements that apply to the facility. It does not include non-air quality regulatory requirements, therefore the Title V operating permit public notification process is not the appropriate forum for resolving concerns about non-air quality related issues. None of the regulations mentioned above contain any air quality-related requirements. Concerns about compliance with these non-air quality regulations and permits should be discussed with the agencies that have jurisdiction over these issues.

III. Permit for Operations Other than the Potrero Hills Landfill

Comment: One Commenter submitted comments on operations other than the Potrero Hills Landfill, including the Tonneson Pet Cemetery, Solano Garbage Company, and the Waste to Energy Plant.

District Response: The proposed renewal of the Title V operating permit is for the Potrero Hills Landfill only and does not include the other operations listed by the Commenter.

Tonneson Pet Cemetery: There is no operation permitted by the District under this name. Cemeteries are not permitted by the District, unless there is an on-site crematory or other source of air emissions. There is no permitted crematory at the Potrero Hills Landfill.

Solano Garbage Company: Reference was made to a non-transferable permit issued to the prior existing Solano Garbage Company being transferred to the Potrero Hills Landfill. It is not clear if the Commenter is referring to a permit issued by the District. However, the District did not transfer a permit from the prior existing Solano Garbage Company to the Potrero Hills Landfill and did not permit the Potrero Hills Landfill in connection with the prior existing Solano Garbage Company operation.

Potrero Hills Energy Producers, LLC: The District has reviewed a permit application (Application #23333) for a future Landfill Gas to Energy facility (Plant #20139, Potrero Hills Energy Producers, LLC) to be located on the Potrero Hills Landfill property. This future operation will burn landfill gas generated by the Potrero Hills Landfill in internal combustion engines that will generate electricity for sale to the grid. This future operation will also include a small enclosed flare that will burn a mixture of landfill gas and a waste gas stream from an adsorption media regeneration step. However, this future operation will not be permitted to burn solid waste of any kind. Comments regarding the installation and operation of this energy plant were requested, received, and reviewed under the public notice for that application, which ended in May 2012. The District issued an Authority to Construct for this proposed facility in October 2012.

Under the definition of “facility” in District Regulation 2, Rule 1, Section 213, the proposed Landfill Gas to Energy facility is considered a separate facility from the Potrero Hills Landfill, since it is under separate ownership and control. Therefore, it is not being included in the proposed renewal of the Title V permit for the Potrero Hills Landfill. If the Landfill Gas to Energy

facility is installed as proposed, the owner of that facility will be required to apply for a separate Title V permit for that operation in accordance with District Regulation 2, Rule 6. A separate Title V permit will be proposed for that operation and comments on the air quality requirements that apply to that operation will be solicited under the public notice related to issuing that permit.

One commenter mentioned that there is an alternative “waste to energy” plant planned for the Suisun Marsh. A “waste to energy” plant generally means an operation that transforms solid waste into a usable energy source, and it would typically require a District permit to operate. The District has no permits for this type of “waste to energy” plant on or near the Potrero Hills Landfill. The District is not aware of any future or planned “waste to energy” plants in association with the Potrero Hills Landfill.

IV. Potrero Hills Landfill Expansion

Comment: One Commenter submitted comments objecting to expansion of the landfill.

District Response: The District has received an application for a proposed landfill expansion at this site (Application #11378). However, the proposed expansion has not been permitted by the District, and the proposed renewal of the Title V operating permit does not include proposed expansion of the landfill.

The appropriate forum for general objections to the proposed expansion is during the CEQA review of the proposal with the local permitting agency that has discretionary authority over siting and permitting of the proposed expansion. If the CEQA review of the project is finalized and if the project is a major project under New Source Review (NSR), the District will issue a request for public comment for the proposed permitting of the landfill expansion under Application #11378. However, the purpose of a NSR public comment period is to request comments on the correctness of the District’s estimates of the air emissions associated with the project and compliance analysis with respect to air quality-related regulations only.

If a District permit is issued for the proposed expansion, the expansion will be incorporated into the Title V permit pursuant to the appropriate Title V permit revision procedures in BAAQMD Regulation 2, Rule 6. Any comments solicited on such a revision will be limited to the correctness of the District’s determination of the applicable requirements that apply to the expansion and the adequacy of the monitoring proposed to demonstrate compliance with the applicable requirements.

V. Odors

Comment: One Commenter submitted a complaint that the Potrero Hills Landfill cannot control odors at the site.

District Response: There have been numerous odor complaints lodged with the District against the landfill. This issue was discussed in the Statement of Basis published with the proposed renewal of the Title V operating permit. Due to the remote location of the landfill and the availability of District inspectors, it is not always possible for the District to respond immediately to odor complaints. Since an odor complaint might be related to a delivery of material which is quickly placed in the landfill and since meteorological conditions can affect the

direction of an odor, these factors make it difficult to verify whether there is a consistent source of odors associated with the odor complaints received.

The District's authority over odor issues is limited to the general public nuisance prohibition in Regulation 1 and to problems arising from hydrogen sulfide emissions, regulated under Regulation 9, Rule 2. Since it is not clear whether the odor complaints received were resulting from hydrogen sulfide emissions, additional conditions were included in the proposed renewal of the Title V permit to attempt to identify and correct any hydrogen sulfide-related odor problems.

For other types of odor problems, the public nuisance prohibition in Regulation 1 prohibits nuisance to any "considerable number of persons" and specifically designates 3 or more violation issued within a 30 day period as the presumption of negligent conduct. Since there are very few residents neighboring the landfill, unfortunately this regulation offers little enforcement recourse under District regulations to the single nearest resident. The District has previously communicated to the Commenter that this situation falls under private nuisance, rather than public nuisance. Therefore, the District must refer the Commenter to other agencies which have broader authority to require operational changes to mitigate odors under these circumstances.

VI. Dust

Comment: One Commenter submitted a complaint that the Potrero Hills Landfill cannot control the dust generated from the landfill operation from travelling offsite.

District Response: Landfill operations by their nature do generate dust due to vehicle traffic on on-site roadways, soil excavation, waste and cover material dumping and handling activities, and wind erosion. At some sites, the ambient atmospheric moisture limits the level of fugitive dust created. At the Potrero Hills Landfill, due to the relatively dry environment and high winds, fugitive dust is a more significant issue than at many other bay area landfills.

The District's authority to regulate fugitive dust is limited to the visible emission standard in Regulation 6, Rule 1 and the public nuisance prohibition in Regulation 1. While these regulations limit the amount of dust that may be emitted from a site, these regulations do allow some particulate emissions (PM10) to occur, and these PM10 emissions could be transported off-site. District regulations minimize particulate emissions from landfills, but it is not possible for a landfill to have zero off-site particulate emissions.

Regulation 6, Rule 1 prohibits emissions of visible particles, referring to particles large enough to be visible as individual particles. This prohibition can be difficult to apply to the landfill operation, since fugitive dust from the landfill is generally not distinguishable from fugitive dust from the general surroundings. In the case of the general public nuisance prohibition in Regulation 1, the limitations on the District's authority to apply this standard to fugitive dust emissions from this site are the same as the limitations discussed above for odors (see District response above regarding private nuisance versus public nuisance).

In general, the mitigation measures for fugitive dust from all types of landfill operations are: watering at the active face and at the active loading/unloading and handling operations, use of dust suppressants and water on unpaved roads and parking areas within the site, frequent sweeping and washing of paved roads, and employment of drag-out prevention measures. These dust mitigation measures are currently required of this site (Permit Condition 1948, Part 4) and are intended to ensure compliance with Regulation 6, Rule 1 visible emission

requirements. Record keeping regarding all dust mitigation activities is a standard method of demonstrating compliance with Regulation 6, Rule 1, and these records are currently required pursuant to Condition 1948, Part 13e. In addition, the District is currently evaluating two permit applications regarding changes to operations at the Potrero Hills Landfill. If these changes result in PM10 emission increases for this landfill and trigger a BACT review, the District will ensure that BACT level dust mitigation measures and monitoring procedures are required for this landfill.

VII. Fires

Comment: One Commenter submitted a complaint that the Potrero Hills Landfill cannot control fires at the site.

District Response: The District is aware of the recent fire at the Potrero Hills Landfill. The documents submitted by the Commenter regarding this fire describe it as a small grass fire, with no specification to cause.

Decomposition of waste in the landfill results in generation of landfill gas, which is combustible. While the District has no specific jurisdiction with respect to fire prevention, District Regulation 8, Rule 34 includes several requirements that will minimize the fire risk at landfills in addition to minimizing organic emissions from landfills. First, Regulation 8, Rule 34 requires this landfill to capture the landfill gas generated by the waste decomposition process and to control the landfill gas in a safe manner, such as combustion in an enclosed flare constructed of proper materials and equipped with flame arrestors and other fire prevention mechanisms. Collection and control of landfill gas prevents the uncontrolled build-up of methane underground, which could lead to spontaneous subsurface fires, and therefore acts to minimize the risk of fire compared to an uncontrolled landfill. Regulation 8, Rule 34 requires monthly monitoring of each gas collection well for pressure, temperature, and nitrogen or oxygen concentration and sets limits for each of these parameters. One of the purposes of these wellhead limits and wellhead monitoring requirements is to minimize the risk of subsurface fires. Monthly wellhead temperature monitoring should detect elevations in wellhead temperatures, which could lead to subsurface fires, in time for the operator to take the steps necessary to prevent the subsurface fire from occurring. In addition, Regulation 8, Rule 34 sets surface leak limits for landfill gas and requires quarterly monitoring of the landfill surface to detect and minimize landfill gas surface emissions. The rule requires corrective action measures for any surface leaks that are detected. These monitoring requirements and corrective action measures reduce the amount and frequency of surface leaks which could become a source of fire risk if left uncontrolled. While these landfill gas control measures will not protect against grass fires, these measures do minimize the potential impacts of grass fires at this landfill.

Other agencies, such as the local county or local fire protection district, have broader and more specific authority over safety and fire hazard mitigation issues for sites located within their jurisdictions. Concerns about fire hazards at the Potrero Hills Landfill should be directed to these local agencies.

VIII. Litter, Property Damage, Trespassing, Roadways

Comment: One Commenter submitted a complaint that the Potrero Hills Landfill cannot control the litter and plastic bags from travelling offsite, that the Potrero Hills Landfill is exhibiting intent

to cause harm and blatant and willful disregard for the safety of her cattle fences, that the Potrero Hills Landfill is placing unauthorized landfill dirt on her property, and that it is degrading the marsh and surrounding properties. The commenter also objected to illegal roads to the Potrero Hills Landfill and stated that roadways must be shielded from the landfill for aesthetic reasons.

District Response: The scope of a Title V operating permit is limited to federal, state, and local air quality requirements that apply to the facility. It does not encompass non-air quality regulatory requirements. Offsite litter, property damage, trespassing, installation of roadways, and concerns about aesthetic impacts due to visibility of the landfill or associate roadways are not air quality-related requirements, therefore the Title V operating permit is not the appropriate forum for resolving concerns about these issues. Concerns about compliance with these non-air quality regulations and permits should be discussed with the agencies that have jurisdiction over these issues.

IX. Air Emissions

Comment: One Commenter submitted a complaint that the Potrero Hills Landfill cannot control the air emissions from the site and that the increasing volume and variety of waste being generated throughout the state and placed at the Potrero Hills Landfill is threatening the public health, safety, well-being, and contributing to air, water, and land pollution and general deterioration of the environment.

District Response: The District acknowledges that the Potrero Hills Landfill facility will have air emissions consisting of: criteria pollutants, toxic air contaminants, hazardous air pollutants, and greenhouse gases. Criteria pollutant emissions from this facility are summarized in Table 1 of the Statement of Basis for Application # 17480, which accompanied the proposed Title V renewal permit. The District also acknowledges that the air emissions from this facility have increased since 2003, when the Title V permit was first issued for this site.

There are numerous District, state, and federal air quality regulations that apply to the Potrero Hills Landfill and the associated operations described in the proposed Title V renewal permit for this site. These regulations are identified in Tables IV-A through IV-C of this proposed permit. District permit conditions are identified in Section VI of this proposed permit. The air quality regulations and District permit conditions limit the type and amount of pollutants for each particular source or operation at this facility. The applicable emission limits are identified in Tables VII-A through VII-C.

As described in Section V of the proposed permit, the District has identified several operations that are not currently complying with one or more of the applicable air quality regulations or emission limits. However, the District has proposed a Schedule of Compliance in Section V of the proposed permit that is expected to bring these specific operations back into compliance with the applicable air quality regulations and emission limits. Although the District's Compliance and Enforcement Division determined that this facility was in intermittent compliance during the review period, the District also determined that this facility was capable of returning to compliance within a reasonable period of time. The District included specific compliance milestones in Section V of the proposed permit and has satisfied the requirements of federal Title V regulations at 40 CFR 70.5(c)(8) and 40 CFR 70.6(c)(3 and 4). Since the permit content requirements for non-compliant sources have been met, the District has no basis

for denial of the Title V renewal permit for this site, even though this site has air emissions that have been increasing over time.

In addition to the equipment and operations described in the proposed Title V renewal permit, this facility has submitted a number of permit applications for both existing and new or modified sources that are or will be located at this site. The District is reviewing these applications to identify all applicable District, state, and federal air quality regulations that may apply and to ensure that any proposed operational or equipment changes will meet all of these applicable requirements. The District will only approve permits for equipment or operations that will meet all applicable air quality regulations. These operations will be incorporated into the Title V permit for this site at a later date in accordance with the appropriate Title V permit revision procedures in Regulation 2, Rule 6.

The Commenters concern over water, land pollution, and general deterioration of the environment are non-air quality issues and therefore fall outside of the District's jurisdiction. The District must refer the Commenter to other agencies which have authority over these other areas.

X. District Regulation 2

Comment: One Commenter referred to the following sections of District Regulation 2, Rule 1:

- Section 304 – Denial, Failure to Meet Emission Limitations
- Section 315 – Denial, Failure to Mitigate Significant Adverse Environmental Impacts
- Section 317 – Public Nuisance Sources
- Section 414 – Loss of Exemption, Public Nuisance
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District Response: District Regulation 2, Rule 1, Section 304 refers to denial of an Authority to Construct or Permit to Operate for a project if it would not or does not comply with emission limits, permit conditions, or federal or state laws or regulations related to air quality. Likewise, Section 315 refers to denial of a District Authority to Construct. The request for public comment in this action is for the proposed renewal of the federal Title V operating permit, not issuance of an Authority to Construct or Permit to Operate, so these sections do not apply to the proposed renewal of the Title V permit.

District Regulation 2, Rule 1, Section 317 requires any operation that is exempt from District permit requirements under Section 103, or Section 114 through 128, to obtain an Authority to Construct and/or Permit to Operate if the exempt source receives 2 or more public nuisance violations within any consecutive 180-day period. Section 414 allows an operator that was subject to permitting due to public nuisance violations to petition removal of the permit requirement after 2 years with no additional violations or confirmed complaints. These sections specifically apply to District permits, not to the federal Title V operating permit program, so these sections do not apply to the proposed renewal of the Title V permit.

XI. Composting and Unpermitted Activities

Comment: One Commenter objected to composting at this site and made reference to unpermitted activities at the landfill, including grinding, concrete crushing, quarrying, composting.

District Response: The District is aware that the facility has been operating a number of activities at this site without first obtaining District permits for the operations and issued a Notice of Violation for the known unpermitted activities. As discussed in the Statement of Basis for the proposed renewal of the Title V permit, the facility submitted an application for composting, quarrying, and crushing/grinding operations (Application #16322), which is still under District review.

After review of Application #16322 under the District's New Source Review program, the existing unpermitted operations will be issued District operating permits if the operations meet all applicable air quality-related requirements. Unlike other permitting authorities, the District does not have discretionary authority over permitting of operations under our jurisdiction. The District is obligated to issue an operating permit for a source if it meets all air quality requirements that apply.

In the case of composting, if the composting operation meets all applicable operating and emission limits that apply, the District is obligated to issue a Permit to Operate. Since the District does not have the authority to consider the Commenter's objection to this activity in our permit review process, the Commenter should pursue this objection with the local permitting authority.

If the emissions from the composting operation and/or other operations in the application are significant, there may also be a separate public notice for permitting of those operations under the New Source Review program, and public comments will be solicited at that time. However, the comments solicited will be related to the correctness of the District's assessment of emissions from the operations and compliance status with respect to air quality regulations only.

All sources permitted under Application #16322 will be updated to the Title V operating permit under a separate action. None of these unpermitted operations have been included in the current proposed renewal of the Title V permit.

XII. Types of Wastes Accepted

Comment: One Commenter submitted comments about acceptance of bio solids, bio waste, nuclear medical treatment byproducts and materials containing high levels of pathogens and these materials being used as alternative daily cover or handled in a manner that allows fugitive dust emissions. Comments were also made regarding acceptance of ash from a future waste to energy plant, including submittal of a document titled, "Application for Facility Permit/Waste Discharge" from 1984 that refers to ash from a future waste to energy plant.

District Response: Regarding the types of wastes accepted at the Potrero Hills Landfill in general, the landfill is not permitted to accept hazardous wastes. The District is aware that the facility accepts biosolids and either places this material in the landfill or mixes it with soil for use as alternative daily cover. This material is received wet and is not expected to be a source of fugitive dust.

In accordance with the current permit conditions for Potrero Hills Landfill (Condition # 1948, Part 14a), the landfill was at one time permitted to accept ash from a waste to energy plant owned by Solano Garbage Company. This waste to energy plant was never permitted by BAAQMD and

was never built. Hence, there is no waste to energy plant ash that is currently approved for acceptance at this landfill.

The District has issued an Authority to Construct for a Landfill Gas to Energy plant, the Potrero Hills Energy Producers (Application #23333), which would be located on property owned by Potrero Hills Landfill. This energy project includes six lean burn IC engines that will burn the landfill gas generated at the landfill to generate electricity, rather than burning the collected landfill gas at the existing onsite flare. This project does not involve the combustion of any solid waste and will not generate ash.

The District's authority to limit the types of wastes accepted by the landfill and the types of cover materials used by the landfill only extends to wastes and cover materials that may result in air emissions during onsite transport and handling. If the facility proposed to accept a new type of waste, the District permit for the landfill would not need to be modified if the waste material would not generate any additional air emissions above the current permitted levels. However, if the landfill proposed to use a new type of cover material that would result in air emissions during on-site transport and handling, such as VOC-laden soil or metal contaminated materials, then the landfill would need to apply to the air District for a permit modification before the landfill would be allowed to use this new cover material. Currently, the only BAAQMD approved cover materials are clean soil, digested dewatered municipal sewage sludge, and wood chips.

XIII. Non-Air Quality Related Documents, Requested and Supplied

Comment: One Commenter requested copies of all deeds that affect her easement, cattle right of way, and zoning, and supplied copies of the following documents:

- San Francisco BCDC Appeal from Marsh Development Permit Decision of Local Government, 2012
- Proof of Personal Service-Civil, 2010
- Ruling after Writs of Mandate Hearing, 2010
- News article related to mayoral candidate endorsement, no date
- County of Solano, Assessment Appeals Board, 2012
- Agenda, Solano County Planning Commission, 2012
- Draft Assessor's Parcel Map, Ridge Top Ranch
- Letter to Representative's regarding 1994 Waste to Energy Plant project at the Anheuser Busch Brewery.
- Letter to Solano County Board of Supervisors, regarding the Minutes for January 2009 Meeting
- Letter from BCDC to Dwight C. Ely, regarding Solano Garbage Company's Claim of Vested Rights, 1979
- Letter from BCDC to Richard Morris, regarding Assignment of BCDC Permit No. 38-79. 1989
- Letter from CA Integrated Waste Management Board to Solano County, regarding violations of the Solid Waste Facility Permit at the Potrero Hills Landfill, 1991
- Letter from William Reustle to Dept. of Resources Recycling & Recovery, 2012

District Response: The requested and supplied documents are not related to air-quality regulations, therefore the District has no jurisdiction over these issues. As they are not relevant to the proposed renewal of the Title V operating permit, no changes to the proposed permit have been made in response to these requests and submittals.