

Midwest Environmental ADVOCATES

pro bono publico

May 27, 2009

Mr. Roger Fritz
Wisconsin DNR of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, WI 53707-7921.

**RE: Comments of Chippewa Concerned Citizens and Loyalty to our Land
on the Draft Air Permit for Canadian Sand and Proppants, Inc.
(Operation Permit No. 609072860-F01)**

Dear Mr. Fritz,

On behalf of Chippewa Concerned Citizens and Loyalty to our Land (collectively, “Commenters”) Midwest Environmental Advocates (“MEA”) submits these comments on the Draft Air Pollution Control Operation Permit for Canadian Sand and Proppants, Inc. (Operation Permit No. 609072860-F01) (“Permit”). We appreciate the opportunity to submit these comments and urge the Department of Natural Resources (“DNR”) to defer issuing the permit altogether until it completes its duty to study crystalline silica emissions and determine if the pollutant should be listed as a hazardous air pollutant or, alternatively, to make the specific changes to the Permit identified below.

(A) The DNR’s failure to evaluate crystalline silica for possible listing as a hazardous air pollutant under NR 445 precludes the issuance of the Permit.

Of chief concern to the Commenters is the facility’s potential emissions of crystalline silica. Silica, a naturally occurring mineral that is commonly found in crystalline forms such as quartz, is a constituent of airborne particulate matter near rock quarries and mines. Crystalline silica is a known carcinogen and the chief cause of silicosis, a debilitating lung disease. The U.S. Occupational Safety and Health Administration has established exposure limits for crystalline silica pursuant to section 6(a) of the Occupational Safety and Health Act,¹ and the State of California is currently reviewing crystalline silica for possible inclusion in its list of hazardous air pollutants.² Because of these known risks, DNR should abstain from issuing the permit until the necessary research is completed and a final determination on the listing of crystalline silica as a hazardous air pollutant under NR 445 can be made.

¹ 29 U.S.C. § 655(a); *see also* 29 C.F.R. § 1910.1000, Table Z-3 (OSHA exposure limits for mineral dusts).

² *See* California Environmental Protection Agency, Air Resources Board, Final Staff Report: Update to the Toxic Air Contaminant List (December 1999) at 11, *available at* <http://www.arb.ca.gov/toxics/Finalreport.PDF>.

1. *The DNR should promptly evaluate the need for listing and regulation of crystalline silica as a hazardous air pollutant under NR 445 and defer issuance of the Permit until requisite studies are completed.*

The DNR is well aware of the public health risks posed by crystalline silica emissions. In 2004, the DNR committed to undertaking a study of the “sources and amounts of [crystalline silica] emissions” in Wisconsin and an assessment of the “alternative strategies for minimizing public health risks” from those emissions.³ Although the DNR was to report to the Natural Resources Board on the progress of the study by July 1, 2006, the study never occurred.

The procedures to be followed by the DNR in making hazardous air pollutant listing decisions are found at NR 445.13. Subject to additional considerations, the DNR “shall determine that a substance is a hazardous air contaminant that may be listed in Table A, B, or C of s. NR 445.07 if the substance can, due to inhalation, cause an adverse health effect and it . . . is classified as a known carcinogen . . . by both the International Agency for Research on Cancer and the National Toxicology Program.”⁴ Crystalline silica has been identified as a known human carcinogen by both the International Agency for Research on Cancer⁵ and the National Toxicology Program.⁶ The remaining steps for consideration of crystalline silica as an NR 445 listed hazardous air pollutants should be completed as soon as possible.

For the reasons given above, Commenters urge the DNR to promptly fulfill its obligation under NR 445.14(2) to prepare a study on the emissions of crystalline silica. Commenters further request that the DNR make a determination as to whether crystalline silica should be listed as a hazardous air pollutant under NR 445. Issuance of the Permit should be deferred until after completion of these duties.

2. *Alternatively, if the Department chooses to issue the Permit, a reopener clause should be included stating the DNR’s intent either to modify the permit when a standard or control requirement for crystalline silica is established under NR 445 or to revoke the permit if the operations cannot be altered so as to meet the standard or control requirement for crystalline silica established under NR 445.*

The DNR is authorized to revise operation permits when there is a “change in the applicable requirement[s] . . . due to an addition of, or revision to, a hazardous air contaminant standard or control requirement in . . . NR 445.”⁷ Should the DNR chose to issue the Permit to CSP, Commenters request that the DNR include a reopener provision stating that the DNR will

³ Wis. Admin. Code § NR 445.14(2).

⁴ Wis. Admin. Code § NR 445.13(2)(a).

⁵ International Agency for Research on Cancer, *Monograph: Silica* (Vol. 68; 1997); available at <http://monographs.iarc.fr/ENG/Monographs/vol68/mono68-6.pdf>. See also International Agency for Research on Cancer, Overall Evaluations of Carcinogenicity to Humans, Group 1: Carcinogenic to humans, <http://monographs.iarc.fr/ENG/Classification/crthgr01.php>.

⁶ Report on Carcinogens, Eleventh Edition; U.S. DNR of Health and Human Services, Public Health Service, National Toxicology Program (January 31, 2005), available at <http://ntp.niehs.nih.gov/ntp/roc/eleventh/profiles/s161sili.pdf>.

⁷ Wis. Admin. Code § NR 407.14(1m)(e).

modify the Permit if and when there is an applicable regulatory requirement for crystalline silica under NR 445 or any other provision of State law.

(B) The DNR should include clear and specific ambient air particulate matter monitoring requirements in the Permit.

NR 415.075 requires certain rock quarries and industrial sand mines (which include CSP) to take precautions “to prevent particulate matter from becoming airborne” and to install and operate a particulate matter ambient air monitoring system.⁸ Sources may apply for a variance from this ambient monitoring requirement if they can demonstrate that the “general public will not be exposed to significant levels of particulate matter from the source, and that the source’s emissions units and processes are controlled to a level which meets all applicable requirements.”⁹ CSP should not be granted a variance from the ambient air monitoring requirements, and the monitoring locations should be expressly included.

1. *CSP’s request for an ambient air monitoring waiver should be denied.*

The Draft Permit includes a provision requiring CSP to install and maintain a particulate matter monitoring system.¹⁰ As noted in the Preliminary Determination, CSP has submitted to the DNR a request for a variance from this requirement, and the DNR has proposed to deny this variance request.

Commenters strongly urge the DNR to deny the variance request. The particulate matter emissions data gathered and submitted by CSP through its ambient air monitoring will serve several important functions. First, it will allow the DNR to determine whether CSP is taking adequate precautions to ensure that particulate matter does not become airborne, as required by the Permit and NR 415.04. Second, it will allow the DNR to determine whether CSP’s particulate matter emissions are causing or contributing to a local air standard exceedence, and thus require additional control measures.¹¹ Third, the data will enable the DNR to ensure that hazardous air pollutants, including crystalline silica, are not emitted in quantities or concentrations that are “injurious to human health.”¹² Finally, the emissions data will provide further necessary information to the DNR to enable the completion of the crystalline silica emissions study required by NR 445.14(2) and the potential hazardous air pollutant listing decision under NR 445.13(2). DNR should deny CSP’s request for a variance from ambient air monitoring requirements.

2. *Ambient air monitoring for particulate matter should be expressly required for at least two years.*

⁸ Wis. Admin. Code § NR 415.075(2)(a), (4).

⁹ *Id.* § NR 415.075(4)(b).

¹⁰ Draft Permit, Section I.ZZZ.2.a(3).

¹¹ See Wis. Admin. Code § NR 404.08(2) (“Any person may be required to reduce emissions below limits established in an implementation plan or by air pollution control rules where emissions cause or substantially contribute to exceeding an air standard in a localized area.”)

¹² Wis. Admin. Code § NR 445.03.

Commenters further urge that ambient air monitoring be required for a minimum of two years after operations commence. As noted above, the Draft Permit states that CSP may apply for a variance from the ambient air monitoring requirements; even if the DNR denies the variance request now pending, CSP may reapply for a variance in the near future. Although a footnote to the Draft Permit states that it is the DNR's "intent" to deny any variance from the ambient air monitoring requirements for at least two years;¹³ this should be made explicit in the Permit itself, and the Permit should be amended to require monitoring for a period of time not less than two years following initiation of the ambient air monitoring program.

3. *Ambient air monitoring for particulate matter should be expressly required at both the sand processing plant and the mine.*

Commenters also request that the DNR include in the Permit an express requirement that ambient air monitoring for particulate matter take place at both the sand processing plant in Chippewa Falls and the mine in the Town of Howard, Chippewa County. The DNR may only approve an ambient air monitoring plan that can "provide accurate and reliable monitoring at the operation site."¹⁴ Both the processing plant and the associated mine are part of the "operation site" covered by the Permit. As noted in the DNR's Preliminary Determination, "[t]he mine supports the processing plant, is controlled by CSP and therefore is required to be addressed as part of the processing facility."¹⁵ The Draft Permit addresses emissions and authorizes the operation of sources of air pollution at both the plant and the mine, and several of the individual emissions units covered by the Permit are at the mine.¹⁶ In order to ensure that CSP accurately and reliably monitors the ambient air for airborne particulate matter, the Permit should be modified to explicitly require monitoring at the mine.

- (C) Opportunities for public review and enforceability of the Fugitive Dust Plan and the ambient air monitoring plan should be clarified and strengthened.

The Draft Permit requires CSP to prepare and submit to the DNR for review and approval two plans: a Fugitive Dust Plan and a plan describing CSP's ambient air monitoring program.¹⁷ In several respects the content of these plans is directly tied to compliance with the permit itself and the underlying DNR regulations.¹⁸ Because both plans are essential components of CSP's permit requirements opportunities for public participation and enforceability of the plans must be clarified in the Permit.

1. *The DNR should provide an opportunity for the public to review and comment upon both the Fugitive Dust Plan and the ambient air monitoring plan.*

¹³ Draft Permit, Section I.ZZZ.2.a(4), note 13.

¹⁴ Wis. Admin. Code § NR 415.075(4)(a)2.

¹⁵ Wisconsin Department of Natural Resources, Analysis and Preliminary Determination for the Operation Permit for a Sand Processing Plant and Industrial Sand Mine for Canadian Sand and Proppants, Inc., at 3.

¹⁶ For example, Unit F11 includes the loading and unloading operations, drilling, blasting, and hauling processes at the mine, and Unit S11/P11 is a diesel driven water pump at the mine. See Preliminary Determination at 7.

¹⁷ Draft Permit, Section ZZZ.2.b.(1) and (3).

¹⁸ See Draft Permit, Section B.2.b.(1) ("Compliance with the Fugitive Dust Plan . . . shall be used to ensure compliance with the opacity limit."); Section C.2.b.(2) ("Compliance with the Fugitive Dust Plan . . . shall be used to ensure compliance with visible emissions limit[.]").

Given the considerable public scrutiny this Draft Permit has generated and the interest of the Commenters in protecting their own health and the health of others from potentially hazardous emissions of crystalline silica and other components of fugitive dust and particulate matter, allowing the public to review and provide comments on the plan components will help ensure that both plans are effective and meet the requirements of Wisconsin law. Commenters urge the DNR to commit to providing ample opportunity for the public to review and submit comments on each plan.

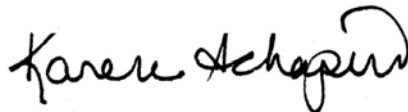
2. *Compliance with both plans should be expressly required in the Permit.*

The DNR correctly included a provision in the Draft Permit requiring compliance with the Fugitive Dust Plan, essentially incorporating the plan into the Permit by reference and making the Plan's components enforceable.¹⁹ The DNR should also include a comparable provision that requires compliance with the DNR-approved ambient air monitoring plan. Only if that plan is incorporated by reference into the Permit and made enforceable will the DNR be assured of receiving accurate and timely data of the fugitive dust and crystalline silica emissions from the facility.

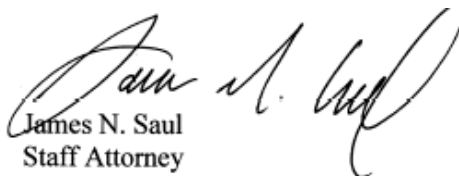
Thank you again for the opportunity to submit comments on the Draft Permit for Canadian Sand and Proppants, Inc. We look forward to your response.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



Karen M. Schapiro
Executive Director



James N. Saul
Staff Attorney

Cc: Ronald Koshoshek, Loyalty to our Land
Elizabeth Walton, Chippewa Concerned Citizens

¹⁹ See Draft Permit at Section ZZZ.2.b.(2) ("The permittee shall follow the Fugitive Dust Plan.").