

[www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/caldwelltanks\\_decision2001.pdf](http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/caldwelltanks_decision2001.pdf).

**FOR FURTHER INFORMATION CONTACT:** Art Hofmeister, Air, Pesticides and Toxics Management Division, EPA, Region 4, telephone (404) 562-9115, e-mail [hofmeister.art@epa.gov](mailto:hofmeister.art@epa.gov). Interested parties may also contact the Air Protection Branch, Georgia Environmental Protection Division, 4244 International Parkway, Atlanta, Georgia 30354.

**SUPPLEMENTARY INFORMATION:** The Clean Air Act (CAA or the Act) affords EPA a 45-day period to review, as appropriate, operating permits proposed by State permitting authorities under Title V of the CAA, 42 U.S.C. 7661-7661f (Title V). Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a Title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Section 505(b)(2) provides that the Administrator shall grant or deny such a petition within 60 days after it is filed, and that the Administrator shall object to the permit within that period if the petitioner demonstrates that the permit is not in compliance with the requirements of the CAA. Section 505(b)(2) further provides that the Administrator's duties under that paragraph may not be delegated to another officer. In addition, section 505(e) of the CAA authorizes the Administrator to terminate, modify, or revoke and reissue a permit for cause at any time. In accordance with EPA's regulations at 40 CFR 70.7(f) and 70.7(g), any person may petition EPA to reopen a permit for cause. However, there is no deadline by which EPA is required to respond to such petitions.

Georgia Center for Law in the Public Interest submitted a petition on behalf of the Sierra Club (GCLPI or Petitioner) to the Administrator on May 9, 2001, requesting that EPA object to a state Title V operating permit, issued by the Georgia Environmental Protection Division (Georgia EPD) to Caldwell Tanks Alliance, LLC (Caldwell Tanks) for its facility located in Newnan, Georgia.

GCLPI's petition was not filed within the statutory time period for filing a section 505(b)(2) petition for objection to a Title V permit. Petitioner claims that it relied upon erroneous information provided by the Georgia EPD which indicated that the permit had been re-proposed to EPA. Reproposal of the permit would have re-started EPA's review period and, in turn, extended the time allowed for filing petitions for objection to the permit. Because the petition was untimely, EPA informed Petitioner that EPA intended to treat it as a petition to reopen the permit for cause in accordance with 40 CFR 70.7(f) and 70.7(g) and to respond on the merits.

Accordingly, EPA sent a letter, dated January 28, 2002, from Winston A. Smith, Director of Region 4's Air, Pesticides & Toxics Management Division, to Petitioner's counsel, stating that the petition was not timely filed under section 505(b)(2) and 40 CFR 70.8(d) and that EPA was treating it as a petition to reopen the permit for cause in accordance with 40 CFR 70.7(f) and 70.7(g). EPA also denied the petition to reopen on the merits.

Because EPA had not responded to the petition within the statutory 60-day period for responding to section 505(b)(2) petitions for objection, the Petitioner filed a nondiscretionary duty suit pursuant to section 304(a)(2) of the CAA in the United States District Court for the District of Columbia to compel EPA to grant or deny its petition. Two days after EPA responded to the Petitioner's petition, the court held that the doctrine of equitable tolling applies to that 60-day limitations period generally and applied against EPA in the Caldwell Tanks case to render the Petitioner's petition timely under section 505(b)(2). The court ordered the Administrator to consider the petition pursuant to section 505(b)(2) and to grant or deny the petition within 60 days of the court's order. *See Sierra Club v. Whitman*, Civil Action No. 01-01991 (ESH) (D.D.C. Jan. 30, 2002) (order and memorandum opinion). In light of the court's holding that the Petitioner's petition was timely under section 505(b)(2), the Administrator responded to the petition pursuant to that statutory provision in an order, dated April 1, 2002.

The Petitioner requested that EPA object to the Caldwell Tanks permit on the grounds that the permit is inconsistent with the Clean Air Act because the permit failed to: (1) Require the submittal of reports of any required monitoring at least every six months, as required under 40 CFR 70.6(a)(3)(iii)(A); (2) allow all persons to enforce

violations of the permit; (3) go through proper public notice procedures because it stated only that the permit is enforceable by EPA and the Georgia EPD without also stating that the permit is enforceable by members of the public; and (4) include an emission limit or require monitoring to assure that no visible emissions result from a shot blasting and baghouse operation that the permit classifies as an insignificant activity.

The order denying this petition explains the reasons behind EPA's conclusion that the Petitioner failed to demonstrate that the Caldwell Tanks permit is not in compliance with the requirements of the Clean Air Act on the grounds raised.

Dated: May 13, 2002.

**J. I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. 02-13119 Filed 5-23-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6629-6]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

#### Draft EISs

*ERP No. D-AFS-J65359-MT Rating EC2,* Lolo National Forest Post Burn Management Activities, Implementation, Ninemile, Superior and Plains Ranger Districts, Mineral Missoula and Sanders Counties, MT.

**Summary:** EPA expressed environmental concerns with water quality proposed management actions in the 303(d) listed Ninemile Creek and Trout Creek drainages and suggested coordinating with the State's TMDL development efforts. EPA recommends that the final EIS should include a summary of major actions in the project area (and including adjacent lands) which may contribute to cumulative effects.

*ERP No. D-FHW-F40405-IL Rating EC2*, US 34/FAP 313 Transportation Facility Improvement Project, US 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and US Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL.

*Summary:* EPA has identified issues, and expressed environmental concerns, relating to characterization of existing water quality, impacts to impaired waters and impacts to Botanical Site #3, a small sand hill prairie with a diverse mixture of grasses and forbs. Accordingly, EPA has requested additional information.

#### Final EISs

*ERP No. F-AFS-J65348-CO Bark Beetle Analysis*, Proposal to Reduce Infestation of Trees by Tree-Killing Bark Beetles, Medicine Bow-Routt National Forests, Hahans Peak/Bears Ears Ranger District, Routt, Grand, Jackson and Moffat Counties, CO.

*Summary:* EPA generally supports the suppression and control actions; however, EPA expressed environmental concerns regarding impacts from 15.3 miles of new roads and the effectiveness of preventative thinning to avert a predicted beetle epidemic.

*ERP No. F-FHW-F40388-WI US-14/61 Westby—Viroqua Bypass Corridor Study*, Transportation Improvements, Funding and US Army COE Section 404 Permit, Cities of Viroqua and Westby, Vernon County, WI.

*Summary:* EPA has no objection to the proposed action.

*ERP No. F-NPS-J65346-WY Devil's Tower National Monument General Management Plan*, Implementation, Crook County, WY.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F-UAF-J11019-MT Montana Air National Guard Air-to-Ground Training Range Development for Use by the 120th Fighter Wing (120th FW)*, Implementation, Phillips and Blaine Counties, MT.

*Summary:* EPA continues to express environmental concerns regarding impacts to people and wildlife from noise and visual stimuli from low altitude F-16 flights and other range activities.

*ERP No. F-USA-J13000-CO Pueblo Chemical Depot*, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility, Pueblo County, CO.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: May 21, 2002.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6629-5]

#### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or [www.epa.gov/compliance/nepa](http://www.epa.gov/compliance/nepa).

Weekly receipt of Environmental Impact Statements

Filed May 13, 2002 Through May 17, 2002

Pursuant to 40 CFR 1506.9.

*EIS No. 020191, Draft EIS, AFS, MT*, Black Ant Salvage Project, To Salvage 739 Acres of Dead Merchantable Trees from the Lost Fork Fire of 2001, Lewis and Clark National Forest, Meagher Basin County, MT, *Comment Period Ends:* July 08, 2002, *Contact:* Scott Hill (406) 566-2292.

*EIS No. 020192, Draft EIS, FHW, WY*, US 287/26 Improvements Project, From Moran Junction to 12 Miles West of Dubois, the Roadway Traverses thru the Bridger-Teton and Shoshone National Forests and Grand Teton National Park, NPDES and COE Section 404 Permits, Teton and Fremont Counties, WY, *Comment Period Ends:* August 28, 2002, *Contact:* Galen W. Hesterberg (307) 772-2012.

*EIS No. 020193, Final EIS, TPT, CA*, Presidio Trust Implementation Plan (PTIP), An Updated Plan for the Area B of the Presidio of San Francisco, Implementation, San Francisco Bay Area, Marin County, CA, *Wait Period Ends:* June 24, 2002, *Contact:* John Pelka (415) 561-5300.

*EIS No. 020194, Final EIS, FAA, IL*, South Suburban Airport, Proposed Site Approval and Land Acquisition, For Future Air Carrier Airport, Will and Kankakee Counties, IL, *Wait Period Ends:* June 24, 2002, *Contact:* Denis Rewerts (847) 294-7195.

*EIS No. 020195, Final EIS, HUD, NY*, 1105-1135 Warburton Avenue, River Club Apartment Complex Development and Operation, Funding, City of Yonkers, Westchester County, NY, *Wait Period Ends:* June 24, 2002, *Contact:* Lee Ellman (914) 377-6557.

*EIS No. 020196, Draft EIS, FHW, WI*, US 10 Highway Improvements between

Marshfield and Appleton, Trestik Road—CTH “K” (Stevens Point Bypass), Funding and COE Section 404 Permit, Portage County, WI, *Comment Period Ends:* July 08, 2002, *Contact:* Wesley Shemwell (608) 829-7521.

*EIS No. 020197, Draft EIS, FRC, ID*, C.J. Strike Hydroelectric Project (FERC NO. 2055), Application for a new License, Located on the Snake River and Bruneau River, Owyhee and Elmore Counties, ID, *Comment Period Ends:* July 08, 2002, *Contact:* John Blair (202) 219-2845.

*EIS No. 020198, Draft Supplement, NRC, SC, Generic EIS—Catawba Nuclear Station*, Unit 1 and 2 (Catawba), Renew the Operating Licenses (OLs) for an Additional 20-Year Period, Supplement 9 to NUREG-1437, York County, SC, *Comment Period Ends:* August 23, 2002, *Contact:* James Wilson (301) 415-1108.

*EIS No. 020199, Draft EIS, BLM, WY*, Pittsburg and Midway Coal Mining Proposal (WYW148816), Exchange Private Owned Land P&M for Federally-Owned Coal, Lincoln, Carbon and Sheridan Counties, WY, *Comment Period Ends:* July 23, 2002, *Contact:* Nancy Doelger (307) 261-7627. This document is available on the Internet at: ([www.wy.blm.gov](http://www.wy.blm.gov)).

*EIS No. 020200, Draft EIS, DOE*, Programmatic EIS—Hanford Site Solid (Radioactive and Hazardous) Waste Program (DOE/EIS-0286D), Proposal to Enhance Waste Management Practices, Low-Level Radioactive; Low-Level Mixed; Transuranic Radioactive; Richland, Benton County, WA *Comment Period Ends:* August 22, 2002, *Contact:* Michael S. Collins (509) 376-6536.

*EIS No. 020201, Final EIS, MMS, AK*, Liberty Development and Production Plan, Beaufort Sea Oil and Gas Development, Implementation, To Transport and Sell Oil to the U.S. and World Markets, Right-of-Way Application, Offshore Beaufort Sea Marine Environment and Onshore North Slope of Alaska Coastal Plan, AK, *Wait Period Ends:* June 24, 2002, *Contact:* George Valiulis (703) 787-1662.

*EIS No. 020202, Final Supplement, FHW, CA*, Devil's Slide Bypass Improvement, CA-1 from Half Moon Bay Airport to Linda Mar Boulevard, Preferred Alternative Estimated Future Project—Generated Noise Study, Funding, Pacifica and San Mateo Counties, CA, *Wait Period Ends:* June 24, 2002, *Contact:* Bill Wong (916) 498-5042.