

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE TITLE V OPERATING PERMIT FOR DUKE ENERGY LEE**

Pursuant to Section 505(b)(2) of the Clean Air Act (the "Act"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), I, Verena Owen, residing at 421 Ravine Drive in Winthrop Harbor, Illinois 60096, hereby petition the Administrator ("the Administrator") of the United States Environmental Protection Agency ("U.S. EPA") to object to the issuance of the Title V Operating Permit for Duke Energy Lee, CAAPP # 02020030, I.D. # 1038117AAH.

The initial draft/proposed Title V permit ( the "Permit") was proposed to U.S. EPA by the Illinois Environmental Protection Agency ("IEPA") for EPA review on October 10, 2002. A copy is attached as exhibit 1.

Note: The Permit I received from IEPA for review was dated September 20, 2002. The draft/proposed permit enclosed was printed off IEPA's permit database today: it is now dated October 25, 2002. I do not know why; or guess at the implications. Both permits are identical in content. Obviously, a proposed permit issued on October 25 could not have been forwarded to USEPA for review on October 10.

Note: Under concurrent permitting, it is unclear if the draft/proposed permit issued on October 10, 2002 or October 25 , 2002 was indeed the proposed permit forwarded to USEPA for review. IEPA may, at its discretion , make changes to a proposed permit without having to reissue it or to make the revised permit available to the public. Such changes become only "visible" to the public in form of the final permit.

Although it is highly unlikely, but to be on the safe side about the timeliness of my petition, I have assumed that USEPA was forwarded the draft/proposed permit on October 10, 2002.

This petition is filed within sixty days following the expiration of U.S. EPA's 45-day review period, as required by Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).

The Administrator must grant or deny this petition within sixty days after it is filed.

In compliance with Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), this petition is based on objections to the Duke Energy Lee Title V that I raised during the public comment period provided by the Act.

On October 18, 2002, IEPA granted my request to extend the public comment period to November 15, 2002.( Email by Jim Ross, Unit Manager of the Clean Air Act Permit Program, exhibit 2).

I timely submitted my comments. A copy of my comments on the draft/proposed Title V permit

is attached as Exhibits 3 and is incorporated by reference into this petition.

IEPA did not respond to my comments.

On December 16, 2002, IEPA issued the final permit to Duke Energy Lee.( Exhibit 4)

#### GROUND FOR OBJECTIONS

I request that the Administrator object to the Title V permit for Duke Energy Lee because the permit is not in compliance with applicable requirements or requirements of 40 CFR part 70.

In particular:

**1) The permit review process failed to comply with the public participation requirements of the Clean Air Act § 503(e), 42 U.S.C. § 7661b(e) and 40 C.F.R. § 70.7(h)(2).**

The public notice for the Permit failed to inform the public that IEPA **had made changes** to the Title 1 permit for Duke Lee Energy. The public notice misleads in stating that : "This permit **may** contain terms and conditions established pursuant to Title 1 of the federal Clean Air Act thereby making it a combined Title V and Title I permit."( emphasis mine).

Any changes to terms and conditions of a Title 1 permit, and particularly in this case where IEPA omitted emission limits imposed on the source in the PSD permit and substantially altered PSD permit conditions, are of high interest to the public who often had input in the Title 1 permit.

It is important for the public to understand what exactly the scope of the proposed permit is .A permit that is not a combined Title1/Title 5 permit will not warrant as much attention as a combined permit . The public has limited resources for review. IEPA has to properly inform us what its intentions are in order for us to evaluate the need for us to get involved in a permit review. It is clear that IEPA knew at the time the permit was put to notice that it was a combined permit. It had the obligation to inform us of this fact. I believe the notice as phrased violated Illinois public notice regulations.

In addition, I believe that IEPA overstepped the boundaries set forth in the Memorandum of Understanding between Region V of the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency, dated 2-14-2000( the "MOU", exhibit 5).

This is discussed in more detail in my comments at 4.

IEPA interpreted the scope of the MOU too broadly. The MOU limits IEPA to issue combined Title 1/Title 5 permit under only two scenarios: 1. To sources which do not have a Title 1 permit and2) to sources which request a revision of Title 1 conditions. In its application, Duke Energy Lee did not request any changes to its Title 1 permit. IEPA was not authorized to act under the provision of the MOU. In addition, the MOU specifically instructs IEPA on how to identify and reference the status of each title 1 permit condition, that includes carried over conditions without change, revised conditions, and new conditions in the combined permit. This was not done by IEPA.

IEPA did not respond to my comments under 4.

It needs to be pointed out that IEPA did not respond to any of my comments. This non-responsiveness handicaps the public in preparing for a petition to object. This is especially true under IEPA's concurrent permitting policy, where a final product of all comments it received is not the published proposed permit but the final permit. There is no statutory time frame within IEPA is required to issue a final permit, indeed it does not even have to do so within the 60 days the public has to appeal. I believe that this violates Illinois Title 5 public participation regulations.

**2)The Administrator Must Object to the Proposed Permit Because it Violates 40 C.F.R. 70.6**

Each permit issued under part 70 has to include the following elements;

70.6.(a)(1)(i) " The Permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition was based."

40 CFR § 70.2 defines "applicable requirement " to include the terms and conditions of preconstruction permits.

IEPA did not identify any differences in conditions 7.1.2, and 7.1.5 (a)(iv)(B) and 7.1.5(a)(iv)(C) in the Permit in form as compared to the PSD permit (Application No: 99090029 I.D. No.: 103817AAH ,Applicants Designation: LEE, Date Issued: March 31, 2000) nor did it provide any reason for the changes.

IEPA responded to my comments regarding this issue.

IEPA did not alert the public of the fact that the storage tank emissions would be deleted. The fact the IEPA proposes to eliminate two tons of VOM from the emissions the source has to account for, is important for the public to know.

IEPA did not identify the omission of the fuel tank VOM emission limits as defined in condition 4 b of the PSD permit

"Condition 4b. The four fuel oil storage tanks are subject to the New Source Performance Standard (NSPS) for storage vessels, 40 CFR 60, Subpart A and Kb. The Illinois EPA is administrating NSPS in Illinois on behalf of the United States EPA under a delegation agreement

NSPS is an applicable requirement. IEPA may not remove applicable requirements from a title 5 permit.

The following conditions in the permit also fail to specify and reference their origin of and authority: 5.2.2 (a), 7.1.7 (b), 7.1.9 (i)(iii),7.1.10 (a).

IEPA did not responded to my comments.

Conditions in this Permit contain no statement of basis.

### **3)The Permit Does Not Assure Compliance With All Applicable Requirements Because Individual Permit Conditions Lack Adequate Monitoring**

One prominent change between the draft/proposed and the final Permit is the deletion of Continuous Opacity Monitors (COMs) in the final version.

Now this permit does not require sufficient periodic monitoring to assure compliance with the opacity standard. I have been unable to locate the method or the frequency of opacity measurement in the permit.

I need to point out that I was not notified of the issuance of the final permit, and although it apparently was issued on December 16, it was not posted and I did not see it on the IEPA permits database until the middle of January. I requested and was sent a copy of the final permit. It arrived a couple of days ago.

I could not reasonably foresee the deletion of the opacity monitors in the final permit. I was not given adequate time to investigate the consequences of the sudden lack of an opacity monitor.

I had contacted IEPA and Region V on November 24, 2002 per email about my concerns that concurrent permitting might curtail the public's right to participate in the title V process. I have included both a copy of my email and the response I received on January 17, 2002. *exh. 7*

I respectfully disagree with Region V's findings: IEPA is under no obligation to issue a final permit within the 60 days the public has to ask the Administrator to object. Even if it does, IEPA is under no obligation to, and does not, officially notify the public, who retained the right to petition the administrator, of the issuance of the final permit. IEPA was given the authority to make changes to a proposed permit, changes the public is able see for the first time when the permit becomes final. In this case, IEPA made me aware of the final permit and of issues due to changes to the proposed permit so late that I could not include them in this petition.

Under a concurrent permitting system, when the proposed permit is changed without commentors being notified, the public gets surprises. Those surprises, as e.g. the deleted COMs, are not conducive to getting good comments. The fact that the public does not know until IEPA issued the final permit which comments it took under consideration in combination with the fact that IEPA does not respond to any comments, make it very hard for the public to prepare for and submit an objection to the Administrator.

I believe that the outlined problems caused by concurrent permitting are so prominent that it IEPA and Region V need to come together and discuss if the perceived advantages to IEPA in any way outweigh the disadvantages the public encounters under the system.

In addition:

Throughout my comments I pointed out numerous conditions that lack adequate monitoring requirements.

IEPA did not respond.

These comments are hereby incorporated by reference.

**4) The Permit Does Not Assure Compliance With All Applicable Requirements because Individual Permit Conditions and are not Practicably Enforceable**

Throughout my comments I pointed out conditions that were not practicably enforceable. IEPA did not respond to those comments.

My comments are hereby incorporated by reference into this petition.

**5) This permit contains credible evidence busting language**

**6) this permit failed to establish BACT for the cooling tower PM emissions**

**7) this permit has conditions that lack adequate recordkeeping and recording requirements**


These comments are hereby incorporated by reference

**Closing:**

I raised substantive issues over permit conditions that violate section 70 provisions. I ask that you object to the issuance of the permit for the reasons outlined above and for all other reasons I stated in my comments on the draft/proposed permit.

Thank you for your interest,

Sincerely,

  
Verena Owen  
421 Ravine Drive  
Winthrop Harbor, IL 60096

dated: January 20, 2003