

BEFORE THE  
STATE OF OHIO  
ENVIRONMENTAL REVIEW APPEALS COMMISSION

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MARION FRANKLIN  
CIVIC ASSOCIATION

Case Nos. ERAC 256031  
ERAC 256036

Appellant.

v.

JOSEPH KONCELICK, DIRECTOR OF  
ENVIRONMENTAL PROTECTION,  
ET AL.

Appellees.

SUPPLEMENTAL NOTICE OF APPEAL

Pursuant to Sections 3745.04 of the Ohio Revised Code, and Entry dated May 17, 2007, this supplemental notice of appeal is hereby given that the Appellant, Marion Franklin Civic Association is appealing to the Environmental Review Appeals Commission the issuance, by the Director of the Ohio Environmental Protection Agency, of a permit to install and federally enforceable permits to operate a formaldehyde production process plant No 2. at Georgia Pacific Resins, located at 1975 Watkins Road, Columbus, Ohio [Franklin County]. Such final actions were issued and effective on January 2, 2007.

BACKGROUND

Appellant is a civic association whose members own residential property in the neighborhoods immediately adjacent to the Georgia Pacific Resin Plant at 1975 Watkins Road, Columbus, Ohio (hereinafter "GPR Watkins Rd. Plant"). The Marion Franklin Civic Association (MFCA) is acting on behalf of the individual members of the

association in this action to protect its members' health, safety, and property from the results of the activities at the GPR Watkins Rd. Plant. Since the MFCA encompasses the neighborhoods immediately adjacent to the GPR Watkins Rd. Plant, the individual members live in close proximity to the GPR Watkins Rd. Plant, and their properties are impacted by general air emissions from the GPR Watkins Rd. Plant, as well as any other risks, such as potential accidental releases and/or explosions as a result of activities associated with the Plant. Many of the residents participated in a class suit (Booth et al. versus Georgia-Pacific) following an explosion at one of the plant's resin kettles in September 1997. The suit was settled with residents receiving about \$22 million in payments and beneficiary programs. The award resulted from the settlement of class action litigation.

As a result of the explosion and subsequent Court action, Dr. Henry S. Cole, an environmental and atmospheric scientist with extensive experience in air pollution and toxic contamination in communities, and William M. Auberle, P.E., a professor of engineering at Northern Arizona University, a licensed professional engineer, and an expert in air pollution regulatory programs, air pollution emissions and their control, were retained to act as a Liaison between the residents and GPR Watkins Rd. Plant. These experts reviewed data and issued a report indicating concerns about some of the features related to the formaldehyde plant and the wastewater lagoon. The Liaisons' report recommended that GPR make changes to the formaldehyde plant in order to improve its safety. The Liaisons' report also recommended that Ohio EPA (a) rescind de minimus status of the wastewater lagoon, and include it as a regulated emission unit and (b) designate the plant as a whole as a major source of hazardous air pollutants and obtain a Title V permit. GPR Watkins Rd. Plant did not adopt these recommended changes. Dr.

Cole continues to be of the opinion that these changes are necessary in order to protect public health. Although there were outstanding concerns expressed by the Liaisons in the report dated October 2005, GPR Watkins Rd. Plant applied for and Ohio EPA approved, effective January 2, 2007, a permit to install a formaldehyde production process plant No. 2 that allows significant increases in the emission of formaldehyde (37.5% increase) and carbon monoxide (282% increase.) In taking this action, the Agency did not require GPR to obtain Title V permit for the plant, nor did it require that the wastewater treatment pond be included as regulated emissions unit.

Individual members of MFCA and its representatives attended public hearing and submitted comments opposing the issuance of the permits. The concerns expressed by the community members, and the Liaison report were available to the Director. The Liaison report recommends that OEPA require a Title V permit for the plant given serious deficiencies in GPR's estimates of emissions of hazardous air pollutants (HAP) from the pond. The Liaisons' report and specific comments to OEPA provide evidence indicating that GPR methods contain numerous errors, omissions, and uncertainties and are likely to underestimate the pond's potential emissions. Dr. Cole will testify that a more accurate analysis in potential HAP emission would result in higher estimates of potential HAP emission from the pond and therefore from the plant as a whole and that a more accurate assessment is likely to show exceedances of the aforementioned regulatory thresholds affecting the pond and plant. Without requiring GPR to address concerns Ohio EPA cannot ensure that the Plant is in compliance with all applicable federal and state laws.

Appellants also assert that Ohio EPA, in issuing the permits to install and operate, failed to consider complaints of residents that noxious odors from the wastewater pond

interfered with their peaceful enjoyment of their properties. Appellants contend that the odors and emissions from the pond constitute a public nuisance in violation of OAC rule 3745-15-07. Despite the serious technical concerns raised by court-appointed experts (Liaisons) and the complaints of residents, Ohio EPA issued a permit which, rather than addressing the concerns, allows the plant to increase its air emission of pollutants including formaldehyde, a hazardous air pollutant and probable human carcinogen. These increases in emissions will cause further deterioration of the air quality in the area, which is already over burdened due to emissions from a number of other facilities in the area. Appellants are adversely affected and aggrieved by the action of the Director, and therefore file this appeal.

### **ALLEGATIONS**

For the following reasons, Appellant alleges that the Director of Environmental Protection has acted unreasonably and unlawfully and without appropriate factual and legal basis to support his action in issuing the permits. Appellant reserves the right to amend this pleading and to supplement the issues raised herein upon review of the Certified Record with this Commission or upon discovery of additional information during the course of proceedings in this appeal.

1. GPR Watkins Rd. Plant had a permit for Plant 2 issued July 15, 1980 (PTI 01-341); the PTI 01-12019 is a modification which allows an increase in emissions of formaldehyde and carbon monoxide. Director approved modifications of the Plant 2 permit without requiring GPR to substantiate that the facility's potential to emit as it exists and as modified did not exceed the limit to be considered a de minimus source.

2. GPR estimated releases from the wastewater pond based on assumptions that microbial activity in the wastewater pond results in rapid biodegradation. GPR rests its case on a highly theoretical analysis with no direct measurement of air emissions from the pond. This analysis led to GPR's conclusions that biodegradation (microbial breakdown) removes 99.9% of the HAPs discharged to the pond that only 0.1% are emitted to the air. Dr. Cole has previously presented evidence to Ohio EPA showing that these conclusions and GPR's emission estimates are implausible and result from a number of serious errors in the calculations. Moreover, Dr. Cole has presented evidence to Ohio EPA demonstrating that the actual conditions operating at the pond, if analyzed in a scientifically valid manner, would lead to much higher estimates of potential HAP emissions than those provided by GPR. Consider for example: (a) the HAPs discharged to the pond are volatile organic compounds and have a propensity to evaporate into the air, aeration at the pond (b) the pond has an aggressive aeration system which is likely to enhance evaporation (c) the three HAPs discharged to the pond, phenol, methanol, and formaldehyde, are known to inhibit the ability of microbes to degrade these HAPs.
3. Dr. Cole also presented evidence to OEPA showing that if even a small percentage of the HAPs discharged to the pond are emitted to the air that estimated potential HAP emissions would exceed thresholds requiring (a) inclusion of the pond as a regulated emission unit and (b) major source status and a Title V permit.

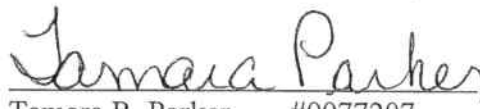
4. Appellant failed to require GPR to apply for a Title V permit despite being presented with evidence that the facility as a whole has a potential to emit total HAPs in excess of 25 tons per year and one or more individual HAPs in excess of 10 tons per year and therefore subject to Title V regulation as a major source.
5. The Director issued the permits to install and operate without requiring air monitoring and/or laboratory testing to provide scientifically valid and reliable assessment of the pond and plant-wide potential HAP emissions.
6. As stated previously, OEPA accepted GPR's flawed analysis of potential pond emission and allowed GPR to treat its wastewater pond as a de minimus source rather than a regulated emission unit. In doing so, the Agency failed to require GPR to employ the Maximum Achievable Control Technology including replacement technologies that prevent and/or control air emissions with certainty.
7. In 1998 the Liaison discussed with GRP the use of a physical-chemical pretreatment followed by a high rate biological bioreactor for the GPR's Watkins Rd. Plant, but GPR rejected this proposal primarily due to costs.
8. The GPR Watkins Rd. Plant is located in an area with several other sources of hazardous air pollutants. The cumulative impact and additive risk from the GPR Watkins Rd. Plant's increase in emissions of greater concerns.

#### **RELIEF SOUGHT**

Based on the above, Appellant respectfully requests that the Environmental Review Appeals Commission hold a de novo hearing on this matter for the taking of

testimony and evidence. Subsequent to the hearing of this matter, Appellant respectfully requests that the Commission vacate these final actions of the Director to the extent such permits and approvals fail to properly limit emissions from the GPR Watkins Rd. Plant and fail to require a Title V permit, and remand the matter to the Director for further consideration pursuant to the federal laws, those of the State of Ohio and the ruling of this Commission.

Respectfully submitted,



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CERTIFICATE OF SERVICE

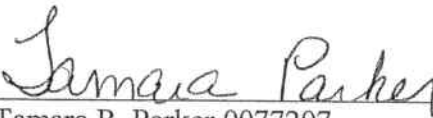
The undersigned hereby certifies that the foregoing, was served upon the following persons by regular U.S. Mail on this 29<sup>th</sup> day of June, 2007:

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