



March 28, 2022

VIA ELECTRONIC MAIL

Dr. Corey Masuca

Corey.M.Masuca@jcdh.org

Re: Comments on Draft Permit No. 4-07-2721-001-01

Dear Dr. Masuca:

GASP and the Fairfield Environmental Justice Alliance (“FEJA”) respectfully submit the following comment on Draft Permit No. 4-07-2721-001-01 (“Draft Permit”). We appreciate the opportunity to make these public comments. We hope that you will take into consideration our comments and recommendations.

Purpose

GASP is a health advocacy organization focused on air quality issues in the Greater Birmingham Area. GASP has been actively involved in addressing community concerns involving air quality issues in communities throughout Jefferson County. One way in which GASP seeks to improve air quality, address historic and ongoing environmental justice issues is through advocating for air permits more protective of human health and air quality, especially where the New Source Review (“NSR”) analysis and the unique situation with Harbison Walker International, Inc.-Fairfield’s (“HWI”) restart are reflected in the current Draft Permit.

FEJA’s mission is to identify, inform and rectify environmental hazards, threats and irregularities that affect the health, safety and equity of the Fairfield community. The vision of FEJA is to live in, and to leave a sustainable community for future generations. Where FEJA works to improve air quality in Fairfield and to encourage clean economic development, FEJA has a vested interest in ensuring that emissions from HWI are as low as possible.

I. HWI Is Reopening a Source of Air Pollution in an Environmental Justice Community and Thus Should Be Subject to Stricter Scrutiny in its Permitting.

A. JCDH Mischaracterizes its Necessary Environmental Justice Analysis and Does Not Plan for Meaningful Public Engagement in the Permitting Process.

JCDH has not properly weighed the environmental justice considerations relevant to this facility. JCDH must take environmental justice into account when evaluating the application for

a “new facility.”¹, especially where, as here, JCDH identified the surrounding community as an “above average risk for environmental justice concerns” in the Statement of Basis (“SOB”).² While JCDH has properly categorized the area around the proposed HWI plant as “above average risk for environmental justice concerns,” the SOB for Harbison Walker mischaracterizes the environmental justice concerns relevant to the facility

“Environmental justice” is defined as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies”.³ This Administration’s Executive Order on Tackling the Climate Crisis at Home and Abroad renews support for Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and calls for federal agencies to make environmental justice an integral part of their missions.⁴ The purpose of Executive Order 12898 is to focus federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities. Executive action is to be taken by this current Administration to tackle the climate crisis at home by “immediate review of harmful rollbacks of standards that protect our air, water, and communities”⁵ as well as increasing environmental justice monitoring and enforcement through new or strengthened offices at the EPA, Department of Justice, and Department of Health and Human Services.⁶ Under these executive orders, EPA, in reviewing the Draft Permit, “must hold polluters accountable for their actions [and] must deliver environmental justice in [the] communities [surrounding HWI].”⁷ The current Administration’s “policy ... is to secure environmental justice.”⁸ To “deliver” and “secure” environmental justice, EPA must confront pervasive environmental justice concerns when it reviews JCDH’s permits.

¹ This term will be quoted throughout this Comment letter, as it is the terminology used by JCDH in its Statement of Basis. *See* Statement of Basis, Air Permit Draft for Harbison Walker International, Inc.-Fairfield, Permit No. 4-07-2721-001-01 (Feb. 26, 2021) at 2 [Hereinafter “HWI SOB”].”

² HWI SOB at 4.

³ *Environmental Justice*, EPA.gov, www.epa.gov/environmentaljustice

⁴ Executive Order on Tackling the Climate Crisis at Home and Abroad,” § 201 (Jan. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>; *see also*, White House Fact Sheet, “President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government,” (Jan. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/statementsreleases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

⁵ White House Fact Sheet, *supra*.

⁶ *Id.*

⁷ *In re US Steel Corp – Granite City Works*, Petition Number V-2011-2 (Order on Petition) (Dec. 3, 2012), at 5.

⁸ Exec. Order on Tackling the Climate Crisis, *supra*.

Commenters are calling upon Region 4 of EPA to also review this Draft Permit⁹. Therefore, it is also incumbent on JCDH, to whom EPA delegated its Clean Air Act Authority, to focus their attention on the environmental and human health effects of their permitting actions on minority and low-income populations. The EPA's delegation of permit reviewing authority has proved problematic in many instances, especially as it pertains to environmental justice. Where EPA's limited capacity restricts its ability to review many permits throughout Region 4, it is even more evident that Commenters and others advocating for environmental justice must proactively reach out to EPA during the public comment phase to raise these issues as well. EPA cannot fulfill this Herculean call to address decades of the injustices in these communities if it does not hear directly from communities about the issues arising with regularity in permitting with the agencies to whom EPA has delegated its authority. In order for EPA to meet its obligation of focused attention to the adequacy of monitoring and other compliance assurances provisions, JCDH must consider the same factors as EPA – including environmental justice.

Harbison Walker's emissions raise environmental justice concerns because of the effects those emissions have on the plant's neighbors. The population living within a one-mile radius of the planned Harbison Walker site is in the 81st percentile nationally for PM_{2.5} exposure, the 95-100th percentile nationally for cancer risk, and the 95-100th percentile nationally of the respiratory health index.¹⁰ Despite these high values relevant to the health impacts of air quality, JCDH asserts in the SOB that the EJ indicators of highest concern are "wastewater discharge, lead paint (pre-1960 housing), and traffic proximity and volume." Although the SOB notes that Harbison Walker "is an area source of air pollution," it does not further analyze the obvious EJ implications of adding another air pollution source to a community already overwhelmed by respiratory illness. Because JCDH inaccurately names environmental justice indicators outside of its jurisdiction in an air permit as the only ones of high concern, the health impacts analysis in the SOB bizarrely ends with the statement that Harbison Walker "is not likely to make a significant contribution to wastewater discharges or traffic." JCDH must revise its analysis of the environmental justice concerns relevant to Harbison Walker to properly include PM_{2.5} exposure, cancer risk, and respiratory illness as environmental justice factors of high concern, so that the agency can properly assess the air pollution burden this source will place on the area's already heavily burdened at-risk communities.

⁹ In part, because a true minor permit will not include proposing for EPA's review as a Title V permit, previously held by the source.

¹⁰ See **FIGURE 1**.

FIGURE 1: EPA EJ SCREEN REPORT FOR 3.14 MILES FROM HWI



EJScreen Report (Version 2.0)



1 mile Ring Centered at 33.490641,-86.922541, ALABAMA, EPA Region 4

Approximate Population: 4,358

Input Area (sq. miles): 3.14

Harbison Walker

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Pollution and Sources							
Particulate Matter 2.5 ($\mu\text{g}/\text{m}^3$)	9.86	8.9	94	8.18	98	8.74	81
Ozone (ppb)	42.6	39.1	91	37.9	83	42.6	53
2017 Diesel Particulate Matter* ($\mu\text{g}/\text{m}^3$)	0.409	0.216	90	0.261	80-90th	0.295	70-80th
2017 Air Toxics Cancer Risk* (lifetime risk per million)	40	34	99	31	95-100th	29	95-100th
2017 Air Toxics Respiratory HI*	0.5	0.47	91	0.4	95-100th	0.36	95-100th
Traffic Proximity (daily traffic count/distance to road)	670	230	92	430	83	710	75
Lead Paint (% Pre-1960 Housing)	0.7	0.18	97	0.15	97	0.28	88
Superfund Proximity (site count/km distance)	0.077	0.054	81	0.083	72	0.13	57
RMP Facility Proximity (facility count/km distance)	0.46	0.41	75	0.6	64	0.75	57
Hazardous Waste Proximity (facility count/km distance)	2.3	0.83	90	0.62	93	2.2	73
Underground Storage Tanks (count/km ²)	2.6	1.7	79	3.5	67	3.9	64
Wastewater Discharge (toxicity-weighted concentration/m distance)	0.092	0.42	90	0.45	91	12	84
Socioeconomic Indicators							
Demographic Index	63%	36%	86	37%	85	36%	85
People of Color	92%	34%	93	39%	92	40%	90
Low Income	37%	37%	53	35%	57	31%	65
Unemployment Rate	9%	6%	76	6%	79	5%	81
Linguistically Isolated	0%	1%	70	3%	51	5%	45
Less Than High School Education	9%	14%	38	13%	44	12%	51
Under Age 5	6%	6%	54	6%	55	6%	53
Over Age 64	12%	17%	29	17%	35	16%	39

The remainder of JCDH’s discussion of environmental justice in the SOB lists the ways in which the Department will notify the public of the Draft Permit and public comment period, but these efforts fall short of the level of “meaningful involvement” that environmental justice demands. JCDH plans to notify the public by informing county and city officials about the comment period, but Jefferson County and the city of Fairfield have proven unreliable transmitters of important information to their constituents. In December, the Fairfield City Commission “publicized” that they would be voting on a tax break for Harbison by posting a flyer, with the wrong date and time, on the city hall bulletin board — during the holidays, when city hall was closed. When Fairfield residents finally heard about the vote and attended the meeting that they thought would be about the vote, the city council cancelled its vote and deliberation of the subject without warning because, as the city council president admitted, the prior notification had violated state fair meeting laws. This is strong evidence that local officials are not reliable in their efforts to inform the public about issues involving Harbison Walker. This further underscores why EPA, and thus JCDH by way of delegation of authority, must engage in

environmental justice communities in a proactive, *transparent* and consistent manner.¹¹ While probably simpler, it is not enough to engage only elected officials.

JCDH also notes that it will publish the notices in a local newspaper and on JCDH’s website. These efforts of engagement are insufficient. Unless an individual is already vigilantly looking for such notices, they are highly unlikely to see the notice and unlikely to have proper context for the notice. JCDH’s reliance on civil society to inform the public about the permit process for polluting sources is an abdication of its responsibility. Environmental justice requires that JCDH make *meaningful* efforts to engage the public in the Clean Air Act’s permitting process — not just token measures at engagement. GASP and FEJA are happy to provide any support, guidance or insight to EPA and JCDH on what embracing its commitment to environmental justice and meaningful involvement could look like.

B. Especially Because HWI is Reopening in an Environmental Justice Community, Fenceline Monitoring Must be Required.

EPA Administrator Michael Regan announced on January 26, 2022 that EPA would be “[p]ressing state and local elected officials to take urgent action to better protect the most overburdened communities” and “[h]olding companies more accountable for their actions in overburdened communities *with increased monitoring and oversight of polluting facilities.*”¹² This is in addition to Executive Order 12898’s requirement to increase environmental justice monitoring.

Fairfield is clearly an environmental justice community overburdened by air pollution. Below is a list of sources and the emissions associated therewith in 2020.

TABLE 1: MOBILE AND POINT SOURCES OF AIR EMISSIONS IN FAIRFIELD, AL¹³

<u>Possible Sourcepoints</u>	<u>Description</u>	<u>JCHD Permit</u> ¹⁴	<u>CO</u>	<u>SO2</u>	<u>NOx</u>	<u>PM10</u>	<u>PM25-fil</u>
Wade Sand & Gravel	Sand/Gravel Supplier	True Minor	49.48968	3.97326	65.88075	25.812	13.12044

¹¹ Starfield, Lawrence E. “Strengthening Environmental Justice Through Cleanup Enforcement Actions” (July 1, 2021) available at <https://www.epa.gov/system/files/documents/2021-07/strengtheningenvirjustice-cleanupenfaction070121.pdf>.

¹² EPA, “EPA Administrator Regan Announces Bold Actions to Protect Communities Following the Journey to Justice Tour” (January 26, 2022) available at <https://www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-communities-following-journey> .

¹³ JEFFERSON COUNTY DEPARTMENT OF HEALTH, <https://jcdh.org/SitePages/Programs-Services/Scores-Lists/Air/AirPollutionControl.aspx> (last visited June 16, 2020). All emissions are for 2020.

¹⁴ E-mail from Jason Howanitz, Senior Air Pollution Control Engineer, Jefferson County Dept. of Health, to Author (June 16, 2020, 21:48 CST) (on file with author).

U.S. Steel-Fairfield Works	Pipe/Steel Fabricator	Title V	118	4.1	130.86	93.22	51.54
Fritz Enterprises	Gravel Sales	True Minor	n/a	0.08	1.19	1.935	0.955
Southern Melting Products	Metal Supplier	True Minor	0.01	0.03	0.09	7.84	7.84
Performance Minerals Co.	Pool Liner Manufacturer	True Minor	1.827	0.052	8.7	9.759	9.759
Precoat Metals	Steel Fabricator	Title V	8.49	0.606	10.107	0.7681	0.7681
Hanna Steel	Steel	SMOP	1.105	0.008	1.315	0.085	0.05
Vulcan Materials	Quarry	True Minor	0.21921	0.06609	0.6626	0.8867	0.74114
Southern Red Rock	Quarry	True Minor	0.01	0.01	0.04	8.66	8.66
Vulcan Pipe and Steel Coating	Metal Coating	Title V	0.2361	0.22948	3.4495	1.88555	0.39509
Industrial Chemical	Distributor	SMOP	n/a	n/a	n/a	0.28799	0.28799
Consolidated Pipe and Supply	Manufacturer	SMOP	0.87323	0.00624	1.03956	0.96301	0.33661
Holcim US	Cement Manufacturer	SMOP	2.99	0.021	3.562	1.501	0.451
Village Creek WWTP	Sewage	NONE	4.14085	0.02704	8.62718	0.34963	0.34963
Hospira Inc.	Pharmaceutical Manufacturer	NONE					
Delta Manufacturing	General Manufacturing	NONE					
Coyote Coating	Powder Coating	NONE					

Hot Metal Coatings	Metal Coating	NONE					
New Process Steel	Steel cutting and shaping	NONE					
Alabama Hard surfacing	Steel Overlay Manufacturing/Welding	NONE					
Train Depot & Track	Railroad	NONE					
I-20/ I-59 Junction	Freeway	NONE					

In **FIGURE 2** below you can see the sources of pollution within 5 miles of the Fairfield monitor, as indicated by the red circle, where the Railroad and Interstate (mobile source contribution) are indicated with an orange and red line, respectively:

FIGURE 2¹⁵: MAP OF MOBILE AND POINT SOURCES OF AIR POLLUTION IN/NEAR FAIRFIELD, AL

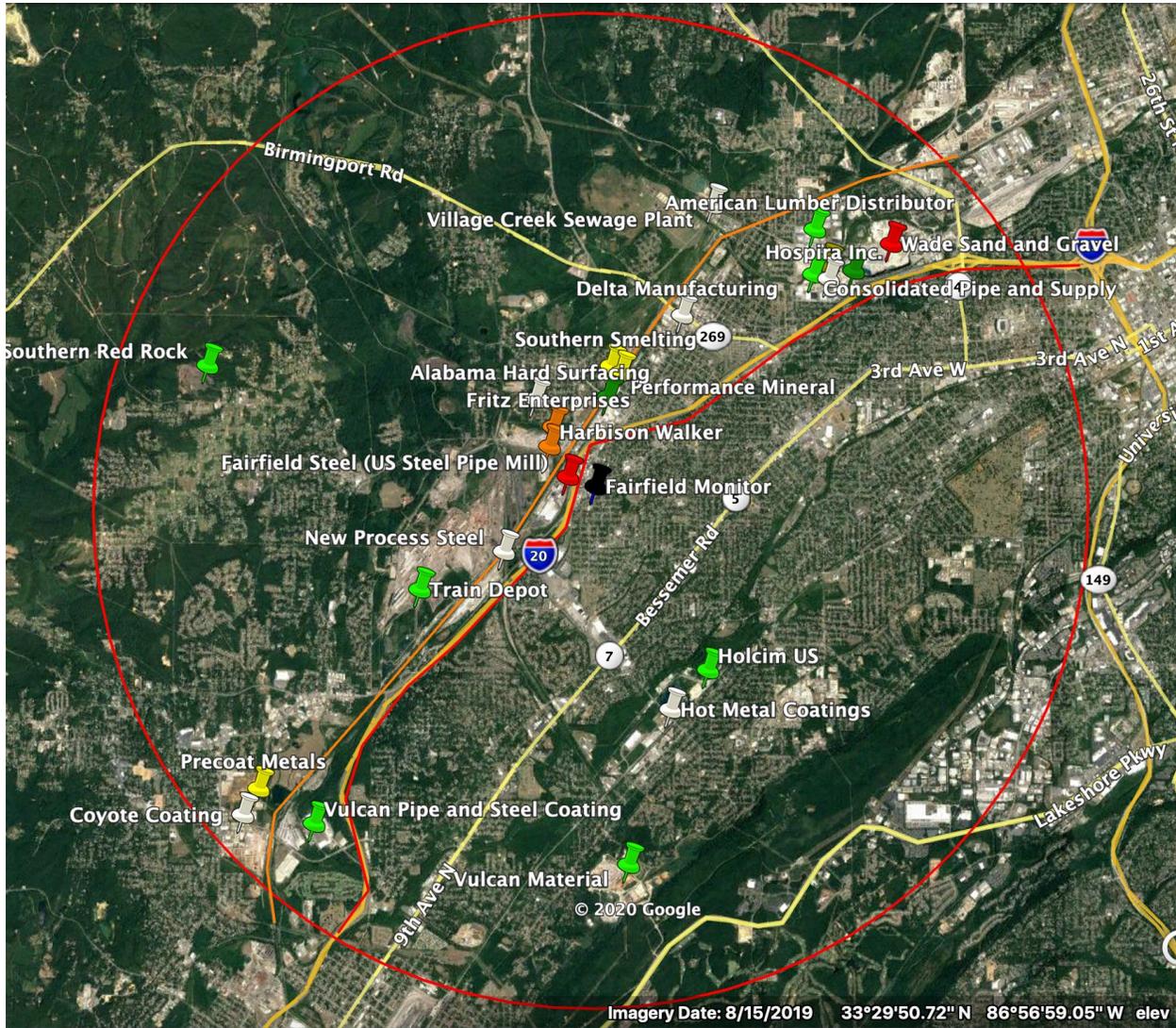


TABLE 1 and FIGURE 2 show the ongoing air pollution in and near Fairfield, AL.

¹⁵ The color in the chart corresponds to the pin color on **FIGURE 2**, not including the freeway or railroad which are labeled as red and orange lines. The highest levels of emissions are bolded and color coded: Red with five bolded categories, orange with 3-4, yellow with 1-2, and green with none. Map of possible source points within a five mile radius of Fairfield air monitor. Red circle represents the radius, and the dark blue pin represents the air monitor. The I-20/I-59 freeway is marked as a red line through the middle, the railroad is indicated by an orange line.

Further, monitor values for the ambient air monitor in Fairfield for CO and O3 show values that are similarly high to that of other monitor values in the network, as seen in **FIGURES 3 and 4** below.

FIGURE 3: 2020 MONITOR VALUES FOR O3 IN JCDH’S NETWORK (FAIRFIELD HIGHLIGHTED)

Monitor Values Report

Geographic Area: Birmingham-Hoover, AL

Pollutant: Ozone

Year: 2020

Exceptional Events: Included (if any)

First Max 8hr	Second Max 8hr	Third Max 8hr	Fourth Max 8hr	Days 8hr Max >STD	Required Days 8hr	Valid Days 8hr	Percent Days 8hr	First Max 1hr	Second Max 1hr	Days 1hr Max >STD	Est Days 1hr Max >STD	Required Days 1hr	Valid Days 1hr	Missing Days 1hr	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
0.068	0.066	0.064	0.062	0	366	353	96	0.078	0.075	0	0	366	354	1	None	1	010730023	No. B'Ham,Sou R.R., 3009 28th St. No.	Birmingham	Jefferson	AL	04
0.069	0.064	0.062	0.062	0	245	244	100	0.082	0.074	0	0	245	245	0	None	1	010731003	Fairfield, Pfd, 5229 Court B	Fairfield	Jefferson	AL	04
0.069	0.064	0.063	0.061	0	245	240	98	0.084	0.079	0	0	245	238	4	None	1	010731005	Route 8 Mcadory	Not in a City	Jefferson	AL	04
0.064	0.063	0.062	0.059	0	245	195	80	0.084	0.079	0	0	245	196	1	None	1	010731010	201 Ashville Road	Leeds	Jefferson	AL	04
0.059	0.058	0.058	0.057	0	245	243	99	0.08	0.07	0	0	245	243	2	None	1	010735003	10005 Corner School Road	Not in a City	Jefferson	AL	04
0.072	0.066	0.064	0.062	1	245	233	95	0.081	0.075	0	0	245	235	2	None	1	010736002	Tarrant, Elem. Sch., 1269 Portland Stree	Tarrant (corporate name for Tarrant City)	Jefferson	AL	04
0.06	0.06	0.06	0.059	0	245	240	98	0.074	0.067	0	0	245	242	1	None	1	011170004	Helena, Bearden Farm	Helena	Shelby	AL	04

FIGURE 4: 2020 MONITOR VALUES FOR CO IN JCDH’S NETWORK (FAIRFIELD HIGHLIGHTED)

Monitor Values Report

Geographic Area: Birmingham-Hoover, AL

Pollutant: CO

Year: 2020

Exceptional Events: Included (if any)

Obs	First Max 8hr	Second Max 8hr	Days 8hr Max >STD	First Max 1hr	Second Max 1hr	Days 1hr Max >STD	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
7787	1.2	0.9	0	1.9	1.8	0	None	2	010730023	No. B'Ham,Sou R.R., 3009 28th St. No.	Birmingham	Jefferson	AL	04
8683	1.1	1.1	0	1.3	1.3	0	None	1	010731003	Fairfield, Pfd, 5229 Court B	Fairfield	Jefferson	AL	04
7843	1.5	1.3	0	3.1	1.7	0	None	1	010732059	1110 5th Street West Birmingham, Al 35204	Birmingham	Jefferson	AL	04

In 2020, the Fairfield monitor shows some of the higher values for CO and Ozone across the network. Ozone levels at the monitor were some of the highest in 2020. Although data from 2021 will not be complete until May 2022, values for CO and O3 are seen in **FIGURES 5 and 6** below:

FIGURE 5: 2021 MONITOR VALUES FOR CO IN JCDH'S NETWORK (FAIRFIELD HIGHLIGHTED)

Monitor Values Report

Geographic Area: Birmingham-Hoover, AL

Pollutant: CO

Year: 2021 (Annual statistics for 2021 are not final until May 1, 2022)

Exceptional Events: Included (if any)

Obs	First Max 8hr	Second Max 8hr	Days 8hr Max >STD	First Max 1hr	Second Max 1hr	Days 1hr Max >STD	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
7934	1	0.9	0	2.1	2	0	None	2	010730023	No. B'Ham,Sou R.R., 3009 28th St. No.	Birmingham	Jefferson	AL	04
8471	1.2	1	0	1.4	1.3	0	None	1	010731003	Fairfield, Pfd, 5229 Court B	Fairfield	Jefferson	AL	04
2963	1.2	1.1	0	1.6	1.5	0	None	1	010732059	1110 5th Street West Birmingham, AL 35204	Birmingham	Jefferson	AL	04

FIGURE 6: 2021 MONITOR VALUES FOR O3 IN JCDH'S NETWORK (FAIRFIELD HIGHLIGHTED)

Monitor Values Report

Geographic Area: Birmingham-Hoover, AL

Pollutant: Ozone

Year: 2021 (Annual statistics for 2021 are not final until May 1, 2022)

Exceptional Events: Included (if any)

First Max 8hr	Second Max 8hr	Third Max 8hr	Fourth Max 8hr	Days 8hr Max >STD	Required Days 8hr	Valid Days 8hr	Percent Days 8hr	First Max 1hr	Second Max 1hr	Days 1hr Max >STD	Est Days 1hr Max >STD	Required Days 1hr	Valid Days 1hr	Missing Days 1hr	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
0.073	0.068	0.066	0.063	1	365	352	96	0.087	0.076	0	0	365	358	3	None	1	010730023	No. B'Ham,Sou R.R., 3009 28th St. No.	Birmingham	Jefferson	AL	04
0.064	0.062	0.062	0.062	0	245	243	99	0.072	0.071	0	0	245	243	2	None	1	010731003	Fairfield, Pfd, 5229 Court B	Fairfield	Jefferson	AL	04
0.065	0.064	0.063	0.063	0	245	231	94	0.072	0.07	0	0	245	232	0	None	1	010731005	Route 8 Mcadory	Not in a City	Jefferson	AL	04
0.065	0.065	0.064	0.064	0	245	222	91	0.073	0.072	0	0	245	223	1	None	1	010731010	201 Ashville Road	Leeds	Jefferson	AL	04
0.067	0.062	0.062	0.061	0	245	244	100	0.077	0.072	0	0	245	245	0	None	1	010735003	10005 Corner School Road	Not in a City	Jefferson	AL	04
0.062	0.061	0.059	0.057	0	245	242	99	0.073	0.071	0	0	245	243	1	None	1	010736002	Tarrant, Elem. Sch., 1269 Portland Stree	Tarrant (corporate name for Tarrant City)	Jefferson	AL	04
0.063	0.062	0.061	0.061	0	245	242	99	0.074	0.071	0	0	245	242	0	None	1	011170004	Helena, Bearden Farm	Helena	Shelby	AL	04

Again, the values for CO are higher than that of the North Birmingham monitor, which is also located near major sources of air pollution. The ozone values are not the highest, but are also not the lowest in the network.

Accordingly, where HWI will be a new source of air pollution any pollution it emits will contribute to an increase in emissions from when it ceased to operate in 2019. Accounting for cumulative effects of the list of sources of air pollution in the list in **TABLE 1** and considering that JCDH, as EPA's delegated authority, must also increase monitoring in overburdened communities, fenceline monitoring must be required at HWI. A fenceline monitoring

requirement for particulate matter should be installed and written as a monitoring requirement in the permit in proviso 2 for Emissions Unit 101¹⁶.

II. The Draft Permit Must Have Provisos to Include the Decommissioning of Units and Considers New Source Review if Old Equipment is Reused at the “New Facility.”

The SOB indicates that some of the equipment from the previous operation “will not be reused and will not be included in the new permit.”¹⁷ Where HWI is being treated as a “new facility” with a minor permit, as opposed to a Title V in its previous iteration, the units not to be used must be included in the permit as decommissioned units. These units could be listed in proviso 1 for Emissions Unit 101 with the notation that they are decommissioned (possibly as subpart H, “decommissioned units”), for example.

Additionally, another proviso should be included in the permit to provide for New Source Review consideration if a decommissioned unit is restarted. Jefferson Board of Health Air Pollution Control Rules and Regulations (“JCBH Rules”) 2.4 addresses when HWI would trigger the Source Impact Analysis¹⁸, and thus would trigger HWI to demonstrate if the modification would cause or contribute to air pollution. Adding in a permit proviso providing for such a scenario would strengthen the permit and proactively address any concerns with the impacted community. Thus, JCDH should add a permit proviso that reads “if the outdoor storage silos, grinders, kiln or other infrastructure is restarted or reused, the owner or operator of this source shall demonstrate that allowable emission increases from the modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of the NAAQS or any applicable maximum allowable increase over the baseline concentration in any area” and cite to JCBH Rules 2.4.10(a)(1)-(2).

III. The Fugitive Dust Provision in General Condition 20 is Inadequate and Must be Revised

General Condition 20 addresses fugitive dust.¹⁹ The fugitive dust provision references JCBH Rules 6.2.1 and 6.2.2.²⁰ “Fugitive Dust” is defined as “solid air-borne particulate matter emitted from any source other than a flue or stack.”²¹ Ala. Admin Code r. 335-3-1-.02(ff)²².

¹⁶ Commenters would be amenable to language in the proviso providing for a number of years worth of monitoring, for example, three years, with the caveat that the results of the monitoring will be analyzed by JCDH and reported back to the community for evaluation and comment.

¹⁷ HWI SOB at 1.

¹⁸ JCBH Rules 2.4.10.

¹⁹ JCDH, Draft Permit No. 4-07-2721-001-01 for Harbison Walker International, Inc.-Fairfield (February 27, 2022) at 4 [hereinafter “HWI Draft Permit”].

²⁰ Alabama SIP equivalent at Ala. Admin Code r. 335-3-4-.02(1).

²¹ Ala. Admin Code r. 335-3-4-.02(1).

²² JCBH Rules 1.3.

JCBH rules also provide that “[n]o person shall cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished without taking *reasonable precautions* to prevent particulate matter from becoming airborne.”²³ Such reasonable precautions shall include, but not be limited to (a)-(c) in 6.2.1.²⁴ “When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance or to violate any rule or regulation, the Director may order that the building or equipment in which processing, handling and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.”²⁵

The permit terms must specify the emissions limitations and standards, including those operational requirements and limitations that assure compliance with the applicable requirement in Alabama’s SIP. General Condition 20 contains a list of pre-approved control measures in a list.²⁶ However, General Condition 20 fails to provide emissions limitations and standards and lacks the specificity required to make the Fugitive Dust provision enforceable. JCDH must include additional permit terms for the “reasonable precautions to prevent fugitive dust.” For example, wet suppression techniques such as those mentioned in JCBH Rules 6.2.1(a)-(c)²⁷ are included in A.-E. Where the Draft Permit falls short is that it does not specify the required frequency, quantity and duration of dust suppression techniques. These requirements should be added to General Condition 20. As such, the Draft Permit must be revised to include more details, specific and enforceable measures, including recordkeeping and reporting requirements that assure compliance with Alabama’s SIP.

IV. Conclusion

Commenters appreciate the extension of the public comment period to give more time to analyze the permit and permit record. Certain provisos should be added to the permit to reflect the decommissioned units at HWI. The fugitive dust provision is inadequate as mentioned and must be revised. Finally, and most importantly, because HWI is impacting an environmental justice community, greater scrutiny is required in permitting. Concerns with the restart of HWI can be addressed by JCDH considering the cumulative impacts of pollution in permitting HWI. One tangible way to address these impacts in permitting is to require fence line monitoring with a component for community engagement and input.

²³ Alabama SIP equivalent at Ala. Admin Code r. 335-3-4-.02(1).

²⁴ Alabama SIP equivalent at Ala. Admin. Code r. 335-3-4-.02(1)(a)-(c).

²⁵ JCBH Rules 6.2.3. Alabama SIP equivalent at Ala. Admin Code r. 335-3-4-0.2(3). (emphasis added).

²⁶ HWI Draft Permit at 4.

²⁷ Alabama SIP equivalent at Ala. Admin. Code r. 335-3-4-0.2(1)(a) and (b).

We appreciate the opportunity to comment.

Sincerely,

/s Gilda Walker

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