

Greenaction for Health and Environmental Justice

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October 13, 2008

Utah Division of Air Quality
150 North 1950 West
Salt Lake City, Utah 84116

RE: Comments of Greenaction for Health and Environmental Justice in Opposition to Proposed Issuance of a Title V Permit Renewal for the Stericycle Incinerator, North Salt Lake City, Utah

Greenaction submits these comments to the Utah Division of Air Quality (DAQ) on behalf of and at the request of our constituents in North Salt Lake City and Salt Lake City, Utah.

These comments document why the permit must be denied. DAQ cannot issue a new Title V permit renewal to the Stericycle incinerator in North Salt Lake City, Utah because DAQ has violated key mandates of Title V and the Clean Air Act and Stericycle has not demonstrated that it can assure compliance with a new Title V permit.

The State of Utah Division of Air Quality has failed to fulfill its regulatory and permitting authority regarding the Stericycle incinerator. DAQ's regulation of the incinerator and the existing and proposed Title V permit is biased towards the company and violates the Clean Air Act's mandate for public participation and for a legitimate, fair and thorough permit evaluation.

DAQ cannot claim emissions are safe without conducting a real and thorough environmental and health assessment that evaluates the impact on thousands of new residents including many living just feet from incinerator:

The incinerator is located in a large residential neighborhood built in the last few years. The incinerator is only a few feet from homes with children and infants, near schools and playgrounds. Many residents were never informed that they were buying homes next to a waste incinerator and were not informed about the types of toxic pollutants including dioxin that are emitted from its stacks. Nor were they informed that Stericycle stored and transported hazardous waste (toxic fly ash from the incinerator) at the facility.

When this facility was first being sited, it was approved explicitly in part due to the fact that no one lived within a mile of the plant. Today, infants and children live feet from the plant. No agency, including DAQ, has done any review to assess the potential health

impacts on people, especially infants and kids, living, playing and going to school so close to the incinerator.

A DAQ evaluation of the risk posed by the incinerator should include a cumulative impact analysis. DAQ's assurances of safety are without basis in reality unless all the incinerator emissions and their cumulative impact with the other serious nearby pollution sources are evaluated. For example, dioxin is emitted from the incinerator and is highly toxic in minute levels of exposure and has been linked to cancer, reproductive, developmental, immunological, hormonal and other illnesses. Dioxin is also a persistent, bioaccumulative toxic. Dioxin emitted from the incinerator acts in concert with other highly toxics from other nearby sources such as the refineries and freeways, as well as with dioxin in the food chain and existing body burdens. The failure to analyze these cumulative and very real impacts when setting permit limits is a serious defect that puts the public at direct risk.

DAQ failed to process the permit application in a timely manner:

The incinerator is subject to Title V of the Clean Air Act. Their last permit was issued May 3, 2002, over six years ago, and the renewal date was May 3, 2007. It is now October 13, 2008, over seventeen months after the five-year permit should have expired.

The public comment period for the current permit application did not start until 14 ½ months after the date the five-year permit should have expired. With curious – and we believe questionable – timing, the DAQ started the so-called public comment period for the renewal application on July 21, 2008, the very same day that DAQ staff agreed to meet the following day with Greenaction about this permit and facility.

In addition, the “public hearing” was not been scheduled until Greenaction requested it. In light of DAQ's knowledge of community concern about this facility, DAQ should have automatically started the public comment period and scheduled a public hearing before the old permit expired so a decision could have been made in a timely manner.

Despite DAQ's denial that they were sitting on the permit renewal application (which benefited Stericycle by turning a five year permit into a substantially longer one), it seems clear that they indeed sat on the permit until challenged.

DAQ failure to notify their mandatory contact list and residents living next to the incinerator violates the Clean Air Act's public participation mandate:

The DAQ has publicly acknowledged the requirement of public participation in the Title V Clean Air Act permit process, yet unfortunately violated that requirement.

The DAQ started the “public comment period” without fulfilling its mandate and pledge to notify Greenaction, Sierra Club, Salt Lake Area Residents Against the Stericycle incinerator and residents about the public comment period. These three groups and several residents had been promised by DAQ that we would be notified of opportunities

to comment, yet we were not notified until we complained after the comment period began. This is a clear violation of Title V and the Clean Air Act's public participation mandate.

In addition, DAQ failed to notify local residents who had contacted DAQ by email or letters expressing concern about this facility. DAQ files contain correspondence from numerous residents and other concerned citizens expressing concern about Stericycle yet who were never notified about the permit process or opportunities to comment.

In addition, DAQ failed to notify residents of the Foxboro neighborhood including residents who live just feet from the Stericycle facility. DAQ staff easily could have delivered notices to these residents in just an hour or two of effort. Is it the State of Utah's official policy to keep its citizens in the dark about issues that affect the health of their families?

A public comment period that key stakeholders including residents and environmental health advocates are not informed about – especially when the DAQ had promised to inform them – is illegitimate and does not meet the requirements of the Clean Air Act.

DAQ Bias and Misrepresentation of Incinerator Operations and Pre-Determined Outcome of Permit Process Reflected in the Public Notice:

DAQ's announcement and description of the comment period and public hearing demonstrated bias. In a blatant demonstration of DAQ's complete bias towards Stericycle and in a violation of the neutral regulatory role an agency like DAQ should play, some DAQ notices stated that the purpose of the hearing was to renew the permit. For example, the email sent from DAQ official Ronald Reece on September 3, 2008 to newspapers stated "Public Hearing regarding the renewal of Stericycle Incorporated's Title V Permit."

The DAQ notice should have invited public comment on a draft permit, but just referred to the "permit renewal." A legitimate notice would state that a hearing and comment period were being held to determine *if the permit should be renewed and soliciting comment on a draft permit renewal*, as that is the purpose of a permit process. Notices issued by DAQ gave the appearance of an improper, pre-determined and rigged process.

The DAQ notice for the permit application and numerous DAQ documents incorrectly state the nature of the facility and incinerator. The hearing notice refers to the "medical waste incinerator" and the DAQ website describes the facility as the "BFI Medical Waste Incinerator" (DAQ website section on Title V Permits Out For Public Comment). The truth is that the incinerator is not just a medical waste incinerator but in fact burns medical and some non-medical waste that has nothing to do with medical, hospital or infectious waste. The impact of failing to be transparent and truthful in the description of the facility is serious, as the public is not being accurately informed about what is being burned in their community.

Another Error in the Public Notice – Questions at Hearing Were Not Permitted:

The DAQ's "Notice of Public Hearing" stated that "Those attending the hearing will be allowed an opportunity to 1) ask questions of the Division of Air Quality regarding the draft renewal, and...."

In fact, the public was not allowed to ask questions of DAQ during the public hearing on October 9 2008. Questions were taken only prior to the hearing, and the questions and answers were unfortunately not on the record.

Failure of DAQ to fully comply with GRAMA request undermines public's right to full public participation in Title V permit process:

Pursuant to a request under the Government Records Access and Management Act (GRAMA), Greenaction went to the DAQ on September 2, 2008 to review the files on Stericycle. Unfortunately, some files were missing, including email communications. We also believe that certain inspection documents and some of the semi-annual reports that Stericycle is supposed to submit were missing. We asked to return to inspect all the files that should have been provided under the GRAMA request, and an appointment was made for October 9, 2008. While emails were provided on that date, no other files were provided at all.

The inability to review all DAQ files on this facility due to incomplete compliance with the GRAMA request makes it impossible for the public to fully exercise our right to public participation and the right to know and comment on the permit application. It interferes with our ability and right to submit thorough comments on the draft permit before the end of the public comment period on October 13, 2008.

Another indication of pro-Stericycle bias can be seen on the DAQ's website section on the incinerator facility. DAQ had promised residents to place current information on their website, but the site is extremely outdated, with no new information apparently posted for almost two years.

DAQ repeatedly and incorrectly refers to "Actual Emissions" that are not actual emissions:

A serious problem and concern that undermines the integrity of the permit process and undermines the public's right to informed public participation is the misleading and inaccurate information on the DAQ website and in their other public information documents. For example, the DAQ website contains what it claims is a summary of "actual emissions" when in fact those emissions are not the actual emissions.

DAQ documents given to the public and media at the hearing made the same error. One document, entitled "By-Pass Emissions as a Percent of Actuals" did not include bypasses from start up and shut down. The bypasses are given a percentage despite DAQ and Stericycle not testing the bypasses and this chart omitting many bypasses. The same error

is made in the document entitled “Actual emissions as a percent of Stericycle’s permit limits.” These DAQ documents are thus knowingly misleading and incorrect.

DAQ knows very well that this incinerator does not test for actual emissions daily, monthly or even yearly. We understand that the incinerator emissions have only been tested on one day in 2006 in at least the last three years, so this cannot seriously be claimed to represent actual emissions.

DAQ understates bypass incidents:

Documents submitted by Stericycle to the DAQ report a huge amount of bypasses due to upsets and emergencies during the current permit period. According to DAQ officials, Stericycle does not report to DAQ information on use of the bypass stack during start up and shut down of the incinerator.

As this facility has had a problem with upset conditions during its operating history, it is imperative that DAQ accurately reveal information about the bypasses as the use of the bypass stack releases toxic contaminants and other pollutants directly into the air without going through pollution control equipment.

The DAQ is also well aware that the facility uses the bypass stack numerous times during the year during start up and shut down of the incinerator as well as during upset conditions, resulting in unmonitored emissions. Yet the bypasses during start up and shut down are not included in DAQ references to the numbers of bypasses. The use of the bypass stack during start up and shut down also results in toxic and criteria pollutant emissions and these incidents also need to be disclosed and evaluated.

Of additional concern is the fact that the DAQ claimed in a meeting with us on July 22, 2008 that they were unaware of any bypasses in the last year, even though the DAQ was aware of emergency bypasses and DAQ knows that the facility uses the bypass stack as a routine measure during start up and shut down. We have since confirmed from DAQ files that they indeed were aware that there were a number of bypasses due to upset conditions each year in the last few years and many additional similar upset bypasses in previous years. There were, of course, uses of the bypass stack due to start up and shut down, yet DAQ omits this fact when stating how many bypasses happened and still cannot tell the public how many of these bypasses occurred and when they took place.

DAQ’s failure to provide accurate and unbiased information, the incomplete compliance with the GRAMA request, and their failure to update the website or provide the required public notice for a comment period has a direct result in undermining the public’s right to know and have a say about project’s that could impact public health and the environment.

DAQ Warning Letter Documents Stericycle’s Inability to Assure Compliance with a new Title V Permit:

As Stericycle has not been able to comply with key requirements of their current Title V Permit, the DAQ cannot seriously argue that Stericycle will comply with a new permit.

On July 1, 2008, DAQ issued a warning letter to Stericycle entitled “Warning – Stericycle, Title V Permit Issued May 3, 2002.”

This warning letter documented violations of the Title V Permit by Stericycle, yet DAQ has been telling the public and media that Stericycle has had no serious violations – but indeed these are serious and demonstrate non-compliance. These are not mere paperwork violations, but are serious instances of Stericycle failing to provide documentation of compliance with their permit. As Stericycle failed to submit compliance reports in accordance with their permit requirements in the required and timely manner, DAQ and Stericycle cannot assure that Stericycle would comply with a new Title V permit as the Clean Air Act requires – and therefore the permit must be denied.

The DAQ warning letter to Stericycle said:

“On June 5, 2008, an inspector from the Utah Division of Air Quality...performed an annual inspection of Stericycle....During the inspection and subsequent records review the inspector documented the following:

1. The annual compliance certification due by May 2, 2008 was not submitted to the Division.
2. Title V monitoring reports for 2008 were not submitted every six months and a reporting gap was found for August 2007.
3. Records showed an opacity observation on the emergency generator (unit EG) was performed on July 3, 2007. No record was available to show whether an opacity observation was taken (or scheduled to be taken) between January and June 2008 on the EG.
4. Records showed that 5 employees obtained 24 hour HMIWI operator certification in February 2007. No records were submitted showing that these individuals have completed (or are scheduled to complete) an annual 4 hour refresher course due in 2008.
5. A semi-annual report required under Condition II.B.4.c.3 for the period January 17, 2007 to July 16, 2007 was not submitted.

On August 12, 2008, DAQ sent a follow-up letter requesting additional information. This letter also stated that Stericycle was out of compliance during this period with Condition I.S. (six-month reporting) and with Condition II.B.4.c (semi-annual reporting), yet the

DAQ found that Stericycle submitted an annual certification listing these as “in” compliance when they were not.

The compliance reports that Stericycle did manage to submit since the beginning of the current permit document a huge amount of bypasses during upset and emergency conditions.

Stericycle also cannot be trusted to comply with the proposed new Title V permit as they on several occasions did not provide accurate information to the public. For example, at the October 9th public hearing they displayed a diagram of their facility that claimed that “clean exhaust” was emitted from the incinerator. Stericycle is well aware that the exhaust from the incinerator is not “clean” but in fact contains toxic and criteria pollutants. It would have been one thing for them to try to argue that the exhaust might (or might not) meet DAQ and EPA standards, but they could not and should not have claimed the exhaust is “clean.”

Community concern in the Foxboro neighborhood continues due to excessive pollution. A resident of Foxboro emailed the DAQ on March 19, 2008 to complain about the incinerator, writing, “Every day I drive by Stericycle and see pollutants being blown out of their building.” Despite being provided her phone numbers and email address, DAQ never bothered to contact this resident about her right to participate in a public comment period on the permit application.

Conclusion:

In light of the above, we request that USEPA and DAQ take the following steps:

- (1) Deny the draft Title V permit due to the inability to assure compliance and the defects in the permit and regulatory process;
- (2) Provide accurate and unbiased information to the public, including by maintaining an accurate and updated website and providing accurate fact sheets and documents;
- (3) We renew our request that the US EPA review and oversee the State of Utah’s Title V permit process to ensure that public health is protected and so the public gets its right to an unbiased and proper permit review with full public participation.

Please use the following contact information to communicate with us.

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Sincerely,

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cc Governor Jon Huntsman Jr.
Rick Sprott, Utah Department of Environmental Quality
US EPA Administrator Stephen Johnson
US EPA Region VIII Acting Administrator Carol Rushin