

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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April 1, 2010

Don R. Willard, Director
Mecklenburg County Department Air Quality
700 N. Tryon St., Suite 205
Charlotte, North Carolina 28202-2236

Re: Comments concerning renewal of BMWNC Title V Permit No. 04-01V-099

Dear Mr. Willard:

On behalf of our member base in Mecklenburg County, we wish to thank you for this opportunity to comment on the Title V permit renewal for the BMWNC medical waste incinerator, located in Matthews, NC.

The League is a regional, community-based, non-profit environmental organization with more than 2,500 members and 40 chapters in North Carolina and the Southeast. Our founding principles are earth stewardship, environmental democracy, social justice, and community empowerment (www.bredl.org).

We are requesting that the Mecklenburg County Air Quality (MCAQ) not renew the BMWNC's permit. A number of issues need to be addressed before a permit is re-issued.

1. The BMWNC has been operating without a valid permit since 3/22/09. The BMWNC's most recent permit is Permit No. 04-01V which expired on 3/22/09. Ordinances 1.5501(g) and 1.5512(b) "Application Shield states that if a Permittee submits a *timely and complete application* for a permit renewal [see also 40 CFR 70.5(a)(1)(iii)], then a facility's failure to have a current Title V air quality permit is not a violation. MCAQCO 1.5513 "Permit Renewal and Expiration" states that (b) "Permit expiration terminates the facility's right to operate unless a complete renewal application has been submitted at last nine (9) months before the date of expiration." The date of a "timely application" in this case would have been 6/22/08. However, the BMWNC did not submit a complete permit application to renew its permit until 2/16/09, which is 239 days after the due date. Even the initial application, which was incomplete, was not received by MCAQ until 9/3/08, which was 73 days late. Despite the fact that the BMWNC submitted an *untimely* application the MCAQ nonetheless granted an application shield for BMWNC on 4/8/09.

At this time we would like to request that the MCAQ address the issue of the BMWNC operating without a valid permit since March 22, 2009.

2. The BMWNC has been releasing criteria pollutants and HAPs, including mercury, dioxins and furans, from June, 25, 2003 to March 2, 2005. On June 25,

2003, the BMWNC submitted an application to MCAQ for a permit renewal. However, the application did not include compliance demonstrations for criteria pollutants and HAPs. Then on July 11, 2003, MCAQ issued a Notice of Violation (NOV) to BMWNC for “General Recordkeeping, Reporting, Reporting and Monitoring Requirements.” However, it is unclear whether a NOV was issued to BMWNC for this violation since the permit review does not mention one. Were stack tests re-submitted to MCAQ showing levels of air pollutants compliant with air quality standards - or not? In its application for another permit renewal, performance stack testing was conducted by BMWNC during September 23-25, 2003, which revealed levels of mercury, dioxins and furans exceeding the standards. An NOV was issued to BMWNC on February 27, 2004, for the above violations. However, the review document states that BMWNC’s permit renewal application was deemed “complete by default” because it had failed to notify the BMWNC of the deficiencies. Emissions testing eventually met the standards after follow-up tests were conducted on March 5, 2005. Thus, the question remains as to how long the BMWNC had been operating in noncompliance with the emission standards for mercury, dioxins and furans. Technically, this period of noncompliance may encompass the period from June, 25, 2003 to March 2, 2005.

At this time we would like to request that the MCAQ conduct a review of compliance testing from this period that shows the BMWNC was in compliance with air quality standards. Also, if the BMWNC is found to be in violation we request the MCAQ conduct an assessment of the total releases of emissions from that period.

3. The BMWNC may not have penalized or paid penalties for Notices of Violations. On September 3, 2008, BMWNC submitted an application for renewal of its permit. The application lacked compliance demonstrations for criteria and HAP pollutants. MCAQ issued a NOV on the same date and noted that the application was not a “timely application,” (i.e), one submitted at least 9 months prior to the application date, in this case, 6/22/08. On Nov. 11, 2008, the MCAQ deemed the permit renewal application incomplete due to a lack of testing results. The BMWNC eventually conducted the testing on Jan. 13-14, 2009, almost 7 months after the due date of the renewal application. MCAQ returned the renewal application to BMWNC on Feb. 3, 2009, deeming it incomplete for air toxics modeling and stack testing results. BMWNC resubmitted the forms again on 2/12/09, compliant test report on 2/13/09, and air toxics modeling on 2/16/09. An application shield was granted to BMWNC on April 8, 2009. On April 21, 2009, MCAQ issued a NOV to BMWNC for violations of emissions standards for particulate matter, dioxin/furans, hydrogen chloride, lead, cadmium, and mercury. Were penalties ever assessed for these numerous violations, and if a penalty was assessed did the BMWNC pay the penalty? In November of 2009 MCAQ revoked BMWNC’s permit due to a technical dispute; in 1994 MCAQ issued an order to BMWNC to shut down its operations for lack of pollution control equipment; in October of 2000 MCAQ issued an order to cease operations due to violations for “Record Keeping and Reporting, Emission Standards, and Operational Standards;” in July, 2003, MCAQ issued a NOV to BMWNC for “Record keeping, Reporting, Reporting and Monitoring Requirements;” and in September, 2003, performance testing indicated violations of emissions standards for dioxins, furans, and mercury. Compliance with emission standards for these three toxic air pollutants was finally established through follow-up testing that was conducted on March 5, 2005. Thus, the question must be asked: how much waste was allowed to be processed through the BMWNC during this period of noncompliance with the emission standards at that time?

At this time we would like to request that the MCAQ conduct a review of penalties assessed to the BMWNC and for these NOVs and verification if the BMWNC has paid such penalties.

4. The permit for the BMWNC medical waste incinerator should not be renewed under the current standards for air pollutants. Levels of mercury, dioxins and furans, hydrogen chloride and nitrogen oxide are currently being released from the smoke stack at the facility above the new EPA limits. Mercury levels were measured 3.5 times higher; dioxins and furans 6 times higher; dioxins and furans toxic equivalency 12.6 times higher, hydrogen chloride 11.5 times higher, and nitrogen dioxide 110% higher. Dioxins are one of the most toxic chemicals known to man and cause cancer. New studies show that prenatal and postnatal exposures to “background” levels of dioxins are linked with a number of effects in developing children that include reduced birth weight and growth, alterations in thyroid function, immune system alterations, decrease in sustained attention, increase in hyperactive behavior, lowered IQ, and teeth abnormalities. Mercury is also concerning because it is a suspected carcinogen (cancer-causing) and is a potent metal known for its ability to affect the brain, kidneys and developing fetus. Children are at special risk from exposures from mercury.

At this time we would like to request that the MCAQ to take proactive steps to request special permission from the Environmental Management Commission to expedite the new EPA rules which were promulgated in October of 2009. A memo dated Jan. 29, 2010, from Mecklenburg County Marvin Bethune, stated that *“the Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards or rules promulgated by the Commission.* The early adoption and implementation of the new stricter standards for air pollutants now deemed unsafe by the EPA would result in more effective air pollution control and provide additional protections to residents of Matthews and nearby Stallings.

5. Requirement for BMWNC to segregate all dental waste from being incinerated. Currently, levels of mercury levels being released by BMWNC are 3.5 times higher than the new EPA standards. If the facility is found to accept dental waste we recommend the facility develop a program with its clients to segregate dental waste prior to shipping such waste to the facility. This will result in reducing mercury emissions and decreasing residents’ exposure to mercury. This same program was issued as a condition in the permit for the Stericycle Haw River medical waste incinerator which resulted in a dramatic decrease in mercury emissions. A document compiled by the DENR Division of Air Quality (DAQ) is attached that outlines the steps taken by the DAQ on this successful program.

6. Requirement for BMWNC to implement a fugitive dust emission plan. Through the years there have been numerous reports of residents’ complaints of falling ash from the incinerator onto adjacent properties, including ash falling on cars, and laundry hanging on clotheslines. One resident collected an ash sample and submitted it to MCAQ for analysis and was told she would be called within two weeks. When she did not receive a call-back, she called and was told there was no record of a sample submitted. As required by MCAPCO Regulation 2.0540 - “Particulates from Fugitive Dust Emission Sources,” the permittee shall not cause or allow fugitive dust emissions to cause or contribute to substantive complaints. This rule outlines a process for the permittee to

provide to the Director a plan to eliminate ash and other fugitive dust emissions. For each ash incident, we request that the Director require the permittee to develop a fugitive dust emission plan to eliminate or minimize ash emissions.

7. Require all medical waste destined for BMWNC that can be autoclaved to be shipped to the permittee's autoclaving facility in Gastonia. Per their PowerPoint presentation given during the public hearing, Healthcare Waste Solutions (HWS), based in Cincinnati, stated that it intends to increase the incinerator's "efficiency." This means that HWS intends to increase its waste volume to make operations more profitable which will likely result, at least in the interim period before coming into compliance with the new EPA rules, increased exposures to residents from toxic air pollutants. Thus, in the interim before the new EPA standards for air pollutants can be met by the facility, we urge the MCAQ to require that all medical waste destined for incineration at BMWNC to be shipped to the company's autoclave in Gastonia for processing and disposal. Autoclaving, a process that uses heat and steam to sterilize waste, is a state-approved method of non-incineration to dispose of 99.7 % of medical waste. Waste is then shredded before it is landfilled so to make it unrecognizable. This is a win-win situation for all involved: residents' exposure to unsafe levels of air pollutants will decrease, there will be no disruption of the medical waste stream, and HWS continues to make a profit.

8. Requirement for stack testing at BMWNC once per year. Stack tests for all air pollutants currently are not conducted on a yearly basis. We recommend that stack tests for all 9 air pollutants are conducted every year regardless of the previous year's compliance status. This will result in additional monitoring, greater protection of public health, and hopefully, better enforcement when a violation does occur.

The BMWNC medical waste incinerator is a public health hazard. The incinerator was built in 1985, and it was not until the first cloud of smoke from a smokestack hidden within the trees did residents from surrounding neighborhoods realize the true identity of their new neighbor. Through the years there have been numerous complaints from residents about odors of flesh and burning plastic, falling ash, and even reports of fires. Residents have complained about numerous health conditions.

A 1995 DHHS report determined it was likely their illnesses were not caused by the incinerator after interviewers cited smoking as a probable cause or because residents failed to tell their family doctor about the incinerator. Residents' complaints were simply brushed away as "probably not caused by the incinerator" because the residents were smokers and/or hadn't submitted a formal complaint to the county health department! A 2000 study by the Occupational Environmental Epidemiology Branch (OEEB) of air samples taken within a 1-5 mile radius of the BMWNC found levels of arsenic, cadmium, chromium, benzene and carbon tetrachloride at levels that posed "an increased lifetime cancer risk greater than the 1×10^{-6} value considered by the OEEB to be acceptable." While deemed inconclusive, no follow-up study was ever conducted.

Something is very wrong with this picture, Mr. Willard. Since then many of the residents of Matthews have sought refuge by leaving their homes behind. Vacant homes have been replaced by new residents who have also discovered the presence of their toxic neighbor, albeit too late.

We believe that the time is NOW for you and your staff to take immediate and necessary steps in fulfilling its mission to protect air quality and public health of the residents of Matthews, NC.

Thank you for your consideration of our comments and recommendations.

Sincerely,

Sue Dayton, Statewide Coordinator, NC Healthy Communities