

Obtaining A Timely Air Permit With Flexible And Appropriate Terms And Conditions

**THOMPSON
HINE**

Pierre



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The Challenge

- Pierre Foods, Inc.
 - Operates 10 cook lines at its facility in Cincinnati for industrial mass production of cooked food products.
 - Lines are different sizes and have different processes (fried food lines versus cooked lines).
 - For years the facility operated and cooked products unaware of actual emissions until a 2006 stack test and administrative enforcement action, which then led to the permitting challenge.
 - Control technology varies depending on cook line.
 - Pierre wanted to stay under Title V and under NSR limits for two reasons: 1) less stringent permit conditions that are easier to manage; and more importantly 2) ability for future growth.
 - Approached the local permitting office and was told production limits on a per-line basis would be required for the synthetic minor.



Pierre Had A Problem

- Company knew that its overall production and emission factors developed through stack testing were well below Title V and NSR levels.
- But the approach by the local permitting authority did not give the company the flexibility it needed to operate – making the approach (and future jobs and growth) impossible.
- The solution?



Pierre Engaged Its Legal Counsel And Technical Consultants

- Knew that there was a better way than per-line limitations.
- Looked at actual emissions and actual production and saw that the facility was well under NSR and Title V thresholds.
- The answer: facility-wide limitations on production and emissions with appropriate record keeping and reporting.



What Happened Next?

- Presented it to the local air agency without success – the agency was uncomfortable with the approach.
- Knew from prior experience that we needed Central Office input and blessing.
- Asked for, and received, a meeting in Columbus with Mike Hopkins and the local air agency.
 - ▣ Explained the approach;
 - ▣ Demonstrated the ability to practically enforce the limitations we were asking for through appropriate recordkeeping and reporting requirements;
 - ▣ Asked for limits and terms and conditions that gave the agency comfort with the approach;



Ohio EPA's Response?

- Pierre followed the process of starting with the local air agency and involving Columbus when appropriate.
- Ohio EPA encourages approaches to permitting that make it easier to do business in Ohio and ease regulatory burden without adverse impact to the environment.
- Approach presented by Pierre made sense to Ohio EPA: it limited emissions to below the thresholds and was enforceable.
- Also discussed terms and conditions at the meeting to help streamline the permitting process and to give local air agency guidance in how the permit should look.
- Pierre also kept dialogue open with local air agency to receive drafts and provide comments as the permit was written, reducing objectionable terms and conditions.



And Then A New Problem Arose

- January, 2010, Pierre needed to modify several of its lines to increase efficiency and bring additional jobs to the plant;
- The problem?
 - ▣ To meet company budget cycle constraints, the permit with the modification had to be issued by Memorial Day.
 - ▣ Five months, for a synthetic minor permit to: 1) apply for the permit modification; 2) receive the modified permit; and 3) allow for the required 30 day notice and comment.
 - ▣ Management also wanted to increase production limits, which would put the facility into NSR and Title V permitting.



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The Solution?

- Called attorney and outside consultant.
- Recommended handling the changes in pieces.
 - ▣ Knew that less than 5 months for a NSR permit was infeasible and impracticable.
 - ▣ Started with the individual line changes to three of the cook lines, increasing hourly rates, but retaining production limits to stay below NSR and Title V applicability.
- Also developed a milestone schedule, working backwards from the deadline date.
 - ▣ Assigned clear roles, tasks, and deadlines.
 - ▣ Pursued permitting process through several parallel tracks.
 - ▣ Thought outside the box for streamlining the permit process.



Consultant's Role

- Deadline was clearly communicated and GT began work to turn around the modification application in a matter of weeks.
- Challenges:
 - ▣ Previous application was not in e-Business/Air Services;
 - ▣ Changes needed to be seamlessly integrated into the previous application; and
 - ▣ FEPTIO strategy needed to consider how changes would affect current and future plans for the business.
- Best practice: Obtained data in one or two iterations versus constantly going back to client for additional data, reducing turn around time.



Ohio EPA's Involvement

- Pierre clearly communicated its need for a “rush permit” to Ohio EPA and the local air agency.
- Pierre explained the approach and the changes to Ohio EPA prior to submission.
- Ohio EPA believed these changes could be incorporated into the permit that was being processed prior to issuance.
- Ohio EPA understood and appreciated the timelines and that the permit issuance meant additional jobs for Ohio.
- Meetings and phone conversations with Ohio EPA and the local air agency resulted in streamlined processing.



Additional Challenges For The Agency

- Following the Sierra Club's litigation with Ohio EPA over SB265 changes, uncertainty over BAT existed and was being clarified at the time (as well as standard BAT language in permits).
- Pierre understood these challenges and offered to provide a draft permit incorporating the new language and the changes Pierre was seeking.
- Ohio EPA and the local air agency accepted Pierre's offer.
- This reduced the work effort for the local air agency and Ohio EPA, saving time.



Consultant's Role

- Pierre's team felt providing a draft to HAMCO would help facilitate issuance of the permit.
- GT was engaged to draft permit terms and conditions and did so in a matter of weeks.
- BAT litigation presented a challenge that was addressed in communications with HAMCO/ Ohio EPA.
- GT worked closely with Pierre's attorney on terms and conditions for the draft permit.



Permit Processing

- Ohio EPA received the draft permit and made its own judgments about appropriate terms and conditions.
- The company and its consultant and attorney made themselves available to answer any questions by the agency.
- Ohio EPA received the permit application in early February, 2010 and the draft permit from the company on March 4, 2010.
- Worked through questions and revisions and had a draft permit issued for 30 day notice and comment on April 14, 2010.
- Ohio EPA was committed to meeting the memorial day deadline.



Permit Comments

- Pierre was not completely satisfied with the draft permit and so TH coordinated comments with Pierre and GT during the 30 day permit.
- We also clearly communicated to Ohio EPA our desire that the permit be issued irrespective of any comments or changes, by the deadline and that we would work out any further issues during an appeal.
- Sensitive to the need for the permit by the deadline versus the need for a perfect permit by the deadline.



Response to Comments

- Ohio EPA received comments from Pierre on May 12, 2010.
- Ohio EPA made several changes requested by Pierre in its comments.
- Ohio EPA issued the permit on May 28, 2010.



The Appeal

- Pierre is appealing the permit to work out the additional areas of disagreement with Ohio EPA.
- Pierre views the process as a success: it received the necessary permit by its deadline and can make the required changes; and it can further refine the permit during the appeal process.



Lessons Learned?

- Assemble your team early and think strategically.
- Start with the local air agency and work out disagreements or questions at that level if possible.
- Do not be afraid to involve Central Office where a novel approach is involved and the local air agency is not comfortable with it.
- Thinking outside the box is not frowned upon by Ohio EPA, particularly where it does not involve any detriment to the environment.
- Communication between Ohio EPA and the permittee is essential to obtaining a timely and flexible air permit.



Questions?



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