



**Via Overnight Mail**

February 24, 2016

Hon. Basil Seggos  
Acting Commissioner  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-1010

**Re: Request for Environmental Justice Analysis Regarding Renewal of Clean Air Act Title V Permits for Global and Buckeye Albany Terminals**

Dear Commissioner Seggos:

In your testimony before the Joint Legislative Budget Hearing on January 28, 2016, you stated that, “Environmental justice will be one of my top priorities at DEC as the Governor launches a statewide environmental justice agenda.” In that spirit, we write on behalf of the Ezra Prentice Homes Tenants Association, Albany County Executive Daniel P. McCoy, Sierra Club Atlantic Chapter, and Environmental Advocates of New York to request that the Department of Environmental Conservation (“DEC” or “Department”) conduct an environmental justice analysis concerning (i) the upcoming (March 2, 2016) renewal of the Clean Air Act Title V permit for the crude-by-rail facility owned and operated by Global Companies, LLC (“Global”) and located at 50 Church Street, Albany, New York (“Global Albany Terminal”); and (ii) the pending renewal of the Clean Air Act Title V permit (which expired on February 21, 2016) for the crude-by-rail facility owned and operated by Buckeye Partners, LP (“Buckeye”) and located at 301 Normanskill Street, Albany, New York (“Buckeye Albany Terminal”).

We believe that a full environmental justice analysis is necessary prior to renewal of the Global and Buckeye Title V permits because:

- (i) Albany’s South End, including the Ezra Prentice Homes, has been designated by DEC as an environmental justice area under the Department’s Environmental Justice Policy;
- (ii) the current Title V permits for the Global Albany Terminal and the Buckeye Albany Terminal authorize the two facilities to receive, store, handle, and marine

load a combined total of more than 5 billion gallons of petroleum products per year;

(iii) operations at the Global and Buckeye terminals are likely having a significant adverse air quality impact on Albany's South End, and renewal of the Title V permits for these facilities will therefore potentially adversely affect the South End environmental justice area;

(iv) the cumulative air quality impacts of the Global and Buckeye operations, together with other industrial sources of air pollution at the Port of Albany, have never been evaluated; and

(v) the Department has previously failed to comply—and failed to require that Global and Buckeye comply—with the substantive and procedural requirements imposed by DEC's Environmental Justice Policy regarding prior major permit applications submitted by Global and Buckeye.

The pending renewal of Title V permits for the Global Albany Terminal and Buckeye Albany Terminal provide an important opportunity for the Department to demonstrate its commitment to environmental justice and to rectify its past failure to comply with the EJ Policy when initially issuing those permits. In light of the recent expiration of the Title V permit for the Buckeye Albany Terminal, the fast-approaching expiration of the Title V permit for the Global Albany Terminal, and the significance of the air quality and environmental justice matters at issue, we respectfully request that the Department provide a response to this letter by no later than March 15, 2016.

## BACKGROUND

### **I. The Port of Albany Area**

The Port of Albany is an industrialized area located directly adjacent to the densely-populated South End of Albany. The Port's facilities include the Global Albany Terminal and Buckeye Albany Terminal, as well as a variety of other industrial sources of pollution. Both the Global and Buckeye terminals are located in close proximity to residences, schools, businesses, health care facilities, parks, and institutions in Albany's South End. Global's facility is located mere yards away from the Ezra Prentice Homes, a public housing project with over 400 residents, including approximately 280 children.

Led by the Ezra Prentice Homes Tenants Association, members of the community who live adjacent to the Port of Albany have voiced concerns about how the Port's operations are affecting their health and safety. The Association has submitted comments and expert reports to the Department regarding Global's pending application to modify its Title V permit to allow the receipt, storage, heating, and transloading of tar sands oil at the Global Albany Terminal. The Association has on several occasions voiced significant concerns regarding potential adverse

health effects from emissions of volatile organic compounds (“VOCs”), including benzene, a known human carcinogen, from Global’s facility. In fact, the Department’s 2014 community air quality screening analysis showed that levels of benzene near the Ezra Prentice Homes routinely exceed DEC’s annual guideline concentration for benzene.

## **II. The Department’s Environmental Justice Policy**

The Department’s Environmental Justice Policy is designed to ensure that minority and low-income communities play a meaningful role in DEC’s permit review process and the Department’s application of the State Environmental Quality Review Act (“SEQRA”).<sup>1</sup> CP-29 recognizes that these communities are disproportionately affected by adverse environmental impacts and “is specifically intended to ensure that DEC’s environmental permit process promotes environmental justice.”<sup>2</sup>

The EJ Policy requires that DEC conduct a preliminary screen to identify whether a major proposed action is in or near a potential environmental justice area.<sup>3</sup> Where such a potential community is identified, the project applicant must “submit a written public participation plan as part of its complete application.”<sup>4</sup> The public participation plan must, at a minimum, (1) identify stakeholders, including nearby residents, local elected officials, community-based organizations, and community residents; (2) provide for distribution and posting of written information on the proposed action and permit review process; (3) provide for public information meetings to keep the public informed about the proposed action and permit review process; and (4) allow for easy access to pertinent information and documents.<sup>5</sup> To ensure compliance with CP-29, the applicant also must submit a report summarizing progress on implementing the plan, all substantive concerns raised, all resolved and outstanding issues, the components of the plan yet to be implemented, and an expected timeline for completing the plan. Upon completion, the applicant must submit a written certification that it has complied with the plan.<sup>6</sup>

### **DEC’S PAST FAILURE TO COMPLY WITH THE EJ POLICY**

Despite the clear requirements in the EJ Policy, the Department has, regrettably, authorized several major projects in the Port of Albany without involving the adjacent environmental justice community. These projects, alone and collectively, raise serious health,

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<sup>1</sup> Commissioner’s Policy 29, Environmental Justice and Permitting (March 19, 2003) (“EJ Policy” or “CP-29”), §§ I–II.

<sup>2</sup> *Id.* § III.

<sup>3</sup> *Id.* § V.B. CP-29 defines a “potential environmental justice area” as “a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.” *Id.* § III.A.8.

<sup>4</sup> *Id.* § V.D.1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

safety, and environmental concerns and are precisely the types of permitting decisions that are supposed to trigger the enhanced public notice and participation requirements of the EJ Policy.

### **I. Global's 2011 Application to Modify Its Title V Permit**

In November 2011, Global submitted an application to the Department to modify its Title V permit to allow it to increase the throughput and marine loading of crude oil at the Albany Terminal from 450 million gallons to 1.8 billion gallons annually. DEC informed Global that its facility is located within a potential environmental justice area and that it would therefore need to address the CP-29 requirements. Although this should automatically have triggered Global's preparation of an enhanced public participation plan, Global erroneously claimed that its project would not impact the neighboring environmental justice area and never prepared the required plan. DEC did not challenge Global's failure to comply with CP-29 and instead issued a Notice of Complete Application for Global's project, published a draft Title V Permit for the proposed modification, and issued a SEQRA Negative Declaration for the project. None of these documents – including the modified Title V permit DEC subsequently issued – acknowledged that the Department had previously concluded that Global's project had the potential to affect an environmental justice area and was therefore subject to the requirements of CP-29.

### **II. Global's 2013 Application to Modify Its Title V Permit**

Global submitted another application to modify its Title V permit in June 2013, this time seeking to expand the Albany Terminal's capabilities to receive, handle, heat, and transfer heavy petroleum products, including tar sands oil. DEC again notified Global that its facility is located within a potential environmental justice area and asked Global to indicate how it would comply with CP-29. Once again, Global failed to submit an enhanced public participation plan as required by the EJ Policy. The Department did not address Global's failure to comply with the EJ Policy and instead issued a Notice of Complete Application and a SEQRA Negative Declaration for the proposed modification in November 2013.

The Association and other community and environmental organizations notified the Department by letter dated January 30, 2014 of its failure to comply with CP-29, and requested that both the Notice of Complete Application and Negative Declaration be rescinded. However, rather than rescind these erroneously issued notices, DEC allowed Global to prepare an "after-the-fact" public participation plan—an action which is not sanctioned by any provision in the EJ Policy. In any event, Global's *ex post facto* public participation plan does not meet CP-29's standards and requirements, and Global has failed to adequately implement the plan.<sup>7</sup> Although the Department issued notification to Global on May 21, 2015 that it was rescinding the Notice of Complete Application, the notice did not cite Global's failure to comply with the EJ Policy as a ground for rescission.

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<sup>7</sup> The deficiencies in Global's plan and its failure to adequately implement the plan were brought to the Department's attention in our August 12, 2014 letter to then-Commissioner Joseph Martens.

### **III. Buckeye Partners' Title V Applications**

DEC also failed to comply with its EJ Policy regarding Buckeye's 2009 application for a Title V permit. No public participation plan was prepared, and the South End community was excluded from the review process based on Buckeye's outdated and flawed analysis concluding that the project would not have any potential impacts on an environmental justice area.

In 2012, Buckeye's application to modify its Title V permit to allow it to increase the crude oil throughput at the Buckeye Albany Terminal from 395 million gallons per year to 1 billion gallons per year was approved with no involvement by the environmental justice community. DEC again erroneously concluded, based on a flawed preliminary screen by Buckeye that did not comply with the EJ Policy's procedures and standards, that the permit modification would have no potential impacts on an environmental justice area.

#### **GLOBAL AND BUCKEYE TITLE V RENEWALS**

Buckeye's Title V permit expired on February 21, 2016. Global's current Title V permit expires on March 2, 2016. We have the following requests regarding the requested renewals of these permits:

#### **I. Compliance With the EJ Policy**

As noted above, the pending renewal of Title V permits for the Global Albany Terminal and Buckeye Albany Terminal provide an important opportunity for the Department to remedy its past exclusion of the affected environmental justice community from the permitting process for these facilities. We therefore request that the permit renewals comply with the procedural and substantive requirements of the EJ Policy, including but not limited to preparation (in consultation with the affected environmental justice community) and implementation of an enhanced public participation plan for both proposed permit renewals.

#### **II. Preparation of an Environmental Justice Analysis**

We further request that the Global and Buckeye permit renewals be subject to an environmental justice analysis that (i) inventories and evaluates all sources of air pollutants from the Port of Albany and environs, and (ii) evaluates the potential cumulative health effects of those pollutants on the residents of the Ezra Prentice Homes and on other sensitive receptors in Albany's South End, including but not limited to Giffen Memorial Elementary School; Picotte Center for Disability Services; the Mount Hope residential community and playground; the Albany Community Charter School; Krank Park; the Steamboat Square Apartments and Townhouses (361 residential units); Centro Civico Hispano Americano; the "2 Together" Children's Tutoring Center; St. Peter's Family Health Center; Island Creek Park; St. Francis Catholic Church; Evangelical Protestant Church; Mt. Zion Baptist Church; Reigning Life Family

Church; the Salvation Army Center for Adult Rehabilitation and Disaster Relief; and the Capital City Rescue Mission.

The Environmental Justice Analysis should also include a commitment for long-term community monitoring for VOCs (including but not limited to benzene) and hydrogen sulfide, as well as a commitment that the results of such monitoring be provided to the community on at least a quarterly basis.

We also request that the Department commit to meeting with the community on at least an annual basis to discuss the monitoring results, as well as any ongoing or planned changes in emissions from sources at the Port of Albany.

### **III. Require That Global Apply for an NNSR Permit**

As you are aware, the Clean Air Act citizen suit enforcement action recently filed in the United States District Court for the Northern District of New York alleges that Global has violated the Clean Air Act and its current Title V permit. One of the claims raised in that suit is that Global was required to apply for and obtain a Non-attainment New Source Review Permit (“NNSR”) permit when it sought and obtained the modified Title V permit that is now up for renewal. The basis for that claim is that Global incorrectly calculated the potential net increase in VOC emissions from the fivefold increase in marine throughput of petroleum products authorized under the current Title V permit. Both the Department and the U.S. Environmental Protection Agency have questioned the basis for Global’s assertion that its operations are not subject to NNSR, and the upcoming Title V renewal process provides an opportunity to remedy this past violation of the Clean Air Act.

### **IV. Require Documentation for Critical Assumptions in Global’s 2011–12 Title V Application**

Global’s 2011–12 application to modify the Title V permit for the Global Albany Terminal, which resulted in issuance of the current Title V permit for the facility, included numerous assumptions for which no supporting documentation or analysis was provided. As part of the renewal process, Global should be required to provide, at a minimum:

- Any tests, sampling, or other documentation supporting Global’s assumption that the Reid vapor pressure (“RVP”) of crude oil received, stored, and marine loaded at the Global Albany Terminal would not exceed 11 pounds per square inch (“psi”);
- Results of any testing, sampling or analysis of the RVP of crude oil received, stored, and marine loaded at the Global Albany Terminal since issuance of the current Title V permit;
- The basis for the VOC emission factor Global used to calculate marine loading VOC emissions;



- Calculation of VOC emissions from standing losses, operational losses, and roof landing losses from storage tanks at the Global Albany Terminal and the basis for each calculation of such losses;
- An inventory of each source of fugitive emissions at the Global Albany Terminal, together with calculations of VOC emissions from each such source and the basis for each calculation; and
- The basis for the assumptions made by Global concerning VOC emissions during marine loading, including but not limited to assumptions concerning operational conditions during barge loading.

**V. Improve Operational, Monitoring, and Reporting Requirements in the Permit**

The current Title V permit fails to establish enforceable standards and limitations to ensure that Global complies with all requirements of the Clean Air Act and New York's State Implementation Plan. We believe that, at a minimum, the following conditions and requirements should be incorporated in any renewal of Global's Title V permit:

**A. Vapor Pressure Monitoring**

The current Title V permit fails to require that the vapor pressure of crude oil received, stored, and transloaded at the Global Albany Terminal be monitored. If renewed, the permit should be modified to require vapor pressure testing or vapor pressure documentation for each incoming shipment of crude oil; monthly vapor pressure testing of crude oil in storage tanks; and a requirement that such documentation and test results be provided to DEC on at least a quarterly basis.

**B. Operational Limits on Storage Tanks**

VOC emission limits should be established for each storage tank at the Global Albany Terminal, and the number of roof landings should be limited on a monthly basis.

**C. Operational Limits on Barge Loading**

The permit should require that all barge loading operations be conducted under negative pressure, and require documentation that negative pressure is achieved for each barge loading event.

**D. Fugitive Emissions**

The permit should require monitoring of fugitive sources using leak detection testing and submission to DEC of monthly leak detection reports.

**E. Fenceline Monitoring**

The permit should require monitoring for VOCs (including but not limited to benzene) and hydrogen sulfide at the fenceline of the Global Albany Terminal. This is particularly critical given the close proximity of the Ezra Prentice Homes to the terminal.

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We would be pleased to meet with you and members of your staff to discuss the issues raised in this letter.

We look forward to your response.

Very truly yours,



Christopher Amato  
Staff Attorney

C: Hon. Andrew Cuomo, Governor (via overnight mail)  
Brenda Torres, Assistant Secretary for the Environment (via overnight mail)  
Thomas Berkman, Deputy Commissioner and General Counsel (via overnight mail)  
Jared Snyder, Assistant Commissioner for Air Resources, Climate Change and Energy  
(via overnight mail)