

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION OF
CONAGRA TRADE GROUP, INC., FOR AN
AIR QUALITY CONSTRUCTION PERMIT FOR
THE CLOVIS ETHANOL PLANT**

No. AQCA 06-35 (P)

FINAL ORDER

This matter comes before the Secretary of Environment following a hearing before the Hearing Officer on January 11, 2007, in Clovis, New Mexico.

ConAgra Trade Group, Inc. (“ConAgra” or “Applicant”) seeks approval to construct and operate a 108 million gallon per year anhydrous ethanol production facility to be located at 1327 W. Hwy 60-84, on the site of the current Peavey Company West grain handling facility in Clovis, New Mexico (the “Clovis Ethanol Plant”). The New Mexico Environment Department Air Quality Bureau supports the issuance of the permit with conditions necessary to protect public health and welfare and the environment.

Having considered the administrative record, including all post-hearing submittals and the Hearing Officer’s Report; and being otherwise fully advised regarding this matter;

THE SECRETARY HEREBY REOPENS THE RECORD TO INCLUDE ALL ITEMS SUBMITTED AFTER THE CLOSE OF THE RECORD AND ADOPTS THE HEARING OFFICER’S REPORT AND RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW, WITH REVISIONS AS FOLLOWS:

In addition to the parties’ comments on the Hearing Officer’s Report submitted by ConAgra on April 23, 2007, and by the Bureau on April 23 and 26, 2007, the record is reopened to include a letter from Frank Dottle dated April 24, 2007; a letter from Blake

Prather, with attachments, dated April 19, 2007; and ConAgra's responses with attachments to the Citizens' letters and attachments, dated May 4 and May 7, 2007.

Based on ConAgra's Amended Response, and the attachments showing that notice was properly given of the permit application for the Clovis Ethanol Facility to owners of record shown in the most recent property tax schedule of all properties within one-half mile of the proposed facility site location, as required by the applicable regulations, the record will not be further reopened to extend the hearing.

ConAgra and the Bureau did submit a joint stipulation following the hearing which addressed many of the concerns raised by the citizens, including stack height, compliance testing and fugitive dust control. Specifically, the stipulation provides for an increase of stack heights at the facility from 50 to 100 feet, to further disburse emissions from the facility. Second, the stipulation provides that the permittee will conduct an initial compliance test to demonstrate that hazardous air pollutants are below regulatory thresholds. The initial compliance test will also form a basis for using periodic VOC testing to demonstrate that the air emission of those constituents will remain below regulatory levels. Third, the stipulation requires the establishment of a fugitive dust control plan for the existing Peavey West facility.

The commitments in the joint stipulation will strengthen the permit and further assure that air quality in the area of the plant is protected from the plant's emissions. Considering the testimony relating to fugitive dust, I am incorporating still another requirement, that the fugitive dust control plan for the Peavey facility include paved haul roads, if there are haul roads not already covered by Condition 10 of Permit No. 3415.

Additionally, the Hearing Officer's recommended condition that the Applicant meet with the citizens to provide information about plant operations and emissions will increase public access to important information about a facility located in their community, and I am increasing the frequency of meetings to twice a year for the first five years of the plant's operation.

Considering the original comments submitted by the Bureau and the Applicant, the proposed additional condition is modified to delete the general provision that the Bureau may request "additional documentation," and to insert the specific permit conditions requiring reporting: 1.a, 1.v and 7.i, in addition to Condition 13. (See Bureau Comments p. 2 and ConAgra Comments p.2.)

Regarding the meetings with citizens, the plant will apparently require a ground water discharge permit; although the request to limit the meetings to air emissions is incorporated below, the discharge permit may require additional public meetings related to water.

Considering the Bureau's additional comments, the proposed condition is further modified to remove from the permit a requirement that the Bureau participate (see Bureau additional comments p. 2); the Bureau has agreed to participate and will be so instructed in a separate document within the agency.

IT IS THEREFORE ORDERED:

The application for an air quality construction permit is granted, and the permit shall be issued by the Air Quality Bureau in the form set forth in the revised Draft Permit, as shown in the Administrative Record, Tab 121, with the revisions below:

As a new subparagraph b) to General Condition 1:

“All reports required to be submitted to the Bureau pursuant to specific conditions

1.a, 1.v, 7.i and 13 of this permit shall be submitted to both of the following offices:

New Mexico Environment Department
Air Quality Bureau
2048 Galisteo
Santa Fe, New Mexico 87508

and

New Mexico Environment Department
Clovis Field Office
100 E. Manana, Unit 3
Clovis, New Mexico 88101”

“The Permittee shall schedule a public meeting at least twice per year for the first five years after the date of issuance of this permit for the purpose of addressing questions and providing information related to the facility’s air emissions and the facility’s performance pursuant to the terms of its air quality permit during the preceding year. The permittee shall provide the Bureau with at least 60 days notice of the public meeting to enable the Bureau to provide a representative at the meeting to answer public questions.”

“The fugitive dust control plan described in Condition 1.ff. shall include the paving and sweeping of all haul roads at the Peavey West facility associated with increased activity to support the ethanol plant.”

RON CURRY, Secretary of Environment

NOTICE OF RIGHT TO REVIEW

Pursuant to Section 74-2-7.H, NMSA 1978, any person who participated in this permitting action and who is adversely affected by the action may file a petition for hearing by the Environmental Improvement Board, c/o Joyce Medina, 1190 St. Francis Drive, Santa Fe, New Mexico 87502. The petition shall be made in writing to the Board within thirty days from the date notice is given of this action.