

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL,

Appellant,

v.

**COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee,

**EHB Docket No.
2011- 072 -**

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HEARING BOARD**

NOTICE OF APPEAL

I. Name, address and telephone number of Appellant:

Clean Air Council, 135 S. 19th St., Suite 300, Philadelphia, PA 19103 (215)-567-4004.

II. Subject of appeal:

a) Action of the Department for which review is sought:

The Clean Air Council seeks review of the Department's April 13, 2011 approval of Plan Approval No. 63-00936D for MarkWest Liberty Midstream and Resources, L.L.C. ("MarkWest"), to construct and temporarily operate a fractionator tower and a process heater at its Houston Gas Processing Plant ("Houston Plant"), in Chartiers Township, Washington County, Pennsylvania.

A copy of the Approval is attached hereto.

b) The Department's official who took the action:

Mark A. Wayner, Southwest Region Air Program Manager, Southwest Regional Office, 400 Waterfront Dr., Pittsburgh, PA 15222.

c) **The location of the operation or activity, which is the subject of the Department's action (municipality, county):**

Chartiers Township, Washington County.

d) **On what date and how you received notice of the Department's action:**

The Plan Approval was issued by the Pennsylvania Department of Environmental Protection ("Department") on April 13, 2011. A copy of the Plan Approval was sent to Counsel via electronic mail on April 14, 2011. The issuance of Plan Approval No. 63-00936D was noticed on April 30, 2011 in the Pennsylvania Bulletin, Volume 41, No. 18.

III. *Objections to the Department's action in separate, numbered paragraphs. The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.*

Please see Attachment with Objections.

IV. *Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.*

We are not aware of any related appeal pending before the Board.

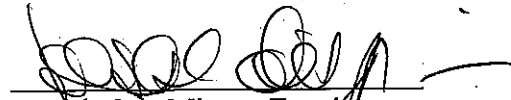
The information submitted is true and correct to the best of our information and belief.

Respectfully submitted,

Date: 5-13-2011

By: _____
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Attorneys for Appellant Clean Air Council

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EHB Docket No.

2011- 072 -

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OBJECTIONS TO THE DEPARTMENT'S ACTION

Clean Air Council ("CAC"), by and through their undersigned counsel, submits this Notice of Appeal of the approval by the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") of the Application for Plan Approval of MarkWest Liberty Midstream and Resources, L.L.C. ("MarkWest") to construct and temporarily operate a fractionator tower and a process heater at its Houston Gas Processing Plant ("Houston Plant"), in Chartiers Township, Washington County, Pennsylvania.

a) Parties:

1. Clean Air Council is a statewide, environmental non-profit corporation, which maintains a principal office at 135 S. 19th Street, Suite 300, Philadelphia, PA 19103. CAC is incorporated in Pennsylvania. Members of Clean Air Council reside in many areas of the Commonwealth, including Washington County.

2. Appellee is the Pennsylvania Department of Environmental Protection (“Department”), with a Southwest Regional Office at 400 Waterfront Drive, Pittsburgh, PA 15222.

3. Applicant is MarkWest Liberty Midstream and Resources, L.L.C. (“MarkWest”), a corporation formed under the laws of Delaware and having a principal place of business at 1515 Arapahoe St., Tower 2, Suite 700, Denver, CO 80202.

b) Factual Background:

4. MarkWest is a private corporation engaged in the business of midstream natural gas services in Southwestern Pennsylvania, primarily by providing “gathering” and processing of raw natural gas extracted from Marcellus Shale natural gas production wells owned by other companies.

5. The “gathering” aspect of MarkWest’s operation involves the construction and operation of small diameter pipelines which receive natural gas from production well operators and transport this gas to MarkWest-owned and operated compressor stations. The gas is typically “dewatered” onsite before being compressed to a high pressure and delivered into a larger, high-pressure, gathering pipeline, which is owned and operated by MarkWest.

6. The high-pressure gathering pipeline(s) deliver the compressed gas from, at present, ten (10) MarkWest compressor stations in Washington County to MarkWest’s Houston Plant complex in Chartiers Township.

7. The Houston Plant commenced operation in 2008 and is rapidly expanding. Numerous general permits and plan approvals, and revisions thereto, have been issued by the Department for MarkWest operations at this facility. In addition, the number of MarkWest compressor stations which deliver gas to the Houston Plant has been growing to meet the demand for

gathering and processing natural gas from the exponential growth in drilled Marcellus Shale wells in Washington County. Each of these stations has been issued plan approvals by the Department.

8. MarkWest's Houston Plant has two primary functions: 1) to sufficiently process natural gas from the well field to make it ready for sale and delivery into transmission pipelines, and, 2) to recover "natural gas liquids" from the processed gas and refine them into saleable product. These liquids include ethane, propane, butane, iso-butane, and natural gasoline.

9. Pre-existing units which have air emissions at the Houston Plant site are believed to include, at a minimum: several natural gas process heaters, seven (7) storage tanks of 30,000 gallons each, a truck load-out, a deethanizer, and three (3) depropanizers.

c) Legal and Regulatory Background:

10. The Department is the agency of the Commonwealth of Pennsylvania tasked with implementing the Air Pollution Control Act ("APCA") and has promulgated regulations in furtherance of that obligation. 35 P.S. § 4002 (1992).

11. The Department has accepted delegation from the U.S. Environmental Protection Agency ("EPA") to implement the federal Clean Air Act ("CAA") and EPA regulations promulgated thereunder. *See* 42 U.S.C. § 7410 (1990).

12. The Department discharges its duties to implement and enforce the federal environmental air quality laws and regulations through direct adoption of EPA regulations or State Implementation Plan ("SIP") approval from EPA to do so through state regulations determined to be at least as stringent as their federal counterparts. *See* 42 U.S.C. § 7410(a)(1)(1990); 35 P.S. § 4002 (1992).

13. The Marcellus Shale natural gas production, gathering, and processing industries in Pennsylvania emit air pollution as defined by the APCA and Department regulation and are thus regulated thereby. 35 P.S. §4003 (1992).

14. The Department has an obligation to regulate pollution from these sources and to issue permits to construct (Plan Approvals) and permits to operate (State-Only Operating Permits (“SOOP”) or Title V Permits) only when an applicant has demonstrated that proposed facilities will meet applicable requirements. 61 Fed. Reg. 39597 (July 30, 1996).

15. Under the federal New Source Review (“NSR”) program for areas not attaining the National Ambient Air Quality Standard (“NAAQS”) for Ozone, known as Non-Attainment NSR (“NA/NSR”), sources that emit 100 tons per year (“tpy”) or more of Nitrogen Oxides (“NOx”) are considered major sources and must meet the requirements of the NA/NSR program. 42 U.S.C. § 7602(j) (1990); 25 Pa. Code § 127.201(c) (2007).

16. Under the federal NSR program for areas not attaining the NAAQS for Ozone, known as NA/NSR, sources that emit 50 tpy or more of volatile organic compounds (“VOCs”) are considered major sources and must meet the requirements of the NA/NSR program. 42 U.S.C. § 7602(j) (1990); 25 Pa. Code § 127.210(c) (2007).

17. Under the federal NSR program for areas attaining the NAAQS for Carbon Monoxide (“CO”), known as Prevention of Significant Deterioration (“PSD”), sources such as the Houston Plant and local compressors that emit 100 tpy or more of CO are considered major sources and must meet the requirements of the PSD program. 40 C.F.R. § 51.166 *et seq* (June 19, 1978).

18. In order to determine whether a stationary source of NAAQS criteria pollutant air emissions is a major source for the purpose of the NSR program, all emission units at a facility or facilities deemed to be a single source are calculated together, or “aggregated.” Memo from

U.S. EPA Assistant Administrator Gina McCarthy to Regional Administrators, *Withdrawal of Source Determination for Oil and Gas Industries* (Sept. 22, 2009); 40 C.F.R. § 52.21(b)(6) (March 30, 2011).

19. The determination of whether emissions units at a facility or facilities are part of a single source is conducted on a case-by-case basis by analyzing whether the units are 1) owned or operated in common, 2) are part of the same Standard Industrial Classification, or SIC, and 3) are located on contiguous or adjacent properties. *See* 40 C.F.R. § 52.21(b)(6) (March 30, 2011).

20. “Adjacent” properties has been deemed to include properties separated by considerable distance if the emission units thereon function together in a manner that satisfies a “common sense notion of a plant” as conceived by the EPA. *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979); 45 Fed. Reg. 52676, 52694-95 (Aug. 7, 1980).

21. The Department has the obligation under the CAA and under its own regulations to conduct such single source determinations for the NSR program. 61 Fed. Reg. 39597 (July 30, 1996).

d) Plan Approval Application:

22. On September 13, 2010, MarkWest submitted a “Plan Approval Application for Installation of Fractionator and Process Heater,” which was accepted by the Department and identified as PA-63-00936D.

23. This addition of the fractionator and process heater will expand the Houston Plant capacity to 355 million cubic feet per day of natural gas.

24. The fractionator is projected by MarkWest to emit less than 1 tpy of VOCs and hazardous air pollutants (“HAPs”). The process heater is a Heatec Hot Oil Heater rated at 148 mmBtu/hr.

The exhaust stream from this unit will include emissions of NO_x, CO, Particulate Matter (“PM”), VOCs, and HAPs.

25. Emissions of NO_x and CO from the process heater will add 18.80 tpy and 25.93 tpy, respectively, to facility-wide emissions. Total potential emissions at the Houston Plant are now 58.35 tpy of NO_x, 68.63 tpy of CO, and 21.23 tpy of VOCs.

26. MarkWest’s compressor stations which feed natural gas through the gathering lines to the Houston Plant are named: Johnston, Shaw, Brigich, Fulton, Godwin, Nancy Stewart, Lowry, Hoskins, Dryer and Welling. They range in distance from 1.5 miles to approximately 13 miles from the Houston Plant.

27. Each of these compressor stations has potential NO_x emissions of 92 or 97 tpy, with the exception of Dryer, which has 50 tpy NO_x. CO emissions range from 12 tpy to 26 tpy, depending on the station. VOC emissions range from 11 tpy to 29 tpy, depending on the station.

28. The Department advised MarkWest by letter dated October 15, 2010 that the application was administratively incomplete and sought answers to questions and additional documentation from the Applicant. A primary focus of the Department’s request concerned factual deficiencies in the information from which the Department could conduct an “aggregation analysis.”

29. Following MarkWest’s responses, the Department determined administrative completeness on December 10, 2011.

30. The Department published proposed Plan Approval PA-63-00936D on February 5, 2011 and opened a 30-day public comment period.

31. On March 7, 2011, CAC submitted timely comments to the proposed Department action, which included extensive comment on the subject of the Department’s aggregation analysis of MarkWest’s operation.

32. On April 13, 2011, the Department issued the Plan Approval and provided notice of this action to CAC on the following day, April 14, 2011.

33. The Department also issued a Comment Response document on April 14, 2011 wherein it defended its conclusion that the Houston Plant should not be aggregated with nearby compressors stations also owned and operated by MarkWest and therefore it is not subject to major source requirements.

e) OBJECTIONS:

34. The Department's issuance of Plan Approval PA-63-00936D does not require the Applicant to meet the requirements of the federal PSD program as they apply to major stationary sources of CO as incorporated in the Pennsylvania SIP by adoption thereof at 25 Pa. Code § 127.83. 42 U.S.C. § 7471 (1990); 40 CFR Part 52. The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

35. The Department's issuance of Plan Approval PA-63-00936D does not require the Applicant to meet the requirements of the NA/NSR program as they apply to major stationary sources of VOCs at 25 Pa. Code 127.201 *et seq.* The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

36. The Department's issuance of Plan Approval PA-63-00936D does not require the Applicant to meet the requirements of the NA/NSR program as they apply to major stationary sources of NOx at 25 Pa. Code 127.201 *et seq.* The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

37. The Department's issuance of Plan Approval PA-63-00936D does not require the Applicant to apply for and obtain a Title V operating permit pursuant to 25 Pa. Code 127.501 *et*

seq. and 42 U.S.C. 7661 *et seq.* The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

38. The Department issued Plan Approval PA-63-00936D without conducting a proper aggregation analysis of MarkWest's Houston Plant units that included the functionally interdependent MarkWest compressor stations. The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

39. The Department's aggregation analysis is fatally deficient because it wrongly concluded that since one of the nine MarkWest compressor stations feeding pressurized gas to the Houston Plant could allegedly also deliver gas to a non-MarkWest pipeline, none of the MarkWest compressor stations should be aggregated with the Houston Plant. The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

40. The Department's aggregation analysis is fatally deficient because it completely failed to include in its aggregation analysis the emissions expected from MarkWest's Welling compressor station, located in Buffalo Township, Washington County, for which permits have been issued, and the Welling compressors' functional relationship to the Houston Plant. The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

41. The Department issued Plan Approval PA-63-00936D and concluded the Houston Plant should not be aggregated with local MarkWest compressor stations despite having no evidence of the practical capability of the alleged independent third party line to accept unprocessed gas from MarkWest's compressor stations. The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

42. The Department issued Plan Approval PA-63-00936D despite evidence that the Applicant intends to take actions which will violate the prohibition on NSR circumvention at 25 Pa. Code § 127.216, specifically the development of a pipeline without which Applicant could make no claim to avoid aggregation of its Houston Plant and local MarkWest compressor stations. The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

43. The Department has ignored and or violated the Pennsylvania SIP, the prohibition on circumvention at 25 Pa. Code § 127.216, by encouraging and proposing to require MarkWest to build an additional pipeline to avoid aggregation and NSR for the Houston Plant and local MarkWest compressor stations. The Department's action is therefore unreasonable, an abuse of discretion, arbitrary and capricious, or otherwise contrary to law.

44. The Department's issuance of Plan Approval PA-63-00936D is improper because the notice and comment process provided by the Department was deficient in that it failed to respond to significant public comments by the Appellant regarding proposed plan approval conditions that had the effect of aiding MarkWest in circumventing the aggregation of its sources of emissions as well as comments regarding the lack of transparency in the Application and Plan Approval decision-making. *See Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977). (As the permitting authority, the Department has a responsibility to respond to significant comments.)

f) Reservations:

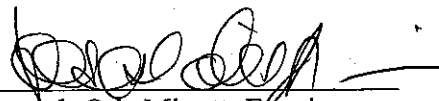
45. Clean Air Council reserves the right to amend this appeal pursuant to 25 Pa. Code § 1021.53.

Respectfully submitted,

Date: 5-13-2011

By:

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Attorney for Defendant
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal was served on this 13 day of May, 2011 via First Class United States mail, upon the following:

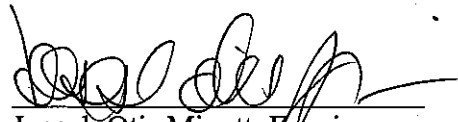
Pennsylvania Department of Environmental Protection
Attention: Mark A. Wayner, Southwest Region Air Program Manager
Southwest Regional Office
400 Waterfront Drive
Pittsburgh, PA 15222

Pennsylvania Department of Environmental Protection
Office of Chief Counsel, Litigation Support Unit
9th Floor, Rachel Carson State Office Building
400 Market St.
Harrisburg, PA 17105

Recipient of Plan Approval
John Mollenkopf
MarkWest Liberty Midstream & Resources, LLC
1515 Arapahoe Street
Tower 2, Ste 700
Denver, CO 80202-2126

Courtesy Copy
Department of Environmental Protection
Attention: John Herman, Esq.
Southwest Regional Office
400 Waterfront Drive
Pittsburgh, PA 15222

Date: 5-13-2011


Joseph Otis Minott, Esquire
Attorney for Appellant

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63-00936D

MARKWEST LIBERTY MIDSTREAM & RESOURCES/HOUSTON GAS PLT



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY PROGRAM

PLAN APPROVAL

Issue Date: April 13, 2011

Effective Date: April 13, 2011

Expiration Date: October 13, 2012

In accordance with the provisions of the Air Pollution Control Act, the Act of January 8, 1960, P.L. 2119, as amended, and 25 Pa. Code Chapter 127, the Owner, [and Operator if noted] (hereinafter referred to as permittee) identified below is authorized by the Department of Environmental Protection (Department) to construct, install, modify or reactivate the air emission source(s) more fully described in the site inventory list. This Facility is subject to all terms and conditions specified in this plan approval. Nothing in this plan approval relieves the permittee from its obligations to comply with all applicable Federal, State and Local laws and regulations.

The regulatory or statutory authority for each plan approval condition is set forth in brackets. All terms and conditions in this permit are federally enforceable unless otherwise designated as "State-Only" requirements.

Plan Approval No. 63-00936D

Federal Tax Id - Plant Code: 30-0528059-1

Plan Approval Description

This Plan Approval is to allow the construction and temporary operation of a fractionator tower and process heater by MarkWest Liberty Midstream & Resources, LLC at their Houston Gas Processing Plant located in Chartiers Township, Washington County.

Owner Information

Name: MARKWEST LIBERTY MIDSTREAM & RESOURCES LLC

Mailing Address: 1515 ARAPAHOE ST
TOWER 2 STE 700
DENVER, CO 80202-2126

Plant Information

Plant: MARKWEST LIBERTY MIDSTREAM & RESOURCES/HOUSTON GAS PLT

Location: 63 Washington County 63921 Chartiers Township

SIC Code: 1321 Mining - Natural Gas Liquids

Responsible Official

Name: JOHN MOLLENKOPF

Title: SR VP & COO

Phone: (303) 290 - 8700

Plan Approval Contact Person

Name: NATHAN WHELDON

Title: SR ENV ENGR

Phone: (303) 542 - 0686

[Signature]

MARK A. WAYNER, SOUTHWEST REGION AIR PROGRAM MANAGER