Environmental Technology Council

1112 16th Street NW • Suite 420 • Washington DC 20036 • (202) 783-0870

Filed electronically

April 1, 2013

Air and Radiation Division
EPA Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

Re: EPA-R05-OAR-2012-0649

To the Docket:

The Environmental Technology Council (ETC) submits these comments on the proposed modifications to the Title V permit for the hazardous waste incinerator operated by Veolia ES Technical Solutions, L.L.C. (Veolia) located in Sauget, Illinois.

The ETC is the leading trade association for the hazardous waste management industry. ETC member companies provide technologies and services to their customers for the proper recycling, treatment, and disposal of industrial and hazardous wastes. The ETC membership represents nearly the entire hazardous waste industry in the United States, providing the essential infrastructure for waste management to a wide range of productive industries. ETC members include companies that operate various types of hazardous waste combustion units, including most of the commercial incineration facilities in the United States (Veolia is a member), and therefore our members are substantially affected by the precedents that would be set in this permit matter.

The ETC must strongly object to Region 5's unilateral proposal to require the use of a multi-metals continuous emissions monitoring system (CEMS) on a commercial hazardous waste incinerator. There are simply too many variables affecting multi-metal CEMs performance that are not well understood and controlled to allow their use as operating parameter limits (OPLs) for hazardous waste combustion processes. The MACT standards for hazardous waste combustors have established extensive reporting requirements for Automatic Waste Feed Cutoffs (AWFCOs), and Region 5 should not be introducing a device such as a multi-metal CEMS that will cause additional AWFCOs that are related to the variable performance of the monitoring device and not to the stability of the combustion process.

EPA must preserve the integrity of 40 C.F.R. § 63.1209(a)(5), which provides that the facility operator may petition the Administrator to use CEMS for compliance monitoring for mercury, SVMs and LVMs in lieu of compliance with the corresponding OPLs. This section allows the operator, who is in the best position to understand its

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processes, to make a case for alternative monitoring of its processes. This section also allows EPA to preserve its neutrality as it evaluates the alternative method. It avoids the present situation where EPA has vacated its role as a neutral reviewer and decision-maker and, in effect, has become the petitioner, vouching for the effective operation and accuracy of an alternative monitoring technology in a particular process. EPA is not the most knowledgeable with regard to both the particular technology that it advocates and the process to which the technology is to be applied. Unfortunately, when EPA vacates its role as a neutral decision-maker, the agency is then not in a position to fairly and accurately evaluate the feasibility of using this type of CEMS, which has not been commonly employed at hazardous waste combustion facilities.

While EPA has authority to modify permits as necessary to ensure protection of public health and the environment, this authority does not extend to requiring use of an unproven and problematic monitoring technology in lieu of established OPLs. It appears that Region 5 is attempting to make the Veolia incinerator conduct an R&D test on this technology, against the will and good judgment of the permittee. This is directly contrary to the procedure set forth in § 63.1209(a)(5) which contemplates that the permittee will initiate and demonstrate the capabilities of a CEMS as an alternative to OPLs. EPA notes in the Statement of Basis (SOB) that EPA did not require use of a multi-metals CEMS in the MACT rule for hazardous waste combustors based on EPA's determination that performance of such CEMS had not been demonstrated. SOB at 21. However, EPA then claims that "modern" multi-metals CEMS "have been shown to be more accurate and reliable" without sufficient support in the administrative record that available CEMS are feasible under the specific operating conditions of commercial hazardous waste incinerators.

In fact, it appears from the administrative record that EPA has prejudged that a specific multi-metal CEMS from a favored vendor should be purchased and installed at the Veolia incinerator, and has set out in a biased and prejudicial way to "build a case" for imposing that CEMS. An e-mail from Mr. Douglas Barth, Pall Corporation, dated September 19, 2012, to EPA refers to a collaborative "effort" to justify using that company's XRF CEMS on a hazardous waste incinerator, noting that the effort "will take some time and tact" precisely because the vendor realized it was inappropriate for EPA to build the case for a specific vendor's technology. Further, after Veolia had shared information with EPA that the multi-metals CEMS had failed at the Eli Lilly facility, Mr. Barth asserted in a follow-up e-mail to EPA that he could "100% refute the Eli Lilly experience as told to you by [Veolia]." This email reveals Mr. Barth's natural bias for his company's CEMS. Finally, in an e-mail dated September 26, 2012, Mr. Barth responded to EPA's "request for building a case why the Xact 640 Multi-Metals CEMS" should be used at a hazardous waste incinerator, and EPA replied "Awesome Doug!"

The EPA e-mail exchange with Mr. Barth shows a disconcerting familiarity with a representative of a technology that EPA would now force Veolia to apply to its processes. EPA must preserve its independence and not defer its regulatory obligations to those that have a pecuniary interest in selling certain monitoring technology. EPA's unquestioning

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acceptance of Pall's representations and the parroting back of such representations in the Statement of Basis seriously draws into question the independent judgment of EPA as well as the agency's technical capabilities to evaluate this unproven technology.

New CEMS technology should be subject to a public rulemaking to preserve the competitive nature of the industry and to provide all potentially affected parties, including competitors in the industry and public interest groups, the opportunity to comment upon the technology. For example, EPA required use of a PM CEMS in the MACT rule for hazardous waste combustors only after developing an administrative record of technical support documents and then, most importantly, subjecting that record to public scrutiny and comment through the rulemaking process. EPA Region 5 is attempting to short circuit that process and impose the multi-metals CEMS through a permit proceeding, based primarily on representations from a CEMS vendor.

EPA must act in a consistent fashion when considering additional requirements on an issued permit and/or when reissuing permits to any segment of an industry and not go beyond what is necessary to assure compliance. The regulated community must have confidence that EPA will act consistently in the future in order to justify the purchase of capital improvements to meet EPA's current demands. This confidence is undermined when, as in the case of Veolia, nothing has materially changed since the date of its last permit in 2008 (i.e., no changes to technology, feedstream, location, risk, enforcement history), but EPA nevertheless is attempting to reopen and significantly modify Veolia's permit.

Further, the regulated community must have confidence that EPA will not request capital outlays that go beyond what is necessary to assure compliance. Industry measures the reasonableness of such outlays on whether others in the same industry have been requested to make similar capital improvements in order to ensure a competitive environment in the industry. As far as we are aware, no other EPA region has attempted to compel a hazardous waste combustion facility to install and operate a multi-metals CEMS at the operator's expense and risk.

Finally, the ETC must also express concerns about the additional waste analysis requirements proposed for this permit modification. The ETC believes that a Title V permit is not the appropriate mechanism to impose burdensome new waste analysis procedures. Rather, supplemental or enhanced waste analysis requirements should be promulgated and vetted under the RCRA program. We believe it is critically important to the integrity of any enhanced waste analysis requirements that the regulated community and interested public be able to fully review and comment through an appropriate rulemaking process.

The ETC appreciates this opportunity to comment on the proposed permit modifications to the Veolia permit. As the leading trade association for hazardous waste incinerators, we believe that the ETC has the experience and technical knowledge among its members to credibly evaluate the issues in this permit proceeding, and we respectfully

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Respectfully submitted,

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