

Prepared for: Director
Submitted: July 15, 1997 State: Virginia

Issue: Extortion Allegation -- Request for Monitoring Connected with Merck Facility Near Shenandoah National Park

o Project XL is an Administration regulatory flexibility program to allow companies to create their own regulatory world, if "superior" environmental benefit is demonstrated. Merck's Stonewall Plant in Elkton, VA, has been selected by the Environmental Protection Agency (EPA) as one of the first pilot projects. Because Shenandoah National Park (SHEN), a Class I air quality area, is one mile from the plant, the National Park Service (NPS) is an active stakeholder in negotiating the final project agreement (FPA) and Prevention of Significant Deterioration (PSD) permit Merck is seeking.

o "Superior" Environmental Benefit: Merck is proposing to replace two of its three existing coal-fired boilers with natural gas boilers that use #2 fuel oil or propane as the back-up fuel. The replacement is expected to reduce actual sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions significantly. Merck is proposing to reduce its total pollutant emissions by approximately 20% from 1992-93 baseline levels (a 300 tpy reduction), resulting in a total criteria pollutant emissions cap of 1202 tpy.

o Environmental Tradeoff: In exchange, Merck would: (1) obtain the flexibility to increase emissions of volatile organic compounds (VOCs) -- from baseline of 408 tpy up to approximately 971 tpy (without a subcap for VOCs); (2) receive relief from complying with explicit Clean Air Act requirements (PSD and Title V) and with certain Resource Conservation and Recovery Act (RCRA) requirements -- with restricted ability of EPA or the Virginia Department of Environmental Quality (VADEQ) to terminate the PSD permit; and (3) obtain a permit without expiration that could be transferred to a new site owner/operator.

o SHEN suffers some of the worst air pollution impacts of any Class I area. In 1990, Department of the Interior (DOI) made a determination that the existing state of AQRVs at SHEN is adverse, and recommended that new or modified pollution sources use the very best available control technologies and obtain emissions offsets. 55 Fed. Reg. 38,403-08 (1990). Because of documented research regarding VOCs contribution to ozone, DOI expressed concern regarding VOC increases in the notice.

o Monitoring: DOI and NPS are charged with an "affirmative responsibility" under the Clean Air Act to protect the air quality related values (AQRVs) of Class I areas. Because of the potential for significant VOC increases, because VOCs are known to contribute to ground-level ozone formation, and because so little known about VOCs impacts on resources, NPS repeatedly requested that Merck perform or fund VOC monitoring/sampling at the park.

Merck instead offered to monitor for pollutants it expected to decrease, such as, sulfur dioxide. In that context, last July, SHEN sent a letter to the Merck chair of the stakeholder group requesting that some agreed amount be set aside for AQRV monitoring, with understanding SHEN would use it for VOC monitoring in the park.

- o Recognizing our resource concerns in connection with the Merck project, EPA agreed to contribute funding for ozone monitoring and VOC sampling studies in SHEN. A \$100,000 EPA grant has been set aside for this purpose.
- o SHEN has requested and received monitoring funds from sources in Virginia previously. In one case, VADEQ made the funding a permit obligation, on request of the permit applicant.
- o In addition, EPA's proposed revised New Source Review (NSR)/PSD regulations explicitly recognize that it may be appropriate for permitting officials to require project applicants to monitor for AQRV impacts in Class I areas, in consultation with the Federal Land Manager. This revision reflects EPA policy and practice, and follows the general "polluter pays" precept. Largely because of the cost involved in this monitoring, industry strongly objects to the proposed regulation. The comment period on the regulations closed last January; EPA expects to finalize the rules by next summer.

Status:

- o The July SHEN letter was described as "blackmail" by a VADEQ official in correspondence to EPA. That correspondence was reportedly sent to the Republican National Committee some time this fall. By letter dated November 6, 1996, Congressman Frank Wolf (R-VA) requested that the DOI Inspector General (IG) investigate the "questionable" language in the July SHEN letter and noted that the VADEQ official considered the letter to be "extortion."
- o Last January, a special IG agent contacted SHEN regarding the investigation. On request of this agent, SHEN (with help from ARD and Solicitor's Office) prepared a draft response to the Congressman's question and signed an affidavit. The agent anticipates submitting the results of his investigation later this month.
- o The proposed Merck XL project site specific rulemaking and PSD permit underwent public comment earlier this year. Most of the comments raised concerns about need for meaningful ongoing stakeholder review process. EPA and VADEQ have not yet responded to the public comments.

Position of Interested Parties:

- o In general, community stakeholders, public interest groups, EPA, and VADEQ local officials have supported the NPS request.
Merck and VADEQ headquarters opposed the request.

Department/Bureau Perspective:

- o NPS will continue to seek monitoring to help ensure AQRVs are protected. Should monitoring/research indicate adverse impacts may be associated with a particular pollution source, NPS will seek corrective action.

Funding Requirements:

- o In-kind services with existing funds; if the permit continues over time, additional funding by NPS may be needed for VOC research and sampling related to VOC emissions associated with the project, to supplement the \$100,000 EPA grant.

Contacts:

- o Karen Malkin, (202)219-3384; Bob Krummenaker, (540)999-3491.

Suggested Talking Points

- o DOI and NPS have a regulatory responsibility, pursuant to the Clean Air Act and the Organic Act, to review PSD permit applications and make recommendations to the permitting official to help ensure protection of park resources.
- o The Merck XL project presents a strong case for VOC/ozone monitoring in SHEN, considering the experimental nature of the project, the potential for very significant emissions increase one mile from a very sensitive park, the limited scientific understanding at present concerning the impacts of VOCs on park resources, and the fact that this permit has no termination date.
- o Although traditional PSD permits also have no termination date, a relatively small increase, such as 40 tons of VOCs, would trigger requirement for Merck to obtain a new permit. Here, Merck's could legally increase VOCs up to the full emissions cap of 1202 tons per year, without modifying or terminating this special permit.
- o The July SHEN letter, which has been the focus of attention, was written by former NPS staff (now employed by EPA) in the flurry of stakeholder activity. Although the language in the letter about monitoring might have been articulated with greater clarity, the rationale for requesting monitoring in this case is sound and compelling.

Contact:

Karen Malkin, (202)219-3384

Bob Krummenaker, (540)999-3491