Michigan Department of Environmental Quality
Air Quality Division

Proposed Permit to Install for Severstal Dearborn, LLC
Permit Application Number 182-05C

COMMENTS OF THE SOUTH DEARBORN ENVIRONMENTAL IMPROVEMENT ASSOCIATION & RESIDENTS OF SOUTH DEARBORN, MICHIGAN

Submitted Through Counsel

March 31, 2014

Christopher M. Bzdok (P53094)
Emerson Hilton (P76363)
OLSON, BZDOK & HOWARD, P.C.
420 E. Front St.
Traverse City, MI 49686
Phone: 231/946-0044
Fax: 231/946-4807
Email: emerson@envlaw.com
chris@envlaw.com

Tracy Jane Andrews (P67467)
LAW OFFICE OF TRACY JANE ANDREWS, PLLC
713-B Lake Avenue
Traverse City, MI 49684
Email: tjandrews@ymail.com

TABLE OF CONTENTS

INTRODUCTION

Severstal North America (Severstal) operates a steel plant in Dearborn, Michigan. This permit action involves Severstal's request to substantially increase the amount of regulated air pollutants that its facility can emit under an existing permit from the Michigan Department of Environmental Quality (MDEQ). Severstal has also proposed a number of additional changes to the equipment and processes at its facility.

Because Severstal is considered a major stationary source of air pollution, the company's proposed changes must be reviewed under the Clean Air Act's provisions for new source review and all associated regulatory requirements administered by MDEQ and the federal Environmental Protection Agency (EPA). Severstal, however, has relentlessly advocated for a far more lenient approach. Specifically, Severstal has urged that its proposals be considered a mere "correction" to the company's existing Permit to Install, PTI No. 182-05B. Severstal has also argued that its proposals are entitled to legal "grandfathering," and that MDEQ should not consider important changes in the standards governing air pollution that have been implemented by EPA and MDEQ since October 2007.

Severstal's proposals, if adopted by MDEQ, would have grave consequences for air quality in southeast Michigan, and in particular for air quality and public health in the South End neighborhood of Dearborn. This neighborhood, located adjacent to the Severstal facility, is rife with existing air pollution and associated adverse health impacts. Air monitors located at the Salina Elementary School in the heart of the South End routinely measure higher concentrations of air pollution than anywhere else in Michigan or the entire Midwest region. The South End is also considered an Environmental Justice Area by EPA, in part because more than 80% of its residents speak a language other than English and more than 40% have incomes that fall below the poverty line.

Severstal, by contrast, is an international corporation operating what MDEQ Staff have previously called "by far the most egregious facility in the state." The company's Dearborn facility has been the subject of hundreds of complaints, and dozens of enforcement actions by EPA and MDEQ – just since receiving its last permit. Severstal has acknowledged routine violations of its existing permit since 2007, and it has "openly admitted" a "total disregard" for maintaining its emissions control equipment. In addition, MDEQ has noted "pervasive" problems with Severstal's emissions reporting and monitoring obligations.

Yet here, Severstal asks MDEQ to give enormous deference to the company's interests in avoiding the costs of additional pollution controls, in avoiding substantial liability for permit violations, and in increasing its production as Michigan's economy improves. Simply stated, MDEQ does not possess the power to grant Severstal the relief it seeks. But even if it did,

MDEQ could only do so in an exercise of unprecedented discretion and extraordinary solicitude for Severstal's interests. For the reasons set forth in detail below, MDEQ should not bow to Severstal's pressure, and it should not accept the company's deeply flawed arguments in favor of issuing a grandfathered permit "correction." Severstal does not deserve MDEQ's solicitude, and the residents of Dearborn's South End do not deserve to suffer the consequences of a deeply flawed permit that increases pollution, undermines the purposes of the Clean Air Act, and exceeds the authority possessed by MDEQ. The Draft Permit, as written, cannot and should not be issued.

STATEMENT OF FACTS

I. The Commenters and the Characteristics of their Neighborhood

These comments are submitted on behalf of Mohammed O. Ahmed, Moshin Alrayyashi, Abdo N. Bapacker, Hajerah Elgahmi, Yahya Elgahmi, Siham Kirdy, Ahmed Mohamed, Al Nasir, Anisa Nasser, Anwar Saeed, Mohamed A. Saleh, Saleh Shuhait ("the residents"), and the South Dearborn Environmental Improvement Association, Inc. ("SDEIA") (collectively, "commenters"). The residents live in the South End neighborhood of Dearborn,[1] in proximity to the Severstal Dearborn facility,[2] and they are adversely affected by past, present, and future emissions of pollutants from Severstal. Eighty percent of the South End neighborhood is Arab-American, and 86% speak a language other than English.[3] Further, 43% of the population has income below the poverty level.[4]

---

[1] The residents' addresses are compiled in **Ex 1.**

[2] The South End neighborhood is generally located between the Severstal (Rouge) complex and Woodmere Cemetery, Patton Park, and Holy Cross Cemetery. For census data purposes, we use Census Block 5735. See **Ex 2**, Census Block 5735, Wayne County, Michigan, available at: http://www2.census.gov/geo/maps/dc10map/GUBlock/st26_mi/county/c26163_wayne/DC10BLK_C26163_T01.pdf (last visited March 27, 2014).

[3] See **Ex 3**, 2008-2012 American Community Survey 5-Year Estimates (March 27, 2014), available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?fpt=table (last viewed March 27, 2014).

[4] See **Ex 4**, 2008-2012 American Community Survey 5-Year Estimates Selected Economic Characteristics (March 27, 2014), available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?fpt=table (last viewed March 27, 2014).

The SDEIA is a Michigan non-profit corporation incorporated by residents of the South End neighborhood of Dearborn in order to assist in representing the residents of that community in their ongoing efforts to improve its environment and public health.

Among the pollutants that Severstal emits in high quantities are fine particulates ($PM_{2.5}$). According to the United States Environmental Protection Agency (EPA), scientific studies have linked $PM_{2.5}$ exposure to various negative health effects, including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease.[5] Children and the elderly are most likely to be harmed by particle pollution exposure.[6] A scientific consensus is emerging that there is no safe threshold for exposure to $PM_{2.5}$.[7]

The Dearborn air quality monitor, located in the parking lot of the Salina elementary school, in the heart of the South End neighborhood, regularly registers the highest $PM_{2.5}$ levels in Michigan.[8] Residents of the South End suffer disproportionately high rates of respiratory and other diseases, and studies of the links between local air pollution and the high incidence of these diseases are underway.[9]

---

[5] Final Rule on National Ambient Air Quality Standards for Particulate Matter, 78 Fed Reg 3086-3287 (January 15, 2013).

[6] *Id.*

[7] **Ex 5**, *Summary of Expert Opinions on the Existence of a Threshold in the Concentration-Response Function for PM2.5-related Mortality*, Technical Support Document Compiled by U.S. Environmental Protection Agency (EPA) Office of Air Quality Planning and Standards, Health and Environmental Impact Division, Air Benefit-Cost Group, Research Triangle Park, North Carolina (June 2010); **Ex 6**, Laden et al. (2006): Reduction in fine particulate air pollution and mortality: extended follow-up of the Harvard Six Cities Study, *Am J Respir Crit Care Med* 173:667-672; **Ex 7**, Bayer-Oglesby et al. (2005): Decline of ambient air pollution levels and improved respiratory health in Swiss children, *Environ Health Perspec* 113, 1632-1637; **Ex 8**, Pope et al. (2004): Cardiovascular mortality and long-term exposure to particulate air pollution: Epidemiological evidence of general pathophysiological pathways of disease. *Circulation* 109:71-77; **Ex 9**, Krewski et al. (2005): Mortality and long-term exposure to ambient air pollution: ongoing analyses based on the American Cancer Society cohort, *J Toxicol Environ Health* 68:1093-1109.

[8] See **Ex 10**, MDEQ $PM_{2.5}$ Annual Data Summary (updated 10/1/2013), available at: http://www.michigan.gov/documents/deq/DEQ-AQD-PM25_summary_291638_7.pdf?20140327151952 (last viewed March 27, 2014); **Ex 11**, MDEQ PM2.5 24-hour Data Summary (updated 10/1/2013), available at: http://www.michigan.gov/documents/deq/deq-aqd-amu-monitoring-pm25-24hr-summary_403178_7.pdf?20140327151952 (last viewed March 27, 2014).

[9] For sources, see section IV, below.

II. History and Chronology of Severstal Dearborn Air Permitting.

2004 – The air monitor at the Salina School shows that the South Dearborn neighborhood records the highest concentration of $PM_{2.5}$ pollution in Michigan. The National Ambient Air Quality Standard (NAAQS) for $PM_{2.5,}$ at that time, was 15 micrograms per cubic meter (μ/m^3)[10] as an annual average. The Salina School monitor, at that time, was consistently above the annual NAAQS.

December 2004 – Residents of the South End neighborhood in Dearborn sue Severstal regarding its emissions of particulate matter pollution. [11] As its primary object, the lawsuit sought the installation of equipment to control particle emissions, including a baghouse on the Basic Oxygen Furnace to control fugitive emissions of fine particulates. The lead plaintiffs, who included one of the current commenters, commissioned through counsel a receptor modeling study that identified Severstal as the largest single contributor to particulate pollution in their neighborhood.[12]

Fall 2005 – Severstal announces that it will upgrade Blast Furnace C to increase its production capacity. As part of the project, Severstal agrees to install a baghouse on the Basic Oxygen Furnace and on Blast Furnace C. If Blast Furnace B is to be operated after the improvements to Blast Furnace C, Severstal agrees to install a baghouse on Blast Furnace B as well.

November 2005 – In light of the commitments by Severstal to install the pollution controls and to fund certain other community projects, the residents agree to settle their lawsuit. Final settlement documents are entered in January 2006.

December 16, 2005 – The residents, through counsel, submit comments on Permit to Install #182-05. Among the issues raised was the need for more rigorous evaluation of condensable particulate matter:

> *The Applicant and MDEQ-AQD do not appear to have considered at all any possibility that some of the modified process units in the modification application would release either organic or inorganic condensable particulate matter. Given that this area is a primary nonattainment area for $PM_{2.5}$ and the likelihood that emissions of*

[10] Micrograms per cubic meter are more or less equivalent to parts per million (ppm).

[11] *Mohammed O. Ahmed, et al v Severstal North America, Inc.*, Wayne County Circuit Court Case No. 04-438968-CE.

[12] **Ex 12,** Hopke and Gildemeister, *Local Sources of fine Urban Particulate Matter in Dearborn, MI* (2005).

> *condensables will all result ultimately in formation of PM less than 2.5 microns, this failure is a significant deficiency. Condensable particulate emissions from all modified processes should be characterized, quantified in netting calculations and subject to clear testing requirements.*
>
> . . .
>
> *Reliance on federal NSPS or MACT rules with their primary dependence on filterable PM emission testing techniques will not allow characterization of condensables in later compliance testing requirements. Decisions to rely only on filterable PM test methods is an intrinsic decision to ignore what must be considered to be a demonstrable public health concern from emissions of condensable PM.*[13]

The same comments also raised the issue that the community was not being adequately protected from manganese emissions at Severstal, and recommended that specific manganese limits be placed on the ladle refining process units under Rule 901 and the Michigan Environmental Protection Act.[14]

January 31, 2006 –The Michigan Department of Environmental Quality (DEQ) grants Permit to Install #182-05 to increase the production and install the baghouses.

February 2006 – Severstal enters into a consent decree with DEQ addressing the particulate emissions and the PTI #182-05.

July 6, 2006 – DEQ issues PTI #182-05A to Severstal, which allows the company to add an on-site coal pulverizing facility (which has never been done), and increase the size of the baghouse on Blast Furnace C.

March 23, 2007 – The residents, through counsel, submit comments on Severstal's application for PTI #182-05B. The comments state that the PM emissions were not properly evaluated, that the CO emissions factors are not justified, and that the evaluation of SO_2 controls was conclusory and limited.[15]

---

[13] **Ex 13**, Sagady, *Comments on a Draft Permit to Install for modification of the Severstal North America Steel Mill Facility, Dearborn, MI* (December 16, 2005).

[14] *Id.*

[15] **Ex 14,** Olson, Bzdok & Howard comment letter (March 23, 2007).

April 2007. – Permit to Install #182-05B issued for modifications to Blast Furnace C, including installation of a baghouse at C Blast Furnace and the Basic Oxygen Furnace (BOF).

October 2007 – Construction is completed and the BOF and C Blast Furnace baghouses become operational.

January 2008 to June 2010. DEQ receives 52 complaints regarding fallout, opacity, and/or odors from Severstal impacting the community. AQD complaint investigations resulted in four violation notices for fallout. Results of fallout samples taken by AQD indicate high iron content and graphite kish, which is a byproduct of steel making.

January 5, 2008 – Blast Furnace B is destroyed in a catastrophic incident.

July 2008 – Severstal seeks DEQ's agreement that rebuilding Blast Furnace B would be considered a "repair" and would not require a new permit to install. Severstal's Environmental Engineering Manager James Earl states:

> *The expedited re-start of this furnace is critical to the Dearborn facility's vitality in the immediate and future time frames.*[16]

The letter includes a Gantt chart showing that the Blast Furnace B repair/construction work will be completed by the 2nd Quarter of 2010.

September 2008 – DEQ concurs that Blast Furnace B can be repaired without the need for a new permit. However, Blast Furnace B has not been repaired in the six years since then, and there is no updated schedule available regarding its repair.

November/December 2008 – Severstal performs compliance stack testing required in PTI182-05B. Results show the facility exceeds allowable emission limits for CO, PM, PM_{10}, SO_2, Lead, Manganese, and Mercury.[17]

February 24, 2009 – DEQ issues an LOV for emission limit violations listed above.[18]

February and March, 2009 – Meetings between Severstal and AQD regarding permit limit violations. Severstal agreed to submit evaluation of available technologies that might enable Severstal to achieve current permit limits.

---

[16] **Ex 15**, July 25, 2008 letter from Severstal, including Gantt chart attachment.

[17] **Ex 16,** Lamb and Koster, DEQ Enforcement Timeline (August 14, 2012); *see also,* November 17, 2008 letter from Severstal.

[18] **Ex 16,** Lamb and Koster, DEQ Enforcement Timeline (August 14, 2012).

March 9, 2009 – In a letter to MDEQ, Severstal seeks a determination from the agency that it was seeking only to make certain "corrections" to its existing Permit to Install, PTI No. 182-05B.[19] According to Severstal's letter, the "corrections" sought by the Company "would not be considered an installation, construction, reconstruction, relocation, or modification," and, as such, would not be "subject to additional permitting requirements."[20]

May 2009 and January 2010 – Severstal submits a Technology Evaluation Report and addendum to address AQD comments. According to Severstal, no feasible technology options available to achieve compliance with current limits.

April 13, 2010 – DEQ writes to Severstal and states that revising emission limits in a Permit to Install constitutes a modification of the permit, and not a correction:

> *As I indicated in our meeting last year, I do not agree that the change being requested is a 'correction.' There is no provision in the air rules for a correction. Although we do occasionally process a supplemental revision to a permit, this is primarily due to a typo or error on our part that needs fixing. Changing emission rates is not an error or correction. It is a modification.*[21]

The email further notes DEQ's position that the condensable fraction of particulate matter was included in the original permit limits:

> *We do not agree with your characterization that the condensable fraction of PM10 was not included in the original permit emission rates. PM10 is defined as both filterable and condensable and any permit issued by the AQD that includes a PM 10 limit is intended to include both fractions.*[22]

July 6, 2010 – DEQ refers Severstal to enforcement for permit emission limit and fallout violations.

---

[19] **Ex 17**, March 9, 2009 Letter from James E. Earl to Bryce Feighner, p 2.

[20] *Id.* at p 4.

[21] **Ex 18**, Email from Mary Ann Dolehanty, Unit Supervisor of the Permit Section, DEQ Air Quality Division, to James Earl, Environmental Manager at Severstal.

[22] *Id.*

July 7, 2010 to August 2012 – DEQ issues 20 additional Violation Notices, and receives 117 additional complaints alleging fallout and opacity.[23]

December 15, 2010 – Severstal submits first application for PTI #182-05C.

January 5, 2011 – DEQ issues Violation Notice to Severstal for exceeding manganese and lead emission limits based on additional stack testing of the C Blast Furnace and Desulfurization Baghouse.

September 8, 2011 – DEQ publishes a report on ambient concentrations of manganese in Michigan. The report notes:

> *The highest annual average concentrations have been measured at the South Delray and Dearborn sites. Although levels at South Delray and Dearborn have dropped since 2003, they remain consistently above the health protective benchmark level, higher than other Michigan sites, and some of the highest values measured within Region 5 and across the U.S. The reason for the increase between 2009 and 2010 is discussed later and is linked to changes in the steel industry.*[24]

The report further notes:

> *The primary source contributor on high manganese days at the Dearborn site was Severstal.*[25]

June 15, 2012 – EPA issues Notice of Violation to Severstal for 24 violations on various dates.[26]

June 21, 2012 – Ann Banninga of the Michigan Economic Development Corporation (MEDC) writes to Susan Holben of the MEDC, who forwards the email as an inquiry to DEQ regarding the permit process. The email states:

> *Mike Finney and Governor Snyder attended a grand opening event at Severstal today, While he was there, Mike spoke with Sergei (I think local plant manager) who expressed some concerns on the*

[23] **Ex 16,** Lamb and Koster, DEQ Enforcement Timeline (August 14, 2012).

[24] **Ex 19**, Ambient Air Levels of Manganese in Southeast Michigan: Evaluation and Recommendations by the AQD Manganese Workgroup, p 15.

[25] *Id*, p 18.

[26] **Ex 20**, EPA NOV dated June 15, 2012.

air permitting process. We may not have all this exactly right, but this is what I took down:

- *Severstal thinks DEQ may get EPA involved, and doesn't think that should be. They think they should be grandfathered (sounds similar to Guardian).*
- *This involvement will add cost and time*
- *Can DEQ do anything to help them make this more efficient?*

Can you kick the tires over at DEQ to see where this stands? We need to know what the issue is, and have a reasonable response for the company. If there is something the DEQ can do to help the company comply, etc. we can help connect the players. We can get contact details from Mike if it gets to that point. At this point, we just need a better understanding of where things stand so we can communicate with the company.[27]

July 17, 2012 – AQD Division Chief Vincent Hellwig spoke with Severstal outside counsel Scott Dismukes of Pittsburgh, PA.[28] The notes indicate discussion of a number of issues, including the need for Severstal to commit to a schedule to correct ongoing violations. The notes also indicate discussion of whether the new PTI would be grandfathered against the 1-hour SO_2. The notes state:

[I]t was implied that to start the permitting process over would somehow expose Severstal to regulations for SO_2 that were not in place at the time of the permit application. I informed Scott that the 1 hr. SO_2 NAAQS preceded the permit application and that we viewed the application as a "fix-up" to a prior permit.

August 9, 2012 – DEQ notes in its enforcement chronology:

To date, no action has been taken to address fallout violations. Opacity issues at the BOF, including the ESP, are ongoing. Additionally, recent data obtained from the ESP continuous opacity monitor seems to indicate ongoing violations of the state

[27] **Ex 21**, MEDC email of 6/22/12 (in Q&A).

[28] **Ex 22**, Hellwig notes on Telephone Discussion with Scott Dismukes dated July 2012.

> *and federal opacity regulations which were not/have not been reported or addressed by Severstal.*[29]

August 14, 2012 – Amy Banninga of MEDC again writes to DEQ indicating that "The boys from Pittsburgh just gave me another call." Presumably this refers to Scott Dismukes and another Severstal outside lawyer. Banninga poses a series of questions on their behalf and suggests "Maybe we need to force bi-weekly phone calls to stay aligned?"[30]

August 16, 2012 – DEQ responds to the MEDC questions. [31] The response includes the following findings:

> *"Severstal's equipment has not and currently cannot operate in compliance with either the rules of the department or the Clean Air Act."*
>
> *"It is clear and the facility has openly admitted that there has been total disregard for the maintenance of the ESP and for the air quality requirements."*
>
> *"This is by far the most egregious facility in the state."*

Division Chief Hellwig states in forwarding the response:

> *Attached are the responses to the questions that were raised concerning Severstal. As you will see, we [are] beyond the limit of time to act on a technically complete permit. Failure to act on this permit violates our own rules. We have but one action available and that is to deny this permit if it is not withdrawn.*[32]

September 10, 2012 – MEDC's Amy Banninga sends an email and task list to AQD upper management, Severstal's environmental manager and in-house counsel, and the outside counsel from Pittsburgh. The tone and content of the email suggests MEDC is now engaged in directing or coordinating the permit process on Severstal's behalf. The email sets a meeting, assigns tasks, and sets deadlines both for Severstal and for DEQ.[33]

---

[29] **Ex 16,** Lamb and Koster, MDEQ Enforcement Timeline (August 14, 2012).

[30] **Ex 23**, MDEQ August 2012 Q and A with MEDC.

[31] **Ex 23**, MDEQ August 2012 Q and A with MEDC.

[32] *Id.*

[33] **Ex 24**, MEDC Task List.

September 12, 2012 – Severstal submits a "grandfathering analysis," which was one of the items on MEDC's task list.[34] The primary authority Severstal offers for why it should be grandfathered from meeting current Clean Air Act requirements is a draft EPA guidance memo from 1985 that was never finalized by the agency and subsequently disclaimed. The grandfathering analysis asserts that if Severstal's legal position is not accepted by DEQ, "future operation of the Dearborn facility may no longer be viable." Severstal offers a number of "voluntary projects" at its facility that will "help DEQ achieve improvements in ambient air quality if DEQ will work with Severstal to see the 182-05C through to completion and issuance with all appropriate and necessary permit conditions." Those projects do not appear to be included in draft PTI #182-05C, however.

September to December 2012 – DEQ issues four more LOVs to Severstal, for opacity violations, lead and manganese violations, and failure to inspect, keep records, properly maintain and operate equipment.[35]

January 2013 – EPA lowers the NAAQS for $PM_{2.5}$ annual concentration to 12 μ/m^3.[36] A determination about whether to designate the neighborhood as attainment or non-attainment under the new standard will be made in December 2014. In 2012 and 2013, the Dearborn 1 monitor registered an annual PM 2.5 concentrations that are still highest in the state.[37]

January to May 2013 – DEQ issues three more LOVs and EPA issues an NOV to Severstal. Violations include failure to conduct inspections, failure to perform preventative maintenance, failure to maintain records, failure to properly maintain and operate the ESP, 1,528 hourly exceedances of the 10% opacity limit at the BOF based on the continuous monitoring, and 1,660 exceedances of the 20% opacity limit from the BOF ESP stack from based on the COMS.[38]

February 2013 – DEQ and Severstal sign an extension agreement allowing Severstal additional time to complete the permit application process for PTI #182-05C.

July 25, 2013 – EPA designates a portion of Wayne County that includes Severstal and the South End neighborhood of Dearborn non-attainment for the one-hour SO_2 NAAQS.

---

[34] **Ex 25**, Severstal grandfathering analysis.

[35] **Ex 26**, 2012 LOVs.

[36] Final Rule on National Ambient Air Quality Standards for Particulate Matter, 78 Fed Reg 3086-3287 (January 15, 2013).

[37] **Ex. 27**, October 31, 2013 letter from MDEQ director Dan Wyant to EPA Region V, available at: http://www.epa.gov/pmdesignations/2012standards/rec/r5mirec1.pdf (last viewed March 27, 2013); **Ex** 10, DEQ PM2.5 Annual Data Summary (updated 10/1/2013).

[38] **Ex 28**, 2013 LOVs.

August 29, 2013 – EPA re-designates the Detroit-Ann Arbor area as attainment for the prior annual NAAQS for $PM_{2.5}$ of 15 μ/m^3.[39]

September 20, 2013 – Severstal submits its updated application for PTI #182-05C.

February 12, 2014 – MDEQ notices for public comment a Draft Permit that would increase permitted emissions as shown in Table 1, below. The Draft Permit is characterized as a permit "correction" entitled to legal and regulatory grandfathering. Specifically, MDEQ proposes to review the permit according to laws and regulations existing in October 2007 and compare pollutant emission increases against 2001-2001 (pre-2007 upgrade) levels. However, relative to PTI#182-05B, the application proposes significant increases in permitted emissions at numerous emissions units, as shown in Table 1.

Table 1[40]

Pollutant	Source	Current Emissions Limit		Stack Test Result	Proposed New Emissions Limit		Increase (tpy, *except * lb/yr)*
		lb/hr	***tpy***	**lb/hr**	**lb/hr**	***tpy***	
Particulate Matter (PM)	B Blast Furnace Stoves						
	B Blast Furnace Casthouse Baghouse	5.59	*24.48*		6.1	*26.72*	2.23
	C Blast Furnace Stoves	14.6	*63.95*		6.98	*30.57*	-33.38
	C Blast Furnace Casthouse Baghouse	11.17	*48.92*		13.87	*60.75*	11.83
	Desulfurization Baghouse	2.09	*9.15*		7.7	*33.73*	24.57
	BOF ESP	50.94	*223.12*		62.6	*274.19*	51.07
	BOF Roof Monitor		*15.88*			*61.90*	46.02
	BOF Baghouse	7.75	*33.95*		15.6	*68.33*	34.38
	Combined B/C Roof Monitors		*19.93*			*87.41*	67.48
	TOTAL INCREASED PM:						**201.98**

[39] 78 Fed Reg 53272-53275.

[40] Current emissions limits, stack tests, and proposed new emissions limits derived from Public Participation Documents for Severstal Dearborn, LLC – Permit Application Number 182-05C (February 12, 2014), Fact Sheet, Tables 1, 3, 6.

PM10	B BF Casthouse Baghouse	2.85	*12.48*		7.6	*33.29*	20.81
	C BF Stoves	14.16	*62.02*	9.78	19.72	*86.37*	24.35
	C BP Casthouse Baghouse	5.7	*24.97*	8.13	18.24	*79.89*	54.93
	Relading Roof Monitor		*3.22*			*3.60*	0.38
	Desulfurization baghouse	1.55	*6.79*	1.48	3.6	*15.77*	8.98
	Desulfurization roof monitor		*6.88*		24.38	*106.78*	99.90
	BOF ESP	37.7	*165.13*	18.19	47.5	*208.05*	42.92
	BOF Roof (fugitives)		*7.25*			*28.30*	21.05
	BOF Baghouse	3.35	*14.67*	6.56	17.71	*77.57*	62.90
	Combined B/C BF casthouse fugitives (roof monitors)		*10.16*			*15.04*	4.88
	Combined B/C stoves	14.16	*62.02*		27.84	*121.94*	59.92
	TOTAL INCREASED PM10:						**401.02**
Carbon monoxide (CO)	BOF ESP	3,057.40	*13391.41*	3237.00	7048.00	*30870.24*	**17478.83**
Sulfur dioxide (SO_2)	B-BF Casthouse Baghouse	6.91	*30.27*		71.9	*314.92*	284.66
	B-BF Stove	70.9	*310.54*		38.75	*169.73*	-140.82
	C-BF stove	275.1	*1204.94*		193.6	*847.97*	-356.97
	C-BF casthouse baghouse	23.03	*100.87*	128.28	179.65	*786.87*	686.00
	TOTAL INCREASED SO_2:						**472.86**
NOx	C-BF casthouse baghouse	2.45	*10.73*		5.46	*23.91*	**13.18**
Volatile Organic Compounds (VOC)	C-BF casthouse baghouse	6.77	*29.65*	4.22	9.92	*43.45*	13.80
	Combined B/C BF baghouses		*27.00*			*49.42*	22.42
	TOTAL INCREASED VOC:						**36.22**
Lead (Pb)	C-BF casthouse baghouse	0.00015		0.001	0.0077		0.00755*
	Desulfurization baghouse	0.000278		0.000539	0.0016		0.001322*
	Combined B/C BF Casthouse baghouses	0.000223			0.00753		0.007307*

	Combined B/C Roof monitors	0.000087		0.0064	0.006313*
	TOTAL INCREASED Pb (lb/hr):				**0.022492***
Manganese (Mn)	C-BF casthouse baghouse	0.00256	0.01897	0.042	0.03944*
	Desulfurization baghouse	0.00064	0.00395	0.013	0.01236*
	Combined B/C Furnace Roof Monitors	0.006		0.0448	0.0388*
	Combined B/C Furnace baghouses	0.00385		0.0597	0.05585*
	TOTAL INCREASED Mn (lb/hr):				**0.14645***
Mercury (Hg)	C-BF stoves	0.000414	0.000929	0.003	0.002586
	BOF baghouse & ESP	0.0125		0.0086	-0.0039
	TOTAL INCREASED Hg (lb/hr):				**-0.001314**

The application also proposes a variety of other substantive changes to the processes, assumptions, and equipment at Severstal's Dearborn facility. As discussed in more detail below, these include:

- After-the-fact permitting of six large emergency engines that were previously installed without a permit.

- Installation of low NO_x burners at the B stoves.

- Reallocation of SO_2 emissions such that all of the SO_2 currently permitted at both the B and C Blast Furnaces could be emitted solely at the C Blast Furnace.

- An increase in allowed emissions at the BOF ESP stack and desulfurization baghouse due to changes in the calculation of their maximum flow rates from rates based on 20 and 40 minute batches to rates based on continuous operation.

- An increase in the assumed capture efficiency of the BOF baghouse.

February 24, 2014. Despite the earlier correspondence from DEQ on the permit being a modification and not a correction, the draft DEQ Staff evaluation begins by stating:

> *Proposed update to permit to install (PTI) 182-0513: This correction is to update emission factors of PM less than 10*

microns in diameter (PM10), lead (Pb), manganese (Mn), mercury (Hg), and carbon monoxide (CO) from the previous application based on recent emission test data for "C" Blast Furnace (EUCFURNACE), Basic Oxygen Furnace (EUBOF), and Desulfurization (EUDESULFURIZATION.[41]

COMMENTS

I. Legal and Regulatory Background.

A. Prevention of Significant Deterioration and Nonattainment New Source Review Under the Clean Air Act.

The Prevention of Significant Deterioration (PSD) program established by the federal Clean Air Act (CAA or Act), which applies to proposed air emissions in areas designated as "attainment" for certain criteria pollutants regulated by the Act, is designed to ensure that major or significant increases of air pollution are not permitted unless the source proposing to increase its emissions meets certain requirements.[42]

A source proposing significant increases in permitted emissions must comprehensively analyze the air quality impacts of the proposed increases, and it must demonstrate that the increases will not "cause or contribute" to exceedances of applicable National Ambient Air Quality Standards ("NAAQS") for "criteria pollutants" or of certain other air quality standards.[43] In addition, the source must demonstrate that it will use Best Available Control Technology ("BACT") to control the emission of "each pollutant subject to regulation under [the CAA] emitted from, or which results from, the facility" at issue.[44] The primary purpose of the PSD program, generally, is "to protect public health and welfare from any actual or potential adverse effect which . . . may reasonably be anticipate[d] to occur from air pollution . . . notwithstanding attainment and maintenance of all [NAAQS]."[45]

---

[41] **Ex. 29**, MDEQ staff evaluation, p 1**.**

[42] See generally 42 USC § 7470 *et seq.*; 40 CFR § 52.21 *et seq.*

[43] See 40 USC § 7475(a)(3); 40 CFR § 52.21(k).

[44] 40 USC § 7475(a)(4).

[45] 40 USC § 7470(1).

Where a source proposes to increase permitted emissions of a pollutant for which the surrounding area has been designated as "nonattainment" under the relevant NAAQS, the CAA imposes more stringent conditions on the permitting process.[46] Among other things, a Nonattainment New Source Review ("NNSR") permit must ensure that the source employs technology to ensure the lowest achievable emission rate ("LAER"),[47] which is a more stringent standard than the BACT demonstration required for PSD permits in attainment areas.

B. Permits to Install Under Michigan Law.

Under the CAA, each state is required to submit an adequate "State Implementation Plan" (SIP) ensuring that the state will faithfully carry out the purpose and goals of the federal statute. A state SIP must be at least as stringent as the CAA and its federal implementing regulations.[48] Michigan's SIP, which has been approved by EPA and is therefore federally enforceable,[49] is codified as Part 55 of the Michigan Natural Resources and Environmental Protection Act ("NREPA"), MCL 324.101 *et seq.*, and by implementing regulations promulgated by MDEQ. The Act's PSD and NNSR provisions are governed in Michigan by the permit to install program set forth in Section 5 of Part 55.[50] While MCL 324.5505(4) authorizes the MDEQ to exempt certain sources or source modifications from the requirement to obtain a permit to install under Part 55, for example, the same subsection simultaneously prohibits the agency from exempting any source or source modification that meets the definition of a major source or major modification under the federal Clean Air Act.

Under the administrative regulations that implement Part 55, the term "Permit to Install" is specifically defined as "a permit issued by the department authorizing the construction, installation, relocation, or alteration of any process, fuel-burning, refuse burning, or control equipment in accordance with approved plans and specifications."[51] As stated in an MDEQ guidance document, *Permit to Install – Determining Applicability Guidebook*, "[i]t is important not to confuse the Permit to Install with Michigan's other air-permitting program: the Renewable

[46] See generally 42 USC § 7501 *et seq.*

[47] 42 USC § 7503(a)(2).

[48] See 42 USC § 7416.

[49] See 75 Fed Reg 14352.

[50] See MCL 324.5505.

[51] Mich Admin Code R 336.1116(f).

Operating Permit (ROP)."[52] Whereas PTIs are ultimately issued pursuant to the requirements of Title I of the CAA, ROPs are separately required by Title V of the Act.

II. MDEQ Cannot and Should Not Shield Severstal From Current Air Quality Regulations.

In the public notice document issued by MDEQ for purposes of the Draft Permit, the agency states that "[t]his proposal is subject to the federal Prevention of Significant Deterioration rules and regulations for a major modification to an existing major stationary source based upon the new best available control technology analysis of emissions of sulfur dioxide and carbon monoxide."[53] In other words, the public notice document characterizes Severstal's proposal as 1) involving a major modification to an existing major stationary source, and 2) invoking review under the rules and regulations applicable to new source review determinations. In the accompanying Fact Sheet, however, MDEQ has proposed to adopt a very different position, long advocated by Severstal and its supporters, that 1) this permit action involves a mere "correction" to an existing permit, and 2) that any and all changes to new source review regulations (including both PSD and NNSR) between October 2007 and the present are not applicable to MDEQ's review of the correction.[54] Commenters urge MDEQ to reject these positions, which are legally unsupportable, factually incorrect, logically untenable, and generally based on the exercise of discretion and solicitude for Severstal that is unwarranted under the circumstances.

A. Factual Background Regarding Severstal's Request for a Grandfathered Permit Correction.

As identified in the permit chronology set forth above, Severstal has long sought to have MDEQ treat the company's proposed permit changes as a "correction," a request the agency originally denied. However, Severstal has continued to characterize its proposed permit revisions as an "administrative 'paper correction.'"[55] When the company did submit a new

[52] MDEQ, *Permit to Install – Determining Applicability*, October 2005, available at http://www.michigan.gov/documents/deq/deq-ess-caap-pti-determiningapplicabilitygdbk_281875_7.pdf (last viewed March 25, 2014), p 1-2.

[53] Public Participation Documents for Severstal Dearborn, LLC – Permit Application Number 182-05C (February 12, 2014), Notice of Air Pollution Comment Period and Public Hearing.

[54] See Fact Sheet, p 2.

[55] **Ex 30**, Severstal Dearborn, SO_2 "White Paper" (July 19, 2010), p 5.

permit application on December 13, 2010[56] – two years after it first determined that emissions at its facility were regularly exceeding the emission limits in its existing Permit to Install – Severstal emphasized that it was "not requesting to make any physical changes, changes to the method of operation, or increase in production rate/throughput for the equipment at the facility."[57] Severstal's claim in this regard is a constant refrain in the record, and is repeated in MDEQ's February 12, 2014 Fact Sheet.[58]

Indeed, Severstal never abandoned its view that the proposed changes it seeks to make require only a permit "correction." Presumably based upon Severstal's contention that its permit application involved only a "correction" to its existing PTI, the company has urged MDEQ not to review the company's proposals under current laws and regulations, but instead under the laws and regulations that existed at the time the existing PTI was issued or at the time construction under that PTI was complete in October 2007.

The commenters are concerned about indications that the MDEQ may have accepted Severstal's premise that the company's proposals warranted only a "correction" and are therefore entitled to a netting analysis that reaches back more than a decade and to legal and regulatory grandfathering that reaches back nearly seven years. Three weeks after MEDC's email to Ms. Dolehanty, Air Quality Division Chief G. Vincent Hellwig's telephone notes indicate that he assured Severstal's legal counsel that the changes being sought by the company constituted "a 'fix-up' to a prior permit" and that, as such, new and more stringent environmental regulations would not apply to MDEQ's review.[59]

During the late summer of 2012, MDEQ's Air Quality Division apparently concluded that Severstal's permit application needed either to be denied or withdrawn by the Company.[60] Subsequently, during further negotiations between MDEQ, Severstal, and MEDC, Severstal's attorneys were assigned with performing a "regulatory grandfathering analysis" by September of 2012.[61] When Severstal provided MDEQ with the grandfathering analysis, the company pleaded

[56] See December 13, 2010 Permit to Install Application. Severstal later submitted an updated application on September 20, 2012, pursuant to an application review deadline extension agreement with MDEQ.

[57] See December 13, 2010 Permit to Install Application, Cover Letter, p 1.

[58] Fact Sheet, p 2.

[59] **Ex 22**, Hellwig notes on Telephone Discussion with Scott Dismukes dated July 2012.

[60] **Ex. 23**. Vince email to Sygo, forwarding Lynn Fiedler email

[61] **Ex. 23**. (MEDC Q&A)

with the agency not to deny or require withdrawal of the permit application.[62] In its analysis, Severstal urged MDEQ to recognize the validity of what the company called an "established permit correction process," but it also identified two potential alternative paths forward: a consent decree[63] or a Renewable Operating Permit compliance plan.[64] On February 1, 2013, however, Severstal and MDEQ entered into an agreement to extend the time for reviewing the company's existing permit application.

B. A Grandfathered Permit Correction Would Have Enormous Consequences for Air Quality in Southeast Michigan.

The two fundamental positions that MDEQ proposes to adopt in characterizing this permit action – that it is a permit "correction" and that legal and regulatory grandfathering is therefore appropriate – are of grave concern to commenters, and they would have far-reaching consequences for efforts to improve air quality in southeast Michigan. Essentially, Severstal has proposed that its emissions increases be reviewed according to the fiction that it is now 2005 or 2006, for netting purposes, and that it is now 2007 for purposes of legal and regulatory review. If MDEQ ultimately adopts Severstal's proposal, it will not only be exceeding its authority and abusing its discretion, but it will be to the substantial detriment of air quality in southeast Michigan and the health of the communities located near the Dearborn facility. So, too, would Severstal's proposal, if adopted, substantially frustrate the CAA's fundamental goal of reducing air pollution over time.

First, and as discussed in more detail below, Severstal's characterization of its proposed increase in permitted emissions as a "correction" results in what is essentially a meaningless netting analysis. By netting its proposed increase in permitted emissions against the company's actual emissions nearly fifteen years ago, in 2001, Severstal suggests that the Draft Permit is actually a decrease in permitted emissions of a number of pollutants.[65] But if the company's

[62] **Ex. 25**. Grandfathering Analysis

[63] Severstal had previously urged MDEQ to enter into a consent decree to address the company's ongoing permit violations and potential "corrections" to the permit, and the agency declined to do so at that time. See **Ex. 31**, emails regarding Consent Decree.

[64] In this analysis, Severstal stated that it was "willing to offer several voluntary projects to help DEQ achieve improvements in ambient air quality" – including additional SO_2 controls and efforts to curb fallout and manganese emissions – "if DEQ will work with Severstal to see the 182-05C through to completion and issuance with all appropriate and necessary permit corrections." The Draft Permit, however, makes no mention of these conditions, and it is unclear whether Severstal has indeed committed to such projects as a condition of permit approval.

[65] See Fact Sheet, Table 5.

proposed increases in permitted emissions were properly analyzed as an application for a new permit to install, and the proposed permitted emissions increases were netted against the permitted emission levels under its existing PTI, Severstal's proposal would represent a significant increase in permitted emissions of particulate matter and many other pollutants.[66] The difference between these two approaches is critical, principally because a permit "correction" would allow Severstal to "net out" of any requirement to perform a current PSD analyses, including current BACT, Lowest Achievable Emission Rate ("LAER"), and/or BACT for toxics (T-BACT)) analysis for particulate matter, coarse particulate matter (PM10), presumably fine particulate matter (PM2.5),[67] sulfur dioxide, carbon monoxide, and manganese, or to properly model air quality impacts modeling for a number of pollutants regulated by the CAA.

Second, Severstal's request that its proposed increases in permitted emissions be "grandfathered," for purposes of new source review, would allow the company to circumvent nearly seven years of important and substantial developments in the regulation of air pollution. Even though the Company could not entirely "net out" of the required PSD analysis for increases in emissions of SO_2 or Carbon Monoxide ("CO"), despite its characterization of the permit as a "correction," the application of grandfathering in this case would nonetheless allow the Company to escape compliance with the more stringent PSD analyses required by current law. That is because, as Severstal has recognized in correspondence with MDEQ,[68] the CAA and Michigan's air pollution laws now regulate several pollutants that were unregulated in October 2007, under a host of regulations that did not then apply. For example:

- Without the proposed grandfathering, Severstal's facility would be subject to PSD requirements for carbon dioxide ("CO_2") and other greenhouse gases (collectively, "GHGs"), including a new Best Available Control Technology ("BACT") analysis for these newly-regulated pollutants. As a result of the proposed grandfathering approach, however, the Draft Permit does not include

[66] See Table 1, above.

[67] The existing PTI 182-05B does not include PM2.5 limits because at the time it was issued, PM2.5 was regulated through PM10 levels under the EPA Surrogate Policy. *See DEQ Fact Sheet*, Table 6. The stack tests demonstrate very high PM2.5 levels, the increases appear "significant" (more than 10 tons per year), and Severstal certainly would be subject to BACT for PM2.5.

[68] See **Ex. 25**, grandfathering analysis.

any data about Severstal's GHG emissions or an evaluation of the PSD requirements for GHGs.[69]

- Without the proposed grandfathering, the facility would be subject to current PSD requirements for Sulfur Dioxide ("SO_2"), including a 1-hour SO_2 NAAQS. Because Severstal's facility is located in an area recently designated by the EPA as "nonattainment" for SO_2, it would also be subject to standards for NNSR, which require consideration and implementation of more stringent emissions control technology than otherwise required under a BACT analysis for attainment areas. As a result of the proposed grandfathering approach, however, the Draft Permit contains only a re-evaluation of Severstal's previous BACT analysis for SO_2, and states that Severstal "is not required to go through non-attainment new source review for SO_2."[70]

- Without the proposed grandfathering, the baseline emissions used in a PSD or NNSR analysis would be different than the baseline emissions that existed before Severstal's existing Permit to Install ("PTI") was issued. As discussed elsewhere in these comments, the use of new baseline emissions would require PSD and NNSR analyses for various air pollutants that are not reflected in the Draft Permit. Ultimately, this would likely result in requirements that Severstal take additional steps to reduce emissions at its facility. As a result of the proposed grandfathering approach, however, the Draft Permit allows Severstal to circumvent those requirements and to obtain a new PTI without any meaningful emissions reductions.

The preceding list is not an exhaustive catalogue of the laws and regulations that would otherwise apply to the Draft Permit "but for" Severstal's grandfathering request. Instead, this brief list is intended simply to show how much is at stake for air quality in Michigan and the

[69] Even if a grandfathered permit correction were allowed in this case, the Draft Permit would still be required to contain a BACT analysis for CO_2. The CAA requires a BACT analysis of each pollutant "subject to regulation" by the Act, 40 USC § 7475(a)(4), including regulation under the monitoring and reporting requirements included in 40 CFR Chapter I, Subchapter C, see 43 Fed Reg 26388, 26397 (June 19, 1978). In 1993, therefore, CO_2 became a "regulated pollutant" under the Act as a result of EPA's promulgation of monitoring and reporting requirements for that pollutant. See, e.g., 40 CFR §§ 75.1, 75.10(a)(3). Even if no CO_2 air quality standard or emissions limitation existed in on the date to which Severstal seeks to be grandfathered, CO_2 was nonetheless a regulated pollutant on that date, and a BACT analysis for CO_2 is now required as part of any permit to install.

[70] See Fact Sheet at p 11.

communities near the facility as MDEQ considers whether or not it has the discretionary authority to grandfather widespread increases in permitted emissions, or whether, even assuming it has such authority, the exercise of such discretion is appropriate under the circumstances. It is also intended to demonstrate several reasons why, because Severstal's proposed grandfathering is not permitted and not appropriate in this case, the Draft Permit must not be issued in its present form.

C. The Draft Permit Cannot be Characterized as a Permit "Correction," and Severstal Cannot be "Grandfathered."

As set forth above, the record demonstrates that Severstal has tireless advocated for a grandfathered permit correction, so as to avoid a host of legal and regulatory requirements that would otherwise apply to its proposed increases in permitted emissions. Yet there is no legal or regulatory basis, at least under the circumstances of this case, for such approach. Severstal's proposed emissions increases cannot be approved and permitted by MDEQ until all aspects of the proposal are properly analyzed as an application for a new PTI, and properly vetted under current law.

1. *There Is No Legal Basis for a Grandfathered Permit Correction.*

One fundamental problem with Severstal's characterization of the Draft Permit – whether it is characterized as a "correction," "fix-up," "update," or "revision" – is that is serves as the basis for efforts to downplay the significant differences between the Draft Permit and Severstal's existing permit, and to allow Severstal to circumvent numerous PSD requirements by falsely netting out of those requirements. Another fundamental problem is that Severstal's characterization serves as the basis for a corresponding claim, which MDEQ now proposes to adopt, that changes in Air Pollution laws and regulations between October of 2007 and the present are not applicable to the agency's review of the current permit. There is no legal basis, however, for characterizing the Draft Permit as a mere "correction."

a. MDEQ Has No Authority to "Correct" a Permit to Install.

As discussed in more detail below, Severstal has in fact proposed significant increases in permitted emissions at many of its emissions units, and it has also proposed substantial changes to plant processes and production, control equipment assumptions and installation, and other items that directly contradict the company's characterization of the proposed changes as a mere "correction" entitled to grandfathering. But even if Severstal's proposed changes do not involve the installation, construction, reconstruction, relocation, or modification of any source, process, process equipment, or environmental controls at the facility, a more fundamental problem arises. Specifically, if the company's characterization of its proposal is accurate, then the basic legal and

regulatory standards governing this case make clear that a Permit to Install is not a proper means of affecting the changes sought by Severstal.

It is well established that administrative agencies have no inherent authority, and that their powers are limited to those expressly granted by statute.[71] An agency's power is limited to that granted by "clear and unmistakable language, since a doubtful power does not exist,"[72] and "powers specifically conferred on an agency cannot be extended by inference."[73] Where the legislature authorizes an agency to implement its statutory authority through administrative rules, moreover, the agency is bound by the rules that it so promulgates.[74]

As explained above, MDEQ is reviewing Severstal's proposal under Michigan's permit to install program, established by Part 55 of NREPA. Part 55 generally governs the MDEQ's authority to regulate and control air pollution, and MCL 324.5503(b) specifically authorizes the agency to

> Issue permits for the construction and operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

MCL 324.5505(1), in turn, provides that

> Except as provided in subsection (4), a person shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment without first obtaining from the department a permit to install, or a permit to operate authorized pursuant to rules promulgated under subsection (6) if applicable, authorizing the conduct or activity.

Read together, these statutory provisions authorize MDEQ to issue Permits to Install, but only where an applicant proposes to "install, construct, reconstruct, relocate, alter, or modify any

---

[71] *Oshtemo v Kalamazoo County Road Comm'n*, 302 Mich App 574, 584; 841 NW2d 135 (2013); *In re Detroit Edison Co*, 296 Mich App 101, 109-10; 817 NW2d 630 (2012); *Herrick District Library v Library of Mich*, 293 Mich App 571, 574; 810 NW2d 110 (2011).

[72] *Herrick*, 293 Mich App at 582, quoting *Mason County Research Council v Mason County*, 343 Mich 313, 326-27; 72 NW 2d 292 (1955).

[73] *Id.* at 582-83.

[74] See *Kassab v Acho*, 150 Mich App 104, 112; 388 NW2d 263 (1986); *Micu v City of Warren*, 147 Mich App 573, 584; 382 NW2d 823 (1985); *Boyce v Grand Rapids Asphalt Paving Co*, 117 Mich App 546, 552; 324 NW2d 28 (1982).

process or process equipment." Indeed, Part 55 states that "the permit to install program is applicable to each new or modified process or process equipment" only, and not to facilities that claim, as Severstal does, that it is in need of permit "corrections" that do not involve "an installation, construction, reconstruction, relocation, or modification" or any part of the facility. Moreover, the phrase "Permit to Install" is a term of art under the administrative regulations implementing Part 55, which define the term as "a permit issued by the department authorizing the construction, installation, relocation, or alteration of any process, fuel-burning, refuse burning, or control equipment in accordance with approved plans and specifications."[75] To expand the regulatory definition of "permit to install" and to issue such permits for activity that Severstal claims is not contemplated by Part 55 or by its implementing rules would not only be contrary to law, but it would wreak havoc throughout the remainder of the relevant regulations by rendering every reference to a "permit to install" subject to MDEQ's discretion.

Yet here, Severstal has argued that the proposed changes to its existing emission limitations "would not be considered an installation, construction, reconstruction, relocation, or modification."[76] MDEQ's Fact Sheet repeats the claim made elsewhere by Severstal that the Draft Permit would not involve "any physical changes, changes to the method of operation, or increase in annual production rate/throughput at the stationary source beyond what was approved in" the company's existing permit. If these claims were true, MDEQ simply would have no statutory or regulatory authority to accomplish the proposed emissions limit changes via a Permit to Install, which is defined only as a "as permit issued by the department authorizing the construction, installation, relocation, or alteration of any process, fuel-burning, refuse burning, or control equipment in accordance with approved plans and specifications." Taking Severstal's claims at face value, in other words, a Permit to Install is not the proper vehicle for accomplishing the company's goals.

Although Part 55's implementing regulations include a mechanism for revoking an existing permit to install and allowing an applicant to submit a new version, as discussed in more detail below, the current Draft Permit is clearly not being reviewed under that mechanism, as Severstal's existing permit to install has not been revoked.[77] Because an agency is limited to those powers expressly granted to it by a statute (or by a properly promulgated legislative rule), and because a "doubtful power does not exist," the draft Permit to Install here is an improper vehicle for accomplishing the type of minimal "correction" that Severstal claims it is seeking. Indeed, "[t]he extent of the authority of the people's public agents is measured by the statute

[75] Mich Admin Code R 336.1116(f).

[76] **Ex. 17**, March 9, 2009 Letter from James E. Earl to Bryce Feighner, p 2.

[77] See Mich Admin Code R 336.1201(8).

from which they derive their authority, not by their own acts and assumption of authority."[78] MDEQ staff at first properly recognized the agency's lack of authority to "correct" a permit to install, as noted above. As such, Severstal's proposed increases in permitted emissions must be reconsidered according to one of the established regulatory pathways described below.

b. There are at Least Two Existing, Alternative Regulatory Pathways for Enacting the Changes Sought by Severstal.

Not only is Severstal asking MDEQ to act under an authority it does not possess, but the company is simultaneously seeking to divert MDEQ from acting under alternative regulatory authority that it does possess. Severstal asks MDEQ to issue a grandfathered permit correction to an existing permit to install, in the absence of statutory or regulatory authority to do so, while asking the agency not to proceed along one of three established regulatory pathways. The purpose of this choice appears to be an effort by Severstal to avoid the application of current laws and regulations governing air pollution, but this is, at least under Michigan law, an impermissible means to an impermissible ends. Indeed, none of the following established regulatory pathways would allow for the legal and regulatory grandfathering that Severstal has urged MDEQ to apply. Ultimately, the existence of at least two alternative and more appropriate regulatory pathways serves to emphasize the unusual solicitude that MDEQ has shown Severstal in pursuing a grandfathered permit "correction" that it has no authority to pursue.

i. Revoke and Resubmit

Perhaps not surprisingly, Part 55's implementing regulations contemplate just the type of scenario that gave rise to the Draft Permit in the first place. According to Section 8 of Rule 201:

> If evidence indicates that the process or process equipment is not performing in accordance with the terms and conditions of the permit to install, the department, after notice and opportunity for a hearing, may revoke the permit to install consistent with section 5510 of the act. Upon revocation of the permit to install, operation of the process or process equipment shall be terminated. Revocation of a permit to install is without prejudice and a person may file a new application for a permit to install that addresses the reasons for the revocation.[79]

The threshold requirement of this provision – that "evidence indicates that the process or process equipment is not performing in accordance with the terms and conditions of the permit to install"

[78] *Sittler v Mich College of Mining & Tech Bd of Control*, 333 Mich 681, 687; 53 NW2d 681 (1952) (quoted in *Mich Educ Ass'n v Secretary of State*, 489 Mich 194, 225-26; 801 NW2d 35 (2011)) (emphasis added).

[79] Mich Admin Code R 336.1201(8).

– is exactly what happened here. Under such circumstances, MDEQ could revoke Severstal's existing permit to install, subject to providing for notice and a hearing, and allowed for the filing of a new permit application. Although this provision clearly states that the department "may" take such action under the contemplated circumstances, and therefore was not required to do so, this provision nonetheless represents a valid regulatory pathway by which MDEQ could address Severstal's alleged inability to comply with its existing permit. In the absence of an alternative PTI regulation authorizing increases in emission limits, no such option is available.

ii. Treatment as New PSD Permit Under Existing Law

MDEQ could also review Severstal's application for increased levels of permitted emissions as if it were any other application for a new permit to install. Such a permit would – like all applications proposing to increase permitted emissions above the PSD significance threshold – be subject to a new source review analysis under current laws and regulations. This is the most obvious and most directly applicable regulatory pathway under these circumstances, especially because, as discussed elsewhere in these comments, Severstal has proposed numerous substantial revisions to its emissions limitations along with various other changes to equipment and processes at the Dearborn facility. Because Severstal's proposal has not been analyzed by MDEQ for what it actually is – a new permit for significant new increases in permitted emissions – the Draft Permit cannot now be issued without starting over again under current laws and regulations.

c. <u>Non-Binding Federal Guidance Cited by Severstal Cannot Give MDEQ Authority it Does Not Have, and, in Any Event, Such Guidance Would Not Allow for a Permit Correction Under These Circumstances.</u>

In a letter sent by Severstal to MDEQ in September of 2012, the company argued that U.S. EPA guidance "provides clear support for" the notion that its existing permit can simply be "corrected," and that any review of such a correction can be grandfathered. But this suggestion is plainly wrong, because MDEQ itself has no authority for such a course of action. And even if it did, the non-binding federal guidance cited by Severstal makes clear that various prerequisites must be met before even EPA can issue a permit correction – a correction is a discretionary action appropriate in only certain circumstances – and those prerequisites have not been satisfied in this case.

i. MDEQ Has No Authority to Issue a Grandfathered Permit Correction.

The first problem with Severstal's argument is that, as discussed above, MDEQ has no statutory or regulatory authority to "correct" an existing permit to install, much less to allow the

circumvention of current law pertaining to new source review. Notwithstanding any informal EPA policy that would give the federal agency discretion to issue a grandfathered permit correction, non-binding EPA guidance cannot give MDEQ authority that is not otherwise granted to it by the clear and unmistakeable language of a statute or properly promulgated administrative rule.[80] Indeed, Part 55 and its implementing regulations do not contemplate the correction of existing permits to install, regardless of whether EPA has informally adopted a more lenient policy.[81] This is made especially clear by the fact that, as also discussed above, MDEQ has chosen not to proceed according to established regulatory authority that does apply in these circumstances. This includes, most notably, MDEQ's authority to revoke a permit to install, and requires submission of a new permit application, when "evidence indicates that the process or process equipment is not performing in accordance with the terms and conditions of the permit to install . . . ."[82]

ii. The Ogden Martin Memorandum Does Not Support Severstal's Position.

Severstal first cites a 1987 EPA memorandum regarding BACT issues at a municipal waste incinerator facility, and argues that this 3-page memo "provides clear support" for merely "correcting" an existing permit to install and thereby ignoring intervening changes in the law and regulation governing air pollution.[83] But Severstal misreads this guidance.

First, the Ogden Martin Memo begins with a statement of its limited scope. Indeed, it first observes that "no final [EPA] policy exists as yet on the more general issue of PSD permit modifications regardless of the status of the source (operating, under construction, etc.) or of the type or magnitude of the change requested."[84] The memo goes on to say that it "addresses only

[80] Note that because EPA guidance documents are not binding on permitting authorities or regulated entities, see, e.g., *Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits Under 40 CFR 52.21(r)(2)*, EPA Memorandum Dated January 21, 2014 ("Page Memo") p 1, n1, they cannot grant MDEQ authority that it does not already possess.

[81] Recall that the CAA allows state SIPs to be more stringent than federal regulations. While federal policy can require a state to apply more stringent regulations, it cannot require a state to apply less stringent regulations.

[82] Mich Admin Code R 336.1201(8).

[83] **Ex. 25**, p 5 [grandfathering analysis], citing U.S. EPA Memorandum, *Request for Determination on Best Available Control Technology (BACT) Issues – Ogden Martin Tulsa Municipal Waste Incinerator Facility*, November 19, 1987 ("Ogden Martin Memo").

[84] Ogden Martin Memo at p 1.

BACT changes for this source and operating sources in similar situations."[85] No matter the weight to be assigned to this guidance document, therefore, it can only be read as applying to BACT changes for sources that fall into a narrow category. The Ogden Martin memo, therefore, says nothing about intervening changes in NAAQS standards, newly regulated pollutants, or nonattainment designations – all of which are factors that must be addressed by the Draft Permit here.

Second, the Ogden Martin Memo states that a permit revision is only warranted if reducing emissions down to the currently-permitted level cannot reasonably be achieved.[86] And even if it cannot lower emissions to the permitted level, a source must, "at a minimum," "investigate and report to the permitting agency all available options to reduce emissions to a lower (if not the permitted) level."[87] This prerequisite for a permit revision, under the Ogden Martin Memo, has clearly not been satisfied here. Among other things, MDEQ staff observed as late as August 2012 that Severstal had not seriously undertaken a review of potential additional emission control options, such as a lime injection system at the facility's ESP.[88] In addition, Severstal had admitted "a total disregard for the maintenance of the ESP and for the air quality requirements," and MDEQ staff has noted that "with proper operation and maintenance, the refurbishing of the ESP now underway would never have been needed."[89] And since Severstal began operating under its existing permit, as discussed elsewhere in these comments, it has been the subject of numerous complaints involving fallout, opacity violations, and odors. In the more than six years that have elapsed since the facility's existing permit was issued, and in the decade since its original PTI was issued, it does not appear that any serious efforts have been made by the company "to reduce emissions to a lower (if not the permitted) level."[90] As discussed elsewhere in these comments, moreover, it is not clear that Severstal cannot reasonably and fully comply with the existing emission limitations for a number of its emission units, rather than request substantial revisions to the limits applicable to so many of those emission units. In addition, although Severstal identified several possible technologies in its September 2012 letter to MDEQ,[91] the Draft Permit does not appear to be conditioned on the company's use of any of those technologies to lower its emissions.

---

[85] *Id.*

[86] Ogden Martin Memo at p 2.

[87] *Id.*

[88] See **Ex. 23**, Fiedler email in Q&A w MEDC.

[89] *Id.*

[90] Ogden Martin Memo at p 2.

[91] **Ex 25**, grandfathering analysis.

Third, any increase in permitted emissions that might be allowed under authority of the Ogden Martin Memo must be capped at the facility's actual tested emissions. Indeed, the source in that case "requested that the permit be revised to reflect the actual measured emissions" of two relevant pollutants. In this case, any correction to the emissions limits of Severstal's existing PTI could not exceed the emission rates measured by Severstal in its 2009 and 2010 stack tests. Yet the Draft Permit in this case would substantially increase Severstal's permitted emissions at many emission units, and that the new emission limits would be far above the actual emission rates measured during stack testing.[92] There is no basis for determining, in this case, that a grandfathered permit correction, allowing significant increases in Severstal's permitted emissions at virtually all of its emissions units, is necessary. The discretionary authority contemplated by the Ogden Martin Memo, to the extent MDEQ even has such authority, cannot be used to raise emission limits to a higher-than-necessary level simply to accommodate Severstal's desire to increase production as a result of improving economic conditions. That is especially true where, as here, nearly ten years have elapsed since many of the existing emission limits were established.

Fourth, the Ogden Martin Memo states that it "is applicable only if EPA finds that the BACT determination in the original permit is inappropriate." It is true that an important basis for Severstal's request to correct its existing PTI is that "the emission factors used in the development of [the existing permit's] emission limits did not accurately reflect the emissions associated with Severstal's operations."[93] Yet the Fact Sheet also states that the emissions factors used to create the limits of the existing permit "were based on the best available data at the time."[94] Whether or not this data ultimately turned out not to be "representative of Severstal's operations as anticipated," the mere fact that emissions factor data may have evolved and/or improved since issuance of the existing permit does not justify a grandfathered permit correction. Indeed, emissions factor data for any number of sources and/or pollutants are likely to improve over time, and if such data improvement were to allow retroactive increases in the emission

[92] Even assuming this discrepancy is due to stack tests being performed while the given emission unit was running at less than full production capacity, a new problem thereby arises: namely, it is patently unreasonable for Severstal to assume that its pollution control equipment will be capable of increasing its efficiency in lockstep with production rates. If Severstal's stack tests were performed at less than full production capacity, in other words, the basic raw data underlying the proposed emission limit increases may once again be flawed, and may once again make it impossible for Severstal to meet even the new limitations when operating at full capacity. For this reason alone, the Draft Permit is flawed and should not be approved without better and more comprehensive stack testing under a wide range of production capacities and conditions.

[93] Fact Sheet at p 2.

[94] *Id.*

limits of existing permits, the goals and purpose of the Clean Air Act and Part 55 would be substantially frustrated. Also important is the fact that Severstal was on notice before issuance of its existing Permit to Install that the analysis underlying that permit's emissions limits was deeply flawed. As set forth earlier in these comments, for example, comments on Severstal's 2005 PTI specifically questioned whether the emission limits proposed in that permit had properly considered increased emissions of the condensable portion of PM2.5, or whether it reflected an adequate effort to protect the surrounding community from manganese emissions. Comments on Severstal's 2007 PTI, too, warned that PM emissions were not properly evaluated, that the facility's CO emissions factors were not justified, and that evaluation of SO_2 controls had been conclusory and limited. As a result, Severstal cannot claim to have been taken by surprise when it "discovered," in 2009 and 2010, that a number of its emissions were not accurately reflected in the permit. Whether or not the emissions limits in Severstal's existing PTI turned out not to reflect the company's actual or desired operations, there is not an adequate basis for finding that flaws in the derivation of those limits now justify a grandfathered permit correction – especially when both Severstal and MDEQ were on notice, at the time, of potential flaws in the underlying analysis.

Fifth, even if a permit "correction" were appropriate under the authority of the Ogden Martin Memo, nothing in that guidance document suggests that legal and regulatory grandfathering is appropriate when analyzing the correction. Although the Odgen Memo does say that reevaluating an existing permit to install "may be warranted" in limited circumstances[95] – indeed, even Severstal acknowledges that the memo simply says there "can be" such a reevaluation[96] – the memo says nothing about legal or regulatory "grandfathering" during such a reevaluation. To the contrary, the Ogden Memo says that "[i]n the process of reevaluating BACT, current BACT technology and requirements must be considered."[97] Moreover, "[i]f a revision to the permit is determined to be appropriate, the revision must also address all other PSD requirements which may be affected by an allowable increase in permitted or newly regulated emissions . . . ."[98] As Severstal has recognized, its operations involve the emission of several pollutants – including PM 2.5 and greenhouse gases – that are "newly regulated" since the issuance of the company's existing Permit to Install. Rather than exempting Severstal from current legal and regulatory developments under the Clean Air Act and Part 55, therefore, the Ogden Martin Memo actually requires those developments to be considered in any revision to

[95] Ogden Memo at p 2. It is also important to note that the Ogden Memo clearly states that enforcement actions, rather than permit revisions, "have and will serve as the primary mechanism in ensuring compliance."

[96] **Ex. 25**, p 5 [grandfathering analysis]

[97] Ogden Memo, p 2.

[98] *Id.* at p 3.

the company's permit. Because Severstal here proposes to increase a number of permitted emissions, any permit "correction" – to the extent MDEQ even has the authority to grant one – must address all PSD requirements that may be affected, and no legal or regulatory grandfathering is allowed.

iii. EPA's 1985 "Revised Draft Policy on Permit Modifications and Extensions" Is Similarly Unavailing.

The second guidance document cited by Severstal, a 1985 EPA memorandum entitled *Revised Draft Guidance on Permit Modifications and Extensions*, provides no more support for a grandfathered permit correction than the Ogden Martin Memo. First, the director of EPA's Office of Air Quality Planning and Standards recently explained in a January 2014 guidance document that the 1985 *Revised Draft Policy* (and a subsequent update in 1991) "were never issued in final form" and did not establish a controlling interpretation of the federal regulations they analyzed.[99] According to this more recent guidance, which specifically addresses construction commencement extensions, EPA now believes that, for requests to extend commencement deadlines, its 1985 *Revised Draft Policy* should be replaced with a case-by-case approach. This guidance shows that EPA clearly disfavors grandfathering where a source would be exempt from intervening nonattainment designations, as in this case.[100] By extension, the 1985 *Revised Draft Policy* does not shield Severstal from obtaining a major NNSR permit for SO_2 or otherwise from current law and regulations governing the PSD process.[101] Although

[99] Page Memo at pp 2-3. Even if the 1985 *Draft Policy* were still considered "controlling" guidance in EPA's parlance, it is well established that EPA guidance documents are not legally binding on state permitting authorities. See, e.g., Page Memo at p 1 n1. Thus MDEQ certainly cannot derive authority, to the extent it is not provided by clear statutory language elsewhere, from a non-binding federal guidance document.

[100] See Page Memo at p 7.

[101] It is possible that Wayne County could soon be designated by EPA as nonattainment for PM 2.5, as well; EPA's proposed designations are expected to be announced in August less than six months from the date of these comments. See http://www.epa.gov/pmdesignations/2012standards/state.htm (last viewed March 27, 2014). Although MDEQ has recommended an attainment classification, the agency's air monitoring station in Dearborn, located in close proximity to Severstal and in the parking lot of an elementary school, registered the highest concentration of PM 2.5 of any monitor in the state from 2010 to 2012. See **Ex. 27**, October 31, 2013 letter from MDEQ director Dan Wyant to EPA Region V, available at: http://www.epa.gov/pmdesignations/2012standards/rec/r5mirec1.pdf (last viewed March 27, 2013). In 2012, the Dearborn monitor measured just 0.11 micrograms per cubic meter below the recently revised annual NAAQS of 12 micrograms per cubic meter. The grandfathering proposed by MDEQ in the Draft Permit will likely allow Severstal to avoid additional controls despite its significant responsibility for these measurements.

Severstal cites the EPA's 1985 *Revised Draft Policy* for its claim of entitlement to legal and regulatory grandfathering, therefore, the EPA has since made clear that it actually disfavors grandfathering in circumstances like these, where the source is located in an area subject to an intervening nonattainment designation and the grandfathering would reach back so many years.[102]

Second – even assuming that the 1985 *Revised Draft Policy* cited by Severstal had ever been finalized by EPA and was therefore controlling – the policy is limited, on its face, to PSD permits originally issued by EPA. As for permits issued by state agencies like MDEQ, under an approved SIP, the *Revised Draft Policy* states that it is intended to "be used as a model for States developing their own permit revision processes . . . ."[103] In the absence of promulgating its own policy, therefore, MDEQ cannot be bound by, or act under the authority of, thirty-year-old draft guidance that has since been disclaimed by the federal agency which drafted it. Once again, nothing in Part 55 or its implementing regulations authorizes MDEQ to issue a grandfathered correction to an existing permit to install.

Third – assuming both that 1985 *Revised Draft Policy* remained valid and that it granted legitimate power to MDEQ – the company has incorrectly cited the document. Severstal points to page 15 of the document for the proposition that "[p]ermit revisions can be exempted from any new PSD (Prevention of Significant Deterioration) requirements that were added between the time of the original permit issuance and the submission of the proposed change if the source had commenced construction prior to the adoption of the new PSD requirement."[104] But page 15 of the *Revised Draft Policy* clearly applies to proposed permit changes that "qualify[] as a revision." Page 12 of the *Revised Draft Policy*, meanwhile, specifically defines the term "revision" as, "in the case of operating sources" like Severstal, "most changes involving construction or changes in the method of operation of a source, including control equipment, that do not produce a net significant emissions increase."[105] The *Revised Draft Policy* repeatedly makes clear, in fact, that permit changes or revisions that would result in a significant emissions increase are considered "major modifications" and treated as such for purposes of regulatory and legal review.[106] And even more broadly, the Draft Permit at issue here does not appear to

[102] Page Memo at p 7.

[103] 1985 *Revised Draft Policy* at pp 6-7; see also p 2.

[104] **Ex. 25**, p 5 [grandfathering analysis]

[105] 1985 *Revised Draft Policy*, p 12 (emphasis in original).

[106] See *id.* at pp 1-2, 5-6, 12, 17.

involve any of the triggering conditions referenced by the 1985 *Revised Draft Policy* for proceeding with a "permit revision" as opposed to simply applying for a new permit.[107]

It is telling that, in discussing EPA's 1985 *Revised Draft Policy*, Severstal cites a "Permit Summary Sheet" issued by the Kansas Department of Health and Environment in 2010.[108] Although it is true that the Kansas agency issued a 2010 permit to install for a power plant expansion, and relied in part on the *Revised Draft Policy*, the circumstances of that case were quite different from those at issue here. The Kansas agency relied on the *Revised Draft Policy* as authority for prospectively contemplating potential changes to emission limits when issuing the original permit.[109] In other words, there is no indication that the Kansas agency ever made an actual determination that a permit revision was necessary or even allowed under the *Revised Draft Policy*. In fact, the Kansas Supreme Court recently vacated this permit in *Sierra Club v Moser*, holding that the Kansas agency had improperly approved the permit without first considering the most current Clean Air Act regulations pertaining to SO_2 emissions.[110] Severstal also cites a permit evaluation for a project in California, but that citation is similarly misplaced. The California permit in question did not involve an increase in permitted emissions of any PSD pollutant, and the *Revised Draft Policy* was cited simply for its discussion of "administrative changes."[111] Nothing in the California permit involved or discussed the propriety of allowing a permit "correction" – much less regulatory grandfathering – where a facility seeks to increase permitted emissions of multiple PSD pollutants at multiple emission units by significant amounts.

d. The Clean Air Act Makes Clear That Grandfathering Is Not Appropriate In These Circumstances.

The federal regulations implementing the Clean Air Act's PSD program, found at 40 CFR § 52.21, do not permit the legal or regulatory grandfathering of a source where, due to the mere relaxation of an enforceable permit standard, the source's increased emissions are

---

[107] See *id.* at p 1.

[108] **Ex. 25**, p 5, n3. [grandfathering analysis]

[109] See **Ex. 32**, Sunflower Permit Summary Sheet, p 5, available at: http://www.kdheks.gov/bar/sunflower/permit_summary_9-10-10_Holcomb.pdf (last viewed March 31, 2014).

[110] *Sierra Club v Moser*, 298 Kan 22; 310 P.3d 360 (2013).

[111] See **Ex. 33**, Los Medanos Permit Evaluation, p 26., available at: http://www.baaqmd.gov/~/media/Files/Engineering/Title%20V%20Permits/B1866/B1866-2012-3_MR_SOB_App22860_03.ashx?la=en (last viewed March 21, 2014).

equivalent to a major modification. Indeed, 40 CFR § 50.21(r)(4) states that when "a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation," the general requirements of permit review under the PSD program "shall apply to the source or modification as though construction had not yet commenced on the source or modification."

EPA has interpreted this provision as requiring that "[p]ermits with conditions that do not reflect a source's planned mode of operation are sham permits, are void *ab initio*, and cannot shield a source from the requirement to undergo preconstruction review."[112] The provision also applies outside the context of so-called "sham permitting," however, as "where a source legitimately changes a project after finding that the operating restrictions which were taken in good faith cannot be complied with."[113] Recently, EPA has emphasized that 40 CFR § 52.21(r)(4)

> does not discuss intent; it simply states that any relaxation of an established limit that would make the project 'major' would at that point in time make PSD applicable. That is, the (r)(4) provision must be considered for the life of any project for which enforceable limits were established such that any subsequent requests for a relaxation of the aforementioned limitations will necessitate their review within the originally-issued permits.[114]

Although "intent" is legally irrelevant to a correct understanding of whether emission limit relaxations trigger new source review, it must be noted here that Severstal is nonetheless essentially casting blame on MDEQ for using incorrect data and failing to place higher limits on its permitted emissions. However, the record reflects a much different picture when it comes to apportioning blame. Regarding the prior failure to account for condensable particulate emissions, for example, both MDEQ and commenters identified this as a problem in the earlier permit processes.[115] With respect to CO, too, commenters previously pointed out the lack of an

---

[112] EPA Memorandum, *Applicability of New Source Review Circumvention Guidance to 3M – Maplewood, Minnesota*, June 17, 1993, available at: http://www.epa.gov/region7/air/nsr/nsrmemos/maplwood.pdf (last viewed March 31, 2014).

[113] EPA Memorandum, *Limiting Potential to Emit (PTE) in New Source Review (NSR) Permitting*, June 13, 1989, available at: http://www.epa.gov/ttn/atw/pte/june13_89.pdf (last viewed March 31, 2014).

[114] EPA Region 2 Letter, *Re: Request for PSD Applicability Determinations for Burlington 12 and Kearny 12 Generating Stations* (February 11, 2009), available at: http://www.epa.gov/region7/air/nsr/nsrmemos/psegr4.pdf (last viewed March 27, 2014).

[115] See MDEQ Staff Evaluation, p 14 ("During the initial review of this project under Permit to Install No. 182-05, AQD expressed concern several times in meetings with Severstal that AQD

adequate basis for the emission used in Severstal's existing PTI.[116] If the question of grandfathering turns on who is to blame for incorrect existing limits, therefore, the blame in this case falls squarely on Severstal.

Regardless of blame, acceptance of Severstal's position in this case raises the question whether any and all permits issued by MDEQ (under Part 55 or other programs) can simply be "corrected" on an ongoing basis as data and technical understanding improves over time. At least to the extent such corrections are entitled to grandfathering, even as much as seven years after an initial permit is granted, this position would render the development of most legal and regulatory standards a useless errand for all existing sources of pollution – a result that would plainly contradict the statutory structure and goals of the Clean Air Act and Part 55, both of which are designed with an overarching purpose of improving air quality over time.

That is why existing authority, including 40 CFR 52.21(r)(4), makes clear that just because the emission limitations in Severstal's existing Permit to Install "cannot be complied with" does not allow Severstal to now escape a new PSD analysis under current laws and regulations.[117] Indeed, the requirements of 40 CFR § 50.21(r)(4) are squarely implicated by Severstal's proposal to relax a variety of enforceable limitations in its existing PTI to such an extent that the increased permitted emissions will exceed the currently permitted emissions by as much or more than the PSD significance threshold. Even if several of the changes permitted in PTI 182-05B may not have triggered PSD regulations when viewed in comparison to PTI 182-05 or PTI 182-05A, the substantial and sweeping increases in permitted emissions now proposed by Severstal must be characterized as significant relaxations of existing permit limits, and therefore reviewed under current PSD and NNSR regulations.

---

expected that there are condensables particulate emissions. Severstal and their consultant did not provide any condensable particulate emissions. In response to AQD's concern, Severstal and their consultant stated that they did not anticipate that a measurable amount of condensable particulates would occur from any of the affected emission units. In regards to condensable particulate emissions through baghouses, Severstal and their consultant assumed that because of low exhaust gas temperatures, any condensable particulate collected by the hoods would have condensed prior to the baghouses and as a result, would be captured in the baghouse. The emissions testing conducted under PTI 182-05B indicates that this assumption was not correct."); see also, **Ex 13**, Sagady comments quoted in chronology.

[116] **Ex 14,** Olson, Bzdok & Howard comment letter (March 23, 2007).

[117] Note that this requirement is consistent with the Ogden Martin Memo, which simply recognizes EPA's ability, in some circumstances, to "relax" an enforceable permit limitation by way of a correction to the permit. As explained elsewhere, the Ogden Martin Memo still requires "current BACT technology and requirements" to be considered along with "all other PSD requirements which may be affected by an allowable increase in permitted or newly regulated emissions." See Ogden Martin Memo at pp 2-3.

That is especially true where, as here, Severstal proposes a number of previously unpermitted changes at its facility, such as its gas-fired emergency engines and additional changes to the ESP at its Basic Oxygen Furnace. And there are even more significant increases (and these increases themselves are more significant) when Severstal's improper netting analysis is accounted for, as discussed in Section III, below. Under a netting analysis that properly accounted for the realities of Severstal's B Blast Furnace, in fact, Severstal's proposed emissions limitations constitute a number of significant increases requiring a full-blown PSD and/or NNSR review under 40 CFR § 52.21(r)(4).

Regardless of whether the proposed relaxation of emissions limits is intended to better "reflect the emissions associated with Severstal's operations,"[118] or to account for "emissions that ha[ve] essentially always been there,"[119] the simple fact remains that the Draft Permit proposes to significantly increase Severstal's permitted emissions by way of relaxing existing enforceable limits. Whether or not a permit correction is allowable in this case under the guidance cited by Severstal,[120] therefore, the company's proposed changes must be reviewed under current PSD regulations. 40 CFR § 50.21(r)(4) is directly aimed at advancing the goals of the Clean Air Act and preventing circumvention, as recognized even in the 1985 *Revised Draft Policy* cited by Severstal, which correctly observed that "[a] rigorous preconstruction review for PSD would ultimately not be effective if sources could readily obtain subsequent relaxations to their permit conditions under a lax policy for permit revisions."[121]

It is important to recognize that the PSD program specifically contemplates grandfathering only where a source commenced construction before the enactment of the 1977 amendments to the Clean Air Act.[122] Nothing in the CAA allows EPA or state permitting authorities to grandfather sources of air pollution outside of this situation, which is not applicable to the changes proposed by Severstal here. The Act contains an express grandfathering provision applicable to specific circumstances; by extension, it cannot be said to permit grandfathering in any other circumstances. As the U.S. Supreme Court has explained, "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to

---

[118] Fact Sheet at p 2.

[119] **Ex. 25,** p 2 [grandfathering analysis].

[120] As stated elsewhere, commenters disagree that MDEQ has any authority to issue a permit correction, or that, even if the agency had such a power, the exercise of such a discretionary power would be appropriate in this case.

[121] 1985 *Revised Draft Policy*, p 3.

[122] 40 USC § 7478(b).

be implied, in the absence of evidence of a contrary legislative intent."[123] And that is especially true in this case, where, as already explained, neither the CAA nor any corresponding Michigan statute or regulation expressly authorizes MDEQ to grandfather Severstal's permit, and where Michigan law otherwise clearly prohibits administrative agencies from acting beyond those powers that may be conferred upon them by clear and unmistakeable statutory language.

Finally, the logical consequences of the grandfathering sought by Severstal here would significantly undermine the goals and purposes of both the CAA and Part 55. Severstal has argued that it is entitled to grandfathering because it is simply seeking to correct emissions limits associated with equipment whose construction and installation was completed in 2007. Setting aside the factual flaws in that argument, which are discussed in more detail elsewhere, Severstal's logic would essentially end the PSD and NNSR permitting processes as we know them. That is because any time an existing source wanted to increase the permitted emissions from existing facilities and control equipment, it could simply seek a "correction" of the permit and thereby circumvent any intervening changes in air quality standards or regulations.

Such a scheme would clearly undermine the very purpose of the PSD and NNSR programs, which are intended to ensure the gradual improvement of air quality as NAAQS and other standards are made more stringent over time, and as control technology improves. Such consequences are highlighted in this case, where Severstal seeks to circumvent not just a year or two of regulatory developments and improvements in technology, but nearly seven years instead. Even if grandfathering were appropriate where a source sought a grandfathered correction one or two years after its initial permit was issued, that approach is clearly inappropriate here. While Severstal characterizes its request for a grandfathered correction as an essentially administrative revision, it would in fact have enormous consequences for both short and long term air quality in southeast Michigan – and, in particular, an Environmental Justice Area whose communities have been forced to endure the worst air pollution in Michigan for years.[124]

2. *There is No Factual Basis For a Grandfathered Permit Correction.*

As discussed above, MDEQ possesses no legal authority to correct a permit to install or, more importantly, to grandfather a source such that nearly seven years of legal and regulatory developments are not considered when issuing a new permit. Even recognizing that EPA and other state permitting authorities have allowed permit revisions in certain circumstances, moreover, such discretionary solicitude for Severstal would be inappropriate in this case.

---

[123] *Andrus v Glover Constr Co*, 446 US 608, 616-17 (1980).

[124] As discussed in Section IV, below, the Draft Permit must be denied for the sole reason that it fails to contain an Environmental Justice Analysis.

Commenters do appreciate that emissions standards are based on assumptions about how equipment will function, that circumstances may prove those assumptions unfounded, and that regulators may sometimes make small, after-the-fact, discretionary adjustments to address those circumstances. But that is not what Severstal has proposed in this case. It is now nearly a decade since Severstal submitted its initial permit application, and nearly seven years since the issuance of its existing PTI. As described elsewhere in these comments, Severstal urges MDEQ not simply to correct inaccurate assumptions, but instead to retroactively validate the company's own ignorance at the time its earlier permits were issued.[125] In addition, Severstal's request for mere permit "corrections" actually involves a proposal for multiple process and physical changes, some of which are substantial. In short, Severstal has significantly downplayed the extent and nature of the changes for which it now seeks MDEQ's retroactive imprimatur, and commenters now urge MDEQ reject the company's requests in present form.

Various language in the Draft Permit and associated documents undercuts Severstal's assertion that its proposals do not involve "any physical changes, changes to the method of operation, or increase in annual production rate/throughput at the stationary source beyond what was approved in" the company's existing permit.[126] For example, Severstal requests not just increased emission limits at a discrete number of emission units, but instead it asks for increased emission limits at virtually all of the company's major emissions units. The emission limit increases sought by Severstal, moreover, are in most cases substantially higher than the actual emission measured during stack tests on many emission units. If the intent of the Draft Permit is merely to "update" or "correct" emission limits to more "accurately reflect the emission factors associated with Severstal's operations," as suggested in MDEQ's Fact Sheet, it is unclear why Severstal is seeking increases in emission limits, virtually across the facility, that are much higher than the measured emissions during actual stack tests.

What is more, the Draft Permit reflects Severstal's request to "reallocate" emissions of certain pollutants between various emission units, further undercutting the company's claim that the permit is merely an "update" or "correction" designed to better reflect actual operations at the facility. Most important, the Draft Permit contemplates a significant reallocation of SO_2 emissions among existing emission units. This reallocation is discussed in more detail elsewhere, but it is important here because it demonstrates that the Draft Permit would involve a substantial change in permitted emissions at the Severstal facility rather than a mere "correction"

[125] As explained elsewhere in these comments, commenters on Severstal's previous PTIs specifically warned of the very problems that the company now seeks to "correct" without regard for current law.

[126] On the basis of this statement, MDEQ has stated that the Draft Permit "does not trigger a new review under the PSD regulations." Fact Sheet, p 10.

or "update." Most important, the Draft Permit appears to contemplate certain physical changes that were not addressed in previous permits.

For example, Severstal seeks approval for emissions caused by six natural gas fueled emergency generators. Severstal claims that the emergency engines were "inadvertently left out of the original permit analysis."[127] This is quite different than the characterization of MDEQ staff, who noted in a 2011 inspection report that Severstal had "recently identified, as part of an environmental audit, several emergency generators related to blast furnace cooling that were installed without a permit and subject to federal regulations."[128] Operation of these generators emit a number of regulated pollutants, and they have not previously been permitted or subject to a PSD analysis. As such, they must now be treated as new construction, and subject to a new PSD analysis under current law – including, for example, new standards for SO2 and GHGs.

This approach is supported by past EPA policy. When a Texas source sought to amend a PTI to include "recently discovered" emissions from an emissions unit not covered by the existing permit, EPA explained that the delegated state permitting authority

> should treat the [unpermitted emission unit] as new construction, and process the permit accordingly. These emissions should be treated as new emissions and permitted under current BACT. In this case, the owner or operator did not obtain all necessary preconstruction approvals or permits for the emissions . . . . Under Title 40 of the Code of Federal Regulations, 40 CFR 52.21(b)(9) (definition of commence), the owner or operator of a major stationary source or major modification has all necessary preconstruction approvals or permits prior to the commencement of construction.[129]

In this case, whether or not the omission of Severstal's six emergency generators from its existing permit intended, they must now be treated as new construction and subject to current PSD and BACT analyses under existing law. There is simply no justification for allowing these generators and their emissions to be included in a permit "correction" that MDEQ expressly says is not subject to a new review under PSD regulations.

---

[127] Fact Sheet, p 10.

[128] **Ex. 34**, 9/7/11 Koster inspection report [Severstal – 2013 Correspondence, pp 4 et seq] (emphasis added).

[129] **Ex. 35**, EPA, Letter from Jole C. Luehrs to Jeffrey A. Saitas, P.E. (April 11, 1996) ("Luehrs Letter") (emphasis added), available at: http://www.epa.gov/region07/air/nsr/nsrmemos/ltrintpr.pdf (last viewed March 30, 2014).

Another important example of the substantial changes proposed by Severstal involves the ESP on the company's Basic Oxygen Furnace. Specifically, Severstal seeks a permit that would authorize it to increase the CO emissions from the ESP by an additional 17,484 tons per year when compared to the limits in its existing PTI.[130] The company also seeks to increase particulate emissions at the ESP by 51 tons per year, and coarse particulate emissions by 42 tons per year.[131] Each of the emissions increases exceeds the significant increase threshold for a major modification under Part 55 and the CAA's PSD regulations.[132]

In 2008, stack testing at the BOF ESP baghouse revealed that Severstal was exceeding its CO emissions limits. Severstal realized that its 1998 ESP baghouse stack tests did not run during oxygen blows, and so failed to capture the extent of CO emissions generated during the oxygen blow portion of the steelmaking process, "which is where all the CO is generated."[133] In 2012 (following years of ESP baghouse malfunctioning and emissions violations), Severstal undertook a comprehensive ESP baghouse inspection, which revealed multiple defects, leaks, and problems.[134] That inspection led Severstal to undertake major repairs and changes at the ESP. Even still, Severstal continued to be cited for violations at the ESP.[135]

As such, it appears the emissions increases requested for the ESP baghouse are the result of historic lack of maintenance, changes made in 2012, operational anomalies, improper testing in 1998, questionable changes in assumptions and/or calculations, and other causes. Whatever the cause(s), commenters are aware of no indication the emissions increases Severstal requests for the ESP baghouse relate to work undertaken as part of its existing PTI, No. 82-05B. As such, increasing the permitted emissions from the ESP baghouse cannot be considered a "correction" to the existing permit. Lacking a causal link between the emissions increases proposed for the ESP and PTI 182-05B, and assuming it is technically impossible to meet the existing emissions standards applicable to the ESP (i.e., production changes, additional control measures), Severstal should be required to apply for a new permit or otherwise become subject to a detailed compliance schedule under its ROP for the ESP baghouse.

---

[130] See Table 1.

[131] *Id.*

[132] See Fact Sheet, Table 5.

[133] *Id.*; Fact Sheet, Table 1.

[134] See **Ex_36** Inspection Report BOF Electrostatic Precipitator, Chambers 1-8, Severstal Dearborn, LLC (June 13-14, 2012) ("2012 BOF ESP Inspection Report").

[135] **Ex. 37**, Severstal response to DEQ Notice of Violation, January 31, 2013 (Feb. 20, 2013).

In addition to sweeping its proposed emissions increases from the ESP baghouse into the unrelated "amendment" of PTI 182-05C, Severstal does not treat the ESP carbon monoxide emissions increases appropriately in its application. As described above, Severstal seeks to increase the permitted emissions from the BOF ESP by 17,484 tons per year of CO over limits in PTI 182-05B. Severstal's own netting analysis (which suffers multiple flaws, as described in Section III, below), indicates that the Draft Permit will allow the addition of 20,777.23 tons per year of CO when compared to 2001-2002 levels.[136] Recognizing that this is beyond the "significant increase threshold" of 100 tons per year for carbon monoxide, MDEQ's Fact Sheet recognizes a BACT analysis requirement for carbon monoxide. However, the CO BACT analysis for the Draft Permit considers only to the C Blast Furnace and the new emergency engines.[137] There does not appear to be any CO BACT analysis undertaken for CO emissions increases at the BOF ESP, which is the source of the CO increases. In short, Severstal improperly characterizes increased ESP emissions as requiring only a "correction" to its existing PTI, and it compounds the error by failing to perform a BACT analysis for those emissions.

In addition to Seversal's request to graft new emergency engines and significant changes at its Basic Oxygen Furnace ESP to what it otherwise calls a mere permit "correction," other aspects of the Company's proposal appear to have been downplayed. For example, the Fact Sheet states that "[t]hough there are no physical changes at the facility as discussed above, the applicant will be installing low NOx burners a the 'B Stoves' as part of this permit application."[138] This sentence plainly contradicts itself, and it highlights the fact that Severstal's numerous proposed changes cannot collectively be described as a mere permit "correction" entitled to legal and regulatory grandfathering. Other changes that stand out in the Draft Permit and associated documents include the operation of Severstal's Basic Oxygen Furnace and C Blast Furnace baghouses at a lower temperature than previously contemplated in earlier PTIs (100 degrees rather than 150 degrees); an increase in the assumed Basic Oxygen Furnace baghouse capture efficiency to 98%, which MDEQ previously called into question; and an increase in allowable emissions at the Basic Oxygen Furnace ESP stack and desulfurization baghouse due to changes in the calculation of their maximum flow rates (from 20 and 40 minute batches every hour, previously, to continuous operation in the Draft Permit).

The commenters oppose all of these proposals as currently presented because they have not been subject to sufficient review under the correct standards. A close review of Severstal's proposals in this case demonstrate that the company seeks to piggy-back a number of substantial projects and changes onto a permit that the company otherwise generally characterizes as a mere

[136] See Fact Sheet, Table 5.

[137] *Id.*, p 11.

[138] Fact Sheet at p 19.

"correction" entitled to grandfathering. No legal authority, factual basis, or equitable rationale – especially in light of Severstal's compliance history and the heavily impacted Environmental Justice community that surrounds the facility – support processing Severstal's application as a grandfathered correction to prior permits. Rather, because the application collectively proposes substantial changes and modifications, existing law, prior EPA guidance, and simple logic require MDEQ to process Severstal's new permit application for what it is: a new permit application. Severstal's entire proposal should be processed as any other new PSD permit under current legal and regulatory standards governing air pollution.

3. *The Discretionary And Deferential Solicitude Implied By A Grandfathered Permit Correction Is Not Warranted In This Case.*

It is important to view Severstal's request for a grandfathered permit correction, even if MDEQ is permitted to take such an action and even if the Draft Permit meets the requirements for such an action, in light of the applicant's history of non-compliance with and lack of respect for air quality regulations. Just since Severstal's last permit to install was issued, hundreds of complaints have been received by MDEQ with respect to the company's Dearborn facility, many of them related to fallout and opacity violations.[139] Also during this time, the Company has received dozens of notices and letters of violation from MDEQ and EPA.

Despite this history of violations – which must be viewed in light of the company's acknowledgment that its facility has not been in compliance with its existing permit literally for years – MDEQ staff have noted "pervasive issues with Severstal's monitoring, recordkeeping, and reporting program."[140] As late as August of 2012, nearly five years after receiving its existing permit to install, Staff also explained that Severstal had still failed to seriously research alternative and additional pollution control technology for its facility, and that the company had "openly admitted[] that there has been a total disregard for the maintenance of the ESP and for the air quality requirements."[141] In the words of MDEQ staff, "[t]his is by far the most egregious

[139] See **Ex. 24**, Koster , Severstal Compliance History. Commenters note that, while many of these complaints have apparently been attributed by Severstal to startup, shutdown, and malfunction (SSM) events, the Draft Permit contains no specific analysis of the company's past problems with SSM. That is especially striking given Seversal's regular failure to comply with various regulations governing SSM events. See **Ex __**, 11-21-12 email from Katie Koster (MDEQ) to James Earl (Severstal). For this reason alone, the Draft Permit should not be issued in its current form. Instead, MDEQ should undertake a detailed analysis of Severstal's SSM issues, and prepare specific permit conditions that properly account for SSM emissions and that ensure Severstal's future compliance with SSM reporting and monitoring requirements.

[140] **Ex. 34**, 9/7/11 Koster Violation Report.

[141] **Ex. 23**, Fieldler email in MEDC Q&A

facility in the state."[142] It is deeply troubling to commenters that despite this history – and despite MDEQ's failure to even address environmental justice concerns, as discussed below – the Draft Permit now proposes to grant extraordinary and unprecedented deference to Severstal's interests.

Indeed, to the extent MDEQ should give deference to anyone implicated by the Draft Permit, and extent unprecedented solicitude to anyone's particular interests, it should be to the already-burdened community surrounding Severstal's facility rather than to the multi-billion-dollar corporation that owns the facility. Yet MDEQ has performed no analysis of environmental justice issues, and the Draft Permit does not even mention the history of Severstal's role in contributing to air quality concerns in the surrounding communities. If ever there was a facility not entitled to MDEQ's discretionary and deferential solicitude in the form of a grandfathered permit correction, it is Severstal. And if Severstal is granted such solicitude, what facility could ever be denied a request for such deference? This is simply the wrong permit, using the wrong law, and the wrong analysis, for the wrong facility, in the wrong location.

III. The Draft Permit Is Based On A Flawed Netting Analysis.

The starting point to determine the PSD review applicable to the Severstal project is to calculate the net (additional) emissions resulting from the changes. The netting analysis is essentially a "before and after" comparison, where "before" is the "past actual emissions" and "after" is the "future potential emissions." Severstal's netting analysis is flawed for at least two reasons. First, Severstal nets the proposed new emissions levels against emissions from 2001 to 2002, before substantial emissions controls were installed in 2007. The result is a diluted netting analysis, not of the proposed new changes but of all changes made at the facility since 2002. Second, Severstal assigns emissions to the B Blast Furnace as if it were operable, with a baghouse installed. But it is not operable and there is no baghouse. The result, again, is a netting analysis that dilutes the extent of the changes proposed. Severstal should revise the netting analysis to calculate the real emissions increases that will result from the proposed changes. Such a revision would clearly show a significant increase in emissions of numerous regulated pollutants, and it would trigger the need for additional PSD and NNSR analyses under current law.

A. Severstal's Netting Analysis Improperly Fails To Consider The True Impact Of The Changes It Has Proposed.

As described above, Severstal seeks a permit that authorizes a number of substantive

[142] *Id.*

changes at its facility, and the netting analysis should therefore calculate the emissions changes resulting from the proposed modifications. That requires first determining actual emissions within a baseline period (a 24-month period within the last 10 years).[143] The baseline emissions must then be adjusted (reduced) to reflect currently-applicable emissions levels.[144]

Severstal's netting efforts run afoul of these regulations, in part because they start from the faulty premise that what the company seeks here is a mere "correction" of the emission limits in earlier permits. By defining the emission limits proposed in the Draft Permit as corrections to the limits established in a 2005 permit, Severstal's selected baseline is actual emissions that occurred more than a decade ago, in 2001 and 2002. Further, Severstal does not apply existing emissions limits in its current ROP or its existing PTI (No. 182-05B) to its baseline emissions calculations. The result is that Severstal's analysis considers the emissions from before the C Blast Furnace and Basic Oxygen Furnace baghouses were installed, and compares them to the proposed permitted emissions of the current Draft Permit. By using this 13-year span, without adjusting downward to reflect the emissions reductions achieved in 2007, Severstal continues to take offsets from the baghouses it installed in 2007.

Severstal's analysis also runs afoul of regulations that prohibit a source from crediting emissions reductions achieved outside the "contemporaneous period" (*i.e.*, the five years preceding the date of construction), or where the decrease was already relied upon in obtaining a prior PTI.[145] Here, the C Blast Furnace and Basic Oxygen Furnace baghouses became operational in October 2007, and MDEQ relied on the resulting emissions decreases when issuing PTI 182-05B. Thus emissions reductions achieved by these baghouses fall outside the contemporaneous period for the Draft Permit, and have also been relied upon for a prior permit, and therefore cannot be credited to offset the impact of the proposed new emissions standards. Yet Severstal's netting analysis incorrectly does just that.

---

[143] 40 CFR § 52.21(b)(48)(ii); Mich Admin Code R 336.2801(b)(ii).

[144] 40 CFR § 52.21(b)(48)(ii)(c) ("The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period."); Mich Admin Code R 336.2801(b)(ii)(C) (same); MDEQ, *PSD Workbook* (Oct 2003), p 3-4 ("[Baseline Actual Emissions] for non-[electric utility steam generating units] must be further adjusted downward to exclude any emissions that would have exceeded an emission limit with which the facility must currently comply. Even though the limitation did not exist during the selected 24-month period, the actual emissions during that period must be adjusted as if the limit did exist. Limits with which the facility must currently comply include final regulations with a future compliance date."), available at: http://www.deq.state.mi.us/aps/downloads/permits/PSD%20Workbook.pdf (last viewed March 29, 2014).

[145] 40 CFR §§ 52.21(b)(3)(ii), 52.21(b)(3)(iii)(a); Mich Admin Code R 336.2801(ee)(ii)(A), (iii).

The correct netting analysis, by contrast, should compare the emissions standards proposed in the Draft Permit (that is, emissions to be permitted in 2014 and beyond) to the past permitted emissions applicable after the C Blast Furnace and Basic Oxygen Furnace baghouse installations. This approach prevents continued reliance on the emissions reductions achieved in 2007. Table 1, above, provides a simple and conservative ("past potential," which is necessarily higher than past actual, to "future potential") inventory of the emissions increases proposed by the Draft Permit. This table demonstrates that the Draft Permit, as written, will result in significant net increases in the permitted emissions of numerous regulated pollutants, including particulate matter, coarse particulate matter, sulfur dioxide, carbon monoxide, and manganese. As such, the Draft Permit cannot be issued without additional PSD and NNSR analyses under current law.

B. Severstal's Netting Analysis Improperly Considers Emissions From The Defunct B Blast Furnace.

Not only does Severstal's netting analysis fail to account for the significance of the changes proposed by the company, but it is further flawed because it includes emissions (past actual and future potential) from the B Blast Furnace, which has been inoperable for over six years.

1. *The B Blast Furnace Is Not Operable.*

On January 5, 2008, the B Blast Furnace suffered a major explosion that caused extensive damage. Severstal received $430 million in insurance proceeds to compensate for the damages resulting from the explosion.[146] Severstal now estimates that it will cost between $235 million and $533 million to replace or rebuild the B Blast Furnace. [147] Severstal apparently considered rebuilding the B Blast Furnace in the months immediately following the explosion, with the

[146] Severstal, *Annual Financial Report* (2009) ("In January 2008, an explosion occurred on one of Severstal Dearborn's furnaces, blast furnace 'B'. Following the accident, Severstal Dearborn ceased blast furnace 'B' operation. Severstal Dearborn is insured against property damage and business interruption with a combined gross coverage of US$500.0 million, subject to customary deductibles. The business interruption insurance covers fixed costs and loss of profits. The entire amount of the insurance coverage of US$430.0 million was received in 2008."), see: http://reports.severstal.com/eng/financial_statements/notes_to_the_consolidated_finance/document1021.phtml (last viewed March 29, 2014).

[147] See **Ex. 15**, July 25, 2008, email and attachments from Ted Bishop (Severstal) to Teresa Seidel and Bernardo Sia (DEQ) (Attachment B to Siemens proposal)**.**

furnace proposed to come back online in 2010,[148] but that never happened. Severstal had been contemplating taking the B Blast Furnace offline before the explosion,[149] so the decision to not rebuild the B Blast Furnace (or the lack of a decision yet to rebuild it) may be attributable to the expense of rebuilding, independent market conditions, or production efficiencies available as a result of the C Blast Furnace rebuild in 2007.[150] Regardless of the reason, however, the B Blast Furnace has not operated or emitted pollutants since 2008.[151]

2. *For Netting Purposes, The B Blast Furnace Should Be Assigned Zero Emissions.*

Because the B Blast Furnace has been inoperable and shut down for years (regardless of whether Severstal would or could ever bring it back online), the company cannot include emissions from that furnace in its netting analysis. Indeed, the baseline actual emissions from an inactive plant should be zero.[152] This is so when the plant is permanently shutdown, which is

---

[148] See *id.*, Attachment A to Aug. 15, 2008, letter to DEQ.

[149] **Ex. __**, *Severstal Permit to Install Application for Enhancement of C Blast Furnace* (July 12, 2005) (original application for PTI 182-05) (Severstal contemplating not operating the B Blast Furnace beyond December 2007); **Ex. __**, MDEQ Consent Order, AQD No. _____-2006, ¶ 10(B)(i) (Severstal considering complete shut-down of the B Blast Furnace by June 30, 2008).

[150] **Ex. __**, Press Release, *Severstal to Invest Over $180 Million in Blast Furnace Upgrades; Begins Its 4-Year Modernization Program* (July 14, 2005) ("As a part of the permit application, Severstal reported that it is evaluating the future of operating its smaller 'B' Blast Furnace following the reline of its larger blast furnace. 'With the added production capability of the enhanced 'C' Blast Furnace, the question is simply whether or not the market will support the incremental tonnage produced by our smaller furnace in 2007 and beyond,' said [Ronald J.] Nock, [president and CEO of Severstal]."), available at: http://www.prnewswire.com/news-releases/severstal-to-invest-over-180-million-in-blast-furnace-upgrades-begins-its-4-year-modernization-program-54608217.html (last viewed March 29, 2014); **Ex. __**, Severstal Dearborn Website, *Other Key Information* ("The 'C' Blast Furnace, rebuilt in 2007, utilizes state-of-the-art technologies making it among the most efficient, productive and environmentally friendly blast furnaces in the world"), available at: http://www.severstal.com/eng/businesses/international/north_american/dearborn/ (last viewed March 29, 2014).

[151] According to the Michigan Air Emissions Reporting System (MAERS), there have been no operations or emissions at the B Blast Furnace since 2008, and the 2008 emissions were relatively minor compared to prior years (the furnace ceased operations in January). See **Ex 39**, available at: http://www.deq.state.mi.us/maers/ (last viewed March 26, 2014).

[152] See *Communities for a Better Environment v. Cenco Refining, Inc.*, 179 F Supp 2d 1128, 1143-44 (CD Cal 2001) (concluding that a unit modified after "six years of non-operation" should be compared to a "zero baseline" and explaining that "for a long-dormant facility (at least

presumed (but rebuttable) after two years of inoperability.[153] It is also the case when the source is temporarily shut down, if startup would involve substantial changes.[154]

Here, the B Blast Furnace has been inoperable since 2008, there has been no apparent maintenance, and the resources required to reactivate the furnace appear substantial (i.e., it would be a complete rebuild). Severstal has been reporting "zero" emissions from the B Blast Furnace since 2009, with only minimal emissions in 2008 after it stopped operating in January of that year.[155] In fact, MDEQ relied on the lack of emissions from the B Blast Furnace in its appeal to EPA to allow the Dearborn area to remain "attainment" for PM2.5.[156] This is akin to the situation in *Cyprus*, where EPA considered a state's removal of a non-operating source from its air emissions inventory as supporting a conclusion that the facility should be treated as

---

those shutdown for two years or more), the emissions baseline for determining whether it has undergone an emissions increase subject to NSR will be zero"); *Supplemental PSD Applicability Determination, Cyprus Casa Grande Corporation Copper Mining and Processing Facilities* (Nov 6, 1987) ("*Cyprus*") (emissions from a facility that had been shut for 13 years "should be zero."), available at: http://www.epa.gov/region7/air/nsr/nsrmemos/cyprusca.pdf (last viewed March 26, 2014); *In re Monroe Elec Generating Plant*, Petition No 6-99-2 (June 11, 1999) (Doc 435-36) ("*Monroe*") at p 16 ("EPA has made clear that in calculating the net emissions increase for reactivation of long-dormant sources potentially subject to PSD, the source is considered to have zero emissions as its baseline.") (available at: http://www.epa.gov/region7/air/title5/t5memos/ccaw_ord.pdf (last viewed March 26, 2014).

[153] See *Monroe*, at p 8 ("Shutdowns of more than two years, or that have resulted in the removal of the source from the State's emissions inventory, are presumed to be permanent.").

[154] *Id.*; see also *Cyprus* (considering the rehabilitation work necessary to make a non-operating plant operable again would be considered a "physical change," and increasing hours of operation from zero for ten years to full operation would be considered a "change in method of operation"); *Cenco*, 179 F Supp 2d at 1144 (proposed startup would trigger new source review because "1) there is not a mere variation in the hours of operation but a fundamental change in the facility's operational status, from six years of non-operation to full operations and 2) the restart will be accompanied by independent physical modifications to the Refinery triggering a comparison of new emissions to the zero baseline.").

[155] See **Ex. 39**, available at: http://www.deq.state.mi.us/maers/ (last viewed March 26, 2014).

[156] **Ex. 42**, Request to Redesignate to Attainment Status For Both the Annual and 24-Hour PM2.5 NAAQS, including Appendix C (SEMCOG, July 5, 2011) (details of Severstal emissions); available at https://www.federalregister.gov/articles/2013/08/29/2013-21020/approval-and-promulgation-of-air-quality-implementation-plans-michigan-redesignation-of-the (last viewed March 26, 2014).

inoperable for purposes of PSD baseline emissions.[157]

Further, it would be speculative and hypothetical to assign future potential emissions to the B Blast Furnace. Before that furnace could restart, the rebuild would be subject to PSD review, either as a new source or a major modification, and PSD analysis would depend on the then-current netting analysis, attainment status, and control technology. As with the C Blast Furnace rebuild in 2007, Severstal may seek to increase the B Blast Furnace capacity as part of an eventual rebuild. These factors render any "future potential emissions" assigned to the B Blast Furnace arbitrary. In fact, an alternative netting analysis – in which emissions from the B Blast Furnace are not considered – is by application of the federal rule for relaxing emissions standards.[158] This result is also consistent with Michigan rules, which require removing from the netting analysis emissions from an offline source.[159]

In sum, the B Blast Furnace is not an "emissions unit" because it is shut down. It does not emit or have the potential to emit any regulated pollutant without a new permit analyzed under current laws and regulations.[160] And as a result, the B Blast Furnace should be removed both from the Draft Permit and the underlying netting analysis. [161]

---

[157] **Ex. __**, *Cyprus* at p 3.

[158] 40 CFR § 52.21(r)(4); see also Letter from Stephen Rothblatt (EPA) to Felicia Robinson George (Indiana Department of Environmental Management) regarding Cooper Tire and Rubber Company (Sept 29, 1992) (in processing an amendment to relax emissions standards under (r)(4), retroactive PSD netting analysis cannot include reductions achieved in the interim period between the original permit action and the amended permit action), available at: http://yosemite.epa.gov/r5/in_permt.nsf/8e411023c38b229786257515006cd355/6058ad2d44670e0a86257522007669ec/$FILE/cooper.pdf (last viewed March 26, 2014).

[159] See Mich Admin Code R 336.1201(5) ("Upon the physical removal of the process or process equipment, or upon a determination by the department that the process or process equipment has been permanently shut down, the permit to install shall become void and the emissions allowed by the permit to install shall no longer be included in the potential to emit of the stationary source.").

[160] Mich Admin Code R 336.2801(r) ("Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant").

[161] The Fact Sheet indicates that, although Severstal's existing permit to install authorized the addition of an on-site coal pulverization facility, that facility has not been installed. Because far more than 18 months have elapsed since the issuance of a permit for its construction at the facility, that portion of the permit should be permanently rescinded.

3. *A Proper Assignment Of Zero Emissions To The B Blast Furnace Results In A Substantially Different Netting Analysis.*

Regardless of whether Severstal's proposed increases in permitted emissions are netted against the emission limits in its existing permit or against its 2001 emissions (as discussed above), the B Blast Furnace must be assigned zero emissions. And in either scenario, this proper assignment of zero emissions to the B Blast Furnace has a substantial impact on the netting analysis underlying the Draft Permit. Without the B Blast Furnace emissions, the proposed new emissions levels will result in "significant" increases in PM10, PM2.5, NOx, SO_2, and CO. As a result, a new BACT analysis is required for PM10, PM2.5, NOx, and CO, while LAER is required for SO_2. Using the Appendix B December 2011 Revised Netting Analysis spreadsheets submitted by Severstal,[162] the results of netting emissions without the B Blast Furnace would be as follows:

Table 2[163]

Pollutant	**PTI-C Table 5 (tpy)**	**Significant Increase Threshold (tpy)**	**Scenario A**[164] **with B-BF at zero emissions (tpy)**	**Scenario B**[165] **with B-BF at zero emissions (tpy)**
PM10	-61.08	15	-16.2	38.92
PM2.5	-10.09	10	14.53	67.86
SO_2	666.69	40	238	501.46
NOx	33.23	40	84.40	185.88

[162] Commenters are not aware if these spreadsheets were further amended or updated. They appear to be the most recent versions provided in response to our FOIA request.

[163] We provide this only as demonstrative of the point that improperly including emissions from the B Blast Furnace has a substantial impact on the netting analysis underlying the Draft Permit. For complete Excel spreadsheets, see **Ex. 45**, *2012-02-02 Appx B Dec 2011 Scenario A 1214 (zero B-BF)*; **Ex. 46**, *2012-02-02 Appx B Dec 2011 Scenario B 1214 (zero B-BF).*

[164] Scenario A is based upon a production limit at B furnace of 1,168,000 tpy and the remaining 2,153,500 tpy at C Furnace. Severstal will maintain the combined B/C production limit of 3,321,500 tpy from 182-05B.

[165] Scenario B is based upon a production limit at C furnace of 2,920,000 tpy and the remaining 401,500 tpy at B Furnace. Severstal will maintain the combined B/C production limit of 3,321,500 tpy from 182-05B.

VOC	36.33	40	20.84	32.40
CO	20,777.23	100	19,691	21,728
Hg	Not provided	n/a	1.63E-02	1.97E-02

In short, including B Blast Furnace emissions in the netting analysis distorts the analysis and dilutes the impact of Severstal's proposed emissions increases. As such, the Draft Permit cannot be issued in its present form.

C. Severstal's Proposed "Reallocation" Of Emissions Between Sources Is Not Permissible.

1. Severstal Cannot Rely On The ESP Rebuild To Avoid A Mercury T-BACT Analysis.

Stack testing performed after Severstal obtained its existing PTI indicated that the C Blast Furnace emits more mercury than previously estimated, apparently as a result of Severstal's failure, despite warnings by commenters on the original permit to install, to account for condensable emissions in its original permit analysis.[166] Severstal now proposes to offset the increased mercury emissions at the C Blast Furnace by tightening the mercury emissions limit for its recently-rebuilt ESP.[167] By using the reductions at the ESP to offset the mercury emissions from the rebuilt C Blast Furnace, Severstal seeks to avoid the comprehensive T-BACT (Best Available Control Technology for Toxics) analysis typically required when a facility proposes modifications that will result in increased mercury emissions.[168]

However, there is no legal basis for Severstal to avoid a T-BACT analysis for mercury emissions increases at the C Blast Furnace simply due to offsetting reductions achieved at the ESP five years after the C Blast Furnace was installed.[169] The reductions at the ESP were achieved outside the contemporaneous period, and thus cannot be used by Severstal to avoid a T-

[166] See Fact Sheet at p 7.

[167] *Id.*

[168] See Mich Admin Code R 336.1224.

[169] 40 CFR § 52.21(b)(3)(ii)(b); Mich Admin Code R. 336.2801(ee)(ii)(A) (offset to net out of an emission increase must occur within at least "five years before construction on the particular change commences").

BACT analysis for increased mercury emissions at the C Blast Furnace.[170] As a result, the Draft Permit cannot be issued before such an analysis is performed.

2. Severstal Cannot Combine And Cap Emissions Between The C and B Blast Furnaces.

Sevestal proposes to reallocate its SO_2 emissions "within" the blast furnace stoves and baghouses to avoid a net increase in emissions of that pollutant when compared to SO_2 emissions limits in the company's existing permit to install.[171] Yet the proposed redistribution within each blast furnace results in substantial SO_2 increases when compared to the limits in PTI 183-05B:

Table 3[172]

Emission Points	Permit Limits in 182-05B (lb/hr)	Proposed 182-05C Limits (lb/hr)
B-Stove	70.9	38.75
B BF Baghouse	6.91	71.9
TOTAL B-BF	**77.81**	**110.65**
C-Stove	275.1	193.6
C BF Baghouse	23.03	179.7
TOTAL C-BF	**298.13**	**373.3**

It is not clear how Severstal proposes to achieve the claimed emissions reductions at its C and B Blasthouse Stoves, though the claimed efficiency must be evaluated to determine whether it is "creditable."[173]

Severstal then proposes an annual cap on the combined blast furnace emissions of SO_2, coincidentally equal to the emissions solely attributable to the C Blast Furnace:

[170] If Severstal undertook T-BACT analysis of mercury emissions from the C-BF as part of its original application for PTI 182-05, that analysis must be updated to reflect current T-BACT standards and the mercury emissions levels observed in stack testing.

[171] Fact Sheet, p 7.

[172] See *id.*, Tables 3, 6. Table 6 does not describe a redistribution of emissions within the B Blast Furnace.

[173] Mich Admin Code R 336.2801(ee) (offsetting decreases must be both "contemporaneous with the particular change" and "otherwise creditable").

Table 4[174]

Emission Points	Permit Limits Included in 182-05B (typ)	Proposed Permit Limit (tpy)
B and C BF Stoves	1,097	---
B and C BF Casthouse Baghouse	91.8	---
B Stoves and B BF Casthouse Baghouse	--	340
C Stoves and C BF Casthouse Baghouse	--	1,188
B and C BF Stoves and B and B and C BF Casthouse Baghouse	**1,188**	**1,188** ***[Note: sum of above is actually 1,528]***

Similarly, Severstal proposes to increase emissions, then combine and cap them under an annual limit for the C and B Blast Furnaces for other pollutants: particulates, lead, manganese, and volatile organic compounds.[175] By increasing emissions from the individual source, while at the same time imposing an annual combined emissions total cap, Severstal attempts to offset some (or all, in the case of sulfur dioxide) of the proposed emissions increases and net out of PSD review.

There is no indication how Severstal proposes to meet the annual cap. However, considering the recent costly rebuild of the C Blast Furnace with the stated intention of increasing its production rates on the one hand, and the inoperable status of the B Blast Furnace combined with the substantial expense of rebuilding it on the other hand, it seems the only practical way Severstal can meet the annual cap limits is to leave the B Blast Furnace offline. In other words, it seems unlikely Severstal would undertake a costly rebuild of the smaller B Blast Furnace when operating it would require a reduction in operations at the larger (and already built) C Blast Furnace in order to comply with annual emissions caps proposed in the Draft Permit.

As such, Severstal is using the B Blast Furnace shut-down as an offset against the proposed increase in permitted emissions at the C Blast Furnace. Increasing the individual emissions from the C Blast Furnace and then grouping the C Blast Furnace with the defunct B-Blast Furnace as a combined unit with an annual cap allows the C Blast Furnace, essentially, to consume the defunct B Blast Furnace emissions while netting out of a required PSD analysis for significant increases of SO_2 emissions. But the shut-down of the B Blast Furnace occurred outside of the contemporaneous period for PTI 182-05B (three months after the C Blast Furnace

[174] See Fact Sheet, Table 4.

[175] See *id.*, Table 1, pp. 7-8.

was operational), so the B Blast Furnace emissions reductions could not be credited against emissions increases attributable to the C Blast Furnace rebuild project authorized by PTI 182-05B.[176] It also occurred outside the contemporaneous period for PTI 082-05C (more than five years ago), so the B Blast Furnace emissions reductions likewise could not be credited against the proposed new emissions increases, if treated as a new permit.[177] Thus, Severstal cannot use emissions reductions from the non-operable B Blast Furnace to offset emissions increases attributable to the C Blast Furnace and thereby circumvent PSD review. Yet the combined-and-capped emissions levels for the C and B Blast Furnaces, as proposed in the Draft Permit, appear to be an attempt to do exactly that.

IV. The Draft Permit Fails To Address Environmental Justice Concerns.

Under federal law, "a permit issuer should exercise its discretion to examine any 'superficially plausible' claim that a minority or low-income population may be disproportionately affected by a particular facility seeking a PSD permit."[178] EPA's Environmental Appeals Board ("EAB") has held that "[e]nvironmental justice issues must be considered in connection with the issuance of PSD permits by both the Regions and states acting under delegated authority.[179] In *In re Knauf Fiber Glass, GmbH*, the EAB remanded a PSD permit to a delegated permitting authority with instructions to provide a meaningful evaluation of environmental justice issues.[180] This obligation stems from Executive Order 12898, which provides that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse

[176] Mich Admin Code R 336.2801(ee).

[177] *Id.*

[178] *In re: Shell Gulf of Mexico, Inc*, OCS Permit No RI00CSIPSD-AK-09-01 (Jan 12, 2012) (citing *In re EcoEléctrica*, LP, 7 EAD 56, 69 n17 (EAB 1997); *In re Shell Gulf of Mex, Inc*, OCS Appeal Nos 10-01 through 10-04 (EAB Dec 30, 2010), 15 EAD __), available at: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/CAA~Decisions/FFB31450EBD172148525798300737184/$File/Denying%20Review...51.pdf (last viewed March 27, 2014).

[179] *In re Prairie State Generating Co*, PSD Appeal No 05-05, 13 EAD 1, 4, 95 (Aug 24, 2006).

[180] PSD Permit No 97-PO-06, 8 EAD 121, 38 (February 4, 1999) ("At a minimum, the petitioner's comment invoking the Executive Order deserves a more complete response than the cursory denial that is currently in the record. If an environmental justice issue is unlikely in the context of this proposed project, we need to know the basis for that conclusion.")

human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."[181]

DEQ administers the state air quality regulations under authority delegated by the EPA, and it receives financial assistance from EPA in its administration of the air quality program. As such, DEQ is subject to the EPA's environmental justice obligations.[182] As noted above, the EAB has specifically stated that a delegated state permitting authority "stands in the shoes" of EPA for purposes of issuing PSD permits, and that a PSD permit issued by a state delegate "is still an 'EPA-issued permit.'"[183]

The Severstal facility is adjacent to the South End neighborhood of Dearborn.[184] Eighty percent of the South End neighborhood is Arab-American, and 86% speak a language other than English.[185] Further, 43% of the population has income below the poverty level.[186] As such, the South End neighborhood is predominantly a "population of interest" for environmental justice purposes.[187]

---

[181] 59 Fed Reg 7,629 (Feb 16, 1994); see also 42 USC § 7470(1) (purpose of PSD program is "to protect public health and welfare...notwithstanding attainment and maintenance of all national ambient air quality standards.").

[182] See *EPA Office of Civil Rights Title VI Administrative Complaint File No 5R-98-R5* (Select Steel Complaint) ("MDEQ is a recipient of EPA financial assistance; therefore, MDEQ is subject to the requirements of Title VI and EPA's implementing regulations."), available at: http://www.epa.gov/civilrights/docs/ssdec_ir.pdf (last viewed March 26, 2014).

[183] *In re Knauf Fiber Glass*, 8 EAD at 37, citing 45 Fed Reg 33,290, 33,413 (May 19, 1980).

[184] The South End neighborhood is generally between the Severstal (Rouge) complex and Woodmere Cemetery, Patton Park, and Holy Cross Cemetery. For census data purposes, we use Census Block 5735. See **Ex. 2**, Census Block 5735, Wayne County, Michigan, available at: http://www2.census.gov/geo/maps/dc10map/GUBlock/st26_mi/county/c26163_wayne/DC10BLK_C26163_T01.pdf (last visited March 27, 2014).

[185] See **Ex. 3**, 2008-2012 American Community Survey 5-Year Estimates (March 27, 2014), **Ex 2**, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?fpt=table (last viewed March 27, 2014).

[186] See **Ex. 4**, 2008-2012 American Community Survey 5-Year Estimates Selected Economic Characteristics (March 27, 2014), available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?fpt=table

[187] See *EPA Activities to Promote Environmental Justice in the Permit Application Process* ("The term "overburdened communities" refers to "minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to exposures or cumulative impacts or greater vulnerability to

Even without substantially higher permitted emissions from the Severstal facility, residents in the South End are disproportionately impacted by pollution sources. The neighborhood is one of the most polluted areas of Michigan. The Dearborn Air Quality monitor, which is located in the parking lot of the Salina school in the heart of the South End neighborhood, regularly registers the highest PM2.5 levels in Michigan.[188] In 2012, that monitor measured an annual concentration of PM2.5 that was higher than any other place in the state, and which is only below the EPA's current NAAQS for PM2.5 by a nearly immeasurable fraction. The Dearborn monitor also shows the neighborhood has some the highest manganese levels nationwide:

> The highest annual average concentrations [of manganese] have been measured at the South Delray and Dearborn sites. Although levels at South Delray and Dearborn have dropped since 2003, they remain consistently above the health protective benchmark level, higher than other Michigan sites, *and some of the highest values measured within Region 5 and across the U.S.* (USEPA, 2008) The reason for the increase between 2009 and 2010 is discussed later and is linked to changes in the steel industry.[189]

As MDEQ has recognized, "[t]he primary source contributor on high manganese days at the Dearborn site was Severstal."[190] Studies underway indicate there may be disproportionately high

---

environmental hazards."), available at: www.epa.gov/environmentaljustice/plan-ej/permitting.html (last viewed March 26, 2014).

[188] See **Ex. 10**, MDEQ PM2.5 Annual Data Summary (updated 10/1/2013), available at: http://www.michigan.gov/documents/deq/DEQ-AQD-PM25_summary_291638_7.pdf?20140327151952 (last viewed March 27, 2014); **Ex. 11,** MDEQ PM2.5 24-hour Data Summary (updated 10/1/2013), available at: http://www.michigan.gov/documents/deq/deq-aqd-amu-monitoring-pm25-24hr-summary_403178_7.pdf?20140327151952 (last viewed March 27, 2014).

[189] **Ex. 40**, *Ambient Air Levels of Manganese in Southeast Michigan: Evaluation and Recommendations by the AQD Manganese Workgroup* p. 15, 18 (DEQ, March 27, 2012), available at: http://www.michigan.gov/documents/deq/deq-aqd-aqe-monitoring-Mn-Report-Michigan-Sept-8-2011_402342_7.pdf?20140327151952 (last viewed March 27, 2014).

[190] *Id.* at p 18. MDEQ's AQD Manganese Workgroup recommended in 2012 that Severstal be required to upgrade its baghouse with a lime injection system, and that it also install baghouse detection devises and additional hooding. Yet the Draft Permit now proposed by MDEQ contains no such requirement. Certainly such a requirement could and should easily be imposed – among others – as a condition of Severstal's receipt of such extraordinary deference and solicitude from MDEQ.

asthma and other health concerns in the neighborhood, which may be attributable to environmental conditions.[191]

That residents in the neighborhood already suffer disproportionate health ailments when compared to their more distant neighbors is already well documented.[192] Studies underway indicate there may be disproportionately high asthma rates and other health concerns in the neighborhood, which may be attributable to environmental conditions.[193] Additional studies under way are examining the cause of infant mortality and other issues among Arab Americans in Wayne County.[194] In short, the health of people living in the South End is disproportionately impacted by air pollution in and around the neighborhood and, in particular, the pollutants emitted by Severstal.

Because the South End neighborhood is an environmental justice area, and because it already suffers substantially impaired air quality, DEQ has the duty to specially consider the potential impact on this neighborhood of authorizing the proposed emissions increases. Commenters see no evidence in the record of such consideration. Instead, despite Severstal's history of violations and exceedances, it is Severstal and not the neighborhood that receives the benefit of doubt -- the balance of equities consistently tipping in its favor -- at every opportunity. Wherever DEQ has discretion in how to process Severstal's application, environmental justice compels DEQ to err on the side of protecting the neighborhood.

---

[191] See **Ex. 43**, *Air Pollution in Dearborn-Detroit area linked to higher asthma rates* (The Arab American News, Aug. 13, 2013), available at: http://www.arabamericannews.com/news/news/id_4594 (last viewed March 27, 2014).

[192] See **Ex. 43**, *Health Disparities Between Arab and Chaldean Americans in Southeast Michigan and Michigan Residents: Differences in Access to Health Providers and Insurance*, Harry Perlstadt, Stephen Gasteyer, Rosina Hassoun, Stephanie Nawyn, Miles McNall, and Hiam Hamade (ACCESS Health Journal, Fall 2013); **Ex. 43**, *A First Look at Chronic Diseases and Lifestyle Behaviors Among Arab and Chaldean Americans in Southeast Michigan*, Rosina Hassoun, Elizabeth Hughes, Mona Farroukh, Miles McNall, and Karen Patricia Williams (ACCESS Health Journal, Fall 2013).

[193] See **Ex. 43**, *Air Pollution in Dearborn-Detroit area linked to higher asthma rates* (The Arab American New, Aug. 13, 2013), available at: http://www.arabamericannews.com/news/news/id_4594 (last viewed March 27, 2014).

[194] See **Ex. 43**, *Abstract: Place Matters: The Social Determinants for Infant Mortality*, Mouhanad Hammami *(*ACCESS Health Journal (Fall 2013) ("More babies die before their first birthdays in Wayne County and the city of Detroit than in many parts of the United States and the world."); see generally **Ex. 43**, ACCESS Health Journal (Fall 2013).

Commenters understand that EPA has been developing tools to assist regulators in evaluating the disproportionate impacts of permitting decisions on public health in Environmental Justice Areas.[195] Thus commenters request that MDEQ engage with EPA to evaluate the impacts of Severstal's proposed increases in permitted emissions on the South End neighborhood. In the meantime, and until environmental justice issues associated with Severstal's emissions are thoroughly considered by MDEQ, the Draft Permit cannot be issued.

V. Severstal's Attempts To Influence MDEQ Have Undermined The Integrity Of The Permitting Process To Date.

As outlined above, Severstal is asking the MDEQ to engage in extraordinary and unprecedented interpretations in the company's favor, on fundamental questions regarding regulatory grandfathering, netting and the continued inclusion of the B Blast Furnace. As also outlined above, Severstal is asking MDEQ to make these extraordinary interpretations in a heavily polluted neighborhood whose residents already suffer health effects from Severstal's emissions. What is more, Severstal is asking MDEQ for this extreme favorable treatment despite years of permit violations and seeming disregard for the laws MDEQ administers and, frankly, any notion of accountability or moral responsibility to the residents of its host community.

One would think in such a circumstance that Severstal would take great pains to avoid conduct that calls the integrity of the process into doubt. And yet, the opposite appears to be the case. Severstal appears instead to have enlisted the MEDC, whose officials have inserted themselves into the fundamental issues outlined above, and attempted to exercise undue influence over the agency who is charged with protecting the air that the residents around the plant must breathe every day.

These efforts by Severstal – directly through ex parte communications by Severstal's own counsel with the ultimate decision-maker, and indirectly through the attempts at undue influence by the MEDC – violate several fundamental rights belonging to the commenters and the other residents of the area. These rights include the right to a fair hearing and a decision based solely on competent, material, and substantial evidence under the Administrative Procedures Act, the right to due process under the United States and Michigan Constitutions, the right to equal protection under the United States and Michigan Constitutions, and the right to fair and just treatment in hearings under the Michigan Constitution.

---

[195] See **Ex. 44**, EPA, *Plan EJ 2014: Considering Environmental Justice in Permitting* (Sept 2011); see also **Ex. __**, EPA, *Proceedings of Symposium on the Science of Disproportionate Environmental Health Impacts* (March 17-20, 2012), available at: http://www.epa.gov/environmentaljustice/multimedia/albums/epa/disproportionate-impacts-symposium.html (last viewed March 29, 2014).

VI. Commenters Object to an Administrative Amendment of Severstal's ROP Based on the Draft Permit.

In the public notice documents issued by MDEQ with respect to the Draft Permit, the agency states that the Draft Permit's changes "will require revisions" to Severstal's ROP, and that "[t]his public comment period meets the public participation requirements for a future administrative amendment to the ROP."[196] It is commenters' express intent that their comments on the Draft Permit be viewed by Severstal, MDEQ, EPA, and any other party as comments on – and objections to – the corresponding issuance of an amended ROP under Title V of the Clean Air Act.

VII. Commenters' Questions.

In addition to a response to these comments, the commenters respectfully request answers to the following questions regarding this permit and permit application:

1. What was the basis for calculating the maximum desulfurization baghouse flowrate on 20 minutes of operation per hour in PTI #182-05B, and what is the basis for the change to calculating the flowrate based on 60 minutes per hour in the draft permit?

2. What was the basis for calculating the maximum BOF ESP flowrate on 40 minutes of operation per hour in PTI #182-05B, and what is the basis for the change to calculating the flowrate based on 60 minutes per hour in the draft permit?

3. What additional measures have been imposed on the BOF baghouse to raise its capture efficiency from 95% to 98%?

4. What is the factual basis for assuming that the facility's pollution control equipment will operate as efficiently (or more efficiently) at full production as they did at the reduced production levels used for the stack testing?

5. What is the current repair status of Blast Furnace B? What repairs have been conducted to date? What is the schedule going forward, and how is it documented?

[196] See Notice of Air Pollution Comment Period and Public Hearing.

6. What quantity of annual SO_2 emissions were allocated to the B Blast Furnace (all emission units) in PTI #182-05B? What quantity of annual SO_2 emissions were allocated to the B Blast Furnace (all emission units) in PTI #182-05B?

7. What additional control measures are being placed on the C Blast Furnace to improve its SO_2 capture efficiency?

8. What is the status of the coal pulverization facility? Is it still included in the draft permit? If so, why?

9. What if any manganese controls outlined in the September 2012 RTP Environmental Associates report will be included in this permit, the amended ROP, or both?

10. What if any pollution controls outlined in Severstal's September 2012 "grandfathering" letter will be included in this permit, the amended ROP, or both?

11. How is environmental justice being considered in this permit action?

12. What is the Michigan Economic Development Corporation's role in the Part 55 permit review process? Who is the MEDC representing in the meetings and emails regarding this application?

13. What is the total amount of civil penalties that Severstal has paid since the required payments in the 2006 consent decree?

VIII. Conclusion: Severstal Should Not Be Permitted to Substantially Increase Its Permitted Emissions Without Additional Review by MDEQ, Under Current Law and Regulations, That Accounts For Numerous Issues Raised By Commenters.

In summary, commenters have identified the following general flaws in the Draft Permit, each of which is explained in more detail above, and each of which requires that the permit not be issued in its current form:

- Part 55 and the Clean Air Act provide no authority to "correct" an existing permit to install in a way that raises emission limits.
- Part 55 and the Clean Air Act provide no authority to "grandfather" a permit to install application that increases emission limits, and thereby shield Severstal from nearly seven years of legal and regulatory developments related to air pollution.

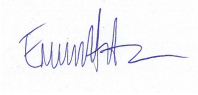
- The Draft Permit improperly fails to analyze the proposed emissions limits under current law and regulations governing air pollution, including PSD and NNSR analyses.
- Even if authority existed to issue a grandfathered permit correction under non-binding EPA guidance, the Draft Permit does not satisfy the conditions required for such a correction.
- Even if authority existed to issue a grandfathered permit correction of the type proposed, and even if the Draft Permit were revised to meet the conditions required for such a correction, the exercise of such discretion in this case would be unwarranted and inappropriate.
- The Draft Permit is based upon a flawed netting analysis by Severstal because it improperly considers the changes contained therein "corrections," and thus fails to properly net the proposed emissions limits against the emissions limits in Severstal's existing Permit to Install.
- The Draft Permit is based upon a flawed netting analysis by Severstal because it improperly considers emissions from Severstal's inoperable and defunct B Blast Furnace.
- The Draft Permit improperly excludes a BACT analysis CO_2, whether or not it is a grandfathered permit correction.
- Authorization to install a coal pulverization facility must be rescinded.
- The Draft Permit fails to properly or sufficiently consider Severstal's history of SSM events and associated emissions, or to ensure future compliance with SSM regulations.
- The Draft Permit fails to properly or sufficiently consider Severstal's history of failing to maintain its emissions control equipment, or to ensure adequate future maintenance.
- Commenters adopt and incorporate the earlier comments in **Ex 14** (Sagady comments) regarding the need for further conditions on particulates and manganese.
- The Draft Permit improperly fails to consider Environmental Justice issues.
- The permit application process was impacted by Severstal's and the MEDC's improper ex parte contacts, improper attempts to secure prior determinations by the final decision maker, and attempts to improperly influence the outcome in a way that deprived commenters of their rights to due process, equal protection, and fair and just treatment.

March 31, 2014

Respectfully Submitted,

Digitally signed by Christopher M. Bzdok
Date: 2014.03.31 16:34:26 -04'00'

Christopher M. Bzdok (P53094)



Digitally signed by Emerson Hilton
DN: cn=Emerson Hilton, o=Olson Bzdok and Howard, ou=Olson Bzdok and Howard, email=emerson@envlaw.com, c=US
Date: 2014.03.31 16:34:54 -04'00'

Emerson Hilton (P76363)
OLSON, BZDOK & HOWARD, P.C.
420 E. Front St.
Traverse City, MI 49686
Phone: 231/946-0044
Fax: 231/946-4807
Email: emerson@envlaw.com
chris@envlaw.com

Digitally signed by T.J. Andrews
DN: cn=T.J. Andrews, o=Co-counsel - Law Office of Tracy Jane Andrews, PLLC, ou, email=tjandrews@ymail.com, c=US
Date: 2014.03.31 16:35:17 -04'00'

Tracy Jane Andrews (P67467)
LAW OFFICE OF TRACY JANE ANDREWS, PLLC
713-B Lake Avenue
Traverse City, MI 49684
Email: tjandrews@ymail.com