

BEFORE THE
JEFFERSON COUNTY BOARD OF HEALTH

GASP,

Petitioner,

vs.

Jefferson County Department of Health
Air Pollution Control Program,

Respondent.

_____ /

REQUEST FOR HEARING

Pursuant to Jefferson County Air Pollution Control R. & Regs., ch. 12,
Petitioner submits this Request for Hearing to contest an administrative action of
the Jefferson County Department of Health Air Pollution Control Program.

Petitioner

1. The name, mailing address, and telephone number of the Petitioner is
as follows:

GASP
732 Montgomery Highway #405
Birmingham, AL 35216
(205) 541-3746

Administrative Action Contested

2. The administrative action of the Jefferson County Department of
Health Air Pollution Control Program which is being contested is the issuance of

Major Source Operating Permit No. 4-07-0355-03 to Walter Coke, Inc. on October 3, 2014.

Timeliness of Request

3. No notice of the issuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke, Inc. was given to GASP by the Jefferson County Department of Health Air Pollution Control Program. In the absence of such notice, a request for hearing must be filed within 30 days after the administrative action. Jefferson County Air Pollution Control R. & Regs., Section 12.4.1. This Request is filed within 30 days after the issuance of Major Source Operating Permit No. 4-07-0355-03 to Walter Coke, Inc.

Threatened or Actual Injuries Suffered

4. The threatened or actual injuries suffered by GASP as a result of the issuance of Major Source Operating Permit No. 4-07-0355-03 by the Jefferson County Department of Health Air Pollution Control Program, and the emissions authorized thereby, are described as follows:

A. GASP is an Alabama non-profit, membership corporation. An organization can seek relief on behalf of its members when its members would otherwise have standing to pursue such relief; the interests it seeks to protect are germane to the organization's purpose; and neither the claims asserted nor the

relief requested require that individual members be made parties in the proceeding. *See e.g., Black Warrior Riverkeeper, Inc. v. Alabama Dep't of Env'tl. Mgmt.*, EMC Docket No. 05-01, 2006 AL ENV LEXIS 2, *12-15 (Feb. 24, 2006) (an organization has standing to contest an ADEM administrative action under Ala. Code § 22-22A-7(c) if its members would otherwise have standing to pursue such relief; the interests it seeks to protect are germane to the organization's purpose; and neither the claims asserted nor the relief requested require that individual members be made parties in the proceeding); *Friends of Hurricane Creek v. Alabama Dep't of Env'tl. Mgmt.*, EMC Docket No. 08-07, 2010 AL ENV LEXIS 1, *47-52 (Apr. 16, 2010) (organization who's members use and enjoyment of water is threatened by discharges authorized by ADEM permit is "aggrieved" under Ala. Code § 22-22A-7(c)), *aff'd sub nom. Alabama Rivers Alliance, Inc. v. Alabama Dep't of Env'tl. Mgmt.*, 14 So.3d 853 (Ala. Civ. App. 2007); *Black Warrior Riverkeeper, Inc. v. Alabama Dep't of Env'tl. Mgmt.*, EMC Docket No. 09-04, 2011 AL ENV LEXIS 3, *10-12 (Aug. 19, 2011) (organization who's members use and enjoyment of water is threatened by discharges authorized by ADEM permit is "aggrieved" under Ala. Admin. Code R. 335-2-1-.02(b)); *Ex parte Fowl River Protective Ass'n, Inc.* 572 So.2d 446, 456 n. 2 (Ala. 1990) (organizations "that appealed this ADEM decision clearly qualify" as persons "aggrieved" under Ala.

Code § 22-22A-7(c); “a citizen’s statutory right to appeal an ADEM decision should be interpreted broadly”).

B. The purpose of GASP is to further the conservation, preservation, protection, maintenance, improvement, and enhancement of human health and the environment on behalf of its members and in the public interest. GASP’s current mission is to reduce air pollution, educate the public about the health risks of poor air quality, and encourage community leaders to serve as role models for clean air and clean energy.

C. Members of GASP reside, work, and/or recreate in close proximity to the Walter Coke facility which was granted Major Source Operating Permit No. 4-07-0355-03. These members are “aggrieved” because they have suffered the following threatened and actual injuries in fact as a result of the operations authorized by Major Source Operating Permit No. 4-07-0355-03: soot (particulate) deposits that are injurious to their homes and interfere with the enjoyment of their homes; smells that are unpleasant in and around their homes; exposures to airborne carcinogens in concentrations that tend to be injurious to human health and welfare; and exposures to airborne carcinogens in concentrations that create an incremental increase in the risk of cancer that is greater than 1 in 100,000. *See* Jefferson County Air Pollution Control R. & Regs., Section 12.2.2 (“Aggrieved”

means having suffered a threatened or actual injury in fact”); *Alabama Dep’t of Env’tl. Mgmt. v. Legal Env’tl. Assistance Found., Inc.*, 973 So.2d 369, 378 (Ala. Civ. App. 2007) (“a ‘person aggrieved’ under § 22-22A-7 is one who has suffered a threatened or actual injury, *i.e.*, one who is somehow adversely affected by the ADEM action of which it complained”).

D. Neither the claims asserted nor the relief requested by GASP require that individual members of GASP be made parties in this proceeding.

Relief Requested

5. GASP proposes that the Jefferson County Board of Health issue an order disapproving the issuance of Major Source Operating Permit No. 4-07-0355-03 in its entirety.

Respectfully submitted,



DAVID A. LUDDER
Attorney for Petitioner
ASB-4513-E63D
Law Office of David A. Ludder, PLLC
9150 McDougal Court
Tallahassee, Florida 32312-4208
Tel (850) 386-5671 Fax (267) 873-5848
E-mail DavidALudder@enviro-lawyer.com