



319 No. Fourth St., Ste. 800
St. Louis, MO 63102
(314) 231-4181 facsimile (314) 231-4184
www.greatriverslaw.org
Founding President: Lewis C. Green 1924-2003

President

Kathleen G. Henry (*Licensed in MO, IL, DC*)

General Counsel

Bruce A. Morrison (*Licensed in MO, IL*)

Climate and Energy Program Director

Henry B. Robertson (*Licensed in MO*)

Staff Attorney

Bob H. Menees (*Licensed in MO, OR*)

Director of Development and Community Outreach

Sarah N. Willey

June 12, 2017

VIA ELECTRONIC MAIL ONLY

Chief, Permits Section
Missouri Department of Natural Resources
Air Pollution Control Program
P.O. Box 176
Jefferson City, MO 65102-0176
apcpermitspn@dnr.mo.gov

*Re: Mallinckrodt, LLC Draft Part 70 Operating Permit,
(Installation ID: 510-0017; Project No. 1997-05-009)*

Dear Sir or Madam:

On behalf of the Missouri State Conference of the National Association for the Advancement of Colored People (“NAACP”), Doug Eller, Gloria Fatima Muhammad, and other concerned citizens of the Hyde Park, Old North, and College Hill neighborhoods in North St. Louis City, Great Rivers Environmental Law Center (“Great Rivers”) submits the following comments regarding Mallinckrodt, LLC’s (“Mallinckrodt”) Draft Part 70 Operating Permit issued by the Missouri Department of Natural Resources (“MDNR”).

I. Introduction

The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. Furthermore, the NAACP has an Environmental and Climate Justice Program (“ECJ”) that addresses environmental injustices that have a disproportionate impact on communities of color and low-income communities in the United States and around the world. The NAACP ECJ Program was created to provide resources and to support community leadership in addressing these types of human and civil rights issues by advocating to reduce harmful emissions, advance energy

efficiency and clean energy, strengthen community resiliency and livability.¹ Similarly, Great Rivers has dedicated much time and effort since 2012 to investigate and attempt to alleviate the negative impacts imposed on North St. Louis City residents and workers from the pollution caused by businesses located in and near the North St. Louis Riverfront Corridor. Immediately prior to the start of Great Rivers' work on this issue, the City of St. Louis Department of Health lost funding to operate most of its air pollution program under its Certificate of Authority issued by the Missouri Air Conservation Commission ("MACC").

Since then, MDNR has since been the primary enforcer of the mandates of the federal Clean Air Act ("CAA") and Missouri Air Conservation Law ("MACL") in the City of St. Louis. While we appreciate the difficulties that have been created by this transition and the efforts taken by MDNR to address air quality issues in the City of St. Louis, we believe that more needs to be done to address environmental justice issues faced by minority and low-income communities in North St. Louis that are caused by this dense corridor of pollution.

The communities most impacted by the decision to issue Mallinckrodt a Clean Air Act, Title V, Part 70 Operating Permit are the Old North, Hyde Park, and College Hill neighborhoods in North St. Louis City, which are located within zip codes 63106 and 63107. The demographic composition of these three neighborhoods is primarily minority and low-income and therefore they constitute Environmental Justice communities under EPA Title VI Civil Rights regulations and policy. According to a 2012 St. Louis City Department of Health report entitled *Understanding Our Needs*, the city's populations located within zip codes 63106 and 63107 have the highest poverty rate in the city (46.3% and 34.4% respectively).² The same report indicates that populations located within zip codes 63106 and 63107 are 94.8% and 90.7% African-American, respectively.³ Furthermore, zip codes 63106 and 63107 had the highest and fourth highest incidences of asthma hospitalizations in the city, respectively.⁴ According to EPA's EJScreen technology, these three neighborhoods are in the upper 90th percentile for exposures to various environmental threats within the state. *See* Attachment 1.

MDNR's permitting program in this area of North St. Louis causes a disparate impact on minority and low-income communities in the form of concentrated pollutant emissions from a variety of permitted sources as well as cumulative and synergistic impacts from those emissions. No analysis of environmental justice disparate impacts is being conducted in MDNR's decision to approve, modify, or extend air permits in this environmental justice community, specifically, or environmental justice communities statewide, generally. As recipients of funding from the EPA to operate its Air Pollution Control Program ("APCP"), MDNR is required to comply with the Title VI of the Civil Rights Act of 1964, EPA's Title VI regulations, and Executive Order

¹ See <http://www.naacp.org/environmental-climate-justice-about/> (Last visited June 9, 2017).

² *See* Page 33. Located at: <https://www.stlouismo.gov/government/departments/health/documents/public-health-understanding-our-needs-report.cfm> (last visited June 1, 2017).

³ *Id.* at 27.

⁴ *Id.* at 120-121.

12898 which mandate consideration and analysis of environmental justice factors in issuing permits through programs funded by the EPA.⁵

This mandate is clearly not being met, and MDNR depriving environmental justice communities in this area of their civil rights. Without consideration and analysis of environmental justice impacts caused by the pending approval of Mallinckrodt's Part 70 Operating Permit, the administrative process to grant such permit is illegal and in violation of Title VI of the Civil Rights Act of 1964, EPA's regulations promulgated thereunder, and Executive Order 12898. Before issuing a Part 70 Operating Permit to Mallinckrodt, MDNR must conduct a disproportionate impact analysis and conduct air quality modeling for those pollutants capable of causing a disproportionate impact to environmental justice communities located in close proximity to the facility.

These environmental justice issues in North St. Louis City are further exacerbated by the fact that Mallinckrodt has not been issued a Part 70 Operating Permit twenty years after first submitting an application in March, 1997. Mallinckrodt is one of the largest emitters of air pollution in the City of St. Louis.⁶ The facility is located in close proximity to minority and low-income communities. St. Louis is a non-attainment area for particulate matter of 2.5 microns or less (PM_{2.5}). North St. Louis City has the highest levels of PM_{2.5} in the state.⁷ Furthermore, North St. Louis City has the highest levels of particulate matter of 10 microns or less (PM₁₀) in the state.⁸ Yet, despite Mallinckrodt's twenty-year history of emitting PM_{2.5} and PM₁₀ without a Part 70 Operating Permit in an area that has the worst statewide air quality for these pollutants, a disproportionate impacts analysis has never been conducted for the minority and low-income communities around Mallinckrodt's facility.

Members of these communities report that they are afraid to breathe the air in their neighborhood. They choose not to open the windows in their homes because of strange odors, concerns of pollution, and potential impacts to their health. If the stacks from Mallinckrodt are blowing towards their residences, they often choose to stay inside rather than leaving their

⁵ The Governor's 2017 Recommended Budget states that MDNR's ACP received \$8,272,621 of its \$14,604,059 operating expenses in 2016 from federal funds, including federal grants. See Pages 100-104, located at https://oa.mo.gov/sites/default/files/FY_2017_Natural_Resources_Budget_Request_Gov_Rec.pdf (last visited June 1, 2017).

⁶ Mallinckrodt is the 8th largest emitter of regulated air pollutants based on chargeable emissions according to MDNR records.

⁷ In MDNR's 2016 Air Monitoring Network Plan, on Page 27, MDNR identifies the Blair St. Monitor, located less than 0.5 miles from the Mallinckrodt facility, as having the highest daily and annual values of PM_{2.5} (25 ug/m³, 11.0 ug/m³) in the ambient air statewide compared to the National Ambient Air Quality Standards ("NAAQS") for PM_{2.5} (35 ug/m³, 12.0 ug/m³).

⁸ In MDNR's 2015 Air Monitoring Network Plan, Page 33, the Branch St. monitor, located less than 0.5 miles of the Mallinckrodt facility is identified as having 2.1 exceedances of the PM₁₀ NAAQS and therefore to be in violation of the PM₁₀ NAAQS during the 2012-2014 timeframe. In MDNR's 2016 Air Monitoring Network Plan 2016, Page 33, the Branch St. monitoring is the only monitor in the state that shows an exceedance of the PM₁₀ NAAQS.

homes. Some have experienced strange phenomenon such as drinking water turning yellow if left outside. They attribute many of these problems to the Mallinckrodt facility. Yet, the facility remains a mystery to them because of a lack of engagement by MDNR or Mallinckrodt in their communities. Of great concern to residents of these communities is the proximity of Mallinckrodt to various schools and daycare facilities, including Ames, Clay, Confluence, Arch Community, and Most Holy Trinity. These disparate impacts to the air quality and health of residents in the area are unacceptable and must be addressed by MDNR and Mallinckrodt going forward.

II. MDNR's Failure to Consider Disparate Impacts to Minority and Low Income Communities Violates Title VI of the Civil Rights Act of 1964, EPA Regulations, and Executive Order 12898.

Recipients of federal funding are prohibited from taking actions that have a discriminatory impact on minority populations. Title VI of the Civil Rights Act of 1964 states:

No person in the United state shall, on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving any federal financial assistance.⁹

EPA's implementing regulations further prohibit recipients of EPA funding from discriminating. Specifically, EPA's Title VI regulations provide that an EPA funding recipient:

... shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.¹⁰

In addition to these protections, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," provides:

To the greatest extent practicable and permitted by law, ... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States...¹¹

MDNR's decision to approve Mallinckrodt's Part 70 Operating Permit as drafted violates the agency's statutory and regulatory duty to administer all programs and activities in a nondiscriminatory manner. Furthermore, MDNR has failed to satisfy E.O. 12898's requirement

⁹ 42 U.S.C. Section 2000d.

¹⁰ 40 C.F.R. 7.35(b).

¹¹ Exec. Order No. 12898, 59 C.F.R. 7629 (1994).

that federal agencies identify disproportionate impacts because it has failed to conduct an analysis of the effects of the pollutants emitted by Mallinckrodt on the minority and low-income communities located near the facility. To comply with Title VI, MDNR must conduct air quality modeling and a disproportionate impacts analysis with respect to Mallinckrodt's emissions, but has not done so.

The draft permit documents published by MDNR do not raise or identify the issue of disproportionate impacts at all, much less conduct a disproportionate impacts analysis for PM_{2.5}, PM₁₀, HAPs, VOCs, or the other pollutants emitted by Mallinckrodt on minority and low-income communities around the facility. Without consideration of environmental justice issues, MDNR's actions in approving the draft permit will have an adverse impact that is discriminatory on the bases of race, color, or national origin, and on the basis of economic status. Under the draft permit, residents living near and within the North St. Louis Riverfront Corridor will be exposed to PM_{2.5}, PM₁₀, VOCs, NO_x, and HAPs in amounts that are likely to threaten human health. Residents in this area are disproportionately African American and low-income compared to other areas of St. Louis. Therefore, MDNR's decision to approve Mallinckrodt's Part 70 Operating Permit as drafted will disparately impact minority and low-income communities in violation of Title VI.

Even if the issuance of Mallinckrodt's permit complies with the National Ambient Air Quality Standards ("NAAQS") for various criteria pollutants and National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") for hazardous air pollutants, such compliance does not absolve MDNR and Mallinckrodt from performing a disproportionate impact analysis related to the issuance of the permit on neighboring communities. Since 2013, EPA's Office of Civil Rights ("OCR") has stated in guidance documents that it "will no longer presume an absence of adversity if a NAAQS (or other health-based threshold) is satisfied."¹² EPA explained that "presuming compliance with civil rights laws wherever there is compliance with environmental health-based thresholds may not give sufficient consideration to other factors that could also adversely impact human health."¹³

Therefore, relying on the NAAQS and NESHAP in the absence of a disproportionate impact analysis is not sufficient to ensure compliance with Title VI requirements under OCR policy because low income communities are considered to be at particularly high risk for exhibiting health impacts from exposure to various pollutants,¹⁴ and because the neighborhoods along the North St. Louis Riverfront Corridor are already struggling with the cumulative effects of multiple sources of pollution. OCR's position has been applied to Title VI complaints filed with EPA, in which OCR explained "compliance with federal and/or state environmental

¹² Environmental Protection Agency, *Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental and Health-Based Thresholds* 4. January 24, 2013.

¹³ *Id.*

¹⁴ See, e.g., National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3086 (Jan. 15, 2013) ((codified at 40 C.F.R. Parts 50, 51, 52, 53, and 58) ("2013 Final Rule") at 3104.

regulations, does not, by itself, ensure compliance with Title VI.”¹⁵ Similarly the EPA Environmental Appeals Board has held that technical compliance with NAAQS is inadequate for compliance with Executive Order 12898.¹⁶

To remedy violations of Title VI, EPA regulations, and Executive Order 12898, MDNR should require Mallinckrodt to conduct a robust analysis of disproportionate impacts to North St. Louis City communities, including cumulative impacts from other nearby permitted facilities regulated by MDNR under the CAA, and allow public comment on that disproportionate impacts analysis. Alternatively, MDNR should conduct such analysis itself for public comment.

III. MDNR’s Failure to Provide a Grievance Procedure for Environmental Justice Complaints to Minority and Low Income Communities Violates EPA Regulations Promulgated Under Title VI of the Civil Rights Act of 1964

MDNR lacks a grievance procedure for environmental justice complaints as required by law. EPA’s Title VI implementing regulations state that each recipient of EPA funding shall “adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this part.”¹⁷ MDNR has adopted no such procedures and is therefore in violation of this regulation. To remedy this violation of EPA regulations, MDNR should develop a complaint procedure whereby members of minority and low-income communities are provided a vehicle to address potential environmental justice and civil rights issues in MDNR’s air permitting process. Such grievance process could be modeled after EPA’s Office of Civil Rights complaint process or other states that have adopted similar processes such as Illinois.¹⁸

Furthermore, MDNR needs to put forth more effort in engaging minority and low-income communities that are impacted by air pollution, such as the neighborhoods impacted by Mallinckrodt’s facility. The issuance of a public notice is not sufficient to meet this need because minority and low-income communities are the least likely groups to be able to effectively navigate and comment on public notices for draft permits. To this end, MDNR should create a position within the APCP for an Environmental Justice liaison to engage and inform minority and low-income communities when air permitting and siting decisions are proposed that might have disproportionate impacts on such communities. MDNR should proactively facilitate informational meetings for minority and low-income communities when air permitting decisions are proposed that might impact such communities. Without these types of components, MDNR’s APCP remains in violation of Title VI regulations.

¹⁵ See *Angelita C. et al v. California Department of Pesticide Regulation*, US EPA, Re: Title VI Complaint 16R-99-R9 (2011).

¹⁶ See *In re Shell Gulf of Mexico Inc.*, No. 1550, 2010 WL 9564110 (EAB 2010).

¹⁷ 40 C.F.R. 7.90(a).

¹⁸ <http://www.epa.illinois.gov/topics/environmental-justice/ej-policy/index>.

The commenters note that around the time when Mallinckrodt first submitted an application for a Part 70 permit in 1997, the company held informational meetings for the neighboring communities to discuss concerns regarding air pollution from the facility. Community members found them valuable in understanding Mallinckrodt's operations and to have their concerns addressed. MDNR or Mallinckrodt should reinstitute these meetings as a means to address concerns regarding air pollution in the area and to disseminate information to the public about air pollution and the regulatory process of air permitting.

IV. MDNR Should Further Limit Emissions of Several Air Pollutants

Several Emission Limits presented in Section III of the Draft Permit should be lowered because they will not be protective of ambient air quality and human health:

NO_x: The limit in the draft permit for NO_x is 39 tons per year (tpy) for all permitted features. Mallinckrodt's Emission Inventory Questionnaires ("EIQs") from 2008-2016 demonstrate a downward trend of NO_x emissions from 107.1 tpy in 2008 to 29.30 tpy in 2016. Allowing Mallinckrodt to suddenly reverse trend and emit 10 tpy more in 2017 than in 2016 would constitute a significant increase of NO_x into the ambient air in an area that is already designated as non-attainment for ozone and PM_{2.5}. Since NO_x is a precursor for ozone, allowing Mallinckrodt to emit 10 tpy will further contribute to ambient air quality exceedances and violations of the ozone NAAQS. Furthermore, NO_x is a precursor to PM_{2.5}. As stated above, the area around the facility is already in non-attainment for PM_{2.5} and experiences the highest levels of PM_{2.5} in the ambient air statewide. Allowing an additional 10 tpy of NO_x per year will further degrade the ambient air in North St. Louis City. A review of a prior draft permit from 2013 suggests that 24.45 tpy would be an appropriate limit in Mallinckrodt's permit and that the 39 tpy limit in the draft permit was arbitrarily selected without justification for the convenience of the permittee. Selecting the 24.45 tpy emission limit for NO_x would continue the downward trend and would help to meet ozone and PM_{2.5} NAAQS in the region and help to improve ambient air quality in North St. Louis City.

VOCs: The Total VOC emission limit of 211.82 tpy is more than five times higher than Mallinckrodt's VOC emissions reported in its 2016 EIQ of 38.10 tpy. The most VOCs Mallinckrodt has emitted since 2008 is 43.8 tpy. Setting the emission limit at 211.82 tpy would allow Mallinckrodt to emit VOCs in a quantity that would negatively impact human health and ambient air quality. Furthermore, because VOC is a precursor to ozone, allowing a five-fold increase in VOC emissions from one source would likely contribute to further exceedances of the ozone NAAQS in an area of non-attainment for ozone.

Total HAPs: The Total HAP limit of 143.43 tpy is significantly higher than Mallinckrodt's reported HAPs from 2012-2016, which ranged from 1.18 tpy to 3.12 tpy. It is unclear from the Statement of Basis or other documents in Great Rivers' possession why there is such a vast discrepancy between reported HAPs and proposed HAP emission limits. We note that in earlier years, Mallinckrodt and/or MDNR were combining VOC and PM₁₀ with HAPs in EIQs. However, these values still do not explain the vast discrepancy described above. MDNR's allowance of 143.43 tpy or 286,860 lbs per year for the next five years to Mallinckrodt

to emit air pollutants deemed hazardous for being suspected of causing cancer or other serious health effects, such as reproductive effects or birth defects, will have a disproportionate impact on minority and low-income communities near the facility.

V. General Typographical errors

We provide the following non-substantive suggested corrections to the draft permit for accuracy:

Page 8

Monitoring:

1. The permittee shall conduct visible emissions observations on each emission unit using the procedures contained in USEPA Test Method 22. The permittee is only required to make observations when the emission unit is operating and when the weather conditions allow. If the permittee observes no visible **emissions**, then no further observations are required.

Page 19

k. In all cases where the provisions of this subpart require a permittee to repair leaks by a specified time after the leak is detected, it is a violation of this section to fail to take action to repair the leaks within the specified time. If action is taken to repair the leaks within the specified time, failure of that action to successfully repair the leak is not a violation of this section. However, if the repairs are unsuccessful, **and** a leak is detected, **and** the permittee shall take further action as required by applicable provisions of this section. [§63.1255(a)(12)]

Page 26

iv. Records. In addition to records required by §63.1255(g), the permittee shall maintain records specified in §63.1255(e)(5)(iv)(A) through (D). [§63.1255(e)(5)(iv)]

Page 35

ii. For equipment complying with the provisions of §63.1255(b) through (g), except §63.1255(b)(4)(iv) and §63.179, the summary information listed in §63.1255(h)(3)(ii)(A) through (L) for each monitoring period during the 6-month period. [§63.1255(h)(3)(ii)]

Page 62

3. The permittee shall operate, monitor, and perform recordkeeping on this equipment ~~in~~ as required in 40 CFR part 63 Subpart GGG.

Page 79

1) The permittee shall submit a Full Emissions Report either electronically via MoEIS, which requires Form 1.0 signed by an authorized company representative, or on Emission Inventory Questionnaire (EIQ) paper forms on the frequency specified in this rule and in accordance with the requirements outlined in this rule. Alternate methods of reporting the emissions, such as a spreadsheet file, can be submitted for approval by the director.

Page 126

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Statement of Basis

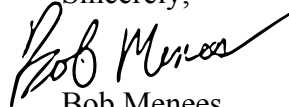
SB-1

The Statement of Basis for the permit states that MDNR relied on Mallinckrodt's "2015 Emissions Inventory Questionnaire, received April 29, 2016" as a reference in drafting the Part 70 Operating Permit. This should be changed to "2016 Emissions Inventory Questionnaire, received April 29, 2017" as the 2016 EIQ numbers are referenced in Table SB 1.

* * *

We appreciate the opportunity to comment on the draft permit on behalf of the NAACP, Doug Eller, Gloria Fatima Muhammad, other concerned citizens of North St. Louis City and hope that MDNR will take the concerns addressed in this comment letter seriously, and we look forward to MDNR's response.

Sincerely,



Bob Menees
Staff Attorney