



TULANE ENVIRONMENTAL LAW CLINIC

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Re: *Comments on Behalf of Save Our Neighborhoods, Louisiana Environmental Action Network, and Mary Jones re PROPOSED INITIAL SYNTHETIC MINOR SOURCE AIR OPERATING PERMIT Minor Source Air Permit for Safeland Storage, LLC / Angelina Tank Farm and Safeland's Environmental Assessment Statement*

AI Number: 144688
Permit Number: 2580-00051-00
Activity Number: PER20060001

Dear Ms. Ghosn:

Save Our Neighborhoods, Louisiana Environmental Action Network (LEAN), and Ms. Mary Jones jointly submit the following comments on LDEQ's PROPOSED INITIAL SYNTHETIC MINOR SOURCE AIR OPERATING PERMIT No. 2580-00051-00 ("Proposed Air Permit") and Safeland's Environmental Assessment Statement / Revised "IT Decision" Responses for Safeland Storage, LLC's proposed petroleum storage and terminal facility (facility) located directly next to the Mt. Airy community in St. John The Baptist Parish.

Save Our Neighborhoods is an organization comprised of people who live in the Mt. Airy and Garyville communities whose goal is to address pollution issues resulting from existing and planned industrial facilities, such as Safeland's proposed facility at issue in the Proposed Air Permit. Ms. Jones lives at 266 Marigold Street in Mount Airy, less than 800 feet from the facility's emission sources.¹ Ms. Jones is a member of Save Our Neighborhoods. Ms. Jones, other Save Our Neighborhoods members, and LEAN members are concerned about adverse health and environmental effects from harmful air emissions from Safeland's proposed ten-million-barrel oil storage facility and terminal that would dump at least 234.46 tons of pollutants a year into the air.

¹ Safeland's Application, URS Site Plan (showing scaled view of tanks and the Mt. Airy community – including Marigold Street)

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Louisiana Environmental Action Network is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members who live, work, or recreate in the vicinity of Safeland's proposed facility.

A. THE PROPOSED AIR PERMIT WILL FURTHER BURDEN THE AFRICAN-AMERICAN COMMUNITY OF MT. AIRY WITH A DISPROPORTIONATE AMOUNT OF INDUSTRIAL POLLUTION.

Mt. Airy, which abuts the Safeland property, is a lower income, mainly African-American community. Mt. Airy residents, and those living in neighboring Garyville, are already inundated with pollution from heavy industrial facilities that release thousands of tons of regulated pollutants pursuant to LDEQ-issued air permits. In fact, LDEQ proposed a major air permit renewal and modification less than two months ago for Gramercy Alumina, LLC's facility, which runs along Safeland's western border. Under the proposed permit, LDEQ would allow Gramercy Alumina to dump almost 10,000 tons per year of regulated pollutants into air less than 700 yards away from the homes of Mt. Airy residents. Also, within the past year, LDEQ approved major source air permits for the Marathon Refinery expansion project with a total emissions increase of more than 4,000 tons per year of particulate matter, sulfur dioxide, nitrogen oxide, carbon monoxide, volatile organic compounds, sulfuric acid, and hydrogen sulfide.² The Marathon Refinery sits in Garyville, and is less than two miles from Mt. Airy. Other nearby facilities that have received air permits to discharge large amounts of regulated pollutants include: Mt. Airy Terminal, NALCO, Stockhausen La. Ltd., and Pinnacle Polymers Co.

Despite the fact that Mt. Airy is already saturated with heavy industrial air polluters, LDEQ is planning to allow Safeland to dump an additional 234 tons of pollutants into the same minority and lower income community. Before granting the proposed permits, LDEQ must carefully consider the disparate impact of air pollutants on the Mt. Airy and Garyville residents. LDEQ must avoid creating environmental inequities. LDEQ must consider the cumulative effects of those environmental permits it has already granted which impact the Mt. Airy community, along with the potential impacts the proposed air permit for Safeland. Many of the pollutants LDEQ allows under the various air pollutants (e.g., most VOCs) have no known thresholds below which exposure to them is safe. Thus, any increase in the release of these pollutants will increase the health risk to the surrounding population.

² LDEQ Public Notice site at <http://www.deq.louisiana.gov/apps/pubNotice/show.asp?qPostID=3435&SearchText=marathon&startDate=1/1/2005&endDate=9/30/2007&category=>

B. TIGHTER EMISSION STANDARDS ARE NEEDED TO PROTECT THE CHILDREN OF ST. JOHN THE BAPTIST PARISH.

LDEQ has proposed to conclude that Safeland's facility is a minor source of air pollution. This is another way of saying that LDEQ has proposed to allow Safeland to build a facility without installing state-of-the-art pollution controls for volatile organic compounds and nitrogen oxides, in light of the fact that St. John The Baptist Parish meets health protection standards for ozone pollution that EPA set 10 years ago, in 1997. (Volatile organic compounds and nitrogen oxides, mixed with oxygen and sunlight, form ground level ozone.)

Recently, however, EPA announced that “[s]cientific evidence indicates that adverse public health effects occur[] following exposure to ozone at levels *below the current standard*”³ EPA has explained that “healthy children . . . who are active outdoors” are an “at-risk group” who face increased vulnerability to health effects from ground-level ozone. This is because “[c]hildren with and without asthma were found to be particularly susceptible to O[zone] effects on lung function in part because their lungs are still developing.” EPA concluded that “children are at-risk due to both their susceptibility and vulnerability.”⁴

EPA, therefore, has proposed to tighten the ozone health protection standard “to provide increased protection for children and other ‘at risk’ populations against an array of O[zone]-related adverse health effects”⁵ In this context, Safeland's application to avoid state-of-the-art pollution controls is, in effect, an attempt to get in under the wire to avoid meeting more stringent emission standards (known as BACT and LAER) that are necessary to protect children in the parish—and would apply to this project as a *major source* of air pollution if St. John The Baptist Parish falls out of attainment for Ozone.

As public trustee, LDEQ has a constitutional duty to “determin[e] whether the proposed project *fully minimizes* adverse environmental effects” and “whether alternate projects . . . would offer more protection.”⁶ Under this standard—and in light EPA's recent announcements—it would be clearly unlawful and irresponsible for LDEQ to allow Safeland to avoid the requirement for state-of-the-art pollution controls. Instead, to protect the health of St. John The Baptist Parish's children, LDEQ must require full minimization of air emissions through application of the best available control technology (BACT) and the lowest achievable emission rate (LAER). Because Safeland's permit application does not meet this standard, LDEQ should deny the application. Indeed, in light of EPA's announcement, Safeland should withdraw and re-evaluate its application.

³ EPA, Fact Sheet - Proposal to Revise the National Ambient Air Quality Standards for Ozone, <http://www.epa.gov/air/ozonepollution/fs20070620.html>

⁴ EPA, Proposed rule: National Ambient Air Quality Standards for Ozone, at pp. 33-35, http://www.epa.gov/air/ozonepollution/pdfs/20070620_o3npr.pdf.

⁵ *Id.* at 1.

⁶ *Save Ourselves, Inc. v. La. Env'tl. Control Comm'n*, 452 So.2d 1152, 1157 (La. 1984).

C. COMMENTERS REQUEST THAT LDEQ DETERMINE SAFELAND'S CONNECTION TO MT. AIRY TERMINAL AND MARATHON REFINERY FOR CLEAN AIR ACT TITLE V AND PSD APPLICABILITY.

Safeland seeks to build its petroleum tank farm contiguous to an existing tank farm—Mt. Airy Terminal (Petroleum Fuel Terminal). In addition, the Safeland facility may be connected via pipeline to the Marathon Refinery in Garyville. Commenters ask LDEQ to determine whether Safeland's proposed facility and the Mt. Airy Terminal and/or the Marathon Refinery constitute one major source for Clean Air Act Title V and Prevention of Significant Deterioration (PSD) applicability purposes.

Through regulation, guidance, and individual determinations, the EPA has established several mechanisms for use by sources and permitting authorities in determining common control as used in the definition of "major source" under Title I and Title V of the Clean Air Act. First, LDEQ must consider whether common control can be established through ownership (i.e., same parent company or a subsidiary of the parent company). Second, LDEQ must consider whether common control can be established if an entity such as a corporation has decision-making authority over the operations of a second entity through a contractual agreement or a voting interest. Importantly, if common control is not established by the first two mechanisms, then LDEQ should next look at whether Safeland or its parent or related entity (The Angelina Group) has a contract for service relationship between either Mt. Airy Terminal or Marathon, or if a support/dependency relationship exists between them, in order to determine whether a common control relationship exists.

If LDEQ finds common control between Safeland and either Mt. Airy Terminal or Marathon, Safeland's emissions must be aggregated with the common facility. If the combined criteria pollutants or hazardous air pollutants exceed the major source threshold, Safeland would be required to obtain a Title V permit and conduct PSD review.

D. SINCE SAFELAND RELIES ON ASSUMPTIONS TO DETERMINE THE FACILITY'S MINOR-SOURCE EMISSION STATUS, LDEQ SHOULD INCORPORATE THESE ASSUMPTIONS INTO THE PROPOSED PERMIT.

A "synthetic minor" source is only a minor source by virtue of a cap on emissions allowable under the permit. For these emission limitations to convert the source into a minor source, LDEQ must show that the limits are enforceable. *See* 54 Fed. Reg. 27,274, 27,277 (June 28, 1989). ("Since sources may avoid the protective requirements of PSD and nonattainment NSR by relying on State or local limitations or reductions, it is essential to the integrity of the PSD and nonattainment program that such State or local limitations be actually and effectively implemented."); *see also* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to senior staff and agency directors of EPA 2 (Apr. 14, 1998), at <http://www.arb.ca.gov/FCAA/TIII/T3Info/498PTE.htm> ("Synthetic minor' sources . . . have the physical and operational capability to emit major amounts, but are not considered major sources because the owner or operator has accepted an *enforceable* limitation." (Emphasis added.)

1. The Specific Requirements for the Proposed Permit Should Include Enforceable Limits on the Facility's Wastewater Treatment Capacity and Flow.

The Specific Requirements for the proposed air permit contain no reference to Safeland's proposed wastewater treatment, which Safeland projects will comprise approximately 8% of the facility's total VOC emissions.⁷ Safeland's calculation of emissions from wastewater treatment assumes a treatment pool with a surface area of 50 square meters and a volume of 75 cubic meters.⁸ Furthermore, Safeland estimates discharge of 0.001 million gallons (or less than 4 cubic meters) a day of treated water.⁹ Safeland expects its stated treatment capacity to be sufficient to account for "tank draw down water from the petroleum storage tanks, stormwater runoff from the equipment pads, maintenance wash water, ship/barge bilge and ballast, slop water, and facility tank wash water."¹⁰ Considering that Safeland is close to the major source threshold for VOC emissions, limiting Safeland's wastewater treatment is critical to insuring Safeland is actually a minor source. LDEQ should incorporate enforceable limitations for wastewater treatment area and discharge flow rate into the Specific Requirements for Safeland's air permit.

2. The Specific Requirements for the Proposed Permit Should Include Enforceable Limitations on Tank Cleanings.

The Specific Requirements also lack reference to Safeland's proposed storage tank cleaning operations. Safeland estimates only 16 of its 63 tanks will be cleaned annually.¹¹ Safeland is thus claiming that it will only clean its tanks roughly once every 4 years. Safeland has estimated that these 16 cleanings will result in 4.9 tons per year of VOC emissions. At that emissions rate, a decision to clean 37 of its 63 tanks in one year would push Safeland over the major source threshold for VOC emissions. LDEQ should incorporate and make enforceable Safeland's estimate of 16 tank cleanings per year into the Specific Requirements for Safeland's air permit.

3. The Specific Requirements for the Proposed Permit Should Include Enforceable Limitations on Diesel Backup Generator Use.

Additionally, while the Specific Requirements mandate some limitations on Safeland's use of its diesel backup generator, the requirements do not limit Safeland's overall use of its generator. Safeland's emissions calculations assume the generator will operate 6 hours every day at 200 horsepower.¹² Therefore, LDEQ should also incorporate and make enforceable these specific, quantified limitations into the Specific Requirements for Safeland's air permit.

⁷ Air Permit Briefing Sheet, p. 2 and Air Permit Application, Exh E, p. E-4.

⁸ Air Permit Application, Exh E, pp. E-2—E-3.

⁹ Water Permit Statement of Basis, p. 3.

¹⁰ Water Permit Statement of Basis, p. 3.

¹¹ Air Permit Briefing Sheet, p. 3.

¹² Air Permit Application, Exh C, p. C-5.

E. LDEQ IS CONSTITUTIONALLY BOUND AS PUBLIC TRUSTEE OF THE ENVIRONMENT TO REQUIRE ADDITIONAL MEASURES PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT WHERE IT ALLOWS A NEW INDUSTRIAL FACILITY TO EMIT 234.46 TONS OF POLLUTANTS PER YEAR WITHIN 1,000 FEET OF AN EXISTING, HISTORIC COMMUNITY.

1. Given the Facility's Proximity to the Mt. Airy Community, LDEQ Must, as Public Trustee of the Environment, Require More Protective Tank Construction That Would Reduce Emissions.

The Louisiana Constitution and Louisiana Supreme Court require LDEQ to require environmental protection "insofar as possible and consistent with the health, safety and welfare of the people."¹³ In its IT Analysis, Safeland claims that "air emissions will be controlled by state-of-the-art emissions control devices...[and] will utilize domed external floating roof tanks."¹⁴ External floating roof tanks are not the state of the art emissions control devices. Internal floating roofs coupled with an external dome are better at controlling emissions. In addition, the greater protection of internal floating roof tanks means that permitting, monitoring, and recordkeeping are much simpler than for external floating roofs.¹⁵ The overlay of a dome over the floating roof provides an extra layer of protection that both reduces regular emissions and helps minimize the effects of accidental leakage. LDEQ must require Safeland to use internal floating roof tanks to fulfill its Constitutional duty.

2. As Public Trustee, LDEQ Must Require Safeland To Install Fenceline Air Monitoring and Community Hotspot Monitoring within the Mt. Airy Community.

In addition to the standard permit requirements, LDEQ should also require Safeland to install monitors around the perimeter of the Facility. According to Safeland's application, the proposed facility is close to being a major source of air pollution and some Mt. Airy residents live a mere 600 feet from sources that will emit 93.8 tons per year of volatile organic compounds (VOCs) and 76.9 tons per year of carbon monoxide. If the community air quality deteriorates, fenceline monitoring could help identify the source of the pollution and help inform the decision for appropriate corrective actions. The Garyville/Mt. Airy community is already surrounded by heavy industry. The Marathon refinery, which marks the community's eastern boundary, has already been the subject of two enforcement actions for air quality in the last three years.¹⁶ If the Parish ceased to comply with air quality standards, pinpointing the source of the problem and establishing responsibility would be very difficult without fenceline monitoring. LDEQ must require fenceline monitoring to fulfill its trustee duty.

¹³ *Save Ourselves, Inc. v. Louisiana Environmental Control Com'n*, 452 So. 2d 1152, 1156-57 (La 1984).

¹⁴ Amended Responses to the Revised Expanded "IT Decision" Questions, Pages 2-3.

¹⁵ LAC 33:III.2103.B-C.

¹⁶ US Environmental Protection Agency, "Enforcement and Compliance History Online (ECHO)." <http://www.epa-echo.gov/echo/>.

F. TO FULFILL ITS PUBLIC TRUSTEE DUTY, LDEQ MUST REQUIRE SAFELAND TO SUBMIT AN “IT” ANALYSIS THAT IDENTIFIES REAL IMPACTS AND MEANINGFUL MITIGATION MEASURES TO REDUCE THE NEGATIVE EFFECT THE PROPOSED FACILITY WILL HAVE ON THE NEIGHBORING COMMUNITY.

1. Local Zoning Laws Require Safeland to Place Its Tanks and Other Heavy Industrial Equipment At Least 2000 Feet from Mt. Airy Residents.

Safeland has not mitigated in any way the proximity of its emission sources (namely the tanks) to the abutting residences. While Safeland claims that it has “intentionally located the storage tanks as close as feasibly possible to the western boundary of the property ... to maximize the distance between the operational areas of the facility and the residents to the east,” it in fact has located its storage tanks as close as it possibly can to the residents to the east.¹⁷ The 600-foot strip of Safeland’s property that exists between the area it plans to locate tanks and the Mt. Airy community is zoned for light industrial use. Local zoning regulations prohibit Safeland from putting any heavy industrial use on that 600-foot strip of land which is zoned for light industry. It must construct its facility on the portion of its land that the parish has zoned for heavy industrial use – which is western portion of the property. And, local zoning regulations require 2,000 feet between heavy industry and residences.¹⁸ Allowing Safeland to construct its tanks, boiler, wastewater treatment facility, loading and unloading facilities, etc. within 2,000 feet of Mt. Airy residences is in direct conflict with local laws.

2. Safeland Must Offer a Real Plan to Provide a Forested Buffer.

Safeland states that “much of the area within the eastern boundary of the Facility is wooded. Safeland will plant trees or take other steps to ensure that a substantial light and sound barrier is in place along the eastern side of the Facility and to enhance the aesthetic view ... from the residential area.” The wooded area on the eastern boundary of the property is the land identified by the Louisiana Department of Natural Resources and U.S. EPA for an inter-agency project to build a canal and divert water from the Mississippi River to the Maurepas Swamp.¹⁹ LDEQ must require Safeland to prepare a detailed plan for providing a visual/sound barrier taking into consideration EPA and DNR’s plans to build a canal through the eastern portion of Safeland’s property which would likely result in cutting down the trees Safeland says will provide a visual buffer.

¹⁷ Safeland Application, URS Site Plan (showing tanks as close as 600 feet from the property boundary); *see also*, St. John The Baptist Zoning Map, EDMS Doc. No. 36197128 (showing eastern portion of Safeland’s property zoning as I-1 or light industrial).

¹⁸ St. John the Baptist Parish Zoning Ordinance Section 6.1406(1)(a)(2) (“[A]n I-3 District or use area shall be so located a minimum of two thousand feet away from a concentration of one dwelling unit per acre gross area.”).

¹⁹ *See* La.Coast.com at <http://www.lacoast.gov/projects/overview.asp?statenumber=PO%2D29>. The western side of the Safeland property was originally selected by the EPA and DNR for placement of a portion of the diversion canal. According to information obtained at public meetings on the diversion project, DNR and EPA now plan to run the canal through the eastern forested portion of Safeland’s property.

3. LDEQ Must Require Safeland to Support Property Tax Figures in IT Analysis.

The projected tax revenues for the tank farm are unrealistic. The Safeland IT analysis estimated that the Proposed Facility would produce as much as \$11.4 million in property tax revenue in its first year. This number is unrealistic considering that the nearby Marathon Refinery pays about \$13.5 million in local taxes.²⁰ The Angelina site is 423 acres, while Marathon is roughly 3000 acres. Expecting a tank farm to produce tax revenue comparable to an oil refinery over seven times larger is unrealistic. LDEQ should either require Safeland to substantiate their numbers in much greater detail or perform an independent analysis.

4. LDEQ Must Require Safeland to Adequately Assess the Expected Impact of the Facility on Nearby Residential Properties.

In its IT analysis, Safeland states that “[t]he facility is not expected to have any adverse effects on property values,” pointing out that residential properties lie directly to the east.²¹ This bare assertion makes no sense. Safeland is not redeveloping land that already has been developed for industrial use. The 400+-acre Safeland plot is an undeveloped field with tall wild grasses and shrubs. As it is, the land is an asset to the community, providing open rural space and views of nature. Save Our Neighborhood members expect the proposed facility to have an enormous negative impact on nearby residential property values, and why should they not? The area residents will no longer be able to enjoy the natural character of the property’s green open spaces and views, and instead will see giant industrial petroleum tanks, a boiler, and terminal activities. See mock photo of Safeland’s planned facility found at <http://theangelinagroup.com/>. Who wants to live near a ten-million-barrel oil storage facility and terminal? LDEQ must require Safeland to honestly assess the impact of its proposed facility on the nearby residential properties—including those in the historic Mt. Airy subdivision and those in Plantation Oaks I & II subdivisions, along with an assessment of historic Garyville.

5. LDEQ Must Require Safeland to Analyze the Impact of the Proposed Facility on Public Infrastructure.

Safeland’s analysis of the impact on public infrastructure is inadequate. Safeland did not provide any estimate of additional traffic on Highway 61 after construction is completed. Safeland also did not analyze the effects of additional railroad traffic on its neighbors. Due to the lack of over/underpasses on the railroad line, passing trains may substantially increase travel times, imperiling residents in emergency situations and considerably inconveniencing residents in their daily lives. LDEQ should require inclusion of this negative community impact in its IT Analysis. Safeland’s IT analysis also states that no increased public costs are likely to arise in terms of fire, police protection, medical facilities, or road usage. Safeland claims to be self sufficient in fire and police protection, which, like every other business and residence is true most of the time. However, the size of the facility and large amount of combustible commodities

²⁰ Source: <http://stjohnig.com/marathon.htm>

²¹ Amended Responses to the Revised Expanded “IT Decision” Questions, Page 16.

means that in the event of an accident, substantial local first-responder resources will be needed to deal with it. In addition, the additional traffic will cause congestion on Highway 61 and accelerate its need for maintenance. LDEQ should require Safeland to fully analyze these impacts on the community.

6. LDEQ Must Require A Coherent Analysis Regarding Transportation Impacts To and From Facility.

Safeland's analysis of the impacts of its transportation needs is fractured, ambiguous, and contradictory. In its list of "significant measures [that] will be taken to ensure there will be no negative effects on residential areas" on page 4 of the IT Analysis, Safeland claims "Access routes to and from the Facility will be via U.S. Highway 61 (Airline Highway) ... and Louisiana Highway 44 (River Road)... and will not pass through residential areas." However on page 19, where Safeland argues that its construction will have little impact on traffic, it claims "much of the materials will be transported to and from the Facility by rail or barge." In making these arguments in separate parts of its IT analysis Safeland is not being forthright with the impact of its transportation needs. Additional traffic on the rail lines will subject residents to noise and delay just as additional highway traffic will incur maintenance costs and problems associated with thicker traffic. The Illinois Central line runs through residential areas and rail traffic on the Kansas City Southern line cuts off both Garyville and Mt. Airy from Airline Highway, the communities' most important transportation artery. DEQ should require Safeland to perform a coherent analysis of how it intends to transport materials both during transportation and operations and how such transport will affect the community.

7. LDEQ Must Require Safeland to Assess the Proposed Facility's Effect on Residential Expansion of the Area

Safeland is proposing to build its tank farm on one of the last remaining areas for residential expansion in the Garyville/Mt. Airy area. The communities of Garyville and Mt. Airy are already bounded by the Marathon Refinery in the east, the Mississippi River to the south, the Maurepas swamp to the north, and Gramercy Alumina, Mt. Airy Terminal to the west. Use of the Angelina Plantation land for heavy industrial uses will choke off the last available places for residential expansion. St. John The Baptist Parish is in the midst of an accelerating population boom. The Parish's population grew 7.6% from 1990-2000.²² From 2000 to 2006 the U.S. Census Bureau estimates that the parish grew 12.5%. Ending the expansion in this part of the parish will isolate Garyville/Mt. Airy in an otherwise growing and thriving parish. LDEQ should require Safeland to factor the community's lost ability to expand into its economic analysis.

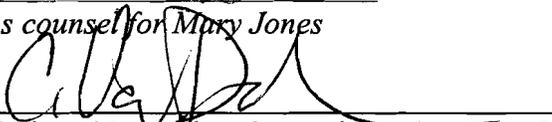
²² U.S. Census data.

Respectfully submitted on October 1, 2007,

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*As supervising attorney with respect to Emon Mahony's
representation of Mary Jones and counsel on Behalf of
Save Our Neighborhoods and Louisiana Environmental
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Cc: EPA Region 6
Air Permits Division