



Sent via email to support@ncuaqmd.org
March 11, 2024

North Coast Unified Air Quality Management District Governing Board
Attn: Clerk of the Boards
707 L Street
Eureka, CA 95501

Re: Scotia Biomass Plant is Operating Without A Permit

- I. The North Coast Unified Air Quality Management District Erroneously Informed Humboldt Sawmill Company and the Public that the Sawmill Company's Biomass Plant Can Operate Without A Permit. The District Must Therefore Immediately Notify the Plant that Operation Before the Permit is Renewed is in Violation of District and Federal Regulations and Issue a Press Release Correcting Previous Public Statements.

All major sources of air pollutants must operate with a Title V permit under the Clean Air Act and its regulations.¹ Once a permit expires, a major source no longer has a legal right to operate.² The only exception occurs when a facility submits a "timely and complete" permit renewal application and is granted an application shield, allowing it to continue to operate while the District considers their renewal application.³ Operating without a Title V permit or application shield is a violation of federal law and NCUAQMD regulations.⁴

On May 12 2023, the Humboldt Sawmill Company (HSC), located in Scotia, California, submitted a request to the North Coast Air Quality Management District ("the District") to renew the Title V Permit (NCU 060-12) for their biomass plant. The fifth term of that Title V permit expired on July 19, 2023.⁵ On July 28, 2023 the District had not yet renewed the permit and

¹ 40 C.F.R. §70.3

²40 C.F.R §70.7(c)(1)(ii) "Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 70.5(a)(1)(iii) of this part."

³ 40 C.F.R. §70.7(b)

⁴ 42 U.S.C. 7413(c)(1) [42 U.S.C. 7661(1)-(2), 42 U.S.C. 7661a(a)]

⁵Press Release from the North Coast Unified Air Quality Management District, January 25, 2024, available at <https://www.ncuaqmd.org/files/ca7579a9c/NCUAQMD+Press+Release+HSC+Title+V+Permit+Update+1-25-2024+final.pdf>



notified HSC by letter that the plant could continue to operate under an “application shield”.⁶ This same letter noted that the plant’s renewal application was submitted late and that several sections of the District’s application form were incomplete.⁷

Granting an application shield was done in error and in violation of both federal law and the District’s own rules because the application for renewal was not “timely” or “complete”. Federal Clean Air Act regulations define a timely application for permit renewal as “at least 6 months prior to the date of permit expiration.”⁷ and a complete application as including the “statement and description of all applicable requirements.”⁹ The district’s own Regulation V, Rule 502 likewise requires a renewal application to be submitted “no later than 6 months before the expiration date of the permit” and states that permit renewal applications must be “timely and complete” for a facility to qualify for an application shield, referencing the federal definition of timely constituting 6 months prior to expiration.¹⁰

In this case, HSC submitted their application on May 12, 2023 only 2 months prior to their permit expiration on July 19, 2023 and failed to complete Section V of the District’s Permit Application Form 1313 with a list of applicable requirements.⁷ Because the application was incomplete and was not submitted on time, an application shield cannot have been granted. The plant has been operating without an application shield or permit since July 19, 2023.

The District has argued in a press release that HSC submitting the application 4 months late was merely a procedural violation and that the application shield has taken effect.⁸ However, a plain reading of both 40 C.F.R. 70.7(c)(ii) and District Rule 502(a)(2) and the district’s July 28 letter to Humboldt Sawmill Company indicates that the District could not have granted an application shield to HSC because their permit renewal application was both late and incomplete. Even if the Air District wanted to grant an application shield to an applicant that

⁶ Letter from Jason Davis, Deputy Air Pollution Control Officer to Chris Verdeber, Director Scotia Operation, Humboldt Sawmill Company (July 28, 2023) (Attached to this letter)

⁷ 40 C.F.R. § 70.5(a)(1)(iii) “For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.”

⁹ 40 CFR 70.5 (a)(2) and 70.5(c)(4)(I)

¹⁰ North Coast Unified Air Quality Management District, Regulation V, Rule 502

^{8 11} North Coast Unified Air Quality Management District, Press Release from the North Coast Unified Air Quality Management District, January 25, 2024, available at <https://www.ncuaqmd.org/files/ca7579a9c/NCUAQMD+Press+Release+HSC+Title+V+Permit+Update+1-25-2024+final.pdf>

Environmental Protection Information Center

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applied less than 6 months prior to their permit expiration, they could not do so because the federal regulations define the minimum standards for State permit programs.⁹

This letter serves as notice to the District that you extended an invalid application shield, encouraged HSC to operate its biomass plant without a permit in violation of federal law, and misinformed the public about the plant's permit status. We urge you to inform Humboldt Sawmill Company that the plant currently does not have a legal basis to operate and to issue a new press release correcting previous statements to the media and the public.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Simmons', with a long horizontal flourish extending to the right.

Matthew Simmons
Climate Attorney
Environmental Protection Information Center

CC: Humboldt County Board of Supervisors
Richard Engel, RCEA
Matthew Marshall, RCEA
Jeff Lindberg, CARB

⁹ 40 C.F.R. 70.3(a) "These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs."