

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
AL TURI LANDFILL, INC.)	ORDER RESPONDING TO
)	PETITIONER'S REQUEST
Permit ID: 3-3330-00002/00039)	THAT THE ADMINISTRATOR
facility DEC ID: 3333000002)	OBJECT TO THE ISSUANCE
)	OF A STATE OPERATING PERMIT
)	
Issued by the New York State)	Petition No.: II-2002-13-A
Department of Environmental)	
Conservation, Region 3)	

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR OBJECTION TO PERMIT

On October 4, 2002, the Environmental Protection Agency ("EPA" or "Agency") received a petition from the New York Public Interest Research Group, Inc. ("NYPIRG"), requesting that EPA object pursuant to § 505(b)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7661d (b)(2), to the final title V operating permit for the Al Turi landfill. The Al Turi landfill is located at 73 Hartley Road, Goshen, New York. The final permit for the Al Turi landfill was issued by the New York State Department of Environmental Conservation, Region 3 ("DEC"), and took effect on August 7, 2002, pursuant to title V of the Act, the federal implementing regulations at 40 C.F.R. Part 70, and the New York State implementing regulations at 6 N.Y.C.R.R. Part 200, 201, 616, 621 and 624.

The Al Turi landfill is a municipal solid waste landfill, owned and operated by Al Turi Landfill Inc. ("Al Turi"). The Al Turi landfill includes a landfill gas collection system, owned and operated by Al Turi which conveys collected landfill gas to a nearby landfill gas conversion facility ("Ameresco"), designed to combust landfill gas for power generation. The electricity produced by Ameresco is sold to Orange and Rockland County utilities. The Al Turi landfill design capacity is 5.5 million megagrams with a maximum landfill gas emission rate of 753 Mg/yr. Based on the potential emissions from the Al Turi landfill, the facility is subject to the federally approved New York State Landfill Plan found at 6 N.Y.C.R.R. Subpart 360-2.21. The facility is also subject to the Standards of Performance for New Stationary Sources for Municipal Solid Waste Landfills ("Landfill NSPS"), Subpart WWW, 40 C.F.R. 60.750-759, and the National Emissions Standard for Hazardous Air Pollutants Municipal Solid Waste Landfills MACT, 40 C.F.R. 63 §§1930-1990.¹

The petition alleges that the final Al Turi permit does not comply with 40 C.F.R. Part 70

¹ All landfills that are subject to the New Source Performance Standards/Emission Guidelines for MSW Landfills (NSPS/EG) are also subject to the MACT, whether they are major sources of hazardous air pollutants (HAPs) or area sources.

because the permit's expiration limits the effective date of many permit conditions. The petition further alleges that the final permit fails to correct deficiencies noted in Petitioner's comments to DEC on the draft Al Turi permit, including:

- (1) the permit is based on an inadequate permit application in violation of 40 C.F.R. § 70.5(c);
- (2) the permit is not supported by an adequate statement of basis as required by 40 C.F.R. § 70.7(a)(5);
- (3) the permit fails to specify whether or not the facility must submit an accidental release plan under § 112(r) of the CAA, 42 U.S.C. § 7412(r);
- (4) the permit distorts the annual compliance certification requirement of § 114(a)(3) of the CAA, 42 U.S.C. § 7414(a)(3), and 40 C.F.R. § 70.6(c)(5);
- (5) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 C.F.R. § 70.6(a)(3)(iii)(B);
- (6) the permit's startup/shutdown, malfunction, maintenance, and upset provision violates 40 C.F.R. Part 70;
- (7) the permit has an inadequate compliance schedule in violation of 40 C.F.R. §§ 70.5(c)(8) and 70.6(c)(3); and
- (8) the permit does not assure compliance with all applicable requirements as mandated by 40 C.F.R. §§ 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate periodic monitoring and are not practically enforceable.

Based on this review and a review of all the information before me, including the petition; the Al Turi permit application, dated July 30, 1999; NYPIRG's comments to DEC on the draft Al Turi permit; DEC's Responsiveness Summary, the final Al Turi permit effective August 7, 2002; and Annual Compliance Reports demonstrating the facility's compliance with the New York State Landfill Plan and the Landfill NSPS; I deny the Petitioner's request in part and grant it in part for the reasons set forth in this Order.

A. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a (d)(1), calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted full approval to New York's title V operating program on February 5, 2002. *67 Fed. Reg. 5216*. Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements") but does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. *57 Fed. Reg. 32250, 32251 (July*

21, 1992). One purpose of the title V program is to enable the source, EPA, States, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under CAA § 505(a), 42 U.S.C. § 7661d(a) and 40 CFR § 70.8(a), States are required to submit all proposed title V operating permits to EPA for review. Permit objections are addressed in § 505(b)(1) and (2) of the Act, 42 U.S.C. § 7661d(b)(2), which authorizes the EPA to object if a title V permit contains provisions not in compliance with applicable requirements, including the requirements of the applicable SIP. This petition objection requirement is also contained in the corresponding implementing regulations at 40 CFR § 70.8(c)(1).

Section 505(b)(2), 42 U.S.C. § 7661d(b)(2) of the CAA states that if the EPA does not object to a permit, any member of the public may petition the EPA to take such action, and the petition shall be based on objections that were raised during the public comment period unless it was impracticable to do so. This provision of the CAA is reiterated in the implementing regulations at 40 C.F.R. § 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify or terminate or revoke and reissue such a permit consistent with the procedures in 40 C.F.R. §§ 70.7 (g)(4) or (5)(i) and (ii) for reopening a permit for cause.

B. ISSUES RAISED BY THE PETITIONER

_____ In its petition, NYPIRG incorporates by reference, as grounds for objecting to the permit, the comments of Mr. Gary A. Abraham, submitted on behalf of the Citizens Who Care, Inc., and alleges that DEC has not corrected these deficiencies. EPA has reviewed Petitioner's allegations pursuant to the standard set forth in section 505 (b)(2) of the CAA, which requires the Administrator to issue an objection to a permit if the Petitioner demonstrates to the Administrator that the permit is not in compliance with the applicable requirements of the Clean Air Act, including the requirements of 40 C.F.R. Part 70. *See also*, 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002). The general allegation that a permitting authority has not corrected deficiencies raised by other commenters does not demonstrate that the permit is not in compliance. The burden is on the petitioner to demonstrate that the permit is not in compliance with all applicable requirements by identifying the specific flaws in the permit. Petitioner has not done this here, and therefore, the petition is denied with respect to these issues.²

I. Permit Condition Effective Dates

² NYPIRG's attempt to rely on Mr. Abraham's comments as a basis for objecting to the final Al Turi permit is additionally flawed in this case because Petitioner incorporates by reference the comments Mr. Abraham submitted on the *draft* Al Turi, many of which were addressed by DEC in issuing the final Al Turi permit.

The Petitioner alleges that the Al Turi permit improperly limits the effective dates of many permit conditions because, in addition to the front page of the permit stating that the permit will expire on August 12, 2007, a clause has been added to most permit conditions, that the permit term is “effective between the dates of 8/07/2002 and 8/07/2007.” Specifically, NYPIRG asserts that this is not the correct way to limit the overall permit term. The petitioner contends that by adding this clause, if a renewal permit is not issued prior to the expiration of the current permit, then each permit term will expire on 8/12/2007, even if the permittee submits a complete and timely application (that is, there would be a “hollow” permit, without most applicable requirements).

The cited language does not limit the effective dates of certain permit conditions as Petitioner contends. Furthermore, the Al Turi permit will not become a “hollow” permit if the renewal permit is not issued before the original permit expires. The DEC regulations at 6 N.Y.C.R.R. § 201-6.7(a)(5) clearly state that all terms and conditions of a permit shall automatically continue while DEC reviews the renewal application. Accordingly, all terms and conditions of the title V operating permit will remain in effect as long as a timely and complete renewal application has been submitted in accordance with the deadline established in 6 N.Y.C.R.R. § 201-6. The inclusion of an additional effective date clause in some permit conditions establishes the initial effective date of a permit term rather than a termination of the term as NYPIRG alleges. The later date, as it coincides with the end date of the term of the permit itself, is simply a reiteration of the term of the permit. Therefore, EPA denies the petition on this issue.

II. Permit Application

a. Initial Compliance Certification

Petitioner alleges that the permit application submitted by Al Turi lacks an initial compliance certification that includes a statement certifying that the applicant is currently in compliance with all applicable requirements in accordance with CAA § 114(a)(3)(c), 40 C.F.R. § 70.5(c)(9)(I), and 6 N.Y.C.R.R. § 201-6.3(d)(10)(I).

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner’s claim here, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit’s content. *See* CAA § 505(b)(2), (requiring an objection “if the Petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of [the] Act, including the requirements of the applicable [SIP]”); 40 C.F.R. § 70.8(c)(1). As explained below, in this case, the petitioner has not met this statutory burden.

Al Turi did not specifically certify to its compliance with all applicable requirements at the time of application submission. Rather, the facility certified that it would be in compliance

with all applicable requirements at the time of permit issuance, which occurred on August 7, 2002. Nonetheless, this initial certification, submitted as part of the permit application, did not result in the issuance of a deficient permit. In its application, Al Turi certified, that for all units at that facility that are operating in compliance with all applicable requirements, the facility will continue to be operated and maintained to assure compliance for the duration of the permit, except for those unit referenced in the “Compliance Plan” portion of the application. Because there was no listing of non-complying sources in this section, the facility, in effect, certified that it was in compliance with all applicable requirements at the time it submitted its title V application. This certification is further supported by additional information in the permit record. For example, routine facility inspections performed by DEC before, and up to the time of application submission, indicate that the Al Turi facility was in compliance with all applicable requirements during this period. Accordingly, EPA concludes that, in this case, Al Turi’s failure to submit a more specific initial compliance certification did not result in a deficient permit. As such, EPA denies the petition with respect to this issue.

b. Statement of Methods for Determining Initial Compliance

Petitioner alleges that the facility’s application fails to include “a statement of methods used for determining compliance,” as required by CAA § 114(a)(3)(B), 40 C.F.R. § 70.5(c)(9)(ii), and 6 N.Y.C.R.R. § 201-6.3(d)(10)(ii). EPA disagrees with Petitioner that the application submitted by Al Turi failed to include the methods used to determine its compliance status relative to each applicable requirement. The applicant completed the Facility Permit Forms Section of the application (page 3-1). This section states that: “since 40 C.F.R. Part 60, Subpart Cc specifies required compliance monitoring and reporting requirements, no facility or unit compliance certifications have been listed.” Thus, the methods this facility used to determine its compliance with the applicable requirements are set out in the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills at 40 C.F.R. Part 60, Subpart Cc. In light of the information provided by the applicant, the Petitioner’s general allegations do not adequately demonstrate that, had the application submitted by Al Turi included a more specific statement of methods, the final permit would have been any different. Therefore, the applicant’s failure to point to the specific monitoring methods in this case is not a basis for objection, and EPA denies the petition on this point.

c. Description of Applicable Requirements

The petitioner also alleges that the permit application lacks a description of all applicable requirements that apply to the facility as required by 40 C.F.R. § 70.5(c)(4) and 6 N.Y.C.R.R. § 201-6.3(d)(4). Citations may be used to streamline how applicable requirements are described in a title V permit application, provided that the cited requirement is made available as part of the public docket on a permit action, or is otherwise readily available. In addition, a permitting authority may allow an applicant to cross-reference previously issued preconstruction and Part 70 permits, State or local rules and regulations, State laws, Federal rules and regulations, and any other documents that affect the applicable requirements to which the source is subject, provided

that the citations are current, clear and unambiguous, and all referenced materials are currently applicable and available to the public. Documents available to the public include regulations printed in the Code of Federal Regulations or its State equivalent. See *White Paper for Streamlined Development of Part 70 Permit Applications* (July 10, 1995) at 20-21.

The application submitted by this facility includes specific requirements (the applicable requirements) that apply to the Al Turi facility. Consistent with EPA guidance, in describing applicable requirements, the Al Turi permit application refers to State and Federal regulations. For example, the application cites to 6 N.Y.C.R.R. Part 201 Subpart 1, Section 4 - Section 10; 6 N.Y.C.R.R. § 360-2.21; 40 C.F.R. Part 60 Subpart A, Sections 7, 8, 11, 13 and 19; 40 C.F.R. Subpart Cc; and 6 N.Y.C.R.R. § 215. These regulations are publicly available in hard copy and are also available on the Internet. See e.g., *DEC's regulations at www.dec.state.ny.us/website/reg/*. While specific rule citations followed by a description of the applicable requirement may make the application more informative, Petitioner has not demonstrated that the lack of it here has resulted in the issuance of a defective permit. Nor has Petitioner shown that the references are in error or that the referenced material is not publically available. Therefore, the petition is denied on this issue.

d. Statement of Methods for Determining Ongoing Compliance

Petitioner further alleges that the application form lacks a description of, or reference to, any applicable test method for determining compliance with each applicable requirement as required by 40 C.F.R. § 70.5(c)(4) and 6 N.Y.C.R.R. § 201-6.3(d)(4). EPA disagrees with Petitioner that the application fails to describe or refer to the methods that Al Turi will use to determine its compliance status relative to each applicable requirement. As stated previously, page 3-1 of DEC State Facility Permit Forms Section of the application states that the requirements set out in the landfill emission guidelines, 40 C.F.R. Part 60, Subpart Cc, govern the compliance monitoring requirements for this facility. This includes the test methods referenced in 40 C.F.R. § 60.34c. This section references 40 C.F.R. § 60.753, of the Landfill NSPS which sets operational standards for landfill collection and control systems. Furthermore, the final permit contains descriptions of, or references to, applicable test methods for determining compliance with applicable requirements. For example, Conditions 30 through 55 of the final permit reference specific sections and test methods within the New York State Plan.³ Therefore, EPA denies the petition with respect to this issue.

III. Statement of Basis Issue

³ The final Al Turi permit incorrectly cites to sections within 6 N.Y.C.R.R. Part 208 as the federally approved New York State Landfill Plan. The federally approved New York State Landfill Plan is actually located in 6 N.Y.C.R.R. Subpart 360-2.21, however, there is little substantive difference between these requirements. Although New York State has moved the landfill regulations to Part 208, the revision has not yet been federally approved. On January 21, 2004, EPA Region 2 notified DEC that it must reopen for cause the final Al Turi permit pursuant to 40 C.F.R. § 70.7(g). Among other things, Region 2 directed DEC to incorporate the requirements of the federally approved landfill plan at 6 N.Y.C.R.R. 360-2.21.

a. Lack of a Statement of Basis

Petitioner alleges that the final permit fails to correct deficiencies noted in its earlier comments, including DEC's failure to include an adequate statement of basis with the draft permit explaining the legal and factual basis for the draft permit conditions. EPA's permit regulations state that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." 40 C.F.R. § 70.7(a)(5). The statement of basis is not part of the permit itself. It is a separate document⁴ which is to be sent to EPA and to interested persons upon request.⁵

A statement of basis ought to contain a brief description of the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring requirements that are not otherwise required, or are intended to fill in monitoring gaps in existing rules, especially the rules which make up a state's federally approved state implementation plan (the "SIP"). Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.⁶ See e.g., *In the Matter of Consolidated Edison Co. of*

⁴ Unlike permits, statements of basis are not enforceable, do not set limits and do not create obligations. Thus, certain elements of statements of basis, if integrated into a permit document, could create legal ambiguities.

⁵ EPA notes that a statement of basis, or "Permit Description," was not made available with the Al Turi draft permit. However, a statement of basis was made available with the final effective permit issued on August 7, 2002.

⁶ Additional guidance was provided in a letter dated December 20, 2001 from Region V to the State of Ohio on the content of an adequate statement of basis. See <http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf>. Region 5's letter recommends the same five elements outlined in a Notice of Deficiency ("NOD") recently issued to the State of Texas for its title V program. See 67 Fed. Reg. 732 (January 7, 2002). These five key elements of a statement of basis are: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. *Id.* at 735. In addition to the five elements identified in the Texas NOD, the Region V letter further recommends the inclusion of the following topical discussions in a statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual requirements as necessary. In a letter, dated February 19, 1999, to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, the EPA Region IX Air Division, provided a list of air quality requirements to serve as guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region IX's review. This guidance is consistent with the other guidance cited above. Each of

NY, Inc. Ravenswood Steam Plant, Petition No. II-2001-08, at pages 10-12, (September 30, 2003); *In the Matter of Port Hudson Operation Georgia Pacific*, Petition No. 6-03-01, at pages 36-40 (May 9, 2003); *In the Matter of Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002).

DEC did not include a statement of basis when it issued the draft Al Turi permit, but a statement of basis was issued with the final permit. The statement of basis accompanying the final Al Turi permit provides a facility description, a discussion of the facility operations and control devices, it describes the facility's applicability with regards to specific regulatory programs (PSD, non-attainment NSR, NESHAP, NSPS, Title IV, Title V, Title VI, RACT, and the SIP), it explains Al Turi's Source Classification Code status, and includes a detailed emissions summary. The statement of basis also summarizes the monitoring, record keeping, and reporting requirements applicable to Al Turi, and includes a description of, and basis for, certain monitoring requirements. In its petition, NYPIRG does not allege that any of these explanations or descriptions are incorrect or inadequate. In addition, NYPIRG did not demonstrate that had they been given an opportunity to comment on a statement of basis with the draft permit, the final permit would have been any different. Therefore, Petitioner's allegation is not grounds for objection in this case.⁷

b. Criteria and Hazardous Pollutants

Petitioner argues that the statement of basis must provide information regarding emissions of criteria pollutants and hazardous air pollutants ("HAPs"). The statement of basis accompanying the final Al Turi permit contains information regarding emissions of Non-methane Organic Compounds ("NMOCs"), total HAPs, and specific HAPs. The petition further states, that the statement of basis must address how the permit conditions will limit the emissions of HAPs and assure compliance with applicable regulations.

As discussed more fully above, the statement of basis should contain a brief description of the origin or basis for each permit condition or exemption, and should include a discussion of the decision-making that went into the development of the title V permit. The statement of basis also serves as a record of the applicability and technical issues surrounding the issuance of the

the various guidance documents, including the Texas NOD and the Region V and IX letters, provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include in any given statement of basis. Taken as a whole, they provide a good roadmap as to what should be included in a statement of basis on a permit-by-permit basis, considering the technical complexity of a permit, history of the facility, and the number of a new provisions being added at the title V permitting state, to name a few factors.

⁷ EPA notes that when the Al Turi permit is reopened in response to EPA Region 2's notice reopening the Al Turi permit for cause, and in response to this Order, the public will have the opportunity to comment on any revisions made to the Permit Review Report. See 40 C.F.R. §§ 70.7(a)(5), 70.7(h), and 70.8(c).

permit. The statement of basis accompanying the final Al Turi permit explains that DEC has established the range for the total emission of HAPs to be between 2.5 to 10 tons per year. This total is well below the aggregate major source threshold for HAPs of 25 tons per year. In addition, the emissions of each individual HAP is under the single major source threshold for HAPs of 10 tons per year. Accordingly, additional explanation regarding how permit conditions will limit emissions of HAPs is not necessary. The statement of basis accompanying the final permit also contains information on general applicability and facility specific requirements. Finally, the statement of basis summarizes the monitoring, record keeping and reporting requirements applicable to this facility, including describing the basis for certain monitoring requirements. Therefore, EPA denies the petition as to this point.

c. Federally-Enforceable vs. State-Enforceable Requirements

Petitioner also alleges that the Al Turi permit does not adequately explain the distinction between New York State regulations that have been approved into the SIP, and therefore, are federally enforceable, and those adopted by New York State that are not approved into the SIP. Petitioner's general allegation in this case is not grounds for objecting to the Al Turi permit. Petitioner provides no specific examples of applicable requirements that it does not understand. Moreover, Part 70 does not require each permit condition to specify whether the cited applicable requirement has been approved into the SIP. Rather, Part 70 requires that state-only regulations be specifically designated in a separate section of the permit (the "state-only" section). *See* 40 C.F.R. § 70.6 (b)(2). The Al Turi permit includes a state-only section which contains the state-only applicable requirements. Therefore, EPA finds no basis for objecting to the permit on this issue.⁸

d. Legal Basis for Certain Applicable Requirements

NYPIRG alleges that although each condition cites applicable regulations, the conditions fail to explain why the regulation is applicable, or how the specific permit condition fulfills the requirement of the regulation. Section 504(a) of the CAA requires title V permits to include "enforceable emission limitations and standards ... and such other conditions as are necessary to assure compliance with applicable requirements of [the CAA], including the requirements of the applicable implementation plan." *See* 40 C.F.R. § 70.6(a)(1) (requiring that title V permits include "[e]mission limitations and standards ... that assure compliance with all applicable requirements."). EPA's implementing regulations also require the permit to "specify and reference the origin of an authority for each term or condition ..." *See* 40 C.F.R. § 70.6(a)(1)(i). However, nothing in the Act or Part 70 requires permits to explain why the regulation is

⁸ However, in the process of reviewing the Al Turi permit EPA identified a state-only condition that is incorrectly included on the federal side of the final permit. The State's open burning regulation, 6 N.Y.C.R.R. § 215, is not part of the approved SIP yet it is cited in Condition 57 of the final permit. Therefore, when DEC reopens the Al Turi permit in response to this Order it must move this citation to the state-only section of the permit.

applicable, or how the specific condition fulfills the requirement of the regulation. As noted previously, the statement of basis accompanying the title V permit should provide any additional explanation that may be necessary to understand the requirements applicable to this facility.

Petitioner also contends that certain applicable requirements have not been included in Al Turi's permit. For example, Petitioner notes that the Al Turi permit should include a case-by-case Maximum Achievable Control Technology ("MACT") determination. Section 112(j) of the CAA applies to sources if EPA misses a deadline for promulgating an applicable MACT standard established in the Agency's source category schedule for standards. *See* CAA § 112(j)(2). After the effective date of a title V program in a State or local jurisdiction, the owner or operator of a major source in a source category for which EPA failed to promulgate a timely section 112(d) standard must submit a section 112(j) permit application. *See* CAA § 112(j)(3). EPA or the State (if it has been delegated to implement section 112 of the CAA) then must establish and include in the source's title V permit emission limitations for HAPs that EPA or the State determines, on a case-by-case basis, to be equivalent to those that would apply to the source if a timely MACT standard had been promulgated. *See* CAA § 112(j)(5); 40 C.F.R. § 63.55(a).

The Al Turi final permit became effective on August 7, 2002, and on January 16, 2003, EPA promulgated the National Emissions Standard for Hazardous Air Pollutants Municipal Solid Waste Landfills MACT which is applicable to the Al Turi Landfill. *See* 68 *Fed. Reg.* 2227 (*January 16, 2003*). When DEC issues a title V permit before an applicable MACT standard is promulgated, the permit must be reopened and revised to include the applicable requirement if the permit has a remaining term of three or more years. *See* 40 C.F.R. § 70.7(f)(1)(i); 6 N.Y.C.R.R. § 201-6.5(i)(1)(i). Therefore, the final landfill MACT is an applicable requirement that must be included in the revised Al Turi permit.⁹

In addition, Petitioner states that the permit and/or the statement of basis must explain whether or not the Ameresco facility and the Al Turi landfill are one major source for title V and New Source Review ("NSR") applicability purposes. In light of the information before DEC, EPA agrees that this information should have been included in the statement of basis, however, the issue here is moot because as previously noted, on January 21, 2004, EPA Region 2 notified DEC that it must reopen for cause the final Al Turi permit. Among other things, the Region directed DEC to re-examine its common control determination regarding the Al Turi landfill and Ameresco, the neighboring landfill gas conversion facility.

IV. Accidental Release Plan

Condition 13, Item 13.2, of the final permit states that risk management plans must be submitted to the Administrator if required by section 112(r) of the Clean Air Act for this facility.

⁹ As previously noted, EPA Region 2 is requiring the Al Turi permit be reopened for cause pursuant to 40 C.F.R. § 70.7(g). As part of this reopening, Region 2 has directed DEC to incorporate the Landfill MACT requirements into the revised permit.

Petitioner argues that the permit condition should state whether section 112(r) applies to the facility, and must indicate which requirements in the facility's section 112(r) plan are enforceable by the public.

During the early stages of implementation of New York's title V program, and before the promulgation of the Risk Management Program Rule, *61 Fed. Reg. 31667 (June 20, 1996)*, EPA asked DEC to include a general requirement regarding section 112(r) in all permits. The language in Condition 13 reflects DEC's implementation of this request.

Additionally, Petitioner has presented no evidence to suggest that the Al Turi landfill is subject to section 112(r) requirements. If a source is subject to section 112 (r) requirements, its permit must include certain conditions necessary to implement and assure compliance with these requirements. However, Al Turi did not include section 112(r) requirements in its application, nor has it submitted a Risk Management Plan (RMP) to EPA which is responsible for implementing section 112(r) requirements in New York. Therefore, based on the information provided, and absent information to the contrary, it is reasonable to conclude that section 112(r) does not apply to this source. Accordingly, we find no basis for objecting to the permit on these grounds.

Although we find no basis for objecting to the permit on this issue, we do believe that DEC must meet its accidental release prevention program obligations under section 40 C.F.R. § 68.215(e).¹⁰ This will insure that DEC, EPA, and the public will be able to track a source's compliance with section 112(r) requirements even if the source's applicability fluctuates. Therefore, as part of the separate reopening for cause, EPA Region 2 will work with DEC on the appropriate changes to its application and annual compliance certification requirements to insure sources are aware of the section 112(r) requirements, and to insure compliance with these requirements, if applicable.¹¹

V. Annual Compliance Certification

Petitioner alleges that the Al Turi permit distorts the annual compliance certification requirement of § 114(a)(3) of the CAA, and 40 C.F.R. § 70.6(c)(5), by not requiring the facility to certify compliance with all permit conditions. The Petitioner claims that the Al Turi permit

¹⁰ DEC has several general section 112(r) obligations, which are found in 40 C.F.R. § 68.215(e), and are further discussed in an April 20, 1999, memorandum from Steven J. Hitte (OAQPS) and Kathleen M. Jones (OSWER) entitled: "Title V Program Responsibilities concerning the Accidental Release Prevention Program." These responsibilities include: (1) verifying that sources register and submit a risk management plan, (2) verifying that sources certify compliance with the requirement to submit a risk management plan, and (3) general enforcement responsibilities.

¹¹ As noted previously, EPA Region 2 notified DEC that cause exists to reopen the Al Turi title V permit and directed DEC to determine whether Al Turi and Ameresco are one major stationary source for purposes of Title V and NSR. The result of this analysis may change these sources' current status with respect to section 112(r) requirements, and any changes in applicability must be reflected in the revised permit.

only requires the annual compliance certification to identify “each term or condition of the permit that is the basis of the certification,” as stated in Condition 25 of the final permit. Specifically, Petitioner is concerned with the language in the permit that labels certain permit terms as “compliance certification” conditions. NYPIRG notes that requirements that are labeled “compliance certification” are those that identify a monitoring method for demonstrating compliance. NYPIRG interprets such compliance certification “designations” as a way of identifying which conditions are covered by the annual compliance certification requirement. NYPIRG further asserts that permit conditions that lack periodic monitoring are thus, excluded from the annual compliance certification. The Petitioner claims such “designation” are an incorrect application of state and federal regulations because facilities must certify compliance with every permit condition, not just those that are accompanied by a monitoring requirement.

The language in the permit that labels certain terms as “compliance certification” conditions does not mean that the Al Turi facility is only required to certify compliance with the permit terms containing this language. The label “compliance certification” is a data element in New York’s computer system that is used to identify terms that are related to monitoring methods used to assure compliance with specific permit conditions.

Title V permits must contain requirements for certifying compliance with terms and conditions contained in the permit including a requirement that the compliance certification include the following: (i) the identification of each term or condition of the permit that is the basis of the certification; (ii) the compliance status; (iii) whether compliance was continuous or intermittent; (iv) the methods used for determining the compliance status of the facility, currently and over the reporting period; (v) such other facts the department shall require to determine the compliance status; and (vi) all compliance certifications shall be submitted to the department and to the Administrator and shall contain such other provisions as the department may require to ensure compliance with all applicable requirements. *See* 40 C.F.R. § 70.6(c)(5) and 6 N.Y.C.R.R. § 201-6.5(e). The Al Turi title V permit includes this language in Condition 25. Therefore, the references to “compliance certification” do not negate DEC’s general requirement that Al Turi certify compliance with the terms and conditions contained in its permit. Accordingly, because the Al Turi permit and New York’s regulations properly require the source to certify compliance or noncompliance annually for terms and conditions contained in the permit, EPA is denying the petition on this point.

VI. Prompt Reporting of Deviations

Petitioner alleges that the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 C.F.R. § 70.6(a)(3)(iii)(B).¹² Petitioner asserts that the primary condition governing prompt reporting (Condition 24 in the final permit), is flawed because DEC’s language in this condition states that deviations will be reported according to

¹²40 C.F.R. § 70.6(a)(3)(iii)(B) states: “[t]he permitting authority shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirement.

time frames specified in the applicable requirement. Petitioner also charges that the reporting scheme in Condition 24 sets up an arbitrary distinction between different kinds of violations and creates a category for certain requirements that require reporting of deviations only every six months.

Title V permits must include requirements for the prompt reporting of deviations. *See* 40 C.F.R. § 70.6(a)(3)(iii)(B). States may adopt prompt reporting requirements for each permit condition on a case-by-case basis, or may adopt general requirements by rule, or both. Whether DEC has sufficiently addressed prompt reporting in a specific permit is a case-by-case determination under the rules applicable to the approved program, although a general provision applicable to various situations may also be applied to specific permits as EPA has done in 40 C.F.R. § 71.6(a)(3)(iii)(B).¹³

Condition 24 includes a general provision that if an applicable requirement includes a definition of prompt, or otherwise specifies a time frame for reporting deviations, that definition or time frame governs. Where the underlying applicable requirement fails to address the time frame for reporting deviations, Condition 24 requires that the report be made within 24 hours for emissions of hazardous air pollutants (HAPs) or toxic air pollutants (TAPs) that continue for more than one hour in excess of permit limits, and within 48 hours for emissions of any regulated air pollutant, other than HAPs or TAPs, that continue for more than two hours in excess of permit requirements. Thus, the prompt reporting requirements contained in the Al Turi final permit distinguish between the prompt reporting required for potentially dangerous excess emissions and other types of deviations. This criteria reflects a reasoned judgment regarding the circumstances in which an expeditious notification is warranted. For any other deviations, the report must be submitted every six months. Thus, the prompt reporting requirements contained in this permit are consistent with EPA's own interpretation of the prompt reporting requirements, adopted after public notice and comment, in the Part 71 federal title V program. For this reason, the petition is denied as to this issue.

VII. Start-up/Shutdown, Malfunction, Maintenance and Upset Provision

Petitioner asserts that the proposed permit's startup/shutdown, malfunction, maintenance, and upset provision (Condition 52 of the draft permit) violates 40 C.F.R Part 70. The petition provides a detailed, 4-part discussion of this condition, which it refers to as DEC's "excuse provision." Petitioner alleges that the "excuse provision" included in the Al Turi permit reflects

¹³EPA's rules governing the administration of the federal operating permit program require, *inter alia*, that permits contain conditions providing for the prompt reporting of deviations from permit requirements. *See* 40 C.F.R. § 71.6(a)(3)(iii)(B)(1)-(4). Under this rule deviation reporting is governed by the time frame specified in the underlying applicable requirement unless that requirement does not include a requirement for deviation reporting. In such a case, the Part 71 regulations set forth the deviation reporting requirements that must be included in the permit. For example, emissions of a hazardous air pollutant or toxic air pollutant that continue for more than one hour in excess of permit requirements, must be reported to the permitting authority within 24 hours of the occurrence.

the requirements of New York State regulation, 6 N.Y.C.R.R. § 201-1.4. This permit condition states, in part, that “[a]t the discretion of the commissioner a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions, and malfunctions or upsets may be excused if such violations are unavoidable.”

In the final permit, DEC removed the “excuse provision” that cites 6 NYCRR § 201-1.4 from the federal side and incorporated it into the state-only side of the permit (Condition 60). Condition 60 of the Al Turi permit provides DEC with the discretion to excuse the facility from compliance with applicable state-only emission standards under certain circumstances, based on the specific criteria set forth in 6 N.Y.C.R.R. § 201-1.4. In addition, DEC also included clarifying language in the final Al Turi permit, stating that violations of federal requirements may not be excused unless the specific federal regulation provides for an affirmative defense during start-ups, shutdowns, malfunctions or upsets.¹⁴ See 6.N.Y.C.R.R. § 201-6.5(c)(3)(ii).

Petitioner also asserts that New York’s federally approved SIP regulations include a similar “excuse provision” that has not been included in the permit as an applicable requirement. See 40 C.F.R. § 52.1679; 6 N.Y.C.R.R. § 201.5. This provision is still part of the federally approved SIP, and therefore, it must be included in the permit as an applicable requirement until it is removed from the SIP, or revised consistent with EPA policy on such provisions. As a result, the petition is granted, in part, as to this issue.

Petitioner also alleges that the permit must describe what constitutes “reasonably available control technology,” or “RACT” during conditions that are covered by the excuse provision. The SIP regulations at 6 N.Y.C.R.R. § 201.5 require facilities to use RACT during any maintenance, startup, or malfunction condition. The term “RACT” is defined as the: “lowest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economical feasibility.” 6 N.Y.C.R.R. § 200.1(b). In those instances where a facility has requested that the DEC Commissioner excuse an exceedance during times of startup, malfunction, or maintenance, RACT is determined by DEC on a case-specific basis. *Id.*

As a practical matter, it is not possible to set forth in advance a detailed definition of RACT that will address all possible startup, shutdown, or malfunction events throughout the life of the permit. The specific technology that will constitute RACT will depend on both the nature

¹⁴ The characterization of this provision as potentially “excusing” certain violations of federal requirements is somewhat misleading. The CAA does not allow for automatic exemptions from compliance with applicable SIP emission limits during periods of start-up, shutdown, malfunctions or upsets. Further, improper operation and maintenance practices do not qualify as malfunctions under EPA policy. To the extent that a malfunction provision, or any provision giving a substantial discretion to the state agency broadly excuses sources from compliance with emission limitations during periods of malfunction or the like, EPA believes it should not be approved as part of the federally approved SIP. See *In re Pacificorp’s Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII-00-1, at 23(Nov. 16, 2000), available on the internet at: <http://www.epa.gov/region07/programs/artd/air/title5/t5memos/woc020.pdf>.

of the violation and the technology available when the violation occurs. The “excuse provision” allows that determination to be made on a case-by-case basis by DEC Commissioner if and when she chooses to exercise her authority to excuse a violation. The applicable requirement associated with the emission unit at which the deviation occurred would be incorporated elsewhere in the permit, and this requirement would apply at all times. The purpose of this case-by-case RACT determination is to mitigate the violation or exceedance of the applicable requirement until such time as compliance can once again be achieved. Therefore, EPA denies the petition on this issue.

The Petitioner also raises an issue with regard to prompt written reports of deviations from permit requirements due to startup, shutdown, malfunction, and maintenance. According to NYPIRG, the excuse provision at 6 N.Y.C.R.R. § 201-1.4 violates Part 70's prompt reporting requirements because the permittee is allowed to submit reports of “unavoidable” non-emission violations by telephone rather than in writing.¹⁵ This provision was moved to the state-only side of the final permit and does not apply to any federally applicable requirements. Accordingly, Petitioner’s allegation is without merit, and the objection request is therefore denied.

VIII. Compliance Schedules

Petitioner alleges that the source is not in compliance with all applicable requirements and is therefore subject to the compliance schedule requirements of 6 N.Y.C.R.R. § 201-6.3(d)(9)(iii) and 201-6.5(d)(1). In support of this contention, Petitioner relies exclusively on “the latest comments of Citizens Who Care.” As discussed in Section B, *infra*, NYPIRG’s general allegation that a permitting authority has not corrected deficiencies raised by other commenters does not demonstrate that the permit is not in compliance with all applicable requirements because the burden is on the petitioner to make a demonstration by identifying the specific flaws in the permit. The petition is therefore denied on this issue.

IX. Specific Permit Conditions

a. General Conditions

Petitioner alleges that the permit contains various general conditions that do not indicate

¹⁵ EPA notes that reporting in order to preserve the claim that a deviation should be excused is not a required report. These reports are submitted in addition to all other required deviation reports. Any deviation for which an excuse is sought must also be reported as a deviation or violation in the six-month monitoring report, or more frequently if it meets the criteria set forth in Condition 24 of the final permit. Deviations from an applicable requirement are required to be reported regardless of the cause of the deviation, and these reports must be in writing. *See* Section VI, *supra*, for a more detailed discussion of the prompt reporting requirements.

whether they apply to Al Turi.¹⁶ These include Condition 3 (maintenance of equipment); Condition 8 (prohibition of reintroduction of collected air contaminants; Condition 49 (Condition 48 of the final permit) (operating requirements when an enclosed combustor is used); and Condition 50 (Condition 49 of the final permit) (landfills that use a device other than an open flare or enclosed combustor).

Condition 3 provides that the owner or operator of an air contamination source, equipped with an emission control device, must keep it in a satisfactory state of maintenance and repair. EPA agrees that this condition should specify how or if it applies to the Al Turi landfill. This facility operates a landfill gas collection system which conveys collected landfill gas to a landfill gas conversion facility. Because this control equipment is located at the Ameresco facility, and not the Al Turi landfill, the permit must specify the applicability of this condition.

Condition 8 (Condition 7 of the final permit) addresses the reintroduction of air contaminants from an air cleaning device to the outside air. As previously noted, because the facility's control equipment is located at Ameresco, the neighboring landfill gas conversion facility, Condition 7 must be revised to specify how or if it applies to Al Turi and to specify the location of the control device.

Condition 48 establishes the calibration, maintenance and operation requirements when an enclosed combustor is used as the control device. Ameresco utilizes enclosed flares and engines to control the collected landfill gas. The DEC categorized these engines as "other control devices" under Condition 49 of the final Al Turi permit. However, as explained in the Landfill NSPS proposal, *56 Fed. Reg. at 24468 (May 30, 1991)*, engines are also categorized as enclosed combustors. As such, only Condition 48 of the final permit contains requirements applicable to the control devices. The permit must be revised to clarify that only Condition 48 applies to these control devices. Therefore, EPA grants the petition, in part, as to these issues.

b. Monitoring and Practical Enforceability Issues

Petitioner also alleges that many individual permit conditions lack adequate monitoring and are not practically enforceable. Petitioner states that Conditions 34, 36, 37, 38, 39, 41, 46, and 51 in the draft Al Turi permit (33, 35, 36, 37, 38, 40, 45, and 50, respectively in the final permit) lack sufficient monitoring and are not practically enforceable. These conditions incorporate the requirements of the New York State Landfill Plan, 6 N.Y.C.R.R. Part 208, which is mistakenly cited as the federally applicable requirement.¹⁷ The New York State Landfill Plan incorporates the operational standards for collection and control systems, the compliance provisions, and the reporting requirements of the New Source Performance Standards for

¹⁶ These allegations were raised in the statement of basis section of NYPIRG's petition, but since they deal with specific conditions we are addressing the issues in this section of the Order.

¹⁷ 6 N.Y.C.R.R. Subpart 360-2.21 is the federally applicable Landfill Plan. As noted previously, there is little substantive difference between the federally applicable Landfill Plan and the New York State Landfill Plan.

Landfills (“Landfill NSPS”) within 40 C.F.R. Part 60, Subpart WWW. *See* 40 C.F.R. §§ 60.753, 60.755(c)(1) and 757((f). The Landfill NSPS was promulgated on March 12, 1996, and therefore, is presumed to contain adequate monitoring requirements to meet the periodic monitoring requirements under 40 C.F.R. Part 70. After reviewing the required monitoring, we believe that the Landfill NSPS does have adequate monitoring. Since the final Al Turi permit incorporates these periodic monitoring requirements directly, no additional periodic monitoring is necessary. These issues are discussed more fully below.¹⁸

i. Condition 33

Petitioner asserts that although Condition 34 (Condition 33 of the final permit) provides that the gas collection system must operate so that the gas is collected from some or all cells depending on how long solid waste has been in place in the cell, it fails to let DEC or the public know which cells fit this criteria, or whether gas collection has occurred in the cell. Condition 33 incorporates the requirements of 40 C.F.R. § 60.753(a)(1) and (2), the operational standards for collection and control systems for municipal solid waste landfills. This section requires the owner or operator of the landfill to operate the collection system such that the gas is collected from each cell, or group of cells, in which solid waste has been in place for: (a) 5 years if active, and (b) 2 years if inactive. Furthermore, this facility is also subject to the requirements of a Landfill Gas Collection and Control System Design Plan (6 N.Y.C.R.R. Part 208 and Part 360) which requires monitoring of the progression of waste placement in the 10 percent of the landfill that remains operational. These requirements have been incorporated at Condition 55. Thus, the waste placement history for the active area is monitored and reported pursuant to the Design Plan.¹⁹ Landfill gas collection continues to occur for the inactive portion of the landfill under the November, 1991 Master Plan.²⁰ In addition, the final cover on this portion of the landfill prevents the escape of landfill gases from the surface of the landfill. Finally, Condition 34

¹⁸ The New York State Landfill Plan, and the Landfill NSPS from which it is derived, separates the reporting, record keeping, monitoring, test methods, operational standards and compliance provisions into different sections of the rule, rather than organizing these various conditions within the same requirement. For example, the operational standards for collection and control systems of the NSPS are found in 40 C.F.R § 60.753, while the test methods and procedures governing these operational standards are located in 40 C.F.R. § 60.754. The compliance provisions are at 40 C.F.R. § 60.755, the monitoring requirements are at 40 C.F.R. § 60.756, the reporting requirements are at 40 C.F.R. § 60.757, and the record keeping requirements are at 40 C.F.R. § 60.758. Particular conditions within the Al Turi permit follow the same format as the New York State Landfill Plan and the NSPS. Thus, all applicable monitoring, record keeping and reporting requirements are incorporated into the final permit. However, they are organized in the permit, as already noted above, by subject matter.

¹⁹ In response to NYPIRG’s allegations regarding the inactive area (which accounts for 90 percent of the landfill), there will be no further waste placement history for the inactive portion of the landfill since it is capped, it is no longer operational, and therefore, no longer accepting waste.

²⁰ The November, 1991 Master Plan, applicable to the inactive portion of the landfill, was developed pursuant to Al Turi’s solid waste management permit (Number 3-3330-0002/21). *See generally*, 6 N.Y.C.R.R. Subpart 360 (these regulations pre-date the New York State Landfill Plan Regulations and have since been subsumed by these requirements).

requires the collection system at each wellhead to be operated, based on a maximum one hour averaging period, at negative pressure (except under certain specified circumstances), provides for monthly monitoring of the pressure, and semi-annual reporting. Petitioner's claims are therefore without merit, and the petition is denied with respect to this issue.

ii. Conditions 35 & 36

Petitioner asserts that Conditions 36 & 37 (Conditions 35 & 36 of the final permit) lacks sufficient monitoring, since there is no mention of how the nitrogen or oxygen content will be measured. Condition 35 incorporates the requirements applicable to measuring the nitrogen level. This condition cites 6 N.Y.C.R.R. § 208.4(c) as the applicable federal requirement.²¹ This section provides that: “the nitrogen level shall be determined using Method 3C as described in 40 C.F.R. Part 60 (see section 200.9 of this Title), unless an alternative test method is established as allowed by clause 3(b)(2)(i)(b).” In addition, Condition 47 of the final permit requires the owner or operator to monitor nitrogen concentration in the landfill gas on a monthly basis as provided in 6 N.Y.C.R.R. § 208.6(a)(5), which states that each well is to be monitored as provided in section 208.4(c). Accordingly, the monitoring method is incorporated by reference in Conditions 35 and 47 of the final Al Turi permit.

The oxygen levels are measured in accordance with Condition 36. This condition cites 6 N.Y.C.R.R. § 208.4(c) as the applicable federal requirement²² and provides that: “unless an alternative test method is established as allowed by clause 3(b)(2)(i)(b) of this Part, the oxygen [content] shall be determined by an oxygen meter using Method 3A as described in 40 C.F.R. Part 60 (see section 200.9 of this Title) ...” In addition, Condition 47 of the final permit requires the owner or operator to monitor oxygen concentration in the landfill gas on a monthly basis as provided in 6 N.Y.C.R.R. § 208.6(a)(5), which states that each well is to be monitored as provided in section 208.4(c). Accordingly, the monitoring method is incorporated by reference in Conditions 35 and 47 of the final Al Turi permit.

Petitioner also asserts that these conditions allow the facility operator to establish higher operating levels at a particular well, thus removing any certainty that the wellheads will be operated with a nitrogen or oxygen level commensurate with the permit limit. These conditions incorporate the requirements of the Landfill NSPS at 40 C.F.R. § 60.753(c).²³ This section of the Landfill NSPS requires each interior wellhead in the collection system to be operated with a nitrogen limit of less than 20 percent or an oxygen limit of less than 5 percent. These limits are included in order to prevent air from entering the landfill which may cause fires or organic

²¹ These requirements correspond to the federally approved landfill plan at 6 N.Y.C.R.R. Subpart 360-2.21 and the Landfill NSPS at 40 C.F.R. § 60.752.

²² *See supra* footnote 21.

²³ Operational standards for collection and control systems.

decomposition. These conditions also include a section entitled “Monitoring Description” which states that the owner or operator “may establish” a higher operating value at a particular well, and a higher operating value demonstration must show supporting data that the elevated parameter does not cause fires, or significantly inhibit anaerobic decomposition by killing methanogens. This requirement is also incorporated verbatim from the Landfill NSPS at 40 C.F.R. § 60.753(c).

The requirements of Condition 41 are also instructive here. Under the applicable requirements cited in this condition, unless certain corrective action is taken, operating the wellheads at a nitrogen concentration higher than 20 percent or an oxygen concentration higher than 5 percent, would be a violation of the permit limit. *See* 6 N.Y.C.R.R. Part 208.6 *and* the Landfill NSPS at 40 C.F.R. § 60.753(c). Corrective action must be initiated within 5 calendar days of an exceedance of the nitrogen or oxygen limits. If the exceedance cannot be corrected within 15 calendar days of the first measurement, then the gas collection system must be expanded to correct the exceedance within 120 days of the initial exceedance. Thus, Condition 41 partially clarifies the relationship between the permit limit and the operators ability to establish a higher operating value under certain circumstance. In addition, Condition 54 requires that exceedances of the operational standards, such as the nitrogen levels, oxygen levels, and temperature readings, must be reported quarterly, and records must be kept on site by the owner or operator for 7 years. As such, these additional applicable requirements, incorporated at Conditions 41 and 54, provide sufficient safeguards to insure appropriate corrective action will be taken, in the event that the wellheads are not operated at the level required by the permit, and these exceedances will be promptly reported. In short, these conditions include the applicable requirements, including the applicable monitoring, record keeping and reporting requirements. Accordingly, NYPIRG’s request that EPA object to the permit on these grounds is denied.

However, although, as we noted, the permit conditions follow the regulatory scheme and include all applicable requirements, we agree with the petitioner that Conditions 35 and 36 are nonetheless ambiguous. As NYPIRG states, the second sentence in the monitoring description section of these conditions could be taken to be a “...qualifying sentence [that] removes any certainty that a member of the public might have gained from these conditions, since there is no indication as to whether any interior wellhead at this landfill is subject to an alternative limitation.” As we discussed in Section III a., *infra*, the statement of basis, among other things, must set forth the legal and factual basis for the permit conditions. Although DEC included a “Permit Review Report” when it issued the final Al Turi permit, this report does not adequately clarify the meaning and purpose of these permit conditions. Accordingly, when DEC reopens and revises the Al Turi permit in response to this Order, it must explain, in the “Permit Review Report,” the meaning and purpose of these conditions, and clarify the ambiguity resulting from the apparent difference between the applicable nitrogen and oxygen limits, and the “higher operating value” which is also included in these conditions.

iii. Condition 37

Petitioner next asserts that Condition 38 (Condition 37 of the final permit) lacks

sufficient monitoring to assure the facility's compliance with the operational temperature requirement, because there is no mention of how temperature is measured. Condition 37 incorporates the requirements of 40 C.F.R. § 60.753(c). This section of the Landfill NSPS provides that the owner or operator of a landfill will operate each interior wellhead in the collection system with a landfill gas temperature less than 55 degrees Celsius. The monitoring method and reporting frequency is incorporated at Condition 47. This condition requires that a thermometer, other temperature measuring device, or an access port for temperature measurements be placed at each wellhead and requires monthly monitoring of the temperature to insure compliance with permit limit. In addition, Condition 54 requires that monitoring records of the recorded temperature be kept at the facility for 7 years, and that any exceedances of the permit limit (less than 55 degree Celsius) be reported on a quarterly basis. Accordingly, the Al Turi permit contains monitoring sufficient to assure the facility's compliance with the operational limit, and therefore, no additional monitoring is necessary.

iv. Condition 38

Petitioner alleges that Condition 39 (Condition 38 of the final permit) is unenforceable as a practical matter because the permit does not provide the background surface methane concentration of the landfill. Condition 38 incorporates the requirements of 40 C.F.R. § 60.753(d). This section of the Landfill NSPS provides that the owner or operator of a landfill will operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill, but it does not provide a specific background methane concentration. Because the background methane concentration fluctuates, a specific value can not be set in the permit. However, the permit does specify how the background concentration is determined in Condition 45.1(2).

Petitioner also asserts that Condition 38 requires the development of a surface monitoring design plan without setting a date for completion of this plan, or explaining how the plan will affect current permit conditions related to monitoring. Condition 38 provides that a surface monitoring design plan that includes a topographical map with the monitoring route must be developed, and that the plan must be submitted for approval within 60 days of the issuance of the Al Turi permit. This is consistent with the requirements of the Landfill NSPS at 40 C.F.R. § 60.753(d). The monitoring requirements applicable to Condition 38 can be found at Condition 45. Among other things, this condition provides that surface monitoring is to be conducted on a quarterly basis, along the entire perimeter of the collection area, and along a pattern that traverses the landfill at 30 - meter intervals for each collection area. Accordingly, the monitoring conditions applicable to the surface monitoring design plan are contained in the Al Turi permit at Condition 45. The petition is therefore denied as to this issue.

v. Condition 40

Petitioner asserts that although Condition 41 (Condition 40 of the final permit) requires that the control or treatment system be operated at all times when the collected gas is routed to

the system, it does not explain what the control or treatment system is, does not require monitoring, recordkeeping and reporting of times in which the system is inoperable, or when the collected gas is routed to the system. Condition 40 incorporates the requirements of 40 C.F.R. § 60.753(f). This section of the Landfill NSPS provides that each owner or operator of a landfill shall operate the control or treatment system at all times when the collected gas is routed to the system. The applicable control system is described in Condition 30 of the final permit. Condition 30 states that the control facility, Ameresco, has nine existing internal combustion engines and two enclosed flares as backup. This condition further provides that Ameresco functions as the control system for the Al Turi landfill by converting the collected landfill gas into electricity. Under the New York State Landfill Plan and the Landfill NSPS at 40 C.F.R. § 60.752(b)(2), a landfill with a NMOC emission rate equal to, or greater than, 50 million megagrams of NMOC per year must install a collection and control system within 30 months of start-up or the landfill may sell the collected gas. *See* 40 C.F.R. § 60.752(b)(2). Al Turi complies with this requirement by selling the collected landfill gas to Ameresco which converts the gas into electricity. Under section 60.752(b)(2)(iii) all emissions from any atmospheric vent from the gas treatment system shall be subject to a control system designed to reduce the NMOC destruction efficiency requirements of 98% or less than 20 ppmv (dry as hexane at 3% oxygen) NMOC stack outlet concentration. Condition 30 of the Al Turi permit states that Ameresco conducted a performance test in June 2001, demonstrating compliance with this requirement.

The monitoring, record keeping, reporting and compliance requirements applicable to Condition 40 are at Conditions 48, 50, 52 and 39. Condition 48 applies to enclosed combustors and requires the owner or operator to calibrate, maintain and operate a temperature monitoring device with a continuous recorder having a minimum accuracy of plus or minus 1 percent of the temperature being measured and a device which records the flow to, or bypass of, the control device. The reporting requirements applicable to Condition 40 are at Condition 50. This condition provides that an initial report must be submitted within 180 days of installation and start-up of the collection and control system, including the results of the initial performance test report (*see* 40 C.F.R. Part 60.8). Condition 50 also requires a detailed accounting of reportable exceedances of the applicable parameters, including when the gas stream is diverted through a bypass line, when the control device is inoperable, and when an exceedance of the methane concentration level is recorded. *See* Condition 50.2 (1)-(6). The record keeping requirements applicable to Condition 40 are at Condition 52. Finally, Condition 39 includes the compliance provisions applicable to Condition 40. This condition requires the control system be operated such that all collected gases are vented to a control system designed and operated in compliance with 6 N.Y.C.R.R. section 208.3(b)(2)(iii).²⁴ Petitioner's claims are therefore without merit, and the petition is denied as to this issue.

vi. Condition 45

Petitioner asserts that Condition 46 (Condition 45 of the final permit) sets requirements

²⁴ This section of the New York State Landfill Plan corresponds with section 60.752 of the Landfill NSPS.

that go into effect “after the installation of the collection system,” but does not set a date for completion of the collection system. In addition, Petitioner asserts that this condition does not set out the frequency of undertaking the monitoring that might trigger the additional requirements of Condition 45.1 (4)²⁵. Condition 45 incorporates the requirements of 40 C.F.R. § 60.755(c)(1), the compliance provisions of the Landfill NSPS. This section addresses the method that is used to take surface methane readings and the compliance provisions for surface methane, as well as the method for determining background methane concentrations before taking the surface methane readings. Condition 45 also provides for the frequency of undertaking the monitoring that might trigger the additional requirements of Condition 45.1 (4). The frequency (quarterly) is set out in Condition 45.1 (1).

Petitioner further alleges that Condition 45 does not set the date for completion of the collection and control system. Although Condition 45 does not provide this date, the information Petitioner seeks is incorporated elsewhere in the permit. Condition 55 states that a Landfill Gas Collection and Control System Design Plan, dated March, 2001, was submitted by Al Turi Landfill, and that a final cover with a comprehensive collection and control system has been installed on 90% of the landfill area. The remaining 10 percent is operational and consists of approximately 9 acres of landfill area. Condition 55 further states that landfill gas collection and control will be installed by onsite personnel concurrent with the progression of final waste deposition. Condition 55 also provides that the facility will implement the monitoring plans as specified by the Design Plan (*see* 6 N.Y.C.R.R. Part 208 and Part 360). Petitioner’s claims are therefore without merit, and are denied as to this issue.

vii. Condition 50

Lastly, Petitioner asserts that Condition 51 (Condition 50 of the final permit), may contain monitoring, record keeping and reporting requirements, but is so poorly worded that these requirements would only apply if the facility sought to comply with 6 N.Y.C.R.R. Part 208.3(b)(2)(ii), and if the facility uses an “active collection system.” Petitioner further alleges that this condition needs to state whether the terms of the regulation apply to this facility and set out specific requirements to implement the regulation. Petitioner also contends that the condition could be misused as a basis for shielding the facility from compliance with the requirements of Part 208.

Condition 50 incorporates verbatim the requirements of the Landfill NSPS at 40 C.F.R § 60.757(f) and applies to owners or operators using an active collection system that is designed in accordance with 6 N.Y.C.R.R. Part 208.3(b)(2)(ii). Although the phrase “seeking to comply” may be confusing, EPA disagrees that this condition could be used as a basis for shielding the facility from compliance with these requirements. This condition details the information that must be submitted by the source, to DEC, in its annual reports, including information on certain

²⁵ This condition states that any reading of 500 parts per million or more must be recorded as an exceedance and corrective action, as specified in the permit, must be taken.

exceedances, use of a bypass line, periods when the control device did not operate, periods when the collection system did not operate, and the date and location of each well or collection system expansion. Thus, this condition contains no operational limits or other requirements, it simply provides additional information regarding the semi-annual reporting requirements. DEC can easily ascertain whether Al Turi failed to include any necessary information in an annual report. Accordingly, no periodic monitoring, or other requirements, as petitioner alleges are required. The petition is therefore denied as to this issue.

CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I deny in part and grant in part NYPIRG's petition requesting that the Administrator object to the Al Turi title V permit. This decision is based on a thorough review of the draft permit, the final permit issued August 7, 2002, and other documents pertaining to the issuance of the permit.

January 30, 2004

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Date

Michael O. Leavitt