



TULANE ENVIRONMENTAL LAW CLINIC

May 31, 2006

*Via Fax and Certified U.S. Mail*

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Re: Petition for Objection to Proposed Title V Operating Permits No 2933-V0 for No. 2 Crude/Coker Units and Permit No.2822-V0 for Waste Water Treatment Plant for Chalmette Refining (Agency Interest No. 1376)

Dear Messrs. Johnson and Green:

Enclosed is a Petition Requesting the Administrator of the U.S. Environmental Protection Agency to Object to two proposed Title V operating permit, Nos. 2933-V0 and 2822-V0, for Chalmette Refinery No. 2 Crude/Coker Units and Waste Water Treatment Plant, respectively, which we submit on behalf of Louisiana Bucket Brigade and St. Bernard Citizens for Environmental Quality.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Van Dalen", written over a horizontal line.

Corinne Van Dalen

Cc:

*Via E-Mail (jsanders@nealharwell.com)*

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**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**IN THE MATTER OF THE  
PROPOSED  
TITLE V OPERATING PERMITS  
ISSUED TO CHALMETTE  
REFINING, LLC  
CHALMETTE, ST. BERNARD  
PARISH, LOUISIANA**

**Petition of St. Bernard Citizens for  
Environmental Quality and Louisiana  
Bucket Brigade Requesting  
Administrator to Object to the Issuance  
of Two Proposed Title V Operating  
Permits, No. 2822-V0 for Chalmette  
Refinery, Waste Water Treatment Plant  
and No. 2933-V0 for Chalmette  
Refinery, No. 2 Crude/Coker Unit  
(Agency Interest No. 1376)**

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Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade (“Petitioners”) petition the Administrator of the United States Environmental Protection Agency to object to two proposed Title V Operating Permits issued by the Louisiana Department of Environmental Quality (“LDEQ”) to Chalmette Refining, LLC for its refinery in Chalmette, Louisiana. The two proposed permits are designated as: No. 2822-V0 for the refinery’s Waste Water Treatment Plant and No. 2933-V0 for the refinery’s No. 2 Crude/Coker Unit (collectively, the “proposed Title V permits”). EPA must object to this Petition because:

- The Statement of Basis that LDEQ provided is inadequate because it omits information about emission limits in the current permits covering the Wastewater Treatment Plant and No. 2 Crude/Coker Under, and therefore fails to provide a context in which the public and EPA can understand and review the new emission limits in the proposed permits.
- LDEQ may not change the emission limits in the existing federally enforceable permits without undergoing proper permit modification procedures.
- LDEQ must require umbrella and periodic monitoring covering all permitted emission points, yet it includes in the permit several emissions limitations without specifying monitoring requirements that assure compliance.

EPA “does not have discretion whether to object to draft permits once noncompliance has been demonstrated.” N.Y. Pub. Interest Research Group v. Whitman, 321 F.3d 316, 334 (2nd Cir. 2003) (EPA was required to object to Title V permits once petitioner demonstrated permits did not comply with the Clean Air Act.).

### **BACKGROUND**

Chalmette Refining submitted a consolidated Title V air permit application to LDEQ in 1999 for its petroleum refinery in Chalmette, Louisiana. Pursuant to an LDEQ “Administrative Order on Consent” signed on May 24, 2005, Chalmette Refining agreed to update its Title V consolidated air permit application according to a schedule that allowed it to divide the permit into eleven separate Title V applications.<sup>1</sup> The two proposed Title V permits at issue here are the third and fourth of eleven Title V permits that Chalmette Refining seeks to receive from LDEQ. The proposed Title V permits cover portions of the Chalmette Refinery referred to as the Waste Water Treatment Plant (WWTP), which currently operates under permit nos. 2500-00005-02; 2226(M-3); and 2822, and the No. 2 Crude/Coker Unit, which currently operates under permit nos. 2500-00005-02; 2226(M-3); and PSD-LA-199(M-4).

Under proposed Title V permit no. 2822-V0, Chalmette Refinery seeks to: “incorporate as built changes from the construction plan originally proposed and permitted as part of the WWTP Project.”<sup>2</sup> Changes to the original project design include: reducing cooling tower design from six to five cells; eliminating Sump #1 modifications and include a new 6,000 gpm electric drive pump instead; changing suction piping from Tank 1013 to provide separate inlet draws;

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<sup>1</sup> See Administrative Order on Consent (May 24, 2005) (“May 24, 2005 Administrative Order”), p. 2, § III, Attach. A.

<sup>2</sup> Permit Application, I-4.

changing new storage tank TK-3721 from open top to external floating roof; and increasing Clearwell effluent pump from 3,300 gpm to 3,600 gpm.<sup>3</sup>

Under proposed Title V permit no. 2933-V0, Chalmette Refinery seeks to:

[I]ncrease throughput on Crude Unit No. 2 from 95 to 100 KBD and increase throughput on Coker No. 2 from 25 to 30 KBD. As part of this proposed project, new equipment will be installed and existing equipment will be modified and/or affected. Physical modifications including changes to No. 2 Crude/Coker Heaters F-7401, F-7410, and F-8101, the No. 2 Coker diesel-fired air compressor engine, and vessels, towers, piping and piping components in the No. 2 Crude and Coker process areas.<sup>4</sup>

EPA received both proposed Title V permits from LDEQ on February 14, 2006. EPA's 45-day review period ended on March 31, 2006. LDEQ issued the permits on March 14, 2006. This Petition is timely since Petitioners submitted it within 60 days following the end of EPA's 45-day review period as Clean Air Act, § 505(b)(2) requires. See 42 U.S.C. § 7661(b)(2).

Petitioners are nonprofit organizations with members who are residents of Chalmette.<sup>5</sup> During the public comment period on the proposed Title V permit, Petitioners submitted written comments to LDEQ on January 17, 2006. Petitioners raised all issues in this Petition in their comments that are before LDEQ.

### **SPECIFIC OBJECTIONS**

#### **I. LDEQ FAILED TO PROVIDE AN ADEQUATE STATEMENT OF BASIS IN VIOLATION OF LA. ADMIN. CODE TIT. 33 § 531.A.4 AND 40 C.F.R. § 70.7(a)(5).**

The purpose of the Clean Air Act Title V permit program is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better

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<sup>3</sup> Id.

<sup>4</sup> Permit Application, I-3.

<sup>5</sup> While damage caused by hurricanes Katrina and Rita has displaced members temporarily, many members own property in Chalmette and plan to return.

enforcement should result.”<sup>6</sup> To further this goal, Louisiana’s Part 70 regulations, like 40 C.F.R. § 70.7(a)(5), provide: “The permitting authority *shall* provide a statement that sets forth the legal *and factual basis* for the draft permit conditions of any permit issued to a Part 70 source, including references to the applicable statutory or regulatory provisions.”<sup>7</sup>

In the proposed Title V permits, LDEQ lists proposed emission limits for criteria pollutants and precursors including PM<sub>10</sub>, SO<sub>2</sub>, NO<sub>x</sub>, CO and VOC.<sup>8</sup> However, LDEQ failed to list the emission limits set in the permits under which the emission sources comprising the Waste Water Treatment Plant and No. 2 Crude/Coker Unit currently operate. Instead, LDEQ states that the emission limits in the proposed permit are “[b]ased on Interim Limits approved by LDEQ in Administrative Order dated 5/25/05.”<sup>9</sup> However, the Administrative Order contains no findings, explanation, or justification for the “interim limits.” The Administrative Order only provides a bare list of limits for emission sources (including those comprising the Waste Water Treatment Plant and No. 2 Crude/Coker Units) with which Chalmette Refining must comply until LDEQ takes final action on the Title V permit applications.<sup>10</sup>

The proposed Title V permits provides no information that would allow EPA or the public to conduct a meaningful review of, or submit meaningful comments on, the proposed permit limits, the interim emission limits, or the changes in the emission limits. EPA should therefore object to both proposed permits because “the materials submitted by the State

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<sup>6</sup> 57 Fed. Reg. 32,250-01, 32,251 (1992).

<sup>7</sup> La. Admin. Code tit. 33 § 531.A.4 (emphasis added); see also 40 C.F.R. § 70.7(a)(5).

<sup>8</sup> See Statement of Basis § III. (Since documents related to both proposed permits have sections that are identical, we provide general citation covering both proposed permits.)

<sup>9</sup> Statement of Basis, § III.

<sup>10</sup> Administrative Order, p.2, § IV. Note that the Administrative Order was not issued in accordance with permit modification procedures and cannot amend Chalmette Refining’s existing permits, nor does it purport to modify the existing permit limits. Therefore, the EPA and citizens may continue to enforce Chalmette Refining’s existing permit limits, Attach. A.

permitting authority to EPA do not provide enough information to allow a meaningful EPA review of whether the proposed permit is in compliance with the requirements of the Act.”<sup>11</sup>

In their comments, the Petitioners specifically asked LDEQ to amend the Statement of Basis to include a comparison of the proposed emission limits to the emission limits set in the current state permits for the sources comprising the Waste Water Treatment Plant and No. 2 Crude/Coker Unit, and to put the information in a form the general public can understand.<sup>12</sup> Yet, LDEQ has failed to make the requested amendments or responses to Petitioner’s Comments.

If the public is to understand and comment on the proposed permits, it is important for the public to be aware of its context, *i.e.* the emissions limitations that the new permits will overrule. Respect for the Title V process therefore requires that LDEQ provide an understandable discussion of the project information for the Waste Water Treatment Plant and No. 2 Crude/Coker. Failure to provide an adequate Statement of Basis denies the public meaningful participation in the commenting process. St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade ask that EPA object to the proposed Title V permit because LDEQ failed to provide a Statement of Basis that includes a comparison of the proposed emission limits to the emission limits set in the current state operating permits for the sources comprising the Waste Water Treatment Plant and No. 2 Crude/Coker Units.

**II. LDEQ MAY NOT INCREASE EMISSION LIMITS IN FEDERALLY ENFORCEABLE PERMITS WITHOUT UNDERGOING PROPER PERMIT MODIFICATION PROCEDURES.**

LDEQ cannot change the emissions limits under which the Waste Water Treatment Plant and No. 2 Crude/Coker Units currently operate without going through the proper permit modification procedure because those emission limits are federally enforceable requirements.

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<sup>11</sup> 56 Fed. Reg. 21,712-01, 21,750 (1991).

<sup>12</sup> See Petitioners’ 1/17/2006 Comments on Proposed Title V Permit for WWTP, p. 3 and No. 2 Crude/Coker Unit, p. 3.

The Waste Water Treatment Plant currently operates under LDEQ permit nos. 2500-00005-02, 2226(M-3), and 2822.<sup>13</sup> The No. 2 Crude/Coker Unit currently operates under permit nos. 2500-00005-02; 2226(M-3); and PSD-LA-199(M-4).<sup>14</sup> LDEQ issued these permits pursuant to La. Admin. Code tit. 33 §§ 501, 509, which are part of Louisiana’s approved state implementation plan (SIP).<sup>15</sup> EPA has explained, “all provisions contained in an EPA-approved SIP and all terms and conditions in SIP-approved permits are already federally enforceable.”<sup>16</sup>

In this case, LDEQ has failed to meet the standard that EPA enforced in In re Dunkirk Power, LLC, *Order Granting in Part and Denying in part Petition for Objection to Permit*, July 31, 2003. In that Order, the agency ruled that “federally enforceable conditions from permits issued pursuant to requirements approved in the New York SIP generally must be included in the [Title V] permit as they are applicable requirements.”<sup>17</sup> This ruling was part of an EPA objection to the New York Department of Environmental Conservation’s failure to include in Dunkirk Power’s draft Title V permit emission and operating limits contained in the facility’s previous state operating permits.<sup>18</sup> EPA further explained that to change the permit conditions, the agency must follow the modification procedures set forth in the New York regulations. Id. That is, the “DEC must provide the public with notice and an opportunity to comment on the appropriateness of any proposed changes to the federally enforceable terms of the pre-existing permit.”<sup>19</sup>

Rather than include the emission limits set forth in the currently applicable state operating permits for the Waste Water Treatment Plant and No. 2 Crude/Coker Units, LDEQ set

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<sup>13</sup> See Permit Application, p. I-1, Permit No. 2822-V0.

<sup>14</sup> See Permit Application, p. I-4, Permit No. 2933-V0.

<sup>15</sup> See 40 C.F.R. §52.970(c).

<sup>16</sup> May 20, 1999 letter from J. Seitz, EPA to R. Hodanbosi, STAPPA/ALAPOCA, Enclosure A, p. 1 (citing 40 C.F.R. § 52.23), Attach. B.

<sup>17</sup> In re Dunkirk Power, LLC, *Order Granting in Part and Denying in part Petition for Objection to Permit*, July 31, 2003, at 15 (citing 40 C.F.R. § 70.2), Attach. C.

<sup>18</sup> Id. at 14-18.

<sup>19</sup> Dunkirk at 16 (citing 6 NYCRR § 621.6; 102-1.6; and 40 CFR § 70.7(h)).



emission limits based only on interim limits established in the May 24, 2005 Administrative Order.<sup>20</sup> LDEQ did not issue the Administrative Order in accordance with permit modification procedures and, therefore, that Administrative Order did not amend Chalmette Refining's permit limits.<sup>21</sup> Therefore, LDEQ's use of the interim limits as the basis for new Title V permits constitutes a change in the federally enforceable requirements found in the state-issued permits under which the Waste Water Treatment Plant and No. 2 Crude/Coker Units currently operate. Under Louisiana law, such a change would require modification of those permits—a process that would require public participation, including notice, comment and an opportunity to appeal.<sup>22</sup> But, LDEQ failed to notify the public of its intention to change the Waste Water Treatment Plant's and the No. 2 Crude/Coker Unit's current emission limits.

Furthermore, LDEQ failed in its Statement of Basis to explain why it chose to use the interim limits instead of the previous limits. Interpreting permit modification procedures in New York law, which are similar to those found in Louisiana law, the EPA ruled that the New York Department of Environmental Conservation must explain any such changes in the Statement of Basis, in addition to providing public notice of and an opportunity to comment on any changes to

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<sup>20</sup> Proposed Title V Permit, Specific Requirements.

<sup>21</sup> See St. Bernard Citizens for Environmental Quality, Inc. v. Chalmette Refining, L.L.C., 399 F. Supp. 2d 726, 734 (E.D. La. 2005) (finding that the Administrative Order “does not revise defendant's permit and simply reflects the LDEQ's current enforcement intentions.”).

<sup>22</sup> Louisiana law provides: “The terms and conditions of any permit or exemption issued to a Part 70 source by the permitting authority prior to the effective date of this Section shall remain in effect, unless otherwise inconsistent with the provisions of this Chapter or *revised in accordance with this Chapter*, until the initial permit under this Section for such Part 70 source is issued.” La. Admin. Code tit. 33.III § 507(D)(1)(a) (emphasis added). LDEQ cannot change Chalmette's permit limits without following La. Admin. Code tit. 33.III § 531(A)(2)(c) requiring LDEQ to publish a notice prior to the issuance of “a permit revision to incorporate a *significant modification* as defined pursuant to LAC 33:III.527.” Id. (emphasis added.). Under La. Admin. Code tit. 33.III § 527, a significant modification is any permit revision that “does not qualify as an administrative amendment and does not qualify as a minor modification.” La. Admin. Code tit. 33.III § 527.A.1. Permit revisions that qualify for an “administrative amendment” include typographical error corrections and other similar changes. See La. Admin. Code tit. 33.III § 521. “Minor modifications” procedures may not be used for revisions that would “violate any federally applicable requirement or standard.” See La. Admin. Code tit. 33.III § 525.A.2.a.

federally enforceable permit limitations.<sup>23</sup> Because LDEQ has failed to include federally enforceable applicable requirements in this permit, but seeks to change federally enforceable applicable requirements without following the proper procedure, the Title V permits covering the Waste Water Treatment Plant and the No. 2 Crude/Coker Unit violate Clean Air Act requirements and EPA must object to them.<sup>24</sup>

**III. LDEQ MUST REQUIRE UMBRELLA AND PERIODIC MONITORING COVERING ALL PERMITTED EMISSION POINTS AS REQUIRED BY C.F.R. § 70.6(a)(3)(i)(B) AND 40 C.F.R. § 70.6(c)(1).**

40 C.F.R. § 70.6(a)(3)(i)(B) requires that each Part 70 permit include requirements for “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit” where “periodic testing or instrumental or noninstrumental monitoring” is not otherwise required. Consistent with paragraph (a)(3), 40 C.F.R. § 70.6(c)(1) requires “compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.” However, the proposed Title V permits do not specify that Chalmette Refining must comply with 40 C.F.R. § 70.6(a)(3)(i)(B) & (c)(1).<sup>25</sup> The General Conditions of the proposed permits must be amended to specifically require compliance with these Part 70 monitoring requirements. Furthermore, the proposed permits do not require monitoring sufficient to demonstrate compliance with each emission point of other equipment subject to the permits.<sup>26</sup> St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade ask that EPA object to the proposed Title V permits because LDEQ failed to require monitoring for

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<sup>23</sup> Dunkirk at 16 (citing 6 NYCRR § 621.6; 102-1.6; and 40 CFR § 70.7(h)) (“DEC must...explain in the Statement of Basis...any proposed changes in applicability [of permit conditions].”).

<sup>24</sup> Whitman at 334 (EPA “does not have discretion whether to object to draft permits once noncompliance has been demonstrated.”).

<sup>25</sup> See Proposed Permit, 40 C.F.R. Part 70 General Conditions.

<sup>26</sup> See Proposed Permit, Specific Requirements.

each permitted emission point in a manner that complies with 40 C.F.R. §70.6(a)(3)(i)(B) and 40 C.F.R. §70.6(c)(1).


**CONCLUSION**

The Proposed Title V Operating Permit Nos. 2822-V0 and 2933-V0 fail to comply with the applicable statutes and regulations because they include an inadequate statement of basis, change federally enforceable emission limits without following lawful modification procedures, and fail to require monitoring sufficient to demonstrate compliance with the permit's terms and conditions. Therefore, St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade respectfully ask EPA to object to LDEQ's issuance of the permits and to require LDEQ to remedy these deficiencies.

Respectfully submitted this 31st day of  
May, 2006,



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Substantially prepared by, Courtney  
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**CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the United States that I have provided copies of the foregoing Petition to persons or entities below on May 31, 2006 as specified:

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Corrine Van Dalen

# **ATTACHMENT A**

**STATE OF LOUISIANA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**OFFICE OF ENVIRONMENTAL COMPLIANCE**

**IN THE MATTER OF:**  
**Chalmette Refining, L.L.C.**  
**Agency Interest No. 1376**

**PROCEEDINGS UNDER THE**  
**ENVIRONMENTAL QUALITY ACT**  
**La. R.S. 30:2001, et. seq.**

**Tracking No.**  
**AE-AOA-05-0109**

**ADMINISTRATIVE ORDER ON CONSENT**

This Order is entered into this day between the Louisiana Department of Environmental Quality (the Department) and Chalmette Refining, L.L.C. (hereinafter "Chalmette Refining") under the authority granted by the Louisiana Constitution of 1974, Article IX, Section 1, and by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001 *et. seq.*, and particularly by La. R.S. 30:2011(D)(6) and (D)(14). This Order applies to and is binding upon the Department and upon Chalmette Refining and their successors and assigns.

**BACKGROUND**

**I.**

Chalmette Refining is a limited liability company that owns and operates a petroleum refinery in St. Bernard Parish, Louisiana ("the Facility"). The Facility includes several sources of air emissions that are subject to the permitting requirements of the Federal Clean Air Act, Title V. Chalmette Refining has submitted an initial Title V permit application for those sources.

**II.**

The Department has received numerous complaints regarding air quality in the area of Chalmette, St. Bernard Parish, Louisiana. The Department and Chalmette Refining believe that additional ambient air monitoring data would be useful for evaluating ambient air quality in the Chalmette area, and for identifying potential sources of emissions of air pollutants in the area.

**AGREED ORDER**

In consideration of the foregoing, the Department and Chalmette Refining agree to the following measures, subject to the terms and conditions of this Order.

**III.**

Chalmette Refining shall submit updated Clean Air Act Title V permit applications to the Department according to the following schedule:

- |     |                           |   |
|-----|---------------------------|---|
| 1.  | Utilities                 | 2nd quarter, 2005                             |
| 2.  | No. 2 Crude/Coker         | 3rd quarter, 2005                             |
| 3.  | CFHT-PT1-RF1-GHU          | 3rd quarter, 2005                             |
| 4.  | WWTP                      | 3rd quarter, 2005                             |
| 5.  | Oil Movements and Loading | 3rd quarter, 2005                             |
| 6.  | HCU-PT3-RF3-LEP           | 3rd quarter, 2005                             |
| 7.  | No. 1 Crude/Coker         | 4th quarter, 2005 (by no later than 11/15/05) |
| 8.  | SRU-HDS-AMS-SWS-WGS-BRU   | 4th quarter, 2005 (by no later than 11/15/05) |
| 9.  | Flares #1 and 2           | 4th quarter, 2005 (by no later than 11/15/05) |
| 10. | FCC/Alky                  | 4th quarter, 2005 (by no later than 11/15/05) |
| 11. | Aromatics                 | 4th quarter, 2005 (by no later than 11/15/05) |

**IV.**

Until such time as the Department takes final action on the above-mentioned Title V permit applications, or otherwise notifies Chalmette Refining, Chalmette Refining shall operate its emission sources in compliance with the interim emission limitations and monitoring and reporting requirements set forth in Appendix A.



V.

Chalmette Refining shall implement the "St. Bernard Parish Enhanced Ambient Monitoring Program" (Appendix B), including the purchase and installation of the ambient air monitoring equipment described in Appendix B, on or before December 31, 2005. In the event of any delays in implementation that are beyond the control of Chalmette Refining, LDEQ may approve a later date for implementation. These ambient air monitors will be used by the Department to collect ambient air quality data in the vicinity of the Facility. The Department will designate the installation sites. Chalmette Refining will lease any property necessary for the siting of the monitoring equipment and ancillary equipment and structures. Each lease shall have a term of at least two years, with the option to renew for an additional two years, and will allow full access by employees and contractors of the Department to the property for the operation and maintenance of the equipment.

VI.

This Order may be amended by mutual consent of the Department and Chalmette Refining. Such amendments shall be in writing and shall have as their effective date the date on which they are signed by the latter of the Department or Chalmette Refining.

VII.

This Order shall be final upon signature by an authorized representative of the Department and by the authorized representative of Chalmette Refining. By signing this Order, each representative certifies that he/she is fully authorized to enter into the terms of this Order and to execute and legally bind the party he/she represents to this Order.

VIII.

This Order is executed in duplicate original.

**CHALMETTE REFINING, L.L.C.**

By: J.A. Strain  
(signature)

J.A. Strain  
(printed)

Title: Refinery Manager

Date: 5-24-2005

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: Harold Leggett  
Harold Leggett, Ph.D., Assistant Secretary

Date: 5-24-05

**APPENDIX A  
INTERIM LIMITS EMISSIONS  
TONS / YEAR**

Chalmette Refining L.L.C.

Interim Limits Emissions (Tons Per Year)

Source Type	EPI	Tag No.	Service Designation	ANNUAL AVERAGE EMISSIONS					
				NOx (Tons/Yr)	SO <sub>2</sub> (Tons/Yr)	SO <sub>x</sub> (Tons/Yr)	PM (Tons/Yr)	VOC (Tons/Yr)	
<b>Heaters<sup>a</sup></b>									
4		F-1	No. 1 Crude Vacuum Heater	25.9	10.0	5.0	1.9	1.3	
1		F-5	No. 1 Crude Atmos. Heater (F-5)	128.9	68.8	13.8	5.1	3.7	
2		F-8	No. 1 Crude Atmos. Heater (F-6)	126.9	68.8	13.8	5.1	3.7	
17 A,B		F-600	Isom Heater	35.4	9.3	4.6	1.7	1.3	
12		F-700	DOBQ Reboiler	0.0	0.0	0.0	0.0	0.0	
14		F-1105	No.2 Hot Oil Heater	97.9	24.5	12.3	4.6	3.3	
16		F-1106	PreFractionator Reboiler	11.0	4.4	2.2	0.8	0.6	
11		F-1201	No. 1 Hot Oil Heater	103.6	24.5	12.3	4.6	3.3	
7		F-1600	Orfho Retun Reboiler	12.3	4.6	2.3	0.8	0.6	
9		F-1600	No. 3 Orfho Reboiler	22.0	6.2	4.1	1.5	1.1	
23 C		F-2301	Hydrocracker 1st Stage Rx PreHeater (W)	1.7	1.4	0.7	0.3	0.2	
23 C		F-2302	Hydrocracker 2nd Stage Rx PreHeater (W)	3.8	2.8	1.4	0.5	0.4	
25 A,B		F-2303	Hydrocracker Stabilizer Reboiler	48.9	12.3	6.1	2.3	1.7	
24		F-2304	Hydrocracker Splitter Reboiler	11.7	4.4	2.2	0.8	0.6	
23 D		F-2307	Hydrocracker 1st Stage Rx PreHeater (E)	1.7	1.4	0.7	0.3	0.2	
23 D		F-2308	Hydrocracker 2nd Stage Rx PreHeater (E)	3.9	2.8	1.4	0.5	0.4	
19 B		F-2502	No. 3 Reformar Rx 1 Pre-Heater	140.5	26.7	14.4	5.4	3.9	
38		F-2503	No. 3 Reformar Rx 2 Pre-Heater	123.2	26.6	13.3	5.0	3.6	
21		F-2504	No. 3 Preheater Heater	49.4	11.6	5.8	2.2	1.6	
22		F-2505	No. 3 Preheater Reboiler	16.3	4.2	2.1	0.8	0.6	
20		F-2506	No. 3 Hot Oil Heater	15.4	4.6	2.3	0.8	0.6	
20		F-2800	No. 1 Coker Heater	75.9	21.9	11.0	4.1	3.0	
8 A,B		F-3001	No. 2 Orfho Reboiler	26.6	9.1	4.8	1.7	1.2	
39		F-3000	HDS Heater	96.1	21.4	10.7	4.0	2.9	
40		F-3301	HDS Stripper Reboiler	28.6	8.9	4.5	1.7	1.2	
85 A		F-4201	TDU Deoil Reboiler	15.7	11.4	5.7	2.1	1.5	
85 B		F-4202	TDU PreHeater	9.6	8.5	3.2	1.2	0.9	
85 C		F-4203	TDU Reboiler	4.9	4.2	2.1	0.8	0.6	
37		F-7401	No. 2 Crude Atmos. Heater	106.5	29.8	14.9	5.5	4.0	
66		F-7410	No. 2 Crude Gas Oil Heater	84.8	23.7	11.9	4.4	3.2	
41		F-7501-7	No. 1 Reformar Heaters	343.5	54.3	27.2	10.1	7.3	
43		F-7601	No. 2 Crude Vacuum Heater	84.8	14.9	7.4	2.8	2.0	
44		F-7701	CFHT Reactor Heater	41.8	8.6	4.3	1.6	1.2	
61		F-7702	CFHT Fractionator Reboiler	44.8	7.9	3.9	1.5	1.1	
46		F-7801	FCC Heater	45.1	9.8	4.9	1.8	1.3	
48		F-7802	FCC Regen. Auxiliary Burner	0.7	0.4	0.1	0.0	0.0	
49		F-7901	Alky Isocatcher Reboiler	34.1	16.8	7.9	2.9	2.1	
60		F-8101	No. 2 Coker Heater	188.1	27.2	13.6	5.1	3.7	
99		F-9401	GHU Heater	11.1	9.6	4.8	1.8	1.3	

APPENDIX A  
INTERIM LIMITS EMISSIONS  
TONS / YEAR

Source Type	EPN	Tag No.	Service Description	NOx (Tons/Yr)	CO (Tons/Yr)	SO2 (Tons/Yr)	PM (Tons/Yr)	VOC (Tons/Yr)
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Boilers <sup>A</sup>	27	F-402	Boiler CAP	511.7	433.7	57.9	21.6	15.7
	35	F-808	No. 402 Boiler (C.O.B.)	(1)	(1)	(1)	(1)	(1)
	66	F-809	No. 7 Boiler	(1)	(1)	(1)	(1)	(1)
	70	F-810	No. 9 Boiler	(1)	(1)	(1)	(1)	(1)

(1) Included in Boiler CAP

Flare	28	ME2001	No. 1 Flare (Candelabra)	32.5	177.0	1,425.4	9.0	49.6
	29	V2010	No. 2 Flare (Pentol)	29.2	198.4	862.3	6.0	58.7

Refinery I.C. Engines	50	K-400	Waste Gas Compressor #1	6.2	1.2	0.0	0.2	0.0
	51	K-401	Waste Gas Compressor #2	8.6	1.3	0.0	0.3	0.0
	52	K-402	Waste Gas Compressor #3	43.5	15.7	0.1	0.4	0.1
	53	K-405	Waste Gas Compressor #4	142.4	142.8	0.2	0.8	0.2
	56A	K-600	Isom Recycle Compressor #1	8.8	10.5	0.1	1.8	7.0
	56B	K-601	Isom Recycle Compressor #2	8.8	10.5	0.1	1.8	7.0
			Misc. Compressor Engines (Combined)	168.3	36.3	9.5	13.3	15.1

Cooling Tower	CT-1	CT-1	Closed-Cooling Water Tower	N/A	N/A	N/A	3.9	78.4
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FCCU Regenerator	47	FCCU No. 2	Waste Gas Scrubber Vent	470.3	355.9	47.0	135.0	4.0
	71		Catalyst Loading/Unloading				1.0	

Reformer Process Vents	42		No. 1 Reformer Regen Vent	0.0	71.5	4.5	2.9	0.8
	74		No. 3 Reformer Regen Vent	0.0	0.0	0.0	0.0	0.0
			Orthoxylene Vent	0.0	0.0	0.0	0.0	0.7

SRU	46	F8003/R053	SRU Thermal Oxidizers (ThOx)	17.4	70.5	142.6	3.7	0.1
	SL		Sulfur Loading	N/A	N/A	0.4	N/A	N/A

Fugitives	Note 1		Refinery Aggregate	N/A	N/A	N/A	N/A	2,598.0
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Tanks <sup>c,b</sup>	Note 2		Tank CAP	N/A	N/A	N/A	N/A	1,032.5
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Crude and Coker Process Vent			Unit Aggregate	N/A	N/A	N/A	N/A	1.5
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Coke Handling & Loading			Unit Aggregate	N/A	14.6	0.8	4.2	N/A
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**APPENDIX A  
INTERIM LIMITS EMISSIONS  
TONS / YEAR**

Source Type	EPN	Item No.	Source Description	NOx (Tons/Yr)	CO (Tons/Yr)	SO2 (Tons/Yr)	PM (Tons/Yr)	VOC (Tons/Yr)
<b>Product Loading<sup>E</sup></b>								
	Note 3 68	ME0901	Refinery Aggregate CAP No. 3 Flare	17.3	70.1	0.0	0.1	187.6 30.8
<b>Waste Water Treatment Plant</b>								
	Note 4 86	F1400	Unit Aggregate (except API THOx) Thermal Oxidizer on API Separator	N/A 46.9	N/A 11.3	N/A 0.0	N/A 0.1	185.0 1.6
<b>Vacuum Trucks</b>	VT		Refinery Aggregate	N/A	N/A	N/A	N/A	150.7
<b>Catalyst Loading / Unloading</b>	Note 5		Refinery Aggregate	-	-	-	-	-
<b>Miscellaneous Chemical Tanks</b>			Refinery Aggregate	0.0	0.0	0.0	0.0	0.2
<b>Insignificant Activities<sup>F</sup></b>	IA		Refinery Aggregate	18.3	4.7	2.4	1.8	17.6
<b>Maintenance<sup>F</sup></b>			Refinery Aggregate	481.7	424.3	183.4	8.7	280.0
<b>Turn Arounds<sup>F</sup></b>	TA		Refinery Aggregate	74.7	16.8	14.7	9.0	9.4



**APPENDIX A  
INTERIM LIMITS EMISSIONS  
POUNDS / HOUR**

Chalmette Refining L.L.C.

Interim Limits Emissions (Pounds Per Hour)

Source Type	EPA	Tax No.	Sanctua Designation	MAXIMUM HOURLY EMISSIONS						
				NOx (Lbs/Hr)	SO <sub>2</sub> (Lbs/Hr)	PM (Lbs/Hr)	VOC (Lbs/Hr)	CO (Lbs/Hr)	SO <sub>x</sub> (Lbs/Hr)	PM (Lbs/Hr)
<b>Heaters<sup>a</sup></b>										
F-1	4		No. 1 Crude Vacuum Heater	12.9	7.4	3.2	0.7	0.5		
F-5	1		No. 1 Crude Atmos. Heater (F-5)	35.0	35.0	6.1	1.3	0.9		
F-6	2		No. 1 Crude Atmos. Heater (F-6)	35.0	35.0	6.1	1.3	0.9		
F-600	17 A,B		Isom Heater	13.0	5.8	2.5	0.6	0.4		
F-700	12		DOB0 Reboiler	0.0	0.0	0.0	0.0	0.0		
F-1105	14		No.2 Hot Oil Heater	32.2	14.3	6.1	1.3	0.9		
F-1106	16		Prefractionator Reboiler	7.3	3.9	1.6	0.4	0.3		
F-1201	11		No. 1 Hot Oil Heater	29.8	13.2	5.6	1.2	0.9		
F-1500	7		Orbho Reurn Reboiler	8.7	4.2	1.8	0.4	0.3		
F-1600	9		No. 3 Orbho Reboiler	22.6	10.9	4.6	1.0	0.7		
F-2301	23 C		Hydrocracker 1st Stage Rx PreHeater (W)	1.6	1.6	0.7	0.1	0.1		
F-2302	23 C		Hydrocracker 2nd Stage Rx PreHeater (W)	2.1	2.1	0.9	0.2	0.1		
F-2303	25 A,B		Hydrocracker Stabilizer Reboiler	17.1	7.6	3.2	0.7	0.5		
F-2304	24		Hydrocracker Splitter Reboiler	8.7	4.2	1.8	0.4	0.3		
F-2307	23 D		Hydrocracker 1st Stage Rx PreHeater (E)	1.6	1.6	0.7	0.1	0.1		
F-2308	23 D		Hydrocracker 2nd Stage Rx PreHeater (E)	2.1	2.1	0.9	0.2	0.1		
F-2501	18 A		No. 3 Reformr Rx 1 PreHeater	35.2	14.3	6.1	1.3	0.9		
F-2502	19 B		No. 3 Reformr Rx 2 PreHeater	35.2	14.3	6.1	1.3	0.9		
F-2503	38		No. 3 Reformr Rx 3 PreHeater	17.1	6.9	2.9	0.6	0.5		
F-2504	21		No. 3 Pretreater Heater	5.8	2.6	1.1	0.2	0.2		
F-2506	22		No. 3 Pretreater Reboiler	7.8	3.4	1.4	0.3	0.2		
F-2506	20		No. 3 Hot Oil Heater	35.4	15.7	6.7	1.4	1.0		
F-2800	26		No. 1 Coker Heater	12.0	6.3	2.7	0.6	0.4		
F-3001	8 A,B		No. 2 Orbho Reboiler	43.5	15.0	6.4	1.4	1.0		
F-3300	39		HDS Heater	15.5	6.8	2.9	0.6	0.4		
F-3301	40		HDS Stripper Reboiler	10.9	5.3	2.2	0.5	0.3		
F-4201	85 A		TDU Distol Reboiler	5.8	7.1	3.0	0.6	0.5		
F-4202	85 B		TDU Heater	3.0	3.6	1.6	0.3	0.2		
F-4203	85 C		TDU PreHeater	2.8	3.4	1.4	0.3	0.2		
F-7401	37		No. 2 Crude Atmos. Heater	29.5	15.7	6.7	1.4	1.0		
F-7410	65		No. 2 Crude Gas Oil Heater	30.3	14.4	6.1	1.3	0.9		
F-7501-7	41		No. 1 Reformr Heaters	130.6	34.4	14.6	3.1	2.2		
F-7601	43		No. 2 Crude Vacuum Heater	30.2	9.1	3.9	0.8	0.6		
F-7701	44		CFHT Reactor Heater	17.6	5.8	2.5	0.6	0.4		
F-7702	61		CFHT Fractionator Reboiler	13.1	4.3	1.8	0.4	0.3		
F-7801	45		FCC Heater	15.1	5.8	2.5	0.5	0.4		
F-7802	48		FCC Regen. Auxiliary Burner	9.4	11.0	1.9	0.4	0.3		
F-7901	49		Alky Isostripper Reboiler	15.4	11.0	4.7	1.0	0.7		
F-8101	60		No. 2 Coker Heater	57.5	16.1	6.4	1.4	1.0		
F-9401	99		GHU Heater	2.9	4.9	2.1	0.4	0.3		

**APPENDIX A  
INTERIM LIMITS EMISSIONS  
POUNDS / HOUR**

Source Type	EPN	Tag No.	Service Designation	NOx (Lbs/Hr)	CO (Lbs/Hr)	SO2 (Lbs/Hr)	PM (Lbs/Hr)	VOC (Lbs/Hr)
Boilers <sup>A</sup>	27	F-402	No. 402 Boiler (C.O.B.)	90.8	114.0	13.3	2.8	2.1
	35	F-808	No. 7 Boiler	93.3	46.0	5.6	1.2	0.9
	66	F-809	No. 9 Boiler	67.4	105.0	12.3	2.6	1.8
	70	F-810	No. 10 Boiler	67.4	105.0	12.3	2.6	1.9
Flare	28	ME2001	No. 1 Flare (Candelabra)	N/A	N/A	N/A	N/A	N/A
	29	V2010	No. 2 Flare (Pend)	N/A	N/A	N/A	N/A	N/A
Refinery I.C. Engines	50	K-400	Waste Gas Compressor #1	1.8	0.4	0.0	0.1	0.0
	51	K-401	Waste Gas Compressor #2	1.8	0.4	0.0	0.1	0.0
	52	K-402	Waste Gas Compressor #3	15.5	5.6	0.0	0.2	0.0
	53	K-408	Waste Gas Compressor #4	35.0	35.1	0.0	0.2	0.0
	56A	K-500	Isom Recycle Compressor #1	2.5	2.9	0.0	0.5	2.0
	68B	K-601	Isom Recycle Compressor #2 Misc. Compressor Engines (Combined)	2.5	3.0	0.0	0.5	2.0
Cooling Tower	CT-1	CT-1	Closest-Cooling Water Tower	N/A	N/A	N/A	N/A	N/A
	FCCU Regenerator	47	FCCU No. 2	281.3	322.5	73.2	46.5	2.0
Reformer Process Vents	71		Waste Gas Scrubber Vent Catalyst Loading/Unloading	N/A	N/A	N/A	N/A	N/A
	42		No. 1 Reformer Regen Vent	N/A	N/A	N/A	N/A	N/A
SRU	74		No. 3 Reformer Regen Vent (Per Regen) Orthoxydane Vent	N/A	N/A	N/A	N/A	N/A
	46	SL	F8003/8053 SRU Thermal Oxidizers (ThOx) Sulfur Loading	6.8	27.4	55.4	1.4	0.1
Fugitives	Note 1		Refinery Aggregates	N/A	N/A	N/A	N/A	N/A
	Note 2		Refinery Tanks	N/A	N/A	N/A	N/A	N/A
Tanks <sup>CO</sup>			Unit Aggregate	N/A	N/A	N/A	N/A	N/A
			Unit Aggregate	N/A	N/A	N/A	N/A	N/A
Crude and Coker Process Vant			Unit Aggregate	N/A	N/A	N/A	N/A	N/A
			Unit Aggregate	N/A	N/A	N/A	N/A	N/A
Coke Handling & Loading			Unit Aggregate	N/A	N/A	N/A	N/A	N/A
			Unit Aggregate	N/A	N/A	N/A	N/A	N/A



**APPENDIX A  
INTERIM LIMITS EMISSIONS  
POUNDS / HOUR**

Source Type	EPN	Tag No.	Service Description	NOx (Lbs/Hr)	CO (Lbs/Hr)	SO2 (Lbs/Hr)	PM (Lbs/Hr)	VOC (Lbs/Hr)
Product Loading <sup>E</sup>	Note 3 68	ME0901	Refinery Aggregate No. 3 Flare	N/A	N/A	N/A	N/A	N/A
				N/A	N/A	N/A	N/A	N/A
Waste Water Treatment Plant	Note 4 88	F-1400	Unit Aggregate (except API THOX) Thermal Oxidizer on API Separator	N/A	N/A	N/A	N/A	N/A
				N/A	N/A	N/A	N/A	N/A
Vacuum Trucks	VT		Refinery Aggregate	N/A	N/A	N/A	N/A	N/A
Catalyst Loading / Unloading	Note 5		Refinery Aggregate	-	-	-	-	-
			Refinery Aggregate	-	-	-	-	-
Miscellaneous Chemical Tanks			Refinery Aggregate	N/A	N/A	N/A	N/A	N/A
Insignificant Activities <sup>F</sup>	IA		Refinery Aggregate	N/A	N/A	N/A	N/A	N/A
Maintenance <sup>F</sup>			Refinery Aggregate	N/A	N/A	N/A	N/A	N/A 260.0
Turn Arouns <sup>G</sup>	TA		Refinery Aggregate	N/A	N/A	N/A	N/A	N/A

**APPENDIX A  
INTERIM LIMITS EMISSIONS  
POUNDS / HOUR**

Source Type	EPA No.	Service Description	NOx (Lbs/Hr)	CO (Lbs/Hr)	SO <sub>2</sub> (Lbs/Hr)	PM (Lbs/Hr)	VOC (Lbs/Hr)

**NOTES and FOOTNOTES**

Note 1 - Fugitives includes all refinery components, including the following permitted sources: P.E.PS (Process Equipment Pump Seals), FE (Process Equipment Fugitives), FE (Oxygen Plant Fugitives), FE1 (D-6360 Asphalt Tank Fugitives), FE-2 (SRU Fugitives), FE-3 (No. 2 Crude Unit Fugitives), FE-4 (FHT Fugitives), FEWVTP-02 (New WVTP Equipment), P.E.H (Process Equipment Heaters), P.E.D (Process Equipment Drums), P.E.RV (Process Equipment Relief Valves), P.E.M (Process Equipment Miscellaneous), FE-Coker (Coker Fugitives). The GHU Fugitives (EPN FE-GHU) emissions are not included since they are permitted in Title V Air Permit 2801-10.

Note 2 - Tank cap includes the following tanks: TK-1, TK-2, TK-3, TK-4, TK-5, TK-6, TK-7, TK-8, TK-9, TK-10, TK-39, TK-31, TK-32, TK-33, TK-35, TK-36, TK-38, TK-50, TK-52, TK-53, TK-55, TK-58, TK-59, TK-60, TK-61, TK-62, TK-63, TK-64, TK-65, TK-66, TK-67, TK-68, TK-69, TK-71, TK-72, TK-73, TK-74, TK-75, TK-76, TK-77, TK-78, TK-79, TK-80, TK-81, TK-82, TK-83, TK-84, TK-85, TK-86, TK-87, TK-88, TK-89, TK-90, TK-91, TK-92, TK-93, TK-94, TK-95, TK-96, TK-97, TK-98, TK-99, TK-100, TK-101, TK-102, TK-103, TK-104, TK-105, TK-106, TK-107, TK-108, TK-109, TK-110, TK-111, TK-112, TK-113, TK-114, TK-115, TK-116, TK-117, TK-118, TK-119, TK-120, TK-121, TK-122, TK-123, TK-124, TK-125, TK-126, TK-127, TK-128, TK-129, TK-130, TK-131, TK-132, TK-133, TK-134, TK-135, TK-136, TK-137, TK-138, TK-139, TK-140, TK-141, TK-142, TK-143, TK-144, TK-145, TK-146, TK-147, TK-148, TK-149, TK-150, TK-151, TK-152, TK-153, TK-154, TK-155, TK-156, TK-157, TK-158, TK-159, TK-160, TK-161, TK-162, TK-163, TK-164, TK-165, 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Note 3 - Product loading cap includes Truck Loading (EPN 1-98), Marine Loading (EPN LD), and Railcar Loading.

Note 4 - Wastewater Treatment Plant includes all wastewater treatment equipment, including the centrifuge and the following tanks: TK-1008, TK-1009, TK-1013, TK-1017, TK-3721, TK-5501, TK-5502, TK-5520, TK-5526, TK-5543 and TK-59.

Note 5 - Category deleted and emissions from FCC Catalyst Loading/Unloading moved to FCC; other catalyst loading/unloading moved to insignificant Activities.

A The following permitted boilers no longer exist: No. 6 Boiler (EPN 34), No. 8 Boiler (EPN 64), and Standby Boiler (EPN 80).

B The following permitted heaters are not included: Hydrogen Plant Heater (EPN 31), which no longer exists, and the GHU Heater (EPN 88), which is permitted in TV Air Permit 2801-10.

C The following permitted tanks no longer exist: TK-7, TK-15, TK-18, TK-21, TK-22, TK-28, TK-29, TK-48, TK-49, TK-101, TK-102, TK-103, TK-105, TK-106, TK-5312, 84-001 & 84-002.

D Tanks 6303, 6305, 6306, 6308, 6310, 6312, 6313, 6314, 6315, 6336, 6337, 6338, and 6344 were previously permitted under EPN 2-98 as a gasoline/diesel tank cap.

E The following permitted loading sources do not exist: Ethanol Unloading (04-003) and Gasoline Unloading (04-004).

F See Tables 1 and 2 for list of Startup, Shutdown, Maintenance, and Insignificant Activities.

Allows approved activities without variances as long as item on submitted list and cumulative emissions within total interim limit.

**Appendix A**  
**Chalmette Refining LLC**

**INTERIM EMISSION LIMITATIONS – REPORTING REQUIREMENTS**

If for any reason Chalmette Refining does not comply with, or will not be able to comply with, the emission limitations specified in this Administrative Order on Consent, Chalmette Refining shall provide the Office of Environmental Compliance, Surveillance Division with a written report as specified below.

- A. A written report shall be submitted within 7 days of any emission in excess of applicable limitations by an amount greater than the Reportable Quantity established for that pollutant in LAC 33.I.Chapter 39.
- B. A written report shall be submitted within 7 days of the initial occurrence of any emission in excess of applicable limitations, regardless of the amount, where such emission occurs over a period of seven days or longer.
- C. A written report shall be submitted quarterly to address all emission limitation exceedances not included in paragraphs A or B above. The schedule for submittal of quarterly reports shall be no later than the dates specified below for any emission limitation exceedances occurring during the corresponding specified calendar quarter:
  1. Report by June 30 to cover January through March
  2. Report by September 30 to cover April through June
  3. Report by December 31 to cover July through September
  4. Report by March 31 to cover October through December
- D. Each report submitted in accordance with this condition shall contain the following information:
  1. Description of noncomplying emission(s);
  2. Cause of noncompliance;
  3. Anticipated time the noncompliance is expected to continue, or if corrected, the duration of the period of noncompliance;
  4. Steps taken by Chalmette Refining to reduce and eliminate the noncomplying emissions; and
  5. Steps taken by the Chalmette Refining to prevent recurrences of the noncomplying emissions.
- E. Any written report submitted in advance of the timeframes specified above, in accordance with an applicable regulation, may serve to meet the reporting requirements of this condition provided all information specified above is included. For Part 70 sources, reports submitted in accordance with Part 70 General Condition R shall serve to meet the requirements of this condition provided all specified information is included. Reporting under this condition does not relieve Chalmette Refining from the reporting requirements of any applicable regulation, including LAC 33.I.Chapter 39, LAC 33.III.Chapter 9, and LAC 33.III.5107.

## Appendix B

### St. Bernard Parish Enhanced Ambient Air Monitoring Program

#### I. Background

This document describes an Enhanced Ambient Air Quality Monitoring Program for the St. Bernard Parish area. The St. Bernard Parish Enhanced Ambient Monitoring Program is being implemented to collect additional ambient air monitoring data to be utilized in evaluating ambient air quality in the St. Bernard Parish area. The Enhanced Monitoring Program is comprised of six monitoring stations and will monitor for criteria pollutants, volatile organic compounds, toxic air pollutants and particulate as described below. The program is comprised of both existing and new monitoring stations that will be equipped with a combination of existing and new equipment. Chalmette Refining LLC agrees to purchase and install all new monitoring equipment, including meteorological stations, data loggers and ancillary equipment and structures that will be needed to outfit the Enhanced Monitoring Program. The Louisiana Department of Environmental Quality (LDEQ) will maintain responsibility for the operation and maintenance of the program, with the exception of the Chalmette Medical Center station. LDEQ may utilize the support of a third-party contractor for program operation and maintenance.

#### II. Target Compounds

The St. Bernard Parish Enhanced Ambient Monitoring Program will monitor the following compounds:

1. Criteria pollutants, including: ozone (O<sub>3</sub>), nitrogen dioxide (NO<sub>2</sub>), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>) and fine particulate matter (PM<sub>2.5</sub>);
2. Volatile organic compounds (VOC), including volatile organic toxic air pollutants. Toxic air pollutants will be analyzed according to the LDEQ toxic air pollutant analyte list. Benzene, toluene, xylene and carbon disulfide will be included on the analyte list;
3. Hydrogen sulfide (H<sub>2</sub>S); and,
4. Total suspended particulate (TSP).

#### III. Number and Location of Sites

The St. Bernard Parish Enhanced Ambient Monitoring Program will be comprised of the following monitoring stations:

1. The enhanced LDEQ Chalmette Vista Station. The enhanced station will monitor for VOC by continuous analyzer, toxic air pollutants by 6-day/24-hour sampling and by summa canister samplers in response to VOC triggers, SO<sub>2</sub> and H<sub>2</sub>S by continuous analyzer, TSP and PM<sub>2.5</sub>. This station will also be equipped with a meteorological tower if practical.
2. The new Chalmette High School Station. This station will monitor for VOC by continuous analyzer, toxic air pollutants by 6-day/24-hour sampling and by

summa canister samplers in response to VOC triggers, and SO<sub>2</sub> and H<sub>2</sub>S by continuous analyzer. This station will also be equipped with a meteorological tower.

3. The new West Bank Station. This station will monitor for VOC by continuous analyzer, toxic air pollutants by 6-day/24-hour sampling and by summa canister samplers in response to VOC triggers, and SO<sub>2</sub> and H<sub>2</sub>S by continuous analyzer.
4. The existing LDEQ Arabi Station. This station will monitor for O<sub>3</sub> and SO<sub>2</sub>.
5. The existing LDEQ Meraux Station. This station will monitor for PM<sub>2.5</sub>.
6. The existing Chalmette Medical Center Station. This station will monitor for NO<sub>2</sub>, CO and SO<sub>2</sub>.

#### **IV. Type of Monitoring and Station Equipment**

Each new and enhanced monitoring station will consist of shelters with air sampling manifold, equipment racks and climate control systems as needed. Each new and enhanced station will be equipped with an air compressor, a zero air generator and a gas cylinder storage rack. Meteorological towers will be ten-meter towers and will be equipped with wind direction and wind speed sensors.

Each new and enhanced station will be equipped as needed for the compounds being monitored with the following equipment type:

1. 20 summa canisters for each station where canister sampling is conducted;
2. summa canister samplers for 6-day/24-hour sampling (RESMI 911A or equivalent);
3. summa canister samplers and multi-point adapters for trigger sampling (RESMI910/912 or equivalent);
4. multi-gas calibrators (TECO 146C or equivalent);
5. Methane/Non-methane continuous hydrocarbon analyzers (TECO 55C or equivalent);
6. Continuous SO<sub>2</sub>/ H<sub>2</sub>S analyzers (TECO 450C or equivalent);
7. Data loggers with modems capable of remote polling of generated data (ESC 8816 or equivalent).

#### **V. Operation and Maintenance of Sites**

The Chalmette Medical Center Station will continue to be maintained and operated by Chalmette Refining LLC and another party, through the support of a third party contractor. Louisiana Department of Environmental Quality (LDEQ) will be responsible for the operation and maintenance of all other monitoring stations and all other aspects of the St. Bernard Parish Enhanced Ambient Monitoring Program. LDEQ may utilize the support of a third party contractor for operation, maintenance, data handling and reporting. LDEQ will periodically review the effectiveness of the program and the continued need for the program beginning two years after the implementation of the new and enhanced monitoring sites, and may elect to expand, reduce or discontinue monitoring based on a technical review of air quality data collected.

**VI. Schedule for Implementation**

Monitoring that is already in progress will continue without interruption. New and enhanced stations will be in place and operating by December 31, 2005. In the event of any delays in implementation that are beyond the control of Chalmette Refining, LDEQ may approve a later date for implementation.

**VII. Responsive Action Plan**

If Chalmette Refining LLC is in an upwind location from a monitoring station at the time of a VOC triggering, Chalmette Refining will conduct an investigation of the potential sources of VOC within the facility. If a source within the facility is identified as having a reasonable possibility of contributing to the triggering event, Chalmette Refining will take corrective action as appropriate. This would include sending a report to the LDEQ with a summary of investigation findings. Upon notification by LDEQ of monitored ambient air levels of other compounds that warrant further review, Chalmette Refining will conduct an investigation of activities and potential sources within the facility, take corrective action as appropriate, and provide a summary report to LDEQ.

**VIII. Reporting**

Monitored data collected and validated under the St. Bernard Parish Enhanced Ambient Monitoring Program will be made available to the public through an LDEQ St. Bernard Parish Ambient Air Monitoring Webpage. Summary reports will also be compiled and made available to the public in accordance with LDEQ public records procedures.

# **ATTACHMENT B**

May 20, 1999

Mr. Robert Hodanbosi  
Mr. Charles Lagges  
STAPPA/ALAPCO  
444 North Capitol Street, NW  
Washington, DC 20001

Dear Messrs. Hodanbosi and Lagges:

I am writing in response to your May 15, 1998 and December 11, 1998 letters. Your May 15, 1998 letter addressed the Environmental Protection Agency's (EPA's) use of its authority to object to permits proposed by State permitting authorities under the Clean Air Act's (CAA's or the Act's) title V operating permit program and focused primarily on interface issues between title V and title I [or new source review (NSR)] of the Act. You expressed concern that EPA's use of its review authority leading to comments and objections to proposed permits was impacting permit issuance rates. Your letter also detailed a number of concerns and disagreements with the positions underlying certain objections and comments that have been made by EPA Regions. In your December 11, 1998 letter, you raised concerns regarding maximum achievable control technology (MACT)/title V interface issues.

As you are aware, EPA has listened to your concerns and thoroughly evaluated your views. Since receipt of your letters, there has been continued dialogue on the many issues raised in the letters among permitting authorities, Regions, and EPA Headquarters. Examples include our July 8, 1998 meeting, monthly STAPPA/ALAPCO title V committee calls, Regional/State title V workshops, specialty meetings such as the MACT/title V issues meeting, and, most recently, the STAPPA title V workshop in Dallas. In these interactions we have heard each other's views and, in most cases, reached some common understanding of the issues and solutions. In fact, the number of objection letters has dropped significantly over the past few months. Through the efforts of the permitting authorities and Regions, we have become increasingly successful at resolving specific permit issues.

I believe it is important to share EPA's views on the issues your letters highlighted. Thus, Enclosure A sets forth EPA's policy on the title I/title V interface issues and concerns raised in your May 15, 1998 letter. Enclosure B provides our present understanding of the



MACT-title V interface issues raised in your December 11, 1998 letter. I seek your thoughts on these MACT-title V issues with a view toward resolving any disagreements we may have as soon as possible.

Two issues in your May 15 letter that do not readily fall into either attachment are periodic monitoring and the State implementation plan (SIP) backlog. Our views on these follow.

#### Periodic Monitoring

We believe that the issuance of the September 15, 1998 periodic monitoring guidance addressed your questions on this issue. Presently, we are working on the Periodic Monitoring Technical Reference Document. This document will provide general technical guidance for complying with the title V periodic monitoring requirements and will present specific examples of monitoring that satisfy these requirements. This document is primarily targeted toward the plant managers and operators who will design and operate such monitoring appropriate to site-specific situations. The document will also be helpful for permitting authorities and permit writers who review and supplement or prescribe monitoring for individual permits. A draft of this document was made available for public review via EPA's website on April 30.

#### SIP Backlog

The EPA understands that the SIP backlog is limited primarily to California. Budgetary constraints in FY 1999 will hamper our ability to completely eliminate the backlog in the near term. However, Region IX has redirected significant resources within its air program to address this issue during FY 2000. Region IX will continue to work closely with the California Air Resources Board and local air districts to prioritize their crucial SIP submittals for expeditious action by EPA in order to minimize the impact on title V permit issuance. The Region is also actively exploring additional mechanisms to expedite SIP actions.

I believe that the responses set forth in this letter and the enclosures will be helpful in informing you of the principles that will guide future EPA action in reviewing draft and proposed title V permits. Together we can move forward to fulfill the recent Agency goal of issuing all permits by January 2001. Whether and how EPA applies these policies in any particular permit proceeding will depend upon the specific review undertaken for particular permits. As you develop permits over the coming months, I ask that you work with our Regional Offices on implementation and involve management where you feel it necessary. Finally, the responses in this letter are not binding on any party, do not represent final Agency action, and cannot be relied upon to create any legal rights or obligations enforceable by any party.

I appreciate your interest in identifying issues you feel affect the successful implementation of the title V program. The upcoming STAPPA/ALAPCO meeting in May might provide a good forum to discuss EPA's positions on these matters.

Sincerely,

/s/

John S. Seitz  
Director  
Office of Air Quality Planning  
and Standards

Enclosures

cc: Bill Becker, STAPPA/ALAPCO  
Bruce Buckheit, EPA/OECA  
Robert Colby, Chattanooga-Hamilton County, Tennessee  
Alan Eckert, EPA/OGC  
Bliss Higgins, Louisiana  
Director, Office of Ecosystem Protection, Region I  
Director, Division of Environmental Planning and Protection, Region II  
Director, Air Protection Division, Region III  
Director, Air, Pesticides, and Toxics Management Division, Region IV  
Director, Air and Radiation Division, Region V  
Director, Multimedia Planning and Permitting Division, Region VI  
Director, Air, RCRA, and Toxics Division, Region VII  
Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance,  
Region VIII  
Director, Air Division, Region IX  
Director, Office of Air, Region X

## ENCLOSURE A

### FEDERAL ENFORCEABILITY

Title V and the part 70 regulations are designed to incorporate all Federal applicable requirements for a source into a single title V operating permit. To fulfill this charge, it is important that all Federal regulations applicable to the source such as our national emission standards for hazardous air pollutants, new source performance standards, and the applicable requirements of SIP's and permits issued under SIP-approved permit programs, are carried over into a title V permit.<sup>1</sup> All provisions contained in an EPA-approved SIP and all terms and conditions in SIP-approved permits are already federally enforceable (see 40 CFR § 52.23).<sup>2</sup> The enactment of title V did not change this. To the contrary, all such terms and conditions are also federally enforceable “applicable requirements” that must be incorporated into the Federal side of a title V permit [see CAA § 504(a); 40 CFR § 70.2)]. Thus, if a State does not want a SIP provision or SIP-approved permit condition to be listed on the Federal side of a title V permit, it must take appropriate steps in accordance with title I substantive and procedural requirements to delete those conditions from its SIP or SIP-approved permit. If there is not such an approved deletion and a SIP provision or condition in a SIP-approved permit is not carried over to the title V permit, then that permit would be subject to an objection by EPA.

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<sup>1</sup>The term “SIP-approved permit” is used in this letter to refer to permits issued pursuant to major or minor new source review (NSR) or prevention of significant deterioration (PSD) permit programs approved into SIP's (or promulgated under 40 CFR § 52.21 in States implementing the federal PSD program via delegation from EPA), as well as federally enforceable State operating permits (FESOP's) issued pursuant to SIP-approved operating permit programs. For purposes of this discussion, the term “NSR” includes major nonattainment NSR, minor NSR and PSD.

<sup>2</sup>By the term “federally enforceable,” I refer to EPA's and citizens' ability to enforce a provision under sections 113/167 and 304 of the Clean Air Act, respectively. The term “Federally enforceable” has also been used in the past in another context to identify a smaller subset of provisions that may be used to limit a source's “potential to emit.” See memorandum from John S. Seitz, Director, Office of Air Quality and Planning Standards, EPA, re Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Jan. 25, 1995), at 2 (explaining that for purposes of limiting a source's PTE, “limitations must be enforceable as a practical matter”). This letter does not address this second usage.

## **NEW SOURCE REVIEW LOOKBACK (INCLUDES BEST AVAILABLE CONTROL TECHNOLOGY/LOWEST ACHIEVABLE EMISSION RATE LOOKBACK)**

All sources subject to title V must have a permit to operate that “assures compliance by the source with all applicable requirements.” See 40 CFR § 70.1(b); CAA section 504(a). Applicable requirements are defined in section 70.2 to include: “(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act. . . .” Such applicable requirements include the requirement to obtain preconstruction permits that comply with applicable preconstruction review requirements under the Act, EPA regulations, and SIP’s. See generally CAA sections 110(a)(2)(C), 160-69, & 173; 40 CFR §§ 51.160-66 & 52.21.

For the PSD and major nonattainment NSR permit programs, as you know, preconstruction review requirements include use of best available control technology (BACT) or lowest achievable emission rates (LAER), respectively, for each regulated pollutant that would be emitted in significant amounts and at each emissions unit at which an emissions increase would occur. In determining BACT and LAER, as in implementing other aspects of the PSD or NSR programs, the State exercises considerable discretion. Thus, EPA lacks authority to take corrective action merely because the Agency disagrees with a State’s lawful exercise of discretion in making BACT and LAER or related determinations. State discretion is bounded, however, by the fundamental requirements of administrative law that agency decisions not be arbitrary or capricious, be beyond statutory authority, or fail to comply with applicable procedures. Consequently, State-issued preconstruction permits must conform to the applicable requirements of the Clean Air Act and the SIP, and failure to do so may result in corrective action by EPA.

In addition to Clean Air Act enforcement authorities, another form of corrective action available to EPA is the title V objection authority under CAA section 505(b). The Agency may object to issuance of any permit that EPA determines is “not in compliance with the applicable requirements of the Act, including the requirements of an applicable implementation plan.” See CAA section 505(b)(1); see also CAA section 113(b)(1) (enforcement authority available for violations of “any requirement or prohibition of an applicable implementation plan or permit.”)

Pursuant to EPA policy, the Agency generally will not object to the issuance of a title V permit due to concerns over BACT, LAER, or related determinations made long ago during a prior preconstruction permitting process. However, regarding recently issued NSR/PSD permits, note that EPA policy is to provide adverse comments concerning the substantive or procedural deficiencies of a preconstruction permit during the NSR/PSD permitting process. EPA may thereafter take corrective action, including objecting to the title V permit if its comments were not resolved by the State. Similarly, where the BACT/LAER determination is made during a concurrent or “merged” preconstruction permit and title V permit process, EPA may object to the title V permit due to an improper determination. Finally, the Agency may object to or reopen a

title V permit in response to a public petition showing that title I preconstruction permitting requirements have not been met.

Moreover, where EPA believes that an emission unit has not gone through the proper preconstruction permitting process (and therefore one or more applicable requirements are not incorporated in the draft or proposed title V permit), EPA may object to the title V permit. The permitting authority may then resolve the issue either by demonstrating to EPA's satisfaction that preconstruction permitting requirements were not applicable or by incorporating a schedule requiring the source to obtain a preconstruction permit.

Where an EPA Region is unable to obtain adequate information during its review period to support an objection, the permit may be issued with "placeholder" language stating that the permit shield does not attach to the emission units at issue. In such instances, the permitting office should also consider a referral to the enforcement office for further investigation. The placeholder language would say that while EPA is evaluating the applicability of the PSD/NSR program, a permit shield is not available with respect to applicability of PSD/NSR and that additional applicable requirements may apply should EPA's evaluation show that PSD/NSR applies. If EPA determines that the source is not subject to any additional requirements, the permit can be reopened to provide a permit shield with respect to these requirements.

As a final point, EPA believes that confusion over the "lookback" issue may have arisen from a misunderstanding of language in White Paper I. We would like to take this opportunity to clarify the meaning of that language. Specifically, White Paper I states that:

Companies are not federally required to reconsider previous applicability determinations as part of their inquiry in preparing part 70 permit applications. However, EPA expects companies to rectify past noncompliance as it is discovered. Companies remain subject to enforcement actions for any past noncompliance with requirements to obtain a permit or meet air pollution control obligations. In addition, the part 70 permit shield is not available for noncompliance with applicable requirements that occurred prior to or continues after submission of the application. [White Paper for Streamlined Development of Part 70 Permit Applications, Office of Air Quality Planning and Standards, EPA (July 10, 1995) at 24].

This passage is intended to convey EPA's belief that a company's responsible official does not have a federal obligation to reconsider previous applicability determinations for the purpose of certifying to the truth, accuracy and completeness of the permit application. Noncompliance of which companies are aware must be reported in the title V applications and corrected expeditiously. This passage further states that noncompliance arising from previous applicability determinations is subject to enforcement and is not covered by the part 70 permit shield. This language does not limit EPA's ability or authority to object to proposed title V permits based on such previous determinations or to request information (from States and sources) related to such decisions in order to assure compliance with applicable requirements.

## **SUPERSESSSION**

It is the Agency's view that title V permits may not supersede, void, replace, or otherwise eliminate the independent enforceability of terms and conditions in SIP-approved permits. To assure compliance with "applicable requirements" such as SIP-approved permit terms and conditions, title V permits must record those requirements, but may not eliminate their independent existence and enforceability under title I of the Clean Air Act (i.e., may not supersede them). Title V permits may state that they "subsume" or "incorporate" SIP-approved permit terms and conditions as EPA interprets such statements to mean that the title V permit includes all SIP-approved permit terms, but does not supersede, void, replace, or otherwise eliminate their independent legal existence and enforceability. Regardless of terminology, to the extent that title V permits are used to accomplish the legal result of supersession, EPA believes that such use is improper.

As noted in the previous section, title V permits must assure compliance with terms and conditions in SIP-approved permits. In enacting title V, Congress did not amend title I of the Act and did not intend the title V permitting program to replace the title I permitting programs. SIP-approved permits must remain in effect because they are the legal mechanism through which underlying NSR requirements (from the Act, federal regulations and federally-approved SIP regulations) become applicable, and remain applicable, to individual sources. NSR programs provide the relevant permitting entity with the authority to impose source-specific NSR terms and conditions in legally enforceable permits, and provide States, EPA and citizens with the authority to enforce these permits. Because State title V programs do not provide the authority for the establishment and maintenance of SIP-approved permit requirements, the title V permit cannot "assure compliance" with those requirements unless the underlying implementation and enforcement mechanism for the NSR requirements--the SIP-approved permit--remains valid.

The supersession of SIP-approved permits poses additional problems that EPA believes are inconsistent with the structure and purposes of title V and title I of the Act. First, while SIP-approved permits impose continual operational requirements and restrictions upon a source's air pollution activities and, accordingly, may not expire so long as the source operates, title V permits could expire or become unnecessary.<sup>3</sup> If the title V permit supersedes the source's SIP-approved permit and then subsequently expires, neither the superseded SIP-approved permit nor the expired title V permit would provide the legal authority to enforce the site-specific operational requirements and restrictions imposed upon the source pursuant to preconstruction

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<sup>3</sup>Title V permits could expire if a source fails to submit a timely and complete title V permit renewal application. See 40 CFR §§ 70.5(a)(1)(iii), 71.5(a)(1)(iii), 70.7(c) & 71.7(c). In addition, a title V permit could become unnecessary if a source limits its actual and potential emissions below major source thresholds, and the source is not otherwise required to maintain its title V permit.

review. Even if title V permits expire, of course, sources are still required to comply with applicable requirements that remain independently enforceable outside of title V permits, as all applicable requirements must.

Moreover, the continuing existence of SIP-approved permits independent of title V preserves the ability of permitting authorities and EPA to reopen title V permits that failed to include all SIP-approved permit terms, or to make such corrections upon permit renewal. Finally, title V regulations allow a permitting authority to include in the title V permit a “permit shield” stating that “compliance with the conditions of the [title V] permit shall be deemed compliance with any applicable requirements as of the date of permit issuance” [40 CFR §§ 70.6(f) & 71.6(f)]. The fact that compliance with the title V permit may be “deemed compliance” with underlying applicable requirements, including applicable requirements contained in SIP-approved permits, indicates that those underlying requirements must remain in force and may not be superseded. If those requirements could be superseded by the title V permit, there would be no need for a mechanism in the title V permit clarifying the source’s obligations and compliance status.

## ENCLOSURE B

### Response to STAPPA/ALAPCO Recommendations On MACT/Title V Interface Issues (from December 11, 1998 Letter to John Seitz)

[General note: Any responses referring to part 70, or permit revision processes, are based on the present part 70 rule promulgated in 1992.]

#### A. MANAGEMENT OF CHANGE

##### A-1. Retrospective application of 112(g)

*STAPPA/ALAPCO Recommendation:* In cases where NSR violations are addressed for historical construction projects that pre-date the effective date of the Section 112(g) rule, 61 Fed. Reg. 68,384 (December 27, 1996), STAPPA and ALAPCO recommend that Section 112(g) MACT controls not be mandated by EPA.

*EPA Response:* The EPA agrees that, for historical construction projects which pre-date the effective date of the section 112(g) rule, where a source has violations for operating without valid NSR permits, the EPA will not mandate section 112(g) MACT controls on those historical construction projects.

##### A-2. Issuance of the permit before MACT compliance details are available

*STAPPA/ALAPCO Recommendation:* When the title V permit is issued prior to the compliance date of the MACT standard or prior to specific compliance details being available, STAPPA and ALAPCO suggest that the permit initially may include an identification of applicable requirements for the facility at the Subpart level, and that additional details may be added through minor permit modification procedures with public and EPA review occurring at permit renewal.

*EPA Response:* The EPA agrees that when a permit is issued prior to the MACT compliance date, one option is for the initial permit to describe MACT applicability at the Subpart level, and for all other compliance requirements (including compliance options and parameter ranges) of the MACT that apply below the Subpart level to be added at a later time. Because this more detailed information describes for the first time in the permit specifically how the source will comply with the standard, it is important to have EPA and public review and thus, it must be added as a significant permit modification.

Another option is for the initial permit to identify the MACT standards or requirements



that apply at the section or subsection level, including anticipated compliance options, along with the information identified in the Initial Notification required by the General Provisions, see 40 CFR Part 63, Subpart A, or by the applicable Subpart. For example, a permit for a source subject to 40 CFR Part 63, Subpart T would identify, in part, each solvent cleaning machine and the anticipated compliance option. [See 40 CFR § 63.468(a) and (b)]. Additional compliance information required in the Notice of Compliance Status (e.g., parameter values) would be added as a minor permit modification when the NCS is submitted. As clarified at the Dallas workshop, the current Part 70 regulations require that minor permit modifications have an EPA review (but no public review) at the time of the permit modification.

### **A-3. Changes in the selected compliance option**

*STAPPA/ALAPCO Recommendation:* Where the permit does not initially contain a compliance option that the source wishes to use, STAPPA and ALAPCO recommend that EPA permit additional compliance options already allowed under the MACT standard to be added to the permit as a minor modification with public and EPA review occurring at renewal.

*EPA Response:* We agree that if a source wishes to add compliance options that are a part of the MACT standard, the compliance options usually can be added to the permit through the minor permit modification process. However, some compliance options, such as those with emissions averaging, would require a significant permit modification due to the amount of judgment involved. Again, the current Part 70 regulations require that minor permit modifications have an EPA review at the time of the permit modification.. As you know, a permit modification may be avoided if the initial permit includes compliance options as alternative operating scenarios under § 70.6(a)(9).

### **A-4. “Once-In-Always-In” and pollution prevention**

*STAPPA/ALAPCO Recommendation:* STAPPA and ALAPCO recommend that EPA revise its current guidance to recognize that, where greater reductions are achieved through pollution prevention and those emission reductions are practically enforceable, the MACT-specific requirements should no longer apply.

*EPA Response:* A workgroup consisting of representatives from STAPPA/ALAPCO, OECA, OPPT, and OAQPS has been established to address this issue. Our staff continues to work on this issue with the workgroup. Once the workgroup has completed its efforts and has made a recommendation, a decision will be made by EPA and sent to STAPPA/ALAPCO.

## B. LEVEL OF DETAIL FOR POINT SOURCES

### **B-1. Use of generic groups that do not identify specific emission units**

*STAPPA/ALAPCO Recommendation:* STAPPA and ALAPCO recommend that EPA allow the identification of emission units by generic groups in permits for smaller MACT-affected emission units that are frequently added, removed or changed and for similar multiple control devices subject to the same monitoring, recordkeeping, reporting and testing requirements. This approach would allow emissions units subject to specific applicable requirements not to be specifically identified or listed in the permit. A contemporaneous on-site log could be used to identify specific units and to document changes to and from generic groups.

*EPA Response:* We interpret your suggestion to recommend that small units subject to MACT standards which are frequently added, removed or changed could be identified in an on-site log, rather than specifically identified in the permit. We further interpret your suggestion as recommending that control devices to which similar MACT requirements apply could be identified in a log, rather than specifically identified in the permit. Finally, we understand your suggestion for a log to be a voluntary mechanism to help the source keep track of units or control devices added to the facility without revising the permit.

As a general rule, the permit must identify not only the applicable requirements, but the specific emissions units to which those requirements apply, to assure compliance by specific units with specific applicable requirements. Linking of applicable requirements to emission units in the permit is important because it retains applicability decisions with the permitting authority instead of transferring these decisions to the source. It also clearly identifies the requirements that apply to each unit and eliminates any disputes as to whether a unit fits a generic group description. Therefore, we believe it is appropriate for the permit to identify specific units. As a practical matter, however, we believe that generic grouping could be appropriate in two situations: 1) where the applicable requirements apply generically; and 2) in certain circumstances where many small units make identification of individual units infeasible. In addition, we are currently involved in several pilot projects that may identify other situations in which generic grouping of emission units may be appropriate.

The first situation where generic grouping may be appropriate is where applicable requirements apply generically to a facility, rather than to an identified class of units. The EPA's White Paper I allowed for the use of generic groups to identify units subject to requirements that apply in the same way to all units at a facility, such as facility-wide opacity limits of the implementation plan (SIP). See White Paper I at 24. An example is a regulation that states "no person shall cause emissions in excess of 20% opacity." Since the requirements do not apply to specific types of units, it is not necessary for the permit to identify specific units subject to the requirement, and hence, generic grouping may be appropriate. [See § II.4 of White Paper I.]

The second situation where generic grouping may be appropriate is where the sheer numbers of units make identification of individual units infeasible, and where the applicable requirement is open to such an approach. Examples where this could be the case include pumps, valves, or flanges covered by leak detection and repair (LDAR) requirements, and manhole covers or drains covered by wastewater work practice standards. In these situations, instead of identifying specific units, the permit could place affected units into a group in which all units are subject to the same applicable requirement, provided that the permit clearly defines the type of unit in each group and the applicability criteria. If required by the MACT standard, the owner or operator must develop a mechanism to identify which individual units belong to which group, and the permit should reflect this obligation. For example, 40 CFR Part 63, Subpart H requires the source to maintain lists of equipment subject to different requirements of the Subpart, but provides that an on-site recordkeeping system may satisfy this requirement. [See 40 CFR § 63.181(b).]

As to your recommendation of generic grouping for control devices subject to similar requirements, however, we cannot agree. We think it is important for the permit to clearly link emission units to control devices and, in turn, to applicable requirements, so that it is clear which control device is being used to meet which standard for which units. We do not yet understand how this can be done categorically for control devices. We are now working on pilot projects that will allow us to see if certain control devices can be advance-approved and generically grouped. We expect that the size of emission units and the nature of control devices will be considerations.

## **B-2. Incorporation of multiple compliance options into Title V permits**

*STAPPA/ALAPCO Recommendation:* STAPPA and ALAPCO recommend that EPA recognize that various compliance options authorized by MACT standards can be placed directly in the permit by referencing the MACT provisions, without identifying them as Alternative Operating Scenarios (AOS). The MACT standard provisions (e.g. periodic reports, Notice of Compliance Status) would provide recordkeeping and notification of changes to compliance options. In addition, STAPPA and ALAPCO believe that once the compliance date is past, the source is obligated to maintain continual compliance even if the compliance option changes.

*EPA Response:* We read your suggestion to recommend that different compliance options of a MACT standard may be referenced in the permit, but not identified as an AOS.

As to your suggestion not to identify compliance options as an AOS, EPA believes that the appropriate way to define different compliance options is as one or more AOS. This is important because to assure compliance with a MACT standard by specific emissions units, the permit must clearly specify which compliance options a source may utilize, using the on-site log required by 40 CFR § 70.6(a)(9) to indicate which compliance option is in effect at a given time. Part 70's AOS provisions supply the appropriate mechanism to ensure that the permit reflects applicability determinations made by the permitting authority for specific emission units, and that

inspectors will have historical records and current information on which compliance option the source is following. The EPA is working on ways to streamline the addition of compliance options into the permit.

When the source changes MACT compliance options, part 63 will require a notification (40 CFR § 63.9(j)) in those cases where the newly instituted option was not already incorporated into the permit. That is, § 63.9(j) triggers a notification only in the instance where “information not previously provided” becomes available. A notification would not be necessary if the permit already included all necessary provisions for employing alternate MACT compliance options.

### **B-3. Level of Detail Needed to Incorporate General Provisions into Permits**

*STAPPA/ALAPCO Recommendation:* With regard to the General Provisions (40 CFR Part 63, Subpart A), STAPPA and ALAPCO recommend that it be sufficient for the permit to specify that the facility is subject to Subpart A as specified in Table 1 of the applicable MACT standard. While state and local agencies may also choose to include summary conditions for key General Provisions requirements, the reference to Subpart A and the MACT-specific Table 1 should be sufficient to meet Part 70 requirements.

*EPA Response:* Generally, the EPA agrees with this recommendation, including the recommendation that it is sufficient for the permit to reference the appropriate table in the MACT rule (not always Table 1). In cases where the requirements of the General Provisions are not clear enough to cross-reference, however, then the permit may need to contain additional clarification as to how the General Provisions apply to the facility.

### **B-4. Level of Detail Needed to Incorporate MACT Standards into Permits**

*STAPPA/ALAPCO Recommendation:* STAPPA and ALAPCO recommend that state and local agencies be allowed to specify only that the source is subject to the relevant Subpart, or to include additional detail as circumstances dictate. For example, under STAPPA and ALAPCO’s recommended approach, standards such as the MACT standard for Industrial Process Cooling Towers, 40 CFR Part 63, Subpart Q, may be appropriately addressed at the Subpart level. Generally, state and local agencies favor including a summary of conditions of the applicable requirement at the section level or lower, along with a reference statement or, alternatively, including a summary of conditions at the section level, along with specification of the applicable Subpart. However, since there may be times when only specifying the Subpart is sufficient, that should be the minimum requirement.

*EPA Response:* We interpret your suggestion to recommend that EPA endorse a reference to the Subpart level as generally acceptable except where further specificity is required by the permitting authority. We also interpret your suggestion to apply at any stage of the permit, not just prior to the compliance date of a MACT standard.

The permit needs to cite to whatever level is necessary to identify the applicable requirements that apply to each emissions unit or group of emission units (if generic grouping is used), and to identify how those units will comply with the requirements. As EPA indicated in White Paper II, the permit must at least specify the applicable emission limit or standard, and the emissions unit to which the limit or standard applies. The White Paper also stated that the permit may use referencing where it is specific enough to define how the applicable requirement applies and where using this approach assures compliance with all applicable requirements. We interpret this to require the permit to identify (or reference) the monitoring, recordkeeping and reporting requirements. Accordingly, we cannot agree with your recommendation that a reference to Subpart level is acceptable at the discretion of the permitting authority.

In the example of the Industrial Process Cooling Towers MACT (Subpart Q), we recommend that the permit identify the standard to be met (i.e., a ban on chromium-based water treatment chemicals), and the unit(s) subject to the standard (i.e., industrial process cooling towers). The permit should also reference the notification requirements of 40 CFR § 63.405, the recordkeeping and reporting requirements of 40 CFR § 63.406, and the applicable General Provisions in Table 1 of Subpart Q.

### C. LEVEL OF DETAIL FOR NON-POINT SOURCES

#### **C-1. Identification of wastewater streams subject to MACT in the Title V permit**

*STAPPA/ALAPCO Recommendation:* STAPPA and ALAPCO recommend that each wastewater stream need not be identified individually in the permit. The permit should contain 1) a description of the criteria for determining a wastewater stream's status, or a reference to the relevant MACT provisions that establish those criteria, and 2) the applicable requirements for Group 1 and Group 2 streams. The identification of the wastewater streams affected by MACT (i.e., Group 1 and Group 2 streams) and the applicable group status will be provided in the implementation plan or periodic reports as required by the MACT.

*EPA Response:* We understand your recommendation to mean that the permit would define wastewater streams as a class (i.e., one class for Group 1, another class Group 2), and would not identify individual wastewater streams within each class. As clarified in Dallas, we interpret your recommendation to apply not only to how the permit identifies wastewater streams existing at the time of permit issuance, but also to how the permit might provide for the addition of new streams without a permit revision.

We do not agree with the idea that individual streams need not be identified. The permit must include a listing of all wastewater streams that designates their status as Group 1 or Group 2, because each Group has different applicable requirements, including monitoring, reporting, recordkeeping and testing requirements. The linkage between individual streams and their Group 1/Group 2 status may be set up as an Alternative Operating Scenario, which would allow individual streams to change status during the permit term, provided that the new status is

identified in the on-site log required by part 70. Under this approach, the permit would need to contain or reference the procedures by which the source determines Group 1 or Group 2 status. Also, the permit must be revised in order to identify new wastewater streams. Note that we are experimenting with advance approval of wastewater streams under the MACT standard for pharmaceutical production, see 63 Fed. Reg. 50, 280 (September 21, 1998) (to be codified at 40 CFR Part 63, Subpart GGG), and may have additional guidance on this topic in the future.

Finally, the permit needs to require the source to provide notification for any change in Group status as required in MACT regulations. For example, Subpart G requires a source to report in the next periodic report any Group 2 emission point that becomes a Group 1 emission point, and include a schedule of compliance as required by § 63.100 of Subpart F. [See 40 CFR § 63.152(c)(4)(iii).]

## **C-2. Specification of requirements for fugitive and wastewater sources**

*STAPPA/ALAPCO Recommendation:* For fugitive emission requirements, STAPPA and ALAPCO recommend that detail at the Subpart level is generally sufficient (e.g., Subpart H). For wastewater requirements, STAPPA and ALAPCO recommend that the permit contain detail at the section level. If the MACT does not require the source to keep records of the current operating options, the permit could specify such a recordkeeping requirement. Finally, the state and local agencies believe Part 70 does not require the source to notify permitting authorities when they switch compliance options.

*EPA Response:* We understand your recommendation to apply to equipment leak requirements (“fugitive emission requirements”) and wastewater emission points (“wastewater sources.”)

As we stated in the response to recommendation B-4, we do not believe that Subpart citation by itself is appropriate. For equipment leak requirements (e.g., Subpart H of part 63, Subpart VV of part 60), different standards, recordkeeping and reporting requirements apply to different types of equipment subject to the rule. For example, one standard applies to pumps in light liquid service, and another standard applies to pumps in heavy liquid service. For this reason, we believe that the applicable requirements of Subpart H (and other similar rules) should be cited at appropriate levels below the Subpart, consistent with the need discussed above to clearly designate the specific applicable requirements for different and specific emission units.

For wastewater streams, citation to the section level (or lower) level of citation is needed to clearly convey the emission limitations of the rules with no ambiguity. We agree that part 70 does not require sources to notify permitting authorities when they switch compliance options that are part of an AOS. However, as noted in the response to recommendation B-2, the MACT general provisions do require reporting and notification when switching to a new compliance option (unless the permit includes the information as an AOS), and these requirements must be met. As we have noted elsewhere, permit revisions can be minimized by including all anticipated options in the permit as AOS's.

### C-3. Specification of operating parameters in the permit

*STAPPA/ALAPCO Recommendation:* STAPPA and ALAPCO recommend that either the actual value for operating parameters or the process to develop those values be considered sufficient to meet Title V permit requirements. Where operating parameter values are identified in the permit, STAPPA and ALAPCO recommend that the minor permit modification process be used to add or change operating parameter values. Public and EPA review would occur at permit renewal.

*EPA Response:* We interpret your suggestion as applying to the parameter ranges or maximum/minimum parameter values (from here on we will refer to them as “parameter ranges”). These parameter ranges are required by many MACT standards. However, we interpret your suggestion as not limited solely to MACT standards; for example, it could apply to NSPS standards that require parameter ranges. We further interpret your suggestion as allowing a permit authority to put in the permit either a process for determining the parameter range, or the parameter range itself. We understand the suggestion to put just the process in the permit to mean that the range itself would not be in the initial permit, and also that the permit would not be revised when a new parameter range is set using the process. In addition, you are recommending that if the actual parameter range is identified in the permit, and then a new parameter range is established, the minor permit modification could be used to incorporate the new parameter range.

We believe that the parameter range must be included in the permit. The parameter range is one of the applicable requirements comprising MACT standards, and is often the means for determining compliance with the emission standard. Including the parameter range as a permit term ensures that the source will be required to promptly report deviations from the range [40 CFR § 70.6(a)(3)(iii)(B)], to submit semiannual reports of such deviations and parameter monitoring [40 CFR § 70.6(a)(3)(iii)(A)], and to certify compliance with the range [40 CFR § 70.6(c)(5)].

We agree that for incorporating a new parameter range into a permit, a minor permit modification could be used. We are also investigating whether this could be done as an administrative change to the permit. This is because we believe that most changes to a parameter range will not be a significant change to monitoring, recordkeeping, or reporting [40 CFR § 70.7(e)(2)(i)(A)(2)]. Note that in accordance with 40 CFR § 70.7(e)(2)(i)(A), a significant change to monitoring, recordkeeping, or reporting would require the significant modification process. Again, the current Part 70 regulations require that minor permit modifications have an EPA review at the time of the permit modification. [40 CFR § 70.7(e)(iii) & (iv)].

In situations where parameter ranges are expected to change so often that a minor permit modification for each change would be impractical, we suggest that you consider the group processing provisions for minor modifications. See 40 CFR § 70.7(e)(3). These provisions are available for changes that are collectively below the thresholds identified in 40 CFR § 70.7(e)(3)(i)(B). We expect that many changes to parameter ranges would be small enough to fit below these thresholds. If so, group processing allows the permitting authority to group up to

a quarter's worth of changes, and then to take up to 180 days to act on the group of permit revisions.

This guidance does not alter the flexibility provided under the "Change Management Strategy" set forth in the preamble to the MACT standard for Pharmaceutical Production, or in future Subparts with similar flexibility. In addition, this guidance does not alter the provisions of the compliance assurance monitoring (CAM) rule, which specifically authorize the permit to include procedures for establishing parameter indicator ranges, designated conditions or excursion triggers, rather the particular ranges, conditions or triggers. See 40 CFR 64.4(a)(2) and (c)(2).

#### **C-4. Incorporation of startup, shutdown, and malfunction plans, operating and maintenance plans, and periodic reports in Title V permits**

*STAPPA/ALAPCO Recommendation:* STAPPA and ALAPCO recommend that EPA use the same approach for operation and maintenance (O&M) plans and periodic reports that is contained in a memorandum from John Seitz dated January 17, 1996 addressing startup, shutdown and malfunction (SSM) plans. The associations further recommend that changes in O&M plans not trigger a permit modification procedure.

*EPA Response:* We understand your recommendation to be that the approach used in the Seitz memorandum [which applies to startup, shutdown and malfunction (SSM) plans] should also apply to O&M plans and to periodic reports. We further understand your recommendation to be that EPA should not require a permit revision when changes are made to an operation and maintenance plan.

To put your recommendation in context, we need to clarify that the General Provisions of part 63 require any SSM plan to be incorporated by reference into the title V permit [§63.6(e)(3)]. In addition, Subpart N requires an O&M plan to be incorporated by reference into the permit [§63.342(f)(3)(i)]. As far as we are presently aware, Part 63 does not require any periodic reports or any other O&M plans to be incorporated by reference into the permit. Since these periodic reports and O&M plans (except Subpart N) are not required to be incorporated by reference into title V permits, these documents need not be incorporated by reference, nor must their content be included as permit terms, in order to assure compliance with the relevant part 63 applicable requirements. Consequently, we agree that a permit revision would not be required when changes are made to these reports or O&M plans. Of course, permits must still require that sources develop, implement or submit, retain, and revise as necessary these plans or reports, consistent with the applicable MACT standard.

That still leaves the SSM plans required under the General Provisions and the O&M plan required under Subpart N. We recognize that requiring the incorporation of these plans by reference into the permit renders the content of the plans enforceable permit conditions and, accordingly, means that changes to plans could result in permit revisions. We believe that this outcome can be avoided, however, by a general reference in the permit to the SSM plan. The



permit would still incorporate the plan by reference, but the reference would not cite the date or specific content of any particular SSM plan. This approach would allow the plan to change without triggering a permit revision. To implement this approach, the permit would state that the SSM plan required under § 63.6(e)(3), and any revision to that plan, is incorporated by reference and is enforceable as a term and condition of the permit. The permit would further state that revisions to the SSM plan are automatically incorporated by reference and do not require a permit revision.

Although incorporation by reference of a document required by an applicable requirement would normally require reference to the document as it exists on a specific date, we believe the approach outlined here for SSM plans is appropriate because it is more consistent with the intent of the General Provisions, which were promulgated subsequent to part 70 and which contemplate that the source will be able to make changes to the SSM plan without the prior approval of the EPA or the permitting authority. See, e.g., §§ 63.6(e)(3)(v) and (e)(3)(vii). For example, any time the SSM plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction, the source must revise the SSM plan to include procedures for operating and maintaining the source during similar malfunction events, and a program of correction actions for similar malfunctions of process or air pollution control equipment. See § 63.6(e)(3)(viii). In addition, compliance with an SSM plan does not relieve a facility from the responsibility to comply with good air pollution control practices as required by § 63.6(e)(1).

Finally, the permit must contain language that reiterates an enforceable obligation for the source to develop, implement, retain, and revise as necessary the SSM plan. The permit must also contain a reference to the applicable rule requirement that requires the plan. Permit authorities also have the authority to request that the SSM plan be submitted to them. They also can require essential parts of the plan, such as the definition of startup, shutdown and malfunction events, to be included in a permit application, pursuant to § 70.5(c)(5), which states that applications must include all information needed to determine applicability of requirements.

Of course, States retain the authority to incorporate specifically identified SSM plans by reference into title V permits, if a permitting authority believes it is important to review certain changes to particular SSM plans pursuant to its approved part 70 program. Note that the requirement to incorporate the SSM plan by reference is under review by EPA as part of the settlement of the litigation on the Part 63 General Provisions and may be the subject of future rulemaking.

# **ATTACHMENT C**

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
DUNKIRK POWER LLC	)	ORDER RESPONDING TO
	)	PETITIONER’S REQUEST THAT
Permit ID: 9-0603-00021/00030	)	THE ADMINISTRATOR OBJECT
Facility DEC ID: 9060300021	)	TO ISSUANCE OF A
	)	STATE OPERATING PERMIT
Issued by the New York State	)	
Department of Environmental Conservation	)	Petition Number: II-2002-02
Region 2	)	
_____	)	

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

The United States Environmental Protection Agency (“EPA”) received a petition dated January 11, 2002, from the New York Public Interest Research Group, Inc. (“NYPIRG” or “Petitioner”) requesting that EPA object to the issuance of a state operating permit, pursuant to title V of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, to Dunkirk Power LLC for the Dunkirk Steam Generating Station located at 106 Point Drive North, Dunkirk, New York. The permittee will be referred to as “Dunkirk” for purposes of this Order.

The Dunkirk facility is owned by NRG Energy, Inc. Dunkirk is an electric utility that has a maximum capacity of producing 600 megawatts. Dunkirk operates four coal-fired boilers, two 922.2 MMBtu/hr boilers and two 1,836 MMBtu/hr boilers, a 750 horsepower emergency diesel generator, a coal unloading and handling operation, and a wastewater treatment plant.

The Dunkirk permit was issued by the New York State Department of Environmental Conservation, Region 9 (“DEC”) on October 31, 2001, pursuant to title V of the Act, the federal implementing regulations, 40 CFR part 70, and the New York State implementing regulations, 6 NYCRR parts 200, 201, 621 and 624.

The petition alleges that the Dunkirk permit, proposed by the DEC, does not comply with 40 CFR part 70 in that: (I) the proposed permit lacks a compliance schedule to address notices of violations issued for alleged opacity violations and violations under the Prevention of Significant Deterioration of Air Quality (PSD) regulations; (II) DEC improperly denied NYPIRG’s request for a public hearing on the permit; (III) the proposed permit is based on an

incomplete permit application in violation of 40 CFR § 70.5(c); (IV) the proposed permit distorts annual certification requirements; (V) the permit does not require prompt reporting of any deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B); (VI) the proposed permit's startup/shutdown, malfunction, maintenance, and upset provision violates 40 CFR part 70; (VII) the proposed permit fails to include federally enforceable emission limits established under pre-existing permits; and (VIII) the proposed permit lacks monitoring sufficient to assure the facility's compliance with all applicable requirements. The Petitioner has requested that EPA object to the issuance of the Dunkirk permit pursuant to § 505(b)(2) of the Act and 40 CFR § 70.8(d) for any or all of these reasons.

EPA has reviewed these allegations pursuant to the standard set forth in section 505 (b)(2) of the Act, which places the burden on the petitioner to "demonstrate to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of 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 (2<sup>nd</sup> Cir. 2002)

Based on a review of all the information before me, including the petition; the Dunkirk permit application; 2001; the administrative record supporting the permit; a letter dated June 11, 2001 from Thomas F. Coates of NRG Energy, Inc. to Michael J. McMurray of DEC Region 9 providing comments on the draft permit; comments on the draft permit dated June 15, 2001 submitted by NYPIRG to DEC; DEC's response to comments received on the draft operating permit [hereinafter, "response to comments document"]; the Dunkirk permit of October 31, 2001; relevant statutory and regulatory authorities and guidance; and two letters dated July 18, 2000 and July 19, 2000 from Kathleen C. Callahan, Director, Division of Environmental Planning and Protection, EPA Region 2, to Robert Warland, Director, Division of Air Resources, DEC; I deny the Petitioner's request in part and grant it in part for the reasons set forth in this Order. Petitioner has raised valid issues on the Dunkirk permit, resulting in my granting portions of the petition.

#### **A. STATUTORY AND REGULATORY FRAMEWORK**

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted interim approval to the title V operating permit program submitted by the State of New York effective December 9, 1996. 61 *Fed. Reg.* 57589 (Nov. 7, 1996); *see also* 61 *Fed. Reg.* 63928 (Dec. 2, 1996) (correction); 40 CFR part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to New York's title V operating permit program based, in part, on "emergency" rules promulgated by DEC. 66 *Fed. Reg.* 63180 (Dec. 5, 2001). Once DEC adopted final regulations to replace the emergency rules, EPA granted full approval to New York's title V operating permit program based on these final rules. 67 *Fed. Reg.* 5216 (Feb. 5, 2002). 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. *See* CAA §§ 502(a) and 504(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 permits 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) and 40 CFR § 70.8(a), States are required to submit all proposed title V operating permits to EPA for review. Section 505 (b)(1) of the Act authorizes 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 reflected in the corresponding implementing regulations at 40 CFR § 70.8(c)(1).

Section 505(b)(2) of the Act 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<sup>1</sup> period unless it was impracticable to do so. This provision of the CAA is reiterated in the implementing regulations at 40 CFR § 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, terminate, or revoke and reissue such a permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

## **B. ISSUES RAISED BY THE PETITIONER**

On April 13, 1999, NYPIRG sent a petition to EPA which brought programmatic problems concerning DEC’s application form and instructions to our attention. NYPIRG raised those issues and additional program implementation issues in individual permit petitions, including the instant petition, and in a citizen comment letter, dated March 11, 2001 that was submitted as part of the settlement of litigation arising from EPA’s action extending title V program interim approvals. *Sierra Club and the New York Public Interest Research Group v. EPA*, No. 00-1262 (D.C.Cir.).<sup>2</sup>

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<sup>1</sup> See CAA § 505(b)(2) and 40 CFR § 70.8(d). The Petitioner commented during the public comment period by raising concerns with the draft operating permit that are the basis for this petition. See comments from Keri N. Powell, Esq., Attorney for NYPIRG to DEC (January 9, 2001) (“NYPIRG comment letter”).

<sup>2</sup> EPA responded to NYPIRG’s March 11, 2001 comment letter by letter dated December 12, 2001 from George Pavlou, Director, Division of Environmental Planning and Protection to Keri N. Powell, Esq., New York Public Interest Research Group, Inc. The response letter is available on the internet at [http://www.epa.gov/air/oaqps/permits/respons/.](http://www.epa.gov/air/oaqps/permits/respons/)

EPA received a letter dated November 16, 2001, from DEC Deputy Commissioner Carl Johnson, committing to address various program implementation issues by January 1, 2002, and to ensure that the permit issuance procedures are in accord with state and federal requirements. EPA monitored New York's title V program to ensure that the permitting authority is implementing the program consistent with its approved program, the Act, and EPA's regulations. Based on EPA's program review, DEC is substantially meeting the commitments made in its November 16, 2001 letter.<sup>3</sup> As a result, EPA has not issued a notice of deficiency ("NOD") at this time. If EPA determines that DEC is not properly administering or enforcing the program, it will publish an NOD in the *Federal Register*.

(I) Compliance Schedule

The Petitioner's first claim is that the proposed permit lacks compliance schedules to bring the Dunkirk Generating Station into compliance with opacity standards and PSD requirements for which Dunkirk has been issued two Notices of Violations (NOVs) by the DEC. NYPIRG provided a copy of an NOV dated December 22, 1999 which alleges that Dunkirk was exceeding the opacity limit specified in the permit in violation of 6 NYCRR § 227-1.3(a). NYPIRG also provided a copy of an NOV dated May 25, 2000 which alleges that the facility has undergone modifications without the necessary PSD permits and application of the Best Available Control Technology (BACT) to control emissions of regulated pollutants.

The Petitioner cites 40 CFR § 70.5(c)(8)(iii)(C), which states that if a facility is in violation of an applicable requirement at the time of receipt of an operating permit, then the facility's permit must include a compliance schedule with milestones that lead to compliance. NYPIRG states that if a power plant is in violation of PSD or SIP requirements, then the facility's title V permit must include a compliance schedule to bring the facility into compliance. The Petitioner also argues that including a compliance schedule in a title V permit will require the facility to immediately begin taking steps to come into compliance, but it would not preclude the facility from contesting the underlying NOV. Petition at 2-4.

The Petitioner is correct that the proposed permit lacked a compliance schedule designed to bring Dunkirk into compliance with opacity requirements, but the issuance of an NOV does not trigger this regulatory requirement. In this case, when Dunkirk submitted its application, it certified that the facility would not be in compliance with the applicable SIP opacity limit at the

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<sup>3</sup> The purpose of this EPA program review was to determine whether the DEC made changes to public notices and to select permit provisions as it committed in its November 16, 2001 letter. See letter dated March 7, 2002, from Steven C. Riva, Chief, Permitting Section, USEPA Region 2, to John Higgins, Chief, Bureau of Stationary Sources, DEC, which summarizes EPA's review of draft permits issued by the DEC from December 1, 2001 through February 28, 2002. In addition, EPA provided DEC with monthly and/or bi-monthly updates, over a 6-month period, to supplement the information provided in the March 7, 2002 letter. See also, EPA's final audit results, transmitted to the DEC via a letter dated January 13, 2003 from Steven C. Riva to John Higgins, which indicate that the DEC is substantially meeting the commitments made in its November 16, 2001 letter.

time of permit issuance, and nothing in the permit record indicates that Dunkirk had come into compliance by the time the DEC issued the final permit.<sup>4</sup> Although Dunkirk did submit a compliance schedule and a compliance plan in its permit application, the Dunkirk permit did not include the compliance schedule from the application and there is nothing in the permit record to explain this omission. Accordingly, the final permit does not contain a compliance schedule as required by EPA's and New York's regulations. *See* 40 CFR §§ 70.5(c)(8)(iii) and 70.6(c)(3); 6 NYCRR §§ 201-6.3(d)(9)(iii) and 201-6.5(d)(1) (title V permit must include a schedule of compliance for a source not in compliance with all applicable requirements at the time of permit issuance).

For the reasons set forth in subsequent sections of this order, EPA is granting, in part, NYPIRG's request that EPA object to the Dunkirk permit. The Dunkirk permit must accordingly be reissued to address those issues forming the basis for EPA's decision to object to the Dunkirk permit. In reissuing the Dunkirk permit, the DEC must either incorporate into the permit a compliance schedule consistent with the requirements of 40 CFR § 70.5(c)(8)(iii) and 6 NYCRR § 201-6.3(d)(9)(iii), or explain in the public notice or statement of basis that a compliance schedule is no longer necessary because the facility is in compliance with all applicable requirements.

DEC has alleged that the owner of the Dunkirk facility is in violation of the requirements of the PSD program. *See* New York State Department of Environmental Conservation Notice of Violation, May 21, 2000. However, unlike the opacity violations to which the facility certified noncompliance, the owner of the Dunkirk facility does not concede that the facility is not in compliance with the requirements of PSD and is currently litigating DEC's PSD allegations in the Western District of New York in *State of New York v. Niagara Mohawk Power Corporation, et al.*, No. 02-CV-0024S. Given this litigation is ongoing, it would be premature to require the DEC to include a compliance schedule relating to the alleged PSD violations at this time. Therefore, EPA denies the petition with respect to this issue.

As discussed above, the NOV for alleged PSD violations is currently being litigated in the Western District of New York and a resolution of the NOV's for opacity violations is still being negotiated. It is entirely appropriate for the DEC enforcement process to take its course.<sup>5</sup> Should an Order on Consent be issued or an adjudicated determination be made prior to the time that DEC re-opens the Dunkirk permit in response to this Order, a compliance plan and schedule

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<sup>4</sup> 40 CFR § 70.5(b) requires applicants to promptly submit supplementary facts or new information to the permitting authority if anything contained in the application has changed, was incorrect, or any new requirements have become applicable to the source.

<sup>5</sup> While nothing in the Act would have *prohibited* the DEC from including a compliance schedule in the Huntley title V permit, the question presented in the petition and answered herein is whether inclusion of a compliance schedule is *mandatory* as soon as an NOV is issued, but long before the matter has been resolved and the required steps to come into compliance have been identified.

must be incorporated into Dunkirk's title V permit. In the event that the NOV for the PSD violations have not been resolved in time for incorporation of a compliance schedule into the Dunkirk permit, there are sufficient safeguards in the title V permit to ensure that the permit shield contained in the Dunkirk permit may not be used as a defense during any enforcement proceedings and requirements relating to compliance schedules will be complied with at the appropriate time. For example, Conditions 5, 20, 22, and 28 of the Dunkirk permit address unpermitted emission sources, the permit shield, re-openings for cause, and permit exclusion provisions, respectively.<sup>6</sup> In addition, the "Description" section of the Dunkirk permit discussed in some detail these two unresolved enforcement issues against the facility. Also, the public notice announcing the draft permit acknowledges these enforcement issues and states that "[a]ny compliance schedules developed due to these issues will be included in this permit when they are finalized." Therefore, EPA denies the petition on this issue.

## (II) Public Hearing

NYPIRG claims DEC improperly denied its request for a public hearing on the Dunkirk draft permit as provided for by 40 CFR § 70.7(h). NYPIRG submitted written comments to DEC during the public comment period and requested a public hearing. DEC denied the hearing request in its September 10, 2001 letter responding to NYPIRG's comments stating that any substantive issues brought up in the comments have already been addressed in the permit revisions. NYPIRG contends that DEC's basis for denying its request for a hearing is flawed since DEC should not presume only NYPIRG's member would be testifying at the hearing if one were held. NYPIRG further contends that a significant degree of public interest in the permit should have been evident from its submission of thirty pages of written comments. NYPIRG requests EPA's objection to the Dunkirk permit on the basis that it did not undergo the proper public participation procedure before the final permit was issued and requests that DEC hold a public hearing on the permit. Petition at 5.

Neither the CAA or EPA's implementing regulations require a permitting authority to hold a hearing when one is requested. Rather, the CAA and applicable regulations require only that States offer an opportunity for a public hearing. *See* CAA § 502(b)(6) and 40 CFR § 70.7(h)(2). In accordance with these requirements, the New York title V program provides that DEC has the discretion to hold either a legislative or an adjudicatory public hearing. In this case, the DEC determined that a public hearing was not warranted. Response to Comments at 1 (June 11, 2001). As the DEC has the discretion to refuse to hold a public hearing and the Petitioner has not demonstrated that this discretion was not reasonably exercised, NYPIRG's request that EPA object to the permit on these grounds is denied.

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<sup>6</sup> In particular, condition 28 provides in part: "The issuance of this permit by the Department . . . does not and shall not be construed as barring, diminishing, adjudicating or in any way affecting any currently pending or future legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against the applicant including, but not limited to, any enforcement action authorized pursuant to the provision of applicable federal law"



### (III) Permit Application

Petitioner alleges that the applicant did not submit a complete permit application in accordance with the requirements of the CAA § 114(a)(3)(C), 40 CFR § 70.5(c) and 6 NYCRR § 201-6.3(d). Petition at 5. In making this claim, Petitioner incorporates a petition that it filed with the Administrator on April 13, 1999, contending that the DEC's application form is legally deficient because it fails to include specific information required by both the EPA regulations and the DEC regulations. This earlier petition asks EPA to require corrections to the DEC program.

Petitioner's concerns regarding the DEC's application form as they relate to Dunkirk are summarized as follows:

- (a) The application form lacks an initial compliance certification with respect to all applicable requirements. Without such a certification, it is unclear whether Dunkirk is in compliance with every applicable requirement and whether DEC was required to include a compliance schedule in the title V permit;
- (b) The application form lacks a statement of the methods for determining compliance with each applicable requirement upon which the compliance certification is based;
- (c) The application form lacks a description of all applicable requirements that apply to the facility; and
- (d) The application form lacks a description of or reference to any applicable test method for determining compliance with each applicable requirement.

NYPIRG alleges that omission of the information described above makes it difficult for a member of the public to determine whether a proposed permit includes all applicable requirements, for example, new source review requirements from pre-existing permits. The Petitioner further states that the lack of information in the application also makes it more difficult for the public to evaluate the adequacy of monitoring in the proposed permit. Petition at 7.

#### (a) Initial Compliance Certification

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims that Dunkirk's permit application failed to submit a proper initial compliance certification, 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 Section 505(b)(2) (objection required "if the Petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); 40 C.F.R. § 70.8(c)(1). As explained below, EPA

believes that the petitioner has failed to demonstrate that the lack of a proper initial compliance certification, certifying compliance with all applicable requirements at the time of application submission in this instance, resulted in, or may have resulted in, a deficiency in the permit.

The application form used by DEC did not clearly require the applicant to certify compliance with all applicable requirements at the time of application submission.<sup>7</sup> Rather, Dunkirk certified that it would be in compliance with all applicable requirements, with the exception of opacity requirements for its four boilers, at the time of permit issuance. In its application, the facility included a compliance certification, as well as a recommended course of action (referred to by the facility as a “compliance plan”) for addressing the opacity exceedances from its four boilers. This “compliance plan” was included in the final title V permit at conditions 4 and 37. Because the Dunkirk facility was not in compliance with the applicable opacity limit when it submitted its application on June 1997, even if the application form used by Dunkirk had required it to certify to its compliance at the time of application, the ultimate permit issued would have been the same. Accordingly, EPA believes that petitioner has not adequately demonstrated that had Dunkirk submitted a proper initial compliance certification the final permit would have been any different. Therefore, EPA denies the petition on this issue.

(b) Statement of Methods for Determining Initial Compliance

Petitioner alleges that the application form omits “a statement of methods used for determining compliance,” as required by 40 CFR § 70.5(c)(9)(ii). The application form completed by Dunkirk did not specifically require the facility to include a statement of methods designated for determining initial compliance, but in this case, the applicant did provide this information for all of the listed applicable requirements. Dunkirk properly completed the “Monitoring Information” section of the application for each emission point with a description of the method for determining compliance with each applicable rule/requirement. For instance, the test method for analyzing sulfur in the startup fuel (distillate oil), the application listed the ASTM or the appropriate EPA test methods. Because Dunkirk already has in place continuous emissions monitors (CEMs) for monitoring the emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) and a continuous opacity monitor (COM) for monitoring opacity, the application identified data collection via the CEMs/COM as the methods for demonstrating compliance with emissions standards for the four boilers. On pages 56-59 of the application, Dunkirk stated it will meet its NO<sub>x</sub> RACT limit through a system-wide average approved by the DEC. Compliance with particulate matter standards for the boilers are determined by a stack emission test once per permit term (*see* Dunkirk Permit Application at 47, 48, 49, and 50 which resulted in

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<sup>7</sup> In accordance with the DEC’s November 16, 2001 letter, the permit application form was changed to clearly require the applicant to certify compliance with all applicable requirements at the time of application submission. The application form and instructions were also changed to clearly require the applicant to describe the methods used to determine initial compliance status. With respect to the citation issue, the application instructions were revised to require the applicant to attach to the application copies of all documents (other than published statutes, rules and regulations) that contain applicable requirements.

Permit Conditions 52, 53, and 54 of the permit). For distillate oil that is only used during start up, Dunkirk samples each batch of oil delivered to determine and record the sulfur content. *See* Dunkirk Permit Application at 16, 22, 26, 32, and 37. In light of the information provided, the Petitioner's general allegations do not adequately demonstrate that, in this case, had the application submitted by Dunkirk specifically required the facility to include a statement of methods, the final permit would have been any different. Therefore, EPA denies the petition on this point.

(c) Description of Applicable Requirements

The Petitioner's next claim is that EPA's regulations call for the legal citation to the applicable requirement to be accompanied by the applicable requirement expressed in descriptive terms. Citations may be used to streamline how applicable requirements are described in an application, provided that the cited requirement is made available as part of the public docket on the permit action or is otherwise readily available. *See* White Paper for Streamlined Development of Part 70 Permit Applications (July 10, 1995) at 20-21. 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 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 id.*

In describing applicable requirements, the Dunkirk permit application refers to State and Federal regulations. These regulations are publicly available and are also available on the internet. The Dunkirk permit also contains references to applicable requirements that as a general matter are not as readily available, such as the NO<sub>x</sub> Reasonably Available Control Technology (RACT) plan which were submitted with the application as a separate document and which is part of DEC's permit record files for Dunkirk. Other facility-specific non-codified documents include Dunkirk's "Repowering Extension Plan" and copies of pre-existing Permits to Construct for the installation of low NO<sub>x</sub> burners for the four boilers. A copy of the plan and of each permit was submitted with the application and is part of DEC's files. While specific rule citations followed by a description of the applicable requirement would make the application more informative, the lack of it, in this case, did not result in the issuance of a defective permit. The contents of the application include the specific requirements that apply to Dunkirk. The Dunkirk permit accordingly contained a description of the applicable requirements that apply to the facility. The Petitioner has not shown that any of the descriptions were in error or that the referenced material is not available to the public. Therefore, the petition is denied on this issue.

(d) Statement of Methods for Determining Ongoing Compliance

Petitioner alleges that the application form lacks a description of, or reference to, any applicable test method for determining compliance with each applicable requirement. EPA

disagrees with Petitioner that the application failed to describe the methods Dunkirk will use to determine its compliance status relative to each applicable requirement. Dunkirk completed the “Monitoring Information” section of the application for each emission point with a description of the method for determining compliance with each applicable rule/requirement. Consistent with 6 NYCRR § 227-2.6(a)(1) as well as 40 CFR Part 75, Dunkirk will monitor its NO<sub>x</sub> emissions with CEMs and submit quarterly NO<sub>x</sub> emissions reports as required by 6 NYCRR § 227-2.6(b)(4). As discussed above, a continuous emissions monitor (CEM) is also installed to record the emissions of SO<sub>2</sub><sup>8</sup> and a continuous opacity monitor (COM) is installed to record opacity on a continuous basis. Data collected via the CEM/COM systems disclose the compliance status of the source continually and instantaneously. With respect to the test Method for stack testing to determine compliance with 6 NYCRR § 227, Dunkirk stated in the application that it will use Reference Method 5 as listed in 40 CFR part 60. In addition to installing COMs, Dunkirk identified Reference Test Method 9 to determine opacity compliance in accordance with 6 NYCRR § 227-1.3(a). For the coal handling operation, Dunkirk did not propose in the application any method for determining compliance with the opacity emission associated with the coal handling facility because it assumed that the coal handling facility is not subject to any applicable requirements. Although the application did not address emissions from the coal handling operation, DEC disagreed and included requirements for opacity monitoring and recordkeeping from 6 NYCRR § 212.6(a) and 40 CFR part 60, Subpart Y in the permit applicable to the coal handling facility. As described above, the application lists CEM/COM as the method to determine compliance with regulations for opacity, NO<sub>x</sub>, and SO<sub>2</sub>, as well as sulfur-in-fuel. Where Dunkirk failed to provide the monitoring strategy for opacity emissions from the coal handling operation, DEC corrected the defect by including the applicable requirements (Condition 57) in the final permit issued to Dunkirk. The Petitioner, therefore, has not adequately demonstrated that the opacity monitoring omitted from the application led to a defective permit. Also, the final permit contained descriptions of, or reference to, applicable testing/monitoring methods for determining compliance with applicable requirements. Therefore, EPA denies the petition on this issue.

#### (IV) Annual Compliance Certification

Petitioner alleges that the proposed permit distorts the annual compliance certification requirement of CAA § 114(a)(3) and 40 CFR § 70.6(c)(5) by not requiring the facility to certify compliance with all permit conditions. The Petitioner claims rather that the Dunkirk permit requires only that the annual compliance certification identify “each term or condition of the permit that is the basis of the certification,” as stated in Condition 26. *See* Petition at 7. Specifically, the 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

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<sup>8</sup> Dunkirk requested in the application to be allowed to monitor the sulfur content of coal fired in the terms of the equivalent sulfur dioxide emissions via the use of the CEM. 6 NYCRR § 225.6(b) allows monitoring and recording of sulfur compound emissions expressed as sulfur dioxide continuously at all times while the combustion installation is in service. As such, DEC included in Conditions 34 and 35, the equivalent sulfur dioxide emission limits that Dunkirk must monitor.

“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” as 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. Petition at 24.

The language in the permit that labels certain terms as “compliance certification” conditions does not mean that the Dunkirk facility is *only* required to certify compliance with the permit terms containing this language. “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. Condition 26.2 of the permit delineates the requirements of 40 CFR § 70.6(c)(5) and 6 NYCRR § 201-6.5(e), which require annual compliance certification with the terms and conditions contained in the permit.

The language in the Dunkirk permit follows directly the language in 6 NYCRR § 201-6.5(e) which, in turn, mirrors the language of 40 CFR §§ 70.6(c)(5) and (6). 6 NYCRR § 201-6.5(e) requires certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. The following are required in annual certifications: (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. The Dunkirk title V permit includes this language at Condition 26.

Therefore, the references to “compliance certification” do not negate the DEC’s general requirement for compliance certification of terms and conditions contained in the permit. Accordingly, because the Dunkirk 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. However, when the DEC revises the Dunkirk permit in response to other sections of this Order, it should also add language to clarify the requirements relating to annual compliance certification reporting.<sup>9</sup>

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<sup>9</sup> In its November 16, 2001 letter, the DEC committed to include additional clarifying language regarding the annual compliance certification in draft permits issued on or after January 1, 2002, and in all future renewals so as to preclude any confusion or misunderstanding, such as that argued by the Petitioner.

## (V) Prompt Reporting of Deviations

Petitioner alleges that the proposed permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B).<sup>10</sup> NYPIRG raised this issue with DEC during the public comment period and concluded DEC's response to comments was inadequate. Basically, DEC stated that deviations will be reported according to time frames specified in the applicable requirement if such are specified; otherwise, prompt reporting of deviations will be established on a case-by-case basis. Petitioner suggests two options to address this issue: 1) include a general permit condition that defines what constitutes "prompt" under all circumstances, or 2) develop facility-specific permit requirements to define what constitutes "prompt" for individual permit conditions. Petitioner also requests that DEC require all prompt reporting to be done in writing. Petition at 8-9.

Title V permits must include requirements for the prompt reporting of deviations. States may adopt prompt reporting requirements for each condition on a case-by-case basis, or may adopt general requirements by rule, or both. Moreover, States are required to consider prompt reporting of deviations from permit conditions in addition to the reporting requirements of the explicit applicable requirements. Whether the 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 CFR § 71.6(a)(3)(iii)(B).<sup>11</sup>

In determining whether an objection is warranted for alleged flaws in the content of a particular permit EPA considers whether the petitioner has demonstrated that the permit is not in compliance with the requirements of the Act, including the requirements of the applicable SIP. *See* CAA § 505(b)(2); 40 CFR § 70.8(c)(1). As explained below, petitioner's allegation that the permit does not contain prompt reporting requirements is without merit. Furthermore, the petitioner has not demonstrated that the various reporting requirements contained in the Dunkirk permit fail to meet the standard set forth in part 70.

In this case, there are several provisions in the Dunkirk permit that require prompt reports

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<sup>10</sup> 40 CFR § 70.6(a)(3)(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.

<sup>11</sup> EPA'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 CFR § 71.(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 an hour in excess of permit requirements, must be reported to the permitting authority within 24 hours of the occurrence.

to be made to the DEC. These conditions require that reports be submitted quarterly. Quarterly reporting, in these cases, also serves as prompt reporting of deviations. NO<sub>x</sub> emissions are monitored by CEMs and are averaged hourly, daily, and monthly and reported quarterly. *See* Permit Conditions 41, 42, and 45. The Dunkirk facility is required to comply with a NO<sub>x</sub> averaging plan for compliance with the NO<sub>x</sub> requirements of 6 NYCRR § 227-2.5. To determine compliance under this averaging plan, emissions from the Dunkirk facility, as well as four other facilities, are calculated either on a 24-hour or a 30-day rolling averages. As such, quarterly reporting, which was established in the subject averaging plan, is also appropriate because it serves as prompt reporting of deviations in light of the applicable requirement and the degree and type of deviation likely to occur.

The Sulfur content of coal is monitored in terms of SO<sub>2</sub> emissions by the use of CEMs as allowed under 6 NYCRR § 225.6(b). SO<sub>2</sub> emissions are averaged daily and quarterly. *See* Permit Conditions 34, 35, and 36. All SO<sub>2</sub> CEM reports are submitted quarterly to DEC. Since the CEM system alerts the facility of an excursion instantaneously, providing ample opportunity for the facility to make any necessary correction within the 24-hour averaging period to avoid violations of the SO<sub>2</sub> standards, Petitioner has not shown that quarterly reporting on the SO<sub>2</sub> emissions is not acceptable in this case.

Particulate matter (PM) is monitored in terms of opacity from the boiler stack. Dunkirk is required to install a COM to continuously monitor opacity emissions. Data from the COM system are submitted to the DEC quarterly. For the fugitive PM emissions from the coal handling operation, Conditions 56 and 57 require a daily observation during operation of all process exhaust vents and openings in the handling facility. An EPA Method 9 test is conducted if the observation shows a 10% opacity. If the Method 9 shows an opacity reading of 20% or greater, corrective action must be taken immediately to reduce opacity emissions to below 20%. Another set of Method 9 readings must be taken thereafter to assure compliance with the 20% opacity limit of 40 CFR 60, Subpart Y and 6 NYCRR § 212.6(a). Any exceedances that necessitate corrective actions to rectify the problems are required to be reported to DEC no later than the next business day, while a written report is submitted if requested by DEC. Reporting deviations of opacity observed at the coal handling operation is an example of where DEC finds it appropriate to define prompt as less than six months.

Petitioner has not shown that DEC failed to exercise its discretion reasonably in defining “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements as provided in 40 CFR § 70.6(a)(3)(iii)(B). Therefore, the petition is denied on this issue.

#### (VI) Startup, Shutdown, Malfunction

Petitioner asserts that the proposed permit’s startup/shutdown, malfunction, maintenance, and upset provision violates 40 CFR part 70. *See* Petition at 10-13. The petition provides a detailed, 5-part discussion of Condition 6 of the proposed Dunkirk permit, entitled “Unavoidable

Noncompliance and Violations,” which it refers to as the DEC’s “excuse” provision. Petitioner alleges that the “excuse provision” included in this proposed permit reflects the requirements of New York State regulation, 6 NYCRR § 201-1.4. Permit Condition 6 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.”

It is EPA’s view that the Act, as interpreted in EPA policy, does not allow for automatic exemptions from compliance with applicable SIP emissions limits during periods of start-up, shut-down, 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 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>.

Condition 6 of the Dunkirk/Huntley permit provides the DEC with the discretion to excuse the facility from compliance with applicable emission standards under certain circumstances, based on the State regulation 6 NYCRR § 201-1.4. EPA grants the petition on the point that the DEC improperly included in the Dunkirk permit the “excuse provision” based on a regulation that has not been approved into the New York SIP. In its November 16, 2001 letter, the DEC committed to remove the “excuse provision” that cites 6 NYCRR § 201-1.4 from the federal side of title V permits and to incorporate the condition into the state side. In accordance with its commitment, DEC must remove the “excuse provision” that cites 6 NYCRR § 201-1.4 from the federal side of the permit. In addition, DEC must include in the permit the provision from its rules that states that violations of a federal regulation may not be excused unless the specific federal regulation provides for an affirmative defense during start-ups, shutdowns, malfunctions or upsets. *See* 6 NYCRR § 201-6.5(c)(3)(ii). With respect to Petitioner’s other allegations regarding the startup, shutdown and malfunction provision (RACT, definition of terms, prompt report of deviations, “unavoidable” defense), the removal of the “excuse provision” from the federal side of the permit makes moot these concerns.

#### (VII) Pre-existing Federally Enforceable Emission Limits

Petitioner alleges DEC failed to include permit limits established from pre-existing permits that are applicable requirements for the Dunkirk title V permit. NYPIRG listed and attached copies of six Certificates to Operate<sup>12</sup> issued to the following emissions units at

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<sup>12</sup> In the State of New York, facilities must apply for a Permit to Construct under 6 NYCRR Part 201 prior to construction. The facility’s Permit to Construct becomes the Certificate to Operate after it is inspected by DEC and



Dunkirk: (1) the ash silo; (2) the spray paint booth; (3) a 750 horsepower diesel generator; (4) Boiler 1 for the installation of a low NO<sub>x</sub> burner; (5) Boiler 2 for the installation of a low NO<sub>x</sub> burner; and (6) Boilers 3 and 4 for the installation of a low NO<sub>x</sub> burner in each. The certificates for the boilers incorporate by reference “Special Conditions” dated September 25, 1995. NYPIRG asserts these certificates contain emission limits that were either omitted entirely from the permit or were incorrectly included in the “State Only” side of Dunkirk’s title V permit. NYPIRG cites the definition of “permissible emission rate” found under 6 NYCRR § 200.1(bj) as designating emission rates specified in Permits to Construct (PC) or Certificates to Operate (CO) by the Commissioner as federally enforceable limits. In addition to the alleged omission of these emission limits, NYPIRG also asserts that DEC increased the amount of wastewater treatment plant sludge that may be burned at Dunkirk from the 10 tons per week limit set forth in the September 25, 1995 Special Conditions to the 12 tons per week in the title V permit without undergoing the proper permitting process. Petition at 13-15. Petitioner also points out that EPA’s position on transferring terms and conditions from SIP-approved permits to the source’s title V permit is stated in the May 20, 1999 letter from John Seitz, U.S. EPA, to Robert Hodanbosi, STAPPA/ALAPCO<sup>13</sup>.

The Petitioner is correct that federally-enforceable conditions from permits issued pursuant to requirements approved into the New York SIP generally must be included in the Dunkirk permit as they are applicable requirements. *See* 40 CFR § 70.2. Construction and operating permits issued in the past, however, may contain requirements that are not “applicable requirements” as defined in the title V program or that are obsolete and are no longer applicable to the facility (e.g., terms regulating construction activity during the building or modification of the source where construction is long completed). In this situation, the DEC may delete inapplicable or obsolete permit conditions by following the modification procedures set forth in the New York regulations. *See* 6 NYCRR §§ 201-6.7, 201-1.6 and 621.6; *see also* 40 CFR §§ 70.7(e)(4) and 70.7(h).

(a) The Ash Silo and the Spray Paint Booth

NYPIRG alleges that Dunkirk’s PC or CO permit includes particulate matter emission limits for the ash silo and the spray paint booth which were omitted from the title V permit. The particulate matter limits from the PC/CO which NYPIRG alleges are omitted from the title V permit are: 1) 0.05 grains per standard cubic foot (SCF) and 0.76 lbs/yr for the ash silo, and 2) 0.05 grains/SCF and 1.50 lbs/yr for the spray paint booth.

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is found to be in compliance with the terms and conditions of the permit. These certificates contain limitations that apply to the operation of the emission units.

<sup>13</sup> In this letter, EPA states all provisions contained in an EPA-approved SIP and all terms and conditions in SIP-approved permits are federally enforceable. All such terms and conditions are also federally enforceable “applicable requirements” that must be incorporated into the federal side of a title V permit.

DEC needs to review its records to determine whether these emission limits for PM are applicable to the ash silo and spray paint booth. EPA grants the petition on this issue. DEC is ordered to reopen the permit to determine whether the emission limits for the ash silo and the spray paint booth set forth in the PC or the CO are still applicable to these emission sources. If they are, DEC must reinstate the terms and conditions of the Certificates when it reopens the title V permit. However, if they are no longer applicable, DEC must explain in the Statement of Basis for the draft title V permit why the emission limits stated in the Certificates no longer apply and provide the public with notice and an opportunity to comment on any proposed changes to the federally enforceable terms of the pre-existing permit. *See* 6 NYCRR; § 621.6; 201-1.6; and 40 CFR § 70.7(h).

(b) The Diesel Generator

NYPIRG alleges that a condition of the pre-existing permit for Dunkirk's 750 HP diesel generator which limited the generator to 475 hours of operation per year was omitted from its title V permit.

Petitioner is correct that the "Special Conditions" limited the diesel generator's operation to no more than 475 hours year. This condition was included in the Certificate to Operate issued to Dunkirk by DEC on February 29, 1996. DEC may be able to conclude that Dunkirk's diesel generator falls within the exemption for emergency generators "where each individual unit operates at no more than 500 hours per year." 6 NYCRR § 201-3.2(c)(6)(i). Even if DEC concludes that the diesel generator falls within the exemption for emergency generators, DEC must ensure that the 500 hours/year operation limit remains applicable to the unit and the monitoring and reporting requirements of Condition 11 continue to apply to the generator. DEC either must incorporate the hours of operation limit in the title V permit or explain in the Statement of Basis in the draft title V permit any proposed changes in applicability such as determining that the diesel generator is an exempt emergency generator. DEC must provide the public with notice and an opportunity to comment on the appropriateness of any proposed changes to the federally enforceable terms of the pre-existing permit. *See* 6 NYCRR § 621.6; 201-1.6; and 40 CFR § 70.7(h). EPA grants the petition on this issue because DEC neither included the condition limiting the hours of operation of the generator to 475 hours/year in the title V permit nor explained the reason for not doing so.

(c) Boilers 1, 2, 3, and 4

NYPIRG further alleges that the "majority of emission limits" for PM, N0x, and SO<sub>2</sub> in the pre-existing permits applicable to Dunkirk's four boilers were omitted from the title V permit. NYPIRG cites the following emission limits:

- Boiler 1 - - PM (0.23 lbs/mm Btu, 2.07 x 10<sup>5</sup> lbs/yr); SO<sub>2</sub> (3.4lbs/mm Btu, 28.2 x 10<sup>6</sup> lbs/yr); N0x (0.42 lbs/mm Btu, 3.18 x 10<sup>5</sup> lbs/yr),

- Boiler 2 - -PM (0.23 lbs/mm Btu, 2.48 x 10<sup>5</sup> lbs/yr); SO<sub>2</sub> (3.4 lbs/mm Btu, 27.8 lbs/yr); NO<sub>x</sub> 0.42 lbs/mm/Btu, 3.18 x 10<sup>5</sup> lbs/yr)
- Boilers 3 and 4 - - PM (0.17 lbs/mm Btu, 12.2 lbs/yr); SO<sub>2</sub> (3.4 lbs/mm Btu, 109 x 10<sup>6</sup> lbs yr); NO<sub>x</sub> (0.42 lbs/mm Btu, 12.2 x 10<sup>6</sup> lbs/yr)

With regard to the three Permits to Construct/Certificates to Operate issued for the four boilers, they were issued with the September 25, 1995 “Special Conditions” and contain federally enforceable permit terms. The emission limits (lbs/mm Btu) on PM and NO<sub>x</sub> were properly included for each boiler. Specifically, these emission limits for PM for Boilers 1, 2, 3 and 4 are in Conditions 52, 53, and 54 respectively. The emission limits for NO<sub>x</sub> that apply to all four boilers are found in Condition 41 with an averaging period of 30 days and in Condition 42 with an averaging period of 24 hours. NYPIRG listed in the petition additional emission limits for the boilers in pounds per year (lbs/yr) for PM, SO<sub>2</sub>, and NO<sub>x</sub> as missing from Dunkirk’s title V permit. The permit record does not provide sufficient information to determine if these lbs/yr limits are applicable requirements that must be carried over to the title V permit. Therefore, DEC must provide information on these annual limits and explain in the public notice or the new statement of basis whether or not these are applicable requirements for Dunkirk’s boilers. If these annual limits are applicable requirements from the pre-existing permits, DEC must incorporate these limits into the title V permit. DEC must also provide the public with notice and an opportunity to comment on the appropriateness of any proposed changes to the federally enforceable terms of the pre-existing permit. *See* 6 NYCRR § 621.6; 201-1.6; and 40 CFR § 70.7(h). EPA grants the petition on this point.

Petitioner is correct that DEC did not include the 12-month average SO<sub>2</sub> emission limits for the four boilers in the federally enforceable side of Dunkirk’s title V permit. Instead, the 12-month average SO<sub>2</sub> limits for the boilers were set forth in the “State Only” side of the permit. *See* Permit Condition 61. The SIP-approved rule, 6 NYCRR § 225.1(a)(3), allows an average SO<sub>2</sub> emission rate of 1.9 lbs of Sulfur/MMBtu and a maximum SO<sub>2</sub> emission rate of 2.5 lbs of Sulfur/MMBtu applicable to all four boilers. In Dunkirk’s permit, DEC included these emission limits. *See* Permit Conditions 34 and 35. However, these emission limits from the SIP are different from those in the subsequently-adopted State rule, 6 NYCRR § 225-1.2(a)(2), and incorporated by DEC in the “Special Conditions” of Dunkirk’s pre-existing permit restricting SO<sub>2</sub> emissions to an annual average of no more than 1.7 lbs of Sulfur/MMBtu. DEC did not transfer the SO<sub>2</sub> emission limits from the “Special Conditions” of the pre-existing permit to the federally enforceable side of the title V permit. Instead, DEC incorporated the SIP-approved limits (1.9 and 2.5 lbs/mm Btu) in the permit at Conditions 34 and 35. In addition, DEC included the “Special Conditions” limits of the pre-existing permit at Condition 61 on the

“State-Only “ side of the permit. NYPIRG is correct that since the “Special Conditions” are federally enforceable emission limits from a SIP-approved permit, they must be included in Dunkirk’s title V permit. Therefore, EPA grants the petition on this issue.

(d) Limits on Burning Sludge

NYPIRG also asserts that DEC increased the amount of sludge Dunkirk may burn in the boilers. The “Special Conditions” of the pre-existing permits limit Dunkirk to burning 10 tons per week of sludge generated from the waste water treatment facility. However, the draft and final title V permits issued to Dunkirk limit Dunkirk to burning 12 tons per week as requested in Table\_1 of Dunkirk’s title V permit application. NYPIRG raised this particular issue on the draft permit. Response to Comments (June 11, 2001) at 14. DEC responded that Dunkirk’s pre-existing special condition which placed the 10 tons per week limit on the amount of sludge did not go through the public notice process. DEC, however, found it appropriate to place a limit on the amount of solid waste that can be burned in the boilers and modified the pre-existing 10 tons/week limit to 12 tons/week. The Petitioner is correct in stating that the 10 tons per week limit of sludge burned from the September 25, 1995 “Special Conditions” must be transferred to the title V permit. DEC may revise this condition to 12 tons per week only after going through the proper permit modification procedures of NYCRR Part 201 including providing the public with notice and an opportunity to comment. Alternatively, DEC may incorporate the original limit of 10 tons per week of sludge. EPA grants the petition on this issue; DEC is ordered to either the incorporate original condition in the title V permit or revise the condition after following proper permit modification procedures of NYCRR Part 201.

(VIII) Monitoring

Petitioner alleges that the Dunkirk permit contains permit conditions that do not have sufficient monitoring to assure compliance with all applicable requirements or are not enforceable as a practical matter. Each of the four boilers at Dunkirk burns coal as a primary fuel and is equipped with an electrostatic precipitator (ESP) to control PM emissions. NYPIRG takes issue with the periodic monitoring requirement imposed to assure compliance with the PM emission limits as well as with opacity standards for the four boilers. Specifically, NYPIRG alleges the permit: (a) fails to assure compliance with the PM limits at each boiler; (b)(1) fails to assure compliance with opacity limits; and (b)(2) fails to include maintenance and calibration requirements on the COM. Petition at 16-19.

(a) Petitioner alleges the permit violates 40 CFR § 70.6(a)(3)(i)(B) for not requiring periodic monitoring sufficient to assure compliance with the PM limits. NYPIRG alleges that the Dunkirk permit fails to 1) establish parametric monitoring; 2) provide data that supports the

link between compliance and the parameter(s) being monitored; 3) include a clear and enforceable indicator range for each parameter; and 4) upgrade the once per permit term stack test to regular stack testing to confirm that the plant is operating in compliance with the PM standard. NYPIRG claims that although Permit Condition 37 imposes monitoring requirements for the ESP, it is inadequate because it fails to establish proper operating ranges for the operating parameters of the ESP. Petitioner asserts such ranges which have been correlated with emissions are necessary to determine proper ESP operation and measure compliance. Petition at 17.

The Petitioner correctly states that the monitoring included in Permit Conditions 52, 53, and 54 of the Dunkirk title V permit is not adequate to assure compliance with the applicable PM limit. EPA believes that one stack test per permit term to measure PM emission from the four boilers is not sufficient “to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit,” as required by 40 CFR § 70.6(a)(3)(B). Therefore, monitoring sufficient to meet this standard is necessary.

As currently written, Condition 37 fails to include proper operating ranges for each of the ESP parameters, and therefore, fails to provide the means to determine ESP compliance. Should DEC determine that monitoring of the ESP parameters together with the stack testing requirement is an appropriate way for assuring compliance with the PM limit, additional requirements must be incorporated to measure ESP performance. Since the amount of PM that exhausts through the stack is affected by the amount of PM controlled by the ESP, proper operation of the ESP is important in assuring compliance with the PM limit. Improper operation of the ESP increases the amount of uncontrolled PM emissions exhausting through the stacks. Once the proper operating ranges for the ESP parameters are established, ESP performance can easily be monitored. DEC may determine the proper operating ranges for the ESP parameters by recording them during a stack test that shows PM compliance. Dunkirk must maintain the ESP in accordance with manufacturer’s instructions as described in Permit Condition 4.

With parametric monitoring of the ESP or other alternative additional monitoring strategies that meet the requirements of 40 CFR § 70.6(a)(3)<sup>14</sup>, together with the once per permit

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<sup>14</sup> 40 CFR § 70.6 (a)(3) requires monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance; and § 70.6 (c)(1) requires permits to contain testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. In all the monitoring issues presented here, where we have concluded that additional monitoring is needed, either the underlying applicable requirement imposes no monitoring of a periodic nature or the applicable rule contains sufficient periodic monitoring but it was not properly carried over into the permit. Therefore, we are addressing them exclusively under 40 CFR § 70.6(a)(3) and need not address 40 CFR § 70.6(c)(1). The scope of applicability of § 70.6(a)(3) was addressed by the US Court of Appeals for the DC Circuit in *Appalachian Power v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000). The court concluded that, under section 40 C.F.R. §70.6(a)(3)(i)(B), the periodic monitoring rule applies only when the underlying applicable rule requires "no periodic testing, specifies no

term emission stack test would be adequate for assuring compliance with the PM emission standards for the Dunkirk boilers. Once the operating ranges have been established for the ESP operating parameters, operating the ESP outside of any of these ranges would constitute a violation of the title V permit. Since parametric monitoring of the ESP helps assure compliance with the PM standards, the proper operating ranges for these parameters must be incorporated into Dunkirk's title V permit. Therefore, EPA grants the petition on the issue of inadequate monitoring to assure compliance with the PM limit. DEC is ordered to establish the proper operating ranges for the ESP operating parameters if it determines that monitoring of the ESP parameters together with the stack testing requirement is an appropriate way for assuring compliance with the PM limit. However, if DEC wishes to impose other alternative monitoring strategies that meet 40 CFR § 70.6(a)(3), it may do so by proposing those provisions for public review when the Dunkirk permit is revised in response to this Order.

(b)(1) Petitioner requests EPA objection to the Dunkirk permit because it “does not include monitoring, recordkeeping, and reporting requirements that will allow DEC, U.S. EPA, and the public to know when the plant is violating opacity requirements.” NYPIRG concluded the monitoring and reporting requirement undertaken by Dunkirk was inadequate because the DEC Commissioner was unable to determine whether exceedances provided by Dunkirk qualified to be excused as unavoidable emissions.<sup>15</sup> As such, NYPIRG finds it necessary for DEC to impose more detailed reporting requirements. Petition at 18-19.

The letter alluded to by NYPIRG as evidence that Dunkirk did not submit enough information for DEC to determine if the exceedances qualify as unavoidable was misinterpreted by Petitioner. Contrary to NYPIRG's claim, the June 1999 letter from DEC informed ARG Engineering that based on the information submitted, the DEC Commissioner determined not to excuse opacity exceedances due to startup or shutdown as unavoidable. Dunkirk is required to monitor opacity emissions by the use of a continuous opacity monitor (COM) to assure compliance with 6 NYCRR § 227-1.3(a). This rule limits opacity at a stationary combustion

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frequency, or requires only a one-time test." *Id.* at 1020. The Appalachian Power court did not address the content of the periodic monitoring rule where it does apply, i.e., the question of what monitoring would be sufficient to "yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as is required by 40 C.F.R. §70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). It is this issue that is raised by the petition at bar. With respect to practical enforceability, the Petitioner cites the U.S. EPA's Periodic Monitoring Guidance, September 15, 1998, at 16 which has since been vacated by *Appalachian Power*.

<sup>15</sup> In a June 8, 1999 letter from Anthony Adamczyk of the DEC to Thomas Allen of ARG Engineering states that “simply coding startup as the reason for an opacity excursion was not adequate for demonstrating that a violation was unavoidable” and “without more detailed information regarding opacity at the Albany, Huntley, and Dunkirk facilities, [DEC] cannot recommend that the Commissioner excuse opacity exceedances which occur during startup or shutdown as unavoidable.”

installation to no greater than 20% in a six-minute average. *See* Permit Condition 39. EPA considers the use of a COM to be adequate monitoring for opacity emissions because it records opacity readings continuously. Recordkeeping and reporting requirements are stipulated in Condition 40. While the monitoring and recordkeeping of opacity emissions are continuous, reporting is on a quarterly basis. Any excess opacity emissions indicated on the COM will alert the operator to check boiler operation and correct the problems quickly. Thus, the Dunkirk permit contains monitoring, recordkeeping and reporting conditions. Therefore, EPA denies the petition on this issue.

(b)(2) NYPIRG alleges the permit fails to include federally enforceable requirements for the maintenance and calibration of the COMS. Such requirements are stipulated in the State Only side of the permit. *See* Permit Condition 63. While Petitioner acknowledges the state rule that contains the COMS maintenance and calibration requirements are not SIP-approved, Petitioner alleges that DEC should include these requirements as periodic monitoring requirements authorized by title V. NYPIRG asserts that without these requirements, the title V permit “does not assure compliance with the opacity limits because there is no assurance that the COMS will correctly measure opacity.” Petition at 19.

EPA agrees these requirements are important in assuring the accuracy of the COMs data collection. However, EPA disagrees with Petitioner that Dunkirk’s permit does not include maintenance and calibration requirements to ensure that the COMS will accurately record opacity emissions. The Acid Rain requirements at 40 CFR Part 75 to which Dunkirk is subject, contains maintenance and calibration requirements for COMS. Permit Condition 48 of Dunkirk’s title V permit incorporates the various Acid Rain regulations, and references the attached Acid Rain Permit. Therefore, EPA denies the petition on this point.

### Conclusion

For the reasons set forth above and pursuant to CAA § 505(b)(2), I deny in part and grant in part the petition of NYPIRG requesting the Administrator to object to the issuance of the Dunkirk title V permit. This decision is based on a thorough review of the October 31, 2001 permit, and other documents that pertain to the issuance of this permit.

July 31 2003  
Dated:

/s/  
Marianne L. Horinko  
Acting Administrator