BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
OPERATING PERMITS 2227-V2 for Cellulose plant and 2024-V2 for Light Hydrocarbon (LHC) III plant DOW CHEMICAL COMPANY PLAQUEMINE IBERVILLE PARISH LOUISIANA	)	PETITION NO. VI-04-02

ORDER DENYING PETITION FOR OBJECTION TO PERMITS

I. INTRODUCTION

On October 29, 2002, the Louisiana Department of Environmental Quality ("LDEQ") issued two permits to the Dow Chemical Company ("Dow") for its existing facilities in Plaquemine, Iberville Parish, Louisiana, pursuant to state regulatory provisions implementing the Clean Air Act ("Act" or "CAA"), 42 U.S.C. §§ 7401, *et seq.* LDEQ issued Permit 2227-V2 to cover modifications to Dow's Cellulose Plant and Permit 2024-V2 for modifications to Dow's Light Hydrocarbon III Plant ("LHC"). LDEQ issued the permits because Dow proposed to increase emissions of Volatile Organic Compounds ("VOCs").[1] The permits constituted both preconstruction permits issued pursuant to the Nonattainment New Source Review ("NNSR") requirements of the Act and significant modifications to Dow's State operating permits issued pursuant to title V of the Act. Pursuant to Louisiana's NNSR requirements, the permit required emissions reductions, or "offsets," to compensate for proposed increases in emissions of VOCs.

The Louisiana Environmental Action Network ("LEAN" or "Petitioner") and Ms. Albertha Hasten petitioned the United States Environmental Protection Agency ("EPA") to object to the LDEQ's issuance of the Dow permits pursuant to Section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d). *See* Petition to Object (Dec. 27, 2002).[2] As discussed below, Petitioner challenges the modifications to and the issuance of the permits, including the validity of the

[1] VOCs are regulated by EPA as they are a precursor to ozone in the atmosphere.

[2] Albertha Hasten subsequently withdrew as a petitioner. *See* Letter of Adam Babich to Lawrence Starfield *et al.*, August 7, 2003.

offsets for certain VOC emission increases. In particular, Petitioner argues:

(1) The emission reduction credits ("ERCs") used as offsets are not valid because the underlying emission reductions were required, and not surplus;

(2) The ERCs are not valid because LDEQ improperly concluded that the underlying emission reductions occurred within ten years of the date the offsets were used;

(3) Dow's application for ERCs was not timely under the requirements of the Louisiana Administrative Code ("L.A.C.");

(4) LDEQ's Basis For Decision on the ERC application failed to respond to all reasonable public comments;

(5) The permits should have required controls designed to achieve the Lowest Achievable Emission Rate ("LAER") because Dow had insufficient offsets to avoid LAER;

(6) Offsets should have been required for 33.34 tons per year ("tpy") of VOC emission increases from emission points C6 ,C7, and LN, and LDEQ was inconsistent in granting those emission increases while also maintaining that the facilities were in compliance with the previously permitted emissions limitations; and

(7) In establishing the baseline for SO2 emissions for purposes of determining whether the permits constituted a significant modification, LDEQ failed to either use actual emissions over the preceding two years, or make a determination that a different time period was more representative of normal source operation.

Based on a review of all of the information before me, for reasons detailed in this Order, the petition is denied.

II. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act requires each State to develop and submit to EPA an operating permit program which meets the requirements of title V. The State of Louisiana submitted a title V program governing the issuance of operating permits on November 15, 1993, and subsequently revised this program on November 10, 1994. 40 C.F.R. Part 70, Appendix A. In September of 1995, EPA granted full approval to the Louisiana Title V operating permits program. 60 *Fed. Reg.* 47296 (September 12, 1995); 40 C.F.R. Part 70, Appendix A.[3] Major stationary sources of air pollution and other sources covered by title V are required to obtain an operating permit that includes emission limitations and such other conditions necessary to assure compliance with all applicable requirements of the Act, in accordance with 40 C.F.R. Part 70. 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements") on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other requirements to

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[3] This program, which became effective on October 12, 1995, is codified in Louisiana Administrative Code (L.A.C.), Title 33, Part III, Chapter 5.

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, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." *Id.* 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 in a single document, and therefore enhance compliance with the requirements of the Act. *Id.*

Under Section 505(b), the Administrator is authorized to review state operating permits issued pursuant to title V, and to object to permits that fail to comply with the applicable requirements of the Act, including the requirements of a State implementation plan ("SIP"), and 40 C.F.R. Part 70. When EPA declines to object to a title V permit on its own initiative, Section 505(b)(2) of the Act provides that any person may petition the Administrator to object to the issuance of a permit by demonstrating that the permit is not in compliance with all applicable requirements. 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(d). These petitions "shall be based only on objections that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." 42 U.S.C. § 7661d(b)(2).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of part 70 and the applicable implementation plan. *See*, 40 CFR § 70.8(c)(1); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003). If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. *See* 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR § 70.8(d).

III BACKGROUND

The Dow facilities are located in Plaquemine, Iberville Parish, which is in the Baton Rouge nonattainment area for the one-hour ozone National Ambient Air Quality Standard ("NAAQS"). Pursuant to Section 107(d)(4)(A) of the Act, EPA designated the Baton Rouge area as nonattainment for the one-hour ozone standard on November 6, 1991. *See* 56 Fed. Reg. 56694. Under Section 181(a)(1), the Baton Rouge area was classified by operation of law as a serious nonattainment area. *Id.* VOC emissions are regulated as ozone precursors. Therefore, with regard to VOC emissions, the proposed permit modifications had to meet the requirements of LAC 33:III.504, which establishes the "Nonattainment New Source Review Procedures" ("NNSR"). With regard to emissions of other "criteria" pollutants (i.e., those for which a NAAQS has been established), the modifications were required to meet the requirements of LAC

33:III.509, which sets the procedures for the Prevention of Significant Deterioration ("PSD") program.

The Dow facilities are "major stationary sources" of VOCs. Therefore, under Louisiana's NNSR regulations, any physical change or change in method of operations at the facilities that resulted in a "significant net emissions increase" would trigger NNSR, including a requirement to offset any increases in emissions due to the change. *See* L.A.C. III:33.504. On March 29, 2001, Dow submitted an application requesting several major modifications to its title V permit (Permit 2024-V1) for the LHC plant to increase VOC emissions. Dow's application stated that the net emissions increase from the LHC plant over the contemporaneous period was significant because it was greater than the applicable 25 tons per year ("tpy") threshold for major modifications (L.A.C. 33:III.504, Table 1), and thus it was a major modification with respect to NNSR procedures. The application also stated that the modifications would not result in a significant net emissions increase for other pollutants, including sulfur dioxide ("SO2"), and therefore offsets for these pollutants were not required.

According to the NNSR procedures approved in Louisiana's SIP, Dow could choose to offset this proposed increase at a ratio of 1.2:1 with controls designed to achieve the Lowest Achievable Emission Rate ("LAER"), or 1.3:1 without LAER. *See* L.A.C. 33:III 504.A.5 & Table 1;[4] *see also* 42 U.S.C. § 7511a(c)(8) (LAER not required under certain circumstances if VOC increases are offset at 1.3:1 ratio). Dow proposed to offset the project's VOC emission increase of 17.71 tons per year without LAER, at an offset ratio of 1.3:1. This required offsets of 23.02 tpy of VOC.

On February 8, 2002, Dow submitted an application for permit revisions authorizing several major modifications to its Cellulose plant, including the addition of a Low Salt Project. The application stated that the VOC emission increases from this modification were significant at 32.43 tpy and would require offsets of 45.40 tpy without LAER. The application also sought changes to emission limits for certain emissions points as a result of changes to product lines and improvements to the methods used in calculating emissions.

In Louisiana, a facility may use Emission Reductions Credits ("ERCs") to offset emissions increases. *See* L.A.C. 33:III.601 *et seq*. ERCs can be generated (or "banked") when a facility decreases its emissions from a physical or operational change, if the reductions are surplus, permanent, quantifiable and enforceable. *See* L.A.C. 33:III.607. The ERC regulations

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[4] Table 1 currently requires offsets of 1.4:1 to avoid LAER controls on significant increases of VOC emissions in a serious nonattainment area. However, L.A.C. 33:III.504.A.5 provides that for applications that are deemed administratively complete before Dec. 20, 2001, the offset ratio for VOC emissions in a serious ozone nonattainment area shall be 1.3:1 if LAER controls are not applied. The LHC application was deemed administratively complete on April 25, 2001.

were promulgated on August 20, 1994. When the rules were promulgated, applications to bank emission reductions that occurred before August 20, 1994 were required to be submitted within six months of that date. ERCs may be used to offset the facility's proposed emissions increases from a particular project, provided the ERCs are used within 10 years of the date the emission reductions occurred. *See* L.A.C. 33:III.607.B.2. LDEQ determines whether the emission reductions are valid as ERCs at the time the ERCs are used. As detailed below, Dow sought to satisfy its requirements for offsets with emission reductions attributable to the closure of its Environmental Wastewater Pond EC-2 ("EC-2") in 1992.[5] Since Dow had not previously sought to use these emission reductions as offsets, LDEQ reviewed the validity of the emission reductions as ERCs as part of its permit review.

Notices requesting public comment on the permit applications were published on September 19, 2002 in the *Advocate*, Baton Rouge, the *West Side Journal*, Port Allen, and the *Post South*, Plaquemine. Public hearings were held on October 24, 2002 in the Iberville Parish Court House on the following: 1) Cellulose Plant's Part 70 (Title V) Operating Permit and major modification; 2) Light Hydrocarbon (LHC) permit modification; 3) VOC Emissions Reductions Credits associated with the removal of the Environmental Wastewater Pond EC-2 (ERC application VOC-10); and 4) the Environmental Assessment statements. The public comment period closed on October 25, 2002.

LDEQ approved the emission reductions associated with the removal of wastewater pond EC-2 as ERCs and issued a certificate for 220.22 tpy of ERCs on October 29, 2002. LDEQ also issued the final permits on the same day, using the offsets proposed by Dow and approving other changes in emission limits. Petitioner filed a timely petition to object to the permit with the Administrator pursuant to section 505(b)(2) of the Act.

On March 19, 2003, Dow submitted a letter to LDEQ requesting that the permit for the Cellulose plant be modified by withdrawing the Low Salt Project. The permit modification was public noticed on November 27, 2003, and no comments were received. On January 13, 2004, LDEQ issued the permit withdrawing the Low Salt Project. As a result of this modification, LDEQ concluded that the Cellulose permit did not involve a significant increase in VOC emissions, and therefore did not require a major preconstruction permit or offsets. *See* Air Permit Briefing Sheet, Dow Chemical Cellulose Plant Operating Permit (Jan. 13, 2004) at 6.

IV: ISSUES RAISED BY THE PETITIONER

A. Requirement That Emissions Reductions be Surplus

Petitioner argues that LDEQ improperly certified 220 tpy of emission reductions attributable to the closure of wastewater pond EC-2 as ERCs, and therefore these ERCs were not

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[5] In place of the pond, Dow installed a floating roof tank to store wastewater.

available for use as offsets, which were required under the permit. Petitioner claims that all emissions reductions of VOCs from the closure of EC-2 were legally required by section 2153, and therefore were not "surplus."[6]

Under the ERC banking regulations, to be valid for netting or offsets, emission reductions must be "surplus, permanent, quantifiable, and enforceable." L.A.C. 33.III.607.B.1; *see also* L.A.C. 33:III.504(F)(10) ("Emission reductions otherwise required by the Federal Clean Air Act or by state regulations shall not be credited for purposes of satisfying the offsets requirement."). "Surplus" is defined in L.A.C. 33:III.605 as:

> Emission reductions that are voluntarily created for an emissions unit and have not been required by any state or federal law or regulation and are in excess of reductions used to demonstrate attainment of national ambient air quality standards at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.

In 1995, LDEQ promulgated rules limiting VOC emissions from industrial wastewater entitled "Limiting Volatile Organic Compound Emissions From Industrial Wastewater" (the "RACT rule"). *See* L.A.C. 33:III.2153.[7] The Dow facility is an affected source category subject to the RACT rule. Section 2153.B establishes the control requirements that apply to "affected VOC wastewater," which is defined in the rule as "a VOC wastewater stream from an affected source category with either a VOC concentration greater than or equal to 10,000 parts per million by weight (ppmw) or a VOC concentration greater than or equal to 1000 ppmw and a flow rate greater than or equal to 10 liters per minute (2.64 gallons per minute), as determined in accordance with Subsection H of this Section." L.A.C. 33:III.2153.A. Under Section 2153.B, affected VOC wastewater must be controlled until it is either returned to a process unit, disposed of in an underground injection well, incinerated, or treated to reduce the VOC content of the wastewater stream by 90% and to reduce the VOC content of the wastewater stream to less than 1000 ppmw.

Section 2153.G provides several exemptions from the requirements of Section 2153.B for facilities in an affected source category. Thus, a facility that falls within one of the categories of section 2153.G need not comply with the control requirements of section 2153.B. Among the exemptions of Section 2153.G is one for sources that control VOC emissions from all wastewater

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[6] Petitioner also claims that "a critical amount of VOC reductions" are not surplus because of transfers to LDEQ and Weyerhauser. It appears this is a challenge to the amount of ERCs available for use as offsets, rather than the decision to approve the emissions reductions associated with removal of pond EC-2 as ERCs. Accordingly, the transfers to LDEQ and Weyerhauser will be considered in the discussion below of the "Sufficiency of the Offsets."

[7] Section 2153 was approved into the Louisiana SIP on June 20, 2002 (67 FR 41240) and was effective August 19, 2002.

(not only "affected VOC wastewater") and maintain a 90% reduction from the 1990 baseline inventory level.[8] Under section 2153.G.4, a source that maintains a 90% reduction of all VOC wastewater emissions from the 1990 baseline level is not required to implement the specific controls and monitoring requirements for affected VOC wastewater contained in section 2153.B.

In 1992, prior to the promulgation of the RACT rule, Dow had replaced two wastewater storage ponds (EC-1 and EC-2) with a floating roof tank. This switch helped Dow achieve a nearly 95% reduction in VOC emissions from wastewater from 1990 levels. *See* Analysis of Validity of Emission Reductions as ERCs, at 3. Accordingly, when section 2153 was promulgated in 1995, Dow sought an exemption under § 2153.G.4.

Section 2153.G.4 specifies a cap on all emissions from VOC wastewater, and that cap can be enforced by LDEQ, EPA, or a citizen.[9] However, contrary to petitioner's statement that "Louisiana's Industrial Wastewater Regulation required Dow to close the pond in order to comply with the regulation's exemption clause," *see* Petition at ¶ 5, section 2153.G does not mandate any particular steps to achieve those emission reductions.[10] Nor has petitioner demonstrated that it would be impossible as a practical matter for Dow to comply with section 2153.G without closing pond EC-2. As a result, petitioner has not demonstrated that compliance with section 2153.G required the closing of pond EC-2.

In considering Dow's ERC and permit application in 2002, LDEQ was required to calculate how much of the emissions reductions Dow achieved by eliminating the wastewater

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[8] There are certain additional requirements, such as an initial control plan and an annual report. *See* LAC 33:III.2153.G.4.

[9] EPA notes that as long as Dow's exemption under section 2153.G.4 remains in place, Dow could not raise as a defense to an enforcement action the argument that it would not have been in violation of section 2153.B of the RACT rule if it had chosen not to seek an exemption under section 2153.G.4. When a source has the option of complying with a rule or standard through more that one method (e.g., a throughput limit vs. a control efficiency requirement), EPA (or a citizen) need only show noncompliance with the compliance option selected by the source in order to demonstrate that a violation of the rule or standard has occurred.

[10] The language in section 2153.G that petitioner relies on makes it clear that wastewater components (such as pond EC-2) are exempt from section 2153.B "if overall control of VOC emissions from wastewater of affected source categories is at least 90% less than the 1990 baseline." *See* Petition at ¶ 5 (quoting L.A.C. 33:III.2153.G.4). The petition correctly points out that the "affected source category" here is Dow's facility. Accordingly, section 2153.G.4 requires the overall level of VOC emissions from the facility's wastewater to be at least 90% less than the 1990 baseline. However, section 2153.G.4 does not require any particular controls on wastewater components, such as the closure of pond EC-2.

ponds were "surplus." LDEQ compared how many tons of VOC emissions Dow actually achieved from closing wastewater pond EC-2, with how many tons it would have been required to achieve under section 2153.B.

The wastewater stream from Dow's Cellulose facility (the "Cellulose stream") was the only wastewater stream stored in EC-2 that met the definition of "affected VOC wastewater." *See* Analysis of Validity of Emission Reductions as ERCs, at 3. Accordingly, for purposes of determining the level of emissions reductions Dow would have had to achieve under section 2153.B, LDEQ assumed that Dow would have treated the Cellulose stream until it no longer qualified as affected VOC wastewater. Then LDEQ modeled the emissions from EC-2 that would have resulted if the treated Cellulose stream had been present in EC-2. As a final step, LDEQ deducted the emissions from the floating roof tank that are attributable to wastewater streams that would have been stored in EC-2, if the tank had not replaced EC-2.

As a result of these calculations, LDEQ concluded that by eliminating pond EC-2, Dow achieved 220 tpy of VOC emissions reductions that would not have occurred had Dow chosen to control only "affected VOC wastewater" under § 2153.B, and therefore Dow was entitled to 220 tpy of "emission reductions credits" ("ERCs").

Petitioner claims that any emissions reductions of VOCs from the closure of EC-2 were legally required by section 2153, and therefore were not "surplus." Petitioner's explanation for its conclusion is that LDEQ erroneously concluded that "only the wastewater streams feeding the pond EC-2 – and not the pond itself – are subject to the control requirements of the Louisiana State Implementation Plan." Petition at ¶ 34.

Section 2153.B only requires controls on "affected VOC wastewater." LDEQ assumed for purposes of its surplus calculations that the Cellulose stream was treated to reduce VOC content by 90%. *See* Analysis of Validity of Emissions Reductions as ERCs, at 3. LDEQ then concluded that there would be no need to treat the Cellulose stream further, and, because the Cellulose stream would no longer be "affected VOC wastewater," its addition to wastewater pond EC-2 would not require any controls on EC-2 itself. *See* L.A.C. 33.III.2153.B. ("Any component of the wastewater storage, handling, transfer, or treatment facility, *if the component contains an affected VOC wastewater stream*, shall be controlled in accordance with Paragraph B.1, 2, or 3 of this Section.") (emphasis added). LDEQ's decision not to treat pond EC-2 as requiring controls for purposes of calculating emissions under section 2154.B was reasonable.

Petitioner has failed to show a flaw in LDEQ's calculation of the amount of emission reductions associated with closing pond EC-2 that were surplus. Accordingly, Petitioner has not met its burden of demonstrating that LDEQ's decision to approve Dow's ERC application VOC-10 violates LAC 33:III.607.B.1, and the petition is denied on this issue. *See* CAA Section 505(b)(2) (objection required "if the Petitioner demonstrates. . . that the permit is not in compliance with the requirements of [the Act], including the requirements of the applicable [SIP].").

B. Requirement That the Emission Reductions Occur Within Ten Years of ERC Use

Petitioner contends that LDEQ's record lacked evidence that the emissions reductions credits were created less than ten years ago. LDEQ's regulations provide that emissions reductions "may be creditable for use as offsets for up to ten years from the actual emission reduction to the atmosphere. An emission reduction credit is considered to be used for this purpose upon issuance of a permit that relies upon the ERCs as offsets." LAC 33:III.607.B.2.

The ERCs were approved and used as offsets on October 29, 2002. Thus, to be valid, the emissions reductions must have occurred no earlier than October 29, 1992. Dow's VOC-10 ERC application states that the date of the shutdown of the wastewater pond was October 30, 1992. LDEQ relied on the fact that the application was certified as "true and accurate" by a Dow official in 1995, and again in 2000, as a basis for concluding that the ERCs were valid. LDEQ also noted that Dow would have had no reason at the time of those applications to intentionally report an incorrect date. *See* LDEQ Public Comments Response Summary, Part 70 Operating Permit Modification 2227-V2, Emission Reduction Credits (VOC-10) at 8.

Petitioner offers no direct evidence that the wastewater pond was closed on a date earlier than October 29, 1992. However, petitioner argues that the record supports the conclusion that pond EC-2 was closed on an earlier date because the floating roof tank that replaced the pond was operating on an earlier date and because Dow's statement elsewhere in its ERC application that "EC-2 was out of service on October 30, 1992" could be construed to mean that the pond was closed on an earlier date.

In light of Dow's certification of the date the emissions reductions occurred, and Petitioner's failure to offer any direct evidence that the emissions reductions occurred on an earlier date, EPA finds that Petitioner has not met its burden of demonstrating a deficiency in the permit. Therefore the petition is denied on this issue.

C. Requirement That ERC Application Be Filed in a Timely Fashion

Petitioner next claims that Dow's application for credits was not timely. Petitioner argues both that the application was due by March 15 of the year following the emissions reductions, or, alternatively, by February 19, 1995.

LAC 33:III.615 governs the timely filing of ERC applications. LDEQ stated in its Response to Comments on this issue that the relevant version of section 615 is the version in effect at the time Dow's application was originally submitted. LDEQ Public Comments Response Summary, Part 70 Operating Permit Modification 2227-V2, Emission Reduction Credits (VOC-10) at 9. As then-written, section 615.A provided that for emission reductions occurring after the rule was adopted, applications must be filed by March 1 following the year in which the emissions reductions occurred. Section 615.B provided that for emissions reductions occurring prior to the adoption of the final rule, applications "shall be submitted within six months after adoption of the final rule."

The final rule was adopted August 20, 1994. Dow's emissions reductions occurred prior to this date, so its application was due within six months of August 20, 1994. Dow's application was received by LDEQ on February 20, 1995. Petitioner contends that the application must have been received by February 19 to be "within six months after the adoption of the final rule." However, EPA agrees with LDEQ that "receipt of the documents on February 20, 1995, satisfies the provisions of LAC 33:III.615.B as it read at the time." LDEQ Public Comments Response Summary, Part 70 Operating Permit Modification 2227-V2, Emission Reduction Credits (VOC-10) at 9. Accordingly, petitioner has not met its burden of demonstrating a deficiency in the permit, and the petition is denied on this issue.

D. Adequacy of Response to Public Comments

Petitioner contends that LDEQ's Basis For Decision for the ERC application VOC-10 failed to respond to all reasonable public comments including comments alleging that: (1) all emission reductions were legally required and not surplus; (2) the ERC banking application was not timely filed; (3) LDEQ and Dow failed to establish in the record that the emission reductions occurred more than ten years prior to the date Dow sought to use the credits; and (4) LDEQ failed to determine which data from which year is the most representative of actual operations.

It does not appear that the "failure to determine which data from which year is the most representative of actual operations" was raised in any comments on the ERC application VOC-10. A review of LDEQ's Response to Comments document on the ERC application VOC-10 shows that LDEQ adequately addressed the other issues raised by Petitioner. LDEQ has the responsibility to consider all reasonable public comments. *See* 40 C.F.R. § 70.7(h); In the Matter of Consolidated Edison Company Hudson Avenue Generating Station, Permit Id: 2-6101-00042/00011, at 8 (Sept. 30, 2003) (available at http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/hudson_decision2002.pdf) ("It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for public comment is a response by the regulatory authority to significant comments.") (citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977)).

LDEQ responded to each of the significant comments on ERC application VOC-10, giving a short explanation of why it took the action it did. Petitioner has failed to demonstrate that there is a deficiency in LDEQ's responses that resulted in, or may have resulted in, a deficiency in the permit. *See* CAA Section 505(b)(2). Therefore, the petition is denied on this issue.

E. Sufficiency of Offsets to Avoid LAER Controls

Petitioner alleges that the permit should require Dow to use LAER controls since there were insufficient offsets or valid credits. As noted above, L.A.C. 33:III.504 allows sources to avoid installing LAER controls by providing a greater amount of offsets. For the reasons

discussed above, LDEQ concluded that there were 220.22 tpy of ERCs available to Dow for offsets from the elimination of wastewater pond EC-2. The Dow application stated that 100 tpy were donated to LDEQ and 63 tpy were sold to Weyerhaeuser. *See* Dow VOC-10 ERC application, Comments Section.

To avoid LAER, the proposed modifications to the LHC plant required 23.02 tpy offsets. The Cellulose plant modifications as originally proposed would have required 45.40 tpy. However, on March 19, 2003, Dow requested that LDEQ withdraw the Low Salt project, which required the 45.40 tpy of offsets in the Cellulose plant modification. LDEQ issued a final permit on January 13, 2004 that removed the authorization of the Low Salt project. Thus, under the current permits, Dow requires 23.02 tpy in offsets, and Dow has available to it 57.22 tpy from ERC application VOC-10.[11] Accordingly, Petitioner has not demonstrated that the permit is not in compliance with applicable requirements regarding LAER controls, and the petition is denied on this issue.

F. Emissions Increases That Were Not Offset

LDEQ increased the permit limits for emissions from three sources, (C6, C7, and LN), without providing offsets.[12] LDEQ indicated that these increases were due to changes in product mix and also updated emissions factors (i.e., improved methodology for calculating emissions). Petitioner contends that LDEQ should not have allowed Dow to increase emissions due to changes in product mix without providing offsets, and also argues that the increases due to improved methodology are evidence of past emission violations.

Under L.A.C. 33:III.504.D, offsets are required for new emissions that are the result of either a "new major stationary source," or a "major modification" of an existing permitted source. A "major modification" is defined under this section as a "any physical change in or change in the method of operation at an existing major source that would result in a significant net emissions increase, as listed in Table 1, of any regulated pollutant for which the stationary source is already major." *See also* 40 C.F.R. § 51.165(a)(1)(v)(A) (definition of "major modification").

Dow sought a change to a different product mix that resulted in higher emissions. Petitioner did not present any evidence that altering the product mix constituted a physical change or change in method of operations of the facility within the meaning of L.A.C. III:33.504. Therefore, Petitioner has not demonstrated that offsets were required.

Petitioner also contends that LDEQ was inconsistent in stating that: (1) "emissions increases from these three sources reflect improvements in calculation methodology and more

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[11] 220.22 tpy less 163 tpy yields 57.22 tpy.

[12] Each of these emission points is a blower exhaust.

accurately reflect plant operations. These emissions have existed since the Cellulose Plant began operations around 1960;" and (2) "The 'fact' that Dow has been emitting is excess of its permit limits cannot be substantiated by the commentator."

There is no necessary conflict between these statements. Permit limits are based on the potential to emit or the maximum capacity to emit for the source. The facility's potential to emit may be adjusted at a later date to account for improved emissions calculations. However, it is not always the case that a facility will emit up to its potential to emit. At any given time, a facility's actual emissions may be well below the permit limits, because of slow production or some other limiting factor. Thus, an increase in permit limits to more accurately reflect the plant's potential to emit does not necessarily establish that a facility was exceeding its permit limits before the adjustment to permit limits. Petitioner has failed to demonstrate that the facility was emitting in excess of its permit limits, or that offsets were required for these emission increases. Accordingly, the petition is denied on this issue.

G. SO2 Emissions Baseline Determination

Petitioner also challenges the permit on the ground that LDEQ used an incorrect baseline to measure sulfur dioxide ("SO2") emissions, in determining whether the proposed increase in SO2 emissions was "significant." If Dow proposed modifications that resulted in a "significant" net emissions increase of SO2, then Dow would be required to satisfy the requirements of Louisiana's "Prevention of Significant Deterioration" ("PSD") program, including installation of the best available control technology ("BACT"). *See* LAC 33:III:509.[13]

In order to determine whether the proposed modification resulted in a "significant" net emissions increase, LDEQ first was required to determine the increase in "actual emissions" from the proposed modification. *See* LAC 33:III.509.A (net emissions increase defined as actual emissions plus any other creditable emissions increases or decreases). "Actual emissions" are defined in part as follows:

> In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the two-year period which precedes the particular date and which is representative of normal source operation. The administrative authority [i.e., LDEQ] may allow the use of a different time period upon a determination that it is more representative of normal source operations.

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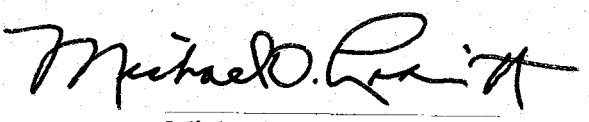
[13] Iberville parish is in attainment for SO2, therefore significant net emissions increases are subject to regulation under PSD, and not NNSR.

LAC 33:III.509.A. Petitioner alleges that LDEQ neither used actual emission data from the two-year period preceding a particular date, nor made a determination that another time period was more representative of normal source operations.

In its application, Dow proposed using SO2 emissions data from 1997 and 2001, on the ground that this data was more representative of normal source operation than data from 1998 and 1999. Dow stated in its application that "the feedstock used in 1998 and 1999 were uncharacteristically low in sulfur." Appendix D to Dow's application at 2. In this case, LDEQ apparently accepted Dow's rationale for the use of the 1997 emissions as the baseline. EPA finds that petitioner has not demonstrated that the record lacked an adequate basis for LDEQ to reasonably determine that an alternative baseline year was more representative of normal source operations. In addition, taking into consideration the significant margin between the increase in actual emissions determined by LDEQ (2.58 tpy) and the significance threshold for net emissions increases (40 tpy), Petitioner has not demonstrated that the use of a different baseline would result in the project being treated as a major modification subject to PSD. In the future, LDEQ should ensure that the record clearly demonstrates the rationale for accepting an alternate baseline. However, Petitioner has not demonstrated that the permit fails to reflect applicable requirements of Louisiana's PSD program, and accordingly the petition is denied on this issue.

V. CONCLUSION

For the reasons set forth above and pursuant to Section 505(b) of the Act and 40 C.F.R. § 70.8(d), I deny the petition submitted by the Louisiana Environmental Action Network.



Michael O. Leavitt
Administrator

Dated: December 22, 2004