

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

IN THE MATTER OF)	PETITION NUMBER III-2013-1
)	
METTIKI COAL, LLC)	
GARRETT COUNTY, MARYLAND)	ORDER RESPONDING TO THE
)	FEBRUARY 5, 2013 REQUEST
PROPOSED PERMIT NUMBER)	FOR OBJECTION TO THE ISSUANCE
24-023-0042)	OF A TITLE V OPERATING PERMIT
)	PERMIT
)	
)	
ISSUED BY THE MARYLAND)	
DEPARTMENT OF THE ENVIRONMENT)	
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ORDER GRANTING A PETITION FOR OBJECTION TO PERMIT

This Order responds to issues raised in a petition submitted to the U.S. Environmental Protection Agency by the Environmental Integrity Project, Benjamin Feldman, and Brenda and Shayne Lambert (Petitioners) dated February 5, 2013 (Mettiki Petition) pursuant to Section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Mettiki Petition requests that the EPA object to the proposed operating permit issued by the Maryland Department of the Environment (MDE) to Mettiki Coal LLC (Mettiki), No. 24-023-0042, for its coal preparation and processing plant located at 293 Table Rock Road, Oakland, Maryland (Facility). The operating permit was proposed pursuant to title V of the CAA, CAA §§ 501-507, 42 U.S.C. §§ 7661-7661f, and COMAR § 26.11.03.01 *et seq.* See also 40 C.F.R. Part 70. These operating permits are also referred to as title V permits or part 70 permits.

I. INTRODUCTION

The Mettiki Petition, dated February 5, 2013, requests that the Administrator object to the proposed operating permit issued by MDE for the Facility on the basis that the Mettiki Proposed Permit (Proposed Permit) did not include testing and monitoring requirements sufficient to assure compliance with limits for sulfur dioxide (SO₂) and particulate matter (PM) emissions from the Facility's thermal dryer unit.

Based on a review of the Mettiki Petition, and other relevant materials, including the Proposed Permit, the permit record, and relevant statutory and regulatory authorities, and as explained more fully below, I grant the Petition requesting that the EPA object to the Proposed Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA. The EPA published a final rule on January 15, 2003, granting full approval to the State of Maryland for the title V (part 70) operating permit program. 68 *Fed. Reg.* 1974 (Jan. 15, 2003). This program is codified in the Code of Maryland Regulations (COMAR) 26.11.03.00, *et seq.*

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including a Prevention of Significant Deterioration (PSD) permit. CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting and other requirements to assure sources' compliance with applicable requirements. 57 *Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." *Id.* Thus, the title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to the EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the permit if the EPA determines that the permit is not in compliance with applicable requirements of the Act. CAA §§ 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c) (providing that the EPA will object if the EPA determines that a permit is not in compliance with applicable requirements or requirements under 40 C.F.R. Part 70). If the EPA does not object to a permit on its own initiative, §505(b)(2) of the Act and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of the EPA's 45-day review period, to object to the permit. The petition shall be based only on objections to the permit 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). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see also New York Public Interest Research Group, Inc. (NYPIRG) v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir.

2003). Under § 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA. *MacClarence v. EPA*, 596 F.3d 1123, 1130-33 (9th Cir. 2010); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266-67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677-78 (7th Cir. 2008); *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081-82 (10th Cir. 2013); *Sierra Club v. EPA*, 557 F.3d 401, 406 (6th Cir. 2009) (discussing the burden of proof in title V petitions); *see also NYPIRG*, 321 F.3d at 333 n.11. In evaluating a petitioner's claims, the EPA considers, as appropriate, the adequacy of the permitting authority's rationale in the permitting record, including the response to comments (RTC).

The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," to determine whether a petition demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty to object where such a demonstration is made. *NYPIRG*, 321 F.3d at 333; *Sierra Club v. Johnson*, 541 F.3d at 1265-66 ("[I]t is undeniable [CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."). Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioners have demonstrated that the permit is not in compliance with requirements of the Act. *See, e.g., Citizens Against Ruining the Environment*, 535 F.3d at 667 (stating § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object if such a demonstration is made") (emphasis added); *NYPIRG*, 321 F.3d at 334 ("§ 505(b)[2] of the CAA provides a step-by-step procedure by which objections to draft permits may be raised and directs the EPA to grant or deny them, *depending on whether non-compliance has been demonstrated.*") (emphasis added); *Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' ... plainly mandates an objection *whenever* a petitioner demonstrates noncompliance.") (emphasis added). When courts review the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., Sierra Club v. Johnson*, 541 F.3d at 1265-66; *Citizens Against Ruining the Environment*, 535 F.3d at 678; *MacClarence*, 596 F.3d at 1130-31. A fuller discussion of the petitioner demonstration burden can be found in *In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Numbers VI-2011-06 and VI- 2012-07 (June 19, 2013) (*Nucor II Order*) at 4-7.

The EPA has looked at a number of criteria in determining whether the petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the RTC), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132-33; *see also, e.g., In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 (December 14, 2012) (*Noranda Order*) at 20-21 (denying title V petition issue where petitioners did not respond to state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 (June 22, 2012) at 41 (*2012 Kentucky Syngas Order*) (denying title V petition

issue where petitioners did not acknowledge or reply to state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient). Another factor the EPA has examined is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress' express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). See *MacClarence*, 596 F.3d at 1131 (“[T]he Administrator’s requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.”); *In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 (Sept. 21, 2011) (*Murphy Oil Order*) at 12 (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring). Relatedly, the EPA has pointed out in numerous orders that, in particular cases, general assertions or allegations did not meet the demonstration standard. See, e.g., *In the Matter of Luminant Generation Co. – Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 (Jan. 15, 2013) at 9; *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 (Apr. 20, 2007) (*BP Order*) at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005) (*Chevron Order*) at 12, 24. Also, if the petitioner did not address a key element of a particular issue, the petition should be denied. See, e.g., *In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station*, Order on Petition Number: VIII-2010-XX (June 30, 2011) at 7–10; and *In the Matter of Georgia Pacific Consumer Products LP Plant*, Order on Petition No. V-2011-1 (July 23, 2012) at 6-7, 10–11, 13–14.

III. BACKGROUND

A. The Facility

Located in Garrett County, Maryland, the Facility is a coal cleaning and preparation operation. A thermal dryer was installed in 1978 that dries raw coal produced from Mettiki’s West Virginia mining operations after it has been cleaned at the Facility. Coal dust collected in the Facility’s cyclones is the primary fuel used for the thermal dryer. The thermal dryer uses number 2 fuel oil during periods of start-up until enough coal has been collected in the cyclones to support combustion. Emissions from the dryer are controlled by four cyclones and two scrubbers. The emissions are vented through two stacks. The Facility’s end product is cleaned and dried steam grade coal that is shipped to power plants.

At all times relevant to this matter, the Facility has been owned and operated by Mettiki Coal, LLC. The Facility is a major stationary source within the meaning of the Act (42 U.S.C. §§ 7602 and 7661) and a title V facility pursuant to COMAR § 26.11.02.01.

B. Facility Permitting History

Mettiki’s initial title V permit was issued on July 25, 2001, and was renewed on June 1, 2008. On December 21, 2011, MDE received an application for the second renewal of Mettiki’s title V permit. In response, MDE issued a draft title V renewal permit (Mettiki Draft Permit) for the Facility on August 21, 2012. On September 17, 2012, Petitioner Environmental Integrity Project submitted comments on the Mettiki Draft Permit, and on October 5, 2012, Petitioner

Benjamin Feldman submitted comments on the Mettiki Draft Permit.¹ MDE submitted a proposed title V permit (Proposed Permit) to the EPA on October 24, 2012, for the Agency's 45-day review period. The EPA's review period ended December 7, 2012. On January 1, 2013, MDE issued the final title V Permit (Final Permit) for the Facility. MDE issued its RTC document on January 14, 2013. Petitioners petitioned the EPA Administrator to object to the Mettiki Proposed Permit² on February 5, 2013.

Mettiki's title V permit incorporates provisions from PSD permit No. 21-0800-60001 issued by MDE to Mettiki on July 5, 1978, and amended on October 1, 1982, and May 6, 1983 (PSD Permit). Specifically, the title V permit includes emissions limits from the PSD Permit for SO₂ of 78.6 pounds per hour and 1,258 pounds per day (lbs/day) and limits for PM of 0.02 grains per standard cubic foot per day and 760 lbs/day. Final Permit at 33-34, Table IV – 2.1.

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. CAA § 505(b)(2); 42 U.S.C. § 7661d(b)(2). Thus, any petition seeking the EPA's objection to the Proposed Permit was due on or before February 5, 2013. The Petition, dated February 5, 2013, was received by the EPA on February 5, 2013. Thus, the EPA finds the Petitioners timely filed their Petition.

IV. EPA DETERMINATION ON THE ISSUE RAISED BY THE PETITIONERS

Petitioners' Claim. The Petitioners contend that the Proposed Permit fails to "... include monitoring requirements ... that assure compliance with air-quality based PSD limits for SO₂ and PM emissions from the thermal dryer." Petition at 4. Petitioners contend that this failure violates the CAA requirement that "each permit issued under [Title V] shall set forth ... monitoring, compliance certification, and reporting requirements sufficient to assure compliance with the permit terms and conditions." CAA § 504(c), 42 U.S.C. § 7661c(c). Specifically, Petitioners state that the Proposed Permit "is deficient because it does not include monitoring sufficient to assure that emissions limits for SO₂ and PM from the thermal dryer will be met at all times, including during daily startup and shutdown events and during malfunctions." *Id.* at 5. The Petitioners raise the following five bases in support of this claim. First, that "annual stack tests required in the [Proposed] Permit are inadequate to assure compliance with the concentration-based PM limit which must be met at all times and the SO₂ limit, which must be met hourly." *Id.* at 6. Second, that parametric monitoring³ used for PM emissions in permit condition IV-2.3(B), Proposed Permit at 36, "cannot assure compliance with the PM limit because it does not require

¹ Mr. Feldman requested and was granted an extension from MDE of the 30 day-public comment period. His comments were treated by MDE as timely submitted and, therefore, the EPA is considering his comments to be timely.

² Petitioners state that they "petition the Administrator of the U.S. Environmental Protection Agency to object to the proposed Title V Operating Permit Number 24-023-0042 (Draft Permit)." Petition at 1. Therefore, although the Petitioners often refer to the "Draft Permit" in explaining their objections, the EPA considers the Petition to be based on objections to the Proposed Permit.

³ The Petitioners refer to the parametric monitoring pursuant to the New Source Performance Standards (NSPS) for Coal Preparation Plants at 40 CFR §60.256(a)(1). Petition at 6.

Mettiki to stay within any values for the parameters being measured.” Petition at 7. Third, that the Compliance Assurance Monitoring (CAM) plan “also falls short because it does not require Mettiki to take corrective action for deviations from parametric indicator ranges” during certain periods of startup, shutdown, and malfunction (SSM). *Id.* at 7. Fourth, that MDE’s RTC fails to establish that the Proposed Permit does require monitoring sufficient to assure compliance with the SO₂ and PM emissions limits for the thermal dryer. *Id.* Concerning their fourth basis, the Petitioners state that MDE’s explained system of monitoring for compliance with emissions limits during SSM periods “merely require[s Mettiki] to report excess emissions, and MDE has the discretionary authority to ask for follow-up data and then to take enforcement action based on that information.” *Id.* at 8. The Petitioners contend that this is insufficient to assure compliance. Further, Petitioners state that “it is entirely unclear how MDE would use the information reported by Mettiki to determine whether Mettiki is violating the SO₂ and PM emissions limits during SSM events,” but the “EPA has stated that the rationale for the selected monitoring must be clear and documented in the permit record.” *Id.* at 9 (internal quotation deleted). Fifth, that “MDE must either establish monitoring requirements which assure compliance with the SO₂ and PM limits for the thermal dryer during SSM events, particularly the frequent and foreseeable daily startups and shutdowns, or it must show that it is impossible to do so.” The Petitioners state that “[t]here are a number of options for measuring such [SSM event] emissions.” *Id.* at 10.

EPA’s Response. For the reasons stated below, I grant the Petitioners’ request for an objection to the permit.

As a preliminary matter, the comments submitted to MDE during the public comment period did not raise the Petitioners’ first, second, and fifth arguments (related to annual stack tests, parametric monitoring from the NSPS, and demonstrating impossibility, respectively) with reasonable specificity, as required by 505(b)(2) of the Act and 40 C.F.R. § 70.8(d). In addition, Petitioners have not demonstrated that it was impracticable to raise such objections during the comment period, and there is no basis in the record for finding that grounds for such objection arose later. As the EPA stated in the proposal to the original title V regulations:

The EPA believes that Congress did not intend for Petitioners to be allowed to create an entirely new record before the Administrator that the State has had no opportunity to address. Accordingly, the Agency believes that the requirement to raise issues with “reasonable specificity” places a burden on the Petitioner, absent unusual circumstances, to adduce before the State the evidence that would support a finding of noncompliance with the Act. 56 *Fed. Reg.* 21712, 21750 (May 10, 1991).

Thus, a title V petition should not be used to raise arguments to the EPA that the state has had no opportunity to address, and the requirement to raise issues “with reasonable specificity” places a burden on the petitioner (or some other commenter), absent the circumstances described in the Act, to have presented to the state the information that would support a demonstration that the permit is not in compliance with the Act. The comments did not discuss three of the five arguments raised by Petitioners to support their claim, and thus MDE had no opportunity to consider and respond to those arguments. Therefore, the EPA’s analysis below is based on the third and fourth arguments raised in the Petition.

The Petitioners' third and fourth arguments concern whether the Proposed Permit's monitoring is sufficient to assure compliance with the PM and SO₂ emissions limits for the thermal dryer. The CAA requires that "[e]ach permit issued under [title V] shall set forth ... monitoring ... requirements to assure compliance with the permit terms and conditions." § 504(c); 42 U.S.C. § 7661c(c). EPA's part 70 monitoring rules (40 C.F.R. § 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1)) are designed to address this statutory requirement. As a general matter, permitting authorities must take three steps to satisfy the monitoring requirements in EPA's part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. Second, if the applicable requirements contain no periodic monitoring, permitting authorities must add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.F.R. § 70.6(c)(1). See *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition-VI-2007-01 (May 28, 2009) (*CITGO Order*) at 6-7; *In the Matter of United States Steel Corporation – Granite City Works*, Petition-V-2009-03 (January 31, 2011) (*Granite City Order*) at 15-16.

The Petitioners' claim involves monitoring established to assure compliance with SO₂ and PM emissions limits that come from the Facility's PSD permit. These SO₂ and PM emissions limits from the Facility's PSD Permit, which reflect best available control technology (BACT) requirements at the time of the permit's issuance, apply at all times. MDE acknowledged this fact in their RTC document. RTC at 2 ("MDE agrees with the comment that PSD limits apply at all times, including periods of SSM."). The EPA has previously affirmed that BACT requirements apply at all times, including during SSM periods. *In re Indeck-Elwood LLC*, PSD Appeal no. 03-04, at 174 (EAB September 27, 2006) ("We, therefore, agree with Petitioners that under the PSD program automatic exemptions from otherwise applicable emission limits during SSM events are inappropriate."). See also *In re: Prairie State Generating Co.*, 13 E.A.D. 1, 85-89 (2006); *In re Tallmadge Generating Station*, PSD Appeal no. 02-12, at 24 (EAB May 21, 2003); *In re RockGen Energy Center*, 8 E.A.D. 536, 553-55 (1999).

Because the PSD permit's emissions limits apply at all times, the title V permit must include monitoring sufficient to assure compliance with those limits. See e.g., 40 C.F.R. §§ 70.6(c)(1) and 70.6(a)(3)(i)(B) (requiring "monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit"). The Act and EPA's title V regulations require permitting authorities to issue permits specifying the monitoring methodology needed to assure compliance with the applicable requirements in the title V permit. *In the Matter of Wheelabrator Baltimore, L.P.*, Permit No. 24-510-01886 (April 14, 2010) (*Wheelabrator Order*) at 10. Thus, the title V monitoring requirements must be adequate to assure compliance with emissions limits, including PSD emissions limits during startup, shutdown, and malfunction.

In addition to including permit terms sufficient to satisfy EPA's part 70 monitoring requirements, permitting authorities must include a rationale for the monitoring requirements selected that is

clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5). See *Granite City Order* at 16; *CITGO Order* at 7; *Wheelabrator Order* at 10.

The Final Permit's SO₂ testing, monitoring, recordkeeping, and reporting requirements for the thermal dryer include: (1) annual Method 6 stack testing; (2) certification of sulfur content of fuel oil received and records of fuel sulfur certification; and (3) monitoring of scrubber liquid pH and pressure in the scrubber pump line as part of the CAM plan, as well as records and reporting of the scrubber liquid pH and scrubber pump line pressure. Final Permit at 35, 37, 49, 51. The Final Permit's PM testing, monitoring, recordkeeping, and reporting requirements for the thermal dryer include: (1) annual Method 5 stack testing; (2) monitoring of pressure drop across the venturi scrubber as part of the CAM plan, as well as records and reporting of the pressure drop; and (3) monitoring and records of the pressure loss through the venturi scrubber, water supply pressure to the control equipment and temperature of the thermal dryer gas exit stream, pursuant to the NSPS requirements for Coal Preparation Plants of 40 CFR §60.256(a). Final Permit at 35, 52, 36, 37.

The administrative record for the Proposed Permit, which includes the RTC, does not adequately explain the rationale for the selected monitoring requirements; nor does MDE address whether the suite of monitoring required by the Proposed Permit is adequate to assure compliance with the SO₂ and PM emissions limits for the thermal dryer. MDE stated that “[b]ecause there is no compliance testing performed during periods of SSM, there is no correlation between the selected operational parameters and compliance with the standard for these periods. Compliance for SSM periods is handled in a manner different from determining compliance during normal operation.” However, MDE's response did not provide an analysis to demonstrate how the reporting requirements of the CAM plan are sufficient to assure compliance with the PM and SO₂ emissions limits for the thermal dryer during SSM events. RTC at 3-4. In the RTC, MDE states:

[T]he Title V permit requires the reporting of incidents of excess emissions and periods of SSM in the monthly monitoring reports as required by the CAM plan. When MDE reviews reports and suspects excess emissions in violation of an emission standard/limit, a source such as Mettiki is required to provide an estimate of the quantity of excess emissions during the occurrence, operating data and calculations used in determining quantity. The Department uses this information to determine the appropriate enforcement action.

RTC at 4. MDE's response recites the requirements, but does not provide a sufficient analysis to demonstrate how the monitoring requirements in the Proposed Permit assure compliance with SO₂ and PM emissions limits during periods of SSM. It is not clear from the administrative record, including the RTC, how MDE would adequately assure compliance with the SO₂ and PM emissions limits at all times, including during SSM events. Further, the administrative record is not clear concerning other monitoring or reporting that would be used to assure compliance with thermal dryer SO₂ and PM limits during SSM events.

Based on the administrative record, including the RTC, the EPA agrees with the Petitioners' claim that it is not clear how the monitoring that is required in the Proposed Permit will assure

compliance with SO₂ and PM limits for the thermal dryer during SSM events. MDE should expressly identify the methods to be used to assure compliance with those emissions limits during SSM events. There may be elements of the monitoring set forth in the Proposed Permit that may be capable of providing an adequate means to assure compliance with the PM and SO₂ emissions limits at the thermal dryer if MDE clearly documents the rationale for how those monitoring requirements assure compliance with applicable requirements in the administrative record.⁴


The EPA notes that in responding to comments regarding monitoring requirements, MDE cited COMAR 26.11.01.07, which governs reporting of excess emissions pursuant to Maryland's SIP. RTC at 3-4. When addressing EPA's objection, MDE should consider and address the requirements at COMAR 26.11.03.06(C)(7), which contain the reporting provisions in Maryland's approved title V program related to monitoring to assure compliance with applicable requirements for title V purposes.

For these reasons, I grant the Petition and direct MDE either to explain how the Final Permit permit provides adequate monitoring or to modify the permit to ensure that it contains monitoring sufficient to assure compliance with the terms and conditions of the permit. COMAR 26.11.03.06(C). *See also* 40 CFR §§ 70.6(a)(3)(i)(A) and (B), and 70.6(c)(1). In doing so, MDE should ensure that the permit is in compliance with Maryland's EPA-approved title V program, including the reporting requirements contained in COMAR 26.11.03.06(C)(7). MDE should also provide a statement in the record, in accordance with COMAR 26.11.03.13(A)(5), which sets forth the legal and factual basis for concluding that the existing or additional requirements are adequate. *See* 40 CFR § 70.7(a)(5). *See also CITGO Order* at 7-8.

V. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2), COMAR 26.11.03.10, and 40 C.F.R. § 70.8(d), I hereby grant the petition as described herein.

Dated: 9/26/14



Gina McCarthy,
Administrator.

⁴ The EPA notes that, supported by an appropriate rationale in the record, a CAM plan indicator established on the basis of performance testing demonstrating compliance with the specified emissions limit may be an appropriate part of a multi-pronged monitoring approach for assuring compliance with an emissions limit. *See In the Matter of Public Service Company of Colorado, dba Xcel Energy, Valmont Station*, Order on Petition Number: VIII-2010-XX (September 29, 2011) at 11-12; *In the Matter of Public Service Company of Colorado, dba Xcel Energy, Cherokee Station*, Order on Petition Number: VIII-2010-XX (September 29, 2011) at 11-12; and *In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station*, Order on Petition Number: VIII-2010-XX (June 30, 2011) at 12-13.