BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: CONSOLIDATED ENVIRONMENTAL MANAGEMENT, INC. – NUCOR STEEL LOUISIANA PIG IRON AND DRI MANUFACTURING IN ST. JAMES PARISH, LOUISIANA PERMIT NUMBERS: 3086-V0 AND 2560-00281-V1 ISSUED BY THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY	PARTIAL ORDER RESPONDING TO PETITIONERS' MAY 3, 2011 & OCTOBER 3, 2012 REQUESTS THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF TITLE V OPERATING PERMITS Petition Numbers VI-2011-06 and VI-2012-07

ORDER DENYING
"SPECIFIC OBJECTION I" IN MAY 3, 2011 PETITION FOR OBJECTION TO PERMITS, AND AS RE-RAISED IN OCTOBER 3, 2012 PETITION FOR OBJECTION TO PERMITS

INTRODUCTION

This order contains the United States Environmental Protection Agency's (EPA) response to the first claim (also called "Specific Objection I") in a Petition dated May 3, 2011, and as re-raised in a Petition dated October 3, 2012, from the Louisiana Environmental Action Network (LEAN) and Sierra Club (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act ("CAA" or the "Act"), 42 United States Code (U.S.C.), § 7661d(b)(2), and 40 Code of Federal Regulations (C.F.R.) § 70.8(d). The May 3, 2011, Petition asks, in relevant part, that the Administrator of the EPA (the Administrator) object to two operating permits, issued by the Louisiana Department of Environmental Quality ("LDEQ") pursuant to title V of the Act, 42 U.S.C. §§ 7661-7661f, Louisiana Administrative Code 33:III.507 (L.A.C. 33.III.507) and the EPA's implementing regulations at 40 C.F.R. Part 70 (Part 70), to Consolidated Environmental Management, Inc. - Nucor Steel Louisiana (Nucor) for a pig iron manufacturing process (the pig iron process) and a direct reduced iron manufacturing process (the DRI process) located in Convent (St. James Parish), Louisiana. These operating permits are also generally referred to as Part 70 permits or title V permits.

On June 25, 2010, the EPA received a petition (the 2010 Petition) from the Petitioners, requesting, in relevant part, that the Administrator object to the Part 70 permit issued by LDEQ on May 24, 2010, for Nucor's pig iron process (the pig iron title V permit) (2560-00281-V0). On May 3, 2011, the EPA received a second petition (the 2011 Petition) from the Petitioners, requesting, in relevant part, that the Administrator object to two Part 70 permits issued by LDEQ on January 27, 2011—first, a modified Part 70 permit for the pig iron process (the modified pig iron title V permit) (2560-00281-V1) and, second, a new title V permit for the DRI process (the DRI title V permit) (3086-V0).[1]

On October 3, 2012, the Petitioners filed a third petition (the 2012 Petition) requesting, in relevant part, that the Administrator object to Nucor's pig iron title V permit, the modified pig iron title V permit, and the DRI title V permit for the reasons expressed in the 2010 Petition and the 2011 Petition, which were incorporated by reference and attached. This order responds to Specific Objection **I** in the 2011 Petition and as re-raised in the 2012 Petition.

This order responds to Specific Objection I in the 2011 Petition, which is contained on pages 5 and 6 of the 2011 petition under the heading, "EPA Must Object to the Title V Permits Because LDEQ Failed to Aggregate [Prevention of Significant Deterioration (PSD)] Permitting for Emissions from the Entire Facility." It also responds to Specific Objection I as re-raised in the 2012 Petition. The Administrator intends to later issue a separate order or orders granting or denying the 2010 Petition and the 2011 Petition (except for Specific Objection I). LEAN and Sierra Club's 2011 Petition adopts and incorporates by reference Zen-Noh's petition seeking an objection to Nucor's modified pig iron title V permit and DRI title V permit. As described below, the EPA has already responded to that petition from Zen-Noh.

In Specific Objection I of the 2011 Petition for the modified pig iron title V permit and for the DRI title V permit, the Petitioners make the claim that "EPA must object to the [modified pig iron title V permit and the DRI title V permit] because LDEQ failed to aggregate the pig iron and DRI processing units under a single PSD permit consistent with the Clean Air Act's PSD requirements." 2011 Petition at 5 (citing 42 U.S.C. §§ 7470-7477, 40 C.F.R. §§ 51.165 and 52.21, and LAC 33.III.509). Further, the Petitioners argue that LDEQ must permit the pig iron and DRI processes together, as part of a single source, that LDEQ allowed Nucor to circumvent the PSD air quality impacts requirements, and that LDEQ deprived the public of an opportunity to review and comment on the emissions and air quality impacts of the whole plant. 2011 Petition at 5-6.

As discussed in more detail in the Statutory and Regulatory Framework section of this order, the Act requires the Administrator to issue an objection to a title V permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2). *See also* 40 C.F.R. § 70.8(d); *New York Public Interest Research Group v. Whitman (NYPIRG)*, 321 F.3d 316, 333-34 (2nd Cir. 2003). The EPA interprets the "demonstrat[ion]"

[1] For the sake of clarity, we adopt the following naming convention for the various title V and PSD permits that have been issued for Nucor and that are discussed in this Order: the "pig iron title V permit" for Permit # 2560-00281-V0; the "pig iron PSD permit" for Permit # PSD-LA-740; the "modified pig iron title V permit" for Permit # 2560-00281-V1; the "DRI title V permit" for Permit # 3086-V0; and the "DRI PSD permit" for Permit # PSD-LA-751.

requirement in CAA § 505(b)(2) as placing the burden on the petitioner to supply information to the EPA sufficient to demonstrate the validity of each objection that the EPA grants. *See, e.g., In the Matter of Georgia Pacific Consumer Products LP Plant*, Order on Petition No. V-2011-1 at 6-7, 10-11 (July 23, 2012) (*Georgia Pacific Order*). Where a petitioner has not provided an adequate demonstration, the EPA is under no duty to object. *Id.* at 11. *See also* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *Sierra Club v. Johnson*, 541 F.3d 1257, 1261, 1269 (11th Cir. 2008) (noting "*if* the petitioner successfully demonstrates that a permit does not comply with clean air requirements, the EPA Administrator must issue an objection to the permit" and upholding decision not to object where the EPA reasonably determined that demonstration had not been made) (emphasis added); *Sierra Club v. EPA*, 557 F.3d 401, 405-07, 411-12 (6th Cir. 2009).

The EPA has reviewed the allegations raised in Specific Objection I from the 2011 Petition and as re-raised in the 2012 Petition pursuant to the standard set forth in section 505(b)(2) of the Act, which, as noted above, requires that the petitioner demonstrate to the Administrator that the permit is not in compliance with the requirements of the Act to obtain an objection to a permit.

Based on a review of Specific Objection I in the 2011 Petition and as re-raised in the 2012 Petition, and other relevant materials, including the permits and permit records, and relevant statutory and regulatory authorities, as explained further in the remainder of this Order, I deny Specific Objection I from the 2011 Petition and as re-raised in the 2012 Petition, requesting that the Administrator object to two Nucor title V permits.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the CAA, 42 U.S.C. § 766la(d)(l), 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 State of Louisiana originally submitted its title V program governing the issuance of operating permits in 1993, and the EPA granted full approval on September 12, 1995. 60 *Fed. Reg.* 47296. 40 C.F.R. Part 70, Appendix A. This program, which became effective on October 12, 1995, was codified in Louisiana Administrative Code (L.A.C.), Title 33, Part III, Chapter 5.[2]

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 the requirements of the applicable State Implementation Plan (SIP). 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 (referred to as "applicable requirements"), but does require permits to contain 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, 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

[2] Date of signature by the Secretary is November 9, 1993; promulgated in the *Louisiana Register*, Volume 19, Number 11, 1420-1421, November 20, 1993.

quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

State and local permitting authorities issue title V permits pursuant to the EPA-approved title V programs. Under CAA section 505(a), 42 U.S.C. § 766ld(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. 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, section 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). 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 that a permit is not in compliance with the requirements of the Act. 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 (2d Cir. 2003). Under section 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, 1266-1267 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA,* 535 F.3d 670, 677-78 (7th Cir. 2008); *Sierra Club v. EPA,* 557 F.3d 401, 405-06 (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 comment.

The petitioner demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains a "discretionary component" that requires the exercise of the EPA's judgment to determine whether a petition demonstrates noncompliance with the Act, as well as a nondiscretionary duty to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265-66 ("it 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"); *NYPIRG*, 321 F.3d at 333. 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 (section 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 ("Section 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). Courts reviewing the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made 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.

There are several reasons why the petitioner's demonstration is important in the context of a title V petition, including the reasons discussed below. First, it is crucial for the petitioner to make the demonstration because title V provides a relatively short timeline for the EPA review of title V permits and petitions. Under CAA § 505(b)(1), the Administrator has only 45 days after receiving a copy of the proposed permit to review that permit and object if he determines that the permit is not in compliance with the CAA. If the Administrator does not object, any petition for an objection must be filed within 60 days after the expiration of the 45–day review period, and the Agency is required to grant or deny that petition within 60 days. CAA §505(b)(2). Thus, Congress provided the EPA a relatively short period of time to review title V petitions and determine whether to object. *Citizens Against Ruining the Environment*, 535 F.3d at 678. Given this short time frame, the EPA does not believe it is reasonable to conclude that Congress would have intended for the EPA to engage in extensive fact-finding or investigation to analyze contested petition claims. *See, e.g., Georgia Pacific Order* at 10-11; *Citizens Against Ruining the Environment*, 535 F.3d at 678 (noting that because the limited time frame Congress gave the EPA for permit review "may not allow the EPA to fully investigate and analyze contested allegations, it is reasonable in this context for the EPA to refrain from extensive fact-finding"). Thus, the EPA relies on the petitioner's demonstration in determining whether the EPA must object to a permit under § 505(b)(2).

Second, the Act is structured so that the EPA's evaluation of a petition under § 505(b)(2) follows and is distinct from its review of a proposed permit under § 505(b)(1), which requires the Administrator to object on his own accord if he determines the permit is not in compliance with the Act. By contrast, under § 505(b)(2), the Administrator is compelled to object only if the necessary demonstration has been made.[3]

Third, the EPA is also sensitive to the fact that its response to title V petitions often comes late in the title V permitting process and often after the title V permit has been issued. *See* CAA § 505(b)(3) (acknowledging that the EPA's response to a petition may occur after the permit has been issued). The EPA's evaluation of the petitioners' demonstration can have consequences, as a determination by the EPA that the petition demonstrates the permit is not in compliance with the Act requires the Administrator and the state permitting authority to take certain actions. *MacClarence,* 596 F.3d at 1131. The EPA also acknowledges Congress' direction that permitting authorities must provide "streamlined" procedures for issuing title V permits, indicating that the title V permitting process should proceed efficiently and expeditiously. CAA § 502(b)(6); 40 C.F.R. § 70.4(d)(3)(ix). These circumstances make it all the more important that the EPA

[3] Further, § 505(b)(2) provides that "the Administrator may not delegate the requirements of this paragraph." This reflects the significance Congress attached to the decision on whether or not to object in response to a petition, and means the process requires additional time.

carefully evaluate the petition's demonstration and not issue an objection under § 505(b)(2) unless the petition demonstrates that one is required.

Fourth, and consistent with its importance in CAA § 505(b)(2), the petitioner demonstration requirement helps to ensure the equity, procedural certainty, efficiency, and viability of the title V petition process for petitioners, state and local permitting authorities, the EPA and source owner/operators. This petitioner demonstration requirement helps to ensure that each and every petitioner is treated equitably in the petition process because the same standard for demonstration applies to each petitioner. Where petitioners meet their burden, the EPA will grant the petition. Where they do not, the EPA will not grant the petition. In this way, the EPA gives equal consideration to the petitioner's arguments, as appropriate.

In addition, the petitioner burden requirement also helps to ensure that the title V petition process is consistent with the division of responsibilities and co-regulator relationship between the EPA and state or local permitting authorities established in the CAA. When carrying out our title V review responsibilities under the CAA, it is our practice, consistent with that relationship, to defer to permitting decisions of state and local agencies with approved title V programs where such decisions are not inconsistent with the requirements under the CAA. The EPA does not seek to substitute its judgment for the state or local agency. As we discuss above in this section, sections 505(b)(1) and (2) of the Act, 42 U.S.C. § 7661d(b)(1) and (2), require the EPA to object to the issuance of a title V permit if it determines that the title V permit contains provisions that are not in compliance with applicable requirements of the Act, including the requirements of the applicable SIP. State and local agencies must ensure that the title V permit includes all applicable requirements under the CAA for that source, and provide an adequate rationale for the permit requirements in the public record, including the response to comment. When the EPA grants a particular title V petition under § 505(b)(2), the EPA directs the state or local agency regarding actions necessary to ensure that the title V permit meets the applicable requirements with regard to the particular issue(s) that was raised, including appropriate and necessary changes to the permit.

The petitioner burden requirement assures that petitioners have clearly and sufficiently articulated the basis for an objection before a title V petition is granted. Thus, state and local agencies have certainty regarding the standard against which petitions on their title V permits and permit records will be assessed. The petitioner burden requirement also helps to ensure that the EPA does not have to spend significant time and resources responding to ungrounded claims regarding the title V permit or permit record. For example, petitioners might include claims in petitions unrelated to applicable requirements for the title V permit at issue or that do not provide sufficient information for the EPA to analyze the claim. Without the petitioner demonstration burden, the EPA could be required to investigate and respond to claims that ultimately prove to be ungrounded or frivolous. This would increase the complexity and uncertainty of the title V permit process, and would be burdensome and unproductive for the EPA, as well as for state and local agencies. The petitioner burden standard also helps to ensure certainty of the permitting process for source owner/operators, because it provides a consistent standard against which petitions on their title V permits will be assessed.

The EPA has looked at a number of criteria in determining whether the petitioner has met its burden to demonstrate noncompliance with the Act. 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 Response to Comments). *See MacClarence*, 596 F.3d at 1132-33. Another factor the EPA has examined is whether the petitioner has provided the relevant analyses and citations to support its claims. If the petitioner does not, the EPA is left to work out the basis for 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 ("the 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.*, Petition No. VI-2011-02 at 12 (September 21, 2011) (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 at 9 (Jan. 15, 2013); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order at 8 (April 20, 2007); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10, at 12, 24 (March 15, 2005). 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 at 7-10 (June 30, 2011); *Georgia Pacific Order* at 10-11, 13-14.

As explained above, the EPA is required to object to a title V permit in response to a petition if the petitioner demonstrates that the title V permit contains provisions that are not in compliance with applicable requirements of the Act. Applicable requirements for a new major stationary source or for a major modification to a major stationary source include the requirement to obtain a preconstruction permit that complies with applicable new source review (NSR) requirements. The NSR program comprises two core types of preconstruction permit programs for major sources. Part C of the CAA establishes the Prevention of Significant Deterioration (or PSD) program, which applies to areas of the country, such as St. James Parish, Louisiana, that are designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS). CAA §§ 160-169, 42 U.S.C. §§ 7470-7479. Part D of the Act establishes the nonattainment NSR program, which applies to areas that are designated as nonattainment with the NAAQS. At issue in this order is the PSD part of the NSR program, which requires a major stationary source in an attainment area to obtain a PSD permit before beginning construction of a new facility or undertaking certain modifications. CAA § 165(a)(1), 42 U.S.C. § 7475(a)(1). The PSD program analysis must address two primary and fundamental elements (among other requirements) before the permitting authority may issue a permit: (1) an evaluation of the impact of the proposed new or modified major stationary source on ambient air quality in the area, and (2) an analysis ensuring that the proposed facility is subject to Best Available Control Technology (BACT) for each pollutant subject to regulation under the Act. CAA §§ 165(a)(3), (4), 42 U.S.C. §§ 7475(a)(3), (4); *see also* L.A.C. 33:III.509.

The EPA has two largely identical sets of regulations implementing the PSD program: one set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be

approved as part of a SIP; the other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA's federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA has approved LDEQ's PSD SIP. *See* 61 Fed. Reg. 53639 (October 15, 1996) and 40 C.F.R. § 52.970(c) (discussing approval of PSD provisions in L.A.C. 33:III.509); *see also* 40 C.F.R. §§ 52.999(c) and 52.986. As LDEQ administers a SIP-approved PSD program, the applicable requirements of the Act for new major sources or major modifications include the requirement to comply with PSD requirements under the Louisiana SIP. *See, e.g.,* 40 C.F.R § 70.2.[4] In this case, the "applicable requirements" include Louisiana's NSR provisions contained in L.A.C. 33:III.509, as approved by the EPA into Louisiana's SIP.

The EPA has previously stated its view that if a PSD permit that is incorporated into a title V permit does not meet the requirements of the SIP, the title V permit will not be in compliance with all applicable requirements. *See, e.g., In the Matter of Duke Energy Indiana Edwardsport Generating Station*, Permit No. T083-27138-00003 (Dec. 13, 2011) at 3. Where a petitioner's request that the Administrator object to the issuance of a title V permit is based in whole, or in part, on a permitting authority's alleged failure to comply with the requirements of its approved PSD program (as with other allegations of inconsistency with the Act), the burden is on the petitioners to demonstrate that the permitting decision was not in compliance with the requirements of the Act, including the requirements of the SIP. Such requirements, as the EPA has explained in describing its authority to oversee the implementation of the PSD program in states with approved programs, include the requirements that the permitting authority (1) follow the required procedures in the SIP; (2) make PSD determinations on reasonable grounds properly supported on the record; and (3) describe the determinations in enforceable terms. *See, e.g., In the Matter of Wisconsin Power and Light, Columbia Generating Station,* Order on Petition Number V-2008-1 (October 8, 2009) at 8 (*Columbia Generating Order*).[5]

BACKGROUND

I. The Facility

The Nucor facility is located on an approximately 4,000-acre site on the Mississippi River, in Saint James Parish, near Convent, Louisiana, immediately outside of the Baton Rouge Ozone Nonattainment Area. The facility, as permitted, is composed of two primary manufacturing processes: a pig iron process and a DRI process, both of which produce feedstock for

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[4] Under 40 C.F.R. § 70.1(b), "[a]ll sources subject to [the title V regulations] shall have a permit to operate that assures compliance by the source with all applicable requirements." "Applicable requirements" are defined in 40 C.F.R. § 70.2 to include "(1) [a]ny 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 that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R.] part 52."

[5] As the EPA has previously explained, in reviewing PSD permit determinations in the context of a petition to object to a title V permit, the standard of review applied by the Environmental Appeals Board (EAB) in reviewing the appeals of federal PSD permits provides a useful analogy. *In re Louisville Gas and Electric Company*, Petition No. IV-2008-3, Order on Petition (August 12, 2009) at 5 n.6; *see also In re East Kentucky Power Cooperative, Inc.* (Hugh L. Spurlock Generating Station), Petition No. IV-2006-4, Order on Petition (August 30, 2007) at 5. The standard of review applied by the EAB in its review of federal PSD permits is discussed in numerous EAB orders as the "clearly erroneous" standard. *See, e.g., In re Prairie State Generation Company*, 13 E.A.D. 1, 10 (EAB, August 24, 2006); *In re Kawaihae Cogeneration*, 7 E.A.D. 107, 114 (EAB, April 28, 1997). In short, in such appeals, the EAB explained that the burden is on a petitioner to demonstrate that review is warranted.

steelmaking. The pig iron process is designed to produce pig iron, while the DRI process is designed to produce sponge iron. The pig iron process was originally permitted (as reflected in the pig iron title V permit) with two blast furnaces (including hot blast stoves and top gas boilers), two coke oven batteries of 140 ovens each (with associated coke charging, pushing and quenching operations), iron ore sintering, furnace slag handling, storage piles, and material handling and transfer operations and haul roads. The capacity of the pig iron process was reduced by approximately half through removal of one blast furnace and associated units, in a subsequent permitting action (the modified pig iron title V permit). Under the DRI title V permit, issued on the same day as the modified pig iron permit, the DRI process consists of two production lines, each consisting of a natural gas reformer (where reducing gases are produced), a reduction furnace (where reducing gases are passed through the iron ore), package boilers (which produce steam used in emission control systems), and material handling and transfer operations and haul roads. It is notable that the DRI process differs from the pig iron process in that it does not use blast furnaces, coke ovens, or slag handling operations because the iron ore is reduced in solid form.

II. The Nucor Permitting History

Underlying the 2010 and 2011 Petitions are two sets of permits that LDEQ issued to Nucor for the two processes, which are located at a single site: one set for the pig iron process, and the other set for the DRI process. There is a complex interplay between the PSD and title V permits issued for these processes and the permit records for these actions are complex.

On May 24, 2010, LDEQ separately but concurrently issued the pig iron title V permit and a related pig iron PSD permit. On August 20, 2010, Nucor submitted an application for the new construction of a DRI process to be built on the same site as the pig iron process. On October 13, 2010, Nucor submitted a permit application asking for modification of the May 24, 2010, pig iron title V permit, specifically requesting that production capacity be reduced, that certain material handling and haul road activities be transferred over to the DRI process (under development by LDEQ at that time) "in order to allow for construction and operation of the DRI facility to proceed independently of the [pig iron] permit," [6] and proposing the addition of selective catalytic reduction (SCR) emission controls at several pig iron emission units. On October 28, 2010, Nucor submitted an addendum to the October 13 application asking for removal of the coke battery heat recovery steam generator (HRSG) bypass vents that had been permitted for the pig iron process.

On January 27, 2011, the second set of permits was issued by LDEQ, including the modified pig iron title V permit. At the time of permit issuance on January 27, 2011, LDEQ also placed an administrative stay on the modified pig iron title V permit, which states that it "shall affect the permit as modified and precludes the commencement of construction as authorized by the permit." Stay of Effectiveness of Permit No. 2560-00281-V1, at 1 (January 27, 2011). This modified pig iron title V permit reduces production capacity, removes the material handling and

[6] *See* LDEQ Electronic Data Management System (EDMS) Document 769711 at page 10. This document may be accessed through the EDMS, the LDEQ's electronic repository of official records. Such records may be searched using a variety of search terms including document date, but most directly by using the EDMS assigned document number (EDMS Doc No).

haul road units that Nucor had requested to be transferred to the DRI process, and requires operation of SCR and removal of HRSG bypass vents at the pig iron process, as Nucor requested in its October 13, 2010, and October 28, 2010, applications. The record for the permit modification stated that LDEQ was not revising the pig iron PSD permit.

The second set of permits consists of title V and PSD permits for the DRI process, which were issued separately but concurrently on January 27, 2011. These permits also include the material handling operations and haul roads that Nucor requested to be transferred from the pig iron process to the DRI process in its permit application of October 13, 2010. Because this permit was issued after greenhouse gases (GHGs) became a regulated pollutant for purposes for PSD, LDEQ included a BACT determination intended to address GHGs in the DRI PSD permit.

On March 23, 2012, the EPA issued an order granting two other petitions on the Nucor permits from a different petitioner, Zen-Noh: *In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Nos. VI-2010-02 and VI-2011-03 (Permit Numbers 2560-00281-V0, 3086-V0, and 2560-00281-V1) (*Zen-Noh Order*). One of Zen-Noh's specific points was that LDEQ's determination that the air quality analysis need not be conducted on the aggregate emissions from the DRI and pig iron processes was not based on reasonable grounds or properly supported in the record. *See* Zen-Noh's 2011 Petition at 18. As part of the first ground for granting Zen-Noh's petitions, the EPA determined that the permit record did not provide an adequate basis to allow the EPA to determine whether the PSD requirement to conduct an ambient air quality impact analysis for the source had been satisfied. *Zen-Noh Order* at 13.[7] The EPA granted the Zen-Noh petitions on the basis that "[t]he respective permit records for the pig iron and DRI title V permits, including the responses to comments, fail to provide an adequate basis and rationale for the EPA to determine that these permits ensure compliance with applicable requirements and are in compliance with the Act." *Zen-Noh Order* at 10. After considering Zen-Noh's petitions under the standard in CAA § 505(b)(2), the EPA explained that "the decision to grant these petitions is based on two threshold issues": "(1) LDEQ has not adequately justified its decision to permit the DRI and pig iron processes as two separate projects for purposes of PSD analysis; and (2) LDEQ has not provided permit records from which the full scope of applicable requirements for the pig iron and DRI title V permits can be determined and, in particular, has not adequately explained the basis for its transfer of emissions units between the pig iron and DRI processes via the title V permits, and its incorporation by reference of permit requirements established in a title V permit into a PSD permit." *Zen-Noh Order* at 10.

On June 21, 2012, LDEQ submitted a response, which it also described as a supplement to the permit record, to the EPA's *Zen-Noh Order* granting an objection to Nucor's title V permits. LDEQ's Response disagreed with the *Zen-Noh Order* on multiple grounds and defended the

[7] The Zen-Noh Order has resulted in two separate lawsuits. In one, Zen-Noh brought a lawsuit arguing that the EPA had a nondiscretionary duty to deny the Nucor title V permits. The judge in that case recently granted the EPA's motion to dismiss the case on jurisdictional grounds. *See Zen-Noh Grain Corp. v. Jackson*, Order, Doc. No. 35, Civ. Action No. 12-2535 (E.D. La. April 30, 2013). In the other, LDEQ sought judicial review of the Zen-Noh Order in the U.S. Court of Appeals for the 5th Circuit. *Louisiana Dept. Env. Quality v. EPA*, Case No. 12-60482 (5th Cir.). The EPA is defending the Zen-Noh Order in that case and arguing that CAA § 505(c) precludes the court from exercising jurisdiction, and that, if the court does review the EPA's order, it should be upheld on the merits. The Fifth Circuit has not yet issued a decision resolving that case.

Nucor permits, arguing that LDEQ satisfied SIP and title V requirements. In its Response, LDEQ provided some clarification of how it viewed both the permitting approach and the interaction between the title V and PSD permits. *See, e.g.,* LDEQ Response at 6-7, 16-21. For example, LDEQ stated that "LDEQ agrees that the pig iron and DRI manufacturing facilities constitute a single 'major stationary source.'" *Id.* at 6. LDEQ also explained its view that "the pig iron and DRI project do not have to be addressed in a single PSD permit (i.e., a single physical document.)" *Id.* at 7. In support, LDEQ explained that in a situation where "a single site includes more than one process," LDEQ interprets its regulations to mean that "a single permit may be issued to include all processes at the site" or that "multiple permits may be issued each of which addresses one or more processes at the site." *Id.* at 7 n. 43. LDEQ's Response also committed to make certain PSD permit revisions to address the second threshold issue. *See* LDEQ Response at 18, 20.

In the *Zen-Noh Order*, the EPA explained that it would entertain future petitions from Zen-Noh, LEAN or Sierra Club raising any of the issues in their 2010 and 2011 petitions that they still wished to raise after LDEQ's Response to that objection, as well as any new claims based on any new proposed permit. *Zen-Noh Order* at 16-17 and n. 9. On September 26, 2012, counsel for the EPA contacted counsel for Zen-Noh to emphasize that the EPA viewed LDEQ's June 21, 2012, Response to the March 23, 2012, Order on the Zen-Noh Petitions as a new proposed title V permit for Nucor, and that the proper course to raise any issues from the 2010 or 2011 Petitions that the Petitioners still wished to raise, or any new claims based on the new proposed permit, would be to submit a title V petition, by October 3, 2012. *See also In the Matter of Kerr-McGee/Anadarko Petroleum Corp., Frederick Compressor Station*, Order on Petition VIII-2008-02, at 2-3 (Oct. 8, 2009) (treating a state response revising a permit record as a new proposed permit); *In the Matter of Anadarko Petroleum Corp., Frederick Compressor Station*, Order on Petition VIII-2010-4, at 4-5 (Feb. 2, 2011) (same). On the same day, the EPA also contacted counsel for LEAN and Sierra Club to emphasize the EPA's view on this issue. 2012 Petition, Att. A. On October 3, 2012, as described above, LEAN/Sierra Club filed a new petition, which, among other things, requested that the EPA object to the DRI and pig iron title V permits for the reasons stated in the 2010 and 2011 Petitions. The 2012 Petition also disagreed with the EPA's interpretation that LDEQ's Response was a new proposed permit that had created another title V petition opportunity.

III. Specific Objection I in the 2011 Petition and as Re-raised in the 2012 Petition

The Petitioners filed a timely title V petition, received on May 3, 2011, requesting that the Administrator object to the DRI title V permit and to the modified pig iron title V permit. In Specific Objection I of the 2011 Petition, the Petitioners claim that "EPA must object to the [2011] Title V permits because LDEQ failed to aggregate the pig iron and DRI processing units under a single PSD permit consistent with the Clean Air Act's PSD requirements." Petition at 5 (citing 42 U.S.C. §§ 7470-7477, 40 C.F.R. §§ 51.165 and 52.21, and LAC 33.III.509).

To support this claim, the Petitioners contend that the pig iron and DRI processes at the Nucor facility are part of a single "'source,'" and that LDEQ must permit them together, not as "two separate sources" because the Louisiana SIP at L.A.C. 33.III:509(A)(1) "mandates PSD permits for the construction of any new *major stationary source*." 2011 Petition at 5 (emphasis in

original). The Petitioners state that the Louisiana SIP defines "'stationary source'" as any "'building, structure, facility, or installation that emits or may emit any pollutant subject to regulation under this section,'" quoting L.A.C. 33. III:509(B), and that the SIP further defines a "'source'" such that it shall encompass "'all of the pollutant-emitting activities which belong to the same industrial grouping [i.e., same two-digit SIC code], are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control),'" quoting L.A.C. 33 III:509(B) and citing 40 C.F.R. § 51.166(b)(6). *Id.* at 5 and 6. The Petitioners allege that this definition of "source" creates a "simple three-prong test" to determine whether a group of pollutant-emitting activities is a single source requiring a single PSD permit. *Id.* (citing *In the matter of Kerr-McGee/Anadarko Petroleum Corporation, Frederick Compressor Station* (Permit Number: 950PWE035), Order Responding to Petitioners' Request that the Administrator Object to Issuance of a State Operating Permit, Oct. 8, 2009). The Petitioners further state that the two iron smelting activities at the Nucor facility meet all three prongs of this "stationary source" test, and, thus, that the two processes should be subject to a single PSD permit. *Id.* at 6. In support of this argument, the Petitioners contend that the pig iron and DRI processes meet this test because, first, they are located on the same parcel of land in St. James Parish, the property is contiguous, and they share the same roads and water service system. *Id.* Second, the Petitioners contend that "Nucor owns and controls both pollutant-emitting activities, and operationally both will be subject to the same management structure." *Id.* (citing to two EDMS documents: 7731641 (pgs. 372, 378) and 7731649 (404, 409)). Third, the Petitioners contend that both of the pollutant-emitting activities are iron foundries, which share the same SIC code—code 3320. *Id.* (citing the Standard Industrial Classification (SIC) Code list).

The Petitioners further allege that "by piecemealing the permits, LDEQ has failed to require PSD review for GHG for the entire plant" because one permit contains a PSD analysis for GHG and the other does not, and "[i]nstead of two PSD permits," "one PSD permit must be issued for the entire Nucor plant." *Id.* at 5.

Continuing on with their argument that one PSD permit should have been issued for the pig iron and DRI processes, the Petitioners claim that "[b]y issuing separate PSD permits for the pig iron process and DRI process, LDEQ allowed Nucor to circumvent the air quality impact analysis prerequisites." *Id.* at 5. The Petitioners contend that "LDEQ did not require Nucor to perform air quality impact modeling -- for NAAQS review and for preconstruction monitoring applicability -- for all emission sources in the aggregate facility," stating for sulfur dioxide (SO_2), particulate matter less than or equal to 10 microns (PM_{10}), and for particulate matter less than or equal to 2.5 microns ($PM_{2.5}$) that "Nucor only modeled emissions from the DRI process, and found them to be below the SIL [significant impact level]." *Id.*

Additionally, the Petitioners argue that by permitting the DRI and pig iron processes separately, LDEQ "deprived the public of the opportunity to review and comment on the aggregate emissions and air quality impacts from the whole plant." *Id.*

Petitioners also timely filed the 2012 Petition, requesting, in relevant part, that the Administrator object to Nucor's modified pig iron title V permit and the DRI title V permit for the reasons expressed in the 2011 Petition, which was incorporated by reference and attached. 2012 Petition

at 1. Specific Objection I is among the reasons the Petitioners sought an objection to Nucor's modified pig iron title V permit and the DRI title V permit in the 2011 Petition. *Id.* Thus, the EPA views the 2012 Petition as re-raising Specific Objection I from the 2011 Petition. In addition, the 2012 Petition states that Petitioners disagree with the EPA's position that LDEQ's Response to the EPA's *Zen-Noh Order* created a "new" title V permit and assert that, rather than triggering a new petition cycle, LDEQ's Response created the duty for the EPA to issue or deny the permits pursuant to Clean Air Act § 505(c) and to take the required steps pursuant to 40 C.F.R. Parts 70 and 71 to terminate, modify, or revoke and reissue Nucor's title V permits. *Id.* The 2012 Petition states that Petitioners are filing the 2012 Petition "to preserve their rights." *Id.* The 2012 Petition additionally asserts that LDEQ's Response to the *Zen-Noh Order* "did not resolve, moot, or change the matters at issue in Petitioners' 2011 Petition." *Id.*

EPA RESPONSE

For the reasons stated below, the EPA denies Specific Objection I of the 2011 Petition. As explained in more detail below, with respect to Specific Objection I as raised in the 2011 Petition, that issue is now moot because of subsequent events. Alternatively, even if Specific Objection I as raised in the 2011 Petition were not moot, the EPA denies this claim because the Petitioners have not demonstrated that Nucor's title V permits fail to assure compliance with an applicable requirement of the Act based on LDEQ's failure to issue a single PSD permit for the pig iron and DRI processing units. With respect to Specific Objection I as re-raised in the 2012 Petition, the EPA denies that objection because Petitioners have not met their burden of demonstration on this issue and because the 2012 Petition does not respond to LDEQ's new proposed permit and reasoning included in LDEQ's Response to the EPA's *Zen-Noh Order*.

Specific Objection I in the 2011 Petition

To the extent that Specific Objection I is the same issue as the one raised in the Zen-Noh Petitions and granted by the EPA in the *Zen-Noh Order*, LDEQ has responded to that petition grant with a buttressed permit record containing additional rationale, and constituting a new proposed permit. The EPA is not required to separately address the 2011 Petition on an issue it has already granted in the Zen Noh Petition and to which LDEQ has responded. Because a new proposed permit, with new rationale, is now before the EPA, to the extent that that new proposed permit relates to Specific Objection I, the issue as raised in the 2011 Petition is moot. Where the EPA has granted a petition on an issue and the state has responded with a new proposed permit, it would make little sense for the EPA to return to the issue as raised in an earlier petition because that issue has been superseded by later events. Under these circumstances, as a procedural matter, the new proposed permit moots out the petition as to any issue granted from the earlier petition that it seeks to address. Thus, the EPA denies LEAN's 2011 Petition on this issue as moot.[8]

[8] The EPA notes that LEAN and Sierra Club's 2011 Petition states that it "adopt[s] and incorporate[s] by reference Zen-Noh Grain's petition asking the EPA to object to the modified Title V permit for the pig iron plant and the initial Title V permit for the DRI plant." 2011 Petition at 2. To the extent that Petitioners have incorporated by reference Zen-Noh's 2011 petition with respect to Specific Objection I, the EPA has already responded to Zen-Noh's 2011 petition, granting an objection, and LDEQ has issued a response to the EPA's objection. Thus, the EPA does not need to further address Zen-Noh's 2011 petition in this order.

The 2012 Petition asserts that LDEQ's Response did not constitute a new title V permit, and that, rather than triggering a new petition opportunity, LDEQ's Response created the duty for the EPA to issue or deny the permits pursuant to CAA section 505(c) and to take the required steps pursuant to 40 C.F.R. Parts 70 and 71 to terminate, modify, or revoke and reissue Nucor's title V permits. The EPA disagrees. The EPA has received and responded to several petitions to object to title V permits that had been revised by states in response to the EPA objections. See, e.g., *In the Matter of East Kentucky Power Coop., Inc., Hugh L. Spurlock Generating Station*, Order on Petition IV -2008-4b (Nov. 30, 2009); *In the Matter of United States Steel Corp. – Granite City Works*, Order on Petition V-2011-2 (Dec. 3, 2012). In those instances, the EPA viewed the revised permit as providing the EPA an opportunity to object to the permit under CAA section 505(b)(1) and 40 C.F.R. § 70.8(c), and, when the EPA did not object, an opportunity for a citizen to petition the EPA to object under CAA section 505(b)(2) and 40 C.F.R. § 70.8(d). The EPA has also treated state responses to EPA objections that revised the permit record to provide further support for its decision as constituting new proposed permits subject to review by the EPA under CAA section 505(b)(1) and 40 C.F.R. § 70.8(c), and, absent an EPA objection, citizen petition under CAA section 505(b)(2) and 40 C.F.R. § 70.8(d). See, e.g., *In the Matter of Kerr-McGee/Anadarko Petroleum Corp., Frederick Compressor Station*, Order on Petition VIII-2008-02, at 2-3 (Oct. 8, 2009); *In the Matter of Anadarko Petroleum Corp., Frederick Compressor Station*, Order on Petition VIII-2010-4, at 4-5 (Feb. 2, 2011). A permitting authority's rationale for its permit terms is a fundamental component of its permit decision.[9] Accordingly, the EPA has viewed a state response to an EPA objection that buttresses its basis for its permit decision as a new proposed permit for purposes of CAA section 505(b) and 40 C.F.R. §§ 70.8(c) and (d).[10]

Viewing a state's response to an EPA objection as triggering a new EPA review and petition opportunity is also consistent with the statutory and regulatory process for addressing objections by the EPA. In particular, when the EPA objects to a title V permit that has already been issued, as is the case for the Nucor permits at issue in the *Zen-Noh Order*, section 505(b)(3) of the Act requires the EPA to "modify, terminate, or revoke" the permit, and the permitting authority may thereafter only issue a revised permit in accordance with section 505(c) of the Act. Further, section 505(c) of the Act provides that "[i]f the permitting authority fails, within 90 days after the date of an objection under [section 505(b)], to submit a permit revised to meet the objection,

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[9] *See*, e.g., 40 C.F.R. § 70.7(a)(5) (requiring permitting authority to "provide a statement that sets forth the legal and factual basis for the draft permit conditions"); *id.* § 70.8(c)(3)(ii) (providing that a permitting authority's failure to provide information sufficient to adequately review the proposed permit is grounds for an objection). *See* also, e.g., *In Re Murphy Oil USA, Inc. Meraux Refinery*, Order on Petition No. VI-2011-02 at 7 (Sept. 21, 2011) (granting objection to a title V permit where permit record, including information in state's response to comments, failed to provide an adequate rationale for a permitting decision); *In the Matter of Cemex, Inc., Lyons Cement Plant,* Order Responding to Petition No. VIII-2008-01 (April 20, 2009) (granting objection to a title V permit where the permit record did not provide the public with a meaningful response to comment and lacked an adequate basis for the state's permitting determination). Cf. *In re: Desert Rock Energy Company, LLC,* PSD Appeal Nos. 08-03 et al, Order Granting Review, at 3, 4 (EAB June 22, 2009) (recognizing withdrawal of a portion of the PSD permit record, i.e., a portion of the response to comments document, as a withdrawal of a portion of the permit decision); *In re: Desert Rock Energy Company, LLC,* PSD Appeal Nos. 08-03 et al, Remand Order, at 4 (EAB Sept. 24, 2009) (same).

[10] The EPA notes that a new proposed permit in response to an objection will not always need to include new permit terms and conditions. For example, when EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing additional rationale to support its permitting decision.

the Administrator shall issue or deny the permit in accordance with the requirements of this title." The EPA's regulations implementing these provisions provide a state with 90 days to resolve the EPA's objection and terminate, modify or revoke and reissue the permit, before the EPA would need to begin to act on the permit. 40 C.F.R. §§ 70.8(d), 70.7(g)(4)-(5); *see also*, 40 C.F.R. § 71.4(e) (noting that the EPA will take permitting action under Part 71 when, among other things, a state fails to "respond to an EPA objection").[11] Thus, the EPA's regulations contemplate that the state may address an EPA objection by, among other things, providing the EPA with a revised permit. Accordingly, the EPA, in the *Zen-Noh Order,* anticipated that a response by LDEQ would constitute a "new proposed permit," and emphasized that title V provides an opportunity for review by the EPA and citizen petitions on proposed permits. *Zen-Noh Order* at 16-17 and p. 17, n. 9; *see also* 40 C.F.R. §§ 70.7(g)(4), 70.8(c)-(d), 70.2 (definition of "proposed permit").

In this case, LDEQ issued its response to the EPA's *Zen-Noh Order* on June 21, 2012, which is within 90 days after March 23, 2012, the date of the EPA's objection in that order. Consistent with the EPA's interpretation that LDEQ's Response was a new proposed permit, the cover letter for LDEQ's Response noted that it "constitutes LDEQ's Response to EPA's order and supplements the permit record." In the *Zen-Noh Order*, the EPA explained that it would entertain future petitions from Zen-Noh, LEAN or Sierra Club raising any of the issues in their 2010 and 2011 petitions that they still wished to raise after LDEQ's Response to that objection, as well as any new claims based on any new proposed permit. *Zen-Noh Order* at 16-17 and n. 9. Further, the EPA emphasized to counsel for LEAN and Sierra Club that if Petitioners wished to raise concerns about whether LDEQ's Response addressed the EPA's objection (or other concerns regarding LDEQ's Response), the proper course was to file a petition with the EPA.[12]

As explained above, to the extent that LDEQ's new proposed permit and new rationale in response to the EPA's objection relate to Specific Objection 1, they moot out this petition issue in the 2011 Petition. However, even if Specific Objection I were not moot, the EPA would deny this issue on the grounds that Petitioners have not adequately demonstrated that Nucor's title V permits fail to assure compliance with an applicable requirement of the Act for this objection. This failure to demonstrate provides an alternative basis for the decision to deny Specific Objection I, as explained below. As we discussed in more detail in the Statutory and Regulatory Framework section of this order, where a petitioner's request that the Administrator object to the issuance of a title V permit is based in whole, or in part, on a permitting authority's alleged failure to comply with the requirements of its approved PSD program (as with other allegations of inconsistency with the Act), the burden is on the petitioners to demonstrate that the permitting decision was not in compliance with the requirements of the Act, including the requirements of the SIP. In the *Zen-Noh Order*, as explained above, after evaluating the petitions under the

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[11] While Petitioners assert in their 2012 Petition that the EPA now has a duty to take action on the Nucor permits, they do not attempt to show that LDEQ's response failed to "resolve" or "respond to" the EPA's *Zen-Noh Order* for purposes of 40 C.F.R. §§ 70.7(g)(4) or 71.4(e)(1).

[12] Petitioners in the 2012 Petition state that: "LDEQ never established a period for the public to comment on its response to the EPA's objection. For that reason, the public had no opportunity to comment on the response that the EPA has now determined amounts to 'new permits.'" Petitioners do not claim that the lack of a public comment period means that LDEQ's Response could not be a new proposed permit. However, to the extent that this argument could be implied by Petitioners' statements, Petitioners did not explain why the LDEQ's Response could not be a permit modification not requiring public comment. *See*, e.g., 40 C.F.R. § 70.7(e)(2).

standard in CAA § 505(b)(2), the Administrator decided that the petitioner in that instance had provided sufficient demonstration to conclude that the three Nucor title V permits were not in compliance with the requirements of the CAA and accordingly granted the petitions.

The petitioner burden to demonstrate that the permitting decision was not in compliance with the requirements of the Act includes demonstrating that the permitting decision was not in compliance with the requirements of the SIP. Such requirements include the requirements that the permitting authority: (1) follow the required procedures in the SIP; (2) make PSD determinations on reasonable grounds properly supported on the record; and (3) describe the determinations in enforceable terms. *Columbia Generating Order* at 8.

For the reasons explained above in the Statutory and Regulatory Framework section, it is critical that the Petitioners make the required demonstration in order for the EPA to grant an objection. The Petitioners in this instance have not made a demonstration that LDEQ's permitting decision was not in compliance with the requirements of the Act, including the requirements of the SIP. In particular, Petitioners have not met their burden of demonstration because Specific Objection I does not identify any specific terms of federal rules, the SIP, or the Act that: (1) preclude LDEQ from addressing the PSD permitting requirements applicable to the emissions units in the pig iron and DRI processes by issuing separate PSD permits for each process; (2) require LDEQ to impose GHG emissions limitations on the pig iron process because a separate PSD permit for the DRI portion of the facility was issued after GHG became a regulated pollutant for PSD purposes; (3) preclude the approach LDEQ used to demonstrate that the air quality impacts from the DRI and pig iron processes would not cause or contribute to a violation of air quality standards; or (4) require a single, unified opportunity to comment on the air quality impacts from the facility instead of the comment opportunity that was provided in this instance. *See MacClarence*, 596 F.3d at 1131 ("the 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.*, Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring).

Specific Objection I of the 2011 Petition cites "42 U.S.C. §§ 7470-7477; 40 C.F.R. §§ 51.165, 52.21; La. Admin. Code tit. 33, pt. III, § 509." These general citations include the statutory and regulatory provisions that establish PSD requirements under federal law and the Louisiana SIP, but Specific Objection I does not describe any particular terms of these regulations or statutory provisions to demonstrate how LDEQ's actions in this instance fail to comply with the regulations and statutory provisions that are generally cited. Accordingly, these generalized allegations do 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 at 9 (Jan. 15, 2013).

Much of the demonstration Petitioners offer in support of Specific Objection I is directed to showing that the pig iron and DRI processes are part of a single stationary source under the three-part test in Louisiana's SIP and the EPA's PSD rules. Petition at 5-6. However, it is undisputed that the pig iron and DRI processes belong to a single stationary source. LDEQ's Response to the *Zen-Noh Order* confirmed that "LDEQ agrees that the pig iron and DRI

manufacturing facilities constitute a single 'major stationary source,' as all of the pollutant emitting activities belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control[])." LDEQ Response at 6. While the Petition offers analysis and citations to support this undisputed point, it simply assumes a critical part of its argument—that a new single stationary source must be subject to a single PSD permit or that its processing units must be permitted in a single PSD permit. The Petition does not provide any legal analysis or specific citations to provisions of the Act or the SIP to establish its premise that all processes at this facility must be addressed in a single PSD permit. The Petition does not demonstrate that the CAA, the SIP, or federal PSD rules preclude the issuance of multiple PSD permits that separately cover the emissions units at a new PSD major stationary source. *See* LDEQ Response at 7, n. 43; LDEQ Public Comments Response Summary for the DRI permits and the modified pig iron title V permit (RTC) at 51. Thus, the Petition does not provide legal analysis or reasoning to support the central issue for its claim. *See, e.g., MacClarence*, 596 F.3d at 1131 (affirming denial of a petition where the petitioner had not provided legal reasoning, evidence and references to support the claim); *Georgia Pacific Order* at 10-11, 13-14 (denying a petition where a key element had not been addressed). Accordingly, the Petitioners have not demonstrated that a single PSD permit must be issued to Nucor to authorize construction of the major stationary source located in Convent, St. James Parish, Louisiana.

Based on this unsubstantiated premise, Petitioners then draw a series of additional conclusions without referencing any specific regulatory or statutory language that supports such conclusions. One of these conclusions is that Nucor's 2011 title V permits fail to assure compliance with applicable requirements for limiting GHG emissions because LDEQ issued separate PSD permits for the pig iron process and DRI process. LDEQ explained in its RTC for the modified pig iron title V permit and DRI permit why the agency did not consider the GHG requirements to apply to the emissions units in the pig iron process. RTC at 12. The Petitioners do not acknowledge this rationale or demonstrate any flaw in LDEQ's explanation. *See, e.g., In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20 (December 14, 2012) (*Noranda Order*) (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 at 41 (June 22, 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); *MacClarence*, 596 F.3d at 1132-33. Furthermore, the Petitioners have not referenced any legal authority to demonstrate that LDEQ's reasoning is contrary to law or that LDEQ was otherwise required to impose GHG emissions limitations on the pig iron process because a separate PSD permit for the DRI portion of the facility was issued after GHG became a regulated pollutant for PSD purposes. *See, e.g., MacClarence*, 596 F.3d at 1131 (affirming denial of a petition where the petitioner had not provided legal reasoning, evidence, and references to support the claim). Nor do Petitioners reference any legal text or authority to show why the lack of a GHG analysis in the pig iron PSD permit that was issued in 2010 would require LDEQ to issue a single PSD permit for the entire Nucor facility. *See, e.g., MacClarence*, 596 F.3d at 1131 (affirming denial of a petition where the petitioner had not provided legal reasoning, evidence, and references to support the claim).

Another of the Petitioners' unsupported conclusions is that LDEQ allowed Nucor to circumvent PSD requirements related to the air quality impact analysis by issuing separate PSD permits for the pig iron process and DRI process and allowing Nucor to model only emissions from the DRI process for certain pollutants during the DRI permitting. However, the Petitioners do not reference any specific legal authority that would require the type of air quality analysis that they contend was necessary in this instance. *See, e.g., MacClarence*, 596 F.3d at 1131 (affirming denial of a petition where the petitioner had not provided legal reasoning, evidence, and references to support the claim). There is no reference to the origin of the air quality impact analysis requirements in any federal regulations or the SIP, nor any explanation of how the particular terms of a regulation establishing this requirement were circumvented by the approach that LDEQ relied on in this case to satisfy such a requirement. The failure of Petitioners to meet their burden on this issue in Specific Objection I contrasts with the relevant demonstration in one of the Zen-Noh petitions that the EPA granted. In relevant part, the Zen-Noh petition referenced the requirements regarding the air quality impact analysis in the Act and the SIP, discussing L.A.C. 33:III.509K-M, and specifically asserted that LDEQ's approach to the air quality impacts analysis was flawed because L.A.C. 33:III.509K requires LDEQ to evaluate the increased emissions from the "'source'" not a "'project.'" Zen-Noh 2011 Petition at 9-11; *see also id.* at 8 (describing the CAA requirement for an source's air quality impacts demonstration). Zen-Noh further claimed that LDEQ's "determination regarding the requirement to conduct the air quality analysis on aggregate emissions from the DRI and pig iron process is not based on reasonable grounds nor properly supported in the record." *Id.* at 18. No comparable demonstration is contained in Specific Objection I. The fact that a particular petitioner meets their burden requirement on a specific issue does not mean that a different petitioner raising the same issue is relieved of the obligation to meet their burden under CAA § 505(b)(2).

A third conclusion that the Petitioners did not support is that the dual permitting approach denied the public an opportunity to review and comment on the aggregate emissions and air quality impacts from the entire facility. As above, Petitioners have not identified any specific provisions or discussed particular language in federal rules, the SIP, or the Act that require a single, unified opportunity for the public to review and comment on the aggregate emissions and air quality impacts from the entire source or that shows how the public comment opportunities that were provided contravened any applicable law. *See, e.g., MacClarence*, 596 F.3d at 1131 (affirming denial of a petition where the petitioner had not provided legal reasoning, evidence, and references to support the claim). Furthermore, Petitioners' conclusory statements do not demonstrate how the process applied by LDEQ in this case operated to deny the public an opportunity to comment on the impact of the facility as a whole. The Petition does not identify specific information or analysis that should have been provided during the public comment opportunities that were provided by LDEQ on the Nucor permits. Petitioners have not demonstrated that the emissions from any particular unit of the facility were not provided or how emissions information that was available during the public comment period was insufficient to fulfill any a particular requirement to provide an opportunity to comment. Petitioners have not demonstrated that they were denied a meaningful opportunity to comment. *See Noranda Order* at 11-13.

When petitioners do not provide the relevant analyses and citations to support their claims, the EPA is left to work out the basis for petitioners' objection, contrary to Congress' express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See also MacClarence*, 596 F.3d at 1131 ("the Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive"). Moreover, given that CAA § 505(b)(2) and our implementing regulations at 40 C.F.R.§70.8(d) provide only 60 days for the EPA to grant or deny a petition, and the additional factors discussed above, the EPA does not interpret the Act to require it to grant petition claims that are not adequately supported. *See, e.g., In the Matter of Georgia Pacific Consumer Products LP Plant*, Petition No. V-2011-1 at 6-7, 10-11 (July 23, 2012) (denying title V petition issue where petitioners had not provided adequate demonstration); *In the Matter of Murphy Oil USA, Inc.*, Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *see also supra* pp. 3, 5-8 (discussing the demonstration requirement under CAA § 505(b)(2)).

Specific Objection I as Re-raised in the 2012 Petition

In relevant part, the 2012 Petition requests that the EPA object to the Nucor permits "for the reasons expressed in ... the May 3, 2011 Petition," which was incorporated by reference and attached. 2012 Petition at 1. The EPA accordingly views the 2012 Petition as re-raising Specific Objection I, exactly as it appears in the 2011 Petition. In the discussion of the alternative basis for its denial above of Specific Objection I in the 2011 Petition, the EPA explained in detail that Petitioners did not satisfy their burden to demonstrate that Nucor's permits failed to assure compliance with an applicable requirement of the Act. When re-raising Specific Objection I in the 2012 Petition, Petitioners simply incorporated the demonstration from the 2011 Petition, without adding any factual or legal analysis to further support that objection. Substantively, the demonstration in the 2012 Petition with respect to Specific Objection I is the same as the demonstration in the 2011 Petition. Accordingly, for the same reasons that Petitioners did not satisfy their demonstration burden with respect to Specific Objection I as raised in the 2011 Petition, Petitioners have also not met their demonstration burden for Specific Objection I as re-raised in the 2012 Petition.

In addition, and equally importantly, the 2012 Petition does not address LDEQ's Response or the reasoning contained in it. Among other things, LDEQ's Response discussed LDEQ's rationale for its permitting approach and its view that it had conducted the requisite air quality analyses. *See, e.g.,* LDEQ Response at 6-16. The Response also explained, in a situation where "a single site includes more than one process," LDEQ interprets its regulations to mean that "a single permit may be issued to include all processes at the site" or that "multiple permits may be issued each of which may address one or more processes at the site." LDEQ Response at 7, n. 43 (citing L.A.C. 33:III.501.C.9). Further, in its Response, LDEQ communicated its view that "for permitting purposes, LDEQ considers a source to be 'existing' once it receives a permit." LDEQ Response at 8, n. 49. In order to warrant an objection, the EPA expects petitioners to address the permitting authority's ultimate decision and reasoning. *See MacClarence*, 596 F.3d at 1132-33; *see also, e.g., Noranda Order* at 20 (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); *Kentucky Syngas Order* at 41 (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). Aside from a general statement that "LDEQ's Response ... did not resolve, moot, or change the matters at issue in" the 2011 Petition, the 2012 Petition does not address LDEQ's Response or the rationale contained in it. Thus, the 2012 Petition does not discuss LDEQ's final reasoning and its failure to do so provides alternative procedural grounds to deny Specific Objection I as re-raised in the 2012 Petition.[13] The EPA's determination on this point rests on procedural grounds and does not express the EPA's opinion on the reasoning articulated in LDEQ's Response.

In denying Specific Objection I in the 2011 Petition and as re-raised in the 2012 Petition, I am determining that this particular objection is not warranted for a variety of procedural reasons, including mootness of the 2011 Petition on this claim, failure to make a sufficient demonstration in the 2011 and 2012 Petitions for this claim, and failure to address LDEQ's Response to the Zen-Noh Order in the 2012 Petition for this claim. However, I am not hereby determining that Nucor's title V permits assure compliance with all applicable requirements of the CAA. The EPA has not yet completed its review of other portions of the Petitions submitted by LEAN and Sierra Club. If the EPA finds that additional action is needed to meet the requirements of the CAA, either independently of or in conjunction with any title V petition decision, the EPA may take such action, consistent with the CAA.

CONCLUSION

For the reasons set forth above and pursuant to CAA section 505(b)(2) and 40 C.F.R. § 70.8(d), in this partial response to the 2011 and 2012 Petitions, I hereby deny Specific Objection I in the 2011 Petition and as re-raised in the 2012 Petition, both from LEAN and Sierra Club, requesting that the EPA object to certain title V permits issued to Consolidated Environmental Management, Inc. - Nucor Steel Louisiana for the pig iron and DRI processes located in St. James Parish, Louisiana.

Dated: 6/19/2013

Bob Perciasepe

Bob Perciasepe,
Acting Administrator.

[13] As noted above, LEAN and Sierra Club's 2011 Petition states that it "adopt[s] and incorporate[s] by reference Zen-Noh Grain's petition asking the EPA to object to the modified Title V permit for the pig iron plant and the initial Title V permit for the DRI plant." 2011 Petition at 2. To the extent that Petitioners have incorporated by reference Zen-Noh's 2011 petition with respect to Specific Objection I into the 2012 Petition through the incorporation of the 2011 Petition into the 2012 Petition, that incorporation does not remedy the 2012 Petition's failure to address LDEQ's Response. Zen-Noh's 2011 petition preceded LDEQ's Response and does not discuss the reasoning in LDEQ's Response. In addition, as noted above, the EPA has already responded to Zen-Noh's 2011 petition and LDEQ has already issued a response to the EPA's objection. Thus, the EPA does not need to further address Zen-Noh's 2011 petition in this order.