

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY

IN THE MATTER OF	)	
	)	
PUBLIC SERVICE OF NEW HAMPSHIRE	)	
	)	PETITION NUMBER VI-2014-04
SCHILLER STATION	)	
PORTSMOUTH, NEW HAMPSHIRE	)	ORDER RESPONDING TO THE
PROPOSED PERMIT NUMBER	)	PETITIONER'S REQUESTS THAT THE
TV-0053	)	ADMINISTRATOR OBJECT TO THE
	)	ISSUANCE OF A STATE OPERATING
ISSUED BY THE NEW HAMPSHIRE	)	PERMIT
DEPARTMENT OF ENVIRONMENTAL	)	
SERVICES	)	
_____	)	

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

This Order responds to issues raised in a petition to the U.S. Environmental Protection Agency (EPA) by Sierra Club (the Petitioner), dated July 24, 2014, 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 Petition requests that the EPA object to the proposed operating permit (Proposed Permit)<sup>1</sup> issued by the New Hampshire Department of Environmental Services (NHDES) to Public Service of New Hampshire (PSNH) for Schiller Station (Schiller), a coal- and biomass-fired electricity and steam generating plant located in the state of New Hampshire. The operating permit was proposed pursuant to Title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f and N.H. Code Amin. R. Env-A 600. *See also* 40 Code of Federal Regulations (C.F.R.) part 70. This type of CAA operating permit is also referred to as a Title V permit or part 70 permit.

**I. INTRODUCTION**

Based on review of the Petition and other relevant materials, including the Schiller Proposed Permit, the permit record and relevant statutory and regulatory authorities, and, as explained more fully below, I grant in part and deny in part the Petition requesting that the EPA object to the Proposed Permit. Specifically, I grant Claim A.2, as identified in the Petition and below in the body of the Order, and deny on the rest of the claims.

<sup>1</sup> Title V Renewal Permit, Permit No. TV-0053, April 14, 2014.

## II. STATUTORY AND REGULATORY FRAMEWORK

### A. Title V Permits

CAA § 502(d)(1), 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. New Hampshire originally submitted its Title V program governing the issuance of operating permits on October 26, 1995, with supplemental materials submitted on May 14, 2001. The EPA granted full approval of New Hampshire's Title V program on September 24, 2001. 66 *Fed. Reg.* 48806. This program, which became effective on November 23, 2001, is codified at N.H. Code R. Admin. Env-A 600.

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 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. 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 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 time frame 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) (*2012 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). 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 (March 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.

When a state responds to an EPA Title V objection by revising the permit record, that response is treated as a new proposed permit for purposes of CAA section 505(b) and 40 C.F.R. §§ 70.8(c) and (d). *See Nucor II Order* at 14. As explained in the *Nucor II Order*, a new proposed permit in response to an objection will not always need to include new permit terms and conditions. For example, when the 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. *Id.* at n. 10. The EPA also explained that treating a state's response to an EPA objection as triggering a new EPA review and petition opportunity is consistent with the statutory and regulatory process for addressing objections by the EPA. *Id.* at 14–15.

### III. BACKGROUND

#### A. The Schiller Station Facility

Schiller Station is a 150 megawatt (MW) wood and fossil fuel-fired electricity generating facility owned and operated by PSNH, a subsidiary of Northeast Utilities. The facility is located in Portsmouth, New Hampshire, on the western bank of the Piscataqua River, which borders New Hampshire and Maine. The facility includes three utility boilers. Two fossil fuel-fired boilers (SR4 and SR6), which primarily combust coal, are each rated at 50 MW and 574 million British Thermal Units per hour (MMBtu/hr). The flue gas from SR4 and SR6 is routed through an electrostatic precipitator (ESP) to control particulate matter (PM) and a selective non-catalytic reduction (SNCR) system and overfire air (OFA) for control of nitrogen oxides (NO<sub>x</sub>). The third

boiler (SR5) is a biomass and coal-fired boiler and is not subject to the claims raised in the Petition.

## **B. Permitting History**

Schiller's initial Title V permit was issued March 9, 2007. On September 30, 2011, PSNH submitted a renewal application for the Schiller Title V permit, and notice of the draft renewal permit (Draft Permit) was published on October 7, 2013. On November 6, 2013, Sierra Club and the Conservation Law Foundation both submitted separate comment letters on the Draft Permit. By letter dated April 14, 2014, NHDES submitted the Proposed Permit to the EPA for its 45-day review period. Along with the Proposed Permit, NHDES also issued a Permit Application Review Summary, often referred to as a Statement of Basis (SOB) dated April 9, 2014, and a Findings of Fact and Director's Decision, often referred to as the RTC dated April 14, 2014. The EPA's 45-day review ended on May 29, 2014. On June 6, 2014, NHDES issued the final Title V permit (Final Permit) for Schiller.

## **C. Timeliness of Petitions**

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 July 28, 2014. Sierra Club's Petition was dated July 24, 2014, and, therefore, the EPA finds that the Petitioner timely filed its Petition.

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

### **Claim A.1: The Petitioner Claims that the SO<sub>2</sub> Limits in the Proposed Permit Fail to Ensure that Schiller Does Not Cause Exceedances of the 2010 1-Hour SO<sub>2</sub> NAAQS in New Hampshire.**

**Petitioner's Claim:** The Petitioner claims that the "Proposed Permit does not include SO<sub>2</sub> emission limits sufficient to protect human health or to ensure compliance with either the federal SO<sub>2</sub> standards or New Hampshire's own regulations." Petition at 7. The Petitioner cites to the federal and state ambient air quality standards for SO<sub>2</sub>. *Id.* at 7 (citing 40 C.F.R. § 50.17(a); N.H. Code. Admin. R. Env-A 304.01). The Petitioner contends that "the SO<sub>2</sub> emission limit in the Proposed Permit must be revised to be at least as low as 0.49 lbs/MMBtu on an hourly averaging period" for SR4 and SR6. *Id.* at 8.

The Petitioner claims that the current SO<sub>2</sub> emission limits in the Proposed Permit for SR4 and SR6, set at 2.4 lbs/MMBtu on a 24-hour averaging period, *see* Proposed Permit at 15, will cause exceedances of the federal 2010 1-hour SO<sub>2</sub> National Ambient Air Quality Standard (NAAQS) and the New Hampshire regulations. Petition at 7–8. The Petitioner asserts that an air dispersion modeling analysis performed by Steven Klafka on behalf of the Sierra Club indicates that the emission limit for the Schiller Station must be reduced by roughly 80 percent in order to avoid causing exceedances of the 2010 1-hour SO<sub>2</sub> NAAQS. *Id.* (citing to Steven Klafka, *Schiller Station Portsmouth New Hampshire Sierra Club Evaluation of Compliance with 1-hour SO<sub>2</sub> NAAQS* (July 24, 2014) (hereinafter Klafka July 2014 Report)). Further, the Petitioner claims



“the ‘calendar day average’ period in the Proposed Permit is incapable of meeting the 1-hour standard.” *Id.* at 8. The Petitioner explains that Schiller could “comply with the provisions in the Proposed Permit, while nonetheless emitting twice as much SO<sub>2</sub> per hour as its numerical limit, and vastly more than what the Klafka July 2014 Report calculates as safe to meet air quality standards and thus protect human health.” *Id.* Therefore, the Petitioner asserts that the SO<sub>2</sub> emission limits must be reduced from 2.4 lbs/MMBtu to less than 0.49 lbs/MMBtu and that SO<sub>2</sub> emissions should be averaged on an hourly basis as opposed to a 24-hour basis. *Id.* at 8.

The Petitioner also addresses the response from NHDES to a similar comment filed by the Petitioner on the Draft Permit that air dispersion modeling was not required for the renewal of Schiller’s Title V permit. *Id.* The Petitioner asserts that regardless of whether modeling was required, it was nonetheless performed and presented to NHDES. *Id.* The Petitioner concludes that its modeling indicates that the “emission limits are insufficient to prevent exceedances of SO<sub>2</sub> NAAQS in New Hampshire, and in fact have allowed historical exceedances to occur.” *Id.*

**EPA’s Response:** For the reasons described below, the EPA denies the Petitioner’s claims that the EPA must object to the permit on the bases described above.

As the EPA has previously explained, promulgation of a NAAQS does not, in and of itself, result in an applicable requirement in the form of an emission limit for Title V sources. *See In the Matter of EME Homer City Generation LP, et al.*, Order on Petition No. III-2012-06, III-2012-07, and III-2013-02 (July 30, 2014) at 11. Rather, the measures contained in each state’s EPA-approved State Implementation Plan (SIP) to achieve the NAAQS are applicable requirements. *See* 40 C.F.R. § 70.2. The CAA provides that the EPA sets the NAAQS, but the states then determine how best to attain and maintain the NAAQS within their boundaries. A NAAQS by itself does not impose any obligations on sources. “A source is not obligated to reduce emissions as a result of the [NAAQS] until the state identifies a specific emission reduction measure needed for attainment (and applicable to the source), and that measure is incorporated into a SIP approved by EPA.” Decision on Reconsideration of Petition to Object to Title V Permit for Reliant Portland Generating Station, Upper Mount Bethel Township, Northampton County, PA, 73 *Fed. Reg.* 64615 (October 30, 2008); *see also In the Matter of Marcal Paper Mills, Inc.*, Order on Petition No. II-2006-001 (Nov. 30, 2006) at 13; *In the Matter of East Kentucky Power Cooperative Inc., William C. Dale Power Station*, Order on Permit No. V-08-009 (Dec. 14, 2009) at 5; *Cate v. Transcontinental Gas Pipe Line Corp.*, 904 F. Supp. 526, 530 (W.D. Va. 1995) (“It is well-established that the NAAQS are not an ‘emission standard or limitation’ as defined by the Act.”). Thus, promulgation of the 2010 1-hour SO<sub>2</sub> NAAQS did not, in and of itself, mandate the emission limits sought by the Petitioner.

The portion of the New Hampshire regulations cited by the Petitioner, N.H. Code. Admin. R. Env-A 304.01, is a codification of the federal 2010 1-hour SO<sub>2</sub> NAAQS into New Hampshire’s SIP. The Petitioner does not demonstrate that Env-A 304.01(a) should be applied any differently than the NAAQS in the Title V permitting process simply because New Hampshire includes ambient standards in its SIP. Accordingly, in claim A.1, the EPA finds the Petitioner does not cite any applicable requirement in either federal regulations or New Hampshire’s EPA-approved SIP that would require specific emission limitations on Schiller Station based on the 2010 1-hour SO<sub>2</sub> NAAQS.

For the foregoing reasons, the EPA denies the Petition as to this claim.

**Claim A.2: The Petitioner Claims that the SO<sub>2</sub> Limits in the Proposed Permit are Insufficient to Prevent Schiller from Interfering with Maintenance of the 2010 1-Hour SO<sub>2</sub> NAAQS in Maine.**

*Petitioner's Claim:* The Petitioner claims that the SO<sub>2</sub> emission limits included in the Proposed Permit are insufficient to protect air quality in Maine and, as a result, the limits violate NHDES's obligations in the New Hampshire SIP to protect air quality in downwind states. Petition at 8–14. The Petitioner states that the hourly emission limits for SO<sub>2</sub> must be revised to be more restrictive. Petition at 13. In support of this claim, the Petitioner points to both a legal and technical rationale. For legal support, the Petitioner cites to CAA section 110(a)(2)(D) and explains its view that under this provision, New Hampshire “is charged with preventing air pollution emitted within its boundaries from blowing into adjoining states and causing violations of air quality standards there.” Petition at 8. In addition, the Petitioner cites to a state rule that is incorporated into the federally enforceable SIP for New Hampshire (N.H. Code Admin. R. Env-A 616.01 (1990) (NH Rule 616)), which states:

The division shall apply special emission limits to the stationary sources on a case-by-case basis to insure that their air quality impacts on adjacent states shall not interfere with the measures taken in those states to prevent significant deterioration of air quality and shall not prevent the attainment or maintenance of National Ambient Air Quality Standards in those states.

N.H. Code Admin. R. Env-A 616.01 (1990). The Petitioner explains its view that under this EPA-approved rule, New Hampshire is obligated to apply a special emission limit derived through a case-by-case review of Schiller's SO<sub>2</sub> emissions. Petition at 9, 14.

For technical support, the Petitioner contends that “Schiller Station most certainly does send much of its air pollution, including SO<sub>2</sub> pollution, out of New Hampshire and into neighboring Maine communities ....” Petition at 9. The Petitioner explains that it retained an expert to perform air dispersion modeling of historical emissions, actual emissions, and permitted emissions. The Petition also discusses the Petitioner's position on what the modeling demonstrates. Petition at 9–13. Specifically, the Petition states that the modeling supports the Petitioner's conclusion that “the limits proposed by NHDES in the draft permit fail to insure that air quality is protected in downwind states ....” Petition at 11. The Petitioner asserts that the modeling shows that Schiller Station has historically caused and is predicted to cause peak 1-hour ambient concentrations of SO<sub>2</sub> in Maine in exceedance of the 2010 1-hour SO<sub>2</sub> NAAQS; that the impacts in Maine are significantly higher than those in New Hampshire; and that Schiller Station therefore prevents attainment and interferes with maintenance of the NAAQS in Maine. Petition at 10–11. The Petitioner provides an explanation of its data inputs and numeric results, and references reports prepared to support these conclusions. Petition at 10–11.

The Petition also includes some technical discussion regarding monitoring data that the Petitioner contends New Hampshire relied upon as part of the Proposed Permit. Petition at 12–



13.<sup>2</sup> The Petition includes information disagreeing with New Hampshire's apparent reliance on this data and explaining why the monitoring data do not provide assurance that Schiller will not interfere with attainment of the 2010 1-hour SO<sub>2</sub> NAAQS in Maine. *Id.* The Petition further includes a response to points made by NHDES in the RTC regarding the appropriate time frame to address emissions from Schiller Station relative to attainment designations for the 2010 1-hour SO<sub>2</sub> NAAQS. Specifically, the Petitioner cites to the plain language of NH Rule 616 and contends that the provision does not indicate its applicability under the existing New Hampshire SIP is contingent upon the status of area designations in either New Hampshire or affected states. Petition at 14. The Petitioner also cites to a previous situation in which the Petitioner explained that New Hampshire adjusted emission limits at Schiller based on modeling. Petition at 14.

***EPA's Response:*** For the reasons described below, the EPA grants the Petition on this claim.

In responding to comments regarding the issues described in this claim in the Petition, NHDES explains its basis for declining to impose more restrictive SO<sub>2</sub> emission limits on Schiller Station at this time. Specifically, the RTC begins by citing to section 110 of the CAA and noting "DES is aware of this requirement and, in fact, it is incorporated into New Hampshire's regulations ...." RTC at 9. NHDES then explains that it is in the process of addressing its obligations relative to the 2010 1-hour SO<sub>2</sub> NAAQS through the designations process. *Id.* NHDES concludes:

It is premature to attempt to address SO<sub>2</sub> emissions from Schiller Station relative to the 2010 1-hour SO<sub>2</sub> NAAQS until the attainment designation process is finalized, because the level and type of limitations required, if any, cannot be determined until that process is complete. . . . Only when the status of these areas is established in accordance with federal rules and guidance will New Hampshire be able to fulfill its obligations relative to protecting the NAAQS both in New Hampshire and in our neighboring States.

RTC at 10. NHDES then notes that "[t]his entire process is ongoing and the form, extent, and timing of attainment designations, attainment plans, and, ultimately, emission limitations on existing sources relative to the 2010 1-hour SO<sub>2</sub> NAAQS cannot be predicted at this time. New Hampshire's 2010 1-hour SO<sub>2</sub> attainment evaluation and plan will also address any potential cross-state issues as required by Env-A 615.01 and referenced above." *Id.*

As a preliminary matter, we note that New Hampshire's RTC document cites to N.H. Code Admin. R. Env-A 615.01 (NH Rule 615), which is a state regulation that is not approved into the SIP. However, NH Rule 615 has language similar to NH Rule 616, which was cited by the Petitioner and *is* approved into New Hampshire's SIP. NH Rule 616 therefore is an applicable requirement for Title V purposes. *See* 40 C.F.R. § 52.1525 (providing a list of EPA-approved New Hampshire state regulations). The definition of "applicable requirement" under part 70 is found in 40 C.F.R. § 70.2 and states as follows in relevant part, "[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 Act that implements the relevant requirements of the Act ...." 40 C.F.R. § 70.2, "applicable requirement" paragraph (1). In 1992, the EPA

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<sup>2</sup> The permit record is not clear regarding whether and to what extent New Hampshire relied upon such monitoring information.



approved into the SIP the version of NH Rule 616 that is the current applicable requirement for purposes of the Proposed Permit. *57 Fed. Reg.* 36603, 36605 (Aug. 14, 1992). Title V of the CAA requires that the Proposed Permit must assure compliance with all applicable requirements, including NH Rule 616. *See, e.g.*, 42 U.S.C. § 7661a(b)(5)(A), (C) (minimum elements of a Title V program include requirements that the permitting authority have adequate authority to assure Title V sources' compliance with each applicable standard, regulation or requirement under the Act and assure that "permits incorporate emission limitations and other requirements in an applicable implementation plan"); 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.1(b) (each source subject to Title V is required to have an operating permit that "assures compliance by the source with all applicable requirements"); 40 C.F.R. § 70.7(a)(1)(iv) (an operating permit may be issued only if "[t]he conditions of the permit provide for compliance with all applicable requirements and the requirements of [part 70]").

Although NH Rule 616 is an applicable requirement for purposes of New Hampshire's Title V program, there is no information in the record indicating that NHDES considered the language in NH Rule 616 during its development of the terms and conditions for the Proposed Permit. Nor is there any reasonable interpretation provided in the permit record explaining that either (1) the rule does not apply to the Proposed Permit; or (2) the terms and conditions of the current permit are adequate to satisfy NH Rule 616. Rather, the RTC and the permit record focus on NH Rule 615 (a state rule that is not EPA-approved) and the ongoing and forthcoming designations process in support of the apparent determination that it is "premature" to address any application of NH Rule 616. RTC at 9–10. Thus, what is missing from the permit record is NHDES's explanation of its interpretation of NH Rule 616 as it applies to Schiller in light of the technical and legal information presented in the Petition (which was also presented during the public comment period). Specifically, the permit record must include the state's interpretation and application of Rule 616 as it applies to the case-specific facts of the Schiller facility, including consideration of the information identified in the Petition and the public comments.

In light of the EPA's objection to the Proposed Permit, the following clarification is appropriate regarding the relationship between the designations process and state obligations to address interstate transport. As was noted above, in the RTC, NHDES relies heavily on the ongoing and forthcoming designations process as a basis for not considering a different SO<sub>2</sub> limit for Schiller at this time for any purpose. In particular, NHDES asserts in the RTC that it is premature to address interstate transport of SO<sub>2</sub> emissions at all from Schiller Station until after the designations process is complete and until after the EPA has provided sufficient implementation guidance. *See* RTC at 10. The EPA rejects this assertion as a matter of statutory interpretation. The CAA's "good neighbor" provision, section 110(a)(2)(D)(i)(I), requires states to prohibit emissions that "will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such [NAAQS]." 42 U.S.C. § 7410(a)(2)(D)(i)(I). The EPA has consistently interpreted the statutory requirement to address interstate transport as imposing duties on states that are independent of the designations (or lack thereof) of areas in downwind states. *See* Cross-State Air Pollution Rule, Response to Comments at 72–73, 375, 2516, Docket No. EPA-HQ-OAR-2009-0491-4513 (June 2011); Clean Air Interstate Rule, 70 *Fed. Reg.* 25162, 25265–67 (May 12, 2005); Finding of Significant Contribution and Rulemakings for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone, 63 *Fed. Reg.* 57356, 57370–75 (Oct. 27, 1998); *cf.*



Final Response to Petition from New Jersey Regarding SO<sub>2</sub> Emissions from the Portland Generating Station, 76 *Fed. Reg.* 69052 (Nov. 7, 2011) (granting CAA section 126 petition and imposing controls on a source to address interstate transport as to the 2010 1-hour SO<sub>2</sub> NAAQS before completion of designations for that standard).

In particular, SIP submissions addressing the good neighbor provision are due within 3 years of promulgation of a new or revised NAAQS. 42 U.S.C. § 7410(a)(1), (2). Area designations are also required to occur 2 to 3 years after promulgation of a new or revised NAAQS. 42 U.S.C. § 7407(d)(1)(B)(i). Because designations are required to occur within the same time frame in which states are required to develop the good neighbor portions of their SIPs, the structure of the statute makes clear that Congress did not intend an upwind state to be relieved of its obligation to address transport merely because of a lack of designation of either the affected downwind state or the state containing the contributing source. The EPA interprets this structure of the statute also to suggest that the designations status either of an area containing a source or of an affected downwind area should not be considered relevant to identifying potential downwind air quality problems.<sup>3</sup> The good neighbor provision is concerned both with significant contribution to downwind nonattainment of a standard and with interference with maintenance of such a standard, which provisions are intended to address actual or potential violations of the standard regardless of designations. Finally, the Supreme Court has affirmed that the EPA is not required to provide any implementation guidance before states' interstate transport obligation can be addressed. *See EPA v. EME Homer City Generation*, 134 S.Ct. 1584, 1601 (2014). Therefore, the EPA does not agree with the NHDES's general assertion that it is premature to address interstate transport for the 2010 1-hour SO<sub>2</sub> NAAQS for purposes of CAA section 110(a)(2)(D) because the separate designations process for that standard is not yet complete.<sup>4</sup> This does not mean that every proposed Title V permit must include an analysis of interstate impacts or that the Act's good neighbor provision itself is an applicable requirement, but rather, that a permit must comply with all applicable requirements that are part of an approved SIP. The petition cites to NH Rule 616, which is a part of the New Hampshire SIP and is a Title V applicable requirement for sources in New Hampshire.

In responding to this order, NHDES is directed to explain, on the record for the Proposed Permit, either why no case-by-case analysis as described in NH Rule 616 is necessary based on its reasonable interpretation of that provision, or describe New Hampshire's case-by-case analysis and the result. If in performing the analysis, the state determines that different emission limits are necessary pursuant to NH Rule 616, then the state will need to undertake a permit revision and a new public process on that permit revision.<sup>5</sup> As explained in Section II.B of this Order, even if the state does not determine that a change to the permit is necessary, the revisions to the permit record needed to respond to this order will still be considered a new proposed permit that is subject to the EPA's 45-day review period, as well as another petition opportunity if the EPA

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<sup>3</sup> *Cf. Genon Rema, LLC v. United States EPA*, 722 F.3d 513, 519–22 (3d Cir. 2013) (affirming EPA's view that the functional prohibition on interstate transport is independent of the state implementation planning process); *Appalachian Power Company v. EPA*, 249 F.3d 1032, 1044–48 (D.C. Cir. 2001) (same).

<sup>4</sup> It is unclear what relevance the state ascribes to the fact that designations are incomplete in New Hampshire, as the designations status of areas where in-state sources are located is irrelevant to the impacts of those sources on air quality in other states. *See e.g.*, RTC at 9.

<sup>5</sup> The EPA observes that New Hampshire's interpretation of the requirements of NH Rule 616 applies only to sources in New Hampshire.



does not object during its 45-day review period. In considering how NH Rule 616 may apply in the case-specific facts presented by Schiller Station, the state should consider technical information presented in the Petition as well as other technical information the state may be aware of that informs its interpretation of NH Rule 616 as it applies to Schiller Station at this time. The information and rationale that NHDES relies upon in determining how NH Rule 616 applies to Schiller Station should be included in the permit record.

For the foregoing reasons, the EPA grants the Petition as to this claim.

**Claim B: The Petitioner Claims that the Proposed Permit Fails to Include Emissions Limits for PM<sub>2.5</sub> and Condensable PM.**

**Petitioner's Claim:** The Petitioner claims “the Title V permit for Schiller Station must include separate and distinct limitations and standards for PM<sub>2.5</sub> emissions,” as well as separate limits for condensable PM.<sup>6</sup> Petition at 14–15.

The Petitioner claims that the Proposed Permit must include emission limits for coarse particulate matter (PM<sub>10</sub>) and fine particulate matter (PM<sub>2.5</sub>), rather than for “total suspended particulate” (TSP) alone. *Id.* at 15 (citing Proposed Permit at 15). Additionally, the Petitioner claims that the permit should include limits for condensable PM, rather than only including limits for filterable PM. *Id.* (citing Proposed Permit at 15).

In support of its claim that separate PM<sub>2.5</sub> limits are needed, the Petitioner contends “the PM<sub>2.5</sub> NAAQS is an applicable requirement with which a Title V permit’s emission limitations and standards must assure compliance.” *Id.* at 14. Further, the Petitioner claims that the EPA stated in the preamble to Clean Air Fine Particle Implementation Rule, “the EPA will no longer accept the use of PM<sub>10</sub> emissions information as a surrogate for PM<sub>2.5</sub> emissions information given that both pollutants are regulated by a [NAAQS] and therefore are considered regulated air pollutants.” *Id.* at 15 (quoting Clean Air Fine Particle Implementation Rule, 72 *Fed. Reg.* 20586, 20660 (Apr. 25, 2007)).<sup>7</sup> In support of its claim that separate limits for condensable PM should be included, the Petitioner claims that the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS include consideration of both filterable and condensable PM. *Id.* at 14 (citing <http://www.epa.gov/airquality/particlepollution>). Finally, the Petitioner asserts that the Proposed Permit should include monitoring of PM<sub>2.5</sub> and condensable PM.

**EPA's Response:** For the reasons described below, the EPA denies the Petitioner’s claims that the EPA must object to the permit on the bases described above.

In the RTC, NHDES states, “While 40 CFR 70.5(c), as implemented based upon current USEPA guidance, does require that PM<sub>10</sub>, PM<sub>2.5</sub> and condensable PM emissions information be included

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<sup>6</sup> Specifically, the Petitioner makes this claim in regards to the emission limit for “total suspended particulate” emissions, qualified as referring to “the filterable portion only,” of 0.10 lb/MMBtu for SR4 and SR6 on page 15 of the Proposed Permit. Petition at 15.

<sup>7</sup> Note that this rule was remanded to the EPA by the D.C. Circuit because the court held that the EPA had erred as a matter of law by applying the wrong portion of the Clean Air Act in its implementation rules. *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

in an application for a Title V operating permit, PSNH Schiller Station is not currently subject to any applicable requirements for PM<sub>2.5</sub> or condensable PM. The EPA did not require states to address condensable PM in establishing PM<sub>10</sub> or PM<sub>2.5</sub> emission limits in New Source Review (NSR) permits prior to January 1, 2011.” RTC at 11. NHDES further explains that “the PM and PM<sub>10</sub> Prevention of Significant Deterioration (PSD) applicability emission limitations . . . were established in Permits PO-B-1629 and PO-B-1631 issued on June 25, 1998, when the PM<sub>10</sub> surrogate policy was in effect and prior to the requirement that condensable PM emissions be included in PSD applicability determinations.” *Id.*

The Petitioner does not demonstrate that the state’s rationale for its treatment of particulate matter emissions was unreasonable or inconsistent with the CAA. The Petitioner does not discuss any applicable requirement that would require emission limits for PM<sub>2.5</sub> or condensable PM.

The Petitioner only cites to the PM<sub>2.5</sub> NAAQS as the applicable requirement that would require a separate PM<sub>2.5</sub> emission limit. As explained in Claim A.1 of this Petition, promulgation of a NAAQS does not, in and of itself, result in an applicable requirement in the form of an emission limit for a Title V source. The promulgation of the PM<sub>2.5</sub> NAAQS did not, in and of itself, mandate the emission limits sought by the Petitioner, and the Petitioner does not identify any applicable requirement for Schiller Station that would require emission limits for PM<sub>2.5</sub>.

In support of the need for PM<sub>2.5</sub> emission limits, the Petitioner cites to the 2007 Clean Air Fine Particle Implementation Rule. In both its public comments and Petition, the Petitioner refers only to a short portion of the rule that states that upon “promulgation of this rule, the EPA will no longer accept the use of PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub>.” *Clean Air Fine Particle Implementation Rule*, 72 *Fed Reg.* 20586, 20659 (Apr. 25, 2007). However, this statement merely addresses monitoring, and what the EPA will and will not accept as appropriate monitoring practices for monitoring PM<sub>2.5</sub>. This statement says nothing about PM<sub>10</sub> or PM<sub>2.5</sub> as applicable requirements for a source. Also, this statement does not establish any regulatory requirements. The Petitioner offers no citation or reference to the New Hampshire SIP or other requirement applicable to this source and provides no additional information in its public comments or Petition to support this claim.

To the extent that the Petitioner intends to claim that an applicable requirement requires monitoring for PM<sub>2.5</sub> and condensable PM at the Schiller Station, the Petitioner does not demonstrate the existence of any such applicable requirement. To the extent that the Petitioner intends to argue that provisions must be added to the Proposed Permit to include monitoring adequate to assure compliance with terms and conditions of the permit, the Petitioner’s failure to demonstrate that PM<sub>2.5</sub> and condensable PM emissions limitations should be included in the Proposed Permit negates any argument for corresponding monitoring requirements.

As set forth in Section II.B., above, a petitioner has the burden to demonstrate that a permit is not in compliance with the Act and must clearly and sufficiently articulate the basis for an objection before a Title V petition is granted. *See Sierra Club v. Johnson*, 541 F.3d at 1266–67; *Citizens Against Ruining the Environment v. EPA*, 535 F.3d at 677–78; *Sierra Club v. EPA*, 557 F.3d at 406; and *MacClarence v. EPA*, 596 F.3d at 1130–31 (discussing the burden of proof in Title V petitions). The Petitioner has not met this burden.



For the foregoing reasons, the EPA denies the Petition as to this claim.

**Claim C: The Petitioner Claims that the Proposed Permit Fails to Require Continuous Emissions Monitoring to Assure Adequate Monitoring of PM Emissions**

**Petitioner's Claim:** The Petitioner claims “[t]he conditions within the Proposed Permit for stack testing and ESP monitoring and maintenance are insufficient to ensure that Schiller stays within its PM emission limits.”<sup>8</sup> Petition at 17. In particular, the Petitioner asserts that stack testing every 5 years is impermissibly infrequent, that the ESP monitoring is insufficient, and that opacity monitoring is not an appropriate surrogate for PM monitoring. *Id.* at 15–16. The Petitioner claims that the Proposed Permit should be revised to require a continuous emissions monitoring system (CEMS), or at least annual or more frequent stack testing, for PM. *Id.* at 17.

The Petitioner states that the EPA’s regulations require monitoring sufficient to assure compliance with applicable requirements and cites to the D.C. Circuit decision in *Sierra Club v. EPA* to highlight that the frequency of emission monitoring must reflect the averaging time used to determine compliance. *Id.* at 15–16 (citing *Sierra Club v. EPA*, 536 F.3d 673, 675, 677 (D.C. Cir. 2008); 42 U.S.C. § 7414(a)(3); 40 C.F.R. §§ 64.3(a)(2), 70.6(a)(3)(i)(B), and 70.6(c)(1)).

The Petitioner first claims that stack testing every 5 years will not assure compliance with the short-term emission limit in the permit. Petition at 16. Next, the Petitioner challenges NHDES’s claim that ESP monitoring is an adequate supplement to stack testing. *Id.* The Petitioner asserts that “ESP performance as an indicator must provide a reasonable assurance of ongoing compliance with the Plant’s PM emission limitations.” *Id.* (citing 40 C.F.R. §§ 70.6(a)(1) and 70.2). The Petitioner contends that the Proposed Permit’s required monitoring of ESP total power input is an unreliable proxy for PM emissions monitoring because changes in PM concentration, size distribution, gas flow rate, and the potential for malfunctions of the ESP equipment can decrease the effectiveness of the ESP despite consistent readings of total power input. Petition at 16.

Finally, the Petitioner claims that opacity monitoring is not an appropriate surrogate for PM monitoring. *Id.*<sup>9</sup>

**EPA’s Response:** For the reasons described below, the EPA denies the Petitioner’s claims on multiple bases. First, these issues either were not raised during the public comment period, or second, they were raised and NHDES responded to the issues by making relevant changes to the Proposed Permit, but the Petitioner has not addressed these changes. Third, even if these issues had been raised during the public comment period, the Petitioner did not demonstrate that the EPA must object to the permit on the bases described above.

As a preliminary matter, the comments submitted to NHDES during the public comment period did not raise the Petitioner’s argument regarding the adequacy of ESP monitoring in the Proposed Permit. Therefore, the claim was not raised with reasonable specificity, as required by

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<sup>8</sup> Specifically, the Petitioner makes this claim with regard to selected PM monitoring for SR4 and SR6 on pages 49 and 55 of the Proposed Permit. Petition at 15-16.

<sup>9</sup> The Petitioner also contends in this portion of the Petition that the Proposed Permit must include monitoring of PM<sub>2.5</sub> and condensable PM. *Id.* at 17. The EPA addressed this issue in its response to Claim B.

505(b)(2) of the Act and 40 C.F.R. § 70.8(d). In addition, the Petitioner does not demonstrate that it was impracticable to raise such objections at that time, and there is no basis in the record for finding that grounds for such an objection did not arise until after the comment period closed. The Draft Permit and Proposed Permit contain identical parametric monitoring provisions for the ESPs, so specific details of ESP parametric monitoring were available for comment. The Petitioner cannot raise “very detailed and very specific claims” in the Petition when “no argument or evidence or analysis” were provided to the permitting authority with reasonable specificity during the public comment period. See *In the Matter of Luminant Generating Station*, Order on Petition No. VI-20 11-05 (Jan. 15, 2013) at 11. Since the public comments did not discuss the ESP parametric monitoring for SR4 and SR6, the Petitioner cannot raise this claim now in the Petition, and, thus, this portion of Claim C is denied.

In the RTC, NHDES notes that “if stack testing were the sole means of evaluating compliance with PM emission limits, testing once every five years may not be sufficient” to assure compliance with PM emissions limits. RTC at 6. However, NHDES explains that the Draft Permit contains, in addition to periodic stack testing conducted every 5 years, parametric monitoring of the ESPs. NHDES also explains that it revised the PM monitoring requirements as a result of comments received during the public comment period on the Draft Permit by adding inspection and maintenance requirements for the ESPs to the Compliance Assurance Monitoring (CAM) plan in the Proposed Permit. See *Id.* at 7; Proposed Permit at page 55, Table 8. With this addition, the Proposed Permit utilizes a three-pronged approach for assuring compliance with the PM limit:

1. Periodic (once every 5 years) performance testing to demonstrate compliance with the specified emission limit of 0.10 lb/MMBtu;
2. Continuous parametric monitoring of actual operating conditions of the ESPs; and
3. Periodic inspection and maintenance requirements to ensure that the ESPs continue to operate properly.

RTC at 7.

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). Under the EPA’s regulations at 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. 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). If there are periodic monitoring provisions 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).

The Petitioner did not demonstrate that the Proposed Permit’s monitoring requirements for PM, viewed as a whole, are insufficient to assure compliance with the applicable PM emission limits.



As discussed above, in addition to requiring stack testing, the Proposed Permit includes requirements for continuous parametric monitoring of the ESPs and periodic ESP inspection and maintenance. Although CEMS may be the preferred type of monitoring in some instances, CEMS are not always necessary to assure compliance with applicable requirements. Section 504(b) of the Act, which authorizes the EPA to promulgate monitoring rules, provides that “continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.” 42 U.S.C. § 7661c(b). *See also In the Matter of Alliant Energy WPL-Edgewater Generating Station*, Order on Petition Number V-2009-02 (Aug. 17, 2010) at 11. The Petitioner neither identifies an applicable requirement that compels the use of CEMS nor demonstrates that CEMS are the only monitoring method that can assure compliance with the applicable requirements. *In the Matter of Scherer Steam-Electric Generating Plant Juliette, Georgia, et al.*, Order on Petition Nos. IV-2012-1, IV-2012-2, IV-2012-3, IV-2012-4, and IV-2012-5 (Apr. 14, 2014) at 12–13; *In the Matter of EME Homer City Generation LP, et al.*, Order on Petition No. III-2012-06, III-2012-07, and III-2013-02 (July 30, 2014) at 37–38.

The Petitioner does not demonstrate that the monitoring approach, when viewed as a whole – stack testing every 5 years in conjunction with continuous parametric ESP monitoring based on the secondary voltage operating ranges, and inspection and maintenance requirements of the ESPs – is inadequate to assure compliance with the PM emission limits for SR4 and SR6. Furthermore, the Petitioner’s claim that stack testing every 5 years is too infrequent and needs to correspond to the averaging time of the PM limit neglects to consider that the ESPs are monitored *continuously* for excursions from the indicator range of 25 kilovolts. As stated above, NHDES has explained that assurance of compliance with the PM emission limits is achieved via the three-pronged approach consisting of stack testing conducted every 5 years, parametric monitoring of the ESPs, and inspection and maintenance protocols for the ESPs.

Even if the comments had raised the Petitioner’s claim regarding the parametric ESP monitoring, the Petition does not demonstrate that the ESP monitoring is insufficient to assure compliance with PM emission limits, when used in conjunction with stack testing and periodic ESP inspection and maintenance, as the Proposed Permit describes. The Proposed Permit requires that PSNH conduct continuous monitoring of the secondary voltage of the ESP for excursions from the indicator range and perform inspection and maintenance that includes ensuring proper operation of the collector rapper control system. *See Proposed Permit at 55; RTC at Attachment B.* As explained in Proposed Permit, a secondary voltage below 25 kilovolts ensures that the gas-flow is appropriately charged, which causes PM to adhere to the collector plates in the ESP. Maintaining proper operation of the collection rapper control system ensures that the PM is removed and collected from the collector plates at regular intervals. *Id.* The EPA has been consistent that the use of secondary voltage for ESPs can provide a reasonable assurance of compliance with PM emission limits when combined with other elements. *See In the Matter of EME Homer City Generation LP, et al.*, Order on Petition No. III-2012-06, III-2012-07, and III-2013-02 (July 30, 2014) at 37–38. The Petitioner does not demonstrate that the selected indicator range for continuously monitoring secondary voltage of the ESPs is inappropriate. Instead, the Petitioner lists other components of the ESPs that the Petitioner asserts should be monitored, but the Petitioner does not explain why it believes these other components must be monitored. The Petitioner did not demonstrate that the Proposed Permit must be modified to

account for alleged variations in the gas flow rate, PM concentration, size distribution or other factors, in light of the current terms and conditions of the permit. The Petitioner identified technical points, such as gas flow rate variation, and others; however, the Petitioner did not provide a basis on which one might conclude that the Permit's PM monitoring requirements fail to assure compliance with the applicable PM emission limits. Additionally, the Petitioner did not explain why ESP malfunctions are not accounted for in the parametric ESP monitoring and the periodic inspection and maintenance plan. As explained previously, the Proposed Permit contains a three-pronged approach for assuring compliance with the PM emission limits consisting not only of parametric monitoring of the ESPs, but also stack testing conducted every 5 years and ESP inspection and maintenance protocols. The Petitioner did not demonstrate that this combination of monitoring does not provide an adequate assurance of compliance.

As outlined in Section II.B, under Title V a petitioner has the burden to demonstrate to the EPA that a permit is not in compliance with the requirements of the Act. *Sierra Club v. Johnson*, 541 F.3d at 1266–67; *Citizens Against Ruining the Environment v. EPA*, 535 F.3d at 677–78; *Sierra Club v. EPA*, 557 F.3d at 406; and *MacClarence v. EPA*, 596 F.3d at 1130–31 (discussing the burden of proof in Title V petitions). Because the Petitioner did not address the overall monitoring scheme for the PM limits in the permit, the Petitioner did not demonstrate that the monitoring requirements in the permit are insufficient to assure compliance with the PM limits. *In the Matter of Scherer Steam-Electric Generating Plant Juliette, Georgia, et al.*, Order on Petition Nos. IV-2012-1, IV-2012-2, IV-2012-3, IV-2012-4, and IV-2012-5 (April 14, 2014) at 17–18. As a result, the Petitioner did not demonstrate that the permit is not compliance with the CAA on this basis.

Finally, regarding the Petitioner's claim that opacity monitoring is not an appropriate surrogate for PM monitoring, the Proposed Permit does not rely on opacity monitoring for monitoring compliance with the PM emission limits. Instead, the Proposed Permit relies on opacity monitoring to satisfy the visible emissions standards located at N.H. Code. Admin. R. Env-A 2002.01. *See* Proposed Permit at 22, 39. As discussed earlier, for PM monitoring, the Proposed Permit relies on the three-pronged monitoring approach of stack testing every 5 years, continuous parametric ESP monitoring, and periodic ESP inspection and maintenance. The Petitioner did not explain where in the Proposed Permit opacity monitoring may be used as a surrogate for PM monitoring. As a result, the Petitioner did not demonstrate that the permit is not compliance with the CAA on this basis.

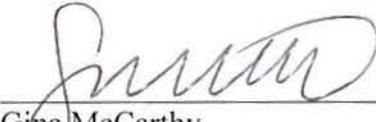
For the foregoing reasons, the EPA denies the Petition as to this claim.



**V. CONCLUSION**

For the reasons set forth above and pursuant to CAA § 505(b)(2), N.H. Code Admin. R. Env-A 600, and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the Petition as to the claims described herein.

Dated: 7/28/2015

  
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Gina McCarthy  
Administrator