

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
CONSOLIDATED EDISON CO. OF	)	ORDER RESPONDING TO
NEW YORK, INC., 74 <sup>TH</sup> ST. STATION	)	PETITIONER'S REQUEST THAT
	)	THE ADMINISTRATOR OBJECT
Permit ID: 2-6204-00019/00006	)	TO ISSUANCE OF A
Facility DEC ID: 2620400019	)	STATE OPERATING PERMIT
	)	
Issued by the New York State	)	
Department of Environmental Conservation	)	Petition No.: II-2001-02
Region 2	)	
_____	)	

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

On May 14, 2001, the Environmental Protection Agency ("EPA") received a petition from the New York Public Interest Research Group, Inc. ("NYPIRG" or "Petitioner") requesting that EPA object to the issuance of a state operating permit, pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, to Consolidated Edison's 74<sup>th</sup> Street generating station (Con Ed). The Con Ed permit was issued by the New York State Department of Environmental Conservation, Region 2 ("DEC"), and took effect on August 16, 2001, pursuant to title V of the Act, the federal implementing regulations, 40 CFR part 70, and the New York State implementing regulations, consisting of portions of 6 NYCRR parts 200, 201, 621, and 624.

The petition alleges that the Con Ed permit does not comply with 40 CFR Part 70 in that (1) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR §§ 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate monitoring and are not practically enforceable; (2) DEC violated the public participation requirements of 40 CFR § 70.7(h) by inappropriately denying NYPIRG's request for a public hearing; (3) the permit is based on an incomplete permit application in violation of 40 CFR § 70.5(c); (4) the permit is accompanied by an insufficient statement of basis as required by 40 CFR § 70.7(a)(5); (5) the permit distorts the annual compliance certification requirement of Clean Air Act § 114(a)(3) and 40 CFR § 70.6(c)(5); (6) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR §§ 70.1(b) and 70.6(a)(1) because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance, and upset conditions; and (7) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B). The Petitioner has requested that EPA object to the issuance of the Con Ed Permit pursuant to § 505(b)(2) of the Act and 40 CFR § 70.8(d) for any or all of these reasons.

Subsequent to receipt of the NYPIRG petition, the EPA performed an independent and

in-depth review of the Con Ed permit. Based on a review of all the information before me, including the petition; the permit application; a January 26, 2001 letter from Elizabeth Clarke of DEC to Steven C. Riva of EPA transmitting the “Responsiveness Summary” or “DEC response to NYPIRG comments”; and the Con Ed Final Permit dated August 16, 2001, I deny in part and grant in part the Petitioner’s request that I object to this permit, for the reasons set forth in this Order. Petitioner has raised valid issues on the Con Ed permit, which has resulted in our granting portions of the petition. This petition also raised programmatic issues, some of which DEC has already addressed and others which DEC is in the process of addressing. *See* letter dated November 16, 2001 from Carl Johnson, Deputy Commissioner, DEC to George Pavlou, Director, Division of Environmental Planning and Protection, EPA Region 2 (“commitment letter” or “November 16 letter”).

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

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted interim approval to the title V operating permit program submitted by the State of New York effective December 9, 1996. 61 Fed. Reg. 57589 (Nov. 7, 1996); *see also* 61 Fed. Reg. 63928 (Dec. 2, 1996) (correction); 40 CFR part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to New York’s title V operating permit program based, in part, on “emergency” rules promulgated by DEC. 66 Fed. Reg. 63180 (Dec. 5, 2001). Once DEC adopted final regulations to replace the emergency rules, EPA granted full approval to New York’s title V operating permit program based on these final rules. 67 Fed. Reg. 5216 (Feb. 5, 2002). Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as “applicable requirements”) but does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, States, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under §§ 505(a) and (b)(1) of the Act and 40 CFR §§ 70.8(a) and (c)(1), States are required to submit all operating permits proposed pursuant to title V to EPA for review, and EPA will object to permits determined by the Agency not to be in compliance with applicable requirements or the requirements of 40 CFR part 70. If EPA does not object to a permit on its own initiative, § 505(b)(2) of the Act and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA’s 45-day review period, to object to

the permit. To justify exercise of an objection by EPA to a title V permit pursuant to § 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with the requirements of the Act, including the requirements of part 70. Petitions must, in general, be based on objections to the permit that were raised with reasonable specificity during the public comment period.<sup>1</sup> A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of the objection. If EPA objects to a permit in response to a petition and the permit has been issued, the permitting authority or EPA will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

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

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

EPA received a letter dated November 16, 2001, from DEC Deputy Commissioner Carl Johnson, committing to address various program implementation issues by January 1, 2002, and to ensure that the permit issuance procedures are in accord with state and federal requirements. DEC's fulfillment of the commitments set forth in the November 16, 2001 letter will resolve some administration problems. EPA is monitoring New York's title V program to ensure that the permitting authority is implementing the program consistent with its approved program, the Act, and EPA's regulations. According to a recent review, DEC has made necessary changes, and is substantially meeting its commitments.<sup>3</sup> As a result, EPA has not issued a notice of

---

<sup>1</sup> See CAA § 505(b)(2); 40 CFR § 70.8(d). Petitioner commented during the public comment period, raising concerns with the draft operating permit that are the basis for this petition. See Letter from Keri Powell, Esq. and Larry Shapiro, Esq., of NYPIRG to DEC (September 3, 1999) ("NYPIRG Comment Letter").

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

<sup>3</sup> See letters dated January 13, 2003, and March 7, 2002, from Steven C. Riva, Chief, Permitting Section, USEPA Region 2 to John Higgins, Chief, Bureau of Stationary Sources, DEC. The purpose of this EPA review was  
(continued...)

deficiency at this time. Failure to properly administer or enforce the program will result in issuance of a Notice of Deficiency pursuant to § 502(i) of the Act and 40 CFR § 70.10(b) and (c).

## **I. Problems With Specific Permit Conditions**

Petitioner's first claim is that the permit does not assure compliance with all applicable requirements as mandated by 40 CFR §§ 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate monitoring and are not practically enforceable. Petition at page 3. The Petitioner addresses individual permit conditions that allegedly either lack monitoring or are not practically enforceable.<sup>4</sup> The specific allegations for each permit condition are discussed below. EPA is granting in part and denying in part Petitioner's request that the Administrator object to issuance of the permit, as delineated below.

### **A. Process-Specific Permit Conditions**

#### **1. Very Large Boilers**

The Final Permit dated August 16, 2001 identifies three boilers, each rated at 836 MMBTU/hr, which are permitted based on residual oil and natural gas being used as fuels. In addition, the earlier Proposed Permit authorized the burning of waste fuel A. Petitioner raises issues relating to emissions from the use of each fuel, as described below.

---

<sup>3</sup>(...continued)

to determine whether DEC is making changes to public notices and to select permit provisions as it committed in its November 16, 2001 letter.

<sup>4</sup> With respect to lack of what the Petitioner refers to as adequate "periodic" monitoring, NYPIRG cites two separate regulatory requirements: 40 CFR § 70.6 (a)(3) which requires monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance; and § 70.6 (c)(1) which requires permits to contain testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. In all the monitoring issues presented here, where we have concluded that additional monitoring is needed, either the underlying applicable requirement imposes no monitoring of a periodic nature or the applicable rule contains sufficient periodic monitoring but it was not properly carried over into the permit. Therefore, we are addressing them exclusively under 40 CFR § 70.6(a)(3) and do not rely on 40 CFR § 70.6(c)(1). The scope of applicability of § 70.6(a)(3) was addressed by the US Court of Appeals for the DC Circuit in *Appalachian Power v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000). The court concluded that, under section 40 CFR § 70.6(a)(3)(i)(B), the periodic monitoring rule applies only when the underlying applicable rule requires "no periodic testing, specifies no frequency, or requires only a one-time test." *Id.* at 1020. The *Appalachian Power* court did not address the content of the periodic monitoring rule where it does apply, i.e., the question of what monitoring would be sufficient to "yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as is required by 40 C.F.R. §70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). It is this issue that is raised by the petition at bar.

### **a. Natural Gas and NO<sub>x</sub> Limitations**

Petitioner makes two points about NO<sub>x</sub> limits applicable to this facility. First, Petitioner avers that there are conflicting limits for NO<sub>x</sub> in the permit and apparently no limits at all for NO<sub>x</sub> for certain units. Second, the permit authorizes the use of natural gas though the petitioner asserts that the facility is not equipped for natural gas and the use of natural gas would require a modification which the title V permit cannot authorize.

The final permit issued by the DEC on August 16, 2001, contains no specific NO<sub>x</sub> emission limits for the combustion equipment. According to Condition 46 of the permit, the facility operates under a system-wide NO<sub>x</sub> plan which is part of the approved SIP and attached to the permit. 6 NYCRR 227-2.5(b). Under that plan, total NO<sub>x</sub> emissions are limited for the Consolidated Edison electric power system as a whole. The emission point-specific emission limits contained in the SIP regulations are used to establish this system-wide limit, but the system-wide limit is the enforceable limit. As in this case, when a NO<sub>x</sub> RACT system wide plan is applicable, emission limits formerly required under the regulations are replaced by a system-wide averaging plan. The requirements that normally would be applied to a specific unit are subsumed and are applied through a weighted average as defined in 6 NYCRR § 227-2.2(b)(20). According to the permit, this facility is averaged with Consolidated Edison facilities in the five boroughs of New York City, pursuant to a system-wide averaging plan which is attached to the permit as an enforceable requirement. Thus, Petitioner's request for an objection on the basis that specific emission limits are not included for each unit is without merit.

Moreover, Petitioner's claim that the attached NO<sub>x</sub> plan is too complex for review is not a basis for objection. The plan incorporated into the permit must be consistent with the SIP approved rules and EPA cannot properly object to a permit term that is derived from a provision of the federally approved SIP. Such a provision is inherently a part of the "applicable requirement" as that term is defined in 40 CFR § 70.2, and the Administrator may not, in the context of reviewing a potential objection to a title V permit, ignore or revise duly approved SIP provisions. *See In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, petition Number VIII-00-1, ("Pacificorp"). Furthermore, averaging plans are complex by their nature and are generally only manageable and enforceable through computer systems. EPA believes that the DEC's management of these averaging plans is adequate.

Petitioner also asserts that units appear to be permitted to operate on natural gas, but they are not equipped to fire with natural gas. Petitioner contends that operating with natural gas would necessitate a modification of the units requiring a construction permit or new source approval and, therefore, this permit cannot authorize operation with natural gas. Although the Petitioner failed to raise this issue during the public comment period and raises it for the first

time in this petition, EPA will address it here.<sup>5</sup>

In its January 6, 2003, response to the NYPIRG petition, Con Ed has acknowledged that its boilers are not equipped to combust natural gas and the facility would have to be modified in order to allow it to do so in the future. “Response of Consolidated Edison Company of New York, Inc. to the Petition of the New York Public Interest Research Group, Inc.,” dated January 6, 2003, at p.1 and p.3, item 3. Such a change at the facility presumably would require an appropriate pre-construction permit, which would in turn require revision of the operating permit before the facility is authorized to fire natural gas. Accordingly, petitioner’s concerns are without merit.

## **b. Residual Oil**

### **i. Sulfur Monitoring**

Petitioner presents two claims relating to the sulfur-in-fuel limitations in the Con Ed permit. First, Petitioner alleges that the vague monitoring description in Condition 61 of the Proposed Permit is insufficient to satisfy 40 CFR part 70 requirements. Second, Petitioner asserts that the permit lacks the applicable sulfur limit for residual oil found in 6 NYCRR § 225-1.2. Petition at page 5. Petitioner is concerned not only that the permit specifies the monitoring protocols without relating them to the fuel sulfur limits, but also that the monitoring is not prescriptive enough to be practically enforceable. Petitioner states that if Con Ed does not perform representative sampling and fuel sulfur analysis in a manner that is acceptable to the Commissioner, then the regulation at 6 NYCRR § 225-1.7(b) would require Con Ed to install continuous monitors for sulfur dioxide.

Petitioner’s first claim relates to the monitoring condition in the Proposed Permit at Item 61.2. This condition cites 6 NYCRR § 225-1.7, which prescribes monitoring methods for determining compliance with fuel sulfur limits found at 6 NYCRR § 225-1.2, referenced in Condition 39 of the Proposed Permit.

The Proposed Permit, at Condition 39, and the Final Permit, at Conditions 41 and 42, prescribe in-fuel sulfur limits as stipulated at 6 NYCRR § 225-1.2 (prohibition on transacting fuel based on sulfur content). Further, at those same conditions, the Final Permit states that monitoring of sulfur content will be performed per delivery of fuel, and monthly reports will be submitted to the NYSDEC. In addition, Condition 43 in the Final Permit states that monitoring data must be retained on site for three years and reported monthly, pursuant to 6 NYCRR § 225-

---

<sup>5</sup> 40 CFR § 70.8(d) provides, in pertinent part, “Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period. *See also* CAA § 505(b)(2).”

1.8. Although the Final Permit includes revisions that improve the description of monitoring of sulfur in the fuel used by Con Ed, EPA agrees with Petitioner that these conditions, as stated, do not meet all of the monitoring requirements of 40 CFR part 70. Specifically, 40 CFR § 70.6(a)(3)(ii)(B) requires facility owners or operators to retain all monitoring-related records for a period of at least five years from the time that the monitoring was performed. Therefore, EPA grants the petition with respect to this issue. As such, DEC must revise Condition 43 to state that: “All records shall be available for a minimum of five years.”

Petitioners second claim regarding the need to install continuous monitors is without merit. 6 NYCRR § 225-1.7(b) is not applicable in this instance because the facility is not equipped with sulfur dioxide control equipment nor is the facility required to have such control equipment. *See* § 225-1.7(b)(2) (listing an exception to the general requirements of § 225-1.7(b)).

## **ii. Particulate Monitoring**

Petitioner alleges that the monitoring included in the Proposed Permit at Conditions 62 and 81 is insufficient to assure compliance with the applicable particulate matter (PM) emissions limit found at 6 NYCRR § 227-1.2(a)(1). Petition at page 5.

Federal regulations at 40 CFR § 70.6 set forth requirements for operating permits issued by state programs established under title V of the Clean Air Act. Under the “periodic monitoring” provisions of 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2), “[w]here the applicable requirement does not require periodic testing or non-instrumental monitoring,” an operating permit must include such monitoring as is “sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit...”<sup>6</sup>

There are no provisions in the New York SIP requiring particulate matter monitoring for stationary combustion installations such as the Consolidated Edison of New York, 74<sup>th</sup> Street Station.<sup>7</sup> Accordingly, DEC added “periodic” monitoring into the Final Permit.

The Final Permit specifies stack testing once each permit term at Condition 82 (Condition 62 of the proposed permit). Nonetheless, EPA is granting the Petitioner’s request and requiring DEC to include appropriate permit conditions for monitoring that meet the requirements of section 70.6(a)(3)(i)(B) and section 201-6.5(b)(2) . Specifically, there are

---

<sup>6</sup> *See supra* footnote 4.

<sup>7</sup> New York’s SIP prohibits particulate matter emissions from stationary combustion installations in excess of certain prescribed limits but does not establish or require monitoring of such emissions.

known operating variables that impact on PM and other combustion emissions of power boilers firing fuel oil, such as the air flow rate to the burner, and the fuel sulfur content. Also, fouling and scale deposits which must be periodically removed affect boiler performance and impact on PM and other combustion emissions. Therefore, in this case prescribing stack testing once each permit term, in the absence of additional parametric monitoring and other maintenance procedures, is inadequate to satisfy emissions compliance for the relevant time period, nor would such monitoring yield data that are representative of the source's compliance with its Permit Conditions and the New York SIP.

These new permit conditions should direct Con Ed to monitor and maintain records of those operating parameters that are known to impact on PM emissions. Con Ed and the DEC may elect to use parametric monitoring and/or more frequent stack testing to satisfy both the periodic compliance monitoring of PM emissions and monitoring to assure compliance. When selecting parametric monitoring criteria, Con Ed should establish operational limits, or a performance range, for those parameters that are selected that assure compliance with the PM limitation. The monitoring reports required by the permit must include any exceedances of the range limits and describe any remedial response to the exceedance. Such monitoring should account for deterioration of the boilers' performance. Therefore, for the reasons cited above, EPA grants the petition on this issue, and requires DEC to develop and present a monitoring regime to assure compliance as a condition of the permit. DEC is also reminded to include in the Statement of Basis an explanation of how the monitoring regime assures compliance with the PM emissions limit.

### **c. Waste Fuel**

Petitioner asserts that Conditions 67 - 70 of the Proposed Permit, which place limits on the PCB, halogens, and heat content of waste fuel, must include appropriate testing and monitoring provisions. Petition at page 6. Also, with respect to sulfur content and particulate matter, Petitioner presents arguments that are similar to those addressed above in sections A(1)(b)(i) and (ii), asserting that the monitoring for these parameters is also insufficient.

When DEC responded to two comments that were related to this issue, DEC noted that Con Ed had only applied to burn Waste Fuel A, not Waste Fuel B, and that DEC was requesting additional information from Con Ed to include appropriate details in the permit. Response at page 8, "Requirements for Firing Waste Fuel A," and "Monitoring Fuel." Subsequently, in response to comments submitted by EPA by e-mail on March 15, 2001, DEC responded that no operator in the county of New York (Manhattan) may burn Waste Fuel A, pursuant to the SIP at 6 NYCRR § 225-2.3(a) and (b). Thus, DEC removed all conditions from the permit that referenced the burning of waste fuel. The Final Permit does not authorize the burning of waste fuel in any emissions unit at this Con Ed facility. Therefore, EPA denies the petition because this issue is moot.

### **d. Quality Assurance for Continuous Monitors**



Petitioner alleges that the permit must include methods by which Con Ed will test that its continuous monitors (CEMs) for NO<sub>x</sub> are operating properly. Petition at page 6. Although this issue appears not to have been raised during the comment period in the state proceedings, we will address it briefly here.

Petitioner makes the statement that although Condition 73 of the draft permit requires CEMs, the condition fails to require Con Ed to perform any maintenance or testing on the monitors to ensure that they are functioning properly. The Final Permit does not include the language used at Condition 73 and instead established, at Condition 64, requirements for installation, certification, and data accounting for CEMs. These newly prescribed criteria reference the applicability of 40 CFR §§ 75.71 and 75.72, with regard to any NO<sub>x</sub> monitoring system that is used at a NO<sub>x</sub> Budget unit, as is the case for Con Ed's "Very Large Boilers" and "Large Boilers." Specifically, Appendix B of Part 75 prescribes extensive QA/QC procedures for the installation and maintenance of CEM-based NO<sub>x</sub> emission monitoring systems. Therefore, the referenced QA/QC procedures already include the means of assuring that the monitoring equipment works properly and records data properly. In this instance, the permit references applicable requirements through citation, rather than by reprinting the requirements themselves. For a discussion of incorporation by reference in permits, *see* White Paper Number 2, at pages 36 through 38. The standard test methods and monitoring methods are fully adequate as codified and EPA does not believe that they require further refinement on a case-by-case basis. Therefore, this issue raised by Petitioner is denied.

## **2. Large Boilers**

The Final Permit dated August 16, 2001 identifies six boilers each rated at 180 MMBTU/hr which are permitted to burn residual oil and natural gas. In addition, the Proposed Permit authorized the burning of waste fuel A. Petitioner raises issues relating to emissions from the use of each fuel, as described below.

### **a. Natural Gas and NO<sub>x</sub> limitations**

Petitioner notes that the Proposed Permit lacked a NO<sub>x</sub> emissions limit applicable to the large boilers while firing natural gas. Petition at page 7. This issue has been addressed above in section (A)(1)(a), for the "very large boilers."

As previously discussed in Section (A)(1)(a) above, when a NO<sub>x</sub> RACT system wide plan is applicable, emission limits formerly required under the regulations are replaced by a system-wide averaging plan. The requirements that would be applied to a specific unit are subsumed and are applied through a weighted average as defined in 6 NYCRR § 227-2.2(b)(20). However, the limits are an integral part of the average calculation and therefore, it is important that they be properly included in the calculation procedure. The Petitioner has not alleged that the system-wide averaging procedure is in error. Therefore, the petition is denied as to this issue.

## **b. Residual Oil**

### **i. Sulfur monitoring**

Petitioner asks EPA to respond to the claims identified in section (A)(1)(b)(i), above, as they apply to Con Ed's large boilers. Specifically, Petitioner alleges that the vague monitoring description in Condition 64 of the Proposed Permit is insufficient to satisfy 40 CFR part 70 requirements. Second, Petitioner asserts that the permit lacks the applicable sulfur limit for residual oil found in 6 NYCRR § 225-1.2. Petition at page 6.

As discussed at section (A)(1)(b)(i) for the "very large boilers", EPA is granting the petition to require Con Ed to retain its sulfur monitoring records for five years. All of the previous comments made at the above referenced section with respect to the "very large boilers" apply equally to the "large boilers". The Final Permit addresses these sulfur requirements on a facility-wide level, at Conditions 41, 42 and 43. Thus, these conditions apply equally to the "large boilers" as to the "very large boilers."

### **ii. Particulate Monitoring**

Petitioner asks EPA to respond to the claims identified in section (A)(1)(b)(ii), above, as they apply to Con Ed's large boilers. Specifically, Petitioner alleges that the monitoring included in the Proposed Permit at Conditions 65 and 81 is insufficient to assure compliance with the applicable particulate matter (PM) emissions limit found at 6 NYCRR § 227-1.2(a)(1). Petition at page 6.

As discussed above in section (A)(1)(b)(ii), EPA is granting the Petitioner's request and requiring DEC to include appropriate permit conditions that direct Con Ed to monitor and maintain records of operating parameters that it believes must be tracked to ensure good combustion practices are followed and compliance is assured.

## **c. Waste Fuel**

Petitioner asks EPA to respond to the claims identified in section (A)(1)(c), above, as they apply to Con Ed's large boilers. Specifically, Petitioner asserts that Conditions 75-77 of the Proposed Permit, which place limits on the PCB, halogens, and heat content of the waste fuel, must include appropriate testing and monitoring provisions. Petition at page 7. Petitioner also presents similar arguments to those addressed earlier, asserting that the monitoring for sulfur content and particulate matter, when firing waste fuel, is insufficient. Finally, Petitioner includes a claim regarding the frequency of stack testing for NO<sub>x</sub> while burning waste fuel. Petition at page 7.

As discussed above in section (A)(1)(c), EPA is denying the petition on this issue because

the Final Permit does not authorize the burning of waste fuel in any emissions unit at this Con Ed facility.

### **3. Combustion Turbines**

The Final Permit identifies two combustion turbines each rated at 223 MMBTU/hr and permitted to burn distillate oil.

#### **a. Sulfur monitoring**

Petitioner asks EPA to respond to the claims identified in section (A)(1)(b)(i), above, as they apply to Con Ed's combustion turbines. Specifically, Petitioner alleges that the vague monitoring description in Condition 56 of the Proposed Permit is insufficient to satisfy 40 CFR part 70 requirements. Petition at page 7.

As discussed above, EPA is granting the petition to require Con Ed to retain its sulfur monitoring records for five years. Because the Final Permit addresses these sulfur requirements on a facility-wide level, Conditions 41, 42 and 43 of the Final Permit apply equally to the combustion turbines as to the other emissions units at the Con Ed 74<sup>th</sup> Street facility.

#### **b. Particulate Monitoring**

Petitioner asks EPA to respond to the claims identified in section (A)(1)(b)(ii), above, as they apply to Con Ed's combustion turbines. Specifically, Petitioner alleges that the monitoring included in the Proposed Permit at Conditions 57, which references Condition 62, which in turn references Condition 81, is insufficient to assure compliance with the applicable PM emissions limit found at 6 NYCRR § 227-1.2(a)(1). Petition at page 7.

As discussed above at (A)(1)(b)(ii), EPA is granting the Petitioner's request and requiring DEC to include appropriate permit conditions that direct Con Ed to monitor and maintain records of operating parameters that it believes must be tracked to ensure good combustion practices are followed and compliance is assured.

#### **c. NO<sub>x</sub> Monitoring**

Petitioner contends that Condition 58, of the Proposed Permit, violates 40 CFR part 70 by failing to require Con Ed to perform monitoring that is sufficient to assure compliance with the applicable NO<sub>x</sub> RACT requirement from 6 NYCRR § 227-2.4 (e)(1). Specifically, a "single occurrence" monitoring frequency, as specified, is inadequate. Petition at page 7.

The New York SIP at 6 NYCRR § 227-2.6(a)(6) specifies certain stack testing requirements Con Ed must utilize to comply with the applicable NO<sub>x</sub> emission limit. The regulations, however, do not provide for the frequency of such testing. As such, in the Final

Permit NYSDEC included a condition which requires stack testing once each permit term, (Condition 72). This periodic monitoring, however, is inadequate to assure that the turbines continue to perform within their permissible emission limit. Specifically, in these circumstances such infrequent stack testing is not “sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.” 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). As noted earlier in section A.1.b.ii., combustion emissions are affected by various operating variables and operating conditions, including those that relate to general maintenance procedures at a combustion source. Therefore, it is essential that the permit specify additional monitoring requirements for these turbines. EPA recommends using the various parameter ranges which were recorded by the source during the most recent stack testing, when NO<sub>x</sub> emission limits were successfully demonstrated, to develop and prescribe surrogate monitoring for the turbines. Thus, EPA is granting the petition on this issue and requiring DEC to revise the permit to include, in addition to annual tune-ups, those parametric monitoring and other operating procedures that Con Ed follows in ensuring that the NO<sub>x</sub> RACT emissions limits are complied with.

## **II. General requirements that Apply to All Facility Processes**

### **1. NO<sub>x</sub> RACT Plan**

Petitioner states that the Proposed Permit does not provide enough information about Con Ed’s NO<sub>x</sub> Averaging Plan, referenced under 6 NYCRR § 227-2 at Condition 47, for the public to understand how Con Ed determines compliance with NO<sub>x</sub> RACT. Petition at pages 7-8. More specifically, Petitioner states that “Condition 47 refers to an assortment of documents that apparently set out the procedures, but these documents are not included with the permit.” It is unacceptable, Petitioner continues, for a permit to refer to a myriad of documents that are not readily accessible to the public.

Petitioner is correct in making the above claims regarding the Proposed Permit. However, in the Final Permit, DEC remedied the problem. At Condition 46, Item 46.2, the Final Permit references only one NO<sub>x</sub> RACT Compliance Plan. Further, that condition states that the NO<sub>x</sub> RACT Plan is attached and incorporated as an enforceable part of the permit. Therefore, the Final Permit satisfies part 70's requirement that the NO<sub>x</sub> RACT Plan be available to the public. For this reason, EPA denies the petition as the issues originally raised by Petitioner have been addressed in the Final Permit.

### **2. NO<sub>x</sub> Budget Rules**

Petitioner alleges that Condition 49 of the Proposed Permit, while setting out the requirements of New York’s NO<sub>x</sub> Budget rule contained in 6 NYCRR § 227-3, does not provide sufficient detail regarding Con Ed’s obligations with respect to that Rule. According to Petitioner, Condition 49 indicates that Con Ed was required to submit a monitoring plan by May

1, 1999, but there is no mention of that monitoring plan in either the Proposed Permit or the Statement of Basis. Similarly, according to Petitioner, Condition 49 requires initial performance testing and periodic calibration of the monitoring systems, yet, there is no mention in the permit regarding when testing or calibration will occur. Petition at page 8.

Petitioner is incorrect in stating that the Proposed Permit (Condition 48 of the Final Permit) lacks sufficient details regarding Con Ed's obligations with respect to the NO<sub>x</sub> Budget Rule. Condition 48 specifically references the facility's obligation to produce a monitoring plan and DEC's failure to reference this plan elsewhere in the permit does not contravene part 70's requirements.<sup>8</sup> Furthermore, the Final Permit directly incorporates several conditions which are part of the monitoring plan. First, the Final Permit includes three facility-wide conditions in addition to the two that were present in the Proposed Permit. *See* Final Permit Conditions 47 through 51. Further, Conditions 74 through 81 address specific testing obligations pertaining to the combustion turbines and very large boilers. (The large boilers are not subject to § 227-3.) Lastly, the Final Permit includes the requirements of 6 NYCRR part 204, New York's newest NO<sub>x</sub> Budget Rule, with which all of Con Ed's emissions units must comply. Each of the Conditions 56 through 69 incorporates applicable requirements from 6 NYCRR part 204. With respect to calibration of monitors, many of the conditions reference 40 CFR part 75. In particular, Appendix B of part 75 specifies quality assurance procedures, including daily assessments, which may include calibration error tests and flow interference checks. Thus, EPA finds no need for additional detail regarding Con Ed's monitoring plan or the frequency of quality assurance procedures in the permit. Accordingly, EPA denies the petition with regard to this issue.

### **3. Opacity Monitoring**

Petitioner contends that the permit must include the manufacturer's instructions for installation of continuous opacity monitors (COMs) because of a requirement to install the monitors according to manufacturer's specifications. Petition at page 8. Although this issue was not raised during the state's comment period rather than dismiss this issue without comment, EPA will address it briefly.<sup>9</sup>

The design, performance, and installation of continuous monitors is generally governed by EPA standards found at 40 CFR Part 60, Appendix B. There is sufficient detail in the EPA methods for the manufacturers and purchasers to address proper specification and installation of the monitors. EPA does not require that these complex procedures be reproduced in the permit or that they be customized for each and every installation. They are understandable and

---

<sup>8</sup> EPA's records indicate that, in accordance with 6 NYCRR § 227-3.13, on December 8, 1998, Con Ed submitted a monitoring plan. Later, on March 31, 1999, Con Ed submitted a revised plan. This plan, referenced at Condition 49, is part of the facility's permit record and is an enforceable part of the permit.

<sup>9</sup> *See supra* footnote 5.

enforceable as technical criteria. The petition is therefore denied with respect to this issue.

#### **4. Coatings and Sealers**

Petitioner contends that Conditions 31 to 34 of the Proposed Permit lack appropriate monitoring and record keeping provisions to assure Con Ed's ongoing compliance with the requirements of 40 CFR part 70 with respect to coating and sealer limits. Petition on page 8.

Conditions 31 to 34 reference those SIP regulations relating to architectural coating limits, promulgated at 6 NYCRR § 205.4. These regulations include various prohibitions on the sale or application of architectural coatings which exceed specified levels of volatile organic compounds, within the New York City metropolitan area. However, part 205 of the New York SIP is entirely devoid of any associated monitoring requirements to ensure the facility's compliance with the rules. As discussed above in section (I)(A)(1)(b)(ii), where the applicable requirement does not require periodic testing, specifies no frequency, or requires only a one-time test, the periodic monitoring rule at 40 CFR § 70.6(a)(3)(i)(B) applies. Accordingly, EPA grants the petition on this issue. Hence, the permit must be reopened to include the following compliance requirements as described below:

- a. Monitoring Type: Record keeping. All records to be kept for 5 years. 40 CFR § 70.6(a)(3)(ii)(B).
- b. Monitoring Description: Keep documents relating to supplier certification of the composition and/or formulation of surface coating material. Certification may be in the form of standard formulation sheets, material safety data sheets, the result of analytical tests, or other methods approved in advance by DEC, provided the required information can be readily extracted from the documents.
- c. Reporting Requirement: Certify compliance with this rule, semi-annually. 40 CFR § 70.6(a)(3)(iii)(A).

#### **5. Visible Emissions<sup>10</sup>**

The Petitioner states that Conditions 35 to 37 of the Proposed Permit lack periodic monitoring to assure Con Ed ongoing compliance with the facility's 20 percent opacity limit. Petition on page 8. In particular, Petitioner finds inadequate the following statement "Equipment will be maintained according to the manufacturer's recommendations which will minimize the opacity of the exhaust." Petitioner further notes that Con Ed already operates continuous opacity monitors, and, therefore, asserts that compliance with this limit should be measured continuously.

---

<sup>10</sup> This issue has been raised by the Petitioner and addressed by the Administrator in several Orders. *See, e.g., In the Matter of Suffolk County Bergen Point Sewage Treatment Plant*, Petition Number II-2001-03, December 16, 2002 ("Bergen Point") at p. 19; *In the Matter of North Shore Towers Apartments, Inc.*, Petition Number II-2000-06, July 3, 2002 ("North Shore Towers") at page 28.

The Final Permit includes these same requirements at Conditions 37 and 38, and addresses opacity at Condition 83. Indeed, as stated by Petitioner, the facility operates COMs (Condition 82 in Proposed Permit; Condition 83 in the Final Permit) which continuously monitor opacity requirements. While Condition 83 applies to a specific emission point (Emission Point:0001) and, therefore, references specific emission units at the facility, Conditions 35 to 37 reference the general SIP opacity provisions listed at 6 NYCRR § 211.3. As listed, Conditions 35 to 37 are facility-wide level conditions that are applicable to any emission sources, without specificity. Because different emissions units can create opacity through different processes (e.g., combustion, material storage) and reach the atmosphere in different ways (e.g., stacked, fugitive), an operator may be unable to conduct the same kind of opacity monitoring at each emission unit where visible emissions arise. Such opacity monitoring requirements are best addressed at the Emission Unit Level section of the permit, as is the case in this permit. For this reason, EPA denies the petition on this issue.

## **6. Waste Fuel Combustion Efficiency**

Petitioner notes that Condition 43 of the proposed permit failed to include additional monitoring to assure Con Ed's compliance with the requirement to maintain at least 99% combustion efficiency while firing waste fuel. Petition at page 9.

As discussed in section (A)(1)(c) above, the Final Permit does not authorize the burning of waste fuel in any emissions unit at this Con Ed facility. Therefore, EPA denies this issue as it is no longer relevant.

## **7. Episode Action Plan**

Petitioner alleges that Condition 54 which references an Episode Action Plan (EAP) should state whether Con Ed has an EAP, as well as establish Con Ed's obligations under its EAP. Further, Petitioner asserts that the public should be informed on how to obtain a copy of that plan and when such episodic occurrence is in effect. Petition at page 9.

Petitioner is correct in stating that Condition 54 (Condition 70 of Final Permit) does not state whether an EAP exists, nor does it establish Con Ed's obligations under the EAP, if it were to exist. While DEC's Responsiveness Summary states that Con Ed is being advised to include an EAP in its (permit) application, response at pages 8-9, the Permit Application, on page 10, notes that an EAP dated January 28, 1983, was previously submitted to DEC. Therefore, the Final Permit should affirm that an EAP exists and is applicable to the facility. Further, EPA confirmed that an updated EAP, dated October 28, 1997 was submitted to DEC. Hence, the permit should clearly reference the existence of the updated EAP. DEC should reference the EAP in the permit's Statement of Basis, and at any other suitable place, such as Condition 70 of the permit. Thus, EPA grants Petitioner's request and requires DEC to state in the permit, the applicability and the availability of the EAP.

With regard to Con Ed's obligations under the EAP, these are already spelled out in that document and need not be recited in the permit itself. White Paper 2, at pages 36-38, discusses when incorporation by reference in permits may be appropriate. Similar to an inspection and maintenance plan, an EAP may be cross referenced in a permit so long as the referenced plan is unambiguous in how it applies to Con Ed. EPA is satisfied that the EAP meets this criteria. With respect to Petitioner's desire that the permit state how the public can obtain a copy of the EAP, it must be noted that the EAP is not different from any other publically available document. It can be obtained by any person or party, upon request to DEC, just like any other public document. Therefore, the permit need not state how the plan can be made available.

Petitioner's last point addresses the issue of how the public would know when an air pollution episode is in effect. The regulations pertaining to air pollution episodes are addressed at 6 NYCRR § 207 and stipulate that air pollution episodes are decreed by DEC. Accordingly, Con Ed has no role in determining the existence of an air pollution episode or notifying the public of such an episode. Such functions are the DEC's prerogatives.

## **8. Opacity Consent Order**

Petitioner notes that Condition 55 of the Proposed Permit indicates that an opacity consent order is attached to the permit, when in fact it is not. Further, Petitioner states, the inclusion of provisions of such order should have been subject to public review. Petition on page 9.

Petitioner is correct in noting that Condition 55 of the Proposed Permit states that the opacity consent order is attached to the permit, when in fact it is not. The same provision is included at Condition 71 of the Final Permit. Therefore, EPA grants the petition on this issue. Appendix A is the compliance plan and schedule of the consent order. The permit must be re-opened to attach "Appendix A" of the consent order to the permit document.

## **II. Public Hearing**

Petitioner alleges that DEC violated the public participation requirements of 40 CFR § 70.7(h) by inappropriately denying its request for a public hearing. Petition at page 9. Specifically, Petitioner asserts that the Notice of Complete Application dated July 26, 1999, which initiated the 30-day public notice, did not announce that a public hearing was scheduled, nor did it inform the public how to request a hearing. Petitioner further contends that DEC applied the wrong standard in reaching the decision to deny the Petitioner's request for a public hearing. Specifically, Petitioner asserts that DEC applied the standard that governs when it can hold a hearing on its own initiative, rather than the standard that governs when DEC receives a



request from a member of the public for a hearing.<sup>11</sup>

This issue has been addressed in previous Orders.<sup>12</sup> The case-specific review of NYPIRG's petition on this Con Ed permit indicates there are no substantive differences in fact between this petition and the petitions that were the subject of the previously-issued Orders referenced in note 12, regarding the public hearing issue. Specifically, Con Ed's Notice of Complete Application contained similar information to the notices in the other cases, there were no commenters other than Petitioner, as was the case before, and DEC applied the same standard in each case, in determining whether to hold a hearing. Because Petitioner raises no issues in this petition that are unique to Con Ed, the petition is denied on this issue as it was in the above-referenced Orders. The rationale of those determinations is hereby re-affirmed in this Order.

This determination does not mean that DEC may be inconsistent in the application of its own regulations. As previously discussed, New York's regulations provide that when a member of the public requests a hearing on a draft title V permit, the determination to hold such hearing shall be based on whether "a significant degree of public interest exists." 6 NYCRR § 621.7(c)(1). Thus, to ensure a consistent approach and to prevent further confusion as to what standard applies to title V public hearing requests, DEC has agreed to express in its public notices the standard of whether a significant degree of public interest exists (that is, the standard for holding a legislative hearing under 6 NYCRR § 621.7(c)), and to use such a standard to determine whether to hold a hearing on a draft title V permit. *See* November 16, 2001 letter at page 5. Failure to consistently express this standard and attendant procedures in public notices may result in a finding of program deficiency pursuant to 40 CFR § 70.10(b). According to EPA's program review, the DEC is substantially meeting this commitment. *See* note 3, *supra*.

---

<sup>11</sup> The Petitioner points out that 6 NYCRR § 621.7 defines two types of hearings: adjudicatory and legislative. Under 6 NYCRR § 621.7(b), DEC determines to hold an adjudicatory public hearing when "substantive and significant issues relating to any findings or determinations the [DEC] is required to make" or where "any comments received from members of the public or other interested parties raise substantive and significant issues relating to the application, and resolution of any such issue may result in denial of the permit application, or the imposition of significant conditions thereon." Under 6 NYCRR § 621.7(c), DEC shall hold a legislative public hearing if a significant degree of public interest exists.

<sup>12</sup> The issue of denying a public hearing has been raised previously by the Petitioner and addressed by the Administrator in several Orders responding to the petitions: In the Matter of Starrett City, Inc., Petition Number II-2001-01, Dec. 16, 2002 ("Starrett City"); In the Matter of Columbia University, Petition Number II-2000-08, Dec. 16, 2002 ("Columbia University"); In the Matter of Elmhurst Hospital, Petition Number II-2000-09, Dec. 16, 2002 ("Elmhurst Hospital"); In the Matter of North Shore Towers Apartments, Inc., Petition Number II-2000-06, July 3, 2002 ("North Shore Towers"); In the Matter of Tanagraphics Inc., Petition Number II-2000-05, July 3, 2002 ("Tanagraphics"); In the Matter of Rochdale Village Inc., Petition Number II-2000-04, July 3, 2002 ("Rochdale Village"); In the Matter of Kings Plaza Total Energy Plant, Petition Number II-2000-03, Jan. 16, 2002 ("Kings Plaza"); In the Matter of Action Packaging Corp., Petition Number II-2000-02, Jan. 16, 2002 ("Action Packaging"); and In the Matter of Albert Einstein College of Medicine of Yeshiva University, Petition Number II-2000-01, Jan. 16, 2002 ("Yeshiva"). Each of these Orders is available on the internet at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2000.htm>. Additionally, Issues III-VII also have been previously addressed by the Administrator.

In fact, such hearings have been held for a number of draft title V permits.<sup>13</sup> Furthermore, where EPA concludes that there is a basis for objecting to a permit due to improper denial of a public hearing, EPA may order a timely objection to any permit pursuant to 40 CFR § 70.8(c)(3)(iii). As in the previous Orders, EPA denies the petition on this issue.

### **III. Permit Application**

Petitioner alleges that the applicant did not submit a complete permit application in accordance with the requirements of CAA § 114(a)(3)(C), 40 CFR § 70.5(c) and 6 NYCRR § 201-6.3(d). Petition beginning at page 11. As such, Petitioner notes that permit application lacks:

- (1). a statement certifying that the applicant's facility is currently in compliance with all applicable requirements (except for emission units that the applicant admits are out of compliance) as required by Clean Air Act § 114(a)(3)(C), 40 CFR § 70.5(c)(9)(i), and 6 NYCRR § 201-6.3(d)(10)(i);
- (2). a statement of the methods for determining compliance with each applicable requirement upon which the compliance certification is based as required by Clean Air Act § 114(a)(3)(B), 40 CFR § 70.5(c)(9)(ii), and 6 NYCRR § 201-6.3(d)(10)(ii).

Further, Petitioner alleges that permit application lacks certain information required by 40 CFR § 70.5(c)(4) and 6 NYCRR § 201-6.3(d)(4), including:

- (3). a description of all applicable requirements that apply to the facility, and
- (4). a description of or reference to any applicable test method for determining compliance with each applicable requirement.

Additional discussion of the permit application issue has been raised in many NYPIRG petitions, *see* footnote 12, and has been addressed in detail by the Administrator. *See, e.g.*, Yeshiva Order at pages 7 through 10.

#### **1. Initial Certification**

EPA agrees with Petitioner that the compliance certification process in the application

---

<sup>13</sup> E.g., Village of Freeport (DEC Permit No. 1-2820-00358/00002); Orange Recycling and Ethanol Production Facility, Pencor Masada Oxynol, LLC (DEC Permit No. 3-3309-00101/00003); Poletti Power Project (DEC Permit No. 2-6301-00084/00015); New York Organic Fertilizer Company (DEC Permit No. 2-6007-00140/00011); Keyspan Energy's Spagnoli Road Energy Center (DEC Permit No. 1-4726-01500/00011); Con Edison's Hudson Avenue Station (DEC Permit No. 2-6101-00042/00011); NYCDEP's North River Waste Water Pollution Control Plant (DEC Permit No. 2-6202-00007/00015); and the Al Turi Landfill (DEC Permit No. 3-3330-00002/00039).

form utilized by the facility in this case, may have enabled the applicant to avoid revealing noncompliance in some circumstances. The DEC form allowed an applicant to certify that it expects to be in compliance with requirements when the permit is issued rather than make a concrete statement as to its compliance status at the time of permit application. If the facility was not in compliance but achieved compliance before the permit was issued, it may have been possible to conceal any previous noncompliance. As provided in 40 CFR § 70.5(c)(9)(i), permit applicants are required to submit “a certification of compliance with all applicable requirements by a responsible official consistent with...section 114(a)(3) of the Act.” EPA interprets this language as requiring that sources certify their compliance status as of the time of permit application submission. Where certifications do not address compliance status as of the time of permit application, the State, EPA and the public have been deprived of meaningful information on compliance status which may have a negative effect on source compliance and could impair permit development. Compliance certifications are public documents. Thus, one purpose of the initial compliance certification is to provide an incentive for sources to come into compliance with applicable requirements before they complete their applications. Another purpose is to alert the permitting authority to compliance issues in advance so that it can work with the source on such problems and develop an appropriate schedule of compliance in the title V permit. *See* 40 CFR §§ 70.5(c)(8) and 70.6(c)(3) and (4).

Based on the application form that the facility official completed, Con Ed certified that it would be in compliance with all applicable requirements at the time of permit issuance, which occurred on August 16, 2001. Petitioner asserts that, in addition to the opacity compliance schedule that is already included in the Proposed Permit, it would be clear whether a compliance schedule is warranted, had Con Ed certified its compliance as of June 9, 1997. As pointed out by Petitioner, Con Ed acknowledges that the facility is subject to a compliance schedule, an opacity compliance plan, on page 8 of application. That plan is attached to the application. Therefore, Con Ed did reveal in its permit application instances of non-compliance that were known at the time of application submittal. EPA does not believe that submission by Con Ed of a different application (that is, one which would have required compliance certification as of the time of application submission) would have resulted in a title V permit any different from the one ultimately issued. Accordingly, EPA denies the petition with respect to this issue. Although in this case EPA finds no basis for objection on this issue, the State and EPA agree that the application form used by applicants in New York prior to January 1, 2002 did not properly implement the EPA or the State regulations. Therefore, as detailed in its November 16, 2001 letter, the DEC has changed its forms and instructions accordingly.<sup>14</sup>

---

<sup>14</sup> In accordance with the DEC’s November 16, 2001 letter, the permit application form was changed to clearly require the applicant to certify compliance with all applicable requirements at the time of application submission. The application form and instructions were changed to require the applicant to describe the methods used to determine initial compliance status. With respect to the citation issue, the application instructions were revised to require the applicant to attach to the application copies of all documents (other than published statutes, rules and regulations) that contain applicable requirements.

## 2. Statement of Methods for Determining Initial Compliance

The next issue raised by Petitioner relates to an omission in the application form of “a statement of methods used for determining compliance.” 40 CFR § 70.5(c)(9)(ii). Although the application form completed by Con Ed did not specifically require the facility to include a statement of methods used to determine initial compliance, in this case, the applicant did provide this information in the Emission Unit Information, section IV, page 6 of the application. Applicant specifies recordkeeping as being in place for determining and measuring the daily fuel usage, the average electrical output and hourly generation rate; the fuels’ heat, sulfur and ash contents. Accordingly, EPA has concluded that the Petitioner was not harmed by the omission of other compliance methods from Con Ed’s application. Thus, EPA denies the petition on this point.

## 3. Description of Applicable Requirements

Petitioner’s next point is that EPA regulations call for the legal citation to the applicable requirement accompanied by the applicable requirement expressed in descriptive terms. EPA has developed guidance, in the form of “White Papers” which were issued in order to enable States to take immediate steps to reduce the costs of preparing and reviewing initial part 70 permit applications. In “White Paper for Streamlined Development of Part 70 Permit Applications” dated July 10, 1995 (“White Paper 1”), EPA clarified that citations may be used to streamline how applicable requirements are described in an application, provided the cited requirement is made available as part of the public docket on the permit action or is otherwise readily available. The permitting authority may allow the applicant to cross-reference previously issued preconstruction and part 70 permits, State or local rules and regulations, State laws, Federal rules and regulations, and other documents that affect the applicable requirements to which the source is subject, provided the citations are current, clear and unambiguous, and all referenced materials are currently applicable and available to the public (e.g., publically available documents include regulations printed in the Code of Federal Regulations or its State equivalent). Con Ed’s permit application contains codes or citations associated with applicable requirements that are readily available, pages 2, 3, 6, and 8. These codes refer to federal and state regulations that are printed in rule compilations and also are available on-line. Further, the applicant attached to the application and referenced various operating plans (i.e., Continuous Emissions Monitoring Plan, Opacity Compliance Plan, Episode Action Plan, NO<sub>x</sub> RACT Plan) as supporting documentation. The permit application and attachments are part of the public docket on the permit action and are publically available. Thus, the permit application references codes and supporting documentation that are used at the facility for assuring compliance. For this reason, EPA denies the petition on this point.

This issue regarding citations also was addressed in detail in the July 18, 2000, letter from Kathleen C. Callahan, Director, Division of Environmental Planning and Protection to Robert Warland, Director, Division of Air Resources, DEC. (“July 18, 2000 letter”) The letter explained that the DEC application form and/or instructions for its operating permits program should be

clarified with respect to the “non-codified” documents that include applicable requirements, such as NO<sub>x</sub> RACT plans, pre-construction and operating permits, etc. EPA pointed out that the application and instructions should make it clear that all supporting information is required in the application with clear cross-referencing to the emission point and applicable requirement cited in the printed form. Accordingly, in its November 16 commitment letter, the DEC agreed to amend the application instructions to ensure that applicants include all documents that contain applicable requirements (other than published statutes, rules and regulations), with appropriate cross-referencing.<sup>15</sup> The DEC is aware that the documentation necessary to ensure the adequate public participation called for in 40 CFR § 70.7(h) must be available with the application during the public comment period.

#### 4. Statement of Methods for Determining Ongoing Compliance

Petitioner’s final point is that the application form lacks a description of, or reference to any applicable test method for determining compliance with each applicable requirement. In section IV - Emission Unit Information of DEC’s application form, there is a block labeled “Monitoring Information” that asks applicants to provide test method information as well as other monitoring information such as monitoring frequency and reporting requirements. Although in this case the permittee failed to supply the test methods corresponding to the applicable requirements listed in the application, Con Ed’s Final Permit remedies that condition by properly referencing each applicable requirement with a test method, as the regulation may call for. As noted earlier with regard to the initial certification statement, EPA does not believe that the absence of references to test methods in the permit application would have caused DEC to issue a title V permit any different from the one ultimately issued. The Final Permit provides test methods that assure that Con Ed does in fact comply with its applicable requirements. Whether the permit application is deficient in some respect is not a basis for objecting to the permit itself. Accordingly, EPA denies the petition with respect to this issue.

#### **IV. Statement of Basis**

Petitioner’s fourth claim alleges that the proposed permit is accompanied by an insufficient statement of basis. Petition at page 13. According to 40 CFR § 70.7(a)(5), each draft permit should include a statement that sets forth the legal and factual basis for the draft permit conditions. Petitioner refers to the “Permit Description” included with Con Ed’s draft permit as the statement of basis in this case.

The requirement for the “statement of basis” is found in § 70.7(a)(5) which states:

The permitting authority shall provide a statement that sets forth the legal and

---

<sup>15</sup> As previously discussed, DEC amended its application form and instructions in accordance with the November 16 commitment letter.

factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.

The statement of basis is not a part of the permit itself. It is a separate document<sup>16</sup> which is to be sent to EPA and to interested persons upon request. This requirement for the statement of basis is not contained in section 70.6 which sets forth the required contents of the permit. In fact, 40 CFR § 70.6(a) requires that the permit contain all the explanation that ordinarily would be necessary to determine whether the permit conditions have been accurately expressed. For example, the permit must contain the references to the applicable statutory or regulatory provisions forming the legal basis of the applicable requirements on which the conditions are based. 40 CFR § 70.6(a)(1)(i).

A statement of basis should contain a brief description of the origin or basis for each permit condition or exemption. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of requirements. The statement of basis should support and clarify items such as any streamlined conditions, any source-specific monitoring requirements, and the permit shield.

EPA has recently provided guidance to permitting authorities that addresses the contents of a “statement of basis” in terms that aid both EPA and the public.<sup>17</sup> As a result, the DEC has incorporated certain elements into its “permit review reports.”<sup>18</sup> In the cited letters, EPA explains the “statement of basis” is to be used to highlight significant decisions or interpretations that were necessary to issuing the permit. These reports are not intended to be redundant to the permit but to assist in reviewing what is in the permit. Additionally, in a December 22, 2000 Order responding to petition for objection to the Fort James Camas Mill permit, EPA interpreted 40 CFR § 70.7(a)(5) to require that the rationale for selected monitoring method(s) be documented in the permit record. In re In the Matter of Fort James Camas Mill, (“Fort James”), Petition No. X-1999-1, at page 8 (December 22, 2000).

---

<sup>16</sup> Unlike permits, statements of basis are not enforceable, do not set limits and do not otherwise create obligations as to the permit holder.

<sup>17</sup> See letter dated December 12, 2001 from George Pavlou, Director, Division of Environmental Planning and Protection to Keri N. Powell, Esq., New York Public Interest Research Group, Inc., responding to NYPIRG’s March 11, 2001; November 16, 2001 DEC commitment letter, from Carl Johnson, Deputy Commissioner, DEC; letter dated December 20, 2001, from EPA Region V to the Ohio EPA (available on the internet at <http://www.epa.gov/region07/programs/artd/air/title5/t5memos/sbguide.pdf>); see also Notice of Deficiency for the State of Texas, 62 Fed. Reg. 732, 734 (Jan. 7, 2000).

<sup>18</sup> In order to comply with the requirements of 40 CFR § 70.7(a)(5), DEC has committed to prepare and make available at time of issuance of draft permits, a “permit review report,” which will serve as DEC’s statement of basis. The contents of this permit review report are described in DEC’s November 16, 2001 commitment letter.

The regulation at 40 CFR § 70.8(c)(3)(ii) requires that the permitting authority submit any information necessary to review adequately the proposed permit. Accordingly, EPA may object to the issuance of a permit simply because of the lack of necessary information. The missing information could be a statement of basis or any other information deemed necessary to review adequately the draft permit in question. Since the statement of basis can serve a valuable purpose in directing EPA's and the public's attention to important elements of the permit and since it is important that EPA perform any reviews as quickly as possible, it is a required element of an approved program that EPA receive an adequate statement of basis with each proposed permit.

EPA notes that although a "Permit Description" was not originally made available with Con Ed's Proposed Permit, it was, however, made available and incorporated in the Final Permit, issued on August 16, 2001. While this description<sup>19</sup> may not satisfy the requirements of § 70.7(a)(5) in a robust fashion, it does provide needed information on the permit. EPA has concluded that in spite of the recognized faults regarding this description, this issue as raised by Petitioner does not, in this case, warrant objection to the permit, for the reasons described below.

In this case, it is possible to achieve a sufficient understanding of the source using the permit description coupled with other available documents in the permit record. The additional information provided in the permit record and the permit helped meet the Statement of Basis requirements. For example, the permit provides information that the facility's fuel burning equipment are subject to the NO<sub>x</sub> RACT requirements outlined at 6 NYCRR § 227-2, and as such, are further subject to attendant reporting and record keeping requirements. Also, the permit provides information that the source is subject to an 'opacity compliance plan' which establishes strict operating requirements on Con Ed's stationary combustion equipment. Therefore, EPA believes that in this instance a more detailed explanatory document as sought by Petitioner is not necessary to understand the legal and factual basis for the draft permit conditions.

Additionally, there is no evidence that the Petitioner was harmed by the absence of a more extensive permit description. In fact, NYPIRG provided detailed and thoughtful comments on this draft permit establishing that it had a basic understanding of the terms and conditions of this permit. Furthermore, NYPIRG was the only member of the public who showed an interest in this project or filed comments on this draft permit. Accordingly, we do not believe that the circumstances of this case warrant an objection to this permit. Nonetheless, as discussed in Section I, NYPIRG's petition on this permit is being granted on other grounds. DEC's permit issuance process now provides that a permit may not be issued unless it is accompanied by a

---

<sup>19</sup> The current description includes the nature of the "business," a power plant generating electricity and steam. It also includes a discussion of the equipment and operations at the facility: three very large boilers, each rated at 836 MMBtu/hr, and six large boilers rated at 180 MMBtu/hr, firing natural gas and residual fuel oil; two combustion turbines each rated at 223 MMBtu/hr, firing distillate oil; a discussion of the NO<sub>x</sub> RACT compliance plan to which the facility is subject; and a discussion of compliance methods utilized at the facility.

Permit Review Report. Therefore, when the DEC revises the permit in response to the objection, it should also submit a complete statement of basis (permit review report) that clearly meets the requirements of § 70.7(a)(5).

## V. Annual Compliance Certification

The Petitioner's fifth claim alleges that the proposed permit distorts the annual compliance certification requirement of the Clean Air Act § 114(a)(3) and 40 CFR § 70.6(c)(5). The Petitioner's allegation is that the Proposed Permit does not require the facility to certify compliance with all permit conditions, but rather just requires that the annual compliance certification identify "each term or condition of the permit that is the basis of the certification." See petition at page 15. Specifically, Petitioner is concerned with the language in the permit that labels certain permit terms as "compliance certification" conditions. NYPIRG notes that requirements that are labeled "compliance certification" are those that identify a monitoring method for demonstrating compliance. NYPIRG asserts that the only way of interpreting this compliance certification designation is as a way of identifying which conditions are covered by the annual compliance certification. NYPIRG asserts that permit conditions that lack periodic monitoring are excluded from the annual compliance certification. The Petitioner claims that this is an incorrect application of state and federal regulations because facilities must certify compliance with every permit condition, not just those that are accompanied by a monitoring requirement.

EPA notes, first, that the language in the Con Ed permit follows directly the language in 6 NYCRR § 201-6.5(e) which in turn, follows the language of 40 CFR § 70.6(c)(5) and (6). Section 201-6.5(e) requires certifications with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Section 201-6.5(e)(3) requires the following in the annual certification: (i) the identification of each term or condition of the permit that is the basis of the certification; (ii) the compliance status; (iii) whether compliance was continuous or intermittent; (iv) the methods used for determining the compliance status of the facility, currently and over the reporting period; (v) such other facts the Department shall require to determine the compliance status; and (vi) all compliance certifications shall be submitted to the Department and to the administrator and shall contain such other provisions as the Department may require to ensure compliance with all applicable requirements. Con Ed's permit includes this language at Condition 28, Item 28.2.

EPA disagrees with Petitioner that "the basis of the certification" should be interpreted to mean that facilities are *only* required to certify the permit terms labeled as "compliance certification". "Compliance certification" is a data element in New York's computer system that is used to identify terms that are related to monitoring methods used to assure compliance with specific permit conditions. Condition 28 delineates the requirements of 40 CFR § 70.6(c)(5) and 6 NYCRR § 201-6.5(e), which require annual compliance certification with the terms and conditions contained in the permit.



The references to “compliance certification” found in the permit terms do not appear to negate DEC’s general requirement for compliance certification of terms and conditions contained in the permit. Because the permit and New York’s regulations require the source to certify compliance or noncompliance, annually, for terms and conditions contained in the permit, EPA is denying the petition on this point.

Nonetheless, in its November 16, 2001 letter, DEC has committed to include additional clarifying language regarding the annual compliance certification in draft permits issued on or after January 1, 2002, and in all future renewals so that the permit includes all the compliance certifications necessary to avoid any misunderstanding that might occur, such as that pointed out by Petitioner.

Although this issue does not present grounds for objecting to the Con Ed permit, DEC has nonetheless elected to take the appropriate steps to improve the administration of its program in this regard. As discussed in section I, above, EPA is granting NYPIRG’s petition on this permit on other grounds. Therefore, when DEC revises the permit in response to this Order, it will also add language to clarify the requirements relating to annual compliance certification reporting.

## **VI. Startup/Shutdown, Malfunction, Maintenance, and Upset**

Petitioner next asserts that Condition 6, which it refers to as the excuse provision, violates 40 CFR part 70. Page 15 of the petition. Permit condition 6 states, in part, “[a]t the discretion of the commissioner a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions and malfunctions or upsets may be excused if such violations are unavoidable” and describes the actions and record keeping and reporting requirements that the facility must adhere to in order for the Commissioner to excuse a violation as unavoidable.

In sum, Condition 6 relates to SIP provisions governing the exercise of enforcement discretion regarding excess emissions and does not, itself reduce the effectiveness of any applicable requirements derived from the SIP. The DEC’s unavoidable non-compliance and emergency requirements are part of the approved SIP. Whether the SIP meets EPA’s guidance is not an appropriate subject for an objection to a specific permit and is not a reason to object to the permit. Accordingly, the petition is denied on this point. EPA is not aware of, and the Petitioner has provided no evidence of, any instances where the DEC relied on these rules to provide blanket exceptions for non-compliance merely because the incidents were reported. This condition appears in many DEC permits, and has been discussed at length in prior Orders by the Administrator. In the Matter of Maimonides Medical Center Petition Number II-2001-04 (Dec. 16, 2002); In the Matter of Suffolk County Bergen Point Sewage Treatment Plant, Petition Number II-2001-03 (Dec. 16, 2002); Starett City; Columbia University; Elmhurst Hospital; North Shore Towers; Tanagraphics; Rochdale Village; Yeshiva; Action Packaging; Kings Plaza. See In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Petition No. VIII-00-1, (“Pacificorp”), at page 23 (November 16, 2000), available on the internet

at <http://www.epa.gov/region07/programs/artd/air/title5/t5memos/woc020.pdf>.

Petitioner raised several additional points on the issue of start-up, shutdown and malfunction which warrant further discussion.

1. Petitioner alleges that the Proposed Permit does not include the limitations established by recent EPA guidance, as set out in a memorandum, dated September 20, 1999. Petitioner suggests that terms addressed in the September 1999 Guidance should be added to the permit.

EPA concludes that it is not necessary for DEC to restate the September 1999 Guidance in the permit as the guidance is policy and does not constitute an applicable requirement. Accordingly, EPA denies the petition on this point.

2. Petitioner alleges that the proposed permit fails to clarify that a violation of a federal requirement cannot be excused unless the underlying federal requirement specifically provides for an excuse. Petition on page 18.

The DEC's excuse provision 6 NYCRR§ 201-1.4 in the current state regulation and 201.5(e) in the SIP provide that violations of a federal regulation may not be excused unless the specific federal regulation provides for an affirmative defense during start-up, shutdowns, malfunctions or upsets. *See* 6 NYCRR § 201-6.5(c)(3)(ii).

Petitioner asserts the permit apparently allows the DEC Commissioner to excuse the violation of any federal requirement by deeming the violation "unavoidable." Commissioner discretion conditions apply only to State requirements and cannot apply to federally promulgated requirements. The regulation at 6 NYCRR § 201-6.5(c)(3)(ii), as amended, clarifies that the DEC's own rules do not authorize expansion of the Commissioner's discretion; it provides that violations of a federal regulation may not be excused unless the specific federal regulation provides for an affirmative defense during start-up, shutdowns, malfunctions or upsets. In its November 16, 2001 Commitment letter, DEC agreed that effective January 1, 2002, it would include the revised provision of 6 NYCRR § 201-6.5(c)(3)(ii) on the federal side of all permits. DEC is substantially meeting this commitment. *See* note 3, *supra*. This will help further assure that the excuse provision is not expanded beyond its proper bounds. Accordingly, the petition is denied on this point.

3. Petitioner states that all significant terms must be defined in the permit. The petitioner alleges that the permit is not practically enforceable because the permit lacks definitions for "upset," and "unavoidable."

EPA disagrees with the Petitioner on this issue. The purpose of the permit is to ensure that a source operates in compliance with all applicable requirements. To the extent Petitioner argues that this requirement extends to compliance with the SIP-based commissioner discretion

provision, EPA agrees. However, the lack of definitions for the terms “upset” or “unavoidable” does not, on its face, render the permit unenforceable. These are commonly used regulatory terms and are not so inherently vague as to render a permit using these terms unenforceable. Moreover, Petitioner has not demonstrated that DEC has improperly interpreted them in practice so as to broaden the scope of the excuse provision. In addition, in its November 16, 2001 Commitment letter, DEC agreed that, effective January 1, 2002, it will include the provision of 6 NYCRR § 201-1.4, which has not been approved into the SIP, on the State side of all permits. *See* note 15. This will help further assure that the excuse provision is not expanded beyond its proper bounds.

4. Petitioner also states that the permit must define “reasonably available control technology” (RACT) as it applies during startup, shutdown, malfunction, and maintenance conditions.

As explained above, EPA cannot properly object to a permit term that is derived from a provision of the federally approved SIP. Such a provision is inherently a part of the “applicable requirement” as that term is defined in 40 CFR § 70.2, and the Administrator may not, in the context of reviewing a potential objection to a title V permit, ignore or revise duly approved SIP provisions. Pacificorp at 23-24.<sup>20</sup>

Moreover RACT is a defined term in the New York SIP. The SIP specifically defines RACT as the “[l]owest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility.” 6 NYCRR § 200.1(bp). There is an identical definition in the current New York regulations that are not part of the approved SIP. 6 NYCRR § 200.1(bs). As explained above, EPA cannot reopen the issue of whether the SIP provision should have required a more specific definition of RACT in the context of deciding whether to object to a title V permit. In any event, NYPIRG has failed to demonstrate that the RACT provision is deficient in this case. As a practical matter, it is not possible to set forth in advance a detailed definition of RACT that will address all possible startup, shutdown or malfunction events throughout the life of the permit. The specific technology that will constitute RACT during such a period of excess emissions will depend on both the nature of the violation and the technology available when the violation occurs. The SIP provision allows that determination to be made on a case by case basis by the Commissioner if and when she chooses to exercise her authority to excuse a violation.

5. Petitioner next asserts that any title V permit issued to Con Ed must require prompt written reporting of all deviations from permit requirements including those due to

---

<sup>20</sup>Memorandum from Eric Schaeffer, Director, Office of Regulatory Enforcement, and John S. Seitz, Director, Office of Air Quality Planning and Standards to Regional Administrators, titled “Re-Issuance of Clarification - State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,” dated December 5, 2001 (“December 2001 Clarification”).

startup, shutdown, malfunction, and maintenance as required under 40 CFR § 70.6(a)(3)(iii)(B). Petitioner states that the permit must require written reports of all deviations.

As written, the permit only requires the permittee to inform DEC of an exceedance when seeking to exercise the excuse provision of 6 NYCRR § 201-1.4. Otherwise, the permit provides that written notifications be provided when requested to do so by the Commissioner. Prompt reporting of deviations is required by 40 CFR § 70.6(a)(3)(iii)(B) which states,

Prompt reporting of deviation from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.

Reporting in order to preserve the claim that the deviation should be excused is not a required report. Deviations from an applicable requirement are required to be reported regardless of the cause of the deviation and these reports are required by other provisions of the permit. *See* Discussion in Part VII *infra*. The regulations at 6 NYCRR § 201-6.5(c)(3), stated at Condition 27, prescribe that all instances of deviations from permit requirements be clearly identified, stating the probable cause of such deviations and any corrective actions taken, and submitted to the State with the semi-annual compliance report. For a violation to be properly excused, the DEC must properly apply the regulation authorizing such discretion and must properly document its findings to ensure the rule was reasonably applied and interpreted. As further discussed below, EPA denies the petition on this point.

## **VII . Prompt Reporting of Deviations**

Petitioner’s seventh claim is that the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B). Petition at page 21. Petitioner states that the only prompt reporting of deviations is that required by 6 NYCRR § 201-1.4, which governs unavoidable noncompliance and violations during necessary scheduled equipment maintenance, start-up/shutdown conditions and upsets or malfunctions. *See* Condition 6 of the Final Permit.

EPA raised this issue with DEC in a July 18, 2000 letter,<sup>21</sup> at Attachment III, item 2. The DEC may adopt prompt reporting requirements for each condition on a case-by-case basis, or may adopt general requirements by rule, or both. In any case, States are required to consider prompt reporting of deviations from permit conditions in addition to the reporting requirements of the explicit applicable requirements. Whether or not the State has adopted a general policy on

---

<sup>21</sup> Letter from Kathleen C. Callahan to Robert Warland , July 18, 2000.

prompt reporting, the specific application of the prompt reporting requirement is a matter of discretion and is subject to review and objection by the Administrator. EPA has addressed the prompt reporting requirement with the DEC in order to clarify how the DEC will properly exercise this discretion. In the November 16 commitment letter, DEC agreed that for all permits issued on and after January 1, 2002, it will include a requirement for reporting deviations consistent with 6 NYCRR § 201-6.5(c)(3)(ii). While this regulation requires inter alia that deviations be reported at least every six months, DEC stated that it will specify less than six months for “prompt” reporting of certain deviations that result in emissions of, for example, a hazardous or toxic air pollutant that continues for more than an hour above permit limits. DEC has stated that it finds the procedures for prompt reporting contained in 40 CFR § 71.6(a)(3)(iii) (B) to be reasonable and compatible with what is provided for in DEC regulations. Therefore, DEC intends to utilize these provisions to define “prompt” reporting in permit conditions. When prompt reporting of deviations is required, the reports will be submitted to the DEC, in writing, certified by a responsible official, in the time frame established in the permit condition. When DEC revises the permit in response to this Order, it must incorporate these additional prompt reporting requirements into the permit.

**E. CONCLUSION**

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I grant the petition on the following issues raised in section B.I: (A)(3)(c) addressing NO<sub>x</sub> emission monitoring for the turbines; (A)(1)(b)(i), (A)(2)(b)(i), and (A)(3)(a) addressing monitoring requirements of the sulfur content of fuel; (A)(1)(b)(ii), (A)(2)(b)(ii), and (A)(3)(b) addressing particulate matter emission monitoring on the fuel burning equipment and on the following issues raised in section B.II: issue (4) addressing the monitoring provisions for coatings and sealers; and issues (7) and (8) addressing, respectively, the referencing and incorporation into the permit of the facility’s Episodic Action Plan and Opacity Consent Order. I object to the issuance of the Con Ed Permit on those points, and deny the balance of NYPIRG’s petition.

February 19, 2003  
Dated:

/s/  
Christine Todd Whitman  
Administrator

Note: Due to a clerical error, an incorrect version of this Order was presented for signature. Therefore, this Order supercedes the Order signed on February 14, 2003.