BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF EME HOMER CITY GENERATION LP INDIANA COUNTY, PENNSYLVANIA HOMER CITY COAL-FIRED ELECTRIC GENERATING FACILITY PROPOSED PERMIT NUMBER 32-00055 AND FIRST ENERGY GENERATION CORP. BEAVER COUNTY, PENNSYLVANIA BRUCE MANSFIELD COAL-FIRED ELECTRIC GENERATING FACILITY PROPOSED PERMIT NUMBER 04-00235 ISSUED BY THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION	)	PETITION NUMBERS III-2012-06, III-2012-07, AND III-2013-02 ORDER RESPONDING TO THE SEPTEMBER 10, 2012, OCTOBER 22, 2012, AND MAY 15, 2013 REQUESTS FOR OBJECTION TO THE ISSUANCE OF A TITLE V OPERATING PERMIT

ORDER GRANTING IN PART AND DENYING IN PART THREE PETITIONS FOR OBJECTION TO PERMITS

This Order responds to issues raised in three related petitions submitted to the U.S. Environmental Protection Agency by the Sierra Club (referred to as "Homer City Petitioner") on September 10, 2012, (Homer City Petition) and a supplement to the Homer City Petition on May 15, 2013, (Homer City Supplemental Petition), and in a petition from the Sierra Club, Little Blue Regional Action Group (LBRAG), Environmental Integrity Project (EIP), Group Against Smog and Pollution (GASP), and the Clean Air Council (collectively referred to as "Mansfield Petitioners") on October 22, 2012, (Mansfield Petition), pursuant to Section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Homer City Petition relates to the proposed operating permit issued by the Pennsylvania Department of Environmental Protection (PaDEP) to EME Homer City Generation LP, No. 32-00055, for the Homer City coal-fired electric generating facility. The Homer City facility is located in Indiana County, Pennsylvania.[1] The Mansfield Petition addresses the proposed operating permit issued by PaDEP to First Energy

[1] The Homer City generating station is presently owned by Homer City Generation LP and operated by NRG Homer City Services.

Generation Corp, No. 04-00235, for the Bruce Mansfield coal-fired electric generating facility. The Mansfield facility is located in Beaver County, Pennsylvania. The Petitions request that the EPA object to each of these proposed permits for the reasons outlined below. These proposed operating permits are issued pursuant to Title V of the CAA, CAA §§ 501-507, 42 U.S.C. §§ 7661-7661f, and the Pennsylvania Administrative Code at 25 Pa. Code, Chapter 127, Subchapter G. *See* also the EPA's implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 70. These operating permits are also referred to as title V permits or part 70 permits.

I. INTRODUCTION

The Homer City Petition, received on September 10, 2012, requested that the Administrator object to the proposed operating permit issued by the PaDEP on May 25, 2012, for the Homer City facility (permit number 32-00055) on the basis that the proposed permit: (1) fails to include the prohibition against air pollution found in the Commonwealth of Pennsylvania's State Implementation Plan (PA SIP) (Claims 1 and 8 in this Order); (2) fails to include emission limits and averaging periods sufficient to prevent the Homer City plant from causing impermissible air pollution in the form of harmful concentrations of sulfur dioxide (SO_2) in violation of the state-adopted, federally-enforceable acid rain provisions and the PA SIP (Claims 1-3, 6, 7); (3) fails to require sufficient emissions limits and monitoring requirements to ensure compliance with particulate matter (PM) standards (Claim 9); (4) impermissibly claims to apply a permit shield to unidentified future projects (Claim 12); and (5) various miscellaneous claims (Claims 15-24). PaDEP issued the final Homer City operating permit on November 16, 2012.

The Homer City Supplemental Petition was received on May 15, 2013, after PaDEP issued the final operating permit and the November 15, 2012, Comment and Response Document (Homer City CRD). Consequently, the Homer City Supplemental Petition requests that the Administrator object to the proposed, and now final, Homer City operating permit.[2] The Homer City Supplemental Petition identifies the following bases on which the EPA should object: (1) Pennsylvania's prohibition on harmful air pollution is an applicable requirement with which the permit must assure compliance (Claims 1 and 8 in this Order); and (2) Pennsylvania's acid rain regulations are federally-enforceable applicable requirements with which the permit must assure compliance (Claim 2). The basic issues raised in the Homer City Supplemental Petition were previously raised in the Homer City Petition, but the Homer City Petitioner also addresses some of the statements made by PaDEP in the Homer City CRD.

The Mansfield Petition, received on October 22, 2012, requested that the Administrator object to the proposed operating permit issued by PaDEP on May 25, 2012, for the Bruce Mansfield coal-fired electric generating facility (permit number 04-00235) on the basis that the permit: (1) fails to include numerical emission limits and monitoring sufficient to prevent the facility from causing impermissible air pollution in the form of harmful concentrations of SO_2 as well as violations of an applicable acid rain provision (Claims 1-4 in this Order); (2) fails to require adequate monitoring to assure compliance with its particulate matter (PM) emissions limits (Claim 13); (3) fails to require adequate monitoring to assure compliance with its opacity limits (Claim 14); and (4) various

[2] Because the Homer City Petition was filed in response to the proposed Homer City operating permit, and the Homer City Supplemental Petition also refers to the proposed permit, even though the permit had by then become final, this Order, for the sake of convenience, generally will refer to the Proposed Permit.

miscellaneous claims. (Claims 10-13, 18, 19, and 25-27). Mansfield Petition at 2. PaDEP issued the final Mansfield operating permit on February 8, 2013.

Pursuant to a consent decree entered into by the EPA and the Homer City Petitioner, the EPA agreed to respond to the Homer City Petition, the Mansfield Petition, and the Homer City Supplemental Petition by July 31, 2014. Due to the similarity of the issues raised and the permit terms, the EPA is responding to all the petitions in one Order.

Based on a review of the Petitions, and other relevant materials, including the Homer City and the Mansfield Proposed Permits and their permit records, and relevant statutory and regulatory authorities, and as explained more fully below, I grant in part and deny in part the Petitions requesting that the EPA object to the Homer City and Mansfield Proposed Permits. The EPA's determinations are divided into three separate sections although the claims are numerically identified and in consecutive order across the separate sections (the numeric identification does not correspond to numbering in the Petitions). Specifically, I grant Claims 6, 12 and 14, as identified below in the body of the Order, and deny on the rest of the claims.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

CAA § 502(d)(l), 42 U.S.C. § 766la(d)(l), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA. The Commonwealth of Pennsylvania originally submitted its title V program governing the issuance of operating permits in 1993, with supplemental materials submitted in 1995. The EPA granted full approval of Pennsylvania's title V program on July 30, 1996. 61 *Fed. Reg.* 39597; 40 C.F.R. Part 70, Appendix A. This program, which became effective on August 29, 1996, is codified in 25 Pa. Code, Chapter 127, Subchapter G.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable SIP. CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, 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. § 766ld(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the permit if the EPA determines that the permit is not in compliance with applicable requirements of the Act. 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 ("it is undeniable [CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements"). 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 (§ 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*, 541F.3d at 1265-66; *Citizens Against Ruining the Environment*, 535 F.3d at 678; *MacClarence*, 596 F.3d at 1130-31. We discuss certain aspects of the petitioner demonstration burden below; however, a fuller discussion can be found in *In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Numbers VI-2011-06 and VI-2012-07 (June 19, 2013) (*Nucor II Order*) at 4-7.

The EPA has looked at a number of criteria in determining whether the petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the RTC), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132-33; *see also, e.g., In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 (December 14, 2012) (*Noranda Order*) at 20-21 (denying title V petition issue where petitioners did not respond to state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 (June 22, 2012) at 41 (*2012 Kentucky Syngas Order*) (denying title V petition issue where petitioners did not acknowledge or reply to state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient). Another factor the EPA has examined is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for petitioner's objection, contrary to Congress' express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("the Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive"); *In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 (Sept. 21, 2011) ("*Murphy Oil Order*") at 12 (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring). Relatedly, the EPA has pointed out in numerous orders that, in particular cases, general assertions or allegations did not meet the demonstration standard. *See, e.g., In the Matter of Luminant Generation Co. – Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 (Jan. 15, 2013) at 9; *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 (Apr. 20, 2007) (*BP Order*) at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005) ("*Chevron Order*") at 12, 24. Also, if the petitioner did not address a key element of a particular issue, the petition should be denied. *See, e.g., In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station,* Order on Petition Number: VIII-2010-XX (June 30, 2011) at 7–10; *See, e.g., 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.

C. Pennsylvania SIP Background

The PA SIP has been approved by the EPA (*see* 40 C.F.R. § 52.2020(a) and (c)) and includes 25 Pa. Code § 121.1, which defines "applicable requirements" for Pennsylvania's title V program as "[r]equirements which apply to any source at a Title V facility including…[t]hose that have been promulgated or approved by the EPA under [the Act] or the regulations adopted under [the Act]…, [a] standard provided for in [the PA SIP] approved by the EPA…, [a] term or condition of preconstruction permits issued under regulations approved or promulgated through rulemaking under Title I, including Part C or D, of [the Act]…, [and] [a] standard or other requirement of the acid rain program under Title IV of [the Act] (42 U.S.C. §§ 7641-7651o) or the regulations thereunder."

The PA SIP also defines "air pollution" in 25 Pa. Code § 121.1 as "[t]he presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste or other matter in a place, manner or concentration inimical or which may be inimical to public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property."

The PA SIP at 25 Pa. Code § 121.7 provides that "[n]o person may permit air pollution as that term is defined in the [Air Pollution Control Act]."

The PA SIP also includes provisions generally applicable to Pennsylvania's operating permit program in 25 Pa. Code, Chapter 127, Subchapter F. Certain provisions address the "permit shield" in Pennsylvania's title V program at 25 Pa. Code § 127.516. For example, 25 Pa. Code § 127.462(g) states that "[u]nless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section," where "this section" pertains to minor operating permit modifications. The PA SIP also includes 25 Pa. Code § 127.450(d), which states that "[u]nless precluded by the Clean Air Act or the regulations thereunder, the Department will, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 127.516 (relating to permit shield) for administrative permit amendments which meet the relevant requirements of this article." The PA SIP also includes 25 Pa. Code § 127.449(f), which provides that "[u]nless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to changes made under this section [for de minimus emission increases]."

Finally, the PA SIP includes 25 Pa. Code § 127.11, which provides that "a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for 1 year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by [PaDEP]."

D. Pennsylvania Acid Rain Provisions

Section 6.5 of Pennsylvania's Air Pollution Control Act (APCA), 35 P.S. § 4006.5, authorizes PaDEP "to develop a permit program for acid deposition control in accordance with Titles IV and V of [the Act]." PaDEP implements these federal acid rain permitting requirements through its operating permits program pursuant to 25 Pa. Code § 127.531 and the EPA's delegation to PaDEP of 40 C.F.R. Parts 70, 72 and 78. *See* 61 *Fed. Reg.* 9125, 9128-9129 (March 7, 1996) (proposing approval of Pennsylvania's operating permit program provisions and applicable acid rain requirements); 61 *Fed. Reg.* 39597 (July 30, 1996) (final approval of operating permit regulations in PA SIP). Section 127.531(f)(2) provides that "permits issued under [section 127.531] shall prohibit… [e]xceeding applicable emission rates or standards, including ambient air quality standards."

In the EPA's final approval of Pennsylvania's title V program and other operating permit provisions for the PA SIP, the EPA stated: "Section 127.531 of Subchapter G contains the acid rain provisions of the Commonwealth's Title V operating permits program." 61 *Fed. Reg.* at 39598. The EPA acknowledged that Pennsylvania had not directly incorporated by reference the EPA's Title IV regulations found at 40 C.F.R. Part 72 nor adopted the EPA's model rule. However, the EPA stated: "Section § 127.531(a) provides that the acid rain provisions of that section 'shall be interpreted in a manner consistent with the Clean Air Act and the regulations thereunder.'" *Id.* Section 127.531(b) requires that affected sources submit a permit application and compliance plan that meets the requirements of the Act and the regulations thereunder.

E. Pennsylvania Plan Approvals

Generally speaking, anyone constructing or operating a source in Pennsylvania that emits pollutants into the air must comply with the general requirement to obtain a "plan approval" prior to construction as outlined in 25 Pa. Code § 127, Subchapters A and B, including 25 Pa. Code § 121.1, which is part of the approved PA SIP. These subchapters are generally considered the state's minor New Source Review (NSR) program covering minor sources as well as minor changes at major sources and are included in the PA SIP. *See* 77 *Fed. Reg.* 21908 (Apr. 12, 2012) (providing limited approval to streamlined revisions of Pennsylvania's minor permit requirements). *See also,* 77 *Fed. Reg.* 58954 (September 25, 2012) (finding PA SIP included measures meeting requirement for regulation of modification and construction of any stationary source including a permit program required by part C of Title I of the Act for Section 110(a)(2)(C) of the Act for the 1997 ozone and fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and 2006 $PM_{2.5}$ NAAQS). Major sources are subject to the additional requirements of 25 Pa. Code § 127 subchapters D (Prevention Significant Deterioration) and E (nonattainment New Source Review). A plan approval is a permit that authorizes construction, installation, or modification of any air pollution source. 25 Pa. Code § 127.11. A plan approval shall incorporate by reference the emission and performance standards and other requirements of the Pennsylvania APCA, the CAA, or regulations adopted pursuant to the APCA or the CAA. 25 Pa. Code § 127.12b(b). A plan approval may also contain terms and conditions PaDEP deems necessary to assure proper operation of the source. 25 Pa. Code § 127.12b(a). The public is given an opportunity to comment on the plan approval application. 25 Pa. Code § 127.44. In addition to being a permit to construct, the plan approval provides

temporary authorization for the source to operate to assure that the equipment functions properly. *See* 77 *Fed. Reg.* at 21908 (proposing limited approval of Pennsylvania's streamlined process for minor permit requirements).

III. BACKGROUND

A. The Homer City Facility

Located in Indiana County, Pennsylvania, the Homer City Facility is a fossil fuel-fired steam-electric generating utility plant, with coal as the primary fuel. The Facility consists of three boiler units with 1,884 megawatt (MW) total generating capacity. The three units have capacity ratings of 620 MW, 614 MW, and 650 MW, respectively. The Homer City Facility is presently owned by Homer City Generation LP and the operator is NRG Homer City Services. At the time of the November 16, 2012, final title V operating permit issuance, the Permit listed Homer City OL1-OL8 LLC[3] as the owners and EME Homer City Generation LP as the operator. The Facility is a major stationary source within the meaning of the Act (42 U.S.C. §§ 7602 and 7661) and a title V facility pursuant to 25 Pa. Code § 121.1.

B. Homer City Permitting History

Homer City's first title V permit was issued January 30, 2004, and expired January 30, 2009. On July 31, 2008, PaDEP received an application for renewal of Homer City's title V permit. On April 2, 2012, PaDEP issued Homer City's Plan Approval (Plan Approval No. 32-00055H) for installation and temporary operation of a dry flue gas desulfurization system (FGD) and fabric filter for Units 1 and 2 for the Facility. The Homer City's Plan Approval included limits of 0.20 pounds per million British thermal units (lb/mmBtu) of SO_2 for each Unit on a 30-day rolling average basis and 5,950 tons of SO_2 from each unit in a consecutive 12-month period beginning one year after operation of the FGD. On April 6, 2012, the Sierra Club and other organizations filed an administrative appeal with the Pennsylvania Environmental Hearing Board objecting to PaDEP's failure to issue title V permits for nine coal-fired power plants, including the Homer City Facility. PaDEP issued a draft title V renewal permit for the Homer City Facility on May 25, 2012 (Permit No. 32-00055) (hereafter referred to as the Homer City Proposed Permit). On June 25, 2012, the Sierra Club submitted comments on the Homer City Proposed Permit, contending that the permit did not comply with requirements in the CAA and PA SIP. The EPA's 45-day review period on the Homer City Proposed Permit began May 29, 2012, and ended July 12, 2012. Sierra Club, the Homer City Petitioner, submitted its Petition dated September 6, 2012. On November 15, 2012, PaDEP issued its Comment and Response Document (Homer City CRD) responding to comments received on the Proposed Permit. On November 16, 2012, PaDEP issued the final Title V Permit (Permit No. 32-00055) for Homer City.

[3] In November 2012, the owners of Homer City were eight entities, Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC, and Homer City OL8 LLC. PaDEP used "Homer City OL1-OL8 LLC" as a short form reference to the eight entities.

On May 15, 2013, Sierra Club submitted a supplement to its Petition. On July 3, 2013, PaDEP proposed a significant modification to the Homer City title V Permit to include, as an applicable requirement, the requirement in 25 Pa. Code § 121.7 that is included in the PA SIP. On August 28, 2013, PaDEP issued the final, revised title V Permit, effective August 28, 2013, with an expiration of November 16, 2017 (2013 Homer City Revised Final Title V Permit). On December 16, 2013, PaDEP issued a modified Plan Approval (No. 32-00055H) with an effective date of December 16, 2013, and an expiration date of April 16, 2016. The December 16, 2013, revised Plan Approval includes a combined SO_2 emissions limit for emissions from Unit 1, Unit 2, and Unit 3 of 6,360 pounds per hour (lbs/hr) at any time, including during periods of startup or shutdown. The December 16, 2013, Plan Approval also included limits of 0.20 lb/mmBtu of SO_2 for each Unit on a 30-day rolling average basis and 5,950 tons of SO_2 for each unit in a consecutive 12-month period beginning one year after operation of the FGD.

C. The Bruce Mansfield Facility

The Bruce Mansfield Facility is an electric-generating plant located in Shippingport Borough, Beaver County, Pennsylvania, about 25 miles northwest of Pittsburgh. The Mansfield Facility consists of three pulverized coal-fired boilers, each rated at 850 MW; three oil-fired auxiliary boilers, each rated at 248 mmBtu/hr; two diesel generators; material storage and handling equipment; and other smaller sources. Units 1, 2, and 3 began commercial operation in 1976, 1977 and 1980, respectively.

D. Mansfield Permitting History

PaDEP issued a title V permit for the Mansfield Facility on November 22, 2002, which was to expire on November 22, 2007. A renewal application for the title V permit was received by PaDEP on May 22, 2007. Notices of PaDEP's intent to issue the renewed title V permit were published in the *Pennsylvania Bulletin* on May 26, 2012, and in the *Beaver County Times* on May 29, 30, and 31, 2012. In response to requests to extend the public comment period, PaDEP extended the comment period until July 20, 2012. The Sierra Club, LBRAG, EIP, and the Clean Air Counsel filed comments on July 20, 2012. A public hearing on the proposed permit was held on November 1, 2012, and a second public comment period was available for thirty days following the public hearing. During its 45-day review period, the EPA did not object to the Mansfield Proposed Permit. The Petitioners submitted the Mansfield Petition on October 22, 2012. PaDEP issued the final Mansfield title V permit on February 8, 2013, along with its Comment and Response Document (Mansfield CRD) on the proposed permit.

IV. EPA DETERMINATIONS ON ISSUES RAISED BY THE PETITIONERS ON SO_2 LIMITS AND RELATED ISSUES

In this section, the EPA will respond to all of the issues related to SO_2 emission limits raised in the Homer City Petition, the Homer City Supplemental Petition, and the Mansfield Petition. In this section, the EPA will also respond to one related issue, which concerns NO_x emission limits. The claims and related supporting information are discussed in more detail below. Section IV, Claims 1 and 2 respond to claims on pages 11-16 of the Homer City Petition as they relate to 25 Pa. Code § 121.7, which is a general rule in the PA SIP. 25 Pa. Code § 121.7 states: "No person

may permit air pollution as that term is defined in the act." Section IV, Claims 1 and 2 also respond to claims of the Homer City Supplemental Petition on pages 2-8 and respond to claims on pages 7-13 of the Mansfield Petition. Section IV.A responds to Claims 1 and 2 in the conclusion section on page 25 of the Homer City Petition and Claims 1 and 2 in the conclusion section on page 17 of the Mansfield Petition. Section IV, Claim 2 responds to Claim 1 on page 2 of the Mansfield Petition.

Claim 1: The Proposed Permits Fail to Include Sufficiently Stringent SO_2 Emission Limits

Petitioners' Claims. Petitioners contend that the Homer City and Mansfield permits fail to include "emission limits and averaging periods on SO_2 emissions sufficient to prevent the facility from causing ambient concentrations in excess of the health-based standard in the 1-hour SO_2 NAAQS." Homer City Petition at 12; *see also* Mansfield Petition at 8 and Homer City Supplemental Petition at 4. Petitioners include a similar discussion in both the Mansfield and Homer City Petitions, and provide an additional discussion including some response to the Homer City CRD in the Homer City Supplemental Petition.

In the Homer City Petition, the Petitioner states that a general provision in the PA SIP (25 Pa Code § 121.7), as qualified by the definition of "air pollutant" in the PA SIP (25 Pa Code § 121.1), is an applicable requirement for title V purposes. Homer City Petition at 12. The Homer City Petitioner then explains its view that since the primary NAAQS must be set at a level that is adequate to protect public health, any emissions at levels above the specific limit set in the 1-hour SO_2 NAAQS "may be inimical to public health" or "injurious" to human life. *Id.* The Homer City Petitioner concludes that "the limits in the NAAQS provide a numeric translation of the Pennsylvania SIP's prohibition on air pollution." *Id.* As a result, the Homer City Petitioner contends that the Homer City permit must include emission limitations that ensure it will not cause "air pollution" as reflected by a violation of the 1-hour SO_2 NAAQS. *Id.* The Homer City Petitioner also references air dispersion modeling performed by a third party, which it contends found that "both the currently permitted level of allowable SO_2 emissions from the plant and the maximum level of SO_2 emissions lead to significant exceedances of the 1-hour SO_2 NAAQS over a wide geographic area." *Id.* at 14. The Homer City Petitioner relies on this modeling to conclude that the emission limits in the Homer City permit are insufficient, create air pollution, and thus the EPA should object to the permit. *Id.*

In the Mansfield Petition, the Petitioners state similar conclusions including a statement that "violations of the one-hour SO_2 NAAQS constitute violations of the Pennsylvania SIP's prohibition on air pollution." Mansfield Petition at 8. The Mansfield Petitioners also state that as a result, the Mansfield permit must include the prohibition on air pollution and set forth SO_2 emission limits and standards which assure compliance with the health-based NAAQS and the general SIP rule. *Id.* In support of these contentions, Mansfield Petitioners cite to two letters issued by the EPA Region 5 that pertain to SIP provisions in other states, as well as several Pennsylvania Hearing Board cases. Mansfield Petition at 8-9 (footnotes 14 and 15). The Mansfield Petitioners then explain their view that if the source's emissions exceed a health-based NAAQS, then the general SIP rule is violated. Mansfield Petitioners again cite to the modeling, also described in the Homer City Petition, as well as to the EPA's title V regulations found at 40

CFR § 70.6(a)(1), and conclude that PaDEP must include appropriate SO_2 emission limitations and standards to implement the general SIP provision. Mansfield Petition at 10.
In the Homer City Supplemental Petition, the Petitioner clarifies some of the statements made in the Homer City Petition and responds to statements on this issue in the Homer City CRD.[4] The Homer City Petitioner clarifies its position that the 1-hour SO_2 NAAQS "by itself" is not the applicable requirement with which the terms of the permit must assure compliance. Homer City Supplemental Petition at 3. Rather, the Homer City Petitioner again cites to the general SIP rule, explaining that the 1-hour SO_2 NAAQS is the "numerical translation" of the general SIP rule, references its air dispersion modeling, and concludes that necessary numerical limitations must be included in the Homer City permit to assure compliance with the general SIP rule. *Id.* at 4. For support on this claim, the Homer City Petitioner cites to two previous EPA title V petition orders, *In the Matter of Hercules, Inc.*, Order on Petition IV_2003-1 (November 10, 2004) (*Hercules Order)* and *In the Matter of TransAlta Centralia Generation, LLC,* Order on Permit No. SW98-8-R3 (April 28, 2011) (*TransAlta Order*). *Id.* The Homer City Petitioner explains that consistent with the *Hercules* and *TransAlta Orders*, Pennsylvania has the authority to impose additional emission limitations in the title V permit, and should include such limits. *Id.* at 5. The Homer City Supplemental Petition states that in the *TransAlta Order*, the EPA determined that "it was only where compliance with the broad prohibition of air pollution in a SIP could be assured, the permitting authority did not have to impose in the Title V permit specific emission limitations or standards to implement the broad prohibition of air pollution." The Homer City Petitioner then seeks to rebut PaDEP's citation to a Pennsylvania Environmental Hearing Board case and maintains that the EPA must object to the Homer City permit because it fails to include additional SO_2 emission limits necessary to prevent violation of the general SIP rule. *Id.* at 6. Notably, in footnote 3 on page 3, the Homer City Petitioner recognizes that "PaDEP has, in fact, taken steps to set permit limits for the Plant to prevent exceedances of the SO_2 NAAQS," citing to the Homer City Plan Approval 32-00055H which is further discussed in Section IV, Claim 6 in this Order.

EPA's Response. For the reasons provided below, the EPA denies the Petitioners' claims in each of the petitions that the EPA must object to the permit on the bases described above.

As recognized by the Homer City Petitioner in the Homer City Supplemental Petition (at 3), 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. Rather, the measures contained in each state's EPA-approved 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. As the EPA has explained in prior orders, a NAAQS by itself does not impose any obligation 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*

[4] PaDEP's Homer City CRD and Mansfield CRD contain substantially similar responses to the comments associated with these claims in the Homer City and Mansfield title V petitions.

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 1-hour SO_2 NAAQS did not, in and of itself, mandate the emission limits sought by the Petitioners.

In this case, the Petitioners contend that a general rule in the PA SIP and a companion definition of "air pollution" are the applicable requirements in the SIP that mandate that PaDEP impose SO_2 emission limits on Homer City and Mansfield that are consistent with the 1-hour SO_2 NAAQS. As noted above, the relevant provisions of the PA SIP are as follows.

> 25 Pa Code § 121.7 Prohibition of air pollution
> No person may permit air pollution as that term is defined in the act.
>
> 25 Pa Code § 121.1 Definitions
> *Air pollution* – The presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste or other matter in a place, manner or concentration inimical or which may be inimical to public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property.

The Homer City and Mansfield Final Permits include a citation to the above-referenced general SIP provisions. 2013 Homer City Revised Final title V Permit at 16 (Permit Condition C.#001); Mansfield Final title V Permit (Permit Condition C.#001). Petitioners make no claims, nor could such a colorable claim be made, that these provisions, on their face, mandate that PaDEP impose the SO_2 emission limits sought by Petitioners on the Homer City and Mansfield facilities. Instead, in their Petitions, Petitioners proffer their interpretation that these provisions should be interpreted consistent with the standards set by the EPA in the NAAQS. The Homer City and Mansfield Petitioners contend that the SO_2 emission limits in the proposed title V permits would not prevent the Homer City and Mansfield facilities from causing ambient concentrations in excess of the 2010 1-hour SO_2 NAAQS. Consistent with their theory, the Homer City and Mansfield Petitioners believe that the Homer City and Mansfield proposed title V permits allow those facilities to emit air pollution that Petitioners contend is prohibited by the above-cited Pennsylvania state rules. Their interpretation, however, is not supported by the Commonwealth, which provides its own reasonable interpretation of its broad, general state-derived rule.

In the Homer City CRD and the Mansfield CRD, PaDEP addressed Petitioners' comments on these issues also raised in the Petitions. In the Homer City CRD, PaDEP's response includes an interpretation of its SIP provision that differs substantially from Petitioners' interpretation. The Homer City Petitioner had the opportunity to respond to PaDEP's position in the Supplemental Petition, but the Homer City Petitioner did not demonstrate PaDEP's interpretation to be

unreasonable. The Mansfield CRD at pages 2-7 contains a response that is substantially similar to the response in the Homer City CRD.

In response to comments, PaDEP articulates its overall interpretation of the general prohibition in the SIP as follows:

> Sierra Club has taken the position that the broad prohibition on air pollution found at Pa. Code 25 § 121.7 and the definition of air pollutant found at Pa. Code 25 § 121.1 compel DEP to establish new SO_2 requirements in the TVOP for Homer City. However, the provisions of Pa. Code 25 §§ 121.1 and 121.7 require facilities to comply with any revisions to 25 Pa. Code Chapters 121-145 which are promulgated as part of the SIP revisions undertaken to achieve and maintain compliance with a new or revised NAAQS. These regulations do not authorize the Department to impose additional SO_2 limits in Homer City's TVOP outside of the SIP revision process. The proposed TVOP contains all applicable SO_2 emission limitations.

Homer City CRD at 3. Thus, PaDEP's interpretation is that the general SIP provisions cited to by Petitioners do not provide PaDEP with the authority to impose the type of SO_2 emission limit sought by the Petitioners; such limit or the underlying basis for such a limit would first need to be included in the SIP revisions responding to Pennsylvania's 1-hour SO_2 NAAQS planning process.

PaDEP further explains that:

> The proposed TVOP [Title V Operating Permit] contains all SO_2 emission limitations that are currently applicable. The 1-hour SO_2 NAAQS does not create any additional applicable requirements for the Homer City Station. In accordance with 42 U.S. Code Sections 7409 and 7410, compliance with a new or revised NAAQS is accomplished through a planning process that ultimately results in a revision to Pennsylvania's State Implementation Plan ("SIP"). NAAQS compliance is not evaluated as part of individual operating permit reviews. *See Berks County v. Department of Environmental Protection and Exide Technologies* [citation omitted]. This decision from the Pennsylvania Environmental Hearing Board has ruled that promulgation of a revised NAAQS does not authorize the Department to set requirements relating to the substances covered by the NAAQS in an operating permit outside the context of state implementation planning (SIP) process.

Id. In *Berks County v. Pennsylvania Dep't of Environmental Protection and Exide Technologies,* 2012 Pa. Envirn. LEXIS 4 (Envt'l Hearing Bd. March 16, 2012) *(Berks County)*, the County was challenging PaDEP's issuance of a title V permit for a source, Exide Technologies, because PaDEP did not include a specific lead standard in light of the lead NAAQS. The decision in that case also indicates that the County raised similar concerns regarding the SO_2 NAAQS.[5] *Berks*

[5] The EHB is the first level of review of PaDEP decisions. 35 P.S. § 7514. Decisions by the EHB may be appealed to Pennsylvania state court. As a general matter, Pennsylvania state courts have held that, "[i]t is a well-established

County at *3-4. In that case, the Environmental Hearing Board (EHB) explained that, "[t]he Department must follow the procedures established by state and federal statute to develop the SIP required to attain the lead and SO[2] NAAQS. If the SIP is ultimately approved, the Commonwealth will then implement the SIP, which may or may not eventually result in the imposition of new emission limits or other control measures on Exide." *Id.* at *5. In addressing the County's argument that a general state law could be the basis of the Department's authority to take immediate steps towards implementing the NAAQS through a source-specific emission limit, the EHB explained, "[w]hen it comes to imposing permit conditions designed to ensure that an area achieves compliance with the NAAQS, the Department must normally proceed in accordance with the federal/state SIP process of attaining the NAAQS that is set forth in the federal Clean Air Act. It will generally not be appropriate to attempt to bypass or ignore that process, cherry-pick a standard out of context, and impose permit conditions outside of or in advance of the federally mandated process." *Id.* at 7. The EHB then quotes a water-related case which discussed whether a different general provision provided the basis for source-specific emission limits, where the EHB had stated that, "[t]hese general provisions, however, are too far removed from the issue at hand. They do not give the Department the authority to do whatever it chooses in setting effluent limits. If [that] were true, the Department could simply bypass the comprehensive regulatory program for establishing permit limits by virtue of generic Clean Streams Law provisions." *Id.* at *9 (*quoting Municipal Authority of Union Township v. DEP*, 2002 EHB 50, 61).

While the *Berks County* decision did not expressly consider the state-derived broad, sweeping SIP provision cited to by the Homer City Petitioner, PaDEP's consideration of *Berks County* as authority appears reasonable both because of the role of the EHB in Pennsylvania, and also because the opinion addressed the Commonwealth's view of the established process for devising requirements to attain the NAAQS, and the appropriateness of bypassing that process to set limits for a particular source. In the Supplemental Petition, the Homer City Petitioner suggests that PaDEP relies on a "misstatement" of that case's holding and suggests the case left open the possibility that PaDEP could have authority to impose the specific limits sought by the Petitioner.[6] Supplemental Petition at 5-6. Although the case does not directly discuss the SIP provision at issue in the Petitions, it does provide a relevant analytical framework for addressing a substantially similar factual situation upon which PaDEP reasonably relied as part of its permit record. Although the Petitioner may not agree with the Board's decision or PaDEP's reliance on it, the Homer City Petitioner does not demonstrate that PaDEP's consideration of *Berks County*

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principal that the EHB's interpretations of environmental regulations must be accorded great deference unless they are plainly erroneous or inconsistent. *Carlson Mining Company v. Pennsylvania Dep't of Environmental Resources*, 639 A.2d 1332, 1335 (Pa. Cmwlth. Ct. 1994). *County of Adams v. Pennsylvania Dep't of Environmental Protection*, 687 A. 2d 1222, 1225 (Pa. Cmwlth. Ct. 1997); *see also Tire Jockey Services v. Pennsylvania, Dep't of Environmental Protection*, 915 A. 2d 1165, 1185-1186 (Pa. 2007) (discussing deference afforded to EHB decisions on matters of regulatory interpretation).

[6] Although not expressly noted in the Supplemental Petition, the Hearing Board also stated that "[t]his is not a case where someone is actually being hurt or at immediate risk of harm such that it might be necessary to proceed independently of the SIP process. The County has repeatedly said that it does not intend to prove actual or potential harm to any particular individuals. The Commonwealth retains authority to address an emergency or an imminent threat, 35 P.S. § 4006.2, but the County has not said that such situation exists here." *Berks County* at *10. While clearly the Petitioner cites to public health and environmental concerns associated with the NAAQS, the Petitioner did not demonstrate that PaDEP's interpretation is flawed and that the limits requested by Petitioner are required, in light of the SIP provisions and circumstances present here.

in articulating its overall interpretation of its state-derived, broad sweeping SIP provision is unreasonable in light of the totality of the discussion in the record.

Further, PaDEP explained the status of the 1-hour SO_2 NAAQS implementation process. PaDEP noted that "EPA has not yet finalized modeling guidance for the SO_2 NAAQS....DEP will develop and submit to EPA revisions of the SIP to achieve and/or maintain compliance with the 2010 NAAQS for SO_2. *Id.* With regard to the general SIP rule identified by the Petitioners, PaDEP responds that this provision requires "facilities to comply with any revisions to 25 Pa. Code Chapters 121-145 which are promulgated as part of the SIP revisions undertaken to achieve and maintain compliance with a new or revised NAAQS. These regulations do not authorize the Department to impose additional SO_2 limits in the Homer City's TVOP outside of the SIP revision process." *Id.* (Emphasis added). Thus, PaDEP's interpretation is that the general SIP provisions cited to by Petitioners do not provide PaDEP with the authority to impose the type of SO_2 emission limit sought by the Petitioners; such a limit would first need to be included in the SIP revisions responding to Pennsylvania's 1-hour SO_2 NAAQS planning process.

At the time of its response to comment, PaDEP had explained that the 1-hour SO_2 NAAQS planning process remains ongoing. Both Indiana County (where Homer City is located) and Beaver County (where Mansfield is located) were designated nonattainment for the 2010 1-hour SO_2 NAAQS on August 5, 2013 (with an effective date of October 4, 2013). 78 *Fed. Reg.* 47191 (August 5, 2013). On April 23, 2014, the EPA issued guidance on 1-hour SO_2 nonattainment area SIP plan submissions. That document states that nonattainment plans for areas designated nonattainment in August 2013 are due on April 4, 2015. Memorandum from Stephen D. Page to Regional Air Division Directors, Regions 1-10, titled, "*Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.*" Thus, PaDEP's interpretation of its SIP is that the provisions cited to by Petitioners could not even authorize additional applicable requirements for title V purposes until at least after that attainment plan is due on April 4, 2015, is submitted and approved by the EPA, and even then, only consistent with the provisions of that plan.

PaDEP's response also refers to 40 C.F.R. § 70.6(a)(1) and the EPA's "White Paper for Streamlined Development of Part 70 Permit Applications" and states that "TVOPs do not have the authority to impose new requirements that do not already exist, with few exceptions." *Id.* Further, PaDEP expresses that the title V permit "is not the correct venue for translating ambient standards into permit limits." *Id.* at 4. The EPA agrees that title V generally does not establish new substantive requirements, but also acknowledges that title V permits do need to include conditions necessary to assure compliance with applicable requirements. The question the EPA faces is whether the Petitioners have demonstrated that the emissions limits they request are necessary to assure compliance with the broad, sweeping state-derived general SIP provision at issue here.

PaDEP cites to the EPA *Hercules* and *TransAlta Orders* to support its interpretation that the broad, sweeping state-derived general SIP provision does not mandate the SO_2 emission limits sought by Petitioners. Homer City CRD at 6. In its response to comments, PaDEP maintains that it is not obligated to add additional requirements beyond the provisions themselves. Homer City

CRD at 6.[7] Thus, PaDEP asserts its discretion to interpret its broad, sweeping state-derived SIP provision as not mandating the specific relief requested by the Petitioners – imposition of SO_2 emission limits at the Homer City and Mansfield facilities in light of the 1-hour SO_2 NAAQS.

Both the Homer City Petitioner and PaDEP cite to the *Hercules* and *TransAlta* Orders. In both of those orders, the EPA addressed specific claims by petitioners on broad, sweeping state-derived SIP provisions. The EPA's decisions in those matters were based on a variety of factors, including the specific claims made by the petitioners, the SIP provisions at issue, and other case-specific facts. In evaluating claims based on state-derived, broad sweeping SIP provisions, the analysis necessarily includes consideration of both the provision being asserted by the petitioners and any state interpretation of that provision. In both Orders, the EPA denied the petitioners' claims, based on the specific facts presented in those matters. In the *Hercules Order*, the petitioners claimed that to assure compliance with a Georgia SIP provision that was broad and general, the State was required to establish additional conditions and incorporate those additional conditions into the permit. In denying that claim, the EPA explained the following:

> In general, EPA presumes that state nuisance rules like the Georgia Rule, which are not derived from and do not implement any federal requirement even if they are part of an EPA-approved SIP, are "general duty" provisions which impose general obligations on sources and may be incorporated into title V permits without specific emission limitations and standards.

Hercules Order at 8. Further, the EPA noted that the state rule at issue in that Order "does not speak to or expressly impose any responsibilities on [Georgia] EPD (such as the creation of emission standards or limitations), as Petitioners maintain." *Id.* The EPA also noted that, in the context of the Georgia rule, it was appropriate to consider the state's interpretation of its state-derived SIP approved rule. Similarly, in the *TransAlta Order*, the EPA also reviewed a broad, sweeping state-derived SIP provision and the EPA considered Washington State's interpretation of its provision. *TransAlta Order* at 7. Also in the *TransAlta Order*, the EPA considered, as part of the state's interpretation of its SIP-approved provision, a hearing board decision that discussed an interpretation of the rule at issue in that Order. *Id.* Generally, states have discretion in deciding how to incorporate terms and conditions into title V permits for sources in their states to comply with broad, sweeping state-derived SIP provisions. In this case, Petitioners seek a specific relief – SO_2 emission limits at Homer City and Mansfield in light of their modeling of the 2010 1-hour SO_2 NAAQS. As described above, imposition of the emission limits sought by Petitioners is outside the scope of PaDEP's interpretation of its SIP-rule. Petitioners do not demonstrate that PaDEP's interpretation was unreasonable or contrary to applicable requirements of the CAA.[8]

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[7] The Mansfield petition also includes an assertion in a footnote that the EPA "Region 5 has also at least once issued a notice of violation under Illinois's nuisance provision, *see* NOV for H. Kramer & Co. (Apr. 20, 2011), attached hereto as Exhibit 7, informing a polluter that it had violated the provision because its emissions caused violations of a NAAQS standard." Mansfield Petition at 8 n14. Petitioners do not discuss the details of the provision at issue in Illinois, nor any interpretation by Illinois of the provision in relation to PaDEP's interpretation here. Petitioners' reference to this NOV does not demonstrate that PaDEP needed to include specific limits to assure compliance with the general prohibition in the Commonwealth's SIP.

[8] The Petitioner asserts in the Homer City Supplemental Petition that the *TransAlta Order* states that "it was only where compliance with the broad prohibition of air pollution in a SIP could be assured, [that] the permitting

In addition to their failure to demonstrate why PaDEP's above-described interpretation of its broad, sweeping state-derived rule and consideration of the decision in *Berks County* are improper, the Petitioners provide no information regarding the history of the SIP provision that supports its use to compel PaDEP to impose SO_2 emission limits on Homer City and Mansfield. To the contrary, the rule at issue in the Petitions was approved into the PA SIP in 1972, as part of Pennsylvania's initial SIP revisions in response to promulgation of the initial NAAQS. *See* 37 *Fed. Reg.* 10842 (May 31, 1972) (state effective date March 20, 1972). In the context of an action under Section 110(k)(6) of the CAA where the EPA took action to remove certain broad, sweeping state-derived SIP provisions in Kentucky, the EPA explained the following about such provisions:

> The first significant amendments to the CAA occurred in 1970 and 1977. Following these amendments, a large number of SIPs were submitted to EPA to fulfill new Federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the CAA. Due to resource constraints during this timeframe, EPA's review of these submittals focused primarily on the required technical, legal, and enforcement elements of the submittals. At the time, EPA did not perform a detailed review of the numerous provisions submitted to determine if each provision was related to the attainment and maintenance of the NAAQS. As a result, some provisions were approved into SIPs erroneously.
>
> To correct such errors, EPA has removed the erroneously incorporated provisions from SIPs under the authority of Section 110(k)(6) of the CAA. *See e.g.,* 73 FR 21546 (removing rules from New York SIP imposing general duty not to cause air pollution or odors); 71 FR 13551 (removing nuisance rule from Georgia SIP); 66 FR 57391 (removing from the Missoula City-County portion of the Montana SIP provisions relating to, among other things, fluoride emission standards); 64 FR 7790 (removing from Michigan SIP a general air pollution rule which had been used primarily to address odors and other nuisances, and had not been used for purposes of attaining or maintaining NAAQS); 61 FR 47058 (removing provisions from Wyoming SIP relating to, among other things, hydrogen sulfide and fluoride ambient standards, and odor control).

75 *Fed. Reg.* 2440, 2441 (January 15, 2010). While the EPA has not used section 110(k)(6) error correction action with regard to Pennsylvania's SIP, nor has PaDEP requested such action, the background discussion above is relevant in considering PaDEP's interpretation of its provision and the EPA's understanding regarding similar provisions in other states – particularly in light of

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authority did not have to impose in the Title V permit specific emission limitations or standards to implement the broad prohibition of air pollution." Supplemental Petition at 5. In light of PaDEP's interpretation of its SIP that it requires sources to comply with requirements established through the SIP revisions process, the Homer City Petitioner has not demonstrated that the conditions already contained in the title V permits do not assure compliance with the SIP. The permits themselves contain numerous provisions, including SO_2 emission limits, and associated monitoring, recordkeeping and reporting to assure compliance with those limits.

Petitioners' claims that the underlying general SIP provision in Pennsylvania mandates that PaDEP impose SO_2 emission limits at Homer City and Mansfield.

In the Homer City Supplemental Petition, in which the Petitioner had an opportunity to respond to the Homer City CRD, the Petitioner maintained its position that PaDEP has the authority to impose *additional emission limitations* to assure compliance with the general SIP rule, and should do so with regard to Homer City in light of the modeling it claims shows that the source impacts attainment of the 1-hour SO_2 NAAQS. Homer City Supplemental Petition at 5. Rather than demonstrate that the Commonwealth's response is unreasonable or inconsistent with the Act, or demonstrate a flaw in the permit, the Supplemental Petition reiterates the Homer City Petitioner's interpretation of the general SIP rule. With regards to the *Berks County* case, the Homer City Petitioner states that that case "did not speak to the question of whether or not NAAQS-informed emission limits could be included in permits where necessary to ensure that other applicable conditions are addressed." Even assuming, in arguendo, that is an accurate statement,[9] the Homer City Petitioner and Mansfield Petitioners do not demonstrate that it is unreasonable or unlawful for PaDEP to cite to that case as support for its interpretation that the established process for developing requirements necessary to attain the NAAQS should be followed, and the general SIP rule does not mandate the imposition of the requested SO_2 emission limits on Homer City and Mansfield.[10]

Under Section 505(b)(2) of the CAA, the Administrator shall issue an objection "if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan." In the Petitions, the Petitioners clearly articulate their view of the broad, sweeping general state-derived SIP rule, but do not demonstrate that the provision mandates the SO_2 emissions limits sought by the Petitioners, particularly in light of the analysis above, including the discussion of the Commonwealth's interpretation of its state-derived SIP rule. The Petitioners do not demonstrate that their interpretation is the only interpretation or the interpretation that is mandated by the CAA. Most significantly, the Petitions do not demonstrate that the interpretation forwarded by PaDEP is erroneous or otherwise inconsistent with applicable requirements of the Act. *See, e.g., MacClarence,* 596 F.3d at 1130-33.

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[9] In a later ruling in the same *Berks County* matter, the EHB also held that PaDEP was not required to impose further limits on Exide pursuant to the PA SIP general prohibition on fugitive emissions at 25 Pa. Code §123.1.*Berks County v. Dep't of Environmental Protection and Exide Technologies,* 2012 Pa. Envirn. LEXIS 46, * 35-38 (Nov. 26, 2012) *(Berks County II)* (finding the general SIP prohibition on fugitives does not directly serve as a basis for imposing new limits or controls and that the imposition of emission limits designed to contribute toward attainment should be done in the context of the SIP development process).

[10] As was noted earlier, both of the permits contain numerous emission limits and other terms and conditions to assure compliance with the applicable requirements –including SO_2 emission limits. *See* 2013 Homer City Revised Final title V Permit at 26 and 43 (Permit Conditions D.#001 and E.#002 respectively). *See also* Mansfield Final title V Permit at 28 and 44 (Permit Conditions D.#002 and E.#002). In addition, as part of today's action, the EPA is objecting to the permit to ensure that certain SO_2 emission limits contained in the Homer City December 16, 2013 Plan Approval (No. 32-00055H) are incorporated into the title V permit.

With regard to the modeling cited by Petitioners as support for imposing SO_2 emission limits on the sources, PaDEP's response explains its interpretation of its SIP provision, and notes that the title V permit process is not the "correct venue" for translating ambient standards into permit limits. Homer City CRD at 6. As part of the CRDs, PaDEP asserts its discretion to interpret the broad, sweeping state-derived SIP rule cited to by Petitioners as not mandating, outside the SIP revision process, the imposition of specific emission limits, such as those sought by Petitioners. Since we find that the Petitions did not demonstrate that the state's interpretation is unreasonable, and thus did not show that there is a flaw in the permit, there is no need for the EPA to provide any further response regarding the modeling described by Petitioners.

For the foregoing reasons, the EPA denies the Petitions as to these claims.

Claim 2: The Proposed Permits Fail to Prevent Violations of the Applicable Acid Rain Provision

Petitioners' Claims. The Petitioners claim that the Proposed Permits for Homer City and Mansfield do not include SO_2 emission limits to assure compliance with the acid rain provision at 25 Pa. Code § 127.531(f), which is inconsistent with the requirement that the title V permit must assure compliance with all applicable requirements at the time of permit issuance. Homer City Petition at 13; Homer City Supplemental Petition at 6; Mansfield Petitions at 11-14. Based on air quality modeling prepared and submitted by the Homer City Petitioner and Mansfield Petitioners, the Petitioners claim the Homer City and Mansfield Proposed Permits' SO_2 emission limits and associated averaging times do not ensure that the plants will meet the 2010 1-hr SO_2 NAAQS. Therefore, Petitioners claim the Proposed Permits do not assure that Homer City and Mansfield can comply with the Pennsylvania acid rain program requirement at 25 Pa. Code § 127.531(f)(2). Petitioners cite to 25 Pa. Code § 127.531(f)(2) as an applicable requirement that provides that permits issued under this section (127.531) shall prohibit (among other requirements) "[e]xceeding applicable emission rates or standards, including ambient air quality standards." The Homer City Petitioner alleges that the Homer City plant is an affected source under Title IV of the Act and therefore Pennsylvania's acid rain program requirement at 25 Pa. Code § 127.531(f)(2) must be imputed into the Proposed Permit, which must prevent any violation of the NAAQS. Homer City Petition at 12-13. Further, the Homer City Petitioner claims that, inconsistent with these requirements, the Proposed Permit does not impose any hourly SO_2 restrictions and allows the Homer City facility to cause air pollution in violation of the NAAQS. Homer City Petition at 13. The Homer City Petitioner claims the SO_2 limits presently in the Proposed Permit will not prevent the Facility from causing violations of the 2010 1-hour SO_2 NAAQS. *Id.* The Homer City Petitioner claims the air dispersion modeling submitted with the Homer City Petition shows "both the currently permitted level of allowable SO_2 emissions form the plant and the maximum level of SO_2 emissions lead to significant exceedances of the1-hour SO_2 NAAQS over a wide geographic area." Homer City Petition at 14. The Homer City Petitioner claims the SO_2 emission limits in the Proposed Permit will not prevent violations of the 2010 1-hour SO_2 NAAQS and "violating requirements of the acid rain program." Homer City Petition at 16-17.

In the Homer City Supplemental Petition, the Petitioner restates that 25 Pa. Code § 127.531(f)(2) is an applicable requirement that must be included in a title V permit contrary to PaDEP's response to its comment, where PaDEP stated the acid rain provision is not part of the PA SIP and was superseded by federal acid rain provisions. Homer City Supplemental Petition at pgs. 6-7. The Homer City Petitioner claims 25 Pa. Code § 127.531(f) was approved as part of Pennsylvania's SIP at 61 *Fed. Reg.* at 39598. As such, the Homer City Petitioner argues 25 Pa. Code § 127.531(f)(2) is an applicable requirement and that the Proposed Permit for Homer City should "ensure that its SO_2 emission limits and standards are set to assure compliance with that provision." Homer City Supplemental Petition at 8.

Likewise, the Mansfield Petitioners claim that Pennsylvania's acid rain provision at § 127.531 is an "applicable requirement" with which the Mansfield permit must assure compliance. Mansfield Petition at 9. The Mansfield Petitioners also provided air dispersion modeling results for the Mansfield plant, which the Mansfield Petitioners claim indicate that at the emission levels allowed by the Proposed Permit, the Mansfield plant "by itself is predicted to cause levels of SO_2 pollution severely above the NAAQS." Mansfield Petition at 11. The Mansfield Petitioners claim the SO_2 limits in the Mansfield title V permit are "plainly insufficient to assure compliance with applicable requirements." Mansfield Petition at 11. The Mansfield Petitioners claim the EPA should employ a "gap-filling method" to ensure the Mansfield title V permit contains a SO_2 emissions limit to assure compliance with applicable requirements, including the acid rain provision and cites to 40 C.F.R. § 70.6(a)(1). Mansfield Petition at 11.

The Homer City Petitioner also claims the Homer City Facility is in violation of its current permit based on the air dispersion modeling documents submitted with its Petition because it is emitting contrary to a requirement in the January 2004 title V permit, which prohibits "exceeding applicable emissions rates or standards, including air quality standards." Homer City Petition at 16. The Homer City Petitioner claims the Proposed Permit must include a compliance schedule for compliance with the 2010 1-hour SO_2 NAAQS to ensure compliance with the PA SIP and NAAQS. Homer City Petition at 16.

EPA's Response. For the reasons provided below, the EPA denies the Petitioners' requests for an objection to the Homer City and Mansfield Proposed Permits on this claim.

The EPA disagrees with Petitioners' claims that 25 Pa. Code § 127.531(f)(2) requires PaDEP to include an SO_2 emissions limit in the title V permits for Homer City and Mansfield to ensure compliance with the 2010 1-hour SO_2 NAAQS. Petitioners have not demonstrated that the acid rain provision in 25 Pa. Code § 127.531(f)(2), which enables Pennsylvania to issue acid rain permits through its title V operating permits program, requires PaDEP to include SO_2 limits in permits to assure compliance with the 2010 1-hour SO_2 NAAQS. As explained in Section II.C., Section 6.5 of Pennsylvania's APCA, 35 P.S. § 4006.5, authorizes PaDEP "to develop a permit program for acid deposition control in accordance with Titles IV and V of [the Act]." PaDEP implements these federal acid rain permitting requirements through its operating permits program pursuant to 25 Pa. Code § 127.531 and the EPA's delegation to PaDEP of 40 C.F.R. Parts 72 and 78. *See* 61 *Fed. Reg.* at 9128-9129 (proposing approval of Pennsylvania's operating permit program provisions and applicable acid rain requirements); 61 *Fed. Reg.* at 39597 (final

approval of operating permit regulations in PA SIP).[11] While the language in 25 Pa. Code § 127.531(f)(2) is not a requirement of the federal acid rain program pursuant to Title IV of the Act, it appears this provision was promulgated by PaDEP, and approved by the EPA on July 30, 1996, as part of Pennsylvania's approved title V program to enable PaDEP to implement acid rain requirements through its title V operating permits program. *See* 61 *Fed. Reg.* 9125; 61 *Fed. Reg.* 39597. The EPA has previously stated that "Section 127.531 of Subchapter G contains the acid rain provisions of the Commonwealth's Title V operating permits program." 61 *Fed. Reg.* at 39598. Petitioners have not demonstrated how this acid rain permit provision requires PaDEP to include SO_2 emission limits in the Homer City and Mansfield title V permits beyond those required by the acid rain program itself.

The acid rain provisions of the PA approved title V program require that Homer City and Mansfield meet the requirements of the federal acid rain regulations and do not generate an additional "applicable requirement" to comply with the 2010 1-hour SO_2 NAAQS. In other words, Petitioners misread what 40 C.F.R. § 72.9(h)(1) and 25 Pa. Code § 127.531(f)(2) require. These provisions do not require additional limits be included in title V permits to ensure compliance with the 2010 1-hour SO_2 NAAQS; rather, these provisions only require that a source continues to comply with already applicable CAA requirements while it complies with the acid rain provisions. Section 72.9(h)(1) of the federal regulations states (in relevant part): "No provision of the Acid Rain Program, an Acid Rain permit application, [or] an Acid Rain permit…shall be construed as…exempting or excluding the owners and operators…from compliance with any other provision of the Act, including the provisions of title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans." Petitioners seem to read this provision as requiring additional SO_2 limits for compliance with the 2010 1-hour SO_2 NAAQS. However, this provision only indicates that a source that is subject to the acid rain program must also continue to meet other applicable CAA requirements at the same time, including those relating to the NAAQS. This just reaffirms what title V already requires – that a source must include all applicable requirements in its title V permit. In this instance, that would include the applicable acid rain provisions and the already applicable provisions relating to the NAAQS. The Petitioners have not shown how the 2010 1-hour SO_2 NAAQS is an already applicable requirement for Homer City and Mansfield.

Section 127.531(f)(2) of the state regulations states: "In addition to the other requirements of this chapter, permits issued under this section shall prohibit the following…Exceeding applicable emission rates or standards, including ambient air quality standards." Again, Petitioners seem to read this provision as requiring additional SO_2 limits for compliance with the 2010 1-hour SO_2 NAAQS. However, it appears this provision, like 40 C.F.R. § 72.9(h)(1), was included only to indicate that a source that is subject to the acid rain program must also continue to meet other already applicable CAA requirements at the same time, including ambient air quality standards. As explained above, 25 Pa. Code § 127.531 was included in Pennsylvania's title V regulations to ensure Pennsylvania's implementation of the acid rain program is consistent with the federal acid rain program. *See* 25 Pa. Code § 127.531(a) ("This section describes the permit program for acid deposition control in accordance with Titles IV and V of the Clean Air Act (42 U.S.C. §§ 7641 and 7642 and 7661-7661f). The provisions of this section shall be interpreted in a manner

[11] 25 Pa. Code § 127.531(a) specifically states that "[t]his section describes the permit program for acid deposition control in accordance with Titles IV and V of the Clean Air Act . . ."

consistent with the Clean Air Act and the regulations thereunder."); 61 *Fed. Reg.* 9129 ("Pennsylvania's program contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and Pennsylvania commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the Title V permit."). Section 127.531(f)(2) indicates that a permit must not allow a source to exceed "applicable emission rates or standards, including ambient air quality standards," or in other words, applicable..."ambient air quality standards." (Emphasis added.) Language from the EPA's proposed approval of Pennsylvania's title V program describing 25 Pa. Code § 127.531 shows that the EPA reads this provision this way: "25 Pa. Code § 127.531... prohibits emissions in excess of allowances or applicable emission limitations...." 61 *Fed. Reg.* at 9128 (emphasis added). The Petitioners have not shown how the 2010 1-hour SO_2 NAAQS is an "applicable" ambient air quality standard under the acid rain program for Homer City and Mansfield.

Contrary to Petitioners' interpretation, the reference to "ambient air quality standards" in 25 Pa. Code § 127.531(f)(2) is not reasonably read to make the NAAQS directly applicable (or enforceable) requirements; rather, this shorthand reference is reasonably read to refer to substantive requirements already imposed via a SIP, FIP, NSR permit, and/or PSD permit that already exists for purposes of implementation of an ambient air quality standard. Petitioners concede in their Petitions that the NAAQS are not directly applicable requirements for title V purposes. Homer City Supplemental Petition at 3 ("To be clear, in this context we are not stating that the 2010 1-hour SO_2 NAAQS is *by itself* the applicable requirement with which the terms of the permit must assure compliance). This point is discussed earlier in the EPA's Response to Claim 1 of Section IV of this Order. Yet the effect of the Petitioners' interpretation of this provision would in fact be to make this NAAQS a directly applicable requirement on Homer City and Mansfield.

Moreover, Petitioners' interpretation is not necessary to reasonably apply this provision as meaning that a source has to meet all of the requirements that are separately imposed on it in support of the state meeting the NAAQS. Under the Petitioners' interpretation of the effect of this provision, the title V permitting process gets converted into a NAAQS attainment demonstration process, even though the title V permitting process is distinct from the CAA section 110 process for determining whether limits are adequate to ensure attainment and maintenance. The appropriate time for implementing requirements for the 2010 1-hour SO_2 NAAQS is through the attainment planning process contemplated by section 172 of the CAA after the EPA has designated an area nonattainment for the given NAAQS. Through that process, the EPA has designated Indiana County where Homer City is located and portions of Beaver County where Mansfield is located as nonattainment areas for the 2010 1-hour SO_2 NAAQS. Thus, section 172 and Part D, Subpart 5 of the CAA describes Pennsylvania's obligations to submit nonattainment plans for Indiana County and Beaver County, including a plan for enforceable measures to reach attainment of the NAAQS. Through the section 172 and Subpart 5 attainment planning, PaDEP may include 1-hour SO_2 emission limits on sources where needed for Indiana County and portions of Beaver County to reach attainment with the 2010 1-hour SO_2 NAAQS.

As discussed in Section IV, Claim 1, Pennsylvania has already interpreted its obligations to set 1-hour SO_2 limits on specific sources pursuant to SIP planning associated with promulgation of a

NAAQS. This interpretation similarly applies to 25 Pa. Code § 127.531(f)(2). PaDEP discussed its interpretation of 25 Pa. Code §127.531(f)(2) as not compelling PaDEP to set 1-hour SO_2 emissions limits for Homer City or Mansfield in its respective Comment and Response Documents. *See* Mansfield CRD at 4-8 and Homer City CRD at 8-10. In support of PaDEP's interpretation of its duties to ensure compliance with the 2010 1-hour SO_2 NAAQS, PaDEP cited to the *Berks County* decision discussed previously. In *Berks County*, Pennsylvania's EHB held that the EPA's promulgation of a new ambient air quality standard does not in and of itself require or authorize PaDEP to impose new emission limits or control measures on a source. *Berks County* at *8-13 (granting summary judgment and dismissing claims to require additional limits in Exide's permit for lead NAAQS). In *Berks County*, the EHB was interpreting the general air pollution prohibitions and stated that general statutory provisions are not sufficient to supplant specific permit-setting standards and procedures that directly apply such as the requirements for attainment plans under Section 172 of the Act. *Id.* at *9. Although that case did not involve precisely the same provision at issue in the Petitions, the analytical approach of the EHB is clearly relevant here. The EHB found nothing in general statutory provisions cited in that case that allowed or suggested that PaDEP on its own initiative should impose control measures beyond those required under the Act and found imposing restrictions through the general prohibition would circumvent the Act's NAAQS attainment planning process. *Id.* at *8-12. The EHB found it generally not appropriate to bypass the attainment planning process and "impose permit conditions outside of or in advance of the federally mandated process" in Section 172 of the Act. *Id.* at *8-12 (stating imposing separate requirements outside the attainment planning process contemplated by the Act would be disruptive and premature absent exceptional circumstances).

Likewise, in a later ruling in the same matter, the EHB also held that PaDEP was not required to impose further limits on Exide pursuant to the PA SIP general prohibition on fugitive emissions as the imposition of emission limits and controls on the source to contribute toward attainment should be done in the context of the SIP attainment planning process. *Berks County II,* 2012 Pa. Envirn. LEXIS at * 35-38. In that case, the Board also explained that imposing different requirements based on fugitive emission prohibition now might ultimately prove inconsistent with the attainment SIP even where one source is likely responsible for nonattainment. *Id.*

While the Petitioners clearly favor an alternative interpretation of Pennsylvania's acid rain provisions, they have not demonstrated that Pennsylvania's interpretation is unreasonable or unlawful. Specifically, they have not demonstrated it is unreasonable for PaDEP to interpret 25 Pa. Code § 127.531(f)(2) as not requiring it to restrict a source's emissions through a title V permit by imposing new emission limits not already applicable even where a source is claimed to emit air pollutants that cause ambient concentrations in excess of the 2010 1-hour SO_2 NAAQS. Pursuant to Section 172 of the CAA, 42 U.S. § 7502, a state must submit an attainment plan with its proposed emission reduction measures so that an area designated nonattainment with a NAAQS can come into attainment with the NAAQS. The provisions in 25 Pa. Code § 127.531 require "special conditions" for operating permits for facilities subject to acid rain requirements pursuant to title IV of the Act. In addition, 25 Pa. Code § 127.531(a) provides that "[t]he provisions of this section shall be interpreted in a manner consistent with the Clean Air Act and the regulations thereunder." The Petitioners have not demonstrated that Pennsylvania's interpretation of 25 Pa. Code § 127.531(f)(2) is unreasonable or inconsistent with the CAA. In

fact, the EPA finds Pennsylvania's interpretation consistent with the attainment planning process in Section 172 and Subpart 5 of the Act and the federal acid rain regulations.

In light of the discussion above, and because 25 Pa. Code § 127.531(f)(2) does not require PaDEP to impose 1-hour SO_2 emission limits prior to the attainment planning process in CAA section 172 and Subpart 5, the air dispersion modeling submitted by Petitioners is not relevant to this claim.
Likewise, the EPA finds the Homer City Petitioner did not demonstrate the Homer City Facility is in violation of its "current permit" as claimed by the Petitioner based on the air dispersion modeling documents submitted with its Petition. Homer City Petition at 16. As previously discussed, 25 Pa. Code § 127.531(f)(2) does not mandate PaDEP include 1-hour SO_2 emission limits in Homer City's Title V permit to prevent exceedances of the 2010 1-hour SO_2 NAAQS. Further, the modeling submitted by Petitioner was conducted prior to issuance of the EPA guidance. Finally, as explained above, Petitioners have not demonstrated that their interpretation of Pennsylvania laws, including 25 Pa. Code § 127.531(f)(2) or the CAA, mandate that the EPA object to this permit. The EPA finds the Homer City Petitioner has not demonstrated that a compliance schedule is warranted in this case at this time.

For the foregoing reasons, the EPA denies the Petitions as to these claims.

Claim 3: The Proposed Permits Fail to Include Proper Averaging Periods in Their SO_2 Emission Limits

Petitioners' Claims. The Petitioners claim that the Proposed Permits for Homer City and Mansfield "must further ensure that the averaging times associated with those SO_2 emissions standards" are sufficient to assure compliance with all standards, including the prohibition on air pollution and the acid rain provision ensuring compliance with the NAAQS. Homer City Petition at 14-16; Mansfield Petition at 11-12. Petitioners claim the averaging time for determining emissions for SO_2 should be 1-hour and that the Homer City and Mansfield Title V permits should be revised so that SO_2 emission limits are based on an hourly averaging period as necessary to meet the 2010 1-hour SO_2 NAAQS, which is an hourly air quality standard. Homer City Petition at 15-16. Mansfield Petition at 12.

EPA's Response. For the reasons provided below, the EPA denies the Petitioners' requests for an objection to the Homer City and Mansfield Proposed Permits on this claim.

As explained in our responses to Claims 1 and 2 above, Petitioners did not demonstrate a basis for requiring the title V permits for Homer City and Mansfield to include SO_2 emission limits to ensure the plants do not exceed the 2010 1-hour SO_2 NAAQS. Specifically, the Petitioners have not demonstrated that either the PA SIP prohibition on air pollution in 25 Pa. Code § 121.7 or the Pennsylvania acid rain program provision in 25 Pa. Code § 127.531(f)(2) mandate that additional hourly SO_2 emission limits be included in Homer City's or Mansfield's title V permit to ensure either facility does not violate the 2010 1-hour SO_2 NAAQS. Therefore, the EPA finds

Petitioners did not demonstrate that an hourly averaging period for SO_2 emission limits is required in either Homer City's or Mansfield's title V permit.

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

Claim 4: The Mansfield Proposed Permit Fails to Include Monitoring Requirements Sufficient to Assure Compliance with Applicable Requirements

Petitioners' Claims. The Mansfield Petitioners claim that the monitoring requirements for SO_2 emissions in Mansfield's Proposed Permit are inadequate to assure compliance with applicable standards. Mansfield Petition at 12. The Mansfield Petitioners claim the Mansfield Proposed Permit lacks a monitoring/testing method for SO_2 emissions that will assure compliance with the facility's SO_2 emissions limits. The Mansfield Petitioners claim the Proposed Permit "should have provided that SO_2 emissions be monitored and measured on an hourly basis through the use of a Continuous Emissions Monitoring System (CEMS) at all times that the units are operating." Mansfield Petition at 13. The Mansfield Petitioners also assert the Mansfield title V permit "must include supplemental monitoring requirements for SO_2 which include adequate frequency to determine compliance with the 1-hour SO_2 standard." *Id.* The Mansfield Petitioners also assert the Proposed Permit for Mansfield allows for an "alternative method for monitoring SO_2 emissions" and claim the "final permit cannot allow for these inadequate and unknown alternative monitoring methods." *Id.*

EPA's Response. For the reasons provided below, the EPA denies the Mansfield Petitioners' request for an objection to the Mansfield Proposed Permit on this claim.

As explained in our responses to Claims 1 and 2, the Mansfield Petitioners did not demonstrate a basis for requiring the title V permit for Mansfield to include hourly SO_2 emission limits to ensure the plant does not exceed the 2010 1-hour SO_2 NAAQS. Specifically, the Petitioners have not demonstrated that either the PA SIP prohibition on air pollution in 25 Pa. Code § 121.7 or the Pennsylvania acid rain program provision in 25 Pa. Code § 127.531(f)(2) mandate that hourly SO_2 emission limits be included in Mansfield's title V permit to ensure the facility does not violate the 2010 1-hour SO_2 NAAQS. To the extent that the Mansfield Petitioners intended to claim that the excess emission reporting requirements or alternative monitoring requirements in the Mansfield Proposed Permit are inadequate to assure compliance with another applicable requirement, the Mansfield Petitioners did not identify any specific "other" requirement or provide any relevant citation or analysis. Therefore, the EPA finds the Mansfield Petitioners did not demonstrate that the monitoring requirements for SO_2 emissions in Mansfield's Proposed Permit are inadequate to assure compliance with applicable standards or permit terms reflecting such standards. Notably, the final Mansfield title V permit issued April 2, 2013 requires the installation, operation and maintenance of SO_2 CEMS. *See* Mansfield Final title V Permit, Section E.III.

With regard to the Mansfield Petitioners' assertion that the Proposed Permit allows for an "alternative method for monitoring SO_2 emissions," Petitioners have not demonstrated that the permit is not in compliance with the Act on this point. The Petitioners merely cite to a particular page of the Proposed Permit (45) that they assert contains conditions for alternative monitoring of SO_2 emissions. They do not identify an applicable requirement for which the SO_2 emission monitoring is inadequate, explain why the monitoring requirements on page 45 of the Proposed Permit are inadequate to meet an applicable requirement of the permit, or explain why the

installation of CEMS would be required. The Petitioners have not provided the relevant citations and analyses to support their claim on this point.

To the extent that the Mansfield Petitioners intended to claim that the alternative monitoring provisions on page 45 of the Proposed Permit are not adequate to ensure the plant does not exceed the 2010 1-hour SO_2 NAAQS, as explained in our responses to Claims 1 and 2, the EPA finds that Mansfield Petitioners did not demonstrate a basis for requiring the title V permit for Mansfield to include hourly SO_2 emission limits to ensure the plant does not exceed the 2010 1-hour SO_2 NAAQS.

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

Claim 5: The Proposed Permits Lack Emission Limits for Compliance with 1-hour Nitrogen Dioxide (NO_2) NAAQS and Lack Adequate Provisions to Ensure Consistency with Averaging Periods and Monitoring Requirements for NO_2 NAAQS.

Petitioners' Claims. The Homer City Petitioner and Mansfield Petitioners both claim the Proposed Permits lack 1-hour emission limits to ensure compliance with 2010 1-hour NO_2 NAAQS and lack adequate provisions or requirements to ensure consistency with averaging periods and monitoring requirements necessary for the 2010 1-hour NO_2 NAAQS. Homer City Petition at 1 [incorporating by reference Sierra Club Comments on Homer City Draft Title V Permit (June 25, 2012) included as Exhibit 1 to Homer City Petition (hereafter, Homer City Comments)]; Mansfield Petition at 2 and 18 [referencing comments in Mansfield Petitioners' July 20, 2012 comments to PaDEP on Proposed Permit included as Exhibit 1 to Mansfield Petition (hereafter, Mansfield Comments)].

The Homer City Petitioner claims in the Homer City Comments that the nitrogen oxide (NOx) emissions limits in the Homer City Proposed Permit have not changed from the 2004 initial title V Permit, which was issued prior to the promulgation of the new 2010 1-hour NO_2 NAAQS. The Homer City Petitioner claims the Proposed Permit's 30-day rolling averaging period for NOx emission limit is entirely inadequate to assure compliance with the one-hour standard in the NAAQS. *See, e.g.*, Homer City Comments at 19. Similar to its claims for SO_2, the Homer City Petitioner claims the PA SIP general prohibition on air pollution at 25 Pa. Code § 121.7 is an "applicable requirement" and the Proposed Permit cannot permit Homer City to cause air pollution, citing 25 Pa. Code §§ 121.1, 121.7 and 127.512(h). *Id.* The Homer City Petitioner claims there are no NOx limits in the Proposed Permit to ensure Homer City will not violate the 2010 1-hour NO_2 NAAQS. *Id.* The Homer City Petitioner claims an hourly standard (i.e., a NAAQS) must be coupled with an hourly emissions limit to assure continuous compliance with all applicable requirements. The Homer City Petitioner requested the permit be revised to include a limit on NOx emissions based on an hourly average. *Id.* (referring to Exhibits 8-10 in the Homer City Comments to support that an hourly standard must be coupled with an hourly averaging period.)

Similarly, the Mansfield Petitioners claim in the Mansfield Comments that the Proposed Permit's emissions limit for NOx for the Mansfield coal-fired boilers, based on a 30-day rolling average,

is inadequate to ensure compliance with an hourly limit set forth in the 2010 1-hour NO_2 NAAQS. *See, e.g.*, Mansfield Comments at 15-16. The Mansfield Petitioners claim an hourly emission limit is needed to assure continuous compliance with an hourly NAAQS and to prevent the plant from causing harmful air pollution. *Id.* In addition, the Mansfield Petitioners claim the NOx monitoring is inadequate to assure compliance with applicable requirements. *Id.* at 16. To correct this deficiency, Mansfield Petitioners claim "Similarly, the monitoring requirements for NO_x emissions are insufficient to assure compliance with applicable standards. Again, monitoring requirements must 'assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.' 40 C.F.R. § 70.6(a)(3)(i)(B); 25 Pa. Code § 127.511(a)(2)." *Id.* (Emphasis added.)

In its Comments, the Mansfield Petitioners claim the PA SIP at 25 Pa. Code § 139.13 for sampling and test methods does not include an averaging period for determining emissions of NO_2 and therefore claim the permit must include supplemental monitoring requirements for NOx. *Id.* Although the Proposed Permit does require operation of NOx CEMS in compliance with 25 Pa. Code Chapter 139 Subchapter C, the Mansfield Petitioners claim the Proposed Permit allows for a "to-be-determined" alternative for NOx monitoring if PaDEP determines that NOx CEMS would be inaccurate or infeasible and claim the Title V permit should not provide for alternative monitoring. *Id.*

PaDEP responded to these comments by explaining that "[t]he promulgation of a new or revised NAAQS does not compel DEP to establish new emission limitations or averaging periods outside of the SIP revision process. The 2010 1-hour NO_2 NAAQS, in and of itself, does not create applicable requirement for this facility." Homer City CRD at 10 and Mansfield CRD at 7-8. PaDEP cited to the *Berks County* decision in support of its argument that promulgation of a revised NAAQS does not authorize PaDEP to set requirements for the NAAQS outside of the SIP planning process. Homer City CRD at 8 (stating Pennsylvania recommended the entire state be attainment or unclassifiable for NO_2 NAAQS and stating PaDEP would submit a SIP revision to achieve and maintain compliance with 2010 1-hour NO_2 NAAQS). Mansfield CRD at 7-8 (stating all areas in Pennsylvania were designated attainment and PaDEP would develop a SIP revision to achieve and maintain compliance with the 2010 1-hour NO_2 NAAQS). PaDEP also references the response given to the similar comments seeking 1-hour SO_2 limits for additional explanation. Homer City CRD at 10; Mansfield CRD at 7-8. Regarding NOx monitoring, PaDEP indicated in its responses that Mansfield is an acid rain unit and operates a NOx CEMS as required for 40 C.F.R. Part 75 and as specifically required by and included in the title V Permit. Mansfield CRD at 8.

EPA's Response. For the reasons provided below, the EPA denies the Petitions on these claims.

Similar to the claims for SO_2 emission limits, which were denied earlier in this Order, the Petitioners have not demonstrated that an objection is warranted based on this claim. As discussed above regarding claims for 1-hour SO_2 emissions limits and 1-hour SO_2 averaging periods and monitoring, the Homer City Petitioner and Mansfield Petitioners have not demonstrated that the permits are flawed for failure to include 1-hour NO_2 or NOx emission limits or associated monitoring. As stated above regarding the 1-hour SO_2 emissions limit claim, the promulgation of a new NAAQS, in and of itself, does not translate to a specific "applicable

requirement" for permitting authorities and sources in the form of a specific emission limit for a source. Petitioners have not demonstrated that either the PA SIP general prohibition on air pollution at 25 Pa. Code § 121.7, or the approved Pennsylvania title V program, require that Homer City's or Mansfield's emission limits be adjusted downward as a result of the promulgation of the 2010 1-hour NO_2 NAAQS. For the reasons described in detail previously for the SO_2 emissions claims, the PA SIP general prohibition on air pollution does not mandate that Pennsylvania include specific emission limits in permits to assure compliance with any NAAQS outside of the SIP planning process contemplated and mandated by the Act, including Sections 110 and 172 of the Act. *See Berks County* at * 8-13 (including Pennsylvania's interpretation that general prohibitions on air pollution do not mandate inclusion in operating permit of lead emission rate to ensure compliance with lead NAAQS). Neither the Homer City Petitioner nor the Mansfield Petitioners have made a sufficient demonstration that the PA SIP or Pennsylvania title V regulations for assuring compliance with applicable requirements require 1-hour NO_2 or NOx emission rates to ensure neither plant violates the 2010 1-hour NO_2 NAAQS.

As explained in our response to Claims 1 and 2 above, the EPA's bases for denying the earlier claims regarding the 2010 1-hour SO_2 NAAQS also apply to the present claim regarding the 2010 1-hour NO_2 NAAQS. The Homer City Petitioner and Mansfield Petitioners have not demonstrated that either the PA SIP prohibition on air pollution in 25 Pa. Code § 121.7 or the Pennsylvania acid rain program provision in 25 Pa. Code § 127.531(f)(2) mandate that hourly NO_2 or NOx emission limits be included in Homer City's or Mansfield's title V permit to ensure either facility does not violate the 2010 1-hour NO_2 NAAQS. Therefore, the EPA also finds Homer City Petitioner and Mansfield Petitioners did not demonstrate that an hourly averaging period for NO_2 or NOx emission limits is required in either Homer City's or Mansfield's title V permit as no hourly NO_2 or NOx emission limit is required to be included at this time. Notably, the final Mansfield title V permit issued April 2, 2013, requires the installation, operation, and maintenance of NOx CEMS. *See* Mansfield Final title V Permit at 51.

With regard to the Mansfield Petitioners' assertion that the Proposed Permit allows for an alternative method for monitoring NOx emissions, Petitioners have not demonstrated that the permit is not in compliance with the Act on this point. The Petitioners merely cite to a particular Condition of the Proposed Permit (E.III. 17) that they assert contains conditions for alternative monitoring of NOx emissions. They do not identify an applicable requirement for which the NOx emission monitoring is inadequate, explain why the monitoring requirements in Condition E.III.17 of the Proposed Permit are inadequate to meet an applicable requirement of the permit, or explain why the installation of CEMS would be required to monitor NOx. The Petitioners have not provided the relevant citations and analyses to support their claim on this point.

To the extent that the Mansfield Petitioners intended to claim that the alternative monitoring provisions in Condition E.III.17 of the Proposed Permit are not adequate to ensure the plant does not exceed the 2010 1-hour NO_2 NAAQS, as explained above, the Mansfield Petitioners did not demonstrate a basis for requiring the title V permit for Mansfield to include NOx emission limits to ensure the plant does not exceed the 2010 1-hour NO_2 NAAQS.

For the foregoing reasons, the EPA denies the Petitions as to these claims.

Claim 6: The Homer City Proposed Permit Fails to Include SO_2 Emission Limits from a Plan Approval Issued Prior to the Proposed Permit

Petitioner's Claims. The Homer City Petitioner claims that the Homer City Proposed Permit does not include the SO_2 emission limits from the Plan Approval for Units 1 and 2 issued April 2, 2012, to authorize installation and temporary operation of a dry FGD and fabric filter for Units 1 and 2 at the plant. Homer City Petition at 16-17. The April 2, 2012, Plan Approval for Homer City Units 1 and 2 provides that each unit is subject to a SO_2 limit of 0.20 lb/mmBtu on a 30-day rolling average and to a 5,950 ton limit in a consecutive 12-month period beginning after 1 year of operation of the FGD. Homer City Petition at 17.[12] The Homer City Petitioner explains that although the Plan Approval expires in October 2014, the title V permit would likely not expire until 2017 and must reflect all of the emission limitations that Units 1 and 2 will be subject to throughout the life of the title V permit. *Id.* In the Homer City Supplemental Petition, the Homer City Petitioners acknowledge that PaDEP has revised the Plan Approval for the installation of the FGD and fabric filter for Units 1 and 2, setting plantwide, hourly mass limits for SO_2 emissions but still assert "the final Title V permit must include numerical limits stringent enough to prevent violations of the primary ambient air quality standard for SO_2." Homer City Supplemental Petition at 3.

EPA's Response. For the reasons provided below, the EPA grants the Petition on these claims.

On April 2, 2012, PaDEP issued the Homer City's Plan Approval (Plan Approval No. 32-00055H) for installation and temporary operation of a FGD and fabric filter for Units 1 and 2 for the Facility. This plan approval was issued by PaDEP pursuant to its authority in the PA SIP at 25 Pa. Code § 127.11. The Plan Approval included SO_2 limits of 0.20 lb/mmBtu from each Unit on a 30-day rolling average basis and 5,950 tons from each unit in a consecutive 12-month period beginning one year after operation of the FGD. Subsequently, PaDEP issued the Proposed Permit for Homer City on May 25, 2012 (Permit No. 32-00055), which did not contain the 0.20 lb/mmBtu SO_2 limit for Units 1 and 2 or the 5,950 ton SO_2 limit for Units 1 and 2. The November 16, 2012 Homer City Final title V Permit (Permit No. 32-00055) also did not contain these Plan Approval SO_2 limits for Units 1 and 2.

Pursuant to 25 Pa. Code § 127.11 of the approved PA SIP, PaDEP issued the Plan Approval authorizing installation and operation of the FGD and fabric filter to Homer City. 25 Pa. Code § 127.11 requires a plan approval, PaDEP's preconstruction permit, for installation of an air cleaning device, such as a FGD or fabric filter, on an air contamination source, such as Homer City's coal-fired units. Because 25 Pa. Code § 127.11 implements a preconstruction permit program for Pennsylvania for Title I of the Act, including Part C and D of the Act, the terms or conditions within such preconstruction permits or "plan approvals" as referred to by Pennsylvania are "applicable requirements" for a Title V facility pursuant to 25 Pa. Code § 121.1 (definition of applicable requirement) and 25 Pa. Code § 127.502(a), which requires applicable requirements for stationary air contamination sources at title V facilities to be included in title V

[12] As described in the Homer City Permit History above, PaDEP has since revised the Plan Approval for the installation of the FGD and fabric filter for Units 1 and 2 and has added additional SO_2 emission limits, including a SO_2 emissions limit for Units 1, 2 and 3 of 6,360 lbs/hr at any time, including during periods of startup or shutdown, in the December 16, 2013 Plan Approval for Homer City.

operating permits. *See* 40 C.F.R. § 70.2 (including terms or conditions of preconstruction permits, issued pursuant to regulations under Title I of the Act, as "applicable requirements").

Pennsylvania's approved title V operating permits program at 25 Pa. Code § 127.512(h) provides "[t]he permit shall contain emission limits and standards, including those operational requirements and limitations that assure compliance with the applicable requirements *at the time of permit issuance*." 25 Pa. Code § 127.512(h) (emphasis added). *See* 40 C.F.R. § 70.6(a)(1) (requiring each title V permit to include emission limitations and standards that assure compliance with all applicable requirements at the time of permit issuance). Thus, Homer City's Proposed Permit should have included all terms and conditions from the April 2, 2012 Plan Approval, including the SO_2 emission limits from the Plan Approval (preconstruction permit) of 0.20 lb/mmBtu from each Unit (1 and 2) on a 30-day rolling average basis and 5,950 tons from each Unit (1 and 2) in a consecutive 12-month period as they were applicable requirements at the time the Proposed Permit was issued.

In its Homer City CRD, Pennsylvania stated,

> [w]ith respect to the plan approval for the scrubber installation on Units 1 and 2, the plan approval provides an authorization to construct the new scrubbers. It does not compel Homer City to construct the new scrubber. The plan approval also provides limited authorization to operate . . . During this limited time, if and when the scrubber is constructed and operating, the facility must comply with all the requirements of the plan approval. To the extent that the plan approval establishes more stringent or different requirements than the existing TVOP, the facility will be required to comply with all applicable SO_2 requirements. Furthermore, Pa. Code 25 § 127.450(a)(5) allows that an administrative amendment to the TV Permit may be used to incorporate requirements from a plan approval into an operating permit if the plan approval has met the procedural requirements of Title V. These procedures have been followed as required and the plan approval *will be incorporated into the TVOP when the project is complete.*

Homer City CRD at 9-10 (stating the title V permit would be "appropriately revised after completion of installation, testing and modeling of the scrubber on Units 1 & 2"). *Id.* at 10 (emphasis added).

The EPA respectfully disagrees with PaDEP's reliance on the administrative amendment procedures at 25 Pa. Code § 127.450(a)(5) as justification for not, in this instance, including the terms and conditions from the April 2, 2012 Plan Approval in Homer City's title V Permit. In this instance, in part due to the timing of the permit renewal action, Pennsylvania law and the title V regulations require that such terms be included into the title V permit at this time. PaDEP did not support its position that the Proposed Permit did not need to include terms and conditions from a plan approval as raised by the Homer City Petitioner, nor did PaDEP explain how the terms and conditions of the 2012 Plan Approval are not "applicable requirements" pursuant to 25 Pa. Code § 121.1 and required to be in the title V permit pursuant to 25 Pa. Code § 127.502(a). *See In the Matter of Wisconsin Public Service Corporation's JP Pulliam Power Plant,* Petition Number V-2009-01 (June 28, 2010) at 3-5. Further, the definition of "applicable requirement"

includes those requirements that will become effective during the term of the title V permit. *See* 40 C.F.R. §§ 70.2, 70.5(c)(4) and (8), and 25 Pa. Code §§ 121.1 and 127.503. The FGD and fabric filter are being installed for Units 1 and 2 at the Homer City plant, and Units 1 and 2 are part of the source that is covered by the title V Permit under review in this action. Thus, by not including the SO_2 provisions of the 2012 Plan Approval in the Homer City Proposed Permit, PaDEP did not include all applicable requirements in the title V permit.

The EPA previously addressed a similar issue in a title V petition order – *In the Matter of United States Steel Corporation – Granite City Works,* Petition No. V-2009-03 (January 31, 2011) (*U.S. Steel Order*) (requiring conditions of a NSR preconstruction permit to be included in title V permit). In that Order, the EPA relied on the definition of "applicable requirement" in 40 C.F.R. § 70.2, as well as the associated SIP definition, to require that conditions of an NSR permit be incorporated into a title V permit. Based on the EPA's and Pennsylvania's definition of "applicable requirement," as described above, the SO_2 emission limits and all other terms of the 2012 Plan Approval issued pursuant to Pennsylvania's SIP-approved permitting program are applicable requirements and therefore must be included in this Homer City Title V Permit renewal permit. *See id.* at 4-5 n3 (comparing a situation where a title V permit is being issued and a source already holds an NSR permit, with the situation where an NSR permit is issued during the term of a title V permit). The EPA therefore grants the Homer City Petition on this issue, and directs PaDEP to include the requirements from the April 2, 2012 Plan Approval in the Homer City title V permit.[13]

For these reasons, the EPA grants the Homer City Petition as to the SO_2 plan approval limit claims.

Claim 7: The Homer City Proposed Permit Includes Differing SO_2 Emission Limits

Petitioner's Claims. The Homer City Petitioner claims that the Homer City Proposed Permit includes two different sets of SO_2 emission limits for Unit 3 such that it is unclear what would constitute a violation for Unit 3. Homer City Petition at 16. The Homer City Petitioner points to two different sets of SO_2 emission limits for Unit 3 in the Proposed Permit and states that the permit should be revised to clarify Unit 3's obligations. The Proposed Permit includes SO_2 limits from the PA SIP as Group Restrictions (including a 3.7 lb/mmBtu limit on a 30-day rolling average not to be exceeded at any time, a 4.0 lb/mmBtu daily limit not to be exceeded more than 2 days in any running 30-day period, and a 4.8 lb/mmBtu limit daily average not to be exceeded at any time. *Id.* (citing Proposed Permit at 24). In addition, the Homer City Petitioner claims Unit 3 has a source level restriction of 0.4 lb/mmBtu SO_2 limit on a 30-day rolling average and a 12,720 ton SO_2 limit in a 12 month consecutive period. *Id.* (citing Proposed Permit at 40). The Homer City Petitioner raises additional concerns regarding confusion from comparing the SO_2 emission limits in Homer City's April 2, 2012 Plan Approval (0.20 lb/mmBtu and a 5,950 ton limit in a consecutive 12-month period on Units 1 and 2). *Id.* at 17. The Homer City Petitioner raised concern regarding what SO_2 limits Units 1 and 2 were subject to during the term of the title V permit as the title V permit has higher SO_2 emission limits than in the Plan Approval. *Id.*

[13] Although not addressed in the Petitions, the EPA notes that at least one additional Plan Approval – the December 16, 2013 Plan Approval – has been issued.

EPA's Response. For the reasons provided below, the EPA denies the Petition on these claims.

The Homer City Petitioner fails to demonstrate that the Homer City Proposed Permit is deficient by having several SO_2 emission limits. The Homer City Petitioner has not demonstrated that it is inappropriate for the permit to contain different SO_2 emission limits.[14] The Petitioner's analysis appears focused on the mere existence of two limits, with no demonstration as to why the compliance requirements for each of these SO_2 emission limits is inadequate, conflicting, or practically unenforceable. In Pennsylvania's Homer City CRD, PaDEP noted that for Unit 3: "both sets of requirements are independently enforced, i.e. the company is required to demonstrate compliance with both sets of requirements using CEM data. The data collected by the CEMS are capable of generating compliance data for all sets of averaging periods and emission levels, therefore any violations would be readily identified." *See* Homer City CRD at 9. Regarding the new limits for Units 1 and 2 in the April 2, 2012 Plan Approval, PaDEP responded that "[t]o the extent that the plan approval establishes more stringent or different requirements than the existing TVOP, the facility will be required to comply with all applicable SO_2 requirements. . . . Consequently, there is no need to 'correct' the differing standards as the Commenter suggests." *Id.* at 9-10.

In the CRD, PaDEP explained that the requirements cited to by the Homer City Petitioner are independently enforceable and also discussed how compliance is assured for each of the conditions. As provided in the Act, "it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate an affected source . . . except in compliance with a permit issued by a permitting authority under this subchapter." CAA § 502(a); 42 U.S.C. § 7661a(a). Thus, the Petitioner did not demonstrate that the SO_2 conditions in the Homer City Proposed Permit are contradictory or unenforceable. PaDEP's explanation provides that each limit is separately identified as reflecting a separate applicable requirement and states that each limit has an appropriate compliance method. The Petitioner does not identify an inherent confusion in Homer City's coal-fired units being able to comply independently with a pounds per hour SO_2 limit, with several lb/mmBtu SO_2 limits, and with ton per year limit using SO_2 CEM data as specified by PaDEP. For the above reasons, the EPA concludes that Petitioner has not demonstrated that the permit is inconsistent with the Act as to this claim.

For these reasons, the EPA denies the Petition as to these claims.

V. EPA DETERMINATIONS ON CLAIMS NOT SPECIFICALLY RELATED TO SO_2 LIMITS

[14] The Homer City SO_2 limits included as Group Restrictions (including a 3.7 lb/mmBtu limit on a 30-day rolling average not to be exceeded at any time, a 4.0 lb/mmBtu daily limit not to be exceeded more than 2 days in any running 30-day period, and a 4.8 lb/mmBtu limit daily average not to be exceeded at any time) are included in the Homer City Revised Final Permit at Condition E.#002 pursuant to 25 Pa. Code § 123.22. The EPA notes that the 0.4 lb/mmBtu and 12,720 tpy limits are in the Homer City Proposed Permit and the 2013 Homer City Revised Final Permit at Condition D.#001, which states that "Compliance with this condition ensures compliance with the SO_2 limits found at Pa Code 25 Section 123.22 and 40 CFR 60.43."

Claim 8: The Homer City Proposed Permit Fails to Include the Prohibition Against Air Pollution Found in the PA SIP

Petitioner's Claims. The Homer City Petitioner claims that the Homer City Proposed Permit fails to include the PA SIP general prohibition against air pollution as an applicable requirement. Homer City Petition at 11-12 and 25. The Homer City Petitioner cites to 25 Pa. Code §§ 121.1 (definition of applicable requirement that includes SIP requirements) and 121.7 (general prohibition on air pollution). The Homer City Petitioner asserts the EPA should object to the Homer City Proposed Permit as it does not include 25 Pa. Code § 121.7 as an "applicable requirement."

EPA's Response. This claim is moot. On August 28, 2013, PaDEP issued a significant modification to the final title V permit for Homer City, which includes 25 Pa. Code § 121.7 (the PA SIP general air pollution prohibition rule) as an "applicable requirement."

For this reason, the EPA denies the Petition on this claim.

Claim 9: The Homer City Proposed Permit Fails to Ensure the Facility's Compliance with Applicable PM Emissions and Monitoring Requirements

The EPA will be responding to the following five sub-claims in two responses, as indicated below.

Petitioner's Claims: The Homer City Petitioner claims generally that the Proposed Permit fails to include applicable requirements related to PM emissions and monitoring sufficient to assure compliance with PM requirements. Homer City Petition at 18-24. The Homer City Petitioner states that this is an important omission due to alleged ongoing violations for PM and then identifies five specific sub-claims related to this general claim.

These specific sub-claims will be addressed and responded to in group fashion as follows: PM Applicable Requirements (Sections V.9.A and V.9.B on pages 33-35) and PM Monitoring (Sections V.9.C – V.9.E, on pages 35-39). *Id.* at 18-24.

Claim 9A: The Proposed Permit Fails to Require that $PM_{2.5}$ be Limited and Monitored Separately from PM_{10}

Petitioner's Claims. The Homer City Petitioner claims that the Proposed Permit does not contain a specific emission limit for PM_{10} and $PM_{2.5}$ and identifies that Proposed Permit Condition E. #001 of the Proposed Permit is the only PM limit in place for Units 1, 2, and 3. *Id.* at 18. That permit condition states that "[a] person may not permit the emission into the outdoor atmosphere of particulate matter from a combustion unit in excess of the rate of 0.1 pounds per million Btu of heat input." Homer City Proposed Permit Section E., Group 1, I. #001 at 40. In support of its claims, the Homer City Petitioner sets forth that PM is treated as two separate pollutants under the CAA, PM_{10} and $PM_{2.5}$, and that the EPA has promulgated separate PM_{10} and $PM_{2.5}$ NAAQS. *Id.* at 8-9 and 18. The Homer City Petitioner also quotes from the EPA's 2007 Clean Air Fine Particle Implementation Rule that, because $PM_{2.5}$ now has a separate NAAQS, PM_{10} can no

longer be used as a surrogate for $PM_{2.5}$. 72 *Fed. Reg.* 20659 (Apr. 25, 2007). Homer City Petition at 8-9. Therefore, the Homer City Petitioner claims that the Proposed Permit must include separate and distinct limitations and standards for PM_{10} and $PM_{2.5}$ emissions.

Claim 9B: The Proposed Permit Fails to Require Inclusion of and Testing for Condensable PM

Petitioner's Claims. The Homer City Petitioner claims that the Proposed Permit does not ensure that condensable PM is tested and used in determining compliance with the PM_{10} and $PM_{2.5}$ requirements. *Id.* at 18-19. It explains that condensable PM is a common component of both PM_{10} and $PM_{2.5}$ and must be considered along with filterable PM in determining compliance with the PM emission limit. *Id.* at 9 and 18. In support of its arguments, the Homer City Petitioner identifies that while Permit Condition E.#032 requires stack testing for PM, it specifically states that only filterable PM must be measured. Homer City Proposed Permit Section E., Group 1, II. #032 at 44. *Id.* at 19. Although Permit Condition E.#033 does require testing for filterable PM_{10}, filterable $PM_{2.5}$, and condensable particulate, the Homer City Petitioner highlights that the condition specifically states that the testing is for informational purposes only. Homer City Proposed Permit Section E., Group 1, II. #033 at 46. *Id.* For these reasons, the Homer City Petitioner argues that unless condensable PM is considered in determining compliance, a significant portion of the facility's PM emissions will be unaccounted for, resulting in incomplete and invalid PM emissions data. *Id.* at 18.

EPA's Response. We view the two claims identified above, Claims 9A and B, as being logically related and, therefore, the EPA is responding to them together. For the reasons provided below, the EPA denies the Petition on these PM applicable requirements claims.

The Homer City Petitioner fails to demonstrate that the Proposed Permit should contain a specific limit for PM_{10} or $PM_{2.5}$ or is required to test for condensable PM. The Petitioner has not identified an applicable requirement for which a PM_{10} or $PM_{2.5}$ limit is needed. 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. The Homer City Petitioner has not met this burden.

Despite its arguments on the need for specific PM_{10} and $PM_{2.5}$ limits in the Proposed Permit, the Homer City Petitioner has not demonstrated that PM_{10} or $PM_{2.5}$ limits are applicable requirements for this facility, and thus has not demonstrated that such conditions must be in the Proposed Permit. As indicated in the Proposed Permit, the PM emission limit contained in Permit Condition E.#001 is based on 25 Pa. Code § 123.11, which is part of the PA SIP. *See* 40 C.F.R. § 52.2020 (identifying 25 Pa. Code § 123.11 as part of the PA SIP). The Petitioner has not demonstrated that PM_{10} and $PM_{2.5}$ limits should be included in the Homer City Permit.

In support of its claims on the need to test for condensable PM, the Homer City Petitioner provides only one supporting citation and that is to the 2007 Clean Air Fine Particle Implementation Rule. In both its public comments and Petition, the Homer City 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_{10} as a surrogate for $PM_{2.5}$". 72 *Fed. Reg.* 20659. However, this

statement merely addresses monitoring, and what the EPA will and will not accept as appropriate monitoring practices for monitoring $PM_{2.5}$. This statement says nothing about PM_{10} or $PM_{2.5}$ as applicable requirements for a source. Also, this statement does not establish any regulatory requirements. The Homer City Petitioner offers no citation or reference to the PA SIP and provides no additional information in its public comments or Petition to support this claim. To the extent that the Homer City Petitioner intends to claim that monitoring for condensable PM is an applicable requirement, the Petitioner's failure to demonstrate the existence of an applicable requirement for either a PM_{10} or $PM_{2.5}$ limit also applies to any such monitoring requirement claim.

Claim 9C: The Proposed Permit Fails to Require Continuous Emissions Monitoring to Assure Adequate Periodic Monitoring of the Facility's PM Emissions

Petitioner's Claims. The Homer City Petitioner argues that the Proposed Permit's monitoring requirements are inadequate to assure compliance with the PM emission limits contained in Permit Condition E. #001. Homer City Petition at 19. As identified above, this limit is based on 25 Pa. Code § 123.11, which specifies a limit of 0.1 lbs/mmBtu of heat input when the heat input to the combustion unit in millions of Btus per hour is equal to and greater than 600. The Homer City Petitioner also states that the appropriate averaging time for sampling such emissions is one hour. 25 Pa. Code § 139.12(4). *See* 40 C.F.R. § 52.2020 (identifying 25 Pa. Code § 139.12 as part of the PA SIP). Homer City Petition at 19. The Homer City Petitioner claims that the Proposed Permit's monitoring frequency of PM stack testing every two years is inadequate for this hourly limit. Permit Condition E .#032. *Id.* at 20. Instead of stack testing every two years as the Proposed Permit specifies, the Homer City Petitioner claims that the permit should require the use of a PM continuous emissions monitoring system (CEMS), as the facility has a history of violations for PM emissions and PM CEMS are available, reliable, and accurate for these types of units. *Id.* at 20-22. The Homer City Petitioner claims that CEMS are required in particular because the use of Electrostatic Precipitators (ESP), "combined with the inherent variability of PM emissions from coal-fired boilers, create a very high degree of variability in Homer City's PM emissions." *Id.* at 20.

The Homer City 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 emissions monitoring must reflect the averaging time used to determine compliance. *See* 42 U.S.C. §7661c(c), 40 C.F.R. §§70.6(a)(3)(i)(A), 70.6(a)(3)(i)(B), and 70.6(c)(1); *Sierra Club v. EPA*, 536 F.3d 673, 675 (D.C. Cir. 2008) (*Sierra Club)*; Homer City Petition at 3-4 and 19. The Homer City Petitioner also cites to the EPA's *Objection to Proposed Title V Operating Permit for TriGen-Colorado Energy Corporation 5* (Sept. 13, 2000) (*Tri-Gen Objection*) and analyzes the Proposed Permit's PM monitoring requirements in light of the five factors identified in the *U.S. Steel Order*. Homer City Petition at 4-5 and 19-22.

In support of its claims, the Homer City Petitioner uses a declaration to set forth that the Proposed Permit's PM monitoring requirements fail the first ("variability of emissions from the unit in question") and third ("whether add-on controls are being used for the unit to meet the

emission limit") of the *U.S. Steel Order's* five factors because PM emissions from coal-fired boilers are inherently variable and when combined with the facility's use of electrostatic precipitators (ESPs) to meet the standard create a high degree of variability in PM emissions. *Id.* at 20-21. The second factor in *U.S. Steel Order*, the likelihood of future violations at a facility, is also a concern for the Homer City Petitioner because of past PM violations at the facility. *Id.* at 21. In addressing *U.S. Steel Order's* final two factors, the Homer City Petitioner identifies that PM CEMS are available and used at other similar facilities. *Id.* at 21-22. Here, it cites to the EPA comments submitted in March 2005 for the Robinson Power Company PSD Application and Draft Plan Approval for a waste-coal fired circulating fluidized bed (CFB) boiler facility as well as to the EPA and PaDEP settlement agreements requiring PM CEMS. *Id.* at 22.

Claim 9D: The Proposed Permit Fails to Include Adequate Compliance Assurance Monitoring Requirements for PM

Petitioner's Claims. The Homer City Petitioner challenges the Proposed Permit's use of opacity monitoring as a surrogate for PM monitoring as being insufficient to determine compliance with applicable PM standards. *Id.* at 22-23. "Employing opacity monitoring as a surrogate for PM monitoring in the manner set forth in the Proposed Permit will not adequately assure compliance with the Plant's PM emission limits." *Id.* at 23. The Homer City Petitioner identifies that the opacity monitoring for Units 1 and 2 at the facility is for an opacity limit of a three-hour block average opacity maintained at less than 20% and that any opacity average less than this value will be considered a reasonable surrogate indicator of PM standard compliance." Proposed Permit Condition E. Group CAM, III. #001. *Id.* at 23. Additionally, the Homer City Petitioner identifies that the facility is subject to the Compliance Assurance Monitoring Rule (CAM) and its requirements to provide "a reasonable assurance of ongoing compliance with emission limitations or standards." 40 C.F.R. § 64.3(a)(2); *see also* Homer City Petition at 22.

Once again, the Homer City Petitioner argues that such a monitoring requirement is not sufficient to determine compliance with the hourly PM standard established in the Proposed Permit and, therefore, fails to assure compliance with the applicable PM emissions limitations requirements set forth in the PA SIP. *See* 25 Pa. Code § 139.12(4); Homer City Petition at 22-23. Further, the Homer City Petitioner contends it does not provide a reasonable assurance of ongoing compliance with the PM emission limits and is inconsistent with the CAM Rule requirements at 40 C.F.R. § 64.3(a)(2) and 42 U.S.C. § 7414(a)(3). Finally, the Homer City Petitioner states that the Proposed Permit's use of opacity monitoring as a surrogate for PM monitoring falls short of adequately assuring compliance with applicable PM standards because it fails to include condensable PM emissions. Homer City Petition at 23.

Claim 9E: The Proposed Permit Fails to Include Stack Testing Frequency Sufficient to Ensure Compliance with PM Emission Limits

Petitioner's Claims. The Homer City Petitioner claims that even if PaDEP were to find that PM CEMS are infeasible at the facility, the Proposed Permit's PM stack testing requirements of every two years are still inadequate to assure compliance with the applicable PM emission limits and inconsistent with the title V compliance assurance monitoring provisions of 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). *Id.* at 24. Instead, it maintains that, at a minimum, the Homer

City Proposed Permit should require quarterly testing conducted according to the final test method in 75 *Fed. Reg.* 80118 (Dec. 21, 2010). *Id.*

Again, the Homer City Petitioner cites to *Sierra Club*, where the D.C. Circuit Court of Appeals stated that "a monitoring requirement insufficient 'to assure compliance' with emission limits has no place in a [title V] permit unless and until it is supplemented by more rigorous standards." *Sierra Club* at 677. The Homer City Petitioner then states, without further analysis, that stack testing once every two years obviously does not assurance compliance with an hourly emissions limit.

EPA's Response. We view the three claims above, V.9C - V.9E, as being logically related and are, therefore, responding to them together. For the reasons provided below, the EPA denies the Homer City Petitioner's request for an objection on these PM monitoring claims.

The Homer City Petitioner fails to demonstrate that the Proposed Permit's monitoring requirements, viewed as a whole, are insufficient to assure compliance with the applicable PM limits. As discussed below, in addition to requiring stack testing, the Homer City Proposed Permit includes parametric monitoring requirements designed to assure compliance with the applicable PM limits. 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 Homer City Petitioner neither identifies an applicable requirement that compels the use of CEMS nor demonstrates that a CEMS is 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) (*Georgia Power Order*) at 12-13. Therefore, the Petitioner did not meet their burden of demonstrating that the permits are not in compliance with the requirements of the Act.

In support of its argument that the monitoring requirements are inadequate to assure compliance with the PM emission limits in Permit Condition E.#001, the Homer City Petitioner raises the following points: stack testing every two years is inadequate to assure compliance with an hourly emissions limit; instead of stack testing every two years, PM CEMS should be required as they are available, reliable, and accurate; the use of ESPs, combined with the inherent variability of PM emissions from coal-fired boilers, creates a very high degree of variability in Homer City's PM emissions; and the opacity indicator ranges in the CAM Plan for Units 1 and 2 do not assure compliance because an hourly test should be used to show compliance with an hourly limit. No other analysis is provided in regards to Unit 3.

For Units 1 and 2, the Homer City Petitioner does not demonstrate that the opacity monitoring, calculated as a 3-hour block average, is inadequate to assure compliance with hourly PM emission limits. The Petitioner did not analyze the full monitoring program at the facility. For instance, the Homer City Petitioner fails to acknowledge that the ESP parameters are to be

collected every 15 minutes. *See* Homer City Proposed Permit Condition E, Group 1 (Main Boilers), II. #032(7) at 45. Opacity monitoring, in conjunction with ESP parameters measured every 15 minutes, can provide a reasonable assurance of compliance with the PM requirement. Further, as noted in the PaDEP response, compliance is based on the average of three one-hour sampling runs conducted in accordance with the EPA Reference Method 5. Homer City CRD at 13. Further, the 2013 Homer City revised final title V permit contains the following conditions for PM monitoring: for Units 1 and 2, the use of continuous opacity monitors and operating parameters of the ESPs (including a power management system alarm set to the management system OEM guidelines) and for Unit 3, SO_2 CEMS and continuous opacity monitors. *See* 2013 Revised Final title V Permit Conditions Section E., Group 1 (Main Boilers), III. #035 at 50 and I. #003 at 45, respectively.

To the extent that the Homer City Petitioner raises concern with the inadequacy of PM monitoring because of the ESPs, the claim was not raised with reasonable specificity because no mention was made of the use of ESPs during the public comment period. Also, the EPA finds that, in making its assertion that the PM monitoring is inadequate in part due to the use of ESP, the Homer City Petitioner did not consider record information that was available during the public comment period. In particular, the Homer City Petitioner did not address the use of ESP power management system or the alarm settings set to the OEM guidelines to assure compliance with the applicable PM emission limit. Proposed Homer City Permit, Section E., Group CAM, III, #001 at 38. *See also* PaDEP Review of Title V Operating Permit Renewal Application at 6-7 (included as Exhibit 8 in the Homer City Petition). As indicated in footnote 12 of its Petition, the Homer City Petitioner recognizes these concerns with ESPs were not raised in regards to this Proposed Permit before submitting the Petition. The footnote references a declaration (attached as an exhibit) made in regards to another facility, but the Homer City Petitioner notes that the analysis is applicable to Homer City as well. Homer City Petition at 20. CAA Section 505(b)(2) states that "[t]he petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." 42 U.S.C. § 7661d(b)(2). This issue was not raised in comments, and, the Homer City Petitioner does not demonstrate that it was impracticable to raise such objections during the comment period. There is no indication that the grounds arose after the comment period.

Finally, as mentioned above, 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 1266-1267; *Citizens Against Ruining the Environment v. EPA*, 535 F.3d at 677-678; *Sierra Club v. EPA*, 557 F.3d at 406; and *MacClarence v. EPA*, 596 F.3d at 1130-1131 (discussing the burden of proof in title V petitions). Because the Petitioner simply challenges the lack of CEMS, the use of opacity monitoring as a surrogate, and the frequency of stack testing without addressing the overall monitoring scheme for the PM limits in the permits, the Petitioner did not demonstrate that the monitoring requirements in the permit are insufficient to assure compliance with the PM limits. *Georgia Power Order* at 59.

For the foregoing reasons, the Petition is denied as to these claims.

Claim 10: The Mansfield Proposed Permit Should Be Revised to Require that $PM_{2.5}$ is Limited Separately from PM_{10} and Monitored for Compliance Purposes[15]

Petitioners' Claim. The Mansfield Petitioners claim that the permit improperly fails to include specific limits for $PM_{2.5}$ and PM_{10}, instead "...inadequately regulat(ing) 'particulate matter' or 'PM'." Sierra Club Mansfield Comments at 21. As a basis for this claim, the Mansfield Petitioners cite to the EPA's April 2007 "Clean Air Fine Particle Implementation Rule" (72 *Fed. Reg.* at 20586), which implemented the $PM_{2.5}$ NAAQS, as well as the May 2008 "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)" (73 *Fed. Reg.* 28321(May 16, 2008)), which established preconstruction requirements for new major sources of $PM_{2.5}$ and major modifications at existing sources under the New Source Review (NSR) program. Under the latter rulemaking, the EPA officially rescinded the PM_{10} surrogate policy, which had allowed sources to use their PM_{10} emissions as a surrogate for $PM_{2.5}$ due to technical limitations associated with $PM_{2.5}$ test methods. Therefore, the Petitioners claim the Mansfield Facility's title V permit should include specific $PM_{2.5}$ and PM_{10} limits, in accordance with 25 Pa Code §§ 127.512(h), 121.1, and 141.1. Further, "(s)eparate permit limits and standards for $PM_{2.5}$ and PM_{10} are necessary to demonstrate compliance with both NAAQS, and prevent the Plant from causing a condition of air pollution, as required by 25 Pa. Code § 121.7[16]..." Mansfield Comments at 22. Additionally, the Mansfield Petitioners note that the Proposed Permit does require testing for filterable and condensable $PM_{2.5}$ and PM_{10}, for "informational purposes" (*See* Mansfield Proposed Permit at 44), but assert that this testing "...must be used to determine compliance with all applicable requirements." Mansfield Comments at 22.

Claim 11: The Mansfield Proposed Permit Should be Revised to Require that Condensable Particulate Matter is Considered When Determining Compliance with the Plant's Particulate Matter Limitations[17]

Petitioners' Claim. Citing to the Mansfield "Draft Permit at 43," the Mansfield Petitioners assert that the Mansfield draft permit is deficient because it fails to require that condensable PM is considered when determining compliance with the facility's PM limit. Mansfield Comments at 23. "As a result," asserts the Mansfield Petitioner, "...the Title V permit will fail to ensure compliance with the applicable NAAQS, thereby failing to ensure that the Plant's particulate emissions are in compliance with 25 Pa. Code § 121.7's prohibition on air pollution." *Id.* Additionally, the Mansfield Petitioners assert that the title V permit must require that the EPA Methods 201A and 202, or an EPA approved alternate method with equivalent accuracy be employed to test for filterable and condensable particulates.

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[15] The Petitioners raise this issues on page 2, as well as on page 18 (fn27). The issue was raised in the Sierra Club Mansfield Comments on page 21-23.

[16] Here, again, the Petitioners assert that Pennsylvania's general prohibition against air pollution at 25 Pa. Code § 121.7 creates new applicable requirements outside of the NAAQS implementation process which must be contained in a source's title V permit. This claim has been previously raised by the Petitioners (and subsequently addressed by the EPA) in both the Homer City and Bruce Mansfield petitions with respect to the SO_2 and NO_2 NAAQS.

[17] The Mansfield Petitioners raise this issue on page 2, as well as on page 18 (fn27). The issue was raised in the Mansfield Comments on page 23-24.

EPA's Response. We view the two claims above, Section V Claims 10 and 11, as being related and we are, therefore, responding to them together. For the reasons provided below, the EPA denies the Mansfield Petition on these PM applicable requirements claims. The issues raised in these claims are also closely related to those raised in Claim 9 of the Homer City Petition. As discussed in response to that Claim, the Mansfield Petitioners have misinterpreted the rulemaking actions cited and did not identify an applicable requirement, or any other statutory or regulatory requirement relating to $PM_{2.5}$ or PM_{10}, with which the permit does not assure compliance. With respect to the Mansfield Petitioners' claim that 25 Pa. Code § 121.7 requires additional, separate limits for $PM_{2.5}$ and PM_{10}, as discussed in Claims 1, 2, and 5 above, that general prohibition against air pollution in and of itself does not create the requirement for PaDEP to impose additional emissions limits outside of the SIP planning/NAAQS implementation process. Finally, the Mansfield Petitioners have not identified an applicable requirement with which the "informational" testing requirements must be used to demonstrate compliance. The Mansfield Petitioners, therefore, did not demonstrate on this claim that the title V permit is inadequate or lacks an applicable requirement. *See* 42 U.S.C. § 7661d(b)(2).

The Mansfield Petitioners are incorrect in their assertion that the pollutant "PM" as regulated in Mansfield's title V permit includes condensables. In an October 2012 final rulemaking action, the EPA revised the definition of "regulated NSR pollutant," and clarified that the condensable fraction of particulate emissions is only considered in relation to $PM_{2.5}$ and PM_{10}, not "particulate matter." *See* 77 *Fed. Reg.* 65107 (Oct. 25, 2012). As previously discussed, the Mansfield Petitioners have not identified the applicable requirement that would compel the inclusion of $PM_{2.5}$ and PM_{10} limits in the Mansfield title V permit. As a result, the Mansfield Petitioners did not identify the applicable requirement for which condensable emissions must be considered, and with which Methods 201 and 202 must be used to determine compliance. The Mansfield Petitioners, therefore, did not demonstrate on this claim that the title V permit is inadequate or lacks an applicable requirement. *See* 42 U.S.C. § 7661d(b)(2).

For the reasons stated above, the EPA denies the Mansfield Petition on these claims.

Claim 12: The Proposed Permits Impermissibly Claim to Apply a Permit Shield to Unidentified Future Projects

Petitioners' Claims. The Homer City and Mansfield Petitioners claim that Permit Conditions B.#013(b), B.#014(b), B.#017(e), B.#025(b), and B.#028(c) and (d) – which are identical in the respective proposed title V renewal permits – should be removed because they "claim to grant a permit shield but they do not specifically identify what applicable requirements are shielded." Homer City Petition at 25; Mansfield Public Comments at 28.[18] The Petitioners claim that the permits' failure to specifically identify the applicable requirements that are shielded is inconsistent with both 40 C.F.R. § 70.6(f)(1)(ii) and the corresponding approved Pennsylvania title V program regulation at 25 Pa. Code §127.516(a)(2). Homer City Petition at 24; Mansfield Public Comments at 28. The Mansfield Petitioners additionally claim that this failure is inconsistent with Permit Condition B.#028(a)(2). *Id.* The Mansfield Petitioners cite one federal district court decision and three EPA title V petition orders to further support their argument that

[18] The Petitioners raise this issue on pages 2, 17, and 18 (fn27) of the Mansfield Petition. This issue was raised in the Mansfield Public Comments on pages 28-30.

the permit shield can only extend to requirements that are specifically included in a title V permit, either as an applicable requirement or in a non-applicability determination.[19] *Id.* at 29. The Mansfield Petitioners note that specifically identifying the applicable requirements is "extremely important . . . since it could have important PSD or NSR implications at the Plant." *Id.* at 28. The Homer City Petitioner claims generally that the Proposed Permit "impermissibly claims to apply a permit shield to unidentified future projects." Homer City Petition at 25.

The Homer City and Mansfield Petitioners also claim that these same six permit conditions must be deleted because they include "changes that do not go through public notice and comment." Mansfield Public Comments at 28; *see also* Homer City Petition at 25. In support of this assertion, the Homer City and Mansfield Petitioners each cite only to the preamble of an EPA final action that promulgated the national emission standards for hazardous air pollutants (NESHAP) to reduce air emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture pharmaceutical products. Homer City Petition at 24; Sierra Club Mansfield Comments at 29. The Mansfield Petitioners point out that in that preamble the EPA listed "changes that do not go through public notice and comment" cannot receive a permit shield. *Id.* at 29. There, the EPA stated that "'[L]ike CAA section 502(b)(10) changes, most administrative permit amendments, and [minor permit modifications] which do not undergo prior public review [see sections 70.4(b)(12)(i)(B), 70.7(d)(4) and 707.(e)(1)(vi)], the part 70 permit shield may not extend to an [on-site implementation log] or source determinations made pursuant to the change management approach that have failed to undergo prior EPA and public review.' 63 *Fed. Reg.* 50280, 50 313 (Sept. 21, 1998)." *Id.* (Bracketed language in the original).

In addition, the Homer City and Mansfield Petitioners claim that these same six permit conditions must be deleted because off-permit changes cannot receive a permit shield. Homer City Petition at 24; Mansfield Comments at 29. The Homer City Petitioner asserts that the permit does not comply with 40 CFR § 70.6(f)(1)(i) and 25 Pa. Code § 127.516(a)(2) because "off-permit change provisions and other permit changes," such as minor permit modifications, do not go through public notice and comment. *See* Homer City Petition at 25.

Finally, the Mansfield Petitioners argue that the EPA stated in the preamble of the proposed Flexible Air Permitting Rule that changes made pursuant to an alternative operating scenario are not covered by the permit shield. Mansfield Comments at 29-30 (citing to 72 *Fed. Reg.* 52206, 52216, fn. 22 (Sept. 12, 2007)). The Homer City Petitioner cites to the same preamble language. Homer City Petition at 24.

EPA's Response. For the reasons provided below, the EPA grants the Petitions on these claims.

The EPA grants the Homer City and Mansfield Petitioners' claims that the respective Proposed Permit Conditions B.#013(b), B.#014(b), B.#017(e), B.#025(b), and B.#028(c) and (d) fail to specifically identify what applicable requirements should be shielded, on the basis that PaDEP's record is inadequate because it fails to contain an adequate justification for the inclusion of these provisions.

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[19] The Mansfield Petitioners cite to *United States v. East KY Power Co-op, Inc.* 498 F. Supp. 2d 1010, 1013, 1018 (E.D.K.Y. 2007) ; *In the Matter of Midwest Generation, LLC, Waukegan Generating Station*, Order on Petition No. V-2004-5 (Sept. 22, 2005); *In re Keyspan Generation Far Rockaway Station*, Order on Petition No. II-2002-06 (Sept. 24, 2004); and *In the Matter of Tanagraphics, Inc.*, Order on Petition No. II-2000-05 (July 3, 2002).

The challenged permit shield provisions are included in Section B, General Title V Requirements, of the Homer City/Mansfield Proposed Permits and the first five appear to generally incorporate into the respective title V permits language from various PA SIP provisions concerning when a permit shield is granted for minor permit modifications, administrative amendments, operational flexibility changes, and de minimis increases. These SIP provisions generally specify that a permit shield cannot be granted if it would be precluded by the Clean Air Act or its implementing regulations. However, while PaDEP referenced the PA SIP provisions found at 25 Pa. Code §§127.449(f), 127.450(d), and 127.462(g) in its response, it did not address how the inclusion of the language in this permit is consistent with 40 C.F.R. § 70.6(f)(1)(ii), the corresponding approved Pennsylvania title V program regulation at 25 Pa. Code § 127.516(a)(2), and Permit Condition B.#028(a)(2), which the Petitioners argue all require that the permit specifically identify the applicable requirements that are shielded. Homer City CRD at 14; Mansfield CRD at 11. In responding to this Order, PaDEP should explain for the record how the identified permit terms are consistent with 40 C.F.R. § 70.6(f)(1)(i) and (ii), 25 Pa. Code § 127.516(a)(2), and Permit Condition B.#028(a)(2), or revise the permit accordingly if required.

As noted above, the EPA observes that much of the language in Permit Conditions B.#013(b), B.#014(b), B.#017(e), B.#025(b), and B.#028(c) incorporates into the General Title V Requirements Section of the Homer City/Mansfield Permits language contained in the PA SIP provisions at 25 Pa. Code § 127.462(g) for minor permit modifications, 25 Pa. Code § 127.450(d) for administrative amendments, 25 Pa. Code § 127.449(f) for de minimis emission increases, and 25 Pa. Code § 127.462(g) for operational flexibility changes. These permit conditions do not specifically identify any particular minor permit modifications, administrative amendments, operational flexibility changes, or de minimis increases that the permitting authority intends to shield. In responding to this Order, PaDEP should consider whether removing these permit conditions would clarify Homer City's and Mansfield's obligations with regard to the provisions of the PA SIP at 25 Pa. Code §§ 127.450, 127.449, 127.462, and 127.3.

Concerning Permit Condition B.#028(d), this permit condition, on its face, appears to automatically apply the permit shield now to future unspecified administrative operating permit amendments and minor operating permit modifications. However, the relevant PA SIP provisions at 25 Pa Code §§ 127.450(d) and 127.462(f), respectively, only allow for a shield when the permitting authority later takes final action on a specific change. Therefore, the EPA directs PaDEP to either remove Permit Condition B.#028(d) from both permits, or revise it consistent with the requirements of the Pennsylvania SIP at 25 Pa Code §§ 127.450(d) and 127.462(f) and of the title V program at 25 Pa. Code § 127.516.

For these reasons, the EPA grants these permit shield claims and orders PaDEP to supplement its record and response to address these concerns or to remove the conditions from both the 2013 Homer City Revised Final title V Permit and the Mansfield Final title V Permit (or make other appropriate changes).[20]

[20] To the extent that the Homer City Petitioner argues specifically in the Homer City Petition at 25 that Permit Condition B.#028(c) or any of the five other conditions are improper because they cover minor permit modifications

Claim 13: The Mansfield Proposed Permit Fails to Require Adequate Monitoring to Assure Compliance with PM Emission Limits

Petitioners' Claims. The Petitioners claim that the Mansfield Proposed Permit's monitoring requirements are inadequate to assure compliance with the PM emission limits listed therein. Mansfield Petition at 13-16. Instead, they assert that PM CEMS, which have already been installed on Units 1, 2, and 3 at the Facility, should be used. *Id.* at 17. In support of this claim, the Petitioners identify that the Mansfield Proposed Permit only requires testing within one year of permit issuance and then only once every two years. *Id.* at 15. Mansfield Petitioners argue that this monitoring frequency is inadequate for a PM emission limit of 0.1 lb mmBtu PM heat input limit when the heat input is greater than or equal to 600 mmBtus, an emissions limit established pursuant to the PA SIP rule at 25 Pa. Code § 123.11(a)(3). *Id.* at 14-15.

The Mansfield Petitioners assert that the monitoring for the 0.1 pound per one million British thermal units (lb/mmBtu) limit in the permit is inadequate to assure compliance as required by 42 § U.S.C. 7661c(c) and is inconsistent with the EPA's monitoring requirements at 40 C.F.R. §§ 70.6(a)(3)(i)(A), 70.6(a)(3)(i)(B), and 70.6(c)(1). *Id.* at 14. The Mansfield Petitioners also cite to *Sierra Club v. EPA*, 536 F.3d at 675, 678 and the *TriGen Objection* to highlight that yearly or one-time tests do not satisfy periodic monitoring requirements for PM under the CAA. *Id.* Further, in citing to the *U.S. Steel Order*, the Mansfield Petitioners claim that the permitting authority is required to set forth its rationale for why the chosen monitoring requirements are adequate to assure compliance of an emissions limit and describe why they believe the required monitoring requirements fail according to the five factors outlined in the *U.S. Steel Order*. *Id.*

Finally, the Mansfield Petitioners assert that PaDEP has offered no such explanation of sufficiency and that the adequacy of the Proposed Permit's monitoring requirements for the 0.1 lb/mmBtu PM limit are inadequate, especially in light of the fact that the plant has PM CEMS, which were required by a 2008 Consent Order and a Partial Consent Decree. *Id.* at 14-15.

EPA's Response. This claim is moot. In response to the Petitioners' comments on the Mansfield Proposed Permit, PaDEP added a condition in the final permit that compliance with the PM emission limit is to be determined through the use of PM CEMS. A new condition, Condition E.#020, was added to the Mansfield Final Permit and explains that in accordance with a Consent Order and Agreement entered into on February 28, 2008, the owner/operator shall "install, certify, operate and maintain" PM CEMS on the exhausts from Units 1, 2, and 3 to demonstrate compliance with the PM emission rate identified under the requirements of 25 Pa Code § 123.11 (for Units 1 and 2) or 40 C.F.R. § 60.42 (for Unit 3). Mansfield Final title V Permit, Section E, Group 1, III, #020. Also, PaDEP indicates that all three units are equipped with Continuous Particulate Monitors (CPMs) for tracking emissions and that PM CEMS constitutes CAM [Compliance Assurance Monitoring] for PM emissions from Units 1, 2, and 3. May 24, 2012 Review of Operating Permit Renewal Application at 7. Therefore, this claim is now moot.

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that do not go through public notice and comment, the EPA notes that 25 Pa. Code § 127.462 requires public notice and comment for minor permit modifications.

Claim 14: The Mansfield Proposed Permit Fails to Require Adequate Monitoring to Assure Compliance with Opacity Limits

Petitioners' Claims. The Petitioners claim that the Mansfield Proposed Permit's opacity monitoring requirements are inadequate to assure compliance with the opacity limits therein because monitoring is too infrequent, uses inadequate methods, and is inconsistent with 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c)(1) and 25 Pa. Code § 127.511(a)(2). Mansfield Petition at 16-17. The Mansfield Petitioners assert that the permit must require continuous opacity monitoring. *Id.* at 17. In support of this assertion, the Petitioners identify that the Mansfield Proposed Permit contains standards that opacity must be limited to 20% for any aggregated period of three minutes during any one hour or 60% at any time, while it only requires measuring visible emissions for at least one hour during each calendar week. *Id.* at 17. The Mansfield Petitioners assert that "...the frequency of the monitoring must meaningfully relate to the opacity limits in the permit...," and, therefore, because the opacity limits must be met at all times, a weekly visible emission measurement is "...insufficient to ensure that any potential exceedances or violations are detected, recorded, and reported as required." *Id.* at 16-17.

The Petitioners also note that the Mansfield Proposed Permit's one hour per week monitoring requirement is qualified by the clause "unless atmospheric conditions make such readings impossible." *Id.* at 17. The Mansfield Petitioners argue that this qualification adds ambiguity and further weakens the opacity monitoring requirements due to the potential exemption from the required weekly observation for atmospheric conditions. Finally, the Mansfield Petitioners claim that the approved methods for conducting opacity monitoring (a device approved by PaDEP or observations by trained and qualified observers) are inadequate. *Id.* For these reasons, the Mansfield Petitioners assert that the Mansfield Proposed Permit should require continuous opacity monitoring (COMS), "...or at the very least, daily stack observations for visible emissions."[21] *Id.*

EPA's Response. For the reasons provided below, the EPA grants the Petition on this claim.

In its response to the Mansfield Petitioners' comments, PaDEP responded by explaining why COMS were not required at any of the three boilers. PaDEP declared that it has exempted all three units at the Mansfield Facility from the COMS requirement in the PA SIP, in accordance with its authority under 25 Pa Code § 123.46(c). Mansfield CRD at 10-11.

The EPA agrees that PaDEP has the authority to exempt, as appropriate, the Mansfield units from the SIP based COMS requirements of 25 Pa Code § 123.46(b), and to require alternative monitoring to demonstrate compliance with the SIP opacity limit at 25 Pa Code § 123.41 (the EPA notes that this is the only opacity limit raised by the Mansfield Petitioners). However, neither the permit record nor PaDEP's response to the Mansfield Petitioners' comments sufficiently demonstrate that Units 1, 2, and 3 were appropriately exempted under this PA SIP provision. Thus, the Mansfield Petitioners demonstrated that PaDEP's record does not explain how the alternative monitoring that was selected assures compliance with the terms and conditions of the permit. Nor does PaDEP attempt to explain how a weekly Method 9 observation relates to an opacity limit that must be met at all times.

[21] The daily stack observation note was not raised in the Mansfield Petitioners' original comments.

The EPA's part 70 monitoring rules (40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(l)) are designed to address the statutory requirement that "[e]ach permit issued under [title V] shall set forth ... monitoring ... requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c). As a general matter, permitting authorities must take three steps to satisfy the monitoring requirements in the EPA's part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. Second, if the applicable requirement contains no periodic monitoring, permitting authorities must add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.P.R. § 70.6(c)(l). *See In the Matter of CITGO Refining and Chemicals Company L.P., West Plant, Corpus Christi, Texas*, Order on Petition Number VI-2007-01 (May 28, 2009) (*CITGO Order*) at 6-7.

In addition to meeting these three steps, the rationale for the monitoring requirements selected by a permitting authority must be clear and documented in the permit record (e.g., in the statement of basis) 40 C.F.R. § 70.7(a)(5). The determination of whether monitoring is adequate in a particular circumstance generally is a context-specific determination. The monitoring analysis should begin by assessing whether the monitoring required in the applicable requirement is sufficient to assure compliance with permit terms and conditions. Some factors that permitting authorities may consider in determining appropriate monitoring are: (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities. The preceding list of factors provides the permitting authority with a starting point for its analysis of the adequacy of the monitoring; the permitting authority also may consider other site-specific factors. *CITGO Order* at 7-8.

The EPA notes that there may be other monitoring requirements in the Mansfield Final title V Permit that possibly could be used to demonstrate compliance with the opacity limits. For instance, the Mansfield Facility now operates PM CEMS, which may detect any compliance issues before opacity becomes an issue.[22] Additionally, stack testing can be used to correlate PM emissions and opacity as this frequently occurs at plants that do not have PM CEMS. Further, a sodium bisulfite (SBS) injection system has been installed at the Mansfield Facility to reduce opacity, and permit conditions contain additional monitoring, reporting and recordkeeping requirements related to the SBS injection system. Mansfield Final title V Permit, Section E, Group 1, VI, #038-040. Specifically, Condition E.#039 requires that the Mansfield Facility maintain records that are "sufficient to determine the correlation between opacity, emission rate of SO_3, emission rate of H_2SO_4, and injection rate of SBS solution." Mansfield Final title V

[22] Notably, the final Mansfield title V permit issued April 2, 2013, requires the installation, operation, and maintenance of PM CEMS to determine compliance with the permit's PM emission limit. *See* Mansfield Final title V Permit at 51.

Permit at 54. Therefore, PaDEP may be able to provide sufficient explanation of why the monitoring requirements contained in the Mansfield Proposed Permit sufficiently assure compliance with the opacity limits. If necessary, PaDEP shall correct the permit terms as needed to ensure that the monitoring is adequate to assure compliance.

For these reasons, the EPA grants the Mansfield Petition on this opacity monitoring claim.

VI. EPA DETERMINATIONS ON MISCELLANEOUS CLAIMS

In both the Homer City and Mansfield Petitions, the Petitioners included multiple additional grounds for objection. These additional grounds for objection include multiple issues as described in Claims 15-27.

Claim 15: The Homer City Proposed Permit Must Be Revised to Include a Complete Inventory List and Maps Section

Petitioner's Claim. The Homer City Petitioner claims that the Site Inventory List contained in Section A of the proposed permit for Homer City is deficient.[23] *See* Homer City Petition at 14. Specifically, the Homer City Petitioner claims that because the facility's stacks and ash handling systems are not included in the Inventory List, it is not clear that the list is complete. Additionally, the Homer City Petitioner claims that the list is deficient because it does not specify the "fuel type and material" and because it "...only lists capacities in millions Btu's per hour and fails to list capacities in tons per hour." Homer City Comments at 31. The Homer City Petitioner further asserts that the Proposed Permit improperly fails to include Permit Maps, which "... are necessary to provide information on the flow of pollutants through the Homer City facility and must be included in any final permit." *Id.*

EPA's Response. For the reasons provided below, the Homer City Petition is denied with regard to this claim. First, the EPA notes that PaDEP agreed to revise the permit in response to the Homer City Petitioner's comments and it did so. Homer City CRD at 15. The Inventory List in Homer City's 2013 Revised Final title V Permit includes all three Unit stacks, as well as the stacks for the fire pump engine and the emergency generator. Additionally, it lists "oil space heaters," "plant fugitive exhaust," and "unit mix col blending yard." 2013 Homer City Revised Final Permit at 4. Section A of the 2013 Homer City revised final title V permit also includes Permit Maps, as requested by the Petitioner. *Id* at 4-5. Therefore, the Homer City Petitioner's claim with respect to these items is moot. Further, notwithstanding PaDEP's revisions, the Homer City Petitioner did not identify any statutory or regulatory requirement that would compel

[23] The Homer City Petitioner raises this issue on page 1 (fn 1). The issue was raised in the Homer City Comments on page 31. This, and numerous other issues in this section, were raised by either or both the Homer City Petitioner or Mansfield Petitioners by referencing comments. As the references to these particular comments are relatively clear, the EPA will consider these claims. However, the EPA strongly encourages petitioners to raise claims they seek to make on the face of the petitions themselves. As discussed in more detail above and in other title V orders, *see Nucor II*, petitioners must demonstrate that a permit is not in compliance with the Act before the EPA must object, and the EPA generally considers numerous factors in evaluating a demonstration, including, as appropriate, whether a petitioner addresses the state's rationale for its permit decision, and the terms of the proposed permit in its petition. Further, Congress only provided the EPA a short time for the EPA to review title V petitions, and, consequently, it is reasonable for the EPA to expect that petitioners provide the necessary support for those claims.

PaDEP to include in the permit any of the information being requested. The Homer City Petitioner, therefore, did not demonstrate on this claim that the title V permit is inadequate or lacks an applicable requirement. *See* 42 U.S.C. § 7661d(b)(2). The EPA notes further that the Homer City Petitioner did not address PaDEP's response in its supplemental petition.

For these reasons, the EPA denies the Homer City Petition as to this claim.

Claim 16: The Homer City Proposed Permit Must be Revised to Include Several Emission Limits and Work Practices Which are Missing Monitoring Requirements

Petitioner's Claim. The Petitioner claims that Homer City's Proposed Permit is missing monitoring and reporting provisions for three permit conditions, C.#001, C.#002, and C.#003.[24] The Homer City Petitioner also claims that many other permit terms are missing monitoring and reporting provisions, but do not identify any other permit conditions. According to the Homer City Petitioner, the permit "must be revised to include monitoring and reporting provisions for these emission restrictions." Homer City Comments at 30.

EPA's Response. The Homer City Petitioner has not demonstrated that the Proposed Permit is not in compliance with the requirements of the Act. *See* 42 U.S.C. § 7661d(b)(2). The Homer City Petitioner has not demonstrated that the monitoring and reporting requirements for the three identified permit conditions are inadequate. See discussion on demonstrating that a permit is not in compliance with the Act in Section II. B of this Order. The Homer City Petitioner has not provided the relevant citations and analyses to support its claim. The Homer City Petitioner has not identified a statutory or regulatory basis for its assertion that monitoring and reporting are required. The Homer City Petitioner broadly claims in a conclusory manner that the monitoring and reporting is inadequate, but does not appear to consider all the relevant permit conditions. In particular, the Homer City Petitioner has not addressed the monitoring and reporting that is included in the permit for the identified permit conditions or explained why that monitoring is inadequate. As PaDEP explained in the Homer City CRD, Permit Conditions C.#010 and C.#011 contain monitoring and recordkeeping for the conditions the Homer City Petitioner identified.[25] Homer City CRD at 14-15. Also, the 2013 Homer City Revised Final title V Permit contains other provisions, including C.#014, C.#015, C.#016, and B.#23, which also require monitoring, recordkeeping and reporting.

With regard to the Homer City Petitioner's assertion that many other permit terms contain inadequate monitoring, the Homer City Petitioner has not specified any permit terms and therefore has not demonstrated that the monitoring for any other permit terms is inadequate.

For these reasons, the EPA denies the Homer City Petition as to this claim.

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[24] The Petitioner raises this issue on page 1 of the 2012 Homer City Petition. This issue was raised in the Homer City Comments on page 30. The EPA notes that in the 2013 Homer City Revised Final title V Permit, the subject permit terms are Conditions C.#002, C.#003, and C.#004.

[25] The EPA notes that in the 2013 Homer City Revised Final title V Permit, the subject permit terms are Conditions C #011 and C #012.

Claim 17: The Homer City Proposed Permit Must Be Revised to Address Numerous Monitoring Deficiencies

Petitioner's Claim. The Homer City Petitioner claims that Permit Condition B.#025(a) of Homer City's Proposed Permit "needs monitoring, record keeping and reporting requirements to determine whether prevention of significant deterioration ('PSD') or nonattainment new source review ('NA NSR') will be triggered under the Plant's operational flexibility." Homer City Comments at 30.[26] The Homer City Petitioner further states that Permit Condition B.#025(a)(4) "allows emission increased [sic] under 25 Pa. Code § 127.449(d), but the permit lacks monitoring and reporting to assure compliance with the emission limits in 25 Pa Code § 127.449(d)(1)-(5)." *Id.* The Homer City Petitioner makes no other assertions in support of these claims.

EPA's Response. The Petitioner has not demonstrated that the Proposed Permit is not in compliance with the requirements of the Act. *See* 42 U.S.C. § 7661d(b)(2). The Petitioner's claim regards one permit condition (B.#025); however, the permit contains several other potentially relevant provisions that qualify as implementation of Condition B.#025. For example, Petitioners cite to B.#025(a)(4) as potentially problematic without considering the requirements associated with B.#017. Condition B.#017 does in fact include key reporting requirements including reporting of emissions information and numerous other requirements not addressed or discussed by the Petitioner. Although each of these conditions is a separate condition, many of the conditions work together to provide a complete picture of the monitoring, recordkeeping and reporting requirements included in the permit. The Homer City Petitioner has not demonstrated monitoring, recordkeeping and reporting associated with Permit Condition B.#025(a) is deficient in part because the Homer City Petitioner did not consider all the relevant permit terms and conditions. Further, the Homer City Petitioner did not identify a statutory or regulatory basis, or analysis, for its assertion that additional monitoring, recordkeeping, and reporting beyond the current permit terms and conditions, is required. The Homer City Petitioner broadly claims in a conclusory manner that the permit should include monitoring, recordkeeping and reporting requirements to determine whether PSD and nonattainment NSR would be triggered under by Condition B.#025, but the Petitioner does not explain why the monitoring, recordkeeping, and reporting associated with all the other conditions that are cited to within Condition B.#025 are inadequate. The permit is clear on its face that Condition B.#025 references various other regulatory requirements – each part of B.#025 includes a specific legal citation. Each of those specific legal citations include various other requirements. In addition, as was explained earlier, those other citations are also included as other general permit terms and conditions. This is also pointed out by PaDEP in its response to these comments. *See* Homer City CRD at 15. 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) at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005) (hereafter "*Chevron Order*") at 12, 24. Also, if the petitioner did not address a key element of a particular issue, the petition should be denied.

[26] The Homer City Petitioner raises this issue on page 1 (fn 1) of the Homer City Petition. This issue was raised in the Homer City Comments on page 30.

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; *See, e.g., In the Matter of Georgia Pacific Consumer Products LP Plant,* Order on Petition No. V-2011-1 at 6-7, 10-11 (July 23, 2012) at 10–11, 13–14.

For these reasons, the EPA denies the Homer City Petition as to this claim.

Claim 18: The Proposed Permits Do Not Include Language Allowing for the Use of Any Credible Evidence to Demonstrate Noncompliance

Petitioners' Claim. The Petitioners claim that both the Mansfield and Homer City Proposed Permits fail to include a provision allowing the use of any credible evidence to determine permit compliance or noncompliance.[27] In both Petitions, the Petitioners refer to the Credible Evidence Revisions ("CER") Rule, which makes clear "that any credible evidence can be used in enforcement actions. 62 *Fed. Reg.* 8314 (Feb. 24, 1997)." Homer City Comments at 30; Sierra Club Mansfield Comments at 30. Further, the Mansfield Petitioners contend that the Mansfield Proposed Permit includes language that "purports to limit the type of evidence that is to be used for compliance purposes or to show that the facility is in violation of an applicable requirement." Mansfield Comments at 30. As an example, the Mansfield Petitioners identify Mansfield Permit Condition E.#011, which requires the Mansfield facility to demonstrate compliance through stack testing. According to the Mansfield Petitioners, the Mansfield general Permit Condition B.#021 (pertaining to sampling, testing, and monitoring procedures) could create confusion that "credible evidence other than the methods set forth" in the permit is not allowable. Sierra Club Mansfield Comments at 30.

EPA's Response. For the reasons stated below, the EPA denies this claim. The Homer City Petitioner and Mansfield Petitioners do not point to any language in the Pennsylvania rules or the Proposed Permits that precludes the use of credible evidence, or provide any instances where PaDEP improperly excluded the use of credible evidence.

As we have previously stated, to demonstrate that a title V permit fails to provide for the use of credible evidence, a Petitioner must specifically identify permit terms excluding the use of credible evidence or otherwise identify that the permitting authority excluded the use of credible evidence. *See, e.g. In the Matter of Louisiana Pacific Corporation, Tomahawk, Wisconsin, Petition number V-2006-3* (November 5, 2007) (*Louisiana Pacific*) at 11-12 (denying the claim because the Petitioner did not point to language in the permit conditions that excludes the use of credible evidence, or to provide any instances where the permitting authority improperly excluded the use of credible evidence). The Homer City and Mansfield Petitioners cite two provisions as examples of how the Proposed Permits preclude the use of credible evidence. Condition B.#021, a general requirement that applies to both the Homer City and Mansfield Facilities, requires that the sampling, testing, and monitoring procedures must be conducted "in accordance with 25 Pa. Code Chapter 139…" 2013 Homer City Revised Final title V Permit at

[27] The Petitioners raise the issue on page one (fn 1) in the Homer City Petition, and on page 2 and page 18 (fn 27) of the Mansfield Petition. The issue was raised in the Homer City Public Comments on pages 30-31; it was raised in the Sierra Club Mansfield Comments on pages 30-31.

12; Mansfield Final title V Permit at 12. Mansfield Permit Condition E.#011 requires stack testing be conducted in accordance with "any applicable federal regulations," 25 Pa. Code Chapter 139 and the PaDEP source testing manual.[28] Mansfield Proposed Permit at 43. While Petitioners refer to these conditions as examples that might cause confusion or appear to limit the types of credible evidence allowed, the language in these permit conditions, like the language at issue in *Louisiana Pacific Corp.*, does not state that the specified methods or procedures are the exclusive or sole methods or procedures to be used to determine compliance. *Id.* No additional conditions or specific concerns within the Proposed Permits have been identified by the Homer City Petitioner and Mansfield Petitioners as excluding the use of credible evidence.

In addition, the Homer City Petitioner and Mansfield Petitioners have not cited to any actual instances where PaDEP improperly excluded the use of credible evidence related to determining compliance with these or other permit conditions in the Homer City and Mansfield Permits. In the CRDs, PaDEP states: "Section 113(e)(1) states 'the duration of a violation may be determined by any credible evidence (including evidence other than the applicable test method).' This enables citizens, states and the EPA to rely on any credible evidence to demonstrate CAA violations." Homer City CRD at 15; Mansfield CRD at 11. Thus, PaDEP explained that "it is not necessary to make a change to the proposed [title V operating permit] renewal to allow the use of credible evidence in [the] determination of compliance of the facility." *Id.* The EPA notes that PaDEP's response indicates that the use of credible evidence is not precluded under the existing permit language, which is inconsistent with Petitioners' claim that the permit must include a provision or language allowing for the use of any credible evidence to demonstrate noncompliance in order to ensure it may be used. The EPA finds that the two permit conditions cited by the Homer City and Mansfield Petitioners do not prohibit the use of credible evidence. For these reasons the Petitions do not demonstrate that the EPA must object to the Homer City and Mansfield permits on this issue.

For the reasons stated above, the EPA denies the Petitions as to these claims.

Claim 19: The Proposed Permits Must Require Prompt Reporting

Petitioners' Claims. The Petitioners claim that the Proposed Permits must be revised to require prompt reporting of permit deviations.[29] The Petitioners contend that both the Homer City and Mansfield Proposed Permits only require deviations to be reported when the permittee submits its semi-annual reporting of all required monitoring, which is not "prompt reporting" as required by 40 C.F.R. § 70.6(a)(3)(iii)(B). Homer City Comments at 33; Mansfield Comments at 18. Relying on an interpretation that it is PaDEP's responsibility to define "prompt," the Petitioners contend this requirement is separate from the semi-annual reporting found in 40 C.F.R. § 70.6(a)(3)(iii)(A). In support of this claim, the Petitioners refer to permit condition B.#023 found in both Proposed Permits (requiring the submittal of reports of required monitoring at least every 6 months), and contend that no justification or rationale is provided by PaDEP as to how

[28] This is Condition E.013 in the Final Permit at 48.

[29] The Petitioners raise the issue on page one (fn 1) in the Homer City Petition, and on page 2 and page 18 (fn 27) of the Mansfield Petition. The issue was raised in the Homer City Comments on pages 31 and 33; it was raised in the Mansfield Public Comments on pages 18-19.

reporting every 6 months "constitutes prompt reporting of permit deviations." Homer City Comments at 33; Mansfield Comments at 19.[30]

The Homer City Petitioner also claims that in the Homer City Proposed Permit "Section B, #004 requires the permittee to submit omitted or corrected information during the permit renewal process" instead of "promptly." Homer City Comments at 31. The Homer City Petitioner claims that 40 CFR § 70.5(b) and 25 Pa. Code § 127.414(b) do not allow the permittee to wait until the permit renewal process to submit omitted or corrected information. Therefore, the Homer City Petitioner contends that the Homer City Proposed Permit must be revised to require any omitted or corrected information be submitted promptly to PaDEP. Homer City Comments at 31.

EPA's Response. For the reasons provided below, the EPA denies the Petitions on these claims.

Permit Condition B.#023(b) incorporates the language of 25 Pa. Code § 127.511(c) into the Homer City and Mansfield final title V permits. Neither 25 Pa. Code § 127.511(c) nor Permit Condition B.#023(b) require "prompt" reporting of deviations. Permit Condition B.#023 addresses deviation reporting by generally requiring semiannual reporting that includes "instances of deviations" to be included in the report. Homer City Proposed Permit at 12; Mansfield Proposed Permit at 13. The Petitioners have not identified any other regulatory provision of the Pennsylvania approved title V program or the Pennsylvania SIP that would require the "prompt" reporting of deviations. The Petitioners also have not identified any other basis for their assertion that Permit Condition B.#023 is inadequate, either in the Homer City Petition or in the Homer City Supplemental Petition.

Further, the Homer City and Mansfield final title V permits do include provisions requiring reporting of malfunctions that may lead to deviations. As PaDEP indicated in both the Homer City CRD and Mansfield CRD, the Permit "contains language relating to prompt reporting of malfunctions that may lead to deviations of the permit," and each facility is also required to submit quarterly CEMS reports. Homer City CRD at 16; Mansfield CRD at 8. The EPA notes that permit conditions C.#015 and C.#012 in the 2013 Homer City revised final title V permit and Mansfield final title V permit respectively describe the process for reporting each malfunction that occurs at the facility. For instance, for a malfunction that "poses an imminent and substantial danger to public health and safety or the environment" the facility must notify PaDEP "no later than one hour after the incident." For all other malfunctions, the facility has until the next business day to notify the permitting authority. 2013 Homer City Revised Final title V Permit at 20-21; Mansfield Final title V Permit at 19-20. Permit Conditions C.#015 and C.#012 implement the provisions of 25 Pa. Code § 127.442, which requires that sources submit reports containing information relative to the operation and maintenance of the source, and does not specify that reporting must occur in any particular time frame. Further, the provisions of 25 Pa. Code §§ 127.442 and 127. 511(c) notwithstanding, PaDEP has included in the final Homer City and Mansfield title V permits provisions related to the timeframe in which reports of deviations due to malfunctions must be submitted. The EPA concludes that the Permit Condition B.#023(b) of the Homer City and Mansfield final title V permits is not inconsistent with the PA SIP or the Pennsylvania approved title V program.

[30] The EPA notes that neither the proposed nor the final Homer City permits contain a Condition C.#032, as discussed by the Homer City Petitioner on pg. 33 of the Homer City Comments.

As the Homer City Petitioner has indicated, Condition B.#004 of the Homer City permit implements 25 Pa. Code § 127.414(b) concerning additional information to address requirements that become applicable after a source has submitted a complete permit application. This provision, 25 Pa. Code § 127.414(b), does not concern deviation reporting. Condition B.#004 is part of the General Title V Requirements Section, and consistent with 25 Pa. Code § 127.414(b), requires the submittal of supplementary factors or corrected information during the permit renewal process. Nonetheless, PaDEP indicated in the Homer City CRD that the permit condition had been "revised as requested," and the final permit condition now states that the facility "upon becoming aware that any relevant facts were omitted or incorrect information was submitted in a permit application, shall promptly submit such supplementary facts or corrected information during the permit renewal process." Homer City CRD at 15; 2013 Homer City Revised Final title V Permit at 6. The Petitioner also has not identified any other basis for their assertion that Permit Condition B.#004 is inadequate either in the Homer City Petition or in the Homer City Supplemental Petition. Therefore, the Petitioner has not demonstrated a flaw related to Permit Condition B.#004 of the Homer City final title V permit.

For the reasons stated above, the EPA denies the Petitions as to these claims.

Claim 20: PaDEP does not have authority to include Section B., #007 in the Homer City Permit

Petitioner's Claim. Referring to Condition B.#007(c) of the Homer City Proposed Permit, the Homer City Petitioner claims that "there is no authority for the inclusion of Section B.#007(c) and therefore it must be deleted from any subsequent draft or final permit."[31] According to the Homer City Petitioner, 25 Pa. Code §§ 127.25, 127.444, and 127.51(c)(1), which the Proposed Permit cites as authority for Condition B.#007(c), do not include any language similar to what PaDEP has proposed to include in Section B.#007(c). The Homer City Petitioner also claims that Section B.#007(c) must be deleted because: (1) there is no monitoring associated with this condition; (2) "allowing post-permit determinations of which physical configurations and engineering design details are essential for the permittee's compliance with the applicable requirements in the Title V permit violates the Title V public participation requirements as the public will not be given an opportunity to comment on this determination"; and (3) 25 Pa. Code §§ 127.25, 127.444 are applicable requirements and PaDEP "cannot essentially remove these SIP approved conditions out of the Title V permit by narrowing their scope to only include physical configurations and engineering design details that ensure compliance with other Title V applicable requirements." Homer City Comments at 32.

EPA's Response. In response to the Homer City Petitioner's public comments, PaDEP removed the last sentence of Condition B.#007(c) in the final title V permit. *See* Homer City CRD at 15. The effect of removing that sentence was to remove from Condition B.#007(c) conditions inconsistent with the Pennsylvania SIP. In the 2013 Homer City Revised Final title V Permit, Condition B.#007(c) reads as follows: "(c) For purposes of Sub-condition (b) of this permit

[31] The Petitioners raise this issue on page 1 (fn 27) of the Homer City Petition. This issue was also raised in the Homer City Comments on page 32.

condition, the specifications in applications for plan approvals and operating permits are the physical configurations and engineering design details that the Department determines are essential for the permittee's compliance with the applicable requirements in this Title V permit." 2013 Homer City Revised Final title V Permit at 7. This permit condition [Condition B.#007(c)] implements the provisions of the PA SIP at 25 Pa Code § 127.444, which states that … "the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department." The Homer City Petitioner has not demonstrated that Condition B.#007(c), as amended in the 2013 Homer City revised final title V permit, is inconsistent with the requirements of 25 Pa. Code § 127.444, including specifications in the applications and the conditions in the plan approval. Although initially raised in the Homer City Petition, this issue was not further addressed in the Supplemental Petition. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the RTC). *See MacClarence*, 596 F.3d at 1132-33; *see also 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). Further, the information in the original Petition is no longer salient in light of the change in the permit.

The Homer City Petitioner has not explained why monitoring should be associated with Permit Condition B.#007(c), and has cited no authority for why monitoring should be required. The Homer City Petitioner also has not explained why Condition B.#007(c) precluded public participation or identified a specific plan approval for which the public record did not include the permit application.[32] Likewise, the Homer City Petitioner has not explained why it is inappropriate to use the physical configurations and engineering design specifications in permit applications for plan approvals and operating permits to determine compliance with applicable requirements, or why this provision of Condition B.#007(c) is inconsistent with 25 Pa. Code §§ 127.25 and 127.444. Thus, the Homer City Petitioner has not provided the relevant analyses and citations concerning its claim. General assertions are not sufficient to demonstrate that the permit was flawed. 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., Luminant Order* at 9; *BP Order* at 8; *Chevron Order* at 12, 24.

For these reasons, the EPA denies the Homer City Petition as to this claim.

Claim 21: The Homer City Proposed Permit Must Be Revised to Include the EPA in the Severability Clause in Section B, #015

[32] The EPA notes that PaDEP in fact provided opportunity for public comment on the permit application for the 2013 Plan Approval. PaDEP provided notice to the public regarding the April 2, 2012 plan approval (Plan Approval No. 32-00055H) for installation and temporary operation of a FGD and fabric filter for Units 1 and 2 for the Homer City facility pursuant to under 25 PA Code §§ 127.44-127.45, which are part of the EPA-approved PA SIP. The plan approval application was available for public review and comment during the comment period. 25 PA Code § 127.44(d) requires notice of action on plan approval applications to include the location at which the application may be reviewed.

Petitioner's Claim. The Homer City Petitioner asserts that Permit Condition B.015 "should be revised to also include EPA in the severability clause."[33] The Homer City Petitioner states that "25 Pa. Code § 127.512(b) provides '[t]he permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to a portion of the permit.'" According to the Homer City Petitioner, the Permit Condition B.#015 of the Homer City Proposed Permit limits the severability clause to the Pennsylvania Environmental Hearing Board or a "court of competent jurisdiction" even though "the U.S. EPA also has the authority to invalidate individual provisions of this permit." *Id.* Therefore, the Homer City Petitioner contends Permit Condition B.#015 "should be revised to also include EPA in the severability clause."

EPA's Response. This claim is moot. The EPA notes that PaDEP revised permit condition B.#015 to include the EPA in the severability clause "as requested." Homer City CRD at 15. In Homer City's 2013 Revised Final title V Permit, permit condition B.#015 now states that "if any provision of this permit is determined by the Environmental Hearing Board or a court of competent jurisdiction, or US EPA to be invalid or unenforceable, such a determination will not affect the remaining provisions of the permit". 2013 Homer City Revised Final Permit at 9 (emphasis added).

Claim 22: The Homer City Proposed Permit Must Be Revised to Include Specific Monitoring For De Minimis Emission Increases

Petitioner's Claim. The Homer City Petitioner claims that Permit Condition B.#017(a) of Homer City's Proposed Permit "allows for de minimis emission increases for various pollutants which will not require a plan approval or permit modification," but that it "does not contain adequate monitoring other than a generic requirement under #017(f)." Homer City Comments at 33.[34] According to the Homer City Petitioner, PaDEP must include specific monitoring for Permit Condition B.#017 to "ensure that increases under this provision remain insignificant." *Id.*

EPA's Response. The Homer City Petitioner has not demonstrated that the permit is not in compliance with the requirements of the Act. *See* 42 U.S.C. § 7661d(b)(2). The provision at issue in the Petitioner's comments includes over a page of separate requirements. Included as part of the requirements is the obligation to provide a written notice that shall: "(1) Identify and describe the pollutants that will be emitted as a result of the de minimis emissions increase. (2) Provide emission rates expressed in tons per year and in terms necessary to establish compliance consistent with any applicable requirement." Permit Condition B.#017(a)(1) and (2). In addition, as recognized by the Petitioner, the provision also requires that, "Emissions authorized under this permit condition shall be included in the monitoring, recordkeeping and reporting requirements of this permit." Permit Condition #B.017(f). The condition also prohibits certain types of activities, including those that "[v]iolate any applicable requirement of the Air Pollution Control Act, the Clean Air Act, or the regulations promulgated under either of the acts." Permit Condition #B.017(d)(3). These provisions work together to require a quantification

[33] The Petitioner raises the issue in the Homer City Petition on page one (fn 1). It was raised in the Homer City Comments on page 32.

[34] The Homer City Petitioner raises this issue on page 1 (fn 1) of the 2012 Homer City Petition. This issue was raised in the Homer City Comments on page 33.

of the associated emissions and ensure that such emissions are included in overall compliance for the relevant applicable requirements, while at the same time prohibiting certain types of activities from even qualifying as allowed under the provision. In the Homer City CRD, PaDEP also explained that there were other key conditions in the permit not referenced by Petitioner in its claim. Homer City CRD at 15-16. The Petitioner's focus exclusively on condition #B.017(f) fails to consider pertinent other provisions as part of the analysis. Further, the Homer City Petitioner did not address PaDEP's response in its supplemental petition. 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) at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005) (hereafter "*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; *See, e.g., In the Matter of Georgia Pacific Consumer Products LP Plant,* Order on Petition No. V-2011-1 at 6-7, 10-11 (July 23, 2012) at 10–11, 13–14.

For these reasons, the EPA denies the Homer City Petition as to this claim.

Claim 23: The Homer City Proposed Permit Must be Revised to Delete Portions of Section B.#025, as it Allows Major Modifications of Major Sources Without PSD Permits

Petitioner's Claim. The Petitioner claims that Permit Conditions B.#025(a)(1), (2), and (4) of the Homer City Proposed Permit must be deleted because "they are contrary to 42. U.S.C. 7475(a) by allowing major modifications of major sources without PSD permits."[35] According to the Homer City Petitioner, although Permit Conditions B.#025(a)(1) and (4) implement 25 Pa. Code §§ 127.14 and 127.449 respectively, "allowing the Homer City plant to make changes under these code sections would not guarantee that the Plant would not cause emissions increase that would trigger a PSD permit requirement." Homer City Comments at 34. The Homer City Petitioner also states that although Permit Condition B.#025(a)(2) implements 25 Pa. Code § 127.447, it "must be deleted because it does not contain any description of the alternative operating scenario." *Id.*

EPA's Response. The Homer City Petitioner has not demonstrated that the permit is not in compliance with the requirements of the Act. *See* 42 U.S.C. § 7661d(b)(2). As the Homer City Petitioner has acknowledged, Permit Conditions B.#025(a)(1) and (4) implement the provisions of Pennsylvania's SIP at 25 Pa. Code §§ 127.14, 127.447, and 127.449 respectively. In this claim, the Petitioner focuses on Condition B.#025 which includes numerous subcomponents, each of which includes a separate legal citation. In addition, some of the subcomponents are also further described in other conditions of the permit (e.g., B.#025(a)(4) which is described in much greater detail in B.#017 and was discussed previously in this Order in response to Claim 22). The

[35] The Homer City Petitioner raises this issue on page 1 (fn 27) of the Homer City Petition. This issue was raised in the Homer City Comments on pages 33-4.

Petitioner does not raise a specific instance of alleged misuse of these permit conditions; but rather, appears to take issue with the mere existence of the conditions. In response to these comments, PaDEP noted that changes at a facility pursuant to condition B.#025 cannot violate state or federal law. Homer City CRD at 16. The Petitioner did not demonstrate that the content of Condition B.#025, or the combination of B.#025 with other relevant permit terms and conditions, serves to approve otherwise unlawful activities at the facility. In fact, the permit terms and PaDEP expressly state otherwise.

As a result, the Homer City Petitioner did not demonstrate that the inclusion of this SIP provision in the permit would cause an emissions increase that would trigger PSD. 25 Pa. Code § 127.444 concerns alternate operating scenarios, and the Homer City Petitioner has not explained why the inclusion of this SIP provision in the permit would cause an emissions increase that would trigger PSD. Furthermore, the EPA notes that 25 Pa. Code § 127.447(b)(3) requires that the terms and conditions of each alternate scenario meet applicable requirements of the CAA and regulations thereunder. Furthermore, the EPA notes that 25 Pa. Code § 127.449(b) specifically states that de minimis increases are not allowed if it would subject the facility to PSD. Moreover, the Homer City Petitioner has not demonstrated any reason that including these particular SIP provisions, which PaDEP has included in the General Title V Requirements section of the permit, would result in noncompliance with any applicable requirement for the Homer City Facility.

The Petitioner has not demonstrated that the permit is unlawful where the petitioner does not provide the relevant analyses and the EPA is left to work out the basis for petitioner's objection, contrary to Congress' express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("the Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive"); *In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 (Sept. 21, 2011)(hereafter "*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) at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005) (hereafter "*Chevron Order*") at 12, 24.

For these reasons, the EPA denies the Homer City Petition as to these claims.

Claim 24: The Homer City Proposed Permit Must Be Revised to Address Whether CAA Section 112(r) and 40 C.F.R. Part 68 are Applicable Requirements Under Section B, #026

Petitioner's Claim: The Homer City Petitioner claims that the Homer City Proposed Permit Condition B.026 fails to specify "whether CAA 112(r) and 40 CFR Part 68 is [sic] an applicable

requirement to the Sunbury [sic] plant."[36] The Homer City Petitioner contends that as 40 C.F.R. § 70.6(a) requires the inclusion of operational requirements to assure compliance with all applicable requirements, permit condition B.#026 must be revised to include a determination of whether CAA section 112(r) and 40 CFR Part 68 are applicable. *Id.* The Homer City Petitioner asserts that if such a determination is reached, the permit must include "a requirement that the source comply with its Risk Management Plan (RMP)" for which there must be an opportunity for public comment. *Id.*

EPA's Response: For the following reasons, the EPA denies the Homer City Petition as to this claim.

As a preliminary matter, the Homer City Petitioner states that "Section B, #026 fails to specify whether CAA 112(r) and 40 C.F.R. Part 68 is an applicable requirement to the Sunbury plant." Section B. #026 requires Homer City to prepare and implement an RMP that meets the requirements of CAA section 112(r). The Homer City Petitioner did not demonstrate how this assertion is related to the Homer City Proposed Permit. Even assuming that the Homer City Petitioner was making this claim in relation to the Homer City Proposed Permit, it has not provided the relevant citations and analyses to support its assertion. As PaDEP acknowledged, the requirements of 40 C.F.R. Part 68 are an applicable requirement for Homer City. However, the Homer City Petitioner has not explained how the requirements of Permit Condition B.#026 are inconsistent with the provisions of 40 CFR § 68.215, which contain the requirements for title V permits relative to the chemical accident prevention provisions of 40 C.F.R. Part 68. In particular, under 40 C.F.R. § 68.215, the stationary source is required to prepare the RMP, register with the EPA, and submit a copy of the RMP to the EPA, the state, and the local planning agency, among others. As the EPA has previously acknowledged, the RMP under CAA section 112 is not required to be incorporated into title V permits. *See In the Matter of Bristol-Myers Squibb Co., Inc.*, Order on Petition No. II-2002-09 (February 18, 2005) at 22. The Homer City Petitioner has not demonstrated that the requirements of Permit Condition B.#026 are inconsistent with 40 C.F.R. § 68.215, nor has it provided any other basis for its assertion that the Homer City Proposed Permit is not in compliance with 40 C.F.R. Part 68. The Homer City Petitioner has not provided any relevant citations or analyses concerning its assertion that the public must be given an opportunity to review and comment on the RMP, or how the title V permit is flawed in this regard.

For these reasons, the EPA denies the Homer City Petition as to this claim.

Claim 25: The Mansfield Proposed Permit Must Require Semi-annual Reporting of All Mandatory Monitoring Data

Petitioners' Claim. The Mansfield Petitioners claim that the Mansfield Proposed Permit fails to require semi-annual reporting of all mandatory monitoring data, as required by 40 C.F.R. § 70.6(a)(3)(iii)(A), 25 Pa. Code §§ 127.511(c)(1) and 127.442(b).[37] Mansfield Comments at 18. As an example of this claim, the Mansfield Petitioners point to Section E, Source Group 1,

[36] The Homer City Petitioner raises the issue in the Homer City Petition on page one (fn 1). This issue was raised in the Homer City Comments on page 35.

[37] The Mansfield Petitioners raise the issue in the Mansfield Petition on page 18 (fn 27).

Condition #018, which requires that records and calculations used to determine compliance with this condition "must be retained for at least two years" and made available "upon request." *Id.* The Mansfield Petitioners assert "that since these monitoring reports are required, 40 C.F.R. § 70.6(a)(3)(iii)(A) demands that the permittee submit this information at least every six months as part of the semi-annual monitoring report." *Id.* The Mansfield Petitioners assert that the Proposed Permit should be revised to "require that these reports are included with the Plant's semi-annual reporting." *Id.* They make this same assertion "for any other source level required monitoring and recordkeeping permit conditions that require reporting only when requested by [PaDEP]." *Id.*

EPA's Response. For the following reasons, the EPA denies this claim in the Petition.

As in previous claims, the Petitioners' claim appears focused on one condition – E.#018 (which was changed to E.#019 in the final permit), without consideration of the numerous other relevant permit terms and conditions. Permit Condition E.#019 of the Mansfield Final title V Permit requires the facility to measure visible emissions for at least one hour per week, recording all readings and/or atmospheric conditions.[38] With regard to the Mansfield Petitioners assertions regarding the permit's recordkeeping requirements, as PaDEP explained, the Mansfield Final title V Permit requires semiannual reporting in accordance with 25 Pa. Code § 127.511. Mansfield CRD at 8. Permit Condition B.#023 requires that "[p]ursuant to 25 Pa. Code § 127.511(c), the permittee shall submit reports of required monitoring at least every six (6) months unless otherwise specified in this permit." Mansfield Final title V Permit at 13. The Mansfield Petitioners did not demonstrate that Condition E.#019 supersedes or otherwise qualifies B.#023. In fact, PaDEP's response makes clear that condition B.#023 applies, in addition to the requirements of E.#019. Thus, the Petitioners did not demonstrate that the permit conditions are inconsistent with the reporting requirements of 25 Pa. Code §§ 127.511(c)(1) and 127.442(b). For these reasons, the Mansfield Petition did not identify any information in the record demonstrating a basis on which the EPA could object to the permit on this issue. The Petitioners did not consider all the relevant permit terms and conditions and did not demonstrate a flaw in the permit. 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) at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005) (hereafter "*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; *See, e.g., In the Matter of Georgia Pacific Consumer Products LP Plant,* Order on Petition No. V-2011-1 at 6-7, 10-11 (July 23, 2012) at 10–11, 13–14.

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

[38] The EPA notes that this Condition 18 of the Proposed Permit has been replaced with condition is E.#019 in the Mansfield Final title V Permit at 51.

Claim 26: The Mansfield Proposed Permit Should be Revised to satisfy the Cross-State Air Pollution Control Rule (CSAPR) Requirement

Petitioners' Claim. The Mansfield Petitioners claim that the Cross-State Air Pollution Control Rule (CSAPR) is an applicable requirement that must be included in Mansfield's title V Permit.[39] According to the Mansfield Petitioners, the EPA promulgated CSAPR before PaDEP issued Mansfield's title V Permit, and the D.C. Circuit Court of Appeal's stay of CSAPR pending judicial review "does not affect the applicability of this rule under the title V permitting program's requirements." Mansfield Comments at 25. The Mansfield Petitioners further claim: "Therefore, in the interests of administrative efficiency as well as the need to assure compliance with whichever rule the Court ultimately determines to be the applicable standard, PaDEP should put forth a permit that includes a discussion of both the Clean Air Interstate Rule (CAIR) and CSAPR provisions, limitations, and effective dates, and instructs that up until and pending the current litigation on CSAPR, the Plant is to operate in accordance with CAIR." Mansfield Comments at 26. The Mansfield Petitioners also assert that SO_2 and NOx emission limits for Units 1 and 2 included in the Mansfield title V Permit, which are the same SO_2 and NOx emission limits that were included in the November 2002 final title V permit, are not adequate to meet the Pennsylvania CAIR requirements.

EPA's Response. The Petitioners have not demonstrated that the Proposed Permit is not in compliance with the requirements of the Act. *See* 42 U.S.C. § 7661d(b)(2). The Mansfield Petitioners have not demonstrated that CSAPR was an applicable requirement that should have been included in the Mansfield Final title V Permit at the time of permit issuance. As PaDEP explained, at the time of permit issuance, the CSAPR rule was vacated. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012) (*EME Homer City*) (vacating CSAPR and keeping CAIR in place pending the promulgation of a valid replacement rule). Subsequently, on April 29, 2014, the United States Supreme Court reversed the August 21, 2012 opinion of the D.C. Circuit (which had vacated CSAPR) and remanded the matter to the D.C. Circuit for further proceedings. *EPA v. EME Homer City Generation, L.P.*, 2014 U.S. LEXIS 3108 (April 29, 2014). Thus, there was no applicable requirement pursuant to CSAPR at the time the Mansfield Final Permit was issued. Moreover, the Mansfield Petitioners have not demonstrated that the title V permit provisions addressing PA SIP's CAIR requirements are inadequate. As PaDEP explained, the Mansfield title V Permit contains the requirements pursuant to the PA SIP's CAIR requirements of 25 Pa. Code § 145.201-145.223. Mansfield CRD at 11; Conditions E.#049-51 in the Mansfield Final title V Permit. The Mansfield Petitioners have not identified any basis for their assertion that the SO_2 and NO_x emission limits included in the Mansfield title V Permit are not adequate to meet the requirements of the Pennsylvania CAIR requirements, regardless of whether these emission limits are the same as those in the 2002 title V permit.

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

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[39] The Mansfield Petitioners raise this issue on page 2 and page 18 (fn 27) of the Mansfield Petition. This issue was raised in the Sierra Club Mansfield Comments on pages 25-26.

Claim 27: The Mansfield Proposed Permit Fails to Ensure that Pennsylvania's Best Available Retrofit Technology (BART) Analyses for Mansfield's Coal-fired Boilers Are Appropriate

Petitioners' Claim. The Mansfield Petitioners claim that the Mansfield Proposed Permit fails to ensure that PaDEP's Best Available Retrofit Technology ("BART") analysis for Mansfield's coal-fired boilers is appropriate.[40] According to the Mansfield Petitioners, in 2007 PaDEP determined that "BART for Units 1, 2 and 3 was determined to be compliance with [the Clean Air Interstate Rule (CAIR)] for NOx and SOx, and continued operation of the sources as presently configured as BART for PM." Mansfield Comments at 26-27. However, the Mansfield Petitioners assert the BART analysis is inadequate and must be remedied before PaDEP may finalize the title V permit. Mansfield Comments at 26-28 ("PaDEP must review its BART determination for the Plant's coal-fired boilers to be sure that it appropriately considered" the statutory factors contained in 42 U.S.C. § 7491(b)). Additionally, it appears the Mansfield Petitioners are generally asserting that PaDEP was required to "ensure that the Plant's BART analysis is still proper" before issuing the final title V permit. *Id.*; Mansfield Comments at 28 ("PaDEP should not finalize the permit without independently confirming the Plant's findings and providing the necessary supporting documentation to the public.").

EPA's Response. The Mansfield Petitioners have not demonstrated that the permit is not in compliance with the requirements of the Act. *See* 42 U.S.C. § 7661d(b)(2). Whether a facility's BART determination or analysis which a state uses in its regional haze SIP revision complies with the statutory requirements at 42 U.S.C. § 7491(b) or is "proper" as Petitioners claim is not an appropriate matter for consideration in a title V permitting process. The Mansfield Petitioners have not identified any statutory or regulatory provision or precedent that requires PaDEP to review or otherwise confirm the adequacy of a facility's BART determination or analysis before issuing a title V permit or even including any BART applicable requirements in a title V permit. *See, e.g., MacClarence*, 596 F.3d at 1131 ("the Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive"); *see also Murphy Oil Order* at 12 (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring).

Moreover, the Mansfield Petitioners have not demonstrated that PaDEP did not include any BART requirements as applicable requirements in the Proposed Permit, nor could they, since at the time PaDEP issued the Mansfield Proposed Permit on May 25, 2012, the EPA had not taken any final action on the Pennsylvania regional haze SIP and there were therefore no BART requirements as "applicable requirements" for Mansfield. *See* 25 Pa. Code § 121.1 (definition of applicable requirement) and 25 Pa. Code § 127.502(a) (requiring inclusion of applicable requirements in Pennsylvania title V operating permits). Pennsylvania's approved title V operating permit program requires inclusion of emission limits to assure compliance with applicable requirements *at the time of permit issuance*. 25 Pa. Code § 127.512(h). *See also* 40 C.F.R. § 70.6(a)(1). The EPA took final action on the Pennsylvania regional haze SIP, including

[40] The Mansfield Petitioners raise this issue on page 2 and page 18 (fn 27) of the Mansfield Petition. This issue was raised in the Mansfield Comments on pages 26-28.

requirements that apply to the Mansfield facility, on June 7, 2012 and July 13, 2012.[41] *See* 77 *Fed. Reg.* 33641 (June 7, 2012) (providing limited disapproval and a partial federal implementation plan for Pennsylvania) and 77 *Fed. Reg.* 41279 (July 13, 2012) (providing limited approval of remainder of Pennsylvania regional haze SIP). *See also* 79 *Fed. Reg.* 24340 (April 30, 2014) (reissuing limited approval of Pennsylvania regional haze SIP).

Subsequent to PaDEP's issuance of Mansfield's Proposed Permit and the EPA's action on the Pennsylvania regional haze SIP, the D.C. Circuit vacated CSAPR as discussed above. *See EME Homer City*. At the time PaDEP issued the final Mansfield title V permit on February 8, 2013, CSAPR remained vacated. The Mansfield Final Permit included as an applicable requirement the PM BART limit approved into the PA regional haze SIP on July 13, 2012, and included the Pennsylvania CAIR requirements of 25 Pa. Code §§ 145-201-145.223 which remained applicable to Mansfield pursuant to the D.C. Circuit's decision in *EME Homer City* as CSAPR was vacated.

The Mansfield Petitioners have not identified any basis for their assertion that the Mansfield Proposed Permit improperly fails to ensure that PaDEP's Mansfield's BART analysis for its coal-fired boilers is appropriate or that PaDEP should have reconsidered its BART demonstration or analysis before issuing the Mansfield Proposed Permit. The Mansfield Petitioners likewise did not demonstrate that the permit was inadequate. Further, the February 8, 2013, final title V renewal permit included the PM BART requirements for Mansfield and included CAIR as applicable to Mansfield and because CSAPR was vacated as of the issuance of the final 2013 title V renewal permit and has since been remanded by the Supreme Court's opinion on April 29, 2014, to the D.C. Circuit for further proceedings. *See* 2014 U.S. LEXIS 3108.

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

VII. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part, as described herein, the issues raised in the Homer City

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[41] The EPA originally finalized a limited approval of the Pennsylvania regional haze SIP on July 13, 2012. 77 *Fed. Reg.* 41279. Our approval was limited due to Pennsylvania's reliance upon CAIR for certain BART emission requirements for electric generating units (EGUs) for SO_2 and NOx. In response to a petition for review of that final action in the United States Court of Appeals for the Third Circuit, the EPA successfully moved for a voluntary remand without vacatur. *Nat'l Parks Conservation Ass'n, et al. v. EPA*, No. 12-3534 [3rd Cir. Oct. 22, 2013]. On April 30, 2014, the EPA reissued its final limited approval of the PA SIP to implement the Commonwealth's regional haze program for the first planning period through 2018. 79 *Fed. Reg.* 24340. The EPA addressed comments concerning the adequacy of PaDEP's BART determinations in these rulemaking actions.

On June 7, 2012, the EPA had finalized the limited disapproval of Pennsylvania's regional haze SIP (and other states' regional haze SIPs that relied similarly on CAIR) due to its reliance on CAIR as meeting BART requirements for SO_2 and NOx for EGUs as the EPA had issued CSAPR to replace CAIR. 77 *Fed. Reg.* 33641. On June 7, 2012, EPA believed that full approval of the regional haze SIP was not appropriate in light of the D.C. Circuit's remand of CAIR and the uncertain remaining period of operation of CAIR. The EPA also finalized a limited federal implementation plan (FIP) for Pennsylvania and other states, which merely substituted reliance on the EPA's more recent CSAPR NOx and SO_2 trading programs for EGUs for the SIP's reliance on CAIR for SO_2 and NOx BART for EGUs. *See* 77 *Fed. Reg.* 33641.

Petition, the Homer City Supplemental Petition, and the Mansfield Petition. As explained more fully above, this Order responds to the petitions filed by the Sierra Club, LBRAG, EIP, GASP and the Clean Air Council requesting that the EPA object to the proposed Homer City and Mansfield title V permits.

Dated: JUL 30 2014

Gina McCarthy,
Administrator.