

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
EASTMAN KODAK COMPANY)	ORDER RESPONDING TO
)	PETITIONER'S REQUEST THAT
Permit ID: 8-2614-00205/01801)	THE ADMINISTRATOR OBJECT
Facility DEC ID: 8261400205)	TO ISSUANCE OF A STATE
)	OPERATING PERMIT
Issued by the New York State)	
Department of Environmental Conservation)	Petition No.: II-2003-02
Region 8)	
_____)	

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

On April 1, 2003, the Environmental Protection Agency ("EPA") received a petition from the New York Public Interest Research Group ("NYPIRG"), requesting that EPA object to the issuance of a state operating permit, pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, to the Eastman Kodak Company, Kodak Park facility ("Kodak"), located in Rochester, New York.

The Kodak permit was issued by the New York State Department of Environmental Conservation, Region 2 ("DEC") on February 20, 2003, pursuant to title V of the Act, the federal implementing regulations, 40 CFR part 70, and the New York State implementing regulations, 6 NYCRR parts 200, 201, 621 and 624.

The Kodak Park facility is a large, integrated manufacturing plant that produces photographic films, papers and synthetic organic chemicals. Among the 68 emissions units covered by this title V permit are surface coating lines, silver operations, chemical reactors, lithographic printing lines, thermoplastic manufacturing operations, semiconductor manufacturing equipment, two hazardous waste incinerators and research and development activities. A separate permit was issued to Trigen Cinergy Solutions to operate the boilers and associated equipment for providing steam and electricity to support the manufacturing activities. EPA is addressing a separate NYPIRG petition on these support activities in a separate Order (*In the Matter of Kodak Park Division Power and Steam Generation*).

NYPIRG's petition alleges that the Kodak permit does not comply with 40 CFR part 70 in that: 1) the permit's operational flexibility provisions are too broad to comply with state and federal regulations; 2) the permit is based on an incomplete permit application; 3) the draft permit was accompanied by an inadequate statement of basis; 4) the permit fails to set out conditions to assure compliance with generally applicable requirements; 5) the permit distorts the annual compliance certification requirement of CAA § 114(a)(3) and 40 CFR § 70.6(c)(5); 6)

the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B); 7) the “excuse” provision for startup/shutdown, malfunction, maintenance, and upset conditions violates part 70; 8) the permit insufficiently specifies information required in the semiannual monitoring reports; and 9) several permit conditions lack monitoring that is sufficient to assure the facility’s compliance with all applicable requirements and many individual permit conditions are not practically enforceable. NYPIRG has requested that EPA object to the issuance of the Kodak permit pursuant to CAA § 505(b)(2) and 40 CFR § 70.8(d) for any or all of these reasons.

EPA has reviewed these allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which places the burden on the petitioner to “demonstrate[] to the Administrator that the permit is not in compliance” with the applicable requirements of the Act or the requirements of part 70. *See also* 40 CFR § 70.8(c)(1); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2^d Cir. 2002).

Based on a review of all the information before me, I deny the petitioner’s request in part and grant in part for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each state to develop and submit to EPA an operating permit program to meet the requirements of title V. In 2002, EPA granted full approval to New York’s title V operating permit program. *See 67 Fed. Reg.* at 5216 (Feb. 5, 2002). Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a).

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

Under CAA § 505(a) of the Act and 40 CFR § 70.8(a), states are required to submit all proposed operating permits to EPA for review. Section 505(b)(1) of the Act authorizes EPA to object if a title V permit contains provisions not in compliance with applicable requirements, including the requirements of the applicable state implementation plan (SIP). *See also* 40 CFR § 70.8(c)(1).

Section 505(b)(2) of the Act states that if EPA does not object to a permit, any member of the public may petition EPA to take such action, and the petition shall be based on objections that were raised during the public comment period¹ unless the petitioner demonstrates that it was impracticable to do so, or unless the grounds for objection arose after the close of the comment period. *See also* 40 CFR § 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

ISSUES RAISED BY THE PETITIONER

I. Operational Flexibility

The Petitioner's first claim is that the title V permit's operational flexibility provisions (delineated at condition 8) contain contradictory language, language that undermines the fundamental purpose of the title V program, and language that violates the regulatory and statutory limits on operational flexibility. Petition at 3-10.

Specifically, NYPIRG raises the following allegations and/or comments:

- (A) The permit's operating flexibility provisions are more broad than the provisions allowed under 6 NYCRR § 201-6.5(f)(6), in that Kodak is given authority to install entirely new emission units and modify pollution control equipment. This aforementioned provision does not supercede the title V requirements governing permit modifications. The operating flexibility provisions in the permit also conflict with New York State's requirements for a facility to obtain a permit to construct prior to commencing construction of an air contamination source, or proceeding with a modification (see 6 NYCRR § 201.2(a)). Petition at 6-7.

Specifically, condition 8 of the Kodak permit allows “6 NYCRR part 200 modifications” without having to undergo permit revisions. This is not allowed under off-permit changes provisions delineated at CAA § 502(b)(10) and 40 CFR § 70.4(b)(12). While NYPIRG acknowledges that a change to condition 8 was made (from the draft to the proposed permit) to indicate that off-permit changes would not include “changes that would exceed emissions allowable under the permit whether expressed as a rule or in terms of total emissions,” the Petitioner argues that 6 NYCRR part 200 modifications must be specifically listed in the permit. Petition at 4-5.

¹ *See* CAA § 505(b)(2); 40 CFR § 70.8(d). Many citizens commented during the public comment period, raising concerns with the draft operating permit that form the basis for NYPIRG's petition. *See* letter from Tracy Peel of NYPIRG to DEC (September 17, 2002), and letter from Mike Schade of the Citizens' Environmental Coalition to DEC (September 2004).

- (B) The Kodak title V permit sets forth an operational flexibility review period for the DEC of 30-days, but does not specifically require the State to undertake a review, nor does it set forth criteria regarding what the DEC must consider in determining whether a more detailed review is needed or if a permit change is required. This must be corrected. Petition at 5.
- (C) By granting Kodak operational flexibility in its title V permit, the DEC may be excluding a large number of federally enforceable emission limits from previously issued, pre-existing permits issued under 6 NYCRR part 201. Specifically, these relate to emission limits in such permits identified as “permissible emission rates.” Incorporation of such limits into the title V permit would likely impact the operational flexibility provisions because pre-approval of select changes cannot be given to changes that would increase emissions in violation of an applicable requirement. While NYPIRG acknowledges that the DEC can revise or eliminate limits from pre-existing permits, it must be done in accordance with applicable public notice requirements, and an assessment must be made as to whether such changes would trigger any CAA new source review requirement. Petition at 7-9.
- (D) The title V permit fails to limit the operation of the permit shield to changes made under the operational flexibility protocol, as required by 40 CFR § 70.4(b)(12)(i)(B). Petition at 9.

In summary, the Petitioner asserts that the operational flexibility provision cannot include pre-approval of modifications such as installing new equipment, transfer of a unit from one location to another, or operation of an emission unit in a manner not specified in the permit. NYPIRG goes on the state that the only flexibility that can be provided is flexibility allowed under an applicable MACT regulation, or the ability to switch between common, currently employed operating scenarios that are specified in the permit. Petition at 10.

It should be noted that EPA has not based this response to the Petitioner's assertions on Kodak's operational flexibility permit provisions on the draft guidance documents referenced by NYPIRG; Petition at 5-6. This response and the corresponding conclusions are based solely on the CAA and the associated federal and State of New York regulations.

A. Conflict with Operational Flexibility Provisions and Part 200 Modifications

It appears that condition 8 was not intended to authorize an alternative operating scenario, rather it appears that Condition 8 may be intended to facilitate “off-permit” changes, pursuant to CAA§ 502(b)(10) and 40 CFR §§ 70.4(b)(12) or (b)(14).² Section (b)(12) allows, in certain circumstances, permittees to make changes without permit revisions, provided the

² Part 70 does not require permits to contain provisions addressing changes under 40 CFR § 70.4(b)(12) or § 70.4(b)(14), but EPA recognizes that, under the provisions of NYCRR part 201, DEC may provide guidelines in permits for making use of these provisions, and such guidelines may be useful to EPA, the permitting authority, and the source.

permittee gives the Administrator and the permitting authority notice, and the permit shield does not apply to the changes. For example, permittees are allowed to make such “off-permit” changes under section 70.4(b)(12) where the changes constitute “Section 502(b)(10) changes” if the changes are not modifications under title I, and the changes do not exceed the emissions allowable under the permit.

“Section 502(b)(10) changes” are defined in CAA§ 502(b)(10) and 40 CFR § 70.2 as changes that contravene an express permit term but do not violate applicable requirements or contravene federally enforceable monitoring, recordkeeping, reporting, or compliance certification requirements.³ Section 70.4(b)(14) provides that a state may allow “changes that are not addressed or prohibited by the permit . . . to be made without a permit revision,” if the state ensures that each such change meets all applicable requirements and does not violate any existing term or condition.⁴ In addition, the permittee must document the changes and provide notice to the permitting authority and EPA, and the changes are not eligible for the permit shield.

The preamble to the final part 70 regulations highlights that section 70.4(b)(14) does not apply to activities that are “addressed” by the permit. “Therefore, off-permit changes cannot alter the permitted facility's obligation to comply with the compliance provisions of its title V permit, which under § 70.6 will be 'addressed' in each permit. Such requirements include monitoring (including test methods), recordkeeping, reporting, and compliance certification requirements.” *See 57 Fed. Reg.* at 32269-70 (July 21, 1992).

It does not appear that condition 8 is limited to section 70.4(b)(14)⁵ changes, those that are not prohibited or addressed by the permit. It also does not appear that condition 8 is limited to changes allowed under section 70.4(b)(12)⁶, such as Section 502(b)(10) changes. Moreover, changes that are allowed under either section 70.4(b)(12) or section 70.4(b)(14) must be excluded from the scope of the permit shield, but the permit does not limit the applicability of the permit shield for changes made pursuant to condition 8. Thus, Petitioner is correct in alleging that condition 8 is not consistent with the operational flexibility, or off-permit, provisions in part 70. For the reasons explained above, and to further clarify the purpose of this condition, the DEC must explain in the PRR the scope of this provision and the part 70 provisions it implements. DEC must also must re-open the permit to ensure that condition 8 is consistent with the requirements of part 70 and DEC’s approved title V program.

³ EPA’s response to comments on the final Part 70 regulations provides an example that section 70.4(b)(12) would apply if a permit specified use of a specific brand of coating, and the facility wishes to switch to a different brand of coating that complied with the emissions limit applicable to the original coating. *See Response to Comments* at 6-20.

⁴ Changes that would be modifications under title I, or subject to a requirement under title IV, of the Act may not be made under this provision. *See* 40 CFR § 70.4(b)(15).

⁵ States are not required to adopt regulations to implement section 70.4(b)(14) off-permit changes.

⁶ 6 NYCRR 201-6.5(f)(6) implements 40 CFR 70.4(b)(12). This provision enables sources to make certain changes, such as “502(b)(10) changes,” without requiring a permit revision.

B. DEC Review

Regarding the Petitioner's allegation that the permit does not set out an obligation for the DEC to review the notifications submitted by Kodak, we note that nothing in title V or part 70 requires permits to include conditions obligating permitting authorities to review notifications submitted pursuant to sections 70.4(b)(12) or (b)(14). Also nothing in title V or part 70 requires title V permits to contain conditions which set forth how a permitting authority must review such submittals.

Section III.C of Condition 8 of the permit discusses DEC's review of the proposed Kodak changes. The draft permit stated that Kodak may proceed “. . . 30 days from the Department's receipt of the notification or upon prior Department approval, whichever is first. . .” See Item 8.2.III.C.1. EPA also notes that this section of the final modified permit has been revised, and it is now less clear when Kodak is permitted to proceed.⁷ In either case, EPA agrees with the Petitioner that the permit allows for the possibility that Kodak may proceed with a change without the DEC having reviewed the proposal. However, in the event that DEC reviews the change, the permit does require, at Item 8.2.III.C.4 that the DEC respond to Kodak within 15 days of receipt of a notification if DEC determines that either: (1) a permit modification is necessary (III.C.2), or (2) additional review is required (III.C.3). That is, this provision provides that the DEC will conduct a review on each proposal to determine if paragraphs (2) or (3) of Item 8.2.III.C are applicable.

Regarding the allegation that the permit does not set forth the criteria that the DEC is to use in determining whether the requirements of Item 8.2.III.C.2 or III.C.3 would apply, EPA disagrees with the Petitioner. In paragraph (2), the permit states that the DEC reviews Kodak's proposals against the criteria in section III.A of the condition, assesses air quality impacts, and looks at the proposal's significance with respect to New York's State Environmental Quality Review Act (“SEQRA,” 6 NYCRR part 617). Additionally, this permit provision is to delineate the requirements for Kodak, the permittee. It is not intended to incorporate all of DEC's obligations in carrying out the implementation of its programs under the CAA.

As previously noted, nothing in the Act or 40 CFR part 70 requires permits to include conditions obligating permitting authorities to review notifications submitted pursuant to sections 70.4(b)(12) or (b)(14). Therefore, EPA denies the petition on this matter.

C. Previously Issued Permits

⁷ The final modified permit allows Kodak to proceed “. . . 30 days from the Department's receipt of the notification and/or additional information upon prior Department approval, whichever is first . . .” See Item 8.2.III.C.1.

As noted above, the Petitioner objects to this provision on the grounds that the DEC may not pre-approve a permit to construct.⁸ Also, the Petitioner suggests that the DEC impermissibly decided to discard a large number of federally enforceable emission limits contained in pre-existing permit that currently apply to the plant.

EPA agrees all federally enforceable emission limits must be incorporated in a title V permit. However, NYPIRG did not identify any specific permit conditions or emission limits from pre-existing permits that it believes should have been included in Kodak's title V permit but were omitted. Accordingly, Petitioner has failed to demonstrate a deficiency in the permit, and EPA denies the petition on this point. *See* CAA Section 505(b)(2) (objection required “if the Petitioner demonstrates. . . that the permit is not in compliance with the requirements of [the Act], including the requirements of the applicable [SIP].”); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003).

D. Permit Shield

Regarding the permit shield, the Petitioner is correct that this shield should not apply to any off-permit change made pursuant to condition 8 (*see* 40 CFR § 70.4(b)(12)(i)(B) and 40 CFR § 70.4(b)(14)(iii)), and that this condition is silent on the permit shield. Item W of the permit, as well as condition 2, address how the permit shield operates regarding these off-permit changes. Condition W states, in part, that: “All permittees granted a Title V facility permit shall be covered under the protection of a permit shield, except as provided under 6 NYCRR Subpart 201-6.” Item 2.1.3 in condition 2 states, in part, that: “. . . sources . . . shall not be eligible for the permit shield until they are . . . approved according to the procedures of the Operational Flexibility Plan.” Therefore, the language in condition 2 appears to render such changes eligible for the shield in some circumstances.

Therefore, the petition is granted on this issue. DEC must revise condition 2 to clarify that off-permit changes made at the Kodak facility pursuant to condition 8 shall not be eligible for the permit shield.

II. Incomplete Permit Application

NYPIRG alleges that Kodak did not submit a complete permit application in accordance with the requirements of the CAA § 114(a)(3)(C), 40 CFR § 70.5(c) and 6 NYCRR § 201-6.3(d). NYPIRG petition at 10. Specifically, NYPIRG is concerned that the Kodak permit application omitted: (a) an initial compliance certification that includes a statement certifying that the applicant’s facility is currently in compliance with all applicable requirements (except for emission units that the applicant admits are out of compliance) as required by CAA § 114(a)(3)(C), 40 CFR § 70.5(c)(9)(i) and 6 NYCRR § 201-6.3(d)(10)(i); (b) a statement of the

⁸ DEC has “merged” the process for issuing operating permits under title V and preconstruction permits under NSR. Thus, the Kodak permit was intended to satisfy the requirements not only for a title V operating permit, but also for a preconstruction permit, to the extent necessary for modifications authorized under the permit.

methods for determining compliance with each applicable requirement upon which the compliance certification is based, as required by CAA § 114(a)(3)(B), 40 CFR § 70.5(c)(9)(ii) and 6 NYCRR § 201-6.3(d)(10)(ii); (c) a description of all applicable requirements that apply to the facility; and (d) a description of or reference to any applicable test method for determining compliance with each applicable requirement, as required by 40 CFR § 70.5(c)(4) and 6 NYCRR § 201-6.3(d)(4).

NYPIRG alleges that because the information described above in (a) and (b) was omitted, neither government regulators nor the public can truly determine whether Kodak is currently in compliance with every applicable requirement. Petition at 11. NYPIRG further alleges that because the information described above in (c) and (d) was omitted, it is difficult for a member of the public to determine whether Kodak's draft permit includes all applicable requirements, or evaluate the adequacy of monitoring in the draft permit. Petition at 12-13.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA § 505(b)(2) (objection required "if the Petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]); 40 CFR § 70.8(c)(1). As explained below, EPA believes that NYPIRG has failed to demonstrate that: the lack of a proper initial compliance certification; the lack of more detailed statements of methods for determining compliance and the lack of descriptions of applicable requirements resulted in, or may have resulted in, a deficiency in the Kodak permit.

A. Initial Certification

NYPIRG alleges that Kodak failed to submit a statement certifying its initial compliance status in accordance with CAA § 114(a)(3)(C), 40 CFR § 70.5(c)(9)(i), and 6 NYCRR § 201-6.3(d)(10)(i). NYPIRG asserts that, absent such certification, neither government regulators nor the public can truly determine whether Kodak is currently in compliance with every applicable requirement. Petition at 11.

While Kodak submitted an initial title V application to DEC in December of 1998, it submitted periodic updates to reflect changes at the plant that occurred and newly issued applicable requirements, correct errors and respond to NYSDEC's questions. According to the DEC, several unpermitted sources were identified during the application process.⁹ On March 15, 2000, Kodak submitted an updated permit application to the DEC. In accordance with the application instructions, Kodak certified that for all emission sources at the facility that are operating in compliance with all applicable requirements, the facility would continue to be operated and maintained to assure compliance for the duration of the permit. The cover letter to the March 2000 application included a statement that, "Kodak continues to rely on the

⁹ *See* memo from B. Schilling of DEC Region 8 to L. Steele of EPA Region 2, dated October 26, 2004. The Permit Review Report released with the proposed permit describes these same compliance issues, at pages 25-26.

compliance certification provided in the 12/98 application, but has revised or removed compliance plans as appropriate, to reflect the current status.”

EPA believes that this statement, along with other information in the permit record indicating Kodak identified instances of noncompliance to the DEC during the application process, demonstrates that Kodak has complied with CAA § 114(a)(3)(C), 40 CFR § 70.5(c)(9)(i), and 6 NYCRR § 201-6.3(d)(10)(i).

Further, Kodak submitted its first annual compliance certification on February 27, 2004. This document indicates which units operated in intermittent or continuous compliance for the period February 24, 2003 through December 31, 2003. In this report, Kodak certified continuous compliance with each of the federally enforceable compliance schedules included in the final permit.

For these reasons, EPA has concluded that NYPIRG’s claim on this point has no merit, and as such, is denying the petition with respect to this issue.

B. Statement of Methods for Determining Initial Compliance

NYPIRG alleges that the application submitted by Kodak was inadequate because it did not specifically include a statement of methods used for determining compliance in accordance with CAA § 114(a)(3)(B), 40 CFR § 70.5(c)(9)(ii), and 6 NYCRR § 201-6.3(d)(10)(ii). Petition at 11. EPA disagrees with NYPIRG’s allegation.

Kodak provided information on methods used for determining the compliance of its emission units with applicable requirements by completing Section IV of the permit application, including several continuation sheets. For example, Kodak provided information on recordkeeping used to determine that nitrogen oxides (NO_x) emissions from the silver recovery processes at emission unit U-00063 do not exceed the Reasonably Available Control Technology (RACT) limit established under 6 NYCRR § 212.10(c)(3). Also at emission unit U-00063, Kodak submitted revised application information in February of 2001 indicating that it would continuously monitor opacity from its baghouse on the silver roaster. This was an upgrade in monitoring from the periodic baghouse inspections described in its initial application. As another example, Kodak’s application provided information describing the breakthrough hydrocarbon concentration that is monitored on the carbon adsorbers controlling vapors from the waste storage tanks, process K20 at emission unit U-00008. This monitoring ensures the vapors are controlled pursuant to 40 CFR § 60.112b(a)(3)(ii) and 6 NYCRR § 212.10(c)(4)(i). These examples demonstrate that Kodak’s permit application provided information by which emissions compliance, as expressed through applicable requirements, can be monitored.

EPA also notes that Kodak’s application had monitoring deficiencies that were corrected by DEC in issuing the final permit. For example, in its application, Kodak proposed to keep records to monitor compliance with 40 CFR § 60.112b(a)(3)(ii) and 6 NYCRR § 212.10(c)(4)(i)

for the waste storage tanks at emission unit U-00008 operating under process K19, but neglected to describe the nature of the records or the frequency of monitoring. Because these vapors are required to be controlled at 81% by the SIP and 95% by the Standards of Performance for Volatile Organic Liquid Storage Vessels at 40 CFR 60 subpart Kb, this proposed recordkeeping was not specific enough to demonstrate compliance. To correct this, DEC included final permit conditions 84 to 86, requiring continuous monitoring of the temperature of the incinerator controlling these vapors, along with maximum and minimum acceptable temperature ranges. As another example, Kodak's application proposed quarterly monitoring of the pressure drop across the High Efficiency Particulate Air (HEPA) filter controlling the central vacuum system associated with Kodak's wastewater treatment operations, emission unit U-00017, process K06. DEC was apparently not satisfied that this would provide sufficient information to demonstrate compliance with the particulate matter (PM) standard at 6 NYCRR § 212.4(c), because in the final permit, DEC upgraded the frequency of monitoring to daily, and specified the acceptable minimum and maximum pressure readings, as described in final permit condition 259. DEC also requires Kodak to replace the HEPA filter as necessary to maintain the proper operating pressure drop, and keep records of pressure drop and filter replacement.

The Petitioner has not demonstrated that, in this case, Kodaks' failure to submit a more complete statement of the methods for determining compliance, resulted in, or may have resulted in, a deficiency in the permit. Therefore, EPA denies the petition on this issue.

C. Description of Applicable Requirements

NYPIRG claims that Kodak's title V application was flawed in that Kodak failed to include a narrative description of applicable requirements that apply to the facility in accordance with 40 CFR § 70.5(c)(4) and 6 NYCRR § 201-6.3(d)(4). Petition at 12. EPA disagrees that the application submitted by Kodak failed to comply with the applicable regulations. Citations may be used to streamline how an applicable requirement is described in an application, provided that the cited requirement is made available as part of the public docket on the permit action or is otherwise readily available. In addition, a permitting authority may allow an applicant to cross-reference previously issued preconstruction and part 70 permits, state or local rules and regulations, state laws, Federal rules and regulations, and other documents that affect the applicable requirements to which the source is subject; provided the citations are current, clear and unambiguous, and all referenced materials are currently applicable and available to the public. Documents available to the public include regulations printed in the Code of Federal Regulations or its state equivalent. For further discussion see *White Paper for Streamlined Development of Part 70 Permit Applications* (July 10, 1995) at 20-21.

Consistent with EPA guidance, Kodak submitted its permit application using references to applicable state and Federal regulations. For example, citations to several Facility Applicable Federal Requirements (including, but not limited to, rules under 40 CFR parts 60, 61, 63, 64, 68 and 82, as well as rules under 6 NYCRR parts 200, 201, 212, 228 and 234) are listed in section III of the application. In addition, in section IV of the application for emission units U-00063,

U-00008 and U-00012, among others, Kodak listed citations to Emission Unit Applicable Federal and State-Only Requirements (including, but not limited to, 6 NYCRR §§ 212.4(a), 212.10(c) and 40 CFR § 60.112b(a) These regulations are publicly available and are also available on the internet. *See, e.g.*, New York regulations at www.dec.state.ny.us/website/regs/; *see also*, federal regulations at www.epa.gov/epahome/cfr40.htm.

In addition, Kodak's permit application includes documentation that, as a general matter, is not as readily or widely available as the regulations above. Specifically, Section 2 of Appendix A of Kodak's application contains special conditions from prior permits issued to Kodak. The index page to this section lists three columns of emission point ID numbers, each corresponding to a set of special conditions attached to the application. NYPIRG has not demonstrated that any of the descriptions were in error or may have resulted in a deficient permit, that the referenced material is not available to the public, or that any attachments were omitted. The petition is therefore denied on this issue.

D. Statement of Methods for Determining Ongoing Compliance

NYPIRG's fourth allegation is that the application lacks a description of, or reference to, any applicable test method for determining compliance with each applicable requirement in accordance with 40 CFR § 70.5(c)(4) and 6 NYCRR § 201-6.3(d)(4). Petition at 12. EPA disagrees with NYPIRG's allegation.

Kodak completed the Emission Unit Compliance Certification block within Section IV of its application (for emission units U-00063, U-00008 and U-00012, among others) with methods for determining ongoing compliance with various applicable requirements. For example, the Kodak permit application includes, among others: monthly records of scrubber blowdown rates; monitoring of outlet gas temperature of the afterburner; and continuous monitoring of opacity of baghouse exhaust, as methods for determining ongoing compliance with the facility's applicable requirements. Although some compliance methods were not stated in the permit application as explained above in section (B), these were later stated in the final permit. Notwithstanding these omissions, NYPIRG has not demonstrated that the descriptions contained in the Kodak application resulted in, or may have resulted in, a deficiency in the permit. For this reason, the petition is denied on this issue.

III. Statement of Basis

NYPIRG alleges that the draft permit was not accompanied by an adequate statement of basis or "rationale." While NYPIRG acknowledges that DEC did issue a "permit review report" ("PRR," the State's version of the required statement of basis) for the draft Kodak Manufacturing permit, the Petitioner alleges that this document did not set out the legal and factual basis for all permit conditions. Petition at 13-16.

Specifically, NYPIRG contends that (A) the PRR did not set forth the factual basis for specific permit conditions applying to specific emission units, emission points and processes. The Petitioner asserts that in some cases, explanations are provided indicating that a process emits a pollutant in amounts above or below a threshold amount of a pollutant, but these explanations do not address all pollutants emitted at each process, and they fail to indicate which hazardous air pollutants are emitted by a particular process.

In addition, NYPIRG alleges that (B) the PRR does not set forth the legal basis to explain why a particular regulation is relevant to the facility, or to any particular emission unit, emission point, or process. NYPIRG further alleges that (C) the permit does not adequately differentiate between regulations approved as part of New York's SIP, and those regulations not approved into the SIP. Indeed, the Petitioner contends that some federally enforceable conditions in the draft permit cite to non-SIP-approved regulations. Finally, NYPIRG asserts that (D) the PRR does not contain the rationale for the monitoring methods selected in the permit.

EPA's title V regulations state that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it." 40 CFR § 70.7(a)(5). Commonly referred to as a "statement of basis," this provision is not part of the permit itself, but rather a separate document which is to be sent to EPA and to interested parties upon request.¹⁰ As for content required under § 70.7(a)(5), EPA interprets this section as requiring that a statement of basis describe the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review.¹¹ Rather than restating the permit, it should list anything that deviates

¹⁰ Unlike permits, statements of basis are not enforceable, do not set limits and do not create obligations. Thus, certain elements of statements of basis, if integrated into a permit document, could create legal ambiguities

¹¹ Additional guidance was provided in a letter dated December 20, 2001 from Region V to the State of Ohio on the content of an adequate statement of basis which is available at <http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf>. Region V's letter recommends the same five elements outlined in a Notice of Deficiency ("NOD") recently issued to the State of Texas for its title V program. *See 67 Fed. Reg.* at 732 (January 7, 2002). These five key elements of a statement of basis are (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. *Id.* at 735. In addition to the five elements identified in the Texas NOD, the Region V letter further recommends the inclusion of the following topical discussions in the statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. In a letter dated February 19, 1999 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, the EPA Region IX Air Division provided a list of air quality requirements to serve as guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region IX's review. This guidance is consistent with the other guidance cited above. } Each of the various guidance documents, including the Texas NOD and the Region V and IX letters, provide generalized recommendations for developing an adequate statement of basis rather than "hard and

from simply a straight recitation of applicable requirements. Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit. *See, e.g., In Re Port Hudson Operations, Georgia Pacific*, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) (“*Georgia Pacific*”); *In Re Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) (“*Doe Run*”). Finally, EPA has interpreted section 70.7(a)(5) to require that the rationale for the selected monitoring requirements be documented in the permit record. *See In Re Fort James Camas Mill*, Petition No. X-1999-1, at page 8 (December 22, 2000) (“*Ft. James*”).

The failure of a permitting authority to meet the procedural requirements of § 70.7(a)(5), however, does not necessarily demonstrate that the resulting title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has demonstrated that the permitting authority’s failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2) (objection required “if petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]”); *see also*, 40 CFR § 70.8(c)(1). Where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. *See, e.g., Doe Run* at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit. *See, e.g., Ft. James* at 8; *Georgia Pacific* at 37-40.

In this case, the permit application, the Kodak PRR dated March 1, 2004,¹² and other available documents in the permit record contain adequate information to support the elements of the permit identified in NYPIRG’s claims. As explained below, Petitioner has not demonstrated, nor does the record indicate, that any deficiency in the PRR resulted in, or may have resulted in, one or more deficiencies in the Kodak permit. As a result, EPA is denying NYPIRG’s petition on this issue.

A. Pollutants in Process Descriptions

fast” rules on what to include in any given statement of basis. Taken as a whole, they provide a good roadmap as to what should be included in a statement of basis on a permit-by-permit basis, considering the technical complexity of the permit, history of the facility, and the number of new provisions being added at the title V permitting stage, to name a few factors.

¹² EPA has reviewed three PRR's drafted by DEC for this facility: the first one dated June 26, 2002 and released with the draft permit; the second dated December 23, 2002 and released with the proposed permit; and the third dated March 1, 2004 and released with the final modified permit. EPA's decisions on issues raised in this petition are based on the most recent PRR, released with the final modified permit.

NYPIRG's first contention is that the PRR needs to explain which regulated pollutants (including hazardous air pollutants) are generated by which processes, and where the pollutants are emitted.

Title V permit applications must contain information sufficient to verify which requirements are applicable to the source. See 40 CFR § 70.5(c)(3). The Kodak application is part of the permit record that supports the NYSDEC's permitting decision. While the process descriptions on pages 3-23 of the PRR do not explicitly list each pollutant emitted by each process, other sections of the PRR, as well as the permit record, address this issue in sufficient detail to satisfy the requirement that title V permit applications contain sufficient information to verify applicable requirements. For the 68 emission units at the Kodak manufacturing plant, the PRR describes the individual emission points, their modes of operation, their location within the plant, and other relevant facts. For example, the PRR explains that the paper coating processes within emission unit U-00029 emit solid PM (from paper trimming) and volatile organic compounds (VOC) (from gravure printing) (PRR at 9). As another example, the PRR, application and permit explain that the silver recovery processes, defined as process H29 in the permit, emit NO_x (PRR at 15), organics (application at 6) and PM (permit at items 27.123 and 1-87.2). In addition, the special conditions attached to the application explain that emission point No. 110C6 (emission unit U-00001, Silver Flow - Cowles Film Wash) emits VOC.

While statements of basis are to set forth the factual basis for the permit conditions, permitting authorities have discretion as to how to accomplish this requirement. The PRR for the Kodak manufacturing plant includes a list and the amounts of all regulated pollutants emitted at the facility (in terms of emission 'ranges') and, although it does not cross-reference to specific emission units, it does list what applicable requirements apply to facility, and what the specific emission processes are. For all of the above reasons, EPA has determined that the permit record, including information provided in the PRR provides sufficient factual information satisfying the requirement of 40 CFR § 70.7(a)(5).

B. Describe Applicable Requirements at Process Level

NYPIRG's second contention is that the PRR fails to cross-reference the explanations of regulations that apply to the facility with specific permit conditions, and fails to explain why a regulation is relevant to the facility or any individual emission unit, emission source, or process. While EPA agrees that statements of basis are to set forth the factual basis for the permit conditions, permitting authorities have discretion as to how to accomplish this requirement. In the "Regulatory Analysis" section of the final Kodak PRR, DEC does list applicable requirements and the level at which each applies, with the associated identification information. In addition, the table of contents beginning on page 2 of the final modified permit, titled "List of Conditions," lists each applicable requirement by emission unit and process. EPA disagrees with Petitioner that these lists must be cross referenced with the descriptions contained in the narrative sections of the PRR, titled "Applicability Discussion" and "Basis for Monitoring."

With respect to applicability determinations, EPA has determined in this case that Kodak's PRR includes sufficient information. Kodak's PRR contains a section titled, "Non Applicability Analysis," PRR at 116. In this section, DEC lists nine specific regulations that it has determined do not apply to certain of Kodak's processes, along with its reasons for making these determinations. In addition, the section, "Applicability Discussion," includes statements of specific applicability in the narrative descriptions of regulations. For example, under the subheading, "Facility Specific Requirements," DEC explains that Kodak is exempt from the National Emission Standard for Benzene Waste Operations at 40 CFR 61 subpart FF because a cap has been placed on Kodak's operations. Further, NYPIRG has not identified any specific issues of applicability that DEC has failed to clarify in the PRR. For these reasons, EPA has determined that the Kodak PRR meets the requirements of 40 CFR § 70.7(a)(5). As such, EPA denies the petition on this point.

C. Distinguish SIP and Non-SIP Requirements

NYPIRG's third contention is that the PRR must explain the distinction between New York State regulations that were approved into the New York SIP, and are thus federally enforceable, and New York State regulations which have been promulgated at the State-level, but not approved into the SIP and, therefore, are not federally enforceable. The Petition goes on to state that some title V permit conditions cite only the non-SIP New York State regulations which, in some cases, are less stringent than the corresponding SIP requirement.

Title V permits are to include all applicable requirements for a source of air pollution, and these regulations are to be incorporated into what is known as the "federal/state side" of the permit. Permitting authorities may also include in these permits, state or local regulations and requirements which would not be federally enforceable - these would be included on the "state-only side" of the permit. *See* 40 CFR § 70.6(b)(2) and 6 NYCRR § 201-6.6(a). The federal/state side of the permit must include only requirements that are federally enforceable; that is, in terms of state rules, only regulations that have been approved by the EPA into the state's implementation plan, or certain provisions approved by EPA as part of the DEC operating permits program at 6 NYCRR § 201-6. Non-SIP regulations cannot generally be included in the federal/state side of the permit, but may be incorporated into the State-only side. Although States may streamline requirements if more than one rule applies to an emission unit for a particular regulated pollutant (e.g., a SIP rule and a non-SIP rule), the federal/state side of the permit must include the SIP requirements unless and until it is replaced by approval into the SIP of the State-only regulation. *See* 40 CFR §§ 70.1(b) and 70.6(a)(1); *see generally White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, at 6 - 9. Given this, a discussion of the non-SIP regulations that are listed on the State-only side of the permit need not be included in the PRR as this document is intended solely for setting forth the factual and legal bases of federally applicable permit conditions. The only exception to this is if the permitting authority streamlined multiple requirements (federally applicable and non-federally applicable) into a condition on the federal side of the permit. The Petitioner did not identify any instance where such streamlining occurred. That is, NYPIRG did not identify any

specific permit condition or conditions where a non-SIP approved regulation was cited and, as such, failed to demonstrate any deficiency in the permit. Therefore, the petition is denied on this issue.

D. Rationale for Monitoring

NYPIRG's fourth and final contention is that the PRR does not, but should, contain the rationale for the monitoring methods selected. EPA regulations require that all title V permits include monitoring to assure compliance with the terms of the permit. This should include any monitoring delineated in the applicable requirement, and other additional, "gap-filling" monitoring in cases where the underlying regulation has no periodic monitoring or the monitoring required consists of only a one-time monitoring occurrence (e.g., one stack test over the life of the unit). The Kodak PRR includes a section entitled, "Basis for Monitoring," where the law or regulation that is the basis for the emission unit's monitoring is listed and explained. For example, the Kodak PRR lists the requirements to monitor control equipment, change dry filters and conduct stack testing to demonstrate compliance with 6 NYCRR § 212.4(c), *See* PRR at 134; and the requirement to conduct monitoring and reporting to demonstrate compliance with ink VOC content limits pursuant to 6 NYCRR § 234.3(c), *See* PRR at 136. While the Petitioner is correct that EPA requires statements of basis to provide the rationale for monitoring (*see Fort James* at 8), permitting authorities have discretion as to how this requirement is implemented. It should also be noted the requirement that permitting authorities must provide a rationale for the selected monitoring is only applicable if the permitting authority is gap filling under the periodic monitoring rule or if the underlying applicable requirement provides for alternative monitoring methods (i.e., the permitting authority should provide a brief explanation as to why one alternative was chosen over another if it is not already clear from the applicable requirement). In addition, the Petitioner did not provide any specific instances of omissions or deficiencies with respect to this requirement. EPA finds the Petitioner's general claim of an inadequate statement of basis to be without merit. Therefore, EPA denies the petition on this issue.¹³

IV. Applicability of General Requirements

NYPIRG alleges that the permit does not indicate how six items in the final permit, under the heading "Notice of General Permittee Obligations," apply to the Kodak plant. Petition at 16. These items are described by the titles: Maintenance of Equipment; Unpermitted Emissions Sources; Recycling and Salvage; Prohibition of Reintroduction of Collected Contaminants to the Air; Proof of eligibility for sources defined as Exempt; and Proof of eligibility for sources defined as Trivial (Items C, D, F, G, I and J, respectively). NYPIRG states that the PRR must state whether or how these requirements apply to the facility. Further, NYPIRG alleges the

¹³ Notwithstanding EPA's denial of Petitioner's general claim here, where EPA has found specific examples of deficiencies in the PRR in the course of reviewing other claims raised in the subject petition, EPA has requested that the DEC provide a revised PRR with additional information, when the permit is reopened for other reasons. *See* sections IX.H, L.1, M and O.2, below.

permit should include facility-specific conditions, imposing sufficient monitoring and recordkeeping to ensure compliance with these requirements. Lastly, NYPIRG asserts that title V requires annual compliance certification with all applicable requirements, though these general permittee obligations are exempt from this requirement. Petition at 17.

NYPIRG's assertion regarding the requirement for annual compliance certification is explained fully in section V of this Order. With respect to the general permittee obligations cited by the Petitioner, EPA agrees with NYPIRG that a title V permit and/or its supporting record should clearly state the applicability of such generic requirements.

With respect to Items C, D and F, in this case, the permit record describes Kodak as operating and maintaining several control devices to control air emissions from its processes. For example, the rotary kiln incinerator at emission unit U-00008, process K01 employs four electrostatic precipitators (ESP's), a wet scrubber, packed gas absorption systems, a spray tower and a dynamic separator. Another example is that some film coating operations at emission unit U-00054 are controlled with a direct flame afterburner. In addition, several emission units have processes that employ either fabric filters, panel filters or HEPA filters. Thus, the Maintenance of Equipment requirement, relating to emission control devices, is applicable to the Kodak facility. In addition, Item F, the Recycling and Salvage requirement, relating to the collection of materials in air cleaning devices, is applicable. This is because the control devices described above, except the afterburner, collect contaminants. Similarly, Item G, the Prohibition of Reintroduction requirement is applicable, especially for devices that collect contaminants in dry particulate form. For the reasons stated above, EPA believes the permit record adequately describes the applicability of the three regulations described above. Thus, EPA is denying the petition on this aspect of NYPIRG's issue.

With respect to Item I, Appendix C of Kodak's application includes a list of exempt activities, defined at 6 NYCRR § 201-3.2. NYPIRG does not allege that any specific requirements have been omitted that apply to these activities. Activities listed as exempt need only be identified in a title V permit if the activity is subject to an applicable requirement. Kodak's application and permit reflect this, in that two emission units are defined as including equipment that would otherwise be exempt per 6 NYCRR § 201-3.2 but are subject to generally applicable requirements. Emission unit F-AC001 includes solvent exempt metal cleaning equipment subject to 6 NYCRR part 234, and F-AC002 includes exempt stationary combustion sources subject to 6 NYCRR part 227. The emission unit definition section beginning on page 3 of Kodak's PRR includes statements explaining the applicability of these two emission units to the general requirements. For these reasons, EPA concludes the permit record provides sufficient documentation to explain the applicability of exempt activities at Kodak's manufacturing facility. Therefore, EPA is denying the petition on this aspect of NYPIRG's issue.

In contrast with exempt activities, those activities listed as trivial under 6 NYCRR § 201-3.3 need not be identified in a title V application. However, Item J of Kodak's permit states that

if Kodak operates a source that is listed as trivial, Kodak may be required to certify that the source operates within the specific criteria described in section 201-3.3. EPA believes that title V permits should include emission units that would otherwise be categorized as trivial under section 201-3.3 only if they are subject to generally applicable requirements. The Petitioner did not demonstrate that the permit is not in compliance with the applicable requirements of the Act or the requirements of part 70, in that NYPIRG did not allege that any specific requirements have been omitted that apply to these activities. As such, EPA sees no reasonable basis for granting the petition on this issue.

The Unpermitted Emission Sources provision is included in all New York title V permits. EPA acknowledges that states have discretion to include language from the general provisions of their regulations as general permit conditions in title V permits. This provision expands on what is required by the SIP at 6 NYCRR § 201.2(a), that no person shall commence construction or proceed with a modification of an air contamination source without having a valid permit, by naming some additional terms for those who violate permitting requirements. It serves as a reminder to Kodak to follow the construction permitting requirements of 6 NYCRR part 201. Therefore, it is not necessary for the DEC to explain the Kodak plant's applicability to this provision in the permit or the PRR. Thus, EPA is denying the petition on this point.

NYPIRG also claims that monitoring requirements must be included in the permit for these general conditions where they do apply to Kodak. EPA believes it is appropriate to include such monitoring in the emission unit section of the title V permit. For example, condition 64 of the final permit requires monthly monitoring of the pressure drop across the HEPA filters in the raw material pre-weighing operations (emission unit U-00006, process C12) to assure the filters operate effectively. This monitoring also serves as compliance monitoring for the general Maintenance of Equipment provision. Thus, because DEC has included monitoring for conditions that apply these general conditions on a facility-specific basis, EPA denies this aspect of NYPIRG's claim as well.

V. Annual Compliance Certification

NYPIRG raises two issues with regard to the annual compliance certification. First, NYPIRG alleges that condition 7 of the permit does not require the facility to certify compliance with all permit conditions, as required by CAA § 114(a)(3), 40 CFR § 70.6(c)(5) and 6 NYCRR § 201-6.5(e). NYPIRG claims that because the Kodak permit labels certain terms "compliance certification," only these terms are included in the annual certification requirement. Petition at 17. Second, NYPIRG notes that the DEC has segregated about 30 conditions under the heading, "Notification of General Permittee Obligations," and the title V permit indicates that these conditions are not subject to the annual compliance certification requirements. Petition at 19.

In the first part of its claim, Petitioner notes that requirements in the permit that are labeled "compliance certification" are those that identify a monitoring method for demonstrating compliance, and those conditions that lack monitoring are excluded from the annual compliance

certification requirement, which is an incorrect application of state and federal law. Petition at 18. While the Petitioner concedes that ‘new’ language was added to title V permits to address this matter (stating that: “the provisions labeled herein as ‘Compliance Certification’ are not the only provisions of this permit for which an annual certification is required”), it opines that such language does not unequivocally state that all permit terms are subject to the annual compliance certification.

The language in the permit that labels certain terms as “compliance certification” conditions does not mean that the Kodak facility is only required to certify compliance with the permit terms containing this language. “Compliance certification” is a data element in New York’s computer system that is used to identify terms that are related to monitoring methods used to assure compliance with specific permit conditions. Condition 7 of the permit delineates the requirements of 40 CFR § 70.6(c)(5) and 6 NYCRR § 201-6.5(e), which require annual compliance certification with the terms and conditions contained in the permit.

The language in the Kodak permit follows directly the language in 6 NYCRR § 201-6.5(e) which, in turn, mirrors the language of 40 CFR § 70.6(c)(5). Section 201-6.5(e) requires certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Section 201-6.5(e)(3) requires the following in annual certifications: (i) the identification of each term or condition of the permit that is the basis of the certification; (ii) the compliance status; (iii) whether the compliance was continuous or intermittent; (iv) the methods used for determining the compliance status of the facility, currently and over the reporting period; (v) such other facts the department shall require to determine the compliance status; and (vi) all compliance certifications shall be submitted to the department and to the Administrator and shall contain other provisions as the department may require to ensure compliance with all applicable requirements. The Kodak permit includes this language at Condition 7. Therefore, the references to “compliance certification” do not negate NYSDEC’s general requirement for compliance certification of terms and conditions contained in the permit. The petition is therefore denied with respect to this issue.

In the second part of its claim, NYPIRG gives some examples of items under the heading “Notification of General Permittee Obligations” that allegedly create obligations. Thus, NYPIRG contends that this format does not meet 40 CFR § 70.6(c)(5) and EPA must object to the Kodak title V permit on this matter because the facility must annually certify compliance for each and every term of the permit.

As a general matter, EPA does not object to a permitting authority’s inclusion of a list of general advisory items that do not require certification. However, the “Notification of General Permittee Obligations” section in this permit appears under the heading “Federally Enforceable Conditions.” Federal regulations require annual certification for “terms and conditions” contained in the permit. 40 CFR § 70.6(c)(5). As such, the items in the “Notification of General Permittee Obligations” section are subject to certification. EPA, therefore, objects to this permit because it attempts to exclude what are represented to be “Federally Enforceable Conditions”

from the certification requirement. EPA has worked with DEC to identify items on this list that may be excluded from the annual certification requirement based on whether these items are purely advisory in nature and are not obligations of the permittee and these understandings have been detailed in a letter from EPA to DEC.¹⁴ EPA grants the petition on this issue.

VI. Prompt Reporting of Deviations

NYPIRG alleges the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B). Petition at 21. NYPIRG notes that the Kodak permit requires the facility to report some deviations promptly, while others can be deferred until the facility submits its six-month monitoring report. NYPIRG asserts that prompt reporting must be more frequent than semiannually, because prompt reporting is a distinct reporting obligation under the regulations at 40 CFR § 70.6(a)(3)(iii)(B). NYPIRG notes that the Kodak permit, at Condition 6, sets up a variety of different prompt reporting requirements based on various factors, but asserts that these procedures are arbitrary, and Condition 6 violates federal requirements. Finally, the Petitioner states that, for the most part, the facility is not required to perform monitoring that assures compliance with applicable requirements and, therefore, deviations from compliance requirements cannot be ascertained or reported.

Title V permits must include requirements for the prompt reporting of deviations from permit requirements. *See* 40 CFR § 70.6(a)(3)(iii)(B).¹⁵ States may adopt prompt reporting requirements for each condition on a case-by-case basis, or may adopt general requirements by rule, or both. Moreover, states are required to consider prompt reporting of deviations from permit conditions in addition to the reporting requirements of the explicit applicable requirements. Whether the DEC has sufficiently addressed prompt reporting in a specific permit is a case-by-case determination under the rules applicable to the approved program, although a general provision applicable to various situations may also be applied to specific permits as EPA has done in 40 CFR § 71.6(a)(3)(iii)(B).¹⁶

¹⁴ Letter from Walter Mugdan, EPA Region 2, to Carl Johnson, DEC, dated September 22, 2004. *See also* Letter from Carl Johnson, Deputy Commissioner, DEC to George Pavlou, Director, EPA, Region 2, at 7 (November 16, 2001)(NYSDEC's Letter of Commitment outlined that DEC would “[o]n a case-by-case basis, . . . exclude from the certification terms that do not create an obligation on the permittee.”)

¹⁵ 40 CFR § 70.6(a)(3)(iii)(B) states: “[t]he permitting authority shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirement.”

¹⁶ EPA's rules governing the administration of a federal operating permit program require, inter alia, that permits contain conditions providing for the prompt reporting of deviations from permit requirements. *See* 40 CFR § 71.6(a)(3)(iii)(B)(1)-(4). Under this rule, deviation reporting is governed by the time frame specified in the underlying applicable requirement unless that requirement does not include a requirement for deviation reporting. In such a case, the part 71 regulations set forth the deviation reporting requirements that must be included in the permit. For example, emissions of a hazardous air pollutant or toxic air pollutant that continue for more than an hour in excess of permit requirements, must be reported to the permitting authority within 24 hours of the occurrence.

The Kodak title V permit addresses prompt reporting of violations in Condition 6. This condition states that the facility must report deviations in accordance with the time frames specified in the underlying applicable requirements. However, if the underlying applicable requirement does not establish a time frame for prompt reporting of deviations, Kodak must report according to the following schedule: (1) for emissions of a hazardous or toxic air pollutant that continue for more than an hour in excess of permit requirements, notify the permitting authority by telephone within 24-hours; (2) for emissions of any other regulated pollutant that continue for more than two hours in excess of permit requirements, notify the permitting authority by telephone within 48-hours; and (3) for all other deviations of permit requirements, report such deviations in the six-month monitoring report. In addition, written notice certified by a responsible official must be submitted within 10 working days of an occurrence of deviations under items (1) and (2), and the incidence identified in the semi-annual report.

Therefore, the prompt reporting requirements contained in the final Kodak permit distinguish between the prompt reporting required for potentially dangerous excess emissions and other types of deviations. This criteria reflects a reasoned judgment regarding the circumstances in which an expeditious notification is warranted. For any other deviations, the report must be submitted every six months unless the specific permit condition provides for more frequent deviation reporting. Additionally, these prompt reporting requirements are consistent with EPA's own interpretation of the prompt reporting requirements, adopted after public notice and comment, in the part 71 federal title V program.

EPA disagrees with the Petitioner that the permit needs to supplement the above prompt reporting requirements with additional conditions for prompt reporting of deviations as stipulated in 40 CFR § 70.6(a)(3)(iii)(B). Pollutant-emitting activities at the Kodak facility are monitored in a number of different ways. EPA believes that a less frequent reporting schedule (quarterly or semi-annually) can be accepted as prompt reporting for certain deviations at the Kodak facility, based on the degree and type of deviation likely to occur and the applicable requirements. For example, Kodak must submit semiannual exceedance reports to comply with the requirements of 40 CFR § 63.468(h), the National Emission Standards for Halogenated Solvent Cleaning, at 40 CFR 63 subpart T. If, however, an exceedance occurs at process Y10 under emission unit U-00083, Kodak must follow a quarterly reporting format until a request to reduce reporting frequency under 40 CFR § 63.468(i) is approved.

Given that the pollutant emitting activities at Kodak are not necessarily all monitored in terms of the quantity of emissions generated (e.g., non-emission type of monitoring may include VOC content, leaks, temperature, pressure drop, etc.), a deviation does not necessarily correspond to an increase in emission. Because the Petitioner has not demonstrated that the reporting requirements contained in the Kodak title V permit fail to meet the standard set forth in 40 CFR § 70.6(A)(3)(iii)(B), the petition is denied on this issue.

VII. Requirements for Requesting Excuse of a Violation

NYPIRG alleges condition 982 of the Kodak permit, relating to violations during startup/shutdown, malfunction, maintenance and upset occurrences, violates 40 CFR part 70. Petition at 26. In addition, NYPIRG cites permit condition 6, and asserts that the permit fails to require prompt written reports of deviations in accordance with 40 CFR § 70.6(a)(3)(iii)(B), instead allowing reporting by telephone pursuant to 6 NYCRR § 201-1.4(b). NYPIRG maintains that, as written, this permit condition will not assure that the facility applies the proper methodology for requesting an excuse, and will not provide a “paper trail” to allow EPA and the public to monitor whether the facility is abusing this provision.

Condition 198 of the Kodak title V permit, which cites the DEC regulation at 6 NYCRR § 201-1.4, is a “state-only” requirement, and is properly located in the “state-only” enforceable side of the permit. This condition provides the DEC with the discretion to excuse the facility from compliance with applicable state-only emission standards under certain circumstances, based on the state-specific criteria set forth in 6 NYCRR § 201-1.4. Since this condition is actually located in the state-only side of the permit, the Petitioner’s allegations regarding this provision have no merit.

In addition, DEC included clarifying language in both the draft and final permits stating that violations of federal requirements may not be excused unless the specific federal regulation provides for an affirmative defense during start-ups, shutdowns, malfunctions or upsets.¹⁷ See 6 NYCRR § 201-6.5(c)(3)(ii). Therefore, EPA denies the petition on this point.

VIII. Semiannual Monitoring Reports

NYPIRG alleges that certain monitoring conditions in the permit do not adequately delineate that monitoring reports must be submitted to the DEC at least once every six months (and that these permit conditions contain contradictory and/or confusing language). NYPIRG contends that all such permit conditions must be individually reviewed and, at a minimum, refer to the requirements of condition 6, which lays out the requirements for the semiannual monitoring reports. Finally, the Petitioner contends that these and other required reports must list emissions and monitoring information using the same units and frequency as were used in the relevant permit condition. Petition at 27.

Condition 6 of the Kodak title V permit states, in part:

¹⁷ The characterization of this provision as potentially “excusing” certain violations of federal requirements is somewhat misleading. The CAA does not allow for automatic exemptions from compliance with applicable SIP emission limits during periods of start-up, shutdown, malfunctions or upsets. Further, improper operation and maintenance practices do not qualify as malfunctions under EPA policy. To the extent that a malfunction provision, or any provision giving a substantial discretion to the state agency broadly excuses sources from compliance with emission limitations during periods of malfunction or the like, EPA believes it should not be approved as part of the federally approved SIP. See *In re PacifiCorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII-00-1, at 23 (Nov. 16, 2000), available on the internet at: <http://www.epa.gov/region07/programs/artd/air/title5/t5memos/woc020.pdf>.

“To meet the requirements of this facility permit with respect to reporting, the permittee must:

Submit reports of any required monitoring at a minimum frequency of every 6 months, based on a calendar year reporting schedule. These reports shall be submitted to the Department within 30 days after the end of a reporting period. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by the responsible official for this facility.”

The Petitioner argues that Kodak’s title V permit sometimes states the “Reporting Requirements” are “As required - see monitoring description.” EPA acknowledges that the title V permit does indeed include such language in a few conditions. Although NYPIRG does not reference any specific conditions here, elsewhere in the petition NYPIRG does raise this issue with respect to final modified permit condition 331. Below, in section IX.O.3(b) of this Order, EPA addresses this specific issue as it pertains to condition 331, relating to the monitoring frequency for pressure relief devices. As described below, EPA has determined that the monitoring in condition 331 is sufficiently descriptive, and is denying the petition on that issue. As stated below, while EPA recognizes that the phrase, “As Required - See Monitoring Description” is repeated often in Kodak’s permit, EPA sees no inherent flaw in this permit language.

EPA does not agree that permit changes to further describe the requisite reporting requirements or to cross-reference other permit conditions are needed. Although such a redundancy can, in some cases, be helpful to the reader, the lack of such does not negate the reporting prescribed in condition 6, nor does it equate to a permit deficiency. With respect to the Petitioner’s concern regarding required reports using the same units and frequency as were used in the relevant permit condition, EPA disagrees that this should delineated in title V permits. For these reasons, EPA denies the petition on this issue.

IX. Monitoring and Practical Enforceability

NYPIRG claims that the Kodak permit does not assure compliance with all applicable requirements because many individual permit conditions lack adequate monitoring and are not practicably enforceable. Petition at 28.

Two provisions of part 70 require that title V permits contain monitoring requirements. The “periodic monitoring rule,” 40 CFR § 70.6(a)(3)(i)(B), requires that “[w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit. . . Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Record keeping provisions may be sufficient to meet

the requirements of [40 CFR § 70.6(a)(3)(i)(B)].” The “umbrella monitoring” rule, 40 CFR § 70.6(c)(1), requires that each title V permit contain, “[c]onsistent with [section 70.6(a)(3)], ...monitoring ... requirements sufficient to assure compliance with the terms and conditions of the permit.” EPA has interpreted section 70.6(c)(1) as requiring that title V permits contain monitoring required by applicable requirements under the Act (e.g., monitoring required under federal rules such as MACT standards and monitoring required under SIP rules), and such monitoring as may be required under 40 CFR § 70.6(a)(3)(i)(B). 69 *Fed. Reg.* at 3202, 3204 (Jan. 22, 2004); *see also, Appalachian Power Co. v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000). Petitioners’ allegations about the monitoring required in the Kodak title V permit concern both monitoring required as part of the applicable requirements and monitoring added to the permit by DEC pursuant to the periodic monitoring rule.

NYPIRG identifies several individual permit conditions that allegedly either lack monitoring or are not practicably enforceable. EPA’s responses to these specific allegations are discussed below.

A. Inaccurate Paraphrasing

Petitioner alleges that some permit conditions fail to properly set out an applicable requirement because they inaccurately paraphrase or quote the requirement, so that what is required under the terms of the permit is much less than what is required in the applicable requirement. Petition at 32.

EPA has stated that paraphrasing of regulations when writing permit conditions could cause confusion.¹⁸ However, Petitioner points to no specific terms or conditions that fail to set out an applicable requirement or inaccurately paraphrase or quote an applicable requirement. Therefore, Petitioner has failed to demonstrate that the permit is not in compliance with applicable requirements. *See* CAA § 505(b)(2). To the extent that Petitioner has raised specific concerns with regard to this issue elsewhere in its petition, EPA has addressed them elsewhere in this Order. EPA is therefore denying the petition on this point.

B. Accountability

Petitioner claims that the permit must be amended to include a facility-wide condition requiring every report submitted by Kodak under the title V permit to be certified as required by 40 CFR § 70.5(d). Alternately, petitioner claims every permit condition requiring a report must include this certification requirement. Petition at 36.

¹⁸ In its *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, EPA stated that, “it is generally not acceptable to use a combination of referencing certain provisions of an applicable requirement while paraphrasing other provisions of that same applicable requirement. Such a practice, particularly if coupled with a permit shield, could create dual requirements and potential confusion.” Section II.E.3, page 40. (March 5, 1996)

Section 70.5(d) requires responsible officials to certify the truth, accuracy and completeness of any application form, report or compliance certification submitted pursuant to the part 70 regulations. This requirement is listed in the facility-wide section of the permit under the heading “Notification of General Permittee Obligations” under Item L, entitled “Certification by a Responsible Official - 6 NYCRR Part 201-6.3(d)(12).” Because this addresses Petitioner’s concern, EPA is denying the petition on this point.

C. Applicability of Part 226 to Cold Cleaners

Petitioner claims the DEC should amend the permit to remove language from draft permit condition 38 that states certain equipment should be used “if practical.” Petitioner alleges the DEC should have the knowledge to determine whether the requirements are actually practical and require use of the specified equipment in a permit condition. Petition at 33.

Final modified permit condition 29 (draft condition 38), applies the terms of 6 NYCRR § 226.3(a) to emission unit F-AC001, which is a facility-wide emission unit that covers several solvent metal parts cleaners. According to Kodak’s permit application, this emission unit is a group of cold cleaners that would otherwise be exempt pursuant to 6 NYCRR § 201-3, except that this generally applicable requirement of part 226 applies to them. In the List of Exempt Activities provided with the application, Kodak identified approximately 51 units of non-vapor phase cleaning equipment under 6 NYCRR § 201-3.2(c)(39).

Final modified permit condition 29 states that a source owner conducting solvent metal cleaning in a cold cleaning degreaser must have the following devices: (1) a cover which can be operated easily; (2) an internal (under cover) drainage facility, if practical; and (3) a control system. In addition, the final modified permit includes additional paragraphs not present in the draft, including one that requires Kodak to identify in its semiannual and annual reports whether each of these conditions has been met. The condition specifies that Kodak will base these reports on monitoring conducted through the permittee’s daily observation of the process.

Even though the DEC has included these additional monitoring requirements, it is still unclear which of Kodak’s cold cleaning units can practically use internal drainage facilities. EPA is therefore granting the petition on this issue, and is requiring DEC to describe in the PRR the criteria for determining when the use of internal drainage facilities is practical. Further, the permit must be amended to specify that Kodak shall keep a log identifying which cold cleaners in emission unit F-AC001 use internal drains.

D. NSPS General Provisions

Petitioner alleges that condition 21 of the draft permit contains language that leaves the impression the terms of this condition may or may not apply, depending on the circumstances. Petition at 30. Condition 21 sets forth certain portions of the General Provisions of the Standards of Performance for New Stationary Sources (NSPS), at 40 CFR 60 subpart A.

Specifically, condition 21 includes language directly from 40 CFR § 60.7(h), stating that, “individual subparts of this part may include specific provisions which clarify or make inappropriate the provisions set forth in this section.” Petitioner requests that the DEC remove language that makes the applicability of permit condition 21 conditional, and explain which individual subparts are not appropriate. Petition at 30.

Draft condition 21 clearly states that it applies to emissions units U-00008, U-00016 and U-00050. The final modified permit identifies the applicability of the NSPS general provisions in three separate permit conditions: Condition 71 states the applicability of 40 CFR 60 subpart A to emission unit U-00008, which includes the chemical waste incinerator, the wastewater sludge incinerator and the waste management operations of building 218; condition 248 does the same for emission unit U-00016, which includes the polyester recovery sources associated with the manufacture of PET; and condition 554 does the same for emission unit U-00050, which includes Kodak’s dispersion manufacturing operations. Because DEC has identified each of these emissions units as being subject to the NSPS general provisions, this means each is also subject to one or more process-specific subparts of 40 CFR part 60. The phrase with which Petitioner raises concerns is a valid use of cross referencing within the permit. Some of the process-specific terms of the individual subparts of 40 CFR part 60 contain language that overrides the general provisions. This cross referencing is intended to acknowledge this possibility.

EPA concedes that this cross-referencing requires the reader to shift between permit sections, which can be unwieldy in a large permit such as Kodak’s. However, this does not result in a deficient permit, and therefore does not constitute a basis for objecting to the title V permit. The List of Conditions at the beginning of the permit contains a concise summary of the regulations to which each emissions unit is subject. This list indicates that emissions units U-00008, U-00016 and U-00050 are indeed subject to the NSPS general provisions as well as other NSPS subparts. Specifically, certain operations under U-00008 are subject to NSPS subpart Kb, certain operations under U-00016 are subject to NSPS subpart SSS, and certain operations under U-00050 are subject to NSPS subparts Dc and VV. It can also be seen from this list that no other emissions units at this facility have been designated as subject to the provisions of 40 CFR part 60, except for the reference test methods in the appendices to part 60.

For these reasons, EPA denies the Petitioner’s claim on this point.

E. National Emission Standard for Benzene Waste Operations

In its petition, NYPIRG identifies two separate issues with respect to the National Emission Standard for Hazardous Air Pollutants (NESHAP) at 40 CFR 61 subpart FF for Benzene Waste Operations.

1. Exempt Benzene Producer

Petitioner alleges that the permit must be revised to clarify that Kodak is an exempt benzene producer according to 40 CFR § 61.342(a). Petitioner notes that draft permit condition 23 sets out requirements for “exempt benzene producers”, but fails to clearly state the regulation’s applicability to Kodak, and does not require Kodak to document its exempt or non-exempt status. Petition at 31.

The PRR that DEC submitted to EPA with the proposed Kodak title V permit states, “Conditions under this rule outline the requirements for chemical manufacturing plants . . . to show that they manage less than 10 megagrams (10⁶ grams, or Mg) per year of benzene from facility waste. Staying below this threshold exempts the plant from the substantive requirements of the Benzene Recovery NESHAP. The Kodak Park facility is exempt because the permit caps the facility below the threshold.” PRR at 47 of 91.

Final modified permit conditions 19-23 address the requirements of 40 CFR subpart FF that were addressed in draft permit conditions 23-27. Final modified permit condition 19 (draft condition 23) describes the methods for determining whether a facility is exempt from this regulation, and how frequently to calculate this. Final modified permit condition 19 also states that the “Upper Permit Limit” benzene mass flow rate is an annual total of 10 Mg. Final modified permit conditions 20-23 include requirements to calculate, record, and report which of Kodak’s benzene containing waste streams are exempt from substantive requirements of subpart FF. For example, see final modified permit condition 21, stating the recordkeeping requirements of 40 CFR § 61.356(b)(1) subpart FF. Thus, Petitioner’s concern that Kodak is not required to document its exempt status is unfounded.

However, EPA finds that the cap of 10 Mg placed in final modified permit condition 19 (draft condition 23) is not practically enforceable. According to the permit, data used to calculate the total annual benzene quantity from facility waste need only be compiled annually. This is insufficient to assure that the facility will at no time exceed this limit. According to EPA guidance,¹⁹ the time period over which limits on a unit’s potential emissions extend should be as short term as possible, but should not exceed an annual limit rolled on a monthly basis. Thus, EPA is granting this aspect of Petitioner’s request, and requiring DEC to amend condition 19 to require the total annual benzene quantity from facility waste to be calculated on a rolling 12-month basis.

2. Testing of Benzene Levels

Petitioner alleges that DEC must include monitoring in the permit to assure Kodak’s compliance with the benzene requirements of 40 CFR 61 subpart FF. Specifically, Petitioner

¹⁹ See EPA memo entitled, “*Guidance on Limiting Potential to Emit in New Source Permitting*,” June 13, 1989.

notes that draft permit conditions 25 and 26 should specify how frequently the benzene levels should be tested, and condition 27 should require each new process to be monitored for benzene production, and require reporting of process changes. Petition at 32-33.

As described above in subsection E.1, Kodak maintains exempt status from the substantive requirements of 40 CFR subpart FF as long as its total annual benzene quantity from facility waste is less than 10 Mg. Among the conditions identified by Petitioner are permit terms providing for the reporting of status changes. For example, see final modified permit condition 23 (draft condition 27), which states the requirements of 40 CFR § 61.357(b). Final modified permit condition 19 (draft condition 23), stating the requirements of 40 CFR § 61.342(a), contains similar reporting requirements for process changes.

EPA is denying Petitioner's claim on this issue because the terms sought by Petitioner are already included in the permit. DEC has properly incorporated the applicable requirements of 40 CFR § 61.355 into the permit at conditions 19-23. According to paragraph (B)(3) of condition 19, Kodak must repeat the determination of total annual benzene quantity from facility waste annually as well as when process changes occur that may affect the regulatory status of the facility with respect to this rule. Reporting is also required at these times. For waste streams whose characteristics do not change in these time frames, new data need not be obtained. More rigorous testing is not required as long as Kodak complies with the cap described above in subsection E.1.

Lack of Monitoring (F - J, O.2)

Petitioner alleges that several permit conditions are either lacking in any monitoring, or contain other language that is insufficient to assure compliance. Specifically, Petitioner claims that conditions 37, 40, 41, 64, 65, 66, 72, 74, 79, 82, 253, 265, 266, 271, 273, 369 and 373 lack any type of monitoring, and the permit can not assure compliance where there is no monitoring. Petition at 34. Also, Petitioner claims that conditions 42, 65, 200, 202, 204, 206, 208, 221-226, 228, 233, 236, 261, 243, 246, 247, 279, 282 and 288 state that the DEC "reserves the right to perform or require the performance of a Method 9 opacity evaluation at any time," or in some cases, monitoring is "at the discretion of the Department." Petitioner claims such statements must be replaced with requirements that set out an appropriate frequency of monitoring, given the requirement being monitored and the monitoring point. Petition at 34.

For purposes of this response, EPA has grouped these conditions into six categories: F. Hazardous Waste Operations; G. Solvent Storage Tanks; H. Particulate & Opacity Issues; I. VOC Work Practice Issues; J. VOC RACT Issues; and O.2 PET Manufacturing Activities. EPA's response to this issue for each group of conditions is presented in each respective section of this Order.

F. Lack of Monitoring: Hazardous Waste Operations

Petitioner alleges that draft conditions 74, 79 and 82 lack any type of monitoring, and the permit can not assure compliance where there is no monitoring. Petition at 34. These conditions address certain federal regulations as they apply to Kodak's emission unit U-00008, which includes the chemical waste incinerator, the wastewater sludge incinerator and the waste management operations of building 218.

1. Part 63 General Provisions

Final modified permit condition 73 (draft condition 74) addresses the applicability of 40 CFR 63 subpart DD, the National Emission Standard for Hazardous Air Pollutants for Off-Site Waste and Recovery Operations, to emission unit U-00008. Condition 73 cites 40 CFR § 63.680(f), stating that the activities of U-00008 must also comply with applicable portions of the General Provisions of part 63, as identified by Table 2 to subpart DD. As stated in condition 73, the General Provisions contain requirements for performance testing, monitoring, notification, recordkeeping, reporting, and control devices that may apply to the source.

Generally, the EPA believes that it is sufficient that Kodak's title V permit address the requirements of the General Provisions of part 63 through the use of a reference rather than explicitly stating the details of subpart A in the permit. EPA finds no fault in NYSDEC's approach to clearly stating that the processes in emission unit U-00008 are subject to subpart A, and correctly referencing Table 2 of 40 CFR 63 subpart DD. In this case, Table 2 is clear in its description of how each of the paragraphs of the General Provisions apply to this emission unit. For this reason, EPA is denying the petition on this point.

2. Inspection of Containers

As stated above, Petitioner alleges draft condition 79 contains no monitoring. Draft permit condition 79 (final modified permit condition 78) applies 40 CFR § 63.926(a) of subpart PP to the activities of U-00008. This condition specifies how Kodak is to inspect the covers and closure devices on containers used to store regulated materials. Subpart PP applies to the control of air emissions from containers that belong to source categories regulated elsewhere in 40 CFR parts 60, 61 or 63.

EPA disagrees with Petitioner. This condition states that Kodak shall inspect containers when it first accepts possession of a container at the facility site and the container is not emptied within 24 hours after arrival. Kodak must also inspect containers at least every 12 months when containers remain on site one year or longer. This permit language properly incorporates the applicable requirement at 40 CFR § 63.926(a). In addition, final modified permit condition 78 requires Kodak to maintain a log documenting each action required by 40 CFR § 63.926(a). The permit also now states that, "the monitoring activities in this condition shall be summarized in the semiannual progress report and annual compliance certification required under the permit."

EPA finds that the underlying applicable requirement requires monitoring of a periodic nature and DEC has properly incorporated it into the permit. Further, the revised permit contains additional recordkeeping provisions that are responsive to Petitioner's comments on the draft permit. For these reasons, EPA is denying the petition on this point.

3. Mercury Emissions

Final modified permit condition 80 (draft condition 82) applies the requirements of 40 CFR § 61.52(b), (NESHAP Subpart E) to process K02 within emission unit U-00008. This process is Kodak's wastewater sludge incinerator. Mercury emissions from the incineration of wastewater sludge are regulated in 40 CFR 61 subpart E. Condition 80 states that Kodak's sludge incinerator shall not emit more than 3,200 grams of mercury per 24 hour period. This permit condition does not specify a test method, and the monitoring frequency is stated as a single occurrence.

EPA notes that final modified permit condition 82 (draft condition 84) requires Kodak to test the mercury content of its wastewater sludge (or conduct stack sampling) at least once each year, pursuant to 40 CFR § 61.55(a), and report the results to EPA each time a test is conducted. EPA further notes that the emission limit in final modified permit condition 82 is more stringent than the limit in condition 80. In this case, EPA believes that the prescribed monitoring for the more stringent limit may also serve as monitoring for the less stringent limit. Because the permit properly incorporates monitoring from the underlying applicable requirement that is of a periodic nature, EPA is denying the petition on this point.

G. Lack of Monitoring: Solvent Storage Tanks

As described above, Petitioner alleges that draft permit conditions 271 and 273 lack any type of monitoring, and the permit can not assure compliance where there is no monitoring. Petition at 34.

In issuing the final modified permit, DEC revised draft condition 271 and renumbered it as condition 284. This condition sets out the requirements of 6 NYCRR § 229.3(e)(2)(v) as they apply to certain of Kodak's solvent distillation, storage and dispensing operations, identified as unit U-00021, Process H05. Condition 284 states that Kodak must equip all vertical volatile organic liquid tanks with capacities under 10,000 gallons with computerized vent control valves. It further states that, "Kodak shall notify the Department of any equipment or process changes that could potentially increase emissions of volatile organic compounds." In addition, this condition states, "The presence of these vents shall be monitored by verifying, every six months, that they are in place and are functional. The results of this survey shall be recorded, and shall be included in the semiannual progress reports and annual compliance certifications required to be submitted under this permit."

In this case, while draft condition 271 did not include monitoring other than reporting if process changes were made, the revised condition contains nondiscretionary monitoring requirements. EPA notes that the underlying applicable requirement does not contain any monitoring that is of a periodic nature, however, DEC has created recordkeeping and reporting requirements to satisfy 40 CFR § 70.6(a)(3)(i)(B). EPA therefore denies the petition on this point.

Final modified permit condition 286 (draft condition 273) sets out the requirements of 40 CFR § 60.116b(b), NSPS Subpart Kb as they apply to the same solvent distillation, storage and dispensing operations discussed above. According to this condition, Kodak must keep readily accessible records showing the dimensions of each storage vessel and an analysis showing the capacity of each storage vessel.

The purpose of this condition is simply to confirm the design capacity of these tanks. DEC has properly incorporated the underlying applicable requirement of 40 CFR § 60.116b(b) into the permit. While there is no requirement to update these records and thus this provision contains no monitoring of a periodic nature, EPA finds that maintaining records of the tanks' design capacities, along with semiannual reporting, conforms with 40 CFR § 70.6(a)(3)(i)(B) in this case. For these reasons, EPA finds that final modified permit condition 286 is sufficient as stated, and denies the petition on this point.

H. Lack of Monitoring: Particulate & Opacity Issues

Petitioner alleges that draft permit conditions 64 and 72 lack any type of monitoring, and the permit can not assure compliance where there is no monitoring. Petition at 34. Petitioner also alleges that draft conditions 42, 65, 200, 202, 204, 206, 208, 221-226, 228, 233, 236, 261, 243, 246, 279, 282 and 288 state that the DEC “reserves the right to perform or require the performance of a Method 9 opacity evaluation at any time,” or in some cases, monitoring is “at the discretion of the Department.” Petitioner claims such statements must be replaced with requirements that set out an appropriate frequency of monitoring, given the requirement being monitored and the monitoring point. Petition at 34.

These conditions address three of New York's SIP regulations regarding visible emissions, and one PM standard, as they apply to several of Kodak's emission units.

1. Combustion Sources

The applicable SIP opacity limit of 6 NYCRR § 227-1.3 is outlined in final permit conditions 35 and 69 (draft conditions 42 and 72, respectively). These conditions limit visible emissions from combustion sources to no more than 20 percent opacity (six minute average) except for one continuous six-minute period per hour of not more than 27 percent opacity. The sources subject to condition 69 include small natural gas fired boilers with less than 20 million British thermal units per hour (mmBtu/hr) heat input (emission unit U-00007). The sources

subject to condition 35 include various small combustion sources located throughout the facility which would otherwise be considered exempt or trivial consistent with 6 NYCRR §201-3.²⁰ (emission unit F-AC002).

The opacity limit at 6 NYCRR § 227-1.3 does not impose monitoring of a periodic nature. Because the underlying applicable requirement imposes no monitoring of a periodic nature, the permit must contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit” 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). While the draft permit stated, for both emission units U-00007 and F-AC002, that a Method 9 test shall be used to determine compliance with the applicable opacity limitations “upon request by regulatory agency,” the March 16, 2004 revised permit requires the facility to conduct visible emission observations semiannually, in both conditions 35 and 69. In general, during steady-state operation, these natural gas and distillate oil fired sources result in little or no opacity.

In addition to the 20 percent opacity limit, the small natural gas fired boilers with less than 20 mmBtu/hr heat input of emission unit U-00007 are subject to an annual tune-up requirement. *See* Condition 66. The annual tune-up serves to optimize the combustion efficiency of the boilers and to redress any deterioration of the combustion units over time. This will help ensure that the opacity monitoring prescribed continues to be appropriate and effective. Accordingly, EPA believes that the prescribed level of periodic monitoring incorporated into the final permit is appropriate for these small combustion sources, and therefore, satisfies 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). Therefore, EPA denies the petition on this issue.

2. Film Base Extruding and Coating

The applicable SIP opacity limit of 6 NYCRR § 228.4 is outlined in final permit conditions 302 and 311 (draft conditions 282 and 288). These conditions limit visible emissions to no more than 20 percent opacity for any consecutive six minute period and apply to the facility’s film base extruding and coating operations identified as emission unit U-00024, processes E54 and E55.

²⁰ The combustion sources included in emission unit F-AC002 are all described as exempt and/or trivial activities consistent with 6 NYCRR § 201-3. According to Kodak's application, these sources include, but are not limited to, stationary or portable combustion installations with maximum heat input of less than 10 mmBtu/hr and emergency generators. EPA has determined that it is appropriate to treat these sources in emission unit F-AC002 as insignificant activities for monitoring purposes. For the treatment of insignificant emission units, EPA provides permitting authorities with broad discretion in determining the nature of any required periodic monitoring. This policy is based on the belief that these emissions points are typically associated with minimal or inconsequential environmental impacts. *See Clean Air Act Proposed Approval of Revision to Operating Permits Program in Washington*, 67 Fed. Reg. 43575, 43577 (June 28, 2002); *See, e.g., White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program at 3 - 4* (March 5, 1996).

The opacity limit at 6 NYCRR § 228.4 does not contain periodic monitoring. As previously discussed, when the underlying applicable requirement imposes no monitoring of a periodic nature, the permit must contain periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). While the original permit issued on February 20, 2003 lacked monitoring to assure the facility's compliance with these requirements, the March 16, 2004 revised permit requires the facility to conduct visible emission observations semiannually. Based on information included in the permit file and particulate emission calculations, the process sources included in these conditions typically have zero or negligible opacity. For example, based upon information included in Kodak's permit file, process E55 has a potential to emit PM emissions of 300 pounds/year and 0.05 pound/hour. While there may not always be a correlation between mass emissions and opacity, in this instance EPA believes there is such a correlation. Namely, due to the inconsequential hourly PM emissions, it is unlikely that the opacity will ever exceed 20 percent in a 6-minute period.

Although EPA believes that semiannual monitoring may be appropriate for these sources, the permit record does not include sufficient data for EPA to determine conclusively that the permit conforms with 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2) in this case. Thus, while EPA does not necessarily disagree that semiannual opacity observations are appropriate for these sources, we are granting the petition on this issue, because EPA is unable to determine if the permit is deficient in this manner. Therefore, DEC must provide a brief justification of its monitoring decision in the statement of basis accompanying the permit.

3. Miscellaneous Process Sources

The third applicable SIP opacity requirement addressed by the conditions identified by NYPIRG is 6 NYCRR § 212.6, which prohibits process emission sources from having an average opacity during any six consecutive minutes of 20 percent or greater (except for uncombined water). In addition to the permit conditions subject to the opacity requirement of 6 NYCRR § 212.6, the Petitioner cites one condition outlining 6 NYCRR § 212.4(c) as having insufficient monitoring. Final permit condition 61 (draft condition 64) prohibits PM emissions greater than 0.05 grains per dry standard cubic foot.

The types of sources described in final permit conditions 62, 211, 213, 215, 217, 219, 1-30, 1-31, 1-35, 236, 238, 244, 1-40, 276, 257, 260 and 292 (draft conditions 65, 200, 202, 204, 206, 208, 221-226²¹, 228, 233, 236, 261, 243, 246 and 279) include a wide variety of process sources such as small scale mixing and precipitation operations, size reduction, pouring, various coating and film washing, waste and wastewater treatment sources and materials handling operations (emission units U-00005, U-00011 through U-00014, U-00016, U-00017, U-00019, U-00023 and U-00024). Based on the information included in the permit file, these sources

²¹ The emission points associated with draft permit conditions 222 and 224 have been either reorganized and moved to a different process or taken out of service. As such, there is not a direct correlation between the draft and modified permits.

typically have negligible or very short term opacity (much less than six minutes). For example, based upon information in the Kodak permit file, maximum PM emissions from emission point 030N7 (associated with emission unit U-00012) are 3.2 pounds per year and 0.0045 pound per hour. These PM emissions occur during the weighing of salts and silver. While there may not always be a correlation between mass emissions and opacity, in this instance EPA believes such a correlation exists. Namely, due to the inconsequential hourly PM emissions, it is unlikely that the opacity will ever exceed 20 percent in a 6-minute period. Further, due to the correlation between mass emissions and opacity for these instances, EPA believes that compliance with the opacity limit should prove compliance with the PM emission standard in condition 61.

Neither the opacity limit at 6 NYCRR § 212.6 nor the PM limit of 6 NYCRR § 212.4(c) imposes monitoring of a periodic nature. Under 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2), the permit must contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit” The draft permit stated that a Method 9 test shall be used to determine compliance with the applicable opacity limitations, but only requires this test to be performed “upon request by regulatory agency.” However, in the March 16, 2004 revised permit, DEC requires the facility to conduct visible emission observations semiannually. Although EPA believes this may be appropriate for these sources and that compliance with the opacity limit should indicate compliance with the particulate emission standard, the permit record does not include sufficient data for EPA to determine conclusively that the permit conforms with 40 CFR § 70.6(a)(3)(i)(B) in this case. Thus, while EPA does not necessarily disagree with the monitoring decision, we are granting the petition on this issue, because EPA is unable to determine if the permit is deficient in this manner. Therefore, DEC must justify its monitoring decision in the statement of basis.

I. Lack of Monitoring: VOC Work Practice Issues

The types of VOC sources addressed by the conditions identified by NYPIRG include: solvent metal parts cleaners (emission unit F-AC001, final permit conditions 28, 31, 32 (draft conditions 37, 40, 41)); lithographic and screen printing processes (emission unit U-00018, final permit condition 269 (draft condition 253)); and miscellaneous metal parts cleaning and degreasing (emission unit U-00020, final permit conditions 278 and 279 (draft conditions 265 and 266, respectively)). The sources in emission units F-AC001 and U-00020 are subject to 6 NYCRR part 226 and the sources in emission unit U-00018 are subject to 6 NYCRR part 234.

Final condition 28 identifies the general requirements for solvent metal cleaning such as maintaining equipment to minimize leaks, the posting of proper operating procedures, and covering degreasers when not in use as outlined in 6 NYCRR § 226.2. Conditions 31, 32 and 279 incorporate the requirements of 6 NYCRR §§ 226.4(a) and (c) and outline operating requirements for cold cleaners and conveyORIZED degreasers. Condition 269 incorporates the requirements of 6 NYCRR § 234.6. This provision prohibits the use of open containers for the handling, storage and disposal of volatile organic compounds. Finally, condition 278 incorporates the requirements of 6 NYCRR § 226.3(a) which specifies the types of control

equipment required for various degreasing operations. None of these underlying applicable requirements imposes monitoring of a periodic nature.

As previously discussed, when the underlying applicable requirement imposes no monitoring of a periodic nature, the permit must contain periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). While the draft permit lacked monitoring to assure the facility's compliance with these requirements, the March 16, 2004 revised permit requires the facility to conduct daily observations that these requirements are being followed and maintain records of instances when the appropriate criteria have not been met. In addition, condition 269 requires logs for each inspection, even when the criteria are met. Each condition specifies that these monitoring results are required to be included in the semiannual monitoring reports and the annual compliance certifications. EPA agrees a daily observation is appropriate as periodic monitoring for solvent cleaners and degreasers. However, we believe the recordkeeping for conditions 28, 31, 32, 278 and 279 should be revised to mirror condition 269, thus adding the requirement for a daily log indicating the observation took place for each subject process. As such, EPA is partially granting the petition on this issue. DEC must revise the recordkeeping requirements of conditions 28, 31, 32, 278 and 279 to require the facility to keep logs of each inspection, including but not limited to: (1) the date and time of each daily inspection, (2) the areas and/or items observed and (3) any corrective actions taken.

J. Lack of Monitoring: VOC RACT Issues

1. Solvent Handling

As described above, Petitioner alleges that condition 66 of the draft permit contains no monitoring. Draft condition 66 (final modified permit condition 63) sets forth the requirements of 6 NYCRR § 212.10(c)(4)(iii), as they apply to the hazardous waste and recoverable VOL solvent handling activities identified as emission unit U-00006, process C09. Section 212.10 sets out the requirements of RACT for sources of VOC. The activities described in condition 63 are covered by a VOC RACT plan, and Kodak is required to comply with this plan and update it every five years.

In this case, the underlying applicable requirement does not contain any monitoring that is of a periodic nature, though DEC has created recordkeeping and reporting requirements to satisfy 40 CFR § 70.6(a)(3)(i)(B). Kodak must calculate its VOC emissions monthly and keep records of the annual emissions on a 12-month rolling basis. Further, the supporting data used in calculating these emissions are described in the permit, and reporting is required semiannually. For these reasons, EPA denies the petition on this point.

2. Grit Chamber Controls

As described above, Petitioner alleges that draft condition 247 provides only for monitoring at the DEC's discretion. Petition at 34. Final modified permit condition 262 (draft

condition 247) sets forth the requirements of 6 NYCRR § 212.10(f), as they apply to the grit chamber controlled by a carbon adsorption control system, which is one of the process emission sources associated with the wastewater operations identified as emission unit U-00017, process K06. Section 212.10 sets out the requirements of RACT for sources of VOC. According to condition 261 of the final modified permit, Kodak is to continuously monitor the inlet air flow to the carbon adsorption control system to ensure it remains between 200 and 500 standard cubic feet per minute. Further, Kodak is to perform maintenance and testing of the control system according to a schedule described in condition 262. In addition to regularly changing the carbon canisters, Kodak is required to re-evaluate the canister changing frequency prior to permit renewal by testing the emissions from the control system.

In this case, EPA notes that there is monitoring prescribed in the permit that is not discretionary, and thus Petitioner's claim is flawed. However, in its review, EPA has determined that DEC has not met its obligation to justify its monitoring decision in the PRR. The SIP at 6 NYCRR § 212.11(b)(3) states that owners and/or operators of any source equipped with fixed-bed carbon adsorption units must install continuous monitors and data recorders to measure the volatile organic compound outlet concentrations, unless alternative monitoring methods have been approved by the DEC. Because Kodak's permit does not provide for continuous direct monitoring of VOC outlet concentration, it appears DEC has approved, and included in the permit, an alternative monitoring method. EPA is requiring DEC to explain in the PRR whether such an alternative monitoring method has been approved, and why it is justified in the case of Kodak's grit chamber in process K06. For these reasons, EPA is granting the petition on this point.

K. VOC RACT Plans

Petitioner alleges DEC must revise the permit to require Kodak to comply with approved RACT plans and seek to amend its permit within 30 days of DEC's approval of RACT plans. Petitioner claims several permit conditions merely state Kodak is to submit proposed permit conditions within 30 days of a written request from DEC. Petition at 36. Petitioner gave no specific examples of permit conditions with this alleged flaw. However, in its Responsiveness Summary, DEC identified draft permit conditions 218, 280, 1201 and 1353 as each containing the text noted by Petitioner.

These four draft permit conditions have been incorporated into the final modified permit as conditions 229, 299, 1138 and 1278, respectively. These conditions set out compliance schedules for emissions units at which Kodak was apparently not achieving full compliance with applicable requirements at the time of permit issuance.²² These noncompliant situations were identified to DEC during Kodak's application process. *See* note 9, *supra*. These schedules set

²² The requirement to include a schedule of compliance for sources that are not in compliance at the time of permit issuance is found at 40 CFR §§ 70.5(c)(8) and 70.6(c)(3).

deadlines for Kodak's submission of RACT evaluations and set out a process for DEC to review these proposals, act on them, and incorporate appropriate permit conditions as necessary.

1. State-only enforceable conditions

Two of the permit conditions identified by DEC are state-only enforceable and apply the provisions of 6 NYCRR § 212.4(a) to regulated air pollutants emitted by processes at Kodak. Final modified permit condition 1138 (draft condition 1201) applies NYSDEC's general process emission source requirements of 6 NYCRR § 212.4(a) to methanol and acetaldehyde emissions from Kodak's polymer manufacturing department, identified as emission unit U-00024, process E53. Final modified permit condition 1278 (draft condition 1353) applies 6 NYCRR § 212.4(a) to several pollutants emitted from Kodak's silver recovery department, identified as emission unit U-00063, vented to emission point 10101.

Permitting authorities may include, at their discretion, state-only (i.e. non-federally enforceable) requirements in a title V permit. *See generally* 40 CFR § 70.6(b)(2). State-only terms are not subject to the requirements of title V and, therefore, are not evaluated by EPA unless those terms may either impair the effectiveness of the title V permit or hinder a permitting authority's ability to implement or enforce the title V permit.²³

In this case, EPA finds that condition 1138 presents no such impairment of or hindrance to enforcing the title V permit because this condition only addresses the emission of methanol and acetaldehyde, and does not affect the federal enforceability of any applicable requirement. Therefore, EPA denies the petition on this point. However, EPA has identified aspects of condition 1278 that warrant review in the context of this petition.

Sulfur dioxide (SO₂) is one of the pollutants emitted from Kodak's silver recovery department, and is addressed in condition 1278, under the authority of 6 NYCRR § 212.4(a). However, SO₂ is a criteria pollutant that should be addressed in the federal and state enforceable portion of the title V permit. EPA has approved 6 NYCRR part 212 into New York's SIP,²⁴ and thus the provisions of this applicable requirement relating to criteria pollutants are federally enforceable. EPA is therefore granting the petition on this point and requiring DEC to amend the permit to identify the provisions of condition 1278 relating to SO₂ as federally enforceable, including the compliance schedule and milestones. *See* 40 CFR § 70.5(c)(8). Further, DEC must revise the permit to include appropriate monitoring, to make this condition practically

²³ *In the Matter of Harquahala Generating Station Project*, Order Responding to Petitioner's Request that the Administrator Object to Issuance of a State Operating Permit, Permit No. V99-015, at 5 (July 2, 2003).

²⁴ State rule effective September 22, 1994, approved by EPA September 25, 2001, 66 *Fed. Reg.* at 48961.

enforceable. Finally, DEC should identify in the revised permit whether Kodak has submitted the “BACT report,” as required by the permit.²⁵

2. Emulsion Finishing

Final modified permit condition 229 sets forth a compliance schedule for Kodak's emulsion finishing operations in building 30 to meet the VOC RACT requirements of 6 NYCRR § 212.10(c). The draft permit set a deadline of August 16, 2002 for Kodak to submit a VOC RACT compliance plan for this process, identified in the permit as emission unit U-00012, process P24. The final modified permit explains that Kodak submitted this plan on September 6, 2002, and the DEC is currently reviewing it.

According to New York's SIP, major sources of VOC that are subject to 6 NYCRR § 212.10(c) must submit process specific RACT demonstrations where a default level of emissions control is not achievable. These default levels are either 81 percent overall VOC removal efficiency at general process sources or the use of coatings containing less than 3.5 pounds per gallon of VOC for surface coating processes not subject to 6 NYCRR part 228. 6 NYCRR § 212.10(c)(4). From the information in the permit record, it appears that Kodak is claiming it can not comply with the default SIP limits for this process, and thus it is appropriate that DEC include this compliance schedule in the title V permit. Kodak therefore must comply with a federally enforceable schedule whose end result will be an approved process specific RACT plan.

The first part of Petitioner's claim is that the permit must require Kodak to comply with an approved RACT plan. EPA is granting the petition on this issue. While the final modified permit does require Kodak to implement RACT in accordance with its approved plan, this approval has not yet been granted. In addition, condition 229 does not include any interim limits. In general, where a RACT plan has not yet been approved, the permit must either contain the default SIP requirement or an interim requirement, until such time as a RACT plan is approved and incorporated into the permit. In this case, DEC has not clearly explained in the permit record why the compliance schedule is necessary, and why the method of achieving compliance is through the approval of a process specific RACT plan. The PRR issued with Kodak's modified title V permit is contradictory on this issue. Under the heading “Compliance Status,” the PRR states that the Kodak facility is in compliance with all requirements. PRR at 25 of 137. However the PRR also explains under the heading “Basis for Monitoring” that conditions citing 6 NYCRR § 212.10(c) contain RACT compliance schedules to satisfy enforcement orders. DEC must explain whether process P24 is under an enforcement order and whether it cannot comply with the default SIP requirement, thus explaining the need for an approved process specific RACT plan.

²⁵ The requirement for Kodak to apply Best Available Control Technology for the control of air contaminants (including toxics on a state-only basis) is found at 6 NYCRR § 212.4(a), Table 2.

Further, the permit must require Kodak to comply with its proposed RACT plan²⁶ until DEC approves it. The permit must further specify that Kodak must comply with the State-approved plan until such time as EPA approves it, as required by 6 NYCRR § 212.10(c)(4)(ii). In addition, the permit must provide for the contingency that the plan may be disapproved, and in such cases, provide for timely actions by Kodak to consider alternate control measures and submit a revised plan as needed. Finally, the permit must be revised to include specific elements, such as emission limits or operational constraints, along with appropriate monitoring, to make this condition practically enforceable.

The second part of Petitioner's claim is essentially that the permit is too vague on when the title V permit must be modified to incorporate the approved RACT plan. Condition 229 states that, "Within 30 days of receipt of a written request by the Department, Kodak shall submit proposed permit conditions designed to ensure prospective compliance with the emission levels achieved through RACT controls."

EPA is granting the petition on this issue. DEC must revise the permit to clarify that upon plan approval, Kodak must immediately request the permit be modified, if any additional conditions are deemed necessary by the DEC to ensure Kodak's compliance with the approved RACT plan. Notwithstanding the status of any permit modification, Kodak must comply with its RACT plan upon approval.

3. Polymer Manufacturing

Final modified permit condition 1-51 sets forth a compliance schedule for Kodak's polymer manufacturing department to meet the VOC RACT requirements of 6 NYCRR § 212.10(c). The draft permit, at condition 280, set a deadline of July 12, 2002 for Kodak to submit a VOC RACT compliance plan for this process, identified in the permit as emission unit U-00024, process E53. The final modified permit explains that Kodak submitted this plan in accordance with Consent Order R820020322, and the DEC is currently reviewing it.

As explained above for Kodak's emulsion finishing operations, major sources of VOC that are subject to 6 NYCRR § 212.10(c) must submit process specific RACT demonstrations where a default level of emissions control is not achievable. From the information in the permit record, it appears that DEC has determined that Kodak is not complying with 6 NYCRR § 212.10(c), and thus it has included a compliance schedule in the title V permit.

As stated above, the first part of Petitioner's claim is that the permit must require Kodak to comply with an approved RACT plan. EPA is granting the petition on this issue. Because the DEC has not yet approved Kodak's proposed plan, DEC must revise the permit to include interim requirements, and explain its rationale for this in the PRR. In this case, DEC has not

²⁶ The proposed RACT plan may serve to provide interim limits in this case. Alternatively, DEC may impose other interim limits.

clearly explained in the permit record why the method of achieving compliance is through the approval of a process specific RACT plan. DEC must identify the effective date of Consent Order R820020322, and explain whether Kodak can comply with the default SIP requirement, thus explaining the need for an approved process specific RACT plan.

The permit must require Kodak to comply with its interim requirements (either the proposed RACT plan or other limits imposed by DEC) until DEC approves the RACT plan. The permit must further specify that Kodak must comply with the State-approved plan until such time as EPA approves it, as required by 6 NYCRR § 212.10(c)(4)(ii). In addition, the permit must provide for the contingency that the plan may be disapproved, and in such cases, provide for timely actions by Kodak to consider alternate control measures and submit a revised plan as needed. Finally, the permit must be revised to include specific elements, such as emission limits or operational constraints, along with appropriate monitoring, to make this condition practically enforceable.

Also as above, EPA is granting the second part of Petitioner's claim, that the permit is too vague on when the title V permit must be modified to incorporate the approved RACT plan. Condition 1-51 states that, "Within 30 days of receipt of a written request by the Department, Kodak shall submit proposed permit conditions designed to ensure prospective compliance with the emission levels achieved through RACT controls." DEC must revise the permit to clarify that upon plan approval, Kodak must immediately request the permit be modified, if any additional conditions are deemed necessary by the DEC to ensure Kodak's compliance with the approved RACT plan. Notwithstanding the status of any permit modification, Kodak must comply with its RACT plan upon approval.

L. West Chemicals Department-Large Scale (Bldg 325)

NYPIRG's petition contains two separate claims regarding draft permit condition 700.

1. Monitoring Frequency

Petitioner alleges that draft permit condition 700 does not ensure compliance because monitoring is only required every 24 months for an annual emission limit. Petition at 38. Final modified permit condition 1-81 addresses the same regulation and process as draft condition 700, that is, VOC RACT pursuant to 6 NYCRR § 212.10(c)(4)(iii) at emission unit U-00053 for emission point 325X3 in the West Chemicals Department-Large Scale (Bldg 325).

According to the draft permit, Kodak was to perform monthly mass balance calculations as the basis for its 12-month rolling total annual emission limit of 190 tons VOC. As a quality assurance measure, every 24 months Kodak was to conduct a three day monitoring exercise on a complete reactor system to determine the total VOC emissions in that time period. The monitoring results were to be compared to the engineering calculations for the same reactor system, to determine if the calculated estimates were valid. In addition, the draft permit required

Kodak to perform monthly leak detection in centrifuges, among other periodic quality assurance measures.

Final modified permit condition 1-81 contains similar monitoring requirements to those in the draft, though the annual VOC limit has been re-evaluated and reduced to 105 tons per year. Because the underlying applicable SIP rule contains no monitoring of a periodic nature, DEC has incorporated monitoring in the permit designed to yield reliable data from the relevant time period that is representative of Kodak's compliance with this RACT plan. EPA has determined that the quality assurance measures in final modified permit condition 1-81, specifically the monthly calculations with biannual validation, monthly and quarterly leak detection protocols, and quarterly monitoring of fast-nitrogen purge rates conform to the monitoring requirements of 40 CFR § 70.6(a)(3)(i)(B). However, there is no explanation in the PRR of NYSDEC's rationale for its monitoring decision in this case. Therefore, while EPA is denying the petition on the issue as raised, the DEC must include a justification in the PRR for its monitoring decisions pertaining to condition 1-81, when it reopens Kodak's title V permit for other reasons.

2. Part 202 Reporting

NYPIRG alleges that all applicable requirements are not always applied in condition terms. Petition at 39. As an example, NYPIRG identifies draft permit condition 700 as failing to include the reporting requirements of 6 NYCRR part 202. Condition 700 (also final modified permit condition 1-81) addresses emission unit U-00053 and its compliance with VOC RACT at 6 NYCRR § 212.10(c)(4)(iii). This condition describes what Kodak must do to assure the sources in the West Chemicals Department-Large Scale (Bldg 325) comply with VOC RACT. NYPIRG alleges that this condition must also include the testing and reporting requirements of part 202 because 6 NYCRR § 212.11(a), "Sampling and monitoring," requires that, "Owners and/or operators of any source which is required by the Department to demonstrate compliance with this Part must comply with the notification requirements and must conduct capture efficiency and/or stack emissions testing using acceptable procedures pursuant to Part 202 of this Title."

In its Responsiveness Summary, DEC responded that, "Part 202 requirements are covered in Item Y in the "NOTIFICATION OF GENERAL PERMITTEE OBLIGATIONS" section of the permit. These requirements apply to the whole permit." Responsiveness Summary, Appendix E, p. 4 of 11. EPA agrees with the DEC. EPA sees no need for process-specific condition 1-81 to include the requirements of part 202, when it is clear that these requirements apply to Kodak at the facility level. For this reason, EPA is denying the petition on this point.

M. Handling, Storage and Disposal of VOC

Petitioner alleges that DEC must set out specific requirements in the permit for processes C13 and E09 to comply with 6 NYCRR part 228. Further, Petitioner alleges the VOC RACT

plan for process P82 must be appended to the permit. Petition at 30. In its earlier comments, Petitioner had noted that facility-wide draft permit condition 17 did not clearly state how Kodak was subject to part 228, nor did it set out monitoring. In its Responsiveness Summary, DEC stated that it would include specific monitoring requirements in the permit. Appendix G, p. 31 of 40. Petitioner's process-specific claims are based on the proposed permit, as revised by DEC.

Condition 17 of the draft permit describes the requirements of 6 NYCRR § 228.10 for the handling, storage and disposal of volatile organic compounds. Similar provisions are found at condition 15 of the final modified permit. The revision DEC made to this condition was to add the following language: "Open containers, if found, shall be covered. The facility shall be inspected daily to determine if there are any open containers present. A log book shall be maintained to record these inspections and their results. the [sic] log book shall include the following information: - date and time of inspection - items or areas observed - corrective measures taken, if necessary." In addition to this facility-wide requirement, the permit contains other process-specific conditions that addresses the compliance of individual emission units with the provisions of part 228. For example, final modified permit conditions 165, 632 and 818 apply the requirements of 6 NYCRR § 228.10 to processes within emission units U-00011, U-00054 and U-00071, respectively.

Although the underlying applicable requirement at 6 NYCRR § 228.10 does not include monitoring of a periodic nature, DEC has included monitoring in the final modified permit that conforms with 40 CFR § 70.6(a)(3)(i)(B). In view of these revisions, EPA believes that Petitioner's concerns about draft permit condition 17 have been addressed.

1. Photographic Film Web Coating

As stated above, Petitioner alleges that DEC must set out specific requirements in the permit for process C13 to comply with 6 NYCRR part 228. Petition at 30. Process C13 is located within Kodak's Research and Development photographic film web coating operations at emission unit U-00054.

According to 6 NYCRR § 228.1(e)(1), part 228 does not apply to "research and development processes involving surface coatings which produce a product for study rather than eventual sale." For this reason, there are no part 228-related applicable requirements included in the permit. Petitioner's claim is therefore unwarranted and EPA is denying the petition for this reason.

2. Film Base Casting and Coating

As stated above, Petitioner alleges that DEC must set out specific requirements in the permit for process E09 to comply with 6 NYCRR part 228. Petition at 30. Process E09 is located within Kodak's film base casting and coating operations at emission unit U-00011.

The description of process E09 changed with the issuance of the modified title V permit. The initial draft permit had described process E09 as “film base casting and/or coating Part 228 R & D”. Condition 36.27, Process Definition By Emission Unit. However, in the final permit issued March 1, 2004, condition 27.17 describes the process as “Film Base Casting and/or Coating Part 228, Including the Maintenance Related Air System Exhaust Vents and R & D and General Research and Development Process Emissions.” As described above, R & D activities are exempt from the provisions of part 228. However, the applicability of the maintenance related air system exhaust vents is unclear. The PRR does not provide any explanation of this process’ applicability to part 228. Thus, because EPA is unable to determine if the permit includes all applicable requirements, EPA is granting the petition on this issue.

DEC must describe in the PRR whether process E09, as currently operated, has any applicable requirements related to 6 NYCRR part 228. If this is the case, then the permit must be revised to address any such requirements, including monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit. 40 CFR § 70.6(a)(3)(i)(B).

3. Glass & Plastic Plate Coating

As stated above, Petitioner alleges the VOC RACT plan for process P82 must be appended to the permit. Petition at 30. The draft permit described process P82 as being part of Kodak’s glass and plastic plate coating operations at emission unit U-00071. However, this process has been discontinued by Kodak. In the introductory section of the final modified permit, under the heading, “Changes from Review and Approval of RACT Evaluation Reports for Reducing Emissions OF VOC,” DEC states that “EU 00071 has been restructured and P74 and P82 were deleted. A revised RACT demonstration has been approved.”

The draft permit described the process-specific VOC RACT limit for process P82 at condition 908. This condition cited 6 NYCRR § 228.3(e), which is a SIP rule allowing for process-specific RACT demonstrations. Though process P82 has been deleted, the final modified permit identifies the process-specific VOC RACT limit for process P73 within emission unit U-00071 at condition 1-93, citing 6 NYCRR § 228.3(e). This condition does not reference a separate VOC RACT plan, rather it appears to be self-contained and explicit in describing the allowable VOC content of coatings and total VOC emissions from this process. Thus, EPA is not aware that a separate plan exists, nor does EPA does see a reason to append any such plan to the permit. For these reasons, EPA is denying the petition on this point.

N. No Requirements Imposed on Kodak

Petitioner alleges that some permit conditions are unenforceable because they impose no requirements on Kodak. Rather, they impose requirements on some entity other than Kodak. Petitioner gives three examples of permit conditions with this alleged deficiency. Petition at 32.

1. Surface Coating Supplier Certifications

Petitioner's first example is draft permit condition 16. This condition states the requirements of 6 NYCRR § 228.6(b), relating to suppliers and users of coatings containing volatile organic compounds, and is located in the facility-wide portion of the title V permit. The condition states, "Any person selling a coating for use in a coating line subject to 6 NYCRR Part 228 must, upon request, provide the user with certification of the volatile organic compound content of the coating supplied." Petitioner claims the permit must be revised to prohibit Kodak from buying a coating the sale of which is violating § 228.6(b). Petition at 32.

In its Responsiveness Summary, DEC stated that, "Kodak, in its chemical manufacturing processes, may in certain cases also be a supplier to of [sic] certain coatings and inks. The requirements in condition 16 (6 NYCRR § 228.6) apply to this facility and the recordkeeping necessary for compliance is covered in conditions for 6 NYCRR § 228.5(a), also in the permit." Appendix G, page 35 of 40.

In the final modified permit, the facilitywide portion of the permit no longer contains a general condition citing 6 NYCRR § 228.6(b). Instead, this regulation has been included as a unit-specific condition for those emissions units that are subject to this provision. Further, the draft and final modified permits both contain unit-specific conditions as described by DEC in its Responsiveness Summary. The permits contain numerous conditions requiring Kodak to maintain production records as well as supplier certifications for coating materials associated with processes conducted by Kodak that are subject to 6 NYCRR § 228.5(a).

For example, final modified permit condition 56 cites 6 NYCRR § 228.6(b) and contains the same language as draft permit condition 16, and applies to Kodak's paper and plastic web coating activities identified as emission unit U-00004, process P40. To assure compliance with this condition, final modified permit condition 51 sets forth Kodak's recordkeeping requirements for this process, and requires reports semiannually. Condition 57 also requires Kodak to perform a VOC analysis using reference test method 24 of 40 CFR part 60 Appendix A upon request by the DEC.

In this case, EPA finds that the underlying applicable requirement contains no monitoring that is of a periodic nature, and the permit's requirements for Kodak to maintain records and test the VOC content of its coatings upon request do not satisfy the requirements of 40 CFR § 70.6(a)(3)(i)(B). For this reason, EPA is granting the petition on this point, and requiring DEC to revise the permit to require Kodak to test each coating in accordance with Method 24 of 40 CFR part 60, Appendix A, each time there is a new product or raw material change in a batch of coating applied. This will assure Kodak's compliance with 6 NYCRR § 228.6(b) for Kodak's paper and plastic web coating activities at process P40.

2. Graphic Arts Supplier Certifications

Petitioner's second example is draft permit condition 252 (final modified permit condition 268). This condition states the requirements of 6 NYCRR § 234.5(b), relating to suppliers and users of coatings or inks containing volatile organic compounds, and applies to Kodak's offset lithographic printing equipment, identified as emission unit U-00018. Condition 268 states, "Any person selling a coating or ink for use at a printing process subject to 6 NYCRR Part 234 must, upon request, provide the user with certification of the volatile organic compound content of the coating or ink supplied." Petitioner's concerns are similar to those expressed above in section N.1.

In its Responsiveness Summary, DEC stated that, "Kodak, in its chemical manufacturing processes, may in certain cases also be a supplier to of [sic] certain coatings and inks. The requirements in condition 252 (6 NYCRR § 234.5) apply to this facility and the recordkeeping necessary for compliance is covered in conditions for 6 NYCRR § 234.(b)(3), [sic] also in the permit." Appendix G, page 35 of 40.

Kodak's draft permit included the recordkeeping described by DEC in its Responsiveness Summary at condition 256. This condition, citing 6 NYCRR § 234.4(b)(3), required Kodak to keep a monthly log identifying each material used in the lithographic printing process, the quantity used and its VOC content.

In the final modified permit, DEC has imbedded this type of record keeping requirement in permit conditions citing other sections of the part 234 regulations. For the lithographic printing process described above, final modified permit condition 270 addresses the requirements of 6 NYCRR § 234.5(b). This condition requires Kodak to maintain records of formulation data pursuant to 6 NYCRR § 234.4(b)(3), including production records as well as supplier certifications for fountain solutions and solvents. Any other parameter used to verify compliance must also be kept, and reporting is required semiannually. Further, condition 270 requires Kodak to perform a VOC analysis using reference test method 24 of 40 CFR part 60 Appendix A upon request by the DEC.

In this case, EPA finds that the underlying applicable requirement contains no monitoring that is of a periodic nature, and the permit's requirements for Kodak to maintain records and test the VOC content of its fountain solutions upon request do not satisfy the requirements of 40 CFR § 70.6(a)(3)(i)(B). For this reason, EPA is granting the petition on this point, and requiring DEC to revise the permit to require Kodak to test each fountain solution in accordance with Method 24 of 40 CFR part 60, Appendix A, each time there is a new product or raw material change in each batch. This will assure Kodak's compliance with 6 NYCRR § 228.6(b) for Kodak's offset lithographic printing equipment.

One of the changes incorporated in the modification of Kodak's title V permit was the addition of a second process under emission unit U-00018. A screen printing process is now described as process R02 under U-00018. Recordkeeping requirements similar to those

described in final modified permit condition 270 are included for this process at condition 1-43, citing 6 NYCRR § 234.3(c).

For the reasons explained above, EPA finds that the permit's requirements for Kodak to maintain records and test the VOC content of its inks/coatings or adhesives upon request do not satisfy the requirements of 40 CFR § 70.6(a)(3)(i)(B). For this reason, EPA is granting the petition on this point, and requiring DEC to revise the permit to require Kodak to test each ink/coating or adhesive in accordance with Method 24 of 40 CFR 60, Appendix A, each time there is a new product or raw material change in each batch. This will assure Kodak's compliance with 6 NYCRR § 228.6(b) for Kodak's screen printing process R02.

3. Overall VOC Removal Efficiency

Petitioner's third example is draft permit condition 281 (final modified permit condition 301). This condition states the requirements of 6 NYCRR § 228.3(c), which identifies the method for calculating overall removal efficiency achieved by air cleaning devices controlling VOC emissions from surface coating processes. Final modified permit condition 301 applies to Kodak's film base extruding and coating operation identified as emission unit U-00024, process E54. The condition states, "Control strategies utilizing an air cleaning device must determine the required overall removal efficiency on a solids as applied basis as per Part 228.2(b)(22). Using the appropriate coating parameters and VOC limits the overall removal efficiency required is the lesser of the value calculated or 85 percent." Petitioner is concerned that the permit imposes no requirement on Kodak. Petition at 32.

EPA believes this permit condition has been included as a descriptive or informational item, and thus no direct obligation on Kodak or any other entity is stated or implied. For this reason, EPA denies the petition on this point.

O. PET Manufacturing Activities Subject to 40 CFR part 63 subpart JJJ

Throughout its petition, NYPIRG makes several allegations relating to Kodak's compliance with the NESHAP for Group IV Polymers and Resins. These standards are codified at 40 CFR 63 subpart JJJ, beginning at 40 CFR § 63.1310. Kodak's title V application identifies two emission units in which activities are subject to this NESHAP: U-00024 and U-00050. The equipment in these emission units is used primarily to manufacture polyethylene terephthalate (PET), which is a thermoplastic material, and includes (but is not limited to) chemical reactors, agitators, storage vessels, recovery operations such as distillation units and condensers, heat exchange systems and cooling towers. Below, EPA has grouped each of Petitioner's claims relating to emission unit U-00024, process E59, which is identified as chemical reactors associated with PET manufacturing activities. Within process E59, Kodak has identified seven emission sources: 317AD, 317AE, 317AG, 317FT, 317FU, 317FV and 317FW. The final modified permit addresses the subpart JJJ requirements applicable to these sources at conditions 321 to 353.

1. Determination of Required Reports

Petitioner alleges that the DEC must make a clear determination in the permit of which reports required by 40 CFR §§ 63.1335(e)(3) through (e)(8) must be submitted by Kodak. Petitioner alleges that proposed permit condition 343 (also final modified condition 343) does not accomplish this because the permit is not specific enough to define how the requirement applies. Petition at 31.

Conditions 343-346 of the proposed and final modified permits address the reporting and notification requirements of subpart JJJ, as they apply to all of the emission sources within process E59. Condition 343 states that, “The owner or operator of an affected source shall prepare and submit the reports listed in paragraphs 40 CFR §§ 63.1335(e)(3) through (e)(8), *as applicable*. The reports required in Subpart JJJ, and the schedule for their submittal, are listed in Table 9 of Subpart JJJ.” (emphasis added) This language tracks the language of 40 CFR § 63.1335(e)(3), which requires the owner or operator of an affected source to “prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable.”

Subpart JJJ is a highly complex rule, allowing for multiple and frequent process changes and operating scenarios. Accordingly, the reports required therein are similarly complex. By contrast, Table 9 to subpart JJJ, entitled “Routine Reports Required by this Subpart,” is a plainly written summary of 40 CFR § 63.1335(e). It can be seen from reading this table that different reports may be required depending on the variation in activities conducted at an affected facility during the permit term. For example, if a facility makes a process change that affects its emissions averaging plan, a report with an updated averaging plan must be submitted 120 days prior to making the process change necessitating the update. This example illustrates why it is logical for DEC to keep the conditional phrase, “as applicable” in permit condition 343.

EPA finds that the permit adequately sets forth Kodak's obligations with respect to reporting under subpart JJJ for these manufacturing processes. First, condition 343 appropriately incorporates Table 9 by reference, thus making it an applicable requirement. Further, condition 346 of the final modified permit specifies that Kodak must submit periodic reports semiannually, as per 40 CFR § 63.1335(e)(6). This condition also describes some of the details DEC expects Kodak to include in these periodic reports. For these reasons, EPA denies the petition on this point.

2. Lack of Monitoring

Petitioner alleges that draft permit conditions 369 and 373 lack any type of monitoring, and the permit can not assure compliance where there is no monitoring. Petition at 34.

(a) Heat Exchange Systems

Draft permit condition 369 (final modified permit condition 350) sets out the leak detection requirements of 40 CFR § 63.1328 as they apply to emission source 317FU. Specifically, draft condition 369 sets out a schedule by which Kodak must make repairs to leaking heat exchange systems.

DEC has included monitoring relevant to these provisions for Kodak's heat exchangers at final modified permit conditions 348-351. Final modified permit conditions 348-351 (draft conditions 370-372) set forth other requirements derived from 40 CFR § 63.1328, and include monitoring, recordkeeping and reporting. Specifically, final modified permit condition 351 (draft condition 370) specifies the information required to be reported semiannually, final modified permit condition 348 (draft condition 371) specifies quarterly monitoring of cooling water, and final modified permit condition 349 (draft condition 372) specifies the retention of records.

Because the underlying applicable requirement contains monitoring that is of a periodic nature, and DEC has properly incorporated it into the permit, EPA denies the petition on this point.

(b) Process Wastewater HAPs

Draft permit condition 373 (final modified permit condition 352) sets out the requirements of 40 CFR § 63.1330 as they apply to emission source 317FV. This condition describes the records Kodak must keep to document the annual average concentration of hazardous air pollutants (HAP) in the process wastewater stream.

In its Responsiveness Summary, DEC stated that it would make changes to condition 373 to add or clarify the necessary monitoring, recordkeeping and reporting activities associated with these requirements. Appendix G, page 37 of 40. Final modified permit condition 352 addresses 40 CFR § 63.1330 for emission source 317FV, but the text is identical to the text of draft condition 373, so it appears DEC did not make the changes it spoke of in its Responsiveness Summary.

Although DEC cites 40 CFR § 63.1330 in condition 352, the underlying applicable requirement actually arises from 40 CFR subpart G, at 63.147(b)(8). This is because 40 CFR § 63.1330 contains a cross reference to 40 CFR 63 subpart G, sections 63.131 through 63.148. Subpart G requires owners or operators of group 2 wastewater streams to retain records documenting the basis for the initial group determination. DEC has correctly incorporated the applicable requirements of 40 CFR § 63.147(b)(8) into the permit. Although condition 352

states that reporting is upon request, general permit condition 6 explains that semiannual reporting is required.²⁷

The nature of this applicable requirement is similar to the issue discussed above in section IX.G, regarding the design capacity of Kodak's storage tanks subject to NSPS subpart Kb. Kodak has made a one time applicability determination, and is required to maintain available records of this determination. Further, the permit requires semiannual reporting. Here, as above in IX.G, EPA has determined that the permit meets the requirements of 40 CFR § 70.6(a)(3)(i)(B).

While EPA is denying the petition on this issue, EPA has determined that the PRR must be revised to more clearly state the wastewater streams of process 317FV are currently determined to be Group 2, and that any change in this group classification would entail the imposition of additional applicable requirements.

3. Leak Detection Under 63 JJJ

Several of Petitioner's claims relate specifically to the leak detection requirements of 40 CFR § 63.1331. Examples of equipment which, if leaking, can emit HAP to the atmosphere, include (but are not limited to) valves, pumps, connectors, agitators, pressure relief devices and storage vessels. Below in subsections (a) through (h), EPA has provided responses to NYPIRG's claims related to the leak detection requirements of subpart JJJ at Kodak's emission unit U-00024. Of note is the structure of 40 CFR § 63.1331. In crafting this rule, EPA relied heavily on the NESHAP for Equipment Leaks at 40 CFR 63 subpart H. Thus, there is a great deal of cross-referencing to these regulations, at 40 CFR §§ 63.160 to 63.182.

(a) Alternative Compliance Methods

Petitioner raises two separate issues, discussed below, related to the alternate compliance methods available to Kodak for detecting leaks in its PET manufacturing equipment at emission sources 317AD and 317AE.

(i) Tracking of Alternatives

Petitioner alleges that the DEC should carefully review the compliance alternatives offered within draft permit condition 334. Petitioner expresses a concern that the alternatives frequently include exemptions to reporting and monitoring requirements, and this could lead to a weaker level of pollution control than the laws intend. Petition at 38.

²⁷ Condition 6, at page 95 of the final modified permit, states in part, "In the case of any condition contained in this permit with a reporting requirement of "Upon request by regulatory agency" the permittee shall include in the semiannual report, a statement for each such condition that the monitoring or recordkeeping was performed as required or requested and a listing of all instances of deviations from these requirements."

Final modified permit condition 340 (draft permit condition 334) describes the alternatives of pressure testing or monitoring leaks at equipment in emission source 317AE. The alternatives provided in the permit are consistent with those described in 40 CFR 63 subpart H, section 63.178, which is the underlying applicable requirement in this case, according to the cross reference at 40 CFR § 63.1331.

Because Petitioner's claim does not identify a flaw in the permit itself, rather an obligation on DEC to track Kodak's compliance with the permit, Petitioner has failed to demonstrate that the permit is not in compliance with the CAA, and EPA is denying the petition on this issue.

(ii) Poorly Worded Requirements

Petitioner alleges that draft conditions 317 and 334 are poorly worded in that they are too broad in scope, and can be misinterpreted. Petition at 35. Specifically, Petitioner is concerned about the language in each condition that states: “As an alternative to complying with all of the above requirements, Kodak may comply with one of the alternative standards which provide the options of pressure testing or monitoring the equipment for leaks.” Petitioner asserts that this statement needs to be changed to clarify which other requirements may be replaced by the terms of conditions 317 and 334, because they appear to be alternative methods of compliance for all permit terms before them. Petition at 35.

Draft condition 317 is identical to draft condition 334 (described above in section 3(a)(i)) except that it applies to emission source 317AD. Condition 340 of the final modified permit replaces these conditions and addresses Petitioner's issue, stating that Kodak may choose to comply with the alternative standards for batch processes which provide the options of pressure testing or monitoring the equipment for leaks, as an alternative to complying with the requirements of 40 CFR § 63.1331 Subpart JJJ for emission sources 317AD, 317AE and 317AG. EPA notes that 40 CFR § 63.178 is the provision of subpart H identifying alternative means of emission limitation for batch processes. EPA finds that the revised permit addresses Petitioner's concerns, and is therefore denying the petition on this point.

(b) Monitoring Frequency for Pressure Relief Devices

Petitioner alleges that draft permit condition 321 states the monitoring frequency is “As Required- see monitoring description” even though the monitoring description contains no such information. Petition at 38.

Final modified permit condition 331 (draft condition 321) prescribes operational requirements, including monitoring, for Kodak's pressure relief devices at emission source 317AD. The function of a pressure relief device is to discharge process fluid, thereby reducing dangerously high pressures within the equipment. This relief is required for safety reasons when atypical process system operating pressures occur. *See* proposed rules for 40 CFR part 63:

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Seven Other Processes. 57 Fed. Reg. at 62608, 62679 (December 31, 1992) (“the 1992 preamble”). Therefore, because pressure releases are unlikely to occur in a planned and predictable manner, it is not reasonable for the permit to prescribe their frequency.

Condition 331 of the final modified permit specifies that Kodak must follow certain work practices within a very specific time frame after each occurrence of a pressure release. For example, Kodak must monitor the pressure relief device within 5 days after being returned to organic HAP service, to verify the reading is less than 500 parts per million above background. 40 CFR § 63.165(b). EPA finds that DEC has appropriately incorporated the standards for pressure relief devices in gas/vapor service from 40 CFR subpart H, section 63.165 into Kodak's permit. This is the underlying applicable requirement in this case, according to the cross reference at 40 CFR § 63.1331.

While EPA recognizes that the phrase, “As Required - See Monitoring Description” is repeated often in Kodak's permit, EPA sees no inherent flaw in this permit language. EPA therefore denies the petition on this point.

(c) Good Engineering Judgment

Petitioner alleges that draft permit condition 333 is not enforceable because it allows Kodak to use good engineering judgment rather than certain testing procedures. Petition at 38.

Draft condition 333 applies to emission source 317AD, and describes in great detail the testing and monitoring methods Kodak must use to comply with the equipment leak provisions of subpart JJJ. The final modified permit includes identical provisions at condition 333, and applies to emission units 317 AD, 317AE and 317AG. Most of the text of this long permit condition relates to the monitoring methods, detection instruments, calibration procedures, and adjustments for background levels of contaminants that Kodak must follow. No exceptions or alternatives are offered for these procedures.

The text of condition 333 to which Petitioner objects relates to how Kodak is to determine whether a piece of equipment is in organic HAP service. Specifically, “Kodak may use good engineering judgment rather than the above procedures to determine that the percent organic HAP content does not exceed 5 percent by weight.” The text goes on to say, “[w]hen Kodak and the Administrator do not agree on whether a piece of equipment is not in organic HAP service, however, the above procedures shall be used to resolve the disagreement.” The “above procedures” to which the permit refers are 40 CFR part 60 Appendix A, Reference Method 18 or, if certain other conditions are met, Reference Method 25A.

Because 40 CFR 63.1331 references subpart H of part 63 as the basis for these leak detection requirements, the underlying applicable requirement for condition 333 is 40 CFR §§

63.180(a-d). Paragraph 63.180(d)(2)(i) of subpart H provides that, “an owner or operator may use good engineering judgment rather than the procedures in paragraph (d)(1),” unless there is disagreement, consistent with the language of Kodak's permit.

This portion of the leak detection regulations is based on the presumption that a piece of equipment is in organic HAP service if it can be reasonably be expected to contain equipment in organic HAP service. 40 CFR § 63.180(d)(1). The rebuttal of this presumption is Kodak's responsibility.

For the above reasons, EPA disagrees with Petitioner that this condition is not enforceable. Kodak's use of good engineering judgment is allowed by the regulations, limited in scope, and appropriate given the presumption described above. EPA therefore denies the petition on this point.

(d) Delay of Repair

Petitioner alleges that some permit conditions refer to the “delay of repair” requirements as set forth in 40 CFR § 63.1331 subpart JJJ as being “above” or “below.” Petitioner claims these requirements are not contained within the permit condition using this reference. Petitioner gives draft condition 340 as an example. Petition at 36.

Draft permit condition 340 contains definitions of certain terms relating to the leak detection requirements of subpart JJJ, and applies to emission source 317AE. EPA notes that final modified permit condition 336 addresses the same provisions of subpart JJJ as did draft condition 340, and the references to “below” and “above” have been removed. For this reason, EPA is denying the petition on this point.

(e) Minimum Leak Detection Frequency on Agitators

Petitioner alleges that while draft permit condition 344 specifies a maximum monitoring frequency for leak detection on agitators that are unsafe and difficult to monitor, no minimum monitoring frequency is specified. Petition at 38.

Final modified permit condition 338 (draft condition 344) addresses the leak detection requirements of subpart JJJ for agitators in gas/vapor service and light liquid service within emission sources 317AD, 317AE and 317AG. This permit condition states that any agitator designated as unsafe to monitor is exempt from leak detection requirements if, “Kodak has a written plan that requires monitoring of the agitator as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.” EPA reads Petitioner's claim to mean that “as frequently as practical during safe-to-monitor times” is not specific enough to satisfy 40 CFR § 70.6(a)(3)(i)(B).

Condition 338 also states that any agitator designated as difficult to monitor is exempt from leak detection requirements if “Kodak follows a written plan that requires monitoring of the agitator at least once per calendar year.” Thus, Petitioner's claim that the permit lacks a minimum monitoring frequency is unfounded in the case of difficult-to-monitor agitators.

In its Responsiveness Summary, DEC responded that the monitoring requirements of the agitators designated as unsafe-to-monitor are consistent with the applicable requirements contained in 40 CFR § 63.1331. Appendix E, page 3 of 11. As noted previously, 40 CFR § 63.1331 refers to subpart H extensively. In this case, the section of subpart H that prescribes the conditions under which unsafe and difficult to monitor equipment may be exempted is 40 CFR § 63.173 for agitators in gas/vapor service and light liquid service.

The permit contains provisions that are consistent with EPA's regulations regarding unsafe-to-inspect equipment. The language from final modified permit condition 338 is taken directly from subpart H, at 40 CFR §§ 63.173(j)(1-2). This includes the requirements for Kodak to identify equipment designated as unsafe to inspect, and to have a written plan for monitoring unsafe-to-inspect equipment. Further, final modified permit condition 339 includes language taken directly from another part of subpart H, 40 CFR § 63.181(b)(7), requiring readily accessible records to be kept of those determinations and plans required by § 63.173(j).

EPA disagrees with Petitioner that the monitoring frequency specified in condition 338 for agitators designated as unsafe-to-monitor does not satisfy 40 CFR § 70.6(a)(3)(i)(B). EPA explained its reasons for providing this exemption in the 1992 preamble. *See, e.g., 57 Fed. Reg.* at 62671, 62678. In addition, there is no need for DEC to incorporate any part of Kodak's written plan for inspecting unsafe agitators into the permit, because the regulation does not require Kodak to report information to EPA or DEC regarding the details of this plan. For all of the above reasons, Petitioner's request for the permit to include a minimum monitoring frequency is denied.

(f) Exemptions from LDAR Requirements

Petitioner alleges that draft permit condition 327, relating to leak detection and repair (LDAR) of agitators in gas/vapor service and in light liquid service, needs to require monitoring of possible changes to the operating conditions under which certain exemptions may apply. Specifically, Petitioner claims Kodak should identify and report which agitators meet the exemptions and monitor any conditions that would lead to a change in an agitator's exempt status. Petition at 35.

Draft condition 327 applies to emission source 317AD. Final modified permit condition 338 is identical except that it also applies to agitators in gas/vapor service and light liquid service within emission sources 317AE and 317AG. In addition to stating the leak detection requirements, this condition also names several specific exemptions and the conditions which must be met for equipment to meet these exemptions. According to final modified permit

condition 338, Kodak's agitators in gas/vapor service and in light liquid service may be exempt from certain LDAR requirements if they are: (1) equipped with a dual mechanical seal system; (2) obstructed by equipment or piping; (3) designed with no externally actuated shaft penetrating the agitator housing; (4) difficult-to-monitor or (5) unsafe-to-monitor. In addition, exemptions (1), (4) and (5) apply only if certain operational and recordkeeping conditions are met.

EPA notes that Kodak is required to maintain records on site of documentation relating to whether the conditions of exemptions (1), (4) and (5) above, are met for these agitators. Final modified permit condition 339 requires recordkeeping that addresses Petitioner's concerns. Specifically, this condition states that Kodak must keep records of design criteria for agitators that are claimed to be exempt due to the presence of a dual mechanical seal system. Kodak must also document explanations of these design criteria, changes to these criteria, and reasons for the changes. Further, Kodak must identify all agitators that are designated as unsafe or difficult to monitor or unsafe to inspect, an explanation of why the equipment is difficult to monitor, and the planned schedule for monitoring or inspecting this equipment.

For these reasons, EPA has determined that the permit includes adequate measures for Kodak to document the status of its agitators that are exempt from leak detection requirements under subpart JJJ. Therefore, EPA denies the petition on this point.

(g) Methods of Leak Detection

Petitioner alleges that the permit allows Kodak to use Reference Test Method 21 of 40 CFR part 60 Appendix A to determine the presence or absence of a leak at the emission sources grouped under emission unit U-00024, while 40 CFR § 63.1331(a)(5)(i) prohibits the use of this test method. Second, Petitioner claims that proposed permit conditions 336 and 570 must specify a monitoring frequency. Third, Petitioner alleges that where leak detection is conducted pursuant to 40 CFR § 63.1331(a)(5)(i), audible and olfactory means must be specified in addition to visual means. Petition at 37.

(i) Reference Test Method 21

Petitioner is concerned that the permit needs to consistently state the regulatory requirements governing how Kodak is to detect leaks, whether using Method 21 or other means. Petition at 37. Petitioner gave no specific examples of permit conditions with this flaw. However, in its Responsiveness Summary, DEC used draft permit condition 323 (final modified permit condition 336) as an example.

EPA believes that the revisions DEC made to the permit address Petitioner's concerns on this point. EPA agrees with Petitioner that draft permit condition 323 was unclear with respect to the use of Reference Test Method 21. Because this condition did not specify which equipment within emission source 317AD was prohibited from using Method 21, it may have appeared to the public that DEC was inconsistently stating when Method 21 was required and

when it was prohibited. Final modified permit condition 336 now clearly states that it applies to Kodak's pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid services for emission sources 317AD, 317AE and 317AG. This condition also states that, for this equipment, a leak is determined to be detected if there is evidence of a potential leak found by visual, audible, or olfactory means, and that Method 21 is not allowed to be used. This language is consistent with 40 CFR § 63.1331(a)(6). For this reason, EPA denies the petition on this point.

(ii) Monitoring Frequency

Petitioner states that the revisions DEC made to proposed permit conditions 336 and 570, in response to comments received, did not include specification of a monitoring frequency. Petition at 37.

As described above, DEC revised the permit to clarify the equipment for which it is appropriate for Kodak to not use Method 21 to detect leaks. Final modified permit condition 336 addresses this for emission unit U-00024. In addition, final modified permit conditions 339 addresses the recordkeeping requirements for this equipment. Specifically, where Kodak has not elected to pressure test the equipment, Kodak must keep a log which, among other things, records the date of each inspection, the equipment inspected, the date of the first repair attempt, and the date the leak was successfully repaired. EPA notes that the permit is consistent with the underlying applicable requirements, at 40 CFR § 63.1331(a)(6) for equipment leak standards and 40 CFR § 63.181 for recordkeeping requirements.

EPA notes that although Petitioner is correct that there is no specified frequency with which Kodak must inspect this equipment for leaks, this is because EPA has evaluated these specific classes of equipment and determined to exempt them from routine monitoring requirements under subpart H.

In its 1992 preamble, EPA explained to the public its reasons for exempting pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid services from routine monitoring and leak inspection requirements. *See 57 Fed. Reg.* at 62680. First, it should be noted that a “heavy liquid,” as defined by 40 CFR § 63.161, is a fluid with a vapor pressure less than 0.3 kilopascals at room temperature. Thus, a leak of a “heavy liquid,” is not likely to cause a great amount of air emissions, because the fluid would be generally less than one eighth as likely to evaporate as water. EPA also explained in the 1992 preamble that leak inspection is generally infeasible for instrumentation systems because they typically contain very small valves or connectors and are located in confined areas. *Id.* Further, as instrumentation systems typically provide critical process operating information, leaks would be readily detected by other indicators, and the source would be likely to employ operating practices to ensure these systems do not leak or fail. *Id.*

EPA concluded that it was appropriate to require pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid services, if found to be leaking, to be repaired according to the allowable repair schedule elsewhere in the rule. *Id.* EPA otherwise exempted this equipment from routine monitoring and inspection requirements on the basis that these sources contribute a very small portion of overall emissions, and EPA did not believe it was reasonable to require routine leak inspections in this case. *Id.* For all of these reasons, EPA is denying the petition on this issue.

Final modified permit condition 570 is identical to condition 336 except that it applies to emission unit U-00050, process H90. In its application, Kodak describes this process as the polyester recovery VOC emission sources subject to 40 CFR 63 subpart JJJ vented to the thermal oxidizer/scrubber system. EPA has determined that the permit's repair provisions at condition 570 and its recordkeeping provisions at condition 571 are appropriate in this case. For the reasons discussed above, EPA is denying the petition on this point.

(iii) Audible and Olfactory Inspections

Petitioner claims that the permit often omits audible and olfactory means, specifying only visual means, when detecting leaks pursuant to 40 CFR § 63.1331(a)(5)(i). Petition at 37. Petitioner gave no specific examples of permit conditions with this flaw. However, in its Responsiveness Summary, DEC used draft permit condition 323 (final modified permit condition 336) as an example. Appendix E, page 3 of 11. EPA notes that both the draft permit (condition 323) and the final modified permit (conditions 336 and 570) include all three means of detecting leaks in the designated equipment. This is consistent with the requirements of 40 CFR § 63.1331(a)(6)(i). EPA therefore finds that the petitioner's claim has no merit, and is denying the petition on this point.

(h) Non-Repairable Valves

Petitioner alleges that, according to draft permit condition 343, Kodak is only required to count non-repairable, leaking equipment the first time it is determined to be leaking and non-repairable. Petitioner claims this allows for the still leaking equipment to avoid being repeatedly counted up, which is inappropriate. Petition at 38.

Final modified permit condition 326 (draft permit condition 343) applies to valves that are either in gas service or in light liquid service at equipment in emission source 317AE.

Petitioner is correct that the permit allows a limited number of nonrepairable valves to be counted only once. Final modified permit condition 326 states that “Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking calculation in a previous period) up to a maximum of 1 percent of the total number of valves in organic HAP service at a process unit may be excluded from

calculation of percent leaking valves for subsequent monitoring periods.” Condition 326 further explains that, “If the number of nonrepairable valves exceeds 1 percent of the total number of valves in organic HAP service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in organic HAP service shall be included in the calculation of percent leaking valves.”

This permit language is taken directly from subpart H at 40 CFR § 63.168(e)(3). One of the primary purposes of calculating the percent leaking valves at a process unit is to determine how frequently monitoring must be conducted. According to 40 CFR § 63.168(d), in the third phase of the standard, the monitoring frequency is determined by the percent leaking valves, with the best performers having an annual monitoring requirement, with some exceptions. While Petitioner expresses concern that omission of certain nonrepairable leaking valves from the count is inappropriate, EPA described its rationale for this provision in the 1992 preamble. *See 57 Fed. Reg.* at 62670.

In the preamble, EPA recognizes that some valves cannot be repaired without shutting down the process and that process shutdown is costly and may result in greater emissions than delaying repair until the next scheduled shutdown. For these reasons, the equipment leak regulations allow, under certain conditions, delay of repair of these "nonrepairables" until the next facility shutdown. Moreover, increased monitoring frequency, if triggered by nonrepairable components, is of little direct benefit since the nonrepairable valves will remain unrepaired in spite of more frequent inspection. *Id.*

The final modified permit incorporates the provisions described in EPA's 1992 preamble. Condition 1-57 sets forth the “delay of repair” requirements for various equipment within emission sources 317AD, 317AE and 317AG. It states that, “Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.” This permit language is consistent with the definitions in subpart H, which define “nonrepairable” as technically infeasible to repair without a process unit shutdown. 40 CFR § 63.161.

EPA believes that, in this case, the permit appropriately sets out the requirements of the applicable rule, and no changes to the permit are necessary. For these reasons, EPA is denying the petition on this point.

P. Inspection of Storage Vessels

Petitioner alleges that proposed condition 600 (also final modified permit condition 600), should be amended to require Kodak to report whether unsafe-to-inspect equipment was inspected, and if not, whether Kodak made a determination the equipment was unsafe, on what facts this determination was based, and whether the required written plan was prepared. Petition at 34.

Condition 600 applies the storage vessel inspection requirements of 40 CFR 63 subpart JJJ (40 CFR § 63.1314) to Kodak's polyester recovery VOC emission sources vented to the thermal oxidizer/scrubber system. This equipment is the part of Kodak's PET manufacturing process identified as U-00050, process H90, emission source 351BB. In addition to stating the inspection requirements for vapor collection and closed-vent systems, this condition also describes exemptions for unsafe- and difficult-to-inspect equipment and the operational and recordkeeping requirements that must be met for equipment to meet these exemptions.

EPA notes that Kodak is required to maintain records on site of documentation relating to whether the conditions of these exemptions are met for this equipment. Final modified permit condition 595 also applies to emission source 351BB, and requires recordkeeping that addresses Petitioner's concerns. Specifically, condition 595 states that Kodak must identify all parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure that are designated as unsafe or difficult to inspect, an explanation of why the equipment is unsafe or difficult to inspect, and the plan for inspecting this equipment. Finally, a summary of this monitoring information must be included in each semiannual report, and Kodak must certify compliance with these requirements annually.

For these reasons, EPA has determined that the permit adequately sets forth the requirements of subpart JJJ that Kodak must follow to document the exempt status of its storage vessel components in emission source 351BB. Therefore, EPA denies the petition on this point.

CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I deny in part and grant in part NYPIRG's petition requesting the Administrator object to the issuance of the Kodak title V permit. This decision is based on a thorough review of the March 1, 2004 permit, and other documents that pertain to the issuance of this permit.

02/18/2005
Date

/S/
Stephen L. Johnson
Acting Administrator