BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF LUMINANT GENERATION COMPANY, LLC MARTIN LAKE STEAM ELECTRIC STATION RUSK COUNTY, TEXAS PROPOSED PERMIT NUMBER O53 MONTICELLO STEAM ELECTRIC STATION TITUS COUNTY, TEXAS PROPOSED PERMIT NUMBER O64 BIG BROWN STEAM ELECTRIC STATION FREESTONE COUNTY, TEXAS PROPOSED PERMIT NUMBER O65 ISSUED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY	PETITION NUMBERS VI-2014-01,- VI-2014-02 AND VI-2014-03 PARTIAL ORDER RESPONDING TO THE PETITIONER'S REQUESTS THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF STATE OPERATING PERMITS

ORDER DENYING IN PART THREE PETITIONS FOR OBJECTION TO PERMITS

This Order partially responds to three related petitions submitted to the U.S. Environmental Protection Agency by the Environmental Integrity Project[1] (Petitioner) pursuant to Section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petitions request that the EPA object to the proposed operating permits issued by the Texas Commission on Environmental Quality (TCEQ) to Luminant Generation Company, LLC (Luminant) for three existing coal-fired electricity and steam generating plants located in the state of Texas. Petition VI-2014-01, dated February 24, 2014, addresses the operating permit for the Martin Lake Steam Electric Station (Martin Lake). Petition VI-2014-02, dated March 3, 2014, addresses the Big Brown Steam Electric Station (Big Brown). Petition VI-2014-03, dated March 3,

[1] The Petitions were initially submitted jointly by the Environmental Integrity Project and Sierra Club. On January 6, 2015, Sierra Club submitted three letters to the EPA formally withdrawing its participation in the petitions. As a result, today's order references only one petitioner, the Environmental Integrity Project.

2014, addresses the Monticello Steam Electric Station (Monticello). The operating permits were proposed pursuant to title V of the CAA, CAA §§ 501-507, 42 U.S.C. §§ 7661-7661f and 30 TAC Chapter 122. *See also* 40 C.F.R. Part 70. These operating permits are also referred to as title V permits or part 70 permits.

I. INTRODUCTION

This Order responds to claim V.A of the Martin Lake Petition (pp. 5–9), the Monticello Petition (pp. 5–11) and the Big Brown Petition (pp. 7–14). The Petitioner requests that the Administrator object to the proposed operating permits issued by the TCEQ to Luminant on several bases. The Petitioner did not raise all of their claims in every Petition. In total, the Petitioner raises three claims in the portion of the Petitions to which the EPA is responding in this Order. The claims are described in detail in Section IV of this Order. In summary, the issues raised are that: (1) the Compliance Assurance Monitoring (CAM) provisions in the Martin Lake, Monticello and Big Brown permits do not assure compliance with the applicable particulate matter (PM) emission limit during periods of startup, shutdown, maintenance and malfunction; (2) the record supporting the CAM opacity indicator ranges for PM for Monticello Units 1, 2 and 3 is deficient and not based on reliable data; and (3) the Big Brown permit must be revised to ensure that any credible evidence may be used to demonstrate noncompliance with applicable requirements. Due to significant overlap in the issues raised in the Petitions and the similarity of the relevant permit conditions in each of the three permits, the EPA is responding to the identified portion of all three Petitions in this Order.

Based on a review of the three Petitions and other relevant materials, including the Martin Lake, Monticello and Big Brown Proposed Permits, the permit records and relevant statutory and regulatory authorities, and as explained more fully below, I deny the portion of the Petitions requesting that the EPA object to three Luminant permits on the bases described in claim V.A.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 766la(d)(l), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA. The EPA granted interim approval to Texas for the title V (Part 70) operating program on June 25, 1996. 61 *Fed. Reg.* 32693. The EPA granted full approval to Texas operating permit program on December 6, 2011. 66 *Fed. Reg.* 66318. The EPA-approved program is found in 30 TAC Chapter 122.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including a Prevention of Significant Deterioration permit. CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring,

recordkeeping, reporting and other requirements to assure sources' compliance with applicable requirements. 57 *Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." *Id.* Thus, the title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to the EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 766ld(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the permit if the EPA determines that the permit is not in compliance with applicable requirements of the Act. CAA §§ 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c) (providing that the EPA will object if the EPA determines that a permit is not in compliance with applicable requirements or requirements under 40 C.F.R. Part 70). If the EPA does not object to a permit on its own initiative, §505(b)(2) of the Act and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of the EPA's 45-day review period, to object to the permit. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see also New York Public Interest Research Group, Inc. (NYPIRG) v. Whitman,* 321 F.3d 316, 333 n.11 (2nd Cir. 2003). Under § 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA. *MacClarence v. EPA,* 596 F.3d 1123, 1130-33 (9th Cir. 2010); *Sierra Club v. Johnson,* 541 F.3d 1257, 1266-67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA,* 535 F.3d 670, 677-78 (7th Cir. 2008); *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081-82 (10th Cir. 2013); *Sierra Club v. EPA,* 557 F.3d 401, 406 (6th Cir. 2009) (discussing the burden of proof in title V petitions); *see also NYPIRG,* 321 F.3d at 333 n.11. In evaluating a petitioner's claims, the EPA considers, as appropriate, the adequacy of the permitting authority's rationale in the permitting record, including the response to comments (RTC).

The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," to determine whether a petition demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty to object where such a demonstration is made. *NYPIRG*, 321 F.3d at 333; *Sierra Club v. Johnson*, 541 F.3d at 1265-66 ("[I]t is undeniable [CAA § 505(b)(2)] also contains a discretionary component: it requires the

Administrator to make a judgment whether a petition demonstrates a permit does not comply with clean air requirements."). Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioners have demonstrated that the permit is not in compliance with requirements of the Act. *See, e.g., Citizens Against Ruining the Environment*, 535 F.3d at 667 (stating § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made") (emphasis added); *NYPIRG*, 321 F.3d at 334 ("§ 505(b)[2] of the CAA provides a step-by-step procedure by which objections to draft permits may be raised and directs the EPA to grant or deny them, *depending on* whether non-compliance has been demonstrated.") (emphasis added); *Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' ... plainly mandates an objection *whenever* a petitioner demonstrates noncompliance.") (emphasis added). When courts review the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., Sierra Club v. Johnson*, 541 F.3d at 1265-66; *Citizens Against Ruining the Environment*, 535 F.3d at 678; *MacClarence*, 596 F.3d at 1130-31. A fuller discussion of the petitioner demonstration burden can be found in *In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Numbers VI-2011-06 and VI-2012-07 (June 19, 2013) (*Nucor II Order*) at 4-7.

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

2005) (*Chevron Order*) at 12, 24. Also, if the petitioner did not address a key element of a particular issue, the petition should be denied. *See, e.g., In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station,* Order on Petition Number: VIII-2010-XX (June 30, 2011) at 7–10; and *In the Matter of Georgia Pacific Consumer Products LP Plant,* Order on Petition No. V-2011-1 (July 23, 2012) at 6-7, 10–11, 13–14.

III. BACKGROUND

A. The Martin Lake Facility and Permitting History

Located in Rusk County, Texas, Martin Lake is a fossil fuel-fired steam electric generating utility plant, with coal as the primary fuel. The facility consists of three boiler units with 2,340 megawatt (MW) total generating capacity; each boiler is capable of generating approximately 780 MW (net). The flue gas from each unit is routed through an electrostatic precipitator (ESP) to remove fly ash which is routed to storage silos equipped with fabric filer baghouses. The flue gas from the ESP is routed to a flue gas desulfurization (FGD) system to remove sulfur dioxide from the flue gas. The Martin Lake Facility is subject to the Texas State Implementation Plan (SIP) PM emission limit of 0.3 lb/MMBtu set forth in 30 TAC § 111.153(b). Martin Lake is operated by Luminant and is a major stationary source subject to the requirements of title V of the Act (42 U.S.C. §§ 7602 and 7661) and the EPA-approved title V program for Texas, codified at 30 TAC Chapter 122.

Martin Lake's first title V permit was issued on May 19, 1999, and was renewed on November 3, 2005. On May 3, 2010, Luminant submitted an application for the second renewal of Martin Lake's title V permit, and notice of the draft renewal permit (Martin Lake Draft Permit) was published on August 18, 2011. On September 23, 2011, Environmental Integrity Project, Sierra Club and the Caddo Lake Institute submitted a comment letter on the Martin Lake Draft Permit. No other party submitted comments on the Martin Lake Draft Permit. By letter dated November 7, 2013, the TCEQ submitted a proposed title V permit (Martin Lake Proposed Permit) along with its response to public comments (Martin Lake RTC) to the EPA for the agency's 45-day review period which ended on December 27, 2013. On January 8, 2014, the TCEQ issued the final title V permit (Martin Lake Final Permit Number O53) for the Martin Lake facility. By letter dated February 24, 2014, Environmental Integrity Project petitioned the EPA to object to the Martin Lake Proposed Permit.

B. The Big Brown Facility and Permitting History

Located in Freestone County, Texas, Big Brown is a fossil fuel-fired steam electric generating utility plant, with coal as the primary fuel. The facility consists of two boiler units with 1,150 MW total generating capacity; each boiler is capable of generating approximately 575 MW (net). Each unit utilizes an ESP and pulse jet baghouses for emission control. The Big Brown facility is subject to the Texas SIP PM emission limit of 0.3 pounds per one million British thermal units (lb/MMBtu) set forth in 30 TAC § 111.153(b). Big Brown is operated by Luminant and is a major stationary source subject to the requirements of title V of the Act (42 U.S.C. §§ 7602 and 7661) and the EPA-approved title V program for Texas, codified at 30 TAC Chapter 122.

Big Brown's first title V permit was issued on September 13, 2000, and was renewed on November 15, 2005. On May 14, 2010, Luminant submitted an application for the second renewal of Big Brown's title V permit, and notice of the draft renewal permit (Big Brown Draft Permit) was published on September 22, 2011. On October 24, 2011, Environmental Integrity Project and Sierra Club submitted a comment letter on the Big Brown Draft Permit. No other party submitted comments on the Big Brown Draft Permit. By letter dated November 14, 2013, the TCEQ submitted a proposed title V permit (Big Brown Proposed Permit) along with its response to public comments (Big Brown RTC) to the EPA for the agency's 45-day review period which ended on January 3, 2014. On January 15, 2014, the TCEQ issued the final title V permit (Big Brown Final Permit Number O65) for the Big Brown facility. By letter dated March 3, 2014, Environmental Integrity Project petitioned the EPA to object to the Big Brown Proposed Permit.

C. The Monticello Facility and Permitting History

Located in Titus County, Texas, Monticello is a fossil fuel-fired steam electric generating utility plant, with coal as the primary fuel. The facility consists of three boiler units with 1,900 MW total generating capacity. Two of the boilers are capable of generating approximately 575 MW (net), while the third boiler is capable of generating approximately 750 MW (net). Units 1 and 2 use ESP and fabric filter baghouses to control emissions of fly ash, while Unit 3 has a FGD system to remove sulfur dioxide from the flue gas and an ESP for fly ash control. The Monticello facility is subject to the Texas SIP PM emission limit of 0.3 lb/MMBtu set forth in 30 TAC § 111.153(b). Monticello is operated by Luminant and is a major stationary source subject to the requirements of title V of the Act (42 U.S.C. §§ 7602 and 7661) and the EPA-approved title V program for Texas, codified at 30 TAC Chapter 122.

Monticello's first title V permit was issued on June 4, 1999, and was renewed on May 23, 2005. On November 23, 2009, Luminant submitted an application for the second renewal of Monticello's title V permit, and notice of the draft renewal permit (Monticello Draft Permit) was published on August 10, 2011. On September 8, 2011, Environmental Integrity Project, Sierra Club and the Caddo Lake Institute submitted a comment letter on the Monticello Draft Permit. No other party submitted comments on the Monticello Draft Permit. By letter dated November 14, 2013, the TCEQ submitted a proposed title V permit (Monticello Proposed Permit) along with its response to public comments (Monticello RTC) to the EPA for the agency's 45-day review period which ended on January 3, 2014. On January 15, 2014, the TCEQ issued the final title V permit (Monticello Final Permit Number O64) for the Monticello facility. By letter dated March 3, 2014, Environmental Integrity Project petitioned the EPA to object to the Monticello Proposed Permit.

D. Timeliness of Petitions

Pursuant to the CAA, if the EPA does not object during its 45-day period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. CAA § 505(b)(2); 42 U.S.C. § 7661d(b)(2). Thus, any petition seeking the EPA's objection to the Martin Lake Proposed Permit was due on or before February 26, 2014, and any petition seeking the EPA's objection to either the Big Brown Proposed Permit or the Monticello Proposed Permit was due on or before March 4, 2014. The Big Brown Petition and Monticello

Petition were each dated March 3, 2014, and the Martin Lake Petition was dated February 24, 2014. The EPA finds the Petitions were timely filed.

IV. EPA DETERMINATIONS ON THE ISSUES RAISED BY THE PETITIONER

Claim 1: The TCEQ Must Revise the Proposed Permits' CAM Provision to Assure Compliance with the Applicable SIP PM Limit of 0.3 lb/MMBtu at all Times, Including Periods of Startup, Shutdown, and Malfunction.

Petitioner's Claim. The Petitioner claims that the Proposed Permits' CAM provisions for opacity are inadequate to assure compliance with the Texas SIP PM emission limit of 0.3 lb/MMBtu set forth in 30 TAC § 111.153(b) for Martin Lake Units 1 through 3, Big Brown Units 1 and 2 and Monticello Units 1 through 3.[2] Martin Lake Petition at 5–9; Monticello Petition at 5–8; Big Brown Petition at 7–12. The Petitioner contends that the permit record fails to demonstrate how maintaining the defined opacity level during normal operations (not including startup, shutdown, maintenance, or malfunction periods) correlates to compliance with the PM emission limit at all times (i.e., including startup, shutdown and malfunction events). Martin Lake Petition at 7–8; Monticello Petition at 7–8; Big Brown Petition at 10–11. The Petitioner concludes by requesting the EPA to require the TCEQ to remove the portion of the CAM text that excludes periods of startup, shutdown, maintenance and malfunction from monitoring requirements. Monticello Petition at 8; Martin Lake Petition at 9; Big Brown Petition at 12.

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the permits on this claim.

This issue was not raised with reasonable specificity during the public comment period, as required by CAA section 505(b)(2) and 40 C.F.R. § 70.8(d). In addition, the Petitioner has not demonstrated that it was impracticable to raise such objections during the comment period, and there is no basis for finding that grounds for such objection did not arise until after the comment period.

A title V petition should not be used to raise arguments to the EPA that the state has had no opportunity to address, and the requirement to raise issues "with reasonable specificity" places a burden on the petitioner (or some other commenter), absent the circumstances described in the Act, to have presented to the state the information that would support a demonstration that the permit is not in compliance with the Act. Nowhere did the public comment letter expressly identify any issues relating to the startup, shutdown, maintenance, or malfunction exclusion in the CAM provisions for opacity. Indeed, the comment letter did not identify *any* particular

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[2] The CAM provision referenced by the Petitioner reads: "[f]or each valid 2-hour block that does not include boiler startup, shutdown, maintenance, and malfunction activities, if the opacity exceeds 20% [for Monticello Units 1 and 2 the deviation threshold is 30%] averaged over the 2 hour block period, it shall be considered and reported as a deviation." Monticello Proposed Permit at 48, 61; Martin Lake Proposed Permit at 42; Big Brown Proposed Permit at 37.

provisions of the draft permits that were inconsistent with the requirements of the CAA and therefore that should be removed.[3]

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

Claim 2: Neither Luminant nor the TCEQ Demonstrated that the Proposed Permit's CAM Indicator Ranges at Monticello are Based on Reliable Data.

Petitioner's Claim. In the Monticello Petition, the Petitioner claims that Luminant did not submit a justification for the CAM indicator ranges to monitor the SIP PM emission limit and the TCEQ also did not justify the CAM provisions in the Monticello Proposed Permit. Monticello Petition at 9. The Petitioner generally claims that 40 C.F.R. § 64.4(a) and (b) require applicants to establish indicator ranges to be monitored and to provide a justification supported by data for those ranges. *Id.*

With respect to Monticello Units 1, 2 and 3, the Petitioner claims that the "limited" information provided in the public record is not sufficient "to reliably correlate opacity levels to PM emissions rates . . . or show that maintenance of opacity levels below the indicator thresholds 'provides a reasonable assurance of ongoing compliance with emissions limitations . . . for the anticipated ranges of operating conditions.'" Monticello Petition at 11 (quoting 40 C.F.R. § 64.3(a)(2)). The Petitioner contends that the information provided in the public record through the TCEQ's RTC did not provide "information about the number of tests conducted at each unit, the duration of the tests, the methods used to conduct each of the tests, the conditions under which each test was run, the operational parameters for each test, the kind and quality of fuel used in each test, or the methods used to review and assure the quality of data generated by each such test." *Id.*

Specific to Monticello Unit 3, the Petitioner makes additional contentions. The Petitioner contends that 40 C.F.R. § 64.4(c) requires unit-specific compliance or performance testing to be provided by a title V permit applicant to justify CAM indicator ranges. Monticello Petition at 9. Additionally, the Petitioner claims that "if unit-specific compliance or performance testing is not available, the owner or operator must either submit a test plan and schedule for obtaining such data, or demonstrate that 'factors specific to the type of monitoring, control device, or pollutant-specific emission unit make compliance or performance testing unnecessary to establish indicator ranges at the levels that satisfy [CAM] criteria in [40 C.F.R.] § 64.3(a).'" *Id.* (quoting 40 C.F.R. § 64.4(d).) To support the indicator range for the Monticello Unit 3 CAM provision, the TCEQ relied on data from tests conducted at Luminant's Martin Lake facility. *Id.* The Petitioner states that"[i]f test data for Monticello Unit 3 is [(sic)] available, it [(sic)] should have been included in Luminant's application and provide the basis for determining the sufficiency of

[3] The EPA notes that it issued a Supplemental Notice of Proposed Rulemaking that identified certain provisions relating to excess emissions during unplanned events and upsets in the Texas SIP. 79 *Fed. Reg.* 55920, 55944 (Sept. 17, 2014). The EPA is proposing to make a finding of substantial inadequacy and to issue a SIP call for the affirmative defense provisions applicable to excess emissions that occur during upsets (30 TAC § 101.222(b)), unplanned events (30 TAC § 101.222(c)), upsets with respect to opacity limits (30 TAC § 101.222(d)), and unplanned events with respect to opacity limits (30 TAC § 102.222(e)).

the Unit 3 CAM Provision in the Proposed Permit. [40 C.F.R. § 64.4(c).] If test data for Monticello Unit 3 is [(sic)] not available, Luminant must submit a test plan and schedule or demonstrate that 'factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary' to establish CAM indicator ranges. [40 C.F.R. § 64.4(d)]." Monticello Petition at 9–10. The Petitioner explains that the TCEQ contends that the Martin Lake test summaries are sufficient to demonstrate that the opacity indicators reasonably assure compliance with the PM emission limit. Monticello Petition at 10. However, the Petitioner contends that the TCEQ's explanation in its RTC for using Martin Lake data did not demonstrate that compliance or performance testing was unnecessary at Monticello Unit 3. *Id.* The Petitioner claims that "performance testing conducted more than 20 years ago at another plant does not suffice to show that the Proposed Permit's Unit 3 CAM provision indicator range reliably reflects the Unit's performance." *Id.* The Petitioner also contends that differences in each facility's upkeep and ESP size should have been taken into account. *Id.* For these reasons, the Petitioner concludes that the Proposed Permit does not demonstrate that the CAM provision for Monticello Unit 3 reasonably assures compliance with the Texas SIP PM limit. *Id.*

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the permit on this claim.

This response first addresses the Petitioner's contention that Luminant must provide specific information about the testing conditions for the performance test data used to establish the indicator ranges at Monticello Units 1 and 2. Next, this response addresses the Petitioner's additional contentions specific to Monticello Unit 3 that concern requirements for unit-specific compliance or performance testing to justify the CAM indicator ranges. To respond to the Petitioner's claims about the CAM indicator ranges at Monticello Unit 3, the EPA first provides an overview of the CAM Rule and then addresses the Petitioner's claims.

EPA Response to the Petitioner's Claims Concerning CAM Indicator Ranges at Monticello Units 1 and 2

With regard to the Petitioner's contention that Luminant must provide specific information about the testing conditions for the performance test data used to establish the indicator ranges at Monticello Units 1 and 2, the comments submitted to the TCEQ during the public comment period did not raise these claims with reasonable specificity, as required by 505(b)(2) of the Act and 40 C.F.R. § 70.8(d). In addition, the Petitioner has not demonstrated that it was impracticable to raise such objections at that time, and there is no basis for finding that grounds for such objection did not arise until after the comment period. The comments concerning Monticello Units 1 and 2 were limited to the general assertions that the indicators must be specified and that "Luminant must 'submit a justification for the proposed elements of the monitoring'" as required by 40 C.F.R. § 64.4(a) and (b). Monticello Public Comments at 8–9. The comments did not discuss 40 C.F.R. § 64.3(a)(2) or its requirements, nor did they discuss the Petitioner's request for very specific information about testing conditions. In response to the comments, the TCEQ provided information on the opacity indicators for PM and Luminant's justification for the selected opacity ranges, both of which were available in Luminant's 2011 permit application. Monticello RTC at 21, 25; Application for Federal Operating Permit No.

O64, Monticello Steam Electric Station, at 19–20 (July 6, 2011). The TCEQ made Luminant's 2011 permit application available as part of the record supporting the 2011 draft title V renewal permit, consistent with the public participation requirements of 40 C.F.R. 70.7(h)(2) and 30 TAC § 122.312. Thus, the test data for Monticello Units 1 and 2 were included in the 2011 permit application and were available during the public comment period. Despite the data being available to comment on, the issue raised in the Petition was not raised with reasonable specificity during the public comment period, as required by the Act. The Petitioner cannot raise "very detailed and very specific claims" in the Petition when "no argument or evidence or analysis" were provided to the permitting authority with reasonable specificity during the public comment period. *In the Matter of Luminant Generating Station*, Order on Petition No. VI-2011-05, at 11 (Jan. 15, 2013). Since the public comments did not address the specificity of information provided on the testing conditions for Monticello Units 1 and 2, the Petitioner cannot raise this claim now in the Petition and, thus, the Petition is denied on this claim.

EPA Response to the Petitioner's Claims Concerning CAM Indicator Ranges for PM at Monticello Unit 3

Brief Overview of the CAM Rule

The CAM rule sets forth criteria to "provide a reasonable assurance of compliance with emission limitations or standards for the anticipated ranges of operations at a pollutant specific emissions unit." 40 C.F.R. § 64.3(a). The rule generally requires the owner or operator to develop monitoring that meets specified criteria for selecting appropriate indicators of control performance and establish ranges for those indicators. 40 C.F.R. § 64.3(a)(1)–(2). To establish the indicator ranges, "the owner or operator shall submit a justification for the proposed elements of the monitoring" and "any data supporting the justification." 40 C.F.R § 64.4(b). Generally, as part of the supporting data, the rule requires that "the owner or operator shall submit control device . . . operating parameter data obtained during the conduct of the applicable compliance or performance test." 40 C.F.R. § 64.4(c). However, the rule also provides that if unit-specific data are not available, the owner or operator shall either "submit a test plan and schedule for obtaining such data" or may base indicator ranges "on engineering assessments and other data." 40 C.F.R. § 64.4(d). The EPA has previously noted that "the presumptive approach for establishing indicator ranges in part 64 is to establish the ranges in the context of performance testing." 62 *Fed. Reg.* 54927 (Oct. 22, 1997).

The CAM rule does provide for the use of engineering assessments and other data, as opposed to unit-specific compliance or performance testing, provided that the source demonstrates "that factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at levels that satisfy the criteria in § 64.3(a)." 40 C.F.R. § 64.4(d)(2). Section 64.3(a) requires that the owner or operator establish an appropriate indicator range for the relevant control device which shall reflect the "proper operation and performance" of the device and "provide[] a reasonable assurance of ongoing compliance." 40 C.F.R. § 64.3(a)(2). Furthermore, the CAM rule provides permitting authorities with the ability to condition the approval of monitoring on the source collecting additional data on the indicators to be monitored. *See,* e.g., 40 C.F.R. § 64.6(b). As a general matter, Part 64 monitoring is "implemented on a case by case basis" and any

documentation supporting indicator ranges must "demonstrate to the permitting authority's satisfaction that compliance testing is unnecessary to establish indicator ranges at levels that satisfy Part 64 criteria." *Id.* at 54903; *see also* EPA Technical Guidance Document: Compliance Assurance Monitoring, 2-16 (August, 1998). [4]

Of particular importance in this case is the language providing that one form of other information that may be appropriate for an owner or operator to consider in selecting indicator ranges is data from tests performed on similar facilities. *See* EPA, Technical Guidance Document: Compliance Assurance Monitoring, at 2-16. Additionally, it may be appropriate for facilities to include "a summary (tabular or graphical format) of the data supporting the selected ranges, supplemented by engineering assessments or control device manufacturer's recommendations" in the justification for the selected indicator ranges. *Id.* at 2-15. Finally, the EPA recommends that indicator ranges be established with "conservative assumptions with respect to the emissions variability and the margin of compliance associated with the emissions unit and control device." *Id.* at 2-16. Notably, the EPA encourages the use of unit-specific data when available for a greater assurance of compliance and proper operation of control devices at the source.

Discussion of the Petitioner's Claims on CAM Opacity Indicator Ranges for PM for Monticello Unit 3

Contrary to the Petitioner's primary contention, the permit record in this case includes substantial information supporting the indicator ranges identified in the Proposed Permit. Some of the most relevant information is described below and the record contains information beyond what is summarized here.

In accordance with applicable requirements, the TCEQ provided a detailed record addressing the Petitioner's comments about the Monticello Unit 3 CAM Provision that was publically available during the petition period. The federal title V regulations and the approved Texas title V program require the permitting authority to make the draft permit, the permit application, all relevant supporting materials, and all other materials available to the permitting authority that are relevant to the permit decision, among other things, available to the public for review. *See* 40 C.F.R. § 70.7(h)(2); 30 TAC §§ 122.312(b), 122.345(b). Additionally, the federal title V regulations and the approved Texas title V program require the permitting authority to keep a record of the commenters and also of the issues raised during the public participation process, and to make such records available to the public. *See* 40 C.F.R. § 70.7(h)(5). Further, the federal title V regulations at 40 C.F.R. § 70.7(a)(5) and the approved Texas title V program require that the permitting authority provide a statement that sets forth the legal and factual basis (Statement of Basis) for the draft permit conditions. 30 TAC § 122.201(a)(4). In this case, the detailed explanation for the CAM opacity indicator ranges in the permit was made publically available by the TCEQ in the Statement of Basis for the 2013 Proposed Permit, and the RTC. The information was also contained in a supplemental application filed by Luminant in 2013, which was made publically available. Also, in the public notice announcing the availability of the draft Monticello

[4] Available at *http://www.epa.gov/ttn/emc/cam.html.*

permit, the TCEQ announced that any relevant supporting information could be found in the regional offices and the Central Office in Austin.[5]

Consistent with the requirements of 40 C.F.R. § 70.7(h)(2) and 30 TAC § 122.312(b), the TCEQ made a supplemental application filed by Luminant in 2013 available to the public on August 19, 2013. This record explains that to satisfy the 64.3(a) requirement to select an appropriate indicator range, Luminant used stack test data from Martin Lake Units 1, 2 and 3 to support the conclusion that at or below 20 percent opacity, Monticello Unit 3's control devices would function properly and the applicable PM emissions limits would be met. Supplemental Renewal Application for Federal Operating Permit No. O64, Monticello Steam Electric Station, at 11 (August 19, 2013) [2013 Supplemental Application]. In order to show that use of the Martin Lake data would be able to establish an appropriate indicator range at Monticello Unit 3, Luminant explained that the control devices on and operating parameters for the two facilities are similar enough that when opacity at Monticello Unit 3 measures at or below 20 percent, this "provides a reasonable assurance of ongoing compliance" with applicable PM emissions limits. *Id.* Luminant further explained that stack data from Martin Lake Units 1, 2 and 3 could be used for establishing the indicator ranges at Monticello Unit 3 because the units share similar designs and operational parameters for PM control devices that affect PM and opacity. *Id.* at 9. Luminant stated that "[p]arameters that affect opacity measurements include[: (1)] particulate matter size and physical properties, [(2)] presence of uncombined water in exhaust gas, [(3)] the [COMS] itself, and [(4)] stack exit diameter." *Id.* First, Luminant explained that the particulate matter size and physical properties at Monticello Unit 3 and Martin Lake Units 1, 2 and 3 would be the same because they burn the same fuel type, use the same combustion method, and both utilize ESP to control PM emissions and wet FGD scrubbers to control SO_2 emissions. *Id.* Second, "Luminant maintains sufficiently high temperatures in the [Martin Lake Units 1, 2 and 3] and [Monticello Unit 3] stacks to prevent water from condensing within the stacks. *Id.* Therefore, the presence of uncombined water in the stack gas is not a significant factor in opacity measurements at [Martin Lake Units 1, 2 and 3] and [Monticello Unit 3]." *Id.* Third, "for a given exhaust gas and optical path length there should be no significant difference between the [Martin Lake Units 1, 2 and 3] and [Monticello Unit 3] COMS opacity measurements." *Id.* Fourth, since the stack exit diameter of Monticello Unit 3 is about 28 feet compared to about 23 feet at Martin Lake Units 1, 2 and 3, Luminant stated that 20 percent opacity at Monticello Unit 3 should actually result in a lower PM emissions than 20 percent opacity at Martin Lake Units 1, 2 and 3. *Id.* at 9–10. Luminant included calculations to demonstrate that the larger stack exit diameter at Monticello Unit 3

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[5] The draft permit public notice stated:

> The permit application, statement of basis, and draft permit will be available for viewing and copying at the TCEQ Central Office, 12100 Park 35 Circle, Building E, First Floor, Austin, Texas; the TCEQ Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734; and the County Clerk's Office, Titus County Courthouse, 100 West 1st Street, Mount Pleasant, Texas, beginning the first day of publication of this notice. At the TCEQ central and regional offices, relevant supporting materials for the draft permit, as well as the New Source Review permits which have been incorporated by reference, may be reviewed and copied. Any person with difficulties obtaining these materials due to travel constraints may contact the TCEQ central office file room at (512) 239-1540.

TCEQ, Public Notice of Monticello Draft Permit, at 1 (Jul. 14, 2011), *available at http://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&CHK_ITEM_ID=864406292011195.*

would actually result in lower PM emissions correlated with a 20 percent opacity limit than at Martin Lake Units 1, 2 and 3. *Id.* at 12–15.

Consistent with 40 C.F.R. § 70.7(a)(5) and 30 TAC § 122.201(a)(4), the TCEQ made the Statement of Basis for the Proposed Permit and the RTC publically available on November 14, 2013. The Statement of Basis and RTC contained the same information included in Luminant's supplemental application explaining why the Martin Lake Units 1, 2 and 3 data could be used to establish the opacity indicator ranges at Monticello Unit 3. *See* Statement of Basis for Monticello Proposed Permit, at 34–35 (November 14, 2013); Monticello RTC at 21–22, 27. In the Statement of Basis and RTC, the TCEQ determined that Luminant's demonstration was sufficient to meet the requirements of 40 C.F.R. § 64.4(d)(2). *See* Statement of Basis for Monticello Proposed Permit, at 34–35 (Nov. 14, 2013); Monticello RTC at 21–22, 27. The TCEQ evaluated the above-summarized analysis submitted by Luminant on a case-specific basis and determined that there was a reasonable scientific basis for the opacity indicator ranges and that Luminant showed that a 20 percent opacity limit at Monticello Unit 3 can assure proper operation and performance of the control devices and provide reasonable assurance of ongoing compliance with the applicable PM emissions limit. *See* Statement of Basis for Monticello Proposed Permit, at 35 (November 14, 2013). The TCEQ provided one page of discussion on the data supporting the selected opacity indicator range for PM and stated, "[b]ased on our assessment of this data, the TCEQ also believes that the continuous opacity monitoring remains adequate for ensuring compliance with PM emission limits of 30 TAC § 111.153(b) [0.3 lb/MMBtu] for [Monticello Unit 3]." *Id* at 35; *see generally In the Matter of Onyx Environmental Services*, Order on Petition No. V-2005-1, at 14 (August 9, 2006) (explaining that the Statement of Basis "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 the U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit").

Luminant based its opacity indicator range of less than or equal to 20 percent on a "conservative assumption." *See* EPA, Technical Guidance Document: Compliance Assurance Monitoring, at 2-16. Luminant noted that the Martin Lake Units 1, 2 and 3 stack test data showed that at 20 percent opacity, PM emissions were at 0.05 lb/MMBTU, which is one-sixth of the SIP PM limit. 2013 Supplemental Application at 10. Luminant further explained that 20 percent opacity at Monticello Unit 3 should result in lower PM emissions than at Martin Lake Units 1, 2 and 3 due to Monticello Unit 3's stack exit diameter being 5 feet wider than the stack exit diameter at Martin Lake Units 1, 2 and 3. *Id.* Finally, Luminant noted that it was establishing the opacity indicator range for Monticello Unit 3 based not just on one other unit, but three different units, which the stack test data show meet the SIP PM emission limit for Martin Lake Units 1, 2 and 3 when those units have emissions at or below 20 percent opacity. *Id.*

The Petitioner's claims concerning the CAM indicator range at Monticello Unit 3 are summarized above. While the Petitioner generally appears to disagree with the TCEQ and Luminant's analyses, and the Petition does reference the RTC, the Petitioner does not demonstrate any flaw in the TCEQ's reasoning, or in the permit itself. First, the Petitioner did not address the specific information it cited from the TCEQ's RTC on the similarities in size, physical properties, fuel type, combustion method and control technologies between Monticello Unit 3 and Martin Lake Units 1, 2 and 3 as they relate to whether performance testing at the

Monticello facility was necessary in this case, to show that the Unit 3 CAM opacity indicator ranges for Unit 3 would reasonably assure compliance with the PM SIP limit. *See* Monticello RTC at E.1. Second, the Petitioner did not explain why the 20-year old Martin Lake test data were unreliable. While the Petitioner did generally assert that facility upkeep and ESP size would affect the "emissions control performance" of Monticello Unit 3 and Martin Lake Units 1, 2 and 3, it did not explain how these factors are related to the necessity of performance testing at Monticello Unit 3 to ensure that the opacity indicators provide a reasonable assurance of compliance with the PM SIP limit. *See* Monticello Petition at 10. Moreover, the Petitioner only quoted a portion of the TCEQ's RTC and did not address the majority of the TCEQ's analysis in the RTC, including particulate matter size and physical properties, presence of uncombined water in the exhaust gas, the COMS itself, and stack exit diameter. *See* Monticello RTC at E.1. The Petitioner also did not address the specific information that the TCEQ provided in the Monticello RTC concerning total PM emission rates and corresponding opacity data from Martin Lake Units 1, 2 and 3 and their appropriateness for establishing opacity indicator ranges at Monticello Unit 3. *Id.* The Petitioner further did not address additional specific information provided in Luminant's 2013 Supplemental Application. For example, the Petitioner did not address Luminant's calculations for the effect of the difference in stack diameter between Monticello Unit 3 and Martin Lake Units 1, 2 and 3. *See* 2013 Supplemental Application at 12–15. As a result, the Petitioner did not address the information and analysis establishing Luminant's and the TCEQ's reliance on 40 C.F.R. § 64.4(d)(2) to establish the 20 percent opacity indicator range at Monticello Unit 3 based on Martin Lake Units 1, 2 and 3 stack test data.

As explained in Section II.B of this Order, consistent with CAA requirements, petitioners must address the permitting authority's final reasoning (including the RTC), where, as here, the documents were available during the timeframe for filing the petition.[6] *See MacClarence*, 596 F.3d at 1132-33; *see also, e.g., Noranda Order* at 20-21 (denying a title V petition issue where petitioners did not respond to state's explanation in response to comments or explain why the state erred or the permit was deficient); *2012 Kentucky Syngas Order* at 41 (denying a title V petition issue where petitioners did not acknowledge or reply to state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient). Instead of providing a substantive analytical response to the technical issues described in the permit record, the Petitioner appears to simply disagree with Luminant and the TCEQ's analyses that compliance or performance testing is unnecessary to establish CAM indicator ranges. As a result, the Petitioner did not demonstrate that the analysis was flawed or otherwise inconsistent with the Act and for these reasons, the EPA denies the Petition on this claim.[7]

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[6] The TCEQ made Luminant's 2013 supplemental permit application available to the public on August 19, 2013, the Statement of Basis for the Proposed Permit available to the public on November 14, 2013, and the RTC available to the public on November 14, 2013.

[7] Late in the agency's review process for these Petitions, the agency became aware that a 1995 PM stack test exists for Monticello Unit 3, although it was not cited to by Luminant or the TCEQ as the basis for the permitting action at issue in the Petition. This information was available to the public in the TCEQ's Central Office file room at the time that the TCEQ provided public notice of the availability of the Draft Permit, *see supra* n.4, but this information was not cited to or identified by the Petitioner in the Petition. These Monticello Unit 3 stack test data are outside the scope of the agency's consideration for this title V

With regard to the Petitioner's remaining claim about specificity surrounding the stack test data that were used to establish the opacity indicator range for Monticello Unit 3 (Monticello Petition at 11), the EPA also denies the Petition on this claim. Specifically, the Petitioner claims that the information provided on the stack test data used to establish the opacity indicator range for Monticello Unit 3 "does not contain any information about the number of tests conducted at each unit, the duration of the tests, the methods used to conduct each of the tests, the conditions under which each test was run, the operational parameters for each test, the kind and quality of the fuel used in each test, or the methods used to review and assure quality of data generated by each such test." Monticello Petition at 11. The Petitioner does not address the specific data and information provided by the TCEQ in the RTC and Statement of Basis for the 2013 Proposed Permit and do not provide any analysis explaining why this information is insufficient to meet CAM requirements or title V monitoring requirements. *See MacClarence*, 596 F.3d at 1130–33 (explaining that petitioners must address the permitting authority's final decision and reasoning, including the response to comments). Further, the RTC includes the information that the Petitioner contends was missing from the record. Because the Petitioner has not demonstrated that information is missing from the record or that the omission of any information may have resulted in a deficiency in the Proposed Monticello Permit, the EPA denies the Petitioner's request that we object to the Permit on this basis. *In the Matter of Chevron Products Company, Richmond, California Facility*, Order on Petition No. IX-2004-08, at 6 (March 15, 2005); *In the Matter of Conoco Phillips Company, San Francisco Refinery, Rodeo, California Facility*, Order on Petition No. IX-2004-09, at 6 (March 15, 2005).

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

Claim 3: The TCEQ Must Ensure that the Big Brown Permit Allows Any Credible Evidence to be Used to Demonstrate Non-compliance.

Petitioner's Claim. The Petitioner claims that the Big Brown Proposed Permit must be revised to ensure that any credible evidence may be used to demonstrate noncompliance with applicable requirements in the permit. Big Brown Petition at 12. The Petitioner states that the Federal Register preamble for the CAM rule outlines that permits cannot be written to limit the types of evidence used to prove violations of emission standards. *Id.* The Petitioner specifically states that "[t]he [Big Brown] Proposed Permit does not contain any language expressly limiting the kinds

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petition. *See generally In the Matter of Georgia Pacific Consumer Products LP Plant*, Order on Petition No. V-2011-1, at 10–11 (Jul. 23, 2012); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 678 (7th Cir. 2008) (explaining that given the EPA's short review period assigned by Congress, "it is reasonable in this context for the EPA to refrain from extensive fact finding"). Therefore, the 1995 PM stack test data are not relevant to today's decision. Even assuming that the Petitioner had adequately demonstrated that there were stack test data available from Monticello Unit 3 that were relevant and appropriate to be used in establishing the opacity indicator ranges at Monticello Unit 3, a review of the 1995 PM stack test data for Monticello Unit 3 indicates that they support a determination that the selected 20 percent opacity limit at Monticello Unit 3 can assure proper operation and performance of the ESP and provide reasonable assurance of ongoing compliance with the applicable PM emissions limit. In fact, the stack test data for Monticello Unit 3 show that PM emissions at the unit were less than one-sixth of the SIP PM emissions limit when opacity was below 20 percent. *See generally 2012 Kentucky Syngas Order* at 8–9 (explaining the EPA's analysis of permit record deficiencies raised in the title V petition context).

of evidence that EPA or citizens may rely on to identify violations of applicable requirements." *Id.* However, the Petitioner claims that in a recent case, the U.S. District Court for the Western District of Texas held that credible evidence could not be used in citizen suits to enforce the permit's emission limits. *Id.* at 13 (citing to Big Brown Petition Exhibit P at 16, *Sierra Club v. Energy Future Holdings Corp.*, No. 6:12-CV-00108 (W.D. Tex. Feb. 10, 2014). Therefore, the Petitioner claims that the Administrator should require the TCEQ to revise the Big Brown Proposed Permit to include a condition that says "[n]othing in this permit shall be interpreted to preclude the use of any credible evidence to demonstrate noncompliance with any term of this permit." *Id.* at 13–14.

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the permit on this claim.

The Petitioner's assertion that the Big Brown title V permit should include more specific text addressing credible evidence was not raised with reasonable specificity during the public comment period, as required by CAA section 505(b)(2) and 40 C.F.R. § 70.8(d). In addition, the Petitioner has not demonstrated that it was impracticable to raise such objections during the comment period, and there is no basis for finding that grounds for such objection arose after that period. Nowhere did the public comment letter on the Big Brown Draft Permit expressly identify any issues relating to the use of credible evidence. Thus, the Petitioner presented no evidence or analysis to the TCEQ during the public comment period demonstrating that the Big Brown permit impermissibly restricts the use of any credible evidence for proving noncompliance with applicable requirements.

As a point of background, the EPA observes that its longstanding position is that the EPA, permitting agencies, and citizens can use any credible evidence to prove compliance and non-compliance with the CAA, including compliance and non-compliance with title V permits. *See* Credible Evidence Revisions, 62 *Fed. Reg.* 8314, 8318 (February 24, 1997). A title V permit may not preclude any entity, including the EPA, citizens or the state, from using any credible evidence to enforce emissions standards, limitations, conditions, or any other provision of a title V permit. *See* Compliance Assurance Monitoring, 62 *Fed. Reg.* 54900, 54907–08 (October 22, 1997). As the EPA has previously stated, to demonstrate that a title V permit fails to provide for the use of credible evidence, petitioners must specifically identify permit terms excluding the use of credible evidence or otherwise identify that the permitting authority excluded the use of credible evidence. *See, e.g. In the Matter of Louisiana Pacific Corporation, Tomahawk, Wisconsin*, Order on Petition No. V-2006-3 (November 5, 2007) at 11–12.

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

V. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2), 30 TAC Chapter 122, and 40 C.F.R. § 70.8(d), I hereby deny the Petitions as to the claims described herein.

Dated: 1/23/15

Gina McCarthy,
Administrator.