BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NUMBER VI-2012-04
	)	
MERAUX REFINERY	)	
ST. BERNARD PARISH, LOUISIANA	)	ORDER RESPONDING TO THE
	)	APRIL 3, 2012 REQUEST FOR
PERMIT NUMBER: 2500-00001-V5	)	OBJECTION TO THE ISSUANCE OF A
	)	TITLE V OPERATING PERMIT
ISSUED BY LOUISIANA DEPARTMENT OF	)	
ENVIRONMENTAL QUALITY	)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

This Order responds to issues raised in a petition to the U.S. Environmental Protection Agency (EPA) by the Concerned Citizens Around Murphy (CCAM) (Petitioner), dated April 3, 2012, (2012 Petition) pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The 2012 Petition requests that the EPA object to the operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for the Meraux Refinery, Permit No. 2500-00001-V5 (2009 Meraux Title V Modification Permit or 2009 Permit), in St. Bernard Parish, Louisiana. The operating permit was issued pursuant to Title V of the CAA, CAA §§ 501-507, 42 U.S.C. §§ 7661-7661f, and Louisiana Administrative Code (LAC) 33.III.507. *See also* Code of Federal Regulations (C.F.R.) Part 70. Such operating permits are also referred to as title V permits or Part 70 permits.

I. INTRODUCTION

As explained in more detail below, the 2012 Petition is the second petition that the EPA received from the Petitioner concerning this facility's title V permit. The EPA previously received a petition from CCAM regarding the 2009 Meraux Title V Modification Permit on December 10, 2009, (2009 Petition) and responded to that petition in a prior order that granted in part and denied in part the request for an objection. *See In the Matter of Murphy Oil USA, Inc.*, Order on Petition Number VI-2011-02 (September 21, 2011) (*2011 Murphy Oil Order*). Within 90 days after that order, LDEQ issued a response to the EPA's title V order. *Response of the Louisiana Department of Environmental Quality to Order Granting in Part and Denying in Part Petition for Objection to Permit*, December 20, 2011 (2011 LDEQ Response).

The 2012 Petition requests that the EPA object to the 2009 Meraux Title V Modification Permit on the general basis that "LDEQ has not shown that the facility's emissions will not trigger PSD [Prevention of Significant Deterioration] requirements." Petition at 2. More specifically, the 2012 Petition contends that the netting analysis LDEQ conducted for the BenFree Unit (BFU)

project and used to determine that the project did not trigger Prevention of Significant Deterioration (PSD) review was incomplete because it only included emissions from normal operations to the North Flare. Petition at 5.The 2012 Petition states that the netting analysis calculations "should have included emergency emissions" unless such emissions are subject to "legally and practicably enforceable limits." *Id*. at 3. The 2012 Petition also contends that LDEQ did not issue a revised permit that satisfies the EPA's objections in the *2011 Murphy Oil Order*.

Based on a review of the 2012 Petition, and other relevant materials, including the 2009 Permit, the permit record for the facility, which includes the 2011 LDEQ Response, and relevant statutory and regulatory authorities, and as explained below, I deny the 2012 Petition.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

CAA § 502(d)(1), 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA. The state of Louisiana submitted a title V program governing the issuance of operating permits on November 15, 1993, and revised this program on November 10, 1994. 40 C.F.R. Part 70, Appendix A. In September 1995, the EPA granted full approval to Louisiana's title V operating permits program. 60 *Fed. Reg.* 47296 (September 12, 1995); 40 C.F.R. Part 70, Appendix A. This program, which became effective on October 12, 1995, is codified in LAC, Title 33, Part III, Chapter 5.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable state implementation plan (SIP). CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting and other requirements to assure sources' compliance. 57 *Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." *Id.* Thus, the title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

Applicable requirements for a new major stationary source or for a major modification to a major stationary source include obtaining a preconstruction permit that complies with applicable new source review (NSR) requirements. The NSR program is comprised of two core types of preconstruction permit programs for major sources. Part C of Title I of the CAA establishes the PSD program, which applies to areas of the country that are designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS). CAA §§ 160-169, 42 U.S.C. §§ 7470-7479. Part D of Title I of the Act establishes the nonattainment NSR program, which applies to areas that are designated as nonattainment for the NAAQS. At issue in this order is the PSD part of the NSR program, which requires a major stationary source in an attainment area to obtain a PSD permit

before beginning construction of a new facility or before undertaking certain modifications. CAA § 165(a)(1), 42 U.S.C. § 7475(a)(1). The analysis under the PSD program must address two primary and fundamental elements (among other requirements) before the permitting authority may issue a permit: (1) an evaluation of the impact of the proposed new or modified major stationary source on ambient air quality in the area, and (2) an analysis ensuring that the proposed facility is subject to best available control technology for each pollutant subject to regulation under the Act. CAA §§ 165(a)(3), (4), 42 U.S.C. §§ 7475(a)(3), (4); *see also* LAC. 33:III.509.

The EPA has two largely identical sets of regulations implementing the PSD program, one set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a SIP. The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA's federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA has approved LDEQ's PSD SIP. *See* 61 *Fed. Reg*. 53639 (October 15, 1996) and 40 C.F.R. § 52.970(c) (discussing approval of PSD provisions in LAC 33:III.509); *see also* 40 C.F.R. § 52.999(c) and 52.986. As LDEQ administers a SIP-approved PSD program, the applicable requirements of the Act for new major sources or major modifications include the requirement to comply with PSD requirements under the Louisiana SIP. *See, e.g.,* 40 C.F.R. § 70.2.[1] In this case, the "applicable requirements" include Louisiana's PSD provisions contained in LAC. 33:III.509, as approved by the EPA into Louisiana's SIP.

B. Raising PSD Issues in a Petition

Where a petitioner's request that the Administrator object to the issuance of a title V permit is based in whole, or in part, on a permitting authority's alleged failure to comply with the requirements of its approved PSD program (as with other allegations of noncompliance with the Act), the burden is on the petitioner to demonstrate to the Administrator that the permitting decision was not in compliance with the requirements of the Act, including the requirements of the SIP. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2). Such requirements, as the EPA has explained in describing its authority to oversee the implementation of the PSD program in states with approved programs, include the permitting authority: (1) following the required procedures in the SIP; (2) making PSD determinations on reasonable grounds properly supported on the record; and (3) describing the determinations in enforceable terms. *See, e.g., In the Matter of Wisconsin Power and Light, Columbia Generating Station*, Order on Petition No. V-2008-01 (October 8, 2009) at 8. As the permitting authority for Louisiana's SIP-approved PSD program, LDEQ has substantial discretion in issuing PSD permits. Given this discretion, in reviewing a PSD permitting decision, the EPA will not substitute its own judgment for that of Louisiana. Rather, consistent with the decision in *Alaska Dep't of Envt'l Conservation v. EPA*, 540 U.S. 461 (2004), in reviewing a petition to object to a title V permit raising concerns regarding a state's PSD permitting decision, the EPA generally will look to see whether the petitioner has shown that the state did not comply with its SIP-approved regulations governing PSD permitting or

[1] Under 40 C.F.R. § 70.1(b), "[a]ll sources subject to [the title V regulations] shall have a permit to operate that assures compliance by the source with all applicable requirements." "Applicable requirements" are defined in 40 C.F.R. § 70.2 to include "(1) [a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R.] part 52; (2) [a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act."

whether the state's exercise of discretion under such regulations was unreasonable or arbitrary. *See, e.g., In re Louisville Gas and Electric Company*, Order on Petition No. IV-2008-3 (Aug. 12, 2009); *In re East Kentucky Power Cooperative, Inc. Hugh L. Spurlock Generating Station*, Order on Petition No. IV-2006-4 (Aug. 30, 2007); *In re Pacific Coast Building Products, Inc*. (Order on Petition) (Dec. 10, 1999); *In re Roosevelt Regional Landfill Regional Disposal Company* (Order on Petition) (May 4, 1999).

C. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to the EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to 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); *La. Dep't of Envt'l Quality v. EPA*, 730 F.3d 446, 447 (5th Cir. 2013). Under § 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA. *MacClarence v. EPA*, 596 F.3d 1123, 1130-33 (9th Cir. 2010); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266-67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677-78 (7th Cir. 2008); *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081-82 (10th Cir. 2013); *Sierra Club v. EPA*, 557 F.3d 401, 406 (6th Cir. 2009) (discussing the burden of proof in title V petitions); *see also NYPIRG*, 321 F.3d at 333 n.11. In evaluating a petitioner's claims, the EPA considers, as appropriate, the adequacy of the permitting authority's rationale in the permitting record, including the response to comments (RTC).

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

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

The EPA has looked at a number of criteria in determining whether the petitioner has demonstrated that the permit is not in compliance with the requirements of the Act, including the requirements of the applicable SIP. *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 the state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 (June 22, 2012) at 41 (denying title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient). Another factor the EPA has examined is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for petitioner's objection, contrary to Congress' express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("the Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive"); *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) at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005) at 12, 24. Also, if the petitioner does 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; *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 Facility

According to the permit record, Murphy Oil, USA (Murphy Oil) owned and operated a petroleum refinery in Meraux, Louisiana. On September 30, 2011, Murphy Oil transferred ownership of the facility to Valero Refining – Meraux, LLC (Valero).[2] The refinery is located in St. Bernard Parish, Louisiana. This facility refines crude oil into several petroleum products, such as propane, motor gasoline, kerosene, diesel, No. 6 fuel oil, and other miscellaneous petroleum products. As described in the record for the 2009 Permit, the refinery consists of the following processes and operations: Crude Distillation Unit, Vacuum Distillation Unit, Residual Oil Supercritical Extraction (ROSE) Unit, Hydrofluoric Acid Alkylation Unit, Hydrobon Unit/Platformer Unit, Amine Unit, No. 2 and No. 3/4 Sulfur Recovery Units (SRUs), Distillation Hydrotreating Unit, C3/C4 Splitter Unit, Middle Distillate Hydrotreating Unit, Merox Process, Sour Water Stripper Process, Liquid Petroleum Gas Recovery Unit, Fluid Catalytic Cracking Units (FCCUs), Wastewater Treatment System, and Steam Generation Unit.[3] In more recent permit records, the Hydrobon Unit/Platformer Unit, the No. 4 SRU and the Gasoline and Kerosene Caustic Treating Unit are no longer listed as part of the process and Distillation Hydrotreating Unit is now known as the Kerosene Hydrotreating Unit (KHT). In addition, the following processes and operations are now present: Benzene Reduction Unit (BRU), which is also known as the BFU Unit or BFU or BenFree Unit or BenFree Reboiler or BRU Reboiler, Naphtha Hydrotreater Unit (NHT), Reformer Unit, Hydrocracker/DAO Hydrotreater Unit, an Oil Recovery System, and an additional Amine Unit.[4]

B. The Permitting History

Murphy Oil submitted a permit application on February 25, 2009, to construct and operate the BFU in order to comply with the EPA's Mobile Source Air Toxics Phase 2 Rule promulgated on February 26, 2007. LDEQ provided public notice of the proposed permit on May 28, 2009, and a public hearing was held on July 7, 2009. The public comment period was extended to August 6, 2009. LDEQ proposed the permit with the Basis of Decision and RTC to the EPA via email on

[2] *Response of the Louisiana Department of Environmental Quality to Order Granting in Part and Denying in Part Petition for Objection to Permit.* December 20, 2011 (2011 LDEQ Response). *See also* Basis for Decision for Part 70 Operating Permit No. 2500-00001-V9 (Meraux Refinery), at 1 ("Valero Refining acquired the Murphy Oil U.S.A., Inc. – Meraux Refinery and all the permits were transferred to Valero Refining-Meraux LLC with an effective date of October 1, 2011.").

[3] Basis for Decision for Part 70 Operating Permit No. 2500-00001-V5 (Meraux Refinery), at 2-3.

[4] Basis for Decision for Part 70 Operating Permit No. 2500-00001-V9 (Meraux Refinery), at 2. *See also* Basis for Decision for Part 70 Operating Permit No. 2500-00001-V11 (Meraux Refinery), at 2. The record for the 2009 Permit notes "[i]n an emergency … emissions from the BFU will be controlled by routing the vent to the existing North Flare…." Basis for Decision for Part 70 Operating Permit No. 2500-00001-V5, at 8.

August 25, 2009. The EPA did not object to the permit within its 45-day review period and LDEQ issued the 2009 Permit on October 15, 2009.

On December 10, 2009, the EPA received the 2009 Petition from CCAM, which requested that the EPA object to the 2009 Permit. CCAM asserted that objection was warranted because the permit did not comply with the CAA and implementing regulations at 40 C.F.R. Part 70 on the basis that: (1) Murphy Oil did not provide information sufficient to evaluate the source and its application and to determine applicable requirements; (2) the netting analysis did not include emergency flaring emissions; (3) the project triggered NSR for sulfur dioxide (SO_2) and volatile organic compounds (VOCs); and (4) the netting analyses relied on limitations that are not practicably enforceable. Based on a review of the 2009 Petition and the permit record for that permitting action, the EPA granted in part and denied in part the Petitioner's request for an objection to that Petition. *See 2011 Murphy Oil Order* at 1.

A number of issues raised in the 2009 Petition led the EPA to grant that Petition in part in the *2011 Murphy Oil Order*. Among those issues was one related to the second issue identified above. *See id.* at 6-8. The EPA explained in its order that it was granting on this issue because LDEQ did not provide adequate basis and rationale in the permit record for its determination that the BFU project did not trigger PSD requirements. *Id.* at 7. In the *2011 Murphy Oil Order*, the EPA stated that "it is not clear from the permit record which state regulations, guidance or policies LDEQ relied upon in completing its PSD analysis, particularly with regard to emergency flaring emissions" or "what framework LDEQ applied to evaluate PSD applicability in this instance (i.e., actual emissions to potential to emit, or baseline actual emissions to projected actual emissions)." *Id.* Further, the EPA noted that "[t]he RTC does not point specifically to any prohibition or limit that LDEQ believes applies to the emergency flaring emissions at issue here, such as a prohibition based on a state rule or permit limit." *Id*. at 7. The EPA directed LDEQ in responding to the *2011 Murphy Oil Order* to "review its PSD applicability determination and the permit record on this matter, and better explain its determination." *Id.*

Within 90 days after the partial grant, LDEQ issued its 2011 response to the 2011 Murphy Oil Order, noting that the response supplemented the permit record. On the issue of the netting analysis and emergency flaring emissions, LDEQ explained that PSD applicability was evaluated based on an actual-to-potential analysis, and identified emission limits that applied to emissions of certain pollutants from the relevant flare, explaining that emissions in excess of those limitations were prohibited. 2011 LDEQ Response at 10-12. LDEQ's response also includes emissions calculations and additional rationale related to the direction provided in the *2011 Murphy Oil Order* in relation to the other issues on which the EPA granted an objection.
As explained in a prior EPA title V order, when a state responds to an EPA title V objection by supplementing the permit record, that response is treated as a new proposed permit for purposes of CAA section 505(b) and 40 C.F.R. §§ 70.8(c) and (d). *See Nucor II Order* at 14. As explained in the *Nucor II Order*, a new proposed permit in response to an objection will not always need to include new permit terms and conditions; for example, when the EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing additional rationale to support its permitting decision. *Id.* at n. 10. The EPA also explained in that order that treating a state's response to an EPA objection as triggering a new EPA review and

petition opportunity is consistent with the statutory and regulatory process for addressing objections by the EPA. *Id.* at 14-15.

Consistent with this interpretation, the 2011 LDEQ Response was properly treated as a new proposed permit that results in a 45-day review period by the EPA. The EPA did not object to the 2011 LDEQ Response within that time frame, so there was an opportunity to file a petition for an objection under CAA section 505(b)(2). Consistent with the CAA and the EPA's regulations, the Petitioner filed a second petition in April 2012 in reaction to the 2011 LDEQ Response and requested that the EPA object. This 2012 Petition also focused on the netting analysis for the BFU project and emergency flaring emissions.[5]

In a separate proceeding, the EPA and LDEQ pursued an enforcement action at the Meraux Refinery. To resolve that matter, in 2011, Murphy Oil entered into a consent decree (CD) that, among other actions, required the installation of: (1) continuous emission monitors for nitrogen oxides (NOx) and SO_2 to demonstrate compliance with FCCU emission limits; and (2) a flare gas recovery system at the Meraux refinery. The CD was entered by the court in February 2011.[6] Subsequently, an amendment to the CD added Valero, which contractually agreed to assume the liabilities and obligations imposed by, and to be bound by the terms and conditions of, the CD as related to the Meraux Refinery.[7]

On September 30, 2011, Murphy Oil transferred ownership of the Meraux facility to Valero. Valero has undertaken several changes and updates at the Meraux Refinery, leading to the issuance of successive modifications to the Meraux title V permit. Many of these changes are reflected in a 2014 title V renewal permit that superseded the 2009 Permit and incorporated many of the requirements of the CD. This 2014 Meraux title V Renewal Permit (2014 Permit) was issued on March 24, 2014.[8] One of the requirements of the CD pertains to the installation and operation of a flare gas recovery system. More recently, a revision to the 2014 Permit was made to incorporate a flare gas recovery system designed to recover a wide range of hydrocarbons from flares, including the North Flare, and route them to the refinery fuel gas system for combustion in process heaters and boilers.[9]

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to

[5] The EPA did not respond to the 2012 Petition within the statutory time frame, and it was followed by a Notice of Intent to Sue letter in 2014.

[6] *U.S. v. Murphy Oil USA, Inc*., Civil Action No. 3:10-cv-00563-bbc, Dkt. # 9 (W.D. Wis., entered on February 16, 2011) (Consent Decree in CAA enforcement actions against Murphy Oil resolving allegations by the EPA, the state of Wisconsin and the state of Louisiana for alleged environmental violations at Murphy Oil's petroleum refineries in Superior, Wisconsin and Meraux, Louisiana). *See also* 75 *Fed. Reg.* 61774 (October 6, 2010) (giving notice and an opportunity for public comment on the proposed CD).

[7] *U.S. v. Murphy Oil USA, Inc*., Civil Action No. 3:10-cv-00563-bbc, Dkt. # 12, Order Granting Unopposed Motion for Approval of Proposed Consent Decree Amendment (W.D. Wis., May 2, 2012).

[8] Permit No. 2500-00001-V9, issued to Valero Refining – Meraux LLC.

[9] Permit No. 2500-00001-V11, Permit for Valero Refining – Meraux LLC, was submitted to the EPA by LDEQ and received on February 17, 2015 (2015 Permit).

object. CAA § 505(b)(2); 42 U.S.C. § 766ld(b)(2). The 2011 LDEQ Response, which is treated as a new proposed permit, was submitted to the EPA on December 20, 2011, and the EPA's 45-day review period ended no earlier than on February 3, 2012. Sixty days after that is April 3, 2012. The 2012 Petition to the EPA was timely submitted April 3, 2012.

IV. EPA DETERMINATION OF THE ISSUE RAISED BY THE PETITIONER

Claim 1. The Petitioner contends that without a complete netting analysis, LDEQ cannot make the determination that the BFU does not trigger PSD review.

Petitioner's Claim. The 2012 Petition initially asks the EPA to object to the 2009 Permit that LDEQ issued for the Meraux Refinery on October 15, 2009, but concludes by asking the EPA to "deny" that permit. 2012 Petition at 1, 5. As an initial matter, the Petitioner states that its 2012 Petition "incorporates in full the previous petition that Concerned Citizens submitted on December 10, 2009, upon which the EPA based its September 21, 2011 Order [the *2011 Murphy Oil Order*] Granting in Part and Denying in Part that petition." *Id.* at 1. The Petitioner states that LDEQ did not issue a revised permit that satisfies the EPA's objections in *2011 Murphy Oil Order*.[10] The 2012 Petition states that the EPA's *2011 Murphy Oil Order* directed LDEQ to provide an adequate explanation for its decision to exclude emissions from emergency flaring from its "netting analysis" and claims that the EPA must object again because "LDEQ has not shown that the facility's emissions will not trigger PSD requirements" nor provided in its response an adequate basis and rationale for its determination that PSD did not apply. *Id.* at 2. The Petitioner states that because "the Meraux Refinery is an existing stationary source, LDEQ is required to determine whether there will be a 'significant' net increase in emissions from this modification." *Id.* The Petitioner faults the analysis for only including emissions from normal operations to the North Flare, claiming the netting analysis calculations "should have included emergency emissions" unless such emissions are subject to "legally and practically enforceable limits." *Id.* at 3.

Further, the Petitioner claims that the North Flare emission limits in the 2009 Permit, which LDEQ identified and discussed in its 2011 Response, are inadequate[11] because they are "blanket restrictions" on actual emissions, which do not limit the emergency flaring emission by legally and practically enforceable means. *Id.* In support of this claim the Petitioner cites primarily to an EPA guidance memo and a district court decision. In addition, the Petitioner claims that the effect of a flare gas recovery system on flaring emissions cannot be included in the netting analysis. Petitioner asserts that the discussion in LDEQ's response that such a system would be installed under the CD and would eliminate emergency flaring emissions from the North Flare is irrelevant because it addresses a "future installation." *Id.* Further, the Petitioner also raises technical claims around the ability of the flare gas recovery system to "control, but not eliminate, emergency releases." *Id*. at 4.

[10] In this regard, the 2012 Petition cites CAA §§ 505(b)(3) and 505(c), and LAC 33.III.533.E.4.

[11] The Petitioner cites to page 11 of the 2011 LDEQ Response, which identifies the criteria pollutant emission rates in Permit No. 2500-00001-V5 (EDMS DOC ID 6077259, pg. 55) and explains why LDEQ believes these rates are enforceable limitations.

EPA's Response. For the reasons stated below, I deny the 2012 Petition and the Petitioner's request for an objection to the 2009 Permit.

Petitioner's incorporation of 2009 Petition by reference

As a preliminary matter, the 2012 Petition incorporates in full the previous petition submitted in December 2009. The EPA understands this statement to mean that the 2012 Petition seeks to re-raise all the claims raised in the 2009 Petition exactly as they were raised in the 2009 Petition, without additional demonstration or analysis. The EPA has already considered those claims and responded to them in its *2011 Murphy Oil Order*. As explained in the Permitting History section of this Order, to the extent that the EPA granted objections in the *2011 Murphy Oil Order*, LDEQ has provided a response that supplemented the permit record and provided additional rationale, and that response is treated as a new proposed permit. In responding to the 2012 Petition, the EPA is not required to separately address the claims raised in the 2009 Petition that it previously granted and to which the state has already responded.

Where the EPA has granted a petition on an issue and the state has responded with a new proposed permit, it makes little sense for the EPA to return to the issue as raised in an earlier petition because that issue has been superseded by later events. *Nucor II Order* at 13 & n.8. Under such circumstances, "as a procedural matter, the new proposed permit moots out the petition as to any issue granted from the earlier petition that it seeks to address." *Id*. In addition, to the extent that the Petitioner simply incorporates by reference claims from the 2009 Petition that the EPA has already granted and to which the state has already responded, the Petitioner has not met its demonstration burden because they have not acknowledged or addressed the 2011 LDEQ Response and the rationale therein, or provided any explanation suggesting why the state's reasoning was flawed or why that proposed permit was deficient. *See, e.g.*, *MacClarence*, 596 F.3d at 1132-33; *Noranda Order* at 20.

Similarly, to the extent that the EPA denied claims from the 2009 Petition in the *2011 Murphy Oil Order*, the EPA is not required to address those claims again in this Order. If the Petitioner wished to further pursue the claims from the 2009 Petition that the EPA denied, CAA section 505(b)(2) provides for judicial review of any denial of a title V petition. The Petitioner did not seek judicial review in this instance.

To the extent that the 2012 Petition seeks to incorporate by reference claims that reside in the portions of the 2009 Petition that resulted in the EPA granting in part the petition in the *2011 Murphy Oil Order*, reliance on the 2009 Petition fails to meet the demonstration burden and such claims are moot because they have been superseded by later events. Accordingly, those claims are denied. To the extent Petitioner seeks to re-raise claims denied by the *2011 Murphy Oil Order*, the EPA will not circumvent the judicial review process cited above and declines to take further action on such claims. Therefore, the only relevant claims are those raised with specificity in the 2012 Petition. Those claims are discussed below.

Petitioner's assertion that the North Flare lacks enforceable limitations

Turning to the Petitioner's contention that the "netting analysis" was inadequate, the EPA notes that the Petitioner's claim is based on its assertion that there are no legally and practicably enforceable limitations on emissions from the North Flare.[12] Although the Petitioner's claim generally regards LDEQ's PSD applicability analysis, the 2012 Petition does not present facts or analysis to show that the BFU Project triggered PSD requirements and, apart from the brief discussion of the portion of LDEQ's Response relating to emission limitations on the North Flare, the 2012 Petition does not provide any relevant analysis suggesting why LDEQ's PSD analysis might be flawed.

PSD applicability is analyzed on a pollutant-by-pollutant basis,[13] and the Petitioner does not identify which specific pollutant or pollutants are of concern in its claim. Moreover, in general terms, PSD requirements apply to both the construction of new major stationary sources and major modifications of existing major stationary sources. *See* LAC 33.III.509.A.1; *see also* 40 C.F.R. §§ 51.166 and 52.21. To determine whether a modification to an existing major stationary source is a "major modification" that triggers PSD requirements, the permitting authority must determine whether the project is a physical change in or change in the method of operation of the source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source. *See* LAC 33.III.509.B; *see also* 40 C.F.R. §§ 51.166(b)(2) and 52.21(b)(2)(i). The 2012 Petition does not provide information or analysis that indicates that the BFU Project should have been predicted to result in, or did result in, a significant emissions increase of any regulated NSR pollutant that would have triggered PSD review. The 2012 Petition also does not provide any analysis to show that there was a significant net increase in emissions for any regulated NSR pollutant from the BFU Project. Furthermore, although the 2011 LDEQ Response provided substantive documentation, including emission calculations, to show how emissions increases from the BFU

[12] The 2012 Petition states that because "the Meraux Refinery is an existing stationary source, LDEQ is required to determine whether there will be a 'significant' net increase in emissions from this modification." 2012 Petition at 2. It is not clear from this language whether the Petitioner intends to raise a separate claim that LDEQ was required to conduct a netting analysis to determine whether the BFU resulted in a significant net emissions increase and failed to do so. To the extent that the Petitioner intended to raise that claim, the EPA denies it because the Petitioner has not demonstrated that a netting analysis was required. LDEQ's 2011 Response reproduced its PSD applicability analysis. *See* 2011 LDEQ Response at 1-9. It also explained that its determination that the "BFU would not result in a significant emissions increase" complied with both the SIP-approved and then-currently effective versions of the relevant provision, LAC 33:III.509. *Id*. at 10. As described in the body of this Order in more detail, the Petitioner does not respond to those emissions calculations, or analyze whether or not those calculations show a significant emissions increase, or a significant net emissions increase, for any regulated NSR pollutant. Nor does the Petitioner provide any emissions analysis to show that LDEQ's determination that the "BFU would not result in a significant emissions increase" was incorrect. PSD is only triggered for modifications that would result in both a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source. *See* LAC 33.III.509.B; *cf.* 40 C.F.R. 51.166(a)(7)(iv)(*a*) and 40 C.F.R. 52.21(a)(2)(iv)(*a*). *See also Noranda Order* at 18, n.20 (noting that a netting analysis was not required for a pollutant where there was no significant emissions increase for that pollutant). Under this two-step analysis, it is not necessary to address whether there is a significant net emissions increase through a netting analysis if there is no significant emissions increase. As the Petitioner has not demonstrated that LDEQ's conclusion that there was no significant emissions increase from the BFU was incorrect, they have not demonstrated that a netting analysis was required.

[13] *See* LAC 33.III.509.I.2.

were determined for purposes of PSD applicability,[14] the 2012 Petition does not respond to LDEQ's analysis or those emissions calculations. For example, the Petitioner does not identify any flaws in LDEQ's analysis under the relevant provisions of the approved Louisiana SIP. Nor does the Petitioner analyze whether or not those calculations show a significant emissions increase, or a significant net emissions increase, for any regulated NSR pollutant.

Instead, the Petitioner's claim is premised on objections to the alleged lack of enforceability of certain emission limits. But, as explained below, the Petitioner did not demonstrate that those limits are not legally and practicably enforceable. Specifically, the Petitioner did not provide sufficient analysis to support its assertion that the 2009 Permit is unlawful because emergency emissions from the flare were neither included in the netting analysis to determine PSD applicability nor subject to a legally and practicably enforceable limit (or limits). The Petitioner, thus, has not demonstrated that the permit and permit record on PSD applicability, as supplemented by the 2011 LDEQ Response, is not in compliance with PSD requirements. The Petitioner, therefore, did not meet its burden to demonstrate that the permit is not in compliance with the requirements of the Act.

LDEQ's Response explained that the emissions increases for the PSD applicability analysis for the BFU Project were evaluated by comparing baseline emissions with post-project potential emissions, consistent with the SIP-approved version of LAC 33:III.509. 2011 LDEQ Response at 10. LDEQ further identified emission limits[15] in the 2009 Permit that applied to the North Flare, stated that these limits were legally and federally enforceable, and said that any emissions above these emission rates would be violations. 2011 LDEQ Response at 11. The Petitioner claims that these North Flare emission limits are not adequately enforceable to be considered in the PSD analysis because they are "blanket emission limits."

More specifically, the Petitioner asserts that "blanket emissions limitations do not limit these emergency flaring emissions by 'legally and federally enforceable' means." 2012 Petition at 3. In making this assertion, the Petitioner cites to *US v. Louisiana Pacific Corp*., 682 F. Supp. 1122 (D. Colo. 1987), and an EPA guidance document, *Limiting Potential to Emit (PTE) In New Source Review (NSR) Permitting*, EPA, (February 11, 2011), *http://www.epa.gov/reg3artd/permitting/limitPTEmmo.htm* (*Limiting PTE in NSR*), which, it notes, cites the *Louisiana Pacific* case and its reasoning. The Petitioner suggests that by pointing to "criteria pollutant limitations in tons per year," LDEQ had "provided a blanket restriction on actual emissions." 2012 Petition at 3.

The Petitioner acknowledges Valero's use of potential to emit (PTE) in evaluating the emissions increases. *See* 2012 Petition at 2. However, the Petitioner has not cited or analyzed the applicable provisions of the approved Louisiana PSD SIP with regards to how PTE is calculated and what limitations may be considered in calculating PTE. *See* LAC 33:III.509.B (definition of "potential to emit"). Louisiana's SIP-approved regulations define "potential to emit" as:

[14] *See generally* 2011 LDEQ Response at 1-9.

[15] The emission limitations that LDEQ identifies appear in a section of the permit titled "Emission Rates for Criteria Pollutants." LDEQ's response explains that under General Condition III of LAC 33:III.537, this section of the permit establishes emission limitations. 2011 LDEQ Response at 11.

> the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as an allowable emission limit or as a condition of a permit issued under a program to prevent the significant deterioration of air quality or under Louisiana Air Quality Regulations.

Id. The federal regulations as discussed in *Limiting PTE in NSR* define PTE as:

> the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of fuel combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

See 40 C.F.R. §§ 52.21(b)(4), 51.165(a)(1)(iii), 51.166(b)(4).[16]

The Petitioner has not acknowledged or discussed the implications, if any, of the SIP definition for its claim. *See Nucor II Order* (noting as part of denying an objection because the Petitioners did meet their burden of demonstration that the Petition did not identify any specific terms of federal rules, the SIP, or the Act that supported key aspects of the claim). Although the Petitioner cites to documents including the EPA guidance, a prior title V order (the *BP Whiting Order*[17]), and court decisions,[18] as discussed below, the Petition lacks sufficient analysis for the EPA to ascertain how application of such documents implicates a flaw in LDEQ's analysis or a flaw in the permit. Further, while the Petitioner points to prior EPA statements in what appears to be a citation to a rule preamble[19] indicating criteria for a permit to be enforceable as a practical

[16] Although the federal definition of PTE for PSD includes the term "federally enforceable," following two court decisions, *Chemical Manufacturers Ass'n v. EPA*, No. 89-1514, 1995 U.S. App. LEXIS 31475 (D.C. Cir. 1995), the EPA clarified that the term "federally enforceable" as used in relation to the definition of PTE for the federal PSD program in 40 C.F.R. § 52.21(b)(4) should be read to mean "federally enforceable or legally and practicably enforceable by a state or local air pollution control agency." John Seitz, Director, Office of Air Quality Planning and Standards, and Robert Van Heuvelen, Director, Office of Regulatory Enforcement, "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (Jan. 22, 1996), at 3. The term "federal enforceability" has also been interpreted to require practical enforceability. *See, e.g., In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357 at 394, n.54 (EAB 2007).

[17] In particular, the Petitioner cites to *In re BP Products North America, Inc*., Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Operating Permit, Permit No. 089-254880-453, at 7 (Oct. 16, 2009).

[18] In addition to the *Louisiana Pacific* case, the Petitioner cites to *Weiler v. Chatham Forest Prod. Inc*., 392 F.3d 532, 535 (2d Cir. 2004), noting that the court explained that emission limitations must be federally enforceable or legally and practicably enforceable by a state or local air permitting authority.

[19] The Petitioner cites "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects, 40 CFR 51 & 52 (Dec. 31, 2002)." Though the Petitioner does not provide any additional citation, this appears to be a reference to the rulemaking at 67 *Fed. Reg.* 80186, and the quotations on pp. 3-4 of the 2012 Petition appear to be from p. 80191 of that notice.

matter, the Petitioner provides no analysis to demonstrate that these criteria are not met by the North Flare emission limits that LDEQ identified. Nor has the Petitioner provided any explanation of how that action is relevant to its arguments, including whether the North Flare emission limits are enforceable. *See* Petition at 3-4, n. 10. Moreover, the Petitioner has not provided analysis regarding how the North Flare emission limits are inconsistent with the EPA's statements in the *BP Whiting Order*.

LDEQ's response to the EPA's prior objection made several statements concerning the enforceability of these emissions limits that the Petitioner does not address. LDEQ identified several permit conditions intended to ensure the enforceability of the North Flare emission limits. LDEQ explained that the terms and conditions of the permit are enforceable both by the EPA and by citizens, and further explained that "the permit is clear that noncompliance constitutes a violation of the [CAA] and the Louisiana Environmental Quality Act, and is grounds for an enforcement action." 2011 LDEQ Response at 11. To support this statement, LDEQ points first to Specific Requirement 1543 of the 2009 Permit, which "directs the permittee to comply with the Part 70 General Conditions as set forth in LAC 33: III.535 and the Louisiana General Conditions as set forth in LAC 33: III.537." *Id.* LDEQ explained that these General Conditions are independently enforceable and provide that violation of the permit terms and conditions is a violation of the CAA and Louisiana Environmental Quality Act. *Id.* LDEQ further explained that Louisiana General Condition I, which is contained in LAC 33: III.537, requires the permittee to submit an application to modify the permit if emissions exceed permit limits and that "[e]missions in excess of permit requirements must be reported in accordance with Part 70 General Condition R and Louisiana General Condition XI and addressed on the annual compliance certification required by part 70 General Condition M."[20] 2011 LDEQ Response at 12. LDEQ stated that for all these reasons, emissions in excess of the limitations in the permit "are prohibited." *Id*. The Petitioner has provided no response to, or analysis of, LDEQ's statements on these permit conditions, which LDEQ identifies to support its views that the North Flare emission limits are enforceable.

Also, LDEQ identified permit conditions to verify compliance with the permit limits and ensure proper operation of the flare. LDEQ stated that "the volume of gas directed to the flare is monitored using flow monitors, and the sulfur content of the gas is monitored continuously." *Id.* To ensure proper operation of the flare, LDEQ explained that "[t]he flare is also subject to the general control device requirements of 40 CFR 60.18 and 63.11, as well as provisions of 40 CFR 61 Subpart FF - National Emission Standard for Benzene Waste Operations and 40 CFR 63 Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units." *Id.*

In light of these statements, the LDEQ response clarifies LDEQ's position on the enforceability of the emission limits on the North Flare and the basis for that position. These statements show that LDEQ identified more than a mere ton-per-year limit to support its views on the enforceability of these limits. However, the Petitioner did not explain why the permit conditions identified by LDEQ result in a flaw in the permit or permit record. The Petitioner has not addressed these statements from LDEQ explaining its view that the North Flare emission limits

[20] The Louisiana General Conditions as set forth in LAC 33: III.537 include General Condition XI.

are enforceable. As we explained in the Review of Issues in a Petition section of this Order, the EPA expects a 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. The Petitioner did not address LDEQ's reasoning regarding the enforceability of emission limits on the North Flare. Thus, while the Petitioner claims that these North Flare emission limits are not adequately enforceable to be considered in the PSD analysis, its analysis does not demonstrate that those limits are not legally and practicably enforceable.

Petitioner's assertion regarding LDEQ's statement about flare gas recovery system

With respect to the Petitioner's claim that LDEQ must include in the netting analysis all emissions at the time the permit is issued and cannot rely on a future installation of the flare gas recovery system (2012 Petition at 4), the Petitioner appears to have misunderstood LDEQ's statement about that system. In the 2011 LDEQ Response, LDEQ describes the rationale used to determine that PSD did not apply and identifies the "legally and federally enforceable" emission limits to which criteria pollutants emitted from the North Flare are subject in the 2009 Permit. In a footnote, LDEQ mentions that "these emissions will be eliminated by the flare gas recovery system" required by the CD, but does not indicate (and it does not appear) that it was in any way a factor in the PSD applicability determination. 2011 LDEQ Response at 11.

Consideration of 2011 LDEQ Response

The EPA observes that the December 2011 LDEQ Response responded to our direction in the *2011 Murphy Oil Order* by supplementing the record and providing additional information about LDEQ's determinations. For example, in the *2011 Murphy Oil Order*, the EPA directed LDEQ to "review its applicability determination and the permit record on this matter, and better explain its determination" in responding to that order. *2011 Murphy Oil Order* at 7. The EPA also observed in the *2011 Murphy Oil Order* that it was unclear from statements in the permit record for the 2009 Permit whether LDEQ meant to say that the emergency flaring emissions were prohibited, and the EPA noted that LDEQ had not specifically identified any prohibition or limit that applied to the emergency flares at issue. *Id.* In the 2011 LDEQ Response, consistent with our direction, LDEQ provided additional information, as well as highlighting or clarifying some information that had previously been in the permit record, to support its determination that emergency flaring emissions did not need to be included in the netting analysis. 2011 LDEQ Response at 9-11. In particular, as discussed above, LDEQ's response identified specific terms in the 2009 Permit that limit particulate matter (PM_{10}), SO_2, NOx, carbon monoxide (CO), and VOC emissions from the North Flare, including those resulting from emergency flaring, and explained why it believed these were enforceable. *Id.* Petitioner asserts that LDEQ did not adequately respond to the EPA's objection in the *2011 Murphy Oil Order*. To the extent that Petitioner makes this assertion as a grounds for an objection, the EPA responds that because the 2011 LDEQ Response is treated as a new proposed permit, and because the Petitioner has not met its burden to demonstrate a flaw in LDEQ's explanation of its PSD analyses, the Petitioner has not demonstrated that LDEQ did not submit a permit revised to meet the EPA's prior objection.

The EPA further observes that LDEQ's response also addressed other issues that were raised in the 2009 Petition and that served as grounds supporting the EPA's decision to grant in part the Petitioner's request for an objection to the 2009 Petition in the Agency's *2011 Murphy Oil Order*. *See generally* 2011 LDEQ Response at 1-9, 12-16. The Petitioner does not address these portions of LDEQ's Response and so does not identify any deficiencies in these responses. In particular, with respect to PSD applicability:

- LDEQ provided information and calculations concerning whether the BFU project would result in a significant increase in emissions of regulated NSR pollutants, to support its determination that PSD did not apply;

- LDEQ stated that the applicable emissions increase test in the SIP is the actual-to-potential test;

- LDEQ identified the emission units associated with or affected by the BFU project, and for each of these emission units identified the pre- and post-change PM_{10}, SO_2, NOx, CO and VOC emissions resulting from the addition of the BFU;

- LDEQ identified, for each unit and for the project, the post-project potential to emit for each of the five pollutants; and

- LDEQ specifically identified the availability of some of this information regarding the PSD applicability analysis in its record for the 2009 Permit.

2011 LDEQ Response at 2-12.[21] Thus, because the Petitioner does not address these aspects of LDEQ's response related to PSD applicability, it has not demonstrated that the permit or the permit record is not in compliance with an applicable requirement of the CAA with regard to these issues.

Effect of subsequent permitting actions

Even if the 2012 Petition had demonstrated that the 2009 Permit was not in compliance with the Act, it is not clear that an objection by the Agency would have any legal or practical effect because the 2009 Permit has been wholly superseded by the 2014 Permit, which was a title V renewal permit, and, therefore, the 2009 Permit is no longer in effect. *See* LAC 33:III.507(E)(3) ("[T]he existing permit shall remain in effect *until such time as* the permitting authority takes final action on the renewal."). The EPA did not object to the issuance of the 2014 Permit and, to the EPA's knowledge, the Petitioner did not file a title V petition requesting an objection to the 2014 Permit.[22] LDEQ modified the 2014 Permit, in turn, through a minor modification permit in

[21] Also, in its 2011 Response, the LDEQ explained why it believed the use of the hydrogen sulfide (H_2S) emission factor is appropriate for estimating SO_2 emissions form the BFU project, why it believed the hydrocarbon emission factor is appropriate for estimating VOC from the North Flare, and why it believed VOC emissions from roof landings were appropriately considered. 2011 LDEQ Response at 12-16.

[22] The Petitioner did, however, provide comments on the 2014 Permit during the public comment period. Comment Letter from Concerned Citizens Around Murphy to LDEQ re: Valero Energy's Meraux Plant (September 27, 2013), available at: *http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=9022981&ob=yes&child=yes*.

2015 (2015 Permit). The EPA additionally observes that there are substantial substantive differences between the provisions of the 2009 Permit and the 2014 Permit and/or the 2015 Permit. These differences include:

- Reduction of 2009 permitted annual allowable emissions for the Meraux facility of SO_2, NOx, CO to the following levels in the 2014 Permit: from 725.02 tons per year (tpy) to 676.98 tpy SO_2; 1,224.91 tpy to 1,108.68 tpy NOx; and 2,018.47 to 1,722.91 tpy CO;[23]

- Additional requirement that CO, NOx, VOC and PM_{10} cannot exceed the combined 2009 Permit limits for the North and South Flare in tons per year and average pounds per hour;[24]

- Lower maximum hourly CO, NOx, VOC, PM_{10} emission limits on the North Flare in both the 2014 and 2015 Permits when compared to the 2009 Permit;[25]

- Addition of an H_2S emissions cap of 50 lb/day over both the North and South Flares;[26]

- Addition of an SO_2 cap of 668 tpy over both the North and South Flares;[27]

- Requirement to investigate the cause of (root cause analysis) and take corrective action for acid gas flaring incidents, tail gas incidents and hydrocarbon flaring incidents;[28]

- Continuous Emission Monitoring System (CEMS) to measure total reduced sulfur on the North Flare and H_2S CEMS on the BFU (also known as the BRU Reboiler);[29]

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[23] *See* 2014 Permit at 10; 2009 Permit at 10.

[24] *See* 2014 Permit, Consent Decree Paragraph 49.a.ii. (7)(c) at 25; *see also* 2015 Permit, Consent Decree Paragraph 49.a.ii. (7)(c) at 24. With respect to the limits under Consent Decree Paragraph 49.a.ii. (7), mentioned here and in footnotes 26-28 below, both the 2014 Permit and the 2015 Permit state that "Valero shall … comply with the following emission limits on the North and South Flare as interim limits, until the Title V permit is revised to incorporate these interim limits pursuant to this CD for the time period prior to installation and operation of the flare gas recovery system." 2014 Permit, Consent Decree Paragraph 49.a.ii. (7) at 25; *see also* 2015 Permit, Consent Decree Paragraph 49.a.ii. (7) at 24. With respect to the limits under Consent Decree Paragraph 49.a.ii.(7)(c), the 2014 Permit and 2015 Permit refer to limits for GRP 0025 and GRP 0026 in the 2009 Permit. The 2009 Permit indicates that GRP 0025 refers to the North Flare Stack pre-project and that GRP 0026 refers to the South Flare Stack pre-project. 2009 Permit, Inventories at p. 7 of 9.

[25] 2014 Permit, Consent Decree Paragraph 49.a.ii. (7)(d) at 25-26; *see also* 2015 Permit, Consent Decree Paragraph 49.a.ii. (7)(d) at 24-25. In addition to these "interim limits," there are more permanent maximum hourly limits for the North Flare located in the "Emission Rates for Criteria Pollutants and CO_2e" table. *See* 2014 Permit, Subject Item EQT-0035, 20-72 at "Emission Rates for Criteria Pollutants and CO_2e," pages 1-2 of 4; *see also* 2015 Permit, Subject Item EQT-0035, 20-72 at "Emission Rates for Criteria Pollutants and CO_2e," pages 1-2 of 4; 2009 Permit, Subject Item EQT-0035, 20-72 at "Emission Rates for Criteria Pollutants," page 2 of 6 .

[26] *See* 2014 Permit, Consent Decree Paragraph 49.a.ii. (7)(a) at 25; *see also* 2015 Permit, Consent Decree Paragraph 49.a.ii. (7)(a) at 24.

[27] *See* 2014 Permit, Consent Decree Paragraph 49.a.ii. (7)(b) at 25; *see* also 2015 Permit, Consent Decree Paragraph 49.a.ii. (7)(b) at 24.

[28] *See* 2014 Permit, Consent Decree Paragraphs 53, 64, and 67 at 26-27; *see also* 2015 Permit, Consent Decree Paragraphs 53, 64, and 67 at 25-26.

[29] *See* 2014 Permit Specific Requirements 496-504 and 776-791 at 45 and 67-68 of 101, respectively; *see also* 2015 Permit Specific Requirements 496-504 and 775-790 at 44-45 and 67-68 of 101, respectively.

- After installation of certain controls and commencing operation of a combustion unit to satisfy particular requirements under the CD, use of NOx CEMS for Heaters & Boilers > 150 MMBtu/hr;[30]

- After installation of certain controls and commencing operation of a combustion unit to satisfy particular requirements under the CD, use of NOx CEMS or predictive emissions modeling system (PEMS) for Heaters & Boilers > 100 MMBtu/hr but < 150 MMBtu/hr NOx;[31]

- Reduction in levels of all pollutants in the annual emission cap for Heaters and Boilers, including the BFU Unit (also known as the BRU Reboiler). The levels of calculated emissions from the equipment covered by the cap are reduced in the 2014 Permit and 2015 Permit to: 66.53 tpy $PM_{10}/PM_{2.5}$, 232.31 tpy SO_2, 701.79 tpy NOx, 732.59 tpy CO, and 48.14 tpy VOC;[32] and

- The 2015 Permit incorporates the flare gas recovery project.[33]

These 2014 Permit and/or the 2015 Permit conditions appear directly relevant to the possibility of future emergency flaring emissions that are the basis of the Petitioner's claims. This disconnect between the permitting posture and the posture of the 2012 Petition creates two primary issues. First, even if the EPA had determined that the Petitioner had met its demonstration burden in the 2012 Petition (which it has not), granting the relief that the Petitioner requests would be to issue an objection under CAA section 505(b)(2) to a permit that has been superseded and is no longer in effect. It is unclear what, if any, legal or practical consequence such an objection would have.

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[30] *See* 2014 Permit, Consent Decree Paragraph 36.a at 20, the presence of CEMS, low NOx burners, and the Heaters and Boilers Emission Cap are identified in Inventories at 1 of 8; *see also* 2015 Permit, Consent Decree Paragraph 36.a at 19, the presence of CEMS, low NOx burners, and the Heaters and Boilers Emission Cap are identified in Inventories at 1 of 9.

[31] *See* 2014 Permit, Consent Decree Paragraph 36.b at 21, the presence of CEMS, low NOx burners and the Heaters and Boilers Emission Cap are identified in Inventories at 1 of 8; *see also* 2015 Permit, Consent Decree Paragraph 36.b at 20, the presence of CEMS, low NOx burners and the Heaters and Boilers Emission Cap are identified in Inventories at 1 of 9.

[32] The Petitioner does not address the annual emissions cap for heaters and boilers, which is present in all three permits. *See* 2009 Permit, Specific Requirement 1435, GRP 0006 at 124 of 135 (providing that the corresponding levels for emissions of PM10, 67.75 tpy; SO_2, 242.15 tpy; NOx, 893.49 tpy; CO, 869.37 tpy; and VOC, 49.03 tpy); *see also id.*, Inventories at 9 of 9 (providing that the BenFree Reboiler, EQT 0127, is part of GRP 0006); *see also* 2014 Permit, Specific Requirement 975, at 83 of 101; *see also id.*, Inventories at 7 of 8 (providing that the BRU Reboiler, EQT 0127, is part of GRP 0006); *see also* 2015 Permit, Specific Requirement 979, at 84 of 101; *see also id.*, Inventories at 8 of 9 (providing that the BRU Reboiler, EQT 0127, is part of GRP 0006).

[33] As a technical matter, flare gas recovery systems are critical to minimizing flaring emissions. The 2015 Permit incorporates the flare gas recovery project. Required by the CD, this flare gas recovery system will be used to "control continuous or routine combustion in the Meraux Refinery's Flaring Devices", which include the North Flare. *See* 2015 Permit at 23. This project is designed to recover hydrocarbons from the "flare headers, treat them to remove [H_2S] (amine unit) and route them to the refinery fuel gas system for combustion" in heaters and boilers. *See* 2015 Permit at 8.

Second, in light of the substantial differences between the 2009 Permit and the 2014 Permit and 2015 Permit, including additional controls and different emission limits listed above, it is unclear whether, and the extent to which, the emissions, on which the Petitioner's claim is based, persist. *Cf. Zen-Noh Grain Corp. v. Consol. Envt'l Mgmt., Inc.,* No 12-1011, 2013 U.S. Dist. LEXIS 107343, at *29-30 (E.D. La., July 31, 2013) (court agreed with plaintiff's concession that a claim to enjoin construction allowed by an initial permit was mooted by a subsequently issued permit, noting that the claims would be moot unless the plaintiffs showed that there was a realistic prospect that the violations alleged in the complaint would continue, notwithstanding the permitting authority's subsequent actions). The Petitioner had an opportunity to address such issues in a title V petition on the 2014 Permit, but it did not file such a petition.

In light of the facts described above, the EPA believes that its duty to respond to the claims in the 2012 Petition has been mooted by subsequent events. As noted above, in this case there have been substantial substantive permit changes since the 2009 Permit and LDEQ's 2011 Response, upon which the 2012 Petition is based. These changes include the issuance of a 2014 Permit (renewal), which wholly superseded the prior permits as a legal matter, and the inclusion of additional controls and different emissions limits that appear directly relevant to the possibility of future emergency flaring emissions in the 2014 and 2015 Permits. The Petitioner had the opportunity to address whether and how their claims were affected by these changed circumstances by filing a title V petition on the 2014 Permit, but did not file such a petition. Accordingly, as a result of the permitting and petition history regarding this source, the EPA's duty to respond to the claims that the Petitioner raised in the 2012 Petition has been overtaken by later events and is now moot.

Based on the 2012 Petition presented to the EPA and a review of the relevant materials, the EPA determines that the Petitioner did not demonstrate that either the 2009 Permit or the 2011 LDEQ Response is not in compliance with the requirements of the Act, including the requirements of the applicable SIP.

CONCLUSION

For the reasons set forth above, and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby deny the 2012 Petition as described above.

Dated: MAY 29 2015

Gina McCarthy,
Administrator.