

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____)	
IN THE MATTER OF)	
MONROE POWER COMPANY)	ORDER RESPONDING TO PETITIONER’S
MONROE POWER PLANT)	REQUEST THAT THE ADMINISTRATOR
MONROE, GEORGIA)	OBJECT TO ISSUANCE OF A STATE
ELECTRIC POWER GENERATION)	OPERATING PERMIT
PETITION IV-2001-8)	
_____)	
PERMIT No. 4911-297-0040-V-05-0)	
ISSUED BY THE GEORGIA)	
ENVIRONMENTAL PROTECTION)	
DIVISION)	
_____)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

On November 14, 2001, the United States Environmental Protection Agency (“EPA”) received a petition from the Georgia Center for Law in the Public Interest (“GCLPI”) on behalf of the Sierra Club (“Petitioner”), requesting that EPA object to the permit issued by the Georgia Environmental Protection Division (“EPD” or the “Department”) to Monroe Power Company (“Monroe Power” or the “Permittee”) for its facility located in Monroe (Walton County), Georgia. The permit is a state operating permit issued on November 30, 2001, pursuant to title V of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7661-7661f.¹

Petitioner challenged the adequacy of the public participation process and the public notice of the draft permit; the permit’s apparent limitations on enforcement authority and the use of credible evidence; the adequacy of the monitoring and reporting requirements; the legality of excluding startups, shutdowns and malfunctions; and the permit’s completeness. Petitioner has requested that EPA object to the Monroe Power permit pursuant to CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2). For the reasons set forth below, I deny the Petitioner’s request.

¹Since Monroe Power’s title V permit was issued, the facility’s name was changed to MPC Generating, LLC, and its ownership changed from Carolina Power & Light to MPC Generating, LLC, which is owned by Progress Genco Ventures LLC. By an administrative amendment, EPD revoked and reissued the facility’s title V permit, No. 4911-297-0040-V-05-0, as No. 4911-297-0040-V-06-0 to reflect these changes. See EPD Narrative for MPC Generating, LLC Permit No. 4911-297-0040-V-06-0, § II(A) at 3 (Mar. 14, 2002 draft permit). Consistent with the petition, this order uses the “Monroe Power” name to refer to the facility. The permit conditions that were included in the original permit and that are raised in the petition have not changed.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each state to develop and submit to EPA an operating permit program intended to meet the requirements of CAA title V. The State of Georgia originally submitted its title V program governing the issuance of operating permits on November 12, 1993. EPA granted interim approval to the program on November 22, 1995. See 60 Fed. Reg. 57836 (Nov. 22, 1995). Full approval was granted by EPA on June 8, 2000. See 65 Fed. Reg. 36358 (June 8, 2000). The program is now incorporated into Georgia's Air Quality Rule 391-3-1-.03(10). 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 Act, including the applicable implementation plan. See CAA sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements") on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. See 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, EPA, and the public to better understand 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 existing air quality control requirements are appropriately applied to facility emission units in a single document, therefore enhancing compliance with the requirements of the Act.

Permitting authorities must provide at least 30 days for public comment on draft title V permits and give notice of any public hearing at least 30 days in advance of the hearing. 40 CFR § 70.7(h). Following consideration of any comments received during this time, Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 CFR § 70.8(a) require that states submit each proposed permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements of title V. 40 CFR § 70.8(c). If EPA does not object to a permit on its own initiative, CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. These sections also provide that petitions shall be based only on objections to the permit raised with reasonable specificity during the public comment period (unless the petitioner demonstrates that it was impracticable to raise such objections within that period or the grounds for such objections arose after that period).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR Part 70 and the applicable

implementation plan. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. See 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR § 70.8(d).

II. PROCEDURAL BACKGROUND

A. Permitting Chronology

EPD received a title V permit application submitted by Monroe Power on June 12, 2000, and determined that the application was administratively complete on August 11, 2000. On June 27, 2001, EPD published the public notice providing for a 30-day public comment period on the draft title V permit for Monroe Power. The public comment period for the draft permit ended on July 27, 2001. The Petitioner submitted comments to EPD in a letter dated July 27, 2001, which serves as the basis for this petition. After making changes to the draft permit in response to comments received, EPD repropose the permit to EPA on September 27, 2001. EPD subsequently issued the final permit to Monroe Power on November 30, 2001.

B. Timeliness of Petition

EPA's 45-day review period for the Monroe Power permit ended on November 13, 2001. The sixtieth day following that date, which was the deadline for filing any petitions requesting that the Administrator object to this permit, was January 14, 2001. As noted previously, on November 14, 2001, EPA received a petition from GCLPI on behalf of the Petitioner requesting that EPA object to the permit. Therefore, EPA considers this petition to be timely.

III. FACILITY BACKGROUND

The Monroe Power facility consists of two simple cycle combustion turbines, which produce electricity for sale. Each unit has a base load output rating of 184 megawatts. Natural gas is used as the primary fuel and low-sulfur content distillate fuel oil serves as a backup fuel source. The units are equipped with water injection for the control of nitrogen oxide (NO_x) emissions.

The primary air emissions from this facility are NO_x, sulfur dioxide and carbon monoxide. The facility is subject to the following federal requirements: 40 CFR 60, Subpart Kb, *Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced After July 23, 1984*; Subpart GG, *Standards of Performance for Stationary Gas Turbines*; and 40 CFR Parts 72, 73 and 75 (acid rain program). The facility is also subject to the following State

Implementation Plan (“SIP”) requirements: Georgia Rules 391-3-1-.02(b), *Visible Emissions*; (g), *Sulfur Dioxide*; and (nnn), *NO_x Emissions from Large Stationary Gas Turbines*. See Title V Application Review for Monroe Power Permit No. 4911-297-0040-V-05-0.

IV. ISSUES RAISED BY THE PETITIONER

A. Omission of Case-by-Case Maximum Achievable Control Technology (MACT) Standard

Petitioner’s comment: Case-by-case MACT standards under section 112(g)(2)(B) of the Act are applicable requirements for title V permits. Presumably, EPD did not apply case-by-case MACT to this facility because it did not consider this facility to be a major source of hazardous air pollutants (“HAPs”). A major source is a facility that has the potential to emit 10 tons per year (“tpy”) or more of any one HAP or 25 tpy or more of any combination of HAPs. Based on EPA’s AP-42 emission factors for natural gas combustion and the results of a study by the Gas Research Institute (“GRI”) and the Electric Power Research Institute, the facility’s potential to emit for formaldehyde appears to be greater than 10 tpy for periods of startup and shutdown and reduced load operation. Therefore, the permit must contain a case-by-case MACT until such time that EPA issues the final stationary combustion turbine MACT standard.

EPA’s response: The Petitioner correctly notes that case-by-case MACT standards are applicable requirements for purposes of title V, see 40 CFR § 70.2, and cites the “major source” thresholds for HAP emissions under the CAA, 42 U.S.C. § 7412(a)(1). However, EPA believes that the Petitioner’s calculations overestimate the Monroe Power facility’s potential emissions of HAPs and that EPD properly determined that the facility is not a major source of HAPs. See EPD Addendum to Narrative for Monroe Power Plant, TV-12332, Response to GCLPI’s Comment 7 (explaining the basis for EPD’s determination that the potential formaldehyde emissions from the turbines on a combined basis is less than 10 tpy). In particular, EPA has concluded that the Petitioner, who outlined one scenario in which the facility would emit 10.1 tpy of formaldehyde, overestimated the potential emissions of formaldehyde for a number of reasons. First, the Petitioner’s estimate is based on an AP-42 emission factor of 7.1×10^{-4} pounds of formaldehyde per million Btu heat input (lb/MMBtu); however, more recent information from EPA’s Office of Air Quality Planning and Standards indicates that a more appropriate emission factor for formaldehyde is 2.02×10^{-4} lb/MMBtu. See EPA Memorandum from Sims Roy to Docket A-95-51, *Hazardous Air Pollutant (HAP) Emission Control Technology for New Stationary Combustion Turbines* (Aug. 21, 2001) (the “Sims Roy memo”). The Petitioner also failed to prorate the heat input at 100 percent load level to more accurately reflect periods of startup and shutdown, which typically occur between 0 and 50 percent load. Furthermore, the Petitioner cited a GRI report to support a formaldehyde emission factor for startups and shutdowns that is 503 times higher than the AP-42 value (7.1×10^{-4} lb/MMBtu); however, this approach overlooked the fact that the actual low-load (i.e., at 30% load) formaldehyde emission factor, as reported in the same GRI document and presented by the Petitioner, is only 7.5×10^{-3} lb/MMBtu – approximately 10.6 times higher than the AP-42 value

but not nearly 503 times higher, as Petitioner estimated. EPA's analysis, based on the Sims Roy memo, shows that the facility's PTE for formaldehyde is significantly less than the 10 tpy major source threshold. EPA believes that EPD properly determined that the facility is not a major source of HAPs and that the Petitioner has not demonstrated otherwise. Thus, the section 112(g) case-by-case MACT requirements are not applicable to the Monroe Power facility. The petition is therefore denied with respect to this issue.

B. Inadequate Carbon Monoxide Monitoring

Petitioner's comment: The permit contains an emission limit of 200 pounds per hour of carbon monoxide ("CO"). However, the permit does not include monitoring and reporting to see that this emission limit is met. This is especially important because the permit limits CO to exactly 250 tpy. If the facility emits 250 tons and one ounce of CO, it is in violation of this permit as well as new source review ("NSR")/prevention of significant deterioration ("PSD") requirements. Therefore, the permit should be modified to require a continuous emissions monitoring system for CO and reporting of hourly CO emissions in pounds for every hour of operation.

EPA's response: Conditions of the Monroe Power permit assure that the facility remains a synthetic minor source of CO emissions and therefore is not subject to PSD requirements for CO. Condition 3.2.3 of the Monroe Power permit prohibits the discharge into the atmosphere from the two combustion turbines (CT01 and CT02), each, of any gases containing CO in excess of 200 pounds per hour. Condition 3.2.2 requires the Permittee to limit the hours of operation of CT01 and CT02 such that the total hours of operation, including startup and shutdown, of both combustion turbines combined does not equal or exceed 2,500 hours during any consecutive twelve months, in order to limit potential emissions of CO and sulfur dioxide. In addition, Condition 3.2.1 prohibits the discharge into the atmosphere, from CT01 and CT02, combined, of NO_x emissions, including emissions occurring during startup and shutdown, in an amount equal to or in excess of 250 tons during any twelve consecutive months.

The 200 pounds per hour emission limit for CO is used in conjunction with the hours of operation limit to further ensure that the facility remains a synthetic minor PSD source with respect to CO emissions. The facility will use a continuous emissions monitoring system ("CEMS") for NO_x emissions as a surrogate method for assuring compliance with the synthetic minor status for CO.² According to EPD, the performance test data show NO_x emission rates to

²Condition 5.2.1.a. requires the Permittee to install, calibrate, maintain, and operate a "[CEMS] for measuring NO_x concentration and diluent (either oxygen or carbon dioxide) discharge to the atmosphere from each combustion turbine CT01 and CT02" and specifies requirements for recording NO_x emission rates. EPD includes this condition pursuant to its general monitoring and reporting requirements, Georgia Rule 391-3-1-.02(6)(b)1; the New Source Performance Standards ("NSPS") monitoring requirements in the NSPS General Provisions at 40 CFR § 60.13 and in the NSPS for Stationary Gas Turbines at 40 CFR § 60.334;

be greater than respective CO emission rates; therefore, it can conservatively be assumed that compliance with the CO synthetic minor source limit will be assured through compliance with the NO_x synthetic minor source limit. In other words, compliance with the PSD avoidance limit for CO will be assured by the fact that NO_x emissions will maximize at the respective NO_x synthetic minor limit before CO emissions exceed the respective CO synthetic minor limit. Furthermore, based on the performance test data, it appears highly unlikely that the emission rate of CO would equal or exceed 200 pounds per hour for any three-hour period, including periods of startups and shutdowns. A three-hour averaging period applies in this case because the applicable reference test method for CO emissions (Method 10) specifies an average of three one-hour tests. Periods of startups and shutdowns, conservatively, last approximately 30 minutes; thus, in any given three-hour period, there will be approximately two and one-half hours of steady-state operation. For steady-state operation, the performance test data show a CO emission rate for fuel oil of 63.5 pounds per hour, which is slightly more than one-quarter of the hourly CO limit for fuel oil combustion of 200 pounds per hour. See EPD Narrative for Monroe Power Plant Permit No. 4911-297-0040-V-05-0, § III(C) at 7 (May 31, 2001 draft permit). Such a relatively low emission rate combined with the relatively short periods for startups and shutdowns means that it is unlikely that CO emissions would equal or exceed the hourly CO limit. Therefore, direct monitoring of CO emissions, particularly with CEMS, is not warranted. The petition is therefore denied with respect to this issue.

C. Inadequate Public Notice and Participation

Petitioner's comment: EPD did not undertake the required public participation activities for this permit, and therefore EPA should object to the permit and require EPD to re-notice the draft permit for a new public comment period.

First, EPD did not follow part 70 in terms of making information available during the public review process. 40 CFR § 70.7(h)(2) states that the public notice will explain where the public can review all relevant supporting documents and “all other materials available to the permitting authority that are relevant to the permit decision.” EPD’s public notice states that “[t]he draft permit and all information used to develop the draft permit are available for review.” Since the public notice only addressed the availability of those relevant documents which were used rather than those which could have been used by EPD to develop the draft permit, the public notice is inadequate. Furthermore, the public is entitled to review records required to be maintained at the Monroe Power facility that are not required to be submitted to EPD.

Second, the public notice itself is inadequate because it contains inaccurate information; it states that the permit is enforceable only by EPA and EPD. The permit shall also be enforceable by any “person.” 42 U.S.C. § 7604(a). Furthermore, the public notice states that “[a]fter the comment period has expired, the EPD will consider all comments, make any necessary changes and issue the Title V operating permit.” This statement is inaccurate.

and the title V monitoring requirements at 40 CFR § 70.6(a)(3)(i).

Specifically, the statement suggests that, while changes may be made, in the end, the permit will be issued. However, under certain circumstances, EPD is required to refuse to issue a title V permit. 40 CFR § 70.7(a). As such, the aforementioned statement could be interpreted as an indication of EPD's predisposition to issue title V permits regardless of whether the permit complies with the law. Therefore, because § 70.7(a)(1)(ii) prohibits the issuance of a title V permit unless all the requirements for public participation pursuant to § 70.7(h) are satisfied, EPA should object to the permit and require a new 30-day public comment period and a public notice that clarifies that the public also can enforce the permit.

EPA's response: In response to the Petitioner's first comment, 40 CFR § 70.7(h)(2) requires that the public notice provide contact information for an individual from whom the public may obtain additional information, "including ... all relevant supporting materials" and "all other materials available to the permitting authority that are relevant to the permit decision." The public notice for the Monroe Power permit explicitly designated a central location where the public could review relevant documents as follows:

"The draft permit and all information used to develop the draft permit are available for review. This includes the application, all relevant supporting materials and all other materials available to the permitting authority used in the permit review process. This information is available for review at the office of the Air Protection Branch, 4244 International Parkway, Atlanta Tradeport - Suite 120, Atlanta, Georgia 30354."

Furthermore, in accordance with § 70.7(h)(2), the public notice identified Jimmy Johnston, Stationary Source Permitting Program Manager at EPD, as the person to contact for more information. This permit language meets the requirements of § 70.7(h)(2), which does not distinguish between materials that a permitting authority did use and those that a permitting authority could have used. It simply requires that the public notice address the availability of all "relevant" materials. Because the public notice for the Monroe Power draft permit met the requirements of part 70 by announcing the availability of all "relevant" supporting information, there is no basis for objecting to the permit on this issue.

The Petitioner further asserts that the public is entitled to review additional information that EPD may not have reviewed in drafting the facility's title V permit, such as information that is maintained at the Monroe Power facility (e.g., emissions data, reports and calculations required under a SIP permit). The Petitioner states that the public needs access to such information in order to comment on the draft title V permit. If part 70 or applicable requirements such as SIP provisions require that such information be submitted to permitting authorities or EPA, EPA expects that it would be available for public review. EPA assumes that the public has access to all of the information contained in EPD's files, except for trade secrets or other information that EPD has determined is protected from disclosure under Georgia law. Also, permitting authorities are encouraged to respond to reasonable requests that they look beyond a permit application and supporting documents and/or requests for additional information during the comment period on a draft permit. For instance, if a citizen presents a permitting authority with credible information indicating that certain applicable requirements are

missing from a permit application or that specific violations have occurred at a facility, the citizen may have a reasonable expectation that additional information will be made available for title V review. Otherwise, information that is required to be maintained only at a permitted facility generally need not be made available to the public at the beginning of the comment period on the facility's draft title V permit. In this case, the Petitioner has not alleged that EPD failed to make the materials listed in the public notice for the draft Monroe Power permit available for review. Nor has the Petitioner alleged that it requested, or that EPD failed to make available, any other particular information. Therefore, there is no basis for objecting to the Monroe Power permit on this ground.

In response to the Petitioner's second comment, although the public notice did not specifically name "persons" as being designated enforcers of the title V permit, EPA believes the notice satisfied the requirements of part 70 for the reasons set forth in orders responding to prior petitions for objection on this issue. See In re: Citgo Petroleum Corporation – Doraville Terminal, Pet. No. IV-2001-4 (June 5, 2002) at 7; In re: Seminole Road Landfill, Pet. No. IV-2001-3 (June 5, 2002) at 7.

Finally, EPA does not agree with the Petitioner that the statement contained in the public notice summarizing the post-comment period proceedings is an indication of EPD's predisposition to issue title V permits regardless of their legality. Rather, EPA interprets the phrase "make any necessary changes" to include those changes that are needed to ensure that the title V permit meets the requirements of the CAA and part 70 prior to issuance by EPD. Therefore, EPA considers the statement to be an accurate one because the title V permit may then be issued in accordance with § 70.7(a)(1).

For the reasons discussed above, the Petitioner has not demonstrated that the Monroe Power permit does not comply with the CAA's requirements because of EPD's public notice, and the petition is denied with respect to the issue of inadequate public notice and participation.

D. Limitation of Credible Evidence

Petitioner's comment: The Monroe Power permit contains language that appears to limit the use of credible evidence in enforcement actions, specifically Conditions 4.1.3, 6.1.3 and 8.17.1. EPD must remove language that is intended or appears to limit the use of credible evidence. EPA should further require EPD to affirmatively state in the permit that any credible evidence may be used in an enforcement action.

EPA's response: EPA believes that the Monroe Power permit as amended (see the discussion below) appropriately provides for the use of reference test methods as the benchmark for determining compliance with applicable requirements and for the use of other credible evidence in enforcement actions and in compliance certifications. See In re: Citgo Petroleum Corporation – Doraville Terminal, Pet. No. IV-2001-4 (June 5, 2002) (the "Citgo Order") at 4 (explaining the appropriate roles of reference test methods and other credible evidence). In particular, EPA believes that the Monroe Power permit as amended adequately provides for the

use of other credible evidence to show whether the source would have been in compliance if the reference test had been performed at some particular time. Condition 4.1.3 of the Monroe Power permit identifies the required reference methods to be used to satisfy any testing requirements; it is not intended, in any way, to limit the use of credible evidence. In fact, Condition 4.1.3 provides for the use of all credible evidence and information. Georgia Rule 391-3-1-.02(3)(a), which serves as the underlying authority for Condition 4.1.3, references EPD's *Procedures for Testing and Monitoring Sources of Air Pollutants*, which permits the use of all credible evidence. Section 1.3(g) of this document states that "nothing. . . shall preclude the use, including the exclusive use, of any credible evidence or information." Both the rule and referenced procedures are approved parts of the Georgia SIP. In addition, Condition 8.14.1.d of the Monroe Power permit adequately provides for the inclusion of credible evidence in compliance certifications by reciting the language from EPA's own regulation at 40 CFR § 70.6(c)(5)(iii)(B) that was promulgated expressly for that purpose.

Condition 6.1.3, which requires the submission of deviation reports, provides in relevant part that failures to meet applicable emission limitations or standards or to comply with or complete work practice standards or requirements "shall be determined through observation, data from any monitoring protocol, or by any other monitoring which is required by this permit." Although the language in Condition 6.1.3 may appear to limit the use of credible evidence, EPA believes that this was not the intention of EPD and that such language does not ultimately limit the use of credible evidence because the Georgia SIP expressly prohibits such an exclusion. Condition 8.17.1 does not limit the use of credible evidence because it allows the use of "any information available to the Division" and the phrase "but is not limited to" renders the listed forms of acceptable information not exclusive.³

Nonetheless, for further clarification, EPD added a general condition to the Monroe Power title V permit via a minor modification which expressly states that nothing shall preclude the use of any credible evidence. See MPC Generating, LLC Minor Permit Modification No. 4911-297-0040-V-06-1. As noted in the Citgo Order, EPD added this condition to the permit template to ensure that such language will be included in future title V permits issued by EPD.⁴

³Condition 8.17.1 provides: "At all times, including periods of startup, shutdown, and malfunction, the Permittee shall maintain and operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on any information available to the Division, which may include, but is not limited to, monitoring results, observations of the opacity or other characteristics of emissions, review of operating and maintenance procedures or records, and inspection or surveillance of the source."

⁴EPD provided EPA with a written commitment to add a general condition to the title V permit template, which expressly states that nothing shall preclude the use of any credible evidence, and to include this condition in every final title V permit not already signed by the

The petition is therefore denied with respect to the issue of limiting credible evidence.

E. Limitation of Enforcement Authority

Petitioner's comment: The Monroe Power permit impermissibly limits who may enforce against violations of the permit. The Act provides that any "person" may take civil action to stop a violation of a title V permit. 42 U.S.C. § 7604(a). The Act defines "person" to include "an individual, corporation, partnership, association, State, municipality, political subdivision of a state. . ." 42 U.S.C. § 7602(e). However, the Monroe Power permit limits those who can take enforcement actions to "citizens of the United States." This is contrary to the statute; therefore, the phrase "of the United States" must be deleted from Condition 8.2.1.

EPA's response: EPA agrees with the Petitioner that the original language contained in Condition 8.2.1 limiting those persons who can enforce the terms and conditions of the Monroe Power permit to "citizens of the United States" was contrary to the CAA and EPA's part 70 regulations. See In re: Caldwell Tanks Alliance, LLC, Pet. No. IV-2001-1 (Apr. 1, 2002) at 4-5 and Enclosure to Attached Letter from Winston A. Smith, Air, Pesticide & Toxics Management Division, EPA Region 4, to Robert Ukeiley, GCLPI (Jan. 28, 2002) at 6-8 (explaining the reasons for EPA's position and stating EPD's commitment to revise Condition 8.2.1 in its permit template). Therefore, the petition is denied with respect to this issue because the issue is moot.

F. Inadequate Reporting

Petitioner's comment: 40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661c(a) require that permits include a requirement for submittal of reports of any required monitoring at least every six months. The Monroe Power permit does not contain such a requirement. Condition 5.3.1, which references Condition 6.1.4, requires reporting of deviations pursuant to 40 CFR § 70.6(a)(3)(iii)(B) but does not satisfy the separate semi-annual reporting requirement. EPA should object to this permit and modify the permit to include a provision that requires the "submittal of reports of any required monitoring at least every 6 months." 40 CFR § 70.6(a)(3)(iii)(A).

EPA's response: The part 70 rule cited by the Petitioner, § 70.6(a)(3)(iii)(A), states that each permit shall require "[s]ubmittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports." This rule implements section 504(a) of the CAA, which requires that each title V permit include "a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring." EPD included Condition 5.3.1 in the Monroe Power permit to satisfy this requirement. This condition, in conjunction with

Director of EPD by the date of said letter. Existing title V permits will be revised upon renewal to include the new condition. See Letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to James I. Palmer, Jr., Regional Administrator, EPA Region 4 (March 22, 2002).

Condition 6.1.4, requires quarterly rather than semi-annual reporting of information related to deviations, malfunctions, operating time, monitor down time, and other information.

The Petitioner argues that since § 70.6(a)(3)(iii)(B) requires reporting of deviations, the position EPD has taken that Condition 5.3.1 satisfies § 70.6(a)(3)(iii)(A) would render that rule meaningless, as it would be redundant to § 70.6(a)(3)(iii)(B). EPA disagrees with this assessment because § 70.6(a)(3)(iii)(B) is a requirement for “prompt” reporting of deviations and is separate from the semi-annual monitoring reporting requirements. The Monroe Power permit addresses the “prompt” reporting requirement under Conditions 6.1.2 and 6.1.3.

The Monroe Power permit, like other title V permits issued by EPD, includes considerable detail in Condition 6.1.4 regarding what must be included in the monitoring reports. See In re: Seminole Road Landfill, Pet. No. IV-2001-3 (June 5, 2002) (the “Seminole Road Landfill Order”) at 4-5 (describing the information required under Conditions 6.1.4 and 6.1.3). For the reasons set forth in the Seminole Road Landfill Order, EPA believes that while the monitoring reports required by EPD focus on information related to deviations and monitoring device operation, EPD reasonably interpreted § 70.6(a)(3)(iii)(A) when it specified what the reports must contain to keep EPD informed of a facility’s compliance status and potential problems. Thus, the petition is denied with respect to the issue of inadequate reporting.

G. Altered Preconstruction Requirements

Petitioner’s comment: Conditions in preconstruction permits are applicable requirements that must be included in title V permits. In Monroe Power’s Permit No. 4911-297-0040-E-04-0 (dated September 30, 1999), a preconstruction permit, Condition 2.4b. limits the opacity of turbine emissions to 20 percent; however, Condition 3.4.1 of the title V permit limits the opacity to 40 percent. Similarly, Condition 8.4g. of the aforementioned preconstruction permit requires the reporting of the total monthly fuel usage; however, Condition 6.2.12 of the title V permit does not contain this requirement. EPD should have kept these preconstruction permit conditions in the title V permit.

EPA’s response: EPA agrees with the Petitioner that 40 CFR § 70.2 defines “applicable requirement” to include the terms and conditions of preconstruction permits issued pursuant to EPA-approved regulations. EPD concurred with the Petitioner that the applicable opacity standard in the title V permit should have been 20 percent rather than 40 percent. Accordingly, EPD removed Condition 3.4.1 in response to GCLPI’s comments on the draft permit and incorporated the 20 percent opacity standard in Condition 3.2.7. See EPD Addendum to Narrative for Monroe Power Plant, TV-12332, Response to GCLPI’s Comment 8; Monroe Power Permit No. 4911-297-0040-V-05-0. Therefore, this issue is moot.

EPD did not omit an underlying applicable requirement from the title V permit by eliminating the fuel usage reporting requirement. Rather, EPD used the title V permit process as a mechanism to eliminate those underlying requirements such as the fuel usage reporting requirement which no longer apply. EPA has recognized that some preconstruction permits

contain terms that are obsolete and that such terms need not be incorporated into part 70 permits to fulfill the purposes of the preconstruction and title V permitting programs. Accordingly, EPA has stated that the part 70 permit issuance process offers permitting authorities an opportunity to make contemporaneous revisions to preconstruction permits, thereby revising applicable preconstruction requirements for purposes of determining what requirements must be included in a part 70 permit. See Memorandum from Lydia N. Wegman, Deputy Director, EPA Office of Air Quality Planning and Standards, to various EPA offices, *White Paper for Streamlined Development of Part 70 Permit Applications* (July 10, 1995), at 12-14. Pursuant to Georgia Rule 391-3-1-.03(7), EPD has the authority to combine permitting actions such as the amendment of minor NSR permits with the issuance of title V permits.⁵ EPD included a discussion in the narrative addendum which describes the action of amending the underlying NSR permit and provides justification for eliminating the fuel usage reporting requirement. See EPD Addendum to Narrative for Monroe Power Plant, TV-12332, Response to GCLPI's Comment 8. According to EPD, the fuel usage reporting requirement was no longer needed because the respective fuel usage limit was no longer applicable to Monroe Power by virtue of the preconstruction permit and thus was not included in its title V permit. The Petitioner has not demonstrated that the Monroe Power permit does not comply with the requirements of the CAA and part 70, and the petition is therefore denied with respect to this issue.

H. Exclusion of Startups, Shutdowns and Malfunctions

Petitioner's comment: Condition 6.2.11 excuses violations of the emission limits during periods of startup, shutdown and malfunction. This provision is contrary to the Act and EPA guidance. Therefore, EPA needs to remove this provision. Both EPA Region 4 and Sierra Club have informed EPD in other contexts that this startup/shutdown/malfunction provision is illegal.

EPA's response: Condition 6.2.11 provides that "[EPD] may allow excess emissions in certain cases as described below:

- a. Excess emissions resulting from startup, shutdown, malfunction of any source which occur through [sic] ordinary diligence is employed shall be allowed provided that:
 - i. The best operational practices to minimize emissions are adhered to;
 - ii. All associated air pollution control equipment is operated in a manner consistent with good air pollution control practice for minimizing emissions; and
 - iii. The duration of excess emissions is minimized.

⁵Georgia Rule 391-3-1-.03(7) provides: "The Director may combine the requirements of and the permits for construction and operation (temporary or otherwise) into one permit. He may likewise combine the requirements of and applications for construction and operating permits into one application."

- b. Excess emissions which are caused entirely or in part by poor maintenance, poor operation, or any other equipment or process failure which may reasonably be prevented during startup, shutdown or malfunction are prohibited and are violations of this Permit.
- c. Paragraphs (a) and (b) of this condition shall not apply if precluded by any other State or Federal regulation.

(Internal citations omitted.) Condition 6.2.11 closely tracks the regulatory language in Georgia Rule 391-3-1-.02(2)(a)7., titled “Excess Emissions,” which EPA has approved into the Georgia SIP. See 46 Fed. Reg. 57486 (Nov. 24, 1981).

EPA agrees with the Petitioner that the CAA, as interpreted in EPA policy, prohibits automatic exemptions from compliance with emissions limitations during periods of excess emissions.⁶ To the extent that a state regulation broadly excuses sources from compliance with emission limitations during periods of startup, shutdown and malfunction, EPA believes it should not be approved as part of the federally-approved SIP. See EPA Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to Regional Administrators I-X, *State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* (Sept. 20, 1999); EPA Memorandum from Kathleen M. Bennett to Assistant Administrator for Air, Noise and Radiation and Regional Administrators, Regions I-X, *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (Sept. 28, 1982). Nonetheless, EPA’s policy was not intended to alter the status of any existing SIP provision regarding malfunctions, startups, and shutdowns that has already been approved by EPA. See EPA Memorandum from Eric Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, to Regional Administrators, Regions I-X, *Re-Issuance of Clarification – State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* (Dec. 5, 2001). EPA’s approval of SIPs and SIP revisions, see CAA §§ 110(k)(5) and (l), 42 U.S.C. §§ 7410(k)(5) and (l), are rulemakings subject to the notice and comment requirements of the

⁶At the same time, EPA recognizes that states may exercise enforcement discretion to refrain from taking enforcement actions and seeking penalties where circumstances beyond a facility owner or operator’s control result in excess emissions, and EPA further recognizes that states have the discretion to provide for appropriately tailored affirmative defenses to actions for penalties brought for excess emissions that occur during startup, shutdown, and malfunction episodes. See EPA Memorandum from Eric Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, to Regional Administrators, Regions I-X, *Re-Issuance of Clarification – State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* (Dec. 5, 2001).

Administrative Procedure Act, 5 U.S.C. §§ 551(5) and 553. Accordingly, SIP provisions must be revised through rulemaking.

The Petitioner correctly points out that Region 4 has advised EPD that Georgia's "Excess Emissions" rule is not in accordance with EPA policy.⁷ However, EPA cannot properly object to a part 70 permit term that is derived from a federally approved SIP. Condition 6.2.11 of the Monroe Power permit is such a provision and is inherently a part of the "applicable requirement" as that term is defined in 40 CFR § 70.2. The Administrator may not, in the context of reviewing a potential objection to a title V permit, ignore or revise duly approved SIP provisions. See In re: Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Pet. No. VIII-00-1 (Nov. 16, 2000) at 23-24. For all of these reasons, the Petitioner has not demonstrated that the Monroe Power permit fails to comply with the requirements of the CAA and part 70 because of Condition 6.2.11, and the petition is denied with respect to this issue. Nonetheless, I am directing Region 4 to follow up on its comment to EPD regarding Georgia's "Excess Emissions" rule and to work with the State to ensure that any necessary revisions to the rule are made.

In addition, there are opportunities outside of the title V petition process for the Petitioner to pursue changes to Georgia's "Excess Emissions" rule. As with any rulemaking, the Petitioner is free to file an administrative petition with EPA requesting that the Agency require Georgia to revise the rule. See 5 U.S.C. § 553(e). The Petitioner ultimately could seek judicial review of EPA's decision on its petition following exhaustion. 42 U.S.C. § 7607(b).

I. Omitted Emission Units

Petitioner's comment: The Monroe Power permit does not address the fuel heaters, emergency generator and firewater pump. These units should be included in the permit along with emissions limits and monitoring and reporting requirements. This is especially important, because the CO limit is 250 tons per year. Thus, if these units emit a pound of CO, then this facility is a major source and its title V permit should require it to go through PSD permitting.

EPA's response: According to EPD, the facility does not include such emission units. A review of the title V permit application does not indicate that such emission units exist at the facility, and the Petitioner has not explained why it believes that such units exist. The Petitioner has not demonstrated that the permit does not comply with the CAA's requirements because it omits emission units, and the petition is therefore denied with respect to this issue.

V. CONCLUSION

⁷See Letter from Kay T. Prince, Chief, Air Planning Branch, EPA Region 4, to Ronald C. Methier, Chief, Air Protection Branch, EPD, Georgia Department of Natural Resources (May 9, 2002).

For the reasons discussed above and pursuant to section 505(b) of the CAA, 42 U.S.C. § 505(b), and 40 CFR § 70.8(d), I hereby deny the petition of GCLPI on behalf of the Sierra Club concerning the Monroe Power title V operating permit.

So ordered.

Dated: October 9, 2002

Christine Todd Whitman
Administrator