

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	ORDER RESPONDING TO
POUCH TERMINAL)	PETITIONERS' REQUEST THAT
)	THE ADMINISTRATOR OBJECT
Permit ID: 2-6402-00295/00003)	TO ISSUANCE OF A STATE
Facility DEC ID: 2640200295)	OPERATING PERMIT
)	
Issued by the New York State)	Petition No.: II-2005-07
Department of Environmental Conservation)	
_____)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

On October 26, 2005, the Environmental Protection Agency ("EPA") received a petition from the office of James P. Molinaro, President of the Borough of Staten Island, New York, ("Petitioner"), requesting that EPA object to the issuance of the final title V permit issued to the New York Power Authority's ("NYPA") Pouch Terminal, located on Lynhurst Avenue and Edgewater Street, in Staten Island ("Pouch Terminal" or the "facility").¹

The Pouch Terminal title V permit was issued by the New York State Department of Environmental Conservation ("NYSDEC" or "DEC") on October 15, 2005 pursuant to title V of the Act, the federal implementing regulations at 40 C.F.R. Part 70, and the New York State implementing regulations at 6 NYCRR § 201.

The Pouch Terminal is a power plant consisting of one simple-cycle gas turbine, located on Lynhurst Avenue and Edgewater Street, Staten Island, New York. It generates a maximum 47 megawatts of power. The turbine is equipped with selective catalytic reduction to control emissions of oxides of nitrogen (NOx), and catalytic oxidation to control emissions of carbon monoxide (CO).² Other on-site equipment includes the following: gas and air compressors, cooling tower, lube oil cooling system, water treatment and storage system, ammonia storage and injection system, raw water storage, heater boiler, backup generator, and auxiliary electrical systems. Also, there is a stack approximately 107 feet tall and 144 inches in diameter.

¹ On July 16, 2003, NYSDEC posted a Combined Notice of Complete application and Hearing for the draft title V permit, and on September 16, 2003, a public hearing was held (numerous adverse comments were received, mostly with regard to startup and shutdown exceedances; the deadline for public comments was subsequently extended until October 31, 2003). On July 18, 2005, NYSDEC issued the proposed Pouch Terminal title V permit and responded to comments ("Responsiveness Summary"). Under the Act, EPA has 45 days to object to the permit, and following EPA's 45-day review, the public has another 60 days to petition the Administrator. Accordingly, the deadline for filing a petition with EPA to object to the Pouch Terminal permit was November 1, 2005; the Petitioner timely filed a petition with the Administrator to object to the permit. See CAA Section 505 (b)(2) and 40 CFR 70.7(d), 70.8(c) and (d).

² The facility's potential to emit is limited to less than 25 tons per year (tpy) of NOx and 100 tpy of CO.

The facility is subject to the Acid Rain provisions of 40 C.F.R. Part 72, the New Source Performance Standards for stationary gas turbines, 40 C.F.R. Part 60, Subpart GG, and New York State DEC State Implementation Plan (SIP) requirements.³ The facility is also subject to a February 2001 State Facility Air Permit which authorized construction and operation of the facility.

Petitioner requests that EPA object to the Pouch Terminal permit on the following grounds: 1) NYPA performed an environmental impact statement (EIS) for the site, only because a lawsuit was brought against it by the community, and ignored the Sun Chemical company in performing the EIS; 2) statements made by applicant, regarding the facility's projected hours of operation, are conflicting; 3) NOx and CO emission limits originally pledged by NYPA are absent in the permit; 4) the public was not informed of the facility's documented air emission violations until after the public hearing; 5) amendment of the title V application to include "less restrictive" air emissions limitations was effected without any public involvement, and enforcement action against the facility, through two consent orders, involved no public participation; 6) DEC ignored the known industry fact that startups and shutdowns are the worst case situations; 7) acknowledgment by DEC of the facility's air emissions violations was due to the fact that this information was about to be divulged in the newspaper; 8) eighteen months passed before a DEC enforcement action was instituted for the violations to the facility's operating air permit; 9) the community living across the street from the plant should receive any and all information on environmental violations occurring at the facility; 10) in response to the facility's 18-month violations, NYPA provided no explanation why it stated "No Action is Needed;" 11) the air emissions under the proposed draft title V permit were less stringent than those under the state facility air permit; 12) it took a long time, 22 months, following the public hearing/comment period, before DEC released its Responsiveness Summary; and 13) DEC allowed more than 18 months, too long a time span, for the "shakedown" period. The Petitioner has requested that EPA object to the issuance of the Pouch Terminal permit, pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), for any or all of the above reasons.

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

Based on a review of all the information before me, including the January 2003 Order on Consent and the March 2005 Order on Consent, the Permit Review Report dated July 1, 2005, the Hearing Report and Response to Comments issued October 15, 2005, the final operating permit dated October 15, 2005, and the petition, including Attachments 1 through 8, dated October 26, 2005, I deny this petition for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

³ As discussed further in this Order, on January 22, 2003, NYSDEC further required the facility to limit facility emissions during startup and shutdown under a state Order on Consent, and on March 3, 2003, NYPA amended its title V application to include the requirements. On March 8, 2005, a second Order on Consent, issued under ECL Section 71-2103, imposed additional monitoring and reporting requirements for startup and shutdown events, and NYPA subsequently incorporated the additional monitoring, required by the second consent order, into the final permit.

Section 502(d)(1), 42 U.S.C. § 7661d(d)(1), of the Act calls upon each state to develop and submit to EPA an operating permit program to meet the requirements of title V of the CAA. EPA granted full approval to New York's title V operating program on February 5, 2002. *67 Fed. Reg.* 5216. Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a), 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, but it does require permits to contain monitoring, recordkeeping, reporting, and other conditions sufficient to assure compliance with applicable requirements and the requirements of Part 70. CAA § 504. *See 57 Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, states, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting them. 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 and that compliance with these requirements is assured.

Under CAA § 505(a) and 40 C.F.R. § 70.8(a), states are required to submit all proposed title V operating permits to EPA for review. CAA Section 505(b)(1) authorizes EPA to object if a title V permit does not contain provisions that assure compliance with all applicable requirements, including the requirements of the applicable State Implementation Plan (SIP). *See* 40 C.F.R. § 70.8(c)(1).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), states that if EPA does not object to a permit, any member of the public may petition EPA to take such action, and the petition shall be based on objections that were raised with reasonable specificity during the public comment period unless it was impracticable to do so, or grounds for such objection arose after such period. 40 CFR 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

ISSUES RAISED BY THE PETITIONER

In his petition, Petitioner raises a number of related and overlapping issues. For purposes of clarity, rather than restating each point presented in the petition, this Order combines certain of Petitioner's allegations and responds accordingly.

I. Petitioner states that absent a lawsuit brought against the NYPA by the Rosebank community of Staten Island, where the Pouch Terminal is sited, no Environmental Impact Statement (EIS) would have been prepared. Petition at page 3. In other words, the Petitioner notes that a lawsuit was brought by the Rosebank community of Staten Island which resulted in NYPA agreeing to file an EIS. Petitioner also states that in the EIS, NYPA failed to consider or take into

account the Sun Chemical facility, which is a major air pollution source within the immediate vicinity of the power plant. Petition at page 5.

Under Title V and EPA's implementing regulations, a permit must contain all federal requirements applicable to that source (generally referred to as "applicable requirements"), including emissions limits and monitoring requirements. See CAA §502(a), §504(a) and (c) 40 C.F.R. §70.1(b) and §70.6(a). The Environmental Impact Assessment (EIA) and its accompanying EIS are not applicable requirements, and therefore, would not be included in the permit.⁴ Likewise, issues concerning the EIA and EIS are outside the scope of the title V operating permit program; therefore, this claim is denied.

II. Petitioner also alleges that DEC provided contradictory bases for the prescribed emission limits. According to the Petitioner, NYPA represented at public meetings and in its literature to the community that the Pouch Terminal would only operate on an "as-needed basis," specifically, during potential brown-out periods, in the summertime. Petitioner further notes that, elsewhere, DEC stated that "at the time the original permit was issued, the emission limits assigned to the plants were based on steady-state operation." See Responsiveness Summary at pages 7-8. Petitioner believes these statements are contradictory. Petition at page 3.

EPA disagrees that these statements are contradictory to each other or are mutually exclusive. Because brown-out periods are random events, the NYPA, in submitting its permit application to the DEC, used emissions data that represent the worst possible scenario, consisting of a continuous operation that runs 24 hours a day and 365 days per year. DEC permitted the facility to operate continuously, if the need were to arise, without subjecting the facility to restrictive and arbitrary operating hours. The permit record for this facility shows that the Pouch Terminal facility operated fewer than 1500 hours in 2005. Thus, although the facility is permitted to operate continuously if necessary, it is intended to actually operate only on an as-needed basis, as stipulated in NYPA's permit application. Accordingly, Petitioner's allegation that the permit's statements that the emission limits are based on 'steady-state operation' while also asserting that the facility would only operate on an 'as-needed basis' are incompatible is without merit. For this reason, EPA denies the petition on this issue.

III. The Petitioner alleges that NYPA guaranteed in writing that emission limits at the facility would not exceed 2.5 parts per million (ppm) of NO_x, and 5 ppm of CO. Petition at page 3. According to Petitioner, these limits were not incorporated into the final title V permit.

With respect to NO_x, Condition 82 of the final permit limits NO_x emissions to 2.5 ppm. Thus, Petitioner's allegation is incorrect. With respect to the 5 ppm CO emission limit, EPA notes

⁴ Under the New York State Quality Review Act (SEQR) most projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a New York State agency or unit of local government, require an EIA. [N.Y. Env'tl. Conserv. Law §§ 3-0301(1)(b), 3-0301(2)(m) and 8-0113].

that this limit is indeed stated in the NYPA literature in the permit file⁵ but was not included in the final permit. However, state and federal regulations governing the operation of gas turbines prescribe no CO standard of performance. See 40 C.F.R. Part 60, Subpart GG (Standards of Performance for Stationary Gas Turbines); 6 NYCRR 227-2. Hence, there is no state or federal applicable requirement that limits a gas turbine's CO emissions. For this reason, EPA is not able to impose a CO emission limit on the source, notwithstanding the representations made by NYPA during the permitting process. Thus, EPA denies the petition on this issue.

IV. Petitioner asserts that the draft title V permit failed to include the facility's operational data and, as a result, the public remained ignorant of the facility's documented air emission violations until after the public hearing. Petition at page 3. Petitioner also addresses this issue in a letter to Mr. John Ferguson of the DEC, dated October 31, 2003. See Petitioner's Attachment # 4.⁶ In the referenced letter, Petitioner argues that the absence of operational data in the draft permit puts the Rosebank community at a disadvantage in presenting an effective case against the location of the Rosebank power plant.

40 C.F.R. § 70.6(a)(1) requires that each title V permit have "[e]mission limitations and standards including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." A facility's operational data (historical data) and air emission violations are part of a facility's operational record but are not required to be included in the permit. Rather, the facility's operational data constitute a part of the public record, which must be made available upon request at the time the draft permit is issued for public comment. The permit, at Item H, cites 6 NYCRR Part 201-1.10(b) and states, "The Department will make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to Section 503(e) of the Act, except for information entitled to confidential treatment pursuant to 6 NYCRR Part 616 – Public access to records and Section 114(c) of the Act." Also, all excess emissions arising at the facility are subject to publicly available deviation reports, which must be submitted semi-annually, or more frequently, as required by title V. See 6 NYCRR 201-6.5(c)(3). Thus, the facility's operational data were available for public review prior to and following the noticing of the draft permit.

The Petitioner states on page 2 of his letter to Mr. Ferguson, referenced above: "It was fortuitous when the public comment period was extended for 30 days. During that time, a Rosebank resident presented my office with a copy of nearly 18 months worth of Rosebank power plant air emissions." This information was not withheld from the public. The public was given the opportunity to access and evaluate the facility's operational data through the permit file, prior to submitting comments to the DEC, and prior to petitioning EPA to object to the permit. For this reason, EPA denies the petition on this issue.

⁵ NYPA's own literature, designated Attachment # 2 in petition, issued in support of installing 10 simple-cycle natural gas-powered generating plants, including the Pouch Terminal facility, represents that such generator units would be controlled with state of the art equipment to guarantee a 5 ppm CO emission limit.

⁶ Attachment # 4 is an October 31, 2003 letter from Petitioner to Mr. John Ferguson of the DEC. It primarily references excess emissions during periods of startups and shutdowns, beginning in 2001.

V. Petitioner states that between the time NYPA received the state operating permit application and the DEC's approval of the title V permit, DEC and NYPA entered into two consent orders.⁷ Petitioner alleges that the first consent order amended the title V application to include "less restrictive" air emissions limitations, and that both consent orders were issued without public involvement or notification, with no reason given as to why they were issued. Petitioner further alleges that DEC failed to afford the public an opportunity to review the facility's record, including 18 months worth of emissions violations. Petition at pages 3-4. Also, Petitioner infers that it was wrong for these enforcement actions to occur before any DEC decision was made concerning the draft title V permit. Petition at page 5. Petitioner's allegations regarding the state enforcement action and subsequent consent orders, and the public's access to the alleged emissions violations are addressed below.

On January 22, 2003, between the time of the submission of the initial NYPA title V permit application and the public hearing, NYSDEC issued the first consent order which requires the facility to comply with new, less restrictive emission limits applicable during startup and shutdown. Pursuant to the Pouch Terminal's state permit, its simple cycle gas turbine is subject to hourly emission limits of NO_x, CO, and NH₃. However, beginning with the first quarter of 2001 through the third quarter of 2002, quarterly emissions reports submitted to DEC, in accordance with the requirements of the facility's state permit issued on February 8, 2001, indicate that the facility had emissions of NO_x, NH₃, and CO that exceeded permit limits. Upon review of these excess emissions, DEC determined, "The facility has specific limitations during periods of start-up and shutdown. During start-up, the control equipment must be both 'warmed' and 'cycled' up to peak performance. Until the proper amount of exhaust flow has been achieved the control equipment is not operating at maximum efficiency. During shutdown, the control equipment must be turned off prior to the gas turbine. The gas turbine can't be switched off immediately; it must be 'cycled' down. During this 'cycle down' period, the amount of exhaust flow decreases to the point where the control equipment must be shutdown. However, the gas turbine must still fire a minimal amount of fuel for a brief period of time...." See Permit Review Report at pages 28-29. The federal and state regulations governing the operation of gas turbines under 40 C.F.R. Part 60, Subpart GG and Part 227, respectively, have no specific limits addressing emissions of these pollutants during startup and shutdown. The only federal requirement is a duty to minimize emissions at all times, including periods of startup, shutdown, and malfunction. See 40 C.F.R. §60.11(d). Therefore, the only specific emission limitations applicable to Pouch Terminal's turbine during startup and shutdown stem from the consent order and are state-only enforceable. DEC issued the January 22, 2003 Consent Order, limiting startup and shutdown periods to 30 minutes and 20 minutes, respectively, while setting emission limits for NO_x, CO, and NH₃ that mirrored the turbine's limitations during these periods. NYPA subsequently amended its title V permit application on March 3, 2003, to incorporate the terms of the first consent order.

Regarding Petitioner's allegation that both consent orders were issued without public involvement or notification, EPA notes that public involvement in state enforcement actions is

⁷ On January 22, 2003, NYSDEC issued the first consent order. The second consent order was issued on March 8, 2005.

governed by state law and New York limits public involvement. *See* 6 NYCRR 622.10(f)(3).⁸ Although the public was not given an opportunity to comment independently on the first consent order, the public was properly given an opportunity to comment, during the title V permitting process, on the incorporation of the consent order's requirements into the title V permit. *See* 40 C.F.R. § 70.7(h); 6 NYCRR § 621.6. The terms of the first consent order were incorporated into the draft permit. On September 16, 2003, DEC held a public hearing on the draft permit and, on October 31, 2003, Petitioner submitted additional comments on this draft permit. *See* Petitioner's Attachment 4. Thus, the process involving the issuance of the Pouch Terminal's first consent order did not hamper public participation in the title V permitting process.

The second consent order, issued March 2005, merely enhances the first consent order by requiring that, within 45 days of issuance, the facility must comply with the additional monitoring, recordkeeping, and reporting requirements set forth in the consent decree and must apply to amend its title V permit to include the requirements. The additional requirements impose more specific monitoring and reporting requirements for startup and shutdown, and obligate NYPA to report exceedances of either steady-state or startup and shutdown operations that NYPA might attribute to unavoidable malfunctions. EPA and state regulations specifically allow permitting authorities to revise permits to increase the frequency of the monitoring or reporting already required in an existing permit without public participation. *See* 40 C.F.R. § 70.7(d)(1)(iii) and 6 NYCRR § 201-6.7(b)(iii). For the reasons stated, EPA denies the petition on this issue.

Petitioner's allegation that it was wrong for these enforcement actions to occur before any DEC decision was made concerning the draft title V permit, is also without merit. Petitioner seems to suggest that, DEC, upon noticing the facility's emission exceedances, should have taken steps to prevent the facility from being permitted rather than taking enforcement action to bring the facility into compliance. Upon issuance of the first consent order, the facility amended the draft title V permit application to include new emission limits, and additional monitoring and reporting requirements during startup and shutdown activities. The new conditions imposed by the first consent order were subsequently included in the draft title V permit. As discussed above, the second consent order merely enhances the first consent order by imposing more specific monitoring and reporting requirements for startup and shutdown, and obligating NYPA to report exceedances of either steady-state or startup and shutdown operations that NYPA might attribute to unavoidable malfunctions. The requirements of both consent orders were later included in the final title V permit. Therefore, EPA finds no basis to support the Petitioner's argument that it was wrong for these enforcement actions to occur before any decision was made concerning the draft title V permit and denies the petition on this issue.

Finally, Petitioner's allegation that DEC did not provide the public with 18 months of emissions violations is incorrect and provides no basis for an EPA objection. The documents pertaining to an enforcement action, including the facility's emission violations, constitute a part of the permit record, and are therefore also publicly available during the permitting process. As referenced in section IV, a review of Petitioner's correspondence to Mr. John Ferguson of the DEC, dated October 31, 2003, demonstrates that the documentation of the alleged emissions violations

⁸ The provision cited by DEC, 6 NYCRR 622.10(f)(3), stipulates that intervention will only be granted where it is demonstrated that there is a reasonable likelihood that the petitioner's private rights would be substantially adversely affected by the relief requested and that those rights cannot be adequately represented by the parties to the hearing.

was accessible through the Pouch Terminal's title V permit record, and was made available to the public, upon request. In addition, DEC's Rules and Regulations pertaining to records access, at 6 NYCRR Part 616, provide that the public may gain access to a record upon submittal of a formal written request to DEC.⁹ The petition is therefore denied on this issue.

VI. Petitioner asserts that although DEC states that its review was always based on worst-case operating scenario, it ignored the known industry fact that startups and shutdowns are the worst case situations, especially to people living directly across the street from such a plant. Petition at pages 3 and 4.

Petitioner appears to be alleging that DEC failed to properly account for potential adverse impacts on the local community when it revised the facility's startup and shutdown emission limits. The Responsiveness Summary states that for the facility's worst-case operating scenario, DEC performed an air dispersion modeling with the assumption that the facility operates 8760 hours per year, and including the new startup and shutdown emission rates. *See* Responsiveness Summary, at page 5. DEC's review took into account, through the air dispersion modeling, the maximum potential emissions from the site's operation. Thus, DEC is correct in stating that its review was based on worst-case operating scenario, and EPA denies the petition on this issue.

VII. Petitioner states that the only reason DEC finally acknowledged any emissions violation or the existence of the first consent order was due to the fact that a local Staten Island newspaper informed DEC it was about to publish a story about the violations. Petition at page 4.

As discussed above, title V of the Act places the burden on the Petitioner to "demonstrate to the Administrator that the permit is not in compliance with the requirements" of the Act. The Petitioner's allegation here does not even allege a flaw, or potential flaw, in the permit, and therefore, there is no basis for EPA to object. For this reason, EPA denies the petition on this issue.

VIII. Petitioner states that eighteen months passed before a DEC enforcement action was instituted for the violations of the facility's operating permit and that there is no record of why DEC allowed the facility to continue to operate even though it was violating the terms of its permit (in one particular instance, five times in one day). Petitioner references Attachment # 4¹⁰ in support of this allegation. Petition at page 4. Petitioner also references the facility's air emissions data, covering the period October 2001 through March 2003, which showed that emission exceedances were specifically observed during startups and shutdowns. *See* Attachment # 4 of the petition.

Beginning with the first quarter of 2001 through the third quarter of 2002, quarterly emissions reports submitted to DEC, in accordance with the requirements of the facility's state permit issued on February 8, 2001, indicate that the facility had emissions of NOx, NH3, and CO

⁹ As stated above in section IV, a facility's emission violations are part of the public record.

¹⁰ See note 6, *supra*.

that exceeded steady-state permit limits.¹¹ Upon DEC review of these excess emissions, including later occurrences through March 2003, DEC determined that the facility has specific limitations during periods of start-up and shutdown.¹² Thus, based on its technical review, DEC issued the January 22, 2003 consent order, which addressed the Pouch Terminal's simple-cycle gas turbine technical limitations during startup and shutdown, by imposing specific startup and shutdown conditions on the turbine's operation. NYPA amended its July 17, 2002 title V permit application on March 3, 2003 to include the addition of the new conditions required by the consent order. *See* Responsiveness Summary, at page 1. Therefore, Petitioner's allegation that there is no record of why DEC allowed the facility to continue to operate with ongoing permit violations overlooks the fact that, during the period that these alleged violations occurred, DEC was investigating the causes of these excess emissions, and had ultimately determined that they were due to design limitations of the newly installed turbines. Because Petitioner failed to demonstrate that the permit is not in compliance with the requirements of the Act, EPA denies the petition on this issue. *See* CAA § 505(b)(2).

IX. Petitioner states that, given the adverse environmental concerns associated with the site, it is unconscionable that DEC chose not to consider the community living 100 feet from the plant as a significant stakeholder that should receive any and all information on environmental violations occurring across the street from where they live. Petition at page 4.

Permit Condition 42 requires the facility to submit an excess emissions report, semi-annually, to the EPA.¹³ Such reports include emissions violations, as well as excess emissions due to startup, shutdown, or malfunction, and are apart of the public record. In addition, permit Condition 5 requires the facility to report deviations to the DEC, as follows: "For emissions of a hazardous air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made within 24 hours of the occurrence. For emissions of any regulated air pollutant, excluding those listed in paragraph (1) of this section that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours."

40 C.F.R. § 70.6(a)(3)(C)(ii)(B) provides that all records pertaining to monitoring data, including those related to excess emissions, be retained for a period of 5 years. As discussed above in sections IV and V, records pertaining to excess emissions can be reviewed by the public upon request, pursuant to 6 NYCRR Part 201-1.10(b) and 6 NYCRR Part 616. Thus, any person may obtain a facility's excess emissions record by submitting a formal request to the DEC, and specifying the information that is sought. Petitioner's intimation that DEC should automatically forward to those living 100 feet from the plant any and all information pertaining to the facility's environmental violations is neither based on any New York SIP rule nor any title V statutory or regulatory requirement. For this reason, EPA denies the petition on this issue.

¹¹ DEC issued a Notice of Violation (NOV) to NYPA to address emissions exceedances beginning with the first quarter of 2001 through the third quarter of 2002. This NOV resulted in a \$ 200,000.00 civil penalty and an order to the NYPA to make payment of \$ 350,000.00 to fund environmental benefit projects in New York City.

¹² See section V where a more detailed account is given on the gas turbine's limitations during startup and shutdown.

¹³ The Pouch Terminal facility is subject to more stringent reporting requirements. NYPA has been required to submit quarterly monitoring reports to DEC, ever since the facility began operating.

X. Petitioner asserts that, upon reviewing the facility's 18-month operational record, NYPA responded that "No Action is Needed" with respect to each reported violation. Petitioner asserts that while, on the one hand, DEC provided no explanation of these recurring violations, it also failed to explain why the "No Action is Needed" was indeed the justified action. Petition at page 4.

DEC has addressed the Petitioner's concern by requiring monitoring and more detailed reporting under the January 2003 Consent Order. DEC states:

The original permit includes a provision from 6 NYCRR 201-1.4¹⁴ that outlines reporting requirements for startup and shutdown activities of the facility. Because startup and shutdown activities were originally permitted as a part of normal operation, NYPA reported these exceedances as 'no action is needed.' In the event of a malfunction that was beyond operator control, a more detailed explanation of the event is required to be forwarded to the NYSDEC.

See Responsiveness Summary, page 14. The regulations at 6 NYCRR 201-1.4 (a) further state "If a facility owner and/or operator is subject to continuous stack monitoring (as is the Pouch Terminal facility) and quarterly reporting requirements, he need not submit reports for equipment maintenance or startup/shutdown for the facility to the commissioner's representative." Thus, in the Pouch Terminal's quarterly reports (prior to the issuance of the January 2003 consent order) the facility owner attributed all exceedances that occurred during startup and shutdown periods as permitted activities and, further characterized these as "no action is needed." To strengthen overall reporting requirements, DEC issued the January 2003 consent order, requiring the facility's quarterly reports to include a discussion of each exceedance, including those related to startup and shutdown activities, with the detailed nature and magnitude of the exceedance, and the specific actions taken to correct the problem. Therefore, upon issuing the January 2003 consent order, DEC clarified any misunderstanding that might have existed with respect to the reporting requirements related to startup and shutdown activities. Further, in raising this issue, Petitioner failed to demonstrate that the permit is not in compliance with the requirements of the Act. *See CAA § 505(b)(2).*

XI. Petitioner asserts that the air emissions under the proposed draft title V permit, and approved by the DEC as part of the January 2003 consent order, were less stringent than those under the State Facility Air Permit. Petitioner states that no justification was given in the draft title V permit why the emission standards were lowered. Petitioner also references Attachment # 2, which guaranteed the plant would meet lower emission levels than those in the State Facility Air Permit. Petition at page 4.

This issue rejoins the discussion at section V, in which Petitioner argues that the January 22, 2003 consent order allowed for less restrictive air emissions. On February 8, 2001, DEC issued NYPA a State Facility Air Permit for the Pouch Terminal, authorizing construction and operation of the facility. NYPA also applied to the DEC for a title V operating permit on July 17, 2002. As

¹⁴ This provision is stated at Condition 54 of the final permit.

discussed in section VIII, upon reviewing the quarterly emission reports submitted by NYPA, beginning with the first quarter of 2001, DEC concluded that the facility could not meet its steady-state emission limits for NOx, NH3, and CO during startup and shutdown, due to the simple-cycle turbine design limitation. For this reason, DEC issued the January 2003 consent order that imposed new emission limits on the facility during startup and shutdown. As required by that order, NYPA amended its title V application on March 3, 2003 to request the addition of new emission limits at the plant during startup and shutdown. Subsequently, DEC posted a combined Notice of Complete Application and Hearing for the draft title V permit (the Notice) in the on-line Environmental Notice Bulletin on July 16, 2003. *See* Responsiveness Summary at page 1. Further, DEC issued a legislative hearing notice in the *New York Times*, on July 25, 2003, announcing that a hearing for the receipt of public comments would be held on September 16, 2003. Thus, the public notification and participation requirements were satisfied. *See* 40 C.F.R. § 70.7(h) and 6 NYCRR § 621.6. *See also* section V above. Therefore, Petitioner's claim that no justification was given in the draft title V permit for the new air emissions is denied on the basis that the desired information was made available through the public notification process. With respect to Petitioner's other comment, that NYPA had guaranteed lower emissions limits than those in the State Facility Air Permit, this issue was addressed in section III, above.

XII. Petitioner states that it took 22 months, following the public hearing/comment period, before DEC released its Responsiveness Summary. Petitioner opines that it took too long for the release of that document and, Petitioner continues, no reason was given why it took so long. Petition at pages 4 and 5.

On July 18, 2005, DEC issued the Pouch Terminal's Proposed title V Permit, along with its Responsiveness Summary, to the public and to EPA for review. Following the EPA's 45-day review period, during which no objections were raised, DEC issued the final permit. If EPA does not object to the permit during the 45-day review period, the public has another 60 days after the expiration of the 45-day review period to petition the Administrator. 40 C.F.R. §70.8 (d). The instant petition was filed during the 60-day public review period. There are no SIP or other federal requirements governing the timeliness of the Responsiveness Summary or Response to Comments. In this case, the Responsiveness Summary's release date to the public did not contravene the public participation process, specified at 40 C.F.R. §70.7(h). In turn, the Petitioner had timely access to the Responsiveness Summary and was therefore not deprived of necessary information pertaining to the preparation of the instant petition. While DEC might have elected to issue the Responsiveness Summary at an earlier date, its concurrent issuance with the Proposed Permit does not violate any title V statutory or regulatory requirement. For this reason, EPA denies the petition on this issue.

XIII: Petitioner notes that where EPA allows a period of up to the first six months of operation as the 'shakedown' period, DEC allowed more than 18 months. Petitioner charges that no justification was provided as to why DEC granted NYPA triple the amount of time than what a federal agency allowed. Petition at page 5.

Regarding Petitioner's comment that DEC allowed NYPA more than 18 months to collect operating emission data during startup and shutdown (before the appropriate startup and shutdown permit emission rates could be determined), this issue was discussed in sections VIII and X. In brief, the emission reports indicated NOx, NH3, and CO exceedances beginning the first quarter of 2001 through the third quarter of 2002, during startup and shutdown periods. To reiterate section VIII, during that period that these alleged violations occurred, DEC was investigating the causes of these excess emissions and ultimately determined that they were due to design limitations of the newly installed turbines.

Petitioner's allegation regarding the violation of the six-month 'shakedown' period is a reference to 40 C.F.R. § 60.8(a) which requires performance testing on affected emission sources, such as the Pouch Terminal, no later than 180 days (6 months) after initial startup of such facility. EPA's files contain a record pertaining to the approval of an amended stack test, dated October 5, 2001, for the Pouch Terminal facility, indicating that the facility complied with the requirements of 40 C.F.R. § 60.8 (a). For these reasons, EPA finds no ground to object to the length of time pertaining to DEC's investigation into the startup and shutdown emission exceedances and denies the petition on this issue.

CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), I deny the petition requesting an objection to the issuance of the Pouch Terminal title V permit.

JUN 23 2008

Date



Stephen L. Johnson
Administrator