

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
)	PETITION No. V-2015-02
WAUPACA FOUNDRY, INC. PLANT I)	
WAUPACA COUNTY, WISCONSIN)	ORDER RESPONDING TO THE
)	JUNE 25, 2015, REQUEST FOR
PERMIT NO. 469033730-P10)	OBJECTION TO THE ISSUANCE OF
)	A TITLE V OPERATING PERMIT
ISSUED BY THE WISCONSIN)	
DEPARTMENT OF NATURAL RESOURCES)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

This Order responds to issues raised in a petition from Philip Nolan (the Petitioner) to the U.S. Environmental Protection Agency (EPA) dated June 25, 2015 (the Petition), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The Petition requests that the EPA object to the proposed operating permit no. 469033730-P10 (the Proposed Permit) issued by the Wisconsin Department of Natural Resources (WDNR) to the Waupaca Foundry, Inc. Plant I (Waupaca Plant I or the facility), a gray iron foundry in Waupaca County, Wisconsin. The operating permit was proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Wis. Stat. §§ 285.60–285.69. *See also* the EPA’s implementing regulations at 40 C.F.R. part 70. This type of CAA operating permit is also referred to as a title V permit or part 70 permit.

I. INTRODUCTION

Based on a review of the Petition and other relevant materials, including the Proposed Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further below, I deny the Petition requesting that the EPA object to the Proposed Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(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 and the EPA’s implementing regulations at 40 C.F.R. part 70. The EPA granted full approval of Wisconsin’s title V operating permit program on December 4, 2001. 66 Fed. Reg. 62951. This program, which became effective on November 30, 2001, is codified at Wis. Stat. §§ 285.60–285.69 and Wis. Adm. Code §§ 407.01–407.16.

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

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements or the 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 proposed 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, CAA § 505(b)(2) 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 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. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*). 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) document.

The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," to determine whether a petition demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty to object where such a demonstration is made. *NYPiRG*, 321 F.3d at 333; *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that 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 obligated to grant a petition to object under CAA § 505(b)(2) only when the Administrator determines that the petitioner has 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 ("[Section 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); *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 have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a standard of review deferential to the agency. *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's 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 Nos. 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 a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the RTC), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33; *see also In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 (December 14, 2012) at 20–21 (denying title V petition issue where petitioners did not respond to state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 (June 22, 2012) at 41 (denying title V petition issue where petitioners did not acknowledge or reply to state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient). Another factor the EPA has examined is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for 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"); *In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 (Sept. 21, 2011) 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 No. 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 a petitioner did not address a key element of a particular issue, the petition should be denied. *See, e.g., In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station*, Order on Petition Number: VIII-2010-XX (June 30, 2011) at 7–10; *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.

C. Regulation of Hazardous Air Pollutants

Section 112 of the CAA establishes the federal requirements for regulating emissions of hazardous air pollutants (HAP). CAA § 112(b) contains an initial list of HAPs, including benzene. CAA § 112(c) requires EPA to list certain sources that emit HAPs, and section 112(d) requires the EPA to promulgate emission standards to regulate HAPs from listed source categories. These standards are known as National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA is required to set standards for major sources based on the maximum available control technology (MACT), and such standards are therefore also known as MACT standards. NESHAP are promulgated for listed source categories and codified in 40 C.F.R. part 63. For example, the NESHAP for Iron and Steel Foundries are located at 40 C.F.R. part 63, subpart EEEEE. Where a source is subject to the subpart EEEEE NESHAP, these standards are applicable requirements for title V purposes, and applicable provisions of these standards must be included in a source’s title V permit.

III. BACKGROUND

A. The Waupaca Foundry Plant 1 Facility

Waupaca Foundry, Inc. (formerly ThyssenKrupp Waupaca) is headquartered and owns three iron foundries in the city of Waupaca, Waupaca County, Wisconsin. Waupaca Foundry Plant 1 is the facility subject to this Petition. Although Waupaca Foundry, Inc. owns two other foundries (Plants 2 and 3) in Waupaca County, Wisconsin, these facilities are co-located on a separate property roughly two miles from Plant 1. Plant 1 operates under a separate title V permit from Plants 2 and 3. Plant 1 produces gray iron castings for agriculture, construction, commercial vehicle, material handling, hydraulics, power tools, and power transmission markets. Plant 1 uses a cupola to melt iron. The exhaust gases from the cupola flow through the following air pollution control system components in series: an oxidizer to control carbon monoxide and volatile organic compound emissions, a dry scrubber to control sulfur dioxide emissions, and a baghouse equipped with a bag leak detection system to control particulate matter emissions. Other operations at the facility include pouring and mold operations, multiple grinding operations, natural gas fired emergency generators, and various sand handling processes.

B. Permitting History

WDNR issued an initial title V permit for Waupaca Foundry Plant 1 on April 29, 2003. On April 30, 2007, Waupaca Foundry submitted a renewal application to WDNR. WDNR issued and published notice of the draft renewal permit (Draft Permit) on February 13, 2015, along with a Preliminary Determination for the Draft Permit. On March 13, 2015, Philip Nolan submitted written comments and testified at a public hearing on the Draft Permit. On April 2, 2015, WDNR submitted the Proposed Permit to the EPA for its 45-day review period. Along with the Proposed Permit, WDNR also issued a RTC Memorandum dated April 2, 2015. The EPA's 45-day review period on the Proposed Permit ended on May 16, 2015. The EPA did not object to the Proposed Permit. On May 19, 2015, WDNR issued the final title V renewal permit (Final Permit) for Waupaca Foundry Plant 1.

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator to object to the permit within 60 days after the expiration of the 45-day review period. 42 U.S.C § 7661d(b)(2). The 60-day public review period ran until July 15, 2015. The Petition, titled "Appeal to EPA to Reconsider its Decision Not To Object To Permit 469033730-P10," was dated June 25, 2015, and therefore the EPA finds that the Petition was timely filed.

IV. ISSUES RAISED BY THE PETITIONER

Petitioner's Claim: The Petitioner's central claim is that the renewal permit allows Waupaca Foundry Plant 1 to emit HAP in excess of 4.59 $\mu\text{g}/\text{m}^3$. Petition at 1. The Petitioner also claims that "Waupaca Foundry's emission concentration exceeds NESHAP." Petition at 2. The Petitioner raises various specific issues related to this claim involving HAP emissions.

First, the Petitioner makes various assertions relating to federal statutes and regulations concerning HAP emissions. The Petitioner contends that "EPA has exercised discretion, has disregarded ¶63.7765 of 40 CFR 63 Subpart EEEEE. EPA has disregarded the definitions and prescribed procedures of s. 112(b)." Petition at 1. The Petitioner also asserts that "Region 5 EPA claimed that s. 112 does not apply because Wisconsin has been delegated authority to regulate HAP under 40 CFR 63 Subpart EEEEE MACT. This claim appears incorrect because Subpart EEEEE, ¶63.7765 incorporates Section 112(b)." Petition at 1 (citing Petition Exhibit 2).

The Petitioner then turns to his request that the EPA conduct a risk and technology review. The Petitioner claims that "EPA must be able to show that its discretionary disregard of ¶63.7765" is "substantiated objectively by EPA Residual Risk Review and Technology Review (RRR/TA)." Petition at 1. The Petitioner claims that "within eight years of promulgating any NESHAP/MACT EPA implements RRR/TA." Petition at 1. The Petitioner also claims that "new credible evidence [relating to the Foundry's alleged health impacts] makes it incumbent on EPA to implement further RRR/TA" Petition at 2. The Petitioner concludes that an "RRR/TA assessment of the credible evidence should provide EPA the reasonable basis needed for objection." Petition at 2.

Next, the Petitioner makes a number of assertions relating to the health effects of the Waupaca Foundry's HAP emissions. The Petitioner first claims that "According to the Clean Air Act s. 112(b) any concentration greater than 4.59 $\mu\text{g}/\text{m}^3$ creates human inhalation risk for cancer greater than [1 in 100,000]." Petition at 1. The Petitioner asserts that "Waupaca Foundry HAP emissions creates for Waupaca County concentrations much greater than 4.59 $\mu\text{g}/\text{m}^3$." Petition at 1. The Petitioner also claims that "Waupaca County's excess Leukemia / Non Hodgkins Lymphoma mortality rates are attributable to these intolerable concentrations." *Id.* Among other things, the Petitioner claims that these alleged health impacts "justify EPA's objection to this renewal permit" and that disregarding these alleged health impacts would "contravene the Act." Petition at 1, 2. The Petitioner repeatedly cites to "CASRN 71-43-2 / IRIS Screening and Assessment" and its dose-response methodology in support of this claim, and challenges the technical validity of AERMOD modeling. *See* Petition at 1, 2-3 (footnote).

Finally, the Petitioner claims that "The final correct renewal permit should incorporate a plan for the strategic, cooperative, profitable beneficial reuse of Waupaca Foundry's air-waste emissions," which the Petitioner alleges could "marshall [sic] available technology" in an economically feasible manner. Petition at 2.¹

EPA's Response: For the reasons discussed below, I deny the Petitioner's request for an objection, on the grounds that the Petitioner has not demonstrated that the Waupaca Plant 1 permit is not in compliance with applicable requirements of the CAA.

As an initial matter, many of the central claims alleged by the Petitioner—specifically, the claims involving CAA § 112, the subpart EEEEE NESHP, and the request that the EPA conduct an RTR—were not raised with reasonable specificity during the public comment period, as required by CAA § 505(b)(2) and 40 C.F.R. § 70.8(d). In addition, the Petitioner has not demonstrated that it was impracticable to raise such objections during the comment period, and there is no basis for finding that grounds for such objection arose after that period. A title V petition should not be used to raise issues to the EPA that the State has had no opportunity to address, and the requirement to raise issues "with reasonable specificity" places a burden on the petitioner, absent unusual circumstances, to adduce before the State the evidence that would support a finding of noncompliance with the Act. *See, e.g.,* 56 Fed. Reg. 21712, 21750 (1991); *In the Matter of Luminant Generation Co. – Sandow 5 Generating Plant*, Order on Petition No. VI-2011-05 (Jan. 15, 2013) at 5. In sum, because the public comments did not include any discussion of the Petitioner's claims involving CAA § 112 and the subpart EEEEE NESHP, WDNR had no opportunity to consider and respond to those claims. The Petitioner cannot raise these claims now. Therefore, the EPA has grounds to deny the Petition as to these issues that were not raised with reasonable specificity during the public comment period.

¹ The Petitioner also alleges (without elaboration) that "Waupaca Foundry is a major source comprised of two Title V operations under common control. Both operations are in contiguous areas of the City of Waupaca, WI." Petition at 1. While the Petitioner provides no explanation for this statement, the Petition only concerns the title V permit for Waupaca Plant 1.

To the extent that the Petitioner raised specific issues in the Petition during the comment period, the EPA finds additional grounds to deny the Petitioner's request that the EPA object to the permit. The Petitioner's specific allegations are addressed further below.

CAA Section 112 and the Iron and Steel Foundries NESHAP

Much of the Petition is focused around the claim that, "According to the Clean Air Act s. 112(b) any concentration greater than $4.59 \mu\text{g}/\text{m}^3$ creates human inhalation risk for cancer greater than [1 in 100,000]." Petition at 1. The Petitioner's characterization of section 112(b) is incorrect. Section 112(b) does not address concentration values but merely contains an initial list of HAP and provisions relating to modification of that list. Moreover, nothing in CAA § 112 or the subpart EEEEE NESHAP references the concentration value that the Petitioner cites. The concentration value that the Petitioner cites appears to be based on an informational risk assessment document.² Overall, the Petitioner does not demonstrate how the $4.59 \mu\text{g}/\text{m}^3$ concentration level is associated with any specific applicable requirement under the CAA. Under CAA § 505(b)(2), a petitioner must demonstrate that "the permit is not in compliance with the requirements" of the CAA before the EPA will object to the permit. 42 U.S.C. § 7661d(b)(2). Moreover, under section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA. *MacClarence*, 596 F.3d at 1130-33; *Sierra Club v. Johnson*, 541 F.3d at 1266-267; *Citizens Against Ruining the Environment*, 535 F.3d at 677-78; *Sierra Club v. EPA*, 557 F.3d at 406; *Whitman*, 321 F.3d at 333 n.11. The Petitioner has not made this demonstration here with respect to the $4.59 \mu\text{g}/\text{m}^3$ concentration or as to any of the Petitioner's other claims involving HAP emissions from the Waupaca Plant 1 facility.

Regarding the Petitioner's assertions that the EPA "disregarded" certain CAA § 112 or subpart EEEEE provisions, the only citations that the Petitioner provides are CAA § 112(b) and 40 C.F.R. § 63.7765. As noted above, CAA § 112(b) contains an initial list of HAP subject to regulation. It does not include requirements that apply directly to sources. Further, 40 C.F.R. § 63.7765 contains the definitions applicable to the subpart EEEEE NESHAP for Iron and Steel Foundries; this section does not contain any substantive requirements. The Petitioner does not explain how the EPA allegedly "disregarded" any of these provisions.

Regarding the Petitioner's other contentions involving CAA § 112, the Petitioner mischaracterizes the relationship between CAA § 112 and 40 C.F.R. part 63 subpart EEEEE. Although subpart EEEEE was promulgated pursuant to CAA § 112(d), subpart EEEEE does not technically "incorporate" section 112 as the Petitioner claims. The Petitioner does not identify any specific procedure or component of CAA § 112 or any other applicable requirement that is "incorporated" by subpart EEEEE but not adequately addressed by the facility's operating permit. As noted above, applicable requirements from individual section 112 standards, including the subpart EEEEE NESHAP, are included within individual title V operating permits.

² The Petitioner cites to "CASRN 71-43-2 / IRIS Screening and Assessment." It appears that the $4.59 \mu\text{g}/\text{m}^3$ concentration is based on an Integrated Risk Information System (IRIS) assessment for benzene. IRIS is an EPA program designed to identify and characterize health hazards of toxic chemicals found in the environment. The risk levels included in IRIS assessments, however, do not carry independent legal weight and are not directly linked to CAA § 112, subpart EEEEE regulations, or any other federally enforceable permit terms. Therefore, any numerical concentration thresholds found in IRIS risk assessments are not "applicable requirements" under the CAA that must be addressed in a title V operating permit.

including the Waupaca Plant 1 permit. The Petitioner has not provided any analysis that the facility's title V permit terms and conditions incorporating the subpart EEEEE NESHAP requirements applicable to the facility are inadequate. *See* Final Permit at 17, 36, 43, 64, 79, 84-109. Finally, the Petitioner does not explain how the "Waupaca Foundry's emission concentration exceeds NESHAP." Petition at 2. Therefore, in addition to failing to raise these issues with reasonable specificity in public comments, the Petitioner has not demonstrated that the Waupaca Foundry Plant 1 permit is not in compliance with the CAA.

Risk and Technology Review

The Petitioner asserts that new credible evidence justifies a Residual Risk Review and Technology Review. The EPA conducts Residual Risk Reviews of MACT standards pursuant to CAA § 112(f)(2) and technology reviews of all section 112 standards pursuant to section 112(d)(6). These provisions address the timing and scope of such reviews, which are commonly conducted simultaneously and referred to collectively as a Risk and Technology Review (RTR). In an RTR, EPA evaluates the existing NESHAP for the entire source category. To the extent that the Petitioner is requesting that the EPA conduct an RTR for subpart EEEEE, such a request does not provide a basis for the EPA to object to the issuance of a title V permit. As discussed above in Section II.B, the Administrator shall grant a petition to object to the issuance of a title V operating permit if the Petitioner demonstrates that the permit is not in compliance with a federally applicable requirement. *See* 42 U.S.C. § 7661d(b)(2). The EPA's part 70 regulations implementing the title V program define "applicable requirement" to include various CAA standards and requirements "as they apply to emissions units in a part 70 source." 40 C.F.R. § 70.2. While this definition includes standards and requirements established under CAA § 112, it only includes these requirements "as they apply to emissions units in a part 70 source," such as the subpart EEEEE standards that apply to individual sources and are included within individual title V operating permits. Other more general requirements under section 112, such as those requiring the EPA to review the existing standards for an entire source category, are not requirements that apply to specific emissions units at a particular source. Therefore, the duty to conduct an RTR is not an applicable requirement for purposes of an individual source's title V permit. Consequently, in addition to failing to raise this issue with reasonable specificity in public comments, the Petitioner has not demonstrated that the Waupaca Foundry Plant 1 permit is not in compliance with applicable requirements of the CAA. *See, e.g., In the Matter of Gateway Generating Station*, Order on Petition No. IX-2013-1 (Oct 15, 2014) at 12-14; *In the Matter of Formaldehyde Plant, Borden Chemical, Inc.*, Order on Petition No. 6-02-01 (Sept. 30, 2002) at 34-36.

Health Impacts, Modeling, and Emission Controls

The Petitioner raises a number of specific claims involving the health impacts of the facility's permitted benzene emissions. First, to the extent that the Petitioner claims to show a connection between the Waupaca facility's HAP emissions and the allegedly increased cancer risk in Waupaca County, the Petitioner does not demonstrate how this health outcome is related to any CAA requirements applicable to Waupaca Plant 1. *See, e.g., In the Matter of BP Exploration (Alaska), Inc. Gathering Center #1*, Order on Petition (Apr. 20, 2007) at 9-10.

To the extent that the Petitioner challenges the adequacy of specific modeling protocols (e.g. AERMOD) or risk assessments, the Petitioner does not cite to any federally applicable requirements related to this modeling or risk assessment. Instead, it appears that all HAP modeling and risk analysis in this permit was conducted by WDNR according to state-only regulations—specifically, NR 445.08.³ These regulations are not part of Wisconsin’s SIP, are not applicable requirements under title V, and are therefore not appropriate to address in a title V petition. *See, e.g., In the Matter of Bioenergy, LLC*, Order on Petition No. 1-2003-01 (Oct. 27, 2006) at 15.

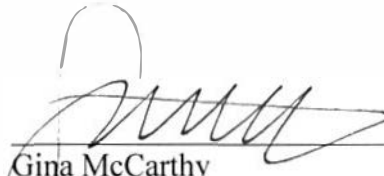
Finally, the Petitioner does not support his suggestion that the permit should incorporate a plan for the recycling of the facility’s air emissions with any citation or analysis. The Petitioner neither identifies any applicable requirement that would require such a recycling plan or other technology-based emissions controls, nor discusses any specific controls or practices that could be used by the facility. Therefore, the Petitioner has not demonstrated that the permit is not in compliance with applicable requirements of the CAA, and the EPA has no grounds for objection.

V. 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 Petition requesting that the EPA object to the Proposed Permit.

Dated:

July 14, 2016


Gina McCarthy
Administrator

³ See Correspondence from Carol V. Crawford, P.E. to Imelda Hofmeister, *Public Hearing Summary and Response to Comments on the Preliminary Determination for Waupaca Foundry Inc. Plant 1*, at 9 (April 2, 2015).