

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	PETITION NO. IV-2016-11 AND
)	IV-2017-17
)	
GALLATIN FOSSIL PLANT)	ORDER RESPONDING TO
SUMNER COUNTY, TENNESSEE)	PETITIONS REQUESTING
)	OBJECTION TO THE ISSUANCE OF
PERMIT No. 561209)	A TITLE V OPERATING PERMIT
)	
ISSUED BY THE TENNESSEE DEPARTMENT OF)	
ENVIRONMENT AND CONSERVATION)	

ORDER DENYING PETITIONS FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received two petitions from Sierra Club (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The first Petition, dated August 8, 2016, (2016 Petition) requests that the EPA object to the proposed operating permit no. 561209 (2016 Proposed Permit) issued by the Tennessee Department of Environment and Conservation (TDEC) to the Tennessee Valley Authority (TVA) for its coal-fired power plant in Gallatin, Sumner County, Tennessee (the Gallatin facility or Gallatin). The second Petition, dated November 20, 2017, (2017 Petition) requests that the EPA object to the proposed significant title V permit modification no. 561209 (2017 Revised Permit) issued by TDEC to TVA. These operating permits were proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Tennessee Comprehensive Rules & Regulations (Tenn. Comp. R. & Regs) 1200-03-09-.02(11) and 1200-03-09-26. *See also* 40 C.F.R. part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

As discussed further below, both Petitions relate to the same equipment in the Gallatin facility and address substantially similar claims; therefore, the EPA found it to be significantly more efficient to resolve those claims in a single order, rather than two separate orders. Thus, this Order responds to both of the Petitions. Based on a review of the Petitions and other relevant materials, including the 2016 Proposed Permit and 2017 Revised Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further below, the EPA denies both Petitions.

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 interim approval to Tennessee for its title V (part 70) operating permits program on July 29, 1996. 61 Fed. Reg. 39335. The EPA granted full approval to Tennessee for its operating permit program on November 14, 2001. 66 Fed. Reg. 56996. The regulations in Tennessee's federally approved title V program are codified in Tenn. Comp. R. & Regs. 1200-03-09-.02(11) and 1200-03-09-26.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. CAA §§ 502(a), 504(a), 42 U.S.C. §§ 7661a(a), 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); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). 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." 57 Fed. Reg. at 32251. 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 found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, 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. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

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).¹ Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.²

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. *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."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 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)).³ 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 deferential standard of review. *See, e.g., MacClarence*, 596 F.3d at 1130–31.⁴ Certain aspects of the petitioner's demonstration burden are discussed below; however, a more detailed 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 at 4–7 (June 19, 2013) (*Nucor II Order*).

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 response to comments, or RTC), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.⁵ Another factor the EPA has examined is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner

¹ *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

² *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *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); *c.f. NYPIRG*, 321 F.3d at 333 n.11.

³ *See also 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)).

⁴ *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

⁵ *See also, e.g., In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *In the Matter of Georgia Power Company*, Order on Petitions, at 9–13 (January 8, 2007) (*Georgia Power Plants Order*) (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

does not, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress' express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 (“[T]he Administrator’s requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.”).⁶ Relatedly, the EPA has pointed out in numerous orders that, in particular cases, general assertions or allegations did not meet the demonstration standard. *See, e.g., In the Matter of Luminant Generation Co. – Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (Jan. 15, 2013).⁷ Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).⁸

The information that the EPA considers in making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) on a proposed permit generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement of basis for the draft and proposed permits; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; relevant supporting materials made available to the public according to 40 C.F.R. § 70.7(h)(2); and all other materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered as part of making a determination whether to grant or deny the petition.

III. BACKGROUND

A. The TVA Gallatin Facility

Gallatin is an electric generating facility located at 1499 Steam Plant Road, Gallatin, Sumner County, Tennessee. This facility is owned by TVA, which is a federally owned corporation created by a congressional charter in 1933 to provide, among other things, electricity generation. Gallatin's title V permit describes it as a “Coal Fired Steam Electric Generating Plant,” with four

⁶ *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition, at 7 (June 20, 2007) (*Portland Generating Station Order*).

⁷ *See also Portland Generating Station Order* at 7 (“[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement].”); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (April 20, 2007); *Georgia Power Plants Order* at 9–13; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

⁸ *See also In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station*, Order on Petition No. VIII-2010-XX at 7–10 (June 30, 2011); *Portland Generating Station Order* at 5–6; *Georgia Power Plants Order* at 10.

coal-fired boilers with a nameplate capacity of 1,255 megawatts. Gallatin Permit at 1. The facility's title V permit covers the coal-fired boilers, natural gas or oil-fired combustion turbines, a coal handling facility, an ash handling process storage silo, a rail car thawer, a gas-fired heater, an auxiliary boiler, control equipment, material handling and storage, a coal combustion product landfill, and an emergency diesel generator. Gallatin permit at 1.

B. Permitting History

TDEC issued the facility's initial title V Permit (Permit No. 546307) on February 24, 2003. On August 24, 2007, TDEC received a renewal application (and on December 17, 2009, TDEC received an acid rain permit application) from TVA for the Gallatin facility. TDEC published public notice of a draft renewal permit on February 12, 2016, and the Petitioner submitted comments on March 11, 2016. TDEC submitted a proposed renewal permit to the EPA on May 13, 2016 (2016 Proposed Permit). The EPA's 45-day review period on the proposed permit expired on June 27, 2016, and TDEC issued the final renewal permit on June 30, 2016 (2016 Final Permit).

TDEC published public notice of a draft significant modification permit on July 7, 2017, and the Petitioner submitted comments on August 9, 2017. TDEC submitted a proposed significant modification permit to the EPA on September 21, 2017 (2017 Proposed Permit). The EPA's 45-day review period of the proposed permit expired on November 5, 2017, and TDEC issued the final significant modification on November 6, 2017 (as noted above, 2017 Revised Permit).

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 within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period for the 2016 Proposed Permit expired on June 27, 2016. Thus, any petition seeking the EPA's objection to the 2016 Proposed TVA Permit was due on or before August 26, 2016. The Petition was filed on August 8, 2016, and, therefore, the EPA finds that the Petitioner timely filed the 2016 Petition.

The EPA's 45-day review period for the 2017 Revised Permit expired on November 5, 2017. Thus, any petition seeking the EPA's objection to the 2017 Revised Permit was due on or before January 4, 2018. The Petition was filed November 20, 2017, and, therefore, the EPA finds that the Petitioner timely filed the 2017 Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

The Petitioner requested that the Administrator object to the Gallatin permits because the Petitioner alleges the 2016 Proposed and 2017 Revised Permits do not comply with the CAA and implementing regulations at 40 C.F.R. part 70. Because, as noted previously, some of the claims in the 2017 Petition are substantially similar to claims in the 2016 Petition, the Order groups these related claims together. Specifically, the Petitioner's claims include the following:

- (A) With respect to monitoring requirements, the Petitioner alleges that:
- 1) in the 2016 Petition, that the 2016 Proposed Permit fails to include monitoring requirements adequate to ensure compliance with the requirements for opacity, particulate matter (PM), and fugitive dust; and
 - 2) in the 2017 Petition, that even with the changes made to the 2016 Proposed Permit, the 2017 Revised Permit also fails to include monitoring requirements adequate to ensure compliance with the requirements for opacity and PM;
- (B) With respect to a Consent Decree that TVA entered into in 2011 with several states and the EPA⁹ (Consent Decree), the Petitioner alleges in the 2016 Petition that the 2016 Proposed Permit fails to incorporate reporting requirements to ensure compliance with the Consent Decree;
- (C) With respect to startup/shutdown provisions, the Petitioner alleges in the 2016 Petition that the 2016 Proposed Permit includes startup/shutdown provisions that are inconsistent with the CAA; and
- (D) With respect to the sulfur dioxide (SO₂) limit, the Petitioner alleges
- 1) in the 2016 Petition that the 2016 Proposed Permit imposes an unreasonably permissive limit for SO₂; and
 - 2) in the 2017 Petition, that even with the changes made to the 2016 Proposed Permit, the SO₂ limit in the 2017 Proposed Permit fails to ensure the one-hour NAAQS is protected based on the averaging period. For the reasons explained below, the EPA denies the Petitioner's request for an objection on any of these claims.¹⁰

Claim A.1 (2016 Petition): Petitioner's Claims that Permit Compliance Evaluation Requirements in 2016 Proposed Permit Are Impermissibly Lax for Opacity, PM, and Fugitive Dust.

This claim is found in Section II.A, pages 6-8 of the 2016 Petition.

Petitioner's Claim: The Petitioner claims generally that the permit lacks adequate monitoring to assure compliance with the SIP-based opacity, PM, and fugitive dust emission limits, and therefore is inconsistent with the compliance monitoring requirements of 40 C.F.R. §§70.6(c)(1) and (a)(3). 2016 Petition at 6. With respect to opacity, the Petitioner claims that the TVA Gallatin facility is subject to an opacity limit of 20 percent, with compliance demonstrated by conducting visual inspections twice per year. *See* 2016 Proposed Permit Condition E3-8. The Petitioner asserts that twice per year visual inspections are not sufficient to demonstrate compliance with a limit that applies at all times. Further, the Petitioner asserts that the permit "creates an exception for an already impermissibly lenient standard" by excusing visual

⁹ Consent Decree in *Alabama v. Tennessee Valley Authority*, Civil Action No. 3:11-cv00170, ¶ 107 (E.D. Tenn., June 30, 2011), available at <http://www2.epa.gov/sites/production/files/documents/tvacoal-fired-cd.pdf>.

¹⁰ In the opening section of its 2016 Petition, the Petitioner also states that "TDEC has offered no response [to Petitioners' comments on the Draft Permit]." Petition at 2. The Petitioner does not further address that assertion, and does not rely on it to support any of the four sets of claims asserting permit inadequacies that the Petitioner makes in its 2016 Petition. Accordingly, it is not necessary for the EPA to respond to this assertion. In any event, TDEC did in fact respond to Petitioner's comments on the Draft Permit. *See* TDEC, "Title V Permit Statement" (May 13, 2016), at 10-12 (in Statement of Basis and Purpose for Gallatin Permit, TDEC responds to the four sets of claims by Sierra Club).

inspections whenever a valid reading cannot be made due to merging plumes or other reasons. *Id.* The Petitioner asserts that this exception is not only impermissibly vague, but it also could result in evaluating opacity even less frequently than twice a year. 2016 Petition at 6-7. Additionally, the Petitioner claims that this is “especially egregious” given the availability of a Continuous Opacity Monitoring System (COMS), which provides more accurate data. 2016 Petition at 8.

Similar to its arguments regarding opacity, the Petitioner asserts that the “proposed permit similarly requires improperly infrequent compliance monitoring for both PM and fugitive dust.” 2016 Petition at 7. The Petitioner claims the proposed permit includes a PM standard of 0.100 pounds per million British thermal units (lb/MMBtu) of heat input until December 31, 2017, when the standard becomes 0.030 lb/MMBtu as required by the 2011 Consent Decree. According to the Petitioner, “[d]espite these standards being based on an hourly calculation, see Tenn. Comp. R. & Regs. 1200-03-06-.02, the proposed permit contemplates compliance demonstration through only annual stack testing.” 2016 Proposed Permit Condition E3-4. “The proposed permit also imposes an hourly fugitive dust standard, *id.* at D7, but again only requires compliance determination through semiannual visual inspection.” 2016 Petition at 7 (citing to 2016 Proposed Permit Condition E2-3(b)).

The Petitioner asserts that the permitted monitoring frequency for each of these parameters is “incompatible with the requirement that the permit include compliance mechanisms sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.” 2016 Petition at 8 (citing to 40 C.F.R. §70.6(a)(3)(i)(B)).

EPA’s Response: For the following reasons, the EPA denies the Petitioner’s request for an objection on this claim.

Subsequent to the EPA’s receipt of the 2016 Petition, TDEC issued a significant modification of the 2016 Proposed permit in the 2017 Revised Permit. This modification includes additional analysis and changes to the permit conditions that are the subject of this claim. These revised provisions in the 2017 Revised Permit and the relevant administrative record have superseded the associated provisions and administrative record for the 2016 Proposed Permit. More specifically, the TDEC made the following changes:

Relevant Permit Conditions

As noted above, the 2016 Proposed Permit included monitoring for visible emissions and required TVA to demonstrate compliance with a visible emission limit of 20 percent by evaluating visible emissions biannually using Method 9. See 2016 Proposed Permit Condition E3-8. The 2017 Revised Permit adds to this requirement by requiring parametric monitoring using COMS as an indicator of good operational and maintenance practices of the emissions unit and control device. See 2017 Revised Permit Condition E3-8. TDEC has also included its reasoning within the 2017 Permit and associated record for why it is not feasible to use the COMS as a tool for direct compliance. *Id.* at E3-8(b)(iii); Gallatin Revised Title V Permit Statement at 16 (stating that the COMS measure opacity from individual stacks rather than the single stack from which exhaust is discharged).

The 2016 Proposed Permit required TVA to meet a PM limit of 0.100 lb/MMBtu of heat input until December 31, 2017, when based on the Consent Decree the limit becomes 0.030 lb/MMBtu. Compliance is demonstrated by conducting stack testing every calendar year and by following a Compliance Assurance Monitoring (CAM) plan. 2016 Proposed Permit Condition E3-4. The 2017 Revised Permit continues to require TVA to follow a CAM plan, which relies on COMS data to ensure proper operation of the control device. With the 2017 Revised Permit, in response to the Petitioners' claim in the 2016 Petition, TDEC also added a condition requiring the continuous operation and maintenance of the control device to ensure PM limits are met. See 2017 Revised Permit Condition E3-4. Additionally, TDEC reviewed the indicator ranges included in the CAM plan to ensure their accuracy and that the monitoring approach in the existing CAM plan was still accurate. *See* Gallatin Revised Title V Permit Statement at 15.

Condition D7 of the 2016 Proposed Permit, which TDEC continued without revision in the 2017 Revised Permit, addressed the general control of fugitive dust and required the implementation of work practice standards and reasonable precautions to prevent PM from becoming airborne. Condition D7(b) disallowed fugitive dust to be emitted in such a manner so as to produce a visible emission beyond the property line of the property for more than 5 minutes per hour or 20 minutes per day. Condition E2-3(b) required evaluating compliance with fugitive emission requirements semiannually. Fugitive dust controls for specific emission points are also detailed in the permit.

EPA Analysis

As noted above, the 2017 Revised Permit includes substantial changes to the 2016 Proposed Permit conditions and associated administrative record that are relevant to the Petitioner's claims. These changes are sufficient to render the Petitioner's 2016 claims regarding the monitoring provisions for opacity and PM in the 2016 Proposed Permit moot. With respect to the PM monitoring provisions, even if these changes had not rendered the Petitioner's claims moot, the Petitioner failed to demonstrate that the PM monitoring provisions, when viewed in the context of the entire permit, are inadequate to assure compliance with PM limits. Regarding fugitive emissions, the Petitioner failed to evaluate the specific requirements in the 2016 Proposed permit to support a demonstration that the permit's compliance demonstration is inadequate.

The EPA recently discussed criteria for evaluating a potentially moot claim in *In the Matter of Wheelabrator Frackville Energy, Inc.*, Order on Petition No. III-2016-17 (October 6, 2017). In that order, the EPA stated that a title V petition may be rendered moot when the version of the permit on which it is based has been withdrawn or superseded, or otherwise is no longer operative. *See In the Matter of Consolidated Env't'l Mgmt., Inc. – Nucor Steel Louisiana et al.*, Order on Petition Nos. 3086-V0 & 2560-00281-V1, at 13 (June 19, 2013) (hereinafter *Nucor Order*); *In the Matter of Duke Energy Indiana Edwardsport Generating Station*, Order on Permit No. T083-27138-00003, at 11 (December 13, 2011). Where a superseding proposed permit, with a new rationale, has been put before the EPA, to the extent that the changes relate to the specific objection(s) raised in the petition, the petition is moot. *Nucor Order* at 13. As in those cases, TDEC has, through a significant modification, made changes that supersede the provisions of the

2016 Proposed permit on which the Petitioners have requested that the EPA object. It makes little sense for the EPA to review an issue that has been overtaken by later events. *Id.* Where there are relevant substantive differences between a permit before the EPA on review and a superseded version of that permit on which a party has petitioned the EPA to object, the “disconnect” between the permitting posture and the posture of the petition makes a determination of mootness appropriate. *In the Matter of Meraux Refinery St. Bernard Parish, Louisiana*, Order on Petition No. VI-2012-04, at 18 (May 29, 2015) (hereinafter *Meraux Order*). Among other things, the relief sought by a petition such as *Meraux*—an objection by the Administrator to a superseded permit under CAA § 505(b)(2)—would be of uncertain legal or practical consequence, given that the proposed permit terms objected to have already changed. *Id.*

In light of these changes, it would be a futile exercise for the EPA to continue review of permit conditions that have been superseded or for which the permit record has been significantly revised through, for example, additional explanation. The permit conditions regarding opacity and PM monitoring challenged in Petitioner’s 2016 Petition have been modified in the 2017 Revised Permit to add more robust monitoring. Specifically, in addition to biannual Method 9 readings, the 2017 Revised Permit now also requires TVA to use the COMS as an indicator of good operational and maintenance practices of the emissions unit and control device. The use of this real time data is in line with the Petitioner’s desire to use more accurate data. The 2017 Revised Permit also now requires continuous operation and maintenance of the control device, which will help ensure, in conjunction with the monitoring already required, that both PM and opacity limits are met. Many of the changes TDEC made were to the same permit conditions challenged in the 2016 Petition and were in response to the Petitioner’s objections. Thus, little purpose would be served by addressing those objections.

The denial of this claim would not affect the Petitioner’s ability to petition the EPA to object to the 2017 Revised Permit according to the provisions of CAA §505 and, in fact, the Petitioner has done so. Thus, at this point, the energy, attention, and resources of the agency and all parties would be better directed toward evaluating the superseding provisions in the 2017 Revised Permit to which the Petitioner has objected. *In the Matter of Wheelabrator* at 9.

Even if the changes to the 2017 Revised Permit had not rendered these claims moot, the Petitioner failed to demonstrate that the PM monitoring provisions, when viewed in the context of the entire permit, are inadequate to assure compliance with PM limits. Specifically, the Petitioner is incorrect that the only monitoring for PM required by the 2016 Proposed Permit is annual stack testing. The Petitioner failed to acknowledge the CAM plan included in the 2016 Permit, which relied on opacity measurements. *See In the Matter of Public Service New Hampshire, Shiller Station*, Order on Petition No. VI-2014-04 at 14–16 (July 28, 2015) (finding that because the Petitioner did not address the overall monitoring scheme, the Petitioner did not demonstrate that the monitoring requirements in the permit were insufficient to assure compliance).¹¹ Thus, we are denying the Petitioner’s objection because the Petitioner did not

¹¹ It should be noted that in addition to the PM state implementation plan (SIP) limit, TVA is also required to demonstrate compliance with a PM limit set forth in the mercury and air toxics standards (MATS). *See* 40 C.F.R. 63.10000. For compliance, TVA has chosen to conduct quarterly stack testing. Therefore, while the permit does not

demonstrate that annual stack testing, in conjunction with the 2016 Proposed Permit's other monitoring methods including a CAM plan, and other controls, is inadequate to assure compliance.

Regarding fugitive emissions, the Petitioner failed to evaluate the specific requirements in the permit to support a demonstration that the permit's compliance demonstration is inadequate. Specifically, the Petitioner has not provided justification beyond a general assertion for why more frequent evaluations should be required based on the controls and recordkeeping already required by the 2016 Proposed Permit. Nevertheless, in response to the Petitioner's claim in the 2016 Petition, TDEC reviewed each of the facility's emission points and their dust control requirements. Based on this evaluation, TDEC concluded that (i) most emission points at the facility were not sources of fugitive emissions and (ii) the dust control measures already in place do not need to be supplemented with additional controls. *See Gallatin Revised Title V Permit Statement at 13-14; 19-20.* TDEC's evaluation also considered the applicability of solid waste regulations for owners and operators of coal combustion residual (CCR) landfills. In addition, since the EPA's receipt of the 2016 Petition, TVA submitted an Annual CCR [coal combustion residual] Fugitive Dust Control Report, detailing the specific measures TVA has taken to control CCR fugitive dust, which noted that no complaints or concerns have been submitted by the public. *Id.* at 14; *See* 40 C.F.R. §257.80 (requiring the minimization of fugitive dust from CCR units, roads, and other management and material handling facilities through the use of a CCR Fugitive Dust Control Plan).

Lastly, the EPA notes that TDEC's RTC included in the 2016 Draft Permit Title V Permit Statement was available to the Petitioner during the petition period, but the Petitioner has failed to acknowledge that the permitting authority responded at all. *See Nucor II Order at 7* (finding that the EPA expects the petitioner to address the permitting authority's final reasoning). The Petitioner's failure to acknowledge the response from the TDEC further supports the EPA's finding that the Petitioner has failed to demonstrate that the monitoring provisions in the 2016 Proposed Permit are inadequate to assure compliance.

For the foregoing reasons, the EPA denies the Petitioner's request for an objection on this claim.

Claim A.2 (2017 Petition): Petitioner's Claims that 2017 Revised Permit Includes Impermissibly Lax Compliance Requirements for Visible Emissions and PM

This claim is found in Section A, pages 3-5 and Section B.1 and B.2, pages 5-8 of the 2017 Petition

Petitioner's Claim: Similar to the opacity claim included in Claim A.1, the Petitioner claims that biannual Method 9 visual evaluations as required by the 2017 Revised Permit are inadequate to

specify quarterly stack testing as a method for demonstrating compliance with the PM SIP limit, the information from that testing is available and should be considered in evaluating the adequacy of the requirement for annual stack testing. *See In the Matter of Raven Power Fort Smallwood, LLC*, Order on Petition No. 111-2017-3 (January 17, 2018) 14-16, 21-22 (relying in part on PM controls and monitoring requirements to conclude that Petitioner failed to demonstrate that opacity monitoring requirements were inadequate; and relying in part on controls and monitoring for SO₂ and nitrogen oxides (NO_x) to conclude that Petitioner failed to demonstrate that monitoring requirements for total PM were inadequate).

assure compliance with the permit's visible emission limit and that "a permit limit applicable every 6 minutes is hardly meaningful if the pollutant to be limited is not monitored more than once every 6 months (or longer where the regulated source alleges that 'a valid reading cannot be made')". 2017 Petition at 4. The Petitioner points to the portion of the permit condition that allows the permittee to "forgo the biannual Method 9 readings for Units 1-4 conditioned only [on] the permittee's reporting of 'its efforts to obtain valid readings, and the reasons it could not,'" as one reason why the condition fails to assure compliance with the emission standard. 2017 Petition at 5 citing to 2017 Revised Permit Condition E3-8(a). The Petitioner alleges that TDEC has failed to explain how the biannual Method 9 observations assure compliance. The Petitioner cites to prior title V petition orders in which the Petitioner claims the EPA found the permitting authority did not adequately explain how the Method 9 frequency required by the permit assures compliance with opacity limits.¹²

The Petitioner acknowledges the 2017 Revised Permit requires the operation of COMS to provide an indication of good operational and maintenance practices for the facility's coal-fired units and associated control device, but asserts that this is "insufficient to remedy the permit's supremely inadequate Method 9 visible emission monitoring requirements." 2017 Petition at 4. The Petitioner claims that "it is illogical to have a monitoring system that is capable of directly and continuously monitoring opacity and provides absolute evidence of compliance with the applicable visible emissions standards and then only use that monitoring data as an indicator of whether the Plant's units and pollution controls are being properly operated at levels that should assure compliance with the applicable visible emissions limits." 2017 Petition at 4-5. The Petitioner asserts that the "claim that Gallatin's COMS may measure opacity for individual boilers rather than the 'fuel burning installation' in no way relieves TDEC of its duty to produce a permit that includes 'compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit' ... Indeed, to do so would create perverse incentives on the part of the regulated major sources to deliberately install monitoring equipment in improper places." 2017 Petition at 5.

Similar to the Petitioner's claims with regard to visible emissions, addressed in Claim A.1, *supra*, the Petitioner claims that the required PM monitoring is inadequate to demonstrate compliance with applicable emission limits. The Petitioner states that the frequency of direct testing, once per calendar year, is inadequate to assure compliance with a limit that applies continuously. The Petitioner claims that "such infrequent testing of PM emissions fails to satisfy the requirements of 40 C.F.R. part 70.6" and "the Gallatin Permit's emission limits must, instead, be accompanied by periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of Gallatin's compliance with its Title V permit and the applicable PM emissions limits." 2017 Petition at 6. The Petitioner also claims that continuous, direct monitoring of PM emissions is necessary. 2017 Petition at 7. Like visible emissions, the Petitioner alleges that the CAM plan does not "cure the inadequate stack testing requirements." 2017 Petition at 7. The Petitioner asserts that in addition to requiring that opacity is measured by COMS, proper operation of the PM control device must be assured in the CAM plan by:

¹² These Orders include *In the Matter of TVA Bull Run*, Order on Petition No. IV-2015-14 (November 10, 2016); *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Order on Petition No. VIII-00-I (November 16, 2011)

“(1) the selection of representative control device operating parameters (such as pressure drop, fan amperage, voltage flow rates, temperature, etc.); (2) establishment of indicator ranges for the operating parameters (accounting for site-specific factors such as margin of compliance, emissions control variability, correlation with emissions, historical data, similar sources, and emission testing data); and (3) establishment of appropriate data collection and averaging times. Indeed, the Plant’s CAM plan must employ appropriate and robust secondary performance indicators which will serve to identify potential problems in the operation and maintenance of the units’ control device and prompt the permittee to take corrective action before there is a deviation from an applicable PM emission limitation/control requirement.”

2017 Petition at 7.

The Petitioner claims that to determine the adequacy of the monitoring, the EPA should consider the following factors: (1) variability of emissions from the unit in question; (2) likelihood of violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities. 2017 Petition at 7 (citing to *In the Matter of Bull Run* at 8). The Petitioner asserts that “the variability of emissions, especially as they relate to add-on controls used by Gallatin, strongly support more frequent stack testing and continuous PM monitoring from the Plant’s coal-fired boilers.” 2017 Petition at 8. The Petitioner adds that “[a]t the very least, if direct continuous PM emissions monitoring is not required in the final permit, quarterly stack testing for the unit’s PM emissions limits (as noted in Permit Condition E2-6, but excluded from Permit Condition E3-4), combined with COMS, *plus* a robust set of secondary performance indicators for the units’ baghouse, must be required.” 2017 Petition at 8.

EPA’s Response: For the following reasons, the EPA denies the Petitioner’s request for an objection on this claim.

Relevant 2017 Revised Permit Conditions

Permit Condition E3-8. Visible emissions from this fuel burning installation (coal-fired units 1-4) shall not exceed twenty percent (20%) opacity except for one six (6) minute period per one (1) hour of not more than forty (40) percent opacity

(a) Consistent with the provisions of Paragraph 1200-03-05-.03(1) of the Regulations, compliance with the applicable visible emissions standards shall be determined by a certified reader using Method 9. The opacity shall be evaluated biannually using Method 9 unless a valid reading cannot be made. In the event that a valid reading cannot be taken within 6 months and provided that at least one reading was attempted during the 6 month period, an additional 30 days shall be allowed in which to attempt another reading. If a valid reading cannot again be made, the permittee shall within 60 days of the end of the 6-month period submit a report describing its efforts to obtain valid readings, and the reasons it could not.

(b) The permittee shall operate the continuous opacity monitoring system (COMS) to provide an indication of good operational and maintenance practices of the emissions unit (including the control device and associated capture system).

Permit Condition E3-4. Particulate Matter Emission Limits

(a) Particulate matter emitted from this fuel burning installation shall not exceed 0.100 lb/MMBtu of heat input.

(b) On and after December 31, 2017, particulate matter emitted from this fuel burning installation shall not exceed 0.030 lb/MMBtu of heat input.

Compliance Method

(a) The permittee shall perform stack testing of this fuel burning installation to demonstrate compliance with the applicable particulate emissions limits. Testing shall be performed every calendar year, and a particulate source test report shall be filed with the Technical Secretary within 45 days after completion of the testing.

(b) The permittee shall operate the continuous opacity monitoring system (COMS) to provide an indication of good operational and maintenance practices. The COMS shall comply with Conditions E3-9, E3-10, E3-11, E3-12, and E3-13 of this permit and with applicable provisions of 40 C.F.R. 64, as indicated in the attached CAM plan (Attachment 9).

(c) The Technical Secretary may require additional performance testing for exceedances of the de minimis criteria specified in TAPCR 1200-03-20-.06.

(d) The permittee shall continuously operate each PM control device on each unit.... The permittee shall maintain the PM control device consistent with manufacturers' specifications, the operational design of the unit, and good engineering practices and shall replace bags as needed on each baghouse to maximize collection efficiency.

TDEC Response

TDEC outlined the changes made to the 2016 Proposed Permit with respect to opacity monitoring. TDEC stated that it "added a requirement to operate the COMS as an indicator of opacity, a definition of an excursion that is consistent with the units of the standard, and specific actions that are required in response to an excursion." RTC, Significant Modification #1, at 18. TDEC explained that its selected approach was based on the EPA's CAM regulation found at 40 C.F.R. part 64. TDEC cited to a portion of the preamble to this rule:

"There are two basic approaches to assuring that control measures... are properly operated and maintained so that the owner or operator continues to achieve compliance with applicable requirements... One method is to establish monitoring as a method for directly determining continuous compliance ... Another approach is to establish monitoring for the purpose of: (1) Documenting continued operation of the control measures within ranges of specified indicators of performance (such as emissions, control device parameters and process parameters) that are designed to provide a reasonable assurance of compliance and applicable requirements; (2) indicating any excursions from these ranges; and (3) responding to the data so that excursions are corrected. The part 64 [requirements] published today adopts this second approach as an appropriate approach

to enhancing monitoring in the context of title V permitting for significant emission units that use control devices to achieve compliance with emission limits.

RTC at 18 (citing to 62 Fed. Reg. 54,900-54,947 (Oct. 22, 1997)).

In explaining why the COMS were not being used for direct compliance, TDEC stated that the “COMS measure opacity within individual stacks rather than the fuel-burning installation as a whole. Thus, the COMS readings are used as a surrogate, rather than direct measurement of the pollutant. The COMS readings are a means of monitoring the operation of the baghouse associated with the boilers. By assuring that the emissions unit, including the control equipment, is operating properly, the COMS readings assure that opacity requirements will not be exceeded.” RTC at 19.

Regarding PM monitoring, TDEC explained that the PM limit is subject to the CAM requirements in 40 C.F.R. Part 64 and that the use of COMS satisfies the monitoring requirements specified therein.

EPA Analysis

The EPA is denying the Petitioner’s objection because the Petitioner has failed to demonstrate that the permit is flawed. The EPA has previously determined that a multi-pronged approach for assuring compliance with emission standards, such as what this permit contains, may be adequate. *See In the Matter of Xcel Energy, Cherokee Station*, Order on Petition No. VIII-2010-XX at 11-12 (September 29, 2011) (finding adequate a three-pronged approach for assuring compliance including stack testing, proper operation and maintenance of the control device, and a CAM plan to assess performance of the control device on an ongoing basis). Similar to Xcel’s permit, the 2017 Revised Permit requires a three pronged approach for assuring compliance with the opacity limit including: (1) Method 9 testing; (2) required continuous operation and maintenance of the control device, which is a baghouse; and (3) a mechanism for assessing the performance of the baghouse on an ongoing basis using COMS. The Petitioner has stated that biannual Method 9 evaluations are inadequate to demonstrate compliance. However, Method 9 is not the sole method required by the permit. Instead, it is one part of a multi-pronged approach. Opacity is the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. 40 C.F.R. §60.2. “Particles decrease light transmission by both scattering and direct absorption.” Visible Emissions Field Manual EPA Methods 9 and 22, EPA 340/1-92-004 (December 1993) at 5. This approach requires the continuous operation of a baghouse to control PM, which in turn assures compliance with the opacity standard. The COMS also assure compliance by providing continuous readings of opacity levels from each boiler and can thereby indicate if the baghouse is operating properly. *See* RTC at 3 (stating that “[b]y assuring that the emissions unit, including the control equipment, is operating properly, the COMS readings assure that opacity requirements will not be exceeded.”). The Petitioner generally failed to address the permit’s multi-pronged approach, including failing to address the PM control device, and failed to specify inadequacies with using this multi-pronged approach in ensuring opacity is controlled. Thus, the Petitioner failed to demonstrate that the 2017 Revised Permit is flawed.

The Petitioner objects to the portion of the opacity condition whereby Method 9 evaluations are required biannually unless a valid reading cannot be made. Inherent in Method 9 is that it can only be conducted under certain conditions. *See* Visible Emissions Field Manual at 5, advising that “the appearance of a plume as viewed by an observer depends upon a number of variables, some of which might be controllable and some of which might not be controllable in the field.” The Permit reflects that there may be cases where ideal conditions are not present. However, the Petitioner has not shown that this occurred (or is likely to occur) so frequently as to eliminate the usefulness of Method 9. Additionally, as noted above, Method 9 is only one part of the three-pronged monitoring approach.

While the Petitioner is correct that the rationale for the selected monitoring requirement must be clear and documented in the permit record, 40 C.F.R. §70.7(a)(5), the EPA disagrees that TDEC has failed to explain how the 2017 Revised Permit ensures compliance with the opacity standard. In its RTC, TDEC discussed its approach in developing opacity monitoring, which was based on EPA’s CAM Regulation. *See* 40 C.F.R. part 64. Additionally, as noted above, TDEC provided an explanation for why the COMS were not being used for direct evidence of an exceedance.¹³ While, as explained by TDEC, the COMS are not being used for direct compliance, the EPA does not find that this diminishes the sufficiency of the 2017 Revised Permit’s use of the COMS to assure continuous operation of the control device.

The Petitioner has argued that continuous direct monitoring for PM is necessary. However, the Petitioner has failed to identify any applicable requirement that requires the use of PM CEMS for monitoring compliance with the PM limit. *See In the Matter of Xcel Energy, Cherokee Station*, Order on Petition No. VIII-2010-XX at 13. Instead, TDEC requires TVA to continuously operate and maintain the control device and comply with a CAM plan, as well as conduct annual stack testing. The CAM plan relies on COMS to provide an indication of good operational and maintenance practices. To that end, the CAM plan establishes an indicator range for opacity, which, if exceeded, triggers required corrective action. As stated by TDEC, the CAM plan required by the 2017 Revised Permit meets the requirements of the CAM regulations (40 C.F.R. part 64). The EPA has determined that monitoring established consistent with the EPA’s CAM rule will be sufficient to assure compliance with permit terms and conditions, and thus meeting the requirements of 40 C.F.R. § 70.6(c)(1). *See In the Matter of CITGO Refining and Chemicals Company, L.P.*, Order on Petition No. VI-2007-01 at 7 (May 28, 2009) (stating that monitoring established consistent with EPA’s CAM rule will be sufficient to assure compliance with permit terms and conditions, and thus meeting the requirements of 40 C.F.R. §70.6(c)(1)). While the Petitioner has provided a list of elements that it asserts must be in a CAM plan, it has provided no legal authority for its assertion. Moreover, the Petitioner has provided no analysis for why it believes TDEC’s reasoning is flawed in a way that renders the CAM plan insufficient to meet CAM requirements. *See In the Matter of Big River Steel, LLC*, Order on Petition No. VI-2013-10

¹³ The plant has COMS located in the boiler stacks, and they measure the opacity in the stack for each individual boiler, but not the opacity of the emissions vented to the atmosphere. The 2017 Revised Permit itself recognizes this use of the COMS, and, in so doing, explains why the COMS are not being used for direct compliance. *See* 2017 Revised Permit Condition E3-8(b)(iii) (stating that “because the COMS measure the opacity for the individual boilers, rather than the entire fuel-burning installation, elevated COMS readings alone cannot provide direct evidence of an opacity exceedance for the fuel-burning installation.”).

at 21 (October 31, 2017) (finding that the EPA expects a petitioner to clearly explain, with citation and analysis, why a particular permit term does not comply with, or assure compliance with, a specific applicable requirement). Additionally, because the CAM plan meets the requirements of 40 C.F.R. part 64, and because monitoring that meets part 64 requirements is presumptively sufficient to meet title V monitoring requirements,¹⁴ the CAM plan is presumptively sufficient to meet title V monitoring requirements; and therefore further analysis of the elements for a CAM plan presented by the Petitioner is not necessary.

In addition to annual stack testing, as acknowledged by the Petitioner, TVA also conducts quarterly PM stack testing in compliance with the MATS. Specifically, the MATS requires TVA to demonstrate compliance with a filterable PM limit of .030 lb/MMBtu. *See* 2016 Final Permit Condition E2-6. The EPA is not convinced by the Petitioner's argument that because the quarterly testing is not specifically required in relation to the PM SIP limit, it has no relevance and cannot be used as an additional indication of compliance, especially given that as of December 31, 2017, the PM SIP limit and the MATS limit will be identical.

Claim B: Petitioner's Claims that Permit's Allowances for Excess Emissions During Startup, Shutdown, and Malfunction (SSM) Are Inconsistent with CAA

This claim is found in Section II.B, pages 8-9 of the 2016 Petition.

Petitioner's Claim: The Petitioner claims generally that the proposed permit language providing allowance for excess visible emissions during startup and shutdown has been specifically rejected by the EPA in the EPA SIP call.¹⁵ The Petitioner argues-- (i) the proposed permit includes language identical to that which was rejected by the EPA; (ii) however, the permit makes no mention of the SIP call and includes no requirements that TVA comply with the updated regulations. The Petitioner cites to 40 C.F.R. §§ 70.2 and 70.6(a)(1), which together require a title V permit to include any operational conditions necessary to ensure compliance with all applicable requirements at the time of permit issuance, including requirements that have been promulgated or approved by the EPA through rulemaking at the time of issuance but have future effective compliance dates. The Petitioner contends that since the time of its Petition, there has been no updated and approved SSM SIP revision, and, as a result, "no approved SSM exception exists that may be included in the final permit except those set forth by federal law." Petition at 8.

Additionally, the Petitioner claims that the 2016 Proposed Permit fails to specify the startup definition to be used by the facility to comply with § 40 C.F.R. 63.10042 (MATS). Specifically,

¹⁴ *See* 62 Fed. Reg. 54900, 54902 (October 22, 1997) ("The CAM approach as defined in part 64 is intended to address the requirement in title VII of the 1990 Amendments that EPA promulgate enhanced monitoring and compliance certification requirements for major sources, and the related requirement in title V that operating permits include monitoring, compliance certification, reporting and recordkeeping provisions to assure compliance.")

¹⁵ On June 12, 2015, the EPA took final action on a petition for rulemaking filed by the Sierra Club, whereby it found that certain SIP provisions in 36 states were inadequate to meet CAA requirements. This action constituted a "SIP call" for these states. The provisions found inadequate included the Tennessee provisions codified at Tenn. Comp. R. & Regs. 1200-03-05-.02(1) allowing for due allowance to be made for visible emissions in excess of the level otherwise permitted, where those emissions are necessary or unavoidable due to routine startup and shutdown conditions.

the 2016 Proposed Permit allows TVA to choose between two definitions of startup and states that TVA “reserves the right to select from among the compliance options and compliance methods set out in Tables 2 and 3 of Subpart UUUUU at the time it submits the Notification of Compliance Status under §63.10030.” The Petitioner argues that the requirements allowed by the 2016 Proposed Permit are impermissibly vague and fail to put the public on notice with respect to what procedures and standards Gallatin must follow in order to be in compliance with the law.

EPA’s Response: For the following reasons, the EPA denies the Petitioner’s request for an objection on this claim. Condition E3-9 of the 2016 Proposed Permit reflects the language of Tenn. Comp. R. & Regs. 122-03-05-.02(1), which the EPA has approved as part of Tennessee’s SIP. Where a state regulatory provision has been approved by the EPA as part of the SIP, it is appropriate for inclusion in a title V permit. *See* 40 C.F.R. §70.2 (defining “applicable requirement” to include “[a]ny standard or other requirement provided for in the applicable implementation plan.”); 40 C.F.R. § 70.1(b) (“All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”); *In the Matter of Piedmont Green Power, LLC*, Order on Petition No. IV-2015-2 (December 13, 2016), at 28. 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 Monroe Power Company*, Order on Petition IV-2001-8 (October 9, 2002), at 14. The Petitioner’s interpretation that the SIP call automatically supersedes the original SIP approval is incorrect and runs contrary to the implementation of the SIP call itself. *See* 80 Fed. Reg. 33849 (“When the EPA issues a final SIP call to a state, that action alone does not cause any automatic change in the legal status of the existing affected provision(s) in the SIP. During the time that the state takes to develop a SIP revision in response to the SIP call and the time that the EPA takes to evaluate and act upon the resulting SIP submission from the state pursuant to CAA section 110(k), the existing affected SIP provision(s) will remain in place.”). The 2016 Proposed Permit appropriately contains the conditions required by the SIP and the Petitioner has not demonstrated that these conditions do not apply.

Similarly, the EPA finds no flaw in the 2016 Proposed Permit regarding the choice of startup definition. TDEC issued the 2016 Proposed and 2016 Final Permits after the applicability date of the MATS but prior to the required compliance date for the Notification of Compliance Status, which requires the facility to notify the state of its chosen startup definition.¹⁶ The EPA has previously held that when a permit is issued prior to the Maximum Achievable Control Technology (MACT) requirements applicability date, it is acceptable for the initial permit to describe MACT applicability more generally (that is, at the subpart level¹⁷), and for all other compliance requirements (including compliance options and parameter ranges) of the MACT (that is, requirements that apply below the subpart level) to be added at a later time as a significant permit modification.¹⁸ *See In re ConocoPhillips Company*, Order on Petition, Petition No. IX-2004-09 (March 15, 2005), at 24-25. The Petitioner has not demonstrated the existence of

¹⁶ *See* 40 C.F.R. §63.10030 (requiring the submittal of a Notification of Compliance Status (NOCS)); 40 C.F.R. §63.9(h)(2)(ii) (requiring submittal of the NOCs within 60 days following completion of performance tests).

¹⁷ In this case, the subpart level would be 40 C.F.R. 63 Subpart UUUUU, which has been incorporated into the Permit. *See Permit Condition E2-6*.

¹⁸ The EPA notes that since the time of submittal of the petition, TVA has submitted its compliance notification, which is available to the public at <https://cfpub.epa.gov/webfire/reports/eSearch.cfm> and which documents that TVA has chosen startup definition 1 for compliance purposes.

any requirement that the chosen startup definition be included in the permit at issue in this Petition.

Claim C: Petitioner’s Claims that Proposed Permit Fails to Include Any Reporting Requirements to Ensure Compliance with 2011 Consent Decree.

This claim is found in Section II.C, page 9 of the 2016 Petition.

Petitioner’s Claim: The Petitioner claims that the 2011 Consent Decree includes requirements for TVA to continuously operate a flue gas desulfurization system (FGD) and a selective catalytic reduction system (SCR). The Petitioner acknowledges that the Permit imposes the Consent Decree obligation to continuously operate a FGD and SCR.¹⁹ However, the Petitioner contends that the Permit does not include “any monitoring or reporting obligations to ensure that TVA actually runs these controls continuously as required by the 2011 Consent Decree.” The Petitioner asserts that “[t]itle V permits must also include adequate monitoring and reporting requirements to ensure compliance with the terms of the permit.” *See* 40 C.F.R. §70.6(a)(3)(i)(B) and §70.6(c)(1).

EPA’s Response: For the following reasons, the EPA denies the Petitioner’s request for an objection on this claim as conditions in the 2016 Final Permit rendered this claim moot. While the Petitioner is correct that these provisions were not included in the 2016 Proposed Permit, in response to the Petitioner’s comments, TDEC added these requirements to the 2016 Final Permit,²⁰ in permit condition E3-17, which requires the continuous operation of the SCR and FGD with compliance demonstrated by complying with condition E2-5. This latter requirement states that “TVA shall comply with the reporting requirements specified in Attachment 12 of this permit,” which are the monitoring and reporting requirements from the 2011 Consent Decree.

Claim D.1 (2016 Petition): Petitioner’s Claims that Proposed Permit Has Impermissibly High SO₂ Limit

This claim is found in Section II.D, pages 9-10 of the 2016 Petition.

Petitioner’s Claim: The Petitioner asserts that the 2016 Proposed Permit limit of 5.0 lb/MMBtu is “nonsensical” in light of other SO₂ limitations within the 2016 Proposed Permit. The Petitioner cites to the requirement to demonstrate compliance with the hydrogen chloride hazardous air pollutant standards using a surrogate SO₂ standard of 0.20 lb/MMBtu. Additionally, the Petitioner claims Gallatin should achieve much lower SO₂ emissions due to the requirement to

¹⁹ The Petitioner cites to Draft Permit condition E2-15. Upon review, that permit condition does not exist. The EPA assumes that this was a typo and, instead, the Petitioner is referring to Draft Permit Condition E2-5, which requires continuous operation of the FGD and SCR no later than December 31, 2017.

²⁰ The EPA notes that neither the Consent Decree nor the Permit require the installation of these controls until December 31, 2017, which came after the date of the 2016 Proposed Permit. Therefore, a question arises as to whether the Consent Decree monitoring and reporting requirements for the operation of these units would be applicable requirements prior to this date, and thus would have been required to be included in the 2016 Proposed Permit. As these requirements have been included in the 2016 Final Permit, this question is moot and we are not addressing it.

run FGD controls continuously. Based on this, the Petitioner contends that the SO₂ emission limit as written is inconsistent with other SO₂ requirements and should be considerably lower.

EPA's Response: For the following reasons, the EPA denies the Petitioner's request for an objection on this claim. As noted by TDEC in its response to the Petitioner's comments on the draft 2016 permit, the permitted SO₂ limit is in accordance with the SIP. As detailed previously, applicable requirements include "[a]ny standard or other requirement provided for in the applicable implementation plan." 40 C.F.R. §70.2. Thus, while there are also lower limits required by other applicable requirements, the 5.0 lb/MMBtu SO₂ limit is an applicable requirement and may be included in the Permit. The Petitioner has failed to demonstrate there is any flaw in the Permit due to inclusion of an SO₂ limit that is an applicable requirement.²¹

Claim D.2 (2017 Petition): Petitioner's Claims that Permit Fails to Set Forth Emission Limit for SO₂ Based on Appropriate One-Hour Averaging Period

This claim is found in Section II, pages 8-10 of the 2017 Petition.

Petitioner's Claim: As described by the Petitioner, "the Gallatin Permit sets forth an SO₂ limit of 1,971 pounds per hour as calculated on 30-boiler operating day rolling average basis." 2017 Petition at 8 citing to 2017 Revised Permit Condition E3-5. The Petitioner asserts that "the 30-day averaging period accompanying the permit limit is inadequate to ensure that the one-hour NAAQS is actually protected, as the NAAQS can only be protected with an appropriately stringent *one-hour* emission limit." Petition at 9. The Petitioner questions the "representative data" chosen by TDEC to model the emission value stating that since the data is from the Cumberland Fossil Plant, it is not based on site-specific data and therefore the accuracy of the adjustment factor analysis cannot be assured. "Moreover, TDEC's Statement of Basis and Response to Comments fail to demonstrate that Gallatin and Cumberland have similar operational requirements for their SO₂ control equipment, or if Cumberland is even operating its SO₂ controls rather than relying on an alternative SO₂ pollution technology." 2017 Petition at 10.

EPA's Response: For the following reasons, the EPA denies the Petitioner's request for an objection on this claim. The Petitioner raises concerns involving an SO₂ emission limit established by a minor source preconstruction permit issued by TDEC. This preconstruction permit was finalized prior to the issuance of the current title V permit. As stated by TDEC, "[t]he 30-day rolling average SO₂ limit was established in accordance with EPA's data requirements rule, EPA's guidance on Air Quality Models (40 CFR 51 Appendix W) and EPA's SO₂ SIP guidance."²² Gallatin Revised Title V Permit Statement at 8. The propriety of TDEC's decisions undertaken in the course of issuing or modifying duly issued preconstruction permits is not

²¹ The EPA notes that, as the Petitioner indicated, this SIP-based limit is less stringent than other SO₂ limits in the Permit derived from other requirements. Nothing in this Act, the EPA's regulations, or Tennessee's regulations prohibits the existence of multiple limitations restricting the emissions of a particular pollutant; in fact, it is not uncommon for permits to contain multiple different limits for a single pollutant, each derived from a different applicable requirement. While permitting authorities have the discretion to consolidate or "streamline" such limits in certain circumstances, they are not required to do so. See White Paper No. 2 For Improved Implementation of the Part 70 Operating Permits Program (March 5, 1996).

²² U.S. EPA, *Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions*, April 23, 2014.

properly before the EPA in a petition to object to a source's title V permit. *See In the Matter of PacifiCorp Energy Hunter Power Plant*. Order on Petition No. VIII-2016-4 at 8-21 (October 16, 2017) (*PacifiCorp-Hunter Order*); *In the Matter of Big River Steel, LLC*. Order On Petition No. VI-2013-10 at 8-20 (October 31, 2017) (*Big River Steel Order*). Rather, these preconstruction permitting decisions define the New Source Review (NSR) related "applicable requirements" that must be included in the title V permit. *PacifiCorp-Hunter Order* at 8-11; *Big River Steel Order* at 9-11.²³ Here, as noted by TDEC in its RTC, the Petitioner had the opportunity to challenge the SO₂ emission limit through the appropriate preconstruction permitting process, and may not now use the title V petition process to raise these concerns.²⁴ The permitting authority should simply incorporate the terms and conditions of preconstruction permits "issued pursuant to regulations approved or promulgated through rulemaking under title I," 40 C.F.R. 70.2, into the source's title V permit as applicable requirements. *PacifiCorp-Hunter Order* at 19-20. The Petitioner has not alleged that TDEC failed to properly incorporate the terms and conditions of preconstruction permits, nor has the Petitioner otherwise demonstrated that the permit is deficient with respect to any applicable requirement. Therefore, the Petitioner failed to demonstrate that the title V permit at issue is "not ... in compliance with applicable requirements" or the requirements of part 70. 40 C.F.R. § 70.8(c)(1); *see* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

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 as described above.

Dated: JAN 30 2018



E. Scott Pruitt,
Administrator

²³ As the EPA has explained, "[A] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the 'applicable requirement' remains the terms and conditions of the issued preconstruction permit and they should be included in the source's title V permit." *Big River Steel Order* at 19; *see PacifiCorp-Hunter Order* at 19; *id.* at 20 ("That the EPA views the incorporation of the terms and conditions of these preconstruction permits into the title V operating permit as proper for purposes of title V does not indicate that the EPA agrees that the state reached the proper decision when setting terms and conditions in the preconstruction permits. . . . The EPA's lack of objection to the inclusion of that requirement in the title V permit does not indicate that the EPA agrees that it is legal or complies with the Act; it merely indicates that a title V permit is not the appropriate venue to correct any such flaws in the preconstruction permit.").

²⁴ As TDEC noted in its RTC, fn. 8, "This limit was established in construction permit 971197. A notice for this permit was published by TDEC on the TDEC website and in a paper of general circulation (Gallatin News Examiner) in the county in which the facility is located. The notices specifically indicated the nature of the proposed changes (establish an SO₂ emission limit to demonstrate compliance with the SO₂ NAAQS). There were no comments received during the public comment period for this permit."