BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NO. IV-2014-13
	)	
PIEDMONT NATURAL GAS, INC.	)	ORDER RESPONDING TO
WADESBORO COMPRESSOR STATION	)	PETITION REQUESTING
ANSON COUNTY, NORTH CAROLINA	)	OBJECTION TO THE ISSUANCE OF
PERMIT NO. 10097T01	)	TITLE V OPERATING PERMIT
	)	
ISSUED BY THE NORTH CAROLINA DEPARTMENT OF	)	
ENVIRONMENT AND NATURAL RESOURCES	)	
	)	

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated October 3, 2014, (the Petition) from Pee Dee Water Air Land and Lives and the Blue Ridge Environmental Defense League (the Petitioners), 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 Administrator object to operating permit No. 10097T01 (the Permit) issued by the North Carolina Department of Environment and Natural Resources (NCDENR)[1] to the Piedmont Natural Gas, Inc. Wadesboro Compressor Station (PNG Wadesboro or the facility) in Anson County, North Carolina. The operating permit was issued pursuant to title V of the CAA, CAA §§ 501–507, 42 United States Code) U.S.C. §§ 7661–7661f, and 15A N.C.A.C. 2Q.0500–0528. *See also* 40 Code of Federal Regulations (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.

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

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the

[1] Subsequent to NCDENR's issuance of the Permit and the Petitioners' submittal of this Petition, NCDENR was reorganized and the agency responsible for issuing air permits is now the NC Department of Environmental Quality (NCDEQ). This Order will refer to the older nomenclature (NCDENR), given that this was the entity that issued the Permit on which the Petition is based.

EPA's implementing regulations at 40 C.F.R. part 70. NCDENR submitted a title V program governing the issuance of operating permits on November 12, 1993. The EPA granted interim approval in 1995 and full approval of the North Carolina title V operating permit program in 2001. 60 Fed. Reg. 57357 (November 15, 1995); 66 Fed. Reg. 45941 (August 31, 2001). This program, which became effective on October 1, 2001, is codified in 15A N.C.A.C. 2Q.0500–0528.

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 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, 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 compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure 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, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator 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 authority (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)(l).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[3]

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," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part 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)).[4] 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.[5] Certain aspects of the petitioner's demonstration burden are discussed below. 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 considers 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 state's response to comments), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.[6] Another factor the EPA examines is whether a petitioner

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

[3] *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); *cf. NYPIRG*, 321 F.3d at 333 n.11.

[4] *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)).

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

[6] *See also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. Appx. *11, *15 (2d Cir. 2018) (summary order); *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 why 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)

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 the petitioner's objection, contrary to Congress's 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.").[7] Relatedly, the EPA has pointed out in numerous previous orders that 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 (January 15, 2013).[8] 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).[9]

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 PNG Wadesboro Facility

PNG owns and operates a natural gas compressor station in Wadesboro, Anson County, North Carolina. The PNG Wadesboro facility consists of eight natural gas-fired reciprocating internal combustion engines powering compressors, one natural gas-fired emergency generator, and other

(*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).

[7] *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*).

[8] *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).

[9] *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

insignificant emission units. These units emit nitrogen oxides (NOx), carbon monoxide (CO), volatile organic compounds (VOC), sulfur dioxide, hazardous air pollutants, and other air pollutants. Among other requirements, units at the PNG Wadesboro facility are subject to the CAA subpart JJJJ New Source Performance Standards (NSPS) applicable to stationary spark ignition internal combustion engines.

B. Permitting History

On December 6, 2013, NCDENR received a permit application from PNG Wadesboro for the facility's initial title V permit. NCDENR provided public notice of the draft permit on June 18, 2014, subject to a public comment period that expired on July 18, 2014. NCDENR also submitted the proposed permit to the EPA on June 18, 2014, initiating the EPA's 45-day review period, which ended on August 4, 2014. The EPA did not object to the proposed permit during this time. On September 15, 2014, NCDENR issued the final permit No. 100097T01, along with a final Air Permit Review document containing its responses to public comments (RTC). The Petitioners timely submitted the Petition on October 3, 2014.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

Although the Petition does not contain separately numbered claims, the EPA's responses below generally follow the organization of the claims in the Petition.

A. The Petitioners' Claim Involving a Public Hearing

Petitioners' Claim: The Petitioners assert that "failure of the permitting authority to meet procedural requirements for public participation under §70.7(h) constitute[s] sufficient grounds for EPA to object to a proposed permit." Petition at 1–2. Apparently related to this assertion, the Petitioners present a single-sentence statement that "Requests from the affected community for a public hearing were not granted by DAQ," *id*. at 2, later followed by a request that the EPA require NCDENR to "[h]old a public hearing in the affected community," *id*. at 6.

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

As an initial matter, it is not entirely clear that the Petitioners intended to claim that NCDENR's failure to hold a public hearing constitutes a basis for an EPA objection to the Permit. The lack of a public hearing was stated as a matter of fact, Petition at 2, and as a requested remedy, *id*. at 6, but was never explicitly claimed as a basis for an EPA objection. *But see id*. at 1–2 (claiming generally that "failure of the permitting authority to meet procedural requirements for public participation under §70.7(h) constitute[s] sufficient grounds for EPA to object to a proposed permit").

In any case, to the extent that such a claim has been made, the Petitioners have not demonstrated that the lack of a public hearing on the PNG Wadesboro Permit violated any procedural requirements of the CAA or part 70. In its RTC, NCDENR justified its decision not to hold a public hearing, stating: "As this was the only request for a public hearing, the Director did not

believe that the threshold for significant public interest had been demonstrated. Therefore, a public hearing is not necessary." Final Air Permit Review at 8. Despite the fact that NCDENR's RTC was available during the public petition period, the Petitioners have not addressed the state's explanation[10] or demonstrated that NCDENR's decision not to hold a public hearing violated any requirements related to public hearings. The Petitioners cite to 40 C.F.R. § 70.7(h), but have not provided any analysis explaining how NCDENR's decision not to hold a public hearing might violate this provision. The EPA notes that 40 C.F.R. § 70.7(h) requires the permitting authority to provide an opportunity for a public hearing but does not include any requirement that NCDENR must hold a hearing in this instance.[11] Therefore, the Petitioners' unsupported statements do not demonstrate that the Permit or the procedures by which it was issued do not comply with the CAA or the requirements of part 70.[12]

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

B. The Petitioners' Claim Titled "Permitting Agency's Basis for Pollution Levels Underestimates Impacts"

Petitioners' Claim: The Petitioners assert that NCDENR's "air permit review grossly underestimates the potential [NOx], [CO], [VOC] and formaldehyde levels emitted by the facility." Petition at 2. The Petitioners reproduce a table from the permit review listing the tons/year emission rates of various pollutants, including those mentioned above. *Id*. According to the Petitioners, emission rates for these pollutants were provided by the supplier of PNG's engines, whereas the rates for other pollutants were based on AP-42 emission factors. *Id*.

The Petitioners then specifically discuss NOx and CO emission estimates. Regarding NOx, the Petitioners note that an emission factor of 0.5 g/hg-hr was used for engines, but claim that the technical data sheet for the Caterpillar F3616 gas engine indicates a higher rate of 0.7 g/hp-hr, which would correspond to 40 percent higher annual emissions. *Id*. Regarding both NOx and CO, the Petitioners assert that the facility's NOx and CO emissions are likely to have wide variations depending on the load placed on the engines. *Id*. The Petitioners then discuss various reasons for this variability. *See id*. at 2–3.

The Petitioners also assert that "[e]ven the engine manufacturer warns against the reliance on its technical data for regulatory compliance," given that this emission data is based on 100% load. *Id*. at 3 (quoting a statement for a Caterpillar technical data sheet for emergency diesel generators).

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[10] *See supra* note 6 and accompanying text.

[11] In fact, permitting authorities are not obligated to hold a hearing in all instances, but rather are required to "offer [] an *opportunity* for . . . a hearing." 42 U.S.C. § 7661a(b)(6); 40 C.F.R. § 70.7(h) (emphasis added). The EPA has previously interpreted federal requirements to require "a hearing *where appropriate*," 57 Fed. Reg. 32290 (July 21, 1992) (emphasis added). Moreover, the EPA has explained that "[n]either the Act nor EPA's implementing regulations require a permitting authority to hold a hearing when one is requested." *See, e.g., In the Matter of Hu Honua Bioenergy*, Order on Petition No. VI-2014-10 at 13–15 (Sept. 14, 2016) (quoting *In the Matter of ExxonMobil Operating Permits*, Order on Petition No. Vl-2004-01 at 12 (June 29, 2005)).

[12] *See supra* notes 7, 8, and accompanying text.

The Petitioners additionally allege that the Permit "does not include adequate monitoring, recordkeeping and reporting requirements to ensure that the Piedmont Natural Gas Wadesboro Compressor Station will comply with NAAQS and the state implementation plan [SIP] for NOx, CO formaldehyde and other pollutants." *Id.*

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

Although the Petitioners question the accuracy of various emissions estimates and emission factors associated with the PNG Wadesboro facility, they have not demonstrated how any of these assertions may be relevant to whether the Permit complies with requirements of the Act. The Petitioners neither provide a citation to any specific CAA requirement related to these emission estimates or emission factors, nor identify any permit terms associated with or impacted by these emission estimates, nor attempt to explain why any inaccuracies in these emission estimates or emission factors would result in the Permit not complying with any requirements of the Act. Overall, the Petitioners' claims challenging the accuracy of certain emission estimates and emission factors, without any citation or analysis explaining the relevance of these claims, do not demonstrate a flaw in the Permit.[13]

Additionally, the Petitioners' brief, one-sentence claim that the Permit does not include adequate monitoring, recordkeeping, and reporting requirements to assure compliance "with NAAQS and the [SIP] for NOx, CO formaldehyde and other pollutants," Petition at 3, is vague and unclear, and provides no grounds for an EPA objection. In order to provide a basis for an EPA objection on this type of claim, petitioners must demonstrate that a permit does not contain monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with a specific applicable requirement or permit term. *See* 42 U.S.C. § 7661c(a), (c); 40 C.F.R. 70.6(c)(1). Here, the Petitioners have not identified any applicable requirement or permit term with which the Permit's current conditions do not assure compliance.[14] Nor do the Petitioners identify or discuss the Permit's monitoring, recordkeeping, and reporting provisions or provide any explanation why these provisions do not assure compliance with any such (unidentified) permit terms. In responding to public comments raising the same vague claim, NCDENR explained: "The engines operating at the Wadesboro facility are subject to 40 CFR Part 60 (NSPS) Subpart JJJJ for stationary spark ignition internal combustion engines. The subpart requires testing, monitoring, recordkeeping, and reporting. These requirements were recently established by EPA and are adequate to demonstrate compliance with emissions standards for regulated pollutants." Final Air Permit Review at 8. The Petitioners failed to acknowledge or rebut the state's reasoning. Overall, the Petitioners' vague, general claim—unsupported by any citation or analysis and not addressing the state's reasoning—fails to demonstrate that the Permit does not comply with requirements of the Act.[15] For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

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[13] *See supra* note 7 and accompanying text. Additionally, as discussed above, the Petitioners failed to address the reasoning provided by NCDENR in its RTC. *See* Final Air Permit Review at 7–8; *supra* note 6 and accompanying text.

[14] Instead, the Petitioners provide only a cursory reference to unidentified NAAQS and SIP requirements related to an open-ended list of pollutants.

[15] *See supra* notes 6, 7, 8, and accompanying text.

C. The Petitioners' Claim Titled "Opacity Compliance Lacks Sufficient Basis"

Petitioners' Claim: The Petitioners claim that the Permit "has insufficient basis for determining compliance with NAAQS opacity standards." Petition at 3. Put another way, the Petitioners request an EPA objection because "the premise of the draft permit for compliance with the 20% opacity standard has no basis." *Id*. at 4. The Petitioners reproduce a statement from the draft permit review, which indicated, "As stated in the inspection report, typical opacities for these engine exhausts is zero." *Id*. at 3. The Petitioners criticize this statement and the inspection report it references, claiming that the facility was not in operation at the time of the inspection, and that "a non-specific review of a typical facility is insufficient when the matter at hand is a specific facility at a specific location." *Id*. at 4.

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

As discussed above, in order to present grounds for an EPA objection on a claim alleging inadequate monitoring, a petitioner must demonstrate that the current monitoring, recordkeeping, and reporting requirements are not sufficient to assure compliance with a particular applicable requirement or permit term. 42 U.S.C. §§ 7661c(a), (c).

As an initial matter, the Petitioners have not identified any specific applicable requirement or permit term with which the Permit does not assure compliance. Instead, the Petitioners refer generically to a 20% opacity standard.[16] However, more importantly, the Petitioners have failed to demonstrate that the Permit does not assure compliance with all applicable requirements and permit terms related to opacity, such that additional provisions are necessary.

In the Air Permit Review released with the Draft Permit, NCDENR explained that opacity from the natural gas-fired engines like those at PND Wadesboro is typically zero and explained that "Due to the large margin of compliance, no monitoring or recordkeeping is required." Draft Air Permit Review at 2.[17] Additionally, in responding to public comments, NCDENR explained that

[16] The EPA observes that Sections 2.1.A.2 and 2.1.B.2 of the Final Permit contains this 20% opacity limit. This permit term is not, as the Petitioners suggest, a "NAAQS opacity standard[]." Petition at 3. Rather, it is a generic requirement based on the North Carolina SIP that applies broadly to many different potential emission units. *See* 15A N.C.A.C. 2D.0521(d).

[17] As the EPA has previously explained, permitting authorities have broad discretion in determining the extent of monitoring necessary to assure compliance with generic requirements (such as the SIP opacity limits at issue here) that apply to units that do not have a significant potential to violate such requirements (such as the natural gas-fired engines at issue here). *See* White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program at 32 (March 6, 1996). As NCDENR suggests, properly operated and maintained natural gas-fired combustion units do not generally have significant opacity or PM emissions. The EPA has affirmed this general principle in the context of natural gas-fired internal combustion engines (like those at PNG Wadesboro) as well as other natural gas-fired combustion sources. *See, e.g.*, 71 Fed. Reg. 33803, 33814 (June 12, 2006) (explaining that the EPA would not regulate particulate emissions from natural gas-fired spark-ignition internal combustion engines in the subpart JJJJ NSPS due to low PM emission levels); AP-42, Fifth Edition, Volume 1, Chapter 3.2 at 3.2-4 (August 2000) ("Emission of PM from natural gas-fired reciprocating engines are generally minimal and comprise fine filterable and condensible PM."); 76 Fed. Reg. 3517, 3520 (March 21, 2011) (explaining EPA's decision to

"[t]he facility only burns natural gas, the firing of which inherently complies with the opacity limit," and indicated that no visible emissions were observed during a 2014 performance testing of the PNG Wadesboro emission units. Final Air Permit Review at 8. The Petitioners fail to acknowledge or address this RTC and do not even attempt to rebut the technical basis of NCDENR's decision.[18] Instead, the Petitioners' sole argument appears to be an insistence that NCDENR cannot rely on basic principles governing opacity from natural gas-fired engines, but instead must undertake a more thorough site-specific evaluation of opacity at the PNG Wadesboro facility. However, the Petitioners have not demonstrated why this is necessary in this instance. For example, the Petitioners have provided no explanation for why the basic principle that NCDENR relied upon should not apply to the specific natural gas-fired engines or the natural gas-fired emergency generator at the PNG Wadesboro facility, such that additional site-specific monitoring would be necessary. Based on NCDENR's RTC, it also appears that the state *did* undertake a site-specific analysis regarding opacity emissions, confirming the lack of opacity during a prior performance test. *See* Final Air Permit Review at 8. It is unclear what more the Petitioners believe is necessary, or why. In any case, the Petitioners' contention that "the premise of the draft permit for compliance with the 20% opacity standard has no basis," Petition at 4, is clearly incorrect. NCDENR provided a basis for its decision, and the Petitioners have failed to rebut it. The Petitioners' cursory, unsupported claims do not demonstrate that the Permit does not assure compliance with Permit's opacity conditions.[19]

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

D. The Petitioners' Claim Titled "Environmental Justice Analysis Lacking"

Petitioners' Claim: The Petitioners' final claim involves health impacts and environmental justice (EJ) considerations associated with the PNG Wadesboro facility. The Petitioners first summarize demographic information for Anson County, the location of the PNG Wadesboro facility. *See* Petition at 4. The Petitioners assert that Wadesboro also contains several other sources of air pollution permitted by NCDENR. *Id*. The Petitioners suggest that the cumulative impact of the PNG Wadesboro facility and other facilities will create an elevated risk to public health in Anson County. *Id*. For support, the Petitioners quote multiple studies and surveys related to air quality impacts and EJ considerations. *See id*. at 4–5.

The Petitioners claim that NCDENR "has not complied with its [EJ] obligations under the state's Administrative Procedure Act" and permit review procedures, which the Petitioners claim require the evaluation of cumulative or secondary impacts of the PNG Wadesboro facility. *Id*. at 4 (citing *Washington County v. U.S. Dep't of the Navy*, 317 F. Supp. 2d 626 (E.D.N.C. 2004); N.C. Gen. Stat. §§ 133A-1, *et seq.*). The Petitioners request that the EPA compel NCDENR to review these impacts, with an emphasis on EJ (that is, on disproportionately affected communities in Anson County). *Id*. at 5.

allow permitting authorities to exempt natural gas-fired turbines in industrial-commercial-institutional steam generating units from periodic opacity monitoring requirements in the subpart D and subpart Da NSPS).

[18] *See supra* note 6 and accompanying text.

[19] *See supra* notes 7, 8, and accompanying text.

The Petitioners also reference "[t]he EPA's responsibility to review state permits for EJ compliance" *Id*. (citing 42 U.S.C. § 7609; Memorandum, Addressing Environmental Justice through Reviews Conducted Pursuant to the National Environmental Policy Act (NEPA) and Section 309 of the [CAA] (April 19, 2011) (Giles Memorandum)).

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

The Petitioners have not demonstrated that NCDENR was required, in the PNG Wadesboro permit action, to conduct a secondary impacts analysis and/or an EJ analysis. Although the Petitioners reference various state and federal statutes, the Petitioners have not demonstrated that any of the cited provisions (or any other provisions) establish federally enforceable "applicable requirements" that would apply to this permit action and which would be subject to EPA review.

The Petitioners generally cite N.C. Gen. Stat. §§ 133A-1 *et seq.*, the state's Administrative Procedure Act, in support of their assertion that NCDENR should have conducted the requested impacts analyses. As an initial matter, it is unclear which specific portion of this statute creates this obligation, as the Petitioners have not provided any specific citation or analysis of the relevant statutory provisions. However, even more importantly, this statute is not part of North Carolina's EPA-approved SIP. *See* 40 C.F.R. § 52.1770 (identification of North Carolina SIP). As such, this statute is not federally enforceable and does not establish "applicable requirements" subject to the EPA's review or a petition opportunity through the title V permitting process. *See* 40 C.F.R. §§ 70.2 (definition of "applicable requirement"), 70.6(b)(2) (providing that state-only permit terms are not subject to, among other things, the EPA's review or a petition opportunity under § 70.8); *see also, e.g., In the Matter of Waupaca Foundry, Inc. Plants 2/3*, Order on Petition No. V-2016-21 at 9–10 (June 7, 2017). Therefore, issues regarding compliance with this state statute (*i.e.*, whether WDNR was required to conduct a cumulative or secondary impacts analysis under state law) do not present grounds for an EPA objection to the Permit.

In discussing "[t]he EPA's responsibility to review state permits for EJ compliance," Petition at 5, the Petitioners mischaracterize CAA § 309 and an EPA guidance document associated with this statutory provision. Both the text of the statute and the guidance document cited by the Petitioners clearly state that Section 309 relates to the EPA's review of certain actions by the federal (not state) government, such as in the NEPA context. 42 U.S.C. § 7609(a) (providing EPA review of: "(1) legislation proposed by any *Federal* department or agency, (2) newly authorized *Federal* projects for construction and any major *Federal* agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the *Federal* Government" (emphases added)); Giles Memorandum at 1 (discussing an obligation to review "*federal* environmental impacts statements" by "other *Federal* agencies" in the NEPA context (emphasis added)). The Petitioners have not addressed the relevant provisions of Section 309 or demonstrated that these provisions create any obligation on the EPA in the context of reviewing a *state-issued* operating permit like the PNG Wadesboro Permit. Additionally, in light of the limited scope of actions to which CAA § 309 applies—and the fact that where it does apply, it places an obligation on the EPA—this provision lends no support to the Petitioners' overarching claims that NCDENR must perform an EJ analysis as part of the current title V permit action.

Overall, given the Petitioners' failure to demonstrate that NCDENR was required by applicable federal law to conduct a cumulative impact or EJ analyses, the Petitioners have failed to demonstrate that the Permit as issued does not comply with applicable requirements of the CAA or the North Carolina SIP.

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

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: MAR 20 2019

Andrew R. Wheeler
Administrator