

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	PETITION No. IV-2017-10
)	
MILL CREEK GENERATING STATION)	ORDER RESPONDING TO
JEFFERSON COUNTY, KENTUCKY)	A PETITION REQUESTING
)	OBJECTION TO THE ISSUANCE OF
PERMIT No. O-0127-16-V)	A TITLE V OPERATING PERMIT
)	
ISSUED BY THE LOUISVILLE METRO AIR POLLUTION)	
CONTROL DISTRICT)	

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition on June 2, 2017 (the Petition) from the Sierra Club (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to the final operating permit No. O-027-16-V¹ (the Permit) issued by the Louisville Metro Air Pollution Control District (LMAPCD) to the Mill Creek Generating Station (Mill Creek or the Facility) in Jefferson County, Kentucky. The operating permit was issued pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and LMAPCD Regulation 2.16. *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)(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 LMAPCD submitted a title V program governing the issuance of operating permits on February 1, 1994, with supplemental submittals dated November 15, 1994; May 3, 1995; July 14, 1995; and February 16, 1996,

¹ The Petitioner cites to Permit No. O-027-16-V which is the identifier LMAPCD assigned to the Permit for the public comment period. Prior to final issuance, LMAPCD assigned a new number, No. 145-97-TV(R3) to the Permit. Both identifiers used in this Order refer to the Final Permit issued April 5, 2017.

respectively. The EPA granted full approval of LMAPCD's title V operating permit program in 1996. 61 FR 11738 (March 22, 1996). This program, which became effective on April 22, 1996, is codified in LMAPCD Regulation 2.16.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with 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), 503, 504(a), 42 U.S.C. §§ 7661a(a), 7661b, 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, 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 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)(1).² Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.³

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

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 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]

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) (*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).

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.

The EPA has approved Kentucky’s PSD, NNSR, and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.920(c) (identifying EPA-approved regulations in the Kentucky SIP). Kentucky’s major and minor NSR provisions, as incorporated into Kentucky’s EPA-approved SIP, are contained in portions of 401 Kentucky Administrative Regulations Chapter 50 and LMAPCD Regulations Part 2.

III. BACKGROUND

A. 2010 1-Hour SO₂ National Ambient Air Quality Standard Implementation

On June 22, 2010, the EPA promulgated a new 1-hour primary sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) of 75 parts per billion (ppb). On April 23, 2014, the EPA issued a guidance document entitled, “Guidance for 1-Hour SO₂ Nonattainment Area SIP

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 (Apr. 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.

Submissions.” (NSIP Guidance) This guidance set forth an approach whereby in specific cases, states could develop emissions limits based on averaging periods longer than 1-hour that could be shown to provide for attainment of the 2010 SO₂ NAAQS. NSIP Guidance at 22.

On August 5, 2013, the EPA designated part of Jefferson County, in which Mill Creek is located, as nonattainment for the 1-hour SO₂ NAAQS. As required by section 191(a) of the CAA, on June 23, 2017, the Commonwealth of Kentucky submitted to the EPA an SO₂ SIP revision including a nonattainment plan for Jefferson County. Specifically, the SIP revision included a new SO₂ emission limit of 0.20 lb/MMBTu based on a 30-day rolling average for Mill Creek that was asserted to be protective of the 1-hour SO₂ NAAQS. On November 9, 2018, the EPA proposed to approve the SIP revision. *See* 83 FR 56002. The EPA issued a final approval on June 28, 2019. *See* 84 FR 30920.

B. The Mill Creek Generating Station

Mill Creek is a coal-fired electric generating station that is owned by the Louisville Gas & Electric Company (LG&E). The Facility is located in Jefferson County, Kentucky, which, as described above, has been designated as nonattainment for the 1-hour SO₂ NAAQS. The Facility is a major source of SO₂ emissions, which it controls by flue gas desulphurization (FGD) units.

C. Permitting History

LMAPCD issued the Facility’s initial title V permit (Permit No. 145-97-TV) on June 1, 2003. On October 20, 2016, LG&E requested an SO₂ emission limit (0.20 lb/MMBTu) based on a 30-day rolling average. LMAPCD proposed these significant revisions to the title V permit, including those that are the subject of this Petition, in December 2016. LMAPCD submitted the proposed title V permit to EPA for review on February 20, 2017, and issued the final permit on April 5, 2017. The same SO₂ emission limit was subsequently approved and incorporated into Kentucky’s SIP. *See* Section III.A above.

D. 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 expired on April 6, 2017. Thus, any petition seeking the EPA’s objection to the Proposed Permit was due on or before June 5, 2017. The Petition was received on June 2, 2017, and, therefore, the EPA finds that the Petitioner timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

In its Petition, the Petitioner makes two related claims that are focused on whether the SO₂ limit set forth in the Proposed Permit is sufficient to assure compliance with the 1-hour SO₂ NAAQS. See Petition at 3-10. Below, the EPA responds to both of these claims together.¹⁰

Claim 1.A: The Petitioner's Claim That "The 1-Hour NAAQS Demands a Short-Term Emissions Limit at Mill Creek."

Petitioner's Claim: The Petitioner asserts that the "rolling 720-hour average¹¹ emissions limitation in the Revised Permit is inadequate to protect the 1-hour standard under the SO₂ NAAQS." Petition at 3. The Petitioner claims spikes in emissions can elevate ambient SO₂ levels above that allowed under the NAAQS and that the longer average period results in a "smoothed-out emissions curve" that "effectively disregards ephemeral (yet harmful) spikes." Petition at 4.

The Petitioner acknowledges that the NSIP Guidance states that a limit with an averaging period longer than the 1-hour limit must include an adequate downward adjustment to compensate for the loss of stringency inherent in applying a limit with a longer-term average. However, the Petitioner claims that "neither LG&E nor LMAPCD has shown that Mill Creek's characteristics and the permit conditions together satisfy the stringent elements noted by the NSIP Guidance to possibly justify a longer-term SO₂ standard." Petition at 4.

Specifically, the Petitioner claims that the 2009-2014 emissions data used by LG&E are "not representative of Mill Creek's current or prospective emissions patterns." Petition at 5. The Petitioner asserts that the emissions information "predates the respective installations of flue gas desulfurization ("FGD") dry scrubbers on Mill Creek's units from late-2014 to mid-2016, respectively." *Id.* The Petitioner points to the NSIP Guidance, which states that a key element of requesting an extended averaging period is the selection of an appropriate emissions data set. Petition at 5 (citing to NSIP Guidance at Appendix C). The Petitioner states, "[t]herefore, because Mill Creek's pre-scrubber emissions data – a core pillar of LG&E's extraordinary request – cannot reliably predict the plant's emissions going forward, LG&E cannot be deemed to have provided adequate assurances of the 720-hour rolling limit's stringency and protectiveness pursuant to the NSIP Guidance." Petition at 5.

Secondly, the Petitioner argues that "Mill Creek's recent SO₂ emissions starkly illustrate the inability of a 720-hour rolling-average limit to ensure that the critically protective 1-hour NAAQS is met there." Petition at 6. The Petitioner provides emissions data for a portion of 2016 to illustrate Mill Creek's actual hourly SO₂ emissions. The Petitioner states that the data presented show frequent exceedances of the 1-hour emission value on which LG&E based its 720-hour conversion. By contrast, the 30-day average was exceeded less frequently. The

¹⁰ The Petition presents both these claims as sub-claims that comprise Claim 1, concerning the 30-day (or 720-hour average) rolling average limit, and in this Order, we number those claims accordingly. The Petitioner makes additional claims that are related to these first two, including claims related to, for example, the robustness of the state's response to Petitioner's comments. See Petition at 10-14.

¹¹ The Petitioner states that the SO₂ limit is based on a 720-hour average, however, the permitted SO₂ limit is based on a 30-day rolling average.

Petitioner states that this “smoothing-out effect inherent to long-term averaging at a plant with substantially variable emissions, like Mill Creek, masks significant hours in which emissions are above safe, lawful levels.” Petition at 7.

The Petitioner addressed LMAPCD’s response to these issues stating that “[n]one of the reasons offered to defend the Revised Permit in the LMAPCD Response to the [Petitioners] comments justify the 720-hour rolling emissions limit of 0.20 lb/MMBtu contained in the Revised Permit.” Petition at 10. More specifically, the Petitioner contends that LMAPCD in its response did not deny or confront that even if emissions spikes exceed the NAAQS on a less frequent bases, it still means that emissions are resulting in unsafe SO₂ concentrations on a non-negligible basis. The Petitioner asserts that a single study presented by LMAPCD does not refute the Petitioner’s position. Petition at 11.

The Petitioner also does not agree with LMAPCD’s rationale for relying on the 2009-2014 emissions dataset and argues that reliance on these data are “contrary to EPA guidance and is otherwise inappropriate.” Petition at 12.

Claim 1.B: The Petitioner’s Claim That “Even if Some 720-hour Rolling Average Limit Were Acceptable, the Figure in the Revised Permit is Too High to Safeguard the NAAQS”

Petitioner’s Claim: The Petitioner’s general claim is that even if a 720-hour average could adequately protect the 1-hour SO₂ NAAQS, the permitted limit is not defensible as it was calculated opaquely and based on a 1-hour figure (value) too high to protect the NAAQS. The Petitioner asserts that it is unclear how LMAPCD calculated the hourly starting-point value used to determine the limit and how that value can be reconciled with a more stringent hourly requirement LMAPCD identified in earlier discussions. Additionally, the Petitioner asserts that an independent evaluation of the SO₂ emissions commissioned by Sierra Club concluded that an even more stringent hourly value is required to protect the NAAQS.

The Petitioner states that the permit record does not provide a defense of the methodology used to determine the SO₂ limit. The Petitioner requested relevant records from LMAPCD and assert that “no document identifying, explaining, or defending the modeling protocol, assumptions, or other methodological bases was included.” Petition at 8. The Petitioner claims that the documents it did receive did not explain why certain emission data were chosen. The Petitioner asserts that these documents also included correspondence which provided emission data which contradict the data LMAPCD used to determine the SO₂ limit. Petition at 8-9. The Petitioners also cite to a report commissioned by the Sierra Club which they claim supports a finding that the SO₂ limit should be 0.15 lb/MMBtu. Petition at 9.

Similar to the previous claim, the Petitioner also addressed LMAPCD’s response to comments, which the Petitioner asserts fails to justify the SO₂ limit. For instance, LMAPCD explained that earlier emission values that Petitioner claimed were more stringent due to differences in the emission concentrations being analyzed and whether they were from inside or surrounding the

nonattainment areas.¹² The Petitioner disputes this explanation, stating that it is counterintuitive that adding consideration of data from a less problematic area (i.e., an area outside the nonattainment area) would have resulted in a more stringent emissions limit. Petition at 13.

The Petitioner also asserts that while LMAPCD acknowledged the Sierra Club-commissioned report concluded a more stringent hourly standard would be necessary, it made “no attempt to show, explain, or quantify whether such conceivable discrepancies exist, what their effects would be, and which respective set of methodologies and calculations are more defensible...” Petition at 14.

EPA’s Response: For the following reasons, the EPA denies the Petitioner’s request for an objection on all the claims raised in the Petition.

1. The NAAQS itself does not impose an applicable requirement that must be implemented in a title V permit

The Petitioner’s concerns lie with an emission limit that, at the time of the Petition submittal, had yet to be incorporated into a SIP. The Petitioner appears to argue that the facility is responsible for demonstrating compliance with the 1-hour SO₂ NAAQS prior to the state developing its nonattainment plan and that the permit is flawed because it fails to ensure that this SO₂ limit achieves compliance with the NAAQS. This argument is incorrect. As the EPA has explained in prior orders, the promulgation of a NAAQS does not, in and of itself, result in an applicable requirement that must be reflected in a source’s emission limit in its title V permit. “A source is not obligated to reduce emissions as a result of the [NAAQS] until the state identifies a specific emissions reduction measure needed for attainment (and applicable to the source), and that measure is incorporated into a SIP approved by EPA.” *In the Matter of EME Homer City Generation LP*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 (July 30, 2014) at 11. Thus, in this case, the Petitioner has failed to identify any applicable requirement with which the Permit does not comply.

2. The title V permit limit is consistent with the relevant SIP-approved limit, which was approved after the title V permit issued

Notably, the EPA evaluated the SO₂ limit extensively through the SIP review process. It was in that process where Petitioner’s concerns with the limit and whether it achieves attainment with the 1-hour SO₂ NAAQS were properly presented, and, in fact, Petitioner did submit comments in that process that were substantially similar to its comments in this Petition. In the SIP revision process, the EPA determined that the limit was appropriate to attain the 1-hour SO₂ NAAQS and was an appropriately calculated longer-term emission limit. Therefore, the EPA approved it as part of the Jefferson County portion of the Kentucky SIP. *See* 84 FR 30920 (June 28, 2019). As such, this limit is now an applicable requirement and is appropriately incorporated into the title V permit. However, at the time the limit was put into the title V permit at issue here, it was not yet

¹²In discussing a 1-hour critical emissions value that it identified in 2015 before refining its analysis, LMAPCD states that “[t]he 0.24 lbs/MMBtu requirement was arrived at by analyzing emissions concentrations inside of and surrounding the nonattainment area.” But the final 0.29 lb/MMBtu 1-hour critical emissions value reflects compliance inside the nonattainment area. LMAPCD Response to Comments at 6.


an applicable requirement as defined by 40 C.F.R. §70.2 because it had not yet been incorporated into the SIP. Inclusion of this limit in the title V permit before it became an applicable requirement does not constitute a flaw in the permit. The Petitioner's request for objections to the permit based on LMAPCD's response to comments was on substantive and technical grounds concerning the same issues that were properly evaluated during the SIP review process, not this process concerning the validity of the title V permit. In contrast, claims that a permit issuer failed to follow proper *procedures* in issuing a permit may be raised in a petition to object to the permit, but as just noted, Petitioner's concerns about the response to comments were substantive and technical, not procedural. Therefore, the EPA finds that the Petitioner has not demonstrated that the Permit fails to comply with applicable requirements of the CAA or applicable implementation plan, or that the state failed to follow proper procedures in issuing the Permit.¹³

Now that the SIP revision has been approved, those SIP provisions are now applicable requirements with which the Permit must comply. *See* 40 C.F.R. §70.2. The Petitioner has been afforded the opportunity to challenge the SIP provisions therein. *See* 84 FR 30932 (stating that judicial review of [the SIP action] must be filed ... by August 27, 2019). To the extent the Petitioner thinks the SO₂ limit is inappropriate, it should have challenged the SIP approval, but failed to do so. The EPA finds that the approved SIP limit is appropriately represented in the Permit, and this provides a second reason for denying the Petitioner's claims.

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: OCT - 3 2019



Andrew R. Wheeler
Administrator

¹³ The claims presented in this Petition are substantially similar to those that the Petitioner submitted as comments in response to the EPA's proposed approval of the SIP revision, where it was appropriate for them to be raised. In its response to comments, the EPA stated that it limited its review to the substantive and technical concerns regarding the adequacy of the SIP limits at Mill Creek, and did not evaluate (i) whether the permit terms complied with applicable requirements of the CAA, including the applicable implementation plan; or (ii) whether the state followed the proper procedures in issuing the permit. 84 Fed. Reg. 30921, n1 (June 28, 2019) Rather, the EPA stated in its response to comments, these latter two claims are of a type that would be more appropriately raised in a title V petition to object to the permit.