BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF THE PROPOSED	)
TITLE V/STATE OPERATING PERMIT NO 11-00378	)
PERMIT RENEWAL FOR	)
	)
INTER POWER AHLCON PARTNERS LP	)
COLVER POWER PLANT	)
CAMBRIA COUNTY, PA	)
	)
ISSUED BY THE PENNSYLVANIA	)
DEPARTMENT OF ENVIRONMENTAL PROTECTION	)
_____	)

PETITION TO THE EPA ADMINISTRATOR TO OBJECT TO ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT RENEWAL FOR THE COLVER WASTE COAL PLANT

Pursuant to Section 505 of the Clean Air Act, the Sierra Club ("the Club") hereby petitions the Administrator of the United States Environmental Protection Agency ("EPA") to object to the proposed permit renewal for Title V Operating Permit No. 11-00378 ("Colver Permit") issued by the Pennsylvania Department of Environmental Protection ("DEP") for the Colver Power Plant ("Colver") in Cambria County, Pennsylvania. The Clean Air Act ("CAA") mandates that the EPA Administrator "shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of [the Clean Air Act]." 42 U.S.C. § 7661d(b)(2). The CAA also requires the EPA to grant or deny any such petition within sixty days of its filing. *Id*.

As shown below, the Colver Permit does not comply with the CAA; therefore, the EPA Administrator must object to it. Specifically, the Colver Permit lacks the monitoring requirements necessary to assure that the facility actually complies with its hourly limitations on emission of total volatile organic compounds ("VOCs"). Sierra Club timely raised this objection in its comments on the Colver Permit submitted to DEP on September 21, 2020. *See* Sierra Club, Sierra Club comments on Proposed TVOP-11-00378, Interpower Alcon Partners LP (Sept. 21, 2020) (attached as Exhibit 1) [Hereinafter Sierra Club Comments]. This petition also responds to DEP's responses to comments on the Colver Permit from November 23, 2020. Pennsylvania Department of Environmental Protection, *Comments and Response Document for Renewed Title V Operating Permit and Acid Rain Permit Interpower Alcon Partners LP / Colver Power Project*, 7 (Nov. 23, 2020) (Attached as Exhibit 2) [hereinafter Colver Comment Response Document]. EPA's 45-day review period for the permit began on August 26, 2020 and ended on October 9, 2020, and the 60-day public petition period began on October 10, 2020 and ends December 8, 2020 so this petition is timely. *See Title V Operating Permit Public Petition Deadlines in Region 3*, EPA, https://www.epa.gov/caa-permitting/title-v-operating-permitpublic-petition-deadlines (last visited Dec. 4, 2020).

I. The Colver Permit's Monitoring Regime Does Not Ensure that Emissions Restrictions Are Met.

A. The CAA requires monitoring that will ensure emissions restrictions are met.

All Title V permits must include monitoring requirements that will ensure the permitted facility complies with the permit's emissions limits. *See* 42 U.S.C. § 7661c(c)); 40 C.F.R. 70.6(a)(3)(i); 70.6(c)(1). CAA section 504(c) states: "Each permit issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c).

40 C.F.R. 70.6(a)(3)(i), known as the Periodic Monitoring Rule, and 40 C.F.R. § 70.6(c)(1), known as the Umbrella Rule, implement this statutory requirement. The Periodic Monitoring Rule requires that, when an emissions restriction does not itself include a monitoring requirement, the permit writer must include terms requiring "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, if the permit requires a facility to comply with a certain emissions limit, the permit must contain monitoring of a frequency and type sufficient to assure to ensure that the facility complies with the limit.

When an emissions restriction requires periodic testing, but its testing requirements are too infrequent to ensure that the facility is actually complying with its emissions limits, the Umbrella Rule requires the permit-writer to develop new monitoring requirements that ensure the facility complies with its emissions restrictions. *See Sierra Club v. E.P.A.*, 536 F.3d 673, 675-76 (D.C. Cir. 2008) (citing approvingly two EPA rulings finding that the Umbrella Rule requires "state and local permitting authorities to supplement inadequate monitoring requirements"). Thus, the Umbrella Rule backstops the Periodic Monitoring Rule by making clear that permit writers must also correct "a periodic monitoring requirement inadequate to the task of assuring compliance." *Id*. at 675.

The CAA and its implementing regulations require permitting authorities to ensure in all circumstances that the monitoring regime established in the permit is adequate to ensure that the permit's emissions limits are met. The EPA has stressed in numerous administrative decisions the importance of a strong monitoring system. *See, e.g.*, *Tennessee Valley Authority, Bull Run, Clinton, Tennessee*, Petition No. IV2015-14 (EPA Nov. 10, 2016) at 8 [hereinafter Bull Run], (concluding that "[t]he rationale for the monitoring requirements selected by a permitting authority must be clear" and that adequate monitoring is determined by careful, context-specific inquiry into the nature and variability of the emissions at issue); *EME Homer City Generation LP Indiana County, Pennsylvania*, Petition Nos. III-2012-06, III-2012-07, III-2013-02 (EPA Jul. 30, 2014) at 45 [hereinafter EME Homer City Generation], (stating that monitoring requirements should be "sufficient to assure compliance with permit terms and conditions"). As explained below, the Colver Permit fails to meet the requirements established by the CAA for monitoring VOCs.

B. The monitoring frequency for VOC under the Colver permit is inadequate.

The Colver facility is subject to hourly VOC emissions limits. Pennsylvania Department of Environmental Protection, Inter Power Ahlcon LP/ Colver Power Project Proposed Title V Permit No. 11-00378, D(I)(006) (2020) [hereinafter "Colver Permit"]. However, DEP's permit only requires testing for VOCs at most *every two years*, or every three years if the facility qualifies as a Low Emitting EGU ("LEE"). Colver Permit at D(II)(11)(1). A test once every two years cannot show whether the facility has actually met its hourly requirements for each of the 17,520 hours between each test. This testing requirement clearly fails to "assure compliance with the permit terms" as the CAA requires. 42 U.S.C §7661c(c).

Numerous court and EPA decisions confirm that the monitoring requirement DEP imposed in its permit modification violate the CAA. In *Sierra Club v. E.P.A*, the U.S. Court of Appeals for the D.C. Circuit held that an annual monitoring requirement for a daily emissions limit would be inadequate under the CAA. 536 F.3d 673, 675 (D.C. Cir. 2008). In *Tennessee Valley Authority, Bull Run, Clinton, Tennessee*, the EPA found that biannual visual evaluations were inadequate to assure compliance with the applicable opacity limit of 20% using a six-minute average. *Tennessee Valley Authority, Bull Run, Clinton, Tennessee, Petition No. IV2015-14, 11* (EPA Nov. 10, 2016) at 8 [hereinafter Bull Run]. In *Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, the EPA found that quarterly visual observations were also inadequate to assure compliance with a 20% opacity limit measured in six-minute averages. *Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII-00-I (EPA Nov. 16, 2011) at 19. In *EME Homer City Generation*, the EPA found that weekly visual observations were inadequate to ensure compliance with a 20% opacity limit measured in three-minute averages (with a maximum limit of 60% at any time). *EME Homer City Generation* at 44-45. If weekly monitoring is inadequate to assure compliance with a three-minute emissions limit, and annual monitoring is inadequate to assure compliance with an hourly emissions limit, then once-every-two-years monitoring is inadequate to assure compliance with an hourly emissions limit. This precedent indicates that, with regard to monitoring VOC emissions, the Colver Permit violates 42 U.S.C. § 7661c and its implementing regulations.

C. DEP's attempted argument that monitoring for oxygen or carbon dioxide might somehow ensure VOC emission limits are met on an hourly basis fails.

As noted above, despite imposing hourly VOC limits on Colver, DEP fails to impose any sort of VOC monitoring regime for VOCs to ensure that those limits are met. Instead, DEP tries to argue that monitoring oxygen or carbon dioxide will ensure compliance with VOC limits by proxy. Colver Comment Response Document at 7. However, *according to DEP itself* this proposed proxy monitoring is inadequate to show compliance.

Sierra Club's Comments on the Colver Permit pointed out that the testing requirement for VOCs was insufficient, and DEP tried but failed to justify the lax testing as mitigated by the requirement that Colver monitor continuously for oxygen or carbon dioxide. Colver Comment Response Document at 7. DEP stated that VOC emissions from the boiler are a result of incomplete combustion, and that if oxygen levels are proper then VOCs can be oxidized completely. *Id*. However, DEP admitted that monitoring oxygen is likely inadequate. It asserted monitoring oxygen or carbon dioxide (itself as an oxygen proxy) "*can* assure *lower* VOC and

CO emissions," but did not state it *would* ensure *compliance* with emissions limits. *Id* (emphasis added). It further stated that "stack testing for VOC and CO is necessary to quantify [VOC and CO] emissions." *Id*. That is to say, it cannot actually determine if VOC emissions exceed the numeric limit by measuring oxygen without reference to the stack tests (which, as noted above, are far too infrequent to ensure compliance with an hourly VOC limit).

Moreover, nowhere in the Comment Response or the Permit does DEP actually set hourly limits for oxygen or carbon dioxide concentrations tied to VOC emissions, or set forth what concentrations of oxygen or carbon dioxide would demonstrate whether Colver is meeting or failing to meet its hourly VOC emission limit. If DEP or a member of the public *or Colver itself* tried to tell if VOC emission limits were being met by looking at concentrations for oxygen or carbon dioxide, they would accordingly have no way of knowing.

Thus, Sierra Club's comments and DEP's own Comment Response show that, contrary to DEP's assertion, the Permit's inclusion of oxygen or carbon dioxide monitoring cannot substitute for the lack of hourly VOC emission monitoring.

D. Qualifying the Colver plant as an LEE will not ensure compliance with VOC emissions limits.

Under the LEE rule a facility can attain LEE status only for mercury, HAPs, particulates, hydrochloric acid, and hydrofluoric acid emissions. 40 C.F.R. § 63.10005(h). The testing to determine whether a facility is an LEE and whether it retains that status only measures emissions of these chemicals. *Id*. A facility cannot attain LEE status for VOCs. *Id*. Yet, DEP attempts to argue in its response to the Sierra Club that if the Colver facility qualified as an LEE it could reduce its monitoring of VOCs to one test every three years.

Even if DEP were correct that it could reduce monitoring for HAPS, mercury, and particulates under the LEE rule, nothing in the rule allows it to reduce monitoring requirements for VOCs. In its previous decision granting Sierra Club's petition for an objection to the Northampton Permit, EPA found that DEP failed to justify using LEE status to ensure compliance with VOC emissions limits. *Northampton Generating Co. LP, Northampton Generating Plant*, Petition No. III-2020-1 (EPA July 15, 2020) at 12 [hereinafter "Northampton"]. In *Northampton*, EPA granted the objection because DEP "did not explain how testing related to metal HAPs or PM could assure compliance with VOC . . ., which [is] not regulated by MATS and [is] not metal HAPs or particulate matter." *Id*. Essentially, the measure DEP proposed would assure compliance had no relation to the type of emissions DEP claimed it would control and as a result EPA granted the petition to object for failure to comply with the CAA.

Here, DEP has failed to learn from its mistakes. Sierra Club's comments on the proposed permit explicitly referenced the Northampton Petition Order and asserted that DEP's proposed permit could not use LEE status to ensure compliance with VOC limits. Sierra Club Comments at 4. DEP received this comment, but rather than responding to it, DEP failed to provide an explanation for how LEE status would ensure VOC compliance and simply restated that if the

Colver plant maintained LEE status for non-Mercury HAP metals then testing for VOCs could be reduced to every three years. Colver Comment Response Document at 7.

Northampton clearly shows that DEP cannot use LEE status to ensure compliance with VOC emission limits. In its response to comments DEP failed to provide any justification, despite Sierra Club raising this serious flaw in the permit. Because DEP failed here in the same way that it failed in the Northampton permit process, EPA should find that the Colver permit violates the CAA, just as it found the Northampton permit violated the CAA.

II. Conclusion

For the foregoing reasons, the EPA should order DEP to revise the Colver permit VOC monitoring requirements to reflect the hourly VOC limits, so that they no longer violate the Clean Air Act.

Respectfully Submitted,

/s/

Colin Parts
Legal Fellow
The Sierra Club
50 F Street NW, 8th Floor
Washington, DC 20001
(443) 797-2810
colin.parts@sierraclub.org

Zachary M. Fabish
Senior Attorney
The Sierra Club
50 F Street NW, 8th Floor
Washington, DC 20001
(202) 675-7917
zachary.fabish@sierraclub.org