BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NOS. VI-2018-3 & VI-2019-12
GEORGIA-PACIFIC CONSUMER OPERATIONS LLC CROSSETT PAPER OPERATIONS ASHLEY COUNTY, ARKANSAS	)	ORDER RESPONDING TO PETITIONS REQUESTING OBJECTION TO THE ISSUANCE OF TITLE V OPERATING PERMIT
PERMIT NO. 0597-AOP-R19	)	
ISSUED BY THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY	)	

ORDER GRANTING IN PART AND DENYING IN PART A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received two petitions, dated February 19, 2018, and October 30, 2019 (collectively the Petitions) from Crossett Concerned Citizens for Environmental Justice (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 Petitions request that the EPA Administrator object to operating permit No. 0597-AOP-R19 (the R19 Permit) issued by the Arkansas Department of Environmental Quality (ADEQ)[1] to Georgia-Pacific Consumer Operations LLC, Crossett Paper Operations (GP Crossett or the facility) in Crossett, Ashley County, Arkansas. The operating permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation 26. *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 Petitions and other relevant materials, including the R19 Permit, the permit record, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, EPA grants in part and denies in part the Petitions requesting that the EPA Administrator object to the R19 Permit. Specifically, EPA grants in part and denies in part Claims II.D.1 and II.D.2 of the October 30, 2019, Petition and denies the rest of the claims.

[1] ADEQ is now termed the Division of Environmental Quality (DEQ). Given that the Petitions and relevant permit documents refer to ADEQ, EPA's Order uses that older terminology throughout.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to EPA an operating permit program to meet the requirements of title V of the CAA and EPA's implementing regulations at 40 C.F.R. part 70. The state of Arkansas submitted a title V operating permit program on October 29, 1993. EPA granted interim approval of the Arkansas title V program in 1995. 60 Fed. Reg. 46771 (September 8, 1995). EPA granted final approval of the Arkansas title V program in 2001. 66 Fed. Reg. 51312 (October 9, 2001). The program is currently codified in APC&EC Regulation 26.

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. 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* 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) 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 EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the proposed permit if EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of EPA's 45-day review period, petition the Administrator to object to the permit. 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). 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. 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 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 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 in the following paragraph. A more detailed discussion can be found in the preamble to EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (August 24, 2016); *see also 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*).

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 contained in the permit record. EPA expects the petitioner to address the permitting authority's final decision and final reasoning (including the state's response to comments) where these documents were available during the timeframe for filing the petition. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022; *MacClarence*, 596 F.3d at 1132–

[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.

33.[6] Another factor EPA examines is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, 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, 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 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 EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. 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 required by § 70.7(a)(5) (sometimes referred to as the 'statement of basis'); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all 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). *Id.* 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 when determining whether to grant or deny the petition. *Id*.

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[6] *See also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x *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).

[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.

If EPA grants a title V petition, a permitting authority may address EPA's objection by, among other things, providing EPA with a revised permit. 42 U.S.C. § 7661d(b)(3), (c); 40 C.F.R. § 70.8(d); *see id*. § 70.7(g)(4); 70.8(c)(4); *see generally* 81 Fed. Reg. 57822, 57842 (August 24, 2016) (describing post-petition procedures); *Nucor II Order* at 14–15 (same). In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record. For example, when EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing an additional rationale to support its permitting decision.

When the permitting authority revises a permit or permit record in order to resolve an EPA objection, it must go through the appropriate procedures for that revision. The permitting authority should determine whether its response is a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V program. If the permitting authority determines that the modification is a significant modification, then the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the state's corresponding regulations.

In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, and regardless of the procedures used to make such revision, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA § 505(b) and 40 C.F.R. § 70.8(c) and (d). *See Nucor II Order* at 14. As such, it would be subject to EPA's 45-day review per CAA § 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity for the public to petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) if EPA does not object during its 45-day review period.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that EPA identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to EPA's objection. As described in various title V petition orders, the scope of EPA's review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action. *See In The Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (September 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (December 19, 2007).

III. BACKGROUND

A. The GP Crossett Facility

Georgia-Pacific Consumer Operations LLC (now Georgia-Pacific Crossett LLC) owns and operates a paper mill in Crossett, Ashley County, Arkansas. At the time the R19 Permit was issued and the Petitions were filed, the GP Crossett facility produced a variety of products, including fine paper, board paper, and tissue paper. Production involved various emissions units from the following operations: Woodyard, Pulp Mill, Bleach Plant, Liquor Recovery,

Causticizing, Fine Paper Machines, Board Machine, Tissue Machines, Extrusion Plant, Steam Generation, Wastewater Treatment, and Miscellaneous activities. Since that time, significant portions of the facility's operations have been shut down. At present, the facility only produces consumer bath tissue. Emission units remaining operational include: pulp storage chests formerly associated with the Bleach Plant, four Tissue Machines and associated Repulpers and Cooling Towers; several boilers associated with Steam Generation, Wastewater Treatment, and Miscellaneous activities. The GP Crossett facility remains a major source subject to title V, and is subject to various other CAA requirements, including New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).

EPA conducted an analysis using EPA's EJScreen[10] to assess key demographic and environmental indicators within a five-kilometer radius of the GP Crossett facility. This analysis showed a total population of approximately 7,843 residents within a five-kilometer radius of the facility, of which approximately 40 percent are people of color and 49 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 12 environmental indicators. Five of the 12 Environmental Justice Indices in this five-kilometer area exceed the 80th percentile when compared to the rest of the State of Arkansas, including Air Toxics Cancer Risk, Lead Paint, Superfund Proximity, RMP Facility Proximity, and Hazardous Waste Proximity.

B. Permitting History

Georgia-Pacific first obtained a title V permit for the GP Crossett facility in 1997, which was subsequently renewed. The facility applied for its most recent renewal title V permit in 2016. ADEQ published notice of a draft permit on November 6, 2017 (the November 2017 Draft Permit), subject to a public comment period that was extended and ran until January 4, 2018. This permit was transmitted to EPA for review as a "proposed permit" at the same time that it was released to the public for public comment. Accordingly, EPA's public website initially indicated that EPA's 45-day review of the November 2017 Draft Permit would end on December 21, 2017, with a public petition period ending on February 19, 2018. The Petitioner submitted a petition on the November 2017 Draft Permit on February 19, 2018 (the 2018 Petition).

Subsequently, based on comments submitted during the public comment period, ADEQ made changes to the November 2017 Draft Permit and submitted a revised "proposed permit" to EPA on July 15, 2019 (the July 2019 Proposed Permit). Accompanying the July 2019 Proposed Permit was a document containing ADEQ's Response to Comments (RTC). EPA updated its public website to indicate that EPA's 45-day review of the July 2019 Proposed Permit would end on August 30, 2019, with a public petition period ending on October 30, 2019. The Petitioner submitted a petition on the July 2019 Proposed Permit on October 30, 2019 (the 2019 Petition).

ADEQ finalized renewal permit No. 0597-AOP-R19 on September 26, 2019 (the R19 Permit). Subsequently, due to the aforementioned partial shutdown of the GP Crossett facility, ADEQ

[10] EJScreen is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. *See https://www.epa.gov/ejscreen/what-ejscreen*.

processed a number of permit revisions that involved removing permit terms associated with shutdown emission units. The latest permit revision involving the removal of emission units was Permit No. 0597-AOP-R25, issued on October 24, 2022 (the R25 Permit).

C. Timeliness of Petitions

Pursuant to the CAA, if 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 Petitioner's 2018 Petition preemptively challenged the November 2017 Draft Permit based on the understanding—valid at the time—that it was a "proposed permit" subject to a petition opportunity.[11] However, the July 2019 Proposed Permit wholly replaced and superseded the November 2017 Draft Permit as the "proposed permit" subject to EPA's 45-day review and public petition opportunity. That is, after the submission of the July 2019 Proposed Permit to EPA, the November 2017 Draft Permit was no longer a proposed permit subject to a petition opportunity under CAA section 505(b)(2).[12]

Notably, the Petitioner acknowledges "ADEQ made a number of valuable improvements" to the November 2017 Draft Permit after considering public comments. 2019 Petition at 2. Accordingly, the Petitioner excluded from the 2019 Petition several claims presented in the 2018 Petition. Moreover, to the extent the Petitioner believes that "the permit continues to suffer from procedural and substantive defects which require EPA's objection," 2019 Petition at 2, it re-raised such claims in the 2019 Petition. Thus, even to the extent the 2018 Petition could continue to be considered a valid petition under CAA section 505(b)(2), it is moot, as it was wholly superseded by the July 2019

[11] The November 2017 Draft Permit was initially treated by ADEQ and EPA as both a "draft permit" subject to public comment as well as a "proposed permit" subject to EPA review and a petition opportunity. At that time, it was not clear whether ADEQ would, after receiving public comments, transmit a new "proposed permit" to EPA (thus initiating a new EPA review and petition opportunity). *See* 2019 Petition at 2 ("[I]in order not to lose its statutory right to petition EPA for an objection, CCCEJ had no choice but to file a petition with EPA before receiving ADEQ's response to CCCEJ's comments on the permit and before ADEQ decided whether to revise the permit in light of those comments."). Note that the requirement to submit a new "proposed permit" containing the state's response to comments was subsequently codified in EPA's regulations, with an effective date of April 6, 2020. 85 Fed. Reg. 6431 (February 5, 2020); *see infra* note 12.

[12] *See* 40 C.F.R. § 70.8(a)(1)(ii) (2020) ("If the permitting authority receives significant comment on the draft permit during the public participation process, but after the submission of the proposed permit to the [EPA] Administrator, the Administrator will no longer consider the submitted proposed permit as a permit proposed to be issued under section 505 of the Act. In such instances, the permitting authority must make any revisions to the permit and permit record necessary to address such public comments, including preparation of a written response to comments (which must include a written response to all significant comments raised during the public participation process . . . , and must submit the proposed permit and the supporting material . . . to the Administrator after the public comment period has closed. This later submitted permit will then be considered as a permit proposed to be issued under section 505 of the Act, and the Administrator's review period for the proposed permit will not begin until all required materials have been received by the EPA."). Although this rule was finalized after both the November 2017 Draft Permit and July 2019 Proposed Permit were transmitted to EPA, it is nonetheless instructive, as it codified EPA's longstanding views on this topic. 85 Fed. Reg. at 6441 ("This reflected, and continues to reflect, the EPA's understanding of how such concurrent permitting programs should—and in most cases, do—operate."); 81 Fed. Reg. 57822, 57839 (August 24, 2016) (same).

Proposed Permit and 2019 Petition. In any case, EPA's response to the 2019 Petition will also effectively resolve the 2018 Petition.[13]

ADEQ's submission of the July 2019 Proposed Permit to EPA restarted the timeline for EPA's review and the opportunity for the public to submit a petition on this permit. Accordingly, as previously stated, EPA's website was updated to state that EPA's 45-day review of the July 2019 Proposed Permit would end on August 30, 2019, with a public petition period ending on October 30, 2019. The Petitioner submitted the 2019 Petition on October 30, 2019. EPA finds that the Petitioner timely filed the 2019 Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Claim I: The Petitioner Claims That "ADEQ Unlawfully Circumvented the Public's Right to a Full 60-Day Petition Period."

Petitioner's Claim: The Petitioner claims that ADEQ failed to timely notify the public that a new proposed permit had been submitted to EPA, resulting in the public having less than 60 days to submit a petition. *See* 2019 Petition at 5–7.

The Petitioner claims that ADEQ forwarded a "proposed" permit to EPA for review on November 6, 2017 (*i.e.*, the November 2017 Draft Permit discussed in Section III.B), before the start of the public comment period. 2019 Petition at 1, 5. The Petitioner further claims that ADEQ refused the Petitioner's requests to withdraw that permit from EPA's review while considering public comments. *Id*. Nonetheless, the Petitioner acknowledges that ADEQ subsequently transmitted a new, second proposed permit for EPA's review on July 15, 2019 (*i.e.*, the July 2019 Proposed Permit discussed in Section III.B), approximately 18 months after its initial proposed permit transmittal. *Id*. at 2, 5. The problem, according to the Petitioner, is that ADEQ did not notify the public of this second proposed permit. *Id*.

Because it did not receive notice of the second proposed permit, the Petitioner asserts that it was not aware of the fact that ADEQ had transmitted a new proposed permit to EPA—or that a new petition period had begun—until ADEQ finalized the R19 Permit on September 26, 2019. *Id*. Because the public petition period on the second proposed permit ended on October 30, 2019, the Petitioner claims that it had only 34 days, versus 60 days as specified in the Act, to prepare and file a petition to EPA. *Id*. at 1, 5.

The Petitioner characterizes ADEQ's failure to notify commenters of the transmittal of the proposed permit or the start of the new petition period as "unfair and unlawful," warranting an EPA objection. *Id*. For support, the Petitioner cites 40 C.F.R. § 70.8(d), which requires that state programs "shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." *Id*. at 5–6. The Petitioner concedes that ADEQ's regulations are "consistent with that requirement." *Id*. at 6 (citing APC&EC Reg. 26 § 26.606). Nonetheless, the Petitioner asserts that "as a practical matter,"

[13] *See, e.g.*, *In the Matter of South Louisiana Methanol, LP*, Order on Petition Nos. VI-2016-24 & VI-2017-14 at 7–8 (May 29, 2018).

ADEQ's program does not provide any person with 60 days to petition EPA, because ADEQ does not notify the public—or even those who submitted comments—that it has forwarded a proposed permit to EPA. *Id*. The Petitioner specifically takes issue with ADEQ's practice in situations such as those present here, where ADEQ (1) previously forwarded EPA an earlier version of proposed permit; (2) rebuffed the public's requests to withdraw the earlier proposed permit; and (3) "left commenters in the dark" of the fact that a new petition period might commence in the future without additional notice. *Id*.

The Petitioner cites various other EPA regulations for support. *See id*. at 6–7 (citing 40 C.F.R. §§ 70.7(a)(1)(ii), 70.7(h), 70.8(c)(1), 70.8(d)). Notably, the Petitioner admits that § 70.7(h) does not specifically require states to provide public notice when transmitting a proposed permit to EPA. *Id*. at 7. Nonetheless, the Petitioner argues that the requirement for "adequate procedures for public notice" in § 70.7(h), in conjunction with the requirement to provide a 60-day petition period in § 70.8(d), requires a state to notify commenters that it has transmitted a proposed permit. *Id*.

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

EPA may object to a permit if a state fails to issue the permit following procedural requirements in 40 C.F.R. § 70.7(h) related to public participation. 40 C.F.R. § 70.8(c)(3)(iii); *see id*. § 70.12(a)(2)(iv) (2020). However, the Petitioner has not demonstrated that § 70.7(h) specifically requires a state to notify the public that the state has transmitted a proposed permit to EPA or that the public petition period has begun.[14] Additionally, the Petitioner has not identified any requirements in 40 C.F.R. § 70.8—including the requirements in § 70.8(a) governing a state's transmission of a "proposed permit" to EPA, as well as the requirements in § 70.8(d) governing the public petition period—with which ADEQ did not comply.

Moreover, Petitioner has not demonstrated that the public was deprived of the full 60-day petition period mandated by the statute and regulations. The Petitioner had several means of ascertaining that ADEQ had provided EPA a proposed permit and that a new petition period would begin 45 days later. For example, as the Petitioner acknowledges, EPA's public website was updated upon receipt of the 2019 Proposed Permit (45 days before the 60-day petition period began) to indicate EPA's review timeline and the corresponding petition deadline. 2019 Petition Att. 1. Additionally, the Petitioner could have periodically reached out to ADEQ or EPA for status updates. *See* 85 Fed. Reg. 6431, 6437, 6441 (February 5, 2020).

To be sure, EPA has historically encouraged, and continues to encourage, state permitting authorities to keep interested parties (especially those who provided comments on a draft permit) apprised of developments in the permitting process, including the transmittal of a proposed

[14] The procedures in § 70.7(h) governing public notice expressly apply to "draft permits," not to "proposed permits" that are transmitted to EPA for EPA's 45-day review. 40 C.F.R. §§ 70.7(h) (requiring " adequate procedures for public notice including offering an opportunity for public comment and a hearing *on the draft permit*" (emphasis added)), 70.2 (defining "draft permit" as "the version of a permit for which the permitting authority offers public participation under § 70.7(h)" and "proposed permit" as "the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8").

permit to EPA. 85 Fed. Reg. at 6437, 6441; 81 Fed. Reg. at 57839. However, the Petitioner has not demonstrated that ADEQ's failure to do violated any requirements of the Act or part 70.

Claim II: The Petitioner Claims That "ADEQ's Permit Does Not Comply with the Clean Air Act's Substantive Requirements."

The Petition's second enumerated "grounds for objection" consists of eight specific claims (II.A, II.B, II.C, II.D.1, II.D.2, II.D.3, II.D.4, and II.D.5) alleging that the title V permit fails to include requirements that assure compliance with all applicable CAA requirements. 2019 Petition at 7 (citing 40 C.F.R. § 70.6(a)(1)); *see id*. at 7–26. The first three claims (II.A, II.B, and II.C) raise various issues that are not closely related. The five separately enumerated claims under II.D concern whether the R19 Permit contains enforceable conditions sufficient to assure compliance with all applicable requirements. *See* 2019 Petition at 11–12 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. §§ 70.6(c)(1), 70.7(a)(5)). Because each claim addresses a different alleged permit flaw, each of these eight claims are addressed separately in the following sections.

Claim II.A: The Petitioner Claims That "The Permit Unlawfully Excludes the Results of Recordkeeping Requirements Designed to Assure Compliance with Applicable Requirements from the Six-Month Monitoring Reports Required by General Provision #7."

Petitioner's Claim: The Petitioner claims that the R19 Permit does not satisfy 40 C.F.R. § 70.6(a)(3)(iii)(A) because it does not require GP Crossett to submit the results of certain recordkeeping requirements every six months. *See* 2019 Petition at 7–10.

The Petitioner claims that, pursuant to General Provision 7 of the R19 Permit, the facility is obligated to include "reports of all required monitoring" in its six-month monitoring reports. *Id*. at 7 (citing R19 Permit at 305). The Petitioner observes that this condition is meant to implement the federal requirement that a permittee submit "reports of any required monitoring at least every 6 months." *Id*. (quoting 40 C.F.R. § 70.6(a)(3)(iii)(A); citing 42 U.S.C. § 7661c(a)).

At issue is whether the results of certain *recordkeeping* requirements in the R19 Permit must be included in these reports. *See id*. at 8. According to the Petitioner: "[W]here a Title V permit relies on recordkeeping for purposes of assuring a facility's compliance with an applicable requirement, this recordkeeping qualifies as 'monitoring,' the results of which must be addressed in the facility's statutorily required six-month monitoring report." *Id*. (citing 40 C.F.R. § 70.6(a)(3)(i)(B)); *see also id*. at 9–10 (citing 42 U.S.C. §§ 7604, 7661b(e)[15]).

The Petitioner claims that "it appears" ADEQ is attempting to exclude the results of recordkeeping requirements from the six-month reporting requirement. *Id*. The Petitioner's concerns about this apparent exclusion are based on ADEQ's statement in its RTC that, "in addition" to the six-month monitoring report requirements, "[t]he permit includes . . . various recordkeeping requirements" that are "provided to the Division upon request." *Id*. (quoting RTC at 32). The Petitioner further bases its concerns on certain permit terms that establish

[15] The Petition erroneously refers to CAA § 504(e), 42 U.S.C. § 7661c(e); the intended citation appears to be CAA § 503(e), 42 U.S.C. § 7661b(e).

recordkeeping and are either silent about the permittee's reporting obligations or state that records are to be provided to ADEQ "upon request." *Id*. Specifically, the Petitioner identifies 10 individual permit terms that allegedly utilize recordkeeping to monitor the facility's compliance with an applicable requirement and which suffer the flaws alleged above. *Id*. at 8–9 (citing R19 Permit, Specific Conditions 5, 7, 9, 10, 11, 15, 17(e), 23, 28, and 31(c)). The Petitioner cites these specific permit terms "to illuminate the issue," but requests "EPA's objection to ADEQ's overall approach of treating recordkeeping requirements as distinct from 'monitoring' and relying on that distinction to exclude results of recordkeeping from the six-month monitoring reports." *Id*. at 8 n.18.

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

The Petitioner asserts that the R19 Permit does not satisfy 40 C.F.R. § 70.6(a)(3)(iii)(A) because the R19 Permit excludes the results of certain recordkeeping requirements from six-month reporting requirements. As a general matter, EPA agrees with the Petitioner that it *would* be inappropriate in some instances to exclude the results of certain recordkeeping requirements from the required six-month monitoring reports in situations where recordkeeping is designed to serve as monitoring. *See* 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(3)(i)(B), (a)(3)(iii)(A). However, it is not clear to EPA that the Permit does (or did) any such thing.

To start, General Provision 7 does not, in and of itself, establish any such exclusion. Instead, this permit term is consistent with the requirements of CAA § 504(a) and 40 C.F.R. § 70.6(a)(3)(iii)(A).[16] Whether the Permit establishes such an exclusion depends on the interaction between General Provision 7 and more specific permit terms.

The Petitioner identifies 10 specific permit terms that allegedly establish such an exclusion. However, the cited Permit terms did not, on their face, indicate that their corresponding recordkeeping requirements would be excluded from the six-month monitoring reports required by General Provision 7. ADEQ's RTC similarly does not explicitly establish or affirm such an exclusion.[17]

It is thus a fact specific inquiry whether these particular permit terms might have been interpreted (or intended) to establish such an exclusion. That is not something EPA must resolve at present. Due to the partial shutdown of the facility, all permit terms identified by the Petitioner have been removed from the Permit since the filing of the Petition. Thus, to the extent the Petitioner's claim alleges that these permit conditions ran afoul of 40 C.F.R. § 70.6(a)(3)(iii)(A), it is moot. Accordingly, Claim II.A is denied.

The Petitioner includes a footnote indicating that the cited permit terms are simply illustrative and that the Petitioner requests EPA's objection to the state's "overall approach." 2019 Petition at 8 n.18. However, to demonstrate a basis for EPA's objection, a petitioner must demonstrate

[16] Notably, the Petitioner does not allege that General Provision 7 itself fails to satisfy the Act. Instead, the Petitioner appears to concede that this permit term, as written, is consistent with 40 C.F.R. § 70.6(a)(3)(iii)(A), which contains similar language. *See* 2019 Petition at 7.

[17] Overall, ADEQ's RTC on this issue is not entirely clear. *See* RTC at 32.

that "*the permit*" does not comply with the CAA and its implementing regulations. 42 U.S.C. § 7661d(b)(2) (emphasis added); *see* 40 C.F.R. § 70.8(c). This necessarily requires addressing the specific permit terms that give rise to an alleged deficiency.[18] Importantly, the burden to identify relevant permit terms is on the Petitioner; it is not EPA's role in the petition response process to chase down hypothetical or speculative leads regarding additional permit terms that may or may not exist and which may or may not suffer the same alleged flaws as those identified by a petitioner. Thus, the Petitioner's generalized allegations—viewed outside the context of any specific permit terms—present no basis for EPA's objection.

To the extent that ADEQ retains or establishes permit terms in the future that might be viewed to establish an exclusion to 40 C.F.R. § 70.6(a)(3)(iii)(A) (whether in GP Crossett's Permit or elsewhere), the public may challenge such permit terms through the appropriate channels, potentially including a future title V petition to EPA.

Claim II.B: The Petitioner Claims That "The Permit Unlawfully Fails to Specifically Identify the State Implementation Plan Provisions on Which the Permit Conditions are Based."

Petitioner's Claim: The Petitioner claims that the R19 Permit does not identify the specific version of Arkansas SIP statutes underlying various permit conditions. 2019 Petition at 10.

The Petitioner notes that 40 C.F.R. § 70.6(a)(1)(i) requires that a title V permit "shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." *Id*. (quoting 40 C.F.R. § 70.6(a)(1)(i)).

The Petitioner observes that the R19 Permit cites to Arkansas statutory provisions as the legal basis for various permit conditions, including Specific Conditions 2, 6–9, 11, 13, 14, 20, 22, 26, 29, 40, 43, 44, 46, 66, 69–71, 73–74, 77–79, 84, 87–89, 94, 104, 106–107, 110–112, 116, 120, 144, 146, 149, 153–155, 158–159. *Id*. The Petitioner claims that the Arkansas legislature has repeatedly revised the statutes at issue since EPA approved Arkansas's SIP in the 1970s and 1980s, and that the EPA-approved versions are the "applicable requirements" for purposes of the title V permit. *Id*. The Petitioner asserts that 40 C.F.R. § 70.6(a)(1)(i) requires ADEQ to "specifically identify the version of the statute that is included and being cited in support of each permit condition, *i.e.*, by identifying the year that the version of the statute that is in the SIP was promulgated." *Id*. The Petitioner also contends that ADEQ must find the version of the statutes that are in the SIP and ensure that they support the permit conditions for which they are cited, and clarify if there is a difference between the permit condition and the statutory provisions incorporated into the Arkansas SIP. *Id*.

The Petitioner addresses ADEQ's statement that "[t]here is no regulatory requirement to include adoption dates" and its suggestion that reconstructing SIP approvals is unnecessary. *Id*. (quoting RTC at 31). The Petitioner offers the following rebuttal:

[18] *See supra* notes 7–8 and accompanying text; *see also* 40 C.F.R. § 70.12(a)(2)(i) (2020) (codifying longstanding EPA interpretations of the demonstration burden).

> Where the SIP-approved version of the applicable statutory or regulatory requirement is not the same as the current version, simply providing a statutory or regulatory citation without identifying the version of that statute or regulation that serves as the "applicable requirement" is insufficient to "specify and reference" the authority for a permit condition.

Id.

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

As an initial matter, all but one of the permit terms subject to the alleged flaws described in Claim II.B have since been removed from the Permit. Therefore, to the extent the Petition challenges permit terms no longer present in the R25 Permit, it is denied as moot.

A portion of Specific Condition 43 of the R19 Permit is now reflected in Specific Condition 2 of the R25 Permit; although this permit term has changed somewhat, its citation to authority remains the same as it was in the R19 Permit. Thus, to the extent that Claim II.B relates to this permit term, EPA will address the Petitioner's allegations.

The Petitioner has not demonstrated that the Permit must specifically identify the version or year of the legal authority on which this permit term is based. The Petitioner's claim is based on the assumption that the permit term at issue is based on a state statute that has changed following approval into the SIP. However, former Specific Condition 43 is not based on any SIP authority at all. Instead, this permit term establishes state-only-enforceable limitations on HAP emissions and cites exclusively to the state-only-enforceable provisions of APC&EC Rule 18 and Ark. Code Ann. §8-4-101 *et seq*. as its authority. As explained further with respect to Claims II.C and II.D.5, such state-only permit terms are not subject to EPA's review. 40 C.F.R. § 70.6(b)(2). Thus, Claim II.B is denied.

Claim II.C: The Petitioner Claims That "The Permit Unlawfully States that Any Permit Condition Citing to the Arkansas Water and Air Pollution Control Act as the Sole Origin of and Authority for that Condition is Not Federally Enforceable."

Petitioner's Claim: The Petitioner requests EPA's objection to General Provision 1 because, according to the Petitioner, this permit term incorrectly asserts that any permit condition that cites to the Arkansas Water and Air Pollution Control Act as the sole origin of and authority for that condition is not federally enforceable. 2019 Petition at 11 (citing R19 Permit at 304). The Petitioner asserts that this legal authority is frequently cited as the legal basis for permit conditions. *Id*. Elsewhere in the Petition (within Claim II.D.5), the Petitioner identifies several permit terms that exclusively cite this authority. *See id*. at 26.

The Petitioner characterizes General Provision 1 as "incorrect" because "many provisions of the Arkansas Water and Air Pollution Control Act are included in Arkansas' federally enforceable SIP, including the statutory predecessor to A.C.A. § 8-4-203 (formerly A.S.A. § 82-1904)." *Id*. at 11 (citing 40 C.F.R. § 52.170(e)). The Petitioner claims that "ADEQ cannot simply deem a

permit condition promulgated pursuant to SIP authority to not be federally enforceable." *Id*. The Petitioner further asserts that ADEQ did not provide a response to this comment. *Id*. (citing RTC at 31).

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

In EPA's review of title V permits, the key inquiry is whether the title V permit contains and assures compliance with all federally enforceable CAA-based applicable requirements. However, in addition to federally enforceable permit terms that are subject to EPA's review, title V permits may also include conditions that are not derived from the CAA and that are not federally enforceable (EPA often refers to such permit terms as "state-only" enforceable terms). It is important that the inclusion of state-only-enforceable permit terms does not undermine the effectiveness of federally enforceable permit terms. To this end, 40 C.F.R. § 70.6(b)(2) states that "the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements."

GP Crossett's title V permit implements this requirement through General Provision 1, which states:

> Any terms or conditions included in this permit which specify and reference Arkansas Pollution Control & Ecology Commission Regulation 18 or the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. § 8-4-101 et seq.) as the sole origin of and authority for the terms or conditions are not required under the Clean Air Act or any of its applicable requirements, and are not federally enforceable under the Clean Air Act. Arkansas Pollution Control & Ecology Commission Regulation 18 was adopted pursuant to the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. § 8-4-101 et seq.). Any terms or conditions included in this permit which specify and reference Arkansas Pollution Control & Ecology Commission Regulation 18 or the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. § 8-4-101 et seq.) as the origin of and authority for the terms or conditions are enforceable under this Arkansas statute. [40 C.F.R. § 70.6(b)(2)]

R19 Permit at 304; *see* R25 Permit at 115 (similar language).

This general provision indicates that certain specific permit terms—permit terms that exclusively cite APC&EC Rule 18 or Ark. Code Ann. § 8-4-101 *et seq.* as their origin of authority—are not federally enforceable. Although a more straightforward method would be to clearly identify each specific permit term as "not federally enforceable" or "state-only-enforceable," this general provision does not, on its face, run afoul of 40 C.F.R. § 70.6(b)(2). Determining whether it is appropriate (or inappropriate) to designate a particular permit term as state-only-enforceable depends on the nature of the specific permit term and the underlying legal authority.

For example, because SIP provisions are federally enforceable requirements of the CAA, it would not be appropriate to designate a permit term that implements an EPA-approved SIP

provision as state-only-enforceable. *See* 40 C.F.R. § 70.6(b)(1); *see also id*. § 70.2 (definition of "applicable requirement" to include certain SIP requirements). Thus, EPA agrees with the Petitioner's general assertion that "ADEQ cannot simply deem a permit condition promulgated pursuant to SIP authority to not be federally enforceable." 2019 Petition at 11. As applied to the Petitioner's hypothetical concern, to the extent that General Condition 1 could have the effect of turning a SIP requirement that *should* be federally enforceable into a state-only-enforceable requirement, this would be problematic. However, the Petitioner has not demonstrated that ADEQ has, in fact, done any such thing in the GP Crossett Permit.

As an initial matter, within Claim II.C, the Petitioner does not identify a single permit term that relies exclusively on APC&EC Reg. 18 or Ark. Code Ann. § 8-4-101 *et seq*. EPA acknowledges that later in the Petition, within Claim II.D.5, the Petitioner identifies several such permit terms. But even there, the Petitioner does not demonstrate that these permit terms are based on a federally enforceable SIP provision, such that it would be inappropriate to designate these terms as not federally enforceable (by way of General Condition 1). To the contrary, as discussed further in Claim II.D.5, these permit terms are state-only-enforceable limitations on HAP emissions that are not based on any provisions of the EPA-approved SIP or any other CAA requirements. Thus, it appears that those conditions are appropriately designated as not federally enforceable, and General Condition 1 is functioning exactly as it should.

Overall, the Petitioner has not demonstrated that General Condition 1, either viewed in isolation or as applied to specific permit terms, does not comply with 40 C.F.R. § 70.6(b)(2) or any other provision of the Act or the part 70 regulations.

Furthermore, the Petitioner has not demonstrated that ADEQ's failure to respond to the specific portion of its comments concerning General Condition 1 presents a basis for EPA's objection to the permit. EPA has long held that state permitting authorities must respond to all significant comments. *See Home Box Office* v. *FCC,* 567 F. 2d 9, (D.C. Cir. 1977); *see also* 40 C.F.R. § 70.7(h)(6) (2020) (codifying this requirement). However, not all comments (or portions of comments) are significant and warrant a specific response. *See generally* 85 Fed. Reg. at 6440 (discussing various principles concerning whether a comment is "significant"). The EPA Environmental Appeals Board (EAB) confronted a situation similar to that present here in the analogous context of Prevention of Significant Deterioration permits, stating: "Where a comment lacks specificity and precision, the permit issuer's obligation to respond is similarly tempered. It is well settled that permit issuers need not guess the meaning behind imprecise comments and are under no obligation to speculate about possible concerns that were not articulated in the comments." *In re: Tuscon Electric Power*, 17 E.A.D. 675, 695 (EAB 2018) (internal quotations and citations omitted). Here, not only were the public comments on this topic vague and generalized, but they also appear to be baseless. Thus, EPA does not view ADEQ's failure to specifically rebut this comment as presenting grounds for EPA's objection to the Permit.

Claim II.D.1: The Petitioner Claims That "The Permit's Production/Process Limits are Insufficient to Assure Compliance with the Applicable Pound per Hour Emission Limits."

Petitioner's Claim: The Petitioner claims that the R19 Permit's production or process limits do not assure compliance with various hourly emission limits, and that ADEQ has not explained the basis for its conclusion that the R19 Permit assures compliance with these emission limits. *See* 2019 Petition at 12–18.

The Petitioner states that the R19 Permit contains multiple emission limits that are expressed on an hourly basis, in terms of pounds per hour (lb/hr). *Id*. at 12; *see id*. at 13–17 (identifying specific permit terms). The Petitioner further states that the R19 Permit indicates that compliance with these limits shall be demonstrated by complying with other permit terms that establish production or process limits. *Id*. at 12; *see id*. at 13–17. However, according to the Petitioner, the production or process limits are not expressed on an hourly basis, but rather on a longer time period—for example, on a daily or 30-day rolling average basis. *Id*. at 12. The Petitioner identifies numerous examples of emission units at the facility and specific permit terms that feature this compliance demonstration scheme. S*ee id*. at 12–17. This includes: the Woodyard (Specific Conditions 1, 2, 6, 8 of the R19 Permit); Pulp Mill (Conditions 12–14, 18–20, 22, 26, 46); Bleach Plant (Conditions 41–44, 46); Liquor Recovery Furnace (Conditions 58–66, 68–70, 73, 81, 84, 93, 94); Causticizing (Conditions 95–98, 104, 114–116, 120); Fine Paper Machines (Conditions 144–146, 149); Board Machines (Conditions 151–153, 155, 158); Tissue Machines (Conditions 160–162, 167–169, 171–173, 178–180, 183–185, 191–193, 195–197, 202–204, 207–209, 220–222); Tissue Repulpers (Conditions 228–230); Cooling Towers (Conditions 240–242); Extrusion Plant (Conditions 244–247, 251), 9A Boiler (Conditions 280–281, 294–296); 10A Boiler (Conditions 303–307, 311, 368–372); Wastewater Treatment (Conditions 377–378); and Miscellaneous (Conditions 379–380, 413–416).

The Petitioner claims that these production or process limits cannot assure ongoing compliance with the applicable hourly emission limits because they apply over a longer time period. *Id*. According to the Petitioner, even if the facility complied with the production or process limits over the relevant time period (30-day rolling average), the facility could violate its hourly emission limits. *Id*. Accordingly, because the R19 Permit does not require monitoring sufficient to demonstrate compliance during the "relevant time period," the Petitioner asserts that the R19 Permit does not satisfy title V's compliance assurance provisions. *Id*. at 12, 18 (citing 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (a)(3), (c)(1)).

The Petitioner further asserts that ADEQ failed to provide—and cannot possibly provide—a reasoned explanation for how these longer-term production or process limits assure compliance with the shorter-term emission limits. *Id*. at 12, 18 (citing 40 C.F.R. § 70.7(a)(5)). Addressing ADEQ's RTC, the Petitioner asserts that the state "simply declared that the permit conditions are sufficient to assure the facility's compliance with emission limitations" and directed the Petitioner to the permit application to understand how the facility calculates these limits. *Id*. at 17 (citing RTC at 12, 13, 16, 17, 18, 20, 21, 22). The Petitioner faults this response on multiple grounds: First, the Petitioner asserts that ADEQ did not identify the specific part of the lengthy permit application where this information could be found. *Id*. Second, The Petitioner claims that

the only connection between the production or process limits and the hourly emission limits is included in the "Example Calculations" sections of the application. *Id*. According to the Petitioner, the relevant equations convert daily production rates into hourly emission rates simply by multiplying the entire equation by "day/24 hours" (*i.e.*, by dividing daily rates by 24 hours). *Id*. at 17–18. The Petitioner asserts that this "mathematical manipulation" averages emission rates over a 24-hour period and does not assure that emissions during any given hour do not exceed the hourly emission limit. *Id*. at 18.

EPA's Response: For the following reasons, EPA grants in part and denies in part the Petitioner's request for an objection on this claim.

Shutdown Units

First, to the extent this claim relates to the Woodyard (Specific Conditions 1, 2, 6, 8 of the R19 Permit); Pulp Mill (Conditions 12–14, 18–20, 22, 26, 46), Liquor Recovery Furnace (Conditions 58–66, 68–70, 73, 81, 84, 93, 94), Causticizing (Conditions 95–98, 104, 114–116, 120), Fine Paper (Conditions 144–146, 149), Board Machines (Conditions 151–153, 155, 158), Tissue Machine #4 (Conditions 160–162, 167–169), Extrusion Plant (Conditions 244–247, 251), 9A Boiler (Conditions 280–281, 294–296), 10A Boiler (Conditions 303–307, 311, 368–372), and Miscellaneous (Conditions 413–416), those units have shut down and the corresponding permit terms have been removed from the Permit. Accordingly, the Petitioner's claim with respect to those units and permit terms is denied as moot.

Remaining Units

Regarding the portion of this claim addressing the Bleach Plant (Specific Conditions 41–44 and 46 of the R19 Permit), the majority of the Bleach Plant has been shut down and only former Specific Conditions 41 and 43 remain in the R25 Permit, as they relate to several high density pulp storage chests that remain on-site. These permit terms were revised such that they no longer rely on production and/or process limits as a means of demonstrating compliance. *See* R25 Permit, Specific Conditions 1–2. As such, that portion of Claim II.D.1 is also denied as moot.

Regarding the portion of this claim addressing Tissue Machines #5, #6, #7, and #8 (Specific Conditions 171–173, 178–180, 183–185, 191–193, 195–197, 202–204, 207–209, 220–222 of the R19 Permit), Tissue Repulpers (Conditions 228–230), and associated Cooling Towers (Conditions 240–242), these permit terms are included in the R25 Permit in substantially the same form as the R19 Permit, albeit with some notable typographical errors.[19] EPA will respond to this portion of Claim II.D.1 with the understanding that the Permit's intended method of determining compliance—preserved but for these typographical errors—is for GP Crossett to demonstrate compliance with the relevant emission limits by relying on the relevant production limits, among other things.

[19] Specifically, in the R25 Permit, the numbering of various cross-references throughout the Permit appears to have been disrupted. Pertinent to this claim, the relevant emission limits no longer point to the relevant process limits, but instead point (in at least some cases) to unrelated permit terms corresponding to entirely different emission units. *See* R25 Permit, Specific Conditions 3, 4, 5, 11, 15, 16, 17, 24, 27, 28, 29, 35, 39, 40, 41, 47, 53, 60, 61, 64, 71, 72, 73. EPA expects ADEQ to fix these typographical errors in the course of responding to EPA's objection.

Regarding the portion of this claim addressing Wastewater Treatment (Specific Conditions 377–378 of the R19 Permit) and Miscellaneous (Conditions 379–380), these permit terms exist in the R25 Permit in substantially the same form as in the R19 Permit subject to the Petition. *See* R25 Permit, Specific Conditions 107–110. Thus, EPA will respond to this portion of Claim II.D.1.

State-Only-Enforceable Emission Limits

As an initial matter, some of the remaining emission limits cited by the Petitioner establish state-only-enforceable limitations on HAP emissions. *See* R25 Permit, Specific Conditions 5, 17, 29, 47, 61, 72, 108, 110. These state-only limits (and the monitoring associated with such limits) are not subject to EPA's review in a title V petition. 40 C.F.R. § 70.6(b)(2). Accordingly, Claim II.D.1 is denied with respect to these limits. *See* EPA's responses to Claims II.C and II.D.5.

Federally Enforceable Emission Limits

For the remaining federally enforceable emission limits cited by the Petitioner, EPA grants Claim II.D.1.

Regarding the limits that apply to the Tissue Machines and Repulpers—specifically, Specific Conditions 3, 4, 15, 16, 27, 28, 39, 40, 41, and 60 of the R25 Permit—these permit terms establish emission limits that apply on an hourly basis (expressed as "lb/hr"). The Permit's associated compliance assurance provisions—process limits—apply on a longer time frame, generally a "per day" limit calculated as a "30 day rolling average" (these are effectively 30-day limits, recalculated every day). R25 Permit, Specific Conditions 11, 24, 35, 53, 64.

The Petitioner has demonstrated that the record is unclear as to whether the Permit's rolling 30-day process limits assure compliance with the hourly emission limits. As a general matter, EPA agrees with the Petitioner that the time period associated with monitoring or other compliance assurance provisions must bear a relationship to the limits with which the monitoring assures compliance. *See* 40 C.F.R. § 70.6(a)(3)(i)(B).

The Petitioner raised this general issue in numerous public comments associated with different permit terms. ADEQ's RTC does not substantively engage with this issue. Instead, the state offers the following vague response:

> The permit conditions are sufficient to assure compliance with the emission limits in these conditions. These emission limits were determined based on production and throughput limitations, fuel requirements, and conservative assumptions. The commenter is directed to the application for specific details on the method of calculation for the limits. Based on these calculations, appropriate monitoring is incorporated into the permit. The recordkeeping and reporting are addressed appropriately. The conditions satisfy Title V requirements, and no change to the Permit or Statement of Basis is required.

RTC at 22; *see id*. at 25–26 (referencing RTC at 22). This response does not address the mismatch between the time frame between the compliance assurance provisions and the relevant hourly emission limits.

Moreover, ADEQ offers no technical support for the state's conclusion that the permit terms are sufficient. ADEQ's oblique reference to an unspecified portion of the permit application containing unexplained emission calculations fails to cure this defect. To the extent ADEQ intends to rely on information in a permit application to explain why additional or more frequent monitoring is not necessary, it must identify which part of the application contains the relevant information and explain why that information is relevant. *See, e.g.*, *In the Matter of BP Amoco Chemical Company, Texas City Chemical Plant*, Order on Petition No. VI-2017-6 at 18, 30–32 (July 20, 2021) (*BP Amoco Order*).[20]

Even if ADEQ had provided a more specific reference to the permit application, it is not clear how the emission calculations in the application would resolve the problem at hand. At best, these calculations show how to calculate an emissions rate based on throughput (or other process variables) over a given period of time. But if throughput (or other process variables) are not themselves measured on an hourly basis—but instead, on a daily or monthly basis—it is difficult to understand how such information could provide an assurance that the source is complying with its emission limits on an hour-to-hour basis. Overall, particularly given the mismatch in the time scales associated with the emission limits and the associated monitoring, it is not clear to EPA whether the Permit assures compliance with all applicable requirements. Accordingly, EPA grants this part of the claim. 40 C.F.R. § 70.8(c)(3)(ii).

Regarding the Cooling Towers associated with the Tissue Machines, the relevant permit terms differ somewhat. To assure compliance with the hourly particulate matter (specifically, PM_{10} and $PM_{2.5}$) limits from the Cooling Towers, the Permit relies on an instantaneous operating limit on total dissolved solids (750 mg/L), which in turn relies on a monthly sampling requirement (which ADEQ added to the R19 Permit in response to comments). R25 Permit, Specific Conditions 71, 73–74. In addressing public comments questioning the sufficiency of these compliance assurance provisions, ADEQ offers a similarly non-substantive response to that discussed above, largely relying on a reference to unidentified calculations in the permit application. *See* RTC at 27 (referencing RTC at 12).[21] ADEQ's response does not itself explain how this monitoring regime assures compliance with the hourly emission limits. Thus, it is not clear to EPA whether the Permit assures compliance with all applicable requirements, and EPA grants this part of the claim. 40 C.F.R. § 70.8(c)(3)(ii); *see In the Matter of Valero Refining-*

[20] Moreover, given that the Permit itself does not contain any reference to the permit application, no portions of the application (*e.g.*, calculation methodologies) establish enforceable components of the facility's compliance demonstration obligations. *See BP Amoco Order* at 30–32.

[21] In full, ADEQ's RTC states: "The permit conditions are sufficient to assure compliance with emission limits in these conditions. These emission limits were determined based on production, total dissolved solids and conservative assumptions. The commenter is directed to the application for specific details on the method of calculation for the limits. Based on these calculations, appropriate monitoring is incorporated into the permit. However, Specific Conditions# 15 and 45 have been revised to specify that the permittee shall collect and analyze a sample no less frequently than once each calendar month to verify compliance with the applicable limit. The monthly recordkeeping requirements are appropriate in these conditions. No additional change to the Permit or Statement of Basis is necessary." RTC at 12.

Texas, L.P., Valero Houston Refinery, Order on Petition No. VI-2021-8 at 59–61 (June 30, 2022).

Regarding Wastewater Treatment and Miscellaneous emission units, the Permit does not contain the same mismatch in time frames associated with the emission limits and corresponding compliance assurance provisions. As with the limits addressed in the preceding paragraphs, these units are subject to hourly emission limits. However, for these limits, the Permit indicates that "emissions from this source are limited by the production levels of the mill." R25 Permit at 81 (Specific Condition 107); *see id*. at 84 (Specific Condition 109) (similar). ADEQ's RTC further explains:

> The emission rates in these conditions are not based on permitted throughput limitations. Rather, AP-42 and NCASI emission factors and modeling have been used to determine the potential to emit for these sources. The commenter is directed to the application for specific details on the method of calculation for the limits. It is not necessary to revise the permit.

RTC at 19; *see id*. at 27 (referencing RTC at 19). This response differs from ADEQ's approach to other units in that it suggests that the source is not physically capable of exceeding the relevant limits, regardless of production rates or other variables. However, again, ADEQ offers no specific technical support for this conclusion, instead referring generally to unidentified emission factors, modeling, and calculations contained in the permit application. From this conclusory response, it is not clear to EPA whether the Permit assures compliance with all applicable requirements, and EPA grants this part of the claim. 40 C.F.R. § 70.8(c)(3)(ii).

Direction to ADEQ: ADEQ must revise the Permit and/or permit record to ensure that the Permit contains sufficient monitoring and/or recordkeeping to assure compliance with all federally enforceable applicable requirements, including the specific emission limits identified by the Petitioner and addressed in EPA's response to this claim. ADEQ may be able to accomplish this in various ways. For example, ADEQ could revise the Permit to align the time periods associated with emission limits and the production or process limits designed to assure compliance with the emission limits (and the monitoring associated with those production or process limits). Absent such a change to the Permit, ADEQ must specifically explain why the time periods associated with the Permit's compliance assurance provisions are sufficient to assure compliance with the hourly emission limits. If ADEQ determines that it is impossible for the source to violate an emission limit, ADEQ must explain the technical basis for this conclusion, and should consider whether any assumptions underlying this conclusion should be embodied in enforceable permit terms. To the extent that ADEQ relies on information contained in the permit application to support its conclusions, it must specifically identify this information and explain its relevance.[22]

[22] Additionally, if ADEQ intends for a calculation methodology contained in a permit application to be an enforceable component of the facility's compliance demonstration obligations, the Permit itself must either include or properly incorporate by reference the relevant portions of the permit application. *See BP Amoco Order* at 30–32.

Claim II.D.2: The Petitioner Claims That "The Permit Fails to Specify a Monitoring Methodology for Determining Compliance with the Permit's Various Production/Process Limits and Fails to Require Monitoring Results to be Provided for the Relevant Time [Period] of the Applicable Requirement."

Petitioner's Claim: The Petitioner claims that the R19 Permit does not include adequate monitoring, recordkeeping, and reporting to assure compliance with various production/process limits (many of which were discussed in Claim II.D.1). *See* 2019 Petition at 18–24.

The Petitioner states that the R19 Permit contains multiple daily production or process limits, expressed as a 30-day rolling average. *E.g.*, *id*. at 18. The Petitioner further states that the R19 Permit indicates that compliance with these limits shall be demonstrated by requiring the permittee to "maintain records which demonstrate compliance with the limit" and to update those records "on a monthly basis." *Id*. The Petitioner identifies numerous examples of permit terms that feature this compliance demonstration scheme (providing a detailed analysis of one of these examples). *See id*. at 20–23. This includes: the Woodyard (Specific Conditions 6 and 7 of the R19 Permit); Pulp Mill (Conditions 22, 23, 46, 47); Liquor Recovery (Conditions 69, 72); Causticizing (Conditions 104, 105); Fine Paper Machines (Conditions 149, 150); Board Machines (Conditions 158, 159); Tissue Machines (Conditions 168–169, 179–180, 192–193, 203–204, 221–222); Tissue Repulpers (Conditions 230–231); Extrusion Plant (Conditions 251–252); 9A Boiler (Conditions 294–297); and 10A Boiler (Conditions 369–372).

The Petitioner claims this compliance demonstration scheme is objectionable for two reasons: First, the Petitioner asserts that these permit terms do not identify the methodology that must be used to monitor the relevant parameters—that is, the R19 Permit does not specify *how* the GP Crossett must monitor these parameters. *Id*. at 18–19 (citing *Piedmont Green Power Order* at 11). The Petitioner asserts that ADEQ's approach of simply instructing GP Crossett to "maintain records which demonstrate compliance" is plainly insufficient. *Id*. at 23.

Second, the Petitioner claims that these permit terms fail to require the production of records that demonstrate compliance over the relevant time period for the applicable production or process limits. *Id*. at 18–19 (citing 40 C.F.R. § 70.6(a)(3)(i)(B)). More specifically, the Petitioner asserts that in order to assure compliance with the daily production or process limits (based on a 30-day rolling average of daily amounts), the source would need to perform the required monitoring every day (and calculate compliance based on that day and the 29 previous days). *Id*. at 19. The Petitioner further asserts that ADEQ's RTC does not explain why reporting of the "twelve month total and each individual month's data" is sufficient to demonstrate compliance with a daily limit, measured on a 30-day rolling average. *Id*. at 19 (citing RTC at 10); *see id*. at 20 (citing RTC at 10, 13, 16, 17, 19, 21, 22, 23, 25, 26, 27).

In addition to requesting EPA's objection based on these two alleged deficiencies, the Petitioner further asserts that "EPA must object to ADEQ's failure to provide a reasoned explanation . . . for why the selected monitoring is sufficient to assure compliance with the applicable process/production limits." *Id*. at 23. The Petitioner requests that EPA's objection direct ADEQ not only to resolve these issues, but also to require the facility to include recordkeeping as part of

the six-month monitoring reports required by General Provision 7 (as addressed in Claim II.A), and to require that any exceedances be promptly reported. *Id*. at 23–24.

EPA's Response: For the following reasons, EPA grants in part and denies in part the Petitioner's request for an objection on this claim.

Shutdown Units

First, to the extent this claim relates to the Woodyard (Specific Conditions 6 and 7 of the R19 Permit), Pulp Mill (Conditions 22–23, 46–47), Liquor Recovery (Conditions 69, 72), Causticizing (Conditions 104–105), Fine Paper Machines (Conditions 149–150), Board Machines (Conditions 158–159), Tissue Machine #4 (Conditions 168–169), Extrusion Plant (Conditions 251–252), 9A Boiler (Conditions 294–297), and 10A Boiler (Conditions 369–372), those units have shut down and the corresponding permit terms have been removed from the Permit. Accordingly, the Petitioner's claim with respect to those units and permit terms is denied as moot.

Remaining Units

To the extent that this claim relates to Tissue Machines #5, #6, #7, and #8 (Specific Conditions 179–180, 192–193, 203–204, 221–222 of the R19 Permit) and Tissue Repulpers (Conditions 230–231), these permit terms are included in the R25 Permit in substantially the same form as the R19 Permit, albeit with some notable typographical errors.[23] Notwithstanding these typographical errors, the Permit remains clear that the relevant monitoring/recordkeeping terms are designed "to demonstrate compliance with the paper production limits" at issue. *E.g.*, R25 Permit at 42 (Specific Condition 12). Thus, EPA will respond to Claim II.D.2 as it relates to the remaining Tissue Machines and Repulpers. For these units, EPA grants Claim II.D.2.

As the Petitioner explains, the Permit establishes various limitations on production or processing that are expressed on a "tons per day, 30 day rolling average" basis. R25 Permit, Specific Conditions 11, 24, 35, 53, 64. The Permit then specifies that compliance with these limits will be demonstrated by "maintain[ing] records which demonstrate compliance with the paper production limits" and "update[ing the records] on a monthly basis." *Id*. Specific Conditions 12, 25, 36, 54, 65.

The Petitioner has demonstrated that the Permit's monthly recordkeeping requirement does not assure compliance with the rolling 30-day production and processing limits.

First, as a general matter, in order to "set forth" monitoring or recordkeeping provisions sufficient to assure compliance with all applicable requirements, 42 U.S.C. § 7661c(c), a permit must specifically identify the relevant parameters to be monitored or recorded, as opposed to

[23] As explained with respect to Claim II.D.1, in the R25 Permit, the numbering of various cross-references throughout the Permit appears to have been disrupted. Pertinent to this claim, the relevant recordkeeping provisions no longer point back to the relevant process limits, but instead point (in at least some cases) to permit terms corresponding to entirely different emission units. *See* R25 Permit, Specific Conditions # 11–12, 24–25, 35–36, 53–54, 64–65. EPA expects ADEQ to fix these typographical errors in the course of responding to EPA's objection.

leaving this decision entirely to the source's discretion. *See, e.g.*, *BP Amoco Order* at 34–35. Second, as explained with respect to Claim II.D.1, EPA agrees with the Petitioner that the time period associated with monitoring, recordkeeping, or other compliance assurance provisions must bear a relationship to the limits with which the monitoring assures compliance. *See* 40 C.F.R. § 70.6(a)(3)(i)(B).

The Petitioner raised these general issues in numerous public comments associated with different permit terms. ADEQ's RTC does not substantively engage with these issues. Instead, the state offers the following vague response:

> The conditions clearly state the limit in tons of wet wood as received. Specific Condition #7 is sufficient to assure compliance with the throughput limit in Specific Condition #6. Additional specificity in the condition is not necessary. Compliance with Specific Condition #6 is based on a 30 day rolling average, and this is clear in the draft permit. Specific Condition #7 requires records to be updated on a monthly basis. Reporting is addressed in the General Provisions as appropriate. No change is required.

RTC at 10; *see id*. *passim* (similar responses).

This response does not address the Petitioner's allegation that the Permit's recordkeeping requirements are deficient because they do not specify *what* must be recorded or *how* it must be monitored or recorded. Additionally, as with the emission limits at issue in Claim II.D.1, this response does not address the mismatch in the time frame between the compliance assurance provisions and the relevant production or process limits. Moreover, ADEQ offers no technical support for the state's conclusion that the permit terms are sufficient.

Overall, given that the relevant permit terms do not specify *what* must be recorded or *how* it is to be recorded, and in light of the mismatch in the time scales associated with the production or process limits and the associated recordkeeping, the Permit does not assure compliance with all applicable requirements. Accordingly, EPA grants Claim II.D.2 with respect to the emission units and production/process limits that remain in the Permit.

Direction to ADEQ: ADEQ must revise the Permit and permit record to ensure that the Permit contains sufficient monitoring and/or recordkeeping to assure compliance with all federally enforceable applicable requirements, including the specific production and process limits identified by the Petitioner and addressed in EPA's response to this claim. ADEQ may be able to accomplish this in various ways. At minimum, the Permit should clearly identify what parameters the facility must keep records of; ADEQ should consider whether the Permit should specify additional details regarding monitoring or recordkeeping. Regarding the timing issues, ADEQ could revise the Permit to align the time periods associated with the rolling 30-day production or process limits and the accompanying monthly monitoring or recordkeeping provisions designed to assure compliance with these limits. Absent such a change to the Permit, ADEQ must specifically explain why the monthly time periods associated with the Permit's compliance assurance provisions are sufficient to assure compliance with the rolling 30-day production or process limits. If ADEQ determines that it is impossible for the source to violate a

production or process limit, ADEQ must explain the technical basis for this conclusion, and should consider whether any assumptions underlying this conclusion should be embodied in enforceable permit terms. To the extent that ADEQ relies on information contained in the permit application to support its conclusions, it must specifically identify this information and explain its relevance.[24]

Claim II.D.3: The Petitioner Claims That "The Permit Condition Requiring That Woodyard Engines and Control Equipment be Operated in Accordance with Manufacturer's Specifications or Other Procedures Approved by the Engine Manufacturer are Unenforceable as a Practical Matter and Fail to Specify Monitoring Sufficient to Assure the Facility's Compliance."

Petitioner's Claim: The Petitioner claims that a permit term applicable to engines and control equipment in the Woodyard is unenforceable due to a lack of specificity and also fails to contain sufficient monitoring, recordkeeping, and reporting to assure compliance with applicable requirements. *See* 2019 Petition at 24 (citing R19 Permit, Specific Condition 11).

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

This claim relates exclusively to a permit term associated with the Woodyard. The Woodyard has been shut down and the permit term at issue was removed from the Permit. Accordingly, Claim II.D.3 is denied as moot.

Claim II.D.4: The Petitioner Claims That "The Permit Unlawfully Authorizes Bypass of the Incinerator's Sulfuric Acid Mist Eliminator During Emergency Maintenance."

Petitioner's Claim: The Petitioner claims that the Permit purports to create an exemption to a requirement to operate an incinerator, scrubber, and sulfuric acid mist controls—requirements established pursuant to NSPS and NESHAP regulations. 2019 Petition at 25 (citing R19 Permit, Specific Condition 40). The Petitioner claims that ADEQ lacks the legal authority to establish this exemption and that this permit term is unlawful. *Id*.

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

This claim relates exclusively to a permit term associated with the Pulp Mill Incinerator. This unit has been shut down and the permit term at issue was removed from the Permit. Accordingly, Claim II.D.4 is denied as moot.

[24] Additionally, if ADEQ intends for a calculation methodology contained in a permit application to be an enforceable component of the facility's compliance demonstration obligations, the Permit itself must either include or properly incorporate by reference the relevant portions of the permit application. *See BP Amoco Order* at 30–32.

Claim II.D.5: The Petitioner Claims That "Numerous Permit Emission Limits are Unenforceable Because They Merely Declare That the 'Permittee Estimates' That They Will Not Be Exceeded and That Emission Rates Are 'Effectively Limited' By Other Conditions That Do Not Apply to the Same Period as the Emission Limits."

Petitioner's Claim: The Petitioner claims that multiple permit terms are unenforceable because they do not explicitly state that GP Crossett must comply with the hourly and annual emission limits contained in those conditions. *See* 2019 Petition at 26 (citing 42 U.S.C. § 7661c(a); R19 Permit, Specific Conditions 185, 197, 215, 229, and 241).

The Petitioner contests ADEQ's position that these requirements "are not Title V applicable requirements" and are therefore not subject to title V requirements regarding enforceability. *Id*. (quoting RTC at 26). The Petitioner asserts that "these conditions are in fact based on a federally enforceable Arkansas SIP provision, and therefore constitute 'applicable requirement[s]' for Title V purposes." *Id*. (citing 40 C.F.R. § 70.2). For support, the Petitioner observes that the relevant permit terms identify A.C.A. § 8-4-203 as their legal basis. *Id*. The Petitioner then observes that an earlier version of that statute—specifically, A.S.A. § 82-1904—was approved into the Arkansas SIP. *Id*. The Petitioner further argues that "[a]ny permit condition derived from a federally enforceable SIP provision is federally enforceable." *Id*. (citing 40 C.F.R. § 52.23). Thus, the Petitioner asserts that EPA must object not only to the allegedly unenforceable nature of the permit terms at issue, but also to ADEQ's characterization of those permit conditions as not reflecting title V "applicable requirements." *Id*.

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

As an initial matter, EPA observes that the five permit terms at issue in Claim II.D.5 remain in the R25 Permit in substantially the same form as the R19 Permit, albeit with different condition numbers. *See* R25 Permit, Specific Conditions 17, 29, 47, 61, 72. These conditions establish emission limits on various HAPs. Importantly, the Permit identifies the following legal authority as the basis for each of these limits: "Reg.18.801 and Ark. Code Ann. § 8-4-203 as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311." *E.g.*, R25 Permit at 44 (Specific Condition 17). As discussed with respect to Claim II.C, General Condition 1 indicates that any permit terms that cite exclusively to these particular regulatory and statutory provisions are not federally enforceable, per 40 C.F.R. § 70.6(b)(2). R25 Permit at 115 (General Condition 1). Thus, as presented in the Permit, the limits at issue in Claim II.D.5 are not federally enforceable.

The Petitioner argues that these limits *should* be federally enforceable, alleging that they are "based on a federally enforceable SIP provision" and therefore are "applicable requirements" for purposes of title V. 2019 Petition at 26. The Petitioner is incorrect. None of the statutory and regulatory authorities cited by the Permit as the basis for these limits are part of the SIP. *See* 40 C.F.R. § 52.170. The fact that the SIP includes a predecessor (A.S.A. § 82-1904) to one of the statutory provisions cited in the Permit (A.C.A. § 8-4-203) is not relevant. But even if it had been, the Petitioner offers no discussion of this historical SIP provision, what it requires, and why it would give rise to federally-enforceable applicable requirements or permit limits.

Notably, the HAP emission limits are part of ADEQ's state-only-enforceable air toxics program and are not based on any CAA provisions. It is not uncommon for states (like Arkansas) to establish air toxics regulations that extend beyond the CAA's regulation of HAPs. However, such programs exist under state law and are not federally enforceable. EPA has consistently rejected petition claims involving such state-only air toxics programs.[25]

EPA therefore agrees with ADEQ that the specific conditions at issue in II.D.5 "are not Title V applicable requirements." RTC at 26; *see* 40 C.F.R. § 70.2 (definition of "applicable requirement"). More to the point, because these state-only permit terms are not federally enforceable—and are correctly designated as such in the Permit—they are not subject to EPA's review or the public petition opportunity under 40 C.F.R. § 70.8(d). *See* 40 C.F.R. § 70.6(b)(2) ("[T]he permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part . . . ."). Accordingly, EPA denies Claim II.D.5.

Claim III: The Petitioner Claims That "The Permit Fails to Incorporate a Compliance Schedule as the Clean Air Act Requires."

Within Claim III, the Petitioner asserts that the R19 Permit must include a compliance schedule related to the source's alleged noncompliance. *See* 2019 Petition at 26–29. As the Petitioner explains, a compliance schedule is required for any applicable requirement "for which the source will be in noncompliance at the time of permit issuance." *Id*. (quoting 40 C.F.R. § 70.5(c)(8)(iii)(C)). The Petition identifies two specific bases for objection, each of which is addressed in the following subsections.

Claim III.A: The Petitioner Claims That "ADEQ Failed to Include a Compliance Schedule for Non-Compliant Operations Identified Prior to the Draft Permit's Release."

Petitioner's Claim: The Petitioner recounts that, in public comments, it noted "numerous outstanding notices and investigations alleging that the G-P Mill is violating applicable requirements," giving rise to the need for a compliance schedule in the title V permit. 2019 Petition at 27. In the 2019 Petition, the Petitioner specifically identifies two "ongoing compliance issues":

> [1] Violations of the Clean Air Act Risk Management Program regulations outlined in the January 9, 2017, Administrative Order on Consent between EPA and Georgia-Pacific;
>
> [2] Non-compliance issues shown in a U.S. EPA National Environmental Investigation Center inspection report based on a February 2015 investigation.

Id.

[25] *See, 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); *In the Matter of Shintech Inc.*, Order on Petition at 14 (September 10, 1997).

The Petitioner faults ADEQ's response to comments, wherein the state indicated that "[t]he Division reviews compliance status each time a permit application is considered," and that "[i]t is not necessary to revise the permit." *Id*. (quoting RTC at 30). The Petitioner asserts that ADEQ failed to specifically respond to public comments and exercise its independent judgment[26] as to what the R19 Permit's compliance schedule should include. *Id*. at 28. According to the Petitioner, this "*likely* resulted in a permit deficiency"—specifically, the lack of a compliance schedule that would bring the source "into full compliance with applicable requirements discussed above." *Id*. (emphasis added).

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

A compliance schedule must be included in title V permits "for sources that are not in compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. § 70.5(c)(8)(iii)(C).[27] In a title V petition seeking EPA's objection on the basis that a permit lacks a compliance schedule, the burden is on the Petitioner to demonstrate that the source is not in compliance with all applicable requirements at the time of permit issuance. 42 U.S.C. § 7661d(b)(2). As EPA has previously explained: "EPA will not object to a permit where the Petitioners have provided no specific evidence to demonstrate that the facility is not in compliance with applicable requirements of the Act. The demonstration requirement is particularly important with respect to the inclusion of a compliance schedule in light of the interplay between compliance schedules and the Agency's enforcement prerogatives." *E.g.*, *BP Amoco Order* at 8 (internal citations omitted).

Here, the Petitioner's only discussion of alleged noncompliance is contained in the two short bullet points quoted above (in full). The Petition does not address the specific applicable requirements at issue or present any evidence demonstrating noncompliance with those requirements. The Petitioner's exclusive reliance on these two enforcement-related documents—the relevance of which is not explained within the Petition—is not enough to satisfy the Petitioner's burden to demonstrate that a compliance schedule must be included in the Permit.

Notably, the January 9, 2017 Administrative Order on Consent—which was an order under CAA § 113(a), with a term of one year—is now closed. Regarding the 2015 investigation by EPA's National Environmental Investigation Center investigation, EPA observes that this investigation did not in and of itself establish noncompliance with any applicable requirements at the time of permit issuance. The Petitioner's unsupported citation to this investigation alone is insufficient to demonstrate that a compliance schedule must be included in the permit.

[26] Regarding ADEQ's "lack of independent judgment," the Petitioner asserts that Section V of the permit, titled "Compliance Plan and Schedule," was written by GP Crossett, not ADEQ. *Id*. at 27.
[27] *See also* 42 U.S.C. §§ 7661(3), 7661b(b)(1), (e), 7661c(a); 40 C.F.R. § 70.6(c).

Claim III.B: The Petitioner Claims That "ADEQ Failed to Include a Compliance Schedule Addressing Ongoing Violations Identified in the 2018 Enforcement Action."

Petitioner's Claim: The Petitioner claims that the Final Permit does not contain a Compliance Schedule that brings the facility into compliance with aspects of a Complaint jointly filed in 2018 by EPA and ADEQ. *See* 2019 Petition at 28 (citing Complaint, 2019 Petition Att. 10). The Petitioner identifies three specific allegations of ongoing non-compliance from the Complaint:

> a. Emissions from the pulping systems two washers (GP-2 and GP-3) are "not enclosed and vented into a closed-vent system and routed to a control device" in violation of 40 C.F.R. § 63.443(c). (Complaint ¶¶ 180-181)
> b. "HAP emissions from the D2 Upflow Tower are not enclosed and vented into a closed-vent system and routed to a control device in violation of 40 C.F.R.§63.445(b)"; (¶¶ 204.);
> c. The HAP emissions from the bleach plant scrubber booster fan were not enclosed and vented into a closed-vent system and routed to a control device in violation of 40 C.F.R.§ 63.445(b)" (¶¶ 211).

Id. (quoting Complaint, 2019 Petition Att. 10).

The Petitioner also discusses a related proposed Consent Decree (which, at the time the Petition was filed, was not yet final) designed to resolve the violations alleged in the Complaint. *See id*. at 29 (citing Lodged Consent Decree, attachment to 2019 Petition Att. 12). The Petitioner states that, in the proposed Consent Decree, GP Crossett agreed to undertake several projects according to various timelines. The Petitioner claims that the title V permit must include a compliance schedule to address the alleged ongoing violations in the Complaint and the remedial measures contained in the proposed Consent Decree. *Id*.

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

As discussed elsewhere in this Order, subsequent to the filing of the Petition, GP Crossett shut down various operations at the facility. This partial shutdown included the Pulp Mill and Bleach Plant—the portions of the facility that were the subject of the allegations in the 2018 Complaint cited by the Petitioner. In light of this partial shutdown, the proposed Consent Decree to which the Petitioner refers was amended, and this amended Consent Decree was finalized (*i.e.*, entered by the U.S. District Court for the Western District of Arkansas) on June 5, 2020. *See* Amended Consent Decree, *U.S. v. Georgia Pacific Chemicals LLC*, No. 1:18-cv-01076-SOH at 2 (W.D. Ark.) (filed June 5, 2020). Because the alleged noncompliance at issue in Claim III.B was resolved by the facility's partial shutdown of the emission units implicated by the 2018 Complaint (as cited by the Petitioner), EPA denies Claim III.B as moot.

V. CONCLUSION

For the reasons set forth in this Order and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the Petition as described in this Order.

Dated: FEB 2 2 2023

Michael S. Regan
Administrator