BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition No. V-2023-2

In the Matter of

City of Chicago, Chicago Department of Aviation

Permit No. 95110002

Issued by the Illinois Environmental Protection Agency

ORDER DENYING A PETITION FOR OBJECTION TO A TITLE V OPERATING PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated January 5, 2023 (the Petition) from C23D32 (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or the Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to operating permit No. 95110002 (the Permit) issued by the Illinois Environmental Protection Agency (IEPA) to the City of Chicago for the Chicago Department of Aviation (CDA or the facility), O'Hare International Airport in Cook and DuPage Counties, Illinois. The operating permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and 415 Illinois Compiled Statutes (ILCS) 5/39.5. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known as a title V permit or part 70 permit.

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

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 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 Illinois submitted a title V program governing the issuance of operating permits in 1993. EPA granted full approval of Illinois' title V operating permit program in 1995, and full approval in 2001, effective November 30, 2001. See 66 Fed. Reg. 62946 (December 4, 2001). This program is codified in 415 ILCS 5/39.5.

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).

Each petition must identify the proposed permit on which the petition is based and identify the petition claims. 40 C.F.R. § 70.12(a). Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under part 70. 40 C.F.R. § 70.12(a)(2). Any arguments or claims the petitioner wishes EPA to consider in support of each issue raised must generally be contained within the body of the petition.[1] *Id.*

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); *see also* 40 C.F.R. § 70.12(a)(2)(v).

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

[1] If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id*.

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 a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, 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

[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.

legal reasoning, evidence, and references is reasonable and persuasive.").[6] 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).[7] 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).[8]

Another factor EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning contained in the permit record. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.[9] This includes a requirement that petitioners 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. 40 C.F.R. § 70.12(a)(2)(vi). Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment. *Id*.

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

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

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

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

[9] *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); *Georgia Power Plants Order* at 9–13 (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).

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*.

III. BACKGROUND

A. The Chicago Department of Aviation

The Chicago Department of Aviation operates airport support operations, such as boilers and emergency/standby engine generators, at O'Hare International Airport in Chicago. It is a major source of nitrogen oxides and carbon monoxide. Emissions units within the facility are subject to various New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and other preconstruction permitting requirements.

EPA conducted an analysis using EPA's EJScreen[10] to assess key demographic and environmental indicators within a five-kilometer radius of the Chicago Department of Aviation. This analysis showed a total population of approximately 83,464 residents within a five-kilometer radius of the facility, of which approximately 34 percent are people of color and 21 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indices for the five-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Illinois.

EJ Index	Percentile in State
Particulate Matter 2.5	62
Ozone	58
Diesel Particulate Matter	66
Air Toxics Cancer Risk	79
Air Toxics Respiratory Hazard	76
Toxic Releases to Air	68
Traffic Proximity	64
Lead Paint	47
Superfund Proximity	39
RMP Facility Proximity	59
Hazardous Waste Proximity	65
Underground Storage Tanks	61
Wastewater Discharge	60

[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*.

B. Permitting History

The City of Chicago first obtained a title V permit for the Chicago Department of Aviation in 2001, which was last renewed in 2020. On July 22, 2022, the City of Chicago applied for a minor modification of the facility's title V permit. The application sought to incorporate two previously-issued construction permits, which authorized the installation of new emergency engines and high temperature water generators, into the title V permit. IEPA did not publish notice of a draft permit and did not hold a public comment period for the minor modification. On October 6, 2022, IEPA submitted the Proposed Permit reflecting the City of Chicago's requested minor modification to EPA for its 45-day review. EPA's 45-day review period ended on November 21, 2022, during which time EPA did not object to the Proposed Permit. IEPA finalized the minor permit modification for the Chicago Department of Aviation on November 20, 2022

C. Timeliness of Petition

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). EPA's 45-day review period expired on November 21, 2022. Thus, any petition seeking EPA's objection to the Proposed Permit was due on or before January 20, 2023. The Petition was received January 5, 2023, and, therefore, EPA finds that the Petitioner timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Before presenting its claims, the Petitioner presents background information to highlight various concerns with actions and inactions by IEPA and EPA. This background information does not allege any specific violation of the CAA or its implementing regulations, and no specific issues regarding the Permit.

The central focus of the Petition is that IEPA should not have classified the incorporation of conditions from two construction permits into CDA's title V permit as a minor permit modification. The Petitioner contends that IEPA went beyond incorporating two construction permits into the title V permit, and instead, completed an overhaul of the permit by adding new requirements that were not found in the construction permits. The Petitioner enumerates seven

specific claims, stating: "the following are all reasons why the permitting action must be objected to by the [U.S. EPA] because it did not meet the criteria for a minor modification."[11]

Claim 1: The Petitioner Claims That "This Section Added an Entirely New Section 4.5 for Six New Engines That Never Existed Before."

Petitioner's Claim: The Petitioner claims that the permit modification added Section 4.5 to the permit and that the section is "entirely new." The Petitioner argues that the section is for "six new engines that never existed before," as the conditions in Section 4.5 were not included in one of the pre-construction permits for the facility.[12]

The Petitioner includes a description of "some of [the] new additions to . . . Section 4.5 from construction permit . . . 15080028." The Petitioner claims that the permit modification added:

1. "[O]pacity monitoring every year when the construction permit had only upon request."
2. "[A]ggregate records for CO and NO_x that is [sic] not in the construction permit."
3. "An entire NSPS . . . that is not in the construction permit."

[11] The Petitioner also states that, because this was a minor modification, IEPA did not offer a public comment period. Yet, the Petitioner still submitted comments to EPA to ask EPA to object to this minor modification, and to direct IEPA to resubmit this permit modification as a significant modification and hold a public comment period. The Petitioner appended these "comments" to EPA to the end of the CDA Petition. EPA addressed this practice in a previous title V petition order that responds to two petitions submitted by this Petitioner. *See In the Matter of Premcor Refining Group, Inc. and ExxonMobil Pipeline Company*, Order on Petition Nos. V-2022-8 & V-2022-15 at 7 n.12 (May 01, 2023) (*Premcor and ExxonMobil Order*). Normally, title V petitions must be based on issues that were presented to the state permitting authority during the public comment period. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v). However, here, because IEPA processed the permit revision as a minor modification, there was no public comment period. *See, e.g.,* Premcor and ExxonMobil Order at 9 (providing legal background of EPA and Illinois minor modification criteria). Thus, the requirement that all petition claims be based only on issues raised in public comments does not apply. In any case, in situations where this requirement does apply, it requires members of the public to submit comments to the state permitting authority—not to EPA. That is because the state permitting authority, and not EPA, is responsible for making the permitting decision. There is no formal mechanism for the public to submit comments to EPA on a state-issued permit. The Petitioner's "comments" to EPA, therefore, are not public comments as that term is used in the CAA and EPA's regulations. EPA addressed the Petitioner's similar action in the *Premcor and ExxonMobil Order*, and the same reasoning applies here. EPA considers the "comments" appended to the end of the Petition to be an exhibit or attachment to the Petition. As explained in Section II of this Order, any arguments or claims a petitioner wishes EPA to consider in support of each issue raised must generally be contained within the body of the petition, as opposed to attachments. If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. 40 C.F.R. § 70.12(a)(2). Because the Petitioner does not make specific references to its comments within the Petition or describe why the information therein supports its claim, EPA will not specifically address the comments in EPA's analysis of the Petition. *Premcor and ExxonMobil Order* at 7 n.12.

[12] The Petitioner also appears to question the fee changes associated with this permit modification with a brief, three-word sentence, but does not allege a specific violation of the CAA or its implementing regulations within its question. Regardless, issues regarding the collection of title V fees are more closely related to a state's title V program versus the content of a title V permit. Therefore, issues related to title V fees are beyond the scope of EPA's evaluation of a title V petition. *See In the Matter of El Dorado Energy, LLC*, Order on Petition No. IX-2003-08 at 19 (September 22, 2005).

4. "An entirely new inspection of the engines…that was not in the construction permit."
5. "Tons of non-applicability statements…that were not in [the] construction permit."

The Petitioner also claims that a condition from the preconstruction permit, which allowed for increasing hours of operation beyond 500 hours, was removed from the title V permit. The Petitioner suggests that the condition does not make sense, but nonetheless argues that it was a "T1R"[13] and that its removal from the title V permit should have been treated as a significant modification. The Petitioner also makes this argument in the background of the Petition, as it contends that "significant changes" to the Permit included a removal of title I conditions, which, the Petitioner claims, EPA "found must be in the permit."

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

The Petitioner does not demonstrate how the creation of Section 4.5 in the Permit is a significant modification of the permit. As explained in Section II of this Order, the burden is on the petitioner to make the required demonstration that a permit, permit record, or permit process is not in compliance with the requirements under the CAA, the part 70 regulations, or Illinois' approved title V program. 40 C.F.R § 70.12(a)(2). General and conclusory claims, presented without sufficient citation or analysis, do not meet the requirements for the petitioner's demonstration burden.

To challenge the permitting authority's use of a minor modification procedure (which results in a lack of a public comment period[14]), the petitioner must demonstrate to EPA that the permitting authority should have processed the modification as a significant modification. This requires the petitioner to evaluate the modification under the criteria that dictate whether minor modification or significant modification procedures are appropriate and/or required.[15] This analysis from the petitioner is particularly important for issues that involve the state's exercise of discretion, as

[13] EPA assumes that this means "title I revision," which is an acronym used by IEPA. However, the Petitioner did not provide this clarification in the Petition.

[14] At various points in the Petition, the Petitioner argues that it (and the public) was not able to comment on this permit modification. EPA notes that the Act allows permitting authorities to enact "[a]dequate, streamlined, and reasonable procedures" for processing permit revisions, and EPA's regulations set forth the most streamlined process that would be approved by EPA. 42 U.S.C. § 7661a(b)(3)(C)(iii)(6); 57 Fed. Reg 32281 (July 21, 1992). In other words, the flexibility EPA allows permitting authorities to devise appropriate permit modification procedures affords them the ability to accommodate for operational changes by using a streamlined minor modification process which may not include public review. However, minor permit modifications are still reviewed by the permitting authority for compliance with the CAA and the relevant approved state title V program.

[15] Under EPA's rules and Illinois' statute, the permitting authority, IEPA in this case, may use a minor modification procedure if certain requirements are met, including that the modification does "not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit." 40 C.F.R. § 70.7(e)(2)(i)(A); 415 ILCS 5/39.5(14)(a)(i)(B). The state must use significant modification procedures for all modifications that do not qualify as minor permit modifications or administrative permit amendments. 40 C.F.R. § 70.7(e)(4)(i); 415 ILCS 5/39.5(14)(c)(i). At a minimum, every "significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant." 40 C.F.R. § 70.7(e)(4)(i); 415 ILCS 5/39.5(14)(c)(ii). Additionally, Illinois' statute requires IEPA to process permit changes as significant if IEPA deems the issues technically complex. 415 ILCS 5/39.5(14)(c)(ii).

EPA allows states the flexibility to devise appropriate procedural schemes to process permit modifications, consistent with the governing statutory and regulatory requirements. 40 C.F.R § 70.7(e)(1); *see* 57 Fed. Reg. 32280 (July 21, 1992).[16]

As explained in detail in the following analysis, the Petitioner offers only brief critiques of the modification to the Permit, but does not demonstrate that IEPA wrongfully processed the permit change as a minor modification instead of a significant modification under the relevant legal authorities. *See* 40 C.F.R. § 70.7(e)(4) and 415 ILCS 5/39.5(14)(c).[17] The Petitioner's one-sentence summaries of "some of these new additions" to Section 4.5 do not identify a permit term at issue from either the relevant construction permit or title V permit. The summaries also do not provide an analysis of any EPA regulations IEPA violated by classifying the modification as a minor modification. That is, the Petitioner does not explain *why* or *how* any of the additions would qualify as a significant modification under *any* relevant regulations. *See* 40 CFR § 70.7(e)(2); 40 CFR § 70.7(e)(4); 415 ILCS 5/39.5(14). The following paragraphs address each of the Petitioner's summaries.

Regarding the first change identified by the Petitioner, the Petitioner asserts that the permit modification "[added] opacity monitoring every year when the construction permit had only upon request." However, the Petitioner does not explain how the addition of a yearly monitoring requirement instead of a requirement to test upon request is a significant modification of the Permit. Therefore, the Petitioner does not demonstrate that IEPA should have considered this to be a significant modification of the Permit.

Regarding the second change identified by the Petitioner, the Petitioner argues that the modification "[a]dded aggregate records for CO and NOx that is [sic] not in the construction permit." However, the Petitioner does not provide further analysis of this modification, and does not demonstrate that IEPA should have considered the addition of a recordkeeping provision to the title V permit to be a significant modification under any relevant rules or regulations.

Regarding the third change identified by the Petitioner, the Petitioner claims that "[a]n entire NSPS has been added that is not in the construction permit." The Petitioner does not explain why IEPA should have considered the addition of an applicable requirement to the title V permit to be a significant modification of the Permit. The Petitioner also does not provide any reasoning for why the particular applicable requirement (an NSPS) should have been included in Construction Permit 15080028. Without putting forth additional information about the change of concern to the Petitioner such as, at a minimum, an identification of the NSPS "added" to the Permit, the Petitioner has not demonstrated a basis for objection.

Regarding the fourth change identified by the Petitioner, the Petitioner contends that "[a]n entirely new inspection of the engines has been added that was not in the construction permit." Again, the Petitioner does not offer an analysis of the impact of the new inspection requirement.

[16] *See also Premcor and ExxonMobil Order* at 9-10.

[17] EPA has previously denied a petition claim where the petitioner failed to demonstrate that a minor modification to a permit should have been considered a significant modification. *See In the Matter of Northampton Generating Co. LP.*, Order on Petition No. III-2020-01 at 14-15 (July 15, 2020).

The Petitioner does not demonstrate that IEPA should have considered the incorporation of a compliance method into the title V permit to be a significant modification of the Permit.

Regarding the fifth change identified by the Petitioner, the Petitioner argues that "tons of non-applicability statements" that "were not in the construction permit" were added to the Permit. However, the Petitioner does not further explain why it was inappropriate for IEPA to include the non-applicability statements for the first time in the title V permit or why this addition was a significant modification of the Permit.

Regarding the sixth change the Petitioner identified, the Petitioner contends that "the construction permit allowed for increasing hours of operation beyond 500 hours," and that this allowance "was removed from the CAAPP permit."[18] Here, the Petitioner does not specify which permit term in Construction Permit 15080028 was not incorporated into the Permit and, even if this were true, does not explain why a significant modification procedure was required in this case.[19]

The Petitioner also includes a two-word sentence questioning whether this requirement related to increasing hours of operation is a "T1R." The relevance of this question is not clear. If the Petitioner intended to claim that this change or other changes to the title V permit should have been considered a "title I modification," requiring a significant permit modification, it has not demonstrated that this is the case.

Claim 2: The Petitioner Claims That "The Summary of Changes Says That All This Modification Has Done Is Incorporate a Couple Construction Permits."

Petitioner's Claim: The Petitioner claims that the permit modification "added an entirely new Section 4.2 for eight new engines," and that some of these new permit terms were not included in one of the underlying pre-construction permits for this facility.[20] The Petitioner then describes the changes to the Permit resulting from the addition of Section 4.2 from Construction Permit 16090010. The Petitioner claims that the permit modification added:

1. "[O]pacity monitoring every year when the construction permit had only upon request."
2. "Tons of non-applicability statements added that were not in [the] construction permit."
3. "[. . .] some weird EU-14 unit that has come into existence that is not in [the] construction permit under brand new section 2a . . . or referenced to anywhere in section 2 [of the title V permit]." The Petitioner also claims that this particular modification is "very odd and difficult to follow" due to IEPA's drafting technique.

[18] EPA assumes this to mean "Clean Air Act Permitting Program Permit," which is Illinois' air permit program developed pursuant to title V of the CAA. However, the Petitioner did not provide this clarification in the Petition.
[19] To the extent that the Petitioner's claim concerns Specific Condition 5.c of Construction Permit 15080028, EPA notes that the Petitioner's claim that IEPA did not incorporate this condition into the Permit is incorrect. EPA observes that this permit term was brought into the Permit under Section 4.5 (as permit term 4.5.2(f)(i)(A)) and was designated as a T1R. Final Permit at 53; *see also* Construction Permit 15080028 for Chicago Department of Aviation at 3-4.
[20] As with Claim 1, the Petitioner questions the fee changes related to this permit action. *See supra* note 12.

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

While the Petitioner claims that this permit action did not meet the criteria for a minor modification, the Petitioner fails to demonstrate that IEPA should have considered this modification to be a significant modification of the Permit. As explained in the analysis of Claim 1, the Petitioner has the burden to make the required demonstration that a permit is not in compliance with the requirements of the Act.

To begin with, the Petitioner's accusation that Section 4.2 is "entirely new" to the Permit is incorrect. EPA's review of the publicly available Proposed Permit and Statement of Basis shows that Section 4.2 is not new to the Permit; it was modified to account for replacement engines during this permit action.[21] Additionally, even if Section 4.2 were "new" to the Permit, the Petitioner does not demonstrate how IEPA should have considered the creation of Section 4.2 to be a significant modification of the Permit.

The Petitioner's one-sentence summaries of "some of these new additions" to Section 4.2 do not explain *why* or *how* any of the additions would qualify as a significant modification under *any* relevant regulations. *See* 40 C.F.R. § 70.7(e)(2); 40 C.F.R. § 70.7(e)(4); 415 ILCS 5/39.5(14). Like the Petitioner's summaries in Claim 1, none of these summaries in Claim 2 challenge an identified term in the Permit, nor do they provide an analysis of any EPA regulations IEPA violated by classifying the modification as a minor modification.[22] Without this citation and analysis, EPA is unable to fully evaluate the Petitioner's claims as written in the Petition. *See* 40 C.F.R. § 70.12(a)(2)(i)-(iii). In the following paragraphs, EPA will address and respond to each of the Petitioner's summaries.

Regarding the first change identified by Petitioner, the Petitioner claims that this permit modification added a yearly monitoring requirement, which is different than a requirement in Construction Permit 16090010 that requires the facility to test "only upon request." However, similar to the accusations it makes in Claim 1, the Petitioner does not explain why IEPA should have considered the addition of a yearly monitoring requirement to the Permit to be a significant modification of the Permit.

Regarding the second change identified by the Petitioner, the Petitioner argues that Construction Permit 16090010 does not contain the non-applicability statements found in the Permit. However, similar to the allegations under Claim 1, the Petitioner does not demonstrate why IEPA should have considered this to be a significant modification of the Permit under any relevant rules or regulations.

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[21] *See* 2022 Proposed Permit for the Chicago Department of Aviation at 24-36 (October 06, 2022) at *https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/8692; see also* Summary of Changes for Chicago Department of Aviation (October 06, 2022) (CDA SOB) at *https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/8691*.

[22] As explained in EPA's analysis of Claim 1 on page 8 of this Order, general and conclusory claims, presented without sufficient citation or analysis, usually do not meet the requirements for the petitioner's demonstration burden.

Regarding the third change the Petitioner identified, the Petitioner questions how Construction Permit 16090010 does not mention existence of the facility's EU-14 unit, yet the title V permit contains a provision(s) related to the allegedly new unit within a "brand new" Section 2a. To the extent the Petitioner intended to refer to Section 4.2.2a,[23] EPA once again observes that Section 4.2.2a was only modified during this permit action and is *not* a new section within the Permit.[24] EPA also observes that EU-14 is also not a new emissions unit at the facility. Requirements for EU-14 were incorporated into Section 4.2.2a of the Permit in 2020.[25] The Petitioner's argument is incorrect, lacks any analysis of the permit terms in question, and does not ultimately demonstrate that IEPA was required to process any changes to this section of the Permit as a significant modification.[26]

The Petitioner also makes a general challenge to IEPA's drafting practice. However, the Petitioner does not present any information regarding how IEPA's drafting technique is relevant to whether the Permit or permit process complies with any relevant statutory or regulatory requirements and therefore, does not demonstrate a basis for objection to the Permit.

Claim 3: The Petitioner Claims That "[The] IEPA Deems the Upon Request to Test is Obsolete…Because 2.4 Already Requires It."

Petitioner's Claim: The Petitioner questions IEPA's statement that a requirement to test upon request in Section 2.4 is obsolete, and claims that "this is another lie to remove testing stringency [from the permit]," as the requirement to test upon request is different from the requirement in the construction permit to test within 90 days of a request. The Petitioner also claims that "relaxing the testing requirements in a [title V] permit is not a minor modification" of the permit. The Petition claims that this change "is a relaxation because it allows the source to avoid testing within a specified period time." The Petitioner also states that it does not agree with "upon-request testing," because it is "not periodic" and is not a type of continuous monitoring.

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

[23] The Petitioner does not make clear which section of the Permit it intended to reference, as Section 2a of the Permit does not exist. It appears to EPA that the Petitioner is referring to Section 4.2.2a of the Permit, as Section 4.2 addresses EU-14.

[24] *See* Final Permit at 29-35 at *https://webapps.illinois.gov/EPA/DocumentExplorer/Documents/Index/170000057747*; *see also* 2020 CAAPP Permit for Chicago Department of Aviation at 30-35 (June 29, 2020) (2020 Permit) at *https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/6432*; s*ee also* CDA SOB.

[25] *See* 2020 Statement of Basis for Chicago Department of Aviation at 35 (May 01, 2020) (2020 SOB) at *https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/6179*; *see also* 2020 Permit at 30.

[26] The Petitioner also claims that Section 2 of the Permit does not contain reference to EU-14 either. The Petitioner does not provide a clear reference to which "Section 2" of the Permit it is taking issue with, as there is a "Section 2 – General Requirements" of the title V permit and "Section 2" under Section 4.2 of the permit. The Petitioner also does not provide a further analysis of the particular Section 2, and why it would need to contain reference to EU-14. Without this reference to the particular section of the Permit or permit term, or an analysis of how or why it is considered a flaw in the permit under any relevant rules or regulations, EPA cannot evaluate the Petitioner's claim.

As explained in Footnote 15, under EPA's rules and Illinois' statute, IEPA may use a minor modification procedure if, among other criteria, the modification does "not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit." 40 C.F.R. § 70.7(e)(2)(i)(A); 415 ILCS 5/39.5(14)(a)(i)(B). According to federal and state rules, every "significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant." 40 C.F.R. § 70.7(e)(4)(i); 415 ILCS 5/39.5(14)(c)(ii).

The Petitioner does not provide any explanation or analysis to demonstrate to EPA that this modification is a "relaxation of testing requirements" under any EPA or Illinois rules or regulations. While the Petitioner makes brief references to Condition 2.4 of the Permit to argue that a requirement to "test within a reasonable time from request" is not the same as a construction permit requirement to test "within 90 days of [the] request," the Petitioner does not provide any analysis suggesting why IEPA should have considered this permit modification to be a relaxation of a permit term or condition, or why IEPA should not have deemed a testing requirement to be "obsolete." It is also not clear to EPA that this permit modification reduced the stringency of the particular testing requirement, as it was, and remains, a test upon request requirement. Absent any further explanation from the Petitioner as to why this change may have decreased the testing stringency, the Petitioner has not demonstrated that this modification is a significant modification.[27]

Claim 4: The Petitioner Claims That "The Summary of Changes Has No Mention That This Area is an Environmental Justice Community."

Petitioner's Claim: The Petitioner contends that IEPA does not mention in the Summary of Changes for this permit modification that the area around the Chicago Department of Aviation is an environmental justice community that is over-burdened with pollution. The Petitioner goes on to argue that the Summary of Changes "does not provide any rationale for this change or explain why it meets the criteria for a minor modification." This, the Petitioner claims, is "gross prejudice against the environmental justice community of Chicago."

The Petitioner then makes various claims within the next paragraph that are loosely related to its main argument within Claim 4. This paragraph seems to have been repeated verbatim from a previous petition this Petitioner submitted concerning an ExxonMobil facility in 2022.[28] The Petitioner cites to past EPA orders[29] to argue that the unavailability of information needed to

[27] To the extent that the Petitioner's allegation that the monitoring requirement is not "periodic" or "continuous" was intended to challenge the sufficiency of the permit term itself, the Petitioner has not provided any citation or analysis as to why additional monitoring would be necessary in this case.

[28] For example, some of the statements within this paragraph refer to "ExxonMobil" and concern permit terms relevant to the ExxonMobil Des Plaines Permit, not the Chicago Department of Aviation Permit. *See Petition Requesting the Administrator Object to Title V Permit for ExxonMobil Pipeline Company, Des Plaines Terminal* at 2 (November, 2022) (2022 ExxonMobil Petition) ("USEPA must object to the Exxon Mobil minor modification for IEPA's failure to provide proper public notice and opportunity to comment on the relaxation of testing requirements intended to demonstrate compliance with numerous VOM limits.").

[29] Specifically, the Petitioner cites to *In the Matter of Cash Creek Generation, LLC*, Order on Petition No. IV-2010-4 (June 22, 2012); *In the Matter of Alliant Energy – WPL Edgewater Generating Station*, Order on Petition No. V-2009-02 (August 17, 2010); *In the Matter of WE Energies Oak Creek Power Plant* (June 12, 2009); and *In the Matter of Louisiana Pacific Corporation*, Order on Petition No. V-2006-3 (November 5, 2007).

determine applicability of or to impose an applicable requirement may also result in a deficiency in the permit's content. The Petitioner then argues that it was denied an opportunity to comment on the "ExxonMobil"[30] permit modification because IEPA never offered a public comment opportunity.

Elsewhere in the Petition, the Petitioner contends that "changes [to the permit] were never disclosed or discussed in a statement of basis" and that the "permit record provides no support" for the permit changes. The Petitioner also argues that Illinois "makes it almost impossible" for members of the public to "participate in minor modifications" because "[the state] is not transparent with the public in its permitting actions or its materials used to justify its permitting actions." In the background of the Petition, the Petitioner also references a response to a FOIA request it submitted to IEPA to claim that EPA and IEPA previously discussed this permit modification. The Petitioner argues that it should "be privileged to this same information" shared between EPA and IEPA.

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

As also explained in Section II of this Order, a petitioner is expected to address the permitting authority's reasoning behind a permit action if such information was available during the petition period. While the Petitioner claims that the Summary of Changes does not discuss the permit modification, EPA observes that IEPA did in fact publish a statement of basis (SOB) (also called a Summary of Changes by IEPA for minor modifications) for the permit modification that explains the changes made to the Permit. The Summary of Changes/SOB for this permit modification was published on October 06, 2022,[31] and was publicly available on IEPA's Bureau of Air Permit Notice database for the Petitioner to evaluate at the time it submitted the Petition in January of 2023. Thus, the Petitioner's claim that IEPA did not discuss this permit modification in a statement of basis is incorrect.[32] Without addressing the state's reasoning or demonstrating that it was unreasonable or contrary to any relevant regulations, the Petitioner has not demonstrated that IEPA should have processed this permit modification as a significant modification instead of a minor modification.[33] This omission alone would be sufficient grounds for EPA to deny this claim. See 81 Fed. Reg. 57822, 57832 (August 24, 2016) (citing cases where EPA denied petitions that did not adequately address the permitting authority's articulated rationale for the permitting decision); *see also Premcor and ExxonMobil Order* at 19.

[30] It appears to EPA that the Petitioner intended to refer to the Chicago Department of Aviation instead of "ExxonMobil," which was the subject of the last Petition this Petitioner submitted to EPA. 2022 ExxonMobil Petition. EPA also notes that the Petitioner refers to the Chicago Department of Aviation as "ExxonMobil" multiple times in this Petition.

[31] *See* CDA SOB; *see also supra* note 21 and accompanying text.

[32] The Petitioner also claims that "[t]he permit record is not available, not accessible, or cannot be obtained easily" in the "background" section of the Petition. The Petitioner's argument is inconsistent, vague, and lacks a thorough analysis for EPA to evaluate.

[33] EPA notes that the Petitioner's incorrect assertion that IEPA did not discuss the permit modification in a statement of basis is inconsistent, as the Petitioner in fact acknowledges and discusses the Summary of Changes in Claims 2-4 of the CDA Petition, and in the "comments" previously submitted to EPA and appended to the Petition.

Additionally, the Petitioner does not cite to any relevant regulations or rules that IEPA violated by not including environmental justice (EJ)-related information in the Summary of Changes/SOB. The Petitioner also does not demonstrate that IEPA violated any regulations that govern significant or minor modification processes by not including information on EJ in the permit record, and does not present any other information within this claim that would demonstrate that this permit modification should have been considered a significant modification.[34]

The Petitioner's claim that it should be "privileged" to the same information allegedly shared between EPA and IEPA fails for similar reasons. The Petitioner has not demonstrated that this modification should have been processed as a significant modification, subject to a public comment period. Thus, the Petitioner does not demonstrate that IEPA was obligated to provide the public any specific information about this modification to review during a public comment period, as it would have been if the modification was considered significant. *See, e.g.*, 40 C.F.R. § 70.7(h)(2).

With respect to the Petitioner's supplemental arguments under Claim 4 that were repeated verbatim from the 2022 ExxonMobil Petition, it is unclear whether or how these arguments are relevant to the Chicago Department of Aviation Permit.[35] Regardless, EPA has addressed the Petitioner's concerns about IEPA's Summary of Changes/SOB and the opportunity to comment on the permit modification within EPA's response to this claim.[36]

Claim 5: The Petitioner Claims That "There Does Not Appear to Have Been Any Outreach Initiated Regarding This Permit Modification by the IEPA."

Petitioner's Claim: In the Petitioner's fifth claim, it alleges that IEPA violated its own EJ Policy by not initiating outreach regarding this permit modification. The Petitioner argues that this violation "should be corrected immediately before further injustices are committed." The Petitioner then goes on to contend that this is the third permit modification that IEPA passed as a minor modification to "bypass the public input and avoid EJ." The Petitioner makes an additional reference to IEPA's response to its previous FOIA request and argues that "only one individual" was "notified" of this permit modification, and that "this is not representative of an EJ community."

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

[34] If the Petitioner's intention was to challenge the sufficiency of IEPA's reasoning or explanations given in the publicly available Summary of Changes, the Petitioner was required to provide a specific citation to the Summary of Changes and a thorough argument for how the explanations given in the Summary of Changes ran afoul of any relevant regulations.

[35] The arguments within this section of the Petition that exclusively address permit terms in a different facility's permit clearly have no relevance to the Chicago Department of Aviation Permit. *See supra* notes 28 and 30.

[36] The Petitioner also argues in Claim 4 that "there is no basis in the non-response by U.S. EPA Region 5 to support [not objecting to the permit]." However, it is unclear what the "non-response" is. It is unclear if the Petitioner is referring to past correspondences with Region 5, or if it is referring to EPA's permit review process. Regardless, the Petitioner has not provided any further information or explanation for why this concern would provide a basis for objecting to the title V permit and considering the minor modification as a significant modification.

EPA confronted a similar claim in the *Premcor and Exxon Mobil Order* and explained that EPA would only object to IEPA's issuance of a permit in response to a petition to make such an objection if the Petitioner demonstrated that IEPA did not comply with applicable requirements under the CAA, such as the procedural requirements governing permit modifications or public notice requirements. *See Premcor and ExxonMobil Order* at 3, 14-15, and 20; *see also* 40 C.F.R. § 70.7(h) & 415 ILCS 5/39.5(8). State-specific laws and policies are not applicable requirements under the CAA, and are not grounds on which EPA can object to the issuance of a title V permit. While the Petitioner alleges that IEPA violated an Illinois EJ Policy by not conducting outreach for this permit modification, this policy is not—so far as EPA is aware—a federally-enforceable requirement that is based on the CAA.[37] It was not approved by EPA into the Illinois State Implementation Plan (SIP) or part 70 program, and is exclusively a matter of state law and/or policy.[38] The Petitioner did not cite any federally enforceable requirements, any rules under part 70, any policy approved by EPA into the Illinois SIP, or any other relevant legal authority that governs IEPA's public outreach in issuing title V permits. Therefore, the Petitioner does not demonstrate that IEPA's failure to conduct public outreach before issuing this minor modification resulted in any violation of applicable requirements under the CAA, part 70 regulations, or Illinois' rules.[39]

Claim 6: The Petitioner Claims That "U.S. EPA Has Failed to Be Responsive to Comments Submitted to Them and…Allowed for Issuance of [the] Permit to "ExxonMobil"[40] Without Objection."

Petitioner's Claim: In the Petitioner's sixth claim, it argues that government entities must respond to comments in order to process final agency actions. The Petitioner claims that EPA's Region 5 office "failed to be responsive to comments" submitted by the Petitioner regarding this permit modification, and allowed the issuance of the Permit to "ExxonMobil"[41] without objection. The Petitioner claims that this is a "violation of procedure," which "mandates" EPA to "[automatically object]" to the Permit and return it to IEPA for revision. The Petitioner also contends that EPA told IEPA that the state does not have to respond to comments submitted by the Petitioner.

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

[37] *See* Illinois Environmental Justice Policy at *https://www2.illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx* and 415 ILCS 155 (Environmental Justice Act).
[38] EPA previously denied a similar claim made by this Petitioner concerning a violation of the Illinois Environmental Justice Policy's outreach requirements. The claim, like the claim made in this Petition, did not demonstrate that IEPA's lack of public outreach violated any federally enforceable requirements. *See* Premcor and ExxonMobil Order at 14-15.
[39] While the Petitioner makes a vague argument that "only one individual" was notified of this permit modification, the Petitioner does not demonstrate why or how this supposed notification violated any requirements of the EPA-approved IEPA rules governing outreach and permit modifications. *See* 40 C.F.R. § 70.7(h); 415 ILCS 5/39.5(8).
[40] *See supra* note 30.
[41] *See supra* note 30.

The Petitioner does not demonstrate that IEPA, or EPA, violated any relevant rules or regulations by not responding to the Petitioner's "comments" on this permit modification.[42] As explained throughout EPA's analysis of this Petition, the Petitioner does not demonstrate that IEPA should have processed the modification to the Permit as a significant modification, and therefore does not demonstrate that a public comment period was required before issuing this permit modification. Because IEPA processed this modification as a minor modification, the state was not required to hold a public comment period as consistent with the relevant federal and state regulations. *See* 40 C.F.R. § 70.7(h); 415 ILCS 5/39.5(8). As such, IEPA was not required to respond to the comments the Petitioner sent to the state because there was no public comment period for this modification, and because the "comments" the Petitioner submitted are not considered public comments as that term is used in the CAA and EPA's regulations.[43]

The Petitioner does not identify or explain any relevant federal or state regulations that require an "automatic objection" of the Permit if EPA does not respond to comments submitted by a member of the public on a state permit action. As explained in Footnote 11, there is no formal mechanism for members of the public to submit comments to EPA on a state-issued permit.

Claim 7: The Petitioner Claims That "There Was No Compliance Schedule Which Would Have Required a Significant Modification."

Petitioner's Claim: In the Petitioner's seventh claim, it argues that "there was no compliance schedule" in the Permit, which would have required IEPA to process this permit modification as a significant modification. The Petitioner alleges that the source could potentially be held in violation because the construction permit mandated initial testing on the first affected engine in order to continue operation of the new boilers. The Petitioner also questions why the title V permit grants authorization to operate engines that are not even constructed yet. The Petitioner suggests that the engines may not be in compliance, and the title V permit might need to contain a compliance schedule.

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

While the Petitioner suggests that the facility may have violated a testing requirement (or perhaps some other unspecified requirements related to the new engines), and that the Permit requires a compliance schedule, the Petitioner's concerns are unsupported. The Petitioner does not demonstrate that the facility is not in compliance with any applicable requirements, nor does it demonstrate that a compliance schedule is necessary for this facility according to any relevant rules or regulations.[44] The Petitioner also presents a hypothetical situation where the engines at the facility may not be in compliance with applicable requirements. The Petitioner does not

[42] EPA previously denied a similar claim made by this Petitioner concerning EPA's responsibility to respond to comments on a minor modification submitted by a member of the Public. Within this argument, the Petitioner similarly did not demonstrate a flaw in the permit, or a procedural flaw with how IEPA processed the permit modification. *See Premcor and ExxonMobil Order* at 20-21.

[43] *See supra* note 11.

[44] EPA's regulations and IEPA's statutes provide that compliance schedule is required "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); *see also* 415 ILCS 5/39(7)(a).

provide any factual information about the facility's actual compliance status. Such a hypothetical situation is insufficient to demonstrate that the source is not in compliance at the time of permit issuance. [45] The Petitioner did not provide an adequate basis for objection as it did not provide specific evidence to demonstrate that the facility was not in compliance with applicable requirements of the CAA at the time of permit issuance.

Like the Petitioner's previous arguments in this Petition, this claim lacks any citation to any federal or state regulations or rules that IEPA may have violated. The Petitioner also does not point EPA to the specific permit term or construction permit that is the subject of this argument. Without providing this information and demonstrating a valid issue with the Permit or permit record, the Petitioner has not demonstrated a flaw in the Permit. Therefore, Claim 7 is denied.

V. CONCLUSION

In this Petition, the Petitioner does not demonstrate that the Permit is not consistent with the applicable requirements of the CAA, or that IEPA improperly processed the permit modification as a minor modification. Because the Petitioner has failed to demonstrate to EPA that issuance of the Permit does not comply with the CAA, part 70 regulations, or the relevant IEPA statutes, I hereby deny the Petition as described in this Order. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Dated: SEP 29 2023

Michael S. Regan
Administrator

[45] EPA has previously denied a similar petition claim regarding the necessity of a compliance schedule in a title V permit. *See In the Matter of Blanchard Refining Company, Galveston Bay Refinery*, Order on Petition No. VI-2017-7 at 11 (August 9, 2021).