BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Petition No. VI-2023-7

In the Matter of

Commonwealth LNG, LLC, Commonwealth LNG

Permit No. 0560-00997-V0

Issued by the Louisiana Department of Environmental Quality

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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 May 24, 2023 (the Petition) from Healthy Gulf and Sierra Club (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to operating permit No. 0560-00997-V0 (the Permit) issued by the Louisiana Department of Environmental Quality (LDEQ) to the Commonwealth LNG (Commonwealth or the facility) in Cameron Parish, Louisiana. The Permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and Louisiana Administrative Code (LAC) 33.III.507. *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, the EPA denies the Petition requesting that the EPA Administrator object to the Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The state of Louisiana submitted a title V program governing the issuance of operating permits on November 15, 1993, and revised this program on November 10, 1994. EPA granted full approval of Louisiana's title V operating permit program in 1995. 60 Fed. Reg. 47,296 (September 12,1995). This program, which became effective on October 12, 1995, is codified in Louisiana Administrative Code (L.A.C.), Title 33, Part III, Chapter 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 the EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit. 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 the 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 U.S.C.

[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*.

§ 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[3] The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).[4] When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g.*, *MacClarence*, 596 F.3d at 1130–31.[5] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to the 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*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether 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, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and

[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.

persuasive.").[6] Relatedly, the EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard. *See, e.g.*, *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013).[7] Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g.*, *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).[8]

Another factor the 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 the 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

[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).

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*.

C. New Source Review

The major New Source Review (NSR) program encompasses two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and for other pollutants regulated under the CAA. 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. 42 U.S.C. §§ 7501–7515.The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA's federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA's regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. The EPA commonly refers to the latter program as the "minor NSR" program. States must also develop minor NSR programs to, along with the major source programs, attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R. §§ 51.160 through 51.164. These federal requirements for minor NSR programs are less prescriptive than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs than in major source programs.

The EPA has approved Louisiana's PSD program as part of its SIP. *See* 40 C.F.R. § 52.970 (identifying EPA-approved regulations in the Louisiana SIP); 52 Fed. Reg. 13671 (April 24, 1987). Louisiana's major and minor NSR provisions, as incorporated into Louisiana's EPA-approved SIP, are contained in portions of LAC 33.III.509, which reference other portions of LAC Title 33, Part III, Chapter 5.

Where the EPA has approved a state's title I permitting program (whether PSD, NNSR, or minor NSR), NSR permits issued following public notice and the opportunity for public comment and judicial review establish the NSR-related "applicable requirements" for the purposes of title V. As with "applicable requirements" established through other CAA authorities, the terms and conditions of those permits should be incorporated into a source's title V permit without a further round of substantive review as part of the title V process. *See generally In the Matter of Big River Steel, LLC*, Order on Petition No. VI-2013-10 at 8–20 (October 31, 2017) (*Big River Steel Order*); 56 Fed. Reg. 21712, 21738–39 (May 10, 1991).[10] Accordingly, the EPA will generally not consider the merits of a permitting authority's NSR permitting decisions in a petition to object to a source's title V permit. *See Big River Steel Order* at 8–9,

[10] However, as EPA noted in the *Big River Steel Order*, there may be circumstances that "warrant a different approach." *Big River Steel Order* at 11 n.20.

14–20.[11] Rather, any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

III. BACKGROUND

A. The Commonwealth LNG Facility

Commonwealth has proposed to construct and operate a new liquid natural gas (LNG) liquefaction and export facility located on the west bank of the Calcasieu Ship Channel at the mouth of the Gulf of Mexico in Cameron Parish, Louisiana. When operational, the facility will consist of six natural gas liquefaction trains and appurtenant facilities. Each train will have a design capacity of approximately 65.1 billion cubic feet of natural gas per year. Equipment at the facility will include refrigeration turbines, generator turbines, flares, thermal oxidizers, fire pump engines, storage tanks, a heater, and an emergency fire engine. The facility is a PSD major source for particulate matter ($PM_{10}/PM_{2.5}$), sulfur dioxide (SO_2), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compound (VOC), and greenhouse gas (GHG) emissions. PSD requirements are documented in Permit No. PSD-LA-841 (the PSD Permit). Provisions of the PSD Permit are incorporated into the Permit.

The EPA used EJScreen[12] to review key demographic and environmental indicators within a five-kilometer radius of the facility. This review showed a total population of approximately 18 residents within a five-kilometer radius of the facility, of which approximately 10 percent are people of color and 11 percent are low income. In addition, the 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 Louisiana.

EJ Index	Percentile in State
Particulate Matter 2.5	4
Ozone	53
Diesel Particulate Matter	3
Air Toxics Cancer Risk	5
Air Toxics Respiratory Hazard	4
Toxic Releases to Air	44

[11] EPA does view monitoring, recordkeeping, and reporting to be part of the title V permitting process and will therefore continue to review whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit. *See, e.g.*, *In the Matter of South Louisiana Methanol, LP*, Order on Petition Nos. VI-2016-24 and VI-2017-14 at 10–11 (May 29, 2018) (*South Louisiana Methanol Order*); *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20. Moreover, as EPA has explained, "[A] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the 'applicable requirement' remains the terms and conditions of the issued preconstruction permit and they should be included in the source's title V permit." *Big River Steel Order* at 19.

[12] 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*.

Traffic Proximity	0
Lead Paint	20
Superfund Proximity	24
RMP Facility Proximity	27
Hazardous Waste Proximity	5
Underground Storage Tanks	0
Wastewater Discharge	42

B. Permitting History

In April 2021, Commonwealth LNG, LLC submitted an application for both a PSD and initial title V permit. LDEQ published notice of both proposed permits on February 1, 2022, subject to a public comment period that initially ended March 21, 2022, but was extended to April 12, 2022. On February 8, 2023 LDEQ submitted the proposed permit, along with its responses to public comments (RTC), to the EPA for its 45-day review. The EPA's 45-day review period ended on March 27, 2023, during which time the EPA did not object to the proposed permit. LDEQ issued the PSD Permit and initial title V permit for the Commonwealth LNG on March 28, 2023.

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on March 27, 2023. The EPA's website indicated any petition seeking the EPA's objection to the Proposed Permit was due on or before May 30, 2023. The Petition was received May 24, 2023, and, therefore, the EPA finds that the Petitioners timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

The Petition contains four separately enumerated grounds for objections (Petition Claims I through IV). The EPA's Order first addresses the one predominantly title V-related claim (Petition Claim II), followed by three claims that all relate to the PSD Permit (Petition Claims I, III and IV).

Claim II: The Petitioners Claim That "The Title V Permit Fails to Include Monitoring Sufficient to Ensure Commonwealth Complies with Its Emission Limits."

Petition Claim: The Petitioners allege that the Permit fails to include monitoring or recordkeeping requirements sufficient to assure Commonwealth complies with its permitted emissions limits. Petition at 32. The Petitioners then generally state that the Permit "is devoid of any specific monitoring requirements whatsoever for most units for key pollutants, like SO_2 and NO_2." *Id.* at 32.

The Petitioners quote the Louisiana Administrative Code to provide that "[a] Title V permit must contain 'compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'" *Id*. (quoting LAC 33:III.507.H.1). The Petitioners observe that many of the monitoring requirements in the Permit reflect

the monitoring in underlying standards. *Id*. at 34–35. The Petitioners assert, "LDEQ cannot simply collect the monitoring requirements that already apply from the relevant regulations but must supplement them as necessary on a case-by-case basis to assure compliance with all permit terms and conditions." *Id*. (citing *Sierra Club v. EPA*, 536 F.3d 673, 677, 680 (D.C. Cir. 2008)); *see id*. at 34–35.

The Petitioners observe, generally, that many of the emissions limits in the Permit come from Commonwealth's Best Available Control Technology (BACT) review. *Id*. Because the EPA requires that BACT emissions limits be met "on a continual basis at all levels of operation," the Petitioners suggest that continuous emission monitors are the best way to show continuous compliance. *Id.* at 32 (quoting the EPA's draft 1990 NSR Workshop Manual). The Petitioners argue that the permitting agency must show that any alternative monitoring methods would still "provide sufficiently reliable and timely information for determining compliance." *Id*. at 32–33 (citing 42 U.S.C. § 7661c(b); 40 C.F.R. § 70.6(a)(3)(i)). The Petitioners claim that, "in lieu of live monitors, the Permit 'must contain sufficient testing or monitoring to confirm that these emission factors, as well as other parameters upon which the emission calculations rely . . . accurately reflect the site-specific conditions.'" *Id.* at 33 (quoting *In the Matter of Yuhuang Chemical Inc.*, Order on Petition No. VI-2015-03 at 28 (Aug. 31, 2016)).

The Petitioners reference their public comments and an attached expert report to reason that "the Permit lacks any clear monitoring provisions for many of the large sources of pollution at the plant, such as thermal oxidizers." *Id.* at 34 (citing Petition Ex. 10). The Petitioners also briefly state that the Permit only requires continuous monitoring for the turbines' NO_x emissions, and "gives the company several options for monitoring flare or combustion units' opacity." *Id*.

The Petitioners argue that LDEQ is required to explain each of its choices concerning monitoring to assure compliance. *Id.* at 33–34. More specifically, the Petitioners assert that LDEQ must prepare a statement of basis that sets forth "the legal and factual basis" for selecting permit conditions, which must include, among other things, "the rationale for the monitoring methods selected." *Id*. (quoting 40 C.F.R. § 70.7(a)(5) and a 2001 EPA Region 5 letter[13]).

The Petitioners conclude: "LDEQ[][] must comprehensively revise the title V permit to include continuous emissions monitoring wherever technically possible, or, at a minimum, provide a detailed explanation why it would choose alternative monitoring methods, along with specific provisions to implement those methods." *Id*. at 35.

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

The Petitioners have failed to demonstrate that the Permit lacks sufficient monitoring to assure compliance with any specific permit terms or applicable requirements. The Petitioners are correct that all title V permits must contain monitoring (or similar compliance assurance measures) sufficient to assure compliance with all applicable requirements and permit terms. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1); LAC 33:III.507.H.1. Further, as the Petitioners suggest, in some cases this will require a permitting authority to supplement monitoring contained within an underlying applicable

[13] Letter from Stephen Rothblatt, EPA Region 5, to Robert F. Hodanbosi, Ohio EPA (Dec. 20, 2001), available at *https://www.epa.gov/sites/default/files/2015-08/documents/sbguide.pdf*.

requirement. *Sierra Club*, 536 F.3d at 680. However, determining whether a title V permit contains sufficient monitoring is a context-specific, case-by-case inquiry. *See, e.g.*, *In the Matter of CITGO Refining and Chemicals Co., L.P., West Plant*, Order on Petition No. VI-2007-01 at 12–13 (May 28, 2009). Other than a sweeping claim that continuous monitoring is presumptively required, the Petitioners do not identify a single permit term they believe lacks sufficient monitoring. Nor do the Petitioners explain why any specific existing monitoring requirements are insufficient to assure compliance. In other words, the Petitioners do not attempt to demonstrate that it is necessary to add supplemental monitoring for any specific permit terms.

The Petitioners' claim features various general allegations of insufficient monitoring for "most units" and "key pollutants, like SO_2 and NO_2." Petition at 32. The closest the Petitioners come to identifying concerns with specific permit terms are their allegations that: the "Permit lacks any clear monitoring provisions for many of the large sources of pollution at the plant, such as thermal oxidizers," and that the Permit "gives the company several options for monitoring flare or combustion units' opacity." *Id*. at 34. But the Petitioners do not cite to any specific permit conditions related to SO_2, NO_2, opacity, thermal oxidizers, flares, or other combustion units. 40 C.F.R. § 70.12(a)(2)(i).[14] Furthermore, the Petitioners have not provided any analysis as to how the Permit's monitoring conditions were deficient or provided an explanation of how any terms or conditions in the Permit are not adequate to comply with the part 70 requirements governing monitoring. 40 C.F.R. § 70.12(a)(2)(iii).[15] These generalized allegations are insufficient to demonstrate a flaw in the Permit; the Petitioners have failed to provide the requisite citation and analysis to demonstrate that the Permit does not assure compliance with specific applicable requirements or permit terms. 40 C.F.R. § 70.12(a)(2)(i)–(iii);[16] *see also, e.g.*, *In the Matter of ExxonMobil Corp., Baytown Refinery*, Order on Petition No. VI-2016-14 at 24 (Apr. 2, 2018) (*ExxonMobil Baytown Refinery Order*); *In the Matter of Suncor Energy (U.S.A), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII-2022-13 & VIII-2022-14 at 24–27 (July 31, 2023) (*Suncor East Order*).[17]

The Petitioners also include a general reference to their public comments and an expert report, claiming that these documents "extensively discuss[]" how the Permit lacks sufficient monitoring. Petition at 34 (citing Petition Ex. 10). However, the EPA's regulations provide:

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

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

[16] *See supra* notes 6–8 and accompanying text.

[17] In the *ExxonMobil Baytown Refinery Order*, the EPA stated: "The permit terms that the Petitioners take issue with span more than two full pages of [the permit], and provide the compliance demonstration methodologies for a wide range of emission limits on different pollutants from different emission units. The Petitioners cite broadly to Conditions 20–22, but do not evaluate any of the individual requirements included in these conditions. Rather, the Petitioners make generalized allegations that apparently apply in the abstract to all of the conditions referenced by the Petitioners. The Petitioners claim that the permit terms at issue 'omit key information necessary to understand and evaluate how emissions are to be calculated' and 'fail to specify relevant monitoring requirements,' but do not identify any particular information that is missing from a particular permit term, or explain why such information would be necessary for compliance demonstrations. These generalized allegations are insufficient to demonstrate a flaw in the Permit; the Petitioners have failed to provide the requisite citation and analysis to demonstrate that the Permit does not assure compliance with specific applicable requirements or permit terms." *ExxonMobil Baytown Refinery Order* at 24. Similarly, in the *Suncor East Order*, the EPA reached a similar conclusion where petitioners cited various permit terms bud did not provide any fact-specific analysis regarding why those permit terms lacked sufficient monitoring. *See Suncor East Order* at 24–27. Here, these principles are even more important, as the Petitioners do not identify *any* affected permit terms, but instead vaguely refer to various unidentified emission units contained throughout the entire permit.

> Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must be contained within the body of the petition, or 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.

40 C.F.R. § 70.12(a)(2). Here, the Petitioners' brief reference to their comments and expert report are insufficient to incorporate such material into the body of the Petition. But even if this reference were sufficient, the EPA observes that neither the public comments nor the report contains details relevant to the issues alluded to in the Petition related to SO_2, NO_2, thermal oxidizers, or opacity from flares or other combustion units; nor do they point to any specific permit terms or conditions; nor do they contain an explanation of how any term or condition in the Permit is not adequate to comply with the part 70 requirements governing monitoring.[18]

Regarding the Petitioners' suggestion that LDEQ was obligated to explain the basis for various (unspecified) permit terms, the Petitioners have similarly failed to demonstrate that LDEQ's permit record failed to satisfy any part 70 requirements, including 40 C.F.R. § 70.7(a)(5). The EPA recently addressed a similar allegation in the *Suncor East Order*, summarizing the relevant requirements as follows:

> (i) [T]he CAA requires that states issue title V permits that assure compliance with all applicable requirements; (ii) EPA's regulations require that states develop permit records justifying their decisions, but states are not required to proactively justify all permit terms . . . ; (iii) EPA's regulations require that states respond to all significant comments, generally with a level of detail commensurate with the public comments; and (iv) ultimately, the CAA places the burden on the public to identify alleged deficiencies with a permit "with reasonable specificity" during the public comment period (in order to preserve such issues in a subsequent petition) and to "demonstrate" in a petition that the permit does not satisfy the CAA, including for claims challenging the adequacy of a permit record.

Suncor East Order at 32; *see id*. at 28–32. Applying these principles, the EPA rejected two similar claims in the Suncor East petition, stating:

[18] The public comments include the same general arguments as the Petition. Additionally, the expert report discusses monitoring and testing requirements in several places, generally in the context of discussing the sufficiency of BACT limits established by the PSD permit issued to the source. Any connection between this discussion and the Petition's vague references to insufficient monitoring for SO_2, NO_2, thermal oxidizers, or opacity from flares or other combustion units, Petition at 32, 34, is unclear and insufficient to demonstrate that the Permit lacks sufficient monitoring. For example, the "extensive discuss[ion]" of thermal oxidizers in the expert report never mentions monitoring, but rather focuses on the controls that should be required as BACT and the control efficiency assumptions related to the potential to emit calculations for these units. Petition at 34; Petition Ex. 10, Attachment "Sahu Report" at 7, 11–13, 19, 20. The report also discusses some compliance assurance issues that are not raised at all in the petition, including discussion related to CO and VOC monitoring. *See* Sahu Report at 7, 9.

> CDPHE did not have a burden to explain the basis for each individual permit term . . . in this permit renewal proceeding. Thus, the more relevant issue is whether CDPHE sufficiently responded to the concerns raised in public comments. More specifically: *Did the public comments addressing [the monitoring issue raised in this claim] articulate specific challenges to the sufficiency of particular monitoring provisions, such that CDPHE was required to provide a specific justification for the dozens of permit terms potentially impacted by these comments?*
>
> Here, for the reasons presented in the following paragraphs, the relevant public comments were not specific enough to necessitate a more specific response than that provided by CDPHE. Central to this conclusion is the fact that . . . [a]s with other monitoring requirements, [the monitoring issue raised in this claim] is a context-specific issue that will depend on factors unique to each affected permit term.
>
> The public comments relevant to [this claim] . . . *did not provide any analysis of the potentially affected . . . permit terms*. In other words, these general comments did not present a fact-specific basis for calling into question the sufficiency of individual permit terms . . . . Because the public comments associated with [this claim] did not present any fact-specific challenges to individual . . . permit terms, CDPHE did not have an obligation to separately analyze and explain the fact-specific basis for each of the potentially affected permit terms.

Suncor East Order at 32–33 (footnotes omitted) (addressing claim related to the use of AP-42 in compliance demonstrations); *see id*. at 42–43 (applying the same principles to reject a claim related to monitoring emissions during startups, shutdowns, and malfunctions).

Here, the Petitioners' public comments were especially general (even more so than the comments relevant to the *Suncor East Order*) and did not identify *any* specific permit terms that lacked sufficient monitoring. In the LDEQ's response to the Petitioners' argument that it needed to provide a detailed explanation of every alternative monitoring choice, LDEQ was correct in stating that "the commentor does not identify any specific deficiency in the proposed monitoring requirements." RTC at 22. Nonetheless, LDEQ provided details about various monitoring requirements in the Permit. *See id*. at 22–23. Absent more specific public comments identifying deficiencies in specific permit conditions, LDEQ did not have an obligation to provide a more detailed explanation of every permit condition. The Petitioners' comments and petition claim effectively attempt to shift the burden to LDEQ to demonstrate the adequacy of the monitoring, rather than demonstrating themselves why the specific monitoring requirements included in the Permit are not sufficient. However, the CAA places the burden on petitioners to demonstrate to the EPA that the title V permit does not comply with the Act. 42 U.S.C. § 7661d(b)(2). Here, the Petitioners' generalized claims, unsupported by any analysis of specific permit terms, have failed to satisfy this burden. For similar reasons, the Petitioners have also failed to demonstrate that the permit record is deficient. Thus, the EPA denies Claim II.

Claims I, III, IV: The Petitioners' Claims Related to PSD Determinations

Petition Claim: Three of the Petitioners' claims relate to PSD determinations made by LDEQ in issuing PSD Permit No. PSD-LA-841. In Claim I, the Petitioners challenge LDEQ's allegedly improper usage of

significant impact levels (SILs) to determine that the project would not cause or contribute to a NAAQS exceedance. See Petition at 12–31. The Petitioners present several reasons to support this position:

> (1) Commonwealth's modeling analysis improperly relies on SILs to avoid the Clean Air Act's requirements; (2) LDEQ does not have discretion to use SILs to exempt Commonwealth from further evaluation in light of the NAAQS exceedance for NO_2 revealed by its own modeling; (3) even if LDEQ had discretion to use the SILs as a *de minimus* [sic] exemption from the Clean Air Act's requirements, LDEQ has failed to demonstrate that pollution impacts up to the SIL are trivial; and (4) LDEQ's use of the SILs to exempt Commonwealth from further evaluation is arbitrary and unreasonable.

Id at 13.

Next, in Claim III, the Petitioners claim that LDEQ failed to ensure compliance with BACT. *See id*. at 35–41. The Petitioners argue that neither Commonwealth nor LDEQ have put forth a reasoned basis for the numerical BACT emission limits. *Id* at 37. According to the Petitioners, "[t]hese limits do not reflect the 'maximum degree of reduction' in emissions of each pollutant that can be achieved by the compressor turbines and power generating turbines." *Id*.

In Claim IV, the Petitioners claim that LDEQ allowed improper use of AP-42 emission factors, particularly in the context of the use of SILs to avoid PSD modeling. *See id*. at 41–44. The Petitioners assert that Commonwealth and LDEQ likely underestimated the Project's emissions significantly by relying on AP-42 emission factors. *Id* at 42. Overall, the Petitioners argue that Commonwealth's improper emissions assumptions, combined with the use of SILs, resulted in the avoidance of refined modeling. *Id* at 42, 44.

EPA Response: For the following reasons, the EPA denies the Petitioners' request for an objection on Claims I, III, and IV.

Each of the Petitioners' claims summarized above involve determinations made by LDEQ in issuing the PSD Permit that are based exclusively on requirements under the PSD provisions in part C of title I of the CAA and the LDEQ's corresponding EPA-approved SIP regulations. More specifically, Claims I, III, and IV relate exclusively to title I permitting requirements—including preconstruction modeling requirements and BACT determinations—rather than title V permitting requirements.[19]

These claims call into question whether the EPA may consider challenges to PSD permitting decisions under title I of the Clean Air Act in reviewing or considering a petition to object to a title V operating permit. As noted in Section II.C of this Order, the EPA reviewed this question under similar

[19] Claim IV, which challenges emission calculations, frames these challenges exclusively in the context of PSD requirements related to modeling. *See* Petition at 42, 43, 44. To the extent that any portion of the Petitioners' argument in Claim IV was intended to challenge requirements in the source's title V permit that were not based on the PSD review, the Petitioners do not identify any connection between the allegedly improper emission calculations and any CAA requirement with which the Permit does not comply. 40 C.F.R. § 70.12(a)(2)(ii)–(iii); *see supra* notes 6–8 and accompanying text. The Petitioner also does not identify any connection between the emission calculations and any particular permit terms that might be deficient as a result of the calculation issues. 40 C.F.R. § 70.12(a)(2)(i); *see also In the Matter of Waelz Sustainable Products, LLC*, Order on Petition No. V-2021-10 at 20–21 (Mar. 14, 2023) (*Waelz Order*).

circumstances in the *Big River Steel Order* and a number of subsequent orders, including the *South Louisiana Methanol Order*.[20] After a review of the structure and text of the CAA and the EPA's regulations in part 70, and in light of the circumstances presented by the petitions at issue in those orders, the EPA concluded that the title V permitting process was not the appropriate forum to review preconstruction permitting issues, even when the PSD conditions based on title I requirements were developed at the same time as the title V permit.[21] The EPA's position can be summarized as follows: where a permitting authority authorizes the construction of a particular facility by issuing an NSR permit that was subject to public notice and the opportunity for public comment and judicial review, the terms and conditions of that NSR permit define the "applicable requirements" of the SIP for purposes of title V permitting and are not subject to review at the time of incorporation into the source's title V permit. This interpretation is explained more fully in the *Big River Steel Order* and subsequent orders, and was upheld by the U.S. Court of Appeals for the Fifth Circuit. *See Env't Integrity Project v. EPA*, 960 F.3d 236 (5th Cir 2020).

The *South Louisiana Methanol Order* addressed a similar situation. There, the EPA explained:

> In this case, those emissions units at the site required to undergo PSD review are found in the PSD permit for SLM. This PSD permit—Permit No. PSD-LA-780(M-1)—was issued in a separate permit document from the title V permit, pursuant to regulations approved by the EPA under title I of the CAA. As such, this PSD permit, including the BACT limits established in that permit, establishes the NSR-related "applicable requirements" that must be incorporated into the title V permit. The fact that the PSD permit was finalized at the same time as the title V permit does not affect this determination. Therefore, the task of LDEQ in issuing or modifying the title V permit is to incorporate the terms and conditions of the underlying title I permit (PSD-LA-780(M-1)), and to ensure that the title V permit contains adequate monitoring, recordkeeping, and reporting requirements to assure compliance with those terms and conditions. Any challenges to the validity of decisions made during the PSD permit proceeding—including the determination of BACT and the establishment of BACT limits—should have been raised through the appropriate title I avenues or through an enforcement action. *See Big River Steel Order* at 15–20; La. R.S. 30:2050.11 (administrative adjudicatory hearings); La. R.S. 30:2050.21 (judicial review, appeal). The Petitioners may not now use the title V petition process to raise concerns over those PSD decisions. Accordingly, the challenges in Claim IV of the Petition to the BACT determinations made in Permit No. PSD-LA-780(M-1) are denied.

South Louisiana Methanol Order at 9–10 (some citations omitted).

Here, too, LDEQ issued a PSD permit to authorize the construction of the Commonwealth facility. This PSD permit—Permit No. PSD-LA-841—was issued in a separate permit document from the title V permit, pursuant to regulations approved by the EPA under title I of the CAA. As such, the terms and

[20] *In the Matter of South Louisiana Methanol, LP, St. James Methanol Plant*, Order on Petition Nos. VI-2016-24 & VI-2017-014 (May 29, 2018).

[21] In fact, the EPA has applied the same approach even when NSR and title V permit authorizations were included within the same permit document. *See, e.g.*, *Waelz Order* at 13–15; *In the Matter of Riverview Energy Corp.*, Order on Petition No. V-2019-10 at 24–28 (Mar. 26, 2020); *Big River Steel Order* at 11–12.

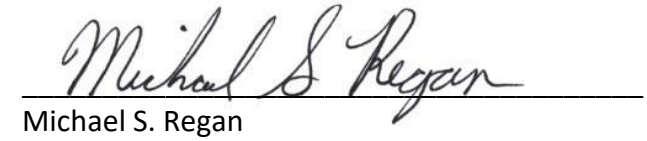
conditions of that PSD permit establish the NSR-related "applicable requirements" of the SIP that must be incorporated into Commonwealth's title V permit. As in *South Louisiana Methanol*, the PSD Permit here was issued following public notice, the opportunity for comment, and the opportunity for judicial review.

Notably, the Petitioners commented on the PSD Permit during the appropriate public comment period (which was combined with the comment period for the title V permit challenged in this Petition). And, in fact, the Petitioners have followed the proper title I pathway by seeking judicial review of the PSD Permit.[22] This judicial review process is the proper process to obtain review of these preconstruction permitting decisions. *See Big River Steel Order* at 17–19. If the ongoing appeal results in any changes to the terms and conditions of Commonwealth's PSD Permit, this will consequently alter the "applicable requirements" that must be reflected in the source's title V permit. *See, e.g.*, 40 C.F.R. § 70.7(f)(1). Until then, the Petitioners may not attempt to challenge LDEQ's preconstruction permitting decisions through a title V petition to the EPA. Accordingly, the EPA denies Claims I, III, and IV.

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 deny the Petition as described in this Order.

Dated: January 30, 2024



Michael S. Regan
Administrator

[22] Normally, judicial review of NSR permits is pursued through the state court system. Here, the Petitioners filed a petition for judicial review in Louisiana state court with the 19th Judicial District Court. *Sierra Club v. LA Dep't of Env't Quality*, La. 19th JDC, Docket No. C731-515 (filed Apr. 27, 2023), available at *https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/2023-04-27_Petition%20for%20Judicial%20Review_Final.pdf*. However, because Commonwealth is an LNG production and export facility, the Petitioners alternatively filed a petition for judicial review in federal court with the United States Court of Appeals for the Fifth Circuit, pursuant to the Natural Gas Act, 15 U.S.C. § 717r(d)(1). *Sierra Club v. LA Dep't of Env't Quality*, Case No. 23-60234 (filed Apr. 27, 2023), available at *https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/04.27.23%20%20Petition%20for%20Review%20Commonwealth.pdf*.