BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Petition No. VI-2023-12

In the Matter of

Oxbow Calcining LLC

Permit No. O1493

Issued by the Texas Commission on 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 August 8, 2023 (the Petition) from Port Arthur Community Action Network and Environmental Integrity Project (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. O1493 (the Permit) issued by the Texas Commission on Environmental Quality (TCEQ) to the Oxbow Calcining Plant (Oxbow or the facility) in Jefferson County, Texas. The operating permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and Title 30, Chapter 122 of the Texas Administrative Code (TAC). *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 Texas submitted a title V program governing the issuance of operating permits on September 17, 1993. The EPA granted interim approval of Texas's title V operating permit program in 1996 and granted full approval in 2001. *See* 61 Fed. Reg. 32693 (June 25, 1996) (interim approval effective July 25, 1996); 66 Fed. Reg. 63318 (Dec. 6, 2001). This program, which became effective on November 30, 2001, is codified in 30 TAC Chapter 122.

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 (Aug. 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 persuasive.").[6] Relatedly, the EPA has pointed out in numerous previous orders that general assertions

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[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.

[6] *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (Sept. 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*).

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 (Jan. 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 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*.

[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 (Apr. 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (Jan. 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 (Mar. 15, 2005).

[8] *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (Feb. 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 (Dec. 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).

III. BACKGROUND

A. The Oxbow Facility

The Oxbow Facility, located in Jefferson County, Texas, is a petroleum coke (pet coke) calcining plant located on a 112-acre waterfront site on the West Turning Basin of the Sabine Neches Ship Canal. The plant produces calcined pet coke which is used to make anodes for the aluminum industry, sized calcined petroleum cokes for the titanium dioxide industry, and other industrial products. The majority of these products are loaded onto vessels for export throughout the world. However, some products may be loaded into railcars and/or trucks for shipment to domestic locations. The facility is a major source of sulfur dioxide (SO_2), particulate matter, nitrous oxides, hazardous air pollutants, hydrochloric acid, and hydrogen flouride.

The EPA used EJScreen[10] to review key demographic and environmental indicators within a five-kilometer radius of Oxbow. This review showed a total population of approximately 2,916 residents within a five-kilometer radius of the facility, of which approximately 95 percent are people of color and 66 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 Texas.

EJ Index	Percentile in State
Particulate Matter 2.5	41
Ozone	84
Diesel Particulate Matter	81
Air Toxics Cancer Risk	99
Air Toxics Respiratory Hazard	81
Toxic Releases to Air	98
Traffic Proximity	59
Lead Paint	91
Superfund Proximity	90
RMP Facility Proximity	98
Hazardous Waste Proximity	97
Underground Storage Tanks	88
Wastewater Discharge	90

[10] EJScreen is an environmental justice mapping and screening tool that provides the 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

2019 Agreed Order

On August 14, 2019, TCEQ issued an Agreed Order for the Oxbow facility, which alleged that Oxbow had violated state and federal regulations and conditions in 2017 by causing an exceedance of the SO_2 NAAQS at a nearby monitoring station, Continuous Ambient Monitoring Station 1071. See *In the Matter of an Enforcement Action Concerning Oxbow Calcining LLC*, TCEQ, 2 (Aug. 14, 2019) ("2019 Agreed Order"). The 2019 Agreed Order states that Oxbow denied this allegation but nonetheless agreed to pay assessed financial penalties, and also agreed to certain technical requirements and certifications of compliance.

2020 Permit Action

Oxbow submitted an application for a title V permit renewal on March 5, 2018. Per a letter dated July 10, 2020, TCEQ transmitted the 2020 Proposed Permit, along with its Response to Comments (2020 RTC), to the EPA for its 45-day review. The EPA's 45-day review period began on July 14, 2020, and ended on August 28, 2020, during which time the EPA did not object to the 2020 Proposed Permit. TCEQ issued the final title V permit for the Oxbow facility on September 9, 2020 (2020 Title V Permit). The Petitioners subsequently submitted a petition on October 28, 2020 requesting that the EPA object to the issuance of the 2020 Title V Permit (2020 Petition). The EPA issued an order granting the 2020 Petition on June 14, 2022. *See In the Matter of Oxbow Calcining LLC,* Order on Petition No. VI-2020-11 (*2022 Oxbow I Order*).

2022 Oxbow I Order

In Claim A of the 2020 Petition, the Petitioners raised objections regarding the alleged lack of monitoring sufficient to ensure compliance with the SO_2 NAAQS. Specifically, they petitioned the EPA to object to the 2020 Title V Permit on the basis that TCEQ's response to comment was inconsistent with an enforcement action that resulted in the 2019 Agreed Order. TCEQ originally responded to comment on the 2020 Proposed Permit by explaining that the title V permit contained SO_2 emission limits in the Maximum Allowable Emission Rates Table (MAERT), as well as monitoring requirements to assure compliance with those limits. TCEQ also stated that the area in which Oxbow is located is in attainment with the NAAQS and that individual facilities are not subject to the SO_2 NAAQS. *2022 Oxbow Order I* at 11 (citing 2020 RTC at 30–32). In the *2022 Oxbow I Order,* the EPA directed TCEQ to explain the apparent inconsistency between its interpretation of NSR General Condition No. 13 and NSR Special Condition No. 25[11] in its RTC and the basis of its allegation of violation of these conditions in the 2019 Agreed Order. As explained in further detail in the *2022 Oxbow I Order*, these NSR provisions formed part of the basis of TCEQ's 2019 enforcement action. The EPA noted that "if the 2019 Agreed Order is not consistent with TCEQ's interpretation of these provisions, TCEQ should provide the interpretation on the record and explain the discrepancy." *2022 Oxbow I Order* at 12.

[11] Note that General Condition 13 and Special Condition 25 existed in the February 28, 2019 version of NSR Permit No. 45622. The 2023 Revised Title V Permit incorporates the November 30, 2022 version of NSR Permit No. 45622. In that version of the NSR Permit, General Condition 13 appears to be mis-labeled as General Condition 6, and Special Condition 25 is now Special Condition 24.

In Claim B of the 2020 Petition, the Petitioners raised objections regarding the lack of monitoring, testing, and recordkeeping provisions to assure compliance with lead and VOC limits from several kiln stacks. Specifically, the Petitioners claimed that the 2020 Title V Permit only contained initial stack testing for lead and VOC emission limits for Kiln stacks 2, 3, 4, and 5 and did not contain monitoring, recordkeeping, and reporting to assure ongoing compliance. In the *2022 Oxbow I Order,* the EPA directed TCEQ to include monitoring, recordkeeping, and reporting sufficient to assure compliance with hourly and annual lead and VOC limits under NSR Permit No. 45622, either directly in the title V permit or in the NSR Permit followed by revisions to the title V permit. Additionally, if part of the monitoring protocol is based on representations in a permit application, the EPA directed TCEQ to appropriately incorporate those representations into a permit document. *2022 Oxbow I Order* at 17.

2023 Permit Action

TCEQ responded to the EPA's objection via a letter dated February 3, 2023 (Executive Director's Response to EPA Objection), which is discussed in further detail below. TCEQ published notice of the revised draft permit on February 7, 2023, subject to a 30-day public comment period, which ended on March 9, 2023. TCEQ responded to comments on April 21, 2023 (2023 RTC), in which it stated that the revised draft permit included sufficient monitoring, recordkeeping, and reporting to determine compliance with applicable requirements. TCEQ subsequently transmitted the revised Proposed Permit to the EPA for its 45-day review. The EPA's 45-day review period began on April 25, 2023, and ended on June 9, 2023, during which time the EPA did not object to the revised Proposed Permit. TCEQ issued the final revised title V permit for the Oxbow facility on June 21, 2023 (2023 Revised Title V Permit).

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 June 9, 2023. Thus, any petition seeking the EPA's objection to the revised Proposed Permit was due on or before August 8, 2023. The Petition was received August 8, 2023, and, therefore, the EPA finds that the Petitioners timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

Claim I: The Petitioners Claim That "The Proposed Permit Fails to Resolve EPA's Objection that the Permit Fails to Include Monitoring and Recordkeeping Provisions Sufficient to Ensure Compliance with the Sulfur Dioxide National Ambient Air Quality Standards."

Petitioners' Claim: The Petitioners claim that a title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with applicable requirements and that the rationale for the selected monitoring requirements must be clear and documented in the permit record. *Id.* at 9 (citing 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3), (a)(5) and (c)(1); *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03 at 7–8 (Jan. 31, 2011) (*Granite City I Order*)).

Specifically, the Petitioners claim that the 2023 Revised Title V Permit does not specify monitoring, testing, and recordkeeping requirements that assure compliance with the 2010 SO_2 NAAQS, including conditions of the Texas SIP, 40 C.F.R. part 50, and the Texas Health and Safety Code. Petition at 6, 9 (citing 30 TAC §§ 101.3, 101.21, 116.115(b)(2)(H)(i); 40 C.F.R. § 50.12(a); and Texas Health & Safety Code § 382.085). The Petitioners assert that these provisions are applicable requirements of the 2023 Revised Title V Permit through General Condition No. 13 and Special Condition No. 24 of NSR Permit No. 45622, which is incorporated into the title V permit. *Id.* at 6. The Petitioners also claim that the permit record does not contain a reasoned justification for TCEQ's determination that monitoring, testing, and recordkeeping requirements in the 2023 Revised Title V Permit assure compliance with the SO_2 NAAQS. *Id.* at 9.

The Petitioners contend that NSR General Condition No. 13 prohibits Oxbow from causing air pollution, pursuant to the EPA-approved SIP requirements in Texas Health & Safety Code § 382.085. *Id.* The Petitioners claim that the 2010 SO_2 NAAQS meet the definition of air pollution under Texas Health & Safety Code § 382.003(3)[12] because the NAAQS are specifically designed "to prevent injurious or adverse effects from SO_2 exposure to human health and welfare . . . ." *Id.* at 7 (citing Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010)). The Petitioners further contend that exceedance of the 2010 SO_2 NAAQS constitutes air pollution under the approved SIP. *Id.* at 8. Additionally, the Petitioners claim that NSR Special Condition No. 24 "prohibits violations of allowable emission rates or other standards, such as the NAAQS, and includes a non-exhaustive list of corrective measures to be taken in the event of a violation." *Id.* at 7.

The Petitioners concede that the NAAQS are not applicable requirements for the purposes of title V, "*unless* they are made applicable to individual sources through SIP provisions, or as here, the terms and conditions of a permit issued pursuant to the Texas SIP." *Id.* at 16. The Petitioners contend that NSR General Condition No. 13 incorporates the SO_2 NAAQS as an applicable requirement for purposes of the title V permit, and that the SO_2 NAAQS and related SIP and federal requirements are critical to the title V permit because Oxbow has repeatedly caused exceedances of the SO_2 NAAQS. *Id.* at 8. The Petitioners support this claim by citing the 2019 Agreed Order between TCEQ and Oxbow, in which TCEQ alleges that Oxbow violated General Condition No. 13 and Special Condition No. 24 of NSR Permit No. 45622 by causing multiple exceedances of the SO_2 NAAQS. *Id.* (citing 2019 Agreed Order at 2).

The Petitioners then refer to the 2020 Petition, which raised similar objections regarding the lack of monitoring sufficient to ensure compliance with the SO_2 NAAQS. In the 2020 Petition, the Petitioners stated that TCEQ originally responded to comments on the 2020 Proposed Permit by explaining that NSR General Condition No. 13 and Special Condition No. 24 did not place any additional requirements on the facility, and that NAAQS exceedances could not be enforced through the title V permit. *Id.* at 9–10. The Petitioners claim that they petitioned the EPA to object to the 2020 Proposed Permit because they believed that TCEQ's response was inconsistent with its enforcement action that resulted in the 2019 Agreed Order. *Id.* at 10. The Petitioners assert that the EPA granted this claim in the *2022 Oxbow I Order* because TCEQ failed to explain this inconsistency, and that the EPA directed TCEQ to explain

[12] "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that: (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation, or property. Texas Health & Safety Code § 382.003(3).

how the 2020 Proposed Permit assures compliance with General Condition 13 and Special Condition 25.[13]

As noted above, TCEQ responded to the *2022 Oxbow I Order* through a letter dated February 3, 2023. The Petitioners claim that TCEQ's response to the EPA's objection in the *2022 Oxbow I Order* is inadequate "because it ignores the inconsistency that gave rise to EPA's objection." *Id.* at 11. The Petitioners assert that TCEQ's statement that NSR General Condition No. 13 and Special Condition No. 24 do not impose additional requirements on Oxbow[14] does not align with the fact that TCEQ relied on these conditions to impose penalties on Oxbow for repeated exceedances of the SO_2 NAAQS. *Id.* The Petitioners then contend that either the cited NSR permit conditions impose applicable requirements, or the 2019 Agreed Order was without any legal basis. *Id.* The Petitioners then state that because TCEQ presumably does not engage in "baseless enforcement actions," we must conclude that the NSR permit conditions establish federally enforceable applicable requirements. *Id.* The Petitioners claim that if this is the case, the title V permit must establish monitoring, testing, and recordkeeping requirements to ensure compliance with these requirements and prevent future exceedances of the SO_2 NAAQS. *Id.*

The Petitioners then challenge a number of TCEQ's statements in its February 3, 2023, response to the EPA's objection in the *2022 Oxbow I Order* and its 2023 RTC on the revised Proposed Permit. The Petitioners argue that the 2019 Agreed Order treats exceedances of the NAAQS as explicit violations of NSR General Condition No. 13 and Special Condition No. 24 and that TCEQ "did not base the Agreed Order on violations of any permitting limits or standards that TCEQ now claims are the purview of these conditions." *Id.* at 13. The Petitioners then assert that despite the 2019 Agreed Order alleging no violations of any "specific requirements or limits in [Oxbow's] NSR Permit," TCEQ states that General Condition No. 13 and Special Condition No. 24 "are not distinct applicable requirements that in and of themselves would require monitoring, recordkeeping, or reporting to determine compliance with the underlying and more specific requirements and limits in its NSR permit." *Id.* at 13.

The Petitioners claim that it appears that the facility was in compliance with the specific requirements and limits in the NSR permit when it caused exceedances of the NAAQS, and, thus, if Oxbow was complying with all the requirements and limits TCEQ considers applicable, those specific requirements are demonstrably not sufficient to prevent NAAQS exceedances. *Id.* at 13–14. The Petitioners conclude that in light of this information, TCEQ cannot argue that NSR General Condition No. 13 and Special Condition No. 24 are "catch-all requirements." *Id.* at 14. The Petitioners also point to TCEQ's statements regarding Oxbow's obligations under the 2019 Agreed Order to pay assessed penalties and implement certain technical and operational corrective actions and certifications of compliance, noting that despite the imposition of the technical and operational corrective actions, TCEQ opposes permit terms sufficient to ensure compliance with NSR General Condition No. 13 and Special Condition No. 24. *Id.*

The Petitioners then turn to TCEQ's 2023 RTC on the revised Proposed Permit, claiming that TCEQ repeats the same "incoherent" position, which mischaracterizes the EPA's objection in the *2022 Oxbow I Order* and "fails to rebut Petitioners' demonstration of deficiency." *Id.* at 15–16. The Petitioners conclude that TCEQ's response to the EPA's objection and its response to comments on the revised

[13] *See supra* note 11.

[14] "NSR Permit No. 45622 General Condition No. 13 and Special Condition No. 25 do not impose additional requirements on a permitted source." 2023 RTC at 2.

Proposed Permit fail to resolve the contradictory positions and thus fail to resolve the EPA's objections. The Petitioners argue that therefore, the 2023 Revised Title V Permit still fails to include monitoring, recordkeeping, and reporting sufficient to ensure compliance with the 2010 SO_2 NAAQS. *Id.* at 15–16.

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

As the Petitioners acknowledge, and as EPA has noted numerous times in title V orders, the NAAQS themselves are not "applicable requirements" with which a source must directly comply. *See* 40 C.F.R. § 70.2 (definition of "applicable requirement," which does not include the NAAQS in the categorical list of applicable requirements); 57 Fed. Reg. at 32276; 56 Fed. Reg. at 21732–33 ("NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source"). *See also, e.g.*, *In the Matter of Lucid Energy Delaware, LLC, Frac Cat Compressor Station and Big Lizard Compressor Station*, Order on Petition Nos. VI-2022-05 and VI-2022-11 at 12 (Nov. 16, 2022); *In the Matter of Marcal Paper Mills, Inc.,* Order on Petition No. II-2006-001 at 13 (Nov. 30, 2006). Thus, the promulgation of a NAAQS does not, in and of itself, automatically result in emission limits or other control measures applicable to a particular source. Instead, the specific measures contained in each state's EPA-approved SIP that are included in order to achieve the NAAQS are the relevant applicable requirements. *See* 40 C.F.R. § 70.2. It is those more specific applicable requirements of the SIP, or of preconstruction permits issued under the SIP, with which a title V permit must assure compliance. *See* 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(1), (c)(1).

Here, the Petitioners contend that an NSR permit term based on a general SIP provision (Texas Health & Safety Code § 382.085) effectively incorporated the SO_2 NAAQS as an applicable requirement for title V purposes. Specifically, NSR General Condition No. 13 states, in part, "emissions from this facility must not cause or contribute to 'air pollution' as defined in Texas Health and Safety Code (THSC) § 382.003(3) or violate THSC § 382.085."

TCEQ explained this provision in its most recent response to comment on the revised Proposed Permit, stating, in part:

> [T]he NAAQS are not applicable requirements under Title V. NSR Permit No. 45622 General Condition No. 13 and Special Condition No. 25 do not impose additional requirements on a permitted source. These are catch-all conditions that prohibit operation in excess of permitted limits or standards that may cause or contribute to air pollution. These conditions are not distinct applicable requirements that in and of themselves would require monitoring, recordkeeping, or reporting to determine compliance with the underlying and more specific requirements and limits in its NSR permit.

2023 RTC at 2.

It appears that TCEQ interprets this SIP requirement (Texas Health & Safety Code § 382.085) and associated general NSR permit terms to mean that the state may bring enforcement actions for "air pollution" events beyond those identified in the NSR permit's specific conditions, but at the same time a title V permit need not spell out all possible types of "air pollution" covered by these general NSR

permit terms, or design specific monitoring requirements to assure compliance with the general obligations in the SIP and in the NSR permit related to "air pollution." In other words, just because the state may be able to enforce alleged violations of general NSR permit terms does not mean that the title V permit must account for all possible circumstances that could lead to such enforcement.

The Petitioners disagree with TCEQ, arguing that NSR General Condition No. 13's reference to "air pollution" includes any exceedance of the SO_2 NAAQS, thus rendering the NAAQS an applicable requirement for title V purposes. Petition at 7–8. As a general matter, the Petitioners' logic is unpersuasive. The Petitioners' reasoning would transform all such general SIP provisions and permit terms into mandates that permitting authorities use title V permits to craft additional limitations and monitoring requirements related to all relevant NAAQS. This is why the EPA, like TCEQ, has rejected similar arguments in the past. Specifically, as the EPA has explained in a number of previous orders, this type of broad, sweeping provision that generally applies to "air pollution" does not necessarily require states to establish specific emission limits, controls, or monitoring at a source. *See, e.g. In the Matter of Hercules, Inc.,* Order on Petition No. IV-2003-1 at 8 (Nov. 10, 2004) ("In general, EPA presumes that state nuisance rules [which broadly prevent 'injurious' emissions of air pollutants] like the Georgia Rule, which are not derived from and do not implement any federal requirement even if they are part of an EPA-approved SIP, are 'general duty' provisions that[] impose general obligations on sources and may be incorporated into title V permits without specific emission limitations and standards.")*; In the Matter of Transalta Centralia Generation, LLC,* Order on Petition at 6–8 (Apr. 28, 2011) ("The SIP applicable requirement at issue in this Petition . . . is a similarly broad, sweeping provision, applying to all sources, all emission units, all activities, and all air contaminants emitted anywhere in the State of Washington. . . . Petitioners have not demonstrated that additional emissions limits or standards are needed to assure compliance with this provision."); *see also In the Matter of ABC Coke & Walter Coke,* Order on Petition Nos. IV-2014-5 and IV-2014-6 at 9–11 (July 15, 2016) (*ABC Coke & Walter Coke Order*) (citing *Hercules* and *Transalta*); *In the Matter of EME Homer City Generation LP,* Order on Petition Nos. III-2012-06, III-2012-07, and III-2013- 02 at 11–19 (July 30, 2014). In addition, the EPA generally defers to a state's interpretation of general SIP provisions or permit terms such as these. *See, e.g. ABC Coke & Walter Coke Order* at 9 ("Alabama's broad prohibition against 'air pollution,' though part of Alabama's EPA-approved SIP, is not derived from and does not implement any federal requirement. In Prior title V orders, the EPA explained that it defers to the state interpretation of what is required by broadly sweeping 'general duty' SIP provisions that are not federally required such as this one, and that such provisions can be incorporated into title V permits without additional emission limits or standards if compliance is otherwise assured."); *see also Transalta Order* at 6–7. Here, the EPA believes it is likewise appropriate to defer to TCEQ's interpretation of NSR General Condition No. 13 and NSR Special Condition No. 25 as described above and in the 2023 RTC.

Here, the Petitioners argue that the other, more specific permit terms that TCEQ references in the 2023 RTC are insufficient to assure compliance with the broad prohibition on air pollution in NSR General Condition No. 13, since the source allegedly caused an exceedance of the SO_2 NAAQS (and allegedly violated NSR General Condition No. 13) while complying with these other more specific requirements and limits in the NSR permit.

Even if the EPA were to accept the Petitioners' argument that these general NSR conditions established an "applicable requirement" related to the SO_2 NAAQS, and that the other specific permit terms

referenced by TCEQ were insufficient to prevent exceedances of the SO_2 NAAQS issues observed in 2017, the Petitioners still have not demonstrated that additional monitoring, recordkeeping, or reporting are necessary to ensure compliance with these provisions. The Petitioners rely solely on the language of the 2019 Agreed Order in arguing for additional monitoring, recordkeeping, and reporting.[15]

The fact that the facility allegedly violated NSR General Condition No. 13 in 2017 does not, in and of itself, mean that this general condition must be supported by more specific monitoring requirements. As a general matter, although a source's history of noncompliance is one factor relevant to determining whether to impose additional compliance assurance requirements, this factor alone is not dispositive. *See In the Matter of CITGO Refining and Chemicals Co., L.P., West Plant,* Order on Petition No. VI-2007-01 at 7 (May 28, 2009). The fact that a "general duty" type permit condition (such as the general prohibition on air pollution at issue here) may be enforceable against a permitted source does not mean that such permit condition must necessarily be more specific. In some instances, it may be more appropriate for such a permit term to be written broadly—both in terms of its requirements, as well as any compliance assurance provisions—in order to provide flexibility to those pursuing enforcement.

Notably, TCEQ explains, and Petitioners do not dispute, that the alleged noncompliance underlying the state's prior enforcement action has been resolved, thus obviating the need for additional permit terms to assure compliance. In responding to the EPA's prior objection and comments on the revised Proposed Permit, TCEQ explains:

> Order Docket No. 2018-1687-AIR-E, effective August 14, 2019 (2019 Agreed Order) was a unique situation. It was determined by TCEQ that the short-term exceedances at the TCEQ monitor were coming from Oxbow. These were individual occurrences. . . . The 2019 Agreed Order states that Oxbow generally denied this allegation. However, Oxbow agreed to pay the assessed penalties and agreed to certain technical and operational corrective actions and certifications of compliance. . . . Oxbow took the necessary corrective actions required by the 2019 Agreed Order and the order is now closed.

2023 RTC at 2.[16]

More specifically, per the 2019 Agreed Order, "By June 25, 2018, the Respondent ceased operating the cold stacks and exclusively operated the hot stacks in order to comply with the national primary one-hour annual ambient air quality standard for sulfur dioxide of 75 ppb." 2019 Agreed Order at 2.

The Petitioners do not address these corrective actions taken by the facility as a result of TCEQ's enforcement action, much less demonstrate that they are insufficient to assure that Oxbow does not violate the Permit's general prohibition on "air pollution." Put another way, the Petitioners do not

[15] The EPA observes that the Port Arthur Community Action Network separately filed a complaint under title VI of the Civil Rights Act related to the Oxbow facility. That Civil Rights Act complaint contains allegations that overlap with those in this title V petition, including additional facts and arguments that were not presented in this title V petition. On December 26, 2023, the EPA administratively closed that Civil Rights Act complaint without prejudice, indicating that the complainants may refile the complaint within 60 days of the termination of the present title V petition proceeding.

[16] *See also* Executive Director's Response to EPA Objection at 2.

demonstrate that the "unique situation" giving rise to TCEQ's enforcement action—and on which the Petitioners rely to support their request for "a unique permit"[17] that includes monitoring to assure compliance with a general prohibition on air pollution—have persisted in the six years since the alleged violations and five years since the corrective actions, that these conditions are likely to persist into the future, or that any other alleged violations have occurred.[18]

Additionally, the EPA observes that both NSR General Condition No. 13 and NSR Special Condition No. 24 already contain specific requirements regarding corrective actions or abatement measures that the source must undertake if it violates a permit term (including the prohibition on "air pollution"). NSR General Condition No. 13 states:

> Emissions from this facility must not cause or contribute to "air pollution" as defined in Texas Health and Safety Code (THSC) § 382.003(3) or violate THSC § 382.085. If the executive director determines that such a condition or violation occurs, the holder shall implement additional abatement measures as necessary to control or prevent the condition or violation.

NSR Special Condition No. 24 states, in part:

> If this permitted facility or any portion of it exceeds any of the applicable allowable emission rates or other standards, the holder of this permit must take immediate corrective action to comply with the applicable standards and record the event. These actions may include (but are not limited to) reducing operating temperature, reducing throughput, and the installation of additional control equipment. These corrective actions shall not be considered complete until compliance with the allowable emission rates and/or other standards has been demonstrated. Demonstration may include testing.

These two permit terms essentially impose the same type of corrective action requirements that TCEQ pursued through its now-closed enforcement action. The Petitioners have not addressed these existing compliance assurance elements of NSR General Condition No. 13 or Special Condition No. 24.[19] Thus, because the Petitioners have not demonstrated that these corrective actions were insufficient to control or prevent additional violations, the Petitioners have failed to demonstrate a flaw in the permit. The EPA denies the petition with respect to this claim.

Overall, from the record before the EPA, including TCEQ's supplemental explanations provided in response to the EPA's prior objection in the *2022 Oxbow I Order*, it appears that the existing terms in the 2023 Revised Title V Permit, as well as the enforcement process, have worked as designed, culminating in corrective action aimed at preventing further incidences of "air pollution" or exceedances of the SO_2 NAAQS. Thus, even if the source's emissions allegedly caused an exceedance of

[17] Petition at 12.

[18] The Petitioners' only discussion relevant to this topic is that Oxbow "is one of the largest emitters of [SO_2] in the state and one of just a few plants of its size that have yet to install pollution controls to reduce [SO_2]" and the Petitioners' characterization of Oxbow as a "massively under-controlled source of SO_2." Petition at 12, 14. The fact that Oxbow is a large source of SO_2 emissions does not, in and of itself, demonstrate that Oxbow is likely to cause exceedances of the NAAQS or that additional monitoring is necessary to assure compliance with the Permit's general prohibition on air pollution.

[19] *See supra* note 8 and accompanying text.

the SO_2 NAAQS at a nearby monitor several years ago, and even if this alleged exceedance ran afoul of the Permit's general prohibition on "air pollution," the Petitioners have not demonstrated that additional, more specific monitoring, recordkeeping, or reporting permit terms are necessary to prevent future violations of this general prohibition on "air pollution." Because the Petitioners have not demonstrated that the 2023 Revised Title V Permit lacks conditions necessary to assure compliance with all applicable requirements, the EPA denies the Petition with respect to this claim.

Claim II: The Petitioners Claim That "The Proposed Permit Fails to Resolve EPA's Objection that the Permit Fails to Establish Monitoring, Testing, and Recordkeeping Provisions that Assure Compliance with Lead and Volatile Organic Compound Limits from Kiln Stacks 2, 3, 4, and 5 in NSR Permit No. 45622."

Petitioners' Claim: The Petitioners claim that the 2023 Revised Title V Permit does not assure compliance with lead (Pb) and VOC limits in NSR Permit No. 45622 for Kilns 2 through 5 because it does not contain sufficient monitoring, testing and recordkeeping for these requirements, as required by 42 U.S.C. § 7661c(a), (c) and 40 C.F.R. § 70.6(a)(3), (c)(1). Petition at 17–18. The Petitioners also contend that the permit record does not contain a reasoned justification for TCEQ's determination that the monitoring, testing, and recordkeeping requirements are adequate to assure compliance with the lead and VOC limits. *Id.* at 18. Specifically, the Petitioners assert that the permit conditions TCEQ added in response to the EPA's objection in the *2022 Oxbow I Order* remain insufficient to ensure compliance with Oxbow's hourly and annual limits for lead and VOC. *Id.* at 18–19.

The Petitioners note that in the *2022 Oxbow I Order,* the EPA objected to TCEQ's failure to specify monitoring, recordkeeping, and reporting requirements sufficient to assure ongoing compliance with hourly and annual emission limits for lead and VOC. *Id.* at 18. The Petitioners claim that in response, TCEQ revised the title V permit by adding special conditions to NSR Permit No. 45622 explaining how the facility should determine compliance with MAERT limits for lead and VOC. *Id.* at 18–19. The Petitioners assert that the revised Proposed Permit terms calculate hourly and annual lead and VOC emissions based on emission factors originally supplied in application documents in 1992 and 2007, which they assert are not sufficient to determine the facility's actual emissions in 2023. *Id.* at 19. The Petitioners liken this approach to demonstration of initial compliance because it is "based on decades-old assumptions." *Id.*

The Petitioners assert that TCEQ should add additional monitoring of actual emissions; specifically, TCEQ should add stack testing for lead and VOC to existing protocols established by NSR Permit No. 45622, Special Condition 28 to ensure that the emission factors are accurate. *Id.* The Petitioners claim that Oxbow currently performs stack tests for other pollutants once every three years and only tests one of its four kiln stacks, and because these stack tests are infrequent, adding stack tests for lead and VOC should not add additional burden. *Id.*

The Petitioners reference TCEQ's response to comments, claiming that TCEQ contends that the calculation using these emission factors is still sufficient to assure compliance with lead and VOC emission limits and will remain sufficient until the kilns are modified or cause a condition of air

pollution.[20] *Id.* (citing 2023 RTC at 3). The Petitioners claim that this conflicts with the Permit's requirement that Oxbow conduct stack tests at its kilns at least every three years to assure compliance with emission limits for other pollutants. *Id.* at 20. The Petitioners also contend that the absence of a condition of air pollution related to lead or VOC is not an indication of compliance with hourly and annual emission limits. *Id.* The Petitioners conclude that the emission factors TCEQ included in its calculations are insufficient to assure compliance with hourly and annual lead and VOC emission limits and that TCEQ's rationale for these new requirements are also insufficient. *Id.*

EPA's 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 Revised title V Permit does not contain monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with lead and VOC limits. The Petitioners point to TCEQ's response to comment that states "[o]nce the permit is granted, it is assumed that the original demonstration is valid unless the commission concludes a condition of air pollution exists," 2023 RTC at 2, arguing that this statement of policy conflicts with the Permit's requirement that Oxbow conduct stack testing on its kilns for other pollutants once every three years. The Petitioners also argue that because Oxbow already performs kiln stack tests for other pollutants, that adding lead and VOC testing to ensure the accuracy of emission factors would not be "overly burdensome" on the facility. The Petitioners do not provide any additional explanation of which specific pollutants are measured from these stack tests, nor do they explain how the testing protocols for those other pollutants are relevant to lead and VOC emissions. Overall, this portion of the Petitioners' claim is general and conclusory and lacks sufficient citation and analysis for the EPA to determine whether the frequency of kiln stack testing for other pollutants is appropriate or necessary for ensuring the accuracy of emission factors used in calculating lead and VOC emissions.[21]

Additionally, the Petitioners' assertion that these emission factors are inappropriate because they are "based on decades-old assumptions" does not take into full consideration TCEQ's explanation in its response to comment and ignores the additional explanation TCEQ provides as to why the previous stack test results for lead and VOC are still appropriate. TCEQ explains:

> The ED [Executive Director] notes Pb and VOC emission factors and emission rates have been unchanged as documented in the last NSR renewal amendment project number 45622 for NSR permit 45622 (see WCC content ID 4998404). Since there have been no physical changes to the kilns or their configuration, it is understood that there should be no changes to the VOC or Pb emissions at those sources. There have been no changes to the hourly coke feed rates and no alterations to the design capacity of the kilns, therefore the emission factors set in place by the 1992 source testing and subsequent amendment action (2007) remain. These factors are considered to be in compliance with the emission standards established by the NAAQS and in accordance with the Texas Administrative Code. The kilns have not been modified since their initial permitting, therefore Federal

[20] *See also* Texas Health & Safety Code § 382.003(3) for definition of "air pollution" and Texas Health & Safety Code § 382.0543 which states, in part, "The commission may not impose requirements more stringent than those of the existing permit unless the commission determines that the requirements are necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements."

[21] *See supra* note 7 and accompanying text.

> review and BACT demonstrations (Federal or State) on the kilns have not been required. However, the emissions were further verified through initial performance testing in 2011 that was submitted to TCEQ. This testing demonstrated that the hourly lead emissions were below the permitted emission limits. Therefore, previously conducted stack test results for Pb and VOC emission factors and emission rates continue to be valid.
>
> In November 2022, Oxbow was granted an alteration to their permit which incorporated periodic monitoring for lead and VOCs to demonstrate compliance with the hourly and annual permitted emission limits. Conditions were added to the permit which require the company to keep record of the hourly and rolling 12-month lead and VOC emissions as well as raw petroleum coke throughput monitoring on a monthly basis for each kiln.

2023 RTC at 2–3.

The Petitioners do not acknowledge or rebut TCEQ's explanation justifying the use of emission factors based on stack testing from 1992 and 2007. The Petitioners also disregard TCEQ's statement that the emissions have been further verified through initial performance testing in 2011. Rather, as previously discussed, the Petitioners broadly assert that emission factors derived from these 1992 and 2007 stack tests are not sufficient and that Oxbow conducts more frequent stack testing for other pollutants. The Petitioners' selective quotation and oversimplification of TCEQ's response to comment fails to demonstrate that TCEQ has inadequately justified its decision. The Petitioners similarly fail to demonstrate a flaw in the permit conditions for periodic monitoring for lead and VOCs and the parametric monitoring of raw petroleum coke added to Special Condition 38 of NSR Permit No. 45622. Notably, these conditions were specifically added in response to the *2022 Oxbow I Order. See* 40 C.F.R. § 70.12(a)(2)(vi).

Contrary to the Petitioners' claim, the permit record does contain justification that TCEQ provided for its determination that monitoring, testing, and recordkeeping requirements assure compliance with lead and VOC emission limits. Because the Petitioners failed to engage with that justification (instead alleging its absence), the Petitioners have not properly put before the EPA the question of the adequacy of that justification. To the extent the Petitioners are claiming that TCEQ should establish additional monitoring of actual emissions—specifically stack testing for lead and VOC to existing protocols—by failing to acknowledge and respond to TCEQ's explanation, the Petitioners have not demonstrated that any such additional monitoring is necessary, nor that the added permit conditions are insufficient to demonstrate compliance with lead and VOC emission limits. Because the Petitioners have failed to address both TCEQ's justification in the RTC and the sufficiency of the added permit conditions, they have failed to meet the requirements of 40 C.F.R. § 70.12(a)(2)(vi) and (iii). Accordingly, the sufficiency of the added requirements to Special Condition 38 is not an issue properly before the EPA and the agency therefore cannot opine on the matter. The EPA denies the Petition with respect to this claim.

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: April 12, 2024

Michael S. Regan
Administrator