BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Petition No. VI-2023-17

In the Matter of

Nucor Steel Louisiana, LLC, Direct Reduced Iron Facility

Permit No. 3086-V10

Issued by the Louisiana Department of Environmental Quality

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

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated December 4, 2023 (the Petition) from Myrtle Felton, Barbara Washington, Gail Leboeuf, Inclusive Louisiana, and Louisiana Bucket Brigade (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. 3086-V10 (the Permit) issued by the Louisiana Department of Environmental Quality (LDEQ) to the Nucor Steel Louisiana, LLC, Direct Reduced Iron Facility (DRI Facility) in St. James Parish, Louisiana. The operating 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 grants in part and denies in part the Petition requesting that the EPA Administrator object to the Permit. Specifically, the EPA grants in part Claim 2 and denies the rest of the claims.

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 (Sept. 12,1995). This program, which became effective on October 12, 1995, is codified in LAC, 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. 40 C.F.R. § 70.1(b); 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. 32250, 32251 (July 21, 1992). 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).

[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*.

In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to 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

[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 (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

[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*).

[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).

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*.

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

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

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

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

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 (Apr. 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* 89 Fed. Reg. 1150, 1160–84 (Jan. 9, 2024) (discussing the EPA's existing positions and rationale on this issue, and proposing clarifying amendments to the EPA's regulations); *In the Matter of Big River Steel, LLC*, Order on Petition No. VI-2013-10 at 8–20 (Oct. 31, 2017) (*Big River Steel Order*).[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*

[10] However, as the 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. The preamble to the proposed Applicable Requirements Rule includes a summary of the different fact patterns in which the EPA has (or has not) applied this approach. *See* 89 Fed. Reg. at 1163–64, 1165–70.

Big River Steel Order at 8–9, 14–20.[11] Rather, any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

III. BACKGROUND

A. The DRI Facility

The DRI Facility, owned by Nucor Steel Louisiana, LLC (Nucor), is located in Convent, St. James Parish, Louisiana. The facility reduces the oxygen content of iron ore to produce iron metal through direct contact with a reducing gas in a countercurrent vertical shaft furnace. Emission units at the facility include a common stack for the Process Heater and Gas Absorption Vent, and various material handling processes. The facility is a major source of nitrogen oxides (NO_x), carbon monoxide, particulate matter (PM), PM_{10}, $PM_{2.5}$, sulfur dioxide (SO_2), volatile organic compounds (VOC), greenhouse gases, hydrogen sulfides (H_2S), sulfuric acid mist (H_2SO_4), and Hazardous Air Pollutants. The facility is subject to New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and several LDEQ rules and regulations.

B. Permitting History

Nucor first obtained a title V permit for the DRI Facility in 2011, which was subsequently renewed. On July 29, 2020, Nucor applied for a title V permit renewal. On July 27, 2021, Nucor submitted an application for a PSD permit authorizing a modification of the facility, an application for a title V permit modification (incorporating the terms of the PSD permit), and an updated application for renewal of the title V permit.[12] LDEQ published notice of draft permits on September 23, 2022, subject to a public comment period that originally ran until October 31, 2022, and was extended until November 21, 2022. On May 5, 2023, LDEQ submitted a proposed title V permit (the Initial Proposed Permit), along with its responses to public comments (RTC) and Statement of Basis (SOB), to the EPA for its 45-day review. On June 16, 2023, the EPA objected to the Initial Proposed Permit.[13] On August 16, 2023, LDEQ responded to the EPA's objection and submitted a revised title V permit (the Revised Proposed Permit) to the EPA for another 45-day review.[14] The EPA's subsequent 45-day review period ended on October 2, 2023, during which time the EPA did not object to the Revised Proposed Permit. LDEQ issued the final title V renewal permit no. 3086-V10 (the Permit) and final PSD modification permit no. PSD-LA-751(M-5) (the PSD Permit) for the DRI Facility on September 20, 2023.

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[11] The 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 the 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] The PSD and title V permits described in this paragraph were processed during the same time period and issued in separate documents.

[13] *See* EPA Objections to Title V Permit No. 3086-V10, Enclosure (June 16, 2023) (EPA Objection Letter).

[14] *See* Response to EPA's Objection to Proposed Permit No. 3086-V10 (Aug. 16, 2023) (LDEQ Response Letter).

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 for the Revised Proposed Permit expired on October 2, 2023. The EPA's website indicated that any petition seeking the EPA's objection to the Revised Proposed Permit was due on or before December 4, 2023. The Petition was received December 4, 2023, and, therefore, the EPA finds that the Petitioners timely filed the Petition.

D. Environmental Justice

The EPA used EJScreen[15] to review key demographic and environmental indicators within a five-kilometer radius of the DRI Facility. This review showed a total population of approximately 1,603 residents within a five-kilometer radius of the facility, of which approximately 90 percent are people of color and 49 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	81
Ozone	95
Diesel Particulate Matter	83
Air Toxics Cancer Risk	94
Air Toxics Respiratory Hazard	54
Toxic Releases to Air	95
Traffic Proximity	55
Lead Paint	83
Superfund Proximity	61
RMP Facility Proximity	83
Hazardous Waste Proximity	80
Underground Storage Tanks	59
Wastewater Discharge	87

IV. EPA DETERMINATIONS ON PETITION CLAIMS

A. Claim 1: The Petitioners Claim That "Environmental Justice Concerns Mandate Action by EPA to Ensure That This Permit's Provisions Comply with Title V Requirements."

Petition Claim: The Petitioners claim that the renewal of the Permit exacerbates Environmental Justice (EJ) concerns in Romeville, in part by increasing emissions, and that the EPA has a duty to address

[15] 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*.

disproportionate pollution burdens. *See* Petition at 6, 11–12 (citing Executive Orders 12898, 13998, and 14008). The Petitioners specifically request that "EPA must carefully weigh the concerns voiced by the Petitioners and others during the comment period and object to the Permit because the permit fails to adequately protect public health and safety." *Id*. at 11.

The Petitioners present information on emissions from Nucor and other nearby sources. *Id.* at 6–8 (citing EPA, National Emissions Inventory Report, 2020 Point Source Emissions). The Petitioners also present demographic and other data from EJScreen for the area surrounding Nucor and describe health issues of the residents of Romeville, which the Petitioners attribute to H_2SO_4 emitted from the facility. *See id.* at 8–10.

The Petitioners claim that the EPA must consider such EJ factors as demographics and existing pollution burdens when determining the adequacy of monitoring in a title V permit. *Id.* at 8 (citing *In the Matter of Northeast Maryland Waste Disposal Authority, Montgomery County Resource Recovery Facility*, Order on Petition No. III-2019-2 (Dec. 11, 2020); *In the Matter of United States Steel Corp., Granite City Works*, Order on Petition No. V-2011-2 at 4–6 (Dec. 3, 2012)). The Petitioners claim that their EJ concerns have been legitimized by the EPA. *Id.* at 11–12 (citing *In the Matter of ExxonMobil Fuels and Lubricant Company, Baton Rouge Refinery*, Order on Petition Nos. VI-2020-4, VI-2020-6, VI-2021-1, VI-2021-2 at 12 (Mar. 18, 2022) (*ExxonMobil Baton Rouge Order*); EPA Objection Letter at 1–2).

The Petitioners claim that LDEQ's decision to issue the Permit violates the EPA's "environmental justice regulations" because it would subject the residents of Romeville "to discrimination because of their race [or] color." *Id.* at 10 (citing 40 C.F.R. § 7.35(b)).

The Petitioners claim that LDEQ's reliance on NAAQS attainment alone does not accurately account for the impacts to the surrounding community and is insufficient to achieve EJ. *See id.* at 14–19 (citing SOB at 20, 21; RTC at 19–20, 23–24; Lillian S. Dorka, EPA, *Re: Letter of Concern* at 54 (Oct. 12, 2022); U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit at 12 (Jan. 18, 2017)). Moreover, the Petitioners claim that the NAAQS are not protective because LDEQ monitors only for ozone in St. James Parish, and the air quality in Romeville is likely not in attainment for several pollutants. *Id.* at 17–18 (citing Petition Ex. G, Letter from Drs. Peter DeCarlo and Kimberly Terrell to Dr. Earthea Nance, EPA Region 6 Administrator at 1 (Nov. 14, 2022)).

The Petitioners allege that "LDEQ's revised proposed permit for the Nucor Facility does not give the requisite attention to monitoring requirements, compliance certification, or reporting measures that would promote environmental justice." *Id.* at 15.

Finally, the Petitioners claim that "LDEQ's treatment of startup, shutdown, and malfunction events does not comply with Title V requirements or promote environmental justice," referring to arguments they make elsewhere in the Petition. *Id.* at 19; *see id.* at 19–20.

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

Although this section of the Petition is presented as a request for the EPA's objection, the basis for this request, as described in the Petition, is not connected to the EPA's authority under title V. The

Petitioners describe emissions increases and claim that the Permit's renewal exacerbates existing disproportionate pollution burdens that the EPA is obligated to address. *See* Petition at 6–12. The Petitioners' only specific request for the EPA's objection is "because the permit fails to adequately protect public health and safety." *Id*. at 11. However, the EPA's authority to object to a title V permit is limited to situations where a petitioner demonstrates that a title V permit does not comply with an applicable requirement of the CAA or a part 70 requirement. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. §§ 70.2 (definition of "applicable requirement"), 70.8(c)(1), 70.12(a)(2). Thus, to demonstrate a basis for the EPA's objection related to these issues, the Petitioners would need to identify and establish a connection between their concerns related to EJ and the Permit's compliance with the CAA and the relevant implementing regulations.

Within this section of the Petition, the Petitioners do not articulate any specific grounds for objection relating to the terms of the Permit, nor do the Petitioners identify any applicable requirements of the CAA, or requirements of part 70, with which the Permit does not comply. *See* 40 C.F.R. § 70.12(a)(2)(i)–(iii).[16] The Petitioners claim that the Permit "does not give the requisite attention to monitoring requirements, compliance certification, or reporting measures that would promote environmental justice." Petition at 15. The Petitioners also correctly assert that the EPA has, in the past, devoted focused attention to monitoring and compliance assurance provisions in evaluating title V petitions due to potential EJ concerns. *Id.* at 8; *see, e.g.*, *ExxonMobil Baton Rouge Order* at 11–12. Here, however, the Petitioners do not specify any monitoring or compliance assurance requirements in particular or explain how they may be inadequate.

The Petitioners' allegations regarding title VI of the Civil Rights Act of 1964 and the EPA's implementing regulations do not allege, much less demonstrate, that LDEQ's actions in issuing the Permit violated any of the requirements of the CAA.[17] While this claim does not demonstrate that LDEQ violated any requirements of the CAA, a permitting authority's compliance with the requirements of the CAA does not necessarily mean that it is complying with federal civil rights laws. EPA encourages LDEQ to assess its obligations under applicable civil rights laws and policies.[18] If the Petitioners believe there are relevant civil rights issues related to the issuance of the Permit, the Petitioners may file a complaint under title VI of the Civil Rights Act of 1964, as amended, and the EPA's implementing regulations, which prohibit discrimination by recipients of EPA assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d *et seq*.; 40 C.F.R. Part 7.

To the extent the Petitioners request the EPA's objection based on issues related to startup, shutdown, and malfunction (SSM) events, the EPA's Order addresses these arguments under Claim 4.

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

[17] *See In the Matter of Tesoro Refining and Marketing Co.*, Order on Petition No. IX-2004-6 at 47 (Ma. 15, 2005) (denying a claim related to environmental justice and title VI of the Civil Rights Act); *In the Matter of Borden Chemical, Inc., Formaldehyde Plant*, Order on Petition No. 6-01-1 at 49–51 (Dec. 22, 2000) (similar response); *In the Matter of Exxon Chemical Americas, Baton Rouge Polyolefins Plant*, Order on Petition No. 6-00-1 at 7–10 (Apr. 12, 2000) (similar response).

[18] Pursuant to a preliminary injunction issued by the U.S. District Court for the Western District of Louisiana on January 23, 2024, the EPA will not impose or enforce any disparate-impact or cumulative-impact-analysis requirements under Title VI against the State of Louisiana or its state agencies.

B. Claim 2: The Petitioners Claim That "EPA Must Object to a Permit When a Permitting Authority Has Violated the Procedural Requirements of Title V."

Petition Claim: The Petitioners claim that "LDEQ violated applicable procedural requirements under state regulations and Title V when responding to the EPA's objection to Nucor's proposed air permits by failing to provide opportunity for public notice and comments." Petition at 20 (citing 40 C.F.R. § 70.7(a)(1)). The Petitioners claim that the EPA specifically requested LDEQ to conduct "enhanced public outreach" in responding to its objection. Petition at 20; *see id.* at 20–24.

The Petitioners argue that federal title V regulations require "a permitting authority to provide public notice, an opportunity for public comment, and a hearing" for all significant permit modifications. *Id.* at 21 (citing 40 C.F.R. § 70.4(d)(3)(iv)).

The Petitioners describe the criteria in Louisiana's regulations for significant permit modifications:

> Louisiana regulations classify any permit modification as significant unless it qualifies for treatment as an administrative amendment or a minor modification. "At a minimum," Louisiana regulations treat as significant any modification under Title I of the Clean Air Act, any "significant change in existing monitoring terms and conditions," and any "relaxation of reporting or recordkeeping permit terms and conditions."

Id. (quoting LAC 33.III.527; citing LAC 33.III.502). The Petitioners argue that Louisiana's regulations "define 'Permit Modification' and 'Permit Revision' broadly as any modifications or revisions to a permit, not merely to those made to final permits or between draft and proposed versions of a permit." *Id.*

The Petitioners claim that: "[t]he revised proposed permit contained multiple significant permit modifications, which are subject to mandatory public participation requirements." *Id.* (citing 40 C.F.R. § 70.7(h)).

First, the Petitioners claim that LDEQ's addition of limits on the sulfur content of natural gas and iron ore and associated recordkeeping in response to the EPA's objection required an additional round of public notice and comment. *Id.* at 22–23 (citing EPA Objection Letter at 6–7; LDEQ Response Letter at 13; Petition Ex. I at 13; 40 C.F.R. § 70.7(d), (e)(2); LAC 33.III.521, 525). The Petitioners note that the Initial Proposed Permit did not contain any requirements related to sulfur levels in natural gas or iron ore. *Id.*

Second, the Petitioners also argue that LDEQ's elimination of an hourly limit on H_2S emissions during SSM events involving bypass of the SulfurOx Unit, in response to the EPA's instruction to remove exemptions from limits during periods of SSM, similarly required public notice and comment. *See id.* at 23–24. The Petitioners allege that LDEQ failed to justify removing the hourly H_2S limit. *Id.* at 23. The Petitioners state: "Eliminating any type of emissions standard for H_2S is a cause for public concern and should be subject to public notice requirements." *Id.* at 24.

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

The EPA's regulations specify when public notice is required for specific types of permit actions, including initial permits, renewal permits, and significant permit modifications. 40 C.F.R. § 70.7(h). These regulations apply in situations where a permitting authority must revise a previously finalized permit or permit record in response to an EPA Order granting a petition (as these revisions constitute a separate permit action). However, these regulations do not explicitly explain what types of changes necessitate a new round of public notice when such changes are made to a permit *before it is finalized* (*i.e.*, within the same permit action). *See In the Matter of Plains Marketing et al.*, Order on Petition Nos. IV-2023-1 & IV-2023-3 at 16 n.15 (Sept. 18, 2023) (*Plains Marketing Order*).

Such is the case here. LDEQ never finalized the DRI Facility's title V permit before sending the Revised Proposed Permit to the EPA for review following the EPA's objection to the Initial Proposed Permit. In determining whether a second public comment period is necessary in such cases, the EPA has applied the administrative law principle of "logical outgrowth" (typically used in the context of rulemakings) to title V permitting, stating:

> The CAA and its implementing regulations at part 70 provide for public comment on "draft" permits and generally do not require permitting authorities to conduct a second round of comments when sending the revised "proposed" permit to EPA for review. It is a basic principle of administrative law that agencies are encouraged to learn from public comments and, where appropriate, make changes that are a "logical outgrowth" of the original proposal.

In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC, Order on Petition No. II-2000-07 at 7 (May 2, 2001) (citations omitted). The logical outgrowth principle prevents a never-ending cycle of public notice each time a change is made in response to information received in public comments during a comment period.

Determining whether a final permit is a logical outgrowth of the draft permit requires considering whether any revisions to the permit were in character with the draft provisions and whether interested parties could reasonably have anticipated the final permit terms based on the draft permit.[19]

The Petitioners refer to two changes that LDEQ made to the Initial Proposed Permit in response to the EPA's objection that they believe required a second round of public notice and comment: (1) adding new limits on the sulfur content of natural gas and iron ore, as well as recordkeeping requirements for the same; and (2) eliminating hourly emission limits on H_2S during SSM events, in the course of eliminating SSM exemptions. These two changes are addressed in turn.

[19] *See In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition at 11 (Apr. 20, 2007) ("The question under the 'logical outgrowth' test is whether the final action is in character with the original proposal and a logical outgrowth of the notice and comments"); *In re Springfield Water and Sewer Commission*, 18 E.A.D. 430, 451 (EAB 2021) ("In determining whether a changed provision in a final permit qualifies as a logical outgrowth of a draft permit, the Board has held that the "essential inquiry" is whether interested parties reasonably could have anticipated the final permit condition from the draft permit.").

Sulfur Content Limits

The nexus between the Draft Permit and final revisions related to the limits and associated recordkeeping for sulfur content in natural gas and iron ore (Specific Requirements 140–141) is tenuous. The Draft Permit and Initial Proposed Permit contained no requirements concerning sulfur content. Pipeline quality natural gas and the variability of iron ore sulfur content were both mentioned in the original SOB but were not discussed in public comments or the RTC. *See* SOB at 5. The EPA first requested monitoring of sulfur content in its objection letter. EPA Objection Letter at 6. In response, LDEQ added to the Revised Proposed Permit not only monitoring (in the form of recordkeeping), but also new limits on sulfur content. *See* LDEQ Response Letter at 13. Although there is a nexus between the limits on sulfur content in the Permit and the discussions of pipeline quality natural gas and iron ore in the initial SOB, it is tenuous. In the EPA's view, it strains the logical outgrowth concept too far to find that entirely new restrictions on permissible fuel for combustion and raw materials could reasonably have been anticipated based on these brief mentions in the initial SOB. LDEQ's revisions were, therefore, not a logical outgrowth of the Draft Permit and public comment period and LDEQ was required to re-notice the Revised Proposed Permit for further public comment. *See In the Matter of Salt River Project Agricultural Improvement and Power District, Agua Fria Generating Station*, Order on Petition No. IX-2022-4 at 25–26 (July 28, 2022) (granting a request for an additional comment period where the permitting authority created a new synthetic minor limit after the initial comment period). Therefore, with regard to the need for an additional public comment period due to the addition of limits on the sulfur content of natural gas and iron ore, the EPA grants the Petitioners' request for an objection on this claim.

Eliminating Exemptions and Associated Limits During Periods of SSM

In contrast, the second issue—H_2S emissions and limits during SSM events for the Process Heater/Acid Gas Absorption Vent Common Stack—has a much more consistent trajectory from the draft to the final permit.

The SOB, in a section titled "As-Built Reconciliations," described modifications made to the PSD Permit to revise H_2S limits for the Process Heater/Acid Gas Absorption Vent Common Stack based on "compliance and engineering testing as well as site-specific process data." SOB at 5. Moreover, LDEQ referenced process modifications related to a safety pressure control relief valve on the SulfurOx Unit that were intended to reduce future excess H_2S emissions stemming from SSM events involving bypasses of the SulfurOx Unit. *See id.* at 5 n.11. This information was available during the public comment period associated with the draft permit and signifies that LDEQ intended these modifications to largely eliminate bypasses of the SulfurOx Unit and excess H_2S emissions generated during those bypasses. Further permit revisions (as LDEQ eventually made) to also eliminate exemptions from H_2S limits during those reduced bypass events could reasonably have been anticipated.

Indeed, the EPA, in comments transmitted during the public comment period associated with the draft title V and PSD permits, questioned why such exemptions had not been removed and pointed out potential issues with the terms for the Process Heater/Acid Gas Absorption Vent Common Stack, stating:

> I[t] would appear that in an endeavor to reduce upsets in the process, such as those

> associated with bypassing the SuflurOx Unit, the LDEQ is authorizing uncontrolled emissions, upsets if you will, of an indeterminant frequency. Such emissions include 226.9 lb/hr of H_2S. We recommend that LDEQ consider mandating further engineering studies followed by permit modifications to eliminate these emissions events.

Email from Brad Toups to Dan Nguyen (Nov. 21, 2022).

The SOB and RTC associated with the Initial Proposed Permit make clear that LDEQ made further revisions to H_2S emission limits based on these comments and again addressed the issue of SSM events involving bypass of the SulfurOx Unit:

> Based on the public comments received, the department has made the following changes to the proposed permits:
> - NO_x and H_2S limits for the Process Heater/Acid Gas Absorption Vent Common Stack (EQT 0207) have been substantially reduced to eliminate operational scenarios involving the bypass of the SulfurOx Unit. . . . Maximum hourly and annual emissions of H_2S have been reduced by 216.90 pounds per hour and 4.99 tons per year, respectively.

SOB at 7. Similarly, the RTC states:

> Permit No. 3086-V10 requires Nucor to maintain records of each period (begin and end times) when the SulfurOx Unit is bypassed. Any excess emissions associated with such an event must be reported to LDEQ in accordance with LAC 33:I.Chapter 39, Part 70 General Condition R of LAC 33:III.535.A, Louisiana General Condition XI of LAC 33:lll.537.A, and LAC 33:lll.5107.B, as applicable.
>
> LDEQ has also revised the proposed permits to remove emissions associated with upsets and malfunctions. See Section I.D of the Basis for Decision.

RTC at 62.

Following the EPA's objection to the Initial Proposed Permit and reiteration of its concerns about SSM exemptions, the LDEQ Response Letter explained:

> Historically, excess emissions of H_2S from the DRI Unit No. l Process Heater/Acid Gas Absorption Vent Common Stack (EQT 0207) were attributed to bypasses of the SulfurOx Unit, ... Nucor has corrected this issue by reengineering system controls to route pressure or volume fluctuations back to the process during normal operations. . . .
>
> LDEQ's response to Comment No. 49 indicated that the proposed permits were revised to remove emissions associated with upsets and malfunctions. . . .
>
> However, LDEQ inadvertently failed to revise the emission limits for H_2S in Specific Requirement 102 of proposed Permit No. 3086-V10. This requirement has now been revised as follows:

> H_2S: BACT is use of the SulfurOx Unit to limit H_2S emissions from the combined DRI Unit No. 1 Process Heater/Acid Gas Absorption Vent stream to < 50 ppmvd @ 0% O_2 (30-day rolling average, ~~excluding SSM). Minimize bypass of the SulfurOx Unit and limit H_2S emissions to < 226.90 lb/hr during such periods.~~ Maintain records of each period (begin and end times) when the SulfurOx Unit is bypassed.

LDEQ Response Letter at 12.

The Petitioners' argument that the removal of the hourly H_2S limit would allow "unhindered" emission spikes during bypasses of the SulfurOx Unit "at any emissions level" sems to reflect a misunderstanding about the effect of the revision. Petition at 23. The elimination of the SSM exemption and hourly emission limit means that the more stringent 50 ppmvd @ 0% 0_2 limit in Specific Requirement 102 now applies continuously to all H_2S emissions from the Process Heater/Acid Gas Absorption Vent Common Stack, *including emissions during any remaining bypasses of the SulfurOx Unit*.

The issue of excess H_2S emissions during SSM events involving bypass of the SulfurOx Unit and exemptions from limits during those events was present in the draft permit. The information available for public review was the subject of public comments, which led to responsive permit revisions, and the issue was brought up again in the EPA's objection to the Initial Proposed Permit, which again led to further permit revisions. Permit revisions to eliminate exemptions from emissions limits during SSM events involving bypass of the SulfurOx Unit could reasonably have been anticipated and were, therefore, a logical outgrowth of the original proposal. As such, LDEQ was not required to re-notice the Revised Proposed Permit for an additional round of public comment. Therefore, with regard to the removal of the hourly H_2S limit during SSM events, the EPA denies the Petitioners' request for objection on this claim.

Direction to LDEQ: LDEQ must provide the public with an opportunity to comment on the sulfur content limits for natural gas and iron ore and associated recordkeeping requirements that it added to the Permit in response to the EPA's objection.

C. Claim 3: The Petitioners Claim That "Nucor's Poor Compliance History Should Require Stricter Permit Requirements Until Nucor Can Prove Itself a Good Neighbor and Employer."

Petition Claim: The Petitioners claim that Nucor's history of noncompliance with its emission limits warrants the inclusion of more stringent emission limits and monitoring requirements in the Permit. *See* Petition at 24–27.

The Petitioners argue that "LDEQ should require stricter emission regulations due to Nucor's dismal compliance history, as well as strict monitoring and reporting requirements for all limited pollutants." *Id.* at 25. The Petitioners claim that the Permit eliminates hourly emission limits, retains SSM exemptions, and allows upset and bypass events. *Id.* The Petitioners state: "EPA should object to all aspects of the permit that allow for emissions increases, SSM exceptions, and any stack testing, bypasses, or upsets that occur without mandatory public reporting of same, based on this continuous history of excessive emissions." *Id.*

The Petitioners claim that the "EPA's decision whether to object or approve this permit must consider whether LDEQ's permit accounts for this [compliance] history." *Id.* (citing 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1)).

The Petitioners describe various documents and other evidence of noncompliance, including enforcement actions by LDEQ and the EPA and performance tests that failed to achieve permitted limits. *Id.* at 25–26. The Petitioners claim that "Nucor failed its last two stack tests and is now is [*sic*] being permitted to emit greater amounts of the pollutants it cannot control by LDEQ. EPA should object to this." *Id.* at 26.

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

As previously explained, the EPA's authority to object to a title V permit is limited to situations where a petitioner demonstrates that a title V permit does not comply with an applicable requirement of the CAA or a part 70 requirement. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. §§ 70.2 (definition of "applicable requirement"), 70.8(c)(1), 70.12(a)(2). The Petitioners do not allege, much less demonstrate, any specific flaw in the Permit, permit record, or permit process. Instead, the Petitioners argue that Nucor's history of noncompliance warrants more robust compliance assurance provisions and stricter emission limits, without specifying which aspects of the Permit might be deficient. The Petitioners appeal vaguely for "more stringent monitoring and reporting" but provide no details as to what that should entail. Petition at 26. The Petitioners make no reference to any permit terms. *See* 40 C.F.R. § 70.12(a)(2)(i)–(iii).[20] Because the Petitioners fail to demonstrate that the Permit does not comply with the Act, the Petitioners present no basis for the EPA's objection.

In its RTC, LDEQ acknowledges its obligation to consider the "history of violations and compliance" for the facility when making a permit decision and refers commenters to Section X of the SOB, which lists and describes several enforcement actions and settlements. RTC at 20; *see* SOB at 32. The SOB also describes actions that Nucor has taken to change its operations to avoid future violations, and LDEQ's determination that "Nucor is willing and able to achieve and maintain compliance with applicable federal and state regulations and the terms and conditions of Permit Nos. 3086-VI0 and PSD-LA-751(M5)." SOB at 32. The Petitioners do not address LDEQ's responses pertaining to the source's compliance history.

Whether *a permit* complies with the Act is distinguishable from whether *a facility* complies with the applicable requirements contained in its permit. Generally, concerns related to a facility's alleged noncompliance with an applicable requirement are handled through the enforcement process, not the title V permitting or petition process. *See, e.g., In the Matter of Drummond Co., Inc., ABC Coke Plant*, Order on Petition No. IV-2019-7 at 6 (June 30, 2021) ("EPA believes the enforcement action—not the title V petition process—is the most appropriate venue for resolving any compliance-related claims raised in that action."). Similarly, the EPA believes that the enforcement process is generally better suited than the permitting process to identify root causes of noncompliance and devise solutions to prevent future noncompliance. *See, e.g., 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 16–17 (July 31, 2023)

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

(distinguishing the permitting and enforcement processes, their timelines, and the opportunities they offer for investigating and devising solutions to complex compliance issues).

To the extent the Petitioners request the EPA's objection based on issues related to SSM events, the EPA's Order addresses these arguments under Claim 4.

D. Claim 4: The Petitioners Claim That "LDEQ's Permit for Nucor Is Improper and Fails to Be Protective of the Environment."

Petition Claim: The Petitioners request the EPA's objection to the Permit because "it fails to be adequately protective of the environment as required by 42 U.S.C. § 7661c and 40 C.F.R. § 70.6." Petition at 27. The Petitioners then list several reasons why they consider the Permit to be deficient, including failures to meet the requirements for adequate monitoring and for justifying the permit conditions in an SOB. *Id.* (citing 40 C.F.R. §§ 70.6(c)(1), 70.7(a)(5)).

AP-42 Emission Factors

The Petitioners first challenge LDEQ's use of emission factors "to create limitations and standards." *Id.* The Petitioners argue that Nucor has now been operating for a decade and should, therefore, have enough data on emissions to use to set limits. *Id.*

The Petitioners note that the EPA has issued an enforcement alert concerning such use of AP-42 emission factors and they claim that many of Nucor's estimates use AP-42. *Id.* at 28 (citing Petition Ex. D, CHANGE Environmental Report (May 19, 2021); EPA Reminder About Inappropriate Use of AP-42 Emission Factors at 2–3 (Nov. 2020)). The Petitioners argue that the facility utilizes unique processes, and, therefore, AP-42 emission factors are likely not representative of its emissions. *Id.*

The Petitioners claim that: "CEMS, stack-testing, and fence-line monitoring are viable options for setting accurate emissions." *Id.* at 29 (citing Texas Commission on Environmental Quality, 2022 Emissions Inventory Guidelines at 41, 43). The Petitioners state: "EPA must mandate fenceline monitoring." *Id.* (citing 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1)).

Best Available Control Technology (BACT) Choices

The Petitioners claim that the BACT for the Process Heater/Acid Gas Absorption Vent Common Stack is inadequate. *See id.* at 29–30. The Petitioners critique the way that the limits for this unit were set, arguing that data from CEMS should be used. *See id.* The Petitioners criticize LDEQ's statement that CEMS for this source is unnecessary. *Id.* at 29 (citing RTC at 44; 60–61). The Petitioners argue that: "CEMS and regular stack testing (with built in consequences for stack test failures) for all emissions streams from the vent would generate accurate, operational data to create reasonable permit limits and ensure compliance with those limits." *Id.* at 29–30.

The Petitioners also challenge the BACT for the Hot Flare. *See id.* at 30. The Petitioners claim that Nucor has a history of noncompliance with its limits on sulfur oxide. *Id.* (citing Nucor, 2022 Title V 2nd Semi-Annual Monitoring Report; Title V Air Permit No. 3086-V9). The Petitioners claim that the Hot Flare was previously monitored through CEMS, and that new monitoring of its gas stream prior to

combustion "falls short." *Id.* The Petitioners criticize the requirement to monitor temperature of the gas stream without an associated limit on temperature. *Id.* The Petitioners claim that the Permit requires "the development of a corrective action plan but does not incorporate that plan into the enforceable permit itself." *Id.* (citing Permit at 49).

The Petitioners also claim that the Hot Flare is permitted to vent during "start ups, product quenches, shutdowns, and product cooling water deaeration." *Id.* (quoting Permit at 49). The Petitioners claim that venting during SSM conditions will be subject to no emissions limits and will be unmonitored. *Id.* The Petitioners state: "Moreover, emissions are to be calculated using estimates, not measured. EPA should object to this specific requirement." *Id.*

SSM

In a subsection titled "SSM as BACT," the Petitioners claim that the Permit exempts emissions of H_2S from the DRI Unit No. 1 Process Heater from any limits during periods of SSM. *See id.* at 31–32 (citing Specific Requirement 90). The Petitioners claim: "Although LDEQ removed one of the remaining references to SSM in the permit in its response to EPA's objections, it failed to remove them all." *Id.* at 32. The Petitioners claim that "[e]xcluding emissions during SSM and 'upset' events from the BACT requirements in a Title V permit violates the CAA." *Id.* (citing EPA Objection Letter; 80 Fed. Reg. 33842 (June 12, 2015)).

The Petitioners relate information from a 2022 EPA Notice of Violation and Opportunity to Confer, claiming that Nucor failed to apply BACT for this unit from July 2014 to the present. *Id.* at 31 (citing Petition Ex. L at 11–12).

The Petitioners also request that the EPA object to the Permit because LDEQ removed the requirement that Nucor minimize bypasses of the SulfurOx unit. *Id.*

Lead

The Petitioners request that the EPA object to the Permit because it increases permitted lead emission levels by "over 1000% from the past permits." *Id.* at 32. The Petitioners acknowledge that the permitted limit for lead emissions is below "the PSD significance limit" but call the increase "worrisome" and ask why there is such a large increase if the facility has not changed its operations. *Id.* at 33.

The Petitioners urge the EPA to "consider the impacts of the increasing level of lead exposure to the community of Romeville and to object to LDEQ's dismissal of Petitioners' concerns without explanation or response." *Id.* at 34 (citing EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities at 36 (Oct. 2022)).

Air Monitoring

The Petitioners acknowledge that LDEQ plans to install an ambient air monitoring station in St. James Parish that will be funded in part by Nucor. *Id.* at 34; *see* SOB at 16. However, the Petitioners claim that fenceline monitoring would be better because it "would not only give site-specific information

concerning Nucor, but provide a clearer image to both LDEQ and the EPA about the emissions that the community experiences on a daily basis." *Id.*

The Petitioners claim that LDEQ does not accurately monitor the air quality in Romeville because LDEQ's monitoring in 2022 did not last long enough and did not monitor for certain pollutants. *Id.* at 34. The Petitioners claim that fenceline monitoring would be more accurate, especially for sulfuric acid emissions. *Id.* at 34–35. The Petitioners claim that due to Nucor's history of noncompliance and proximity to residential areas, the limits and monitoring in the Permit for sulfuric acid are insufficient. *Id.* at 35. The Petitioners note that permitted VOC emissions will increase by 38.37 tons per year, near the PSD threshold of 40 tons per year. *Id.* The Petitioners claim that $PM_{2.5}$ and NO_x emissions increases are also within decimal points of PSD thresholds. *Id.*

NO_x

The Petitioners claim that the permit record does not justify increases of NO_x emissions. *Id.* at 35. The Petitioners claim that despite increases in NO_x emissions, LDEQ did not model to determine whether these emissions would exceed the NAAQS. *Id.* The Petitioners argue that LDEQ's reliance on a previous permit's NAAQS demonstration is incorrect. *Id.* The Petitioners claim that Nucor exceeded its NO_x limits every year since 2018. *Id.* (citing Petition Ex. L EPA Clean Air Act Notice of Violation and Opportunity to Confer (Nov. 3, 2022).

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

Many of the subclaims of Claim 4 challenge determinations LDEQ made 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 LDEQ's corresponding EPA-approved SIP regulations. These claims call into question whether the EPA may consider challenges to PSD permitting decisions under title I of the Clean Air Act in considering a title V petition. This response first summarizes the EPA's position on this issue and then explains in further detail under each subclaim how that position applies (if it does apply) to the arguments put forward by the Petitioners.

The EPA reviewed the question of evaluating title I permitting decisions in title V petitions under similar circumstances in the *Big River Steel Order* and a number of subsequent orders, including the *South Louisiana Methanol Order*. After a review of the structure and text of the CAA and the EPA's regulations in part 70, 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.

The EPA's position can be summarized as follows: where a permitting authority authorizes the construction of a facility by issuing an NSR permit that was subject to public notice and 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 proposed Applicable Requirements Rule, 89 Fed. Reg. at 1160–84, 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 [South Louisiana Methanol]. 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 modifications of the Nucor facility. This PSD permit—Permit No. PSD-LA-751(M5)—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 conditions of that PSD permit establish the NSR-related "applicable requirements" that must be incorporated into Nucor'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.

AP-42 Emission Factors

As a threshold matter, it is unclear whether the Petitioners are challenging the use of AP-42 emission factors to *set limits* or to calculate emissions as part of *assuring compliance with limits*. The Petitioners cite an EPA Enforcement Alert about AP-42 emission factors and make a case as to why their use may be an issue for Nucor, but they do not provide any specifics about which emission factors or calculations they think are problematic. The Petitioners fail to cite any permit terms or describe how emission factors are used in the Permit in any detail. *See* 40 C.F.R. § 70.12(a)(2)(i)–(iii).[21] To the extent that the Petitioners request the EPA's objection based on the use of AP-42 emission factors to set limits in the PSD Permit, as previously explained, the EPA will not reevaluate such preconstruction

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

permitting determinations in a title V petition. To the extent the Petitioners challenge the use of AP-42 emission factors to assure compliance with limits in the Permit, the Petitioners have failed to demonstrate that any particular use of emission factors is inadequate. The EPA, therefore, denies the Petitioners' request for an objection on this subclaim.

BACT Choices

To the extent the Petitioners request the EPA's objection based on the BACT decisions and limits that were established in the PSD permit for the DRI Unit No. 1 Process Heater/Acid Gas Absorption Vent Common Stack (EQT 0207) and the DRI Unit No. 1 Hot Flare (EQT 0071), including any such decisions concerning periods of SSM, that request is denied. As previously explained, the EPA will not reevaluate such preconstruction permitting determinations in a title V petition.

To the extent the Petitioners challenge the monitoring for the Process Heater/Acid Gas Absorption Vent Common Stack and the Hot Flare, they have failed to demonstrate that the monitoring in the Permit is inadequate. The Petitioners do not analyze the monitoring in the Permit for either unit. *See* 40 C.F.R. § 70.12(a)(2)(i)–(iii).[22] The Petitioners vaguely allege that monitoring the gas stream entering the Hot Flare "falls short" but provide no details as to why. The Petitioners fail to explain why setting a limit on temperature is necessary for the Hot Flare. The Petitioners do not describe the contents or purpose of the Hot Flare's "corrective action plan" and cite no authority that would compel its inclusion in the Permit. The Petitioners do not explain why they consider the emission estimation methods referenced in the Permit to be inadequate. The Petitioners also fail to address LDEQ's responses to their comments on these issues. *See* 40 C.F.R. § 70.12(a)(2)(vi).[23]

As previously explained, the Petitioners' arguments about alleged previous noncompliance do not demonstrate a flaw in the Permit and are best handled through the enforcement process.

SSM

The Petitioners' claim concerning an exemption to the H_2S limit for the DRI Unit No. 1 Process Heater during periods of SSM and bypasses of the SulfurOx Unit challenges BACT decisions made during the PSD permitting process. The EPA will not evaluate such preconstruction permitting determinations in a title V petition.[24]

The Petitioners' arguments about alleged previous noncompliance do not demonstrate a flaw in the Permit and are best handled through the enforcement process.

Lead

The Petitioners fail to allege any specific flaw in the Permit related to increased lead emissions. Rather, the Petitioners seem to be expressing general concern with permitted increases in lead emissions, although they acknowledge that the lead emissions are "still below the PSD significance limit." Petition

[22] *See also supra* notes 6–8 and accompanying text.
[23] *See also supra* note 9 and accompanying text.
[24] Based on further communication with LDEQ, the EPA notes that LDEQ intends to eliminate the remaining exemption from the H_2S limit during periods of SSM in Specific Requirement 90.

at 33. As previously explained, the EPA's authority to object to a title V permit is limited to situations where a petitioner demonstrates that a title V permit does not comply with an applicable requirement of the CAA or a part 70 requirement. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. §§ 70.2 (definition of "applicable requirement"), 70.8(c)(1), 70.12(a)(2). Since the Petitioners do not allege, much less demonstrate, any flaw in the Permit related to lead emissions, the Petitioners have not presented any grounds for the EPA's objection.

Air Monitoring

Beyond the general statement that the monitoring for sulfuric acid in the Permit is inadequate, the Petitioners make no attempt to claim that the Permit is flawed. They refer to no permit terms and provide no analysis of any required monitoring. *See* 40 C.F.R. § 70.12(a)(2)(i)–(iii).[25] The Petitioners request fenceline monitoring but cite no legal authority that would require its inclusion in the Permit. The Petitioners also fail to address LDEQ's reasons for not requiring fenceline monitoring provided in the RTC. *See* 40 C.F.R. § 70.12(a)(2)(vi).[26] Rather, the Petitioners seem to be criticizing the ambient monitoring that LDEQ has previously conducted in Romeville more generally. Such programmatic issues do not provide a basis for the EPA to object to a title V permit.

NO_x

The Petitioners' claim concerning modeling for determining whether NO_x emissions from the modification authorized by PSD Permit No. PSD-LA-751(M5) would cause or contribute to a violation of the NAAQS is based exclusively on requirements under the PSD provisions in part C of title I of the CAA and LDEQ's corresponding EPA-approved SIP regulations. *See Big River Steel Order* at 8; *In the Matter of Riverview Energy Corp.*, Order on Petition No. V-2019-10 at 13 (Mar. 26, 2020); *In the Matter of Commonwealth LNG, LLC*, Order on Petition No. VI-2023-7 at 12 (Jan. 30, 2024). More specifically, the claim relates to preconstruction modeling requirements under LAC 33.III.509.K.1.a. As previously explained, the EPA will not reevaluate such preconstruction permitting determinations in a title V petition.

V. CONCLUSION

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

Dated: September 27, 2024

Michael S. Regan
Administrator

[25] *See also supra* notes 6–8 and accompanying text.
[26] *See also supra* note 9 and accompanying text.