

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:)
)
EPD Part 70 Operating Permit)
Amendment No. 2499-271-0022-V-05-2)
) Permit No. 2499-271-0022-V-05-2
For Telfair Forest Products, LLC)
)
Issued by the Georgia Department of)
Natural Resources, Environmental)
Protection Division)

**PETITION TO OBJECT TO THE TITLE V OPERATING PERMIT SIGNIFICANT
MODIFICATION FOR TELFAIR FOREST PRODUCTS, LLC**

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Georgia Interfaith Power & Light and the Georgia Chapter of the Sierra Club (collectively, “Petitioners”) hereby petition the U.S. Environmental Protection Agency (“EPA”) to object to the above-referenced Title V permit significant modification issued by Georgia’s Environmental Protection Division (“EPD”) for Telfair Forest Products, LLC (“Telfair” or the “facility”). Telfair is an existing wood pellet and wood shavings manufacturing plant located in Lumber City, Georgia.

EPD released the draft permit modification for public comment on January 10, 2024, and forwarded its proposed permit modification to EPA on approximately July 3, 2024.¹ EPA’s 45-

¹ U.S. EPA, “Georgia Proposed Title V Permits,” <https://www.epa.gov/caa-permitting/georgia-proposed-title-v-permits> (accessed Oct. 17, 2024).

day review period ended on August 19, 2024, and the public petition deadline is therefore October 17, 2024.² This petition is therefore timely.

Telfair is located in one of the poorest counties in the nation, and Lumber City is 72% Black. Against this backdrop, Telfair sought to become the 6th largest emitter of volatile organic compounds (“VOCs”) in the state of Georgia, and the largest that has never undergone major-source Prevention of Significant Deterioration (“PSD”) permitting. All told, the facility is now authorized under this permit to emit 586 tons of VOCs per year—without ever having undergone PSD. A significant portion of these VOC emissions are also toxic and/or carcinogenic Hazardous Air Pollutants (“HAPs”).

This Petition, however, focuses only on EPD’s inclusion of indisputably defective VOC and HAP emission factors in the modified permit conditions intended to assure Telfair’s compliance with its synthetic minor emission limits, and EPD’s related failure to notify the public and EPA of the emissions testing demonstrating these defects.

As explained below, EPD knowingly proposed the modified Telfair permit to EPA in July 2024 with inaccurate emission factors that had already been contradicted by emissions testing conducted six months earlier, in January 2024 (the results of which were transmitted to EPD on March 12, 2024).³ In other words, despite having the results of these tests for many months, EPD proposed and issued the permit modification with outdated and incorrect emission factors, along with a Statement of Basis that erroneously referred to 2021 emissions tests as “the most recent.”⁴ EPD moreover misleadingly declared that the VOC and HAP emission factors were being “updated based on the facility’s most recent VOC [and HAP] stack test results.”⁵ In

² *Id.*

³ EPD, Source Test Report Review for Telfair Forest Products LLC (Apr. 24, 2024) (Attachment A)

⁴ Statement of Basis at 11.

⁵ Statement of Basis at 14.

fact, the Statement of Basis does not even reference the January 2024 tests even though they occurred six months prior to EPD's proposed and final permit issuance.

EPA must object to the Title V permit amendment because (1) the Title V permit modification's inclusion of inaccurate VOC and HAP emission factors in key monitoring, recordkeeping, and reporting requirements renders the permit conditions insufficient to assure Telfair's compliance with its synthetic minor limits, (2) EPD failed to provide an adequate statement of basis for the permit modification due to the statement's incorrect information regarding the factual basis for the selected VOC and HAP emission factors, and (3) EPD failed to provide an adequate opportunity for public and EPA review of the permit modification's VOC and HAP monitoring conditions due to EPD's withholding of centrally important emissions test results.

Background

Telfair is an existing wood pellet and wood shavings manufacturer owned by Fram Renewable Fuels, a pellet company that owns numerous pellet plants in Georgia and is one of the largest pellet producers in the nation. The facility has been subject to a facility-wide 249-ton-per-year ("tpy") synthetic-minor limit for VOC emissions since it began operating in 2008. In August of 2023, Telfair submitted a permit application to add a new furnace and dryer utilizing the "one-time-doubling" interpretation of the major modification definition under the PSD rules.⁶ Under this technique, the existing units (two furnaces/dryers as well as a milling and pelletizing line) will retain the 249-tpy-VOC limit, while the new furnace and dryer will be subject to a second 249-tpy-VOC limit. Although Petitioners believe this relaxation of the "facility-wide" 249-tpy-VOC limit that previously applied to the entire facility is a relaxation which triggers

⁶ Telfair Forest Products, LLC, Dryer Addition and Other Revisions Application (Aug. 2023) (hereafter, the "Application") (Attachment B).

PSD under the Source Obligation Rule, 40 C.F.R. § 52.21(r)(4), Petitioners do not raise this issue here in light of EPA's current policy of not reviewing New Source Review issues in Title V petitions.

Critically, however, the August 2023 Permit Application also sought to revise the Title V Permit's emission factors for the facility's two existing wood dryers (Dryers 2 and 3) that are used to demonstrate the facility's compliance with its original 249-tpy-VOC synthetic minor limit as well as HAP limits of 10 tpy for any individual HAP and 25 tpy for combined HAPs. In particular, the permit (as was the case with prior permits) uses emission factors paired with an equation to assure compliance with the with the VOC and HAP limits.⁷ While the permit has historically utilized an emission factor for VOCs from these dryers of 3.0 lb/ton (based on EPD's default emission factor for wood pellet dryers⁸), Telfair requested lower emission factors that would allow higher rates of production.

On January 10 and 11, 2024, Telfair conducted periodic stack testing for VOCs and HAPs from its existing dryers as required every 36 months by its Title V permit. The last testing had occurred in 2021. This 2024 testing demonstrated that Telfair's VOC and HAP emissions (specifically, the HAPs methanol, formaldehyde, and acetaldehyde) are markedly higher than that reflected by the emission factors requested in Telfair's August 2023 permit application. In fact, one of the VOC emission factors (for Dryer 3) was also substantially higher than the 3.0 lb/ton emission factor in Telfair's existing Title V permit that Telfair was requesting EPD to lower as part of this permit modification.⁹ Notably, Telfair had previously modified Dryer 3

⁷ Telfair Permit No. 24999-271-0022-V-05-2, Permit Conditions 6.2.3 and 6.2.4 (pages 11-13).

⁸ EPD, Emission Factors for Wood Pellet Manufacturing (Jan. 29, 2013). This memo provides a default uncontrolled emission factor of 6.0 lb/ton for wood dryers; the Telfair permit, meanwhile, historically used 3.0 lb/ton because Telfair recycles 50% of the dryers' exhaust to the furnaces for VOC and HAP control.

⁹ Telfair Title V Permit No. 2499-271-0022-V-05-0, at Condition 6.2.3(b) (May 24, 2021) (Attachment C).

(without a permit) in February of 2023 to combust gas rather than wood fuel—Telfair’s August 2023 application also sought to retroactively approve this modification.¹⁰

Telfair provided EPD with its report documenting the results of the January 2024 testing on March 12, 2024, after the close of the comment period on the Title V permit modification but four months before EPD proposed the permit modification to EPA and issued the final permit. Although Telfair briefly considered retesting in hopes of achieving lower emission factors, it ultimately informed EPD on February 27, 2024, that such retesting would be futile, and the facility would not be able to demonstrate lower emission rates.¹¹

Despite knowing that the emission factors in Telfair’s August 2023 permit application do not accurately reflect the existing dryers’ actual VOC and HAP emissions, EPD proposed the Title V permit modification with these defective emission factors to EPA on approximately July 3rd, 2024, the same date it also issued the final permit to Telfair, still incorporating the erroneous emission factors. Specifically, EPD included the erroneous VOC emission factors in Condition 6.2.3, which is the permit’s primary monitoring provision for the 249-tpy VOC synthetic minor limit on the facility’s existing units in set forth in Condition 3.2.1, and included the erroneous HAP emission factors in Condition 6.2.4, which is the permit’s primary monitoring provision for the facility-wide HAP synthetic minor limit set forth in Condition 2.1.2. The Statement of Basis accompanying both the draft and the proposed versions of the permit modification, meanwhile, makes no reference to the 2024 tests. Instead, the Statement of Basis incorrectly references the

¹⁰ Telfair, 2023 Title V Annual Compliance Certification, at Attachment D, Dryer Production and Emission Calculations (Feb. 28, 2024) (Attachment D). In particular, this report shows that Dryer 3 switched from wood-fired to gas-fired in February 2023, *see Id.*, DR3 Monthly Data.

¹¹ Email from Chuck Odom, Telfair Forest Products, to Emilio Rickicki, EPD (Feb. 27, 2024) (Attachment E) (“[W]e concluded that retesting in February was unlikely to yield materially improved results. As a result, we elected to not apply resources to retesting in February. The January 2024 testing results will be reported timely and used/handled as called for under our permit.”).

2021 stack tests as the “most recent” testing and incorrectly declares that the permit modification’s updates to the VOC and HAP emission factors are “based on the facility’s most recent VOC [and HAP] stack test results.”¹²

We note that Petitioners were not able to raise the issue of the deficient emission factors in their public comments. EPD released the draft Title V permit modification for public comment on January 10, 2024, with a comment deadline of February 9, 2024. Petitioners submitted comments on February 9, 2024. Because Telfair did not submit its report documenting the results of the January 2024 stack tests to EPD until March 12, 2024, a month after the close of the comment period, Petitioners could not have raised this issue during the public comment period.

EPD, however, had ample time to revise the draft permit modification’s VOC and HAP monitoring conditions so that they would assure compliance with the VOC and HAP limits prior to proposing the permit to EPA for final issuance. Likewise, there can be no justification for EPD’s failure to update the Statement of Basis that it provided to EPA with accurate information about Telfair’s emissions testing results and how they relate to the VOC and HAP emissions factors included in the proposed permit. And finally, given the central relevance of the January 2024 testing results to whether the draft permit’s monitoring requirements assure Telfair’s compliance with its VOC and HAP synthetic minor emission limits, EPD’s failure to provide the public with an opportunity to comment on this information prior to proposing the permit modification to EPA for final issuance contravenes the statutory and regulatory requirement that EPD provide the public with an “adequate” opportunity to comment. Given the information in EPD’s possession at the time it proposed Telfair’s permit modification to EPA, which showed

¹² Statement of Basis at 14.

that the VOC and HAP emission factors being incorporated into the permit were deficient, and EPD's failure to adjust the emission factors and provide EPA and the public with an opportunity to review this centrally relevant emissions and compliance information prior to permit issuance, EPA must object to Telfair's Title V permit modification.

Petitioners

Georgia Interfaith Power & Light: Georgia Interfaith Power & Light, which brings this Petition on behalf of itself and its members, is a non-profit organization with its principal place of business in Decatur, Georgia. GIPL is a growing organization with more than 350 member congregations across the state of Georgia representing a wide variety of faiths. GIPL is dedicated to equipping communities of faith to organize and advocate across the state on environmental issues, including climate change and community resilience. GIPL works to promote the responsible use of God's Creation by advocating for clean energy production, preventing harmful environmental practices, and minimizing the impact of resource decisions on vulnerable communities. GIPL furthers this mission through many means, including public education, advocacy, organizing, and litigation

The Georgia Chapter of the Sierra Club: The Sierra Club and its Georgia Chapter, which brings this Petition on behalf of itself and its members, is a national grassroots environmental organization dedicated to exploring, enjoying, and protecting the wild places of the earth; to educating and enlisting humanity to protect and restore the quality of the national and human environment; and to using all lawful means to carry out these objectives. As part of carrying out this mission, one of Sierra Club's primary goals is to ensure that federal clean air regulations are adhered to and that loopholes are eliminated nationwide.

I. Legal Requirements

Federal operating permits are the primary method for enforcing and assuring compliance with the Clean Air Act's pollution control requirements for major sources of air pollution.¹³ Prior to enactment of the federal operating permit program, regulators, operators, and members of the public had difficulty determining which requirements applied to each major source and whether sources were complying with applicable requirements. This was a problem because applicable requirements for each major source were spread across many different rules and orders, some of which did not make it clear how general requirements applied to specific sources.

The federal operating permit program was created to improve compliance with and to facilitate enforcement of Clean Air Act requirements by requiring each major source to obtain an operating permit that (1) lists all applicable federally-enforceable requirements, (2) contains emissions calculations and other information sufficient for readers to determine how applicable requirements apply to units at the permitted source, and (3) establishes monitoring requirements that assure compliance with all applicable requirements.¹⁴

The Title V operating permit program provides a process for stakeholders to resolve disputes about which requirements should apply to each major source of air pollution outside of the enforcement context.¹⁵ Because courts, agencies, the public, and regulated entities rely on Title V operating permits to determine which requirements may be enforced and which

¹³ Operating Permit Program, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992).

¹⁴ 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a), (c); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) (“The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source.”); *Sierra Club v. EPA*, 536 F.3d 673, 674–75 (D.C. Cir. 2008) (“But Title V did more than require the compilation in a single document of existing applicable emission limits It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions”).

¹⁵ 57 Fed. Reg. at 32,266 (“Under the [Title V] permit system, these disputes will no longer arise because any differences among the State, EPA, the permittee, and interested members of the public as to which of the Act’s requirements apply to the particular source will be resolved during the permit issuance and subsequent review process.”).

requirements may not be enforced against each major source, state permitting agencies and EPA must exercise care to ensure that each federal operating permit includes a clear, complete, and accurate account of the requirements that apply to the permitted source.

The Act also requires the Administrator to object to a state-issued federal operating permit if they determine that it fails to include and assure compliance with all applicable requirements.¹⁶ If the Administrator does not object to a federal operating permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.”¹⁷ The Administrator “shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the . . . [Clean Air Act].”¹⁸ The Administrator must grant or deny a petition to object within 60 days of its filing.¹⁹

II. Grounds for Objection

For the reasons set forth below, EPA must object to the Title V significant permit modification for Telfair.

A. EPD’s Proposed Permit Fails to Assure Compliance With the 249-tpy VOC Synthetic Minor Limit for Existing Units.

1. Specific Grounds for Objection

Title V permits must include adequate monitoring, recordkeeping, and reporting requirements to assure compliance with all applicable requirements.²⁰ This monitoring shall include “periodic monitoring sufficient to yield reliable data from the relevant time period that

¹⁶ 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c).

¹⁷ 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

¹⁸ 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(c)(1).

¹⁹ 42 U.S.C. § 7661d(b)(2).

²⁰ 40 C.F.R. § 70.6(a)(3).

are representative of the source's compliance with the permit."²¹ EPD's inclusion of faulty VOC emission factors in the modified permit for purposes of assuring Telfair's compliance with its VOC synthetic minor limit means that the permit modification does not assure compliance with the VOC limit and EPA must object.

The applicable requirement in question is the VOC emission limit set forth in Condition 3.2.1, which limits total VOC emissions from the existing dryers, hammermills, and pelletizing units to less than 249 tons per year. This condition is listed as a PSD-avoidance condition, and we note EPD calculates that the facility's *actual* emissions have reached at least as high as 249 tpy, meaning the facility's compliance with the limit is already razor-thin (and Petitioners believe the 2024 tests show the facility has actually exceeded the 249-tpy limit over many 12-month periods).

To assure compliance with the 249-tpy VOC limit, Condition 6.2.3 requires that Telfair calculate monthly and 12-month rolling VOC emissions utilizing a specified equation and listed emission factors. Whereas this condition previously utilized emission factors for the two dryers of 3.0 lb/ton, the permit modification now incorporates the lower emission factors that Telfair requested in its August 2023 permit application: 1.75 lb/ton for Dryer 2 and 1.09 lb/ton for Dryer 3 (Dryer 1 was previously deleted from the permit and no longer exists).

The January 2024 testing, however, showed much higher VOC emission rates than those reflected by the emission factors in modified Permit Condition 6.2.3. Specifically, the January 2024 testing revealed Dryer 2 emitting VOCs at a rate of 2.5 lb/ton (as opposed to the 1.75 lb/ton emission factor in the modified permit) and Dryer 3 emitting at a rate of 3.7 lb/ton (as opposed to

²¹ *Id.* § 70.6(a)(3)(i)(B).

the 1.09 lb/ODT emission factor in the modified permit).²² Telfair has not disputed that the January 2024 test results are representative of the facility's emissions, instead telling EPD that repeated tests would not produce lower emission rates.²³

Despite receiving the results of Telfair's January 2024 tests on March 12, 2024, EPD proposed the permit modification to EPA for issuance on July 3, 2024, ignoring the January 2024 testing and incorporating the defective VOC emission factors Telfair had requested back in August 2023. In short, EPD replaced the higher 3.0 lb/ton VOC emission factor it had previously utilized in Telfair's permit with the much lower VOC emission factors that Telfair requested in August 2023 (i.e. the 1.75 and 1.09 lb/ton factors), despite knowing as a matter of undisputed fact that these lower emission factors are inaccurate. As a result, the modified permit directs Telfair to monitor compliance with the 249-tpy VOC emission limit using emission factors that substantially underestimate the facility's actual VOC emissions.

While Telfair's Title V permit includes a provision providing that if performance testing records emissions that exceed the factor listed in the permit, the facility shall begin calculating emissions using the new and higher factor (Permit Condition 4.2.3), that provision does not authorize EPD to issue a Title V permit that includes an emission factor that it knows is too low at the time EPD issues the permit. First, EPA has been clear that where a Title V permit utilizes emission factors to determine compliance with applicable requirements, those emission factors

²² EPD, Source Test Report Review for Telfair Forest Products LLC (Apr. 24, 2024) (Attachment A). We calculate the emission factors from this test report by simply dividing the average hourly VOC emission rate by the average reported production rate.

²³ Email from Chuck Odom, Telfair Forest Products, to Emilio Rickicki, EPD (Feb. 27, 2024) (Attachment E) (“[W]e concluded that retesting in February was unlikely to yield materially improved results. As a result, we elected to not apply resources to retesting in February. The January 2024 testing results will be reported timely and used/handled as called for under our permit.”).

must be explicitly incorporated into the permit.²⁴ EPD cannot skirt that requirement by issuing a defective permit with outdated emission factors and assuming that the fallback provision described above will nonetheless result in the permittee instead utilizing different emission factors based on emissions testing performed six months *before* the permit modification was issued. Moreover, to the extent EPD anticipates that Telfair will ignore the VOC emission factors listed in the permit and instead utilize off-permit emission factors to determine its compliance with its VOC limit, EPD provided no such explanation anywhere in the permit record. In fact, the Statement of Basis explicitly—and incorrectly—cites to the 2021 stack tests as the most recent testing.

In addition, because EPD’s Statement of Basis failed even to acknowledge the January 2024 testing, let alone identify the emission factors resulting from that testing, both the public and EPA were denied the opportunity to evaluate the adequacy of those factors. Even if EPD believes that Telfair will use the updated factors derived from the January 2024 testing, EPD cannot evade public comment on the adequacy of those updated factors by finalizing a permit with different, outdated factors. The permit’s fallback provision is simply that, a fallback when it turns out that the emission factors thought to be valid at the time of permit issuance turn out to be too low. It is not an excuse for the permitting authority to issue a permit with defective emission factors.

Finally, Title V permits are meant to allow the public to ascertain whether a facility is complying with applicable requirements. Obviously, the VOC factors in the permit are insufficient to demonstrate the facility’s compliance. Whatever emission factors Telfair is

²⁴ *In re Piedmont Green Power, LLC*, Order on Petition No. IV-2015-2, at 14-16 (Dec. 13, 2016), https://www.epa.gov/sites/default/files/2016-12/documents/piedmont_response2015.pdf (“*Piedmont Green Power Order*”).

actually using, the public has no way of verifying what those factors are or checking their accuracy. Those emission factors, moreover, have never undergone public notice and comment.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements.²⁵ This monitoring shall include “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”²⁶ Further, any “monitoring requirement insufficient ‘to assure compliance’ with emission limits has no place in a [Title V] permit unless and until it is supplemented by more rigorous standards” sufficient to assure compliance.²⁷

Moreover, all terms of a Title V permit must be “enforceable by the Administrator and **citizens**.”²⁸ As EPA has explained, when a Title V permit relies on emission factors to determine compliance, those emission factors must be incorporated into the final permit.²⁹ EPD’s use of emissions factors must also be technically supported and appropriate, not arbitrary or irrational: “. . . EPA has recognized that [emissions] factors, if technically supported and appropriate, can be a component to both developing [potential to emit] and assuring compliance with permit limits.”³⁰

As set out above, because EPD issued the Title V permit with emission factors that are undisputably not correct, the permit fails to assure compliance with the 249-tpy VOC synthetic minor limit. The permit also fails to include “periodic monitoring sufficient yield reliable data . .

²⁵ 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1).

²⁶ *Id.* § 70.6(a)(3)(i)(B).

²⁷ *See Sierra Club*, 536 F.3d at 677.

²⁸ 40 C.F.R. § 70.6(b)(1) (emphasis added).

²⁹ *Piedmont Green Power Order*, *supra* note 24, at 14-16.

³⁰ *Id.* at 40; *see also Shell Offshore, Inc.*, OCS Appeal Nos. 11-05, 11-06, 11-07, U.S. E.P.A. at 558 (2012)

. that are representative of the source’s compliance with the permit.”³¹ Additionally, to the extent EPD relies on off-permit emission factors to assure compliance, the permit is still deficient because the 249-tpy limit is not enforceable by citizens who have no ability to divine from the record the precise emission factors that, as a legal matter, must be used to assure compliance with the 249-tpy limit.

Separately, the permit is also deficient because the 249-tpy synthetic minor VOC limit is not enforceable as a practical matter. As EPA has regularly maintained, synthetic minor limits such as this must be enforceable as a legal and a practical matter.³² EPA explains practical enforceability as such:

In order to be considered practically enforceable, an emissions limit must be accompanied by terms and conditions that require a source to effectively constrain its operations so as to not exceed the relevant emissions threshold. **These terms and conditions must also be sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.**³³

Here, by including inaccurate emission factors in the final permit, and making no reference to any off-permit emission factors that might be used instead, the 249-tpy VOC limit is not enforceable as a practical matter. Moreover, as discussed above, to the extent that EPD does indeed rely on off-permit emission factors, the limit is still not enforceable as a practical matter because, again, the public has no way of ascertaining from the permitting record what emission factors should be used as a legal matter.³⁴

³¹ *Id.* § 70.6(a)(3)(i)(B).

³² *Kentucky Syngas, LLC*, Petition No. IV-2010-9, U.S. E.P.A. (2012)

³³ *Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Petition No. II-2001-05 at 7, U.S. E.P.A. (2002) (emphasis added).

³⁴ We note also that Georgia’s EPA-approved State Implementation Plan (SIP) also requires that synthetic minor limits shall be federally enforceable. *See* Ga. Comp. R. & Regs. 391-3-1-.01(ddd). Under EPA’s long running interpretation of “federal” enforceability, the public must also be able to enforce such federally enforceable provisions.

3. Inadequacy of the Permit and Permit Terms

As demonstrated above in Section 1 & 2 of this part, the permit is inadequate because it fails to assure compliance with the 249-tpy-VOC limit contained in Condition 3.2.1. More specifically, Permit Condition 6.2.3, which purports to assure compliance with Condition 3.2.1, is deficient because subsection 6.2.3(b) contains emission factors that are undisputably not representative of the facility's VOC emission rates.

4. Issues Raised in Public Comments

Petitioners did not raise this issue in public comments because Telfair only submitted the results of the testing on March 12, 2024, which was after the close of the public comment period (February 9, 2024). Under the 40 C.F.R. § 70.8(d), however, the public may still bring a petition when the grounds for that petition arose after the close of the public comment period, which is the case here.³⁵

5. Analysis of EPD's Response

Because Petitioners could not have raised this issue during the comment period, EPD did not respond to any relevant comments from Petitioners. However, we do note that EPD's broader response to comments, as well as the entire Statement of Basis itself, does not make any reference to the 2024 emissions testing and incorrectly cites to testing from 2021 as the most recent testing available.

³⁵ 40 C.F.R. 70.12(a)(2)(v) ("If the grounds for the objection were not raised with reasonable specificity during the public comment period, the petitioner must demonstrate that such grounds arose after that period, or that it was impracticable to raise such objections within that period, as required under § 70.8(d) of this part.").

B. EPD’s Proposed Permit Fails to Assure Compliance With the 10 and 25-tpy Synthetic Minor Limits for Hazardous Air Pollutants.

1. Specific Grounds for Objection

The following deficiency is substantially and legally similar to the deficiency discussed above relating to the VOC synthetic minor limit for Telfair’s existing units (*See* Part (II)(A) above), except this section discusses Hazardous Air Pollutants (HAPs) and the facility-wide 10 and 25-tpy synthetic minor limits. Specifically, the underlying Title V Permit No. 2499-271-0022-V-05-0 (issued May 2021) contains Condition 2.1.2, limiting facility-wide HAP emissions for purposes of major source avoidance. While this permit modification did not alter the HAP limit itself, the permit modification did change the HAP emission factors for existing Dryers 2 and 3 at Condition 6.2.4 that Telfair uses to demonstrate its compliance with the HAP limits. As with Telfair’s VOC emissions, the January 2024 stack testing also showed that the HAP emission factors proposed in Telfair’s 2023 permit application and incorporated into Telfair’s Title V permit at Condition 6.2.4 underestimate the facility’s actual HAP emissions from Dryers 1 and 2, specifically, its emissions of methanol, formaldehyde, and acetaldehyde:³⁶

| Dryer 2 | | | |
|---|----------|--------------|--------------|
| | Methanol | Formaldehyde | Acetaldehyde |
| Permit Emission Factor (lb/ton) (Condition 6.2.4(b)) | 0.018 | 0.021 | 0.00847 |
| 2024 Stack Test Result (lb/ton) | 0.045 | 0.063 | 0.022 |

| Dryer 3 | | | |
|---|----------|--------------|--------------|
| | Methanol | Formaldehyde | Acetaldehyde |
| Permit Emission Factor (lb/ton) (Condition 6.2.4(b)) | 0.00333 | 0.0167 | 0.00278 |
| 2024 Stack Test Result (lb/ton) | 0.012 | 0.038 | 0.013 |

³⁶ EPD, Source Test Report Review for Telfair Forest Products LLC (Apr. 24, 2024) (Attachment A). We calculate the emission factors from this test report by simply dividing the average hourly HAP emission rate by the average reported production rate.

As discussed above in Part (II)(A)(1) of this Petition, EPD’s failure to update these emission factors to reflect the higher emissions demonstrated by the January 2024 testing means the permit lacks adequate monitoring to assure compliance and, in particular, lacks “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”³⁷ The only difference here are the permit conditions at issue, specifically that Condition 6.2.4 (containing the defective emission factors) fails to assure compliance with the facility-wide synthetic minor limits in Condition 2.1.2.

2. Applicable Requirement or Part 70 Requirement Not Met

As further explained above in Part (II)(A)(2), each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements.³⁸ This monitoring shall include “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”³⁹ Further, any “monitoring requirement insufficient ‘to assure compliance’ with emission limits has no place in a [Title V] permit unless and until it is supplemented by more rigorous standards” sufficient to assure compliance.⁴⁰

Moreover, all terms of a Title V permit must be “enforceable by the Administrator and **citizens.**”⁴¹ As EPA has explained, when a Title V permit relies on emission factors to determine compliance, those emission factors must be incorporated into the permit.⁴² EPD’s use of emissions factors must also be technically supported and appropriate, not arbitrary or irrational:

³⁷ *Id.* § 70.6(a)(3)(i)(B).

³⁸ 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1).

³⁹ *Id.* § 70.6(a)(3)(i)(B).

⁴⁰ *See Sierra Club*, 536 F.3d at 677.

⁴¹ 40 C.F.R. § 70.6(b)(1) (emphasis added).

⁴² *Piedmont Green Power Order*, *supra* note 24, at 14-16.

“. . . EPA has recognized that [emissions] factors, if technically supported and appropriate, can be a component to both developing PTE and assuring compliance with permit limits.”⁴³

As set out above, because EPD issued the Title V permit with HAP emission factors that are undisputably not correct, the permit fails to assure compliance with Condition 2.1.2’s synthetic minor limits for HAPs. The permit also fails to include “periodic monitoring sufficient yield reliable data . . . that are representative of the source’s compliance with the permit.”⁴⁴ Additionally, to the extent EPD relies on off-permit emission factors to assure compliance, the permit is still deficient because the HAP synthetic minor limits are not enforceable by citizens who have no ability to divine from the record the precise emission factors that must be used to assure compliance with the HAP limits

Separately, the permit is also deficient because the HAP synthetic minor limits are not enforceable as a practical matter. As EPA has regularly maintained, synthetic minor limits such as this must be enforceable as a legal and a practical matter.⁴⁵ EPA explains practical enforceability as such:

In order to be considered practically enforceable, an emissions limit must be accompanied by terms and conditions that require a source to effectively constrain its operations so as to not exceed the relevant emissions threshold. **These terms and conditions must also be sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.**⁴⁶

Here, by including inaccurate emission factors in the final permit, and making no reference to any off-permit emission factors that might be used instead, the HAP synthetic minor limits at Condition 2.1.2 are not enforceable as a practical matter. Moreover, as discussed above,

⁴³ *Id.* at 40; *see also Shell Offshore, Inc.*, OCS Appeal Nos. 11-05, 11-06, 11-07, U.S. E.P.A. at 558 (2012)

⁴⁴ *Id.* § 70.6(a)(3)(i)(B).

⁴⁵ *Kentucky Syngas, LLC*, Petition No. IV-2010-9, U.S. E.P.A. (2012)

⁴⁶ *Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Petition No. II-2001-05 at 7, U.S. E.P.A. (2002) (emphasis added).

to the extent that EPD does indeed rely on off-permit emission factors, the limit is still not enforceable as a practical matter because the public has no way of ascertaining from the permitting record what emission factors should be used as a legal matter.

3. Inadequacy of the Permit and Permit Terms

As demonstrated above, the permit is inadequate because it fails to assure compliance with the HAP synthetic minor limits contained in Condition 2.1.2. More specifically, Permit Condition 6.2.4, which purports to assure compliance with Condition 2.1.2, is deficient because subsection 6.2.4(b) contains emission factors that are undisputably not representative of the facility's emission rates.

4. Issues Raised in Public Comments

Petitioners did not raise this issue in public comments because Telfair only submitted the results of the testing on March 12, 2024, which was after the close of the public comment period. Under the 40 C.F.R. § 70.8(d), however, the public may still bring a petition when the grounds for that petition arose after the close of the public comment period or when it was impracticable for the petitioner to raise an issue during the public comment period, which is the case here.

5. Analysis of EPD's Response

Because Petitioners could not have raised this issue during the comment period, EPD did not respond to any relevant comments from Petitioners. However, we do note that EPD's broader response to comments, as well as the entire Statement of Basis itself, does not make any reference to the 2024 emissions testing and incorrectly cites to testing from 2021 as the most recent testing available.

C. EPD Failed to Provide a Reasoned Rationale in the Statement of Basis for Why the Permit Modification's Monitoring is Sufficient to Assure Compliance with the VOC and HAP Synthetic Minor Limits.

1. Specific Grounds for Objection

In addition to requiring adequate monitoring in Title V permits, Title V rules also require that the permitting authority “provide a statement that sets forth the legal and factual basis for the draft permit conditions.” 40 C.F.R. § 70.7(a)(5). Commonly referred to as a “Statement of Basis,” this document must be made available to the public during the public comment period. 40 C.F.R. § 70.7(h)(2). EPA has explained that the “rationale for the monitoring requirements selected by a permitting authority must be clear and documented in the permit record (e.g., in the Statement of Basis).”⁴⁷

The Statement of Basis here is devoid of a rationale for how the VOC and HAP emission factors specified in the permit for use in determining the facility’s compliance with its VOC and HAP emissions limits are sufficient. This omission that is especially significant given the testing performed six months prior to permit issuance showing that these factors greatly underestimate the facility’s emissions.

The only discussion of the monitoring associated with the 249-tpy VOC limit for the existing units (i.e., Condition 3.2.1) is the following statement:⁴⁸

Modified Condition 6.2.3 requires the facility to calculate monthly VOC emissions from all manufacturing processes (excluding Dryer DRY4) using the records from Condition 6.2.1 and the provided equation and VOC emission factors. The VOC emission factors have been updated based on the facility’s most recent VOC stack test results. The facility must also notify the Division if the monthly emissions of VOC exceed 20.7 tons.

Despite referencing the “most recent VOC stack test results” in this paragraph, the permit itself utilizes emission factors from 2021, not the most recent 2024 testing. Moreover, in other parts of

⁴⁷ 40 C.F.R. § 70.5(a)(5); *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03 at 7–8 (January 31, 2011) (“Granite City I Order”).

⁴⁸ Statement of Basis at 14.

the Statement of Basis, EPD refers to the 2021 testing as the most recent, which, again, is incorrect.

Likewise, the only discussion of the monitoring associated with the facility-wide HAP synthetic minor limits in Permit Condition 2.1.2 is the following statement:⁴⁹

Modified Condition 6.2.4 requires the facility to calculate monthly HAP emissions using the records from Condition 6.2.1 and the provided equation and HAP emission factors. The HAP emission factors have been updated based on the facility's most recent HAP stack test results. The facility must also notify the Division if the total monthly emissions of any single HAP exceeds 0.83 tons or total emissions of all HAP exceed 2.08 tons.

As with respect to the VOC monitoring described above, despite referencing the “most recent HAP stack test results” in this paragraph, the permit itself utilizes emission factors from 2021, not the most recent 2024 testing.

In sum, nothing in the Statement of Basis explains why EPD believes the permit modification's VOC and HAP monitoring provisions (Modified Permit Conditions 6.2.3 and 6.2.4) are adequate to assure compliance with the VOC limit in Condition 3.2.1 and the HAP limits in Condition 2.1.2, especially given the January 2024 testing showing that the emission factors used in these monitoring conditions underestimate the facility's emissions. Moreover, members of the public reviewing the permit and Statement of Basis would have no idea that the permit's emission factors are fatally flawed. Given the foregoing, EPD has failed to provide a “rationale for the monitoring requirements selected by a permitting authority” as required by the Part 70 rules.

⁴⁹ *Id.*

In addition to hindering the public’s ability to understand the adequacy of the permit’s monitoring condition (or, here, the inadequacy), EPD’s inaccurate and misleading Statement of Basis likely also hindered EPA’s review of the proposed permit. For instance, nothing in the Statement of Basis nor the rest of the record submitted to EPA for its review would have alerted EPA that more recent tests had demonstrated that Telfair’s requested VOC and HAP emission factors—as incorporated into the proposed permit under review—were simply not correct.

For these reasons, the EPD has failed to meet its task of providing a rational explanation in the Statement of Basis for why the permit’s monitoring provisions assure compliance with the key VOC and HAP synthetic minor limits, and EPA must object.

2. Applicable Requirement or Part 70 Requirement Not Met

40 C.F.R. § 70.5(a)(5) requires that permitting authorities shall provide “a statement that sets forth the legal and factual basis for the draft permit conditions.” EPA has routinely explained that this “Statement of Basis” must include the “rationale for the monitoring requirements selected by a permitting authority” and that this rationale “must be clear and documented in the permit record (e.g., in the Statement of Basis).”⁵⁰ As discussed above (and in particular given the January 2024 test results), by failing to explain how the monitoring requirements in Modified Permit Condition 6.2.3 assure compliance with the VOC synthetic minor limit in Modified Permit Condition 3.2.1, and by failing to explain how the monitoring requirements in Modified Permit Condition 6.2.4 assure compliance with the HAP synthetic minor limits in Permit Condition 2.1.2, EPD has not provided the required rationale for how the selected monitoring requirements assure compliance with applicable requirements.

⁵⁰ 40 C.F.R. § 70.5(a)(5); Granite City I Order at 7–8.

3. Inadequacy of the Relevant Portion of the Permit Record and the Permit Process

When EPD proposed Telfair's Title V permit modification to EPA in July 2024, EPD knew that proposed permit modification included inaccurate VOC and HAP emission factors (which, again, are critical components of the permit's overall compliance mechanism with the key synthetic minor limits in Conditions 2.1.2 and 3.2.1) and had known this for many months. Nonetheless, EPD made no attempt to update the Statement of Basis to explain that emissions testing had been performed in January 2024 and that such testing demonstrated that the facility's actual VOC and HAP emissions exceed what would be calculated using the proposed permit modification's emission factors. Instead, EPD submitted the proposed permit modification to EPA with the defective VOC and HAP emission factors and left the statements indicating that the most recent testing had been performed in 2021 unchanged. EPD's omission prevented EPA from being able to adequately assess the adequacy of the permit modification's VOC and HAP monitoring provisions, which of course denied the public of the protection that should be provided by EPA review of proposed permits.

Moreover, because a permit's Statement of Basis also serves to inform the public and regulators even after permit issuance, EPD's failure to update the Statement of Basis prior to proposing the permit modification to EPA continues to harm members of the public who are concerned about Telfair's ongoing compliance with Clean Air Act requirements.

4. Issue Raised in Public Comments

Petitioners did not raise this issue in public comments because Telfair only submitted the results of the testing on March 12, 2024, which was after the close of the public comment period. Under the 40 C.F.R. § 70.8(d), however, the public may still bring a petition when the grounds

for that petition arose after the close of the public comment period or if it was impracticable for petitioners to raise an issue during the public comment period, which is the case here.

5. Analysis of EPD's Response

Because Petitioners could not have raised this issue during the comment period, EPD did not respond to any relevant comments from Petitioners.

D. EPD Failed to Provide the Public with an Adequate Opportunity for Comment on the Draft Permit Modification.

1. Specific Grounds for Objection

When EPD proposed Telfair's Title V permit modification to EPA in July 2023, EPD knew that source testing performed six months earlier demonstrated that the VOC and HAP emission factors proposed to be incorporated into Telfair's permit did not accurately reflect the facility's actual emissions, and accordingly, were insufficient to assure the facility's compliance with the VOC and HAP synthetic minor limits. EPD's failure to reopen the public comment period and provide the public with this information, which is indisputably of central relevance to whether the permit conditions are sufficient to assure compliance with the VOC limit as required by Title V, violated Title V's public comment requirements. Specifically, EPD failed to provide an "adequate" opportunity for public comment on the draft permit as required by 42 U.S.C. § 7661a(b)(6) and 40 C.F.R. § 70.7(h).

2. Applicable Requirement or Part 70 Requirement Not Met

EPD's failure to provide the public with an opportunity to comment on the draft permit with the benefit of knowledge of and access to the January 2024 test results and EPD's analysis those test results impacted the draft permit conditions violated the requirement that the public be

given an “adequate” opportunity to comment on a draft significant modification to a title V permit as required by 42 U.S.C. § 7661a(b)(6) and 40 C.F.R. § 70.7(h).

3. Inadequacy of the Permit Process

Telfair provided EPD with a report of the results of its January 2024 VOC and HAP testing shortly after the close of the public comment period on Telfair’s draft permit modification, and approximately four months before EPD proposed Telfair’s permit modification to EPA for issuance. The test report made it clear that Telfair’s actual emissions substantially exceed the emissions calculated using the VOC and HAP emission factors that had been included in the draft permit modification released for public comment, thereby undermining the permit conditions intended to assure Telfair’s compliance with the applicable VOC and HAP synthetic minor limits. Because assuring compliance with applicable requirements is a core function of the Title V program, EPD’s failure to allow for public comment on how the source testing information impacted the adequacy of the draft permit modification’s VOC and HAP monitoring conditions violated the requirement that the public be given an “adequate” opportunity to comment on a draft permit as required by 42 U.S.C. § 7661a(b)(6) and 40 C.F.R. § 70.7(h).

4. Issue Raised in Public Comments

Petitioners did not raise this issue in public comments because Telfair only submitted the results of the testing on March 12, 2024, which was after the close of the public comment period. Under the 40 C.F.R. § 70.8(d), however, the public may still bring a petition when the grounds for that petition arose after the close of the public comment period or if it was impracticable for petitioners to raise an issue during the public comment period, which is the case here.

5. Analysis of EPD's Response

Because Petitioners could not have raised this issue during the comment period, EPD did not respond to any relevant comments from Petitioners.

Conclusion

For the foregoing reasons, the proposed Telfair Title V permit is deficient. Accordingly, the Clean Air Act requires the Administrator to object to the proposed permit.

Respectfully submitted,

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