

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	PETITION NO. IV-2021-7
)	
US STEEL SEAMLESS TUBULAR OPERATIONS, LLC)	ORDER RESPONDING TO
FAIRFIELD WORKS PIPE MILL)	PETITION REQUESTING
JEFFERSON COUNTY, AL)	OBJECTION TO THE ISSUANCE OF
PERMIT No. 4-07-0371-09)	TITLE V OPERATING PERMIT
)	
ISSUED BY THE JEFFERSON COUNTY)	
DEPARTMENT OF HEALTH)	

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition on June 7, 2021 (the Petition) from Greater-Birmingham Alliance to Stop Pollution (GASP or the Petitioner), 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. 503-8010 (the Permit) issued by the Jefferson County Department of Health (JCDH) to the US Steel Seamless Tubular Operations, Fairfield Works Pipe Mill (US Steel or the facility) in Fairfield, Jefferson County, Alabama. The operating permit was issued pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Chapter 355-3-16 of the Alabama Administrative Code. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also referred to 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 further below, the EPA denies the Petition requesting that the EPA Administrator object to the Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA’s implementing regulations at 40 C.F.R. part 70. The EPA granted interim approval of JCDH’s title V operating permit program in 1995, 60 Fed. Reg. 57346 (November 15, 1995), and the EPA granted full approval of JCDH’s title V program in 2001. 66 Fed. Reg. 54444 (October 29, 2001). This program, which became effective on November 28, 2001, is codified in Chapter

16 (“Operating Permit Fees”) and Chapter 18 (“Operating Permit Regulations for Major Sources”) of the Jefferson County Board of Health Air Pollution Control Rule and Regulations.

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. CAA §§ 502(a), 503, 504(a), 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source’s emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA’s 45-day review period, petition the Administrator to object to the permit. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

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

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v).

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 (August 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, the EPA is left to work out the basis for the petitioner’s objection, contrary to Congress’s express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 (“[T]he Administrator’s requirement that [a title V petitioner] support his allegations with

² *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

³ *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

⁴ *See also Sierra Club v. Johnson*, 541 F.3d at 1265 (“Congress’s use of the word ‘shall’ . . . plainly mandates an objection whenever a petitioner demonstrates noncompliance.”) (emphasis added).

⁵ *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

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

Another factor the EPA examines is whether the petitioner has addressed the state or local permitting authority’s decision and reasoning. Petitioners are required to 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); *see MacClarence*, 596 F.3d at 1132–33.⁹ 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 making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the ‘statement of basis’); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority’s written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the agency’s

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

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

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

⁹ *See also, e.g., Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App’x *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state’s explanation in response to comments or explain why the state erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state’s response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (January 8, 2007) (*Georgia Power Plants Order*) (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).

review of a petition on a proposed permit, those documents may also be considered when making a determination 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. *See, e.g.*, 40 C.F.R. § 70.7(g)(4); *see generally* 81 Fed. Reg. 57822, 57842 (August 24, 2016) (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. The permitting authority should determine whether its response is 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 modification 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 (September 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (December 19, 2007).

C. New Source Review

The major New Source Review (NSR) program is comprised of 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 provide requirements for the major NSR program for major sources, section 110(a)(2)(C) also 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 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 Alabama’s PSD, NNSR, and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.50 (identifying EPA-approved regulations in the Alabama SIP). Alabama’s major and minor NSR provisions are contained in portions of Alabama Administrative Code 335-3-14 and 335-3-15, as incorporated into Alabama’s EPA-approved SIP.

III. BACKGROUND

A. The US Steel Facility

The US Steel Facility, owned by US Steel Seamless Tubular Operations, is located at 5700 Valley Road, Fairfield, Alabama. The facility molds steel into pipes and coats the pipes prior to shipping them to customers. The facility is a major source under title V for particulate matter (PM and PM10), carbon monoxide (CO), nitrogen oxides (NOx), sulfur dioxide (SO₂), and volatile organic compounds (VOC).

The EPA conducted an analysis using EPA’s EJScreen¹⁰ to assess key demographic and environmental indicators within a 5-kilometer radius of US Steel. This analysis showed a total population of approximately 54,241 residents within a 5-kilometer radius of the facility, of which approximately 92 percent are people of color and 50 percent are low income. In addition, the EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 12 environmental indicators. All of the 12 Environmental Justice Indices in this

¹⁰ EJScreen is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. *See* <https://www.epa.gov/ejscreen/what-ejscreen>.

5-kilometer area exceed the 80th percentile in the State of Alabama, with the 2017 Diesel Particulate Matter, Traffic Proximity, Lead Paint, Superfund Proximity, Risk Management Plan Facility Proximity, Hazardous Waste Proximity, and Wastewater Discharge indices exceeding the 90th percentile.

B. Permitting History

JCDH issued US Steel's initial title V permit in 1996. In 2015, US Steel submitted an application for a renewal of its title V permit, which was subsequently amended in 2017. *See* Statement of Basis at 1; RTC at 4. In 2019, JCDH noticed a draft title V renewal permit and issued a final renewal permit in 2020. This 2020 renewal permit incorporated new applicable requirements related to the construction of an electric arc furnace (EAF), EU012. The current permit action that is the subject of this petition is a significant modification to the title V permit that occurred after the renewal permit. For this permit modification, JCDH published notice of a draft permit (the Draft Permit), along with a Statement of Basis document, on November 1, 2020, with a 30-day public comment period that ran until December 1, 2020. On February 22, 2021, JCDH transmitted a proposed permit (the Proposed Permit), along with its response to public comments (RTC), to the EPA. The EPA's 45-day review period ended on April 8, 2021, during which time the EPA did not object to the Proposed Permit. On March 9, 2021, JCDH issued a final permit (the Final Permit) to US Steel.

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. CAA § 505(b)(2). The EPA's 45-day review period expired on April 8, 2021. Thus, any petition seeking the EPA's objection to the Proposed Permit was due on or before June 8, 2021. The Petition was received on June 7, 2021, and, therefore, was timely filed.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Claim I.A: The Petitioner Claims That “JCDH conflated a permit renewal, administrative amendment and a reopening throughout the SOB and Draft Permit, making unclear to Petitioner and Commenters the impetus for the permit action subject to public comment and the basis for its proposed approval.”

Petitioner's Claim: The Petitioner claims that JCDH failed to adequately explain whether the permit action “was a permit renewal, administrative amendment or reopening of the Title V permit,” which “is a serious flaw because the public has no idea what type of permit changes JCDH proposes” and “calls into question the adequacy of the permit changes proposed.” Petition at 15. For support, the Petitions assert that the EPA has previously determined that a “permitting authority's failure to adequately explain its permitting decisions in the SOB or elsewhere in the permit record “is such a serious flaw that the adequacy of the permit itself is in question. *Id.*¹¹ In addition, the Petitioner contends that the lack of clarity regarding the permit action “goes against

¹¹ Citing *In re Midwest Generation, LCC, Waukegan Generating Station*, Petition No. V-2004-5 at 8 (September 22, 2005).

EPA’s vision regarding the integration of environmental justice into all aspects of EPA’s work in order to ‘achiev[e] better environmental outcomes and reduc[e] disparities in the nation’s most overburdened communities.’” *Id.* at 14¹²

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

The EPA’s regulations state that the permitting authority must provide the EPA with a statement of basis that sets forth the legal and factual basis for the draft permit conditions. 40 C.F.R. § 70.7(a)(5). In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet a procedural requirement, such as accompanying a permit by a statement of basis meeting the requirements of 40 C.F.R. § 70.7(a)(5), the EPA considers whether the petitioner has demonstrated that the permitting authority’s alleged failure resulted in, or may have resulted in, a deficiency in the content of the permit.¹³ When a permitting authority receives public comments requesting additional information or clarifications of the information in the statement of basis, the EPA expects the permitting authority to supplement the record in its response to comment document.¹⁴ Even when public comments have raised concerns regarding a lack of information in the statement of basis or draft permit, the EPA has historically denied petitions when the state has supplemented the record and/or modified the permit to address concerns received during the public comment period.¹⁵ This is consistent with the requirements in 40 C.F.R. § 70.12(a)(2)(vi) for a petitioner to address the state’s final record and reasoning, including the RTC.¹⁶ Thus, the Petitioner must demonstrate that the record as a whole, including

¹² Citing Exec. Order No. 14,008, 86 Fed. Reg. 7619 (February 1, 2021); Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7629 (Feb. 16, 1994), as amended by Exec. Order No. 12948, 60 Fed. Reg. 6381 (February 1, 1995).

¹³ *In the Matter of U.S. Department of Energy, Hanford* at 25–26 (May 29, 2015) (denying a petition claim regarding the unavailability of a rationale in the statement of basis the petitioners did not demonstrate a flaw in the permit); *In the Matter of Sirmos Division of Bromate Corp.*, Order on Petition No. II-2002-03 at 13–16 (May 24, 2004) (denying a petition claim regarding an inadequate statement of basis because the petitioners did not demonstrate a flaw in the permit and the record as a whole supported the permit).

¹⁴ 40 C.F.R. 70.7(h)(6); *In the Matter of U.S. Department of Energy, Hanford* at 25–26 (May 29, 2015).

¹⁵ *See e.g.*, *In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 10–11 (September 14, 2016) (denying a petition claim because the petitioners did not address the updated statement of basis and the RTC document); *In the Matter of Doe Run Company, Buick Mine and Mill*, Order on Petition No. VII-1999-001 at 25–26 (July 31, 2002) (denying a petition claim when the state supplemented the record in response to comments to address the lack of a rationale in the statement of basis). In comparison, even when a state does not include a rationale or information in the statement of basis, title V of the CAA also allows states to update the record in response to comments. *See e.g.*, *In the Matter of South Louisiana Methanol, St James Methanol Plant*, Order on Petition Nos. VI-2016-24 and VI-2017-14 at 13 (May 29, 2018) (denying a petition claim alleging an insufficient rationale for monitoring where the petitioners did not address the additional rationale provided in the RTC); *In the Matter of Wheelabrator Frackville Energy*, Order on Petition No. III-2017-19 at 13–15 (April 6, 2018) (denying a petition claim alleging that the permit record did not contain a rationale for the monitoring where the petitioners did not address state’s rationale for the monitoring that was added in response to comments); *In the Matter of Luminant Generation Company, Martin Lake, Monticello, and Big Brown*, Order on Petition Nos. VI-2014-01, VI-2014-02, and VI-2014-03 at 13–14 (January 23, 2015) (denying a petition claim alleging that the permit record did not contain a rationale for the monitoring where the petitioners did not address the state’s rationale for the monitoring that was supplemented in response to comments).

¹⁶ *See supra* note 9 and accompanying text.

the statement of basis and response to comments, does not support the terms and conditions of the permit.¹⁷

In the RTC, JCDH explained that the application was posted with the draft permit on August 18, 2020, which contained a detailed explanation of the corrections to the permit. RTC at 1–2. To address any confusion and clarify the record, JCDH also included a detailed explanation of the permitting history and exactly what error corrections were being made with the modification to the title V permit. *Id.* Specifically, the application and RTC explained that the permit was being modified to: 1) correct the PM emission limit for the EAF in permit condition 47 to 21.39 lb/hr; and 2) clarify that emissions from the EAF are routed to the slag management baghouse. RTC at 1–2; Title V Permit Application from US Steel at 1–2 (August 18, 2020).

The EPA finds that the Petitioner has not demonstrated that any potential lack of clarity with the type of permit action led to a flaw in the permit or in the public’s ability to participate in the permit process. While the Petitioner is correct that the statement of basis for the draft modification does contain the word “renewal” in the title, it also states that it is the statement of basis for a revision. Specifically, the statement of basis states that it is a statement of basis for the “Title V Renewal *and Revision.*” SOB at 1 (emphasis added). Despite this confusing language, JCDH clarified in the RTC that this permit action was not a renewal and provided an explanation of what changes were made to the permit. Furthermore, the Petitioner’s potential misunderstanding that the relevant permit action was a renewal rather than a significant modification does not excuse its failure to challenge the permit terms JCDH proposed to revise. Regardless of whether the permit action here was a renewal or a significant modification, the Petitioner had an opportunity to raise any issues regarding the specific corrections to the PM emission limit and the clarifications of which baghouse was used.¹⁸ However, the public comments raised no concerns regarding these two changes but instead focused on other aspects of the permit that had been added during the renewal permit issued on January 8, 2020. *See* US Steel Renewal Title V Permit # 4-07-0731-07. While the EPA could see a possible concern arising if a state limited public participation by mislabeling a renewal permit as a modification, the Petitioner has not demonstrated how mislabeling a revision as a renewal would deprive the public of the opportunity to participate in the permit process.

In addition, even after JCDH explained in the RTC which changes were made with the modification and clarified that the modification was not a renewal, the Petitioner did not raise any concerns with these two changes in the Petition itself. Specifically, the Petitioner did not make any claims related to the PM emission limit or baghouse corrections.

Given the clarification made to the permit record and the lack of any public comments or claims regarding the changes to the PM limit and baghouse, the Petitioner has not demonstrated that the alleged flaw in the public participation process led to a flaw in the permit. In the RTC, which is

¹⁷ *See In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 10–11 (September 14, 2016); *In the Matter of U.S. Department of Energy, Hanford*, Order on Petition Nos. X-2014-01 and X-2013-01 at 25 May 29, 2015); *In the Matter of Onyx Environmental Services*, Order on Petition No. V-2005-1 at 14 (February 1, 2006); *In the Matter of Doe Run Company, Buick Mine and Mill*, Order on Petition No. VII-1999-001 at 25–26 (July 31, 2002).

¹⁸ *See* 40 C.F.R. 70.7(c)(1)(i) (explaining that title V renewals are subject to the same public participation requirements as an initial permit).

part of the permit record, JCDH corrected any alleged flaw in the initial statement of basis by supplementing the record and the EPA finds that the record as a whole supports the terms and conditions changed in this modification.¹⁹

Claim I.B: The Petitioner Claims That “JCDH fails to meaningfully engage with Petitioner’s comments regarding specific permit deficiencies.”

Petitioner’s Claim: The Petitioner claims that JCDH “entirely fail[ed] to respond and inadequately respond[ed] to several of Petitioner’s claims.” Petition at 15. For support, the Petitioner claims that “the unavailability during the public comment period of information needed to determine the applicability of or to impose an applicable requirement also may result in a deficiency in the permit’s content.” *Id.* at 12.²⁰

In particular, the Petitioner asserts that JCDH did not respond to the Petitioner’s request for “a list of the emission units that were planned to be shut down, and also a list of emission units that actually were shut down” upon completion of the EAF. *Id.* at 12–13, 15–16.

In addition, the Petitioner raises several concerns related to the construction permit for the EAF. *Id.* at 17–18. The Petitioner contends that they “learned from JCDH’s RTC on the 2019 Title V permit renewal that there was a halt in construction for the EAF in 2015” and that neither the application nor statement of basis for the current permit modification “provided information on when construction began again.” *Id.* at 16. Further, the Petitioner claims that the title V permit “does not reference the underlying construction permit [for the EAF] because it does not exist” and that JCDH did not respond to comments raising this concern. *Id.* at 17. Therefore, the Petitioner contends that the public was “disadvantaged during the public comment period stage for the title V renewal in 2019 and the Title V reopening in 2020²¹ in adequately determining the applicability of NSR to the source due to information that was not available in the permit record nor through the RTC at the time.” *Id.* at 17. The Petitioner concludes that “[b]ecause the SOB, the entirety of the permit record and JCDH’s RTC were silent on the duration of the halt in construction and when construction of the EAF re-commenced, Petitioner and the public were deprived of the opportunity to meaningfully participate during the permitting process.” *Id.* at 18.

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

The EPA interprets its Title V regulations at 40 C.F.R. part 70 to require different opportunities for citizens to petition on initial permit issuance, permit modifications, and permit renewals. The regulations state that a permit, permit modification, or renewal may be issued if specified conditions are met, 40 C.F.R. § 70.7(a)(1), including a requirement that “[t]he permitting

¹⁹ *In the Matter of Doe Run Company, Buick Mine and Mill*, Order on Petition No. VII-1999-001 at 25–26 (July 31, 2002) (denying a claim where the state provided additional information on the adequacy of monitoring in the RTC).

²⁰ Citing *In the Matter of U.S. Department of Energy – Hanford Operations, Benton County, Washington*, Petition No. X-2016-13, Order on Petitioner (October 15, 2018). See also *In re Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Petition No. 11-2000-07 (May 2, 2001); cf., e.g., *In re Murphy Oil USA, Inc., Meraux Refinery*, Petition No. 2500-00001-V5, (September 21, 2011).

²¹ The EPA notes that the Petitioner refers to the current significant modification subject to the Petition as a reopening, revision, and administrative amendment throughout the Petition.

authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions.” 40 C.F.R. § 70.7(a)(1)(i) and 70.7(a)(5). Further, 40 C.F.R. § 70.7(h) requires the permitting authority to provide adequate procedures for public notice and comment for permit proceedings that qualify as significant modifications and provides that the notice shall identify “the activity or activities involved in the permit action; the emissions change involved in any permit modification; ... and all other materials available to the permitting authority that are relevant to the permit decision ...” 40 C.F.R. § 70.7(h)(2). The EPA interprets these provisions to limit petitions on significant modifications to issues directly related to those modifications.²²

In addition, in the preamble to the part 70 rules, in the broader context of permit modifications, the EPA explained that:

Public objections to a draft permit, permit revision, or permit renewal must be germane to the applicable requirements implicated by the permit action in question. For example, objections addressed to portions of an existing permit that would not in any way be affected by a proposed permit revision would not be germane. Public comments will only be germane if they address whether the draft permit is consistent with the applicable requirements or requirements of part 70.

57 Fed. Reg. 32250, 32290 (July 21, 1992).

In the *Weston Order*, in the context of a significant permit modification, the EPA stated:

[T]his interpretation is not only consistent with the regulations, but it also furthers the statutory requirement that the Title V regulations contain “[a]dequate, streamlined, and reasonable procedures” for evaluating permit applications and issuing permits. Sources required to have a Title V permit to operate must apply for such a permit. At the time the permitting authority issues the source its Title V permit, the public is provided an opportunity to review, comment on, and object to any aspect of that permit. Sources are also required to renew the permit at least every five years, and that process also provides the public with an opportunity to review, comment on, and object to all aspects of the permit. *See* 40 C.F.R. § 70.7(c). EPA’s interpretation that the opportunity to object during significant modification permit actions should be limited to the issues directly related to the permit modifications is a considered one that accounts for the review opportunities available to the public. EPA directed permitting authorities to complete the review of the majority of significant modification actions within nine months, half the time authorized for completion of initial permit issuance and renewal, knowing that the limited scope of the action would allow for expedited processing in most circumstances. 40 C.F.R. § 70.7(e)(4)(ii).

²² *See In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (September 14, 2016) (*Hu Honua Order*); *In the Matter of Wisconsin Public Service Corporation, Weston Generating Station*, Order on Petition No. V-2006-4 at 5–7 (December 19, 2007) (*Weston Order*) (denying a petition claim related to requirements for a unit that was not the subject of the minor permit modification); *see e.g., In the Matter of Tennessee Valley Authority, Shawnee Fossil Plant*, Order on Petition No. IV-2011-1 at 4–7 (August 31, 2012) (*Shawnee Order*) (denying a petition claim related to monitoring, recordkeeping, and reporting for applicable requirements that were not the subject of the reopening).

Weston Order at 6 (citing CAA § 502(b)(6); 40 U.S.C. § 7661a(b)(6)).

As explained in the Section III.B, Permitting History, of this order, the permit action subject to this petition was a significant modification. This modification only corrected the PM emission limit and specified which baghouse was being relied on. *See* RTC at 1–2; Title V Permit Application from US Steel at 1–2 (August 18, 2020).

In claim I.B of the petition, the Petitioner raises concerns related to applicable requirements, including the construction permit for the EAF, that were added during the 2020 renewal permit action. The Petitioner does not raise any specific concerns with correction to the PM emission limit or the baghouse. To the extent that the Petitioner had concerns with the construction permitting process and the inclusion of those requirements into the title V permit, the Petitioner should have raised those concerns during the construction permitting process and the title V renewal permit public comment period and petition period. The correction of the PM emission limit and specification of which baghouse is being used are unrelated to the Petitioner’s claims regarding which emission units were shut down, the incorporation of the construction permit, and the construction permit process. Therefore, the Petitioner’s claims are not related to the current significant modification and outside the scope of the current permit proceeding.

Claim II: The Petitioner Claims That “JCDH lacks authority to allow for a halt in construction greater than 24 months for the EAF, which means U.S. Steel violated the SIP when it commenced construction of the EAF in 2019, more than 24 months after JCDH’s purported initial approval and thus required a new NSR permit in 2019.”

Petitioner’s Claim: The Petitioner claims that the title V permit is deficient because “there is no title I construction permit” and the title V permit “did not contain any clear and documented rationale for any of the monitoring requirements set forth in the Draft Permit for the EAF, EU012.” Petition at 20–21. The Petitioner asserts that the construction permit is “neither referenced nor publicly available because it does not exist.” *Id.* at 21. Further, the Petitioner contends that the title V permit does not contain the monitoring, recordkeeping, and reporting from the construction permit and the title V permit. *Id.* at 20–21. Finally, the Petitioner claims that “several conditions relevant to reporting requirements are dependent upon the Health Officer’s approval,” without any citation to or inclusion of documentation of the Health Officer’s discretion. *Id.*

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

As explained in response to Claim I.B, public comments and petitions are limited to the specific changes made during a title V permit modification.²³ In this case, the Petitioner’s claims and general assertions regarding the inadequacy of monitoring, recordkeeping, and reporting for the construction permit terms are unrelated to the distinct changes made in the significant modification to the title V permit. Any concerns related to the monitoring, recordkeeping, and

²³ *See supra* note 22 and accompanying text.

reporting conditions incorporated from the construction permit and any claim that additional monitoring, recordkeeping, and reporting was necessary under title V, should have been raised during the 2020 renewal permit process when these permit terms and conditions were incorporated into the title V permit. Further, if the Petitioner had concerns regarding the proper incorporation of the underlying construction permit, those claims should have been made when those terms were included in the title V permit during the renewal action. To the extent the Petitioner is claiming that a separate underlying construction permit does not exist, and the construction permit limits and conditions appeared for the first time in the title V permit during the 2020 renewal, the Petitioner should have raised those concerns during the 2020 renewal process.

The EPA finds that all the issues raised in this claim are outside the scope of the current permit action.²⁴ The permit modification only made two corrections to the title V permit related to the PM emission limit and the baghouse. The Petitioner raises no specific claims regarding these two changes and does not make any specific claims related to the monitoring, recordkeeping, and reporting for the EPA to evaluate if their monitoring claims could relate to the change to the PM emission limit or the baghouse.

Even if this claim was inside the scope of the current permit action and not a general allegation, this claim was not raised with reasonable specificity during the public comment period. The public comments do not raise any concerns about the adequacy of the monitoring, recordkeeping, and reporting requirements for the construction permit, nor do the public comments raise any concerns with the adequacy of the incorporation of the construction permit or claim that the permit “does not exist.” Therefore, the Petitioner’s claim is not based on issues that were raised with reasonable specificity during the public comment period as required by title V of the CAA and the EPA’s implementing regulations at 40 C.F.R. part 70.²⁵

Claim III: The Petitioner Claims That “U.S. Steel halted construction of the EAF [f]or greater than 24 months, and violated the SIP by commencing without a new construction permit.”

Petitioner’s Claim: The Petitioner claims that JCDH approved an extension of the construction permit for the EAF for greater than 24 months, which violates the approved SIP requirement for construction to occur within two years. Petition at 21–22 (citing Ala. Admin. Code r. 335-3-14.02(1)(a)). The Petitioner asserts that:

If U.S. Steel received a valid construction permit for the EAF in 2015, that permit would have become invalid on or about March of 2017, 24 months after it halted construction in 2015. The almost four year halt in construction violated the SIP’s requirement to obtain a new construction permit.

²⁴ See *cf. Hu Honua Order* at 38–40; *Weston Order* at 5–7; *Shawnee Order* at 5–7.

²⁵ See 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); see also 40 C.F.R. § 70.12(a)(2)(v); *In the Matter of Phillips 66 San Francisco Refinery*, Order on Petition No. IX-2018-4 at 7–10 (August 8, 2018); *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 5–6 (January 15, 2013).

Id. at 23–24. The Petitioner claims that the approved SIP does not allow for an extension of the construction period. *Id.* at 22. The Petitioner recognizes that JCDH cited their local regulations which allow for extensions of the construction period but claims that the extension still violated the SIP requirement pursuant to Ala. Admin. Code r. 335-3-14.02(1)(a)). *Id.* at 23–24. In addition, the Petitioner contends that JCDH does not have any record “of the Health Officer extending the period of construction nor a showing by U.S. Steel that such halt is justified.” *Id.* at 24–25.

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

As explained in response to Claim I.B, public comments and petitions are limited to the specific changes made during a title V permit modification.²⁶ In this case, the Petitioner’s claim regarding an extension of the 24-month construction period under the Alabama SIP are outside the scope of the current significant modification. Any alleged issue with the incorporation of the construction permit or concerns with the issuance of the construction permit are unrelated to the distinct changes made to the PM emission limit and the baghouse permit condition. To the extent the claim that the extension was in violation of the SIP is related to the incorporation of construction permit terms into the title V permit, those claims should have been raised during the 2020 permit renewal. The EPA finds that this claim is outside the scope of the current permit action.²⁷

Claim IV: The Petitioner Claims That “EPA must object to Permit No. 4-07-0371-09 because the Title V permit does not assure compliance with a non-existent SIP permit for the EAF.[]U.S. Steel neither had a valid NSR permit for construction of the EAF, nor for the re-commencement of construction after a period greater than 24 months, and thus no permit was validly incorporated into the Title V permit.”

Petitioner’s Claim: The Petitioner claims that “EPA must object to the final permit and send it back to JCDH to issue a valid PSD permit to U.S. Steel, and re-draft the Title V permit to properly incorporate the EAF-specific construction terms and conditions into the permit.” Petition at 28. The Petitioner asserts that the construction of the EAF is a major source of air pollution and JCDH should have issued a valid PSD permit. The Petitioner also contends that JCDH “lacked the authority to impose source-specific NSR terms and conditions in legally enforceable permits” and is “not authorized to issue a combined title V and construction permit.” *Id.* at 27.

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

As explained in response to Claim I.B, public comments and petitions are limited to the specific changes made during a title V permit modification.²⁸ In this case, the Petitioner’s claims

²⁶ See *supra* note 22 and accompanying text.

²⁷ See *cf. Hu Honua Order* at 38–40; *Weston Order* at 5–7; *Shawnee Order* at 5–7.

²⁸ See *supra* note 22 and accompanying text.

regarding whether US Steel should have received a PSD permit²⁹ for the construction of the EAF and whether the 2020 renewal permit was a combined NSR and title V permit action in violation of Alabama’s approved program are not germane to the distinct correction to the PM emission limit and the baghouse conditions. Any alleged issues with the creation of the NSR permit terms or the incorporation of the NSR permit terms in the 2020 renewal permit, are outside the scope of the current permit action. The EPA finds that these claims are outside the scope of the current permit action.³⁰

To the extent the Petitioner is claiming that the current significant modification was a combined construction and title V permit action, the Petitioner’s general assertions that JCDH does not have the authority to issue a combined permit does not meet the demonstration burden. The Petitioner provides no analysis of JCDH’s title V regulations or Alabama’s approved SIP to demonstrate that a combined permit process is not appropriate. Rather, the Petitioner’s argument is conclusory and only states that “JCDH has no such authorization to issue permits that contain both construction and title V requirements.” Petition at 27–28. The Petitioner only summarily claims that JCDH title V program does not allow for combined title V and NSR permits to be issued without providing any actual analysis of the approved regulations. Further, the Petitioner only generally asserts that combined permit programs must be expressly authorized and provides no support for this claim. Even if the Petitioner had demonstrated that JCDH should not issue a combined construction and title V permit, which the Petitioner has not done, the Petitioner has not demonstrated that JCDH’s corrections to the title V permit terms for the PM emission limit and the baghouse were also corrections to the allegedly combined construction permit. The EPA has repeatedly held that general assertion and conclusory arguments do not meet the demonstration burden.³¹

V. CONCLUSION

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

Dated: JUN 16 2022



Michael S. Regan
Administrator

²⁹ The EPA notes that JCDH determined that this project was not a major modification for NSR purposes and provided an updated, as built, netting analysis during the public comment period to further show that the project did “not result in a net significant increase in any criteria pollutant.” RTC at 2, 6–9.

³⁰ See *cf. Hu Honua Order* at 38–40; *Weston Order* at 5–7; *Shawnee Order* at 5–7.

³¹ See *supra* note 7 and accompanying text.