

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

IN THE MATTER OF)) Clean Air Act Final Title V Permits) Issued to)) Plains Marketing LP (Mobile, Mobile) County, AL), Permit No. 503-3013) Alabama Bulk Terminal (Mobile, Mobile) County, AL), Permit No. 503-3035) Kimberly-Clark Corporation (Mobile,) Mobile County, AL), Permit No. 503-2012) Epic Alabama Maritime Assets, LLC –) Alabama Shipyard LLC (Mobile,) Mobile County, AL), Permit No. 503-6001) UOP LLC (Chickasaw, Mobile County,) AL), Permit No. 503-8010)) Issued by the Alabama Department of) Environmental Management)	PETITION FOR OBJECTION Permit Nos. 503-3013 503-3035 503-2012 503-6001 503-8010
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**COMPLETE* PETITION TO OBJECT TO THE ISSUANCE OF FIVE TITLE V
PERMITS BY THE ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT**

Pursuant to Clean Air Act § 505(b)(2) (“Act” or “CAA”) and 40 C.F.R. § 70.8(d), GASP, the Greater-Birmingham Alliance to Stop Pollution, Mobile Environmental Justice Action Coalition (“MEJAC”), Clean Healthy Educated Safe Sustainable Africatown (“C.H.E.S.S.”), and Mobile Alabama NAACP Unit #5044 Environmental and Climate Justice Committee (“Mobile AL NAACP”) (collectively, “Petitioners”), petition the Administrator of the United States

* As noted on page 5 of the Petition filed on January 3, 2023, addressing these same Permits, given the time and resource constraints Petitioners faced in preparing objections for all five Permits, Petitioners reserved discussion of objections addressing the failure to comply with CAA requirements for the Kimberly-Clark, Alabama Shipyard, and UOP Permits for a petition to be filed on Monday, January 9, 2022, the statutory filing deadline for filing objections to those Permits. As discussed in more detail below, Petitioners are making only very limited changes in this January 9th Petition to add those specific arguments reserved in the Petition filed on January 3, 2023. All other portions of the January 3rd Petition remain unchanged in this January 9th filing.

Environmental Protection Agency (“EPA” or “the Agency”) to object to the issuance of Title V Renewal Permits (collectively, “Permits”) by the Alabama Department of Environmental Management (“ADEM” or “Department”) for the following five (5) facilities:¹

- Plains Marketing LP (Mobile County, AL), Permit No. 503-3013 (“Plains Marketing”)
- Alabama Bulk Terminal (Mobile County, AL), Permit No. 503-3035 (“AL Bulk Terminal”)
- Kimberly-Clark Corporation (Mobile County, AL), Permit No. 503-2012 (“Kimberly-Clark”)
- Epic Alabama Maritime Assets, LLC – Alabama Shipyard LLC (Mobile County, AL), Permit No. 503-6001 (“Alabama Shipyard”)
- UOP LLC (Mobile County, AL), Permit No. 503-8010 (“UOP”)

Note that ADEM issued the UOP Permit at issue in this Petition as a “Minor Modification” to the Title V renewal permit ADEM previously issued on February 2, 2021. This “Minor Modification” was ADEM’s failed attempt to address objections raised in the EPA’s Order on April 27, 2022 (“*UOP Order*”), responding to a prior petition to object to the UOP renewal permit filed by GASP, which granted a number of objections and required additional permitting action by ADEM.²

As denoted on EPA Region 4’s Alabama Proposed Title V Permit Database (“Region 4 AL Permit Database”),³ Petitioners submitted comments, either alone or with other community

¹ While ADEM appears to use the terms Title V Permit and Major Source Operating Permit, or MSOP, interchangeably or together, this Petition will consistently use the phrase “Title V Permit” or “Permit” to denote the permits issued to fulfill the requirements of Title V of the Clean Air Act and 40 CFR Part 70. See ADEM’s Air Permitting website, referencing the Title V Major Source Operating Permit Program (available at <https://adem.alabama.gov/programs/air/permitting.cnt>) and ADEM’s Public Notice website, which includes notices for three differently named renewals -- Title V Major Source Operating Permit Renewal, Title V Renewal, and Major Source Operating Permit Renewal.

² *In the Matter of UOP LLC, UOP Mobile Plant*, Pet. No. IV-2021-6, Order Granting in Part and Denying in Part a Petition for Objection to Permit (4/27/22) (hereinafter “*UOP Order*”), available at https://www.epa.gov/system/files/documents/2022-05/UOP%20Order_4-27-22.pdf.

³ Available at <https://www.epa.gov/caa-permitting/alabama-proposed-title-v-permits>.

groups within Alabama and other organizations supporting those groups, during the public comment period on drafts of each of these Permits as follows:

- Plains Marketing: 10/30/20 Comments from GASP, Deep South Center for Environmental Justice (“DSCEJ”), C.H.E.S.S., and MEJAC; 3/4/21 Comments from GASP, MEJAC, Mobile AL NAACP, and Sierra Club Mobile Bay Group
- AL Bulk Terminal: 10/28/21 Comment from C.H.E.S.S., DSCEJ, and GASP
- Kimberly-Clark: 4/23/21 Comments from GASP, MEJAC, C.H.E.S.S., and Mobile AL NAACP
- Alabama Shipyard: 5/9/22 Comments from C.H.E.S.S., MEJAC, DSCEJ, GASP, Sierra Club AL Chapter Mobile Bay Group, and League of Women Voters of Alabama
- UOP: 10/24/20 Comments from GASP, MEJAC, C.H.E.S.S., and DSCEJ⁴

Petitioners’ public comments on the draft Permits, as well as other “Public Files” available on the Region 4 AL Permit Database and other documents referenced in the Petition, are included as attachments.⁵

While the decision to address five Permits in one Title V objection request petition may be unusual, such an approach is required given the strict petition deadlines contained in the Clean Air Act (“CAA” or “Act”) and the decision of ADEM to transmit the proposed versions of eight

⁴ Note that these were the comments filed to the original renewal permit issued in February 2021. *See* n.1, *supra*. ADEM did not conduct any public comment period for the “Minor Modification” of that Permit it delivered to EPA in September. *See* Attach B, at 2, (blank box denoting the public comment period dates for the UOP Permit).

⁵ This Petition is accompanied by four PDF attachments.

- Attachment A includes all permitting documents provided in the “Public Files” for each Permit on EPA Region 4’s Alabama Proposed Title V Permit Database (“Region 4 AL Permit Database”), available at <https://www.epa.gov/caa-permitting/alabama-proposed-title-v-permits>. The Attachments are generally provided in groups corresponding to each Permit, which include screenshot of the Public Files list, Draft Permit, Draft Statement of Basis (“SOB”) available at public comment, Petitioners’ Public Comments, Proposed Permit, Revised SOB, Response to Comments (“RTC”), and Final Permit.
- Attachment B includes all of the documents referenced in the January 3rd Petition which are not generally available.
- Attachment C includes additional documents added in the January 9th Petition which are not generally available.
- Attachment D is a redline document that compares the complete text of the January 3rd Petition with this January 9th Petition.

These attachments include a Table of Contents (and relevant Bookmarks in the PDF) listing the documents and an overall page number for easy reference, and are available at https://drive.google.com/drive/folders/18vQfN_k-rkmra4NyRe7NCPinhdEyW0FA?usp=sharing.

permits – including each of the Permits addressed in this Petition – to EPA during a one-week period in September.⁶ Specifically, based on information provided on the Region 4 AL Permit Database it appears that ADEM transmitted the Plains Marketing and AL Bulk Terminal permits to EPA on September 15, 2022, and the Kimberly-Clark, Alabama Shipyard, and UOP permits to EPA one week later on September 22, 2022.⁷ Barring an EPA objection during its review period pursuant to CAA § 505(b)(1), which did not occur for any of these Permits, any parties wishing to object to these permits must do so by January 3 and 9, 2023, under the deadlines set forth in CAA § 505(b)(2).⁸

Petitioners identified many potential issues in each Permit upon which it could petition EPA to object. However, given the time and resource constraints resulting from eight petition filing deadlines in early January, Petitioners have chosen to focus this Petition on the five Permits that represent the emission producing sources of most concern to the communities near them and to raise issues that represent consistence deficiencies in ADEM permitting that could be improved through EPA granting objections to these Permits. Specifically, Petitioners are raising these three types of objections to help ensure that in issuing these Permits, as well as other Title V permits in the future, ADEM will (1) provide the information required and necessary for meaningful public participation in the Title V permitting process, (2) provide meaningful consideration of the environmental justice impacts of Title V permits and ADEM's

⁶ This petition uses “draft” to refer to permits ADEM made available for public comment, “proposed” for permits submitted to EPA for review following public comment, and “final” for signed and effective permits ADEM issued at the conclusion of the EPA’s 45-day review period.

⁷ See Attach B. at 2, Screenshot from Region 4 Proposed Title V Permit Database (noting that EPA’s 45-Day Review period ended for the first four permits on October 30, 2022, and for the second four permits on November 6, 2022).

⁸ The 60-day petition deadline for the first four permits ended on January 2, 2023, a Federal Holiday, so the deadline moves to January 3, 2023. (Confirmed via a December 22, 2022 email exchange with Cheryl Vetter, Group Leader, Operating Permits Group, EPA Headquarters.) Likewise, January 8, 2022 is a Sunday, moving the appropriate deadline to Monday, January 9, 2023.

permitting process, and (3) carefully review the permit terms to ensure they contain all applicable requirements and comply with the Act, especially terms included to avoid major source requirements, as well as specific monitoring, recordkeeping and reporting sufficiently to ensure compliance with those important terms. Accordingly, and as explained in more detail below, EPA should object to these five Permits because:

- ADEM failed to comply with the procedural requirements to issue these Permits;
- ADEM's issuance of these Permits does not comply with Title V's public participation requirements or the prohibition against disparate impacts under Title VI of the Civil Rights Act of 1964; and
- The Permits' terms fail to comply with significant requirements of the CAA, especially regarding the adequacy of synthetic minor limits and monitoring, recordkeeping, and reporting requirements.

In addition, Petitioners note that the recently issued UOP Permit is ADEM's response to the *UOP Order*, but it continues to fail to comply with the requirements of the Act and the Alabama SIP, as explained below. Accordingly, the Administrator should deny the UOP Permit pursuant to CAA § 504 and EPA's Title V regulations, since it was not submitted to EPA within 90 days and fails to satisfy all of the objections identified by EPA.⁹ While denial of the UOP Permit is the appropriate course of action at this time, to the extent EPA does not issue such a denial, EPA should issue another objection to the Permit and provide ADEM with more specific direction regarding how to resolve the issues identified in this Petition.

⁹ 42 U.S.C. § 7761d (c) (“If the permitting authority fails, within 90 days after the date of an objection...to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subchapter.”); 40 C.F.R. § 70.8(c)(4) (same).

Given the time and resource constraints Petitioners faced in preparing objections for all five Permits, Petitioners are addressing their objections across two Petitions – most will be addressed in the January 3rd Petition with a smaller set of objections added in this January 9th Petition. The January 3rd version of the Petition addresses objections based on the deficiencies related to procedural requirements and Environmental Justice (“EJ”)/Title VI listed above for all five Permits, as well as permit-specific objections based on the failure to comply with CAA requirements for the Plains Marketing and AL Bulk Terminal Permits.

This January 9th Petition contains all of the background information and specific objection requests included in the January 3rd Petition and only adds the permit-specific objections addressing the failure to comply with CAA requirements for the Kimberly-Clark, Alabama Shipyard, and UOP Permits, plus minor edits to the overall Petition to address the filing of two petitions (such as modifications to footnote 4 to address additional attachments) and non-substantive typographical errors (such as spelling and outline formatting). This approach allows Petitioners to exercise the full scope of time Congress provided in the Act to raise objections regarding the Kimberly-Clark, Alabama Shipyard, and UOP Permits, while increasing efficiency by allowing EPA to refer to only document – this January 9th Petition (with supporting attachments) – to address all objections and issues raised by Petitioners. In further support of this approach, Petitioners have provided EPA **with Attachment D**, which is a redline document that compares the complete text of the January 3rd Petition with this January 9th Petition to confirm the very specific additions of reserved sections and other minor changes between the two filings.

INTRODUCTION

The Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP facilities are located within Alabama’s “chemical corridor” – a sixty mile stretch of land in Mobile County that is home to at least 28 industrial facilities.¹⁰ In a 2019 EPA study, Alabama ranked fifth out of all the states in most toxic substances released into the air.¹¹ Mobile County had the highest amount of reported toxic releases of all the counties in the state, and the sources were among the largest contributors of air releases in the county. The EJ communities that surround these facilities are also impacted by the criteria pollutants emitted by them and other facilities in the area.¹² Although the National Ambient Air Quality Standards (“NAAQS”) set threshold ambient concentration limits for the criteria pollutants, issuance of permits to sources that seek approval to construct and operate facilities that emit air pollutants play a key role in protecting public health, because air pollution from major emitting sources can harm and potentially even kill members of the public.¹³

¹⁰ “Chemicals: Catalyst for Growth,” ALABAMA POWER https://mobilechamber.com/wp-content/uploads/2019/06/2019_MAST_Brochure_MARCH28_in-order.pdf.

¹¹ See generally Al.com (last visited Mar. 22, 2021); *Alabama Ranks 5th for Industrial Toxic Releases in Air and Water*, ADVANCE LOCAL MEDIA LLC (Mar. 24, 2019), <https://www.al.com/news/2019/03/alabama-ranks-5th-for-industrial-toxic-releases-in-air-and-water.html>.

¹² See, e.g. Attach. B at 6, Map of Particulate Matter 2.5 Levels in Communities Surrounding UOP Plant Mobile.

¹³ See, e.g., *Conservation Law Found. v. Pub. Serv. Co. of New Hampshire*, No. 11-CV-353-JL, at 3 (D.N.H. Sept. 27, 2012) (In Clean Air Act enforcement action against coal-fired power plant, in dismissing claims regarding NOx emissions increases, court finds that “NOx and SO2 emissions have significant adverse effects on public health. These emissions also contribute to the formation of secondary particulate matter that may cause decreased lung function, worsened respiratory infections, heart attacks, and the risk of early death.”); *North Carolina v. EPA*, 531 F.3d 896, 903 (D.C.Cir.2008) (“NOx emissions contribute to the formation of fine particulate matter, also known as PM_{2.5}, as well as ground-level ozone, a primary component of smog.”); *Catawba Cnty. v. EPA*, 571 F.3d 20, 26 (D.C.Cir.2009) (“Elevated levels of fine particulate matter have been linked to “adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma.”); *Ass’n of Irrigated Residents v. EPA*, 686 F.3d 668, 671 n. 1 (9th Cir.2012) (“And ‘even at very low levels,’ inhalation of ozone ‘can cause serious health problems by damaging lung tissue and sensitizing lungs to other irritants.’”); *North Carolina v. TVA*, 593 F.Supp.2d 812, 822 (W.D.N.C. 2009) *rev’d on other grounds*, 615 F.3d 291 (4th Cir. 2010) (In tort case against coal-fired power plants “Court finds that, at a minimum, there is an increased risk of incidences of premature mortality in the general public associated with PM2.5 exposure, even for levels at or below the NAAQS standard of 15 [u]g/m 3.”); *Ohio Power Co. v. EPA*, 729 F.2d 1096, 1098 (6th Cir. 1984) (in challenge to Clean Air Act regulation of power

Mobile County’s population is 59% White and Mobile’s population is 50.6% Black.

Large proportions of the people living within a 1-mile radius of each of these facilities are minorities and living near the poverty line (ratio of household income to poverty level in the past 12 months was less than 2).¹⁴ It is well-established that poor communities and communities of color are disproportionately affected by air pollution; Black Americans in particular face a 54 percent higher health burden compared with the overall population of the United States.¹⁵

This Administration’s recent executive order on the climate crisis renews support for Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,¹⁶ and calls for federal agencies to make environmental justice an integral part of their missions.¹⁷ Executive action is to be taken by this Administration to tackle the climate crisis at home by “immediate review of harmful rollbacks of

plants 25 years ago, court holds “there is now no longer any doubt that high levels of pollution sustained for periods of days can kill. Those aged 45 and over with chronic diseases, particularly of the lungs or heart, seem to be predominantly affected. In addition to these acute episodes, pollutants can attain daily levels which have been shown to have serious consequences to city dwellers.”); *Sierra Club v. TVA*, 592 F.Supp.2d 1357, 1371 (N.D. Al. 2009) (In Clean Air Act enforcement action against coal-fired power plant, court holds “there is no level of primary particulate matter concentration at which it can be determined that no adverse health effects occur.”); *Catawba County v. EPA*, 571 F.3d 20, 26 (D.C. Cir. 2009) (“A ‘significant association’ links elevated levels of PM2.5 with adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma.”); 70 Fed. Reg. 65,983, 65,988 (Nov. 1, 2005) (“emissions reductions resulting in reduced concentrations below the level of the standards may continue to provide additional health benefits to the local population.”); 71 Fed. Reg. 2620, 2635 (Jan. 17, 2006) (U.S. EPA unable to find evidence supporting the selection of a threshold level of PM2.5 under which the death and disease associated with PM2.5 would not occur at the population level). *See also, e.g.*, Attach. B at 5, Map of National-Scale Air Toxics Assessment (NATA) Air Toxics Cancer Risk for Communities Surrounding UOP Plant Mobile.

¹⁴ See Attach. 1 at 109 (AL Bulk Terminal Comments), 391 (Alabama Shipyard Comments), 612 (Kimberly-Clark Comments), and 1097 (UOP Comments).

¹⁵ *EPA Scientists Find Black Communities Disproportionately Hit by Pollution*, THE HILL (Feb. 23, 2018), <https://thehill.com/policy/energy-environment/375289-epa-scientists-find-emissions-greater-impact-low-income-communities#>

¹⁶ Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7629 (Feb. 16, 1994), as amended by Exec. Order No. 12948, 60 Fed. Reg. 6381 (Feb. 1, 1995).

¹⁷ “Executive Order on Tackling the Climate Crisis at Home and Abroad,” § 201 (Jan. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>; see also, White House Fact Sheet, “President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government,” (Jan. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/statementsreleases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

standards that protect our air, water, and communities” as well as increasing environmental justice monitoring and enforcement through new or strengthened offices at the EPA, Department of Justice, and Department of Health and Human Services.¹⁸ The Administration plans on strengthening clean air and water protections, holding domestic polluters accountable for their actions, and delivering environmental justice to all communities in the United States.¹⁹

EPA defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.”²⁰ In its Environmental Justice Strategic Plan for 2016-2020 (“EJ 2020”), EPA outlined its goal to deepen environmental justice practice within its programs to improve the health and environmental of overburdened communities and stated its aim to establish a framework for considering environmental justice in EPA-issued permits.²¹ These actions by the EPA underscore the Agency’s commitment to ensuring that “vulnerable, environmentally burdened, economically disadvantaged communities”²² have access to a safe and healthy environment.

The EPA has also recognized that “Title V can help promote environmental justice through its underlying public participation requirements,” as well as through monitoring, compliance certification, reporting and other measures.²³ Indeed, “[f]ocused attention to the adequacy of monitoring and other compliance assurance provisions is warranted” where a

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Environmental Justice*, EPA.gov, www.epa.gov/environmentaljustice.

²¹ EJ 2020 Action Agenda – The U.S. EPA’s Environmental Justice Strategic Plan for 2016-2020, EPA (May 2016), at iii. (“EPA’s EJ 2020 Action Agenda.”) Available at <https://www.epa.gov/environmentaljustice/environmental-justice-2020-action-agenda>.

²² *Id.*

²³ *In re US Steel Corp – Granite City Works*, Petition Number V-2011-2, Order on Petition (Dec. 3, 2012), at 5.

facility “is home to a high density of low-income and minority populations and a concentration of industrial activity”.²⁴

Consideration of these environmental justice concerns is especially relevant to the issuance of these five Permits. Each of the facilities at issue here has the potential to emit pollution at levels that would have required them to undergo major source permitting under Title I of the CAA and/or adhere to the hazardous air pollutant (“HAP”) provisions in Section 112 of the CAA. That permitting would have resulted in the application of stringent emission controls through the application of the best available control technology.²⁵ Instead, each of these sources sought to avoid these major source permitting and HAP (*i.e.*, MACT/NESHAP) requirements by securing permits to limit their emission below relevant thresholds. Given the overall levels of air pollution impacting the communities in Mobile County as described above, it is imperative that the public can determine that the Title V permits issued to these facilities – and the many others in the area that took similar emission limits – ensure that the terms of those underlying air permits are appropriately reflected in their operating permits and actually meet the permitting requirements of the Clean Air Act and the Alabama state implementation plan (“SIP”), and that these Permits contain the necessary monitoring, recordkeeping, reporting and other measures to ensure that these sources can and do limit their emissions as required. For these five Permits, the public could not make such determinations based on the information ADEM provided during and after the public comment period and the process ADEM used in issuing them. Thus, Petitioners are seeking objections from the Administrator to address the permitting deficiencies that continue to impact these overburdened communities and limit their meaningful involvement in the permitting process.

²⁴ *Id.*

²⁵ 42 U.S.C. § 7475(a)(4).

BACKGROUND

I. Facilities

The following are short descriptions of each facility that received the Permits at issue in this Petition, as described in the revised Statement of Basis (“SOB”) for each Permit provided in the Public Files on the Region 4 AL Permit Database:

Plains Marketing “operates a petroleum bulk storage and transfer terminal” that can receive crude oil, petroleum liquids, and ethanol via ships, barges, tank trucks, or pipeline. “The material is stored in one of the existing storage tanks and is loaded out by ships, barges, tank trucks, or pipeline.” The facility “was originally constructed/began operations in 1951.” The initial title V permit was issued on November 17, 2000, and this is the fourth renewal.²⁶

AL Bulk Terminal is a “bulk liquid storage and transfer terminal for petroleum, organic, and inorganic products...[that] receives, stores, and distributes these products via barge, ship, and tank truck.” It was “originally constructed/began operations in 1958.” The initial title V permit was issued on October 18, 2000, and this is the fourth renewal.²⁷

Kimberly-Clark is a “tissue, towel, and napkin mill” what produces products “made from market pulp, recycled paper, and from other Kimberly-Clark mill's parent rolls.” It was “originally constructed/began operations in 1983.” The initial Title V permit was issued on January 1, 2004, and this is the third renewal.²⁸

Alabama Shipyard is a shipyard in Mobile with emissions from various surface coating, priming, and blasting lines (as well as emergency generators). The original Title V permit was issued on April 23, 2002, and this is the fourth renewal.²⁹

UOP is “a chemical production plant that produces synthetic materials to be used as adsorbents and/or catalyst in various manufacturing applications.” It “was originally constructed/began operations in 1965.” The initial Title V permit was issued on August 15, 2003, and “this is the second renewal.”

While the draft SOBs available during public comment on these Permits contained similar general descriptions of what these facilities do, the operational and permitting history

²⁶ Attach. A at 889, Plains Marketing Revised SOB.

²⁷ Attach. A at 225, AL Bulk Terminal Revised SOB at 1.

²⁸ Attach. A at 653, Kimberly-Clark Revised SOB at 1.

²⁹ Attach. A at 484, Alabama Shipyard Revised SOB at 1. (The SOB does not provide any information on when the various emission producing activities at the Shipyard began.)

summarized above for each facility was added to the Revised SOBs in response to Petitioners' public comments.³⁰

II. Petitioners

GASP, also known as the Greater-Birmingham Alliance to Stop Pollution, is a nonprofit organization with a mission to advance healthy air and environmental justice in the Greater Birmingham area and throughout Alabama through education, advocacy, and collaboration. That mission includes actively engaging impacted communities on air pollution issues, reviewing air pollution permits, and addressing concerns related to air quality, including environmental justice issues. One way in which GASP seeks to improve air quality and address historic and ongoing environmental justice issues in these communities is through advocating for stronger Title V permits.

C.H.E.S.S., a community-based organization in historic Africatown located in Mobile, Alabama, is dedicated to preserving the Africatown community and achieving environmental justice.

MEJAC was formed in 2013 by residents of Africatown in partnership with regional stakeholders and advocates. Their mission is to engage and organize with Mobile's most threatened communities in order to defend the inalienable rights to clean air, water, soil, health, and safety, and to take direct action when the government fails to do so, ensuring community self-determination.

The Mobile AL NAACP envisions an inclusive community rooted in liberation where all persons can exercise their civil and human rights without discrimination. Its mission is to achieve

³⁰ See, e.g., bolded text in the Plains Marketing, AL Bulk Terminal, and Kimberly-Clark Revised SOBs, Attach. A at 889, 225, and 653, respectively, and UOP Updated SOB, Attach. A at 1001.

equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. The Mobile AL NAACP operates within Mobile County, Alabama.

TIMELINESS

As noted above, it appears that ADEM transmitted the proposed permits and related materials for the Plains Marketing and AL Bulk Terminal facilities to EPA on September 15, 2022, and the proposed permits and related materials for the Kimberly-Clark, Alabama Shipyard, and UOP facilities to EPA one week later on September 3, 2022.³¹ EPA's 45-day period to review these permits expired on October 30, 2022, and November 6, 2022, respectively.³² As explained above, Petitioners are submitting two Petitions addressing these five Permits, the first of which was filed on January 3, 2023, and this Petition, which is being filed on January 9, 2023. Accordingly, these submissions are within 60 days following the end of EPA's 45-day review period for each set of Permits submitted to EPA, as required by CAA § 505(b)(2).³³ The Administrator must grant or deny this petition within 60 days after it is filed per 42 U.S.C. § 7661d(b)(2).

LEGAL STANDARDS FOR OBJECTIONS

The Clean Air Act provides that EPA "shall issue an objection ... if the Petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of

³¹ See n. 7, *supra*.

³² *Id.*

³³ Allowing for the Federal Holiday on January 2, 2023. See n.8, *supra*. To the extent EPA determines that any portions of these Petitions are untimely, Petitioners request that EPA treat those portions as a petition to reopen under 40 C.F.R. §§ 70.7(f) and (g).

the” Act. 42 U.S.C. § 7661d(b)(2). Likewise, EPA’s implementing regulations provide that EPA will object to the Permit if it is not “in compliance with applicable requirements or requirements under this [40 C.F.R. Part 70].” 40 C.F.R. § 70.8(c). *See also N.Y. Pub. Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.12 (2d Cir. 2003) (explaining that under Title V, “EPA’s duty to object to non-compliant permits is nondiscretionary”). In 40 C.F.R. § 70.2, EPA defines “applicable requirements” as “(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter.” 40 C.F.R. § 70.2(1) (emphasis added). An additional ground for EPA to object arises when the permitting agency – here ADEM – fails to “[s]ubmit any information necessary to review adequately the proposed permit.” 40 C.F.R. § 70.8(c)(3)(ii).

While states with EPA-approved Clean Air Act programs have independent discretion and are not necessarily required to follow all EPA policies or interpretations,³⁴ a state must conduct its permitting process and underlying analysis in a way that is reasoned and faithful to the Act’s statutory framework.³⁵ Accordingly, in reviewing Title V permits, EPA will ensure that a state adequately explains the basis for the various determinations in their permit – including those associated with major source permitting requirements – and that those determinations comport with the requirements of the Act and the SIP.³⁶

³⁴ *See, e.g.*, 57 Fed. Reg. 28093, 28095 (June 24, 1992).

³⁵ *See Alaska Dep’t of Env’tl Conservation v. EPA*, 540 U.S. 461, 484-91 (2004).

³⁶ *See, e.g., In re East Kentucky Power Cooperative, Inc.*, at 5 (Hugh L. Spurlock Generating Station) Petition No. IV-2006-4 (Aug. 30, 2007).

OBJECTIONS

The U.S. EPA Administrator must object to these five Permits because they do not comply with the Clean Air Act and requirements of 40 C.F.R. Part 70. As explained below, EPA should object to these five Permits because:

- ADEM failed to comply with procedural requirements to issue these Permits.
 - ADEM failed to re-notice those permits for public comment as required by the Act and EPA regulations.
 - ADEM did not provide the “information necessary to review adequately the proposed permit” given the errors and inadequacies in the documents ADEM provided in support of these Permits.
- ADEM’s issuance of these Permits does not comply with Title V’s public participation requirements or the prohibition against disparate impacts under Title VI of the Civil Rights Act of 1964.
 - ADEM failed to adequately respond to comments raising specific environmental justice concerns as required by Title V.
 - ADEM’s issuance of eight permits within one week – all of which involved significant comments from Petitioners, including environmental justice concerns – hinders meaningful public participation by protected groups in violation of Title VI.
- The Permits’ terms fail to comply with significant requirements of the CAA, especially with regard to the adequacy of synthetic minor limits and monitoring, recordkeeping, and reporting requirements.
 - The emission limits for the purpose of limiting Potential to Emit (“PTE”) in the Permits are insufficient to avoid Major Source permitting requirements for the NAAQS pollutants and the MACT/NESHAP requirements.
 - The Permits fail to include the monitoring, recordkeeping and reporting necessary for those limits to comply with the Act.
 - ADEM failed to address other significant issues for several facilities.

In order to address these objection requests as efficiently as possible, given the time and resource constraints noted above, this Petition provides the arguments supporting each objection

generally as they apply to all (or almost all) of the Permits at issue here. We apply those arguments to examples from specific Permits to support each Objection arguments, but we utilize lists, cross-references, and other summary techniques with corresponding citations to the record to set forth the grounds for objection to each Permit as necessary fulfill the requirements for Title V objection petitions in 40 C.F.R. § 70.12(a)(2).

I. ADEM failed to comply with procedural requirements to issue these Permits.

a. ADEM failed to re-notice these Permits for public comment as required by the Act and EPA regulations.

The Title V program is structured to “make it easier for the public to learn what requirements are being imposed on sources to facilitate public participation in determining what future requirements to impose.”³⁷ EPA has recognized that “when a title V petition seeks an objection based on the unavailability of information during the public comment period in violation of title V’s public participation requirements, the petitioner must demonstrate that the unavailability deprived the public of the opportunity to meaningfully participate during the permitting process.”³⁸ In determining whether a petitioner has met this burden, EPA looks to “whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit’s content.”³⁹

EPA has recognized in numerous prior orders that “the unavailability during the public comment period of information needed to determine the applicability of or to impose an

³⁷ 56 Fed. Reg. 21712, 21713 (May 10, 1991).

³⁸ *In the matter of U.S. Department of Energy – Hanford Operations, Benton County, Washington*, Petition No. X-2016-13, Order on Petition (Oct. 15, 2018), at 11. (hereinafter “*Hanford 2018 Order*”) See also *In re Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Petition No. 11-2000-07, Order on Petition (May 2, 2001) (applying the concepts of meaningful public participation and logical outgrowth to title V); cf., e.g., *In re Murphy Oil USA, Inc., Meraux Refinery*, Petition No. 2500-00001-V5, Order on Petition (September 21, 2011) (discussing a response to significant comments as “an inherent component of any meaningful notice and opportunity for comment” (citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977))).

³⁹ *Hanford 2018 Order* at 11.

applicable requirement also may result in a deficiency in the permit’s content.”⁴⁰ A permitting authority’s failure to provide “all relevant materials” to support the permit’s issuance prevents the public from knowing “how the title V permit might be said to meet” the relevant CAA requirements.⁴¹ Therefore, the unavailability of relevant information during the public comment period may cause a permit not to be in compliance with applicable requirements or the requirements of 40 C.F.R. Part 70.⁴²

Indeed, the Title V permitting rules state that the SOB “must contain a brief description of the origin or basis for each permit condition or exemption.”⁴³ It is more than a short form of the permit and “must highlight elements that EPA and the public would find important to review.”⁴⁴ It should not simply restate the permit, but instead include “a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit.”⁴⁵ 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.”⁴⁶

Without an opportunity to review the Title I permits upon which the applicable requirements in these Permits are based, Petitioners and the general public have been “deprived

⁴⁰ *Hanford 2018 Order* at 11. See also *In re Cash Creek Generation, LLC*, Petition No. IV-2010-4, Order on Petition (June 22, 2012), at 9; *In re Louisiana Pacific Corporation*, Petition No. V-2006-3, Order on Petition (November 5, 2007); *In re WE Energies Oak Creek Power Plant*, Order on Petition (June 12, 2009); *In re Alliant Energy-WPL Edgewater Generating Station*, Petition No. V-2009-02, Order on Petition (August 17, 2010).

⁴¹ *Hanford 2018 Order* at 12.

⁴² *Id.*

⁴³ *In re Midwest Generation, LCC, Waukegan Generating Station*, Petition No. V-2004-5 (Order on Petition) (Sept. 22, 2005), at 8.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

of the opportunity to meaningfully participate during the permitting process”⁴⁷ because they have not been able to determine if these Title V Permits include the applicable requirements found in those underlying air permits and otherwise comply with the Act and the Alabama SIP. In this case, EPA must object and direct that ADEM must re-notice each Permit for public comment because the Permits and the supporting SOBs made available during the initial public comment period lacked the information necessary for meaningful public review.

Petitioners’ comments for each Permit explained how information regarding the underlying preconstruction permits that established relevant terms within the Permit were essential for meaningful review of the permit but were not cited or provided, as set forth below:

- Plains Marketing: Petitioners’ 3/4/21 Comments noted that the permitting process lacked meaningful public participation because the SOB stated the source is subject to applicable requirements in a 2005 air permit to avoid major source permitting requirements, but that underlying permit was not made available to the public. GASP also provided extensive comments noting how it could not locate the 2005 permit in the record ADEM provided.⁴⁸
- AL Bulk Terminal: Petitioners’ 10/28/21 Comments noted that the draft Permit failed to reference the SIP construction permits where the emission limitations and other requirements were established.⁴⁹
- Kimberly-Clark: Petitioners’ 4/23/21 Comments noted that the draft Permit contained serious deficiencies regarding information concerning the emission units with PTE limits (X052 and X053) which impeded public review.⁵⁰
- Alabama Shipyard: Petitioners’ 5/9/22 Comments noted that the SOB failed to address underlying SIP and other requirements and that the draft Permit failed to include these SIP requirements and other requirements.⁵¹
- UOP: ADEM did not notice for public comment the changes it made to the Permit and supporting record in response to EPA’s objection order, asserting that they were “Minor

⁴⁷ *Hanford 2018 Order* at 28; see also *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxydol, LLC*, Petition No. 11-2000-07, Order on Petition No. 11-2000-07 (May 2, 2001) (applying the concept of meaningful public participation).

⁴⁸ Attach. A at 799-804, Plains Marketing 3/4/21 Comments.

⁴⁹ Attach. A at 119-121, AL Bulk Terminal Comments.

⁵⁰ Attach. A at 602, Kimberly-Clark Public Comments.

⁵¹ Attach. A at 316-318, Alabama Shipyard Comments.

Modifications” to the Permit issued in 2021. However, Petitioners’ 10/24/20 Comments noted that the SOB was lacking information on previously issued air permits and that they were unable to meaningfully comment on whether certain limit complied with the Act because the air permits establishing various limits in the Permit were not available.⁵²

While ADEM may have added some of the requested factual and historic information to the SOB or Permits in response to Petitioners’ comments,⁵³ adding such information after the public comment period does not comply with Title V permitting requirements. As clearly stated in Petitioners’ comments on the Plains Marketing Permit, “[w]here a Title I permit is used by a facility to avoid the Act’s requirements, the permit must be included in the permit application, part of the set of documents available in the record, and available for public review because its contents are needed to impose the applicable requirements that allow the facility to escape major source permitting, so that the public can review its contents.”⁵⁴ Given that EPA rules require that ADEM provided this information to support the draft Permits, ADEM was required to re-notice them but chose not to do so. Accordingly, the grounds for this objection arose after the public comment period, and Petitioners were not required to comment on them.⁵⁵

Requiring ADEM to re-notice permits for public comment when they fail to include essential information, such as the original permits that form the basis for Title V permit terms, is supported by EPA’s Title V rules. Those rules require that the draft permit made available to the public must include a SOB and “all relevant supporting information,” and that SOB must include

⁵² Attach. A at 1076-78, 1092-95, UOP Comments.

⁵³ In so doing, ADEM did not heed EPA’s suggestion to “provide direct links to [eFile] documents to the public in the future when documents are requested.” *UOP Order* at 15 n.36. The public, including the Petitioners, were still required to search through the many documents in the eFile to find the relevant documents because ADEM’s eFile system lacks search capabilities, as well as clear file names and titles identifying specific documents. In addition, ADEM fails to provide PDF documents in the eFile that are saved with optical character recognition (OCR), which further hampers the public access and review.

⁵⁴ Attach. A at 802, Plains Marketing 3/4/21 Comments at 13 (emphasis added).

⁵⁵ 40 C.F.R. §§ 70.8(d), 70.12(a)(2)(v). While not required to perverse this objection for all 8 permits, Petitioners’ Comments in a number of actions did raise issue of re-noticing, but ADEM did not address the re-notice issue in any of the corresponding RTCs. *See* Plain Marketing Comments at 15, King Cutter Comments at 4, Kimberly-Clark Comments at 12-13, Alabama Shipyard Comments at 32-33, and UOP Comments at 19-20.

“the legal and factual basis for the draft permit conditions.”⁵⁶ The revised SOBs that ADEM provided to EPA made clear that the legal and factual basis for many of the permit terms included in these Permits were air permits that were neither referenced nor explicitly provided during the public comment period. Because this information was not provided during the public comment period, it was impossible for the public to meaningfully consider whether these Permits complied with a fundamental purpose of Title V permitting – to ensure that sources are subject to relevant CAA requirements.⁵⁷

The need to re-notice for permits lacking this fundamental information during the initial public comment period is especially important given EPA’s recent efforts to expand public participation in CAA permitting. Failing to provide such information for public comment also goes against EPA’s vision regarding the integration of environmental justice into all aspects of EPA’s work to “achiev[e] better environmental outcomes and reduc[e] disparities in the nation’s most overburdened communities.”⁵⁸ EPA stressed the importance of transparency and dialogue for positive permitting outcomes in any community.⁵⁹ These concerns are amplified for overburdened communities that may lack the tools and resources to access information needed to meaningfully engage in the permitting process, such as easy access to computers or the technical skills necessary to locate documents in ADEM’s dense eFile system. Without an adequate SOB and citations to specific permit terms in the underlying air permits, members of these communities – as well as the general public and organizations representing the concerns and interests in these communities – cannot ensure that the facilities at issue in this Petition are meeting all applicable requirements. As “meaningful involvement” is a key pillar of

⁵⁶ 40 C.F.R. §§ 70.7(h)(2) and (a)(5).

⁵⁷ *Hanford 2018 Order* at 12.

⁵⁸ EPA’s EJ 2020 Action Agenda, at iii.

⁵⁹ *Id.* at 38052.

environmental justice, a permitting authority's failure to provide relevant information to the public as part of the public comment process only reinforces the injustices faced by communities of color and low-income communities, depriving them of a fair opportunity to weigh-in on the polluting activities affecting their lived experiences.

With regard to the UOP Permit, ADEM cannot assert that adding essential information to the SOB and making other changes to the RTC and Permit was a "minor modification" that did not require public notice. As noted above, the SOB is required to be provided during the public comment period and that SOB must put forth the legal and factual basis for the permit. EPA objected to the UOP Permit because ADEM failed to respond to comments about the lack of necessary information in the SOB and permit record.⁶⁰ In response to that objection, ADEM revised that SOB to add more than 12 pages of necessary information – information that forms the basis for the permit and was required to have been made available during the initial public comment period – and thus should have been made available to the Public here.

Moreover, contrary to ADEM's assertions that the UOP changes are "minor modifications," the specific facts show that the Permit must be re-opened with a public notice and comment period under Alabama's Title V permitting rules. Those rules state that a permit "shall be" reopened and revised following the same procedures as initial permit issuance in the circumstance in which EPA determines that the permit contains a material mistake or inaccurate statements were made in establishing permit terms.⁶¹ Not only did EPA find that ADEM had failed to respond to a number of significant public comments, but EPA determined that "the permit record is inadequate" with regard to its basis for a number of permit terms, including the

⁶⁰ *UOP Order* at 10.

⁶¹ ADEM Admin. Code R. 335-3-16-.13(5).

lack of references to specific authority in the Permit.⁶² In response to EPA’s objection order, ADEM made numerous changes to the SOB, RTC, and the Permit itself, and thus was correcting mistakes (*i.e.*, absences of requirements information) and inaccurate statements (*i.e.*, citations to inaccurate regulatory provisions).⁶³ Accordingly, permit re-opening, with accompanying public notice and comment, was required in light of these serious flaws in the initial issuance of the UOP Permit.⁶⁴

Accordingly, EPA must object to each Permit, making clear to ADEM that it is required to provide during the initial public comment period a SOB that includes “the legal and factual basis” for specific terms in these Permit and “all relevant supporting information” for the Permits. Consistent with both EPA and ADEM’s Title V rules, EPA must direct ADEM to re-notice these Permits, ensuring that information regarding specific emission limits (such as the underlying air permits) and other terms in these Permits are made available for public review and comment.

b. ADEM did not provide the “information necessary to review adequately the proposed permit” given the errors and inadequacies in the documents ADEM provided in support of these Permits.

When ADEM re-notices these Permits per the objection above, EPA must also direct ADEM to ensure that the subsequent Permits delivered to EPA (and the public) for review contains all “information necessary to review adequately the proposed permit” as required by EPA’s rules, including responses to all significant comments.⁶⁵ In preparing this Petition, our

⁶² See *UOP Order* at 11 (lack of rationale for the opacity limits and alternative test methods contained in the permit), 13-14 (lack of specific citations to authority throughout the permit), and 15 (directing ADEM to incorporate and cite to the NSR permitting decision creating various limits in the Permit).

⁶³ Attach. A at 976, ADEM UOP Response Cover Letter at 2 (Responses to Claim 2 and 4).

⁶⁴ See *In re Midwest Generation* at 8 (explaining 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”)

⁶⁵ 40 C.F.R. §§ 70.8(c)(3)(ii), (a)(1).

efforts to streamline factual support for our objections were seriously complicated by the disorganization, lack of clarity, and errors in the information ADEM provided to support issuance of these Permits. As explained below, the information ADEM prepared to support finalization of these Permits is provided in the “Public Files” available for each Permit in the Region 4 AL Permit Database, but that information is riddled with deficiencies and inaccuracies that fail to support the Final Permits and make it impossible for EPA – or the public, including Petitioners – to adequately review the Final Permits to determine whether they meet CAA requirements, including the requirement to provide a meaningful response to public comments.⁶⁶ As this objection relates to information provided by ADEM after public comment period, the grounds arose after the public comment period and Petitioners could not comment on them.

As an initial matter, it is generally difficult to determine the nature of the documents in the “Public Files.” First, the names of the individual files contained in the “Public Files” generally do not indicate what the document is or when ADEM produced it, *i.e.*, whether it is a draft document made available during the public comment period, a document to support the proposed Permit provided for EPA review, or a final document intended to support the final Permits issued to these facilities. This information is also not easily discerned from the information provided at the beginning of these documents. For example, the Public Files for every Permit contain two unsigned copies of permits, but they contain nothing – such as title at the beginning or redline text within the document – that EPA or the public can use to discern which is the proposed permit that reflects any changes made in response to comments.⁶⁷ And at some point following

⁶⁶ 40 C.F.R. § 70.8(a)(1).

⁶⁷ For example, the Plains Marketing public files contain these two documents that are both titled as Major Source Operating Permit, are 50 pages long, and state “DRAFT” for the Issuance, Effective , and Expiration Dates on the first page. See https://mosaiceps.epa.gov/sites/default/files/FRU/A973013D_4_00.pdf and https://mosaiceps.epa.gov/sites/default/files/FRU/A973013P_4_00.pdf. Based on the order of the files provided in the Public Files, Petitioners assumes these are the Draft and Proposed Permits, respectively. See Attach. A at 709, Plains Marketing Public Files List.

the beginning of the public petition period, EPA Region 4 received and added a third permit to each Public File, which appears to be the “Final” Permit because it is signed and dated.⁶⁸ The public files for a number of these permits also contain a file named “Draft Response to Comments.” This petition assumes such “draft” files are actually ADEM’s final Response to Comments (“RTC”) as EPA rules require ADEM to produce an RTC for any permit in which significant public comments were received and no others are available in the public files.⁶⁹

Aside from the general confusion regarding the version of documents that ADEM provided, the substance of those documents makes it difficult to determine whether ADEM fulfilled the requirement to address public comments and to ensure those permits contain the required permit terms.⁷⁰ When the RTCs state that changes were made to the SOB and/or the Permit in response to specific comments, ADEM’s documents do not consistently say which changes were made or where those changes can be found within the specific documents.⁷¹ Instead, the public is left to do a side-by-side comparisons of the relevant documents – especially the permits – to determine the specific changes that occurred. ADEM can be clearer about these issues, as evidenced by the revised SOBs for the Plains Marketing, AL Bulk Terminal, Kimberly-Clark, and UOP, which use bold text to denote the changes made in response to comments, or the updated RTC for UOP, which used asterisks to denoted changed responses.⁷² However, ADEM did not do so for all SOBs and made no such efforts to highlight specific

⁶⁸ For example, the Plains Marketing public files also contains file https://mosaiceps.epa.gov/sites/default/files/FRU/A973013F_4_00.pdf, which is signed and contains specific Issuance, Effective , and Expiration Dates.

⁶⁹ See generally Reg. 4 AL Permits Database, “Public Files” for Plains Marketing and AL Bulk Terminal.

⁷⁰ 40 C.F.R. §§ 70.8(a)(1) and 70.6(a).

⁷¹ For example, see Attach. A at 495-496, Alabama Shipyard RTC at Responses 14 and 15, which state that “[a] statement referencing the originating permits for permit limitations has been added to the SOB” and “[a]ll statements concerning alternative test methods that aren’t specifically listed in 40 CFR 63, Subpart II have been removed from the proposed permit,” but it does not denote which specific portions of the SOB or provisos of the Permit were changed and there is nothing in those documents noting such changes.

⁷² See generally n. 30, *supra* (first page of SOBs).

changes, if any, in the proposed Permits transmitted to EPA. As recently noted by EPA, making the permit application, administrative record, and data easily and publicly available is especially important when interacting with EJ communities such as those surrounding these facilities.⁷³

One of the most frustrating examples is found in Alabama Shipyard Public Files, which contains two SOB files – one SOB is signed and dated in March 2022, which is when ADEM noticed the Permit for public comment,⁷⁴ and the other SOB is unsigned and undated but has a September 2022 date in its file name (by ending in “09-22-2022”) and contains various operational and permitting history information that the RTC noted would be added to the SOB.⁷⁵ In addition, while the Alabama Shipyard RTC notes that the SOB would be updated to include various environmental justice reports,⁷⁶ no such information is available in the file dated September 2022. Instead, those reports are attached to what appears to be the “draft” SOB document dated March 2022, which is impossible because Petitioners specifically commented that there was nothing in the permit record at review to show that ADEM considered environmental justice issues,⁷⁷ which ADEM’s RTC acknowledged as noted above.

In addition, for each of the Permits, ADEM’s RTCs fail to demonstrate that they responded to all significant comments. First, ADEM summarizes pages of comments – sometimes from multiple public commenters – into simple comment summaries without referencing which specific comment it is addressing. Second, while Petitioners generally provided fulsome comments, with citations to relevant legal and regulatory authorities and

⁷³ Attach. B at 15, EJ in Air Permitting – Principles for Addressing Environmental Justice Concerns in Air Permitting (December 2022) at 3 (hereinafter, “EJ in Air Permitting”).

⁷⁴ Attach. A at 373, Alabama Shipyard Draft SOB; *see file available at* https://mosaiceps.epa.gov/sites/default/files/FRU/A976001B_4_00.pdf

⁷⁵ Attach. A at 484, Alabama Shipyard Revised SOB; *see file available at* https://mosaiceps.epa.gov/sites/default/files/FRU/A976001B_4_00%2009-22-2022.pdf

⁷⁶ Attach. A at 493, Alabama Shipyard RTC at 1 (Response 1).

⁷⁷ Attach. A at 381-383, Alabama Shipyard Draft SOB at 9-11; Attach. A at 393, Alabama Shipyard Comments at 10.

various attachments, ADEM's responses were usually a few lines long and failed to engage with the specific significant details of those comments and their extensive accompanying legal, regulatory, and factual research supports. Take for example, Plains Marketing, where Petitioners submitted two sets of comments. Petitioners' 10/30/20 Comments identified more than 10 specific comments over 16 pages and its 3/4/21 Comments identified at least 20 specific comments over 43 pages.⁷⁸ ADEM's RTC addresses these two sets of comments, as well as two additional comment from individual citizens, in one RTC document of less than ten total pages, where almost half of those pages are composed of headings, spaces, and very short summaries of the comments.⁷⁹ The comment summaries provided in the RTC do not identify the which comments are being summarizing by either identifying the commenter and/or referencing specific comment page numbers.⁸⁰

ADEM addressed public comments in the other Permits similarly:

- AL Bulk Terminal: Petitioners' 10/28/21 Comments identified at more than 15 specific comments over 47 pages, which ADEM's RTC summarized and responded to in 6 pages.⁸¹
- Kimberly-Clark: Petitioners' 4/23/21 Comments identified at more than 15 specific comments over 27 pages, which ADEM's RTC summarized and responded to in 5 pages.⁸²
- Alabama Shipyard: Petitioners' 5/9/22 Comments identified more than 25 specific comments over 27 pages, which ADEM's RTC summarized and responded to in 6 pages.⁸³

⁷⁸ Attach. A at 774 and 793, Plains Marketing Comments.

⁷⁹ Attach. A at 914, Plains Marketing RTC.

⁸⁰ *See generally id.*

⁸¹ Attach. A at 99 and 249, AL Bulk Terminal Comments and RTC

⁸² Attach. A at 592 and 671, Kimberly-Clark Comments and RTC

⁸³ Attach. A at 384 and 492, Alabama Shipyard Comments and RTC

- UOP: Petitioners’ 10/24/20 Comments identified at more than 15 specific comments over 25 pages, which ADEM’s Updated RTC summarized and responded to in 6 pages in 2021, and revised to 8 pages in 2022.⁸⁴

Because ADEM’s RTCs contain such short summaries of the public comments it received without any citation to specific pages in those comments, the only way EPA – and the public – can determine whether ADEM fulfilled its obligation to respond to all significant comments is to review each comment letter and ADEM RTC side by side to see if the RTC summaries capture each comment and responses address all issues raised within the comments. It is difficult to imagine that EPA could undertake such a review during its 45-day comment period, especially in an instance such as this where ADEM delivered eight Permits (each of which received significant public comment) to EPA within one week. Likewise, the information provided by ADEM makes it difficult for the public to review these permits and determine if they comply with the Act and associated Title V permitting requirements. Such information is necessary for ADEM to support the Final Permits at issue here.⁸⁵

The deficiencies in the Public Files supporting these Permits identified above, including ADEM’s failure to clearly demonstrate that it responded to each significant comment and failure to identify specific changes in all Permits and SOBs made in response to those comments, mean that ADEM failed to submit the “information necessary to review adequately” – a failure that “shall constitute grounds for an objection.”⁸⁶ Accordingly, EPA must object to these Permits and

⁸⁴ Attach. A at 1075, 1137, and 1044, UOP Comments, 2021 RTC, and Updated RTC. The brevity of the UOP RTC is especially astounding given that it is a revised RTC issued in response to an EPA Order directing ADEM to “adequately respond to the significant comments.” *UOP Order* at 11, 14, and 15.

⁸⁵ See generally *In the Matter of United States Steel Corporation - Granite City Works*, Order on Petition No. V-2011-2 (December 3, 2012) at 10-12 (granting a petition and directing the permitting authority to include specific types of information in the permit and explanations in the SOB because even though the permitting authority provided a response to public comments on monitoring, the record made it impossible to know whether the specific monitoring terms assured compliance with the permit terms and complied with Title V requirements).

⁸⁶ 40 C.F.R. 70.8(c)(3)(ii) (emphasis added).

direct ADEM to fix all the deficiencies in the “Public Files” supporting each Permit, including clearly identifying each document in the public file on its face, clearly identifying changes made in the Permit, SOB, or RTC in response to public comments (or any other EPA objection), and revising the RTCs to clearly indicate the specific comments being summarized and responded to.

II. ADEM’s issuance of these Permits does not comply with Title V’s public participation requirements or the prohibition against disparate impacts under Title VI of the Civil Rights Act of 1964.

Even though the public comment periods for the eight Permits ADEM delivered to EPA in mid-September 2022 occurred at various points in an 18-month period between October 2020 and May 2022, ADEM chose not to space out the finalization of those Permits and their related delivery to EPA. Instead, ADEM delivered the Permits – including their respective responses to the public comments Petitioners filed in all eight actions – to EPA during a one-week period in September. The timing of ADEM’s action created an objection petition period that included state and federal holidays (Thanksgiving, Christmas, and New Year’s) and lead to deadlines for all eight permits falling within a one-week period in early 2023.⁸⁷ Moreover, ADEM did not inform Petitioners that it had responded to their comments and sent the proposed permits to EPA, even though Petitioners had submitted comments on those permits and asked ADEM for such notification. Instead, Petitioners only learned of ADEM’s actions by checking the Region 4 AL Permit Database website.⁸⁸

⁸⁷ See n.8, *supra*.

⁸⁸ Petitioners note that the Region 4 AL Permit Website does not help with enabling public involvement in this process. The website is formatted in such a way that is not easy to determine when EPA receives new permits (*e.g.*, it does list the newest permit entries first) and thus the public cannot create automatic notifications of changes to the page and instead must do manual checks of the website on a periodic basis. EPA could make simple changes to the website to address these issues, or set up its own email notification system when it receives new permits for review and/or when its review period has ended without issuance of an objection.

During the public comment period for each and every one of the eight permits ADEM delivered to EPA in mid-September, Petitioners (often with other organizations), raised concerns that the specific terms of these permits did not comply with the requirements of Act and/or the Alabama state implementation plan. The public files provided to EPA, such as ADEM's proposed and final Permits, RTCs, and revised SOPs, are the first time Petitioners and other commenters have seen how ADEM addressed the concerns they raised in public comment. Delivering eight permits and their accompanying documents to EPA within a one-week period makes it difficult for the impacted communities, interested organizations, and the general public to review them fully. Such review is necessary to ensure that the Final Permits comply with the Act and that ADEM's supporting documents contain all "information necessary to review adequately" review the as required by EPA's rules, including responses to all significant public comments.⁸⁹ Moreover, delivery of all eight Permits within one-week is unreasonable and fails to provide adequate time for the public to take the one remaining action provided by the Clean Air Act to address any noncompliance in the permits – filing a petition to object with EPA. The consequences of ADEM's actions are especially problematic for Alabama residents in Africatown and Mobile that are impacted by cumulative emissions from the operation of numerous sources, including several of the sources authorized by the five Permits at issue in this Petition.

ADEM was aware of these potential concerns, since the Petitioners' Public Comments made clear that they were submitting comments as part of their mission to advance healthy air and environmental justice for these communities in Mobile and throughout Alabama. For example,

⁸⁹ 42 U.S.C. § 7661c(a), 40 C.F.R. §§ 70.8(c)(3)(ii) and (a)(1).

- Plains Marketing: Petitioners’ 3/4/21 Comments were a “request” from the minority and low-income populations in the community surrounding the facility, as well as groups advocating on their behalf, that “ADEM place special focus and resources” on addressing the impacts on these communities in issuing air permits.⁹⁰
- AL Bulk Terminal: Petitioners’ 10/28/21 Comments identified the commenters as groups seeking to achieve environmental justice and address air pollution in Mobile’s Africatown community, Alabama, and the Gulf Coast Region.⁹¹
- Kimberly-Clark: Petitioners’ 4/23/21 Comments noted that the commenting groups sought changes in the Permit to “better protect the health of residents – including those located in the environmental justice community adjacent to the Kimberly-Clark plant - and air quality in Mobile County.”⁹²
- Alabama Shipyard: Petitioners’ 5/9/22 Comments identified the commenters as groups seeking to achieve environmental justice and address air pollution in Mobile’s Africatown community, Alabama, and the Gulf Coast Region.⁹³
- UOP: Petitioners’ 10/24/20 Comments noted that the commenting groups sought changes in the permit to “better protect the health of residents and air quality in Mobile County.”⁹⁴

Moreover, the public comments for the five Permits in Mobile County addressed in this Petition – Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP – also raised concerns about the potential environmental justice (“EJ”) and civil rights impacts of each of these facilities on the nearby communities. However, ADEM’s actions show that they failed to meaningfully consider these comments or consider and include provisions in the final Permits to address the implications of their current permitting actions on these communities.

It should be noted that prior to filing this Petition, one Petitioner (GASP) requested that ADEM withdraw the eight Permits submitted to EPA in mid-September 2022 and re-submit them to EPA in a phased manner in order to facilitate meaningful public participation in the

⁹⁰ Attach. A at 790, Plains Marketing 3/4/21 Comments at 1

⁹¹ Attach. A at 100, AL Bulk Terminal Comments at 2

⁹² Attach. A at 592, Kimberly-Clark Comments at 1

⁹³ Attach. A at 385, Alabama Shipyard Comments at 2-3

⁹⁴ Attach. A at 1075, UOP Comments at 1.

permitting process by Petitioners, other organizations in Alabama, and their members.⁹⁵ GASP requested that ADEM respond to this request within 5 business days, given the pending petition deadlines, but ADEM has provided no response as of the date of this Petition.

In light of the stringent statutory deadline for filing objection petitions, the intervening holiday periods, and Petitioners' generally limited resources, Petitioners cannot raise to EPA all of their concerns, and potential objections, regarding the five Permits issued to sources in Mobile County and cannot raise any potential objections regarding the other three permits transmitted to EPA in mid-September, and are thereby deprived of meaningful participation in ADEM's permitting process.

a. ADEM failed to adequately respond to comments raising specific environmental justice concerns as required by Title V.

EPA's Title V regulations make clear that ADEM must respond meaningfully to all significant comments raised.⁹⁶ In the public comments on each of the Mobile County permits, Petitioners noted that ADEM had failed to address EJ issues in a meaningful manner.

Specifically:

- Plains Marketing: Petitioners submitted two comments
 - Petitioners' 10/30/20 Comments alleged that ADEM failed to consider EJ concerns as required by its mission to "assure for all citizens of the state a safe, healthful, and productive environment" (Citing ADEM website at <http://www.adem.state.al.us/default.cnt>) and argued that ADEM must provide for more communication with the public during the permitting process and that the permit "must be specific enough for enforcement" by the public. The Comments also noted that ADEM had not considered the health impacts of the air pollution from this source and the many other sources in the surrounding area.⁹⁷
 - Petitioners' 3/4/21 Comments argued that the draft permit is "not protective of the of the surrounding EJ community" and raised specific concerns about the

⁹⁵ See Attach. B at 7, GASP Withdrawal Request Letter.

⁹⁶ 40 C.F.R. § 70.8(a)(1).

⁹⁷ Attach. A at 785-89, Plains Marketing 10/30/20 Comments at 12-16

amount of VOCs from this facility that have been impacting the community for more than 60 years.⁹⁸

- AL Bulk Terminal: Petitioners’ 10/28/21 Comments noted three different pollutants of concerns for the EJ community emitted by the facility and argued that ADEM failed to protect civil rights by proposing a permit that would continue and worsen racially disproportionate impacts of the facility. They also noted that ADEM failed to undertake any specific analysis “to address, much less mitigate or avoid, racially disproportionate pollution burdens.”⁹⁹
- Kimberly-Clark: Petitioners’ 4/23/21 Comments included extensive EJ-related comments arguing that ADEM’s “failure to consider environmental justice factors as a part of this permit renewal is arbitrary and capricious” and listing specific changes that must be made to provide meaningful EJ public involvement and address EJ concerns.¹⁰⁰
- Alabama Shipyard: Petitioners’ 5/9/22 Comments included extensive EJ-related comments arguing that the emissions from the facility have EJ and Civil Rights implications and should thus receive stricter scrutiny. They also noted that ADEM failed to conduct any specific outreach to or engage meaningfully with the surrounding EJ community, and explained that simply producing EJSscreen reports was insufficient. ADEM “failed to assess or even address the adverse impacts that a permit renewal to Alabama Shipyards would have on nearby residents.” They also noted that ADEM did not consider how it could implement protections for the overburdened community, such as requiring fence-line air monitoring or increasing facility inspections.¹⁰¹
- UOP: Petitioners’ 10/24/20 Comments noted that the facility was one of the largest emitters of air pollution in Mobile County and the state, and argued that the “sheer amount of polluting industry located in Mobile County” demonstrated ADEM’s lack of regard for EJ communities in the area.¹⁰²

Instead of addressing these comments in a meaningful, source-specific manner, ADEM’s response – in its entirety or in large part – was the same for each Permit, stating:

The draft permit contains emission limits based on state and federal regulations that are protective of human health and the environment. Moreover, the Department has a robust public engagement program (see <http://www.adem.alabama.gov/MoreInfo/pubs/>)

⁹⁸ Attach. A at 791-93, Plains Marketing 3/4/21 Comments at 1-3

⁹⁹ Attach. A at 108-110, AL Bulk Terminal Comments at 10 -12

¹⁰⁰ Attach. A at 612-18, Kimberly-Clark Comments at 21-27

¹⁰¹ Attach. A at 390-94, Alabama Shipyard Comments at 7-11

¹⁰² Attach. A at 1099-1103, UOP Comments at 23-27. While Petitioners did not previously raise and EPA did not object to environmental justice concerns with the UOP Permit, we are providing them here as they are relevant in light of ADEM’s decision to issue all of these Permits at once and address all of these EJ comments with the same generic answer.

ADEMCommunityEngagement.pdf) that utilizes a number of tools, such as EPA’s EJ Screen: Environmental Justice Screening and Mapping Tool, to ensure that local residents and stakeholders are provided a meaningful opportunity to participate in the permitting process.¹⁰³

However, ADEM provides no evidence that it engaged in the types of community engagement and outreach provided for in the document cited in the response. ADEM did not arrange public meetings with the surrounding community to discuss the Permits and any environmental justice concerns they might have raised.¹⁰⁴ This short, *pro forma* response simply does not adequately respond to the varied, specific, and significant procedural and substantive issues raised in Petitioners’ comments.

For example, ADEM does not explain how providing EJScreen reports without any additional analysis ensures that surrounding communities have a meaningful opportunity to participate in the permitting process. In fact, EPA has found that use of the EPA’s EJScreen to document facts about the surrounding community alone is insufficient to ensuring environmental justice and civil rights protections; rather EJScreen “is a useful first step in understanding environmental justice concerns that communities face.”¹⁰⁵ EPA has explained the EJ considerations expected of permitting agencies with delegated Title V permitting authority, such as ADEM. These expectations include enhanced outreach and engagement with the community impacted by a source proposed for a permit renewal, such as listening sessions prior to releasing the draft permit for public comment and providing fact sheets and advance notice of when the permit would be released for public comment.¹⁰⁶

¹⁰³ See Attach. A at 249 (AL Bulk Terminal RTC), 492 (Alabama Shipyard RTC), 675 (Kimberly-Clark RTC), 914 (Plains Marketing RTC), and 1045 (UOP RTC).

¹⁰⁴ See Attach. B at 35, 37, ADEM Community Engagement (Aug. 2022) at 16, 20, *available at* <http://www.adem.alabama.gov/MoreInfo/pubs/ADEMCommunityEngagement.pdf>.

¹⁰⁵ EPA Objection to Suncor Energy, Inc. Plant 2 Title V Operating Permit (March 25, 2022) at PDF 7 (emphasis added), *available at* <https://www.epa.gov/system/files/documents/2022-03/epa-suncor-plant-2-title-v-objection-letter-2022-03-25.pdf> [hereinafter “*Suncor Objection*”].

¹⁰⁶ *Suncor Objection* at 8.

Indeed, ADEM fails to undertake even the most basic form of outreach – providing a phone number (preferably identifying a specific individual) for community members to call with questions about the proposed permit action is missing from ADEM’s notices.¹⁰⁷ ADEM certainly did not take these steps or those advocated in a number of Comments that would provide meaningful participation, such as delivering specific information about the source and the permit in a way that allowed the surrounding community to understand the permit and enforce its terms.¹⁰⁸ In fact, EPA recently issued guidance regarding the consideration of EJ in air permitting, and it specifically identifies many of the techniques advocated in Petitioners’ Comments but left unconsidered by ADEM, such as early engagement with the community to help identify mitigation measures or “making the permit application, administrative record, and data easily and publicly available providing more easily understandable support documents to supplement a statement of basis or other permit decision support documents.”¹⁰⁹

Likewise, ADEM did not respond to any of the comments regarding the specific emission impacts borne by citizens in Mobile County or the specific communities surrounding these facilities. Nor did ADEM provide any evidence that it had even considered using their Title V authority to include permitting mechanisms to protect those communities, such as requiring fence-line air monitoring or increasing facility inspections. Such actions can be used to monitor the facilities’ compliance with the terms of their Title V Permits, and so ADEM should consider them as part of their under obligation to determine these Permits need to include additional monitoring, recordkeeping, and/or reporting requirements to ensure that these facilities are

¹⁰⁷ While the draft SOB and other documents may include ADEM staff information, often staff email and phone numbers are neither included in the state’s website directory, nor are they available on ADEM’s website.

¹⁰⁸ Plains Marketing 10/30/20 Comments at 15, Kimberly-Clark at 24, and UOP Comments at 26.

¹⁰⁹ Attach. B at 14-15, EJ in Air Permitting at 2-3.

complying with the terms of these Permits.¹¹⁰ The Fourth Circuit Court of Appeals has vacated a CAA permit issued by a state environmental agency for failure to determine the character and degree of injury to the health of a nearby community and the suitability of air pollution in the community, noting that “environmental justice is not merely a box to be checked.”¹¹¹

For the reasons stated above, ADEM failed to provide meaningful responses to the specific EJ comments raised by Petitioners. Such a failure to address these EJ concerns is especially problematic given ADEM’s decision to finalize all of these Permits on the same day as or within one week of one another without any consider of the cumulative emission impact concerns raised in the comments.¹¹² Accordingly, Petitioners strongly encourage EPA’s Administrator to object to the Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP Permits and direct ADEM to address the substance of Petitioners’ comments, including consideration of whether the specific emission impacts of these sources (alone and in combination with the total of approximately 28 major operating sources in the area) warrants revised or additional monitoring, recordkeeping, and reporting requirements to ensure that the sources and their emissions are in compliance with their Permits and do not violate CAA air quality requirements, including an analysis of the cumulative air impacts.¹¹³

¹¹⁰ 42 U.S.C. § 7661c. (c).-

¹¹¹ *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68, 92 (4th Cir. 2020).

¹¹² *See generally* n.97-102, *supra* (cites to EJ portions of comments). For example, Petitioners’ Plains Marketing 10/30/20 Comments and Kimberly-Clark Comments specifically stated “ADEM must consider the disparate and cumulative impacts of its permitting decision on people living near” these facilities. *See* Attach. A at 785 and 612.

¹¹³ *See, e.g., Suncor Order* at Enclosure B, pages 4-5, recommending that in response to EPA’s Title V objection, the state permitting authority engage with stakeholders, including community members to conductive an analysis of cumulative air impacts in the area surrounding the facility and to submit the final fenceline monitoring plan that was already in process for incorporation into the SIP so that it would be an applicable requirement under Title V.

b. ADEM’s issuance of eight permits within one week – all of which involved significant comments from Petitioners, including environmental justice concerns – hinders meaningful public participation by protected groups in violation of Title VI.

Title VI of the Civil Rights Act of 1964 prohibits any program or agency that receives Federal financial assistance from discriminating on the basis of race, color or national origin. As ADEM receives such Federal financial assistance,¹¹⁴ Title VI prohibits discrimination throughout the Department and its programs, including its permitting program.¹¹⁵ EPA’s recent guidance reiterated the Title V obligation of permitting authorities such as ADEM, and noted that where a permitting authority’s “decision is likely to have an adverse and disparate effect on the basis of race, color, national origin (including LEP), disability, sex, or age, then the program should consider broadly the availability of less discriminatory alternatives.”¹¹⁶ Petitioners’ comments on these Permits were being submitted for their members, which include historically disadvantaged racial groups and communities of color. ADEM’s decision to finalize eight permits, including the five Permits at issue in this Petition, within a one-week period limits meaningful participation by these groups and their members and

¹¹⁴ See generally, CAA §105, describing federal grant support for state air pollution control agencies, such as ADEM; see also March 22, 2022 letter from Caroline Freedman, Air and Radiation Director, EPA Region 4, to Ron Gore, Air Division Chief, ADEM, raising the requirements of ADEM’s CAA Section 105 grant while noting concerns with Alabama’s 2021 Annual Ambient Air Monitoring Network Plan, available at <https://www.scribd.com/document/571905973/2021-12-Alabama-adem-Network-Plan-Disapproval-Final-032222>.

¹¹⁵ As a state agency, any ADEM activity or operation is considered a “program or activity” within the meaning of civil rights laws and EPA’s nondiscrimination regulations. 40 C.F.R. Part 7 (2022). Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Age Discrimination Act, and EPA’s regulations all define a “program or activity” as “all of the operations of... a department, agency, special purpose district, or other instrumentality of a State or of a local government[.]” 42 U.S.C. § 2000d-4a; 42 U.S.C. § 6107; 29 U.S.C. § 794(b)(1)(A); 40 C.F.R. § 7.25. Furthermore, Congress’ definition of “program or activity” is unambiguous, making it “clear that discrimination is prohibited throughout entire agencies or institutions if any part receives Federal financial assistance.” *Lopez v. City of Dallas, Tex.*, 2004 WL 2026804, at *9-10 (N.D. Tex. 2004) (citing S. Rep. 100-64); *Grimes v. Superior Home Health Care of Middle Tenn.*, 929 F. Supp. 1088, 1091-92 (M.D. Tenn. 1996) (“the [Civil Rights Restoration Act of 1987] was intended to ensure that the various civil rights statutes would apply to the entirety of any state or local institution that had a program or activity funded by the federal government.”) (internal quotes omitted).

¹¹⁶ Attach. B at 16, EJ in Air Permitting at 4.

thus is prohibited under Title VI because it results in the disparate impacts or discriminatory effects on a protected class.¹¹⁷

EPA's nondiscrimination implementation regulations make clear that a recipient need not intentionally discriminate against a protected class to be in violation of EPA's nondiscrimination regulations.¹¹⁸ As noted in the various public comments on these permits and discussed in the section above, many of these sources disproportionately burden residents of color. For example, the entire first section of Petitioners' March 4, 2021 Comments on the Plains Marketing permit was devoted to the potential environmental justice impacts of the permit on disproportionately impacted communities surrounding the Mobile Terminal at issue.¹¹⁹ Similarly, the comments on the Kimberly-Clark permit noted that the community surrounding the facility contained a high percentage of minorities and people near the poverty line that would be disproportionately impacted by the emissions being permitted.¹²⁰ ADEM was aware that the communities surrounding these facilities were concerned about the impact of these permits, because Petitioners raised those concerns in detailed public comments to the Department regarding each Permit. Such comments included concerns about the failure of these Permits to include terms addressing emissions as required under the Act, as noted in the other objections below. In addition, five of those comments specifically noted that protected groups were in the those

¹¹⁷ We note that this is not the first time ADEM has taken such prohibited actions in its permitting. In early August 2022, ADEM similarly delivered to EPA in one day five permits in which GASP (and others) had commented: Alabama Power Company – Theodore Cogeneration Plant (Permit No. 503-8073), Southern Power Company – EB Harris Generating Plant (Permit No. 201-0010), southern Power Company – H. Allen Generating Plant (Permit No. 206-0036), Hog Bayou Energy Center (Permit No. 503-8066), and W&T Offshore, Inc. – Mary Ann Field Offshore Production Platform (Permit No. 503-0010). *See generally* Region 4 AL Permits Database.

¹¹⁸ 40 C.F.R. § 7.35(b); *see also* EPA External Civil Rights Compliance Office (ECRCO), Case Resolution Manual, 26-27 (Jan. 2021), available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf.

¹¹⁹ Attach. A at 791, Plains Marketing Comments.

¹²⁰ Attach. A at 612, Kimberly-Clark Comments

surrounding communities and raised specific concerns EJ concerns regarding ADEM’s permitting. Accordingly, ADEM knew that Petitioners and the protected groups within the communities they represent were interested in ADEM permitting actions for these facilities. However, in spite of this knowledge, ADEM chose to transmit all eight permits to EPA within a one-week period, which made it difficult for these protected groups to assess each of those permits to determine whether (a) the final permits complied with requirements of the Act and the Alabama SIP and (b) ADEM had provided meaningful consideration of and responses to all the other significant issues raised in the comments, including EJ concerns. Thus, ADEM’s actions have a disproportionate impact on the Black and other disproportionately burdened residents of Alabama, depriving them of meaningful access to participate ADEM’s programs or activities, and thus amounts to discrimination on the basis of color in violation of Title VI.¹²¹

This disparate impact is exacerbated by the specific timing of ADEM’s actions here. The mid-September transmittal of eight permits to EPA meant that Petitioners and the communities they represent would have to complete any objection petitions, such as this one, during a period that included multiple Federal and cultural holidays,¹²² which is when many communities are busy with other activities and many organizations, including Petitioners’, are closed in observation of those holidays.

We note that this is not the first time ADEM has taken such prohibited actions in its permitting. In December 2020, ADEM transmitted four Title V permits – including the 2021 UOP renewal permit – to EPA on the same day, all of which had significant public interest,

¹²¹ See e.g., EPA Office of Gen. Counsel, Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions, 6 (Aug. 2022), (“A recipient’s compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with civil rights laws”) <https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf> (“EPA FAQ”).

¹²² Including Thanksgiving, Kwanza, Hanukkah, Christmas, and New Year’s Day.

including comments by one or more of the Petitioners.¹²³ At that time, due to similar resource constraints, Petitioners filed Title V objection petitions on only two of those permits, both of which were successful and resulted in the EPA Administrator issuing orders objecting to numerous deficiencies in both permits.¹²⁴ Likewise, in early August 2022, ADEM similarly delivered to EPA in one day five permits in which at least one of the Petitioners had commented.¹²⁵ Petitioners were unable to file any objection petitions due to staffing transitions and other resource issues, but it should be noted that those final permits contained many deficiencies similar to the ones identified in this Petition.¹²⁶

EPA must take action to ensure that ADEM does not continue to take such actions causing disparate impacts (*i.e.*, submitting more than one permit to EPA within a short time period with significant comments from EJ communities), especially as these actions exacerbate the other public participation issues raised in Petitioners' objections above. Accordingly, to the extent EPA grants Petitioners' other objection requests and ADEM is required to address the objections through additional permitting actions, EPA should direct ADEM to release any subsequent actions in a staggered manner that allows Petitioners and the communities they

¹²³ Those included the 2021 UOP permit renewal and three permits for Alabama Power Company (APC) plants: APC Plant Barry (Permit No. 503-1001); APC Gaston Steam Electric Generating Plant (Permit No. 411-0005) and APC Greene County Steam Electric Generating Plant (Permit No. 405-0001)

¹²⁴ See *UOP Order*, and *In the Matter of Alabama Power Company, Barry Generating Plant*, Petition No. IV-2021-5 (June 14, 2022).

¹²⁵ Alabama Power Company – Theodore Cogeneration Plant (Permit No. 503-8073), Southern Power Company – EB Harris Generating Plant (Permit No. 201-0010), southern Power Company – H. Allen Generating Plant (Permit No. 206-0036), Hog Bayou Energy Center (Permit No. 503-8066), and W&T Offshore, Inc. – Mary Ann Field Offshore Production Platform (Permit No. 503-0010).

¹²⁶ Indeed, ADEM's failure to implement the permitting program requirements in accordance with the Act, not only forms the basis for the objections in this Petition, but also demonstrates the need for EPA to enhance its oversight and enforcement efforts, particularly in the EJ communities. See generally EPA Office of Inspector General Report *EPA Should Conduct More Oversight of Synthetic Minor-Source Permitting to Assure Permits Adhere to EPA Guidance* (7/8/21) ("EPA 2021 OIG Report"), available at https://www.epa.gov/system/files/documents/2021-07/_epaig_20210708-21-p-0175.pdf. Clearly, additional EPA resources are needed to ensure that ADEM follows the requirements of the CAA and the Alabama SIP in implementing its Title V permitting program.. If ADEM continues to ignore these legal requirements and EPA objections, protection of the EJ communities demands that EPA take back implementation of all or portions of the program.

represent the necessary time to adequately consider those revised Permits and ADEM's associated actions.¹²⁷

III. The Permits' terms fail to comply with significant requirements of the CAA, especially with regard to the adequacy of synthetic minor limits and monitoring, recordkeeping, and reporting requirements.

a. Applicable Requirements

The Act requires that ADEM-issued Title V permits “include enforceable emission limitations and standards...and other such conditions as are necessary to assure compliance with applicable requirements of [the Act], including the requirements of the applicable state implementation plan.” 42 U.S.C. § 7661c(a).¹²⁸ Title V permits are also required to “set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(c). Thus, all federally enforceable emission limits must be incorporated in a Title V permit, including specific permit conditions or emission limits from pre-existing permits issued pursuant to the applicable state implementation plan (SIP), and the permit must include monitoring, recordkeeping, and reporting requirements sufficient to insure that those limits are met.

¹²⁷ Spacing any issuance of revised or modified permits approximately 6 weeks apart would provide sufficient time for Petitioners to review ADEMs actions and would also insure that these Permits would be before EPA for review in a staggered manner.

¹²⁸ *In the Matter of Consolidated Environmental Management, Inc. — Nucor Steel Louisiana Pig Iron and Dri Manufacturing*, Petition Nos. VI-2010-02, VI-2011-03, at 14-15 (March 23, 2012) [hereinafter “Nucor Steel”]; see also 40 C.F.R. § 70.1(b); see also *In the Matter of Bristol-Meyers Squibb Co., Inc.*, Petition No. II-2002-09, at 7 (Feb. 18, 2005) [hereinafter “Bristol-Meyers”]. The EPA’s Title V regulations define applicable requirements to include “[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated under title I, including parts C or D, of the Act.” 40 C.F.R. § 70.2. Moreover, a basic precept of the Title V operating permit program is that it does not generally impose new substantive air quality control requirements, or new applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32,250, 32,251 (July 21, 1992) (EPA’s final action promulgating the Part 70 rule).

Additionally, where a Title I permit is used by a source to avoid the Act's major source PSD/NSR permitting requirements, the Title I permit must be included in the Title V permit application, part of the set of documents available in the state's record, and available for public review because its contents are needed to impose the applicable requirements that allow the facility to escape major source permitting, so that the public can review its contents.

As is evident in the below arguments, ADEM fails to follow the commitment it made to EPA that the Title V applications ADEM uses will include requirements to define the part 70 applicable requirements and major and minor source status. ADEM fails to require that the Part 70 sources include in their applications information about synthetic minor source status, as that information from the sources was lacking in the permit applications. Moreover, despite adverse comments noting multiple instances of missing information regarding synthetic minor source permit issues, including failure to consider missing emitting sources and missing emissions in the analysis, ADEM failed to require the permit applicants to supplement the applications to include the missing applicable requirement information.¹²⁹

Moreover, as also presented in the below arguments, ADEM fails to rely on and follow the SIP regulations EPA approved for sources to avoid major source permit requirements.¹³⁰

¹²⁹ 60 Fed. Reg. 47522, 47524 (Sept. 13, 1995) (EPA's proposed interim approval of ADEM's operating permit program explained that "[t]he ADEM title V program will implement a two-step process for application completeness, first determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation.")

¹³⁰ See, e.g., 59 Fed. Reg. 52915 (Oct. 20, 1994) (EPA's direct final rule approving ADEM's revisions to Construction and Operation Permit Regulations for Synthetic Minor Sources, where EPA took action on the State of Alabama "SIP revision designed to make Alabama's minor source operating permit program federally enforceable pursuant to EPA requirements as specified in a Federal Register document, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules," (see 54 FR 22274, June 28, 1989).)" EPA's notice further explained that Alabama's "voluntary SIP revision allows EPA to enforce terms and conditions of State-issued minor source operating permits. In addition, operating permits that are issued under a state's minor source operating permit program that is approved into their SIP may provide federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through federally enforceable operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration

ADEM also fails to rely on its minor source SIP regulations to create synthetic minor emission limits that allow a source to escape major source permitting requirements.¹³¹

The EPA Office of Inspector General’s 2021 report addressing EPA oversight of minor source permitting echoes many of the issues Petitioners raise below in their requests for the Administrator to object regarding these Permits’ inclusion of synthetic minor limits, including: (1) ADEM’s failure to include technically accurate emission limits in the permits; (2) the lack of specificity for determining compliance; and (3) the lack of “sufficient monitoring requirements to determine whether the facility’s assumed pollution reduction from pollution control devices was being achieved.”¹³² These flaws “could [and likely do] result in a synthetic-minor facility emitting pollutants at or above major-source levels without being detected,”¹³³ which is of significant concern to Petitioners and the impacted environmental justice communities.

Furthermore, consideration of whether a facility constitutes a “major stationary source” for PSD permitting purposes depends on whether the facility emits or has the potential to emit certain pollutants in excess of specified thresholds: the threshold for sources within listed

(PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements mandated under section 112 of the Clean Air Act as amended in 1990 (CAA) for air toxics which are also Volatile Organic Compounds (VOCs).” *id.*; see also 83 Fed. Reg. 64285, 64285 (Dec. 14, 2018) (EPA’s final rule approving Alabama’s “revised Chapter 335-3-14, Air Permits and Chapter 335-3-15, Synthetic Minor Operating Permits, and Chapter 335-3-16, Major Source Operating Permits, to incorporate EPA’s amendments to the federal public notice regulations” [81 Fed. Reg. 71613 (Oct. 18, 2016)]...where EPA incorporated “by reference of Alabama’s Chapter 335-3-14, “Air Permits” at 335-3-14-.01, .04, and .05 and Chapter 335-3-15 “Synthetic Minor Operating Permits” at 335-3-15-.05, which address the public notice rule provisions for the NSR program, state effective December 9, 2017.”; see also 60 Fed. Reg. 37825, 37826 (July 24, 1995) (EPA’s direct final rule where the agency explained that “[t]he Alabama FESOP program ... meets the approval criteria specified in the June 28, 1989, Federal Register document and in section 112(l)(5) of the Act [for HAPs]. Specific discussion of how Alabama’s FESOP program meets the requirements for Federal enforceability may be found in the Federal Register document approving Alabama’s FESOP program for criteria pollutant purposes. See 59 FR 52947.”

¹³¹ ADEM’s SIP-approved rules for permitting NAAQS pollutants from minor sources include ADEM Admin. Code r. 335-3-14-.01 General Provisions, 335-3-14-.02 Permit Procedure, and 335-3-14-.03—Standards for Granting Permits; see e.g., 82 Fed. Reg. 3637,3638 (Jan 12, 2017).

¹³² EPA 2021 OIG Report at pdf page 3.

¹³³ *Id.*

categories, including the facilities at issue here, is 100 TPY; for all other sources, 250 TPY.¹³⁴ See 42 U.S.C. § 7479(1) (defining ““major emitting facility”); (defining “Major Stationary Source”).¹³⁵ Under Alabama’s federally approved SIP, the calculation of a facility’s PTE for purposes of determining whether the facility triggers PSD requirements for a particular pollutant includes consideration of:

Any physical or operation limitation on the ability of a source to emit a pollutant shall be considered in calculating the potential to emit if the limitation is federally enforceable.

(definition of “Potential to Emit” in Alabama’s SIP).¹³⁶ The Title V permit applications, Revised SOBs, and Final Permits must include all pollutants and emission units.¹³⁷ Because definitions and requirements for determining the source for PSD permitting also appear in the Part 70 regulations, ADEM must make the source determination in all the construction and operating permitting processes (*i.e.*, major sources,¹³⁸ minor sources¹³⁹ and synthetic minor sources¹⁴⁰).¹⁴¹ Additionally, for the hazardous air pollutants, the major source thresholds are PTE of 10 TPY of any one HAP and PTE of 25 TPY of all HAPs combined. “Therefore, if a permit applicant agrees to enforceable limits that are sufficient to restrict PTE, the facility’s “maximum capacity

¹³⁴ *In the Matter of Yuhuang Chemical, Inc.*, Order on Petition No. VI-2015-03 (Aug. 31, 2016), at 13 [hereinafter “*Yuhuang I Order*”].

¹³⁵ Attach. B at 131, ADEM Admin Code r. 335-3-14-.04 (2)(a); *see also* 40 C.F.R. §51.166(b)(1).(definition of “major stationary source”).

¹³⁶ Attach. A at 828, Plains Marketing 3/4/21 Comment Letter at 38, citing 40 C.F.R. § 52.21(b)(4), ADEM ADMIN. CODE r. 335-3-14-.04 (2)(d).

¹³⁷ *See, e.g.*, 40 C.F.R. § 70.2 (definitions of “Applicable requirement,” “Emissions allowable under the permit,” “Emission unit,” “Fugitive emissions,” “Regulated air pollutant,” “Stationary source”); *see also* 40 C.F.R. § 70.3; *see also* 40 C.F.R. § 70.5(a)(2), (b), (c); *see also* 40 C.F.R. § 70.6; *see also* 40 C.F.R. § 70.7.

¹³⁸ EPA 2021 OIG Report at 1 (**Major sources**, which are facilities that emit regulated pollutants over certain levels measured by tons per year or TPY, referred to as major-source thresholds. Major-source thresholds differ by permitting program and type of pollutant.)

¹³⁹ *Id.* (**True-minor sources**, which are facilities that have the potential to emit regulated pollutants below major-source thresholds.)

¹⁴⁰ *Id.* (**Synthetic-minor sources**, which are facilities that have the potential to emit regulated pollutants at or above major-source thresholds but that agree to enforceable restrictions to limit their emissions below these thresholds to avoid being subject to more stringent major-source requirements. Such enforceable restrictions, also called limitations, are included in a facility’s air permit.) (citation omitted)

¹⁴¹ Petitioners’ explained these requirements in comments on the Plains Marketing Draft Permit, at 21-22.

to emit” for PTE purposes is calculated based on those limits.”¹⁴²

As commenters explained in comments on the Plains Marketing permit,¹⁴³ permitting authority must take into account the emissions from all parts of a source when determining the applicable requirements and conditions for operation of that source. Fundamental to this process is the determination of which emission units are actually part of that “single source.”¹⁴⁴ Where a permitting authority has EPA-approved Title V and Title I permit programs, it is the responsibility of the permitting agency to “ensure that source determinations are made consistent with minimum program requirements.”¹⁴⁵ EPA often provides guidance to permitting authorities on this analysis.¹⁴⁶

Only emission limits that meet certain enforceability criteria may be used to restrict a facility’s PTE, and in order to avoid major source requirements for either the NAAQS or HAP pollutants, the minor source permit must include sufficient terms and conditions such that the source cannot lawfully exceed the limit.¹⁴⁷ An “emission limit can be relied upon to restrict a source’s PTE only if it is legally and practicably enforceable.”¹⁴⁸ The first key concepts in evaluating the enforceability of PTE limits “is whether the limit is enforceable as a practical

¹⁴² *Yuhuang I Order* at 13, citing *In the Matter of Hu Honua Bioenergy Facility*, Order on Petition No. IX-2011-1 (Feb. 7, 2014) at 9 [hereinafter “*Hu Honua Order*”]; *In the Matter of Cash Creek Generation, LLC, Order on Petition No. IV-2010-4 (June 22, 2012)* at 15 [hereinafter “*Cash Creek Order*”], *In the Matter of Kentucky Syngas, LLC, Order on Petition No. IV-2010-9 (June 22, 2012)* at 28 [hereinafter “*Kentucky Syngas Order*”].

¹⁴³ Attach. A at 828, Plains Marketing 3/4/21 Comment Letter at 20-21.

¹⁴⁴ *In the Matter of Seneca Energy II, LLC Seneca, New York*, Petition No. II-2012-01 (June 29, 2015) at 6.

¹⁴⁵ *Id.* at 8.

¹⁴⁶ See, U.S. EPA New Source Review Permitting, Single Source Determination, <https://www.epa.gov/nsr/single-source-determination>.

¹⁴⁷ *Yuhuang I Order* at 14; see, e.g., *Cash Creek Order* at 15 (explaining that an “emission limit can be relied upon to restrict a source’s PTE only if it is legally and practicably enforceable”); *In the Matter of Orange Recycling and Ethanol Production Facility. Pencor-Masada Oxynol, LLC*, Order on Petition No. 11-2001-05 (April 8, 2002) at 4-7 [hereinafter “*2002 Pencor-Masada Order*”].

¹⁴⁸ *Cash Creek Order* at 15

matter.”¹⁴⁹ To be enforceable as a practical matter, “the permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit.”¹⁵⁰ In short, enforceable permit provisions “readily allow regulators and the public to assess a facility’s compliance with its permit limitations.”¹⁵¹ The second key concept is federal enforceability, which refers to whether the limitations placed on a source’s potential to emit are enforceable by the EPA and private citizens as a legal and practical matter, thereby providing the public with credible assurances that otherwise major sources are not avoiding applicable CAA requirements.¹⁵²

Thus, limitations from a Title I minor source permit must be supported by monitoring, recordkeeping, and reporting requirements in the Title V permit that are “sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.”¹⁵³ For a permit term to effectively restrict PTE, the emission limits must apply at all times and all emissions must be considered in determining compliance with the limits.¹⁵⁴ EPA issued numerous guidance documents for permitting authorities to use in implementing synthetic minor emission limits.¹⁵⁵ The synthetic minor permit provisions must be

¹⁴⁹ *Yuhuang I Order* at 14, referencing 2002 *Pencor-Masada Order* at 4- 7 (emphasizing the importance of practical enforceability in the permit terms and conditions that limit PTE), which further explained that “... the concept of “federal enforceability” has also been interpreted to encompass a requirement for practical enforceability. *See, e.g., In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357, 394 n54 (EAB 2007).

¹⁵⁰ *Yuhuang I Order* at 14; *see, e.g., Hu Honua Order* at 10.

¹⁵¹ *See e.g.,* EPA 2021 OIG Report at 4.

¹⁵² EPA OIG Report at 4.

¹⁵³ *Yuhuang I Order* at 14, citing 2002 *Pencor-Masada Order* at 7.

¹⁵⁴ *Yuhuang I Order* at 14, citing *Hu Honua Order* at 10-11; *Cash Creek Order* at 15; *Kentucky Syngas Order* at 29-30.

¹⁵⁵ *See, e.g.,* Memorandum entitled “Guidance an[d] Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits,” from Kathie A. Stein, Director, Air Enforcement Division, Office of Enforcement and Compliance Assurance, to Regional Air Directors (Jan. 25, 1995); *see also* Memorandum entitled “3M Tape Manufacturing Division Plant, St. Paul, Minnesota,” from John B. Rasnic, Director, Stationary Source Compliance Division, EPA’s Office of Air Quality Planning and Standards, to David Kee, Director, EPA Region V Air and Radiation Division (July 14, 1992); *see also* Memorandum entitled “Policy

clear and enforceable to ensure that the synthetic-minor sources comply with these limitations.¹⁵⁶ If a synthetic-minor-source permit does not have adequate permit limitations, the facility would be considered a major source and subject to the more stringent requirements of the major-source permitting programs.¹⁵⁷ The permitting authority cannot exclude insignificant emissions from its determination of PTE for the facility.¹⁵⁸

In addition to the requirements to effectively restrict PTE, the Title V program is structured to “make it easier for the public to learn what requirements are being imposed on sources to facilitate public participation in determining what future requirements to impose.”¹⁵⁹ As discussed in the re-noticing objection above, objections to Title V permits are warranted when the petitioner can show that the unavailability of information during the public comment period precluded the public’s meaningful participation during the permitting process.¹⁶⁰ As discussed in the arguments below, Petitioners’ comments explained that the

Determination on Limiting Potential to Emit for Koch Refining Company Clean Fuels Project, “from John Rasnic to David Kee (March 13, 1992); *see also* Memorandum entitled “Use of Long Term Rolling Averages to Limit Potential to Emit,” from John Rasnic to David Kee (Feb. 24, 1992); *see also* “Guidance on Limiting Potential to Emit in New Source Permitting,” (June 13, 1989) (as explained in the *Pencor-Masada Order*, at 4, n.3, “This memorandum was transmitted from Terrell E. Hunt, Associate Enforcement Counsel, Air Enforcement Division, Office of Enforcement and Compliance Monitoring and John S. Seitz, Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards, to EPA Regional air directors, EPA Regional Counsels, other EPA headquarters offices and the Chief of the Environmental Enforcement Section at the Department of Justice.”).

¹⁵⁶ EPA 2021 OIG Report at 3; *See also*, *Pencor-Masada Order*, at 5, n.6, providing as examples the following: Memorandum entitled “3M Tape Manufacturing Division Plant, St. Paul, Minnesota,” from John Rasnic to David Kee (July 14, 1992) (“a federally enforceable emissions limit may be used ... to limit the potential to emit as long as a continuous emissions monitor (CEM) or an acceptable alternative is used.”); *see also* Memorandum entitled “Policy Determination on Limiting Potential to Emit for Koch Refining Company Clean Fuels Project,” from John Rasnic to David Kee (March 13, 1992) (“Use of an emission limit to restrict potential to emit ... is acceptable provided that emissions can be and are required to be readily and periodically determined or calculated.”)

¹⁵⁷ EPA 2021 OIG Report at 3.

¹⁵⁸ *See, e.g.*, 60 Fed. Reg. 57346, 57348-9 (Nov. 15, 1995).

¹⁵⁹ 56 Fed. Reg. 21712, 21713 (May 10, 1991).

¹⁶⁰ *Hanford 2018 Order* at 11; *see also In re Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Petition No. 11-2000-07, Order on Petition (May 2, 2001) (applying the concepts of meaningful public participation and logical outgrowth to Title V); *cf. e.g., In re Murphy Oil USA, Inc., Meraux Refinery*, Petition No. 2500-00001-V5, Order on Petition (Sept. 21, 2011) (discussing a response to significant

Draft SOB associated with the Draft Permit lacked key relevant information that is necessary for meaningful public review. While ADEM has added some information to the SOBs for these Permits in response to comments, they did not address all issues raised and the Permits and their required record support are still deficient .

As explained below, EPA must object to these five Title V permits because each of them: (1) contain the emission limits for the purpose of limiting PTE that are insufficient to avoid Major Source permitting requirements; and (2) fails to include the monitoring, recordkeeping and reporting provisions necessary to assess whether the source is in compliance with the synthetic minor emission limits. In doing, EPA should also make clear to ADEM that the various Title I pre-construction air permits in which these and other requirements originated are not voided by issuance of Title V permit to the same source.

b. Underlying Title I Permits are NOT Voided by Issuance of a Title V Permit.

As an initial matter, in addressing the PTE and related major source permitting requirements issues discussed below, more than one ADEM RTC asserted that the underlying preconstruction air permit permits in which these limits were created are “void” and no longer relevant for Title V permitting purposes. In responding to the Petitioners’ public comments on the AL Bulk Terminal Permit, ADEM states:

ADEM Air permits authorize construction, as such the permitting history is also the history of construction at the facility. Any significant changes to the facility are required to be addressed through an updated Title V application.... Whenever an Air Permit or a Title V Permit is modified in any way and a new permit is issued as a result, the previous permit is no longer valid and is therefore “void”. For example, the existing Air Permits are void once the requirements are incorporated into the initial Title V permit. Voided permits are not incorporated into current permits.¹⁶¹

comments as “an inherent component of any meaningful notice and opportunity for comment” (citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977)).

¹⁶¹ Attachment ____ . AL Bulk Terminal RTC at p. 3 & 4 (responses 6 & 15).

Likewise, in the Plains Marketing RTC, ADEM states “Once Title I permits are incorporated into the [Title V permit], those permits become void,” and thus there was no need to list those air permits in the facility’s Title V Permit.¹⁶²

This is simply wrong. As Petitioners noted in public comments, ADEM cannot “void” underlying preconstruction permits that are required for facilities to show their compliance with the Act and the Alabama SIP.¹⁶³ The Act requires the terms and conditions of such preconstruction permits must be included in Title V permits, and they are specific “applicable requirements” under EPA Rules, and thus exist independently of Title V permits that contain them.¹⁶⁴ ADEM also wrongly asserts that its “Air Permits authorize construction” only.¹⁶⁵ Its SIP-approved permitting rules are clear that preconstruction permits are required for any emission-producing source to “be operated or used.”¹⁶⁶ Moreover, ADEM’s voiding practice conflicts with the position is communicated to EPA regarding “previously set PSD synthetic minor limits.” As EPA explained in the SIP rulemaking preamble for Alabama’s proposed revisions to its PSD and NNSR programs, “it is ADEM’s intent that previously set PSD synthetic minor limits remain intact.”¹⁶⁷

A basic precept of the Title V operating permit program is that it does not generally impose new substantive air quality control requirements, or new applicable requirements, but

¹⁶² Attachment ____, Plains Marketing RTC at p. 5 & 8 (responses 15 & 25).

¹⁶³ Attachment ____, AL Bulk Terminal Public Comments at 26-29 (citing to three voided located in “Historic Correspondence”). *See also* Attachment ____, Plains Marketing Public Comments at n.30.

¹⁶⁴ 42 U.S.C. § 7661c(a) (requiring Title V permits to include enforceable emission limitations and standards...and such other conditions as are necessary to assure compliance with applicable requirements of” the CAA and the Alabama SIP, both of which include NSR and SIP permitting requirements; 40 C.F.R. § 70.2 (definition of applicable requirement).

¹⁶⁵ Attach. A at 251-252. AL Bulk Terminal RTC at p. 3 & 4 (responses 6 & 15).

¹⁶⁶ AL Admin .Code 355-3-14-.01(1)(b).

¹⁶⁷ 73 Fed. Reg. 4133, 4134 (Jan. 24, 2008); *see also* 80 Fed. Reg. 52701, 52709 (Sept. 1, 2014) (EPA’s proposed action approving similar amendments to the NNSR program, which also relies on ADEM’s stated intent regarding synthetic minor limits remaining intact).

instead gathers all existing and relevant CAA permit terms and other applicable requirements into one document, while also making sure the Title V permit contains monitoring, recordkeeping, reporting, and other requirements to assure compliance with those applicable requirements.¹⁶⁸ EPA's guidance has explained that a Title V permit may not simply “supersede, void, replace, or otherwise eliminate the independent enforceability of terms and conditions in SIP-approved permits.”¹⁶⁹ That is, Title V permits must assure compliance with the requirements of SIP-approved permits, but may not simply eliminate their independent existence and enforceability. This makes sense, because, as noted above, any source seeking to avoid major source applicability through use of limits on their PTE must ensure those limits are permanent and enforceable. Such permanence and enforceability cannot occur with a voided permit, and a source's title V permit is not a valid substitute to fulfill this requirement because title V permits expire by their own terms.¹⁷⁰

ADEM simply cannot assure that the Title V permits they issue contain all applicable requirements if they are voiding air permits required under the Act and the SIP and not reviewing and referencing them during the Title V process. It is important to note that Petitioners only became aware of such “voided” permits in the AL Bulk Terminal permitting action when it asked ADEM to provide underlying air permits that did not appear in ADEM's publicly available records.¹⁷¹ The fact that such underlying air permits were not already part of ADEM's usual

¹⁶⁸ 57 Fed. Reg. 32,250, 32,251 (July 21, 1992) (the EPA final action promulgating Part 70 rule); *see also* 40 C.F.R. § 70.1(b).

¹⁶⁹ Letter from J. Seitz, EPA, to R. Hodanbosi and C. Lagges, STAPPA/ALAPCO (May 20, 1999), *available at* <https://www.epa.gov/sites/default/files/2015-08/documents/hodan7.pdf>

¹⁷⁰ 40 C.F.R. § 70.6(a)(2) (permit terms must be 5 years or less for all sources except for solid waste incineration units combusting municipal waste). *See, e.g.*, Attach. A at 255, AL Bulk Terminal Final Permit (with an expiration date of Nov.3, 2027)

¹⁷¹ Attachment ____, AL Bulk Terminal comments at n. 2 (citing more than 800 pages of documents included in multiple “Historical” Construction Permits and Correspondence files that ADEM posted to the efile for the AL Bulk Terminal).

Title V permit record, as well as ADEM's assertions that it is their normal practice to void such permits, leads Petitioners to believe that ADEM is undertaking such voiding actions in their CAA air permitting programs generally, in violation of the requirements of the CAA and the Alabama SIP.

Accordingly, EPA should object to all five of these Permits¹⁷² and direct ADEM to stop its practice of voiding preconstruction air permits required by the CAA and the Alabama SIP and to reissue the unlawfully voided preconstruction permits underlying the Title V Permits at issue in this Petition, and to correct the issue in renewing all Title V renewal permits issued by their permitting program in the future.

In the interest of efficiency, this Petition fully details the arguments for objection with regard to the Plains Marketing permitting action and then provides additional citations to support similar objections for the other Permits, as appropriate. Accordingly, any general arguments and authorities, including relevant regulatory and statutory criteria, raised in the discussing the objections to the Plains Marketing Permit regarding the insufficiency of PTE limits and the lack of adequate monitoring, recordkeeping and reporting provisions are incorporated by reference in the specific objections raised for the other four Permits.

C. The emission limits for the purpose of limiting PTE in the Permits are insufficient to avoid Major Source permitting requirements for the NAAQS pollutants and the MACT/NESHAP requirements.

As noted in the revised SOBs and other permit documents, each of the five facilities has the potential to emit in excess of the applicable major source permitting thresholds for the

¹⁷² As explained above, ADEM did not place the voided permits for the AL Bulk Terminal in the eFile at public comment. In addition, ADEM did not note the presence of "voided" (or any other) air permits in the SOBs for these Permits, and only discussed their voiding practice in the RTCs for two Permits. Thus, Petitioners have maintained the ground for this objection request for all five permits because it was impracticable to comment on this issue for the other four permits during the public comment period.

following pollutants: Plains Marketing – VOCs;¹⁷³ AL Bulk Terminal –SO₂, VOCs, and various HAPs;¹⁷⁴ Kimberly-Clark - NOx;¹⁷⁵ Alabama Shipyard– VOCs;¹⁷⁶ and UOP – PM and SO₂.¹⁷⁷ Accordingly, as noted above, these Permits must include sufficient terms and conditions such that the source cannot lawfully exceed the limit.¹⁷⁸ They must be legally and practicably enforceable, and the Title V permit must include monitoring, recordkeeping, and reporting requirements sufficient to ensure compliance with them. The Permits here fail to meet those requirements.

a. ADEM erroneously cited its major source PSD/NSR permit program as its authority to create synthetic minor VOC emission limits.

ADEM’s proposed permit actions fail to fulfill its obligations to set forth the legal and factual basis for the synthetic permit conditions as required by 40 C.F.R. § 70.7(a)(5).

i. Plains Marketing

Petitioners’ Plains Marketing comments explain that ADEM’s Draft Permit fails to include permit provisions to comply with the SIP requirements.¹⁷⁹ ADEM’s RTC explains that “[i]n PSD/NSR permitting, a facility may take limits on their potential emissions in order for a facility or a modification to remain minor for that program...” noting that “[t]hese limits are termed ‘synthetic minor.’”¹⁸⁰ For the one emission limit at the Plains Marketing LP facility where ADEM attempted to create a synthetic minor limit – the Truck Loading Operations - both the proposed and Final Title V permits erroneously reference ADEM’s major source PSD

¹⁷³ Attach. A at 892, Plains Marketing Revised SOB at 4.

¹⁷⁴ Attach. A at 227-228, AL Bulk Terminal Revised SOB at 3-4.

¹⁷⁵ Attach. A at 656, Kimberly-Clark Revised SOB.

¹⁷⁶ Attach. A at 493, Alabama Shipyard RTC at Response 3; see also Revised SOB at 2 (emission table).

¹⁷⁷ Attach. A at 1003, UOP Revised SOB at 3.

¹⁷⁸ *Yuhuang I Order* at 14; see, e.g., *Cash Creek Order* at 15 (explaining that an “emission limit can be relied upon to restrict a source’s PTE only if it is legally and practicably enforceable”); *In the Matter of Orange Recycling and Ethanol Production Facility. Pencor-Masada Oxynol, LLC*, Order on Petition No. 11-2001-05 (April 8, 2002) at 4-7.

¹⁷⁹ See, e.g., Attach. A at 828, Plains Marketing 3/4/21 Comment Letter at 38-43.

¹⁸⁰ Attach. A at 922-923, Plains Marketing RTC at 9-10.

regulations globally citing “ADEM Admin. Code r. 335-3-14-.04” as its authority for creating the synthetic minor emission limit.¹⁸¹ Such a global citation is not adequate, because the regulations referenced – ADEM Admin. Code r.335-3-14-.04 – contain the regulations for issuing major source permits, not synthetic minor permits. ADEM has failed to provide the specific regulations upon which these various limits are based. Additionally, ADEM’s final Permit, Revised SOB, and RTC fail to provide the particular regulatory provision(s) it relied on from its PSD/NSR SIP regulations that provide the authority to create PTE limits to avoid the PSD requirements. Indeed, as the EPA has previously recognized, failing to provide information relating to the permitting authority’s decision-making (especially with respect to how the source can “avoid PSD review”) is “such a serious flaw that the adequacy of the permit itself is in question.”¹⁸² EPA must object to the Final Permit because it fails to provide a legal basis for establishing the synthetic minor emission limit at the Truck Loading Operations.

Moreover, because ADEM failed to use and follow the requirements from one of its SIP regulations to create synthetic minor VOC emission limits, the Plains Marketing LP facility must be treated as a major PSD source for its VOC emissions. The Final Permit fails to assure compliance with PSD requirements for VOCs.¹⁸³ The permit does not include limits that will assure compliance with the Best Available Control Technology (“BACT”) requirements for PSD-regulated pollutant emitted from sources at the facility, specifically BACT limits for VOC. EPA must object to the Final Permit because it fails to assure compliance with the PSD requirements.

¹⁸¹ Attach. A at 737, Plains Marketing Draft Permit at 27; *see also* Attach. A at 951, Plains Marketing Final Permit at 27.

¹⁸² *In re Midwest Generation, LCC, Waukegan Generating Station*, Petition No. V-2004-5 (Sept. 22, 2005), at 8.

¹⁸³ 42 U.S.C. § 7661c(a).

ii. AL Bulk Terminal

Petitioners' AL Bulk Terminal Comments similarly explained that ADEM failed to use appropriate authority to create synthetic minor emission limits and that the Draft Title V permit is deficient because it does not include emission limits and other conditions necessary to either allow the source to escape major source permitting or assure compliance with PSD requirements.¹⁸⁴ ADEM's RTC failed to address these comments. Therefore, ADEM failed to use appropriate authority to create synthetic minor emission limits, and EPA must object to the Final Permit because it fails to assure compliance with the PSD requirements for VOC emissions.

iii. Kimberly-Clark

Petitioners' Public Comments did not raise issues regarding underlying authority for the PTE limits in the Kimberly-Clark Permit and does not request an objection on these grounds.

iv. Alabama Shipyard

Petitioners' Alabama Shipyard Comments also explain that the Draft SOB lacks any mention of the synthetic minor emission limitations that allow Alabama Shipyard to escape PSD major source permit requirements and that there is only one place in the Draft Permit that mentions a "PSD synthetic minor emission limitation," which cites to "ADEM Admin. Code r. 335-3-14-.04."¹⁸⁵ That proviso remains in the Final Permit and ADEM's Revised SOB failed to respond to Petitioners' comment. ADEM neither explained that it issued a synthetic minor

¹⁸⁴ See, e.g., Attach. A at 104, AL Bulk Terminal Comment Letter at 6-10 (ABT's Representations About the Terminal's Potential to Emit are Unsupported and Cannot be Relied Upon to Allow the Facility to Escape Major Source Permitting Requirements); see also *id.* Attach. A at 117, (The Draft Statement of Basis Fails to Disclose and the Draft Permit Fails to Include Numerous Emitting Units and Alternate Operating Scenarios); see also *id.* at 28-45 (Draft Permit Fails to Include Emission Standards and Monitoring, Recordkeeping and Reporting Requirements).

¹⁸⁵ Attach. A at 396, 364, and 541, Alabama Shipyard Comments at 13. Draft Permit at 7-2. Final Permit at 7-2

construction permit nor that it issued a synthetic minor operating permit, the two types of synthetic minor permits provided for in the SIP.¹⁸⁶

Instead, ADEM's Revised SOB explains that "[t]he SOB has been modified to include the date of the permit that established the only synthetic minor PSD limitations." And further explains that the "original Title V permit was issued on April 23, 2002."¹⁸⁷ Petitioners note that the original permit is not available in ADEM eFile system and is no longer valid. ADEM further explains that the permit included limitations on VOCs on three units:

- Indoor surface coating unit (limiting to 95 tons in any consecutive twelve month period),¹⁸⁸
- Indoor surface coating line (limiting to 95 tons in any consecutive 12 month period),¹⁸⁹ and
- Open air surface coating (limiting to 95 tons in any consecutive twelve month period).¹⁹⁰

ADEM lacks authority to use a Title V permit to create synthetic minor limits. Indeed, ADEM's RTC cites no such authority. As noted above, synthetic minor limits must be permanent, and Title V permits are not permanent vehicles – they have a limited term of five years and expire.¹⁹¹ ADEM's suggestion that it can allow this source to escape PSD major source permit requirements for VOC emissions based on its 2002 title V operating permit is incorrect; ADEM lacks authority for doing so using the procedure it selected. EPA must object.

¹⁸⁶ See e.g., 59 Fed. Reg. 52915.

¹⁸⁷ Attach. A at 484, Alabama Shipyard Revised SOB at 1.

¹⁸⁸ Attach. A at 485 and 487, Alabama Shipyard Revised SOB at 2 and 4, VOC standard (ADEM Admin. Code r. 335-3-6.01(b)).

¹⁸⁹ Attach. A at 487, Alabama Shipyard Revised SOB at 4.

¹⁹⁰ Attach. A at 490, Alabama Shipyard Revised SOB at 7.

¹⁹¹ 40 C.F.R. § 70.6(a)(2) (permit terms must be 5 years or less for all sources except for solid waste incineration units combusting municipal waste). See also Attach. A at 498, Alabama Shipyard Final Permit (containing an expiration date of April 22, 2027).

In directing ADEM to properly establish synthetic minor emission limits, we encourage EPA to strongly suggest that ADEM evaluate control devices and work practice standards that are available and require emission reductions in VOC, HAP, VOHAP, and PM (e.g., use of control devices, use of low(no)-VOC and low(no)-HAP products, monitoring wind speed, etc.), because there are methods to reduce and control emissions and reduce health and environmental impacts to the adjacent environmental justice communities. Other state agencies do considerably more to protect public health and the environment in their CAA-issued permits, and ADEM must work with the permit applicant and do likewise.¹⁹²

Moreover, ADEM's Revised SOB is also internally inconsistent. ADEM added a PTE table to the Revised SOB, which is copied below. The HAP figure in the PTE table of 30 TPY¹⁹³ is inconsistent with the statement on the next page of the SOB, which explains that "actual [HAP] emission from this facility are ... 40 tons."

¹⁹² See Attach. A at 390, Alabama Shipyard Public Comments at 7 and cites included in , explaining that a review of CAA Title V permits issued to other private shipyards shows that ADEM's permit issued to Alabama Shipyard is less stringent than those issued by four other states to private shipyards: Corn Island Shipyard (Indiana), Gunderson, LLC (Oregon), Vigor Shipyards (Washington), and Huntington Ingalls, Inc. (Virginia), citing Corn Island Shipyard, (Indiana) Operation Permit No: F147-27989-00047, (Expired Dec. 1, 2014); Gunderson LLC, Oregon DEQ Title V Permit, (2018), available at <https://www.deq.state.or.us/msd/profilerReports/traacs.asp?id=26-2944-TV-01>; Department of Environmental Quality, Air Quality Division, OREGON TITLE V OPERATING PERMIT APPLICATION REVIEW REPORT, Gunderson, LLC, available at <https://www.deq.state.or.us/msd/profilerReports/traacs.asp?id=26-2944-TV-01>; Gunderson, LLC., 2021 Annual Report, (Feb. 11, 2022), <https://www.deq.state.or.us/msd/profilerReports/traacs.asp?id=26-2944-TV-01>; Statement of Basis for Vigor Shipyards, Inc. Air Operating Permit No. 12539 Administrative Amendment, (Jan. 3, 2018), available at <https://www.pscleanair.gov/DocumentCenter/View/294/Statement-of-Basis-PDF?bidId=>; Vigor Operating Permit (Expired Aug. 25, 2021), available at <https://www.pscleanair.gov/DocumentCenter/View/295/Air-Operating-Permit---Attachments-PDF?bidId=>; andHuntington Ingalls Incorporated – Newport News, Federal Operating Permit, Number TRO-60153 (Expired April 28, 2020), available at <https://www.deq.virginia.gov/permits-regulations/permits/air/issued-air-permits>.

¹⁹³ Attach. A at 486, Alabama Shipyard Revised SOB at 3.

Regulated Pollutant	Potential Emissions (tons/year)
VOC	245
HAP (total)	30
PM	95
Fugitives	160

Actual HAP emissions cannot be greater than PTE, and thus there is an error in the HAP figures contained in the SOB. However, because ADEM fails to support any of these figures with calculations and references, the Petitioners cannot review and determine where the error occur. EPA must object to ADEM’s HAP and other emission figures and direct that ADEM recalculate and produce detailed and accurate accounting supporting the emission figures.

v. UOP

Similar to the Plains Marketing and AL Bulk Terminal, Petitioners’ UOP Comments noted that while the Title V Permit included synthetic minor emission limits for many units, it failed to identify the specific authority for those limits, citing only generally to the ADEM Admin. Code r. 335-3-14-.04.¹⁹⁴ ADEM responded by adding the citations to the relevant NSR air permits that established the limits in the SOB. However, most (if not all) of the unique and specific PM and SO₂ limits in the Permit continue to cite to ADEM Admin. Code r. 335-3-14-.04,¹⁹⁵ and

¹⁹⁴ Alabama Shipyard Public Comments at 13.

¹⁹⁵ See, generally, citations to numeric limits as provided on the Information Summary pages of the UOP 2021 Final Permit, which are provided on the first page (x-1) of the sections addressing specific permit requirements for all emitting units at the facility. None of these pages appear in ADEM’s 2022 Final Permit, and thus remain unchanged. For example, see Attach. A at 1163, UOP 2021 Final Permit at 1-1, Informational Summary for the Steam General Boilers (citing Rule 335-3-14-.04 for several numeric PM and SO₂ limits); *id.* at 1167, UOP 2021 Final Permit at 2-1 (same for multiple numeric PM limits for General Material Handling); *id.* at 1057, UOP 2022 Final Permit at 5-2 (Applicability Proviso 4 stating that this unit “is subject to synthetic minor PSD emission limitations” and citing to Rule 335-3-14-.04).

ADEM provided no explanation of how citation to the entire PSD provision provided the authority to establish such limits. As noted above, ADEM Admin. Code r. 335-3-14-.04 contains the provisions addressing major source PSD requirements, not minor source limits to avoid those PSD requirements. Therefore, ADEM failed to use the appropriate authority to create the synthetic minor emission limits in the UOP Permit, and EPA must object to the Permit because it fails to assure compliance with the PSD requirements for PM and SO₂ emissions.

EPA must object to the synthetic minor limits contained in the Plains Marketing, AL Bulk Terminal, Alabama Shipyard, and UOP Permits, because ADEM failed to provide, or otherwise explain, the appropriate regulatory authority it relied upon to create these synthetic minor emission limits. Thus, these permits fail to assure compliance with the major source permitting provisions of the CAA and Alabama SIP with regard to the pollutants addressed by those limits and are thus subject to major source permitting.

b. The synthetic minor PTE limits included in the Permits are inadequate for a number of reasons.

In addition to failing to rely on adequate authority to create the synthetic minor limits, EPA must also object to these Permits because ADEM failed to ensure that the PTE limits include all sources of the relevant pollutants at the facility or consider Petitioners' detailed comments on the issue.

i. Plains Marketing

The Plains Marketing Comments clearly stated that ADEM failed to ensure that PTE limits include all sources of criteria and HAP pollutants at the facility, but ADEM failed to meaningfully respond.¹⁹⁶ The comments raised four specific errors in this regard.

¹⁹⁶ Plains Marketing Comment Letter at 38-43, Plains Marketing RTC at 6.

Insignificant activities: ADEM erroneously excluded emissions from what it classified as “insignificant activities.” In 1995 in acting on ADEM’s Title V Program, EPA explained that “EPA maintains that part 70 does not allow for insignificant activities to be excluded from major source applicability determinations. Major source determinations are made in accordance with the definitions in section 70.2, which do not allow for exclusions of emissions from insignificant activities.”¹⁹⁷ Acting contrary to the regulatory requirements and EPA’s explicit direction to ADEM, ADEM failed to include emissions from supposedly “Trivial and Insignificant Activities” such as painting the storage tanks,¹⁹⁸ tank cleaning,¹⁹⁹ and emissions from wastewater (and stormwater) runoff, disposal and storage tanks.²⁰⁰ ADEM’s RTC suggests these are trivial activities and are not associated with the primary production process of the facility.²⁰¹ ADEM fails to provide a basis for its classification of these activities at this

¹⁹⁷ 60 Fed. Reg. 57349.

¹⁹⁸ Attach A. at 820, Plains Marketing 3/4/21 Comment Letter at 30-31 (explaining that an EPA-issued permit for similar activities included these emissions); *see, e.g.*, Limetree Bay Terminal (and tanks), LLC. documents referenced in Petitioners’ comments: Air Permit Application, Limetree Bay Terminals, LLC., St. Croix, USVI, Marine Loading Project, Revision (Nov. 2017) (copy enclosed) (File name: EPA-R02-OAR-2019-0551-0236_content_permitappli); Final EPA Plantwide Applicability Limit Permit for Limetree Bay Terminals, LLC and Limetree Bay Refining, LLC, St. Croix, U.S. Virgin Islands, https://www.epa.gov/sites/production/files/2020-12/documents/limetree-final_pal_permit.pdf (Dec. 2, 2020) ((File name: EPA-HQ-limetree-final_pal_permit); U.S. EPA Region 2 Office, Response to Comments On the Clean Air Act Plantwide Applicability Limit Permit for the Limetree Bay Terminal and Limetree Bay Refining St. Croix, U.S. Virgin Islands (Nov. 2020), https://www.epa.gov/sites/production/files/2020-12/documents/response_to_comments-limetree_pal_permit.pdf (File name: EPA-R02-response_to_comments-limetree_pal_permit); Email exchange between Umesh Sholakia, US EPA, and Catherine Elizee (LB Terminals) (Feb. 12-13, 2019, Feb. 20, 2019 – March 11, 2019), <https://www.regulations.gov/docket/EPA-R02-OAR-2019-0551> (File names: EPA-R02-OAR-2019-0551-0022_content_tank emission calcs).

¹⁹⁹ Attach A. at 824-834, Plains Marketing Comment Letter at 34-34 (noting that an EPA-issued permit for similar activities included these emissions).

²⁰⁰ Attach A. at 813, Plains Marketing Comment Letter at 25 (explaining and citing permits issued by two other state permitting agencies to Plains Marketing than include emissions from these sources); *see, e.g.*, Attach. A Commonwealth of Virginia, Statement of Legal and Factual Basis, Plains Marketing L.P., Yorktown, Permit No. TRO-60116 at 10-21 (Oct. 12, 2017); *see, e.g.*, New York State Department of Environmental Conservation Permit Review Report Permit ID: 4-0101-00112/00029 Renewal Number: 2 Modification Number: 4 11/06/2012, Global Companies LLC. - Albany Terminal at 3 (Nov, 6, 2012), https://www.dec.ny.gov/dardata/boss/afs/permits/prr_401010011200029_r2_4.pdf.

²⁰¹ Attach A. at 920, Plains Marketing RTC at 7.

facility as trivial. ADEM merely provides a cite to the overall ADEM website (www.adem.alabama.gov) and did not provide the specific link to where its list of trivial activities resides on its website. Commenters expressed concern with the lack of information regarding these specific emitting units and activities, and ADEM failed to respond to the comments and explain which activity on the list were related to the emitting units and activities at the Plains Marketing facility.

Additionally, in response to the comments regarding emissions from wastewater, ADEM's response suggests that "[a]ny air emissions resulting from wastewater activity that may be present at the facility would be deemed insignificant."²⁰² ADEM neither provides a basis for characterizing the wastewater emissions as insignificant nor does it explain whether EPA approved characterization of these activities as "Trivial and Insignificant Activities." Indeed, emissions from these activities at Plains facilities in other states and other facilities are permitted by permitting agencies in other states, which as explained above, was another comment ADEM failed to respond to.

The Part 70 regulations require that if ADEM uses a list of insignificant activities when excluding such activities from permitting for specific sources, the list must be approved by EPA.²⁰³ Neither ADEM's RTC nor the list of activities on its internet page describe whether EPA approved the list on ADEM's website.²⁰⁴ This is of concern because historically ADEM disagreed with the requirement to seek EPA's approval of the list of insignificant activities and

²⁰² Attach A. at 919, Plains Marketing RTC at 6. ADEM failed to provide a basis for its response.

²⁰³ 40 C.F.R. § 70.5(c); *see also* 60 Fed. Reg. 57346, 57348-9 (Nov. 15, 1995) (EPA responded to adverse comments from ADEM that objected to EPA's required role "to review and approve these lists initially during the program review and later during implementation as States seek to add new exemptions to the lists.")

²⁰⁴ Attach. B at 121, ADEM's ten-page list of "Trivial and Insignificant Activities," (Sept. 23, 2009) <https://adem.alabama.gov/programs/air/permitting.cnt..>

any subsequent amendments to it.²⁰⁵

Failure to address missing sources: ADEM incorrectly relied on its prior construction permitting decisions as justification for failing to respond to Petitioners' comments regarding PTE. ADEM's RTC suggests that "[p]otential to emit is evaluated by ADEM during the air permitting process and a determination is made, at that time, that the source is major." ADEM's RTC explains that it does not consider all emitting sources during the Title V permit process because it asserts that "[a] Title V permit does not allow the introduction of new emission sources that would warrant a new review of potential emissions."²⁰⁶ ADEM apparently suggests that it makes the determination of what constitutes the source during the construction permit process and does not independently review and verifying the accuracy of the Title V application and consider whether there are facilities, emitting units and emissions missing from the application,²⁰⁷ and are necessary to ensure the permit complies with CAA permitting requirements. Furthermore, ADEM also ignored Petitioners' comments that identified missing sources and emissions in the Draft SOB and Draft Title V permit.²⁰⁸ ADEM's response indicates that the "application contains information regarding the potential emissions for the facility and is available in eFile, as is the entire permit record."²⁰⁹ ADEM's RTC failed to

²⁰⁵ 60 Fed. Reg. 57346, 57348-9 (Nov. 15, 1995) (EPA responded to adverse comments from ADEM that objected to EPA's required role "to review and approve these lists initially during the program review and later during implementation as States seek to add new exemptions to the lists.")

²⁰⁶ Attach A. at 920, Plains Marketing RTC at 7.

²⁰⁷ See, e.g., Attach A. at 810, Plains Marketing 3/4/21 Comment Letter at 20-21 (ADEM's Draft Renewal Permit Lacks a Determination of the Source); see also *id.* at 23 (Unlike Other Permits Issued by Other State Agencies, ADEM's Permit Fails to Include Requirements for Emissions from Wastewater (and Stormwater) Runoff, Disposal and Tanks Used for Water); see also *id.* at 23-25 (ADEM Did Not Calculate Potential to Emit to Determine Whether the Facility Will be A Major Source); see also *id.* at 26 (The Public Cannot Read ADEM's Mind Regarding What It Relies on to Assess PTE); see also *id.* at 26-27 (ADEM Failed to Disclose the PTE of Criteria Pollutants and HAPs); see also *id.* at 33 (Plains Marketing's Application] Failed to Include All Fugitive Emissions); see also *id.* at 35 (Plains Marketing's Application] Erroneously Excluded Secondary Emission Sources); see also *id.* at 36-37 (The Permit Application Does Not Include an Accurate Assessment and All Pollutants from the Marine Tank Vessels and Trucks).

²⁰⁸ Attach A. at 810.

²⁰⁹ Attach A. at 920, Plains Marketing RTC at 7.

indicate what application information it referred to and where in those materials the potential emissions for the facility – including all of the various units and emission raised in the comments – can be found.

Fugitive Emissions: ADEM failed to include and require monitoring of all fugitive emissions in the permit. The Permit Application, upon which ADEM relied, only included in the fugitive emission inventory “emissions that are due to leaks associated with pumps, flanges, connectors, and other similar equipment.”²¹⁰ Missing from Permit Application are the PTE estimates and permit requirements for emissions from the products are transported and permitted to flow through the marine terminal (Emission Unit No. 019). There are neither specific compliance or performance test methods/procedures nor emission monitoring requirements applicable to the marine loading operations. ADEM also ignored comments regarding the need to include and monitor of VOC and HAP emissions from the marine terminal operations.²¹¹ Moreover, the Final Permit lacks enforceable conditions that would restrict the public’s access to the ambient air at the marine loading and unloading terminal, and therefore emissions from the operation of the vessels must be taken into account when estimating emission from the marine terminal operations,²¹² which ADEM failed to do.

Reliance on inappropriate emission factors: The Plains Marketing PTE limits are inadequate due to ADEM’s inappropriate reliance on emission estimates that used TANKS 4.09d software. As explained in Petitioners’ public comments, EPA explained that that the use of TANKS software is to estimate emissions because TANKS is unable to accurately calculate limitations for heated tanks, lacked functions for calculating flashing, cleaning, and roof

²¹⁰ Attach A. at 827, Plains Marketing 3/4/21 Comment at 37, citing Permit Application at 13.

²¹¹ Attach A. at 814, Plains Marketing 3/4/21 Comment at 24, 38-39 (secondary emission sources).

²¹² Attach A. at 828, Plains Marketing 3/4/21 Comment at 38, n.119.

landing emissions, and inaccurately calculated monthly emissions.²¹³ Instead of addressing the specific problems with TANKS, ADEM simply asserts in the RTC that “AP-42 emission factors have been an appropriate method to calculate potential emissions since 1972 when other data is not readily available.”²¹⁴ Statements in ADEM’s RTC misunderstand EPA’s statements and decisions regarding the use and accuracy of the TANKS software.²¹⁵ EPA must object to ADEM’s misplaced use of the TANKS software program to estimate emissions.²¹⁶

EPA must also object to ADEM’s reliance on the permit applicant’s use of emission factors for the other emitting sources. An emission factor is a value that roughly correlates the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant and a generic emission factor does not generally yield an accurate estimate for a particular source.²¹⁷ Emission factors are based on a nationwide average of a range of facilities and of emission rates, and they are not necessarily indicative of the emissions from a given source at all times.²¹⁸ VOC and HAP emissions will vary depending on the product (*e.g.*, crude oil or diesel fuel). EPA must require ADEM require that the facility either require periodic

²¹³ See generally, Attach. A. at 820, Plains Marketing 3/4/21 Comment at 30-33.

²¹⁴ Attach. A at 922; Plains Marketing RTC at 8 (“Plains Marketing L.P. used approved US EPA method AP-42 emission factors for calculating emissions from the truck and marine loading operations. For loading emission estimates, emissions were estimated using AP-42 Section 5.2, Transportation and Marketing of Petroleum Liquids (June 2008). Marine crude oil loading emissions were based on arrival and filling operations.”); see also *id.* at 9 (“Plains Marketing L.P. application states loading emissions are calculated using AP-42 methodology specifically developed for the marine loading of crude oil, which include the displacement of vapors and the emissions generated from the filling operations. AP-42 emission factors have been an appropriate method to calculate potential emissions since 1972 when other data is not readily available.”) The Petitioners did not have an opportunity to comment on this assertion during the Draft Permit process and is thus raising issues regarding ADEM’s assertion and the use of AP-42 emission factors in the Petition.

²¹⁵ Attach. A at 922; Plains Marketing RTC at 8. (“EPA’s website states the TANKS model was developed using a software that is now outdated and may not be functional on certain older operating systems. It says they can no longer provide technical support for the program, not that the emission factors cannot be used to estimate emissions.”)

²¹⁶ Attach. A at 922; Plains Marketing RTC at 8 (“HAPs were calculated using speciation profiles for crude oil and diesel fuel from the TANKS program, which uses calculation methodologies and data presented in AP-42, Compilation of Air Pollutant Emission Factors.”)

²¹⁷ EPA, AP-42, AP-42 Vol. I, Introduction, <https://www.epa.gov/sites/default/files/2020-09/documents/c00s00.pdf>.

²¹⁸ *Id.*

monitoring or conduct emission testing to accurately characterize emissions from the types of crude oil and diesel fuel that is loaded at the truck rack and marine docks. If periodic monitoring is not required, then EPA must require that emission factors are developed for the source, which are representative of operations and the products at Plains Marketing. Furthermore, the Title V permit for this source must include testing requirements for monitoring, recordkeeping and reporting provisions for all forms of PM, HAPs, NO_x, SO₂, CO, and VOC emissions, which are needed to demonstrate compliance with the applicable requirements of the Act.

Because the arguments provided above show that ADEM failed to ensure that the PTE limits include all sources of the relevant pollutants at the facility or consider Petitioners' detailed comments on the issue, EPA must object to the VOC PTE limits contained in the Plains Marketing Permit.

ii. AL Bulk Terminal

In addition to failing to rely on adequate authority to create the synthetic minor limits, Petitioners' comments explained that ADEM's erroneously excluded emitting sources²¹⁹ and used inaccurate methods to calculate PTE emissions.²²⁰ ADEM's methods resulted in excluding relevant emissions from the PTE estimates and emissions sources from the permit.

Similar to the errors made and discussed above for Plain Marketing, the AL Bulk Terminal Final Permit fails to include the following:

²¹⁹ Attach. A at 117; AL Bulk Terminal Comment Letter at 19 (The Draft Statement of Basis Fails to Disclose and the Draft Permit Fails to Include Numerous Emitting Units and Alternate Operating Scenarios).

²²⁰ *Id.*

- ***Insignificant activities:*** ADEM erroneously excluded activities it deemed to be insignificant without citing the required EPA approved list of such activities.²²¹
- ***Failure to address missing emission sources:*** ADEM failed to respond to comments and the permit record does not address emissions from the truck traffic; emissions from the marine vessel operations; emissions from flanges, valves, pipes and pumps; emissions from oil/water separator(s); and emissions from transferring and receiving liquids from a neighboring facility's pipeline at ABT's dock facility²²²
 - ADEM also failed to include emissions from transferring and receiving liquids from a neighboring facility's pipeline at ABT's dock facility.²²³
- ***Fugitive Emissions:*** ADEM failed to address comments regarding fugitive PM/PM10 emissions from roads and parking lots²²⁴
- ***Inappropriate Use Of Emission Factors:*** ADEM relied on the permit application's use of emission factors, which was selective and omitted emissions from all sources.²²⁵

²²¹ Attach. A at 143; AL Bulk Terminal Comment Letter at 45 (The permit application and SOB fail to reference an EPA-approved list of insignificant emission units. Moreover, ADEM's website does not disclose to the public what insignificant units EPA has approved. It appears ADEM approves these on a case-by-case basis.); see also Draft SOB at 2 ("The insignificant emission sources at this facility include one portable 300 gallon diesel storage tank for fueling facility equipment; one stationary 360 gallon diesel storage tank for the fire water pump fuel; one 591 gallon thermal oil storage tank; one 571 gallon thermal oil storage tank; one 17,766 gallon diesel storage tank for the stand-by fuel for the boiler; one 5,040 gallon diesel storage tank for the stand-by fuel for the oil heaters and one 1,785 gallon thermal oil storage tank.")

²²² Attach. A at 117, AL Bulk Terminal Comment Letter. at 19.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ See, e.g., Attach. A at 104, AL Bulk Terminal Comment Letter at 6, citations omitted (explaining that "[i]t appears ABT has used emission factors to estimate maximum emissions as follows: PM, SO₂, NOX, CO and VOC from heater and boiler emissions, Only HAP emissions from its storage tanks, and Only HAP emissions during marine vessel and truck loading.")

ADEM either dismissed or failed to respond to all these comments. For example, ADEM failed to respond to the comments regarding missing emission units and emissions. ADEM also failed to address the adverse comments regarding the lack of permit provisos for the alternative operating scenario. In response to the insignificant emission unit comments, ADEM summarily dismissed Petitioners' comments as follows:²²⁶

Response to Comment 4

The MSOP permit is a compilation of the Air rules and regulations that a facility is subject and only covers stationary sources under the facility's control. A list of trivial and insignificant activities at the facility was included with the application. ADEM has explicitly defined what can be considered trivial or insignificant with regard to inclusion in an MSOP. A listing of what the Department has defined as "Trivial and Insignificant Activities" can be found on the ADEM website at www.adem.alabama.gov.

The second example is ADEM's misplaced reliance on emission factors. Commenters detailed the issues regarding ADEM's use of generic emission factors that were neither developed for nor demonstrated to be representative of emissions from the source.²²⁷ ADEM's RTC fails to engage and meaningfully respond to these comments.²²⁸

Because the arguments provided above show that ADEM failed to ensure that the PTE limits include all sources of the relevant pollutants at the facility or consider Petitioners' detailed comments on the issue, EPA must object to the SO₂, VOC, and HAPs PTE limits contained in the AL Bulk Terminal Permit.

iii. Kimberly-Clark

Petitioners' Comments did not raise issues regarding the types of inaccuracies noted above with regard to the Kimberly-Clark Permit's synthetic minor PTE limits but did provide detailed comments regarding other issues:

²²⁶ Attach. A at 250, AL Bulk Terminal RTC at 2.

²²⁷ Attach. A at 104-08, AL Bulk Terminal Comment Letter at 6-10.

²²⁸ Attach. A at 248, AL Bulk Terminal RTC at 1 ("The potential emissions included in the permit application were determined utilizing a mixture of programs based on AP-42 emission factors or EPA guidance documents (TanksESP and Guideware). In the absence of source specific emission factors, which themselves can be subject to variation, the Department has determined that these methods are the best estimates of emissions.")

- ***Inappropriate emission factors:*** Noted that inappropriate use of such factors lead to an underestimation of emissions at another unit (No. 7 Tissue Machine), which would impact the overall modeling analysis supporting the Permit.²²⁹

ADEM responded that AP-42 emissions factors have been used to calculate PTE since 1972, but did not address any of Petitioners' detailed comments regarding the flaws inherent in their use or the resulting impact on the Permit's limits.²³⁰ Accordingly, EPA must object because ADEM did not respond fully to Petitioners' comment on the use of emission factors.

iv. Alabama Shipyard

Alabama Shipyard Comments state that the draft SOB fails to contain a PTE table and lacks a PTE table for each emission unit, and also noted that ADEM's SOB does not quantify individual HAPs.²³¹ Furthermore, Petitioners explained that the SOB fails to include secondary emissions and that the only fugitive emissions discussed are for PM. Petitioners' Comments state that:

Without supporting detail and rationale, ADEM's failure to include a PTE [table] in its SOB lacks a reasoned basis. Furthermore, ADEM must redo the SOB to contain a PTE table of pollutants and provide rationale for the public to review and understand the bases for the emissions presented. Moreover, ADEM must include the missing sources, units and pollutants in a PTE table and analysis.²³²

ADEM's RTC explains that VOC and HAP information was evaluated and established with "the issuance of the original Title V permit."²³³ But Petitioners' cannot determine the accuracy of this information or the validity of any permit terms related to it because, as noted above, information

²²⁹ Attach. A at 600-601, Kimberly-Clark Public Comments

²³⁰ Attach. A at 673, Kimberly-Clerk RTC at Response 7

²³¹ Attach. A at 401, Alabama Shipyard Comments at 18.

²³² Attach. A at 417, Alabama Shipyard Comments at 34. FN 102 further explained that "It is further unclear whether ADEM independently calculated PTE at all. There are no statements in the SOB that indicate it either did – or did not – use information from the applicant or from any other source. In fact, ADEM does not address PTE at all." *Id.*

²³³ Attach. A at 494, Alabama Shipyard RTC at Response 8.

regarding ADEM's initial title V permit action is not available in ADEM's eFile. ADEM failed to respond to Petitioners' comments, and EPA must object and request that ADEM respond to Petitioners' comments.

v. UOP

=Similar to the errors made and discussed the Permits above, Petitioners' Comments on the UOP Permit noted that PTE information, including resulting limits, was inaccurately measured due to:

- ***Inappropriate Use of Emission Factors***: The permit regularly relies on underestimated and inappropriate emission factors, noting the many flaws with relying on such factors and specifically identifying use of AP-42 factors for units with numeric synthetic minor limits.²³⁴

ADEM responded that it used AP-42 in combination with other information and that AP-42 emissions factors have been used to calculate PTE since 1972.²³⁵ However, the Department did not address any of Petitioners' detailed comments regarding the flaws inherent in their use or the resulting impact on the Permit's limits. Accordingly, EPA must object because ADEM did not explain how use of emission factors does not underestimate emissions, especially as related to the synthetic minor PM and SO₂ limits contained in the Permit.

For the reasons provided above, EPA must object to the Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP Permits because ADEM failed to

²³⁴ Attach. A at 1085-1087, UOP Public Comments; *Id* 1086 n.55 (Identifying problems with the use of AP-42 for a number of units, including "EP100 *UOP Permit Application* at 621; EP101 *UOP Permit Application* at 623;... EP111 *UOP Permit Application* at 634" all of which are units with specific numeric PTE limits. *See* Attach. A at 1208 and 1212, UOP 2021 Final Permit.)

²³⁵ Attach. A at 1038, UOP Updated RTC at Response 12. Note that ADEM made no change to this response to address the objections in the *UOP Order*.

ensure that the PTE limits include all sources of the relevant pollutants at the facility, and did not fully consider and respond to Petitioners' detailed comments regarding PTE estimates.

c. The Permits fail to include the monitoring, recordkeeping and reporting necessary for those limits to comply with the Act.

Heightening ADEM's lack of authority for establishing synthetic minor limits in these Permits, and the inadequacies of the limits themselves, ADEM failed to fulfill its obligations to include adequate monitoring, recordkeeping and reporting permit conditions to assure compliance with the applicable requirements under 40 C.F.R. § 70.6(a)(3) and to provide other necessary bases for these limits as required by 40 C.F.R. § 70.7(a)(5).

i. Plains Marketing

Petitioners submitted voluminous and detailed comments regarding insufficient monitoring, recordkeeping, and reporting as related to the Truck Loading Rack,²³⁶ but ADEM simply added in the Revised SOB that: "Plains has a PSD synthetic crude oil throughput limitation on the truck rack of 2,284,170 gallons during any consecutive 12-month period."²³⁷ ADEM made no changes to add the required monitoring, recordkeeping and reporting provisions to the Final Permit to assure that Plains Marketing meets the operational limit of 2,284,170 gallons during any consecutive 12-month period.

For the following six reasons, EPA must object to the permit because ADEM failed to explain the basis for its Truck Loading Rack limit and create adequate monitoring, recordkeeping and reporting requirements to ensure compliance with it.

²³⁶ See, e.g., Attach. A at 822-23; Plains Marketing 3/14/21 Comment Letter at 32-33 (ADEM's final action continues to use faulty TANKS software); see also *id.* at 33-35 (ADEM's final action fails to include all the fugitive emissions from the Truck Loading Rack); see also *id.* at 35-37 (ADEM's final action fails to include secondary emission sources associated with the Truck Loading Rack operations).

²³⁷ Attach. A at 892, Plains Marketing Revised SOB at 4.

- First, ADEM failed to explain how the restriction on the amount of material processed - synthetic crude oil throughput limitation on the truck rack - correlates to the controlled PTE VOC emissions from the Truck Loading Rack.²³⁸ ADEM merely revised the SOB to include a table of 2021 plant-wide actual emissions,²³⁹ but this was inadequate as it failed to explain how the limit on cap on throughput results in a PTE for VOC emissions from Truck Loading Rack that is below the relevant VOC threshold of 100 TPY.
- Second, ADEM failed to respond to the following significant comments and EPA must object to the Title V permit because it lacks provisions that require the source to use specific methods to track throughput that are “sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.”²⁴⁰
 - The comments noted that in order for the emission limit based on gallon throughput limit to be enforceable as a practical matter, the permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit.²⁴¹ The final Permit does not describe how the gallons loaded by the operations either into or out of the

²³⁸ Attach. A at 830, Plains Marketing 3/4/21 Comment Letter at 40 (ADEM’s draft and Revised SOBs suggest that a 2005 permitting action successfully limited throughput at one emission point so that the facility avoids the 100 TPY VOC threshold. The Final SOB fails to quantify *how* the permit provisions that apply to the truck loading operations reduce and cap VOC emissions at a level less than 100 TPY. ADEM failed to provide calculations and methodology to review, verify and offer comments. Therefore, the public has been denied the opportunity to meaningfully review and comment and was not provided with the calculations and methods ADEM relied on for its proposed determination that the draft permit proviso limiting throughput at the truck loading operation to a gallon per year number meets the requirements for practical enforceability.)

²³⁹ Attach. A at 891, Plains Marketing Revised SOB at 3.

²⁴⁰ *Yuhuang I Order* at 14, citing 2002 *Pencor-Masada Order* at 7.

²⁴¹ Plains Marketing Comment Letter at 43, citing *In the Matter of Hu Honua Bioenergy Facility*, Petition No. IX-2011-1 (Feb. 7, 2014), at 10.

trucks are monitored and measured and instead merely indicates that “the permittee shall calculate the crude oil throughput.”²⁴²

- The permit does not explain what methods, metering systems or other devices the permittee is required to use to ensure compliance with this limit. There are no requirements for the facility to install, maintain and use metering systems to track and monitor the number of gallons of crude oil.²⁴³
- Third, ADEM failed to respond to comments that the Title V permit’s recordkeeping requirements are inadequate as they lack specificity on the records the permittee must maintain, which fails to meet the requirement for practical enforceability.²⁴⁴ The permit is not practically enforceable because it fails to specify the record the permittee must maintain. In short, it lacks the permit provisions to allow regulators and the public to assess whether the source is in compliance with the emission limits. Instead, the permit gives the permittee the discretion to use whatever records it wants to. EPA must object to the Title V permit because it lacks these provisions.
- Fourth, ADEM failed to respond to comments regarding the lack of detail in the type of information that the permittee include in its submittal to ADEM to demonstrate compliance with the throughout limit, giving the permittee unfettered discretion in providing information.²⁴⁵

²⁴² Plains Marketing Comment Letter at 43.

²⁴³ *Id.*

²⁴⁴ *Id.* (Final Permit at 28, “The permittee shall maintain records of the crude oil throughput on a monthly and 12-month rolling total basis.”)

²⁴⁵ Plains Marketing Comment Letter at 43 (“Finally, commenters note that the permit requires that only a “summary of the crude oil throughput for the truck loading operation to include the monthly and 12-month rolling totals” be submitted to ADEM twice a year. The permit fails to provide adequate specificity regarding *what* information is required. The permit unclear what must be included in a summary. Thus, the summary of the crude oil throughput will not include clear and specific information about what is monitored for the public to review.”)

- Fifth, ADEM failed to respond to comments that all VOC emitting units at the facility must be considered in determining compliance with the VOC synthetic minor limit that ADEM attempts to use to allow the entire source to escape PSD permitting.²⁴⁶ ADEM only attempted to create a synthetic minor emission limit at the Truck Loading Rack. The permit application clearly disclosed PTE of VOCs from across the facility, which included the following: tanks (61.02 TPY), marine loading operations (239.27 TPY), truck loading (131.61 TPY), fugitives (1.01 TPY) and engines (4.61 TPY) totaling 437.57 TPY.²⁴⁷ Only the truck loading unit has a synthetic minor limit. ADEM failed to revise the Final Permit so that it covers all VOC emissions, the permit is inadequate to restrict the facility's PTE under the major source threshold of 100 TPY VOCs.
- Sixth, ADEM failed to respond to the comment that the permit allows for multiple ways for product to flow into and out of the facility without ever passing through the truck loading facility.²⁴⁸ As Petitioners explained in the comments, the draft permit allows the marine terminal to move different types of petroleum and/or use different processes and emitting units to move the products.²⁴⁹ The permit allows that crude oil and ethanol may flow into the marine terminal or from the marine terminal. Under these circumstances it is necessary to include permit provisions for all pre-

²⁴⁶ *Id.* at 44, citing *Yuhuang I Order* at 14, citing *Hu Honua Order* at 10-11; *Cash Creek Order* at 15; *Kentucky Syngas Order* at 29-30.

²⁴⁷ Plains Marketing Permit Application at 3-4.

²⁴⁸ Plains Marketing Comment Letter at 44.

²⁴⁹ *Id.* at 22 (“ADEM’s SOB explains that the Marine Terminal has 17 tanks and has the capability of receiving crude oil, petroleum liquids, and ethanol.⁶⁰ While the SOB explains that the crude oil petroleum liquids, and ethanol are moved to and from the Marine Terminal via the pipeline system, ships, barges, and tank trucks, the SOB does not address the regulatory source determination requirements and assess whether the pipeline and associated equipment are part of the source.”); *see also id.* at 27.

approved alternative operating scenarios as required by 40 C.F.R. § 70.6(a)(9).²⁵⁰ Commenters explained in the comments – and provided examples of permits issued by other states – that demonstrated that other state permitting agencies provided for such alternative operating scenarios in issuing permits to Plains Marketing operations and other companies with operations similar to the Plains Marketing facility in Mobile.²⁵¹ Different petroleum products stored and moved through different parts of the facility will emit different amounts of criteria pollutants and HAPs, thus the need to require that information be included in the permit application and ensure that the Final Permit includes provisos that cover the various ways and operating scenarios in which the marine terminal operates. Notably, the permits issued by the other state permitting agencies account for the variety of alternative operation scenarios in their permitting actions.²⁵² While the permit allows for different operating scenarios, the permit application and Revised SOB lack information about the emissions from these scenarios, thus the public cannot provide detailed comments on these issues. ADEM

²⁵⁰ *Id.* at 27 (ADEM’s Statement of Basis and Draft Permit Fail to Include Alternative Operating Scenarios).

²⁵¹ *Id.* at 2 n.3, citing Title V Operating Permit Registration No. 60116, issued by the Commonwealth of Virginia to Plains Marketing L.P., Yorktown bulk petroleum liquids storage and distribution terminal (Oct. 12, 2017), available at Attach. B at 1573, and Commonwealth of Virginia, Statement of Legal and Factual Basis, Plains Marketing L.P., Yorktown, Permit No. TRO-60116 (Oct. 12, 2017), available at Attach. B at 1549, *see also id.* at 3, n.3 (explaining that in contrast to ADEM’s Draft SOB, Virginia’s SOB for the Plains Marketing facility in that State included A) detailed information about the Title I NSR permits (permit date and type), permitted process covered, and permitting agency notations; B) the compliance status of the source (this issue was identified in GASP’s October 2020 comments; C) a table summarizing all the emission units, a description of each unit, the pollution control device, the pollutants controlled and the applicable permit date; D) actual emissions reporting data.) Furthermore, the permit application submitted by Plains Marketing to Virginia includes the various alternative operating scenarios under which the company anticipates it will operate.

²⁵² *See, e.g.*, available at Attach. B at 1549, Title V Operating Permit Registration No. 60116, issued by the Commonwealth of Virginia to Plains Marketing L.P., Yorktown bulk petroleum liquids storage and distribution terminal (Oct. 12, 2017) (File name: VI_60116 - FOP_T5Renewal - 20171012_50539947); *see also* Attach. B at 1549, Commonwealth of Virginia, Statement of Legal and Factual Basis, Plains Marketing L.P., Yorktown, Permit No. TRO-60116 (Oct. 12, 2017) (File name: VI_60116 - SOB_T5Renewal - 20171012_44971270); *see also* Plains Marketing Title V Operating Permit Renewal Application submitted to the Virginia Department of Environmental Quality (VDEQ) for Registration No. 60116 (May 5, 2016) (File name: VI_60116 - Application - 20160506_53270952).

failed to consider the variables and different operating scenarios or respond to Petitioners' comments regarding them.²⁵³ However, Petitioners' comments raised at least three operating scenarios that allow product to move through the facility outside the truck loading rack and emissions from these scenarios fail to include synthetic minor limits.²⁵⁴ Therefore, the draft permit's proviso that only covers the truck loading operations does not cover all actual VOC emissions from the facility and does not effectively restrict PTE of VOCs as required to comply with the permitting requirements by the Act. ADEM failed to respond to these comments.²⁵⁵ EPA must object to the failure of ADEM to include provisions for all operations and direct ADEM to request information necessary to develop operating scenarios – with associated permit terms for emission controls, monitoring, recordkeeping and reporting.

ii. AL Bulk Terminal

Similar to the issues raised above, EPA must object to the AL Bulk Terminal Permit because ADEM failed to create the necessary foundations for the synthetic minor limits and failed to include create adequate monitoring, recordkeeping and reporting requirements to ensure compliance with them in the Permit. Specifically:

- First, ADEM's RTC "clarifies" that it intended for the synthetic minor limits on individual and total HAPs to apply across the facility.²⁵⁶ Therefore, EPA must

²⁵³ The permit applicant did not include any alternative operating scenarios in the Title V Application or request any specific operational flexibility conditions.

²⁵⁴ Attach. A at 834, Plains Marketing Comment Letter at 44 ("Product is unloaded via marine vessels, stored in the tanks, and then reloaded into marine vessels. Product is unloaded via marine vessels, stored in the tanks, and leaves the facility via pipelines. Product enters at the facility via pipelines, stored in tanks, and leaves the facility via the marine terminal operations.")

²⁵⁵ Attach. A at 920, Plains Marketing RTC at 7 (Response to comment 23 appears to be ADEM's attempt at responded to these comments, where ADEM notes that "[e]ven though Plains Marketing L.P. previously stored gasoline, they no longer have the legal authority to do so since the product is not listed in the most current Title V application.)

²⁵⁶ Attach. A at 253, AL Bulk Terminal RTC at Responses 16 & 17.

also object based on the Final Permit's failure to contain the required Plantwide Emission Limits (PALs). 40 CFR § 52.21 (aa)(6)(i).

- Second, as explained in Petitioners' comments on the Draft Title V permit, "[t]he Draft Title V Permit fails to establish a relationship between throughput of products allowed by the Draft Title V permit and potential to emit. Neither ADEM's draft permit nor SOB include calculations supporting" the PTE limits necessary for the source to be exempt from MACT requirements.²⁵⁷ ADEM's Revised SOB fails to establish any relationship between the throughput limits in the Permit and the facility-wide HAPs limits.
- Third, in response to Petitioners' extensive comments regarding the lack of adequate monitoring, recordkeeping, and reporting to support the various HAPs PTE limits in the Permit,²⁵⁸ ADEM noted that it would add the phrase "using the methods described in the application" in regards to how emissions shall be calculated" to every such proviso in the Permit.²⁵⁹ This phrase is inadequate to establish synthetic minor monitoring, recordkeeping and reporting requirements because it is not practically enforceable. The phrase is not practically enforceable because the means for ensuring compliance with permit terms needs to be contained in the permit itself. It is not clear how someone looking at these provisos of AL Bulk Terminal Permit would understand *which* application is being referenced or *which* specific calculation methods within it AL Bulk

²⁵⁷ Attach. A at 128, AL Bulk Terminal Comment Letter at 30.

²⁵⁸ *Id.* at 30-46.

²⁵⁹ Attach. A at 253, AL Bulk Terminal RTC at Responses 16.

Terminal should be using. The permit provisions fail to allow regulators and the public to assess a facility's compliance with its permit limitations.

iii. Kimberly-Clark

EPA must also object to the Kimberly-Clark Permit because ADEM failed to include adequate monitoring, recordkeeping and reporting requirements to ensure compliance with the NOx synthetic minor limit in the Permit. Specifically,

- First, Petitioners' Comments provided the various NOx limits contained in the Permit, which include a limit of "25ppm @ 5% O2 or 1.2 lb/MWh useful output" and "shall not exceed 3.46 lb/hr while both the Combustion Turbine & Supplemental Burner are being operated," which was identified as a synthetic minor limit.²⁶⁰ Petitioners then noted that in order for the Permit's synthetic minor NOx limit of 3.46 lb/hr "to be enforceable as a practical matter, the permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit. The permit is silent on this operational scenario that is integral to this limit."²⁶¹ ADEM's full response to emission limit comment was "Subpart KKKK establishes the methods to be used for demonstrating compliance with the NOx limit, which are reflected in the draft permit."²⁶² However, this response completely fails to address the operating scenario issue specifically raised in the comment or the need for practical and legal enforceability of synthetic minor limits. The Permit notes that compliance with the NOx limit shall be determined through use of Method 7c, but it does not

²⁶⁰ Attach. A at 606-607 and n. 70, Kimberly-Clark Comments.

²⁶¹ Attach. A at 608, Kimberly-Clark Comments.

²⁶² Attach. A at 674, Kimberly-Clark RTC at Response 13,

require Kimberly-Clark to provide any information about the various operating scenarios it is using, nor does it require emissions compliance monitoring to be tested during both types of operating scenarios.²⁶³ Since the synthetic minor NOx limit is required to control emissions for a specific operating scenario, it can only be legally and practically enforceable if the Permit requires Kimberly-Clark to record when it operating under the various scenarios and to do compliance testing using both operating scenarios.

- Second, Petitioners’ noted that the monitoring of the NOx synthetic minor limit was inadequate because the monitoring requirements consisted of only a yearly NOx performance test.²⁶⁴ ADEM’s response to the yearly performance test issue simply says that it complies with federal rules.²⁶⁵ While the federal rules may only require a yearly performance test for determining compliance with general NOx requirements, that type of yearly test is inadequate, in and of itself, to assure compliance with a lb/hour synthetic minor limit. The Permit must include monitoring that would “readily allow regulators and the public to assess a facility’s compliance with its permit limitations,”²⁶⁶ so ADEM needs to include provisions that address monitoring that can measure the quantity of NOx emissions during the specific periods both the Combustion Turbine and Supplemental Burner are being operated.

²⁶³ Attach. A at 690, Kimberly-Clark Final Permit at 1-3, Proviso 3.

²⁶⁴ Attach. A at 608, Kimberly-Clark Comments.

²⁶⁵ Attach. A at 673, Kimberly-Clark RTC at Response 8.

²⁶⁶ *See e.g.*, EPA 2021 OIG Report at 4.

Accordingly, EPA must object to the Kimberly-Clark Permit because it fails to include provisions that assure the NOx synthetic minor limit is enforceable and that Kimberly-Clark is complying with it.

iv. Alabama Shipyard

EPA must also object to the Alabama Shipyard Permit because ADEM failed to create the necessary foundations for the synthetic minor limit and failed to include adequate monitoring, recordkeeping and reporting requirements to ensure compliance with the synthetic minor limits for VOCs in the Permit. Specifically:

- First, Petitioners' Comments noted that the draft Permit appeared to contain facility-wide caps for pollutants but "lacks the regulatory provisions required for Plantwide Applicability Limits."²⁶⁷ Petitioners also noted that the permit lacks provisions to make the facility-wide limits practically enforceable.²⁶⁸ The RTC explains that the permit contains a "facility-wide synthetic minor limit of 245 tons/year"²⁶⁹ for VOCs, but ADEM failed to address the comment regarding the need for additional provisions required to establish Plantwide Applicability Limits, including those that would make such limits practically enforceable. EPA must object because the Final Permit fails to contain the Plantwide Emission Limits (PALs) required for such facility-wide limits. 40 C.F.R. § 52.21 (aa)(6)(i).
- Second, the permit fails to establish a relationship between the throughput of products allowed by the permit, PTE, the emission limitations, and calculations.²⁷⁰ ADEM must establish a relationship between whatever provisions are contained in the draft

²⁶⁷ Attach. A at 417, Alabama Shipyard Comments at 34.

²⁶⁸ Attach. A at 399, Alabama Shipyard Comments at 16.

²⁶⁹ Attach. A at 493, Alabama Shipyard RTC at Response 3.

²⁷⁰ Attach. A at 398, Alabama Shipyard Comments at 15.

permit (e.g., throughput limits) and the facility-wide emission limits of tons per year that ADEM appears to be establishing in this Permit. ADEM did not provide the calculations and technical basis pertaining to these limits, which must be included in the SOB, or present it elsewhere in the permit record.²⁷¹ Instead, ADEM's RTC explains:

The facility utilizes vendor data and the amount of VOC containing material used to calculate emissions. Alabama Shipyard is required to conservatively assume that all VOCs applied are emitted to the atmosphere on the plant premises. The limitation was evaluated and established with the issuance of the original [2002] Title V permit. The limitations for HAPs come directly from 40 CFR 63, Subpart II.²⁷²

EPA must object because ADEM failed to respond to the comment – the 2002 permit is not available and thus there is nothing in the record for this Permit providing a correlation between the throughput and the PTE limit.

- Third, given nearby EJ communities the Petitioners encouraged ADEM to include work practice standards to control the VOCs and HAPs emissions allowed by the Permit, rather than allow the source to emit all VOCs and HAPs to the atmosphere.²⁷³ ADEM's fails to revise the Permit in response to this comment, and instead responded that “[t]he facility tracks the usage of VOC and HAP containing materials and performs routine visual observations, which both serve to limit emissions.”²⁷⁴ The visual observations address opacity and particulate emissions and do nothing to limit VOC and HAP emissions. Furthermore, it is unclear how “tracking” usage of material containing VOC and HAPs results in emission reductions. Given that the

²⁷¹ Attach. A at 398-99, Alabama Shipyard Comments at 15-16, citing *In the Matter of Motiva Enterprises, LLC*, Order on Petition No. 11-2002-05 (Sept. 24, 2004), at 30.

²⁷² Attach. A at 494, Alabama Shipyard RTC at Response 8.

²⁷³ Attach. A at 399, Alabama Shipyard Comments at 16.

²⁷⁴ Attach. A at 495, Alabama Shipyard RTC at Response 12.

Permit includes specific PTE limits of 245 TPY of VOCs and 30 (or 40) TPY of HAPs, Petitioners appeal to EPA to direct ADEM to work with the source to explore ways to reduce and limit emissions, memorializing reductions via practically enforceable provisos in a synthetic minor permit.

v. UOP

EPA must also object to the UOP Permit because ADEM failed to create the necessary foundations for the synthetic minor limits and failed to include adequate monitoring, recordkeeping and reporting requirements to ensure compliance with them in the Permit. As discussed more fully below, Petitioners noted that infrequent visual monitoring of opacity and PM emissions and lack of any monitoring for SO₂ emissions was adequate to assure compliance with an opacity limit or a PM limit “that must be met at all times.”²⁷⁵ ADEM provided additional information regarding this monitoring in the RTC and SOB, but nowhere did they specially explain how such infrequent or nonexistent monitoring could assure compliance with these numeric limits. Accordingly, EPA must object to the UOP Permit.

For the reasons provided above, EPA must object to the Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP Permits because ADEM failed to ensure that the Permits include the monitoring, recordkeeping and reporting provisions necessary to ensure that these facilities are in compliance with the PTE limits.

d. ADEM failed to address other significant issues for several facilities.

In addition to the permit-specific issues related to the authority for and adequacy of the various synthetic minor limits in these five permits, as noted above, Petitioners request objections on the additional, significant deficiencies in these Permits discussed below.

²⁷⁵ Attach. A at 1099, UOP Public Comments at 14.

i. AL Bulk Terminal: EPA must object because ADEM failed to evaluate and treat the Alabama Bulk Terminal Company LLC and the Hunt Refining Company as the same source.

As Petitioners' comments explained, the Alabama Bulk Terminal Company LLC and the Hunt Refining Company must be considered the part of the same source because they meet the three-prong test.²⁷⁶ As explained in the comments, because both facilities are owned by the same legal entity,²⁷⁷ the two facilities meet the third-prong (under common control of the same person (or persons under common control)).²⁷⁸ The two facilities also meet the second-prong (the two facilities share the same two-digit SIC code), because for these facts, the Alabama Bulk Terminal Company LLC is a support facility to the Hunt Refinery, and for support facilities that facility is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered.²⁷⁹ Finally, for the first-prong of the test, the comments showed that, consistent with EPA's analyses and comments on single source determinations, the two facilities are "contiguous and adjacent" because they share

²⁷⁶ The Hunt Refinery Title V permits indicate the source is major for several NAAQS pollutants and HAPs. *See, e.g.*, Attach. B at 252 Major Source Operating Permit issued by ADEM to Hunt Refinery Company, Facility No 413-0007, (ADEM Filename: 6169 413-0007 125 02-23-2021 T5PERM MOG 3T5R SIGNIFICANT MOD) (Dec. 23, 2021) (current major source operating permit, which included a significant mod) <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104481876&dbid=0&cr=1> (last accessed January 3, 2023); *see also*, Major Source Operating Permit issued by ADEM to Hunt Refinery Company, Facility No 413-0007, (ADEM Filename: 6169 413-0007 125 09-01-2020 T5PERM MOG 3T5R PERMIT) (Sept. 1, 2020) (third major source operating permit renewal), <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104373939&dbid=0>, (last accessed Jan. 3, 2023); *see also* Statement of Basis, Major Source Operating Permit Third Title V Renewal, Harlotte M. Bolden-Wright, Industrial Mineral Section, Energy Branch, Air Division, ADEM, for Hunt Refinery Company, Facility No 413-0007, (Sept. 1, 2020) (ADEM Filename: 6169 413-0007 125 09-01-2020 T5SOB MOG 3T5R STATEMENT OF BASIS) (Dec. 23, 2021), <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104373940&dbid=0> (last accessed Jan. 3, 2023), (last accessed Jan. 3, 2023) [hereinafter "ADEM's Hunt Refinery Company SOB"]; *see also* Hunt Refinery Renewal Application (May 2017), (ADEM Filename: 6169 413-0007 125 05-07-2017 T5APP MOG 3T5R APPLICATION), <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104318961&dbid=0> (last accessed January 3, 2023) [hereinafter "Hunt Refinery Company Application"].

²⁷⁷ Attach. A at 395-97, Alabama Bulk Terminal Comment Letter at 12-14.

²⁷⁸ *See* 40 C.F.R. § 70.2.

²⁷⁹ Attach. A at 398, Alabama Bulk Terminal Comment Letter at 15.

afunctional relationship or the functional interrelatedness. Thus, the comments showed that these two facilities are one stationary source.²⁸⁰

ADEM failed to meaningfully respond to Petitioners' detailed comments that the Hunt Refinery must be considered a single source with the Alabama Bulk Terminal. ADEM's terse reply indicates that "[t]he ABT facility is a minor source with respect to both PSD and MACT applicability. Since the facility is not adjacent to or co-located with any facility with which it shares ownership, a sole source determination is not required." ADEM failed to provide a reasoned basis for treating the two sources separately or provide any record evidence to counter the information provided in the comments to show the facilities are contiguous and adjacent and under common control. EPA must object and based on the facts detailed in the Comments require that ADEM determine that the two facilities are a single source.

Finally, because the Hunt Refinery is a major source of HAPs,²⁸¹ once ADEM correctly considers the Alabama Bulk Terminal Company LLC and the Hunt Refining Company are a single source, EPA must direct that ADEM treat the entire source as major for HAPs, including removing the synthetic minor HAP limits in the Alabama Bulk Terminal Company LLC, identifying Clean Air Act section 112 requirements applicable to the Alabama Bulk Terminal Company LLC and require that ADEM provide for public notice and comment of its actions.

For the reasons provided above, EPA must object to the AL Bulk Terminal Permit because ADEM failed to evaluate and treat the Alabama Bulk Terminal Company LLC and the Hunt Refining Company as the same source.

²⁸⁰ *Id.* at 15-18.

²⁸¹ Attach. B at 846, ADEM's Hunt Refinery Company SOB (identifying the MACT/NESHAP regulations that apply to the refinery); *see also* Attach. B. at 960, ADEM's Hunt Refinery Company SOB Hunt Refinery Company Application (explaining that the PTE for all HAPs is 63.07 TPY).

- ii. **Alabama Shipyard: EPA must object because ADEM failed to include credible evidence requirements, the most recent NESHAP Compliance Plan, and adequate monitoring of PM emissions.**

1. **EPA must object and direct ADEM to include the required credible evidence requirements in the Alabama Shipyard Final Title V Permit.**

Petitioners' Alabama Shipyard Comments stated that Alabama's EPA-approved SIP includes a regulation for use of any credible evidence for purposes of enforcement and the draft permit failed to include that applicable requirement.²⁸² As the Comments explain, the Alabama Shipyard Permit must include all applicable requirements, including the SIP requirements for use of credible evidence.²⁸³ Moreover, the Part 70 regulations include a similar requirement, which must be reflected in the permit.²⁸⁴ ADEM's RTC explains that "[t]he Department has the ability to use credible evidence of a violation when enforcing the terms and conditions of the permit. Its explicit inclusion in the permit is not necessary."²⁸⁵ ADEM did not revise the permit in response to this comment.

The use of credible evidence is a requirement of the Alabama SIP and the Part 70 regulations and is thus an applicable requirement that must be contained in the Title V permit for Alabama Shipyard. ADEM failed to revise the Permit to include a provisions providing for use of credible evidence. Therefore, EPA must object and direct that ADEM revise the Alabama

²⁸² Attach. A at 397, Alabama Shipyard Comments at 14, citing 335-3-1-.13(3).

²⁸³ *Id.*

²⁸⁴ 40 C.F.R. § 70.6(c)(5)(iii)(b) ("Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements."), contains the Part 70 requirement for use of credible evidence and these requirements must be reflected in the Title V Permit; *see e.g., In the Matter of Shaw Industries, Inc. Plant No. 2 Dalton, Georgia Carpet Manufacturing*, Petition IV-2001-10, Order on Petition (Nov. 15, 2002), at 11-12 (where the Final Title V permit "adequately provides for the inclusion of credible evidence in compliance certifications by reciting the language from EPA's own regulation at 40 CFR § 70.6(c)(5)(iii)(B) that was promulgated expressly for that purpose.") ("Shaw Industries"). In contrast, ADEM's Final Title V Permit fails to contain the SIP credible evidence and related Part 70 requirements.

²⁸⁵ Attach. A at 493, Alabama Shipyard RTC at Response 5.

Shipyards Permit to include provisos for the use of credible evidence, referencing the applicable requirements in the Alabama SIP and the Part 70 regulation.

2. EPA must object and direct ADEM to include the most recent NESHAP Compliance Plan in the Alabama Shipyards Final Title V Permit.

Commenters stated that ADEM must include as a part of the Alabama Shipyards Title V permit the October 2020 NESHAPs Compliance Plan for Shipbuilding and Ship Repair (Surface Coating), which was included in the application.²⁸⁶ ADEM's RTC suggests that "the original NESHAP Implementation Plan was submitted in 2006 and is not required to be resubmitted. A copy of this [2006] plan can be found in the facility's records on the Department's eFile system with the latest application."²⁸⁷ ADEM's RTC is incorrect. The permit applicant's application included the 2020 update to its earlier compliance plan, which was clearly identified on the cover page to the plan.²⁸⁸ Therefore, EPA must object and require that ADEM reference and include the most recent 2020 plan in issuing the Title V permit.²⁸⁹

²⁸⁶ Attach. A at 419-21, Alabama Shipyards Comments at 36-38.

²⁸⁷ Attach. A at 497, Alabama Shipyards RTC at Response 21.

²⁸⁸ Attach. C at 96, Title V Air Permit Renewal Permit Application, ADEM Facility Number: 503-6001, Alabama Shipyards, LLC, 660 Dunlap Drive, Mobile, Alabama, 36602 (Oct. 2021), "NESHAPs Compliance Plan for Shipbuilding & Ship Repair (Surface Coating) (Revised October 2020)", available at <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104660516&dbid=0&cr=1>.

²⁸⁹ Attach. A at 421, Alabama Shipyards Comments at 38, explaining that the NESHAP requires that Alabama Shipyards "[p]repare a written implementation plan" and "[n]ot later than one year after the effective date of this subpart, submit the implementation plan to the Administrator." 40 C.F.R. § 63.787(b)(1)(i)-(ii). The source is required by the applicable requirement to operate in accordance with the Implementation Plan, *i.e.*, the facility "must prepare and implement" a plan that addresses coating compliance procedures, recordkeeping procedures and transfer, handling and storage procedures. *Id.* Therefore, the NESHAPs Compliance Plan must be included in the permit pursuant to 40 C.F.R. § 70.6(a)(1). *In re CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel*, Petition No. VIII-2011-01 (May 31, 2012) at 7, (citing *In re Alliant Energy - EP L Edgewater Generating Station*, Petition No. V-2009-2 (Order on Petition) (Aug. 17, 2010), at 13-14 (determining that a plan must be included in a title V permit where compliance with the plan was required by the applicable requirement, or where the plan was necessary to demonstrate compliance with a permit limit); see also *In re WE Energies Oak Creek Power Plant* (Order on Petition) (June 12, 2009), at 25-26 (noting that where compliance with an approved plan is required by a construction permit or the SIP, the plan must be included in the title V permit)). In order for the plan to be practically enforceable, the draft permit must, as a threshold matter, incorporate the NESHAPs Compliance Plan. Accordingly, ADEM must revise the draft permit to include the NESHAPs Compliance Plan in its entirety and update the provisos for EU001 to include the requirements of the NESHAPs Compliance Plan attached to the permit application.

3. EPA must object because the Alabama Shipyard Permit lacks sufficient monitoring for the PM emission limits.

The final Title V Permit for Alabama Shipyard lacks sufficient monitoring for PM in five areas and EPA must object and direct that ADEM revise the Permit to include sufficient monitoring. Specifically

- (1) Commenters stated that permit lacks the requirements found in EPA’s Method 9, which include training and certification of the observer and procedures to be used in the field for determination of plume opacity. ADEM entirely ignored this comment, and retained the language in the Draft Permit, which conflicts with EPA’s Method 9 requirements – the permit merely requires “someone familiar with Method 9” to conduct this monitoring.²⁹⁰ It is essential that the person observing potential opacity violations have the required training and certification, otherwise the public lacks assurance that the observations are conducted in accordance with EPA’s Method 9 procedures. EPA must object and require that ADEM revise the permit and require that the permittee use individuals that are trained and certified to conduct Method 9 observations.
- (2) Commenters stated that the draft permit failed to include the necessary provisions for Method 9: no reporting for Indoor Blasting Unit;²⁹¹ no recordkeeping and no reporting for Indoor Blasting Machine;²⁹² and no recordkeeping and no reporting for

²⁹⁰ See e.g., Attach. A at 498, Alabama Shipyard Final Permit at 520 (Visible emissions shall be monitored on a weekly basis when this source is operating by someone familiar with Method 9 of 40CFR60 Appendix A. If visible emissions greater than normal are observed corrective action shall be taken within 24 hours and an additional observation shall be made.) (emphasis added); *id.* at 538 (“Visible emissions shall be monitored on a weekly basis by someone familiar with Method 9 of 40CFR60 Appendix A. If visible emissions greater than normal are observed corrective action shall be taken within 24 hours and an additional observation shall be made.”) (emphasis added).

²⁹¹ Attach. A at 403, Alabama Shipyard Comments at 20.

²⁹² Attach. A at 407-408, Alabama Shipyard Comments at 24-25.

Shape Blasting Line.²⁹³ ADEM did not respond to these comments. EPA must object, require that ADEM respond and revise the permit to include the necessary recordkeeping and reporting requirements for Method 9 for the Indoor Blasting Unit, Indoor Blasting Machine, and Shape Blasting Line.

- (3) Commenters stated that the “permit lacks any work practice provisos for baghouse maintenance and repair.”²⁹⁴ Without such provisions, the EJ communities near this facility have no assurance the baghouses continue to operate as designed. ADEM fails to respond to this comment. The SOB indicates that for the Indoor Blasting Unit, “[t]he baghouse shall be inspected at least annually, and whenever emissions are observed.” This sentence is not enforceable because it is not in the permit.

Enforceable work practice provisions for the baghouses are essential to ensure that the following three emission units control the dust and particulate matter emissions.

EPA must object and direct that ADEM include baghouse work practices, along with monitoring, recordkeeping and reporting provisions in the permit to maintain and control emissions.

- Emission Unit 002, Shot blast and paint building with baghouses that is permitted to operate 8,760 hours per year. Of significant concern to Petitioners is that according to ADEM’s RTC, filters for these baghouses were purchased more than 20 years ago, in 2002.²⁹⁵

²⁹³ Attach. A at 408, Alabama Shipyard Comments at 25.

²⁹⁴ Attach. A at 399, Alabama Shipyard Comments at 16.

²⁹⁵ Attach. C at 2, Permit Application Appendix E, at 2,

<http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104889363&dbid=0&cr=1>. Attach. C at 102, Alabama Shipyard Title V Renewal Permit Application Appendix E at 2, available at

<http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104889363&dbid=0&cr=1>.

- Emission Unit 003, Steel shot blast with baghouse that is permitted to operate 8,760 hours per year.
 - Emission Unit 006, Shot blast steel with dust controlled baghouse that is permitted to operate 8,760 hours per year.
- (4) Commenters stated that the permit fails to specify how frequently the source must demonstrate compliance with Method 5 and lacks the recordkeeping and reporting requirements: the Indoor Blasting Unit, Indoor Blasting Machine, Shape Blasting Line.²⁹⁶ The final permit retains the requirement for Method 5 testing in the same three instances,²⁹⁷ and the SOB explains that “[t]he Title V Permit lists Method 5 as the method that shall be used if a compliance test was required. However, due to the low rate of emissions expected, no monitoring is required in the Title V Permit.” ADEM’s SOB statement is inconsistent with the requirement in the Final Permit. Moreover, the Permit fails to include how frequently the source must test and the required recordkeeping and reporting. EPA must object and require that ADEM include these provisions in the revised permit.
- (5) Commenters stated that the Permit fails to specify how much grit is allowed in the Open Air Grit Blasting operations, what type of grit is allowed, how the overall throughout was calculated to determine the overall emissions, etc.²⁹⁸ Additionally, the Permit does not describe how the tons of grit are measured, nor how an annual limit ensures compliance with the short-term PM NAAQS. Commenters stated that ADEM

²⁹⁶ Attach. A at 400-411, Alabama Shipyard Comments at 17-28.

²⁹⁷ Attach. A at 498, Alabama Shipyard Permit at 520 (Indoor Blasting Unit “Particulate emissions shall be determined using Method 5 of 40CFR60 Appendix A.”); *id.* at 528 (Indoor Blasting Machine “Particulate emissions shall be determined using Method 5 of 40CFR60 Appendix A.”); *id.* at 538 (Provisos for Shape Blasting Line “Particulate emissions shall be determined using Method 5 of 40CFR60 Appendix A.”).

²⁹⁸ Attach. A at 411-412, Alabama Shipyard Comments at 28-29.

must specify the methods used, and information must be collected for these operations and submitted to ADEM and made available to the EJ community. ADEM's RTC simply refers to Appendix E of the application.²⁹⁹ ADEM fails to respond to specific issues identified in comments and makes no changes to the Permit. It is disingenuous for a permitting agency to merely reference the application and fail to engage with the public's comment, especially as any terms of an appendix of a permit application are not actually part of the Permit and thus do not address the enforceability of the PM limits in the Permit. The Permit must specify the types of materials allowed, and ADEM must explain what assumptions and calculations it used to determine emissions and how those results ensure compliance with the PM NAAQS. EPA must object and direct that ADEM take those actions.

iii. UOP: EPA Must Deny the UOP Permit, or in the Alternative Issue an Objection, Because ADEM's Response Fails to Address All of the Objections and Related Deficiencies Identified in the *UOP Order*.

The EPA's objection order regarding the UOP Permit directed ADEM to "respond to the significant comments" regarding the Agency's (1) justification for the adequacy of the monitoring, recordkeeping, and reporting requirements for the synthetic minor limits, (2) the adequacy of the monitoring, recordkeeping, and reporting for opacity, PM, and SO₂ limits, (3) the lack of specific citations to authority throughout the permit, including the general references to Alabama Administrative Code R. 335-314-.04, and (4) the underlying permitting decision for the synthetic minor NSR limits.³⁰⁰ In their response, ADEM explained that it modified the SOB to include references to the documents establishing such authority, including citations to the

²⁹⁹ Attach. A at 496, Alabama Shipyard RTC at 5 Response 18.

³⁰⁰ *UOP Order* at 10, 11, 14, and 15.

“originating” NSR permits and the engineering analysis that accompanied them; modified the SOB and RTC to provide additional justification for the monitoring, recordkeeping, and reporting requirements; and revised certain references in the Permit to provide more specific regulatory references.³⁰¹ Petitioners have reviewed the information ADEM added to the various portions of the UOP permit record and finds that they fail to fully address EPA’s objections in the *UOP Order* and are still insufficient to ensure that the Permit complies with CAA (and Alabama SIP) permitting requirements. As an initial matter, ADEM did not provide its response until mid-September 2022, which is more than 90 days following the April 2022 *UOP Order* and should thus be denied as untimely. In addition, ADEM’s revision to the UOP Permit and accompanying record contain many of the same flaws regarding the authority for and adequacy of the PTE limits and the monitoring, reporting, and recording provisions in the Permit. Accordingly, for the reasons stated above and the additional reasons provided below, EPA must deny the UOP Permit as required by the Act and EPA’s regulations,³⁰² or alternatively, issue another objection to the Permit and provide UOP with more specific direction regarding how to resolve the issues identified in this Petition.

A review of the overall Permit reveals that UOP is subject to “synthetic minor PSD emission limits” for PM and SO₂ at almost every source at the facility.³⁰³ It is unclear whether the source took these limits to avoid the PSD permitting requirements for major sources or for major modifications,³⁰⁴ but that distinction does not matter for the purpose of this Petition. What

³⁰¹ See generally Attach. A at 975, UOP Response Cover Letter.

³⁰² 42 U.S.C. § 7761d (c)(“ If the permitting authority fails, within 90 days after the date of an objection...to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subchapter.”); 40 C.F.R. § 70.8(c)(4) (same).

³⁰³ See generally UOP 2021 Final Permit, Federally Enforceable Provisos: Applicability for each listed unit (except the Pneumatic Clay Transfer System and Emergency Engines).

³⁰⁴ Attach. A at 1051, UOP Updated RTC at Response 17 (noting that whenever UOP has undertaken modifications, it has taken PTE limits to avoid the significance thresholds to that would require PSD major modification permitting).

does matter is that UOP has taken multiple limits across all aspects of its facility since the early 1980's,³⁰⁵ which resulted in a Permit with over 80 individual PM emission limits of which than 50 of which are numeric limits (most of which measured are in lbs/hour or lbs/MMBtu), and more than 15 numeric SO₂ limits (all of which are measured in lb/MMBtu).³⁰⁶ These are PTE limits that were required in order to avoid the requirements of major source permitting. As such, these limits need to be set at appropriate levels, including accurate estimates of all emissions. As discussed above, Petitioners raised issues with the use of AP-42 in the Permit generally and specifically identified its use at several units with synthetic minor limits, but ADEM did not explain how use of those factors supported the specific emission limits in the permit.³⁰⁷

In addition, these synthetic minor limits must also be legally and practically enforceable to ensure emissions remain those major source permitting thresholds,³⁰⁸ and must be supported by monitoring, recordkeeping, and reporting requirements in the Title V permit that are “sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.”³⁰⁹ Those assurances simply do not exist here.

Every opacity and PM limit contained in the Permit, including the 50+ numeric limits that restrict PM emissions on a lb/hr or lb/MMBtu basis, is monitored by visual emission monitoring in which emissions are observed during short periods either daily (for 4 units subject to CAM requirements)³¹⁰ or twice a week (for all other units). ADEM did provide more detailed responses to Petitioners' Public Comments regarding the inadequacy of infrequent

³⁰⁵ Attach. A at 1009, UOP Updated SOB at 9-10 (noting 1984 air permit establishing the Project 505 PTE); *see also id.* at 14 (noting that ADEM calculated the PTE limits for the Catalyst 6A until in 1980 but did not include them in an enforceable limit until 1986).

³⁰⁶ *See generally* Attach. A at 1163 *et seq.* (pages x-1), UOP 2021 Final Permit, Information Summary for each listed unit (summarizing emission points and emission limits).

³⁰⁷ *See* n.234-235 and related text, *supra*.

³⁰⁸ *Cash Creek Order* at 15

³⁰⁹ *Yuhuang I Order* at 14, citing 2002 *Pencor-Masada Order* at 7.

³¹⁰ UOP Updated RTC at response 13 (for three baghouses and a wet scrubber).

visual monitoring and supplemented the SOB with similar information, but they still failed to address Petitioners' central comment – how such monitoring could incur compliance with limits “that must be met at all times.”³¹¹ In general, ADEM's additional information repeated the same answer for each unit – explaining that use of use of either daily or twice weekly visual monitoring requirement would ensure control equipment was being properly maintained and thus that emissions were controlled.³¹² However, the information provided by ADEM makes no attempt to correlate this type of monitoring to hourly emission limits or otherwise specifically explain how this monitoring assures compliance with opacity and PM limits, especially where such limits are included to enforce PTE limits taken to avoid major source permitting and control obligations.

The UOP Permit contains many PM limits expressed as lbs/hr and lbs/MMBtu and opacity limits of “twenty percent (20%), as determined by a six-minute average, except for one six (6) minute period in any sixty (60) minute period of not greater than forty percent (40%).”³¹³ While twice weekly observations may, as ADEM asserts, “indicate any issues that may be developing which a control device and allow the facility to take a proactive approach to compliance,”³¹⁴ this monitoring does not actually ensure that the facility has met these PM and opacity limits during all other times the plant is operating. Nor does ADEM's rejection of more frequent monitoring provide the necessary justification. ADEM states that:

Since these emission units are batch operations and operate on an intermittent basis, continuous methods of emission monitoring, such as COMS, would be impractical, as they would be monitoring a significant amount of time while the units were not in

³¹¹ Attach. A at 1088, UOP Public Comments at 14.

³¹² Attach. A at 1045, UOP Updated RTC at Response 3.

³¹³ Attach. A at 1053, UOP Final Permit at page 2, Proviso 5.

³¹⁴ Attach. A at 1045 and 1004 et seq., UOP Updated RTC at Response 3 and Updated SOB at 4, 7, 8, 10, 12-13, 15, 18, 20, 23, 24, 27, 32, 34, 35, 36, 38, and 40.

operation. Similarly, more frequently required visual observations would also result in observations during times of non-operation.³¹⁵

Such concerns about monitoring emissions during periods of non-operation does not excuse the need to monitor them during periods of operation. ADEM could stipulate that COMs equipment be used only during operational periods or require more frequent hourly visual observations during operational periods.

This type of infrequent monitoring – when coupled with a requirement to only report deviations observed in such monitoring – does not allow ADEM, EPA, or the public to determine whether the facility is in continuous compliance with the Permit or enforce the terms of the Permit as necessary. ADEM assertion that the “potential PM emissions from the individual emission points located at the facility are relatively small”³¹⁶ fails to recognize that even if small, these numeric emission limits must be enforceable to avoid PSD permitting requirements, and there are many of these “small” limits exist across the facility, with a cumulative impact on the overall PM emissions from the facility. ADEM has again failed to show how such limited visual monitoring ensures compliance with the numerous PM and opacity limits across the facility, most of which are synthetic minor limits and thus must be legal and practically enforceable. Accordingly, EPA must object and direct ADEM to revise the permit to include monitoring, recordkeeping, and reporting to ensure compliance with the various PM and opacity limits at all times, such as use of COMs or more frequent visual tests, with results that must be recorded and reported regularly to ADEM.

Likewise, the Permit continues to generally cite to EPA Method 6 for compliance with the SO₂ limits without explaining which of the specific tests within Method 6 the source must

³¹⁵ Attach. A at 1007, UOP Updated SOB 7 (and other Updated SOB pages referenced in n. 314, *supra*)

³¹⁶ Attach. A at 1090, UOP Response – Updated RTC at Response 3; see also Updated SOB at 7, 11, 13, 15, 27, 29, 32, 35, 38 (arguing that the relatively small size of batching operations leads to few expected PM emissions).

apply.³¹⁷ Petitioners comments regarding lack of specificity in the Method 6 compliance provisions must be addressed, especially as there are many types of emission units addressed in the Permit to which the various Method 6 options could apply.³¹⁸ ADEM's response to comments addressing the adequacy of the SO₂ limits does not even mention Method 6.³¹⁹ Without specificity regarding which type of Method 6 monitoring of SO₂ emissions UOP is required to undertake, it impossible for ADEM, EPA, and the public to ensure that the source is meeting the SO₂ emission limits in the Permit or to determine whether other methods are needed. EPA must object and direct ADEM to revise the Permit to state the specific SO₂ monitoring method that UOP must apply for each unit with an SO limit and direct ADEM to re-notice the permit so that the public can determine whether that method is sufficient to ensure compliance with the Permit's specific SO₂ limits.

CONCLUSION

EPA must object to these five Final Permits for the reasons stated above. Specifically, EPA should find that:

- ADEM failed to comply with the procedural requirements to issue these Permits and direct ADEM to re-notice these permits for public comment and provide all necessary information in re-submitting them to EPA;
- ADEM's issuance of these Permits does not comply with Title V's public participation requirements or the prohibition against disparate impacts under Title VI of the Civil Rights Act of 1964, and direct ADEM to respond to Petitioners' EJ comments and to re-issue these Permits in staggered manner to avoid disparate impacts; and

³¹⁷ See generally Attach. A at 1044 and 1053, UOP Updated RTC (no mention of Method 6) and UOP 2022 Final Permit at 1-3, Proviso 2 (citing Method 6 generally for compliance with SO₂ emission rates).

³¹⁸ See Attach. A at 1090, UOP Comments; 40 C.F.R. Part 60, Appendix A-4, Method 6, including Methods 6A, 6B, and 6C, available at <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-60/appendix-Appendix%20A-4%20to%20Part%2060>.

³¹⁹ Attach. A at 1049, UOP Revised RTC, response 14.

Permits' terms fail to comply with significant requirements of the CAA, and direct ADEM to provide their regulatory authority to issue synthetic minor emission limits, correct the various deficiencies Petitioners' identified in those limits, and revise the permits to include the monitoring, recordkeeping and reporting provisions necessary to ensure that these facilities are in compliance with limits, as well as direct ADEM to address other significant issues identified in the facility-specific objections noted above, including denial of the UOP Permit for failure to fully address the objections issued in the *UOP Order*.

Petitioners also request that if EPA decides to grant objections for the failure to follow procedural requirements and direct ADEM to re-notice these permits, EPA should not then end its inquiry. Instead, EPA should fully consider all of the issues raised in this Petition, grant objections based upon them, and issue specific direction to ADEM for addressing each objection. We recognize that EPA may be inclined to emphasize a cooperative federalism approach to Title V permitting, with the inclination to give ADEM as much flexibility as possible in implementing its permitting program. However, Petitioners' arguments and the permit records at issue show consistent non-compliance with the Act's procedural and substantive requirements and clear impacts on EJ communities in Africatown and Mobile community. Thus, it is imperative that EPA's order provide detailed and specific direction to ADEM regarding the resolution of

objections. Continually asking ADEM to clarify and justify its record will only further delay the health and environmental protections provided to these communities by the Act.³²⁰



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Attachment A

Attachment B

Attachment C

Attachment D

³²⁰ In addition to addressing the issues raised in this Petition, Petitioners' strongly encourage EPA to improve its oversight of ADEM's permitting program, especially with regard to its issuance of synthetic minor limits. For example, EPA should conduct periodic reviews of synthetic minor permits issued by ADEM and work with ADEM to review permits that impact the Africatown and Mobile EJ communities before they are issued for public comment. See generally EPA 2021 OIG Report.

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