

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

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| IN THE MATTER OF |) | PETITION FOR OBJECTION |
| |) | |
| Clean Air Act Title V Permit (Federal |) | |
| Operating Permit) No. 503-8085 |) | |
| |) | |
| Issued to DCP Operating Company, |) | Permit No. 503-8085 |
| L.P. |) | |
| |) | |
| Issued by the Alabama Department of |) | |
| Environmental Management |) | |

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE
ISSUANCE OF TITLE V RENEWAL OPERATING PERMIT NO. 503-8085
FOR THE DCP OPERATING COMPANY, L.P. MOBILE BAY GAS
TREATING AND PROCESSING FACILITY**

Pursuant to section 505(b)(2) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. §7661(b)(2), and CAA implementing rules, 40 C.F.R. §70.8(d), Mobile Environmental Justice Action Coalition (“MEJAC”) and GASP (“Petitioners” or “Commenters”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Title V Operating Permit No. 503-8085 (“Renewal Permit”) issued by the Alabama Department of Environmental Management (“ADEM” or “Department”) on December 6, 2023, to the Mobile Bay Gas Treating and Processing Facility (“Facility” or “Mobile Bay Plant”), owned and operated by DCP Midstream L.P. (“DCP”), located in Caden, Mobile County, Alabama. The Facility consists of one natural gas liquids (“NGL”) processing train with a design capacity of 300 million standard cubic feet per day (MMScf/day) and uses a cryogenic turbo expander NGL recovery process, which

cools a dried inlet gas stream to separate the NGLs from a high methane “residue” gas product. Final Statement of Basis (“Final SOB;” attached here as Attachment 1) at 7. The NGLs are then treated to remove impurities prior to being delivered for sales via an interstate pipeline. *Id.* As required, Petitioners are filing this Petition with the Administrator via the Central Data Exchange and providing copies via email and certified U.S. mail to ADEM and via certified mail to DCP.

As discussed further below, EPA must object to the Renewal Permit because it does not include: (1) sufficient measures to control fugitive dust requirements from the unpaved roads, and (2) monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with applicable requirements for unpaved roads. The pollutants of concern include particulate matter (PM₁₀, PM_{2.5}).

I. PETITIONERS

MEJAC is a nonprofit organization formed in 2013 by residents of Africatown, Alabama (an extraordinarily historic and predominately Black area in Mobile County) in partnership with regional stakeholders and advocates. MEJAC’s mission is to engage and organize with others in Mobile, Alabama’s most threatened communities in order to defend the inalienable rights to clean air, water, soil, health, and safety; to promote environmental justice; and to take direct action when the government fails to do so, ensuring community self-determination, including environmental justice.

GASP is a nonprofit organization with a mission to enhance the health and well-being of Alabamians by reducing air pollution, advancing environmental

justice, and promoting climate solutions 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. GASP advocates for more robust public participation and community involvement in matters that affect community members.

II. PROCEDURAL BACKGROUND

This petition addresses ADEM's renewal of Title V Permit No. 503-8085 for the DCP Midstream L.P. Mobile Bay Gas Treating and Processing Facility. The previous Title V operating permit for the Mobile Bay Plant was a significant modification, issued on September 14, 2017, and expired on September 13, 2022.¹ ADEM released the Draft Permit for public comment on July 20, 2023, setting a 30-day comment deadline of August 21, 2023.² On August 21, 2023, Petitioners timely filed significant Public Comments on the Draft Permit. *See* Attachment 7, Public Comments Regarding Draft Renewal Title V Permit No. 503-8085 ("Comments").

EPA's 45-day review period began on September 24, 2023, and ended on November 8, 2023. Almost a month later, on December 6, 2023, ADEM issued the Renewal Permit (attached here as Attachment 3), Final SOB, and the DCP Operating Company, LP-Mobile Bay Gas Treating and Processing Facility MSOP Renewal Response to Comments, Facility No.: 503-8085 ("Response to Comments;")

¹ ADEM Major Source Operating Permit for Mobile Bay Gas Treating & Processing Facility, Facility No.: 503-8085 (Issuance Date, Sept. 14, 2017), *available at* <https://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104486999&dbid=0&cr=1>.

² Public Notice at 1, *available at* <https://adem.alabama.gov/newsEvents/notices/jul23/7dcp.html>.

attached here as Attachment 4). Because EPA did not object to the Renewal Permit during its 45-day review period, the 60-day public petition period ends on January 7, 2024, which is a Sunday. Therefore, the deadline falls to the next day, January 8, 2024. Accordingly, this Petition is timely filed.³

III. LEGAL REQUIREMENTS

Title V permits, which must list and assure compliance with all federally enforceable requirements that apply to each major source of air pollution, are the primary method for enforcing and assuring compliance with the Clean Air Act's pollution control requirements for major sources. *Operating Permit Program*, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). One of the primary purposes of Title V is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result.” *Id.* at 32,251. “The [Title V] permit is crucial to implementation of

³ While this Petition is timely filed, we want to emphasize that the timing of ADEM's issuance of the Renewal Permit and related documents provided Petitioners with significantly less than 60 days to consider, draft, and file this Petition. Following the conclusion of EPA's review period, Petitioners were tracking the finalization of this permitting action and the availability of these documents in two locations: EPA Region 4's Title V Database and ADEM's eFile. Petitioners also reached out directly to EPA and ADEM for information on the status of the final documents and requested that ADEM provide them with the final Renewal Permit and related documents when they were issued (attached here as Attachment 2). However, ADEM did not provide Petitioners with email notice of the Department's issuance of the Renewal Permit, Final SOB, and Response to Comments on December 6, 2023, and Petitioners did not see them on ADEM's eFile or EPA's database on that date. Instead, Petitioners did not find out about the final Renewal Permit and related documents until a week later, on December 13, 2023. Since EPA implementing rules require that Title V petitions must identify noncompliant permit terms and the permitting authority's inadequate responses to public comments, 40 C.F.R. §§ 70.12(a)(2)(i), (iii), and (vi), Petitioners reasonably waited until the Department had issued their final Renewal Permit, final SOB, and final Response to Comments before deciding whether a petition was warranted. Accordingly, Petitioners have had only 26 days, including the intervening holiday period, to prepare this Petition.

the Act: it contains, in a single, comprehensive set of documents, all [Clean Air Act] requirements relevant to the particular source.” *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996). All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). 40 C.F.R. Part 70, which governs the State Operating Permit Programs, requires that Title V permits include all “applicable requirements.” See 40 C.F.R. §§ 70.1(b), 70.3(c)(1), 70.7(a)(1)(iv). “Applicable requirements” include, *inter alia*, any provision of the Alabama State Implementation Plan (“SIP”), including Ala. Admin. Code r. 335-3-4-.02(1), (2), which is part of ADEM’s EPA-approved SIP and referenced in the Renewal Permit.⁴ This regulation in the Alabama SIP requires sources in the State to prevent fugitive particulate matter emissions from becoming airborne.⁵

⁴ Renewal Permit at 8 (General Permit Proviso 18, “Fugitive Dust and Fugitive Emissions”) (Attach. 3); see Ala. Admin. Code r. 335-3-4-.01(1). The SIP-approved version of this regulation is attached to this Petition, *available at* <https://www.epa.gov/system/files/documents/2021-12/335-3-4.pdf>. (Attached here as Attachment 5). The regulation was first approved into the SIP on May 31, 1972 (37 Fed. Reg. 10,842) and last revised October 15, 2008 (73 Fed. Reg. 60,957).

⁵ Ala. Admin. Code r. 335-3-4-02(1) No Person shall cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, but not be limited to, the following:

(a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading or reads, or the clearing of land;

(b) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stock piles, and other surfaces which create airborne dust problems;

“But Title V did more than require the compilation in a single document of existing applicable limits It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions.” *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008). It is also the Title V permitting authority’s responsibility to ensure that a proposed permit “set[s] forth” conditions sufficient “to assure compliance with all applicable requirements” of the Clean Air Act. *In the Matter of Sandy Creek Services, LLC, Sandy Creek Energy Station, McLennan County, TX*, Order on Petition No. III-2018-1 (June 30, 2021) at 12 (quoting 42 U.S.C. § 7661c(c)). Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). A “monitoring requirement insufficient ‘to assure compliance’ with emission limits has no place in a permit unless and until it is supplemented by more rigorous standards.” *See Sierra Club v. EPA*, 536 F.3d 673, 677 (D.C. Cir. 2008).

All emission limits in a Title V permit must be enforceable as both a legal and practical matter. In order for a limit to be enforceable under the Clean Air Act, it must be supported by monitoring, recordkeeping, and reporting requirements “sufficient to enable regulators and citizens to

(c) Installation and use of hoods, fans, and fabric filters (or other suitable control devices) to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations.,

(2) No person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.

determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.” *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Order on Petition No. II-2001-05 (April 8, 2002) at 7. The permitting authority’s rationale for any proposed permit conditions must be clear and documented in the permit record, 40 C.F.R. § 70.7(a)(5), and “permitting authorities have a responsibility to respond to significant comments” received on a proposed permit. *In the Matter of CITGO Refining and Chemicals Co., L.P., West Plant, Corpus Christi, TX*, Order on Petition No. VI-2007-01 (May 28, 2009) at 7 (“CITGO Order”).

EPA must object to any Title V permit that fails to include or assure compliance with all applicable requirements of the Clean Air Act. 40 C.F.R. § 70.8(c). “Applicable requirements” include any requirements of a federally enforceable SIP. “Under CAA § 504(a), [e]ach permit issued under this subchapter shall include enforceable emission limitations and standards ... and such other conditions as are necessary to assure compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan.’ Likewise, the EPA’s regulations specify that each Title V permit must include ‘[e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.’ 40 C.F.R. § 70.6(a)(l); see 40 C.F.R. § 70.6(c)(l).” *In the Matter of Alabama Power Company, Barry Generating Plant, Mobile County, AL*,

Order on Petition No. IV-2021-5 (June 14, 2022) at 15 (“Barry Order”). A Title V permit must include all applicable requirements.

If EPA does not object to a Title V permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). The Administrator “shall issue an objection” if the petitioner demonstrates “that the permit is not in compliance with the requirements of [the Clean Air Act], including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1). The Administrator “shall grant or deny such petition within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2).

IV. GROUNDS FOR OBJECTION

For all the reasons discussed below, EPA must object to the Title V Renewal Permit for the Mobile Bay Plant.

A. The Renewal Permit Does Not Include the Specific and Detailed Measures for Control of Fugitive Emissions from the Unpaved Roads

1. Specific Grounds for Objection, Including Citation to Permit Term

The Renewal Permit is deficient because it fails to include the specific and detailed operational requirements for the control of fugitive particulate matter emissions from the unpaved roads at the Mobile Bay Gas Facility, which must be in the Permit to assure compliance with the SIP requirements. 40 C.F.R. § 70.6(a)(l); *see* 40 C.F.R. § 70.6(c)(l). According to ADEM, the requirements in General Permit Proviso 18 are based on Ala. Admin. Code r. 335-3-4-.02, which is part of ADEM’s EPA-approved SIP. *Supra* notes 4-5. The Alabama SIP requires sources in the State

– including Mobile Bay Gas – to prevent fugitive particulate matter emissions from becoming airborne. Specifically, ADEM’s rules prohibit Mobile Bay Gas from: (1) operating without taking reasonable precautions to prevent fugitive dust emissions, including from the use of the roads within it, and (2) allowing visible fugitive dust emissions beyond the lot line of the source. *Supra* note 5. Accordingly, limiting fugitive dust emissions is an applicable requirement for Mobile Bay Gas under the Alabama SIP, and the Renewal Permit must include adequate, source-specific operational requirements to assure compliance with these requirements.

The Renewal Permit only contains the General Permit Proviso that essentially reiterates the State SIP rule requirements by requiring roads at Mobile Bay Gas to be “maintained in the following manner so that dust will not become airborne” using one or a combination of the following, general methods:

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| (1) | By the application of water any time the surface of the road is sufficiently dry to allow the creation of dust emissions by the act of wind or vehicular traffic; |
| (2) | By reducing the speed of vehicular traffic to a point below that at which dust emissions are created; |
| (3) | By paving; |
| (4) | By the application of binders to the road surface at any time the road surface is found to allow the creation of dust emissions; |

as well as unspecified “alternative methods” as needed. Draft Permit at 8, General Permit Proviso 18 (attached here as Attachment 6). These general and vague provisions are inadequate to control and address the fugitive dust requirements of the Alabama SIP because they lack specific and detailed operational requirements

for the control of fugitive emissions from the unpaved roads. The items listed lack the specificity necessary to assure compliance. For example, the Renewal Permit:

- Leaves it entirely up to the owner or operator to determine when the road is “sufficiently dry” and necessary to apply water.
- Fails to include and define triggers for water suppression activities.
- Fails to specify the frequency at which water must be applied.
- Fails to specify the speed at which vehicular traffic must be reduced to, leaving discretion to the owner or operator to set the speed limit.
- Does not specify how the owner or operator determines the road surface is found to allow the creation of dust.

Moreover, the Final SOB merely explains that “[a]ll plant roads are paved or graveled. There are no raw materials, storage piles, products, etc. capable of generating fugitive dust at this facility.” *Id.* ADEM wrongly asserts that “additional specific requirements are not necessary for this facility.” *Id.*

Neither the Renewal Permit, Final SOB, or Response to Comments provide a reasoned explanation as to how General Permit Proviso 18 contains the specific and detailed operational requirements for control of fugitive emissions from the unpaved roads at the Mobile Bay Facility. The Department does not provide a rationale for how General Permit Proviso 18 contains conditions to assure compliance with the SIP requirements for the owner or operator of the Facility to take reasonable precautions to prevent fugitive dust emissions, including from the use of the roads within it – the unpaved roads in particular, and assure that the owner or operator

does not cause or allow the discharge of visible fugitive dust emissions beyond the lot line of the property as required by 72 U.S.C. § 7661c(a), 40 C.F.R. § 70.6(a)(1) and 40 C.F.R. § 70.6(c)(1). *See* Final SOB at 4.

2. Applicable Requirement or Part 70 Requirement Not Met

Every Title V permit must include all applicable requirements that apply to a source. The Clean Air Act requires that “[e]ach permit issued under this subchapter shall include enforceable emission limitations and standards ... and such other conditions as are necessary to assure compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan.” 72 U.S.C. § 7661c(a). Additionally, the EPA’s regulations specify that each Title V permit must include “[e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.” 40 C.F.R. § 70.6(a)(1); *see* 40 C.F.R. § 70.6(c)(1). The applicable requirements at issue here are found in Ala. Admin. Code r. 335-3-4-02(1), (2). *Supra* notes 4-5. The Renewal Permit fails to include permit terms with operational requirements necessary to assure compliance with the requirements in Ala. Admin. Code r. 335-3-4-02(1), (2).

3. Inadequacy of the Permit Term

The General Provisos in the Renewal Permit are inadequate because they lack the details necessary that assure compliance with the applicable requirements for the control of fugitive emissions from the unpaved roads at the Mobile Bay Facility. EPA has expressly found that “[t]he ‘reasonable precautions’ requirement

at Ala. Admin. Code r. 335-3-4-.02(1) is an ‘applicable requirement’ for title V purposes.” Barry Order at 15-16. The generic list of options from the Alabama SIP to control fugitive emissions in the Renewal Permit do not assure compliance because they are not specifically related to the use of vehicles on the unpaved roads at the Mobile Bay Facility. The generic list has not been tailored with detailed operational requirements that apply to the unpaved roads at the Mobile Bay Facility. Instead, ADEM’s Renewal Permit leaves the discretion completely up to the owner or operator to determine the details of what, if any, reasonable precautions to take to control fugitive dust emissions from the unpaved roads. Moreover, the Renewal Permit allows ADEM to approval alternative methods, and lacks criteria for ADEM to apply in approving those methods, which gives ADEM unfettered discretion in approving other methods with the opportunity for public comment. Renewal Permit Provisos 18 (c), (d). The lack of specific operational requirements means that the neighboring communities, EPA, and the State have no means to track the operational requirement activities – and associated violations of the SIP requirements and – will therefore be hindered in taking appropriate enforcement action. In sum, leaving discretion to the owner or operator to decide whether, when and how to follow the SIP requirements is inadequate, inappropriate and not sufficient for enforcement.

The lack of specific reasonable precautions in the Renewal Permit to prevent fugitive dust emissions, including from the use of the unpaved roads within the Mobile Bay Facility, and the lack of specific terms to prohibit visible fugitive dust

emissions beyond the lot line of the source results in a Renewal Permit that does not comply with the SIP and Title V requirements.

4. Issue Raised in Public Comment

Petitioners expressly raised these issues in Comment 3 of their Comments, which stated the same points above. Comments at 8-10. Moreover, Petitioners took issue with the following statement in the Draft SOB that asserted that such “additional specific requirements for fugitive dust are not necessary for this facility” because there are “no raw materials, storage piles, products, etc. capable of generating fugitive dust at this facility” and “all plant roads are paved or graveled.” Draft SOB at 4. Petitioners’ Comments explained the Department’s assertion that gravel roads do not produce fugitive dust “is simply false.” Comments at 9.

Petitioners’ Comments explained that ADEM’s assertion regarding gravel roads not producing fugitive dust is not supported by the US Department of Transportation and US EPA. As Petitioners’ Comments detailed “[t]he [US DOT] has developed an entire manual to address the maintenance and design of gravel roads, which clearly states that ‘all gravel roads will give off dust under traffic’ because they are all ‘unpaved roads’ for which dust is an ‘inherent problem.’” Comments at 9-10. Petitioners’ Comments expressly provided information on how ADEM could obtain the US DOT manual.⁶ ADEM never contacted Commenters that it had a challenge accessing the US DOT manual. Furthermore, Petitioners’

⁶ Comments at 9-10 (attached here as Attach. 7), citing U.S. Dept. of Transportation, Federal Highway Administration, *Gravel Roads: Maintenance and Design Manual* (Nov. 2000), at 51, available at <https://www.epa.gov/nps/gravel-roads-maintenance-and-design-manual>.

explained that “[w]hile gravel roads generally produce less fugitive dust than dirt roads, they are still considered ‘unpaved’ roads for which EPA has suggested specific controls measures, such as regularly applied water, specific speed limits, paving, and regular visual inspections for dust during heavy truck use.” Comments at 10. Petitioners provided ADEM with a link to where the EPA best practices information for fugitive dust control can be found, providing links to two documents.⁷ ADEM never contacted Commenters that it had a challenge accessing the US EPA information on best practices.

Petitioners’ Comments concluded by telling ADEM that it “must revise the Proposed Permit to include specific fugitive dust control provisions . . . Such provisions should include specific vehicle speeds, defined triggers for water suppression activities, and monitoring of visible emissions at the roads and the lot line, and ADEM must ensure the revised measures contain enough detail to be enforced by the Department, EPA, and the public.” Comments at 10.

5. Analysis of ADEM’s Response

The Department’s response to Petitioners’ Comments does not explain how the Renewal Permit contains provisions with specific measures to assure control of fugitive emissions from the unpaved roads. In response to Petitioners’ Comments,

⁷ EPA, Fugitive Dust Control Measures and Best Practices (Jan. 2022), *available at* <https://www.epa.gov/system/files/documents/2022-02/fugitive-dust-control-best-practices.pdf>; *see also*, EPA, Gravel Roads: Maintenance and Design Manual, Section IV: Dust Control and Stabilization (Nov. 2000), *available at* https://www.epa.gov/sites/default/files/2015-10/documents/2003_07_24_nps_gravelroads_sec4_0.pdf.

the Department tersely summarizes Petitioners' detailed Comments and provides the response below:

COMMENT No. 3. – “The Proposed Permit Must Contain Source-Specific Measures to Control Fugitive Dust”.

RESPONSE – All plant roads are paved or graveled, thereby significantly limiting the potential for fugitive dust. There are no raw materials, storage piles, products, etc. capable of generating fugitive dust at this facility. Therefore, additional specific requirements for fugitive dust are not necessary for this facility.

Response to Comments at 4. To appreciate the level of effort ADEM put into responding to Petitioners' Comments, it is important to start with ADEM's Draft SOB on the issue of unpaved roads, which was as follows:

All major facilities are now required to submit a Facility-Wide Fugitive Dust Plan, if necessary. All plant roads are paved or graveled. There are no raw materials, storage piles, products, etc. capable of generating fugitive dust at this facility. Therefore, additional specific requirements for fugitive dust are not necessary for this facility.

Draft SOB at 4. (Attached here at Attachment 8.) When one compares the language in ADEM's Draft SOB with its Response to Comment, one finds that the entirety of the Department's response is contained in the underlined words seen in the sentence below:

All plant roads are paved or graveled, thereby significantly limiting the potential for fugitive dust.

The Department's response is neither consistent with the Clean Air Act and regulatory requirements nor responsive to Petitioners' Comments. 72 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(1); 40 C.F.R. § 70.6(c)(1). Indeed, the Department added just *eight* words to its Draft SOB on these issues, which is inadequate for numerous reasons. First, the Department does not explain how vague and generic language in General Permit Proviso 18 will assure that there are no fugitive dust emissions and

that the fugitive dust emissions will not cross the property line, nor does the Department identify any other reasonable precautions that are included in the Renewal Permit that the owner or operator must take to address these fugitive dust requirements. Second, while the Department asserts there is gravel on some of the roads, as Petitioners' Comments explained, gravel roads still create fugitive dust emissions, which the Department fails to address in its response. Third, the Department fails to explain how "significantly limiting the potential for fugitive dust" meets the SIP requirements to take reasonable precautions to prevent dust since gravel roads generate fugitive dust. Fourth, the Department's explanation fails to explain how "significantly limiting the potential for fugitive dust" assures that the dust will not go beyond the property line of the Mobile Bay Facility, as required by the Alabama SIP. Indeed, merely "limiting" the fugitive dust does nothing to prevent it from crossing the Facility's property line and traveling to the neighboring communities. Fifth, the Department cites to no amendments it made to the Renewal Permit to include operational requirements for the owner or operator to place gravel on and continuously maintain gravel on the unpaved roads. In fact, the Renewal Permit does not require that the Mobile Bay Facility use or maintain gravel on the unpaved roads. The lack of continuing requirements to place gravel, maintain the gravel, and implement other requirements to control fugitive dust means there are no assurances that fugitive dust is controlled from the unpaved roads as required by the SIP. The Department has an affirmative obligation to supplement the Renewal Permit with specific and detailed operational

requirements that assure compliance with the EPA-approved SIP regulations for fugitive dust, which are Title V applicable requirements. In conclusion, the Renewal Permit is deficient because it does not include the specific and detailed operational requirements for the fugitive dust SIP requirements that apply to the unpaved roads.

Moreover, EPA's regulations require that states respond to all "significant comments." 40 C.F.R. § 70.7(h)(6). Indeed, "[i]t is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for public comment is a response by the regulatory authority to significant comments. *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977)(the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.); see also, *Action on Smoking & Health v. CAB*, 699 F.2d 1209 (D.C. Cir. 1983), citing *Alabama Power*, 636 F.2d 323, 384 (DC Cir. 1980)." *In the Matter of Consolidated Edison Company Hudson Avenue Generating Station Permit*, Order on Petition No. II-2002-10 (Sept. 30, 2003) at 8. Accordingly, permitting agencies have "an obligation to respond to significant public comments and adequately explain the basis of its decision." *Id.* Petitioners' comment regarding the concerns about fugitive dust from the unpaved road were "significant." Petitioners' Comments included an analysis of the missing operational requirements that were not included in the Proposed Permit and cited EPA's findings and direction to the Department in the Barry Order on this same issue. Petitioners' Comments provided support from two federal agencies to counter

ADEM's apparent assertion that there is no dust from gravel roads. Petitioners' Comments identified that the Title V Permit must include monitoring, recordkeeping and reporting for these SIP requirements and offered an example of the type of provision that could be included in the Permit issued by ADEM.

The Department's eight word response to Petitioners' significant Comments renders the Title V opportunity to comment on the Mobile Bay Facility meaningless. EPA must provide direction to the Department that it had a legal obligation to respond these significant public comments in accordance with 40 C.F.R. § 70.7(h)(6).⁸ See 85 Fed. Reg. 6,431, 6,436, 6,440 (Feb. 5, 2020) (discussing what constitutes a "significant comment"). "Significant comments in this context include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing federal applicable requirements and requirements under part 70, including adequate monitoring and related recordkeeping and reporting requirements." 85 Fed. Reg. at 6,436. In this case, the Petitioners have demonstrated that ADEM failed to respond to their Comments that concerned whether the Permit complies with all federal applicable requirements and requirements under part 70. Thus, the Petitioners demonstrated that the inadequacy of ADEM's response also presents grounds for EPA's objection.

⁸ See 85 Fed. Reg. 6431, 6436, 6440 (Feb. 5, 2020) ("Significant comments in this context include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing *federal applicable requirements and requirements* under part 70, including adequate *monitoring and related recordkeeping and reporting requirements.*") (*emphasis added*).

B. The Renewal Permit Does Not Include Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Applicable Requirements for the Unpaved Roads and Assure Federal Enforceability of the Permit

1. Specific Grounds for Objection, Including Citation to Permit Term

The Renewal Permit is deficient because General Permit Proviso 18 fails to establish monitoring, recordkeeping or reporting requirements that assure compliance with the requirements found in Ala. Admin. Code r. 335-3-4-.02(1), (2). According to ADEM, the requirements in General Permit Proviso 18 are based on Ala. Admin. Code r. 335-3-4-.02, which is part of Alabama's EPA-approved SIP. *Supra* notes 4-5.

The Renewal Permit lacks requirements for monitoring, recordkeeping, and reporting requirements for fugitive dust from the unpaved roads. Neither the Renewal Permit, Final SOB, nor Response to Comments provide a reasoned explanation as to how the lack of these requirements assures continuous compliance with requirements of the EPA-approved SIP requirements in Ala. Admin. Code r. 335-3-4-.02.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1); *In the Matter of Wheelabrator Baltimore, L.P.*, Permit No. 24-510-01886 (April 14, 2010) at 10. Requirements of a federally enforceable SIP that are incorporated into a Title V permit are

“applicable requirements.” 40 C.F.R. § 70.2. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5); *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03 (Jan. 31, 2011) at 7-8. “[I]f the applicable requirement contains no periodic monitoring, permitting authorities must add ‘periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.’” CITGO Order at 7, citing, 40 C.F.R. § 70.6(a)(3)(i)(B).

3. Inadequacy of the Permit Term

ADEM’s final Renewal Permit does not include monitoring, recordkeeping, or reporting requirements for the fugitive dust emissions from unpaved roads. *See* Renewal Permit at 8; *see also* Final SOB at 4. EPA has expressly found that when the fugitive dust provisions of Alabama’s SIP apply, the Title V permit must “include monitoring, recordkeeping, and reporting requirements that assure compliance with the applicable requirement Ala. Admin. Code r. 335-3-4-.02 and ensure federal enforceability of the permit.” Barry Order at 16; 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(3), (c)(1).

The Department does not provide any rationale for how the lack of monitoring, recordkeeping, or reporting requirements for the fugitive dust requirements assures compliance with the SIP requirements for Fugitive Dust and Fugitive Emissions in the Renewal Permit or Final SOB as required by 40 C.F.R. § 70.7(a)(5). The Department appears to suggest that since it believes the gravel

roads significantly limit the potential for fugitive dust there is no need for monitoring, recordkeeping, or reporting requirements, and that it has authority to waive the compliance requirements. Response to Comments at 4.

4. Issue Raised in Public Comment

Petitioners expressly raised these issues in Comment 3 of their Comments, which stated the same points above. Comments at 8-10. Additionally, Petitioners' Comments made clear to ADEM that it "must revise the Proposed Permit to include ... the related monitoring and recordkeeping requirements to address fugitive dust from the gravel roads at this facility. Such provisions should include ... monitoring of visible emissions at the roads and the lot line, and ADEM must ensure the revised measures contain enough detail to be enforced by the Department, EPA, and the public." *Id.* at 10. Thus, Petitioners' Comments were clear that any final Title V permit for the Mobile Bay Plant issued by ADEM "must also include adequate monitoring, recordkeeping, and reporting provisions to assure compliance with and federal enforceability of the detailed operational requirements" for fugitive dust that need to be added to the Renewal Permit. Comments at 10.

5. Analysis of ADEM's Response

The Chief of the Air Division's Response to Public Comments reiterates the same three sentences found in the Draft SOB, merely adding eight words. The Chief's response to Petitioners' detailed Comments and terse summary of those Comments is as follows:

COMMENT No. 3. – “The Proposed Permit Must Contain Source-Specific Measures to Control Fugitive Dust”.

RESPONSE – All plant roads are paved or graveled, thereby significantly limiting the potential for fugitive dust. There are no raw materials, storage piles, products, etc. capable of generating fugitive dust at this facility. Therefore, additional specific requirements for fugitive dust are not necessary for this facility.

Response to Comments at 4. The only additional information added was to the following sentence, shown in underline:

All plant roads are paved or graveled, thereby significantly limiting the potential for fugitive dust.

The Department’s response is not consistent with the Clean Air Act and completely fails to address the Petitioners’ detailed Comments relating to the need for fugitive dust monitoring, recordkeeping, and reporting provisions. First, the Department’s response – that reiterated what it had already communicated in the Draft SOB and added eight words – fails to explain how the lack of any requirements in the Renewal Permit for monitoring, recordkeeping and reporting of fugitive dust will assure compliance with the SIP requirements in Ala. Admin. Code r. 335-3-4-.02, 40 C.F.R. § 70.7(a)(5). In particular, the Department does not explain how the lack of monitoring, recordkeeping and reporting will provide the necessary compliance information regarding no fugitive dust emissions and prohibiting fugitive dust emissions from crossing the property line. The Renewal Permit lacks requirements for the owner or operator to monitor, keep records and report that information to the Department. Second, the fact that the Department believes that because all plant roads are paved or graveled, and thereby the potential for fugitive dust is significantly limited is irrelevant to the monitoring, recordkeeping and reporting requirements. The SIP fugitive dust regulation does not contain a

provision that allows the Department to *ignore* the monitoring, recordkeeping and reporting requirements if fugitive dust is significantly limited. Moreover, even if the SIP fugitive dust regulation could be interpreted to allow the Department to ignore the monitoring, recordkeeping and reporting requirements, the Department failed to provide a rationale basis for its assertion that the potential for fugitive dust is significantly limited, particularly in light of Petitioners' Comments and the supporting information provided and cited in the Comments from US DOT and US EPA regarding dust created by vehicles traveling on gravel roads and the need for control measures. Third, the Department cites no amendments it made to the Renewal Permit that require the owner or operator to monitor the amount of gravel applied and ensure it is continuously used and effective, keep records of such activity and report the information to the Department. Indeed, the Renewal Permit fails to contain any requirements that the Mobile Bay Facility use gravel on the unpaved roads.

Title V requires monitoring, recordkeeping and reporting requirements for applicable requirements, and the lack of those provisions in the Renewal Permit is insufficient to demonstrate continuous compliance with the fugitive dust SIP requirements. Under Title V, testing, monitoring, and reporting requirements must be included in the Title V permit itself. *See In the Matter of Valero Refining-Texas, L.P. Valero Houston Refinery*, Order on Petition No. VI-2021-8 (June 30, 2022) at 23 (finding that the Title V permit itself must include or clearly incorporate by

reference monitoring requirements that assure compliance with emissions limits set forth in incorporated Permits-by-rule).

Furthermore, for the same reasons discussed above, the Department's eight word addition to what was contained in the Draft SOB renders the public comment opportunity meaningless because the Department entirely fails to respond to the significant Comments on monitoring, recordkeeping and reporting.

The Department has an affirmative obligation to supplement the Renewal Permit with specific and detailed monitoring, recordkeeping and reporting requirements so that the owner or operator can demonstrate continuous compliance with the EPA-approved SIP regulations for fugitive dust, which are Title V applicable requirements. Moreover, it is essential that the monitoring and recordkeeping be reported to the Department so that the neighboring communities have access to the compliance information and can take enforcement actions as needed. In conclusion, the Renewal Permit is deficient because it does not include any requirements for monitoring, recordkeeping and reporting for the fugitive dust SIP requirements that apply to the unpaved roads.

V. CONCLUSION

For the foregoing reasons, and explained in Petitioners' timely-filed Public Comments, the Renewal Permit is deficient. The Chief of the Air Division's Response to Comments failed to address Commenters' significant concerns. Accordingly, the Clean Air Act requires the Administrator to object to the Renewal Permit for the Mobile Bay Facility.

Respectfully submitted this 8th day of January 2024 on behalf of MEJAC and
GASP.



Sara L. Laumann
Principal
Laumann Legal, LLC
3800 Buchtel Blvd. S. #100236
Denver, CO 80210
sara@laumannlegal.com



Kristi M. Smith
Principal
Smith Environmental Law LLC
7305 Marietta Ave.
St. Louis, MO 63143
kristi@smithenvironmentallaw.com

List of Attachments

- 1 Final Statement of Basis.
- 2 Communications regarding issuance
of Final Renewal Permit
- 3 Final Renewal Permit
- 4 DCP Operating Company, LP-Mobile
Bay Gas Treating and Processing
Facility MSOP Renewal Response to
Comments, Facility No.: 503-8085
- 5 Ala. Admin. Code r. 335-3-4-.01
- 6 Draft Permit
- 7 Public Comments Submitted to
ADEM
- 8 Draft Statement of Basis