

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

Petition No. IX-2024-13

In the Matter of

Torrance Refining Company, LLC

Permit Renewal for Facility ID 181667

Issued by the South Coast Air Quality Management District

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

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated July 10, 2024 (the Petition) from Del Amo Action Committee (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to the renewal of an operating permit (the Permit) issued by the South Coast Air Quality Management District (SCAQMD) to the Torrance Refining Company, LLC refinery in Los Angeles County, California (Facility ID 181667). The Permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and SCAQMD Regulation XXX. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Permit, the permit record, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, the EPA grants in part and denies in part the Petition and objects to the issuance of the Permit. Specifically, the EPA grants all or part of Claims 1, 2, 4, 5, 6, and 8, and denies the rest of the claims.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. SCAQMD submitted a title V program governing the issuance of operating permits in 1993. The EPA granted interim approval of SCAQMD's title V program in 1996 and full approval of SCAQMD's title V program in 2001. 66 Fed. Reg. 63503 (Dec. 7, 2001). SCAQMD's title V program is codified in SCAQMD Regulation XXX.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 40 C.F.R. § 70.1(b); 42 U.S.C. § 7661c(c). One purpose of the title V program is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source’s emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

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

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

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

In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. 42 U.S.C.

¹ If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id.*

§ 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).² Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.³ The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).⁴ When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., MacClarence*, 596 F.3d at 1130–31.⁵ Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive").⁶ Relatedly, the EPA has pointed out in numerous previous orders that general assertions

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

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

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

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

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

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

Another factor the EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning contained in the permit record. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.⁹ This includes a requirement that petitioners address the permitting authority's final decision and final reasoning (including the state's response to comments) where these documents were available during the timeframe for filing the petition. 40 C.F.R. § 70.12(a)(2)(vi). Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment. *Id.*

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the “statement of basis”); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition. *Id.*

If the EPA grants a title V petition and objects to the issuance of a permit, a permitting authority may address the EPA's objection by, among other things, providing the EPA with a revised permit. 42 U.S.C.

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

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

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

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

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

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

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

C. New Source Review

The major New Source Review (NSR) program encompasses two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and for other pollutants regulated under the CAA. 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. 42 U.S.C. §§ 7501–7515. The EPA has two largely identical sets of

regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA’s federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA’s regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. The EPA commonly refers to the latter program as the “minor NSR” program. States must also develop minor NSR programs to, along with the major source programs, attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R. §§ 51.160 through 51.164. These federal requirements for minor NSR programs are less prescriptive than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs than in major source programs.

The EPA has approved SCAQMD’s PSD, NNSR, and minor NSR programs as part of the California SIP. *See* 40 C.F.R. § 52.220 (identifying EPA-approved regulations in the California SIP). SCAQMD’s major and minor NSR provisions, as incorporated into California’s EPA-approved SIP, are contained in portions of SCAQMD Regulation II (Permits to Construct), XIII (NNSR), XVII (PSD), and XX (the RECLAIM program).

Where the EPA has approved a state’s title I permitting program (whether PSD, NNSR, or minor NSR), NSR permits issued following public notice and the opportunity for public comment and judicial review establish the NSR-related “applicable requirements” for the purposes of title V. As with “applicable requirements” established through other CAA authorities, the terms and conditions of those permits should be incorporated into a source’s title V permit without a further round of substantive review as part of the title V process. The EPA has explained and reiterated this interpretation in numerous orders. *See, e.g., In the Matter of Big River Steel, LLC*, Order on Petition No. VI-2013-10 at 8–20 (Oct. 31, 2017) (*Big River Steel Order*). Accordingly, the EPA will generally not consider the merits of a permitting authority’s NSR permitting decisions in a petition to object to a source’s title V permit. *See Big River Steel Order* at 8–9, 14–20.¹⁰ Rather, any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

¹⁰ However, as the EPA noted in the *Big River Steel Order*, there may be circumstances that “warrant a different approach.” *Big River Steel Order* at 11 n.20. Additionally, even in situations where this approach applies, the EPA does view monitoring, recordkeeping, and reporting to be part of the title V permitting process and will therefore continue to review whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in a preconstruction permit. *See, e.g., In the Matter of South Louisiana Methanol, LP*, Order on Petition Nos. VI-2016-24 and VI -2017-14 at 10–11 (May 29, 2018) (*South Louisiana Methanol Order*); *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20. Moreover, as the EPA has explained, “[A] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the ‘applicable requirement’ remains the terms and conditions of the issued preconstruction permit and they should be included in the source’s title V permit.” *Big River Steel Order* at 19.

III. BACKGROUND

A. The Torrance Refinery

The Petition concerns a petroleum refinery in Torrance, Los Angeles County, CA (the Torrance Refinery), which has been in operation since 1929. The existing refinery, formerly owned by ExxonMobil, was purchased by PBF Energy in 2016, and it is operated by Torrance Refining Company, LLC. The Torrance Refinery processes crude oil into petroleum products such as gasoline, diesel, jet fuel, fuel oil, liquefied petroleum gases, sulfur, and petroleum coke. The refinery includes various processes and emission points, including atmospheric crude and vacuum distillation, a fluid catalytic cracking unit (FCCU), catalytic reforming, hydrocracking, alkylation, hydrogen production, hydrotreating, blending, and coking, and other operations. The facility is a major source under title V and is subject to a variety of other regulatory programs under federal, state, and local laws, including New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), SIP rules, NSR permit requirements, and other requirements. Among various pollutants emitted by the Torrance Refinery, the Petition addresses particulate matter (PM and PM₁₀), ammonia (NH₃), carbon monoxide (CO), volatile organic compounds (VOC), reactive organic gases (ROG), hydrogen sulfide (H₂S), sulfur dioxide (SO₂), and nitrogen oxides (NO_x).

B. Permitting History

ExxonMobil first obtained a title V permit for the Torrance Refinery in 2010, which was subsequently renewed in 2014, and later transferred to Torrance Refining Company, LLC. On May 24, 2019, Torrance Refining Company, LLC applied for a title V permit renewal. On August 30, 2022, SCAQMD published notice of a Draft Permit. The Draft Permit was accompanied by a Statement of Basis (SOB) and subject to a public comment period that ran until November 16, 2022. On March 29, 2024, SCAQMD submitted the Proposed Permit, along with its responses to public comments (RTC), to the EPA for its 45-day review. The EPA's 45-day review period ended on May 13, 2024, during which time the EPA did not object to the Proposed Permit. SCAQMD issued the final title V renewal permit for the Torrance Refinery on May 30, 2024.¹¹

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on May 13, 2024. The EPA's website indicated that any petition seeking the EPA's objection to the Permit was due on or before July 11, 2024. The Petition was submitted on July 10, 2024. Therefore, the EPA finds that the Petitioner timely filed the Petition.

¹¹ Since the submittal of the Petition, the title V permit has been subsequently revised; the current version of the title V permit was issued on September 17, 2024. The revisions are unrelated to the Petition claims. For ease of reference, this Order addresses the Permit as finalized on May 30, 2024.

D. Environmental Justice

The EPA used EJScreen¹² to review key demographic and environmental indicators within a 5-kilometer radius of the Torrance Refinery. This review showed a total population of approximately 264,330 residents within a 5-kilometer radius of the facility, of which approximately 70 percent are people of color and 20 percent are low income. In addition, the EPA reviewed the EJScreen Environmental Justice Indexes, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indexes for the 5-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of California.

EJ Index	Percentile in State
Particulate Matter 2.5	63
Ozone	47
Nitrogen Dioxide	75
Diesel Particulate Matter	74
Toxic Releases to Air	81
Traffic Proximity	69
Lead Paint	65
Superfund Proximity	73
RMP Facility Proximity	78
Hazardous Waste Proximity	82
Underground Storage Tanks	29
Wastewater Discharge	61
Drinking Water Non-Compliance	0

The Petition features two primary section headings: “Background” and “Grounds for Objection.” Petition at 2, 5. The “Grounds for Objection” section includes multiple subheadings. Subheading I of the Grounds for Objection includes extensive discussion of environmental justice (EJ) concerns related to the Torrance Refinery and the communities impacted by its emissions. *See id.* at 6–11. Within that subsection, the Petitioner does not present any specific “grounds for objection” related to the EPA’s authority to object to a permit under title V. Rather, subsection I appears to serve as backdrop and support for the Petitioner’s more specific, permit-focused claims that follow. Among other things, the Petitioner asserts: “Due to these environmental justice concerns, EPA—in reviewing this petition to object to the Title V permit for the Refinery—must devote increased, focused attention to ensure that the Refinery complies with all Title V requirements.” *Id.* at 9.

The EPA is committed to advancing environmental justice and incorporating equity considerations into all aspects of the agency’s work.¹³ The EPA appreciates and takes seriously the Petitioner’s concerns regarding the potential impacts of emissions from the Torrance Refinery on communities living near

¹² EJScreen is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. *See* <https://www.epa.gov/ejscreen/what-ejscreen>. The information herein is based on an August 12, 2024, report using EJScreen, version 2.3.

¹³ *See, e.g., In the Matter of United States Steel Corp., Granite City Works*, Order on Petition No. V-2011-2 at 5 (Dec. 3, 2012). More recently, Executive Orders 13990, 14008, and 14096, signed by President Biden on January 20, 2021, January 27, 2021, and April 21, 2023, respectively (among other Executive Orders), affirm the federal government’s commitment to environmental justice.

the facility, as well as the Petitioner's desire that the facility's title V permit contains sufficient provisions to comply with the CAA. The EPA has thoroughly reviewed and evaluated the Petition, giving focused attention to the adequacy of permit conditions. As explained in the following sections, the EPA is granting the Petition where the Petitioner has demonstrated that the Permit fails to assure compliance with applicable requirements or the requirements of part 70.

IV. EPA DETERMINATIONS ON PETITION CLAIMS

The section of the Petition titled "Grounds for Objection" includes six subheadings (I through VI). Subsection II includes the first claims requesting the EPA's objection; that subsection includes eight discrete claims alleging different problems related to the sufficiency of monitoring and other provisions designed to assure compliance with different requirements in the Permit. Subsequent subsections contain one claim each. This Order addresses the Petitioner's claims as follows:

- Petition Subsection II.A: Claim 1
- Petition Subsection II.B: Claim 2
- Petition Subsection II.C: Claim 3
- Petition Subsection II.D: Claim 4
- Petition Subsection II.E: Claim 5
- Petition Subsection II.F: Claim 6
- Petition Subsection II.G: Claim 7
- Petition Subsection II.H: Claim 8
- Petition Subsection III: Claim 9
- Petition Subsection IV: Claim 10
- Petition Subsection V: Claim 11
- Petition Subsection VI: Claim 12

A. Claim 1: The Petitioner Claims That "The Proposed Permit's Monitoring and Testing Requirements Cannot Ensure Compliance with SIP PM₁₀ Limits for the FCCU."

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with three SIP-based limits on PM₁₀ emissions from the FCCU. See Petition at 11–22.

The Petitioner states that the facility has three PM₁₀ limits under SCAQMD Rule 1105.1, each of which apply during different operating scenarios: 2.8 lbs PM₁₀/1000 barrels, when the fresh feed to the FCCU is 105,000 barrels per day or less; 0.005 gr/dscf, only when the flow rate is 320,000 dscfm or less; and 3.6 lbs/hour, when the fresh feed exceeds 105,000 barrels per day and the flow rate exceeds 320,000 dscfm. *Id.* at 11 (citing Permit Conditions A.99.1–99.3).¹⁴ The Petitioner acknowledges a variety of testing, monitoring, and other requirements associated with these limits, discussed in more detail below.

The Petitioner addresses SCAQMD's conclusion that the Permit "includes all *applicable* requirements for monitoring, testing, reporting and recordkeeping required under South Coast AQMD and federal

¹⁴ The unit "gr" means grains, "dscf" means dry standard cubic feet, and "dscfm" means dry standard cubic feet per minute.

rules and regulations.” *Id.* at 20 (quoting RTC at 5¹⁵). The Petitioner contends that, by focusing on the requirements contained within existing rules, “The District ignores that 40 C.F.R. § 70.6(c)(1) and 42 U.S.C. §§ 7661c(a) and 7661c(c) require the District to supplement any SIP monitoring and testing requirements that are inadequate.” *Id.* Relatedly, the Petitioner argues that the District would be incorrect to take the position that gap-filling monitoring only applies if the underlying regulation has no periodic monitoring. *Id.* at 21 (citing Petition Ex. D at 2). The Petitioner argues that the monitoring required by Rule 1105.1 is inadequate to assure compliance with the three PM₁₀ limits at issue,¹⁶ and therefore that SCAQMD must add additional monitoring to the Permit that is sufficient to assure compliance. *Id.* at 20. The Petitioner alleges four deficiencies with the testing and monitoring associated with these limits. *Id.* at 12.

Frequency of Testing and Monitoring

First, the Petitioner claims that the Permit’s testing and monitoring requirements are not frequent enough to assure compliance with the hourly and continuously applicable emission limits. *Id.* at 12. The Petitioner first addresses the Permit’s annual stack testing requirement in Permit Condition D29.4. The Petitioner asserts that “[a]n annual performance test cannot ensure compliance with hourly or continuously applicable limits,” and the Petitioner repeats a similar statement from EPA Region 9. *Id.* at 12–13 (citing Petition Ex. C). The Petitioner alleges that PM emission rates from FCCUs are variable, changing hour to hour, week to week, and month to month based on various conditions. *Id.* at 13. The Petitioner thus concludes that “an annual test would leave undetected any violations of the three PM₁₀ limits that occur in the 364-plus days in between tests.” *Id.* For support, the Petitioner repeats EPA statements from a rulemaking that applies to power plants, in which the EPA explained why continuous emission monitoring systems (CEMS) are preferable to periodic stack tests. *Id.* at 13–14 (citing 89 Fed. Reg. 38508, 38536 (May 7, 2024)).

The Petitioner addresses SCAQMD’s RTC, in which the District stated that “[p]ast annual source tests indicated that Torrance Refinery complied with all applicable emissions limits and requirements under Rule 1105.1.” *Id.* at 18 (quoting RTC at 2). The Petitioner reiterates its claim that the results of a stack test on a single day cannot ensure compliance with limits during the time between stack tests. *Id.* The Petitioner also argues that because SCAQMD does not provide the past stack test results, it is impossible to evaluate how close measured emissions were to the Rule 1105.1 limits, or how variable emissions were from 1 year to the next. *Id.*; *see id.* at 20.

The Petitioner acknowledges that the Permit not only requires annual stack tests, but also requires continuous parametric monitoring and hourly recordkeeping of the total power input across the electrostatic precipitators (ESPs) that control PM₁₀ emissions from the FCCU. *Id.* at 12 (citing Permit Condition D90.10). The Petitioner also notes that another permit term requires the Torrance Refinery to maintain daily average voltage and secondary current (or total power input) at levels at or above those measured in the most recent compliant stack test, and to perform an additional performance

¹⁵ The Petitioner’s citations to the RTC refer to the page numbers of the pdf document reflected in Petition Ex. A. However, the RTC is itself separately paginated. All references to the RTC throughout the EPA’s Order refer to the page numbers of the RTC itself, not the page numbers of the Petitioner’s exhibit.

¹⁶ In addition to the technical discussion throughout this claim, the Petitioner argues that nothing in the CAA nor the rulemaking record for Rule 1105.1 ensures or documents that the monitoring requirements contained within that rule are sufficient to assure compliance in all situations. *Id.* at 20.

test within 90 days if average daily ESP power input falls below this level. *Id.* (citing Permit Condition C.12.2).

The Petitioner challenges the frequency of the latter permit term. Specifically, the Petitioner argues that maintaining daily average values “cannot ensure compliance with hourly or continuous limits” because there could be significant short-term dips in hourly ESP power and, accordingly, violations of hourly and continuous limits that would go undetected. *Id.* at 14. For support, the Petitioner repeats EPA statements from the agency’s latest risk and technology review for the refinery NESHAP. There, the EPA concluded that it was necessary to impose operating limits on FCCUs on a 3-hour average basis, rather than a daily average basis, since poor performance could result in potential exceedances of a short-term PM emission limit while still complying with daily operating limits. *Id.* at 14–15 (citing 79 Fed. Reg. 36880, 36929–30 (June 30, 2014); 80 Fed. Reg. 75178, 75183 (Dec. 1, 2015)). The Petitioner addresses SCAQMD’s position that “[t]he daily average in total power input is sufficient to determine the performance of the ESP, since its operation does not vary significantly on a daily basis.” *Id.* at 19 (quoting RTC at 4). The Petitioner asserts that SCAQMD fails to provide any data to support this claim about the stability of ESP performance from hour to hour. *Id.* The Petitioner posits that SCAQMD has no such data. *Id.* The Petitioner also interprets various SCAQMD statements as admissions that significant dips in ESP power could occur. *Id.* Again, the Petitioner argues that such dips are why the EPA required three-hour (instead of daily) averaging periods for FCCU ESP operating limits in its revisions to the refinery NESHAP. *Id.* The Petitioner states that SCAQMD’s response ignores this requirement in the NESHAP. *Id.* (citing RTC at 4).

Given the EPA’s indication that, “Typically, the averaging time for operating limits is based on the duration of the performance test used to establish those operating limits,” and SCAQMD’s statement that performance tests for the Torrance Refinery’s FCCU generally last four hours, the Petitioner claims that “the Title V permit must require parametric monitoring with—at the longest—four-hour averaging periods.” *Id.* at 14–15 (quoting 79 Fed. Reg. at 36929; citing RTC at 2).

Testing or Monitoring During Varying Operating Conditions

Second, the Petitioner claims that the Permit “cannot ensure compliance across the varying operating conditions when the PM₁₀ limits apply because it does not require testing or monitoring during those varying conditions.” *Id.* at 15; *see id.* at 18.¹⁷ The Petitioner reiterates that each of the three PM₁₀ limits apply only during certain operating conditions, based on feed rates and flow rates at the FCCU. *Id.* at 15.

The Petitioner states that the Permit allows the Torrance Refinery to conduct the performance stack tests with feed rates as low as 84,000 barrels per day. *Id.* The Petitioner asserts that testing at such low feed rates cannot assure compliance with the relevant limits: “When the feed rates are higher during day-to-day operations than during testing, these different operating conditions could result in higher PM₁₀ rates than reflected in the testing.” *Id.*

¹⁷ Earlier in the Petition, the Petitioner observes that the Permit requires monitoring of flow rate of flue gas (among other parameters). Petition at 12 (citing Permit Conditions D90.9). However, according to the Petitioner, SCAQMD “indicates that these parameters are not monitored to ensure compliance with the SIP PM₁₀ limits; they are monitored to determine which of the three SIP PM₁₀ limits apply at any given time.” Petition at 12 (citing RTC at 1–2, 3).

The Petitioner also addresses permit requirements for the flue gas flow rates, noting that the Permit does not require any specific flow rates during testing. *Id.* The Petitioner argues that if testing occurs at flow rates above 320,000 dscfm, the results would not assure compliance with the limit that applies when flow rates are below that value, and that if testing occurs at flow rates below 320,000 dscfm, the results would not assure compliance with the limit that applies when flow rates are above that value. *Id.* at 15–16. For support, the Petitioner states that the EPA has recognized that flow rates can affect PM emission rates, since one of the PM monitoring options in the EPA’s refinery NESHAP requires maintaining daily average flow rates at the level established in the most recent performance test. *Id.* at 16 (citing 40 C.F.R. part 63, subpart UUU, Table 2).

The Petitioner asserts that the Permit terms concerning ESP voltage and secondary current (or total power input) cannot ensure compliance across the varying operating conditions that are not tested. *Id.* The Petitioner further claims that SCAQMD failed to respond to comments addressing this issue. *Id.* at 17 (citing 40 C.F.R. § 70.7(h)(6)).

Additional Limits or Monitoring of Operating Parameters

Third, the Petitioner asserts that monitoring ESP power levels alone is not sufficient to assure compliance with the PM₁₀ limits at issue. *Id.* at 16. The Petitioner observes that under the EPA’s refinery NESHAP rules, FCCUs that rely on parametric monitoring of ESPs are also required to either maintain daily average coke burn-off rate or daily average flow rate no higher than the rates for these parameters established in the last performance test. *Id.* (citing 40 C.F.R. part 63, subpart UUU, Table 2). The Petitioner suggests that a similar requirement is necessary here. *See id.* The Petitioner asserts that SCAQMD’s RTC, which focused on requirements under NESHAP and NSPS rules, “misses the point” and did not directly address this issue. *Id.* at 17–18, 21. The Petitioner argues that even if those federal rules do not require limits on coke burn-off and average flow rates, such parametric monitoring or limits are necessary to assure compliance with the three different PM₁₀ limits in Rule 1105.1. *Id.* at 21.

Permit Connections Between Limits and Testing and Monitoring

Fourth, the Petitioner claims that the Permit “cannot ensure compliance with the PM₁₀ limits because it does not tie the relevant testing and monitoring to those limits.” *Id.* at 16. The Petitioner observes that the Permit lists the PM₁₀ limits as applicable to the FCCU, but the testing and monitoring requirements are applicable to the FCCU’s ESPs. *Id.* The Petitioner states that EPA Region 9 raised a similar concern with respect to the FCCU’s NH₃ limits. *Id.* (citing Petition Ex. C). The Petitioner also observes that the FCCU is subject to additional PM-related requirements from the subpart UUU NESHAP, subpart J NSPS, and SCAQMD Rule 404. *Id.* The Petitioner notes that SCAQMD’s RTC mentions some of these requirements. *Id.* at 20. The Petitioner claims that nothing in the Permit or permit record ties those requirements to the PM₁₀ limits under Rule 1105.1 limits, nor correlates those limits to PM₁₀ emission rates relevant under Rule 1105.1. *Id.* at 17. The Petitioner further claims that SCAQMD failed to respond to comments addressing the Permit’s lack of connection between these requirements. *Id.* (citing 40 C.F.R. § 70.7(h)(6)).

Requested Relief

The Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns and data showing that the Torrance Refinery's FCCU emits a significant amount of filterable PM₁₀. *Id.* at 17. The Petitioner requests that the EPA mandate a requirement for PM CEMS, along with continuous flow and temperature measurements. *Id.* at 17. The Petitioner asserts that CEMS would better ensure compliance than parametric monitoring, and would address issues related to compliance during various operating conditions. *Id.* The Petitioner asserts that PM CEMS are widely available. *Id.* The Petitioner addresses SCAQMD's statements that it "does not have a protocol to certify PM CEMS at this time," is "not aware of any EPA certification protocol for PM CEMS," and that "PM CEMS cannot be utilized to monitor the 'filterable PM₁₀' emission standards required under Rule 1105.1." *Id.* at 21 (quoting RTC at 5–6). The Petitioner argues that SCAQMD ignores the fact that the subpart UUU NESHAP allows FCCUs to measure PM using PM CEMS. *Id.* The Petitioner also argues that SCAQMD's concern that CEMS cannot separate out filterable PM is unfounded, based on the Petitioner's understanding that PM CEMS only measure filterable (and not condensable) PM. *Id.* at 21–22.

EPA Response: For the following reasons, the EPA grants in part and denies in part this Petition claim and objects to the issuance of the Permit.

This claim concerns the adequacy of monitoring requirements associated with a trio of SIP Rule 1105.1 limits on PM₁₀ emission from the FCCU: (1) "The 2.8 lb/1000 bbl fresh feed PM₁₀ emission limit(s) shall only apply when the fresh feed to the FCCU is 105 thousand barrels per day or less"; (2) "The 0.005 gr/dscf PM₁₀ emission limit(s) shall only apply when the flow rate is 320,000 dscfm or less"; and (3) "The 3.6 lbs/hr PM₁₀ emission limit(s) shall only apply when the fresh feed exceeds 105 thousand barrels per day and the flow rate exceeds 320,000 dscfm." Permit Conditions A99.1, A99.2, A99.3; see SCAQMD Rule 1105.1(d)(1)(A).

The SIP itself includes various testing and monitoring requirements associated with these limits. See SCAQMD Rule 1105.1(e) and Attachment A.¹⁸ Various permit terms reflect SIP testing and monitoring requirements, as well as some requirements beyond the SIP. In summary, the Permit: requires annual stack testing, imposes various requirements on the operating conditions during stack tests, and specifies the parameters to be recorded during stack tests (Condition D29.4); requires continuous monitoring of total flue gas inlet temperature to ESPs, total flue gas flow rate, current across each ESP, voltage across each ESP, and total power input across each ESP (Conditions C12.2, D90.8, D90.9, D90.10); and imposes a limit on daily average voltage and secondary current (or total power input) equal or greater to the average value from the most recent compliant stack test, with re-testing required if this the daily average total power input falls below the level measured in the most recent source test that demonstrated compliance. (Condition C12.2). Similar requirements and additional

¹⁸ Given that the underlying applicable requirement contains periodic monitoring, SCAQMD is correct that gap-filling monitoring under 40 C.F.R. § 70.6(a)(3)(i)(B) is not directly relevant here. See Petition Ex. D at 2. However, the Petitioner is correct that, under CAA § 504(c) and 40 C.F.R. § 70.6(c)(1), monitoring requirements contained in an underlying applicable requirement (like the SIP provisions here) can and must be supplemented through the title V process if monitoring contained in the underlying applicable requirement is inadequate to assure compliance. Petition at 20.

information are included in the Torrance Refinery's Rule 1105.1 Monitoring Plan, incorporated via Section I of the Permit.¹⁹

Frequency of Testing and Monitoring

The Petitioner's first argument concerns the purported difference in the time period or frequency of the Permit's short-term emission limits and the associated testing and monitoring conditions. This argument is flawed. The Petitioner's initial focus on the frequency of annual stack tests is particularly misplaced.²⁰ As SCAQMD explains (and the Petitioner elsewhere acknowledges), the Permit does not rely exclusively on annual stack tests, but rather includes a combination of stack tests and more frequent parametric monitoring, as required by Rule 1105.1. *See, e.g.*, Permit Conditions C.12.2, D.90.8–90.10, and Section I, Rule 1105.1 Monitoring Plan; SOB at 22; RTC at 3; Petition Ex. D. at 2. Thus, the more relevant issue is whether the Permit's collective set of testing and monitoring requirements is sufficiently frequent to provide a reasonable assurance of compliance with the short-term PM₁₀ limits.

The Petitioner also directs criticism towards a portion of Permit Condition C12.2 that requires the Torrance Refinery to maintain daily average voltage and secondary current (or total power input) from the ESPs at the level of the most recent compliant stack test (or greater). The Petitioner argues that such daily operating limits are insufficient to assure compliance with hourly limits. This argument similarly misses the point. As the Petitioner elsewhere acknowledges (but fails to substantively discuss), the Permit not only imposes these requirements based on *daily* averages, but also requires *continuous* monitoring (*i.e.*, once every 15 minutes) and hourly recordkeeping of current across each ESP, voltage across each ESP, and ESP total power input (among other parameters). Permit Conditions C12.2, D90.10; *see* Petition at 12; RTC at 3. Given that the Permit already requires continuous parametric monitoring, the Petitioner's arguments regarding the frequency of testing and monitoring requirements do not, in and of themselves, demonstrate any basis for the EPA's objection.²¹ Thus, the EPA denies this portion of Claim 1.

Testing or Monitoring During Varying Operating Conditions

The Petitioner's second argument—that the Permit “cannot ensure compliance across the varying operating conditions when the PM₁₀ limits apply because it does not require testing or monitoring during those varying conditions,” Petition at 15—is more persuasive.

¹⁹ Section I of the Permit also includes a Compliance Assurance Monitoring (CAM) Plan specifically addressing PM₁₀ emissions from the FCCU, as related to two of the three Rule 1105.1 emission limits. Neither SCAQMD nor the Petitioner rely on or discuss this CAM Plan, which contains requirements similar to those in other parts of the Permit.

²⁰ *See* Petition at 12 (“An annual performance test cannot ensure compliance with hourly or continuously applicable limits.”). The EPA acknowledges similar statements made by staff in EPA Region 9, but notes that those statements did not express a final agency position or determination regarding the sufficiency of the Permit's monitoring requirements. *See* Petition Ex. C.

²¹ This portion of the Petitioner's claim is especially puzzling, since the Permit actually requires more frequent parametric monitoring than what the Petitioner requests. *See* Petition at 15 (requesting “parametric monitoring with—at the longest—four-hour averaging periods”). Additionally, the EPA observes that the Petitioner does not make any arguments within Claim 1 alleging that the parameters at issue (relating to power input to the ESPs) should be *limited*, as opposed to simply *monitored*, on a continuous basis. As the EPA's responses to other portions of Claims 1 and 2 explain, the EPA's regulations do not require the relevant operating parameters to be limited in all cases; monitoring the relevant parameters may be sufficient to assure compliance.

Again, the Permit (and underlying SIP rule) includes three different PM limits, each of which correspond to different operating conditions, based on different feed rates and flow rates. See Permit Conditions A99.1, 99.2, 99.3; SCAQMD Rule 1105.1(d)(1)(A). Given that different emission limits apply depending on feed rates and flow rates, it logically follows that feed rates and flow rates are relevant to PM₁₀ emission levels from the FCCU.²²

It is not clear from the Permit and permit record whether the results of the annual stack tests will provide sufficient information to assure compliance with all three PM₁₀ limits, given that those limits, by design, apply during operating conditions that may differ from the conditions during the stack test. The relevant permit terms do not necessarily resolve the issue. The Permit requires that stack testing be conducted when the FCCU is operating with at least 80 percent total feed rate (84,000 barrels per day), but places no similar restrictions on the flow rates during stack testing. Permit Condition D29.4. As the Petitioner states, it is unclear whether or how a stack test performed at such operating conditions would provide information representative of emissions associated with different operating conditions. Petition at 15–16.²³ Put another way, it is not clear that the stack test conditions would be sufficiently conservative—that is, involve the highest emission rates associated with all different operating scenarios—to assure compliance with all three emission limits that apply during different operating conditions.

Notably, SCAQMD's RTC does not respond to the public comments that questioned the lack of testing during the varying operating conditions that correspond to the different PM₁₀ limits. See RTC at 4. In addition to the general lack of clarity in the Permit and permit record surrounding this issue, SCAQMD's failure to respond to this significant comment presents a basis for the EPA to object to the permit. 40 C.F.R. § 70.7(h)(6), 70.8(c)(3)(iii). Thus, the EPA grants this portion of Claim 1.

²² For example, the PM₁₀ limits applicable during higher feed rate conditions are higher than the PM₁₀ limits applicable at lower feed rates. Accordingly, the Petitioner's argument that higher day-to-day feed rates than those measured during a stack test could result in higher emissions than what was observed during a stack test appears sound. Petition at 15. The importance of flow rates is also evidenced by the EPA's refinery rules. As the Petitioner notes, in order to assure compliance with PM and hazardous air pollutant limits on FCCUs using ESPs, the EPA's rules impose operating limits and parametric monitoring not only on total power and secondary current, but also on daily average flow rate (or coke burn-off rate). 40 C.F.R. part 63, subpart UUU, table 2; see Petition at 16.

²³ Other permit terms—including requirements to keep records of feed rates and flow rates observed during the stack test, and to continuously monitor flow rates (but not feed rates) thereafter—do not appear to resolve this issue. See Permit Conditions D29.4, C12.2, D90.9, and Section I, Rule 1105.1 Monitoring Plan. SCAQMD's discussion of these permit terms sheds little light on the subject. On one hand, SCAQMD's SOB suggests that all of these requirements are related to assuring compliance with the limits at issue. See SOB at 22 ("The monitoring and recordkeeping provisions pursuant to subparagraph (e)(3) of this rule are identified in the Rule 1105.1 Compliance Plan (A/N 583659) in Section I of the TV permit. Permit conditions A99.1, A99.2, A99.3, A195.2, C12.2, D28.26, D29.4, D90.8, D90.9, D90.10, D90.11, E193.19, K67.15 and K67.16 are also tagged to affected FCCU devices to ensure compliance."). But SCAQMD's RTC also downplays the relevance of some of those requirements, including monitoring of flow rates. The District states: "it is important to understand that the purpose of monitoring the temperature and flow rate is to determine which Rule 1105.1 limit applies under conditions A99.1, A99.2 and A99.3." RTC at 3. The Petitioner infers from this statement that that the purpose of monitoring flow rate is only to determine which requirement applies, and not to assure compliance with the limit. See Petition at 12.

Additional Limits or Monitoring on Operating Parameters

The Petitioner’s third argument asserts that the Permit must require operating limits on, or parametric monitoring of, additional variables that could impact PM₁₀ emissions: coke burn-off rate and flow rates.²⁴ As an initial matter, the Petitioner has not demonstrated that it is necessary to impose independently enforceable *limits* on these operating parameters in order to assure compliance with the PM₁₀ emission limits at issue. The EPA’s regulations do not require relevant operating parameters to be limited in all cases. To the extent these parameters may impact PM₁₀ emissions, it may instead be sufficient to *monitor* those parameters. *See In the Matter of Cargill, Inc., Blair Facility, Order on Petition No. VII-2022-9 at 22–23 (Feb. 16, 2023) (“To be clear, it may not be necessary in all cases to make these types of operating parameter ranges independently enforceable permit requirements.”)*.²⁵ The Petitioner does not identify any legal or factual reason why operating limits, as opposed to parametric monitoring, would be necessary to assure compliance with the three PM emission limits at issue here. Thus, to the extent this claim asserts that operating limits on coke burn-off rate or flow rates are necessary, it is denied.

By contrast, to the extent that this claim requests monitoring of these parameters, the EPA grants this claim. The Permit requires the Torrance Refinery to record the levels of various parameters observed during stack tests, including coke burn-off and flow rates. Permit Condition D29.4. But the Permit does not require any monitoring of these parameters thereafter. SCAQMD’s permit record (including its RTC) does not directly address why SCAQMD does not consider it necessary to monitor these parameters. Thus, the record is inadequate for the EPA to determine whether the Permit contains sufficient monitoring to assure compliance with the PM₁₀ limits at issue, and the EPA grants Claim 1 on this issue. 40 C.F.R. § 70.8(c)(3)(ii).

Permit Connections Between Limits and Testing and Monitoring

The Petitioner’s fourth argument concerns the alleged lack of connections between the Permit’s various conditions related to PM₁₀ emissions from the FCCU. In general, “As the EPA has previously explained, to the extent that specific permit terms (*e.g.*, monitoring or recordkeeping provisions) are relied upon to assure compliance with emission limits, the Permit should clearly state the connection between the compliance assurance provisions and the associated limits, and the permit record must explain how those requirements assure compliance with the relevant limits.” *In the Matter of U.S. Steel Corp., Edgar Thomson Plant, Order on Petition No. III-2023-15 at 16 (Feb. 7, 2024) (US Steel Edgar Thomson Order)*. Here, the Petitioner does not demonstrate that the Permit runs afoul of this principle.

The Petitioner primarily takes issue with the fact that the Permit imposes the PM₁₀ emission limits on the FCCU, while the compliance assurance provisions for PM₁₀ are imposed on the ESPs. Petition at

²⁴ Most of the corresponding Petition arguments assert the need to limit or maintain flow rates or coke burn-off rates at the level observed during the last performance test. *See* Petition at 16, 18, 21. However, the Petitioner also discusses parametric monitoring associated with these variables. *See id.* at 21.

²⁵ In the related context of the CAM rule under 40 C.F.R. part 64, the EPA provides permitting authorities the option, but not the obligation, to make “indicator ranges” (*i.e.*, ranges of operating parameters associated with a control device) independently enforceable, as opposed to simply requiring monitoring of these operating parameters and corrective actions. 62 Fed. Reg. 54900, 54931 (Oct. 22, 1997).

16.²⁶ The fact that some permit requirements are listed in direct association with the FCCU while others are associated with the ESPs (control devices for the FCCU) does not necessarily mean that the Permit lacks a sufficient connection between these requirements.

The Petitioner focuses on the tables in Section D of the Permit that summarize the requirements and conditions that apply to various pieces of equipment. *See* Petition at 16 n.83 (citing Proposed Permit at 34, 39–40). But the table entries regarding the FCCU (and limits) and ESPs (and monitoring) clearly cross-reference each other, indicating that the FCCU (ID No. D151) is connected to the two ESPs (ID Nos. C2283 and C2284), and vice versa. Permit at Section D, pages 22, 26–27. Additionally, the table entries for the ESPs are contained under a table heading “Process 3: Fluid Catalytic Cracking Unit (FCCU).” Permit at Section D, pages 26–27. Other portions of the Permit and permit record reinforce these connections between the process unit (FCCU) and its control devices (ESPs).²⁷ The Petitioner has not demonstrated that the EPA must object because the Permit imposes PM₁₀ limits on the FCCU, while the compliance assurance provisions are imposed on the ESPs.²⁸ Thus, the EPA denies this part of Claim 1.

Summary of EPA Response

In summary, the EPA is granting portions of Claim 1 because the permit record is unclear regarding whether the Permit contains sufficient monitoring to assure compliance with the three PM₁₀ limits that apply to the FCCU. Specifically, the Petition demonstrates that (i) SCAQMD failed to respond to comments that questioned the lack of testing during the varying operating conditions that correspond to the different PM₁₀ limits, and the Permit and permit record are unclear regarding this issue; and (ii)

²⁶ The Petitioner also discusses the connection (or lack thereof) between NESHAP and NSPS monitoring and the Rule 1105.1 limits. The EPA agrees that the Permit does not expressly link the NESHAP and NSPS monitoring requirements to the Rule 1105.1 limits. However, the EPA does not interpret SCAQMD’s discussion of those NESHAP and NSPS requirements to mean that SCAQMD is relying on those requirements to assure compliance with the Rule 1105.1 limits. Thus, this part of the Petition presents no basis for the EPA’s objection.

²⁷ For example, the Permit clearly identifies Rule 1105.1 as the basis for *all* the relevant conditions, including the limits and all associated monitoring conditions discussed in this claim. This is clear in the aforementioned Section D tables, as well as the more specific requirements throughout the permit (including Permit Conditions A99.1, A99.2, A99.3, D29.4, C12.2, D90.8, D90.9, and D90.10). The rule itself is also clear that the limits and associated testing and monitoring conditions are all related. The Rule 1105.1 Monitoring Plan (incorporated via Section I of the Permit) clearly discusses both the FCCU and ESPs in connection with the Rule 1150.1 requirements. The permit record further reinforces the connection between the FCCU and ESPs. *See* SOB at 22 “The monitoring and recordkeeping provisions pursuant to subparagraph (e)(3) of this rule are identified in the Rule 1105.1 Compliance Plan (A/N 583659) in Section I of the TV permit. Permit conditions A99.1, A99.2, A99.3, A195.2, C12.2, D28.26, D29.4, D90.8, D90.9, D90.10, D90.11, E193.19, K67.15 and K67.16 are also tagged to affected FCCU devices to ensure compliance.”); *see also* RTC at 2–5 (discussing various permit conditions that assure compliance with the PM limits at issue, and discussing the relationship between the FCCU and ESPs); RTC at 5 (“The FCCU is identified in the permit as being connected to two cyclones, devices IDs C1590 and C2314, and two ESPs, devices IDs C2283 and C2284. These air pollution control devices are for PM control and are required to be operated whenever the FCCU is in operation.”).

²⁸ The EPA’s conclusion in this Order is confined to the arguments presented by the Petitioner. However, the EPA notes that, as a general matter, SCAQMD could take various steps to more explicitly connect the permit limits at issue in this claim (and other claims) to the compliance assurance provisions that support those limits (including the specific permit terms that establish testing and monitoring requirements, as well as the plans incorporated via Section I of the Permit).

the permit record is unclear regarding why SCAQMD does not consider it necessary to monitor coke burn-off or flow rates. The EPA is denying the remainder of Claim 1.²⁹

Direction to SCAQMD: SCAQMD must update the permit record and, if necessary, the Permit to ensure that the Permit contains sufficient testing and monitoring to assure compliance with the three PM₁₀ limits that apply to the FCCU.

SCAQMD must respond to public comments questioning the lack of testing during the varying operating conditions that correspond to the different PM₁₀ limits. SCAQMD may be able to address this issue by updating the permit record (in the course of responding to comments) to justify the current Permit requirements. Alternatively, SCAQMD may determine that additional Permit terms are necessary to ensure that stack tests are conducted under conditions that are sufficiently representative of the various operating conditions that may be present between stack tests.

While SCAQMD is addressing this EPA objection, SCAQMD should also consider whether any additional, related updates to the Permit (including the Rule 1105.1 Plan incorporated via Section I of the Permit) are necessary to ensure that the combination of annual stack testing and continuous monitoring of relevant parameters is sufficient to assure compliance with each of the three PM₁₀ limits that applies during different operating scenarios.

SCAQMD must also explain why it is not necessary to monitor either coke burn-off rate or flow rates. Alternatively, if SCAQMD determines that monitoring one or both of these parameters is necessary to assure compliance with the PM₁₀ limits, it could revise the Permit to require monitoring of the relevant parameter(s).

Beyond these issues, SCAQMD may also wish to consider updating the Permit to provide greater clarity about how the Permit's various testing and parametric monitoring requirements interact. Although it is not inherently problematic for the relevant limits and compliance assurance provisions to be associated with different pieces of equipment in the permit (*e.g.*, process unit and associated control device), it would be helpful for the Permit to clearly identify how the permittee will demonstrate compliance with each relevant limit. This could be accomplished, for example, by including more cross-references between the Permit's limits and compliance assurance provisions.

²⁹ The Petitioner has not demonstrated that the Permit's overarching testing and parametric monitoring methodology is deficient, such that it would be necessary to require a PM CEMS. However, the EPA wishes to provide the following clarifications to certain SCAQMD statements regarding PM CEMS. SCAQMD states that it does not have a protocol to certify PM CEMS, and that it is not aware of any EPA certification protocol. The EPA does not publish "certification protocols" for CEMS, but the EPA has published performance specifications (PS 11) and quality assurance procedures (QA 2) for PM CEMS. See 40 C.F.R. part 60, appx B, appx F; see also <https://www.epa.gov/emc/performance-specification-11-particulate-matter>. PM CEMS have been in widespread use in a number of industries for decades, and have been included as a compliance option for PM limits on refinery FCCUs dating back to 2008. See 73 Fed. Reg. 35838, 35840–41 (June 24, 2008) (promulgating 40 C.F.R. § 60.105a(d)). SCAQMD also states that "PM CEMS cannot be utilized to monitor the 'filterable PM₁₀' emission standards required under Rule 1105.1." RTC at 6. SCAQMD may be overstating the limitations of PM CEMS. PM CEMS measure total filterable PM, and do not specifically provide information on filterable PM₁₀ (which is a subset of total PM). However, there are various ways by which a correlation between total filterable PM and filterable PM₁₀ could be established, such that PM CEMS could be used to demonstrate compliance with a filterable PM₁₀ limit. The EPA could provide more information to SCAQMD if this is an option that SCAQMD would like to consider in the future.

B. Claim 2: The Petitioner Claims That “The Proposed Permit’s Monitoring and Testing Requirements Cannot Ensure Compliance with the SIP Ammonia Limit for the FCCU.”

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with a SIP-based limit on NH₃ emissions from the FCCU. See Petition at 22–25.

The Petitioner states that SCAQMD Rule 1105.1 imposes a limit of 10 ppmv³⁰ corrected to 3% oxygen dry, averaged over 60 consecutive minutes. *Id.* at 22 (citing Permit Condition A.195.2). The Petitioner acknowledges several testing and monitoring requirements in the Permit, including: a requirement for annual performance tests; a requirement to continuously monitor the NH₃ injection rate in lb/hr at the inlet to the FCCU’s ESPs “in accordance with the monitoring plan as approved by SCAQMD”; and requirements within the aforementioned plan to continuously monitor NH₃ injection rates at the inlet to the SCR, to monitor wet and dry oxygen, and to use an NH₃ mass flowmeter for the ESPs and SCR. *Id.* (citing Permit Conditions D.29.4, D.90.11; Petition Ex. K).

Similar to Claim 1, the Petitioner addresses SCAQMD’s indication that supplemental monitoring is not necessary because the Permit includes the requirements of Rule 1105.1. *Id.* at 25 (citing RTC at 8). The Petitioner asserts that title V independently requires SCAQMD to supplement inadequate monitoring contained within SIP rules. *Id.* (citing 40 C.F.R. § 70.6(c)(1) and 42 U.S.C. §§ 7661c(a) and 7661c(c)). The Petitioner alleges three deficiencies with the NH₃ testing and monitoring requirements in Rule 1105.1.

First, similar to Claim 1, the Petitioner claims that the Permit’s annual stack testing requirements are not frequent enough to assure compliance with the hourly NH₃ limit. *Id.* at 22.

Second, the Petitioner claims that “[t]he requirement to continuously monitor the ammonia injection rate at the inlet to the FCCU’s ESPs and SCR cannot somehow solve this frequency problem because the proposed permit does not require the Refinery to limit injection rates to any particular values over any particular averaging period.” *Id.* at 23. The Petitioner suggests that the Permit should require the refinery to maintain NH₃ injection rates to the ranges from a passing performance test. *Id.* The Petitioner also asserts that SCAQMD failed to respond to comments raising this issue. *Id.* at 24 (citing 40 C.F.R. § 70.7(h)(6)).

Third, similar to Claim 1, the Petitioner claims that the Permit “does not adequately tie the relevant testing and monitoring requirements to” the NH₃ limit. *Id.* at 24. The Petitioner focuses on the fact that the Permit limits are associated with the FCCU and the FCCU’s SCR (but not the ESPs), while the testing requirements are associated with the SCR and ESPs (but not the FCCU), and the monitoring requirements are associated with the ESPs (but not the FCCU or SCR). *Id.* The Petitioner notes that EPA Region 9 raised similar concerns, and although SCAQMD indicated it would make certain changes to the permit, those changes were not reflected in the Proposed Permit being petitioned. *Id.* In any case, the Petitioner argues that SCAQMD’s changes would leave unresolved the problem that the continuous monitoring requirements are applicable only to the ESPs, not the FCCU or SCR. *Id.*

As with Claim 1, the Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns and data showing that the Torrance

³⁰ The unit “ppmv” means parts per million by volume.

Refinery's FCCU emits a significant amount of NH₃. *Id.* at 24. The Petitioner requests that the EPA mandate a requirement for NH₃ CEMS. *Id.* The Petitioner contests SCAQMD's position that there is no approved protocol for certifying NH₃ CEMS. *Id.* at 25. Given SCAQMD's recognition that NH₃ CEMS are commercially available, the Petitioner posits that a certification protocol exists, or could be developed. *Id.* Absent a CEMS, the Petitioner requests that the Permit's monitoring requirements be strengthened. *Id.*

EPA Response: For the following reasons, the EPA grants in part and denies in part this Petition claim and objects to the issuance of the Permit.

Claim 2 involves similar issues to Claim 1: whether the Permit's testing and monitoring requirements, based on SCAQMD Rule 1105.1, are sufficient to assure compliance with the SIP Rule 1105.1 limit on NH₃ emissions from the FCCU. *See* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). Specifically, the Permit includes a 10 ppmv limit on NH₃ emissions, averaged over 60 minutes. Permit Condition A195.2; *see* SCAQMD Rule 1105.1(d)(1)(B). The Permit includes requirements for initial and annual stack tests (Conditions D28.26, D29.4) and continuous monitoring of NH₃ injection rates (Condition D90.11); *see* SCAQMD Rule 1105.1(e) and Attachment A. Similar requirements and additional information are included in the Torrance Refinery's Rule 1105.1 Monitoring Plan, incorporated via Section I of the Permit.

The Petitioner's first argument—which focuses on the purported difference in the time period or frequency of the short-term emission limit and annual stack testing requirement—is flawed for the same reason explained in the EPA's response to Claim 1. The Permit not only requires annual stack testing, but also requires continuous monitoring of NH₃ injection rates. Thus, the Petitioner's concern about monitoring frequency is misplaced.

The Petitioner attempts to downplay the relevance of the continuous monitoring of NH₃ injection rates because this parameter is not also *limited*. But, as discussed in the EPA's response to Claim 1, the EPA's regulations do not specifically require binding operating limits on monitored parameters. Nonetheless, the Petitioner also briefly, but correctly, claims that SCAQMD did not directly respond to the comment requesting operating limits on NH₃ injection rate. Although it may not be necessary in all instances to impose operational limits on this type of parameter, this is something that a permitting authority might deem necessary to assure compliance, and which accordingly might result in a change to the permit. Thus, the Petitioner's comment was a significant comment to which SCAQMD had an obligation to respond. 40 C.F.R. § 70.7(h)(6); *see* 85 Fed. Reg. 6431, 6436, 6440 (Feb. 5, 2020). Thus, the EPA grants Claim 2 on this issue.

The Petitioner's third argument—concerning the alleged lack of connections between the Permit conditions—fails to demonstrate a basis for the EPA's objection. The Petitioner takes issue with the fact that the Permit imposes the NH₃ limit on the FCCU and SCR, while the testing requirements are associated with the SCR and ESPs, and the monitoring requirements are associated with the ESPs.

Petition at 23.³¹ For the reasons discussed in the EPA’s response to Claim 1, this does not present a basis for the EPA’s objection to the Permit. *See, e.g.*, Permit, Section D, pages 22, 26, 27; RTC at 8; Petition Ex. D at 4.

In sum, the EPA grants Claim 2 and objects to the permit solely with respect to the Petitioner’s claim that SCAQMD failed to respond to public comments requesting operating limits on the facility’s NH₃ injection rate.³²

Direction to SCAQMD: SCAQMD must respond to public comments alleging that it is necessary to limit (not just monitor) NH₃ injection rates.

C. Claim 3: The Petitioner Claims That “The Proposed Permit’s Monitoring Requirements Cannot Ensure Compliance with 15-Minute Average CO and PM Emission Limits for Thermal Oxidizer 29F-4.”

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with SIP-based limits on CO and PM emissions from a thermal oxidizer. *See* Petition at 25–29.

The Petitioner states that the Permit includes the following limits on Thermal Oxidizer 29F-4, based on SIP rules 407 and 409: 2,000 ppmv CO and 0.1 gr/scf PM, both averaged over 15-minute periods. *Id.* at 25.

The Petitioner addresses SCAQMD’s discussion of the District’s Periodic Monitoring Guidelines, developed in 1997 to establish gap-filling testing and monitoring requirements where underlying rules (like Rules 407 and 409) do not include testing and monitoring requirements. *Id.* at 27. The Petitioner argues that this guidance document does not relieve SCAQMD from its obligations under title V to ensure that permits contain sufficient monitoring. *Id.* at 27, 28 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(c)(1)).

The Petitioner states that the Permit requires source testing once every 3 years to demonstrate compliance with these limits. *Id.* at 25–26 (citing Permit Condition D28.25). The Petitioner alleges that the Permit “includes no monitoring or other requirements that apply in between tests that could possibly assure compliance with these short-term limits during these 3 years in between tests,” and

³¹ As the Petitioner observes, SCAQMD added additional connections throughout the Permit itself in response to EPA Region 9’s comments; the Permit now also identifies the ESP as being subject to the limit. *See* Permit, Section D, page 26, Condition A195.2; Petition Ex. D at 4. The fact that these changes were made to the Final Permit (as opposed to the Proposed Permit, on which the Petitioner bases its Petition), does not diminish the relevance or effectiveness of this change. *See* Petition at 24. As noted in the EPA’s regulations: “If a final permit is available during the agency’s review of a petition on a proposed permit, that document may also be considered as part of making a determination whether to grant or deny the petition.” 40 C.F.R. § 70.13. However, even if this change had not been made, this would not necessarily present a basis for the EPA to object to the Permit. *See* the EPA’s response to Claim 1.

³² Overall, the Petitioner has not demonstrated that the Permit’s overarching testing and parametric monitoring methodology is deficient, such that it would be necessary to require an NH₃ CEMS. However, the EPA wishes to provide the following clarifications to certain SCAQMD statements regarding NH₃ CEMS. Although EPA does not have any specific approved performance specifications or QA procedures for NH₃ CEMS, EPA encourages the use of Performance Specification 18 and Appendix F Procedure 6 or Performance Specification 15 for NH₃ CEMS. Reference methods to be considered are Method 320 and CTM-027. Additional information can be found on the following EPA website: <https://www.epa.gov/emc/emc-other-test-methods>.

states that SCAQMD did not identify any such requirements. *Id.* at 26, 27.³³ Overall, the Petitioner claims that “these testing requirements are insufficient to ensure compliance during the 3 years in between tests with applicable short-term CO and PM emission limits with 15-minute averaging periods.” *Id.* at 26.

The Petitioner argues generally that SCAQMD failed to provide sufficient technical analysis to justify this monitoring regime. *See id.* at 26–29. More specifically, the Petitioner argues that SCAQMD’s justification ignores the five factors that EPA Region 9 recommended SCAQMD consider when determining the necessary monitoring. *Id.* at 28, 29 (citing Petition Ex. C).³⁴

Regarding one of these five factors, the Petitioner claims that the stack testing requirement alone is insufficient “due to the potential variability of these emissions.” *Id.* at 26. The Petitioner mentions three parameters that could impact variability, including pollutant concentration in the gas stream, temperature, and degree of mixing. *Id.* The Petitioner also references “the full range of operational factors and non-routine operational issues that could result in variability and excess releases of CO and PM above applicable limits.” *Id.* at 28. The Petitioner claims that SCAQMD’s RTC ignores the variability issues raised by the Petitioner in public comments. *Id.* at 26, 28 (citing 40 C.F.R. § 70.7(h)(6)).

The Petitioner addresses the SCAQMD’s position that the CO and PM limits at issue have been “consistently met” and can “easily” be complied with, its conclusion that emissions are “well below” the limits, its reference to the “large margin of compliance where the limit is 2,000 ppmv,” and its summary of stack tests from 2016, 2019, and 2022. *Id.* at 27, 28 (citing RTC at 10; Petition Ex. D at 6). The Petitioner argues that SCAQMD did not provide the individual source test details, which the Petitioner suggests might show variability across test runs. *Id.* at 27, 28. In any case, the Petitioner argues that the results of stack tests alone cannot address the Petitioner’s concerns about variability between tests. *Id.* at 27, 28–29.

As with other claims, the Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns and data showing that Thermal Oxidizer 29F-4 emits significant amounts of CO and PM. *Id.* at 29. The Petitioner requests that the EPA mandate a requirement for CEMS or more frequent, robust monitoring. *Id.* at 29.³⁵

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

³³ The Petitioner observes SCAQMD’s statement that compliance with PM limits under Rule 409 are “determined by source test once every 5 years *and* engineering calculations with the use of appropriate emission factors and exhaust characteristics, respectively.” *Id.* at 27 (quoting RTC at 10). The Petitioner claims that the Permit contains no requirements regarding engineering calculations and emission factors, and also that SCAQMD does not provide further details about such calculations, emission factors, or exhaust characteristics at the Torrance Refinery. *Id.*

³⁴ Addressing SCAQMD’s suggestion that it considered these same factors when developing its Periodic Monitoring Guidelines, the Petitioner asserts: “The public is left to speculate as to the technical and engineering considerations related to the Refinery that informed the testing requirements for this equipment, since the District has not provided this previous evaluation and rationale.” *Id.* at 29.

³⁵ The Petitioner states that SCAQMD’s RTC focused exclusively on CEMS and did not address comments requesting more frequent stack testing or parametric monitoring. *Id.* at 26.

Claim 3 involves a CO limit of 2,000 ppmv (based on SCAQMD Rule 407) and a PM limit of 0.1 gr/scf (based on SCAQMD Rule 409), both averaged over a 15-minute period. Permit, Section D, page 97. The underlying applicable requirements (SCAQMD Rules 407 and 409) do not contain any testing or monitoring requirements, so the Permit must include gap-filling monitoring under 40 C.F.R. § 70.6(a)(3)(i)(B). SCAQMD's guidance developed to satisfy this gap-filling function may be instructive, but the Petitioner is correct that the District's guidance is not dispositive. Determining the conditions necessary to assure compliance with a given applicable requirement is a case-by-case, context-specific inquiry. Here, SCAQMD did not rely exclusively on its own guidance, as the Permit's stack testing requirements (every 3 years) go beyond those recommended in the guidance (every 5 years). See Permit Condition D28.25; RTC at 10.

The Petitioner's primary concern appears to be the difference between the time period or frequency of the emission limits (15-minute average) and the required testing and monitoring (every 3 years). As the Petitioner observes, if an underlying applicable requirement lacks periodic testing or monitoring, the EPA's regulations require that the permitting authority 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." 40 C.F.R. § 70.6(a)(3)(i)(B). Notably, this regulation does *not* mean that the frequency of monitoring must exactly match the time period of the relevant limits. Rather, the frequency of monitoring must bear a relationship to the time period of the relevant limits in order to provide a reasonable assurance of compliance during each relevant time period. See *US Steel Edgar Thomson Order* at 12; *In the Matter of U.S. Steel Corp., Clairton Coke Works*, Order on Petition Nos. III-2023-5 & III-2023-6 at 9 (Sept. 18, 2023); *In the Matter of Georgia-Pacific Consumer Operations LLC, Crossett Paper Operations*, Order on Petition Nos. VI-2018-3 and VI-2019-12 at 18 (Feb. 22, 2023). As with all questions regarding monitoring, determining the necessary frequency of testing and monitoring is highly context specific, and may depend on a number of variables, including the five factors the EPA identified in the *CITGO Order*:

(1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.

In the Matter of CITGO Refining and Chemicals Company, L.P., Order on Petition No. VI-2007-01 at 7–8 (May 28, 2009).

The Petitioner alleges that SCAQMD failed to consider these factors, but the record shows otherwise. Perhaps most importantly, SCAQMD squarely addressed the likelihood that the Torrance Refinery would violate the emission limits at issue. The permit record is replete with qualitative statements regarding this factor. See, e.g., RTC at 10 ("It has also been repeatedly demonstrated, based on source test results for this and other refineries, that the emission limits of Rule 407 . . . and Rule 409 . . . are consistently met."); Petition Ex. D at 6 (discussing "the objectively low and unrealistic likelihood of any violation of the 2,000 ppm [CO] limit"). SCAQMD provides context for this, noting that the limits at issue in Rules 407 and 409 were adopted over 40 years ago, and modern combustion technologies can "easily" and "consistently" meet these limits. Petition Ex. D at 6. SCAQMD also contrasts its decision here, where "[t]here is a large margin of compliance," to its decision in other contexts, where the

District has imposed more stringent monitoring (like CO CEMS) for combustion sources that have lower limits. RTC at 11.

Moreover, SCAQMD provides quantitative support for these conclusions. SCAQMD states that the last three stack tests showed CO emissions at 364, 443, and 361 ppmv, and PM emissions of 0.0048, 0.0071, and 0.0071 gr/dscf. RTC at 10; Petition Ex. D, Tables 1 and 2. As SCAQMD correctly states, the CO results “are well below the 2,000 ppmv limit,” and the PM results “easily comply with” Rule 409. RTC at 10. Put more directly, SCAQMD notes that “the source test results are mostly orders of magnitude below the permit limits,” “the maximum measured CO concentration . . . provide[s] an over 78% compliance margin,” and, for PM, “[a] majority of the tests show a compliance margin of over 80%.” Petition Ex. D at 6. The Petitioner does not substantively address this data, neglecting to acknowledge the numerical values and apparently dismissing the value of stack test results on general principles. See Petition at 27, 28–29.³⁶

Most of the Petitioner’s arguments—including the Petitioner’s aversion to relying on stack test data—are based on alleged variability of emissions. As an initial matter, the Petitioner does not present any information demonstrating that CO or PM emissions from this thermal oxidizer are likely to be variable. The Petitioner’s arguments on the “potential variability” of emissions are brief, vague, and speculative. Petition at 26; *see id.* at 28.

Instead of demonstrating anything beyond a general “potential” for variability, the Petitioner critiques the purported lack of analysis by SCAQMD. Although SCAQMD does not explicitly discuss emissions variability, SCAQMD’s permit record implicitly addresses this issue. The stack test data provided by SCAQMD shows that CO and PM emissions from Thermal Oxidizer 29F-4 are not significantly variable. Again, the last three stack tests showed CO emissions at 364, 443, and 361 ppmv, and PM emissions of 0.0048, 0.0071, and 0.0071 gr/dscf. RTC at 10; Petition Ex. D, Tables 1 and 2. This data does not display significant variability when considered one test to the next. But even more importantly, any variability of emissions must be considered in context. The ultimate purpose of testing and monitoring requirements is to assure compliance with a specific applicable requirement, like the emission limits at issue here. If variability is confined within a narrow band at the low end of the emission limits, then any such variability would be unlikely to impact the facility’s compliance with the underlying emission limits, which weighs against the need for additional monitoring to address such variability. *See In re Veolia ES Technical Solutions, L.L.C.*, 18 E.A.D. 194, 216–17 (EAB 2020). Here, the data does not display significant variability relative to the emission limits at issue. Test results ranged between approximately 18 and 22 percent of the CO limit, and 4.8 to 7.1 percent of the PM limit. See RTC at 10; Petition Ex. D, Tables 1 and 2.

In sum, SCAQMD provided a reasoned technical justification, complete with quantitative support, for its decisions regarding the amount of periodic testing necessary to assure compliance with the Rule 407 and Rule 409 CO and PM limits on Thermal Oxidizer 29F-4. The Petitioner fails to substantively rebut this justification. Accordingly, the Petitioner fails to demonstrate that more frequent stack testing, parametric monitoring, or CEMS are required to assure compliance with the emission limits at issue. Therefore, the EPA denies Claim 3.

³⁶ The Petitioner suggests that SCAQMD should have provided more detailed information regarding each source test in order to provide further information about variability between individual test runs, but does not demonstrate that this was necessary. Petition at 27, 28.

D. Claim 4: The Petitioner Claims That “The Proposed Permit’s Monitoring Requirements Cannot Ensure Compliance with 15-Minute Average CO and PM Emission Limits for Flare 55F-1.”

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with SIP-based limits on CO and PM emissions from a flare. *See* Petition at 29–32.

The Petitioner states that Flare 55F-1 is subject to the 2,000 ppmv CO limit from Rule 407 and the 0.1 gr/scf PM limit from Rule 409 (also discussed in Claim 3). *Id.* at 29. The Petitioner further states that to calculate emissions from this flare, the Torrance Refinery “is allowed to use emissions factors from natural gas and butane that are typically for closed combustion systems, such as boilers and heaters, and not for open-flame flares like 55F-1.” *Id.* at 29–30 (citing Permit Section I, Rule 1118 Flare Monitoring and Recording Plan).

The Petitioner argues generally that SCAQMD failed to provide sufficient technical analysis to justify this monitoring regime. *See id.* at 30–32. The Petitioner argues that SCAQMD’s justification ignores the five factors that EPA Region 9 recommended SCAQMD consider when determining the necessary monitoring. *Id.* at 32. The Petitioner addresses SCAQMD’s reluctance to repeat its engineering analysis in the record for this title V renewal permit. *Id.* at 30 (citing RTC at 11). The Petitioner argues: “To the contrary, the Clean Air Act requires that the statement of basis provide a detailed explanation of the rationale behind the monitoring and other requirements adopted by the District to ensure compliance with applicable emission limits. This mandate is especially important when a commenter points out problems with the Title V permit’s monitoring and testing requirements.” *Id.* (citing 40 C.F.R. § 70.7(a)(5)).

More specifically, the Petitioner claims that SCAQMD “failed to provide technical justification and data explaining how these emissions factors are applicable to and appropriate for this open-flame flare to confirm compliance with these CO and PM emission limits.” *Id.* at 30. The Petitioner contends that SCAQMD failed to respond to comments questioning the adequacy of these emission factors. *Id.* (citing 40 C.F.R. § 70.7(h)(6)). Instead, the Petitioner notes that SCAQMD’s response was as follows: “concern in the comment on the applicability of these factors to an open-flame system versus a closed combustion system is *duly noted.*” *Id.* (quoting RTC at 11–12) (emphasis in Petition).

The Petitioner addresses SCAQMD’s reliance on the fact “that Rule 1118 ‘requires the use of specific emission factors . . . to calculate flare emissions based on the type of vent gas(es) a flare is servicing.’” *Id.* at 31 (quoting RTC at 11). The Petitioner observes that Attachment B of Rule 1118 indicates that use of these emission factors is not mandatory under that rule. *Id.* The Petitioner argues that the presence of the emission factors within Rule 1118 does not refute the Petitioner’s concern that these emission factors are not appropriate for open combustion flares. *Id.* The Petitioner also asserts that Rule 1118 does not, on its face, establish monitoring requirements to assure compliance with the CO and PM limits in Rules 407 and 409. *Id.* Overall, the Petitioner claims that the “the monitoring provisions of Rule 1118 are not meant to replace the District’s obligations under the Clean Air Act Title V permitting mandates,” which require SCAQMD to ensure that the Permit’s monitoring requirements are sufficient to assure compliance with applicable emission limits. *Id.* (citing U.S.C. § 7661c(c); 40 C.F.R.

§ 70.6(a)(3)(i)(B), (c)(1); *Sierra Club v. EPA*, 536 F.3d 673, 675–77 (D.C. Cir. 2008); Cal. Health & Safety Code § 42301.10).

Additionally, the Petitioner addresses SCAQMD’s discussion of an exemption to the CO limit in Rule 407, which SCAQMD indicated does not apply during process upsets. *Id.* at 30 (citing RTC at 11–12). The Petitioner contests the applicability of this exemption. *See id.* The Petitioner states that the Permit does not provide such an exemption, and also argues that the Torrance Refinery’s Rule 1118 Flare Monitoring and Recording Plan characterizes Flare 55F-1 as providing both “normal and emergency relief,” and therefore the flare does not qualify for the exemption. *Id.* at 30–31. But even if the exemption applies to CO emissions under Rule 407, the Petitioner argues that it does not apply to PM emissions Under Rule 409. *Id.* at 31.

As with other claims, the Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns. *Id.* at 32. The Petitioner requests that the EPA mandate more robust monitoring and testing requirements. *Id.*

EPA Response: For the following reasons, the EPA grants this Petition claim and objects to the issuance of the Permit.

Claim 4 involves the same CO limit of 2,000 ppmv (based on SCAQMD Rule 407) and PM limit of 0.1 gr/scf (based on SCAQMD Rule 409) discussed in Claim 3, which are also applicable to Flare 55F-1. *See* Permit, Section D, page 189. The underlying applicable requirements (SCAQMD Rules 407 and 409) do not contain any testing or monitoring requirements, so the Permit must include gap-filling monitoring under 40 C.F.R. § 70.6(a)(3)(i)(B).

Although the Permit includes compliance assurance provisions based on SCAQMD Rule 1118, the Petitioner is correct that, as a legal matter, those compliance assurance provisions do not necessarily resolve the issue. SCAQMD was obligated to assess whether the Rule 1118 provisions—including the emission factors contained in Rule 1118—are also sufficient to assure compliance with the Rule 407 and Rule 409 emission limits. Additionally, although the EPA understands SCAQMD’s reluctance to repeat prior technical analyses in this title V renewal permit action, *see* RTC at 11, SCAQMD has an obligation to respond to all significant comments that raise specific concerns about the compliance assurance methodology contained in a title V permit. 40 C.F.R. § 70.7(h)(6); *see In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII–2022–13 & VIII–2022–14 at 28–32 (July 31, 2023) (*Suncor Plant 2 Order*).

Here, a public comment expressed concerns regarding the appropriateness of calculating flare CO and PM emissions using the emission factors listed in the Rule 1118 Flare Monitoring and Recording Plan, incorporated via Section I of the Permit. The comment specifically questioned whether emission factors that are typically used for closed combustion systems, such as boilers and heaters, were representative of emissions from open-flame flares like Flare 55F-1. This comment was a significant comment. SCAQMD did not substantively respond to this comment, instead simply indicating that it was “duly noted.” RTC at 12. This non-substantive response presents a basis for the EPA’s objection. 40 C.F.R. § 70.7(h)(6). Additionally, SCAQMD’s permit record does not contain any other justification for the use of these particular emission factors. Thus, the record is inadequate for the EPA to determine whether the emission calculation methodology contained in the Permit’s Rule 1118 Flare Monitoring

and Recording Plan is sufficient to assure compliance with the CO and PM limits under Rules 407 and 409. 40 C.F.R. § 70.8(c)(3)(ii).

It is also unclear whether or how SCAQMD's brief discussion of exemptions from the Rule 407 CO limit is relevant to this issue. SCAQMD indicates that "CO emissions from flaring due to process upsets (such as over-pressurization) are exempt from Rule 407 pursuant to subparagraph (b)(3) of the rule." RTC at 12. SCAQMD elsewhere appears to suggest that this exemption covers Flare 55F-1: "When the headspace pressure in any of the three tanks exceeds its safety set point, they are vented to clean service Flare 55F-1 to avoid over-pressurization to prevent tank integrity failure." *Id.* at 11. However, it is unclear whether this is the *only* situation that Flare 55F-1 is used, such that the flare is fully exempt from the Rule 407 CO limit. As the Petitioner notes, the Rule 1118 Flare Monitoring and Recording Plan suggests that this flare is used for some routine (non-emergency) purposes. See Permit, Section I, Rule 1118 Flare Monitoring and Recording Plan, Part II, pages 1 and 5. In any case, the Permit indicates that Flare 55F-1 is subject to (not exempt from) Rule 407, and therefore the Permit must contain sufficient measures to assure compliance with the Rule 407 CO limit. Permit, Section D, page 189.³⁷

In sum, the record is inadequate to determine whether the Permit contains sufficient monitoring or emission calculation requirements to assure compliance with the CO and PM limits on Flare 55F-1, and SCAQMD failed to respond to a significant comment on this issue. Thus, the EPA grants claim 4. 40 C.F.R. § 70.8(c)(3)(ii), (iii).

Direction to SCAQMD: SCAQMD must revise the permit record and, if necessary, the Permit to ensure that the Permit contains sufficient conditions to assure compliance with the CO limit under Rule 407 and the PM limit under Rule 409 that apply to Flare 55F-1.

Regarding the CO limit, to the extent SCAQMD considers Flare 55F-1 entirely exempt from this limit, it should revise the Permit accordingly and explain the basis for this decision. To the extent the flare remains subject to the limit, SCAQMD should clarify whether and how this exemption is relevant to the requirements necessary to assure compliance with this limit. Provided the Torrance Refinery will demonstrate compliance with the Rule 407 CO limit using the emission factor based on Rule 1118, SCAQMD must respond to comments questioning the adequacy of this emission factor.

SCAQMD must also respond to comments questioning the adequacy of the Rule 1118-based emission factor as it relates to demonstrating compliance with the Rule 409 PM limit on Flare 55F-1.

To the extent that SCAQMD is relying on prior technical or engineering analyses to support the adequacy of the current permit terms, SCAQMD should update the permit record to clearly reference such a justification and ensure that it is publicly available.

E. Claim 5: The Petitioner Claims That "The Proposed Permit's Monitoring Requirements Cannot Ensure Compliance with Three-Hour Average H₂S Limits for Flares 55F-1, 65F-3, 65F-4, and 65F-8."

³⁷ Additionally, as the Petitioner states, any exemptions from the CO limit under Rule 407 would not be relevant to the PM limit under Rule 409.

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with a limit on H₂S from four flares. See Petition at 33–35.

The Petitioner states that Flares 55F-1, 65F-3, 65F-4, and 65F-8 are subject to a SIP limit on the use and combustion of vent gases with H₂S greater than 160 ppmv. *Id.* at 33 (citing Permit Condition B61.5).

For Flare 55F-1, the Petitioner acknowledges that the Permit requires the Torrance Refinery to periodically monitor the H₂S concentration at the flare inlet. *Id.* at 33 (citing Permit Condition D90.15). The Petitioner also addresses SCAQMD’s discussion of the Alternative Monitoring Plan (AMP) for this flare, which is referenced by Permit Condition D90.15. *Id.* The Petitioner notes that the EPA approved the AMP based on samples showing H₂S concentrations between 0.5 ppmv and 1.5 ppmv, below the applicable limit of 160 ppmv. *Id.* The Petitioner argues, however, that although the EPA-approved AMP relieved the Torrance Refinery of the obligation to operate a CEMS for SO₂ under the EPA’s subpart J NESHAP rules, it did not, and could not, exempt Flare 55F-1 from monitoring H₂S for purposes of demonstrating compliance with the H₂S SIP limit at issue here. *Id.* The Petitioner also asserts that the AMP does not specify the frequency of required H₂S monitoring. *Id.* at 33–34.

For Flares 65F-3, 65F-4, and 65F-8, the Petitioner states that the Permit does not specify whether these flares need to monitor H₂S. *Id.* at 33. The Petitioner also claims that SCAQMD failed to respond to comments concerning those flares. *Id.* at 34 (citing 40 C.F.R. § 70.7(h)(6)).

The Petitioner addresses SCAQMD’s statement that Rule 1118(g) specifies monitoring requirements for the flares at issue. *Id.* at 34 (citing RTC at 12).³⁸ The Petitioner asserts that the Rule 1118(g) monitoring requirements are not in the Permit, nor are the four flares at issue tagged with Rule 1118(g) monitoring requirements. *Id.* In any case, the Petitioner asserts that this rule requires monitoring of gas flow, heating value, and SO₂, but not H₂S. *Id.*

Additionally, the Petitioner addresses SCAQMD’s discussion of an exemption to the H₂S limit in Permit Condition B61.5, which does not apply to “any vent gas resulting from an emergency, shutdown, startup, or process upset. *Id.* at 30 (quoting RTC at 12). The Petitioner contests the applicability of this exemption. See *id.*³⁹ The Petitioner states that “there are presumably other instances where the H₂S limit would apply to flare operations outside of these exempt periods,” given that Flare 55F-1 “provides *normal* and emergency relief,” and Flares 65F-3 and 65F-4 are designated as general service flares. *Id.* (quoting Permit Section I, Rule 1118 Flare Monitoring and Recording Plan).

As with other claims, the Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns. *Id.* at 34–35. The Petitioner requests that the EPA mandate CEMS or more frequent, robust monitoring and testing requirements. *Id.* at 34.

³⁸ The Petitioner claims that “the District’s duty to include monitoring sufficient to ensure compliance with applicable requirements in a Title V permit exists regardless what monitoring the SIP may require, if that SIP monitoring cannot ensure compliance.” Petition at 34.

³⁹ The Petitioner also claims that blanket exemptions for startup, shutdown, and malfunction (SSM) periods are unlawful. *Id.* at 32 n.192.

EPA Response: For the following reasons, the EPA grants this Petition claim and objects to the issuance of the Permit.

The Permit includes a Rule 1118-based limit restricting the use or combustion of gas with H₂S greater than 160 ppm; this limit applies to the four flares at issue. Permit Condition B61.5; see SCAQMD Rule 1118(c)(15) (July 7, 2017).

The Permit does not, on its face, include any specific testing or monitoring requirements directly related to the Rule 1118 limit for any of the four flares. Instead, it appears that SCAQMD intended for the Permit to incorporate by reference the applicable monitoring requirements from Rule 1118(g) via the facility's Flare Monitoring and Recording Plan, which is attached to the Permit and incorporated via Permit Section I. Specifically, SCAQMD states: "The monitoring requirement for flares is stated in Rule 1118 (g). Note that this monitoring requirement for Torrance Refinery's affected flares is subsumed in Torrance Refinery's approved Flare Monitoring & Recording Plan (FMRP), Condition 1, which delineates to Subparagraph (g) of Rule 1118." RTC at 12. Condition 1 of the Flare Monitoring and Recording Plan states: "The owner/operator shall perform monitoring and recording of the operating parameters for the below flares in accordance with the approved compliance plan *and other applicable requirements of Rule 1118(g)*. The monitoring and recording shall be performed at all times except when the flare monitoring system is out of service for reasons described in Rule 1118(g)(5)(A)." Permit, Section I, Flare Monitoring and Recording Plan, page 2, Condition 1 (emphasis added).

Although permitting authorities may satisfy the statutory requirement that title V permits include all applicable requirements (including monitoring requirements contained in underlying SIP provisions like Rule 1118) through the use of incorporation by reference, there are reasonable limits on this practice. The EPA has provided extensive guidance on this subject. See, e.g., White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, 36–41 (Mar. 5, 1996) (*White Paper 2*) (explaining how incorporation by reference can satisfy the requirements of CAA § 504). In all cases where incorporation by reference is employed, the title V permit must contain references that are "detailed enough that the manner in which the referenced material applies to the facility is clear and is not reasonably subject to misinterpretation." White Paper 2 at 37. Moreover, "Where only a portion of the referenced document applies, . . . permits must specify the relevant section of the document." *Id.* The EPA has further explained:

Incorporation by reference may be appropriate where the cited requirement is part of the public docket or is otherwise readily available, clear and unambiguous, and currently applicable. As EPA explained in White Paper 2, it is important to exercise care to balance the use of incorporation by reference with the need to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. In order for [incorporation by reference] to be used in a way that fosters public participation and results in a title V permit that assures compliance with the Act, it is important that (1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and the date of the document be included so that there is no ambiguity as to which version of the document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and not reasonably subject to misinterpretation.

In the Matter of United States Steel Corp., Granite City Works, Order on Petition No. V-2009-03 at 43 (Jan. 31, 2011) (internal citations omitted).

Here, the facility's Flare Monitoring and Recording Plan (which is attached to the Permit) contains only a vague reference to "other applicable requirements of Rule 1118(g)." This wording is insufficient to incorporate any specific monitoring requirements of Rule 1118(g) by reference. Therefore, the EPA agrees with the Petitioner that the Permit does not contain the applicable monitoring requirements of 1118(g) for all four flares at issue, and the EPA grants Claim 5 with respect to all four flares for this reason.

Additionally, even if the Permit did include (or effectively incorporate) the applicable monitoring requirements of Rule 1118(g), it is not clear that such requirements would be sufficient to assure compliance with the 160 ppmv H₂S limit, particularly for Flares 65F-3, 65F-4, and 65F-8. As the Petitioner observes, the rule does not specifically require measurements of H₂S, but instead requires calculating or monitoring "total sulfur concentration," which the rule defines as "Total Sulfur as SO₂, ppmv." Rule 1118(g)(3) and Rule 1118, Table 1 (July 7, 2017).⁴⁰ For general service flares, the rule specifically requires that total sulfur concentration be "Semi-Continuously Measured and Recorded with a Total Sulfur Analyzer."⁴¹ The rule, in Attachment A, Condition 5, includes additional requirements for Continuous and Semi-continuous Gaseous Stream Total Sulfur Monitoring Systems. This provision requires "The monitoring system must be capable of measuring total sulfur concentration within the requirements of the rule." Rule 1118, Attachment A, Condition 5.a (July 7, 2017). Among many other provisions, none appear to specifically require measuring H₂S. The EPA is aware that there are multiple ways to measure total sulfur or SO₂ concentrations, but not all of these methods provide speciated concentrations of individual sulfur compounds such as H₂S. Therefore, it is not clear how the Rule 1118 requirements to monitor total sulfur concentration will assure compliance with the 160 ppmv H₂S limit. This presents an additional reason for the EPA to grant Claim 5 with respect to Flares 65F-3, 65F-4, and 65F-8.

Regarding the clean service flare (Flare 55F-1), the EPA does not necessarily agree with the Petitioner's other arguments. The Petitioner identifies a permit term that requires periodic H₂S sampling and incorporates an AMP related to NSPS requirements on this flare. Petition at 33 (citing Permit Condition D90.15). The Petitioner's primary concern appears to be that neither this permit term nor the associated AMP specifies a sampling frequency. *Id.* at 33, 34. However, that concern appears incorrect; the AMP indicates that the facility "will take drager tube samples from each tank weekly, quarterly, and semi-annually, as allowed in the RFG guidance." Petition Ex. A (RTC) at pdf page 62. The Petitioner also acknowledges that this flare is designated under Rule 1118 as a clean service flare, and that samples of gas streams associated with this flare showed H₂S concentrations between 0.5 ppmv and 1.5 ppmv, well below the applicable limit of 160 ppmv. *Id.* at 33; *see also* RTC at 12 ("[T]he clean service flare, 55F-1, is not expected to combust vent gas with measurable sulfur compounds."). The

⁴⁰ The EPA understands the Petitioner's and SCAQMD's references to Rule 1118(g) to refer to this 2017 version of the rule, which is the version approved into the SIP. The same provision is now in section (j) in the latest 2024 version of Rule 1118 in the SCAQMD regulations.

⁴¹ For clean service flares, the rule allows total sulfur concentration to be either calculated or semi-continuously measured and recorded with a total sulfur analyzer.

Petitioner does not substantively address this large margin of compliance (and low likelihood of violation), nor explain why additional or more frequent sampling is needed for this flare.

Regarding the fact that the H₂S limit at issue “exclud[es] any vent gas resulting from an emergency, shutdown, startup, process upset or relief valve leakage,” Permit Condition B61.5, it is unclear whether or how this provision is relevant to any of the four flares, and whether SCAQMD is relying on this provision as a basis for not imposing monitoring for any of these flares. As the Petitioner notes, Flare 55F-1 is designated as a clean service flare, and Flares 65F-3 and 65F-4 are designated as general service flares. Permit, Section I, Flare Monitoring and Recording Plan, page 2, Condition 1. However, Flare 65F-8 is listed as an “emergency” service flare. *Id.* SCAQMD’s RTC briefly acknowledges this exclusion but does not explain its applicability to the flares at issue here. *See* RTC at 12. In any case, the Permit indicates that all four of these flares are subject to (not exempt from) the Rule 1118 limit on H₂S.

In sum, the Permit does not include (or effectively incorporate) the monitoring requirements related to the 160 ppmv H₂S limit in Rule 1118 that applies to Flares 55F-1, 65F-3, 65F-4, and 65F-8. And even if it did include the monitoring requirements within Rule 1118(g), it is unclear whether and how those requirements would assure compliance with the limit at issue, particularly for Flares 65F-3, 65F-4, and 65F-8. The record is also unclear about the scope of the exclusion in Permit Condition B61.5. Thus, the EPA grants Claim 5.⁴²

Direction to SCAQMD: SCAQMD must revise the Permit and permit record to ensure that the Permit contains sufficient conditions to assure compliance with the H₂S limit under Rule 1118 that applies to Flares 55F-1, 65F-3, 65F-4, and 65F-8.

If any of these flares (*e.g.*, Flare 65F-8) are entirely exempt from this limit, SCAQMD should revise the Permit accordingly and explain the basis for this decision.

Otherwise, and for all flares that depend on the Rule 1118(g) monitoring requirements to assure compliance with the Rule 1118 H₂S limit, SCAQMD must revise the permit to include or effectively incorporate by reference the applicable monitoring requirements. SCAQMD must also explain why such monitoring requirements are sufficient to assure compliance with the H₂S limit.

Alternatively, SCAQMD could revise the Permit to include other monitoring requirements that assure compliance with this limit.

⁴² Regarding the Petitioner’s one-sentence footnote argument that “the Clean Air Act requires that emission limits and standards apply continuously, meaning that blanket exemptions for SSM periods are unlawful,” this presents no basis for the EPA’s objection to this claim. The permit term at issue, which defines the applicability of the 160 ppmv H₂S limit, uses language taken almost verbatim from the underlying applicable requirement in the SIP. *Compare* Permit Condition B61.5 with SCAQMD Rule 1118(c)(15) (July 7, 2017). As the EPA has repeatedly explained, the requirements of a SIP—including any provisions related to SSM—establish the “applicable requirements” that must be included in a title V permit. 40 C.F.R. § 70.2 (definition of “applicable requirement”). Whether an approved SIP rule is inconsistent with the CAA is a matter that may be addressed by a method such as a “SIP Call” pursuant to CAA § 110(k), not by the Administrator’s objection to a title V operating permit. *See, e.g., In the Matter of Piedmont Green Power, LLC*, Order on Petition No. IV-2015-2 at 28–29 (Dec. 13, 2016); *In the Matter of Monroe Power Company*, Order on Petition IV-2001-8 at 14 (Oct. 9, 2002); *In the Matter of Pacificorp’s Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Order on Petition No. VIII-00-1 at 23–24 (Nov. 16, 2000).

F. Claim 6: The Petitioner Claims That “The Proposed Permit’s Monitoring Requirements Cannot Ensure Compliance with 15-Minute Average and Hourly CO, PM, and ROG Emission Limits for Heater 24F-1.”

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with a variety of limits on CO, PM, and ROG⁴³ emissions from a heater. See Petition at 35–38.

Specifically, the Petitioner identifies the following limits on Heater 24F-1: a CO limit of 88.54 lbs/hr (under Rule 1303(b)(2)); a CO limit of 2,000 ppmv (with a 15-minute averaging period under Rule 407); PM limits of 0.1 gr/scf (with a 15-minute averaging period under Rule 409) and limits ranging from 0.196 to 0.010 gr/scf depending on the volume discharged, as determined by a table in Rule 404, and averaged over a cycle of operation or one-hour period, whichever is less under Rule 404(d); PM₁₀ limits of 24.94 lbs/hour (under an NSR permit); and ROG limits of 62.35 lbs/hour (under an NSR permit). *Id.* at 35.

The Petitioner states that that the Permit requires annual source testing to determine emission rates in pounds per hour in order to assure compliance with the applicable limits. *Id.* at 35 (citing Permit Condition D28.23).⁴⁴ The Petitioner states that the Permit does not include, and SCAQMD failed to consider, additional monitoring between these annual stack tests. *Id.*; see *id.* at 36. Similar to other claims, the Petitioner claims that “the use of an annual source test . . . is inadequate to ensure compliance with emission limits with short averaging periods of 15 minutes and one hour.” *Id.* at 35.

The Petitioner argues generally that SCAQMD failed to provide sufficient technical analysis to justify this monitoring regime. See *id.* at 35–38. The Petitioner states:

The District dismissed the need to provide technical analysis, arguing instead that the agency “cannot reasonably be expected to reconstruct and belabor the information from all permitting decisions that were made at the time of permitting in the Title V renewal SOB for all the 1,100 plus devices listed in the Draft Title V permit.” Contrary to the District’s assertion, however, Petitioner is not requesting that the District provide additional information to support its permitting decision for *all* 1,100 plus devices. Rather, Petitioner identified several key equipment that are subject to source tests annually or every few years to determine compliance with emissions that are averaged over short periods of time and that could vary over longer periods.

Id. at 36 (quoting RTC at 13). More specifically, the Petitioner argues that SCAQMD’s justification ignores the five factors that EPA Region 9 recommended SCAQMD consider when determining the

⁴³ The term ROG, as used in SCAQMD’s regulations and Permit, has a similar (but not identical) meaning as the term VOC, which is more commonly used in various EPA programs.

⁴⁴ Similar to Claim 3, the Petitioner challenges SCAQMD’s reliance on the District’s Periodic Monitoring Guidelines, developed to establish gap-filling testing and monitoring requirements where underlying rules (like the ones implicated by this claim) do not include testing and monitoring requirements. Petition at 36. The Petitioner argues that this guidance document does not relieve SCAQMD from its obligations under title V to ensure that permits contain sufficient monitoring. *Id.*

necessary monitoring. *Id.* at 37–38. The Petitioner focuses on SCAQMD’s purported lack of technical analysis of emissions variability. *Id.* at 35, 36, 37.

Similar to Claim 3, the Petitioner addresses the District’s position, based on prior source tests, that CO and PM emissions from this equipment are “well below” and can “easily” comply with applicable emission limits for these pollutants. *Id.* at 37 (citing Petition Ex. D at 6). The Petitioner argues that SCAQMD did not provide the individual source test details, which the Petitioner suggests might show variability across test runs. *Id.* at 37. In any case, the Petitioner argues that the results of stack tests alone cannot address the Petitioner’s concerns about variability between tests. *Id.*

The Petitioner also claims that SCAQMD did not provide any test results for ROG. *Id.*

Additionally, the Petitioner argues that there are no testing requirements for the ppmv and gr/scf emission limits, given that Condition D28.23 only requires testing to determine emission rates in pounds per hour. *Id.* at 35, 36. The Petitioner further claims that SCAQMD failed to respond to comments raising this issue. *Id.* at 36 (citing 40 C.F.R. § 70.7(h)(6)).

As with other claims, the Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns. *Id.* at 38. The Petitioner requests that the EPA mandate a requirement for CEMS or more frequent, robust monitoring. *Id.*

EPA Response: For the following reasons, the EPA grants in part and denies in part this Petition claim and objects to the issuance of the Permit.

Claim 6 involves a variety of emission limits on Heater 24F-1, imposed under a variety of SCAQMD rules. See Permit, Section D, page 58. The Rule 407 CO limit and Rule 404 and Rule 409 PM limits do not include testing or monitoring in the underlying applicable requirement, so the Permit must include gap-filling monitoring under 40 C.F.R. § 70.6(a)(3)(i)(B). By contrast, the CO, PM, and ROG limits associated with Rule 1303 were established through the NNSR permitting process, and it appears that the annual testing requirements associated with those limits were developed at that time. See Permit Condition D28.23.

As a general matter, the EPA agrees with SCAQMD that the District was not necessarily obligated to independently examine and re-justify the monitoring associated with more than 1,100 pieces of equipment in this title V renewal proceeding. See RTC at 12–13; *Suncor Plant 2 Order* at 28–32. However, SCAQMD did have an obligation to address those concerns raised in public comments relating to specific deficiencies with specific testing and monitoring requirements. *Suncor Plant 2 Order* at 28–32. The sufficiency of the Permit and SCAQMD’s permit record differs with respect to the various emission limits at issue in this claim.

Pounds per Hour Limits on CO and PM (NNSR Rule 1303)

Regarding the pounds per hour limits on CO and PM (based on NNSR Rule 1303(b)(2)), this claim presents similar issues to those addressed in Claim 3. The Petitioner’s primary concern appears to be the difference between the time period or frequency of the emission limits (hourly) and associated testing requirements (annual). As explained previously, the time period of limits and associated testing

or monitoring requirements does not always need to precisely align in order to assure compliance. Again, determining the necessary frequency of periodic testing or monitoring is a context-specific decision.

The Petitioner alleges that SCAQMD failed to consider the factors that the EPA recommends, but the record shows otherwise. Perhaps most importantly, SCAQMD squarely addressed the likelihood that the Torrance Refinery could violate the emission limits at issue. SCAQMD explained that “it has been repeatedly determined, based on source tests, that these emission limits . . . can consistently be met.” RTC at 13. SCAQMD further indicated that “it has been repeatedly shown with source test data that the CO levels are near the non-detection level for the facility’s heaters . . .” *Id.* at 14. SCAQMD provided quantitative information from prior stack tests to support these conclusions. Specifically, the data provided by SCAQMD indicates that CO emissions have consistently ranged between 0.44 and 2.5 percent of the relevant hourly CO emissions limit. See Petition Ex. D at Table 1. Similarly, the data indicates that PM emissions have ranged between 7.7 and 12.5 percent of the relevant hourly PM emissions limit. Petition Ex. D at Table 2. Overall, this data indicates a large margin of compliance and relatively little variability.

The Petitioner does not substantively engage with this data. The Petitioner also does not present any arguments of its own regarding the existence of variability that might impact compliance with the emission limits.⁴⁵ Nor does the Petitioner present any fact-specific information or analysis of any other factors relevant to determining the sufficiency of monitoring.

In sum, for the pound per hour limits on CO and PM emissions from Heater 24F-1, SCAQMD provided a reasoned technical justification, complete with quantitative support, for its decisions regarding the amount of periodic testing necessary to assure compliance with these limits. The Petitioner fails to substantively rebut this justification, and in so doing, fails to demonstrate that more frequent stack testing, parametric monitoring, or CEMS are required to assure compliance with the emission limits at issue. Therefore, the EPA denies this part of Claim 6.

Pounds per Hour Limits on ROG (NNSR Rule 1303)

In contrast to the hourly CO and PM limits, SCAQMD does not provide any prior stack test results or other information related to the facility’s margin of compliance, emissions variability, or other factors relevant to the testing or monitoring necessary to assure compliance with the ROG limit on Heater 24F-1 under Rule 1303(b)(2).⁴⁶ Thus, the record is inadequate for EPA to determine whether annual stack

⁴⁵ The most the Petitioner includes within Claim 6 is a suggestion that “actual test reports . . . could possibly show variability in between test runs,” and a reference to “variability issues raised by Petitioner,” presumably in its public comments. Petition at 37. This vague reference is insufficient to demonstrate a basis for the EPA’s objection. 40 C.F.R. § 70.12(a)(2) (“Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must be contained within the body of the petition, or if reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim.”).

⁴⁶ A portion of SCAQMD’s RTC discusses how complete and efficient combustion, as evidenced by low CO emissions and ensured by periodic inspections and tune-ups, would ensure the destruction of hazardous air pollutant emissions. See RTC at 14. This discussion, which was provided in response to a comment that was not carried forward in this Petition claim, may also be relevant to ROG emissions, but nothing in SCAQMD’s permit record discusses this potential connection or otherwise directly addresses ROG emissions from Heater 24F-1.

testing is sufficient to assure compliance with that limit, and the EPA grants Claim 6 to the extent it concerns the ROG limit. 40 C.F.R. § 70.8(c)(3)(ii).

Other Limits on CO and PM (Rules 407, 404, 409)

The Permit treats the CO and PM limits under Rules 407, 404, and 409 differently than the CO and PM limits under Rule 1303 discussed earlier in this claim. In sum, the CO and PM limits under Rule 1303 (expressed in lb/hr) are subject to annual stack testing requirements. By contrast, the CO limit under Rule 407 (expressed as ppmv) and the PM limits under Rule 404 and 409 (expressed as gr/scf) do not appear to be supported by *any* periodic testing or monitoring requirements.

The Permit's annual testing requirement, on its face, applies only "to determine the emission rates (lb/hr) of ROG, CO, & PM" emissions, and this permit term is only expressly associated with the Rule 1303(b)(2) limits (not the Rule 407, 404, and 409 limits). Permit Condition D28.23. SCAQMD's permit record reinforces the limited applicability of the Permit's annual stack test requirement. The District's RTC states: "Permit condition D28.23 requires the equipment to be tested annually *to determine compliance with the pound per hour emission rates for CO, PM, and ROG to demonstrate compliance with Rule 1303(b)(2).*" RTC at 13 (emphasis added). Similarly, the explanatory tables supplied by SCAQMD list "annual" as the stack test frequency for the hourly CO and PM limits under Rule 1303, with a citation to Permit Condition D.28.23. Petition Ex. D, Tables 1 and 2. By contrast, the table entries associated with the Rule 407 CO limit and the Rule 404 and Rule 409 PM limits on Heater 24F-1 indicate "none" and "N/A" for stack test condition and stack test frequency entries. *Id.*

The reason for this discrepancy is not clear. SCAQMD offers no response to the comments questioning the total absence of testing for the Rule 407 CO limit and Rule 404 and 409 PM limits. *See* RTC at 13. This was a significant comment, and the lack of a response presents a basis for the EPA's objection. 40 C.F.R. § 70.7(h)(6). And although portions of the permit record (discussed above) imply that the no-testing decision was intentional, other portions of the permit record suggest that SCAQMD believes that annual stack testing is necessary for all of the limits on Heater 24F-1. *See* RTC at 13 (including a reference to the Rule 404, 407, and 409 emission limits in its determination that, "based on our best engineering judgment and evaluation, that annual performance testing is sufficient to demonstrate compliance").⁴⁷

In sum, the permit record is inadequate for the EPA to determine whether the Permit contains sufficient provisions to assure compliance with the CO and PM limits on Heater 24F-1 under Rules 404, 407, and 409, and SCAQMD failed to respond to a significant comment on this issue. Therefore, the EPA grants Claim 6 to the extent it relates to these limits. 40 C.F.R. § 70.8(c)(3)(ii), (iii).

⁴⁷ *See also* RTC at 14 ("Annual source testing as well as maintaining the heater in optimal condition to maximize efficiency ensures compliance with . . . the CO, PM, and ROG limits for heater 24F-1."). Additionally, SCAQMD's RTC for the limits on Heater 24F-1 references prior discussion in its RTC regarding adequacy CO and PM monitoring under Rules 407 and 409. *See* RTC at 13. SCAQMD also provides the results of prior stack tests, which indicate relatively low CO and PM emissions compared to the ppmv and gr/scf limits from Rules 407, 404, and 409. Petition Ex. D at Tables 1, 2. It is unclear whether this discussion was intended to support a conclusion that no stack test requirements were necessary at all for these particular limits, or instead to support a position (inconsistent with the current Permit terms) that annual testing would be sufficient to assure compliance with the Rule 407, 404, and 409 limits.

Direction to SCAQMD: SCAQMD must amend the permit record and, if necessary, the Permit to ensure that the Permit contains sufficient testing and monitoring requirements to assure compliance with the 24.94 lb/hr limit on ROG emissions, the 2,000 ppmv limit on CO emissions, and the two gr/scf limits on PM emissions from Heater 24F-1.

Specifically, SCAQMD could explain why the Permit’s annual testing requirement is sufficient to assure compliance with the ROG limit. Such a justification could be based on prior stack test results or other relevant factors. *See CITGO Order* at 7–8. Or, if necessary, SCAQMD could revise the Permit to contain additional testing or monitoring, and provide a justification for the added requirements.

SCAQMD must also address public comments questioning the lack of any testing requirements for the Rule 407 CO limit and Rule 404 and 409 PM limits. In addressing this issue, SCAQMD may determine that the Permit needs to be updated to connect the existing annual testing requirements to those limits.

G. Claim 7: The Petitioner Claims That “The Proposed Permit’s Monitoring Requirements Cannot Ensure Compliance with 15-Minute Average CO and PM Emission Limits for Heater 4F-1.”

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with SIP-based limits on CO and PM emissions from a heater. *See* Petition at 38–40.

The Petitioner states that the Permit includes the following limits on Heater 4F-1: 2,000 ppmv CO (based on Rule 407) and 0.1 gr/scf PM (based on Rule 409), both averaged over 15-minute periods. *Id.* at 38.

The Petitioner states that the Permit requires source testing every 3 or 5 years to assure compliance with the CO limit. *Id.* at 38 (citing Permit Condition D28.8).⁴⁸ The Petitioner alleges that SCAQMD “failed to establish how often the Refinery must conduct PM monitoring to ensure compliance with the applicable limit.” *Id.* The Petitioner also notes SCAQMD’s statement that the testing requirement in Condition D28.8 would be replaced with a new permit term, Condition D29.7, which contains a similar requirement to test every 5 years. *Id.* at 38–39.⁴⁹

The Petitioner states that the Permit does not include, and SCAQMD failed to identify, additional monitoring between stack tests. *Id.* at 39. As with other claims, the Petitioner contests the frequency of the required monitoring: “Emissions could be higher than the CO and PM limits in the many hours between tests once every five years, but without more frequent testing and monitoring, there would be no way to know whether the heater is complying with these short-term limits.” *Id.* at 38.

⁴⁸ Similar to Claims 3 and 6, the Petitioner challenges SCAQMD’s reliance on the District’s Periodic Monitoring Guidelines, developed to establish gap-filling testing and monitoring requirements where underlying rules (like Rules 407 and 409) do not include testing and monitoring requirements. Petition at 39. The Petitioner argues that this guidance document does not relieve SCAQMD from its obligations under title V to ensure that permits contain sufficient monitoring. *Id.*

⁴⁹ The Petitioner criticizes the fact that this new condition is associated with an SCR and is not expressly listed as applying to Heater 4F-1, and asserts that the lack of more details in the Permit and permit record causes confusion regarding these requirements. *Id.* at 39.

The Petitioner argues generally that SCAQMD failed to provide sufficient technical analysis to justify this monitoring regime. *See id.* at 38–40. More specifically, the Petitioner argues that SCAQMD’s justification ignores the five factors that EPA Region 9 recommended SCAQMD consider when determining the necessary monitoring. *Id.* at 39–40. The Petitioner focuses on SCAQMD’s purported lack of technical analysis of emissions variability. *Id.* at 38, 40. The Petitioner also alludes to the “likely variability” and “potential variability” of CO and PM emissions. *Id.* at 38.

Similar to Claims 3 and 6, the Petitioner addresses the District’s position, based on prior source tests, that CO and PM emissions from this equipment are “well below” and can “easily” comply with applicable emission limits for these pollutants. *Id.* at 40 (citing Petition Ex. D at 6). The Petitioner argues that SCAQMD did not provide the individual source test details, which the Petitioner suggests might show variability across test runs. *Id.* In any case, the Petitioner argues that the results of stack tests alone cannot address the Petitioner’s concerns about variability between tests. *Id.*

As with other claims, the Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns and data showing that the Torrance Refinery’s Heater 4F-1 emits significant amounts of CO and PM₁₀. *Id.* at 40. The Petitioner requests that the EPA mandate a requirement for CEMS or more frequent, robust monitoring. *Id.*

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

Similar to Claim 3 and a portion of Claim 6, this claim concerns the 2,000 ppmv CO and 0.1 gr/scf PM limits under SCAQMD Rules 407 and 409, which also apply to Heater 4F-1. Permit, Section D, page 57. As a preliminary matter, since Rule 407 and Rule 409 PM do not include periodic testing or monitoring, the Permit must include gap-filling monitoring under 40 C.F.R. § 70.6(a)(3)(i)(B).

The Proposed and Final Permits include two different provisions establishing testing requirements on Heater 4F-1: Conditions D28.8 and D29.7. Both conditions are included in the Permit, although SCAQMD takes the position that Condition D29.7 supersedes Condition D28.8. RTC at 15.⁵⁰ Both conditions reference stack testing for both CO and PM,⁵¹ and both conditions explicitly connect those

⁵⁰ Specifically, SCAQMD states: “Heater 4F-1 has a permit to operate that includes condition D28.8. The heater also has a permit to construct to connect to a new SCR that supersedes the existing permit to operate. Condition D28.8 was superseded with condition D29.7 during the application evaluation process for the SCR (Application no. 609400). South Coast AQMD staff disagrees with the comment’s assertion that monitoring is inadequate for heater 4F-1. As explained in detail below, new permit condition D29.7 contains monitoring requirements that *currently apply* to Heater 4F-1 to ensure compliance. Condition D28.8 will be removed from the permit when this permit to construct is converted to permit to operate and the affected devices are moved from Section H to Section D of the Title V permit.” RTC at 15 (emphasis added). Despite some confusion associated with the presence of both these permit conditions in different sections of the Permit, and with SCAQMD’s suggestion that Condition D28.8 has already been superseded, it appears uncontested that the requirements of Condition D29.7 currently apply.

⁵¹ The Petitioner’s unexplained allegation that SCAQMD “failed to establish how often the Refinery must conduct PM monitoring to ensure compliance with the applicable limit,” Petition at 38, appears to be incorrect. The Petitioner later acknowledges that Condition D29.7 includes testing requirements for PM. *Id.* at 38–39.

stack test requirements to Heater 4F-1.⁵² The stack test frequency is once every 5 years. *E.g.*, Permit Condition D29.7.

This Claim presents similar issues to those addressed in Claims 3 and 6. The Petitioner's primary concern appears to be the difference between the time period or frequency of the emission limits (hourly) and associated testing requirements (every 5 years). As explained previously, the time period of limits and associated testing or monitoring requirements does not always need to precisely align in order to assure compliance. Again, determining the necessary frequency of periodic testing or monitoring is a context-specific decision.

The Petitioner alleges that SCAQMD failed to consider the factors that the EPA recommends, but the record shows otherwise. Perhaps most importantly, SCAQMD squarely addressed the likelihood that the Torrance Refinery could violate the emission limits at issue. Here, SCAQMD explained that it "has been repeatedly shown through source tests, that . . . [the Rule 407 and 409 limits] can consistently be met," and that source test results for CO have "consistently demonstrated very low CO emissions in single digits, orders of magnitude less than the 2,000 ppmv requirement." RTC at 16. SCAQMD also provided quantitative information from prior stack tests to support these conclusions. Specifically, the data provided by SCAQMD indicates that CO emissions have consistently ranged between 0.23 and 0.40 percent of the 2,000 ppmv limit under Rule 407. *See* RTC at 16; Petition Ex. D at Table 1. Similarly, the data indicates that PM emissions have ranged between 8.9 and 15 percent of the 0.1 gr/scf limit under Rule 409. Petition Ex. D at Table 2. Overall, this data indicates a large margin of compliance and relatively little variability.

The Petitioner does not substantively engage with this data. The Petitioner also does not present any arguments of its own regarding the existence of variability that might impact compliance with the emission limits.⁵³ Nor does the Petitioner present any fact-specific information or analysis of any other factors relevant to determining the sufficiency of monitoring.

In sum, SCAQMD provided a reasoned technical justification, complete with quantitative support, for its decisions regarding the amount of periodic testing necessary to assure compliance with the Rule 407 and Rule 409 CO and PM limits on Heater 4F-1. The Petitioner fails to substantively rebut this justification, and in so doing, fails to demonstrate that more frequent stack testing, parametric monitoring, or CEMS are required to assure compliance with the emission limits at issue. Therefore, the EPA denies Claim 7.

⁵² Condition D28.8 specifically identifies device ID No. D367—that is, Heater 4F-1—as the "[d]evice[]" subject to this condition," and it appears uncontested that this permit term relates to Heater 4F-1. Permit Condition D28.8; *see* Permit Section D, page 57. By contrast, the Petitioner is correct that Condition D29.7 specifically identifies device ID No. C2628—the SCR associated with Heater 4F-1—as the "[d]evice[]" subject to this condition." But Condition D29.7 twice explicitly refers to "heater 4F-1 (D367)." Permit Condition D29.7. Moreover, both the Section D and Section H table entries associated with Heater 4F-1 (D367) cross-reference the SCR (C2628), and the Section H table entry associated with the SCR (C2628) cross-references Heater 4F-1 (D367). Permit, Section D, page 57; Section H, page 1. Overall, the Permit is reasonably clear that the new permit Condition D29.7 is associated with emissions from Heater 4F-1.

⁵³ The most the Petitioner includes within Claim 7 is a speculative reference to "likely variability" and "potential variability" of emissions from this unit, and a suggestion that "source test details . . . could show variability across test runs." Petition at 38, 40.

H. Claim 8: The Petitioner Claims That “The Proposed Permit’s Monitoring Requirements Cannot Ensure Compliance with Emissions Limits Applicable to Several Other Heaters and Boilers at the Refinery.”

Petition Claim: The Petitioner claims that the Permit lacks sufficient monitoring to assure compliance with 31 different emission limits on CO, PM, and ROG from seven different boilers and heaters. *See* Petition at 41–46.

The Petition includes a table that identifies the emission units at issue, the associated emission limits and the SIP rules that give rise to them, the testing requirements associated with the limits, and the total annual quantity of emissions reported from these units in a 2014 submission to the EPA. *See id.* at 41–44. The Petitioner notes that the limits at issue are generally short term (*e.g.*, hourly or 15-minute averages). *E.g., id.* at 41.

The Petitioner states that the Torrance Refinery is required to conduct testing generally every 3 to 5 years. *Id.*⁵⁴ The Petitioner states that the Permit does not include, and SCAQMD failed to identify, additional monitoring between stack tests. *Id.* at 45. As with other claims, the Petitioner contests the frequency of the required monitoring: “These monitoring and testing requirements are inadequate to confirm compliance with short term limits that could vary and would leave violations undetected for years in between tests.” *Id.* at 41.

The Petitioner argues generally that SCAQMD failed to provide sufficient technical analysis to justify this monitoring regime. *See id.* at 41, 44–46.⁵⁵ More specifically, the Petitioner argues that SCAQMD’s justification ignores the five factors that EPA Region 9 recommended SCAQMD consider when determining the necessary monitoring. *Id.* at 45–46. The Petitioner alludes to the “potential variability” of emissions and focuses on SCAQMD’s purported lack of technical analysis of emissions variability. *Id.* at 41; *see id.* at 45–46.

Similar to Claims 3, 6, and 7, the Petitioner addresses the District’s position, based on prior source tests, that CO and PM emissions from this equipment are “well below” and can “easily” comply with applicable emission limits for these pollutants. *Id.* at 45 (citing Petition Ex. D at 6). The Petitioner argues that SCAQMD did not provide the individual source test details, which the Petitioner suggests might show variability across test runs. *Id.* In any case, the Petitioner argues that the results of stack tests alone cannot address the Petitioner’s concerns about variability between tests. *Id.*

In addition to its concerns with the frequency of 3-year or 5-year stack testing, the Petitioner also states that some of the limits are not accompanied by any monitoring or testing requirements. *Id.* at 41. The Petitioner specifically identifies PM limits associated with five boilers: Boiler 2F-4 (D803),

⁵⁴ Similar to Claims 3, 6, and 7, the Petitioner again challenges SCAQMD’s reliance on the District’s Periodic Monitoring Guidelines, developed to establish gap-filling testing and monitoring requirements where underlying rules (like the ones implicated by this claim) do not include testing and monitoring requirements. Petition at 44. The Petitioner argues that this guidance document does not relieve SCAQMD from its obligations under title V to ensure that permits contain sufficient monitoring. *Id.*

⁵⁵ Similar to Claim 6, the Petitioner also addresses SCAQMD’s reluctance “to reconstruct and belabor the information from all permitting decisions that were made at the time of permitting in the Title V renewal SOB for all the 1,100 plus devices listed in the Draft Title V permit.” Petition at 44 (quoting RTC at 17). The Petitioner emphasizes the more limited scope of the Petitioner’s challenges to specific testing requirements at issue in this claim. *Id.*

Heater 19F-1 (D924), Boiler 2F-3 (C164), Heater 3F-3 (D930), and Boiler 75F-1 (D805). *Id.* at 44. The Petitioner suggests that SCAQMD effectively concedes that the Permit does not contain any monitoring or testing requirements for these limits. *Id.* at 46. (citing Petition Ex. D at 10–12). The Petitioner claims that SCAQMD provides no explanation for the lack of monitoring and testing. *Id.* at 46. According to the Petitioner, SCAQMD “completely ignored” and failed to respond to comments regarding the lack of any monitoring or testing requirements for these units. *Id.* at 44 (citing 40 C.F.R. § 70.7(h)(6)).

As with other claims, the Petitioner asserts generally that strong monitoring and testing requirements are especially important due to environmental justice concerns and data showing significant emissions of criteria pollutants from these units. *Id.* at 41, 46. The Petitioner requests that the EPA mandate a requirement for CEMS or more frequent, robust monitoring. *Id.*

EPA Response: For the following reasons, the EPA grants in part and denies in part this Petition claim and objects to the issuance of the Permit.

Claim 8 involves a wide variety of emission limits on various heaters and boilers. The sufficiency of the Permit and SCAQMD’s permit record differs with respect to the various emission limits at issue in this claim. Details about specific permit terms are provided in the following paragraphs.

CO Limits on Heater 3F-3 and Boilers 2F-4, 30F-1, 30F-2 (Rule 407): 5-year Testing

Heater 3F-3 and Boilers 2F-4, 30F-1, and 30F-2 are subject to the same 2,000 ppmv CO emission limit under Rule 407 discussed in Claims 3, 6, and 7. Permit, Section D, pages 65, 169, 170, 172. All of these units are subject to a 5-year stack testing requirement. Permit Condition D328.1. The Petitioner’s challenges to this stack test frequency are unavailing for the same reasons discussed in the EPA’s responses to Claims 3, 6, and 7. Specifically, SCAQMD stated in its RTC that “CO source tests have repeatedly shown near non-detectable levels,” and SCAQMD subsequently provided quantitative information from prior stack tests to support this conclusion. RTC at 16; *see* Petition Ex. D. at Table 1. Specifically, the data provided by SCAQMD indicates that CO emissions have consistently ranged between 0.01 and 1.03 percent of the relevant CO emissions limit. Overall, this data indicates a large margin of compliance and relatively little variability. The Petitioner does not substantively engage with this data or present any arguments (whether related to variability or any other relevant factors) that would demonstrate a need for additional monitoring in this situation. Therefore, the EPA denies Claim 8 to the extent it concerns the CO limits on Heater 3F-3 and Boilers 2F-4, 30F-1, and 30F-2.

ROG Limits on Boilers 30F-1 and 30F-2 (NNSR Rule 1303): 3-year Testing

Boilers 30F-1 and 30F-2 are subject to a 1.77 lbs/hr limit on ROG emissions, per NNSR Rule 1303(b)(2). Permit, Section D, pages 170, 172. The Permit includes a 3-year stack testing requirement for these limits. Permit Condition D29.2. In contrast to the Rule 407 CO limits discussed in the preceding paragraph, but similar to the ROG limits addressed in Claim 6, SCAQMD does not provide any prior stack test results or other information related to the facility’s margin of compliance, emissions variability, or other factors relevant to justifying this stack test frequency. Thus, the record is inadequate for EPA to determine whether stack testing every 3 years is sufficient to assure compliance with the ROG limits on Boilers 30F-1 and 30F-2. Therefore, the EPA grants Claim 8 to the extent it concerns these limits. 40 C.F.R. § 70.8(c)(3)(ii).

PM Limits on Boilers 2F-3, 30F-1, and 30F-2 (multiple rules): 1-year or 3-year Testing

Boilers 2F-3, 30F-1, and 30F-2 are subject to several limits on PM emissions under Rules 404, 409, 476, and 1303. See Permit, Section D, pages 26, 170, 172. Boiler 2F-3 is subject to an annual stack test requirement for PM,⁵⁶ and Boilers 30F-1 and 30F-2 are subject to a 3-year stack test requirement. Permit Conditions D29.4, D29.2.

SCAQMD's rationale for the testing frequency associated with these emission units appears to depend on the same general idea, as discussed in other claims, that stack tests have consistently shown low emissions relative to the limits at issue, such that the facility has a consistently large margin of compliance. See RTC at 17 ("The explanation[s] provided in the above responses to comment 1 (C) clearly justify the monitoring, recording and report keeping requirements for CO and PM."). However, unlike the PM and CO limits addressed in Claims 3, 6, and 7, and the CO limits discussed earlier in this claim, the quantitative information provided by SCAQMD does not necessarily support the District's qualitative justification. Specifically, the stack test results provided by SCAQMD showed PM emissions ranging between 38% to 54% of the most stringent PM limit applicable to Boiler 2F-3, 18% to 100% of the most stringent PM limit applicable to Boiler 30F-1, and 9% to 36% of the most stringent PM limit applicable to Boiler 30F-2. See Petition Ex. D, Table 2.⁵⁷ SCAQMD may be able to rely on this data, along with other relevant considerations, in order to support the selected stack test frequencies and the decision not to impose any additional monitoring in between stack tests. However, without further explanation from SCAQMD, the permit record is inadequate for the EPA to determine whether these requirements are sufficient to assure compliance with all the applicable PM limits. Thus, the EPA grants Claim 8 to the extent it concerns the PM limits on Boilers 2F-3, 30F-1, and 30F-2. 40 C.F.R. § 70.8(c)(3)(ii).

PM Limits on Heater 3F-3 and Boilers 2F-4 and 75F-1 (Rules 409, 476): No Testing

Heater 3F-3 and Boilers 2F-4 and 75F-1 are subject to several limits on PM emissions under Rules 409 and 476. See Permit, Section D, pages 65, 169. As the Petitioner states, the Permit does not appear to contain any PM testing or monitoring requirements for these emission units. SCAQMD's permit record appears to confirm the lack of any testing or monitoring, as the tables supplied by SCAQMD in response to the EPA's feedback indicate "none" and "N/A" for stack test condition and stack test frequency entries associated with these limits. See Petition Ex. D, Table 2.

Similar to the issues addressed in Claim 6, the reason for the lack of testing is not clear. SCAQMD offers no specific explanation for the total absence of testing for the Rule 409 and Rule 476 PM limits on these units. See RTC at 16–17. And although portions of the permit record (discussed above) imply that the no-testing decision was intentional, other portions of the permit record suggest that SCAQMD believes that some form of periodic testing, monitoring, recordkeeping, and reporting is necessary for all of the CO and PM limits discussed throughout Claim 8. See RTC at 17 ("The explanation[s] provided

⁵⁶ The Petitioner includes Boiler 2F-3 in its discussion of emission units that are not subject to any testing requirements at all. Petition at 44. However, SCAQMD explains that this unit is routed to the FCCU stack, with annual testing required per Condition D29.4. See Petition Ex. D at Table 2.

⁵⁷ Note this is only an issue for certain requirements (the most stringent ones) that apply to the units in question; the units are also subject to less stringent limits with much better margins of compliance.

in the above responses to comment 1 (C) clearly justify the monitoring, recording and report keeping requirements for CO and PM. Additionally, the Draft Permit also clearly identifies periodic monitoring as the basis for the requirements”).⁵⁸

In sum, the permit record is inadequate for the EPA to determine whether the Permit contains sufficient provisions to assure compliance with the PM limits on Heater 3F-3 and Boilers 2F-4 and 75F-1 under Rules 409 and 476.⁵⁹ Therefore, the EPA grants Claim 8 to the extent it concerns these limits. 40 C.F.R. § 70.8(c)(3)(ii).

CO and PM Limits on Heater 19F-1 (Rules 407, 404, 409)

Heater 19F-1 is subject to the same 2,000 ppmv CO limit (under Rule 407) and PM limits (under Rules 404 and 409) discussed in Claims 3, 6, 7, and elsewhere in Claim 8. See Permit, Section D, page 50. The Permit requires 5-year stack testing for CO, but no stack testing or other monitoring for PM. Permit Condition D328.1; see Petition Ex. D, Table 2. Although SCAQMD does not directly explain the reason for these requirements (or lack thereof), SCAQMD indicates the following about this heater: “Not in operation since December 2010.” Petition Ex. D, Tables 1 and 2.⁶⁰

Despite not being in operation, Heater 19F-1 is still identified in the Permit as an emission unit subject to applicable requirements. As such, it remains subject to the requirements of title V, including the need for sufficient testing and monitoring requirements to assure compliance with all applicable requirements. See 42 U.S.C. § 7661c(c); 70.6(c)(1).

The fact that the unit has not been in operation since 2010 is not *per se* a justification for not including adequate monitoring requirements (or not justifying the adequacy of requirements) to assure compliance with the requirements that would apply if and when the unit comes back into operation.

SCAQMD’s permit record does not currently contain a justification for the specific compliance assurance requirements (or lack thereof) that apply to this unit. Regarding the CO emission limit under Rule 407, SCAQMD’s rationale elsewhere does not necessarily appear relevant, as SCAQMD provides no stack test information demonstrating a large margin of compliance for this unit, and it is not immediately clear whether this long-dormant unit would perform similarly to other boilers and heaters with modern combustion technologies that can “easily” and “consistently” meet limits like that in Rule 407, which was developed over 40 years ago. Petition Ex. D at 6. Regarding the PM limits at issue, the Permit record does not contain any specific justification for the lack of any testing or monitoring requirements. See the EPA’s response regarding Heater 3F-3 and Boilers 2F-4 and 75F-1 within Claim 8,

⁵⁸ SCAQMD also provides the results of prior stack tests for these units. For Boiler 75F-1, test results ranged between 24% to 44% of the most stringent PM limit applicable to this unit. The other two units (Boiler 2F-4 and Heater 3F-3) had much lower stack test results relative to the Rule 409 and 476 limits. See Petition Ex. D at Table 2. It is unclear whether this discussion was intended to support a conclusion that no stack test requirements were necessary at all for these particular limits, or instead to support a position (inconsistent with the current Permit terms) that some frequency of periodic testing would be sufficient to assure compliance with the Rule 409 and 476 limits.

⁵⁹ The EPA also observes that for Heater 3F-3, the Permit includes a PM limit under Rule 404. The Petitioner does not raise any challenges to the testing or monitoring requirements associated with that limit (or the lack thereof), but the same issues may exist with respect to that limit.

⁶⁰ This description is included in the portion of these tables that contain the numerical stack test results for other emission units.

and the EPA's response to Claim 6. Overall, the record is inadequate for the EPA to determine whether the Permit contains sufficient provisions to assure compliance with the CO and PM limits on Heater 19F-1 under Rules 407, 404, and 409. Therefore, the EPA grants Claim 8 to the extent it concerns these limits. 40 C.F.R. § 70.8(c)(3)(ii).

Direction to SCAQMD: SCAQMD must amend the permit record and, if necessary, the Permit to ensure that the Permit contains sufficient testing and monitoring requirements to assure compliance with the following emission limits:

Regarding the ROG limits on Boilers 30F-1 and 30F-2, SCAQMD could explain why the Permit's 3-year testing requirement is sufficient to assure compliance with these limits. Such a justification could be based on prior stack test results or other relevant factors. *See CITGO Order* at 7–8. Or, if necessary, SCAQMD could revise the Permit to contain additional testing or monitoring, and provide a justification for the added requirements.

Regarding the PM limits on Boilers 2F-3, 30F-1, and 30F-2, SCAQMD must, at minimum, provide further explanation for why the previously-identified stack test results support the current monitoring requirements. SCAQMD should consider providing additional information that would justify the current permit requirements. *See CITGO Order* at 7–8. Or, if necessary, SCAQMD could revise the Permit to contain additional testing or monitoring, and provide a justification for the added requirements.

Regarding the PM limits on Heater 3F-3 and Boilers 2F-4 and 75F-1, SCAQMD must address the lack of any testing or monitoring requirements associated with these units. SCAQMD should consider revising the Permit to require testing (and possibly monitoring) requirements, and must include a justification for any such testing or monitoring.

Regarding the CO and PM limits on Heater 19F-1 (Rules 407, 404, 409), SCAQMD has several options. SCAQMD may be able to update the permit record to provide further justification for the current permit terms, or it may revise the Permit to include the necessary compliance assurance requirements. Or, if this unit is either physically incapable of, or legally prohibited from, operating, then SCAQMD could remove the unit and all associated limits from the Permit. *See In the Matter of Epic Alabama Maritime Assets, LLC, Alabama Shipyard, LLC, Order on Petition No. IV-2024-5 at 16 (Aug. 16, 2024).*

I. Claim 9: The Petitioner Claims That “In Violation of 40 C.F.R. § 70.7(a)(5), the District Failed to Provide a Reasoned Explanation for Why the Proposed Permit Ensures Compliance with the Limits at Issue Here for the FCCU, Flares, Heaters, and Boilers.”

Petition Claim: The Petitioner claims that the permit record is insufficient to justify the monitoring requirements for the FCCU, flares, heaters, and boilers. *See* Petition at 46–47. The Petitioner presents this claim as an independent basis for the EPA's objection to the permit, separate from its substantive challenges in prior claims. *Id.* at 46 (citing 40 C.F.R. § 70.7(a)(5)). The Petitioner also alleges that SCAQMD did not respond to public comments raising concerns with the insufficient permit record. *Id.* at 47 (citing 40 C.F.R. § 70.7(h)(6)).

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

As described in the EPA’s response to Claims 1 through 8, the EPA agrees with the Petitioner that there are certain instances where SCAQMD’s permit record does not provide a sufficient justification for the Permit’s testing and monitoring requirements (or the lack of such requirements). To the extent the Petitioner demonstrated inadequacies in SCAQMD’s permit record within Claims 1 through 8, the EPA is objecting to the Permit on that basis in response to those claims. Thus, the EPA’s responses to Claims 1 through 8 fully address the Petitioner’s allegations—and, as appropriate, contain the EPA’s conclusions—regarding the sufficiency of SCAQMD’s permit record.

In Claim 9, the Petitioner does not identify any additional instances where SCAQMD failed to provide a sufficient justification for any specific permit terms.⁶¹ In other words, the Petitioner does not identify any additional deficiency in SCAQMD’s permit record that would provide a basis for EPA to object to the Permit, beyond the issues already addressed in Claims 1 through 8. *See, e.g., Suncor Plant 2 Order* at 78.

Although Claim 9 does not include any additional factual allegations, it does include, for essentially the first time, an additional legal citation to 40 C.F.R. § 70.7(a)(5). However, again, the EPA’s responses to Claims 1 through 8 effectively address any permit record-related issues arising under 40 C.F.R. § 70.7(a)(5). As the EPA has explained on numerous occasions, the EPA generally evaluates permit record-focused claims under 40 C.F.R. § 70.7(a)(5) by evaluating whether issues related to an inadequate permit record result in, or may have resulted in, a deficiency in the content of the permit. *See, e.g., Suncor Plant 2 Order* at 28–32. The EPA also considers whether the permit record as a whole—not only the statement of basis, but also the response to comments and potentially other parts of the permit record—supports the terms and conditions of the permit. *See, e.g., id.* at 30. The EPA’s responses to Claims 1 through 8 account for these analytical considerations under 40 C.F.R. § 70.7(a)(5).

A similar line of reasoning applies to the Petitioner’s criticism of SCAQMD’s RTC: the Petitioner has not identified any additional basis for the EPA’s objection beyond those already addressed in the EPA’s response to Claims 1 through 8. In many situations, SCAQMD responded to public commenters’ concerns about the lack of information in the permit record by supplementing the permit record, either through its RTC, or through subsequent responses to feedback from EPA Region 9 (included as Petition Ex. D). However, in other situations, SCAQMD failed to directly address the lack of information in the permit record and did not provide additional information in its RTC or response to EPA Region 9. The EPA’s responses to Claims 1 through 8 fully address the latter situation, as appropriate. Claim 9 does not identify any additional basis for the EPA’s objection on this issue. Accordingly, the EPA denies Claim 9.

J. Claim 10: The Petitioner Claims That “The Proposed Permit Contains Unlawful Startup, Shutdown, and Malfunction Exemptions to NSR Limits.”

Petition Claim: The Petitioner claims that the Permit contains unlawful SSM exemptions to major NSR limits on a heater, a turbine, and two boilers. *See* Petition at 47–64.

⁶¹ Instead, Claim 9 includes a general allusion to the emission units discussed in Claims 1 through 8. The Petitioner also includes a citation to various pages of its public comment submission; those comments formed the basis of the issues in Claims 1 through 8. *See* Petition at 46 n.258.

The Petitioner identifies several limits on NO_x emissions from multiple combustion sources that allegedly suffer from “unlawful exemptions.” *Id.* at 47–48 (citing Permit Conditions A99.4, A195.1, & E54.1 (Heater 24F-1 and Turbine 24J-1), A195.9 & E448.7 (Boilers 30F-1 and 30F-2)). The Petitioner elaborates on the alleged problems with each of these permit terms and addresses SCAQMD’s justifications in its RTC. *See id.* at 61–64.

Most of the Petitioner’s discussion involves a rebuttal of SCAQMD’s position that “[t]here are no exemptions to NSR limits” because the Permit contains alternative emission limitations during SSM. *Id.* at 62 (quoting RTC at 32; citing RTC at 28–32). According to the Petitioner, this is “[n]ot true”; the Petitioner argues that the permit terms at issue do not qualify as an alternative emission limitation. *Id.* at 62–63.

The Petitioner argues that the limits do not reflect the Lowest Achievable Emissions Rate (LAER) because the limits do not apply continuously due to the exemptions. *Id.* at 63–64. The Petitioner also addresses SCAQMD’s discussion of how LAER must account for the feasibility of achieving limits during SSM periods. *Id.* at 64.

Reviewability of NSR Issues in this Title V Petition

The Petitioner recognizes the EPA’s now longstanding position that, “where the EPA has approved a state’s Title I permitting program (whether PSD, NNSR, or minor NSR), duly issued preconstruction permits will establish the NSR-related ‘applicable requirements’ for the purposes of Title V, and the terms and conditions of such permits should be incorporated into the Title V permit without further review by EPA.” *Id.* at 53 (quoting *In the Matter of Valero Refining-Texas, L.P., Valero Houston Refinery*, Order on Petition No. VI-2021-8 at 65 (June 30, 2022) (*Valero Houston Order*); citing *Big River Steel Order*). The Petitioner acknowledges that, based on this position, the EPA has previously refused to use the title V petition response process to consider challenges to SSM-related limits that were established in an NSR permit. *Id.* at 53 (citing *Valero Houston Order* at 64–67).

Here, the Petitioner claims that the “EPA cannot lawfully rely on the policy from its ‘Big River Steel Order’ and ‘Valero Houston Order’ to refuse to address the SSM exemptions” in the title V permit for the Torrance Refinery. *Id.* at 53. The Petition includes nine pages of arguments asserting that the EPA should review the Petitioner’s substantive challenges to the Permit’s allegedly unlawful SSM exemptions. The Petitioner organizes these arguments under several sub-headings, which argue that: (i) the EPA’s *Big River Steel* framework is irrelevant or not applicable here (two reasons), (ii) refusing to address these SSM issues would violate the CAA or the part 70 regulations (four enumerated reasons), (iii) refusing to address these SSM issues would be arbitrary and capricious (four enumerated reasons), and (iv) the EPA’s rationale for not addressing NSR issues is especially unpersuasive as applied to SSM loopholes (various non-enumerated reasons). *See id.* at 53–61. The following paragraphs reorganize some of the Petitioner’s arguments for clarity of the EPA’s response.

Applicability of the EPA’s Big River Steel Framework

The Petitioner first posits:

If the exemptions in the proposed permit here were established through the Title V permit process rather than through underlying NSR permits (which is unclear from the permit and permit record), the policy from the *Big River Steel* and *Valero Houston Orders*—that ‘duly issued preconstruction permits will establish the NSR-related “applicable requirements” for the purposes of title V’—would not apply.

Id. at 53. The Petitioner briefly discusses why it considers this fact “unclear,” but elsewhere takes the position that “the affected NO_x limits here are all nonattainment NSR limits.” *Id.* at 53 n.293, 48.

On the other hand, even if the permit terms at issue here were first established through underlying NSR permits, the Petitioner advances another reason why the “EPA’s regulatory interpretation and rationale behind the *Big River Steel* and *Valero Houston Orders* is irrelevant to the question of whether EPA must address the exemptions here.” *Id.* at 53. The Petitioner observes that the EPA’s *Valero Houston Order* relied on an interpretation of the EPA’s regulations involving the ambiguity between two parts of the definition of “applicable requirement” in the title V rules. *Id.* at 54. As the Petitioner states, the first section of the relevant definition refers to “[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA” (*i.e.*, the SIP), and the second section refers to “[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act.” *Id.* at 54 (quoting 40 C.F.R. § 70.2). The Petitioner restates EPA’s position that ambiguity exists between these two parts of the definition when a source has obtained a preconstruction permit; the EPA resolved that ambiguity by “interpreting the part 70 regulations to mean that the issuance of [an NSR] permit defines the preconstruction requirements under section (1) of the definition of ‘applicable requirement’ for the approved construction activities for the purposes of permitting under title V of the Act.” *Id.* (quoting *Big River Steel Order* at 10).

The Petitioner states that the *Valero Houston Order* involved a claim addressing whether “the permitting authority had failed to comply with major NSR permitting requirements from the SIP—including ensuring that the startup and shutdown limits reflected BACT,” among other things. *Id.* at 55. By contrast, here:

In this petition, Petitioner is not asserting that the District failed to comply with major NSR permitting requirements from the SIP. Instead, Petitioner argues that these exemptions violate: (1) the statutory requirement that NSR emission limits apply continuously; and (2) the statute and EPA’s regulations by removing the ability to enforce violations of the affected NSR limits during the exempted periods. Thus, the first section of § 70.2’s definition of “applicable requirement” is irrelevant, and there can be no alleged ambiguity concerning the application of the first and second sections of that definition.

Id. at 55. The Petitioner later expands on these two arguments.

Statutory Arguments

As a backdrop for its arguments, the Petitioner addresses the statutory mandate that each title V permit “shall include enforceable emission limitations and standards . . . and such other conditions as

are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.” *Id.* at 55 (quoting 42 U.S.C. § 7661c(a)). Similarly, the Petitioner observes that the EPA is obligated to object to any title V permit that “contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter,” or when a “petitioner demonstrates . . . that the permit is not in compliance with the requirements of this chapter.” *Id.* at 56 (quoting 42 U.S.C. § 7661d(b)(1), (2)). The Petitioner concludes that “[u]nlawful SSM exemptions from NSR permits are ‘not in compliance with’ the Act’s requirements”—and therefore warrant the EPA’s objection—because they violate the requirements that: (i) emission limits apply continuously and (ii) are enforceable by citizens. *Id.* at 56; *see id.* at 50–52, 55.⁶² Thus, the Petitioner’s core argument is twofold:

First, the Petitioner argues that “the statutory mandate . . . that major NSR emission limitations apply continuously, not only during some periods of time, is an ‘applicable requirement of this chapter’—the Clean Air Act—that Title V permits unambiguously must ensure compliance with.” *Id.* at 55 (quoting 42 U.S.C. § 7661c(a)). Regarding this statutory mandate, the Petitioner argues that NNSR permits must contain “emission limitations” reflecting LAER (per CAA §§ 171 and 173), and that such emission limitations must apply continuously (per CAA § 302(k)). Petition at 48–50 (citing 42 U.S.C. §§ 7501(3)(A)–(B), 7503(a)(2), & 7602(k); *Sierra Club v. EPA*, 551 F.3d 1019, 1027 (D.C. Cir 2008), *In the Matter of Southwestern Electric Power Co., H.W. Pirkey Power Plant*, Order on Petition No. VI-2014-01 at 8 (Feb. 3, 2016) (*Pirkey Order*); and other sources). The Petitioner alleges that the Permit includes exemptions that “mean that the affected NSR limits only apply some of the time.” *Id.* at 49. According to the Petitioner, “these exemptions violate the unambiguous statutory mandate that major NSR emission limitations apply continuously, not only during some periods of time.” *Id.* at 48.

Second, the Petitioner also contends that “the statutory mandate from § 7604 that citizens be able to enforce limits from NSR and Title V permits is also a requirement of ‘this chapter’ that Title V permits must assure compliance with.” *Id.* The Petitioner claims that the Permit’s alleged “exemptions contravene the Clean Air Act and EPA’s Title V regulations by removing the ability of the public and EPA to enforce violations of the affected NSR limits during SSM periods.” *Id.* at 50; *see id.* at 50–52 (citing 42 U.S.C. §§ 7604(a)(1), 7661c(a); 40 C.F.R. § 70.6(b)(1); 80 Fed. Reg. 33840, 33927 (June 12, 2015), and other sources). The Petitioner restates the EPA’s position that the agency “will review . . . concerns related to the enforceability of . . . synthetic minor [] emission limits, since these concerns relate to core title V requirements.” *Id.* at 58 (quoting *In the Matter of Intercontinental Terminals Company LLC, Pasadena Terminal*, Order on Petition No. VI-2023-13 at 14 (Feb. 7, 2024) (*ITC Pasadena Order*); citing *In the Matter of Yuhuang Chemical Inc. Methanol Plant*, Order on Petition Nos. VI-2017-5 & VI-2017-13 at 8 (Apr. 2, 2018) (*Yuhuang II Order*). The Petitioner argues that “[i]t is irrational and contradictory for EPA to take the position that the enforceability of synthetic minor NSR limits is reviewable in Title V permitting while, at the same time, take the position that unlawful SSM loopholes that diminish or negate the enforceability of major NSR limits cannot be remedied through Title V permitting.” *Id.* at 59.

⁶² Relatedly, the Petitioner states that the “EPA has recognized that the purpose of Title V permits is to improve the enforceability of—and assure compliance with—applicable requirements, which plainly include NSR limits.” *Id.* at 58. The Petitioner argues that refusing to use the title V permitting process to address SSM loopholes contained in NSR permits conflicts with this purpose, since those loopholes weaken enforcement and promote noncompliance. *Id.*

Regulatory Arguments

The Petitioner also addresses the EPA's regulations in the context of assessing "the exemptions' unlawful effect on NSR limits." *Id.* at 56. The Petitioner states that limits contained within NSR permits are applicable requirements with which title V permits must assure compliance. *Id.* (citing 40 C.F.R. §§ 70.1(b), 70.2 (definition of "applicable requirement," paragraph (2), 70.4(b)(3)(i), (b)(3)(v), 70.6(a)(1), 70.7(a)(1)(iv)).⁶³ The Petitioner claims: "Thus, under its own regulations, EPA cannot lawfully refuse to address provisions—such as the exemptions here—that render the proposed permit unable to ensure compliance with these applicable NSR limits." *Id.* at 56–57.

Other Arguments

The Petitioner presents various other reasons why it would be "arbitrary and capricious" for the EPA to refuse to address the alleged SSM exemptions here, or why the EPA's previously explained reasoning would be "particularly unpersuasive and irrational in the context of SSM loopholes." *Id.* at 57–61.

The Petitioner argues that "it would be irrational and contradictory for EPA to take the position elsewhere—such as in previous Title V orders, numerous NESHAP and NSPS rulemakings and the SSM SIP call—that SSM loopholes are unlawful and must be removed when present, while, at the same time, take the position here that these unlawful loopholes—if contained in an NSR permit—cannot be remedied through Title V permitting." *Id.* at 59.

The Petitioner claims that EPA has not yet considered an important aspect of the problem: that "some states could use NSR permitting to circumvent EPA's prohibition on unlawful SSM loopholes." *Id.* at 57. The Petitioner addresses the EPA's position that "[t]hrough the review of SIP submissions, the EPA ensures that states have programs in place that provide the authority to issue substantively sound preconstruction permits," and "[w]hen a permitting authority authorizes construction by issuing either a major NSR permit or minor NSR permit, it establishes emission limits and other standards necessary to satisfy the SIP requirements relevant to either major or minor NSR." *Id.* at 61 (quoting 89 Fed. Reg. 1150, 1178, 1165–66 (Jan. 9, 2024)⁶⁴). The Petitioner argues that this is not true for SSM loopholes, which it states are unlawful, do not comport with SIP requirements, and are often established in individual NSR permits as opposed to through NSR-related SIP provisions. *Id.* The Petitioner also addresses perceived problems with the availability or effectiveness of other mechanisms to address this problem—namely, the enforcement process and the opportunity for the public to challenge NSR permits through the state administrative process or in state courts. *Id.* at 58, 60, 61. The Petitioner asserts that state court challenges are unlikely to be successful. *Id.* at 58, 60. The Petitioner also addresses the EPA's ability to comment directly on NSR permits, arguing that the EPA has not done this

⁶³ The Petitioner also observes that in addressing another title V petition order, the U.S. Court of Appeals for the Tenth Circuit concluded that EPA's Title V regulations "unmistakably require[] that each Title V permit include all requirements in the state implementation plan, including Utah's requirement for major NSR." *Id.* (quoting *Sierra Club v. EPA*, 964 F.3d 882, 891 (10th Cir 2018)). The Petitioner likens that decision to the facts at hand, arguing: "Here, just as the requirement to obtain a major NSR permit in *Sierra Club*, the NSR limits affected by the SSM exemptions are unambiguously applicable requirements under EPA's Title V regulations that the proposed Title V must ensure compliance with." *Id.*

⁶⁴ The EPA notes that the discussion in the Federal Register notice cited by the Petitioner is associated with a proposed (not final) regulatory action. Regardless of the status of the proposed regulatory action itself, the discussion in the notice reflects a summary of the EPA's existing interpretations and policies concerning this issue, which the EPA has been applying on a case-by-case basis since 2017. See 89 Fed. Reg. at 1150, 1151, 1152, 1158 n.36, 1173.

in a systematic way. *Id.* at 61. The Petitioner further questions how the EPA “would remedy a situation where a state simply ignored EPA’s comments that a permit’s SSM loopholes are unlawful.” *Id.* Thus, the Petitioner emphasizes the need for the EPA’s oversight, and the public’s ability to challenge issues, through the title V process. *See id.* at 58.

The Petitioner discusses prior EPA statements outlining practical concerns with using title V to address NSR issues, arguing that addressing SSM exemptions would not be complicated. *Id.* at 60, 61 (citing 89 Fed. Reg. at 1174, 1177, 1180–81). Specifically, the Petitioner asserts: “EPA long ago determined that SSM exemptions are unlawful, and all that would be required of EPA to remedy an exemption in a NSR permit (such as here) would be for EPA to review petitioners’ arguments and, if petitioners have made the required demonstration that the exemption is unlawful, order the state to remove the loophole.” *Id.* at 60.

The Petitioner also addresses finality and certainty in this context, arguing that “[p]ermittees and states, however, are well-aware of EPA’s position that SSM loopholes, such as exemptions, are unlawful. Thus, sources have no—or at least should not have any—certainty that they can rely on these unlawful exemptions in NSR permits.” *Id.* at 61.

The Petitioner argues that “SSM emissions and loopholes can also have devastating real-world impacts,” with emissions that can be very large, occur frequently, threaten the NAAQS, and harm the health and wellbeing of nearby communities, which “tend to be low-income and communities of color that already experience disproportionate exposure to air pollution.” *Id.* at 59; *see id.* at 60.

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

Claim 10 challenges whether SCAQMD properly established emission limitations reflecting LAER when it previously issued NNSR preconstruction permits to the Torrance Refinery. This claim raises the question of whether challenges to permit conditions based on NSR preconstruction permitting authority under title I of the CAA should be considered by the EPA in addressing a petition to object to a title V operating permit under CAA § 505(b)(2).

As noted in Section II.C of this Order, the EPA’s position on this issue can be summarized as follows: where a permitting authority authorizes construction by issuing a title I NSR permit that was subject to public notice and the opportunity for public comment and judicial review, the terms and conditions of that NSR permit define the “applicable requirements” of the SIP for purposes of title V permitting. As with “applicable requirements” established through other CAA authorities, the terms and conditions of the NSR permit should be included in a source’s title V permit without a further round of substantive review as part of the title V process. This interpretation is explained more fully in the *Big River Steel Order*, and many subsequent orders (the most relevant of which are addressed in the following paragraphs).

Determining how the EPA’s interpretation of “applicable requirements” applies to an individual permit action is a case-specific inquiry. In many situations, the EPA has declined to review NSR decisions through the title V permitting process, including when responding to title V petitions.

The relevant circumstances here closely resemble those that the EPA considered in the *Valero Houston Order*. In that order, the EPA declined to review “concerns related to limits and other provisions covering emissions from various units during periods of startup, shutdown, and maintenance (MSS) that are included in [an NSR permit], and which are in turn incorporated into the title V permit.” *Valero Houston Order* at 62. After a review of the structure and text of the CAA and the EPA’s regulations in part 70, and in light of the circumstances presented in that petition, the EPA concluded that the title V petition process was not the appropriate forum to review the petitioners’ NSR-related claims. *Valero Houston Order* at 65–66; see also *In the Matter of Nucor Steel Louisiana, LLC, Direct Reduced Iron Facility*, Order on Petition No. VI-2023-17, 21 (Sept. 27, 2024).⁶⁵

Here, the EPA finds that the same logic and legal principles articulated in *Valero Houston* and other orders apply to the present title V renewal permit issued by SCAQMD to the Torrance Refinery. A title V petition is not the appropriate forum for reviewing the merits of the Petitioner’s NSR-related claims, notwithstanding that they concern SSM issues. The previously issued title I (NNSR) permit(s) established the NSR-related “applicable requirements” of the SIP that applied to the relevant emission units at issue here, including the NSR-related requirements that apply during periods of SSM. As with applicable requirements established under other CAA authorities, the validity of those underlying applicable requirements should not be revisited through the procedural tools that are unique to title V, including the present title V petition response. To the extent the public wished to challenge those past NSR-related decisions, it had other available avenues to do so. For example, the issuance of any prior NSR permits would have been subject to legal challenge through the administrative appeal process before the SCAQMD Hearing Board, followed by an appeal in state court. See SCAQMD Rule 216 (appeals to hearing board); Cal. Health and Safety Code §§ 42302.1 (appeals to hearing board), 40864 (judicial review of hearing board decision). Unless and until the relevant underlying preconstruction permit terms are revised, the terms of the underlying NSR permit establish the “applicable requirements” that should be incorporated into the title V operating permit without further substantive review. Here, the Petitioner does not claim that SCAQMD failed to properly incorporate the terms and conditions of a preconstruction permit “issued pursuant to regulations approved or promulgated through rulemaking under title I.” 40 C.F.R. § 70.2 (definition of “applicable requirement,” paragraph (1)). Thus, the Petitioner has failed to demonstrate that the title V permit is “not in compliance with the applicable requirements,” and the EPA denies Claim 10. 42 U.S.C. § 7661d(b)(2).

The following paragraphs address the Petitioner’s arguments and further explain why the EPA is not reviewing the substantive adequacy of the NSR permit terms in this Order.

⁶⁵ The EPA has reached similar conclusions in response to other title V petitions raising different types of challenges to the content of NSR permit terms (*i.e.*, challenges to NSR permit terms that did not specifically involve SSM issues, but which otherwise involved similar factual and legal principles). See *In the Matter of Commonwealth LNG, LLC*, Order on Petition No. VI-2023-7 at 12–14 (Jan. 30, 2024); *In the Matter of Delaware City Refining Company, LLC, Delaware City Refinery*, Order on Petition No. III-2022-10 at 26 (July 5, 2023); *In the Matter of AK Steel Dearborn Works*, Order on Petition No. V-2016-16 at 9–13 (Jan. 15, 2021); *In the Matter of Riverview Energy Corp.*, Order on Petition No. V-2019-10 at 19-29 (Mar. 26, 2020); *In the Matter of South Louisiana Methanol, LP, St. James Methanol Plant*, Order on Petition Nos. VI-2016-24 & VI-2017-014 at 8–10 (May 29, 2018); *In the Matters of Superior Silica Sands & Wisconsin Proppants, LLC*, Order on Petition Nos. V-2016-18 & V-2017-2 at 14–15 (Feb. 26, 2018); *In the Matter of Tennessee Valley Authority, Gallatin Fossil Plant*, Order on Petition Nos. IV-2016-11 & IV-2017-17 at 19–20 (Jan. 30, 2018).

Applicability of the EPA's Big River Steel Framework

As the Petitioner acknowledges, in other situations involving materially different procedural or factual postures, the EPA has addressed the merits of title V petition claims involving certain NSR issues. For example, the EPA has reviewed questions about whether a title V permit includes and assures compliance with NSR-related requirements of the SIP in situations where no title I NSR preconstruction permit was issued.⁶⁶ The Petitioner suggests that similar facts might be present here, Petition at 53, but the Permit and permit record indicate otherwise. The permit record unambiguously and repeatedly states that the limits at issue were originally imposed through NSR preconstruction permits. *E.g.*, RTC at 29 (“Draft Permit Conditions A99.4, A195.1, A195.9, C1.81, E54.1 incorporate requirements originally imposed on the facility in NSR preconstruction permits duly issued by South Coast AQMD.”), 31 (“[T]he limits in the permit reflect the LAER as applicable when the permit to construct was granted”); *see also id.* at 28, 30, 31, 33 (noting that all the limits at issue were developed in NSR preconstruction permits or reflected LAER).⁶⁷ The Permit also identifies NSR-related rules as the basis for the NO_x limits and other conditions implicated by this claim. *See* Permit Conditions A99.4 (citing Rule 2005, RECLAIM); E54.1 (citing Rule 2012, RECLAIM reporting); A195.1 (citing Rule 2005); A195.9 (citing Rule 2005), E448.7 (citing Rule 2005). The Petitioner does not present any allegations to dispute this, but instead acknowledges that “the affected NO_x limits here are all nonattainment NSR limits.” Petition at 48. Thus, the applicability of the EPA’s *Big River Steel* framework appears sound insofar as this issue is concerned.

The Petitioner’s attempt to distinguish the factual basis of the present Petition claim from the one the EPA considered in the *Valero Houston Order* is unpersuasive. As relevant to the EPA’s title V petition response framework, the Petitioner’s claim here is factually indistinguishable from the one the EPA addressed in the *Valero Houston Order*. The *Valero Houston Order* addressed, among other things, a title V petition claim about “how [maintenance, startup, and shutdown] limits impact (e.g. relax) other limits within the same NSR permit.” *Valero Houston Order* at 65. The Valero Houston petitioners’ underlying concern about that alleged relaxation was “that major NSR/PSD limits must apply at all times and that PSD/NSR permits cannot contain blanket exemptions to those limits for periods of startup, shutdown, and malfunction.” *Valero Houston* Petition at 99.⁶⁸ Thus, that claim in the Valero Houston petition was essentially the same as the one now raised in the Torrance Petition: that SSM exemptions and alternative limits established in NSR permits impermissibly render discontinuous, and thereby relax or weaken, the otherwise applicable NSR permit limits. The Petitioner does not identify

⁶⁶ *See Suncor Plant 2 Order* at 45-48, 54-55; *In the Matter of Salt River Project Agricultural Improvement & Power District, Agua Fria Generating Station*, Order on Petition No. IX-2022-4 at 11 n.18 (July 28, 2022); *In the Matter of Salt River Project Agricultural Improvement & Power District, Desert Basin Generating Station*, Order on Petition No. IX-2022-3 at 12 n.20 (July 28, 2022); *In the Matter of BP Products North America, Inc., Whiting Business Unit*, Order on Petition No. V-2021-9 at 13 n.24 (Mar. 4, 2022); *In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII-2016-4 at 26–31 (Oct. 16, 2017)..

⁶⁷ The Petitioner is incorrect to suggest that SCAQMD did not directly respond to comments questioning the origin of the relevant permit limits. *See* Petition at 53 n.293.

⁶⁸ Petition to Object to the Title V Operating Permit for the Valero Houston Refinery, Permit No. O1381 (June 29, 2021), available at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>. The Valero Houston petitioners raised other arguments that are also raised in the Torrance Refinery Petition, including that the NSR limits are applicable requirements with which the title V permit must assure compliance, and that the maintenance, startup, shutdown provisions in the Valero Houston permit failed to assure compliance with, and rendered unenforceable, those otherwise applicable NSR limits. *Valero Houston Order* at 63; *Valero Houston* Petition at 99, 105–06. Those arguments, as presented in the Torrance Petition, are addressed below.

any relevant way in which the limits here, and those considered in the *Valero Houston Order*, are factually dissimilar insofar as the EPA's *Big River Steel* framework is concerned.

The Petitioner's attempt to distinguish the legal basis of the present Petition claim from the one the EPA considered in the *Valero Houston Order* (and other orders involving the *Big River Steel* framework) is similarly unpersuasive. In an attempt to avoid the regulatory interpretation undergirding the *Big River Steel* framework, the Petitioner states: "In this petition, Petitioner is not asserting that the District failed to comply with major NSR permitting requirements from the SIP." Petition at 55. This statement is contradicted by the Petitioner's own arguments.

In the sentence immediately following the above-quoted sentence, the Petitioner argues that the permit terms at issue violate "the statutory requirement *that NSR emission limits apply continuously.*" *Id.* (emphasis added); *see also id.* at 48 ("[T]hese exemptions violate the unambiguous statutory mandate that major NSR emission limitations apply continuously"). The Petitioner elaborates, arguing that NNSR permits must contain "emission limitations" reflecting LAER (per CAA §§ 171 and 173), and that such emission limitations must apply continuously (per CAA § 302(k)). Petition at 48–50 (citing 42 U.S.C. §§ 7501(3)(A)–(B), 7503(a)(2), & 7602(k)); *see id.* at 63–64 (discussing the requirement that LAER limits apply continuously). Thus, the Petitioner's arguments *are* fundamentally about whether SCAQMD complied with major NSR permitting requirements when issuing the prior NNSR permit(s).

Moreover, the Petitioner's arguments are fundamentally about whether SCAQMD complied with the major NSR requirements *in the SIP*. Importantly, the statutory NNSR requirements for LAER—including the requirement for LAER limits to apply continuously—are applied to individual sources only after they are embodied in the NNSR provisions of a SIP, followed by the issuance of a source-specific NNSR permit. This is reflected in the structure of the CAA. The CAA requires that states develop SIPs that implement the general directives contained throughout the CAA, including requirements related to LAER for NNSR permits. *See* 42 U.S.C. §§ 7502(b), (c)(5), 7503(a)(2). SCAQMD's EPA-approved SIP rules governing NNSR contains just such a provision mandating limits that reflect LAER. SCAQMD Rule 1303(a); SCAQMD Rule 2005(b)(1)(A), (c)(1)(A).⁶⁹ The Petitioner neglects to cite or discuss the relevant SIP provisions, perhaps in an attempt to avoid conceding that this *is* a claim about whether "the District failed to comply with major NSR permitting requirements from the SIP." Petition at 55. But the Petitioner's omission of this citation does not change the fact that this is exactly what this claim is about.

In summary, this claim—like the *Valero Houston* claim and many other claims—is about whether the permit limits that were established by SCAQMD in the NSR permit satisfy the legal requirements that govern how such NSR limits are established. As previously noted,⁷⁰ in most situations, the EPA does not review the substantive adequacy of such NSR permit terms through the title V process. Again, that is because the prior NNSR permit(s) at issue includes permit terms that are "applicable requirements" (under paragraph (2) of the regulatory definition). 40 C.F.R. § 70.2. Those permit terms, which were

⁶⁹ SCAQMD's NNSR SIP rules use the term "Best Available Control Technology" (BACT) when describing the limitations required under the NNSR program. SCAQMD Rule 1303(a); SCAQMD Rule 2005(b)(1)(A), (c)(1)(A). However, the SCAQMD regulations further define BACT to be "at least as stringent as Lowest Achievable Emissions Rate as defined in [CAA § 171(3)]." SCAQMD Rule 1303(a)(2). For convenience, this Order will continue to use the term LAER when referring to this requirement in the SCAQMD NNSR rules.

⁷⁰ *See supra* notes 10, 65, and accompanying text.

expressly designed to satisfy the SIP requirement for LAER, in turn also define the applicable requirements of the SIP governing LAER for title V purposes (under paragraph (1) of the regulatory definition). The fact that this inquiry involves issues related to SSM does not alter the EPA's position.

Statutory Arguments Concerning "Applicable Requirements" of the CAA

The Petitioner attempts several statutory arguments to support its position that the EPA must use its title V authorities to address the alleged SSM exemptions at issue in this claim. As an initial matter, it is beyond dispute that title V permits must assure compliance with all "applicable requirements" of the CAA, and that the EPA must object to a title V permit if a petitioner demonstrates that the permit does not assure compliance with all applicable requirements. *E.g.*, 42 U.S.C. §§ 7661c(a), 7661d(b). However, as Congress, the EPA, and federal courts have repeatedly explained, while title V permits must assure compliance with applicable requirements of the CAA, the title V program was not intended to create new substantive requirements or to modify substantive requirements established through other CAA programs. *E.g.*, 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.1(b).⁷¹

This Petition claim purports to focus on the need for the title V permit to assure compliance with CAA requirements, but what it really asks the EPA to do is revisit and modify applicable requirements established under another CAA program. Understanding the difference between these two concepts—and the reasons why the Petitioner's arguments are flawed—will be facilitated by a closer look at the meaning of "applicable requirements" of the CAA in the context of title V. As the EPA has previously explained, the statute does not define this term. The EPA defined "applicable requirement" in 1992 in a manner that best aligns the title V program with the other relevant CAA programs. *See* 40 C.F.R. § 70.2; *Big River Steel Order* at 10–11. The Petitioner's legal arguments largely ignore this regulatory definition, as well as the structure of the CAA.

The Petitioner's first legal argument is that the statutory mandate that emission limits (including LAER) apply continuously is itself an "applicable requirement" of the CAA that should be addressed through title V. Petition at 55. The Petitioner's argument appears to be that, because the requirement that emission limits apply continuously originates in the CAA, this requirement is an "applicable requirement" of the CAA for purposes of title V.

It is not possible to sensibly interpret the statute's reference to "applicable requirements" of the CAA as broadly as the Petitioner's reading would entail. There are many requirements within the CAA that cannot be considered "applicable requirements" for purposes of title V permitting, for various

⁷¹ *See also, e.g.*, S. Rep. No. 101-228 at 347 (Dec. 20, 1989), *reprinted in* 5 Legislative History of the Clean Air Act Amendments of 1990 (CAA Legislative History) at 8687 (1998); Conf. Rep. on S. 1630, Speech of Rep. Michael Bilirakis (Oct. 26, 1990), 6 CAA Legislative History at 10768 (1998); 81 Fed. Reg. 57822, 57826–27 (Aug. 24, 2016); 57 Fed. Reg. 32250, 32251, 32284 (July 21, 1992); *Utility Air Reg. Group v. EPA*, 573 U.S. 302, 309 (2014) ("Unlike the PSD program, Title V generally does not impose any substantive pollution-control requirements."); *Env't Integrity Project*, 960 F. 3d at 250 ("By all accounts, Title V's purpose was to simplify and streamline sources' compliance with the Act's substantive requirements. Rather than subject sources to new substantive requirements—or new methods of reviewing old requirements—the intent of Title V was to consolidate into a single document (the operating permit) all of the clean air requirements applicable to a particular source of air pollution." (cleaned up)); *id.* at 244..

reasons.⁷² This is why, in 1992, the EPA promulgated a regulatory definition of this undefined statutory term. The EPA’s regulatory definition mediates the extent to which various CAA provisions are addressed through title V, consistent with Congress’s design for the title V program.

The Petitioner focuses on two specific CAA provisions that purportedly establish “applicable requirements” with which title V permits must directly assure compliance. First, the Petitioner suggests that the CAA provisions governing NNSR LAER limits (in CAA §§ 171 & 173) are “applicable requirements.” These statutory requirements, however, only become “applicable requirements” for title V purposes by virtue of the SIP and the issuance of individual NNSR permits. *See* 40 C.F.R. § 70.2 (definition of applicable requirement, items (1) and (2)). Section 172(c) of the CAA describes the requirements for state plans, which include plan provisions that “require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area” in accordance with section 173. 42 U.S.C. 7502(c)(5). For the reasons explained above, whether the limits in an NNSR permit ultimately satisfy the corresponding SIP requirements for LAER (and by extension, the CAA provisions upon which those SIP requirements are based) is not an issue that is properly addressed through title V, including the title V petition response process. The EPA will not use title V to bypass the mechanisms through which the CAA-based requirements governing LAER are established for an individual source or emission unit. *See, e.g., Big River Steel Order.*

Second, the Petitioner asserts that the general-purpose definition in CAA § 302(k)—which indicates that an “emission limitation” must apply continuously—is itself an “applicable requirement” that must be directly implemented through title V. The EPA disagrees. To start, this general provision is not among the list of “applicable requirements” identified in the EPA’s regulations. *See* 40 C.F.R. § 70.2 (definition of applicable requirement).

There are reasons why cross-cutting general provisions like this are not included in the definition of “applicable requirements” that are directly addressed through title V.⁷³ As relevant here, the most important reason is structural. These general provisions do not exist in a vacuum. Instead, other, more substantive CAA programs build upon these general provisions and incorporate them as necessary to fulfill their specific functions. Those substantive CAA programs, in turn, give rise to EPA-promulgated or EPA-approved regulations that, in many cases, identify the specific “applicable requirements” that apply to individual stationary sources.⁷⁴ Other CAA programs require one additional step—the issuance of a permit—in order to define applicable requirements for inclusion into a title V permit that apply to

⁷² The CAA is a large and complex statute, composed of many different programs. Not all of these programs are implemented in the same manner through title V or establish “applicable requirements” for title V purposes. Examples of CAA-based requirements that are not “applicable requirements” for title V purposes include title II of the CAA, which concerns emission standards for internal combustion engines in mobile sources and nonroad engines); the “General Duty Clause” concerning the prevention of accidental releases of hazardous substances under CAA § 112(r)(1); the Greenhouse Gas Reporting Program in 40 C.F.R. part 98; the Air Emissions Reporting Requirements program in 40 C.F.R. part 51, subpart A; various general provisions in title III of the CAA; and potentially other CAA-derived requirements.

⁷³ Some CAA provisions are more general in nature and do not impose substantive requirements that are incorporated into title V permits. For example, title III of the CAA includes general provisions related to a number of cross-cutting topics. *See* 42 U.S.C. 7601–7628. Although some of these requirements may directly or indirectly impact title V permitting, most provisions within title III are not “applicable requirements” for title V purposes because they do not directly apply to emission units at part 70 sources.

⁷⁴ Such is the case for NSPS, NESHAP, and certain SIP (and FIP) regulations.

individual stationary sources. Such is the case for most emission units subject to the NSR program (including the NNSR, PSD, and minor NSR programs).⁷⁵

In the context of the NNSR program, the foregoing can be summarized as follows: The CAA § 302(k) definition of “emission limitation” operates in concert with the NNSR provisions of the CAA that require “emission limitations,” such as the CAA provisions concerning LAER. Those statutory NNSR provisions concerning LAER are implemented through regulations promulgated by state and local authorities and approved by EPA into a federally enforceable SIP. Those SIP regulations related to LAER are then applied to individual emission units at a stationary source through the issuance of a preconstruction NNSR permit. Consistent with Congress’s overarching design, and according to the EPA’s definition of “applicable requirement” in 40 C.F.R. § 70.2, only after this entire sequence is completed (through the issuance of a preconstruction NNSR permit) is an “applicable requirement” established that must be included in a title V permit. Importantly, it is that specific “applicable requirement” from the NNSR permit that a title V permit must include and assure compliance with, per CAA § 504(a) and 40 C.F.R. § 70.6(a)(1).⁷⁶

The Petitioner’s suggestion to use the title V permitting process to directly implement one of the CAA’s general provisions—the definition of “emission limitation” in CAA § 302(k)—would require an end-run around the mechanisms that Congress designed to define the applicable requirements (including emission limitations) through various CAA programs.

Such an end-run would make little enough sense in the context presented here: When authorizing the construction or modifications of emission units, SCAQMD issued NSR permits containing limits that were designed to reflect SIP requirements governing LAER (which require an “emission limitation or standard” that applies continuously). Years later, the Petitioner here asks the EPA to object to a title V renewal permit on the basis that those NSR permit terms were improperly established and do not satisfy LAER because they do not apply continuously. As explained on many previous occasions, the EPA does not view revisiting past NSR permitting decisions as an appropriate role of title V.⁷⁷

But perhaps more importantly, accepting the Petitioner’s overbroad statutory interpretation would cause absurd results that cannot be confined to the facts here. The Petitioner’s arguments are not specific to SSM, nor are they specific to the interaction between NSR permits and title V permits.

First, nothing in the Petitioner’s overbroad statutory interpretation is restricted to SSM issues. In arguing that the CAA § 171 & 173 requirements governing LAER are themselves “applicable

⁷⁵ Some EPA-approved SIP NSR programs allow certain types of construction activities without the issuance of an NSR permit, particularly under the minor NSR program.

⁷⁶ As previously explained, it is only after an NSR permit is issued that the terms of the NSR permit define the applicable NSR-related requirements of the SIP for a particular construction activity, for purposes of title V. See 40 C.F.R. § 70.2 (definition of applicable requirement, paragraphs (1) and (2)); *Big River Steel Order* at 10–11. If an NSR permit is not issued to authorize construction, then any NSR-related requirements of the SIP remain “applicable requirements” for title V purposes, to the extent they are applicable to emission units at the source. 40 C.F.R. § 70.2 (definition of applicable requirement, paragraph (1)). Additionally, this interpretation only addresses the relationship between NSR permits and NSR-related SIP requirements in the context of determining the “applicable requirements” that must be included in a title V permit. The EPA’s interpretation of the title V statute and regulations does not diminish the independent validity or enforceability of NSR permit terms or the SIP requirements upon which they are based.

⁷⁷ See *supra* note 65 and accompanying text.

requirements” for title V purposes, this claim could just as easily allege that any of the NNSR-based emission limits incorporated into the title V permit are not stringent enough to satisfy various other statutory requirements underlying the establishment of LAER limits. For example, the claim could hypothetically allege that emission limits (which undisputedly apply at all times) are nonetheless too weak to satisfy the mandate for a “lowest achievable emissions rate.” Or, similar claims could attack essentially any other aspect of an NSR permit, alleging that the NSR permit term does not satisfy the relevant underlying statutory (or regulatory) authority that dictates how such permit terms are established. Addressing any such issues through the title V process would require EPA to ignore the process by which applicable requirements of the CAA are defined for individual sources.

Second, nothing in the Petitioner’s overbroad statutory interpretation is restricted to NSR issues. In arguing that the CAA § 302(k) definition of “emission limitation” is itself an “applicable requirement” for title V purposes, this claim could just as easily allege that the EPA must object to a title V permit that incorporates problematic SSM provisions already approved or promulgated by the EPA and included in SIP, NSPS, or NESHAP rules. The Petitioner’s logic would require the EPA to use the title V process to circumvent the rulemaking processes and modify substantive requirements established in a SIP, NSPS, or NESHAP rule, fundamentally changing the nature (and potentially the stringency) of those underlying applicable requirements.⁷⁸ The EPA’s well-established position is that this is not an appropriate role for title V permits, including the title V petition response process.⁷⁹

The EPA cannot object to a title V permit merely because it includes a SSM provision that allegedly runs afoul of a general statutory requirement like CAA § 302(k). That statutory provision is not itself an “applicable requirement” for title V purposes. Instead, the applicable requirements for title V purposes are the terms of the NSR permit (or, *e.g.*, the requirements of the SIP, the NSPS, or the NESHAP). 40 C.F.R. § 70.2. In order to address substantive concerns with an SSM provision included in an underlying applicable requirement (whether in an NSR permit, a SIP, an NSPS, or a NESHAP), the underlying applicable requirement must be revised following the appropriate process for doing so. Only after the offending SSM provision is removed from the underlying applicable requirement would it be appropriate to revise the title V permit. As this discussion illustrates, contrary to the Petitioner’s suggestion, Petition at 59, the EPA’s conclusion in this Order is entirely consistent with how the EPA approaches title V permits that contain SSM provisions included in other types of applicable requirements. For better or worse, a title V permit is not the appropriate vehicle to resolve such underlying problems.

⁷⁸ The solution is not so simple as objecting to a title V permit and removing an exemption; rather, the underlying limit would likely need to be re-examined, and new limits would need to be developed that apply during periods of SSM in order to satisfy the relevant statutory and regulatory requirements governing such limits. The title V permitting process is not the appropriate vehicle for such a limit-setting exercise. Instead, again, any necessary revisions to the underlying applicable requirement to address SSM issues should go through the separate process for revising such a requirement.

⁷⁹ In the context of SIPs, this has been a well-understood and consistently applied principle for decades. For example, the EPA has addressed at least six title V petitions that requested the EPA’s objection to title V permit terms that reflected potentially problematic SSM provisions contained within a SIP rule, including the three cited in the EPA’s response to Claim 5. *See, e.g., Piedmont Green Power Order* at 28–29, *Monroe Power Order* at 13–14; *PacifiCorp Bridger/Naughton Order* at 23–24. Notwithstanding the EPA’s concerns about the SIP provisions at issue, the EPA denied those petition claims, explaining that the title V permitting process is not the correct vehicle to modify “applicable requirements” in SIPs—even those that the EPA openly believed to violate the CAA. As the EPA has explained, there is a separate process for addressing such problems: through a SIP revision. *E.g., Piedmont Green Power Order* at 28–29.

Statutory Arguments Concerning Enforceability

The Petitioner invokes another legal argument in support of its claim that these SSM issues are different than other NSR issues that the EPA has declined to address through title V: the statutory requirement that title V permit terms be “enforceable.” *E.g.*, Petition at 50, 55 (citing 42 U.S.C. §§ 7604(a)(1), 7661c(a); 40 C.F.R. § 70.6(b)(1); 80 Fed. Reg. 33840, 33927 (June 12, 2015), and other sources).

The Petitioner is correct that CAA § 504(a) and 40 C.F.R. § 70.6(b)(1) require that title V permit terms be enforceable.⁸⁰ The Petitioner is also correct that the EPA will review certain issues relating to the legal or practical enforceability of title V permit terms—even permit terms originally established in an underlying NSR permit—given that enforceability is a core title V-based requirement. *E.g.*, *ITC Pasadena Order*; *Yuhuang II Order*; 89 Fed. Reg. at 1170. However, the Petitioner is incorrect that these two facts provide a basis for the EPA to object to the title V renewal permit for the Torrance Refinery, for two reasons.

First, much of the Petitioner’s focus on “enforceability” puts the cart before the horse. The underlying applicable requirements (the NNSR permit terms) define the situations in which the relevant NO_x limits apply. In so doing, the underlying applicable requirements define the situations in which those limits can be enforced (*e.g.*, on what units, during which modes of operation, etc.). The fundamental dispute underlying Claim 10 concerns whether the specific NNSR limits in the underlying permit(s) should be applicable during additional modes of operation. Thus, although the Petitioner attempts to frame this claim as one about the diminished *enforceability* of NNSR permit limits, Claim 10 is more accurately viewed as an attempt to use the title V permitting process to change the *applicability* of the underlying NNSR permit limits. The Administrator’s authority to object to the issuance of a proposed title V permit was not designed to redefine the situations in which underlying applicable requirements are (or are not) applicable.

The Petitioner attempts to liken the situation in this Petition to past instances where the EPA reviewed the enforceability of emission limits taken to restrict the applicability of major NSR requirements (often called “synthetic minor” limits). Petition at 58 (citing *ITC Pasadena Order*; *Yuhuang II Order*). The issues in the *ITC Pasadena* and *Yuhuang II Orders* are factually distinguishable from those here. The relevant limits in *ITC Pasadena* and *Yuhuang II* applied and were legally enforceable at all times. There was no question about the situations in which the relevant emission limits were applicable, or accordingly *when* those limits could be enforced. Instead, the question presented in those petitions exclusively involved *whether* the relevant limits could be enforced as a practical matter. More specifically, the question was whether the title V permits contained sufficient compliance assurance provisions (such as monitoring, recordkeeping, and reporting) in order to ensure that the limits were enforceable as a

⁸⁰ As an initial matter, note that the requirements of CAA 504(a) and 40 C.F.R. § 70.6(b)(1) are technically not “applicable requirements” as defined in 40 C.F.R. § 70.2. This semantic distinction is ultimately not dispositive here, as it is axiomatic that title V permits must satisfy the statutory and regulatory requirements of title V of the CAA and its implementing regulations, or else face the possibility of an EPA objection. *See* 40 C.F.R. §§ 70.8(c)(1); 70.12(a)(2), (a)(2)(ii). The Petitioner also relies on CAA § 304. As discussed above with respect to CAA § 302(k), this type of general provision of the CAA is not, in and of itself, an “applicable requirement” with which title V permits must directly comply. But that does not materially impact the EPA’s response to this Petition argument, since the enforceability-related arguments in this Claim are equally well-anchored to CAA § 504(a) and 40 C.F.R. § 70.6(b)(1). The remainder of the EPA’s response address these title V-based provisions.

practical matter. By contrast, here, the Petitioner does not advance any reasons why the limits—as established in the NSR permit(s)—are not enforceable during the situations in which the limits apply.

Second, the Petitioner attempts to frame the SSM provisions at issue as “SSM loopholes that *diminish* or *negate* the enforceability of major NSR limits,” and which “*remov[e]* the ability of the public and EPA to enforce violations of the affected NSR limits during SSM periods.” Petition at 59, 50 (emphasis added); *see id.* at 55, 64. The EPA disagrees with these characterizations. The relevant NSR permit terms self-define the circumstances in which the emission limits at issue apply (and are enforceable), when the limits do not apply (and are not enforceable), and when other requirements apply in their stead. Regardless of whether the relevant NSR limits were correctly established, this collective set of NSR permit terms are the “applicable requirements” for title V purposes. 40 C.F.R. § 70.2. The title V Permit includes the applicable requirements from the underlying NNSR permit(s) in full form; nothing in the title V permit makes those requirements more or less enforceable. Thus, the title V Permit does not itself diminish, negate, or remove the enforceability of the applicable requirements at issue here, and accordingly the title V Permit does not run afoul of CAA § 504(a) and 40 C.F.R. § 70.6(b)(1).

The Petitioner’s line of reasoning might be theoretically sound in other circumstances; it simply does not apply to the facts here. The answer might be different if the title V permit at issue included terms that did, in fact, diminish, negate, or remove the enforceability of an applicable requirement. As a point of contrast, the EPA has objected to a title V permit in the past for essentially that reason. In the *Pirkey Order* (which the Petitioner cites to support a different argument), the EPA objected to a title V permit that incorporated alternative NSR limits for periods of maintenance, startup, and shutdown (MSS) that appeared to conflict with other limits based on the SIP (not NSR). Notably, the EPA did *not* object to those alternative limits for MSS provisions to the extent they affected the applicability or enforceability of the primary NSR permit limits. Instead, the EPA objected because those alternative limits potentially interfered with the applicability and enforceability of additional, different (non-NSR) SIP-based applicable requirements, which by their terms contained no exemptions or allowance for alternative limits. *See Pirkey Order* at 6–12. Here, the Petitioner has not identified any similar “applicable requirement” like the (non-NSR) SIP limits in *Pirkey* whose applicability or enforceability may have been diminished through the issuance of the facility’s title V permit.

Overall, the Petitioner’s discussion of the requirement that title V permit terms must be enforceable does not present a basis for the EPA to review the merits of the Petitioner’s challenges to the NSR permit limits at issue.

Regulatory Arguments

Earlier portions of the EPA’s response to this claim explain how the EPA’s regulatory interpretation guides the EPA’s approach to this Claim. Although the Petitioner’s statutory arguments largely ignore the EPA’s regulations, the Petitioner eventually acknowledges the fact that the regulatory definition of “applicable requirement” includes the terms and conditions of NSR permits. Petition at 56. As explained above, this point undermines, rather than supports, the Petitioner’s argument. The fact that the limits at issue were established in underlying NSR permits is the precise reason why the EPA will not review the substantive adequacy of those limits in this title V petition response.

The Petitioner argues that, because the NSR permit terms are applicable requirements, the “EPA cannot lawfully refuse to address provisions—such as the exemptions here—that render the proposed permit *unable to ensure compliance with* these applicable NSR limits.” Petition at 56–57 (emphasis added); *see id.* at 47, 48, 50, 52 (similar language). The Petitioner also alleges that the title V permit “remove[s]” the enforceability of “the affected NSR limits.” *Id.* at 50, 55. Viewed from either the compliance assurance or the enforceability angle, the Petitioner’s argument is unpersuasive. As previously stated, the title V permit includes the applicable requirements from the underlying NSR permit(s). The Petitioner does not allege, much less demonstrate, that the title V permit does not faithfully incorporate these applicable requirements. The Petitioner also does not allege, much less demonstrate, that the title V permit lacks sufficient conditions to assure compliance with these requirements during the modes of operation in which the requirements are applicable. Finally, the Petitioner does not allege, much less demonstrate, that these requirements are not enforceable during the modes of operation in which they are applicable.⁸¹

Other Arguments

None of the Petitioner’s other arguments present a basis for the EPA to review the substantive issues underlying this claim.

The EPA appreciates the Petitioner’s concern that state and local permitting authorities might attempt to include problematic SSM provisions within individual NSR permits, given that the EPA will not review such problems during the title V permitting process. However, Congress gave the EPA specific tools to address this type of situation. In addition to the “SIP call” authority provided by CAA § 110(k) to address problematic provisions contained within a SIP rule itself, the EPA also has authorities under CAA § 113(a)(2) and (a)(5) to address situations where an EPA-approved permitting authority fails to properly implement its NSR program. The EPA also has authority under CAA § 167 to issue injunctive orders to stop construction. The Supreme Court has affirmed the EPA’s authority to use CAA §§ 113(a)(5) and 167 to address deficiencies in the terms of a major NSR permit. *See Alaska Dep’t of Env’t Conservation v. EPA*, 540 U.S. 461 (2004). Interested parties can also exercise title I oversight authorities on a permit-by-permit basis through the appropriate NSR permit appeal channels, typically through state courts. *See, e.g., Big River Steel Order* at 16–18.

The EPA maintains that title V permits and petitions are not an effective tool to fix SSM issues authorized by EPA approved or promulgated rules which provide the basis for the applicable requirements within NSR permits. From a resource perspective, these issues can be just as complicated as certain other questions about the content of NSR permit terms, which the EPA has stated are among the most factually and legally complicated issues that have been raised through the title V process.

⁸¹ Additionally, the relevance of the Petitioner’s discussion of the Tenth Circuit’s *Sierra Club v. EPA* decision is unclear. *See* Petition at 56–57. That case involved a materially different issue: whether the EPA should review a claim alleging that a title V permit was missing applicable requirements of the SIP related to major NSR. 964 F.3d 882, 891–97 (10th Cir. 2020). In that case, it was uncontested—and it remains uncontested here—that the terms of the NSR permit itself established “applicable requirements” that needed to be included in the facility’s title V permit, pursuant to paragraph (2) of the EPA’s regulatory definition of “applicable requirement.” *Id.* at 891–92. The disputed issue in the case involved the EPA’s position that issuance of a minor NSR permit for a particular construction project defined all of the NSR-related requirements of the SIP for that construction project, pursuant to paragraph (1) of the definition of applicable requirement. *Id.* at 891–97. The EPA also observes that the Tenth Circuit’s decision is not binding here, as the Ninth Circuit would have jurisdiction to review the EPA’s denial of Petition claims in this Order.

Additionally, the remedies the EPA can provide through title V to address any such NSR problems are limited. These limitations apply equally well to SSM issues in NSR permits.

Finally, the EPA appreciates the importance of SSM issues in terms of protecting public health, environmental justice, and related considerations. The EPA is diligently and systematically working to address these issues through the right administrative vehicles. However, again, the title V permitting process is not the appropriate means to address such concerns that arise out of other, underlying CAA programs.

In sum, the Petitioner has not demonstrated any basis for the EPA to review the NSR-related issues concerning SSM in Claim 10. The Petitioner has also not demonstrated that the Permit fails to include or assure compliance with the “applicable requirements” at issue in Claim 10. Thus, the EPA denies this claim. 42 U.S.C § 7661d(b)(2).

K. Claim 11: The Petitioner Claims That “Quarterly Inspection Records Indicate that the Refinery Is in Violation of Reinspection Requirements Under Rules 1173 and 1176 to Control Fugitive VOC Releases.”

Petition Claim: The Petitioner claims that the Permit must include a compliance schedule to remedy the facility’s alleged noncompliance with VOC leak reinspection requirements. *See* Petition at 65–67.

The Petitioner states that after the facility repairs or replaces leaking equipment, it is required to reinspect the completed repairs or replacement within either 30 days (for certain types of equipment, per SCAQMD Rule 1173) or between 24 and 48 hours (for other types of equipment, per Rule 1176). *Id.* at 65.

The Petitioner alleges that “the Refinery is failing to conduct (or at a minimum log) these reinspections.” *Id.* For support, the Petitioner includes an excerpt of a table from one of the facility’s quarterly inspection and repair reports. *See id.* at 66. According to the Petitioner, this table in the report documents the following activities:

[P]erforming an initial inspection (Insp. Date column) identifying a leak rate above applicable limits (Leak Rate column) and then conducting a repair within the required timeframe (Type of Repair column) and taking a contemporaneous leak rate measurement (Post Leak Rate column) following the corrective action to confirm the leak is below the applicable threshold at that time.

Id. at 65–66. The Petitioner interprets this report to mean that the Torrance Refinery “is failing to retest components within the required reinspection timeframes under Rules 1173 (30 days) and 1176 (24 to 48 hours) following the repair.” *Id.* at 66. The Petitioner argues that this “demonstrate[s] a pattern of non-compliance with reinspection requirements under Rules 1173 and 1176,” thus necessitating a compliance plan or compliance schedule prior to issuing the Permit. *Id.* at 67; *see id.* at 65, 66 (citing C.F.R. § 70.5(c)(8)(iii)(C); 42 U.S.C. § 7661c(a)).

The Petitioner further asserts that SCAQMD’s RTC does not dispute “that reinspections are required under Rules 1173 and 1176 and that the Refinery’s quarterly reports fail to confirm reinspections.” *Id.*

at 66. The Petitioner addresses SCAQMD's statements that "there are no ongoing violations in response to the matters raised in this comment," and that no citations have been issued regarding these requirements. *Id.* (quoting RTC at 45–46). The Petitioner argues that this is the problem: SCAQMD did not previously identify violation of the reinspection requirements. *Id.* The Petitioner claims that SCAQMD must now require a compliance plan to remedy the alleged noncompliance. *Id.* at 67. Or, if SCAQMD disagreed with the allegations of noncompliance, the Petitioner asserts that "the District was required to provide a responsive answer with evidence in the permit record explaining how the Refinery is not in violation of applicable LDAR requirements under these SIP-approved rules." *Id.*

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

In order to demonstrate that a title V permit must include a compliance schedule, a petitioner must demonstrate that the source was "not in compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. § 70.5(c)(8)(iii)(C); *see also* 42 U.S.C. §§ 7661(3), 7661b(b)(1), (e), 7661c(a); 40 C.F.R. § 70.6(c)(3). Here, the Petitioner has not demonstrated noncompliance at the time of permit issuance.

As an initial matter, the Petitioner does not allege, much less demonstrate, that the facility was not in compliance with any applicable requirements (such as the reinspection requirements of Rules 1173 and 1176) at the time of permit issuance. Instead, the Petitioner alleges is that there is a "pattern of non-compliance" with these requirements. Petition at 67. An alleged "pattern of non-compliance" does not, in and of itself, provide a basis for the EPA to mandate a compliance schedule. The EPA has denied similar claims involving a pattern of alleged "chronic but intermittent" noncompliance, where petitioners did not demonstrate that noncompliance persisted *at the time of permit issuance*. *Suncor Plant 2 Order* at 12, 20–21.⁸²

Moreover, the evidence presented by the Petitioner does not demonstrate noncompliance with the reinspection requirements of Rules 1173 and 1176. The only evidence presented by the Petitioner comes from one of the facility's quarterly inspection and repair reports. *See* Petition at 65–66. As the Petitioner states, the report documents the date of an inspection, the leak rate observed during the inspection, the type of repair, the date of repair, and *the leak rate following the repair* (among other things). *Id.* at 66.

The Petitioner interprets the last item—the "Post Leak Rate" column of the report—to reflect a "contemporaneous leak rate measurement." *Id.* at 65. The Petitioner appears to imply that these "contemporaneous" measurements do not qualify as post-repair reinspections under Rules 1173 and 1176. *Id.* But the Petitioner's own description of this information undermines this implicit argument: the Petitioner acknowledges that the "Post Leak Rate" measurement would necessarily be taken

⁸² *See also In the Matter of Tesoro Refining and Marketing Co.*, Order on Petition No. IX-2004-6 at 17 (Mar. 15, 2005) (a permitting authority may "reasonabl[y] determin[e] that no compliance schedule is necessary because (i) the facility has returned to compliance; (ii) the violations were intermittent, did not evidence on-going non-compliance, and the source was in compliance at the time of permit issuance; or (iii) the District has opted to pursue the matter through an enforcement mechanism and will reopen the permit upon a consent agreement or court adjudication of the noncompliance issues."); *In the Matter of Valero Refining Co.*, Order on Petition No. IX-2004-07 at 16 (Mar. 15, 2005) (same).

“following the corrective action to confirm the leak is below the applicable threshold at that time.” *Id.* (emphasis added). The Petitioner does not explain why this second round of measurements—necessarily taken *after* a leak is repaired—would not satisfy the reinspection requirements required by 1173 and 1176.

Overall, the only evidence provided by the Petitioner tends to undermine—rather than support—the Petitioner’s allegation of noncompliance. The Petitioner’s claim is insufficient to demonstrate noncompliance at the time of permit issuance, or to demonstrate that SCAQMD erred in concluding that “[c]urrently there are no ongoing violations in response to the matters raised in this comment.” RTC at 45. Thus, the EPA denies Claim 11.

L. Claim 12: The Petitioner Claims That “The Proposed Permit Omits Equipment at the Refinery Without Adequate Explanation or Supporting Documents in the Permit Record to Understand the Basis for the Exclusion.”

Petition Claim: The Petitioner claims that the Permit fails to include all equipment at the facility, along with any requirements that may apply to such equipment. *See* Petition at 67–70 (citing 40 C.F.R. § 70.6(a)(1)).

The Petitioner recounts its public comments, which included a table of equipment that appeared to be omitted from the Permit. *Id.* at 67–69. The Petitioner addresses a subset of this equipment that was omitted because, according to SCAQMD, the equipment was exempt under SCAQMD Rule 219. *Id.* at 69 (citing RTC at 48–51). The Petitioner claims that SCAQMD’s RTC on these omissions was inadequate for three reasons.

First, the Petitioner claims that SCAQMD “failed to provide the specific basis for exempting each equipment under Rule 219, leaving the public to speculate.” *Id.* The Petitioner asserts that the portion of the facility’s permit application that is supposed to include information about Rule 219 exemptions does not list the equipment at issue here. *Id.* at 69–70 (citing Petition Ex. L at 4–5). According to the Petitioner: “In violation of Title V regulations, the District does not explain the reasons for allowing the Refinery to omit this equipment from Form 500-B and processing a deficient application that omitted important information.” *Id.* at 70 (citing 40 C.F.R. § 70.5(a), (c), (c)(3)(i), (c)(3)(ii)).

Second, the Petitioner claims that SCAQMD does not explain whether this equipment is subject to any other requirements, notwithstanding the Rule 219 exemption. *Id.* The Petitioner suggests that the exempt equipment may still be subject to other rules, such as Rule 109, which requires recordkeeping regarding VOC releases from the use of adhesives, coatings, and solvents by stationary sources. *Id.*

Third, the Petitioner asserts that SCAQMD does not explain why the exempt equipment at issue is not documented in the Permit itself. *Id.* The Petitioner states that other exempt equipment under Rule 219 is documented in various parts of the Permit. *Id.* (citing Proposed Permit at 205-06, 570). The Petitioner states that the exempt equipment referenced in the Permit appear to correspond to the exempt equipment listed in the facility’s permit application. *Id.*

The Petitioner concludes: “The District should be fully transparent about exempt equipment and should document all equipment at the Refinery in the proposed permit. Without complete

information, it is not possible for the public to assess the adequacy of the District's response or to confirm compliance with Title V permitting requirements." *Id.*

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

Various pieces of equipment—including a CO/CO₂ analyzer and a dozen storage tanks—are not specifically listed in the Permit, and therefore the Permit contains no applicable requirements associated with them. SCAQMD explains why the equipment at issue is not listed in the Permit: they are exempt per Rule 219. RTC at 48–51. The Petitioner does not present any information to rebut SCAQMD's conclusions regarding the Rule 219 exemption.

Moreover, the Petitioner does not demonstrate that any of the equipment at issue is subject to any applicable requirements that are missing from the Permit. 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(1). The Petitioner briefly suggests that certain missing equipment "may" be subject to other rules, "such as" Rule 109, but provides no information to demonstrate that this is the case.⁸³

The Petitioner does not identify any other way in which the treatment of this equipment arguably ran afoul of an applicable requirement or a part 70 requirement. The Petitioner is correct that certain other Rule 219-exempt equipment at the Torrance Refinery is listed in the permit application or is included in the Permit itself. *See* Petition Ex. L at 4–5; Permit at Section D, pages 192–193, Appendix A, page 1. However, the Petitioner provides no information to demonstrate why the Rule 219-exempt equipment implicated by Claim 12 should have been treated the same way. The permit application form cited by the Petitioner recognizes that certain types of Rule 219-exempt equipment (including a long list of "trivial activities" such as storage tanks that will not emit VOC or hazardous air pollutants) need not be included on the application form. Petition Ex. L at 5. Likewise, the relevant sections of the Permit cited by the Petitioner only apply to certain types of Rule 219-exempt equipment: Rule 219-exempt equipment that is nonetheless subject to certain source-specific rules, or Rule 219-exempt equipment that emits NO_x and SO_x (*e.g.*, small internal combustion engines). Permit at Section D, pages 192–193, Appendix A, page 1. The Petitioner makes no attempt to demonstrate that the equipment at issue in Claim 12 should have been treated this way.


In sum, the Petitioner fails to demonstrate that the Permit lacks any applicable requirements associated with any of the equipment at issue in Claim 12, or that the Permit fails to appropriately address or satisfy any applicable regulations governing Rule 219-exempt equipment. Thus, the EPA denies Claim 12.

⁸³ The EPA appreciates that the record contains limited information about the equipment at issue. However, the Petitioner could have attempted to demonstrate, based on the information in the record, that the specific equipment at issue is subject to applicable requirements, such as those in Rule 109. The Petitioner attempted no such demonstration. In any case, the EPA sees no reason why the exempt units—which, again, consist of a CO/CO₂ analyzer and number of storage tanks—would be subject to Rule 109, which applies to VOC releases from the use of adhesives, coatings, and solvents.

V. CONCLUSION

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

Dated: January 7, 2025



Jane Nishida
Acting Administrator