BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
OPERATING PERMITS EXXONMOBIL REFINING AND SUPPLY COMPANY COMPLEX BATON ROUGE EAST BATON ROUGE PARISH LOUISIANA 2795-V0 for Refinery Tank Farm 2261-V0 for Reforming Complex 2447-V0 for Hydroprocessing 2234-V1 for Coker Complex PSD-LA-667(M-1) for Clean Air Commitment 2385-V1 for Catalytic Cracking Complex 2589-V1 for Light Ends 2176-V1 for Low Sulfur Mogas Complex 3120-00056-V1 for Anchorage Tank Farm 2755-V1 for Pipestill Complex 2296-V0 for Light Ends Refinishing	)	PETITION NO. VI-2004-01
(MARCH 19, 2004)	)	

ORDER DENYING
PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

On February 18, 2004, the Louisiana Department of Environmental Quality ("LDEQ") issued 11 permits to the ExxonMobil Refining and Supply Company ("ExxonMobil") for its existing facilities in Baton Rouge, Louisiana, pursuant to State regulatory provisions implementing the Clean Air Act ("Act"), 42 U.S.C. §§ 7401, *et seq.* These permits consist of one Prevention of Significant Deterioration ("PSD") permit and ten part 70 permits. These actions are called the Clean Air Commitment ("CAC") Project and incorporate modifications of multiple fuel processing units, at the Baton Rouge Refinery, located in East Baton Rouge Parish, and the Anchorage Tank Farm located in West Baton Rouge Parish. The CAC permits authorize a series of changes that will increase production of gasoline, diesel, and jet fuels. ExxonMobil was required to apply for permit modifications because it proposed to increase emissions of particulate matter (PM_{10}), sulfur dioxide (SO_2), carbon monoxide (CO),

and sulfuric acid (H_2SO_4)[1] from various operating units at the facility. Proposed emission increases of Volatile Organic Compounds ("VOCs")[2] were subject to Nonattainment New Source Review ("NNSR") and required offsets. The permits constituted both preconstruction permits issued pursuant to the New Source Review requirements of the Act and significant modifications to ExxonMobil's State operating permits issued pursuant to title V of the Act. The permit modifications will result in an overall reduction in permitted emissions from the Baton Rouge Refinery.

The Louisiana Environmental Action Network ("LEAN") and Ms. Stephanie Anthony ("Petitioners") petitioned the United States Environmental Protection Agency ("EPA") to object to LDEQ's issuance of the ExxonMobil permits pursuant to section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d).[3] *See* Petition to Object (March 19, 2004). As discussed below, Petitioners challenge the modifications to and the issuance of the permits, including the validity of the offsets for certain VOC emission increases. In particular, Petitioners argue:

1. The permits allow ExxonMobil to evade NNSR requirements by using paper reductions to claim emission reduction credits ("ERCs");

2. The permits unlawfully expand the contemporaneous netting window by reaching more than four years into the past for emission reductions to offset future increases of NOx and VOC and thereby avoid NNSR;

3. The permits allow the use of speculative future reductions from an unbuilt project to unlawfully net out of NNSR for NO_X;

4. The permits rely on invalid credits from the closure of tanks at ExxonMobil's Maryland Tank Farm to offset increased VOC emissions;

5. The permits violate New Source Review requirements by relying on an invalid emission reduction credit banking system; and

6. LDEQ improperly denied a request for a public hearing.

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[1] Sulfuric acid mist is regulated by EPA under 40 C.F.R. Part 60, Subpart H, Standards of Performance for Sulfuric Acid Plants (40 C.F.R. § 60.83).

[2] VOCs are regulated by EPA as they are a precursor to ozone in the atmosphere.

[3] The PSD permit is not subject to a petition to object, since it is not a title V permit, but its conditions are incorporated into the title V permits and Petitioners challenge those elements of the operating permits.

Based on a review of all of the information before me, for reasons detailed in this order, the petition is denied.

II. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an Operating Permit Program which meets the requirements of title V. The State of Louisiana submitted a title V program governing the issuance of operating permits on November 15, 1993, and subsequently revised this program on November 10, 1994. 40 C.F.R. Part 70, Appendix A. In September of 1995, EPA granted full approval to the Louisiana Title V Operating Permits Program. 60 *Fed. Reg.* 47296 (September 12, 1995); 40 C.F.R. Part 70, Appendix A.[4] Major stationary sources of air pollution and other sources covered by title V are required to obtain an operating permit that includes emission limitations and such other conditions necessary to assure compliance with all applicable requirements of the Act, in accordance with 40 C.F.R. Part 70. Sections 502 and 504 of the Act, 42 U.S.C. §§ 7661a and 7661c.

The title V Operating Permit Program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements") on sources. The program does require permits to contain monitoring, record keeping, reporting, and other requirements to assure compliance by sources with existing applicable requirements. 57 *Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." *Id.* Thus, the title V Operating Permits Program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document, and therefore enhance compliance with the requirements of the Act. *Id.*

Under Section 505(b) of the Act, 42 U.S.C. § 7661d(b), the Administrator is authorized to review State operating permits issued pursuant to title V, and to object to permits that fail to comply with the applicable requirements of the Act, including the requirements of a State Implementation Plan ("SIP"), and 40 C.F.R. Part 70. When EPA declines to object to a title V permit on its own initiative, Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), provides that any person may petition the Administrator to object to the issuance of a permit by demonstrating that the permit is not in compliance with all applicable requirements. *See also* 40 C.F.R. § 70.8(d). These petitions "shall be based only on objections that were raised with reasonable specificity during the public comment period provided by the permitting agency (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)." Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).

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[4] This program, which became effective on October 12, 1995, is codified in Louisiana Administrative Code ("LAC"), Title 33, Part III, Chapter 5.

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of part 70 and the applicable implementation plan. *See,* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 & n.11 (2d Cir. 2003). If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. *See* Sections 505(b)(2) and (b)(3) of the Act, 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 C.F.R. § 70.8(d).

III. BACKGROUND

The ExxonMobil facilities, located in Baton Rouge, are in the Baton Rouge nonattainment area for the one-hour ozone National Ambient Air Quality Standard ("NAAQS"). Pursuant to Section 107(d)(4)(A) of the Act, EPA designated the Baton Rouge area as nonattainment for the one-hour ozone standard on November 6, 1991. *See* 56 *Fed. Reg*. 56694. Under Section 181(a)(1), the Baton Rouge area was classified by operation of law as a serious nonattainment area. *Id.* VOC emissions are regulated as ozone precursors. Therefore, with regard to VOC emissions, the proposed permit modifications had to meet the requirements of LAC 33:III.504, which sets the procedures for NNSR. With regard to emissions of other "criteria" pollutants (i.e., those for which a NAAQS has been established), the modifications were required to meet the requirements of LAC 33:III.509, which sets the procedures for PSD.

The ExxonMobil facilities are "major stationary sources" of VOCs and NOx. Therefore, under Louisiana's NNSR regulations, any physical change or change in method of operation at the facilities that resulted in a "significant net emissions increase" would trigger NNSR, including a requirement to offset any increases in emissions due to the change. *See* LAC 33:III.504. In December 2002, ExxonMobil submitted an application requesting several major modifications to its PSD permit and 10 title V permits.[5] ExxonMobil's application stated that the net emissions increase from the facility over the contemporaneous period was significant because it was greater than the applicable 25 tons per year ("tpy") threshold for major modifications (LAC 33:III.504, Table 1), and thus it was a major modification with respect to NNSR procedures. The application also stated that the modifications would result in a significant net emissions increase for other pollutants, including SO_2, PM_{10}, and CO and therefore PSD review

[5] The PSD permit is permit no. PSD-LA-667(M-1) for Clean Air Commitment and the title V operating permits being modified or issued are 2795-V0 for Refinery Tank Farm, 2261-V0 for Reforming Complex, 2447-V0 for Hydroprocessing, 2234-V1 for Coker Complex, 2385-V1 for Catalytic Cracking Complex, 2589-V1 for Light Ends, 2176-V1 for Low Sulfur Mogas Complex, 3120-00056-V1 for Anchorage Tank Farm, 2755-V1 for Pipestill Complex, and 2296-V0 for Light Ends Refinishing.

for these pollutants was required.

According to the NNSR procedures approved in Louisiana's SIP, ExxonMobil could choose to offset this proposed increase at a ratio of 1.2:1 with controls designed to achieve the Lowest Achievable Emission Rate ("LAER"), or 1.4:1 without LAER. *See* LAC 33:III.504.D.3 and Table 1. ExxonMobil proposed to offset the projected emission increase of 180.63 tpy VOC without LAER at an offset ratio of 1.4:1. This required offsets of 252.88 tpy of VOC. With regard to emissions of other criteria pollutants, the modifications were required to meet the requirements of LAC 33:III.509, which sets the procedures for PSD.

In Louisiana, a facility may use ERCs to offset emissions increases. *See* LAC 33:III.601 *et seq*. ERCs can be generated (or "banked") when a facility decreases its emissions from a physical or operational change, if the reductions are surplus, permanent, quantifiable and enforceable. *See* LAC 33:III.607. ERCs may be used to offset the facility's proposed emissions increases from a particular project, provided the ERCs are used within 10 years of the date the emission reductions occurred. *See* LAC 33:III.607.B.2. The LDEQ determines whether the ERCs are valid at the time the ERCs are used. As detailed below, ExxonMobil sought to satisfy its requirements for offsets with ERCs attributable to the closure of its Maryland Tank Farm. The tanks were shutdown between December 31, 1994, and December 31, 1999.

Notices requesting public comment on the permit application were published on August 28, 2003, in the *Advocate*, Baton Rouge. The public notice was also mailed to persons included in the LDEQ mailing list on August 22, 2003. A facilitated public information session was conducted by representatives from LDEQ and ExxonMobil on September 15, 2003, in the Istrouma High School Cafeteria in Baton Rouge, Louisiana. Comments were being requested on the CAC Project which includes the following: 1) PSD permit modification for emissions of PM_{10}, SO_2, CO, and H_2SO_4; 2) four initial Part 70 permits for the Hydroprocessing Unit, Light Oils Finishing Unit, Refinery Tank Farm, and the Reformer facility; and 3) six modifications to existing Part 70 permits for the Anchorage Tank Farm, Catalytic Cracking Complex, Coker Facility, Light Ends Unit, Low Sulfur Mogas, and the Pipestill Complex. A public hearing on the proposed modifications was not held.

The LDEQ approved the emission reductions associated with the removal of the tanks in the Maryland Tank Farm and issued a certificate for 254.8 tpy of ERCs on February 18, 2004. The LDEQ issued the final permits on February 18, 2004, using the offsets proposed by ExxonMobil and approving other changes in emission limits. Petitioners filed a timely petition to object to the permit with the Administrator pursuant to section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).

IV. ISSUES RAISED BY THE PETITIONER

A. Requirement That Emission Reductions be Actual

Petitioners argue that LDEQ allowed ExxonMobil to evade NNSR requirements by using "paper reductions" to claim emission reduction credits. The Petitioners contend ERCs approved as part of the CAC Project do not represent reductions in actual emissions, as required by the LAC (and the approved SIP). Petitioners appear to allege that the ERCs were generated by reducing the permitted level of emissions for VOCs and NOx under the existing operating permits but that the actual level of emissions would increase as a result of the CAC Project. Petitioners argue that any reductions represent "paper reductions" rather than actual reductions and therefore do not qualify as emission reduction credits for NNSR or netting purposes.

In its Public Comments Response Summary, LDEQ states that LAC 33:III.607 provides that emission reduction credits may result from actual reductions in the amount of pollution emitted by a facility due to:

1. Installation of add-on control equipment;

2. Change in process(es);

3. Change in process inputs, formulations, products or product mix, or raw materials (an actual emission reduction resulting from more effective operation and maintenance of abatement and process equipment if the applicant accepts a permit provision specifying a lower level of emission);

4. Shutdown of emission units or stationary sources;

5. Production curtailment(s); and

6. Reductions in operating hours.[6]

The Analysis of Validity of Emission Reductions as ERCs prepared by LDEQ as part of the permit proceedings shows that the ERCs in question are for VOCs (not NOx) and result from the shutdown of the tanks in the Maryland Tank Farm. Since the emission reductions result from the shutdown of emission units, they are actual reductions, not "paper reductions," and may qualify as ERCs. Accordingly, Petitioners have failed to demonstrate that the ERCs are invalid as "paper reductions," and the petition is denied on this issue.[7]

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[6] Petitioners also cite this regulation, at page 6 of the Petition.

[7] The validity of the ERCs is discussed further below.

B. Netting Analysis for New Source Review (Four-Year Contemporaneous Period)

Petitioners argue that ExxonMobil's approach to the netting analysis underestimates the amount of net future emission increases that will require offsets under New Source Review. They state that ExxonMobil's netting analysis subtracts reductions that have already occurred (as long as two years ago in the case of VOCs) from anticipated future pollution increases that may occur at any time in the next five years for projects proposed under the CAC Permit. The petition states that for purposes of calculating a "net emissions increase" under the LAC, emissions increases may only be offset by emission reductions that occurred within four years of the modification that will lead to the increase. Petitioners believe that the netting analysis LDEQ relied upon in issuing these permits is inconsistent with this regulation.

Louisiana's regulation at LAC 33:III.504.G defines "net emission increase," in part, to include any creditable increases and decreases in actual emissions at the major stationary source over a period including the calendar year of the proposed increase, up to the date on which the proposed increase will occur, and the preceding four consecutive calendar years.

The PSD permit relies on offsets from the ERCs discussed above (not a netting analysis) to avoid LAER as a result of increased VOC emissions. Thus, Petitioners' argument that the netting analysis relies on past VOC reductions has no basis. The PSD permit does rely on a netting analysis to avoid NNSR review as a result of increased NOx emissions, with the reductions attributable to installation of Thermal DeNox. The Response to Comments prepared by LDEQ on this issue quotes from the PSD permit modification as follows:

> A netting analysis of the contemporaneous period shows a decrease in NOx emissions due to installation of Thermal DeNOx on the Catalytic Cracking Units' CO furnaces. ExxonMobil's commitment to reduce NOx emissions will occur with the first modification activity to generate a sufficient reduction in NOx emissions, even if all other proposed activities do not occur.

LDEQ Public Comments Response Summary, PSD Permit and Part 70 (Title V) Air Operating Permits, Clean Air Committment, Baton Rouge Refinery, AI Number 2638, at 13-14.

Thus, the reductions relied upon in the netting analysis are not past reductions. The reductions are scheduled to occur in the first modification activity under the permit and prior to the emission increases from this project. The Response to Comments summary document goes on to state specifically that increases and decreases authorized under these permits will occur from 2004 through 2008. Therefore, Petitioners have failed to identify any past reductions that are improperly included in the netting analysis. Accordingly, the petition is denied on this issue.

C. Netting Analysis for New Source Review (Use of Reductions Attributable to Thermal DeNOx)

Petitioners further argue that the permits are inconsistent with the requirements of NNSR because reductions attributable to the installation of Thermal DeNox are "speculative" and may occur *after* modifications that could increase emissions.

As noted above, the permit states that "ExxonMobil's commitment to reduce NOx emissions [through installation of Thermal DeNox] will occur with the first modification activity to generate a sufficient reduction in NOx emissions, even if all other proposed activities do not occur." Thus, these reductions must occur prior to the emission increase. Accordingly, Petitioners have not demonstrated that the netting analysis' reliance on the reductions attributable to installation of Thermal DeNOx is inconsistent with NNSR requirements. The petition is denied on this issue.

D. Reliance on ERCs from the Maryland Tank Farm to Offset Increased VOC Emissions

Petitioners argue that ExxonMobil should not be allowed to offset 182 tpy of VOC emission increases with ERCs attributable to the closure of the Maryland Tank Farm. They contend that ExxonMobil has already used the reductions from the closure of the Maryland Tank Farm to net out of nonattainment new source review for its Tier II Low Sulfur Gas project.[8] Petitioners also object to the use of any ERCs from the closure of the Maryland Tank Farm, based on comments originally submitted when ExxonMobil sought to bank those credits.

The Petitioners refer to 22 tanks shut down in the Maryland Tank Farm in 1999. There were actually a total of 48 tanks shut down between 1994 and 1999. The emission reductions from the shutdown of those 48 tanks totaled 607 tons per year. This number was adjusted to account for requirements that have come into effect after the shutdown of the tanks. The emissions from the tanks were adjusted because of the applicability of 40 C.F.R. Part 63, Subpart CC - National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, and Louisiana's regulations at LAC 33:III.2103 (Storage of Volatile Organic Compounds) and LAC 33:III.5109 (Emission Control and Reduction Requirements and Standards). After this adjustment, there were 407 tpy available for use as offsets. Of that amount, 114 tpy were used for netting in the Tier II Low Sulfur Gas project.[9] The LDEQ's ERC

[8] Under LAC 33:III.607.D, emissions reductions used in a netting analysis are not eligible for use as offsets (and therefore are not creditable as ERCs).

[9] LEAN argues that 157 tpy were used for netting for the Tier II project. However, as indicated in the Air Permits Briefing Sheet for that project (Operating Permit 2176-V1), ExxonMobil was only projected to require 116 tpy to net out of NNSR for that project. After completion of the project, the permit was modified to reflect an actual requirement for netting

analysis specifically identifies the reductions used for netting, and does not treat them as ERCs. *See* Analysis of Validity of Emission Reductions As ERCs.[10] Thus, the CAC permits do not rely on the same reductions used for the Tier II Low Sulfur Gas project, and the petition is denied on this issue.

Petitioners also state that they are incorporating by reference comments filed by LEAN and others on ExxonMobil's application to bank credits from the closure of the Maryland Tank Farm.[11] The comments on the ERC application rely largely on the same factual assertion addressed above, i.e., whether ExxonMobil relied on the same reductions for internal netting previously. For the reasons explained above, these comments do not demonstrate a flaw in the permit.

In addition, the comments argue that there is not enough record support to establish that the tanks in question were actually demolished and that the reductions are enforceable. The LDEQ states in the Response to Comments for the CAC permits, "The tank farm was physically dismantled." Public Comments Response Summary, PSD Permit and Part 70 (Title V) Air Operating Permits, CAC, Baton Rouge Refinery, AI Number 2638, at 3. Petitioners offer no evidence suggesting that the tanks were not demolished.[12] Furthermore, the ERC analysis clearly states that no emissions are permitted from these tanks in the future. This statement, together with the statement that the tanks were dismantled (and would therefore require new permits for further emissions), is sufficient to support the enforceability of the reductions. In light of Petitioners' failure to offer any evidence at all suggesting the tanks were not demolished, and LDEQ's statement that the tanks were dismantled, EPA finds that Petitioner has not met its burden of demonstrating a deficiency in the permit. Therefore, the petition is denied on this issue.

LEAN's comments on the ERC application also argue that meaningful public comment was hindered because the application and analysis documents lacked certain information (such as technical description of tanks, page numbers, identification of applicable requirements,

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reductions of 114 tpy.

[10] The analysis identifies 608 tpy of reductions that occurred, of which 200 tpy were not surplus at the time of the analysis, and 114 tpy were used for netting, leaving 294 tpy for ERCs.

[11] The comments were attached to the petition. Although the comments were initially filed following the ERC application, they were also incorporated and attached to LEAN's comments on the CAC permits.

[12] LEAN's comments on the ERC application object that no information about the exact location of the tank farm was provided. However, the tank farm had been issued a separate title V permit, the application for which clearly specifies its location.

calculations, and source of emissions data).[13] Some of this information, particularly the identification of applicable requirements that reduced the amount of surplus reductions available as ERCs, was provided. *See* Analysis of Validity of Reductions as ERCs, at 1. Of the remaining items, Petitioners have not demonstrated that the failure to provide this information resulted in, or may have resulted in, a deficiency in the permit. Accordingly, the petition is denied on these issues.[14]

E. LDEQ's ERC Banking System

Petitioners contend that the issuance of the proposed revisions is unlawful unless LDEQ:
(1) identifies all modifications prior to October 9, 2000, that relied on ERCs; and
(2) demonstrates that all such ERCs were surplus when used.

Petitioners point out that in 2001, EPA concluded that when a source reduces actual emissions in a manner that is eligible for ERCs and later seeks to use those ERCs as offsets under the CAA, LDEQ must determine the quantity of emission reductions that are surplus under applicable Federal and State law at the time the ERCs are used (as opposed to the amount that was surplus at the time the emissions reductions occurred).

The credits used in these permits were evaluated using the "surplus when used" methodology currently in LDEQ's SIP-approved banking regulations in Chapter 6. In this case, LDEQ found that 200 tpy of the actual emission reductions would not be considered "surplus" under applicable Federal and State regulations in effect as of the date of the ERC validity analysis.

Petitioners raise the possibility that prior preconstruction permits, issued prior to October 9, 2000, relied on invalid ERCs. Petitioners do not identify any preconstruction permits that they believe are inconsistent with the requirements of the CAA. Rather, Petitioners assert that ExxonMobil is required to identify all ERCs approved before October 9, 2000, and demonstrate that all ERCs used as offsets were valid, and '[i]n the absence of such a demonstration, EPA must veto the permit." Petition at 14.

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[13] Although LEAN largely objects on procedural grounds, it also argues in part that the record lacked sufficient information to quantify emissions reductions for certification as ERCs. However, it appears that much of the information LEAN identified as lacking, such as technical descriptions of the tanks and test methods, was available to LDEQ (and LEAN) as part of the title V application for the tank farm. Since LEAN presents no evidence that the calculation of ERCs was not done correctly (or that failure to include this information in the record resulted in, or may have resulted in, a deficiency in the permit), the petition is denied on this issue.

[14] LEAN's comment on the ERC application that LDEQ may not certify ERCs because of possible insufficiencies in the banking database likewise is insufficient to demonstrate a deficiency in the permit. *See* discussion infra at IV.E.

Section 505(b) of the Act, 42 U.S.C. § 7661d(b), requires the Administrator to object to a title V permit where a petitioner demonstrates that the permit is not in compliance with the Act. Petitioner has failed to demonstrate that any past defects in the ERC bank resulted in a deficiency in this permit. Accordingly, the petition is denied on this issue.

F. Denial of Petitioners' Request for a Public Hearing

Petitioners argue that LDEQ improperly denied a public hearing on the CAC project permits. The Petitioners contend that LDEQ's refusal to allow the public a hearing violates the CAA's requirements that LDEQ provide adequate, streamlined, and reasonable procedures for public notice, "including offering an opportunity for public comment and a hearing." *See* Petition at 16 (quoting CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6)).

The Petitioners sent a letter to LDEQ requesting a public hearing to provide an opportunity for the affected public to fully participate in LDEQ's consideration of the CAC permit application. On September 15, 2003, ExxonMobil conducted a "town hall - style meeting" in Baton Rouge.[15] Representatives of both ExxonMobil and LDEQ were participants in the meeting. The meeting was not represented as constituting a surrogate public hearing. *See* Petition at 17. According to Petitioners, LDEQ's refusal to conduct a public hearing was arbitrary and capricious and contrary to the requirements of the CAA, particularly because LDEQ cited the public information session in its decision not to conduct a public hearing.

The Federal regulations at 40 C.F.R. § 70.7(h) provide that "permit proceedings, including initial permit issuance . . . shall provide adequate procedures for public notice including offering the opportunity for public comment and a hearing on the draft permit." Part 70 does not provide specific guidance on when, or under what circumstances, a hearing should be held. Permitting authorities have considerable discretion when determining whether to hold a public hearing. A review of Louisiana's public participation requirements at LAC:33:III.531.A.3 finds that they are in accordance with the provisions of 40 C.F.R. § 70.7(h). The EPA approved this requirement as a part of Louisiana's program approval in 1996. On August 28, 2003, LDEQ published a notice in *The Advocate* requesting comments on the CAC project permits. This notice also provided the procedures for requesting a hearing. The Petitioners submitted written comments to LDEQ on September 29, 2003. The LDEQ responded to the Petitioners' request for a public hearing by letter dated November 7, 2003. The LDEQ stated in its letter that based on the public comments on behalf of the Petitioners and the public information session conducted by ExxonMobil, that LDEQ had decided a public hearing would not be held.[16]

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[15] LDEQ describes the meeting as a "facilitated public information session." LDEQ Public Comments Response Summary at 16.

[16] The public comments were addressed in writing in the LDEQ's Response to Public Comments document.

Neither the Act nor EPA's implementing regulations require a permitting authority to hold a hearing when one is requested. Rather, the Act and applicable regulations require only that States offer an opportunity for a public hearing. *See* Section 502(b)(6) of the Act, 42 U.S.C. § 7661a(b)(6). Given the fact that the Petitioners were the only commenters, LDEQ could have reasonably concluded that there was not sufficient public interest to hold a hearing on these permits. It is not EPA's position that under all circumstances a single request from a citizen's group, no matter how many people it represents, automatically constitutes insufficient public interest, nor is the converse true. The permitting authority must independently analyze each request and make a reasonable judgment as to whether the facts before it warrant granting a particular request. In making that judgment, it is not unreasonable for the permitting authority to take account of any public information session that has occurred. The LDEQ has the discretion to deny a public hearing and Petitioners have not demonstrated that this discretion was not reasonably exercised. Accordingly, the petition is denied on this issue.

V. CONCLUSION

For the reasons set forth above and pursuant to Section 505(b) of the Act, 42 U.S.C. § 7661d(b), and 40 C.F.R. § 70.8(d), I deny the petition submitted by the Louisiana Environmental Action Network and Ms. Stephanie Anthony for an objection to title V permits issued to ExxonMobil.

/s/

Stephen L. Johnson
Administrator

Dated: Jun 29 2005