

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
CONSOLIDATED EDISON CO. OF NY, INC.)	)	ORDER RESPONDING TO
RAVENSWOOD STEAM PLANT	)	PETITIONER'S REQUEST THAT
	)	THE ADMINISTRATOR OBJECT
Permit ID:2-6304-01378/00002	)	TO ISSUANCE OF A
Facility DEC ID: 2630401378	)	STATE OPERATING PERMIT
Issued by the New York State	)	
Department of Environmental Conservation	)	Petition No.:II-2001-08
Region 2	)	
_____	)	

ORDER GRANTING IN PART AND DENYING IN PART  
PETITION FOR OBJECTION TO PERMIT

On December 17, 2001, the Environmental Protection Agency (“EPA” or “Agency”) received a petition from the New York Public Interest Research Group, Inc. (“NYPIRG” or “Petitioner”) requesting that EPA object to the issuance of a state operating permit, pursuant to title V of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, to the Ravenswood Steam Plant located in Long Island City, New York. The permittee will be referred to as “Ravenswood” for purposes of this Order. The Ravenswood permit was issued by the New York State Department of Environmental Conservation, Region 2 (“DEC”), and took effect on October 22, 2001, pursuant to title V of the Act, the federal implementing regulations, 40 CFR part 70, and the New York State implementing regulations, consisting of portions of 6 NYCRR parts 200, 201, 621, and 624.

The Ravenswood Steam Plant is an existing steam production plant, owned by Consolidated Edison of New York and operated, under contract, by KeySpan-Ravenswood Services Corporation. The facility consists of four face-fired steam generating boilers, each rated at 424 Million BTUs/hour. Continuous monitors are installed on the facility’s stacks to record and report emissions of nitrogen oxides and opacity.

The petition alleges that the Ravenswood permit, proposed by the DEC, does not comply with 40 CFR part 70 in that: (1) the proposed permit is based on an inadequate permit application in violation of 40 CFR § 70.5(c); (2) the proposed permit is not supported by an adequate Statement of Basis as required by 40 CFR § 70.7(a)(5); (3) the proposed permit distorts the

annual compliance certification requirement of CAA § 114(a)(3) and 40 CFR § 70.6(c)(5); (4) the proposed permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B); (5) the proposed permit's startup/shutdown, malfunction, maintenance, and upset provision violates 40 CFR part 70; (6) the proposed permit lacks federally enforceable conditions that govern the procedures for permit renewal, in accordance with 40 CFR §70.5(a)(1)(iii); (7) the proposed permit does not assure compliance with all applicable requirements as mandated by 40 CFR §§ 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate periodic monitoring and are not practically enforceable. The Petitioner has requested that EPA object to the issuance of the Ravenswood permit pursuant to § 505(b)(2) of the Act and 40 CFR § 70.8(d) for any or all of these reasons.

EPA has reviewed NYPIRG's allegations pursuant to the standard set forth in section 505 (b)(2) of the Act, which places the burden on the petitioner to "demonstrate to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of Part 70. *See also* 40 CFR § 70.8(c)(1); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2<sup>nd</sup> Cir. 2002).

Based on a review of all the information before me, including the petition; the Ravenswood permit application, dated March 2000; the administrative record supporting the permit; NYPIRG's comments to the DEC on the Draft title V Operating Permit; DEC's Responsiveness Summary to NYPIRG's comments, dated August 31, 2001, the Final Permit effective October 22, 2001; the Annual Compliance Report for July 1, 2002 - June 31, 2003; relevant statutory authorities and guidance; and two letters dated July 18, 2000 and July 19, 2000 from Kathleen C. Callahan, Director, Division of Environmental Planning and Protection, EPA Region 2, to Robert Warland, Director, Division of Air Resources, DEC; I deny the Petitioner's request in part and grant it in part for the reasons set forth in this Order.

**A. STATUTORY AND REGULATORY FRAMEWORK**

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an

operating permit program to meet the requirements of title V. EPA granted full approval to New York's title V operating program on February 5, 2002. *67 Fed. Reg.* 5216. Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as “applicable requirements”) but does require permits to contain monitoring, record keeping, reporting, and other compliance requirements when not adequately required by existing applicable requirements to assure compliance by sources with existing applicable emission control requirements. *57 Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, States, and the public to better understand the applicable requirements to which the source is subject and to assess whether the source is meeting those requirements. 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 and that compliance with these requirements is assured.

Under CAA § 505(a) and 40 CFR § 70.8(a), States are required to submit all operating permits proposed, pursuant to title V, to EPA for review. Section 505(b)(1) of the Act authorizes EPA to object if a title V permit contains provisions not in compliance with applicable requirements, including the requirements of the applicable SIP. This petition objection requirement is also reflected in the corresponding implementing regulations at 40 CFR § 70.8(c)(1).

Section 505(b)(2) of the Act states that if the EPA does not object to a permit, any member of the public may petition the EPA to take such action, and the petition shall be based on objections that were raised during the public comment<sup>1</sup> period unless it was impracticable to do so. This provision of the CAA is reiterated in the implementing regulations at 40 CFR § 70.8(d).

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<sup>1</sup> *See* CAA § 505(b)(2) and 40 CFR § 70.8(d). The Petitioner commented during the public comment period by raising concerns with the draft operating permit that are the basis for this petition. *See* comments from Keri N. Powell, Esq., Attorney for NYPIRG to DEC (January 29, 2001) (“NYPIRG comment letter”).

If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

## **B. ISSUES RAISED BY THE PETITIONER**<sup>2</sup>

On April 13, 1999, NYPIRG sent a petition to EPA which brought programmatic problems concerning DEC's application form and instructions to our attention. NYPIRG raised those issues and additional program implementation issues in individual permit petitions, including the instant petition, and in a citizen comment letter, dated, March 11, 2001 that was submitted as part of the settlement of litigation arising from EPA's action extending title V program interim approvals. *Sierra Club and the New York Public Interest Research Group v. EPA*, No. 00-1262 (D.C.Cir.).<sup>3</sup>

EPA received a letter dated November 16, 2001, from DEC Deputy Commissioner Carl Johnson, committing to address various program implementation issues by January 1, 2002, and to ensure that the permit issuance procedures are in accord with state and federal requirements. EPA monitored New York's title V program to ensure that the permitting authority is implementing the program consistent with its approved program, the Act, and EPA's regulations. Based on EPA's program review, EPA has concluded that DEC is substantially meeting the

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<sup>2</sup> Issues III-VII have been raised previously by Petitioner and addressed by the Administrator in various Orders. See, e.g., *In the Matter of Dynergy Northeast Generation*, Petition Number II-2001-06, February 14, 2003 ("Danskammer"); *In the Matter of Lovett Generating Station*, Petition Number II-2001-07, February 19, 2003 ("Lovett"); *In the Matter of Consolidated Edison Co. of New York, Inc., 74<sup>th</sup> Street Station*, Petition Number II-2001-06, Feb. 19, 2003 ("Con Ed 74<sup>th</sup> Street"), *In the Matter of Maimonides Medical Center*, Petition Number II-2001-04, Dec. 16, 2002 ("Maimonides"); *In the Matter of Suffolk County Bergen Point Sewage Treatment Plant*, Petition Number II-2001-03, Dec. 16, 2002 ("Bergen Point"); *In the Matter of Starrett City, Inc.*, Petition Number II-2001-01, Dec. 16, 2002 ("Starrett City"); *In the Matter of Columbia University*, Petition Number II-2000-08, Dec. 16, 2002 ("Columbia University"); *In the Matter of Elmhurst Hospital*, Petition Number II-2000-09, Dec. 16, 2002 ("Elmhurst Hospital"); *In the Matter of North Shore Towers Apartments, Inc.*, Petition Number II-2000-06, July 3, 2002 ("North Shore Towers"); *In the Matter of Tanagraphics Inc.*, Petition Number II-2000-05, July 3, 2002 ("Tanagraphics"); *In the Matter of Rochdale Village Inc.*, Petition Number II-2000-04, July 3, 2002 ("Rochdale Village"). Each of these Orders is available on the internet at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2000.htm>.

<sup>3</sup> EPA responded to NYPIRG's March 11, 2001 comment letter, by letter dated December 12, 2001 from George Pavlou, Director, Division of Environmental Planning and Protection to Keri N. Powell, Esq., New York Public Interest Research Group, Inc. The response letter is available on the internet at <http://www.epa.gov/air/oaqps/permits/response/>.

commitments made in its November 16, 2001 letter.<sup>4</sup> As a result, EPA has not issued a notice of deficiency (“NOD”) at this time. If EPA determines that DEC is not properly administering or enforcing the program, it will publish an NOD in the *Federal Register*.

**(I) Inadequate Permit Application**

Petitioner alleges that the applicant did not submit a complete permit application in accordance with the requirements of CAA § 114(a)(3)(C), 40 CFR § 70.5(c) and 6 NYCRR § 201-6.3(d). Petition at 2. In making this claim, Petitioner incorporates a petition that it filed with the Administrator on April 13, 1999, contending that the DEC’s application form is legally deficient because it fails to include specific information required by both EPA’s regulations and the DEC regulations. This earlier petition asks EPA to require corrections to the DEC program.

Petitioner’s concerns regarding the DEC’s application form as they relate to Ravenswood are summarized as follows:

- a. The application form lacks an initial compliance certification with respect to all applicable requirements (except for emission units that the applicant admits are out of compliance). Without such a certification, it is unclear whether Ravenswood is in compliance with every applicable requirement and whether DEC was required to include a compliance schedule in the title V permit;
- b. The application form lacks a statement of the methods for determining compliance with each applicable requirement upon which the compliance certification is based;
- c. The application form lacks a description of all applicable requirements that apply to the facility; and

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<sup>4</sup> The purpose of this EPA program review was to determine whether the DEC made changes to public notices and to select permit provisions as it committed in its November 16, 2001 letter. See letter dated March 7, 2002, from Steven C. Riva, Chief, Permitting Section, USEPA Region 2, to John Higgins, Chief, Bureau of Stationary Sources, DEC, which summarizes EPA’s review of draft permits issued by the DEC from December 1, 2001 through February 28, 2002. In addition, EPA provided DEC with monthly and/or bi-monthly updates, over a 6-month period, to supplement the information provided in the March 7, 2002 letter. See also, EPA’s final audit results, transmitted to the DEC via a letter dated January 13, 2003 from Steven C. Riva to John Higgins, which indicate that the DEC is substantially meeting the commitments made in its November 16, 2001 letter.

- d. The application form lacks a description of or reference to any applicable test method for determining compliance with each applicable requirement.

NYPIRG alleges that omission of the information described above makes it difficult for a member of the public to determine whether a proposed permit includes all applicable requirement. The Petitioner further states that the lack of information in the application also makes it more difficult for the public to evaluate the adequacy of monitoring in the proposed permit. Petition at 3.

**a. Initial Compliance Certification**

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner’s claims that Ravenswood’s permit application failed to include a proper initial compliance certification, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit’s content. *See* CAA Section 505(b)(2) (objection required “if the Petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]”); 40 CFR § 70.8(c)(1). As explained below, EPA believes that the petitioner has failed to demonstrate that the lack of a proper initial compliance certification, clearly certifying compliance with all applicable requirements at the time of application submission in this instance, resulted in, or may have resulted in, a deficiency in the permit.

Although the application form used by Ravenswood did not clearly require that it certify compliance with all applicable requirements at the time of application submission<sup>5</sup>, it is reasonable to infer that in this case by acknowledging non-compliance with certain applicable

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<sup>5</sup> In accordance with the DEC’s November 16, 2001 letter, the permit application form was changed effective December 1, 2001, to clearly require the applicant to certify compliance with all applicable requirements at the time of application submission. The application form and instructions were also changed to clearly require the applicant to describe the methods used to determine initial compliance status. With respect to the citation issue, the application instructions were revised to require the applicant to attach to the application copies of all documents (other than published statutes, rules and regulations) that contain applicable requirements.

requirements, the source effectively certified that it was *in compliance* with the remainder of the requirements applicable to it at the time application submission. Accordingly, Ravenswood certified that it was in compliance with all applicable requirements, with the exception of opacity requirements for its four boilers, at the time of application submittal. The application form used by Ravenswood included a Compliance Plan section, (section IV), where the applicant may certify non-compliance with applicable requirements, as well as provide information regarding the details of any compliance schedule. In this case, Ravenswood certified non-compliance with 6 NYCRR part 227 regulations<sup>6</sup>. Further, in that same section, the applicant references a consent order, with a stipulated deadline of November 15, 1999, for achieving compliance with opacity requirements, which in this case was prior to final permit issuance. Under the terms of that order, recorders and digital opacity indicators were installed at Ravenswood's control room to enable operators to have real-time opacity readings and to quickly respond to opacity exceedances. Additionally, a review of the annual compliance report for July 1, 2002, through June 31, 2002, indicates an occasional opacity deviation but shows compliance with the remaining applicable requirements. Accordingly, EPA concludes that Petitioner has not adequately demonstrated that the failure, in this case, to submit a different initial compliance certification resulted in a deficiency in the final Ravenswood permit and, for this reason, denies the petition on this issue.

However, in reviewing the final permit, EPA noted that neither the consent order nor its provisions were referenced in the permit. Because some of the elements of the consent order pertain to ongoing obligations, such as performing monthly opacity audits, with no stipulated end date, the terms of the order must be made applicable requirements of the permit. In this case, the order from which a compliance plan and schedule is derived should be reference in the permit, and must be included as part of the permit file.<sup>7</sup>

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<sup>6</sup> 6 NYCRR Part 227 regulates stationary combustion installations. In this case, it is clear from the terms of the consent order that the source was not in compliance with section 227-1.3 (opacity requirements).

<sup>7</sup> Once the consent order is referenced in the permit, the permit review report must explain that the order is part of the permit file.

### **b. Statement of Methods for Determining Initial Compliance**

Petitioner alleges that the application form omits “a statement of methods used for determining compliance,” as required by 40 CFR § 70.5(c)(9)(ii). The application form completed by Ravenswood did not specifically require the facility to include a statement of the methods used to determine initial compliance, in this case, however, the applicant provided this information in the Emission Unit Information Section (section IV, page 6), of the application. For example, for determining compliance with the sulfur- in- fuel limit the applicant references ASTM Standard Method D-4294. In that same section, with respect to determining compliance with opacity and particulates limits, the applicant references 40 CFR part 60, Appendix A, which contains various EPA-approved compliance test methods. Although in this case, applicant’s reference to 40 CFR part 60, Appendix A, lacked specificity with regard to the exact methodologies used for determining compliance with the opacity and particulates matter limits, Ravenswood, nevertheless, specified that these parameters were monitored through EPA approved methods. Therefore, the applicant’s failure to point to the specific monitoring methods in this case is not a basis for objection. In light of the information provided, the Petitioner’s general allegations do not adequately demonstrate that, had the application submitted by Ravenswood specifically required the facility to include a more specific statement of methods, the final permit would have been any different. Therefore, EPA denies the petition on this point.

### **c. Description of Applicable Requirements**

The Petitioner’s next claim is that EPA’s regulations call for the legal citation to the applicable requirement accompanied by the applicable requirement expressed in descriptive terms. As explained in EPA’s White Paper for Streamlined Development of Part 70 Permit Applications (July 10, 1995) at 20-21, citations may be used to streamline how applicable requirements are described in an application, provided that the cited requirement is made available as part of the public docket on the permit action or is otherwise readily available. In addition, a permitting authority may allow an applicant to cross-reference previously issued



preconstruction and Part 70 permits, State or local rules and regulations, State laws, Federal rules and regulations, and other documents that affect the applicable requirements to which the source is subject, provided that the citations are current, clear and unambiguous, and all referenced materials are currently applicable and available to the public. Documents available to the public include regulations printed in the Code of Federal Regulations or its State equivalent. *See id.*

In describing applicable requirements, the Ravenswood permit application refers to State and Federal regulations. These regulations are publicly available in hard copy and are also available on the internet. *See e.g., DEC's regulations at [www.dec.state.ny.us/website/regs/](http://www.dec.state.ny.us/website/regs/).* The Ravenswood permit also contains references to applicable requirements that, as a general matter, are not as readily available, such as the NO<sub>x</sub> Reasonably Available Control Technology (RACT) plan. In this case, however, referencing the facility's NO<sub>x</sub> RACT plan did not impede the public's ability to comment on the proposed permit because the plan was submitted with the application as a separate document and is part of DEC's permit record files for Ravenswood. While specific rule citations followed by a description of the applicable requirement would make the application more informative, NYPIRG has not shown that the lack of it here resulted in the issuance of a defective permit. The contents of the application include all of the specific requirements that apply to Ravenswood. The Ravenswood permit, accordingly, contains a description of the applicable requirements that apply to the facility. The Petitioner has not shown that any of the descriptions were in error or that the referenced material is not available to the public. Therefore, the petition is denied on this issue.

#### **d. Statement of Methods for Determining Ongoing Compliance**

Petitioner alleges that the application form lacks a description of, or reference to, any applicable test method for determining compliance with each applicable requirement. EPA disagrees with Petitioner that the application failed to describe the methods Ravenswood will use to determine its compliance status relative to each applicable requirement. The applicant completed the Monitoring Information section of its application for each emission point which

included a description of the method used for determining compliance with each applicable rule/requirement. The applicant completed this section as follows: For fuel sulfur content, ASTM Standard Method D-4294 is prescribed for determining compliance; for opacity and particulates, test methods referencing 40 CFR part 60, App.A are prescribed for determining compliance; for nitrogen oxide emissions, a NO<sub>x</sub> RACT Compliance Plan is referenced, subjecting the facility to operating guidelines and procedures for controlling NO<sub>x</sub> emissions. Also, the final permit contains descriptions of, or references to, applicable test methods for determining compliance with each applicable requirement. Therefore, EPA denies the petition with respect to this issue.

## **(II) Statement of Basis**

Petitioner alleges that the proposed title V permit is defective because DEC failed to include an adequate “statement of basis” or “rationale” with the draft permit explaining the legal and factual basis for draft permit conditions. Petition at 4. Petitioner goes on to say that the sparse “permit description” fails to satisfy this federal requirement. In particular, Petitioner contends that DEC failed to explain why a one time stack test per permit term, prescribed for the boilers, is to be considered adequate to assure compliance with the applicable particulate matter limit. As such, petitioner requests that the Administrator object to the Ravenswood permit, and that the public be given a new opportunity to comment on the draft permit once a statement of basis is available.

Section 70.7(a)(5) of EPA’s permit regulations states that “the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).” The statement of basis is not a part of the permit itself. It is a separate document<sup>8</sup> which is to be sent to EPA and

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<sup>8</sup> Unlike permits, statements of basis are not enforceable, do not set limits and do not create obligations. Thus, certain elements of statements of basis, if integrated into a permit document, could create legal ambiguities.

to interested persons upon request.<sup>9</sup>

A statement of basis ought to contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring requirements that are not otherwise required or are intended to fill in monitoring gaps in existing rules, especially the SIP rules. Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.<sup>10</sup> See e.g., *In the Matter of Port Hudson Operation Georgia Pacific*, Petition No. 6-03-01, at pages 37-40 (May 9, 2003); *In the Matter of Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002). Finally, in responding to a petition filed in regard to the Fort James Camas Mill title V permit, EPA interpreted 40 CFR § 70.7(a)(5) to require that the rationale for selected monitoring method be documented in the permit record. See *In Re Fort James Camas Mill*, Petition No. X-1999-1, at page 8 (December 22, 2000) (“*Ft. James*”).

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<sup>9</sup> EPA notes that a statement of basis, or “Permit Description,” was made available with the Ravenswood draft permit. A statement of basis was also made available with the final effective permit issued on October 22, 2001.

<sup>10</sup> Additional guidance was provided in a letter dated December 20, 2001 from Region V to the State of Ohio on the content of an adequate statement of basis. See <<http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf>>. Region 5’s letter recommends the same five elements outlined in a Notice of Deficiency (“NOD”) recently issued to the State of Texas for its title V program. 67 *Fed. Reg.* 732 (January 7, 2002). These five key elements of a statement of basis are (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. *Id.* at 735. In addition to the five elements identified in the Texas NOD, the Region V letter further recommends the inclusion of the following topical discussions in a statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. In a letter dated February 19, 1999 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, the EPA Region IX Air Division provided a list of air quality requirements to serve as guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region IX’s review. This guidance is consistent with the other guidance cited above. Each of the various guidance documents, including the Texas NOD and the Region V and IX letters, provide generalized recommendations for developing an adequate statement of basis rather than “hard and fast” rules on what to include in any given statement of basis. Taken as a whole, they provide a good roadmap as to what should be included in an statement of basis on a permit-by-permit basis, considering the technical complexity of a permit, history of the facility, and the number of new provisions being added at the title V permitting stage, to name a few factors.

We have reviewed the permit and all supporting documentation before us. As petitioner notes, it is possible that the information necessary to review the permit, and typically found in a statement of basis, may also be included elsewhere in the permit record. Such is not the case here. The record does not include sufficient information to adequately support permit Conditions 64, 65, 69, and 70 which provide for once per permit term stack testing to ensure compliance with the PM limit. The DEC Responsiveness Summary dated August 31, 2001, at section II 4, does not offer an adequate explanation of why the stack test frequency is sufficient to assure compliance. The Responsiveness Summary at section II 4 states: “It is unnecessary to conduct a stack test once a year. The initial stack test will establish an emission factor which will be used to verify ongoing compliance.” Yet, there is no explanation in the permit record with respect to any emission factor or as to on what the emission factor would be based, or to what it would be correlated to.

Despite DEC’s failure to provide a rationale for its monitoring decision, the issue here is moot. As more fully explained in Section IX, *infra*, EPA is granting petitioner’s request that the Administrator object to the Ravenswood permit because it does not contain periodic monitoring sufficient to assure the plant’s compliance with the applicable particulate matter limit. In particular, the once per permit term stack test does not satisfy the requirement of 40 CFR 70.6(a)(3)(B)<sup>11</sup>. Accordingly, the issue regarding DEC’s failure to provide an adequate statement of basis is moot because the underlying monitoring provision is insufficient. When the Ravenswood permit is reopened in response to this Order, the DEC will be required to make available for comment an adequate statement of basis that includes the rationale for the revised particulate matter emissions monitoring regime. *See* 40 CFR §§ 70.7(a)(5), 70.7(h), and 70.8(c); *Ft. James* at 8.

### **(III) Annual Compliance Certification**

Petitioner alleges that the proposed permit distorts the annual compliance certification

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<sup>11</sup> The periodic monitoring rule requires that each permit contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit, ...”

requirement of Clean Air Act § 114(a)(3) and 40 CFR § 70.6(c)(5) by not requiring the facility to certify compliance with all permit conditions. The Petitioner claims rather that the Ravenswood permit requires only that the annual compliance certification identify “each term or condition of the permit that is the basis of the certification,” as stated in Condition 26. Specifically, Petitioner is concerned with the language in the permit that labels certain permit terms as “compliance certification” conditions. NYPIRG notes that requirements that are labeled “compliance certification” are those that identify a monitoring method for demonstrating compliance. NYPIRG interprets such compliance certification “designations” as a way of identifying which conditions are covered by the annual compliance certification requirement. NYPIRG further asserts that permit conditions that lack periodic monitoring are thus, excluded from the annual compliance certification. The Petitioner claims such “designation” as an incorrect application of state and federal regulations because facilities must certify compliance with every permit condition, not just those that are accompanied by a monitoring requirement. Petition at 5.

The language in the permit that labels certain terms as “compliance certification” conditions does not mean that the Ravenswood facility is *only* required to certify compliance with the permit terms containing this language. The label “Compliance certification” is a data element in New York’s computer system that is used to identify terms that are related to monitoring methods used to assure compliance with specific permit conditions.

Title V permits must contain requirements for certifying compliance with terms and conditions contained in the permit including a requirement that the compliance certification include the following: (i) the identification of each term or condition of the permit that is the basis of the certification; (ii) the compliance status; (iii) whether compliance was continuous or intermittent; (iv) the methods used for determining the compliance status of the facility, currently and over the reporting period; (v) such other facts the department shall require to determine the compliance status; and (vi) all compliance certifications shall be submitted to the department and to the Administrator and shall contain such other provisions as the department may require to ensure compliance with all applicable requirements. *See* 40 CFR § 70.6(c)(5) and 6 NYCRR § 201-6.5(e). The Ravenswood title V permit includes this language at Condition 26. Therefore,

the references to “compliance certification” do not negate the DEC’s general requirement that Ravenswood certify compliance with the terms and conditions contained in its permit.

Accordingly, because the Ravenswood permit and New York’s regulations properly require the source to certify compliance or noncompliance annually for terms and conditions contained in the permit, EPA is denying the petition on this point. However, when DEC revises this permit in response to other sections of this Order, it should also add language to clarify the requirements relating to annual compliance certification reporting.<sup>12</sup>

#### **(IV) Prompt Reporting of Deviations**

Petitioner alleges that the proposed permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B).<sup>13</sup> NYPIRG raised this issue with DEC during the public comment period and argues that DEC’s response to its comments was inadequate. In sum, DEC stated that deviations from permit requirements will be reported according to the time frames specified in the applicable requirement, if such are specified. Petitioner suggests two options to address this issue: 1) include a general permit condition that defines what constitutes “prompt” under all circumstances, or 2) develop facility-specific permit requirements to define what constitutes “prompt” for individual permit conditions. Petitioner also requests that DEC require all prompt reporting to be done in writing. Petition at 6.

Title V permits must include requirements for the prompt reporting of deviations. 40 CFR § 70.6(a)(3)(iii)(B). States may adopt prompt reporting requirements for each permit condition on a case-by-case basis, or may adopt general requirements by rule, or both. Whether the DEC has sufficiently addressed prompt reporting in a specific permit is a case-by-case determination under the rules applicable to the approved program, although a general provision

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<sup>12</sup> In its November 16, 2001 letter, the DEC committed to include additional clarifying language regarding the annual compliance certification in draft permits issued on or after January 1, 2002, and in all future renewals so as to preclude any confusion or misunderstanding, such as that argued by the Petitioner.

<sup>13</sup> 40 CFR § 70.6(a)(3)(B) states: “[t]he permitting authority shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirement.”

applicable to various situations may also be applied to specific permits as EPA has done in 40 CFR § 71.6(a)(3)(iii)(B).<sup>14</sup>

As explained below, petitioner's allegation that the permit does not contain prompt reporting requirements is without merit. In issuing the Ravenswood permit, DEC included several provisions that report deviations promptly. Furthermore, the petitioner has not demonstrated that the various reporting requirements contained in the Ravenswood permit fail to meet the standard set forth in Part 70.

The Ravenswood permit has several provision that require prompt reports of deviations be made to the DEC based on the degree and type of deviation likely to occur. *See e.g.*, Conditions 44, 48, 54, 66, 67, 71, and 72. These conditions require that reports, including information on any deviations, be submitted more frequently than the semi-annual reporting stipulated under the compliance certification requirements of title V and 40 CFR § 70.6(c)(5). *See* Condition 25. These reports (including reports of deviations) are required to be submitted at time frames ranging from monthly to quarterly. For example, Condition 48 prescribes that the sulfur-in-fuel content be reported monthly. This report will include any deviations that may have occurred during the reporting period, and therefore, serves as prompt reporting consistent with 40 CFR § 70.6(a)(3)(iii)(B).

Conditions 44, 54, 66, 67, 71, and 72 require quarterly reporting. Specifically, permit Conditions 44, and 54 note that NO<sub>x</sub> emissions are monitored by CEMs and are averaged hourly, daily and monthly, and reported quarterly. This report will include any deviations that may have occurred during the reporting period, and in this instance, also serves as prompt reporting of deviations consistent with 40 CFR § 70.6(a)(3)(iii)(B). Ravenswood's NO<sub>x</sub> emissions are

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<sup>14</sup> EPA's rules governing the administration of the federal operating permit program require, *inter alia*, that permits contain conditions providing for the prompt reporting of deviations from permit requirements. *See* 40 CFR § 71.6 (a)(3)(iii)(B)(1)-(4). Under this rule deviation reporting is governed by the time frame specified in the underlying applicable requirement unless that requirement does not include a requirement for deviation reporting. In such a case, the Part 71 regulations set forth the deviation reporting requirements that must be included in the permit. For example, emissions of a hazardous air pollutant or toxic air pollutant that continue for more than an hour in excess of permit requirements, must be reported to the permitting authority within 24 hours of the occurrence.

monitored by CEMs and the collected data are averaged with other NO<sub>x</sub> emission data at fourteen other KeySpan facilities, through the use of a system-wide averaging plan. In this particular case, a deviation of NO<sub>x</sub> emissions at Ravenswood alone, or at any of the other fourteen facilities, may be of no significance to the system-wide averaging plan. For this reason, quarterly reporting (including reports of any deviations) of the NO<sub>x</sub> emissions data is sufficiently prompt in light of the applicable requirement and the deviation likely to occur.

Also, permit Conditions 66, 67, 71, and 72 require that COMs be installed to continuously monitor the boilers' opacity emissions. Data from the COM system are based on 6-minute averages and are instantly transmitted to Ravenswood's control room to enable operators to quickly respond to any opacity exceedance. Therefore, any opacity deviation at the facility would elicit immediate response from the operators in the form of corrective action and is, therefore, not likely to continue for any significant length of time. For this reason, quarterly reporting that includes reports of any deviations is consistent with part 70's prompt reporting requirement because any opacity deviation at Ravenswood is not likely to persist for any significant time duration. Furthermore, Petitioner has not shown that DEC failed to exercise its discretion reasonably in defining "prompt" in relation to the degree and type of deviation likely to occur, or that the underlying requirements are deficient in prescribing reporting that is less than "prompt" as defined under 40 CFR § 70.6(a)(3)(iii)(B). Therefore, the petition is denied on this issue.

**(V) Startup/Shutdown, Malfunction, Maintenance, and Upset**

Petitioner asserts that the proposed permit's startup/shutdown, malfunction, maintenance, and upset provision violates 40 CFR part 70. The petition provides a detailed, 5-part discussion of Condition 5 of the permit, entitled "Unavoidable Noncompliance and Violations," which it refers to as the DEC's "excuse provision." Petitioner alleges that the "excuse provision" included in this proposed permit reflects the requirements of New York State regulation, 6 NYCRR § 201-1.4. Permit Condition 5 states, in part, that "[a]t the discretion of the



commissioner a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions and malfunctions or upsets may be excused if such violations are unavoidable.” Petition at 7-10.

The CAA does not allow for automatic exemptions from compliance with applicable SIP emissions limits during periods of start-up, shut-down, malfunctions or upsets. Further, improper operation and maintenance practices do not qualify as malfunctions under EPA policy. To the extent that a malfunction provision, or any provision giving substantial discretion to the state agency broadly excuses sources from compliance with emission limitations during periods of malfunction or the like, EPA believes it should not be approved as part of the federally approved SIP. *See In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII-00-1, at 23 (Nov. 16, 2000), available on the internet at: <http://www.epa.gov/region07/programs/artd/air/title5/t5memos/woc020.pdf>

Condition 5 of the Ravenswood permit provides the DEC with the discretion to excuse the facility from compliance with applicable emission standards under certain circumstances, based on the State regulation 6 NYCRR § 201-1.4. EPA grants the petition on the point that the DEC improperly included in the Ravenswood permit the “excuse provision” based on a regulation that has not been approved into the New York SIP. In its November 16, 2001 letter, the DEC committed to remove the “excuse provision” that cites 6 NYCRR § 201-1.4 from the federal side of title V permits and to incorporate the condition into the state-only side. In accordance with its commitment, DEC must remove the “excuse provision” that cites 6 NYCRR § 201-1.4 from the federal side of the permit. In addition, DEC must include in the permit the provision from its rules that states that violations of federal requirements may not be excused unless the specific federal regulation provides for an affirmative defense during start-ups, shutdowns, malfunctions or upsets. *See* 6 NYCRR § 201-6.5(c)(3)(ii). With respect to Petitioner’s other allegations regarding the startup, shutdown, and malfunction provision (RACT, definition of terms, prompt report of deviations, “unavoidable” defense), the removal of the “excuse provision” from the federal side of the permit makes moot these concerns.

## **(VI) Permit Renewal**

According to Petitioner, this title V permit violates 40 CFR part 70 because it lacks the federally enforceable requirement that the facility apply for a renewal permit within six months of permit expiration. Petition at page 11. Petitioner cites 40 CFR § 70.5(a)(1)(iii) which provides that “For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time, as may be approved by the Administrator, that ensures that the term of the permit will not expire before the permit is renewed.” Petitioner argues, based on the cited regulations, that the Ravenswood permit violates 40 CFR part 70 because it lacks the federally enforceable requirement that the facility apply for a renewal permit within six months of permit expiration.

EPA disagrees with Petitioner that the Ravenswood permit must include a federally enforceable requirement that the facility apply for a renewal permit within six months of permit expiration. The regulations at 40 CFR § 70.5(a)(1)(iii) simply define what constitutes a “timely” application for renewal purposes. This definition is essential to the interpretation of 40 CFR § 70.7(c)(ii), which explains that permit expiration terminates the source’s right to operate unless a “timely” renewal application has been filed. Any facility that does not renew in a timely manner may be subject to an enforcement action for operating without a permit. EPA finds Petitioner’s request to be without merit; therefore, EPA denies the petition on this point.

## **(VII) Periodic Monitoring**

The Petitioner claims that the permit does not assure compliance with all applicable requirements as mandated by 40 CFR §§ 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate periodic monitoring and are not practically enforceable. Petition at 12. The Petitioner addresses individual permit conditions that allegedly either lack periodic

monitoring or are not practically enforceable.<sup>15</sup> The specific allegations for each permit condition are discussed below. EPA is granting in part and denying in part Petitioner's request that the Administrator object to issuance of the permit.

**a. Compliance with Particulate Matter (PM)**

Petitioner states that the Administrator must object to the Ravenswood permit because (1) the applicable particulate matter (PM) emissions limit for the facility's four boilers is misstated as point 0.1 lbs/MMBtu instead of the 0.10 lbs/MMBtu called for at 6 NYCRR § 227-1.2(a); (2) the monitoring that is prescribed in the permit is inadequate to assure the facility's compliance with the applicable PM emission limit on an ongoing basis; and (3) DEC fails to provide any information in the Statement of Basis indicating why a single stack test per permit term is sufficient to assure the facility's ongoing compliance with the PM emission limit. Petition at 14-15. Additionally, Petitioner states that the permit fails to indicate whether the boilers are equipped with any kind of PM emissions control device and, consequently, the permit fails to prescribe any monitoring for these would-be control devices. Petition at 14.

Petitioner is correct that the PM emission limit should state 0.10 lbs/MMBtu, as required by 6 NYCRR § 227-1.2(a). The Final Permit includes a PM emission limit of 0.1 lbs/MMBtu at Conditions 64, 65, 69, and 70. Although EPA views the omission of this second-decimally placed zero as a likely typographical error, we must nonetheless object since, as petitioner has

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<sup>15</sup> With respect to lack of what the Petitioner refers to as adequate "periodic" monitoring, NYPIRG cites two separate regulatory requirements: 40 CFR § 70.6 (a)(3) which requires monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance; and § 70.6 (c)(1) which requires permits to contain testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. In all the monitoring issues presented here, where we have concluded that additional monitoring is needed, the underlying applicable requirement imposes no monitoring of a periodic nature. Therefore, we are addressing the issue exclusively under 40 CFR § 70.6(a)(3) and do not rely on 40 CFR § 70.6(c)(1). The scope of applicability of § 70.6(a)(3) was addressed by the US Court of Appeals for the DC Circuit in *Appalachian Power v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000). The court concluded that, under section 40 CFR § 70.6(a)(3)(i)(B), the periodic monitoring rule applies only when the underlying applicable rule requires "no periodic testing, specifies no frequency, or requires only a one-time test." *Id.* at 1020. The Appalachian Power court did not address the content of the periodic monitoring rule where it does apply, i.e., the question of what monitoring would be sufficient to "yield reliable data from the relevant time period that are representative of the source's compliance with the permit," as is required by 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). It is this issue that is raised by the petition at bar.

correctly identified, the permit does not properly reflect the applicable requirement. Therefore, EPA grants the petition on this issue. DEC must reopen the permit and revise the PM emission limit at Conditions 64, 65, 69, and 70 to reflect the limit of 0.10 lbs/MMBtu as prescribed by section 227-1.2(a) of the NY regulations.

Regarding its claim that the monitoring prescribed in the permit is inadequate to assure compliance with the applicable PM limit, NYPIRG believes that appropriate compliance monitoring should consist of an annual stack test, rather than the one-time stack test per permit term currently prescribed, supplemented by parametric monitoring of relevant operational parameters. While more frequent stack testing, as recommended by NYPIRG, might enhance periodic monitoring at the source, the regulations at 40 CFR § 70.6(a)(3)(i)(B) call for “[p]eriodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit...” Therefore, if the one-time stack testing per permit term, as prescribed by DEC, assures compliance with the source’s PM emission limit through periodic monitoring, then, the increased testing frequency requested by NYPIRG would not be necessary.

DEC, in its August 31, 2001, Responsiveness Summary stated: “[T]he initial stack test will establish an emission factor which will be used to verify ongoing compliance.” However, as petitioner contends, DEC has not demonstrated how the data collected from the initial stack test would be used to establish an emission factor, nor is there any evidence that DEC is currently using it to verify ongoing PM emissions compliance, or using any form of PM surrogate monitoring, as DEC implies in its Responsiveness Summary.

The Final Permit specifies stack testing for each of the four boilers, once each permit term, at Conditions 64, 65, 69, and 70. However, prescribing stack testing once each permit term, in the absence of additional parametric monitoring and other maintenance procedures, is inadequate to satisfy PM emissions compliance for the relevant time period, nor would such monitoring yield data that are representative of the source’s compliance with its permit conditions and the New York SIP. *See* 40 CFR § 70.6(a)(3)(B); 6 NYCRR § 201-6.5(b)(2).

Accordingly, EPA is granting the Petitioner's request and requiring DEC to include an annual tuneup as part of the periodic monitoring and to increase the frequency of stack testing from the current once per permit term to at least once every three years. The annual tuneup serves to redress any deterioration of the combustion units over time and ensure that the effectiveness of the PM emissions monitoring that is initially prescribed for those units continues to be appropriate. The tuneup should consist of preventative and corrective measures, in accordance with manufacturer specifications, to optimize the combustion efficiency of the unit. Also, in addition, the facility and the DEC may elect to use parametric monitoring and/or more frequent stack testing to satisfy the periodic compliance monitoring. When selecting parametric monitoring criteria, the Ravenswood permit should establish operational limits, or a performance range, for those parameters that are selected for use in the form of surrogate monitoring. Although operating out of these specified operational limits would not constitute a violation of an applicable requirement, the monitoring reports required by the permit must include any exceedance of the range limits and describe any corrective action that is taken to rectify such exceedance. Also, such monitoring should outline any additional maintenance procedures that are in place at the source to mitigate any deterioration of the boilers' performance over time.

Therefore, as stated above, EPA grants the petition on this issue, and is requiring DEC to develop and present a monitoring regime, consistent with 40 CFR § 70.6(a)(3)(B) and 6 NYCRR § 201-6.5(b)(2), that includes an annual tuneup and a stack test at least once every three years as conditions of the permit. DEC is also reminded to include in the Statement of Basis an explanation of how this monitoring regime assures compliance with the PM emissions limit.

Finally, NYPIRG comments that the permit fails to indicate whether the boilers are equipped with any kind of PM emissions control device. The regulations at 6 NYCRR § 227-2 require Ravenswood to comply with certain specified emission limits but do not, otherwise, require that specific control equipment be appended to the source. Further, NYPIRG has not demonstrated that Ravenswood is contravening any specific regulation for not installing PM

control equipment on its boilers. For this reason, this last issue raised by Petitioner is without merit, and is denied.

**b. Compliance with 6 NYCRR § 211.3**

Petitioner claims that permit Condition 46 fails to include any monitoring designed to assure the plant's compliance with 6 NYCRR § 211.3. Petitioner asks that the Administrator object to this permit due to its lack of any monitoring to assure compliance with this applicable requirement. Petition at 15.

Condition 46 limits the opacity from any air contamination source to less than 20% (six-minute average) except for one continuous six-minute period per hour of not more than 57% opacity. *See* 6 NYCRR § 211.3. Condition 46 is a general condition that applies to the facility as a whole but is monitored and enforced at the permit's "Emission Unit Level" section, where specific emission units are regulated. Except for emissions units that are subject to particulate matter or opacity limits established by rule, permittees may not know how to apply specific monitoring to a facility-wide condition, because different emissions units can create opacity through different processes (combustion, material storage) and reach the atmosphere in different ways (stacked, fugitive). Indeed, an operator may be unable to conduct the same kind of monitoring at each opacity-emitting emissions unit at a facility. Thus, it is more appropriate to include appropriate opacity monitoring in the Emission Unit Level section of the permit, as was done in the Ravenswood permit at Conditions 66 and 71. These conditions impose an opacity limit of 20% and prescribe the use of continuous opacity monitors. Accordingly, EPA denies the petition with respect to this issue.

**c. Compliance with NO<sub>x</sub> Emission Limits**

The Ravenswood facility operates under a system-wide NO<sub>x</sub> RACT plan which is part of the approved SIP. *See* 6 NYCRR § 227-2 *et seq.* Petitioner raises three main issues with respect to the applicability of NO<sub>x</sub> emission limits. They are addressed below, in the order that they are

raised by Petitioner. Petition at 15-16.

- (i) NO<sub>x</sub> emissions may not be averaged with any facilities other than those owned or operated by Con Edison.

Under Ravenswood's NO<sub>x</sub> RACT plan, total NO<sub>x</sub> emissions are limited for the fifteen facilities of the KeySpan Energy system, as a whole, spread over Long Island and New York City. However, NYPIRG contends that the permit for the Ravenswood Steam Plant has been issued to the Consolidated Edison Co. of New York, Inc., not to KeySpan Energy. Thus, NYPIRG contends, the permit may not allow NO<sub>x</sub> emissions from the Ravenswood Steam Plant to be averaged with any facilities other than those owned or operated by Con Edison.

6 NYCRR § 227-2.5 enables permit holders to comply with the applicable NO<sub>x</sub> RACT emission limits through the use of a system-wide averaging plan that is based on the weighted average of actual emission from units that are operating. Pursuant to this option, the averaging may include all units at a major stationary source or sources within a system. 6 NYCRR § 227-2.5(b). New York's regulations define "system" as including those units "which are owned and/or operated by the same person provided that that person holds Department operating permits for each unit." 6 NYCRR § 227-2.2(b)(16). The Final Ravenswood Permit was issued to both, the Consolidated Edison Co. of New York, Inc., and KeySpan-Ravenswood Services Corp. Therefore, it would be permissible to use the fossil-fuel fired facilities of either permit holder to establish NO<sub>x</sub> RACT emission limits through the use of a system-wide averaging plan, pursuant to 6 NYCRR § 227-2.5. However, the permit states that the NO<sub>x</sub> emissions are averaged over a system of fossil-fuel fired facilities, owned and operated by KeySpan Energy, a third entity. The permit does not identify the relationship of KeySpan Energy to either of the permit holders. Thus, unless a relationship, meeting the definition of "system" at 6 NYCRR § 227-2.2(b)(16), exists between KeySpan Energy and KeySpan-Ravenswood Services Corp., the NO<sub>x</sub> RACT system-wide averaging plan may be flawed. While EPA disagrees with Petitioner's assertion that the NO<sub>x</sub> RACT system-wide averaging plan may only be performed with facilities owned or

operated by Con Edison, EPA is unable to determine whether the system-wide averaging plan, in this case, is performed with fossil-fuel fired facilities that meet the criteria set forth in the regulations. For this reason, EPA grants the petition on this issue. DEC must reopen the permit and establish a relationship between any of the permit holders or operators, and the system of fossil-fuel fired facilities that satisfies the criteria of 6 NYCRR § 227-2.5.

(ii) Permit fails to include site specific NO<sub>x</sub> emission limits and target emission rates.

Petitioner alleges that the permit's NO<sub>x</sub> RACT conditions fail to identify the applicable NO<sub>x</sub> emission limits for Ravenswood. NYPIRG contends that, even if compliance with NO<sub>x</sub> RACT is measured based on a system-wide average, DEC must still include in the permit NO<sub>x</sub> emission limits that are applicable to Ravenswood. Further, in the context of complying with a NO<sub>x</sub> RACT plan, NYPIRG views any "target" emission rate that is applied to a source, as a form of compliance assurance monitoring that also must be stated in the permit.

As explained above, under a NO<sub>x</sub> RACT system-wide averaging plan, total NO<sub>x</sub> emissions are limited to a group of facilities jointly owned or operated by the same party. In this case, DEC used the system of facilities owned by KeySpan Energy. Generally speaking, under a NO<sub>x</sub> RACT plan, although the emission point-specific emission limits contained in the SIP regulations are used to establish a system-wide limit, that system-wide limit is the enforceable limit, enforced through an emissions averaging concept (i.e., installing more stringent controls on some units in exchange for lesser control on others). *See 92 Fed. Reg. 55625* (Nov. 25, 1992). And when a NO<sub>x</sub> RACT system wide plan is applicable, emission limits formerly required under the regulations are replaced by a system-wide averaging plan. *See 6 NYCRR § 227-2.5(b)*. The requirements that normally would be applied to a specific unit are subsumed and are applied through a weighted average as defined in 6 NYCRR § 227-2.2(b)(19). According to the permit, the Ravenswood facility is averaged with other KeySpan facilities, pursuant to a system-wide averaging plan that includes facilities located in Long Island and New York City. In Ravenswood's case, the NO<sub>x</sub> RACT plan is attached to the permit and is an enforceable element



of the permit. Thus, Petitioner's request for an objection on the basis that specific emission limits are not included for each unit is without merit. Also, Petitioner's request that "target" emission rates be stated in the permit is without merit because "target" emission rates do not constitute permit limits and are not enforceable elements under the approved New York SIP regulations.

**d. Compliance with the NO<sub>x</sub> Budget Rule (6 NYCRR Part 204)**

The petitioner alleges that the permit fails to assure compliance with the NO<sub>x</sub> Budget rule in 6 NYCRR Part 204 because, according to Petitioner, many of the conditions are too vague to be enforceable.

(i) NO<sub>x</sub> Budget Units

The Petitioner claims that permit Conditions 31, 32, and 33 which reference the term "NO<sub>x</sub> Budget unit" fail to explain which units qualify as NO<sub>x</sub> Budget units. Petitioner is correct that these conditions fail to designate those units that constitute the "NO<sub>x</sub> Budget units" and therefore, are not enforceable as a practical matter. The permit's attached NO<sub>x</sub> RACT plan uses the very fuel burning equipment that constitute the "NO<sub>x</sub> Budget units" to develop the system-wide NO<sub>x</sub> averaging plan, but the permit, in effect, does not specifically reference or list those units as "NO<sub>x</sub> Budget units." For this reason, EPA grants the petition on this issue and is requiring DEC to reopen the permit and to designate, in the permit, those units that constitute the NO<sub>x</sub> Budget units.

(ii) Monitoring System Referenced in Condition 39

Petitioner claims that Condition 39 is vague and is unclear as to what kind of monitoring system will be used at the Ravenswood Steam Plant. The permit clearly specifies the kind of monitoring system for the Ravenswood plant. Although in isolation the phrase "any other approved emission monitoring system under this Subpart" may appear vague, Petitioner failed to reference the entire text from which the above quote is extracted. Condition 39 states:

No owner or operator of a NO<sub>x</sub> Budget unit or a non-NO<sub>x</sub> Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall: (4) permanently discontinue use of the continuous emission monitoring system, any component thereof, or *any other approved emission monitoring system under this Subpart*, except under any one of the following circumstances:

(i) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this Subpart and 40 CFR part 75, by the Department for use at that unit that provides emission data for the same pollutant or parameter as the discontinued monitoring system; or

(ii) The NO<sub>x</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with Paragraph 204-8.2(b)(2). (Emphasis added).

Condition 39 also references 6 NYCRR § 204-8.1, which establishes general monitoring and reporting requirements for NO<sub>x</sub> Budget sources. Condition 39 then, forbids the discontinuance of monitoring systems that might have already been in place and operating at the facility under 6 NYCRR § 204-8.1. Therefore, rather than prescribing the use of some unspecified monitoring equipment, as Petitioner's comment suggests, this condition stipulates that such previously approved monitoring systems may not be discontinued without proper notification to DEC. Further, 6 NYCRR § 204-8.1 references monitoring systems that are quite specific in meeting the requirements of 40 CFR 75 which specifies CEM recertification procedures at Part 75.20(b), in the event the use of a previously approved CEM is discontinued. Therefore, instead of being vague, the term quoted by Petitioner references regulations that are actually prescriptive in the type of monitoring systems that are permitted for monitoring NO<sub>x</sub> emission sources. For these reasons, Petitioner's request to object to the use of the phrase referenced above is without merit.

(iii) Reference to Parameters in Condition 42

Petitioner claims that Condition 42 refers to parameters, but fails to specify what

parameters are to be monitored. Petitioner also takes issue with the use of the phrase “any other values required to determine NO<sub>x</sub> mass”. Again, Petitioner failed to reference the entire relevant text from which this quote is extracted. Condition 42 specifies that the “other values required to determine the NO<sub>x</sub> mass” may be either “NO<sub>x</sub> emission rate and heat input, or NO<sub>x</sub> concentration and stack flow.” Therefore, Condition 42, far from being vague as alleged by Petitioner, spells out a combination of parameters that, when properly monitored, would allow NO<sub>x</sub> mass emissions to be calculated. For this reason, Petitioner’s comment is without merit.

(iv) Condition 44 is Vague and Unenforceable

Petitioner alleges that the phrase in Condition 44 that a “unit that elects to monitor and report NO<sub>x</sub> Mass emissions using a NO<sub>x</sub> concentration system and a flow system”, is vague and unenforceable. Also, in this instance, Petitioner failed to put the quote in its proper context. Condition 44 reads: “The owner or operator of a unit that elects to monitor and report NO<sub>x</sub> Mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input at the unit level, using the procedures set forth in 40 CFR part 75.” Indeed, there are several commercially available NO<sub>x</sub> concentration and flow systems and, rather than specifying a given unit, the permit predicates an action based on a category of instruments that might be used, as allowed at Appendix E of Part 75 for oil-fired peaking units, such as Ravenswood’s boilers. The permit is affirming that, in the event that NO<sub>x</sub> concentration and flow systems are used in the monitoring of NO<sub>x</sub> mass emissions, then heat input must also be monitored and reported. For this reason, EPA disagrees that language in Condition 44 is vague and unenforceable and denies the petition on this issue.

**e. Monitoring of the NO<sub>x</sub> RACT System Wide Averaging Plan**

Petitioner alleges that the Statement of Basis fails to provide an explanation for why the monitoring that is included in the permit assures compliance with the NO<sub>x</sub> RACT System wide averaging plan. Permit Condition 54 specifies that KeySpan’s current version of the NO<sub>x</sub> RACT

Compliance and Operating Plans are attached to the permit. Ravenswood's NO<sub>x</sub> RACT Compliance Plan details the rationale for Ravenswood's NO<sub>x</sub> RACT monitoring plan and explains how it assures compliance with the NO<sub>x</sub> RACT plan. In particular, it specifies that compliance with the NO<sub>x</sub> RACT system wide averaging plan is being assured through NO<sub>x</sub> emissions monitoring of Ravenswood's boilers, using CEMs, as is also stipulated in the current Permit Review Report, and at Conditions 68 and 73, as well as through the monitoring of fuel usage, as stated at Conditions 40 and 57. Therefore, the information requested by Petitioner is available in the NO<sub>x</sub> RACT plan, which is attached to the permit. For this reason, EPA denies the petition on this issue.

**f. Compliance with the Sulfur Limit**

Petitioner raises several issues regarding the monitoring of the facility's sulfur dioxide emissions and sulfur-in-fuel limit. Specifically, Petitioner alleges that the Administrator must object to the proposed permit because: (i) the monitoring conditions included in the permit for assuring compliance with the sulfur-in-fuel limit are vague and unenforceable as a practical matter; (ii) DEC fails to provide, in the statement of basis, information justifying its reliance on fuel analysis to assure the facility's compliance with sulfur dioxide emissions rather than (using) continuous monitoring, while the permit's applicable requirement establishes fuel analysis as the monitoring practice that is in force, and; (iii) DEC fails to correctly identify the SIP version of 6 NYCRR § 225-1 as the legal basis for the sulfur limits. Petition at 17-18.

The issues raised by Petitioner are addressed in the order they are presented above. First, EPA agrees that the prescribed sulfur-in-fuel monitoring is vague, and hence inadequate. The Final Permit, at Condition 48, prescribes that a grab sample be taken per (tanker) delivery. However, the permit fails to prescribe an analytical method by which that sample is to be analyzed. The absence of a referenced method for testing the fuel makes this condition unenforceable. Therefore, EPA grants the petition on this issue and is requiring DEC to reopen the permit and prescribe an analytical method for monitoring the sulfur-in-fuel limit.

Petitioner's next claim is that the permit fails to explain in the statement of basis the rationale for selecting fuel analysis as the method for monitoring compliance with the facility's sulfur limit. The approved SIP, at 6 NYCRR § 225.6(b), calls for using a continuous monitor to track emissions of sulfur dioxide for combustion installations that exceed a heat input of 250 million BTU per hour, such as those found at Ravenswood, while using liquid petroleum fuel. In the absence of a continuous monitor, those same regulations allow for representative sampling and sulfur analysis of the fuel, as a surrogate means for assuring compliance with sulfur dioxide emissions. Although the Ravenswood permit states in the "Facility Description" section that the facility's sulfur dioxide emissions are monitored through continuous monitors, there is no reference elsewhere in the permit addressing the existence, maintenance, and operation of such monitors. Indeed, the presence of continuous monitors would trigger various attendant maintenance, operating, and reporting requirements that should be included in the permit. Therefore, if continuous monitors are indeed installed at the Ravenswood plant, as stipulated in the "Facility Description" section, the Final Permit would be deficient for failing to account for those attendant requirements. Further, in its Responsiveness Summary, DEC states: "Under 225-1.7(b)(2), the facility is permitted to conduct 'representative sampling and sulfur analysis' in a manner approved by the commissioner, in lieu of having to install equipment to continuously monitor and record sulfur emissions." Based on DEC's response, it is reasonable to conclude that the facility relies on fuel analysis rather than CEMs to comply with its sulfur dioxide emission limit. Therefore, when the permit is reopened, DEC must resolve the ambiguity with respect to the compliance method that is relevant and applicable to Ravenswood. Specifically, since there is no indication that Ravenswood utilizes CEMs, DEC must remove the reference to "continuous monitors" that is currently included in the "Facility Description" section and must, instead, indicate that compliance with sulfur dioxide emissions is achieved through surrogate monitoring, using sulfur-in-fuel analysis. The "Facility Description" should state that the referenced monitoring regime, consisting of collecting and analyzing a grab sample per fuel delivery, has been retained in lieu of installing sulfur dioxide continuous emission monitors, in

accordance with the provisions of 6 NYCRR § 225.6(b).

Lastly, Petitioner requests that DEC correctly identify the approved SIP version of 6 NYCRR § 225-1 that constitutes the legal basis for the sulfur-in-fuel limit. In this regard, both the approved and non-approved SIP versions of 6 NYCRR § 225-1 contain the sulfur in-fuel limit of 0.30 percent sulfur by weight. However, Petitioner is correct in stating that the DEC failed to correctly identify the version that is the legal basis for that limit. The approved SIP version references the 0.30 percent sulfur by weight at 6 NYCRR § 225.1(3), whereas the non-approved SIP version references that same limit at 6 NYCRR § 225-1.2(2). Currently, the permit lists the non-approved SIP version as the sulfur limit applicable requirement. EPA grants the Petition on this issue and is requiring DEC to reopen the permit to establish 6 NYCRR § 225.1(3) of the federally approved SIP version, as the applicable requirement for the sulfur-in-fuel limit. DEC may retain 6 NYCRR § 225-1.2(2) on the State-Only side of the permit.

#### **(VIII) Limits Established Under Pre-Existing Permits**

Petitioner states that all emission limits established under pre-existing permits, pursuant to 6 NYCRR part 201, must be carried over into the title V permit. Specifically, Petitioner refers to emission limits of criteria pollutants (oxides of nitrogen, sulfur dioxides, and particulates) that were stated in certificates of operation issued for Ravenswood's boilers, on May 31, 1995. Petition at 18.

The Petitioner is correct that federally-enforceable conditions from permits issued pursuant to requirements approved into the New York SIP must generally be included in a title V permit, as they are applicable requirements. *See* 40 CFR § 70.2. Construction and operating permits issued in the past, however, may contain requirements that are not "applicable requirements" as defined in the approved title V program or that are obsolete and are no longer applicable to the facility (e.g., terms regulating construction activity during the building or modification of the source where construction is long completed). In this situation, the DEC may delete inapplicable or obsolete permit conditions by following the modification procedures set

forth in the New York regulations. *See* 6 NYCRR §§ 201-6.7, 201-1.6 and 621.6; *see also* 40 CFR §§ 70.7(e)(4) and 70.7(h). Alternatively, the DEC may announce the intended deletion of old permit conditions in the public notice for the draft title V permit or in the corresponding Permit Review Report. Either process satisfies the requirement to provide the public with notice and an opportunity to comment on changes to the federally enforceable terms of a pre-existing permit. *See* 6 NYCRR §§ 201-1.6 and 621.6; *see also* 40 CFR 70.7(h).

The criteria pollutants that are referenced by Petitioner as having limits that precede the issuance of the title V permit consist of nitrogen oxides (NO<sub>x</sub>), sulfur dioxide, and particulate matter. With respect to all three pollutants, the previously issued permits that are the object of Petitioner's comments state emission values for these contaminants based on the unit's "actual emissions." These "actual emissions" are emission estimations rather than SIP based emission limits and, therefore, are not applicable requirements. The actual emissions values which are usually arrived at through stack testing of the source or through using an emission factor from a published guidance document such as EPA's AP-42, or some other technical manual, are not regulatory limits. These actual emission values do not subject a source to penalties or other enforcement actions for exceeding the stated value.

The emission limits stated in the final permit, for NO<sub>x</sub>, sulfur dioxides, and particulate matter were established through rules and replace any previously stated, non-regulatory emission values that were issued in previous permits. Specifically, with respect to NO<sub>x</sub> emission limits, the SIP regulations at 6 NYCRR § 227-2.5 allow for compliance through either a fuel switching option, or a system-wide averaging option. Permittee opted to implement the system-wide averaging option, formulated at 6 NYCRR § 227-2.5(b) and, thereby, replaced the "actual" NO<sub>x</sub> emission values that were stated in the previously issued permits with the limits established per 6 NYCRR § 227-2.5(b). With regard to particulates emissions, the final permit sets an emission limit of 0.10 pound per million BTU heat input, at Conditions 64, 65, 69, and 70, as called for at 6 NYCRR § 227-1.2(a)(1). Likewise, in regulating sulfur emissions, Condition 48 of the final permit sets a sulfur-in-fuel limit of 0.30 percent sulfur by weight, which is stipulated under 6

NYCRR § 225.1(3). Accordingly, EPA denies the Petition on this issue.

**C. CONCLUSION**

For the reasons set forth above and pursuant to CAA § 505(b)(2), I deny in part and grant in part the petition of NYPIRG requesting the Administrator to object to the issuance of the Ravenswood title V permit. This decision is based on a thorough review of the October 22, 2001 permit, and other documents that pertain to the issuance of this permit.

\_September 30, 2003\_\_\_\_\_

Dated:

\_\_\_\_\_/s/\_\_\_\_\_

Marianne L. Horinko

Acting Administrator