BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF SIRMOS DIVISION OF BROMANTE CORP. Permit ID: 2-6304-00416/00007 Facility DEC ID: 2630400416 Issued by the New York State Department of Environmental Conservation Region 2	))))))))))	ORDER RESPONDING TO PETITIONER'S REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF A STATE OPERATING PERMIT Petition No.: II-2002-03

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

On April 11, 2002, the Environmental Protection Agency ("EPA") received a petition from the New York Public Interest Research Group ("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 Sirmos Division of Bromante Corporation ("Sirmos") located in Long Island City, New York.

The Sirmos permit was issued by the New York State Department of Environmental Conservation, Region 2 ("DEC") on February 25, 2002, pursuant to title V of the Act, the federal implementing regulations, 40 CFR Part 70, and the New York State implementing regulations, 6 NYCRR parts 200, 201, 621 and 624. The February 25, 2002 permit was modified on March 16, 2004 to limit emissions of hazardous air pollutants from the facility to below major sources

thresholds.[1]

The Sirmos facility molds, decorates, fabricates and assembles decorative lamps and fixtures. Materials fabricated at this facility are cast from a compounded talc/polyester mixture, compounded latex, polystyrene plastic and wood. Molds used to make the castings are typically made of rubber and plaster. Castings are hand sanded to prepare the surface for finish coatings. Finish coatings are applied to all products either by hand or spray gun.

The petition alleges that the Sirmos permit, proposed by DEC does not comply with 40 CFR Part 70 in that: 1) the proposed permit was issued without adequate opportunity for public comment through a public hearing; 2) the proposed permit is based on an inadequate permit application; 3) the proposed permit lacks an adequate statement of basis as required by 40 CFR § 70.7(a)(5); 4) the permit distorts the annual compliance certification requirement of CAA § 114(a)(3) and 40 CFR § 70.6(c)(5); 5) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B); 6) the startup/shutdown, malfunction, maintenance, and upset condition in the proposed permit violates 40 CFR Part 70; 7) the emergency defense provision is in violation of 40 CFR § 70.6(g); 8) the proposed permit lacks federally enforceable conditions that govern the procedures for permit renewal; and 9) the proposed permit lacks monitoring that is sufficient to assure the facility's compliance with all applicable requirements and many individual permit conditions are not

[1] The March 16, 2004 modified permit does not follow the same numbering scheme as the February 25, 2002 permit. Throughout this order any citations to condition numbers refer to the February 25, 2002 permit unless specifically indicated.

practicably enforceable. The Petitioner has requested that EPA object to the issuance of the Sirmos permit pursuant to CAA § 505(b)(2) and 40 CFR § 70.8(d) for any or all of these reasons.

EPA has reviewed these 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 (2nd Cir. 2002).

Based on a review of all the information before me, including the petition; the Sirmos permit application; NYPIRG's comments to the NYSDEC on the Draft title V Operating Permit; DEC's Responsiveness Summary to NYPIRG's comments, dated December 27, 2001 ("Responsiveness Summary"); the Sirmos permit of February 25, 2002; the modified Sirmos permit of March 16, 2004; and relevant statutory and regulatory authorities and guidance; I deny the Petitioner's request in part and grant it in part for reasons set forth in this Order.

A. <u>STATUTORY AND REGULATORY FRAMEWORK</u>

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 permit 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 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 § 505(a) of the Act and 40 CFR §§ 70.8(a), States are required to submit all proposed operating permits 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 state implementation plan ("SIP"). See also 40 CFR § 70.8(c)(1).

Section 505(b)(2) of the Act states that if EPA does not object to a permit, any member of the public may petition EPA to take such action, and the petition shall be based on objections

that were raised during the public comment period[2] unless the petitioner demonstrates that it was impracticable to do so, or unless the grounds for objection arose after the close of the comment period. See also 40 CFR § 70.8(d). 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**

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.).[3]

In determining whether an objection is warranted for alleged flaws in the procedures

[2] *See* CAA § 505(b)(2); 40 CFR § 70.8(d). Petitioner commented during the public comment period, raising concerns with the draft operating permit that are the basis for this petition. *See* Letter from Keri N. Powell, Esq. of NYPIRG to DEC (August 9, 2001) ("NYPIRG Comment Letter").

[3] 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 Powell, Esq., New York Public Interest Group, Inc (December 12 Letter). The response letter is available on the internet at http://www.epa.gov/air/oaqps/permits/response/.

leading up to permit issuance, such as Petitioner's claims below that DEC improperly denied NYPIRG's request for a public hearing, and that the application form submitted by Sirmos was not in compliance with the requirements of the CAA, Part 70 and 6 NYCRR Part 201, 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 § 505(b)(2) (objection required "if the Petitioner demonstrates ... 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: (1) DEC's failure to grant Petitioner's request for a hearing; (2) the lack of a proper initial compliance certification; and (3) a more detailed statement of methods for determining initial compliance, resulted in, or may have resulted in, a deficiency in the Sirmos permit.

(I) <u>Public Hearing</u>

NYPIRG claims DEC improperly denied its request for a public hearing on the Sirmos draft permit as provided for by 40 CFR § 70.7(h). NYPIRG submitted written comments to DEC during the public comment period and requested a public hearing. DEC denied the hearing request in its December 27, 2001 letter responding to NYPIRG's comments. NYPIRG asserts that DEC does not have discretion to refuse to hold a hearing when one is requested. Petition at 2. NYPIRG contends that DEC's decision was arbitrary and capricious in that the agency failed to provide any justification for its refusal to hold a public hearing. NYPIRG further contends that a significant degree of public interest in the permit should have been evident from its

submission of seventeen pages of written comments. NYPIRG requests EPA's objection to the Sirmos permit on the basis that it did not undergo the proper public participation procedure before the final permit was issued and requests that DEC hold a public hearing on the permit. Petition at 2.

In its petition, NYPIRG alleges that it was arbitrary and capricious for DEC to deny its request for a public hearing, however, NYPIRG does not demonstrate or even allege that a public hearing on this permit would have garnered additional information such that it may have resulted in different terms and conditions in the permit. In fact, by its own admission, NYPIRG submitted 17 pages of relevant comments to DEC on the draft permit. DEC responded in writing to these comments in its December 27, 2001, Responsiveness Summary. Accordingly, in this case, NYPIRG does not demonstrate that DEC's failure to grant a hearing on the Sirmos permit resulted in, or may have resulted in, a deficiency in the permit.

Additionally, neither the CAA nor EPA's implementing regulations require a permitting authority to hold a hearing when one is requested. Rather, the CAA and applicable regulations require only that States offer an opportunity for a public hearing. *See* CAA § 502(b)(6) and 40 CFR § 70.7(h)(2). In accordance with these requirements, the New York title V program provides that DEC has the discretion to hold either a legislative or an adjudicatory public hearing. In this case, the DEC determined that a public hearing was not warranted. *See* Responsiveness Summary (Dec. 27, 2001). As the DEC has the discretion to refuse to hold a public hearing and the Petitioner has not demonstrated that this discretion was not reasonably

exercised, NYPIRG's request that EPA object to the permit on these grounds is denied.

(II) Incomplete Permit Application

Petitioner alleges that the applicant did not submit a complete permit application in accordance with the requirements of the CAA § 114(a)(3)(C), 40 CFR § 70.5(c) and 6 NYCRR § 201-6.3(d). Petition at 3. 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 the EPA 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 Sirmos are summarized as follows:

(a) The application form lacks an initial compliance certification with respect to all applicable requirements. Without such a certification, it is unclear whether Sirmos 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

(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 requirements, for example, new source review requirements from pre-existing permits. 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 4.

(a) Initial Compliance Certification

As noted above, the applicable standard is whether the petitioner has demonstrated that the lack of a proper initial compliance certification, resulted in, or may have resulted in, a deficiency in the content of the Sirmos permit. In this case, EPA believes that the petitioner has failed to meet this standard.

The application form used by DEC did not clearly require the applicant to certify compliance with all applicable requirements at the time of application submission. Rather, Sirmos certified that it would be in compliance with all applicable requirements at the time of

permit issuance.[4] In this case, the applicant's failure to properly certify compliance at the time of application submission might have resulted in the permitting authority not including a compliance schedule in the final permit, but it would not have delayed the source's obligation to come into immediate compliance with the applicable SIP requirements at 6 NYCRR §§ 228.7 and 228.8. In the event of a deviation, these provisions require the Sirmos facility, which uses low VOC content coatings, to immediately switch to a coating that complies with the low VOC content requirements. Therefore, even if the application form used by Sirmos had required the facility to certify to its compliance at the time of application submission, the ultimate permit issued would have been the same. Accordingly, as the petitioner has not demonstrated that the Sirmos permit fails to comply with the applicable requirements, EPA denies the petition on this issue.

(b) Statement of Methods for Determining Initial Compliance

The 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 Sirmos did not specifically require the facility to include a statement of methods used for determining compliance but the applicant nonetheless provided information on certain methods used for determining compliance by referring in the permit application, Sections III and IV, to the applicable monitoring procedures. Such references include: (1) specific test methods

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[4] In its application form, Sirmos certified that, for all units at the facility that are operating in compliance with all applicable requirements, the facility will continue to be operated and maintained to assure compliance for the duration of the permit, except for those units referenced in the compliance plan portion of the permit.

used to analyze the organic compound, water and solids content of each batch delivery of coatings and/or solvents; (2) vendor-supplied analysis of the VOC content of the coatings and solvents used; and (3) various record keeping. *See* pages 5 and 16 of the Sirmos application. In light of the information provided, EPA believes that the Petitioner's general allegations do not adequately demonstrate that, in this case, had the application submitted by Sirmos specifically required the facility to include a statement of methods for determining compliance, the final permit would have been any different. Therefore, EPA denies the petition on this issue.

(c) Description of Applicable Requirements

The Petitioner's next claim is that EPA's regulations require the applicable requirements contained in a title V permit to be accompanied by a narrative description of the requirement. 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. *See White Paper for Streamlined Development of Part 70 Permit Applications* (July 10, 1995) at 20-21. 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 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.*

Consistent with EPA guidance, in describing applicable requirements, the Sirmos permit application refers to State and Federal regulations. For example, page 4 of the Sirmos application identifies several applicable requirements including, but not limited to 6 NYCRR §§ 201.6, 212.6, 215 and 228.4. These regulations are publicly available and are also available on the internet. In addition, the application also provides a narrative description of certain requirements. *See* pages 5 and 6 of the Sirmos application. The Petitioner has not shown that any of the descriptions were in error or that the referenced material is not available to the public. The petition is therefore denied on this issue.

(d) Statement of Methods for Determining Ongoing Compliance

The Petitioner's fourth allegation is 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 form used by the Sirmos facility failed to include a description of, or reference to, any applicable test method that the source intends to use for determining compliance with each applicable requirement. In the emission unit information part (Section IV) of the application form, there is a block labeled "Monitoring Information" that requires applicants to provide test method information as well as other monitoring information such as work practices and averaging methods. The application form also requires the applicant to provide monitoring information at the facility level in the "Facility Information" section of the application. The Sirmos application addresses this point by providing a description of and/or reference to the applicable test methods for determining

compliance with each applicable requirement. For example, on page 5 of the application, Sirmos states that it will record all deliveries of VOC-containing products and of all solvent deliveries. Also, on pages 6 and 16, Sirmos states that it will sample each batch delivery in accordance with 40 CFR 60 Method 24. Thus, the Petitioner's final point regarding the application form is without merit. Therefore, EPA denies the petition on this issue.

(III) Statement of Basis

Petitioner alleges that the 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 the permit conditions. NYPIRG asserts that DEC's permit review report is insufficient in that it only includes a description of the manufacturing process. In addition, Petitioner states that DEC should develop an adequate statement of basis and re-release it with the draft permit for a new public comment period. Petition at 4.

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 part of the permit itself. It is a separate document which is to be sent to EPA and to interested persons upon request. [5]

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[5] 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.

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 requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 CFR § 70.6(a)(3)(i)(B) or 6 NYCRR § 201-6.5(b)(2). 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 with a record of the applicability and technical issues surrounding the issuance of the permit.[6] *See e.g., In Re Port Hudson Operation Georgia Pacific ("Georgia Pacific")*, Petition No. 6-03-01, at pages 37-40 (May 9, 2003); *In Re Doe Run Company Buick Mill and Mine ("Doe Run")*, 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 §

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[6] 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 V'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 the 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 fro 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 a statement of basis on a permit-by-permit basis, considering the technical complexity of the permit, history of the facility, and the number of new provisions being added at the title V permitting stage, to name a few factors.

70.7(a)(5) to require that the rationale for the selected monitoring method be documented in the permit record. *See In Re Fort James Camas Mill ("Ft. James")*, Petition No. X-1999-1, at page 8 (December 22, 2000).

EPA's regulations provide that the permitting authority must provide EPA with a statement of basis. 40 CFR § 70.7(a)(5). The failure of a permitting authority to meet this requirement, however, does not necessarily demonstrate that the title V permit is substantively flawed. As noted previously, in reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the Petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. *See e.g., Doe Run* at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit. *See e.g., Ft. James* at 8; *Georgia Pacific* at 37-40.

In this case, the draft permit was accompanied by a permit description, and a more detailed permit review report was issued with the final Sirmos permit. While neither of these documents provide an explanation of how the selected periodic monitoring assures compliance with the applicable requirements, DEC's failure to provide an explanation or rationale for its decisions did not result in a deficient permit. Additionally, other available documents in the

permit record, including the permit application, the permit descriptions and the DEC's response to comments document support the final Sirmos permit. For example, on pages 6, 7 and 16 of the Sirmos application and under the Facility Description and Regulatory Analysis sections of the permit review report, 6 NYCRR § 228 is listed as an applicable requirement. Part 228 requires facilities to obtain supplier certifications regarding the VOC content of each coating and also demonstrate compliance using test method 24 of 40 CFR 60, Appendix A. These requirements have been incorporated into the final Sirmos permit. As such, the permit record contains sufficient information describing these requirements and in this case, a more detailed explanatory document was not necessary to support the adequacy of the permit itself, nor was it necessary to understand the legal and factual basis for the final permit conditions. Accordingly, the circumstances of this case do not warrant an objection to the Sirmos permit, and therefore, EPA denies the petition on this issue.[7]

(IV) Annual Compliance Certification

Petitioner alleges that the permit distorts the annual compliance certification requirement of the 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 Sirmos permit requires only that the annual compliance certification identify "each term or condition of the

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[7] In accordance with the November 16 2001 letter, DEC's permit issuance process now provides that a permit may not be issued in draft unless a comprehensive permit review report has been prepared for the draft permit. This requirement also applies to the issuance of draft permits for revised or modified and renewed permits. Thus, the re-opening and re-issuance of this permit will provide EPA and the public an additional opportunity to comment on legal and factual basis for the draft permit conditions.

permit that is the basis of the certification." *See* Petition at 6. Specifically, the Petitioner is concerned with the language in the permit that labels certain permit terms as "compliance certification" conditions. NYPIRG notes that requirements that are identified as "compliance certification" are those that identify a monitoring method for demonstrating compliance. NYPIRG asserts that the only way of interpreting this compliance certification designation is as a way of identifying which conditions are covered by the annual compliance certification and that permit conditions lacking periodic monitoring are excluded. The Petitioner claims that this is 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.

The language in the permit that labels certain terms as "compliance certification" conditions does not mean that the Sirmos facility is *only* required to certify compliance with the permit terms containing this language. "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. Condition 26 of the permit delineates the requirements of 40 CFR § 70.6(c)(5) and 6 NYCRR § 201-6.5(e), which require annual compliance certification with the terms and conditions contained in the permit.

The language in the Sirmos permit follows directly the language in 6 NYCRR § 201-6.5(e) which, in turn, mirrors the language of 40 CFR §§ 70.6(c)(5) and (6). Section 201-6.5(e) requires certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Section 201-6.5(e)(3) requires the following in annual

certifications: (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. The Sirmos title V permit includes this language at Condition 26.

Therefore, the references in the Sirmos permit to "compliance certification" do not negate the DEC's general requirement for compliance certification of terms and conditions contained in the permit. Accordingly, because the 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 the DEC revises the Sirmos title V permit in response to other sections of this Order, it should add language to clarify the requirements relating to annual compliance certification reporting.[8]

(V) Prompt Reporting of Deviations

Petitioner alleges the permit does not require prompt reporting of all deviations from

[8] 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.

permit requirements as mandated by 40 CFR § 70.6(a)(3)(iii)(B). Petition at 7. The Petitioner states that while the permit now contains a timetable for reporting deviations of hazardous, toxic and regulated air pollutants under some circumstances, all other deviations need only be reported in the six-month monitoring report. Further, the condition regarding maintenance, start-up/shutdown, malfunctions and upsets contains conflicting reporting requirements and only applies only to "unavoidable" exceedances. Thus, the Petitioner requests that EPA order DEC to require the applicant to submit prompt written reports of all deviations, with prompt being defined based on "the degree and type of deviation likely to occur and the applicable requirements."

Title V permits must include requirements for the prompt reporting of deviations from permit requirements. *See* 40 CFR § 70.6(a)(3)(iii)(B).[9] States may adopt prompt reporting requirements for each condition on a case-by-case basis, or may adopt general requirements by rule, or both. Moreover, States are required to consider prompt reporting of deviations from permit conditions in addition to the reporting requirements of the explicit applicable requirements. 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 applicable to various situations may also be applied to specific permits as EPA has done in 40 CFR § 71.6(a)(3)(iii)(B).[10]

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[9] 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."

[10] EPA's rules governing the administration of a 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.(a)(3)(iii)(B)(1)-(4). Under this rule deviation reporting is governed by the time frame specified in the underlying

In the subject case, EPA disagrees with the Petitioner that the permit needs to be supplemented with additional conditions for prompt reporting of deviations as stipulated in 40 CFR § 70.6(a)(3)(iii)(B). Sirmos has selected the use of low VOC content coatings as its method of assuring compliance with the applicable VOC content limits of 6 NYCRR § 228 and § 212. Periodic monitoring for these requirements involve obtaining supplier certifications and analytical testing. *See* 6 NYCRR § 228.5. All certifications and test results must be maintained on site for a period of five years. In addition, Sirmos is required to test each time a new batch of coating is added or changed. *See* Conditions 45, 46, and 50. The test result unambiguously reveals the compliance status of the material tested. Sirmos is prohibited from using coatings with VOC contents that exceed their allowables as specified in 6 NYCRR § 228.3(a). Therefore, any deviation must be quickly corrected by switching to a compliant coating. Deviations at this type of facility usually result from the use of a material that has a VOC content higher than anticipated. The corrective action involves removing the noncompliant material and replacing it with one that is compliant. To minimize the chance for deviations that result from the mixing of unknown VOC content coatings, the permit requires the vendor to provide certification of the VOC content of all coatings supplied. See 6 NYCRR § 228.6. Since ample safeguards are in place to assure compliance with the SIP, deviations are easily determined (no excess emissions resulting from startup, shutdown or malfunction that are associated with a combustion source) and quickly corrected. As such, the Petitioner has not demonstrated that the reporting requirements contained in the Sirmos permit fail to meet the standard set forth in part 70, and

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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.

thus, EPA denies the petition on this issue.

(VI) Startup, Shutdown, Malfunction

Petitioner alleges that the startup/shutdown, malfunction, maintenance and upset provision violates 40 CFR part 70. Petition at 8. Petitioner asserts that the excuse provision included in the permit is not the excuse provision that is in the New York SIP. That is, Condition 59 of the final permit cites 6 NYCRR § 201-1.4, which has not been approved by EPA into the New York SIP. Petitioner argues that the excuse provision in New York's SIP is more restrictive than the provision in current State regulations in that it does not cover violations that occur due to shutdown or upsets. Petitioner asserts that since the SIP rule is the federally enforceable requirement, DEC must delete the words "shutdown" and "upsets." Petition at 8.

In the final permit, DEC removed the "excuse provision" that cites 6 NYCRR § 201-1.4 from the federal side of the Sirmos title V permit and incorporated it into the state-only side of the permit (Condition 59). This condition provides DEC with the discretion to excuse the facility from compliance with applicable state-only emission standards under certain circumstances, based on the specific criteria set forth in 6 NYCRR § 201-1.4. In addition, DEC also included clarifying language in the final Sirmos permit stating 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.[11]

With respect to Petitioner's other allegations regarding the startup, shutdown and malfunction provision (RACT, definition of terms, prompt reporting of deviations, "unavoidable" defense), the removal of the "excuse provision" from the federal side of the permit and the incorporation of the language clearly stating that the "excuse" provision is not available for violations of federal regulations makes moot these concerns. *See* Condition 25.

(VII) Emergency Defense Provision

Petitioner alleges that the emergency defense provision contained in Condition 5 of the permit is in violation of 40 CFR § 70.6(g) in that its reporting requirement sets out a less timely notification schedule. Petitioner notes that 40 CFR § 70.6(g) requires notice of an emergency "within two working days of the time when the emission limitations were exceeded", while the permit requires notification "within two working days after the event occurred."

The language cited by Petitioner is not inconsistent with the requirement in 70.6(g)(3)(iv)

[11] The characterization of this provision as potentially "excusing" certain violation of federal requirements is somewhat misleading. The CAA does not allow for automatic exemptions from compliance with applicable SIP emission limits during periods of start-up, shutdown, malfunction 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 a substantial discretion to the state agency broadly excuses sources from compliance with emission limitations during periods of malfunction or the like, it is the Agency's position that 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.

that the permittee submit notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. Section 70.6(g) provides for an affirmative defense in cases where technology based emission limits have been exceeded due to an emergency, and certain specified conditions are met, including reporting the exceedance within 2 working days. *See* 40 CFR § 70.6(g)(2) and (3)(i)-(iv). Thus, the requirement to report the exceedances is only one of four criteria that must be met before a permittee can avail itself of the affirmative defense. Even if the language cited by Petitioner could reasonably be interpreted as providing the permittee with a less timely notification requirement than part 70, and we disagree that it does, the permittee's other substantive obligations (i.e., evidence that the emergency occurred and the cause can be identified, the facility was being operated properly, certain steps were taken to minimize the emission exceedances) under the emergency provisions of part 70 insure that an affirmative defense will only be available under certain limited circumstances. Additionally, for sources that do not utilize continuous emissions monitors or CEMS, such as Sirmos, it's likely that the facility would be aware that an event occurred even before it knew that emissions were exceeded. In such a circumstance, a report within two working days after an occurrence may even be an earlier report. As such, EPA denies the petition on this point.

(VIII) 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 2. 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 Sirmos 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 the Petitioner that the Sirmos 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 allegation to be without merit, and therefore, denies the petition on this point.

(IX) Periodic Monitoring

The Petitioner's ninth claim is that the proposed Sirmos permit does not assure compliance with all applicable requirements because many individual permit conditions lack adequate monitoring and are not practicably enforceable. Petition at 13. The Petitioner addresses individual permit conditions that allegedly either lack monitoring or are not practicably enforceable. The specific allegations for each permit condition are discussed

below.

Facility-Specific Petition Issues

Inadequate Citations

Petitioner contends that because Conditions 12 through 24, 41 and 42 simply refer generically to 6 NYCRR § 201-6 as the citation for the underlying requirement, it is difficult to locate the actual underlying applicable requirement, and therefore, DEC must include more specific legal citations in the final permit. Petition at 13.

Part 70 requires title V permits to specify and reference the origin of an authority for each term or condition in the permit. 40 CFR § 70.6(a)(1)(i). Thus, EPA agrees that generic citations to an entire subpart can make it difficult for the public to locate the underlying applicable requirement. However, when DEC modified the permit on March 16, 2004, it included more specific references to the underlying applicable requirements in these Conditions. Thus, EPA denies the petition on this issue as it is now moot.

Maintenance of Equipment

Petitioner alleges that Condition 3 of the final permit, which cites 6 NYCRR § 200.7 as an applicable requirement is unenforceable as written. Petition at 14. Petitioner states that this condition which requires pollution control equipment to be maintained according to ordinary and necessary practices, does not explain what Sirmos must do to comply with the condition. Therefore, Petitioner argues, this permit condition must be modified to apply to Sirmos with specificity, and to include monitoring, record keeping, and reporting to assure compliance with

the maintenance requirements.

Permitting authorities have discretion to develop general permit conditions that apply to all title V sources. The maintenance of equipment condition (Condition 3) is a general requirement which is incorporated into all New York title V permits even where no applicable requirement necessitates the use of control equipment. This type of general or generic requirement is commonly found in SIPs. For example, many SIPs contain generic requirements for facilities to maintain all equipment in proper condition and to carry out proper work practices. DEC includes these generic requirements in the general permit conditions section of its title V permits. Thus, even if Condition 3 is not currently applicable to the Sirmos facility, including it in the Sirmos permit does not render the permit deficient.

As a general matter, where control equipment is installed pursuant to an applicable requirement or a source chooses to employ such equipment, appropriate permit conditions are included in the emission units section of the title V permit. As such, EPA denies the petition on this point.

Emergency Defense

Petitioner asserts that a definition for "emergency" should be incorporated into the permit for clarity. Petition at 14. NYPIRG does not attempt to demonstrate or even allege that the failure to include a definition of "emergency" in the Sirmos permit renders it substantively deficient or unenforceable. Moreover, as stated in previous Orders, commonly used regulatory terms or terms that are already defined in the regulations do not have to be defined in the

permit. See e.g., *In Re Suffolk County Bergen Point Sewage Treatment Plant ("Bergen Point"),* Petition No. II-2001-03, at page 12 (December 16, 2002)*; In Re Maimonides Medical Center ("Maimonides"),* Petition No. II-2001-04, at page 12 (December 16, 2002)*; In Re Elmhurst Hospital ("Elmhurst Hospital")*, Petition No. II-2000-09, at page 16 (December 16, 2002). As NYPIRG correctly notes, "Emergency" is defined at 6 NYCRR § 201-2.1(b)(12). Thus, any reference to the term "emergency" in the Sirmos permit would be governed by the definition set forth in the New York regulations. Therefore, EPA denies the petition on this point.

Air Contaminants Collected in Air Cleaning Devices

NYPIRG alleges that while permit Conditions 6 and 7 should continue to be included as general conditions, they must also be included as facility-specific conditions if the facility uses an air cleaning device. Further, these facility-specific conditions must explain how these requirements apply to the facility and include sufficient monitoring to assure compliance. Petition at 14.

Permitting authorities have discretion to develop general permit conditions that apply to all title V sources. The general requirements regarding air contaminants collected in air cleaning devices (Conditions 6 and 7) are incorporated into all New York title V permits even where no applicable requirement necessitates the use of control equipment. This type of general or generic requirement is commonly found in SIPs. DEC includes these generic requirements in the general permit conditions section of its title V permits. Thus, even if Conditions 6 and 7 are not currently applicable to the Sirmos facility, including it in the Sirmos

permit does not render the permit deficient.

As a general matter, where control equipment is installed under an applicable requirement, appropriate permit conditions are included in the emission units section of the title V permit. Therefore, EPA is denying the petition on this issue.

Applicable Criteria, Limits, Terms, Conditions and Standards

Petitioner asserts that Condition 12 which stipulates that the facility operate in accordance with any accidental release plan, response plan, or compliance plans, as well as support documents submitted as part of the permit application is problematic because those referenced documents are not incorporated into the permit.

EPA disagrees with the Petitioner that all types of plans must be incorporated into the title V permit. In certain cases, a facility must comply with a plan that is not part of the title V permit. For instance, risk management plans under CAA § 112(r) need not be incorporated into title V permits. However, EPA does agree that certain documents should be properly cross-referenced in title V permits. For example, where a facility is subject to plans such as a NOx RACT plan or a startup, shutdown and malfunction plan under a maximum achievable control technology ("MACT") standard, the permit must specifically say so and properly incorporate that plan by reference. In this case there is no allegation that this facility is subject to such plan(s).

Because the Petitioner does not allege any specific plans that should have been, but were not included in the permit as an applicable requirement, EPA denies the petition on this

issue.

Compliance Requirements

Petitioner alleges that the permit fails to assure the plant's compliance with its risk management plan and should state whether Sirmos is subject to CAA § 112(r) and provide plan details. Petition at 15.

During the early stages of implementation of New York's title V program, and before the promulgation of the Risk Management Program Rule, *61 Fed. Reg. 31667 (June 20, 1996)*, EPA asked DEC to include a general requirement regarding section 112(r) in all permits. The language in Condition 12 reflects DEC's implementation of this request.

This condition has been updated in the modified permit of March 16, 2004 (See Condition 1-4 in March 16, 2004 permit). While this condition is still general, Petitioner has presented no evidence to suggest that Sirmos is subject to section 112(r) requirements. If a source is subject to section 112(r), its permit must include certain conditions necessary to implement and assure compliance with these requirements. However, Sirmos did not include section 112(r) requirements in its application, nor has it submitted a Risk Management Plan (RMP) to EPA which is responsible for implementing section 112(r) requirements in New York. Therefore, based on the information provided, and absent any information to the contrary, it is reasonable to conclude that section 112(r) does not apply to this source. Accordingly, we find no basis for objecting to the permit on these grounds.

Although we find no basis for objecting to the permit on this issue, we do believe that

DEC must meet its accidental release prevention program obligations under 40 CFR § 68.215(e).[12] This will insure that DEC, EPA, and the public will be able to track a source's compliance with section 112(r) requirements even if the source's applicability fluctuates. Therefore, EPA Region 2 will work with DEC on the appropriate changes to its application and annual compliance certification requirements to insure sources are aware of the section 112(r) requirements, and to insure compliance with these requirements, if applicable.

Six Month Monitoring Reports

Petitioner alleges the permit violates the 40 CFR part 70 requirement that the permittee submit reports of any required monitoring at least every six months. Petition at 15. Petitioner asserts that many conditions in the permit do not include the six month reporting requirement. Instead in several instances it is either left blank or only requires monitoring reports upon request by the agency. In addition, Petitioner asserts that the monitoring reports must contain a summary of all monitoring results, regardless of whether deviations were recorded.

EPA disagrees with the Petitioner that the permit needs to be modified with regard to the reporting requirement. Condition 25 of the permit requires, among other things, that the permittee submit required monitoring reports every six months unless the specific permit condition contains a more stringent reporting requirement. This six month reporting

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[12] DEC has several general section 112(r) obligations, which are found in 40 CFR § 68.215(e), and are further discussed in an April 20, 1999, memorandum from Steven J. Hitte (OAQPS) and Kathleen M. Jones (OSWER) entitled: "Title V Program Responsibilities concerning the Accidental Release Prevention Program." These responsibilities include: (1) verifying that sources register and submit a risk management plan, (2) verifying that sources certify compliance with the requirement to submit a risk management plan, and (3) general enforcement responsibilities.

requirement applies to all monitoring, regardless of whether a frequency was included in the specific condition. Above and beyond what is required by 40 CFR § 70.6(a)(3)(iii), Condition 25 requires the semiannual report to include a summary of the testing results of any emission testing performed during the previous six month reporting period. Therefore, EPA denies the petition on this issue.

Permit Exclusion Provisions

Petitioner alleges that Condition 27 in the permit must be modified to make it clear that enforcement actions against the facility brought by EPA or the public pursuant to the federal citizen suit provision (CAA § 304) are unaffected by issuance of this permit. Petition at 16.

EPA disagrees with the Petitioner on this issue. Omitting such language from the permit does not bar, diminish or in any way affect the right of any person to commence a civil action on his own behalf under Section 304 of the Clean Air Act. However, when the permit was modified in March 2004, this condition was revised and contains the requested clarifying language making this issue moot. *See* Condition BB of March 16, 2004 modified permit.

Required Emissions Tests

The Petitioner alleges that Condition 28 of the permit, "Required Emissions Tests," includes everything required under 6 NYCRR § 202-1.1, except the requirement that the permittee "bear the cost of measurement and preparing the report of measured emissions." The Petitioner goes on to cite EPA's *White Paper Number 2 for Improved Implementation of the*

part 70 Operating Permits Program (White Paper 2") (March 5, 1996), which states that "it is generally not acceptable to use a combination of referencing certain provision of an applicable requirement while paraphrasing other provisions of that same applicable requirement. Such a practice, particularly if coupled with a permit shield, could create dual requirements and potential confusion." *White Paper 2*, Section II.E.3.

The permit unambiguously states that 6 NYCRR § 202-1.1 is an applicable requirement. Further, 6 NYCRR § 202-1.1 places the burden of conducting and reporting any required emissions testing on the permittee. Omitting who shall bear the cost of conducting and reporting mandatory emissions tests from the permit does not relieve the permittee from performing and reporting such tests. EPA does not believe a reasonable interpretation of the permit would lead a reader to conclude that anyone other than the permittee should bear the costs of measuring and testing emissions. For this reason, EPA denies the petition with respect to this issue.

Conditions 31, 32 and 43 (Compliance with Opacity Limitations)

Petitioner alleges that the permit must include monitoring to assure compliance with the opacity limitations contained in Conditions 31, 32, and 43. Petitioner states that DEC must identify each part of the plant where visible emissions are possible and provide a justification for the selected monitoring. Petition at 16.

Condition 31 and 32 set forth the general applicable SIP opacity limit which requires the facility to limit visible emissions to no more than 20 percent opacity (six minute average)

except for one continuous six-minute period per hour of not more than 57 percent opacity. 6 NYCRR § 211.3. Condition 43 contains more specific SIP opacity limits applicable to particular emission units. *See* 6 NYCRR § 228.4. These underlying applicable requirements impose no monitoring of a periodic nature. Accordingly, under 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2) the permit must contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . . . " The permit states that a Method 9 test shall be used to determine compliance with the applicable opacity limitations, but only requires this test to be performed "upon request by regulatory agency." Condition 32. As this condition specifies no frequency, the permit fails to include periodic monitoring sufficient to meet the applicable standard, and therefore, EPA grants the petition on this issue.

DEC is hereby ordered to revise Conditions 31, 32, and 43 of the permit to require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Accordingly, at a minimum, the Sirmos permit must be revised to require daily visible inspections to detect the presence of visible emissions. At any time visible emissions are observed a Method 9 test should be performed. The facility must also keep records of when the daily observations are conducted and retain all results for at least five years. *See* 40 CFR § 70.6(a)(3)(ii)(B). In addition, a report of the daily inspection results must be submitted to DEC every six months to satisfy the semi-annual reporting requirements of 6 NYCRR part 201 and 40 CFR part 70.

Condition 34 (VOC limits)

The Petitioner alleges that maintaining certifications from the coating supplier is insufficient to assure the facility's compliance with VOC limits. NYPIRG states that the supplier cannot be held accountable under this permit and asserts that there is no information available regarding how the supplier knows the VOC content of the coating. In addition, the Petitioner asserts that the rationale behind this monitoring and why DEC believes it is sufficient to assure compliance should be included in the statement of basis. Petition at 16-17.

In this case, the underlying applicable requirement provides for supplier certifications to assure compliance with the VOC limits. *See* 6 NYCRR § 228.5(a). While the supplier is not responsible if Sirmos uses noncompliant coatings in their operations, 6 NYCRR § 228.6 prohibits persons from selling coatings to subject facilities which are prohibited under Part 228. Contrary to Petitioner's argument, Part 228 defines acceptable methods the supplier must use to determine the parameters used to determine the actual VOC content of the as applied coating. *See* 6 NYCRR § 228.5(b). In addition to obtaining supplier certifications, Sirmos is also required to test in accordance with Method 24 of 40 CFR 60, Appendix A, each time a new batch of coating is added or changed. *See* Conditions 45, 46, and 50. Accordingly, EPA believes that ample safeguards are in place to assure compliance with the facility's VOC limits, and therefore, denies the petition with respect to this issue.

Conditions 35, 36, 38, 39 (Open Containers)

The Petitioner alleges that these conditions lack monitoring to assure the facility's compliance with 6 NYCRR § 228.10. Petition at 17.

Conditions 35, 36, 38 and 39 incorporate the requirements of 6 NYCRR § 228.10. This provision prohibits the use of open containers for the handling, storage and disposal of volatile organic compounds. As previously discussed, when the underlying applicable requirement imposes no monitoring of a periodic nature, the permit must contain periodic monitoring in accordance with 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). Therefore, EPA grants the petition on this issue. DEC is hereby ordered to revise Conditions 35, 36, 38, and 39 of the permit to include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. This standard can be met by requiring Sirmos to perform daily inspections for open containers and keep records of when the daily inspections for open containers occur; and in accordance with 40 CFR § 70.6(a)(3)(ii)(B), the source must retain the results of all inspection results for at least five years. In addition, a report of the daily inspection results must be submitted to DEC every six months to satisfy the semi-annual reporting requirements of 6 NYCRR part 201 and 40 CFR part 70.

Condition 44 (Alternative Analytical Methods)

Petitioner alleges that if Sirmos uses alternative analytical methods to monitor a particular coating, the permit must identify the specific method that is to be used. Petition at

17.

Condition 44 states that "[w]here the methods referenced in 6 NYCRR Part 228.5(b) are not applicable, alternate analytical methods for surface coating may be acceptable." EPA agrees with the Petitioner in that any alternative methods for proving compliance must be specified in the permit. 6 NYCRR § 228.5(b) identifies the acceptable methods for determining the volatile content, water content, density, etc. as being presented in Appendix A, Method 24 of 40 CFR 60. The permit unambiguously requires the facility to use Method 24 of 40 CFR part 60, Appendix A (see Conditions 9, 45, 46 and 50), and no alternative analytical methods approved by the Commissioner have been incorporated into the permit. If an alternative method for demonstrating compliance were approved it would need to be incorporated as a requirement of the permit. As such, Petitioner's claim is without merit with respect to this facility. EPA therefore, denies the petition on this issue.

Conditions 47, 51 (VOCs)

Petitioner alleges that these conditions must be revised to indicate whether any coatings used at the facility fall under the exemptions in 6 NYCRR § 228.6(a). Petition at 17.

Conditions 47 and 51 of the proposed permit (note that these have been renumbered to 48 and 52 in the final permit) state that "[n]o person shall sell, specify, or require for use the application of a coating on a part or product at a facility with a coating line described in table 1

or 2 of 6 NYCRR Part 228 if such use is prohibited." This prohibition goes on to list three exceptions: "(1) ...where control equipment has been installed to meet the allowable VOC content limitations...; (2) where a coating system is used which meets the requirements specified in Part 228; and (3) coatings...that have been granted variances for reasons of technological and economic feasibility."

According to the permit, all coatings currently used at the facility meet the VOC content limits required in tables 1 and 2 of 6 NYCRR § 228 without add-on control equipment. If however, in the future Sirmos proposes to use a coating which falls under one of the exemptions, the permit must be modified to include these changes. Therefore, EPA denies the petition on this issue. However, because this petition is being granted on other grounds, DEC should clarify in the statement of basis that the facility does not use any coatings that fall under the exemptions in 6 NYCRR § 228.6(a).

Condition 53 (Surface Coating of Wood Products)

Petitioner asserts that DEC must add monitoring to assure the facility's compliance and describe the rationale for selected monitoring in the statement of basis. Petition at 17.

EPA first notes that the monitoring for the VOC content for all coatings (including wood products) is listed in Condition 34 of the final permit and requires the facility to obtain certifications from the coating supplier/manufacturer. The adequacy of this monitoring

condition has been previously addressed in this Order under the subheading "Condition 34 (VOC limits)." As explained, the monitoring condition to obtain supplier certifications is appropriate for the coating VOC content applicable requirements. The Petitioner has presented no facts to suggest, let alone demonstrate, that the supplier's certification is not adequate to assure Sirmos' compliance with the VOC content limitation. Therefore, EPA denies the petition on this issue.

Conditions 54-58 (Environmental Rating)

The Petitioner alleges that these conditions are unenforceable as a practical matter because the permit fails to indicate the environmental rating issued by the commissioner. Petition at 17.

Conditions 54-58 state: "No person will cause or allow emissions that violate the requirement specified in Table 2, Table 3, or Table 4 of 6 NYCRR Part 212 for the environmental rating issued by the commissioner." Yet, as noted by the Petitioner, the permit does not incorporate the applicable environmental rating for these conditions. EPA accordingly agrees that Conditions 54 through 58 are practicably unenforceable. Further, as the federally applicable requirement contains no monitoring of a periodic nature, these conditions must be supported with periodic monitoring in order to demonstrate compliance with 6 NYCRR § 212.3. Therefore, EPA grants the petition on this issue. DEC is hereby ordered to revise Conditions 54 through 58 of the permit to include the specific requirement for each emission

unit, and include periodic monitoring sufficient to assure the facility's compliance with these requirements. See 40 CFR § 70.6(a)(3)(i)(B) and 6 NYCRR § 201-6.5(b)(2). In addition, a report must be submitted to DEC every six months to satisfy the semi-annual reporting requirements of 6 NYCRR part 201 and 40 CFR part 70.

Permissible Emission Rates and other Requirements in Pre-existing Permits

Petitioner alleges DEC omitted permit limits established from pre-existing permits that are applicable requirements for the Sirmos part 70 permit. Petitioner asserts the SIP makes it clear that the "permissible emission rate" included in SIP-based Part 201 permits is an enforceable requirement. Therefore, Petitioner requests EPA's objection to the Sirmos permit on the basis that it fails to include federally enforceable emission limits from permits previously issued by DEC under a SIP-approved permit program. Petition at 17.

The Petitioner is correct that federally-enforceable conditions from permits issued pursuant to requirements approved into the New York SIP generally must be included in the 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 no "applicable requirements" as defined in the 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). The DEC may announce the intended deletion of inapplicable or obsolete permit conditions in the Permit Review Report (PRR). In its petition, however, NYPIRG makes fails to identify any specific pre-existing permits or conditions that have not been properly incorporated into the title V permit. As such, the Petitioner has not demonstrated, in accordance with CAA § 505(b)(2), that the permit is not in compliance with the Act. Therefore, the petition is being denied with respect to this issue.

III. CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I deny in part and grant in part the petition of NYPIRG requesting the Administrator to object to the issuance of the Sirmos title V permit. This decision is based on a thorough review of the February 25, 2002 permit, and other documents that pertain to the issuance of this permit.

May 24, 2004
Dated

_______/S/________
Michael O. Leavitt
Administrator