BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NO. VI-2016-2
	)	
BUNGE NORTH AMERICA, INC.	)	
DESTREHAN GRAIN ELEVATOR	)	ORDER RESPONDING TO
ST. CHARLES PARISH, LOUISIANA	)	PETITION REQUESTING
	)	OBJECTION TO THE ISSUANCE OF
PERMIT NO. 2520-00048-V5	)	A TITLE V OPERATING PERMIT
	)	
ISSUED BY THE LOUISIANA	)	
DEPARTMENT OF ENVIRONMENTAL QUALITY	)	
	)	

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition on January 24, 2016, (the Petition) from Ms. Cynthia Portera & Ms. Toni Offner (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The Petition requests that the EPA object to the final operating permit no. 2520-00048-V5 (Final Permit) issued by the Louisiana Department of Environmental Quality (LDEQ) to the Bunge North America, Inc. Destrehan Grain Elevator (Bunge or the facility) in Destrehan, St. Charles Parish, Louisiana. The operating permit was proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Louisiana Administrative Code (LAC) 33.III.507. *See also* 40 C.F.R. part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Final Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further below, the EPA denies the Petition requesting that the EPA object to the Final Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The state of Louisiana submitted a title V program governing the issuance of operating permits on November 15, 1993, and revised this program on November 10, 1994. The EPA granted full approval to Louisiana's title V operating permits program in 1995. 60 Fed. Reg. 47296 (September 12, 1995); 40 C.F.R. part 70,

Appendix A. This program, which became effective on October 12, 1995, is codified in LAC, Title 33, Part III, Chapter 5.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. CAA §§ 502(a), 504(a), 42 U.S.C. §§ 7661a(a), 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting and other requirements to assure sources' compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." *Id*. Thus, the title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

B. Review of Issues in a Petition

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

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d)). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(l).[1] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[2]

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

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

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

The EPA has looked at a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the response to comments, or RTC) where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.[5] Another factor the EPA has examined is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").[6] Relatedly, the EPA has pointed out in numerous orders that, in particular cases,

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

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

[5] *See also, e.g.*, *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *In the Matter of Georgia Power Company*, Order on Petitions, at 9–13 (January 8, 2007) (*Georgia Power Plants Order*) (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

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

general assertions or allegations did not meet the demonstration standard. *See, e.g.*, *In the Matter of Luminant Generation Co. – Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013) (*Luminant Order*).[7] Also, if a petitioner did not address a key element of a particular issue, the petition should be denied. *See, e.g.*, *In the Matter of Georgia Pacific Consumer Products LP Plant*, Order on Petition No. V-2011-1 at 6–7, 10–11, 13–14 (July 23, 2012).[8]

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

III. BACKGROUND

A. The Bunge Facility

Bunge North America, Inc. owns and operates a grain elevator on the left bank of the Mississippi River in Destrehan, St. Charles Parish, Louisiana.[9] The Bunge grain elevator began operating in 1962. The facility is a dry bulk grain storage, processing, and handling facility. Grain and grain products are unloaded from barges and rail cars and transferred to storage at the facility. Grain may be cleaned, dried, or screened at the facility, and various products leave the facility by barge. Collected dust is sent to a processing plant or shipped by rail car/truck. The Bunge facility uses a combination of capture and control equipment in order to reduce or minimize particulate emissions. Some of the equipment are partially enclosed, some are fully enclosed, and others are connected to baghouse filters. The LDEQ asserts that these systems offer reduction efficiencies between 70 percent and 99.9 percent. The current permit action (Permit No. 2520-00048-V5) involves a modification to the facility's title V permit, in order to reflect the replacement of

[7] *See also Portland Generating Station Order* at 7 ("[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement]."); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (April 20, 2007); *Georgia Power Plants Order* at 9–13; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).
[8] *See also In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station*, Order on Petition No. VIII-2010-XX at 7–10 (June 30, 2011); *Portland Generating Station Order* at 5–6; *Georgia Power Plants Order* at 10.
[9] Bunge North America, Inc. also owns and operates an oilseed processing plant that is contiguous to the Bunge grain elevator. The LDEQ has issued separate title V permits to these two facilities, and the current action only concerns the Bunge grain elevator permit.

existing baghouses, the addition of new baghouses, the installation of cyclone collectors, and the replacement of two diesel generators with a gas-powered emergency generator.

B. Permitting History

Bunge submitted an application to modify its title V permit on June 25, 2015. The LDEQ published notice of the proposed permit on September 10, 2015, and the public comment period ran from September 10, 2015, until October 12, 2015. The LDEQ submitted a proposed permit to the EPA on October 12, 2015, and the EPA's 45-day review period ran until November 25, 2016. The EPA did not object to the proposed permit. On December 18, 2015, the LDEQ issued the Final Permit along with Public Comments Response Summary (referred to as a RTC).

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on November 25, 2015. Thus, any petition seeking the EPA's objection to the Final Permit was due on or before January 24, 2016. The Petition was received on January 24, 2016, and, therefore, the EPA finds that the Petitioners timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

Claim 1: The Petitioners claim that "EPA must object to the permit because both the permit application and the permit must include a compliance schedule."

Petitioners' Claim: The Petitioners claim that the permit application and permit must include a compliance schedule because Bunge is not in compliance with its existing permits.

The Petitioners assert that title V permits must include a compliance schedule for requirements for which the source is not in compliance at the time of permit issuance. Petition at 7 (citing 42 U.S.C. § 7661c(a), 40 CFR §§ 70.5(c)(8) and 70.6(c)(3), and LAC 33:III.517(E)(4)). The Petitioners also describe title V requirements for required content of compliance schedules, and assert that "Title V permits must spell out enforceable, specific steps to be taken with sources with histories of noncompliance in order to return those sources to compliance." *Id*. at 7.

The Petitioners allege that "Bunge has repeatedly violated the terms of its Permit, including a violation that resulted in an enforcement action which commenced in 2013. This enforcement action has not concluded and there is no indication that the facility has been brought into compliance with the Louisiana Environmental Quality Act." *Id*. at 4. The Petitioners present a chart, which the Petitioners claim "notes the facility's extensive non-compliance history in recent years." *Id*. at 4–6. The chart documents a number of inspection reports, warning letters, and reports related to the LDEQ enforcement actions, along with a brief summary of what each document referenced in the chart contains. The Petitioners conclude: "Because Bunge is not in compliance with its existing permits, it must include a compliance schedule in this permit application, and LDEQ must include a compliance schedule in Bunge's permit." *Id*. at 6.

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

As the Petitioners observe, under Louisiana's EPA-approved title V program regulations, a compliance schedule is required in the permit application and the permit itself for applicable requirements with which the source is not in compliance at the time of permit application submittal. LAC 33:III.517(E)(4) & 507(H)(3).[10] Therefore, in claiming that the EPA must object to the Final Permit because a compliance schedule is required, the Petitioners must demonstrate to the EPA that the source was not in compliance with applicable requirements at the time of permit application submittal. As discussed above, the CAA expressly places this burden on the petitioner; a petitioner may not merely raise an issue for the EPA and thereby obligate the EPA to investigate and, if appropriate, object. *See* CAA § 505(b)(2). The EPA will not object to a permit where, as here, the Petitioners have provided no specific evidence to demonstrate that the facility is not in compliance with the Act. *See, e.g.*, *Georgia Power Plants Order at* 9–10.

Here, the Petitioners allege broadly that "Bunge has repeatedly violated the terms of its Permit" and that "Bunge is not in compliance with its existing permits." Petition at 6. However, the Petitioners do not identify any permit terms with which Bunge was allegedly not in compliance with at the time of permit application. Nor do the Petitioners identify any applicable statutory or regulatory requirements that Bunge allegedly violated. The Petitioners' general assertions are not sufficient to demonstrate that Bunge was not in compliance with applicable requirements or, accordingly, that a compliance schedule must be included in the facility's title V permit.

The only evidence provided by the Petitioners is a chart documenting a number of inspection reports, warning letters, and conference reports related to the LDEQ enforcement actions. At most, this chart and accompanying summaries indicate that the LDEQ has routinely inspected the Bunge facility, noted areas of concern, and initiated investigations or some form of enforcement proceedings. The brief summaries accompanying each item on the chart do not, in and of themselves, demonstrate that Bunge was not in compliance with any applicable requirements or permit conditions. The Petitioners do not specifically explain how any of the chart items demonstrate Bunge's noncompliance with applicable requirements.

Moreover, the Petitioners' general allegations that an enforcement action was commenced in 2013, that the enforcement action has not concluded, and that "there is no indication that the facility has been brought into compliance with the Louisiana Environmental Quality Act" are insufficient to demonstrate noncompliance. As an initial matter, the EPA observes that it is unclear from the information included in the Petition whether any official enforcement action was initiated concerning alleged violations of a federal applicable requirement. Furthermore, even assuming *arguendo* that such an official enforcement action was initiated, the EPA notes that the mere fact that an enforcement action has been initiated is not sufficient to demonstrate noncompliance with applicable requirements for permitting purposes. *See, e.g.*, *Georgia Power Plants Order* at 6–9, *upheld by Sierra Club v. Johnson*, 541 F.3d 1257, 1267–68 (11th Cir.

[10] These requirements derive from federal requirements that title V permit applications and title V permits must include a compliance schedule for applicable requirements for which a source is not in compliance at the time of permit issuance. *See* 42 U.S.C. § 7661c(a); 40 CFR §§ 70.5(c)(8) & 70.6(c)(3).

2008). Moreover, the Petitioners do not address any specific aspects of ongoing enforcement actions or otherwise explain why the circumstances underlying such enforcement actions demonstrate that Bunge remained out of compliance with any particular permit term or applicable requirement at the time of permit application or issuance.

The EPA also notes that the LDEQ responded to public comments concerning Bunge's compliance history and the alleged need for a compliance schedule. The LDEQ explained that "unless there is an applicable requirement with which Bunge is *currently* out of compliance, there is no need for a compliance schedule." RTC at 7. The LDEQ provided a short description of an enforcement action referenced by the Petitioners, and concluded that "there are no outstanding compliance obligations that must be resolved before some future date. Accordingly, a schedule of compliance is not required." *Id*. at 8. Although the LDEQ released its RTC on December 18, 2015 (more than 1 month before the Petition was submitted), the Petition does not acknowledge or address the LDEQ's response. As discussed in Section II.B of this Order,[11] failure to address the permitting authority's reasoning—including that found in the responses to public comments—constitutes further grounds for the EPA's determination that the Petitioners have not demonstrated grounds for the EPA to object. *See, e.g.*, *MacClarence v. EPA*, 596 F.3d 1123, 1132–33 (9th Cir. 2010).

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

Claim 2: The Petitioners claim that "EPA must object to the permit because . . . the construction activity at issue ought to have been determined to be a "Substantial Modification," requiring an Environmental Assessment Statement."

Petitioners' Claim: The Petitioners assert that the Bunge modification should have been considered a "Substantial Modification," and therefore Bunge should have provided an Environmental Assessment Statement (EAS) of the project's impacts.

The Petitioners claim that when applying for a "Substantial Modification" in Louisiana, a permit applicant must complete an EAS. Petition at 8. The Petitioners note that a "Substantial Modification" is defined as: "Any modification that results in a significant increase in the amount of any regulated air pollutant or results in the significant emission of any air pollutant not previously emitted (from LAC 33:I.Chapter 15). It should be noted that this is NOT the same as a Significant Modification." *Id*. at 8 (citing the LDEQ's 2013 *Louisiana Guidance for Air Permitting Actions*).

The Petitioners claim that the LDEQ labeled the current activity as a "Significant Modification." The Petitioners cite Louisiana's definition of significant modification: "Significant modification procedures shall be used for any permit revision needed to incorporate a change which does not qualify as an administrative amendment and does not qualify as a minor modification." Petition at 8 (quoting LAC 33:III.527). The Petitioners acknowledge that "[a] 'Substantial Modification' and a 'Significant Modification' are not the same thing under Louisiana law." *Id*. at 8. The Petitioners also claim that, "By defining Bunge's construction activity as a 'Significant

[11] *See supra*, p. 3 and fn. 5.

Modification' but not a 'Substantial Modification,' LDEQ did not require Bunge to complete the Environmental Assessment Statement." *Id*. at 8–9.

The Petitioners also claim that the current permit action was labeled by the EPA as a "Major Modification," citing the EPA Region 6 air permits public notice website. *Id*. at 8. The Petitioners claim that, "Because EPA has determined this construction activity is a 'Major Modification,' the Petitioners believe it is a 'Substantial Modification' and therefore an Environmental Assessment Statement should be required." *Id*. at 9.

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

As an initial matter, this claim was not raised with reasonable specificity during the public comment period. Section 505(b)(2) of the Act, 42 U.S.C. § 766ld(b)(2), and 40 C.F.R. 70.8(d) state that a petition to object to a title V permit shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period unless the petitioner demonstrates that it was impracticable to raise such objections during the public comment period or unless the grounds for such objection arose after the public comment period. A title V petition should not be used to raise issues to the EPA that the state has had no opportunity to address, and the requirement to raise issues "with reasonable specificity" places a burden on the petitioner, absent unusual circumstances, to adduce before the state the evidence that would support a finding of noncompliance with the Act. *See, e.g.,* 56 Fed. Reg. 21712, 21750 (1991); *Luminant Order* at 5. Here, commenters raised general concerns regarding the need for an "IT analysis," which appears to be related to an EAS under state law, and claimed that "Bunge has never been required to submit an [EAS]."[12] The comments contain no argument that the LDEQ was in error for failing to treat the action as a "Substantial Modification," nor any citation to the LDEQ guidance that the Petitioners now rely on in support of their claim that a "Substantial Modification" triggers an EAS.[13] Overall, the fundamental premise of the Petitioners' claim—that the requirement to conduct an EAS was triggered by a "Substantial Modification" at the Bunge facility—was not raised during the public comment period. As a result, the LDEQ was not alerted to this claim and did not have an opportunity to respond to it in its RTC (although the LDEQ did explain on separate grounds why it does not believe an EAS is required). *See* RTC 5–6.[14] This claim fails the reasonable specificity requirement. *See Luminant Order* at 6. The Petitioners have not demonstrated that it was impracticable to raise such objections during the comment period, and there is no basis for finding that grounds for such

[12] Public Comments, EDMS Doc. ID No. 9958022, at pdf page 3 (October 12, 2015).
[13] Nor do the comments discuss how the permit action's purported classification as a "Significant Modification" or a "Major Modification" would trigger such requirements. Commenters tangentially assert, "It is imperative that the LDEQ perform this IT analysis prior to issuing this permit, because Bunge's calculations show that these significant modifications are expected to increase particulate matter and carbon monoxide emissions from this facility," and that "the permit at question here . . . requests a significant modification to the facilities' Part 70 Air Operating Permit." Public Comments, EDMS Doc. ID No. 9958022, at pdf page 4 (October 12, 2015). However, these statements do nothing to connect a "Significant Modification" to a "Substantial Modification" or otherwise suggest why a "Significant Modification" to a title V permit would trigger the requirement to conduct an EAS.
[14] The EPA notes that the Petitioners entirely failed to respond to, or even acknowledge, the LDEQ's points regarding the need for an EAS in the RTC. As discussed above in Section II.B of this Order, in order for petitioners to demonstrate that a permit is flawed with respect to an applicable requirement, the EPA expects petitioners to address the state's reasoning. *See MacClarence*, 596 F.3d at 1132–33.

objection arose after that period. Therefore, the EPA denies the Petition as to this claim, because it was not raised with reasonable specificity during the public comment period.

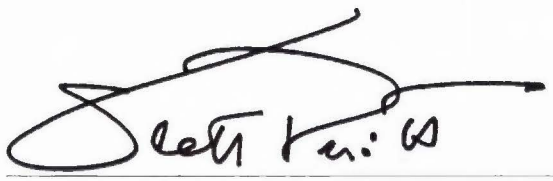
Even if the Petitioners had raised this claim with reasonable specificity during the public comment period, the EPA finds that the Petitioners have not demonstrated that the requirement to conduct an EAS is a federal "applicable requirement" for title V permitting purposes. *See* 40 C.F.R. § 70.2 (defining "applicable requirement"). The Petitioners did not identify any provision from the CAA, the EPA's implementing regulations, or any provisions from the LDEQ's state implementation plan or approved title V program regulations that would require an EAS. The only authority cited by the Petitioners in support of their assertion that a "Substantial Modification" (a term of art under state law) triggers the obligation to prepare an EAS was a 2013 guidance document prepared by the LDEQ. The EPA observes that the state authorities concerning the obligation to prepare an EAS—namely, Louisiana R.S. 30:2018(A)—appear to be state-only requirements (*i.e.*, not applicable requirements for title V purposes). As such, whether an EAS was required for the Bunge facility is not an appropriate issue for the EPA's consideration in a title V petition. *See* CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2) (grounds for granting petition "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of [the CAA]").

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

V. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2), and 40 C.F.R. § 70.8(d), I hereby deny the Petition as described above.

Dated: JUN 07 2017



E. Scott Pruitt
Administrator