BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NO. V-2016-21
	)	
WAUPACA FOUNDRY, INC. PLANTS 2/3	)	ORDER RESPONDING TO
WAUPACA COUNTY, WISCONSIN	)	PETITION REQUESTING
	)	OBJECTION TO THE ISSUANCE OF
PERMIT NO. 469033840-P20	)	A TITLE V OPERATING PERMIT
	)	
ISSUED BY THE WISCONSIN	)	
DEPARTMENT OF NATURAL RESOURCES	)	
	)	

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated December 1, 2016, (Petition) from Mr. Philip Nolan (Petitioner), 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 operating permit no. 469033840-P20 (Permit) issued by the Wisconsin Department of Natural Resources (WDNR) to the Waupaca Foundry, Inc. Plants 2/3 (Waupaca Foundry Plants 2/3 or facility) in Waupaca County, Wisconsin. The operating permit was proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Wis. Stat. §§ 285.60–285.69. *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 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 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 Wisconsin submitted a title V program governing the issuance of operating permits on January 27, 1994. The EPA granted full approval of Wisconsin's title V operating permit program in 2001. 66 Fed. Reg. 62951 (December 4, 2001). This program, which became effective on November 30, 2001, is codified at Wis. Stat. §§ 285.60–285.69 and Wis. Adm. Code §§ 407.01–407.16.

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." 57 Fed. Reg. at 32251. 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]

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

[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.

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, 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-

[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)*.

05 at 9 (January 15, 2013).[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.

C. Regulation of Hazardous Air Pollutants

Section 112 of the CAA establishes the federal requirements for regulating emissions of hazardous air pollutants (HAPs). CAA § 112(b) contains an initial list of HAPs, including benzene. CAA § 112(c) requires EPA to list certain sources that emit HAPs, and section 112(d) requires the EPA to promulgate emission standards to regulate HAPs from listed source categories. These standards are known as National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA is required to set standards for major sources based on the maximum available control technology (MACT), and such standards are therefore also known as MACT standards. NESHAP are promulgated for listed source categories and codified in 40 C.F.R. part 63. For example, the NESHAP for Iron and Steel Foundries are located at 40 C.F.R. part 63, subpart EEEEE. Where a source is subject to the subpart EEEEE NESHAP, these standards are applicable requirements for title V purposes, and applicable provisions of these standards must be included in a source's title V permit.

III. BACKGROUND

A. The Waupaca Foundry Plants 2/3 Facility

Waupaca Foundry, Inc. (formerly ThyssenKrupp Waupaca) is headquartered and owns three iron foundries in the city of Waupaca, Waupaca County, Wisconsin. This Petition concerns Waupaca

[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.

Foundry Plants 2/3.[9] The Plants 2/3 facility produces gray iron castings for light vehicle, agriculture, commercial vehicle, construction, material handling, heating, power tools, power transmission, and infrastructure markets.

B. Permitting History

WDNR issued an initial title V permit for Waupaca Foundry Plants 2/3 on December 13, 2004. On September 2, 2015, Waupaca Foundry submitted its second permit renewal application to WDNR. WDNR issued and published notice of a draft renewal permit on August 20, 2016, along with a Preliminary Determination for the draft permit. On September 27, 2016, Philip Nolan submitted written comments and testified at a public hearing on the Draft Permit. On October 17, 2016, WDNR submitted a proposed permit to the EPA for its 45-day review period. Along with the proposed permit, WDNR also issued a RTC Memorandum dated October 12, 2016. The EPA's 45-day review period on the proposed permit ended on December 1, 2016. The EPA did not object to the proposed permit. On November 28, 2016, WDNR issued the final title V renewal permit for Waupaca Foundry Plants 2/3.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Petitioner's Claim: The Petitioner raises allegations concerning benzene emissions from the Waupaca Foundry Plants 2/3 facility. These related allegations involve CAA § 112, the NESHAP for iron and steel foundries (located at 40 C.F.R. part 63 subpart EEEEE), health impacts, modeling, and Wisconsin state-only HAP rules.

The Petitioner broadly claims that the permit does not comply with applicable requirements of 40 C.F.R. part 63 subpart EEEEE, repeatedly alluding to the "definition" of benzene, CASRN 71-43-2. *See* Petition.[10] The Petitioner asserts, "Since this permit-renewal must comply with Subpart EEEEE the definition of Benzene must apply, be part of this title V permit-renewal." *Id*. The Petitioner claims, "Subpart EEEEE Table 1 lists hazardous air contaminants. Legend 40 CFR s. 63.7760 specifies that major sources like this foundry operation must follow, comply with, all Section 112 definitions. Section 112(b) definition of Benzene / CASRN 71-43-2 specifies the effects of quantifiable, measurable benzene concentrations on human health." *Id*.

The Petitioner, citing exhibits containing emissions inventories, asserts that "Waupaca Plant 2/3 actual emission has inadvertently created and sustained lethal HAP concentration in Waupaca County that exceeds federal definition CASRN 71-43-2. Part of this definition informs / states that benzene concentration than 4.95 $\mu g/m^3$ creates significant human inhalation risks for cancer." *Id*. The Petitioner briefly also discusses HAP modeling conducted by WDNR, as well as modeling the Petitioner conducted. The Petitioner asserts that the Petitioner's analysis and

[9] Although Waupaca Foundry, Inc. owns one other foundry (Plant 1) in Waupaca County, Wisconsin, that facility is located on a separate property roughly two miles from Plants 2/3. Plants 2/3 operate under a separate title V permit from Plant 1. The EPA responded to a petition (Plant 1 Petition) submitted by the same Petitioner challenging the Waupaca Plant 1 permit in its July 2016 Order. *See In the Matter of Waupaca Foundry, Inc. Plant 1*, Order on Petition No. V-2015-02 (July 14, 2016) (*Waupaca Plant 1 Order*).

[10] The Petition was transmitted as text in the body of an email and, as such, is not individually paginated. Thus, this Order refers to the Petition generally, rather than citing specific pages.

modeling of HAP emissions "is consistent with Section 112(b), i.e. Benzene / CASRN 71-43-2 definition." *Id*.

Finally, the Petitioner claims that WDNR mistakenly applied Ch. NR 445 during its permit renewal. The Petitioner cites some of WDNR's RTC, where WDNR explained, "Ch. NR 445, Wis. Adm. Code, is a state only rule and is not a requirement of Title V permitting requirements under the Clean Air Act." *Id*. (quoting RTC at 2–3). The Petitioner also reproduces a statement from the EPA's *Waupaca Plant 1 Order*, where the EPA explained, "NR 445.08 regulations are not part of Wisconsin's SIP, are not applicable requirements under title V, and are therefore not appropriate to address in a title V petition." *Id*. (quoting *Waupaca Plant 1 Order* at 9). The Petitioner concludes that, "Since NR 445.08 regulations are not appropriate in a title V petition they must not have been appropriate / applied during this title V permit-renewal determination." *Id*.

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

As discussed above, under CAA § 505(b)(2), a petitioner must demonstrate that "the permit is not in compliance with the requirements" of the CAA before the EPA will object to the permit. 42 U.S.C. § 7661d(b)(2). Moreover, under section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA. *MacClarence*, 596 F.3d at 1130-33; *Sierra Club v. Johnson*, 541 F.3d at 1266-267; *Citizens Against Ruining the Environment*, 535 F.3d at 677-78; *Sierra Club v. EPA*, 557 F.3d at 406; *Whitman*, 321 F.3d at 333 n.11. Here, the Petitioner's allegations, similar to those addressed in the EPA's *Waupaca Plant 1 Order*, do not demonstrate that the Waupaca Plants 2/3 Permit is not in compliance with any applicable requirements of the CAA.[11] The Petitioner has not made this demonstration with respect to the "definition" of benzene, the 4.95 $\mu g/m^3$ concentration, health impacts, modeling, or any other claims involving HAP emissions from the Waupaca Foundry Plants 2/3 facility. The EPA provides below more detailed responses to the issues raised in the Petition.

"Definitions" in CAA § 112 and the Iron and Steel Foundries NESHAP

With respect to the Petitioner's claims involving CAA § 112 and the Subpart EEEEE NESHAP, the Petitioner asserts, "Since this permit-renewal must comply with Subpart EEEEE the

[11] As noted above, on July 14, 2016, the EPA issued an Order (*Waupaca Plant 1 Order*) denying a similar petition submitted by the same Petitioner. The Plant 1 Petition contained claims similar to those presented in the Plants 2/3 Petition at issue here, including various allegations involving CAA § 112, the subpart EEEEE NESHAP, benzene concentration thresholds, health impacts, and modeling. In the EPA's *Waupaca Plant 1 Order*, the EPA provided background on the interaction between CAA § 112 and the specific standards (*e.g.*, those in the subpart EEEEE NESHAP) that apply to individual facilities and that must be included in a facility's title V permit. *See Waupaca Plant 1 Order* at 3, 7–8. The EPA also explained that many of the Petitioner's characterizations of CAA § 112 and the subpart EEEEE NESHAP (including those related to risk thresholds or benzene concentration values) were incorrect, and that the Petitioner failed to demonstrate that any particular applicable requirements from the subpart EEEEE NESHAP were not correctly addressed in the Plant 1 Permit. *See id*. at 7–8. The EPA also addressed the relationship between title V permits and state-only modeling requirements. *See id*. at 8–9. The EPA's *Waupaca Plant 1 Order* was transmitted directly to the Petitioner and was also available on the EPA's public database (*https://www.epa.gov/title-v-operating-permits/title-v-petition-database*) more than four months before this Petition was submitted. This Petition contains similar claims to those the EPA previously addressed in the Waupaca Plant 1 Order..

definition of Benzene must apply, be part of this title V permit-renewal." Petition. However, although the Petition repeatedly refers to the "Section 112(b) definition" and the "federal definition" of benzene or CASRN 71-43-2,[12] it is unclear to what the Petitioner is referring. To the extent that the Petitioner is claiming that CAA § 112(b) or any provision within the subpart EEEEE NESHAP "define" or contain a definition of benzene, this is incorrect—neither authority contains a "definition" of benzene.

The Petitioner's specific citations to provisions in 40 C.F.R. part 63 subpart EEEEE do not illuminate what "definition" must be incorporated into the Permit. The Petitioner claims that "40 CFR s. 63.7760 specifies that major sources like this foundry operation must follow, comply with, all Section 112 definitions," and that "Subpart EEEEE Table 1 lists hazardous air contaminants." Petition. These assertions are not correct; 40 C.F.R. § 63.7760 actually specifies that Table 1 to subpart EEEEE lists certain general NESHAP provisions to which iron and steel foundries are subject. The Petitioner does not cite to or explain which, if any, of these general part 63 provisions (or any other specific provisions) are relevant to the Petitioner's concerns. In other words, the Petitioner does not identify any specific "definitions" that the Petitioner believes to be applicable requirements that must be included in the Waupaca Foundry Plants 2/3 Permit. In fact, contrary to the Petitioner's suggestion, there are no provisions within the subpart EEEEE NESHAP, nor within the part 63 general provisions (including the definitions section), that actually "define" benzene. *See*, *e.g.*, 40 C.F.R. §§ 63.2, 63.7765.[13]

Moreover, the Petitioner's suggestion that a "definition" of benzene would give rise to applicable requirements that would need to be included in a source's title V permit is incorrect. For example, CAA § 112(b) and any relevant "definitions" in the EPA's part 63 regulations do not, in and of themselves, establish any substantive applicable requirements related to benzene emissions that must be included in a source's title V permit. *See Waupaca Plant 1 Order* at 7 (explaining that "CAA § 112(b) . . . does not include requirements that apply directly to sources" and that "40 C.F.R. § 63.7765 . . . does not contain any substantive requirements"). Rather, applicable requirements related to HAP emissions (including benzene) from iron and steel foundries are specified in regulations in the subpart EEEEE NESHAP. For example, the subpart EEEEE NESHAP establishes, among other things, emission limitations, work practice standards, operation and maintenance requirements, compliance requirements, and monitoring, recordkeeping, and reporting requirements. These specific provisions, where applicable to a particular facility, are required to be included within the facility's individual title V permit. Here, just as the EPA previously indicated, "The Petitioner has not provided any analysis that the

[12] When referring to the "definition" of benzene, the Petitioner also repeatedly references "CASRN 71-43-2," the CAS Registry Number for benzene. A CAS Registry Number is simply a unique numerical identifier associated with a particular chemical substance. CASRN 71-43-2 identifies benzene, and is listed next to benzene on the CAA § 112(b) list of hazardous air pollutants. However, CASRN 71-43-2 is not itself a "definition" and does not "specify the effects of quantifiable, measurable benzene concentrations on human health." Petition.

[13] The EPA observes that among the part 63 general provisions applicable to iron and steel foundries are the general definitions in 40 C.F.R. § 63.2. Also, the subpart EEEEE NESHAP contains a section with definitions specifically applicable to iron and steel foundries. 40 C.F.R. 63.7765. However, the Petitioner does not cite to either of these sections, nor does the Petitioner specify any "definition" within these sections that might be relevant to the Petitioner's concerns. Neither of these sections contain a definition of benzene. Perhaps the Petitioner intended to refer to the definition of "hazardous air pollutant," which "means any air pollutant listed in or pursuant to section 112(b) of the Act." 40 C.F.R. § 63.2. Benzene is a hazardous air pollutant listed in CAA § 112(b) but, as noted above, section 112 does not "define" benzene.

facility's title V permit terms and conditions incorporating the subpart EEEEE NESHAP requirements applicable to the facility are inadequate." *Waupaca Plant 1 Order* at 8.

The EPA also notes that WDNR responded to the Petitioner's similar public comments relating to "definitions" in CAA § 112(b) and the subpart EEEEE NESHAP, but the Petition did not acknowledge WDNR's explanation on this point.[14] As explained above in Section II.B of this Order, the EPA expects a petitioner to address the permitting authority's final reasoning, including its RTC. Overall, the EPA finds that the Petitioner has not identified any applicable requirement related to CAA § 112, the subpart EEEEE NESHAP, or the Petitioner's purported "definition" of benzene that must be included in the facility's Permit.

Health Impacts and Modeling of HAP Emissions

The Petitioner asserts: "Waupaca Plant 2/3 actual emission has inadvertently created and sustained lethal HAP concentration in Waupaca County that exceeds federal definition CASRN 71-43-2. Part of this definition informs / states that benzene concentration than 4.95 $\mu g/m^3$ creates significant human inhalation risks for cancer." *Id*. However, the Petitioner does not explain how emissions from the Waupaca Foundry Plants 2/3 apparently "exceed" any federal applicable requirement. *See Waupaca Plant 1 Order* at 8 ("[T]he Petitioner does not explain how the 'Waupaca Foundry's emission concentration exceeds NESHAP.'"). The Petitioner has not identified any such applicable requirement in the CAA; instead, the Petitioner refers to the unidentified "definition" discussed above. Although the Petitioner asserts that that the "Section 112(b) definition of Benzene / CASRN 71-43-2 specifies the effects of quantifiable, measurable benzene concentrations on human health," Petition, this is incorrect. As previously explained: "Section 112(b) does not address concentration values but merely contains an initial list of HAP and provisions relating to modification of that list." *Waupaca Plant 1 Order* at 7. Further, it is unclear to what the Petitioner's 4.95 $\mu g/m^3$ concentration refers, as the Petitioner does not identify the origin of this value.[15] As the EPA previously stated, "nothing in CAA § 112 or the

[14] Specifically, WDNR explained "Section 112(b) establishes a list of hazardous air pollutants that is composed of specific chemical compounds and compound classes to be used to identify source categories for which the EPA will promulgate emission standards. The list of hazardous air pollutants does not specify emissions, ambient concentrations, bioaccumulation, or deposition of the hazardous substances that may cause adverse effects to human health or the environment. 40 CFR s. 63.7760 states: '*Table 1 of this subpart shows which parts of the General Provisions in 40 CFR ss. 63.1 through 63.15 apply to you*'. Table 1 in 40 CFR 63, Subpart EEEEE states the definitions in 40 CFR s. 63.2 are applicable to this subpart. 40 CFR s. 63.2 defines hazardous air pollutant as '*any air pollutant listed in or pursuant to section 112(b) of the act*'. Neither this subpart nor the definition of a hazardous air pollutant requires the commentators 'definition of benzene' to be incorporated into a Title V permit subject to this subpart." RTC at 1.

[15] In a prior petition on the Waupaca Foundry Plant 1 permit, the Petitioner cited a value of 4.59 $\mu g/m^3$, rather than 4.95 $\mu g/m^3$. Although not explicitly stated in this Petition, the Petitioner's references to the "definition" of benzene and the 4.95 $\mu g/m^3$ concentration, taken together, may be related to the Integrated Risk Information System (IRIS) risk assessment for benzene, which the Petitioner cited in the prior petition. The IRIS assessment for benzene—unlike any provisions identified in CAA § 112 or the Subpart EEEEE NESHAP—may indeed "specify the effects of quantifiable, measurable benzene concentrations on human health" and could indicate that "benzene concentration greater than 4.95 $\mu g/m^3$ creates significant human inhalation risks for cancer." Petition. However, this IRIS assessment is not a "federal definition" or a "Section 112(b) definition" of benzene. It is an informational risk assessment. Moreover, as the EPA explained in the *Waupaca Plant 1 Order*, this IRIS assessment, and the inhalation risks and concentration values contained therein, do not have any independent legal or regulatory effect in CAA title V, and are not applicable requirements for title V permitting purposes. *See Waupaca Plant 1 Order* at 7 n.2. ("As the

subpart EEEEE NESHAP references the concentration value that the Petitioner cites." *Waupaca Plant 1 Order* at 7. In other words, the Petitioner's assertions are simply incorrect. Section 112 and the subpart EEEEE NESHAP neither "define" benzene nor do they directly establish health impact concentration thresholds.[16] Overall, the Petitioner has not identified any applicable requirement relating to these claims or otherwise demonstrated any flaw in the current Permit related to the alleged health impacts of emissions from the facility.

With respect to modeled emission concentrations and health impacts, the Petitioner claims that the Petitioner's modeling of Waupaca Foundry Plants 2/3 HAP emissions and health impacts "is consistent with Section 112(b), i.e. Benzene / CASRN 71-43-2 definition." Petition. However, the Petitioner has not demonstrated how this modeling is relevant to any federal applicable requirement. *See Waupaca Plant 1 Order* at 8 (citing *In the Matter of BP Exploration (Alaska), Inc. Gathering Center #1*, Order on Petition, at 9–10 (April 20, 2007)). Neither CAA § 112(b), nor the subpart EEEEE NESHAP, nor any "definitions" in 40 CFR part 63 establish applicable requirements for a source, in its title V permit, to model the concentrations or health impacts of benzene emissions. To the extent that the Petitioner's discussion of HAP modeling relates to modeling conducted by WDNR under state-only NR 445, the EPA does not address those issues here, as discussed below.

Wisconsin State-only HAP Requirements

Regarding the state-only HAP regulations in Ch. NR 445 of Wisconsin's Administrative Code, it appears that the Petitioner has misunderstood statements made by WDNR and the EPA. WDNR, in responding to comments on the current permit action, indicated that "Ch. NR 445, Wis. Adm. Code, is a state only rule and is not a requirement of Title V permitting requirements under the Clean Air Act. As such, EPA has no authority over how the state of Wisconsin interprets or implements the requirements of ch. NR 445, Wis. Adm. Code." RTC at 2–3. As the EPA previously explained, "These regulations are not part of Wisconsin's SIP, are not applicable requirements under title V, and are therefore not appropriate to address in a title V petition." *Waupaca Plant 1 Order* at 9; *see* 40 C.F.R. §§ 70.2 (defining "applicable requirement" for title V permitting purposes), 70.6(a) (listing standard title V permit content requirements), 70.6(b)(2) (requiring that terms and conditions not required by the CAA or any applicable requirements must be specifically labeled in a source's title V permit as not federally enforceable, and providing that these terms are not subject to, among other things, the EPA review and petition requirements of 40 C.F.R. § 70.8); *see also In the Matter of Hu Honua Bioenergy Facility*, Order on Petition No. IX-2011-1, at 21 (February 7, 2014); *In the Matter of Harquahala Generating Station Project*, Order on Petition, at 5 (July 2, 2003) ("State-only terms are not subject to the requirements of Title V and hence are not be [sic] evaluated by EPA unless those terms are drafted in a way that might impair the effectiveness of the permit or hinder a permitting

EPA previously explained: 'IRIS is an EPA program designed to identify and characterize health hazards of toxic chemicals found in the environment. The risk levels included in IRIS assessments, however, do not carry independent legal weight and are not directly linked to CAA § 112, subpart EEEEE regulations, or any other federally enforceable permit terms. Therefore, any numerical concentration thresholds found in IRIS risk assessments are not 'applicable requirements' under the CAA that must be addressed in a title V operating permit.").

[16] Portions of the subpart EEEEE NESHAP establish technology-based emission limits that apply to specific emissions units (rather than health-based ambient concentration thresholds). *See* 40 C.F.R. § 63.7690. However, the Petitioner does not appear to raise any challenges concerning these specific emission limits.

authority's ability to implement or enforce the permit."). Thus, the EPA is not, in this Order, addressing any issues raised in the Petition related to NR 445 requirements, including claims related to the applicability of NR 445[17] and WDNR's modeling of benzene emissions and alleged health impacts. The Petitioner has not demonstrated any basis for the EPA to object to the Waupaca Foundry Plants 2/3 Permit with respect to any Wisconsin state-only requirements.

Moreover, the Petitioner is incorrect in asserting that because state-only requirements are generally not subject to the EPA's review in evaluating a title V permit or in responding to a petition challenging a title V permit, it was improper for WDNR to conduct its NR 445 analysis in the course of this title V permit proceeding. On the contrary, permitting authorities may conduct analyses required by state law and include state-only requirements in a title V permit at their discretion, provided that any state-only conditions are clearly designated in the permit as such. *See* 40 C.F.R. § 70.6(b)(2); *Harquahala Order* at 5.

For the foregoing reasons, the EPA denies the Petitioner's 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

[17] The EPA observes that WDNR appeared to address some of the Petitioner's concerns by explaining the interaction between NR 445 and the federal subpart EEEEE standards. *See* RTC at 2 ("[T]the hazardous air pollutant emissions from emission units, operations or activities that are covered by an emission standard under s. 112 of the Clean Air Act are not subject to regulation under ch. NR 445, Wis. Adm. Code pursuant to s. NR 445.01(b), Wis. Adm. Code. . . . Many of the emission units at Waupaca Foundry are subject to an emission standard under 40 CFR 63, Subpart EEEEE. Thus, only a subset of the potential hazardous air pollutants discharged from the facility are subject to review and regulation under ch. NR 445, Wis. Adm. Code.").