

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
)	
ALGONQUIN GAS TRANSMISSION LLC)	ORDER RESPONDING TO
)	PETITIONS REQUESTING
SOUTHEAST COMPRESSOR STATION)	OBJECTION TO THE ISSUANCE OF
PUTNAM COUNTY, NEW YORK)	TITLE V OPERATING PERMITS
PERMIT No. 3-3730-00060/00013)	
)	
STONY POINT COMPRESSOR STATION)	
ROCKLAND COUNTY, NEW YORK)	
PERMIT No. 3-3928-00001/00027)	
)	
ISSUED BY THE NEW YORK STATE DEPARTMENT OF)	
ENVIRONMENTAL CONSERVATION)	
)	

ORDER DENYING PETITIONS FOR OBJECTION TO PERMITS

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received eight petitions¹ asking EPA to object to operating permits issued by the New York State Department of Environmental Conservation (NYSDEC) to Algonquin Gas Transmission, LLC (Algonquin) for two natural gas compressor stations: (1) the Southeast Compressor Station, Permit No. 3-3730-00060/00013 (the Southeast Permit) and (2) the Stony Point Compressor Station, Permit No. 3-3928-00001/00027 (the Stony Point Permit) (collectively the Permits). The Permits are operating permits issued pursuant to title V of the Clean Air Act (CAA or the Act), §§ 501–507, 42 U.S.C. §§ 7661–7661f, and 6 New York Codes, Rules, and Regulations (NYCRR) § 201-6. *See also* 40 C.F.R. part 70 (title V

¹ The eight petitions are from: (1) the Westchester County Board of Legislators (Westchester), dated September 4, 2015 (the Westchester Petition); (2) Grassroots Environmental Education (Grassroots), dated September 4, 2015 (the Grassroots Petition); (3) Suzannah Glidden, dated September 4, 2015 (the Glidden Petition); (4) Berty Barranco-Feero, dated September 4, 2015; (5) Paola Dalle Carbonare, dated September 4, 2015; (6) Lorenzo Auslander, dated September 4, 2015; (7) Simone Auslander, dated September 4, 2015 (petitions (4), (5), (6), and (7) are substantively identical and are collectively referred to as the Barranco-Feero, Carbonare, and Auslander Petitions); and (8) Cari Gardner, dated September 3, 2015 (the Gardner Petition). EPA also received an email message from Paula Clair dated September 3, 2015 (the Clair Submittal) and a letter from Susan Van Dolsen dated September 3, 2015 (the Van Dolsen Submittal) relating to the Permits. The Clair and Van Dolsen Submittals do not appear to be petitions submitted under CAA § 505(b)(2) asking EPA to object to the Permits. Nonetheless, without waiving any claim that the Clair and Van Dolsen Submittals were not properly filed, EPA will respond to those Submittals here, in connection with its response to the eight Petitions, as if the Clair and Van Dolsen Submittals were petitions to object under CAA § 505(b)(2).

implementing regulations). These operating permits are also referred to as title V permits or part 70 permits.

Based on a review of the Petitions and other relevant materials, including the Permits, the permit records, and relevant statutory and regulatory authorities, and as explained further below, EPA denies the Petitions requesting that the EPA Administrator object to the Permits.²

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to EPA an operating permit program to meet the requirements of title V of the CAA and EPA's implementing regulations at 40 C.F.R. part 70. The state of New York first submitted a title V program governing the issuance of operating permits in 1993, and EPA granted interim approval of the state's program in 1996. 61 Fed. Reg. 57589 (November 7, 1996). Following subsequent submissions, EPA granted full approval of New York's title V operating permit program in 2002. 67 Fed. Reg. 5216 (February 5, 2002). This program, which became effective on January 31, 2002, is codified in 6 NYCRR 201-6.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with 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), 503, 504(a), 42 U.S.C. §§ 7661a(a), 7661b, 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 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, 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 compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure 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 EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the proposed permit if 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 EPA does not object to a permit on its own

² To the extent the Clair and Van Dolsen Submittals could be considered petitions requesting an EPA objection to the Permits, EPA also denies those Submittals.

initiative, any person may, within 60 days of the expiration of EPA's 45-day review period, petition the Administrator 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 authority (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)(1).³ Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to EPA.⁴

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," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part 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)).⁵ When courts have reviewed 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 1130–31.⁶ Certain aspects of the petitioner's demonstration burden are discussed below. 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*).

EPA considers 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

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

⁴ *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); *cf. NYPIRG*, 321 F.3d at 333 n.11.

⁵ *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)).

⁶ *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the state's response to comments), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.⁷ Another factor EPA examines is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, EPA is left to work out the basis for the 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.”).⁸ Relatedly, EPA has pointed out in numerous previous orders that 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 Sandow Order*).⁹ Also, the failure to address a key element of a particular issue presents further grounds for EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).¹⁰

The information that 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

⁷ *See also, e.g., Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. Appx. *11, *15 (2d Cir. 2018); *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 why 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).

⁸ *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*).

⁹ *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).

¹⁰ *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

documents may also be considered as part of making a determination whether to grant or deny the petition.

III. BACKGROUND

A. The Algonquin Southeast and Stony Point Facilities

At issue in this Order are permit actions related to Algonquin's (formerly a subsidiary of Spectra Energy; now a subsidiary of Enbridge Inc.) Algonquin Incremental Market (AIM) Project, which involves the expansion of its existing natural gas transmission pipeline system across various states in the Northeastern United States. Among other aspects of the AIM Project, Algonquin proposed to modify various natural gas compression stations to increase pipeline size and horsepower, two of which are implicated by the petitions addressed in this Order: the Southeast compressor station, and the Stony Point compressor station.

The Southeast compressor station is located in Brewster, Putnam County, New York. As part of the AIM Project, Algonquin proposed modifications to the Southeast facility including, among other things: the addition of one new natural-gas fired turbine-driven compressor, one new gas-fired emergency generator, one new gas-fired fuel gas heater, and one new gas cooler. In addition to the AIM project modifications, Algonquin also proposed to install one new gas-fired turbine-driven compressor, shut down one existing gas-fired compressor, and make other modifications to other existing equipment stacks. Collectively, these modifications were not considered major modifications for New Source Review (NSR) purposes.

The Stony Point compressor station is located in Stony Point, Rockland County, New York. As part of the AIM Project, Algonquin proposed to modify the Stony Point facility, including the addition of two new natural gas-fired turbine-driven compressor units, one new gas-fired emergency generator, two new gas-fired heaters, and a new gas cooler. In addition to the AIM Project modifications, Algonquin also proposed the following modifications: the permanent shutdown of one existing gas-fired turbine-driven compressor, four existing reciprocating engines, and a boiler, the addition of a new gas-fired turbine-driven compressor and other equipment, and the modification of other units. Collectively, these modifications were not considered major modifications for NSR purposes.

Various emission units at the Southeast and Stony Point facilities emit air pollutants, including, among others, carbon monoxide (CO), nitrogen oxides (NOx), volatile organic compounds (VOC), hazardous air pollutants (HAP), and greenhouse gases (GHG). Both facilities are subject to requirements based on New Source Performance Standards (NSPS) and State Implementation Plan (SIP) provisions. These requirements are contained in the sources' title V permits.

B. Permitting History

Both the Southeast and Stony Point title V permit modifications¹¹ were processed by NYSDEC on the same timeline. NYSDEC released draft title V permit modifications on December 31, 2014, subject to a public comment period that ended February 27, 2015. By letter dated May 12,

¹¹ The modifications to the Southeast Permit were processed at the same time as its title V permit renewal.

2015, NYSDEC transmitted to EPA proposed title V permit modifications (Proposed Permits), along with a document containing its response to public comments (RTC). EPA's 45-day review of the proposed permits ended on July 6, 2015, during which time EPA did not object to the permits. NYSDEC finalized the Permits on July 15, 2015.

C. Timeliness of Submittals

Pursuant to the CAA, if 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). EPA's 45-day review period expired on July 6, 2015. Thus, any petitions seeking EPA's objection to the Proposed Permits were due on or before September 4, 2015. Each of the petitions was dated either September 3, 2015, or September 4, 2015, and was timely filed.¹²

IV. THE WESTCHESTER PETITION

Claim I: Westchester's Claim That "The proposed final Title V permits do not adequately assess the health risk caused by air pollutants emitted from the compressor stations, and a comprehensive determination of baseline air emissions and air-related health impacts should be required."¹³

Westchester's Claim: Westchester contends that the Southeast and Stony Point Permits do not adequately assess health risks associated with compressor station emissions. Westchester Petition at 2. Westchester makes various assertions related to the lack of information regarding radioactive or hazardous constituents of gas processed by the compressor stations. *See id.* at 2–3. To address this uncertainty, Westchester states that "the Title V permit conditions must be based on a comprehensive determination of baseline emissions from the compressor stations as well as proper evaluation of health impacts." *Id.* at 3.

Westchester asserts that the title V permit applications for the Southeast and Stony Point facilities "do not provide the comprehensive characterization that is needed to quantify potential emissions from the compressor stations." *Id.* Westchester specifically criticizes the use of AP-42 emission factors last revised in 2000 and reliance on an analysis taken from Thomaston, Texas in 2005. *See id.*

Westchester also challenges various aspects of NYSDEC's air quality dispersion modeling. *See id.* at 4–7. Westchester asserts that the ambient air quality data for NO₂, which was based on a monitoring station located in Lackawanna, Pennsylvania, is not representative of the air quality in the vicinity of these compressor stations. *See id.* at 4–5. Westchester also challenges the exclusion of HAP emissions from blowdowns and fugitive emissions from the dispersion

¹² The Clair Submittal and the Van Dolsen Submittal were both dated September 3, 2015. *See supra* note 1.

¹³ Claim I of the Westchester Petition includes three separately enumerated subclaims: "a. The ambient air quality data for nitrogen dioxide . . . is not representative of the vicinity of the compressor stations;" "b. Blow down emissions and fugitive emissions are not included in the dispersion modeling analyses;" and "c. Existing emission sources are not included in the dispersion modeling of toxic compounds." All of these subclaims are collectively addressed below.

modeling analysis, claiming that the modeling analysis did not properly predict the impacts of toxic emissions from these sources. *See id.* at 5–6. Specifically, Westchester expresses concerns that reported emissions during blowdowns have varied widely during the last 10 years, and questions NYSDEC’s estimates of blowdown emissions and associated health impacts. *See id.* at 6. Westchester further criticizes the omission of HAP emissions from existing sources, and from exempt or trivial sources, from the modeling NYSDEC conducted. *See id.* at 6–7.

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

As discussed in Section II.B of this Order, the CAA places a burden on petitioners to demonstrate that a permit is not in compliance with the requirements of the Act or of the requirements under 40 C.F.R. part 70. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1). Westchester has failed to do so here.

Numerous public commenters requested that NYSDEC conduct an assessment of baseline emissions and health impacts associated with the modifications to the Southeast and Stony Point Permits. In responding to these comments, NYSDEC explained:

Neither an independent air emissions baseline assessment nor a health impact assessment is required in order for the NYSDEC to issue the Title V air permit modifications because the AIM Project complies with all applicable federal and state regulations, which have been established to protect public health and safety. All applicable requirements are included in the Title V permits for the Southeast and Stony Point compressor stations.

RTC at 1. Westchester failed to acknowledge or rebut this explanation.¹⁴

As a general matter, title V permits are not required to contain such health impacts analyses; nor has Westchester demonstrated, here, that such an analysis is a precondition to the issuance of these title V permits. Rather, title V permits are a vehicle for collecting and consolidating in a single document all federally-enforceable applicable requirements that apply to a source, and for ensuring that these requirements are supported by adequate monitoring, recordkeeping, and reporting conditions. *See, e.g.*, 40 C.F.R. § 70.1(b); 57 Fed. Reg. 32250, 32251 (July 21, 1992). Although Westchester (and other members of the public) may desire a more thorough analysis of the health impacts associated with the Southeast and Stony Point modifications, they have not demonstrated that such an analysis is required by law. Westchester has not cited any applicable CAA requirement that would require “a comprehensive determination of baseline emissions,” or an evaluation of the health impacts of the current project in the current title V permits. Thus, Westchester has failed to demonstrate that the Southeast and Stony Point Permits do not comply with the Act based on the lack of such a determination or evaluation, and Westchester’s claims present no basis for EPA to object to the Permits.

Regarding Westchester’s general criticisms of the emission calculations contained in the Southeast and Stony Point permit applications, Westchester has similarly failed to demonstrate

¹⁴ *See supra* note 7 and accompanying text.

any basis for an EPA objection. Westchester has not provided any citation to or analysis of requirements related to emission estimates in permit applications, nor has Westchester demonstrated why the estimates provided for the Southeast and Stony Point Permits ran afoul of these requirements.¹⁵

Westchester also has not demonstrated that any issues related to air quality dispersion modeling caused the Permits to violate any applicable requirements. Westchester has provided no citation or analysis of applicable requirements that would require such modeling,¹⁶ nor any analysis of how such requirements were violated due to purported flaws or discrepancies with such modeling.

In summary, none of the issues raised in Claim I of the Westchester Petition demonstrate that the Southeast or Stony Point Permits are not in compliance with applicable requirements of the CAA, 42 U.S.C. 7661d(b)(2). For the foregoing reasons, EPA denies Westchester's request for an objection on this claim.

Claim II: Westchester's Claim That "The proposed final Title V permits do not adequately monitor fugitive emissions, including [HAPs] and [VOCs], from the compressor stations."

Westchester's Claim: Westchester contends that the title V permits must include monitoring of all fugitive emissions. Westchester Petition at 7. Westchester asserts that the Stony Point Permit only requires monitoring and reporting of fugitives from new components, and the Southeast Permit does not require any monitoring or reporting of fugitive emissions from either new or existing components. *Id.* Westchester asserts that quantifying fugitive emissions is important for evaluating air quality and climate change impacts, and therefore suggests that the title V permits should require enforceable conditions requiring monitoring of all fugitive emissions, with NYSDEC oversight over the method used to determine emissions. *Id.* at 8.

With respect to the Stony Point Permit, Westchester argues that data on emissions from exempt sources, including fugitive piping emissions and gas releases, should be submitted on a rolling 12-month basis, rather than an annual submission of a summary of emissions. *Id.* at 7–8 (citing Stony Point Proposed Permit Item 1-21.2). Westchester asserts that this should be required because exempt sources (including fugitive piping emissions and gas releases) constitute the majority of allowed VOC emissions at the facility. *Id.* at 8. Westchester also claims that the fugitive emissions from piping components and VOC emissions from gas releases should not be considered "exempt sources." *See id.* (citing 6 NYCRR 201-3.2, 3.3).

Westchester presents various options related to the monitoring of fugitive emissions. Westchester discusses how Algonquin has previously quantified fugitive emissions in its annual emissions

¹⁵ EPA has discussed these permit application requirements, and the burden on petitioners to demonstrate a flaw with respect to these requirements, in another recent title V petition order. *See, e.g., In the Matter of Superior Silica Sands and Wisconsin Proppants, LLC*, Order on Petition Nos. V-2016-18 & V-2017-2 at 7–12 (Feb. 26, 2018); *see also supra* note 8 and accompanying text.

¹⁶ Notably, as EPA has previously explained, there are no federal requirements associated with the modeling of HAP emissions. *See, e.g., In the Matter of Waupaca Foundry, Inc. Plant I*, Order On Petition No. V-2015-02 at 8–9 (July 14, 2016).

statements, contrasting the approaches used in the Southeast and Stony Point statements. *See id.* Additionally, Westchester cites a then-proposed EPA rule regulating oil and gas emissions, while acknowledging that facilities would not be obligated to perform the monitoring of fugitives specified in this rule unless and until the rule was finalized and the requirements were incorporated into the title V permits. *Id.* at 9. Westchester also generally refers to various remote measurement methods, including thermal imaging infrared cameras, that could be used to monitor fugitive emissions, which Westchester suggests could be used to monitor and report on GHG and fugitive emissions. *See id.*

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

As a threshold requirement to submitting a title V petition, the CAA requires that:

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).

42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(d). As EPA has explained:

EPA believes that Congress did not intend for petitioners to be allowed to create an entirely new record before the Administrator that the State has had no opportunity to address. Accordingly, the Agency believes that 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.

56 Fed. Reg. 21712, 21750 (May 10, 1991); *see also, e.g., In the Matter of Phillips 66 San Francisco Refinery*, Order on Petition No. IX-2018-4 at 7–10 (August 8, 2018); *Luminant Sandow Order* at 5–6.

Here, the claims raised in the Westchester Petition regarding the monitoring or reporting of fugitive emissions, and the assertion that certain fugitive emissions should not be considered “exempt sources,” were not raised during the public comment period with reasonable specificity. Some public comments briefly discussed fugitive emissions in a general sense, including the health impacts of fugitive emissions as well as concerns with understanding the quantity of fugitive emissions from the facilities. *See, e.g.,* RTC at 11 (summarizing and responding to comments claiming that “[t]here is no way of knowing the volume, frequency and content of blowdown, fugitive emissions, and emissions from pigging stations to determine their safety”). Additionally, some commenters raised questions inquiring why certain emission units (notably, not the fugitive sources at issue in this claim) were classified as exempt sources. *E.g.,* Comments of Susan Van Dolsen (February 27, 2015). However, no commenters raised the specific issues raised in Claim II, which assert the need for enforceable permit terms establishing monitoring of fugitive emissions from certain sources at either Southeast or Stony Point, and challenge to the

propriety of classifying certain fugitive emissions as exempt. Thus, these claims were not raised with reasonable specificity during the public comment period and cannot now be raised in a title V petition. There is no basis for determining that the issues arose after the public comment period, and Westchester has not attempted to demonstrate that it was impracticable to raise these issues during the public comment period.¹⁷

Even if these issues had been raised with reasonable specificity during the public comment period, Westchester has not met its burden of demonstrating that the permits are not in compliance with the CAA. The CAA requires that each title V permit shall include conditions “necessary to assure compliance with applicable requirements” of the CAA, and shall set forth monitoring requirements “to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(a), (c). Thus, in order to present grounds for an EPA objection on a claim alleging the need for additional monitoring, recordkeeping, or reporting, a petitioner must demonstrate that the current permit requirements are not sufficient to assure compliance with a particular applicable requirement or permit term. The adequacy of monitoring in a title V permit is a highly fact-specific inquiry. *See, e.g., In the Matter of CITGO Refining and Chemicals Co. L.P.*, Order on Petition No. VI-2007-01 at 6–8 (May 28, 2009) (describing a non-exhaustive list of factors relevant to the sufficiency of monitoring). Here, Westchester has not provided the requisite citation or analysis to demonstrate that the current permit terms are insufficient. Westchester has not identified any applicable requirements or permit terms related to fugitive emissions for which the Southeast or Stony Point Permits do not contain adequate monitoring, nor has Westchester provided any analysis demonstrating why existing monitoring provisions are inadequate. Thus, Westchester has failed to demonstrate that the title V permits do not contain monitoring to assure compliance with all applicable requirements or permit terms. Westchester’s claims, therefore, present no basis for an EPA objection.

For the foregoing reasons, EPA denies Westchester’s request for an objection on this claim.

¹⁷ Westchester suggests that it was impracticable for one of the individual Westchester County Legislators—Legislator Cole—to provide comments in an official capacity during the public comment period, given that this legislator was appointed after the end of the comment period. Westchester Petition at 1. However, this misses the point: the question is not whether it was impracticable for a given *person* to raise issues during the comment period, but whether it generally was impracticable to raise certain *issues* during the comment period. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. §70.8(d); *see* 81 Fed. Reg. 57822, 57828 (August 24, 2016). Here, Westchester has made no showing that it was impracticable for the other Legislators, or other persons, to raise the issues associated with Claim II (or other claims discussed below) during the comment period. To the contrary, Westchester’s statement suggests that—but for the fact that Legislator Cole was not appointed until after June 2015—it *would* have been practicable for him to raise the issues, “in an official capacity,” during the comment period. Moreover, even with the misplaced focus on the practicability of a given person raising issues during the comment period, Westchester makes no showing that it was impracticable for Legislator Cole to raise issues during the comment period in a personal or “unofficial capacity,” but only that it was impracticable for him to raise the issues in an “official capacity.” Again, such an assertion misses the point and is no basis for determining that it was impracticable to raise certain issues during the comment period.

Claim III: Westchester’s Claim That “The proposed final Title V permits do not adequately monitor blow down emissions, including HAPs and VOCs, from the compressor stations.”

Westchester’s Claim: Westchester claims that the Southeast and Stony Point Permits must include monitoring and reporting of emissions from blowdown events (i.e., releases of gas) from all sources emissions (both existing and new). Westchester Petition at 9. Westchester states that the Stony Point permit requires limited monitoring of gas releases from only new emission units (not existing units), and that the Southeast permit contains no monitoring for blowdowns from either new or existing units. *Id.* at 10 (citing Stony Point Proposed Permit Item 1-21.2). Westchester contends: “In order to properly assure permit compliance, the annual submission of blowdown emissions should consist of rolling 12-month averages throughout the calendar year to properly monitor these emissions.” *Id.* at 10.

Westchester also asserts that the title V permits should require Algonquin to notify NYSDEC of any planned or unplanned release of natural gas, not just releases greater than 1 MMscf, as the Permits currently require. *Id.* at 9, 10 (citing Southeast Proposed Permit Item 22.2; Stony Point Proposed Permit Item 1-13.2); Westchester argues that the 1 MMscf value is too high and will result in the underreporting of gas releases. *Id.* at 10. Westchester additionally asserts that Algonquin should be required to notify the applicable County Health Department and host municipality 48 hours prior to a planned gas release, and within 24 hours of an unplanned release. *Id.* at 10.

Westchester claims that “[t]he Title V permits should set specific requirements to regulate the blowdown (gas release) events, as the events occur regularly at the compressor stations and yield substantial emissions.” *Id.* at 10. Westchester claims that reported health impacts associated with blowdown emissions underscore the need to regulate these emissions. *Id.* at 11.

Westchester discusses the reporting of apparent blowdown emissions from the Southeast facility and claims that there must be an error in reporting due to discrepancies between VOC and methane emissions from the same units. *See id.* at 11. Westchester also claims that there are no emission units associated with blowdown events from the Stony Point facility, which Westchester asserts is surprising. *Id.* Westchester criticizes various aspects of the estimates of blowdown emissions in the Southeast and Stony point permit applications, including the use of data from a 2005 analysis of gas from Thomaston, Texas, the lack of estimates for HAP other than BTEX compounds, and the apparent calculation of continuous releases. *See id.* at 11.

Westchester also discusses (in both Claim III and Claim V) available approaches for reducing methane emissions from blowdown events, including best practices from EPA’s Natural Gas STAR Partners program. *Id.* at 11. Westchester faults the omission of these approaches in the Stony Point draft greenhouse gas best available control technology analysis and suggests that the title V permits should require Algonquin to re-route blowdown gas rather than venting it to the atmosphere. *Id.* at 12, 14.

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

As discussed above with respect to Claim II, Westchester’s specific claims regarding the purported need for additional monitoring or more frequent compliance reporting for blowdown emissions, or for additional enforceable restrictions on blowdowns, were not raised with reasonable specificity during the public comment period, and Westchester has not demonstrated that it was impracticable to do so.¹⁸ Accordingly, these claims cannot now be raised in this title V petition. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Additionally, even if these issues had been raised, and to the extent certain other issues within Claim III of the Westchester Petition might be said to have been raised with reasonable specificity during the comment period,¹⁹ Westchester has not met its burden to demonstrate that the Permits are not in compliance with CAA requirements.

As discussed above with respect to Claim II, in order to present grounds for an EPA objection on a claim alleging the need for additional monitoring, a petitioner must demonstrate that the current monitoring, recordkeeping, and reporting requirements are not sufficient to assure compliance with a particular applicable requirement or permit term. 42 U.S.C. § 7661c(a), (c). Here, again, Westchester has provided no citation to any applicable requirements or permit terms related to blowdown emissions for which the current permit must include additional monitoring. Thus, Westchester has failed to demonstrate that additional monitoring of blowdowns (e.g., from all Southeast units or existing Stony Point units) or more frequent reporting of blowdowns (e.g., on a rolling 12-month basis) is necessary to assure compliance with any particular applicable requirements or permit terms.

Westchester has failed to demonstrate that any additional enforceable restrictions on blowdown emissions must be added to the Permits, as Westchester has provided no citation to or analysis of any applicable legal requirements that would give rise to such restrictions. Contrary to Westchester’s suggestion, potential health impacts from a particular type of emissions activity do not, in and of themselves, give rise to title V applicable requirements. Rather, title V permit terms are based on applicable CAA requirements (including EPA-approved SIP requirements) that apply to given emission units and activities.

Regarding Westchester’s request for more frequent notifications of planned and unplanned blowdowns (which, along with the claims addressed below, *was* raised to some extent during the

¹⁸ Some public comments briefly discussed blowdown emissions in a general sense, including the health impacts of blowdown emissions as well as concerns with understanding the quantity of blowdown emissions from the facilities. *See, e.g.*, RTC at 11. However, like the concerns regarding the monitoring of fugitive emissions discussed in EPA’s response to Westchester Claim II, the specific claims now articulated in the petition regarding: (1) the need for enforceable permit terms governing blowdown emissions, (2) the need to add monitoring for blowdown emissions from all Southeast units, and from existing Stony Point units, and (3) the need to increase the reporting frequency of blowdown emissions to a 12-month rolling average, were not raised to NYSDEC in public comments.

¹⁹ As noted, claims by Westchester relating to the need for additional blowdown monitoring or more frequent compliance reporting for blowdown emissions, or for additional enforceable restrictions on blowdowns, were not raised with reasonable specificity during the public comment period. Other blowdown-related claims by Westchester arguably were raised to some extent during the public comment period, including the request for more frequent notice of blowdown events; the manner of estimating or reporting blowdown emissions; and whether blowdown emissions could be controlled by re-routing such emissions or other alleged “best practices.”

public comment period), Westchester has not demonstrated that this is required by any applicable CAA requirement, or that current permit terms do not comply with applicable requirements. Westchester also did not address NYSDEC's response to comment document on this point (which, among other things, explained that "Department Staff has revised the draft Title V air permits for both the Southeast and Stony Point Compressor Stations and has incorporated additional language in both permits which requires notification of both planned and unplanned gas releases") or explain why it was unreasonable or failed to comply with the Act. RTC at 8.²⁰ In addition, Westchester provides no explanation of how the manner in which blowdown emissions were estimated or reported by the Southeast or Stony Point facilities, *see* Westchester Petition at 11, was improper or shows that the Permits do not comply with applicable requirements of the Act. Similarly, Westchester has not demonstrated that the best practices for minimizing methane emissions by re-routing blowdown gases, *see id.*, are mandated by applicable requirements of the Act. Rather, as NYSDEC explained, EPA's Natural Gas STAR partners program is a voluntary program, not a source of regulatory requirements that must be included in a title V permit. *See* RTC at 4. Westchester failed to acknowledge or rebut this explanation.²¹

In summary, none of the assertions regarding blowdown emissions demonstrate that the Permits do not assure compliance with any applicable requirement. For all the foregoing reasons, EPA denies Westchester's request for an objection on this claim.

Claim IV: Westchester's Claim That "The proposed final Title V permits do not contain proper emissions limits for [CO] emissions or VOC emissions from the natural gas-fired turbines."

Westchester's Claim: Westchester challenges CO emission limits on the three new natural gas-fired turbines at the Stony Point facility.²² Westchester asserts that in order for Stony Point to avoid PSD applicability, an oxidation catalyst must provide a 95% CO reduction efficiency on the turbines. Westchester Petition at 12. Westchester claims that the Stony Point Permit must contain a CO limit based on 95% reduction efficiency by the catalyst emissions (rather than based on a manufacturer guarantee that does not include the oxidation catalyst), which Westchester asserts should be 0.4 lb/hr, or 2.79 lb/MMscf. *Id.* (citing Stony Point Proposed Permit Item 1-39.7).

Westchester also questions the 0.5 lb/hr VOC emission limit that applies to each of the three new Stony Point turbines. *Id.* at 12 (citing Stony Point Proposed Permit Item 1-15.2). Westchester suggests that this limit should be expressed as 3.49 lb/MMscf, to be consistent with an emission factor used in a later permit term. *Id.* (citing Stony Point Proposed Permit Item 1-21.2). Westchester also notes that the current permit limit is higher than the AP-42 emission factor for natural gas-fired turbine VOC emissions. *Id.* Westchester states that the upper permit limit should be set at the lower of the AP-42 emission factor or the manufacturer guarantee. *Id.* at 12–13. Westchester asserts that the new turbines should be capable of meeting the AP-42 emission

²⁰ *See supra* note 7 and accompanying text.

²¹ *See supra* note 7 and accompanying text.

²² Claim IV of the Westchester Petition only expressly relates to the Stony Point Permit.

factor, and notes that a PM limit in the Stony Point permit was based on an AP-42 emission factor, rather than a higher manufacturer's guarantee. *Id.* at 13.

Westchester explains that the upper permit limits for CO and VOC are based on an oxidation catalyst functioning at a 95% and 50% reduction efficiency, respectively. *Id.* Given that emissions testing of CO and VOC may occur only once per permit term, Westchester claims that the title V permit should additionally require Stony Point to submit annual reports on the condition and performance of the catalyst. *Id.*

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

The issues related to the CO and VOC emission limits on the new turbines at the Stony Point facility, or the need for more frequent reporting on the condition of the oxidation catalyst, were not raised with reasonable specificity during the public comment period, and Westchester has not demonstrated that it was impracticable to do so. As discussed above with respect to Claim II, such claims cannot now be raised in this title V petition. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Additionally, even if these issues had been raised with reasonable specificity during the comment period, Westchester has not met its burden of demonstrating that the Stony Point Permit does not comply with the requirements of the Act. Westchester has not provided any citation to legal authority that would mandate emission limits different than those currently included in the title V permit, nor has Westchester demonstrated that these existing limits run afoul of any CAA requirements.

Regarding the claims concerning the purported need for additional reporting of the condition of CO and VOC oxidation catalyst, Westchester has failed to demonstrate that this is necessary to assure compliance with any permit term. Notably, although Westchester broadly asserts the importance of the oxidation catalyst functioning as estimated, Westchester presents no basis for its claim that annual reporting of the condition of the catalyst is necessary to assure that the catalyst is functioning as estimated, nor why the current permit requirements requiring testing once per permit term is inadequate. Westchester's generic allegations, unsupported by citation and analysis, do not demonstrate a flaw in the permit.²³

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

Claim V: Westchester's Claim that "The proposed final Title V permit for the Stony Point compressor station does not properly monitor [GHG] emissions)."

Westchester's Claim: Westchester states that the Stony Point Permit does not contain an enforceable condition on GHG emissions. Westchester Petition at 13. Westchester discusses aspects of the Stony Point application that proposed BACT emission limits for GHG emissions and states that the Permit did not contain such a condition. *Id.* Westchester indicates that, in its response to comments, NYSDEC stated that it had discretion not to require a PSD permit based

²³ See *supra* notes 8, 9, and accompanying text.

solely on potential GHG emissions. *Id.* Nonetheless, Westchester asserts that the Stony Point and Southeast Permits²⁴ should require monitoring, recordkeeping, and reporting of carbon dioxide equivalent (CO₂e) emissions on an annual rolling average basis, as stated in the Stony Point application. *Id.* at 14.²⁵

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

Westchester has provided no citation to an applicable CAA requirement that would necessitate the inclusion of an enforceable condition limiting GHG emissions in either the Stony Point or Southeast Permits. Westchester's discussion of draft GHG BACT limits and monitoring conditions proposed in the Stony Point permit application is immaterial, given that these conditions were never finalized and are therefore not applicable requirements that must be included in the current title V permit. *See* RTC at 6–7 (explaining the basis for NYSDEC's decision not to issue a PSD permit—which would have been the basis for the BACT conditions referenced by Westchester—on the basis of the sources' GHG emissions). In the absence of an identified applicable requirement or permit term governing GHG emissions from Stony Point or Southeast, Westchester cannot demonstrate that additional monitoring, recordkeeping or reporting of GHG emissions is necessary to assure compliance with such an applicable requirement or permit term.

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

Claim VI: Westchester's Claim That "The proposed final Title V permit should require continuous emissions monitoring or more frequent testing for NO_x emissions from the new turbines."

Westchester's Claim: Westchester asserts that the title V permits²⁶ should require more frequent monitoring of NO_x from the turbines, such as more frequent NO_x emissions testing, continuous NO_x monitoring, or continuous monitoring of operating data for the new turbines. Westchester Petition at 14–15. Westchester claims that NYSDEC would "allow Algonquin to use a manufacturer-guaranteed 9 ppm NO_x emission value" for new turbines at the compressor stations. *Id.* at 14. Westchester suggests that more frequent or continuous monitoring is necessary because there is no actual operating experience for these turbines, and because this is the first time the manufacturer of the turbines has guaranteed the 9 ppm NO_x emissions rate (a lower value than prior guarantees). *Id.*

²⁴ Although the heading of Claim V only references Stony Point and the focus of the discussion concerns Stony Point, Westchester generally mentions both the Stony Point and the Southeast facilities when asserting that there should be additional CO₂e monitoring, recordkeeping, and reporting. Accordingly, EPA treats Claim V as seeking an objection to both Permits.

²⁵ Claim V of the Westchester Petition also raises issues related to EPA's Natural Gas STAR Partners program and the re-routing of blowdown gas in order to reduce emissions, which are addressed with Claim III above.

²⁶ Although Claim VI of the Westchester Petition only cites a provision from the Southeast permit application, this claim appears to implicate the NO_x monitoring for both the Southeast and Stony Point Permits, given that Westchester refers to the permits (plural), and given that both Permits contain similar provisions related to this issue. Accordingly, EPA treats Claim VI as seeking an objection to both Permits.

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

Westchester’s claims were not raised with reasonable specificity during the public comment period. Although some commenters very generally requested additional monitoring and one commenter generally requested either continuous or regular periodic monitoring of a variety of pollutants (including NO_x) from the facilities,²⁷ the particular claims asserted here (e.g., claims related to the adequacy of relying on the manufacturer-guaranteed 9 ppm NO_x emissions value in light of the operating history of these turbines) were not previously raised with reasonable specificity. Therefore, as discussed above with respect to Claim II, such claims cannot now be raised in this title V petition. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Moreover, Westchester has not demonstrated that the Southeast and Stony Point Permits lack adequate NO_x monitoring, recordkeeping, and reporting. As discussed above with respect to Claim II, a petitioner must demonstrate that the current permit requirements are not sufficient to assure compliance with a particular applicable requirement or permit term. 42 U.S.C. § 7661c(a), (c). The adequacy of monitoring in a title V permit is a highly fact-specific inquiry, and here, Westchester has not provided the requisite citation or analysis to demonstrate that the current permit terms are insufficient.²⁸

Westchester asserts that NYSDEC would “allow Algonquin to use a manufacturer-guaranteed 9 ppm NO_x emission value” for the new turbines, Westchester Petition at 14, but provides no citation to any applicable requirements or permit terms (e.g., emission limits) with which the current NO_x monitoring regime does not assure compliance. Westchester also provides no discussion or further information about how the 9 ppm NO_x value is “used” in the Permits.²⁹ In

²⁷ See RTC at 3 (summarizing comments requesting that “[c]ontinuous stack monitoring of nitrogen oxides and sulfur oxides should be required at each compressor station”); see also Comments of Bradley Schwartz (February 27, 2015) (requesting “[c]ontinuous, real-time monitoring of emissions, or at least regular periodic monitoring of NO_x, SO₂, VOC, and other harmful substances” without further explanation).

²⁸ Additionally, in responding to broader comments suggesting the need for continuous monitoring of multiple pollutants from the new turbines, NYSDEC explained its position that this was not necessary: “Continuous emissions monitoring is not required by any applicable federal or state regulation for the type of stationary source subject to the Title V permit modifications. Periodic monitoring required by the Title V permits include periodic stack testing as required by federal New Source Performance Standards using EPA-approved stack testing methods, as well as monitoring of specific emissions on a monthly basis based on formulas contained in each Title V permit.” RTC at 3. The failure to consider NYSDEC’s reasoning and demonstrate that it was not a reasonable interpretation of the CAA presents an additional basis for finding that Westchester has not demonstrated a flaw in the Permits with respect to NO_x monitoring. See *supra* note 7 and accompanying text.

²⁹ There appear to be two different uses of the 9 ppm value in each Permit. First, both Permits contain an “upper permit limit of” 9 ppm NO_x (dry, corrected to 15% O₂) on the new turbines. See Southeast Proposed Permit Item 24.2; Stony Point Proposed Permit Item 1-17.2. Second, both permits rely on the 9 ppm NO_x value to generate an emission factor used to calculate emissions prior to stack testing, for purposes of demonstrating compliance with a different set of NO_x emission limits (rolling twelve-month NO_x limits) on the new turbines. See Southeast Proposed Permit Item 46.7, 48.7; Stony Point Proposed Permit Item 1-23.2. It is unclear which set of conditions concerns Westchester. The Westchester Petition, for example, could be interpreted to suggest that the Permits do not contain sufficient monitoring to assure compliance with the short-term 9 ppm NO_x emission limits. Or, the Westchester Petition could suggest that the Permits do not contain sufficient monitoring to assure compliance with the longer-

addition to failing to adequately identify the permit terms for which monitoring is inadequate, Westchester has also failed to identify the permit terms establishing the allegedly inadequate monitoring provisions. Instead, Westchester only briefly alludes to “periodic emission tests,” without citation or explanation.³⁰ Given Westchester’s failure to identify both the specific permit terms that are not supported by adequate monitoring and the specific monitoring provisions that are allegedly inadequate, Westchester has failed to demonstrate that the NOx monitoring terms are insufficient assure to compliance with any permit limits.

Additionally, the only bases provided by Westchester for its concerns are the allegation that the 9 ppm value is lower than prior manufacturer guarantees, and a lack of operating experience for these turbines. Westchester Petition at 14. Westchester’s conclusion that these circumstances necessitate “more than periodic emission tests for the new units” is unsupported by any technical explanation or analysis. Westchester provides no analysis explaining why the current monitoring provisions do not address these concerns. For example, Westchester does not discuss the frequency of the existing emission tests, how information from such emission tests are used to demonstrate compliance, or how such testing relates to the specific permit terms with which they are intended to assure compliance. Accordingly, Westchester has not demonstrated that more frequent monitoring is necessary to assure compliance with any applicable requirements or permit terms.

For the foregoing reasons, EPA denies Westchester’s request for an objection on this claim.

Claim VII: Westchester’s Claim That “The proposed Title V permit for the Southeast compressor station must include a capping monitoring condition for VOC emissions for the new sources and intermittent emission testing for the new turbines.”

Westchester’s Claim: Westchester states that the Southeast Permit³¹ does not contain a “capping monitoring condition for VOC emissions from new sources and does not require intermittent testing of VOC emissions from the new turbines.” Westchester Petition at 15. Westchester asserts that the permit should require VOC emissions monitoring, recordkeeping, and reporting from the new turbines, new fugitive emissions, and new blowdown events. *Id.* Westchester explains that the Stony Point permit requires monitoring of these VOC emissions, and asserts that the Southeast Permit should contain similar provisions, notwithstanding that the counties in which the two facilities are located have a different ozone nonattainment status. *Id.* (citing Stony Point Items 1-15, 1-21).

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

term 12-month rolling NOx emission limits, for which the 9 ppm value is “used” (for a certain period of time) to calculate emissions for compliance demonstration purposes.

³⁰ The permit terms associated with the short-term 9 ppm emission limits include stack testing requirements, and stack test data is used to develop emission factors for demonstrating compliance with the longer-term rolling 12-month emission limits (thus superseding the emission factor based on the 9 ppm value). *See* Southeast Proposed Permit Items 24.2, 46.7, 48.7; Stony Point Proposed Permit Items 1-17.2, 1-23.2.

³¹ Claim VII challenges only the Southeast Permit.

These issues related to the monitoring of VOC from new turbines and other emission sources at the Southeast facility were not raised with reasonable specificity during the public comment period, and Westchester has not demonstrated that it was impracticable to do so. As discussed above with respect to Claim II, such claims cannot now be raised in this title V petition. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Additionally, Westchester has failed to demonstrate that the Southeast Permit does not contain adequate provisions to assure compliance with all applicable requirements and permit terms. As discussed above with respect to Claim II, a petitioner must demonstrate that the current monitoring, recordkeeping, and reporting requirements are not sufficient to assure compliance with a particular applicable requirement or permit term. 42 U.S.C. § 7661c(a), (c). Here, Westchester does not cite to any applicable requirements or permit terms related to VOC emissions with which the Southeast Permit does not assure compliance. Instead, Westchester cites only plantwide emission estimates provided by Southeast in its permit application. Westchester Petition at 15. Accordingly, Westchester has failed to demonstrate that the Southeast Permit does not assure compliance with any applicable requirements or permit terms.

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

Claim VIII: Westchester's Claim That "The proposed Title V permit for the Stony Point compressor station must include NOx capping condition for existing turbines."

Westchester's Claim: Westchester claims that both Southeast and Stony Point previously accepted federally-enforceable limits to restrict NOx emissions below thresholds that would trigger NSR requirements, which were included in the facilities' prior title V permits. Westchester Petition at 15–16. However, Westchester claims that a prior cap on NOx emissions was not carried over into the current Stony Point³² permit modification. *Id.* at 16 (citing an unspecified "existing" version of the Stony Point Permit,³³ Item 35.7). Westchester asserts that this previous condition should be included in the current permit because Stony Point previously relied on them to avoid applicable requirements. *Id.* Acknowledging that new NOx "capping conditions" have been added to the title V permits for new equipment, Westchester also argues that the prior capping conditions should be included because it would be counterproductive to impose new capping conditions for the new equipment while eliminating the conditions for the old equipment. *Id.*

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

These issues related to the inclusion of previously-accepted NOx emission limits on existing units at the Stony Point facility were not raised with reasonable specificity during the public comment period, and Westchester has not demonstrated that it was impracticable to do so. As

³² Claim VIII expressly refers only to the Stony Point Permit. It is unclear whether this claim was also intended to relate to the Southeast Permit. In either event, EPA's response below would apply the same.

³³ Although Westchester identifies this prior version of the Stony Point Permit as Exhibit 4, the cited exhibit actually contains the Proposed Stony Point Permit modification.

discussed above with respect to Claim II, such claims cannot now be raised in this title V petition. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Additionally, this claim now appears to be moot. NYSDEC included in later versions of the Permits the emission limits that Westchester identified as absent from the 2015 Proposed Permits.³⁴

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

V. THE GRASSROOTS PETITION

Grassroots' Claims: Grassroots raises several concerns with positions expressed in NYSDEC's RTC regarding scientific research on the public health impacts of the AIM Project.³⁵

Grassroots expresses general concern with NYSDEC's dismissal of research related to the health impacts of the project. Individuals associated with Grassroots presented criticisms of relying on regulatory standards such as NAAQS to determine health impacts or risks of individual projects, including issues related to short-term exposures and the economic and health-based significance of VOC, NO_x, and HAP emissions from compressor stations. *See* Grassroots Petition Attachment at 1–2, 5. Individuals associated with Grassroots also challenge industry claims regarding potential formaldehyde emissions after the AIM Project and claim that model-predicted outcomes may underestimate HAP emissions, including formaldehyde, benzene, and 1,3-butadiene. *See id.* at 3, 6. Grassroots urges EPA to question NYSDEC's reliance on best-case industry model projections. Grassroots Petition at 1–2.

Grassroots claims that existing monitoring methods may dramatically underestimate pollutants at compressor stations, and that several prominent researchers have concluded that some monitoring protocols are incompatible with protecting the health of those living near compressor stations. *Id.* at 2. Grassroots encourages EPA to continue its dialogue with these scientists, and to consider whether this information would constitute “newly discovered material information” that would “argue for a denial of the permit by NYS DEC.” *Id.*

Grassroots challenges DEC's assertion that the gas flowing through the pipeline associated with the Southeast and Stony Point facilities will be substantially different than gas originating at wellheads in Pennsylvania, Ohio, and West Virginia. *Id.* at 1.

Grassroots also expresses concerns with DEC's dismissal of matters relating to the decay time of radon and other by products of radiation. *See id.* at 2; Grassroots Petition Attachment at 3–5.

³⁴ *See* Final Southeast Permit dated April 26, 2018, Item 47.7 (establishing a 34.3 tons per year limit on the two existing Solar Taurus turbines); Final Stony Point Permit dated April 26, 2018, Item 58.7 (establishing a 30.7 tons per year limit on the two existing Solar Taurus turbines).

³⁵ The Grassroots Petition consists of a letter from Grassroots on behalf of various scientists and researchers, as well as an attachment containing rebuttals of individual scientists and researchers to NYSDEC's RTC. Grassroots requested that both documents be considered the petition requesting an EPA objection.

EPA's Response: For the following reasons, EPA denies the request for an objection in the Grassroots petition.

As discussed above, the CAA places a burden on petitioners to demonstrate that a title V permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2). Although Grassroots may be dissatisfied with NYSDEC's responses to comments and may disagree with NYSDEC's technical conclusions regarding the health impacts, emissions modeling and monitoring, emissions estimates, gas characteristics, or radioactive materials, Grassroots has not identified any applicable CAA requirements with which the Southeast and Stony Point Permits do not comply. Thus, Grassroots has failed to meet its burden to demonstrate noncompliance with the requirements of the Act, and the issues raised by the Grassroots Petition provide no basis for an EPA objection to the Permits.

For the foregoing reasons, EPA denies the request for an objection in the Grassroots petition.

VI. THE GLIDDEN PETITION

Glidden's Claims: Suzannah Glidden raises various concerns related to the health impacts of emissions from the compressor station. Ms. Glidden states that she previously gave personal testimony concerning her health and medical condition and asserts that she has experienced extreme adverse health reactions, including hospitalization because of emissions from the Southeast facility. Ms. Glidden also notes the area's nonattainment status for ozone and particulate matter and asserts that this region cannot afford significant increases in toxic air emissions. Glidden asserts that the use of "air credits" is unconscionable and must be abandoned to protect public health, because it allows industry to release air pollutants beyond safe limits. Ms. Glidden also states that Spectra refuses to give the town of North Salem advance notification of planned blowdowns. Ms. Glidden expresses concern with raising the threshold at which point blowdown emissions would require reporting and notification, describing this as "unacceptable." Ms. Glidden requests "true and honest 24 hour monitoring" of compressor station emissions and an evaluation of the cumulative impacts of these emissions on health, and requests that EPA deny approval of the Permits.

EPA's Response: For the following reasons, EPA denies the request for an objection in the Glidden Petition.

As discussed above, the CAA places a burden on petitioners to demonstrate that a title V permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2). Ms. Glidden has not identified any applicable CAA requirements with which the Southeast and Stony Point Permits do not comply. Thus, Ms. Glidden has failed to meet her burden to demonstrate that the Permits fail to comply with the requirements of the Act, and the issues raised by the Glidden Petition provide no basis for an EPA objection to the Permits.

For the foregoing reasons, EPA denies the request for an objection in the Glidden Petition.

VII. THE BARRANCO-FEERO, CARBONARE, AND AUSLANDER PETITIONS

The Barranco-Feero Petition, Carbonare Petition, and the two Auslander Petitions each consists of a brief email message containing substantially similar claims and statements. As such, EPA is responding to these petitions together.

Barranco-Feero, Carbonare, and Auslander’s Claims: These petitions express various concerns and allegations related to the impact of the pipeline project associated with the Southeast and Stony Point facilities on land, life, and health. The petitions assert that the existing compressor stations emit large quantities of methane, CO₂, and VOCs, including formaldehyde, benzene and toluene. The petitions also contend that severe health effects are associated with compressor station emissions, listing various symptoms and/or conditions, and focus on risks to certain particularly vulnerable populations. The petitions also discuss the region’s non-attainment status for air quality standards, and the American Lung Association’s “F” rating of Westchester air quality, and conclude that the region cannot afford significant increases in toxic emissions.

EPA’s Response: For the following reasons, EPA denies the requests for an objection in the Barranco-Feero, Carbonare, and Auslander Petitions.

As discussed above, the CAA places a burden on petitioners to demonstrate that a title V permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2). These petitioners have not identified any applicable CAA requirements with which the Southeast and Stony Point Permits do not comply. Thus, the petitioners have failed to meet their burden to demonstrate that the Permits fail to comply with the requirements of the Act, and the issues raised by these petitioners provide no basis for an EPA objection to the Permits.

For the foregoing reasons, EPA denies the requests for an objection in the Barranco-Feero, Carbonare, and Auslander Petitions.

VIII. THE GARDNER PETITION

Gardner’s Claims: Cari Gardner expresses various concerns and allegations relating to the Southeast and Stony Point facilities, including the proximity and danger of a nearby aging nuclear facility, the need to reduce the use of fossil fuels, and the risk of gas leaks and explosions. Ms. Gardner also asserts that “the air quality is already below acceptable standards,” and “there has yet to be a clear assessment of the real health and safety risks of this project.” The Gardner Petition concludes that no permits should be issued for the pipeline project, and requests that EPA put a stop to the project.

EPA’s Response: For the following reasons, EPA denies the request for an objection in the Gardner Petition.

As discussed above, the CAA places a burden on petitioners to that a title V permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2). Ms. Gardner has not identified any applicable CAA requirements with which the Southeast and Stony Point Permits

do not comply related to these concerns. Thus, Ms. Gardner has failed to meet the burden to demonstrate that the Permits fail to comply with the requirements of the Act, and the issues raised by the Gardner Petition provide no basis for an EPA objection to the Permits.

For the foregoing reasons, EPA denies the request for an objection in the Gardner Petition.

IX. THE CLAIR SUBMITTAL

The email message submitted by Paula Clair is addressed to EPA Administrator and the subject line states: “Petition on title V Air Permits for the Southeast and Stony Point Compressor Stations—Algonquin Incremental Market Project.” In the text of the message, Ms. Clair describes her email as a “petition to . . . [the EPA] regarding the proposed Air Permits for the Southeast and Stony Point Compressor Stations.” Ms. Clair does not expressly request that EPA “object” to the permits, but concludes her message by asking that EPA “take action to deny these Air Permits.” The Clair Submittal does not cite to CAA § 505(b)(2) or to 40 C.F.R. § 70.8, or any other statutory or regulatory provision as the basis for the submission. Ms. Clair appears to petition EPA for some relief or action, but it is not clear that the Clair Submittal is specifically a CAA § 505(b)(2) petition to object to the Southeast and Stony Point Permits. Nonetheless, without waiving any claim that the Clair Submittal was not properly filed, EPA is responding to the Clair Submittal as if it were a petition to object under CAA § 505(b)(2).

Clair’s Claims: The Clair Submittal repeatedly asserts that the AIM Project violates 6 NYCRR 211.1, which states:

No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.

Clair Submittal at 1 (quoting 6 NYCRR 211.1); *see id.* at 3, 4.

The Clair Submittal asserts that the project associated with the Southeast and Stony Point Permits violate this state rule because their air emissions will cause adverse impacts on human health and wildlife. *Id.* at 1, 3, 4. Ms. Clair discusses various studies, a report, and a video involving purported adverse health impacts of air emissions from compressor stations. *Id.* at 1–3. Ms. Clair focuses on specific pollutants, including benzene, formaldehyde, and hexane, and discusses specific symptoms and other conditions that potentially result from exposure to such pollutants. *Id.* at 1–2. Ms. Clair also discusses the risk to residents located close to compressor stations, as well as to sensitive populations, such as children and the elderly. *Id.* at 3.

The Clair Submittal also claims that the cumulative effects from compressor stations and other natural gas infrastructure, including pigging stations and pipelines, have not been analyzed. *Id.* at 2. Ms. Clair discusses the radioactive materials cleaned out from pigging stations, and claims

that pollutants associated with pigging stations are released during compressor station and pipeline blowdowns. *Id.* Ms. Clair also asserts that although pigging stations are on-site at both the Southeast and Stony Point facilities, they are not discussed in the permit documents. *Id.*

The Clair Submittal also makes various allegations related to potential and actual emissions of VOC and NO_x from the Southeast and Stony Point facilities, based on a comparison of potential emissions submitted in reports to the FERC in 2014 to actual emissions reported in October 2013. *See id.* at 3. Based on the potential emissions, Ms. Clair contends that emissions of NO_x and VOCs would be “hugely increased.” *Id.*

The Clair Submittal also focuses on emissions from blowdowns. *See id.* at 2, 3. Ms. Clair asserts that there is no reporting of toxic emissions vented in blowdowns, thus potentially leading to the under-reporting of total emissions that might “take them over limits.” *Id.* at 3. Ms. Clair also claims that Spectra Energy refused to provide the neighboring town of North Salem advance notice of blowdowns. *Id.*

The Clair Submittal asserts that Spectra Energy’s safety record is questionable, citing fines for spills and safety violations and charges of a number of probable violations. *Id.* at 3.

The Clair Submittal addresses methane emissions from compressor stations, pipelines, and fracking, claiming that the amount of methane released from these emissions is greater than previously believed, and asserting that “this is a serious problem affecting the environment and climate change.” *Id.* at 3.

EPA’s Response: The Clair Submittal focuses on alleged violations of 6 NYCRR 211.1. However, this is a state law provision that is *not* part of New York’s EPA-approved SIP. 40 C.F.R. § 52.1670; *see* 63 Fed. Reg. 65557 (November 27, 1998).³⁶ As a purely state law provision, 6 NYCRR 211.1 is not a federally-enforceable “applicable requirement” subject to EPA review or, for example, a petition opportunity. *See* 40 C.F.R. §§ 70.2 (definition of “applicable requirement” for title V permitting purposes), 70.6(b)(2) (providing that state-only permit terms are not subject to various federal requirements related to the issuance and EPA’s review of title V permits); *see also, e.g., In the Matter of Waupaca Foundry, Inc. Plants 2/3*, Order on Petition No. V-2016-21 at 9–10 (June 7, 2017). Therefore, to the extent that the Clair Submittal may be regarded as a title V petition to object under CAA § 505(b)(2) and 40 C.F.R. § 70.8, any concerns presented with respect to 6 NYCRR 211.1 present no basis for EPA to object to the permits.

Regarding Ms. Clair’s various other concerns, as summarized above, the Clair Submittal does not identify any applicable CAA requirements with which the Southeast and Stony Point Permits do not comply. Thus, to the extent the Clair Submittal may be construed as a petition to object

³⁶ As EPA explained when removing this provision from the New York SIP, this general prohibition against air pollution “does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the [CAA].” 63 Fed. Reg. at 65557. Note that this provision was previously codified at 6 NYCRR 211.2, which is why the 1998 preamble references 6 NYCRR 211.2. However, EPA’s regulations make clear that the current version of the provision, codified at 6 NYCRR 211.1, is not part of the SIP. *See* 40 C.F.R. § 52.1670.

under CAA § 505(b)(2), the Submittal fails to demonstrate that the Permits fail to comply with Act and provide no basis for EPA to object to the Permits.

X. THE VAN DOLSEN SUBMITTAL

The Van Dolsen Submittal is an eight-page letter addressed to EPA Administrator. The letter is not explicitly characterized as a “petition” and it contains no reference to a petition. It also does not request that EPA “object” to the Southeast or Stony Point Permits, but requests EPA to “reject the modification of the Title V air Permits,” to “deny the permits,” and “not to issue the modified title V permits.” Van Dolsen Submittal at 1, 8. The Van Dolsen Submittal does not cite to CAA § 505(b)(2) or to 40 C.F.R. § 70.8, or any other statutory or regulatory provision as the basis for the submission. Ms. Van Dolsen clearly requests some relief or action from EPA, but it is not clear that the Van Dolsen Submittal specifically is a CAA § 505(b)(2) petition to object to the Southeast and Stony Point Permits. Nonetheless, without waiving any claim that the Van Dolsen Submittal was not properly filed, EPA is responding to the Van Dolsen Submittal as if it were a petition to object under CAA § 505(b)(2).

Van Dolsen’s Claims: The Van Dolsen Submittal, like the Clair Submittal, requests that EPA “reject” the modifications to the Southeast and Stony Point Permits because they violate 6 NYCRR 211.1. Van Dolsen Submittal at 1, 5 (citing Draft Permit Item 25.1³⁷ and quoting 6 NYCRR 211.1 (characterized as a “federal requirement”). Ms. Van Dolsen claims that “emerging research into the health impacts from shale gas development demonstrates that the current regulatory framework does not protect the health and ‘comfortable enjoyment of life and property’ as outlined in the statute.” *Id.* at 5.³⁸ For support, Ms. Van Dolsen discusses health concerns underlying New York’s December 17, 2014 ban on high-volume hydraulic fracturing, as well as various other studies evaluating the emissions and health impacts associated with oil and gas development, particularly emissions from compressor blowdowns. *See id.* at 1–5.

The Van Dolsen Submittal claims that permit conditions related to reporting and compliance “fall short of what is necessary to truly gauge actual exposure from emissions and the health effects of these exposures.” *Id.* at 3. Ms. Van Dolsen asserts that annual self-reporting requirements do not take into account accidental and planned blow downs or the resulting spikes of PM, formaldehyde, and other chemicals. *Id.* Ms. Van Dolsen reproduces a permit term related to deviation reporting, and requests that NYSDEC “immediately raise the bar and commence monitoring . . . on a more consistent basis and require third-party, independent air sampling of emissions during blow down events.” *Id.* at 5–6.

The Van Dolsen Submittal also alleges that Spectra has not been forthcoming in notifications of an emission event in Bedford, Pennsylvania. *Id.* at 6. Accordingly, Ms. Van Dolsen requests that Algonquin be required to notify NYSDEC about planned blowdowns at least 72 hours prior to the event, and of emergency blowdowns within 30 minutes of the event. *Id.*

³⁷ The conditions at issue are actually contained in Item 26.1 of the Draft and Proposed Southeast Permits and Item 1-19.1 of the Draft and Proposed Stony Point Permits.

³⁸ Van Dolsen similarly claims that “shale gas development has created a new paradigm and therefore requires different methods of assessing permit applications,” and that due to new risks related to shale gas development, EPA should re-evaluate the New York SIP. *Id.* at 1, 2.

The Van Dolsen Submittal also asserts that an increase in fugitive methane emissions from the Southeast and Stony Point compressor stations will contribute to climate change and undermine New York's renewable energy goals. *Id.* at 6–8 (citing GHG emissions from the AIM project generally, potential emissions from leaking valves and flanges, and studies related to the impacts of methane as a GHG). Ms. Van Dolsen contends that EPA “should deny the permits” because NYSDEC did not sufficiently look at energy policy and consequences for the state when permitting major sources of GHG emissions. *Id.* at 7–8.

Throughout her letter, Ms. Van Dolsen asks various questions related to the Permits. Ms. Van Dolsen asks, for example, why the permit applications before NYSDEC were broken into two projects, while the FERC application was for the AIM Project as a whole. *Id.* at 2. Ms. Van Dolsen asks various questions related to the facility's use of emission reduction credits, including observations related to environmental justice in Peekskill, New York. *Id.* at 3. Ms. Van Dolsen also asks why various units, including fugitive emissions from piping components, were classified as “exempt” in the Southeast Permit. *Id.* at 7.

EPA's Response: With respect to Ms. Van Dolsen's claims relating to 6 NYCRR 211.1, as discussed in connection with the Clair Submittal, 6 NYCRR 211.1 is *not* a federally-enforceable SIP provision, but rather a matter solely of state law. Therefore, to the extent that the Van Dolsen Submittal may be regarded as a title V petition to object under CAA § 505(b)(2) and 40 C.F.R. § 70.8, any concerns presented with respect to 6 NYCRR 211.1 present no basis for EPA to object to the permits.

Regarding Ms. Van Dolsen's various other concerns, as summarized above, the Van Dolsen Submittal does not identify any applicable CAA requirements with which the Southeast and Stony Point Permits do not comply. Thus, to the extent the Van Dolsen Submittal may be construed as a petition to object under CAA § 505(b)(2), the Submittal fails to demonstrate that the Permits fail to comply with Act and provides no basis for EPA to object to the Permits.

XI. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), to the extent that the ten submittals addressed herein are or could be considered petitions requesting an EPA objection, I hereby deny such petitions.

Dated: APR 30 2019



Andrew R. Wheeler
Administrator