

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:)
)
LDEQ Title V Air Operating Permit)
No. 1680-00097-V3)
) Permit No. 1680-00097-V3
For LaSalle BioEnergy, LLC)
)
Issued by the Louisiana Department of)
Environmental Quality)

**PETITION TO OBJECT TO THE TITLE V OPERATING PERMIT FOR
LASALLE BIOENERGY’S URANIA, LOUISIANA WOOD PELLET MILL**

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Delta Chapter of the Sierra Club, Dogwood Alliance, Partnership for Policy Integrity, Natural Resources Defense Council, Our Children’s Earth, and Environmental Integrity Project (“Petitioners”) hereby respectfully petition the Administrator of the U.S. Environmental Protection Agency (“EPA”) to object to the above-referenced Title V permit prepared by the Louisiana Department of Environmental Quality (“LDEQ”) for the LaSalle BioEnergy, LLC facility located at 4915 Highway 125, Urania, LaSalle Parish, Louisiana. LaSalle BioEnergy is a wood pellet manufacturing facility with a capacity to produce 578,000 tons of pellets per year, owned by Drax Biomass. Drax owns and operates three wood pellet plants in the U.S., which produce pellet fuel for Drax’s power plant in the United Kingdom.

LDEQ forwarded this permit to EPA for its 45-day review period on approximately April 19, 2019, prior to the conclusion of the public comment period on the draft permit, which ran from April 16, 2019 to May 21, 2019. Petitioners submitted timely comments on the draft permit on May 21, 2019.¹ Despite receiving significant and timely public comments on the draft permit, LDEQ has apparently not withdrawn the permit from EPA review. Petitioners therefore submit this petition to object by the deadline of August 5, 2019, without having received a response to comments. As explained below, the draft² permit fails to assure compliance with numerous applicable requirements of the Clean Air Act, and EPA must therefore object.

BACKGROUND

I. PETITIONERS

- a. Delta Chapter of the Sierra Club:** The Delta Chapter of the Sierra Club is the Louisiana chapter of the Sierra Club and includes more than 3,000 members statewide. The mission of the Sierra Club is to explore, enjoy and protect the wild

¹ Petitioners’ May 21, 2019 comments are attached. (Attachment A).

² Because LDEQ has not addressed significant public comments, the permit currently under EPA review is not a proposed permit but rather a draft permit, as explained more fully in Part XI of this petition.

and beautiful places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist people to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

- b. Environmental Integrity Project (EIP):** EIP is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or comply with environmental laws; and (3) to help communities obtain protections guaranteed by environmental laws.
- c. The Dogwood Alliance:** Dogwood Alliance mobilizes diverse voices to protect Southern forests and communities from destructive industrial logging. Dogwood Alliance opposes industrial wood pellet facilities for their negative impacts on our forests, environment, and communities. The production of wood pellets creates fine particulates and other air pollutants that have been linked to respiratory illness, heart disease, and cancer.
- d. Natural Resources Defense Council (NRDC):** NRDC is a national, non-profit, environmental organization that works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. We combine the power of more than three million members and online activists with the expertise of some 500 scientists, lawyers, and policy advocates across the globe to ensure the rights of all people to the air, the water, and the wild.
- e. Partnership for Policy Integrity (PFPI):** PFPI is a non-profit corporation that provides scientific and legal support so that citizen groups, environmental organizations, and policymakers can better understand energy development impacts on air quality, ecosystems, and the climate.
- f. Our Children's Earth (OCE):** Our Children's Earth Foundation advocates on behalf of children, who are most vulnerable to pollution, to enable them to breathe clean air and use clean water. OCE educates the public about health problems caused by pollution in their neighborhoods, and empowers affected communities to take action to reduce pollution. Throughout its history, OCE has successfully challenged and exposed governmental agencies that fail to meet their responsibility to protect and serve the public. This pro-transparency work reflects our commitment to educate communities about environmental issues, to investigate noncompliant and negligent polluters, and to enforce environmental laws and regulations.

II. PROCEDURAL AND FACTUAL BACKGROUND

Drax's LaSalle BioEnergy, formerly German Pellets Louisiana, is a major source of air pollution subject to prevention of significant deterioration ("PSD"). As such, prior to construction, LDEQ issued both a PSD permit and a Title V permit on May 28, 2013.³ The facility completed construction of one of two planned production lines in March of 2015.⁴ Less than a year later, German Pellets filed for bankruptcy, and Drax acquired the plant in April 2017.⁵ The second production line has not been constructed.⁶

This facility's initial Title V permit, Permit No. 1680-00097-V1 (the "V1" permit), was set to expire on May 28, 2018 unless Drax applied to renew the permit at least six months prior to that date. Drax missed this deadline and instead submitted a renewal application on May 7, 2018.⁷ Drax therefore failed to submit a timely application to renew its Title V permit, and, as LDEQ acknowledges, that permit expired "at midnight on May 28, 2018."⁸

On June 29, 2018, LDEQ released a draft permit to renew the expired Title V permit (the "V2" permit). Petitioners submitted timely comments on the draft V2 permit on August 7, 2018 to LDEQ's Public Participation Group (this is the designated body for receiving public comment on draft Title V permits in Louisiana, as stated by the public notice for the draft permit).⁹ The following day, Public Participation Group staff confirmed receipt of Petitioners' comments by e-mail.¹⁰ Shortly thereafter, on August 27, 2018, LDEQ issued the final V2 permit without reading or responding to Petitioners' comments. LDEQ permitting staff has not explained why they issued the final permit without considering petitioners' comments, alluding only to apparent issues with an email account.¹¹

Petitioners submitted a petition to EPA to object to the V2 permit on October 15, 2018, raising both substantive issues with the draft permit and LDEQ's failure to consider and respond to significant public comments before issuing the final V2 permit. To date, EPA has not responded to the October 15, 2018 petition.

Apparently after realizing that LDEQ had improperly failed to consider public comments before issuing the final V2 permit, LDEQ decided to reopen the entire permit for a new 30-day public comment period, from April 16, 2019 to May 21, 2019. For purposes of the new public comment period, LDEQ produced a new draft permit, V3, that reflects several revisions based on

³ PSD Permit No. PSD-LA-773 (May 28, 2013); Title V Permit No. 1680-00097-V0 (May 28, 2013).

⁴ German Pellets, Notification of Completion of Construction and Startup – Line 1 (Feb. 24, 2015). (Attachment B).

⁵ Drax Biomass Press Release, "Drax Biomass Submits Winning Bid for Central Louisiana Pellet Manufacturing Facility," (Apr. 3, 2017), available at: https://www.draxbiomass.com/press_release/drax-biomass-submits-winning-bid-central-louisiana-pellet-manufacturing-facility/.

⁶ *See infra*, Part IV..

⁷ Air Permit Briefing Sheet for Permit No. 1680-00097-V2, at 1 (Aug. 27, 2018). (Attachment E)..

⁸ *Id.*

⁹ LDEQ Public Notice for Permit No. 1680-00097-V2, June 29, 2018. (Attachment C)

¹⁰ Email from Tommie Milam, LDEQ, to Patrick Anderson, Powell Environmental Law (Aug. 8, 2018). (Attachment D).

¹¹ Phone Conversation between LDEQ Permit Writer Dr. Qingming Zhang and Patrick Anderson, counsel for Petitioner EIP (Sep. 7, 2018). (Dr. Zhang explained generally that he had not seen the comments in his email).

petitioners' public comments on the V2 permit.¹² Petitioners submitted public comments on the V3 permit on May 21, 2019.¹³ To date, LDEQ has not issued a response to comments, nor withdrawn the draft permit from EPA review.

III. GENERAL TITLE V PERMIT REQUIREMENTS

To protect public health and the environment, the Clean Air Act prohibits stationary sources of air pollution from operating without or in violation of a valid permit, which must be designed to include and assure implementation and compliance with health-based emission standards and all other applicable requirements. 42 U.S.C. §§ 7661a, 7661c. To that end, Title V permits must include such conditions as necessary to assure compliance with all applicable requirements. 40 C.F.R. § 70.6(a)(1); 42 U.S.C. § 7661c(a), (c). As defined, “applicable requirements” include all standards, emissions limits, and requirements of the Clean Air Act. 40 C.F.R. § 70.2. “The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular polluting source.” *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) (“purpose of Title V permit is to provide “a source-specific bible for Clean Air Act compliance”); *Sierra Club v. EPA*, 536 F.3d 673, 681, 674-75 (D.C. Cir. 2008) (“But Title V did more than require the compilation in a single document of existing applicable emission limits...It also mandated that each permit...shall set forth monitoring requirements to assure compliance with the permit terms and conditions.”). Thus, Title V requirements aim 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.” *Operating Permit Program, Final Rule*, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992).

Title V permits must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements that sufficiently assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). In accordance with 40 C.F.R. § 70.7(a)(5), “the permitting authority shall provide a statement that sets for the legal and factual basis for the draft permit conditions.” This “statement of basis” must include, among other things, a reasoned explanation for why the selected monitoring, recordkeeping, and reporting requirements are sufficient to assure the facility’s compliance with each applicable requirement.¹⁴

Title V regulations include several procedural requirements to ensure that members of the public have a meaningful opportunity to review and comment on a draft permit. A Title V permit may not be issued unless all of the public participation requirements set forth in 70.7(h) are satisfied. 40 C.F.R. § 70.7(a)(1)(ii). Among other things, the issuing state authority must maintain a mailing list of interested persons and use it to provide notice of the public review period and the public hearing. 40 C.F.R. § 70.7(h)(1). Furthermore, the permitting authority must offer a draft of the permit for public review and comment, and provide at least 30 days for public comment and notice of any public hearing at least 30 days in advance of the hearing. 40 C.F.R. § 70.2, §

¹² Statement of Basis for the V3 permit at 2.

¹³ Petitioners’ May 21, 2019 comments are attached (Attachment A).

¹⁴ See, e.g., *In re Los Medanos Energy Center*, Order in Response to Petition (EPA May 24, 2004), available at https://www.epa.gov/sites/production/files/2015-08/documents/los_medanos_decision2001.pdf.

70.7(h)(4); *see also* 42 U.S.C. § 7661a(b)(6). Following public review, the permitting authority is to prepare a proposed permit in light of its consideration of public comments, and send the permit that it proposes to issue to EPA for a 45-day review period. 42 U.S.C. § 7661d(a), (b)(1); 40 C.F.R. § 70.8(a), (c); *see also* 40 C.F.R. § 70.2 (defining “proposed permit” as “the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8.”).

If a state proposes a Title V permit that fails to include and assure compliance with all applicable Clean Air Act requirements, EPA must object to the issuance of the permit before the end of the 45-day review deadline. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If EPA does not object to a Title V permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period... to take such action.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). The Clean Air Act provides that EPA “shall issue an objection...if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the” Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see also* *N.Y. Pub. Interest Group v. Whitman*, 321 F.3d 316, 333 n.12 (2d Cir. 2003) (explaining that under Title V, “EPA’s duty to object to non-compliant permits is nondiscretionary”). EPA must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

GROUNDINGS FOR OBJECTION

For all the reasons set forth below, the LaSalle BioEnergy Title V permit fails to comport with procedural and substantive requirements of the Clean Air Act, and EPA must therefore object. Each of these objections was raised in public comments that Petitioners timely submitted to LDEQ.¹⁵

I. The Draft Permit Does Not Assure Compliance with the Previously Established Best Available Control Technology (BACT) Limits Because Available Credible Evidence Shows that the Facility Violates the Limits at Production Levels Far Below the Facility’s Current Permitted Production Capacity.¹⁶

As discussed below, if operated anywhere near its permitted capacity, Drax cannot conceivably comply with the BACT limits for volatile organic compounds (VOCs) on units known as pellet coolers (permitted as units EQT 0021, EQT 0022, EQT 0023, and EQT 0024). These limits appear in Specific Condition 22 of the draft V3 permit. Title V permit must “assure compliance” with all applicable requirements, which include applicable BACT limits. *See, e.g.*, 40 C.F.R. § 70.6(a)(1) (requiring that a Title V permit include “those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”); § 70.2 (defining “applicable requirement” to include “[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C and D of the Act.”).

In particular, LDEQ must amend the permit to assure compliance with applicable VOC BACT limits either by (1) requiring a dramatic reduction in wood pellet production, or (2) requiring

¹⁵ Specific citations to Petitioners’ comments are provided in footnotes to the heading of each of the grounds for objection below.

¹⁶ Petitioners’ Comments at 2.

installation of new VOC controls capable of reducing the facility's VOC emissions to the required levels, especially with respect to the pellet coolers. Alternatively, LDEQ must require Drax to apply for a reopening of the defective BACT analysis and to propose a new BACT limit based on the use of industry-standard VOC controls. Regardless, LDEQ must place the facility on a Title V compliance schedule setting forth enforceable steps designed to bring the facility into prompt compliance with its BACT obligations. 40 C.F.R. § 70.6(c)(3) (requiring a Title V permit to include a schedule of compliance), § 70.5(c)(8)(iii)(C) (providing that the schedule of compliance for a source that is not in compliance with all applicable requirements at the time of permit issuance "shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance.").

A. Drax Cannot Possibly Comply with the VOC BACT Limit for the Pellet Coolers at its Permitted Production Rate.

LaSalle BioEnergy was originally permitted to operate four units known as pellet coolers, but has only installed two (and permission to construct the other two has almost certainly expired, as discussed below).¹⁷ Each of the two existing pellet coolers is subject to a BACT limit of 17.70 tons per year (tpy) of VOCs on a rolling 12-month basis.¹⁸ Notably, Drax has never conducted emissions testing for VOCs from these units, despite the fact that Drax was required to perform such testing by February 23, 2019 pursuant to Specific Conditions 3 and 10 of the existing final V2 permit.¹⁹ Nonetheless, available information from similar facilities demonstrates that the pellet coolers' VOC emissions vastly exceed the applicable BACT limit at production levels far below what would be authorized by the draft V3 permit.

The draft V3 permit's BACT limits are based on emission factors from the facility's initial 2012 prevention of significant deterioration (PSD) construction permit application. The 2012 VOC emission factor for the pellet coolers is 0.12 pounds per oven dried ton (lb/ODT), which equates to 17.34 tpy for each pellet cooler at the facility's nameplate production rate of 578,000 tpy.²⁰ Since 2012, however, knowledge of VOC emissions in the wood pellet industry has grown substantially (as have the number of plants found to be vastly exceeding permitted emission limits), and the 2012 pellet cooler emission factor is far lower than what is plausible. We have surveyed all available stack tests for pellet coolers at industrial wood pellet plants that we are aware of, and the graph and table below compare the test results, as applied to LaSalle BioEnergy and to the combined BACT limits for the two pellet coolers.

¹⁷ As discussed in Part IV of this petition, only Line 1 has been constructed and permission to construct Line 2 has plainly expired because more than 18 months have elapsed during which construction ceased. Line 1 includes two pellet coolers permitted as EQT 0021 and EQT 0022.

¹⁸ Draft Specific Condition 22.

¹⁹ Requiring testing within 180 days of permit issuance, which occurred August 27, 2018. The V2 permit is attached at Attachment E.

²⁰ Draft Specific Conditions 4 and 15.

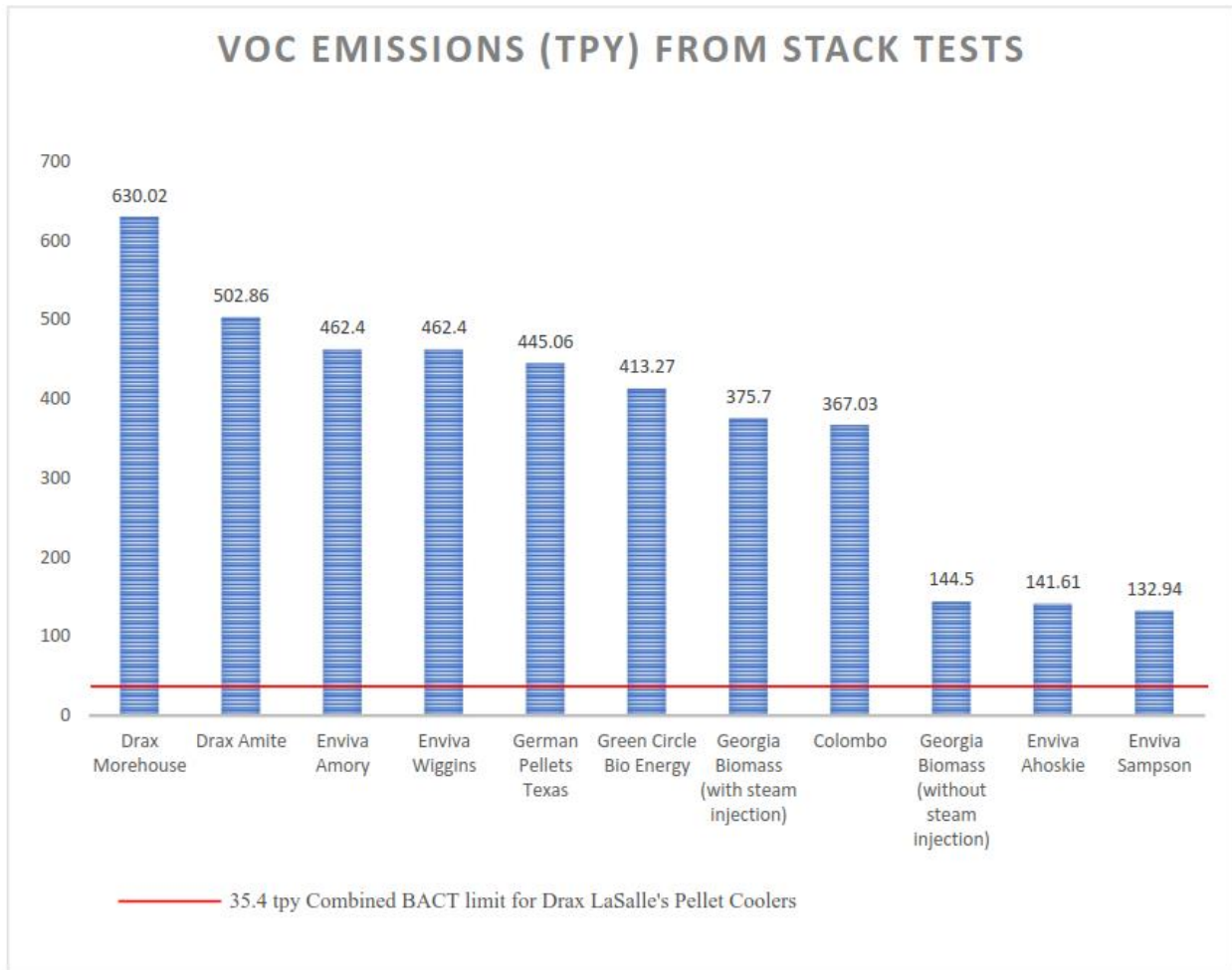


Figure 1: VOC emission factors from stack tests applied to the production rate of 578,000 tpy, which is the nameplate capacity of the existing Drax LaSalle Plant. The red line is the combined BACT limits for each of the two pellet coolers.

As this graph shows, the combined BACT limits of 17.7 tpy for each of the two pellet cooler outlets, i.e. 35.4 tpy total, is simply unattainable for Drax LaSalle if it operates anywhere near its nameplate capacity of 578,000 tpy. The table below provides the same information, along with the softwood percentage processed during the test. Processing more softwood increases VOC emissions,²¹ therefore tests like Enviva Ahoskie (35% softwood) and Enviva Sampson (52% softwood) at lower softwood percentages likely underestimate Drax’s emissions, given the fact that Drax LaSalle processes close to 100% softwood.²²

²¹ See generally, EPA, AP-42 Fifth Edition Compilation of Air Pollutant Emission Factors, Volume 1, Chapter 10.6 Reconstituted Wood Products (various dates) (consistently showing higher VOC emissions for softwoods than hardwoods across all processes).

²² SCS Global Services, Evaluation of LaSalle BioEnergy Plant Compliance with the SBP Framework: Public Summary Report (2018). The 2018 summary report states that the plant is “designed to consume 800,000 to 1 million green metric tons” of wood per year, which is “comprised mainly of southern yellow pine with a potential minimum quantity of mixed southern hardwoods.” *Id.* at 5.2.. Available at: https://sbpcert.org/docs/Supply%20Base%20Report%20v1.2_First%20Surveillance%20Audit_%20LaSalle%20BioEnergy%20FINAL.pdf. (Attachment F).

VOC Emission Factors for Pelletizer/Pellet Coolers			
Facility	Softwood %	Emission Factor (lb/ODT)	Emissions at 578,000 tpy
Drax Morehouse	Unknown	2.18	630 tpy
Drax Amite	Unknown	1.74	502 tpy
Enviva Amory	60%	1.6	462 tpy
Enviva Wiggins	60%	1.6	462 tpy
German Pellets Texas	Unknown	1.54	446 tpy
Green Circle Bio Energy	95%	1.43	413 tpy
Georgia Biomass (with steam injection)	100%	1.3	375 tpy
Colombo	80%	1.27	367 tpy
Georgia Biomass (without steam injection)	100%	0.5	144 tpy
Enviva Ahoskie	45%	0.49	141 tpy
Enviva Sampson	52%	0.46	132 tpy
Average:	80%	1.28	370 tpy
Drax LaSalle Emission Factor	90 to 100%	0.12	35.4 tpy (combined BACT limits)

Note: stack test citations are provided in Appendix A.

In short, there is not a single test in this industry that supports the idea that Drax LaSalle can comply with the permit’s pellet cooler BACT limits at its permitted production rate of 578,000 tpy. To the contrary, based on the average emission factor from the 11 available stack tests (including even the unrepresentative tests such as Enviva Ahoskie, processing just 34% softwood), the plant would need to produce pellets at a rate of less than 55,000 tpy—about 10% of the facility’s nameplate capacity—in order to comply with the BACT limits.

One additional data point is particularly relevant to Drax LaSalle’s VOC emissions. The German Pellets Texas plant was built in a nearly identical manner to the LaSalle plant, which was originally constructed by the same company as German Pellets Louisiana. In 2016, however, German Pellets Texas came forward to the Texas permitting authority to report that, amongst other exceedances, its two pellet coolers were emitting VOCs at the rate of 446 tpy.²³ Given that the two German Pellets plants were essentially identical when built, and that Drax does not claim that it somehow modified the LaSalle plant to reduce VOC emissions (nor can we envision any modification that would vastly reduce VOC emissions other than add-on controls, which the plant does not currently use), the rate of 446 tpy further cements the fact that at its permitted

²³ German Pellets Texas, Permit Amendment Application (Sep. 2016). (Attachment G).

wood pellet production levels, Drax LaSalle cannot comply with a BACT limit of 17.7 tpy on each of the two pellet coolers.

Finally, we note that it should not be surprising that Drax is failing to meet VOC BACT limits for the pellet coolers; excess VOC emissions have plagued this industry. In fact, Drax's two other pellet plants in the U.S. have each finally conceded that they were vastly exceeding permit limits and the major source PSD threshold for VOCs, but only after EIP raised the issue in public comments (and after responding by submitting "engineering tests" that were plainly flawed showing VOC emissions rates from the pellet coolers that were 33 times lower than the company now admits to emitting).²⁴ Those two plants, Drax Morehouse and Drax Amite, both permitted as synthetic minor sources supposedly restricted to less than 250 tpy of VOC emissions, admitted in late 2018 that they had the potential to emit VOCs at more than 1,100 tpy and 790 tpy respectively.²⁵ Those exceedances are due in large part to the pellet cooler emissions.

B. The Draft Permit Fails to Assure Compliance with the Pellet Cooler BACT Limits and is Therefore Deficient.

As demonstrated above, LaSalle BioEnergy is exceeding the currently applicable pellet cooler BACT limits, and will continue to exceed them, any time the plant's 12-month rolling production is higher than about 55,000 tpy, which is roughly 10% of the plant's currently permitted capacity. Further, based on multiple lines of evidence, we believe the plant consistently operates at a rate of at least 500,000 tpy.²⁶ Given that this plant cannot comply with the applicable pellet cooler BACT limit while operating remotely close to production level authorized by the draft V3 permit (which allows operation at full nameplate capacity), the draft permit utterly fails to assure compliance with the BACT limit.

The only permit condition that might plausibly force this facility to take action to comply with the BACT limits is the stack testing provision, requiring stack testing within 180 days after permit issuance. Yet reliance on stack testing to assure compliance is arbitrary and ineffective where clear, credible evidence shows non-compliance even before the permit is issued, and where it cannot be disputed that the facility will violate its BACT limits when operated as

²⁴ In response to EIP's comments on the Title V permit for Drax Amite, Drax sent a letter to Mississippi's permitting authority attempting to refute EIP's claims that the facility was vastly exceeding the major source threshold for VOCs. As part of Drax's response, Drax included emissions testing from Drax Morehouse. The pellet cooler testing is listed as "engineering testing data" and shows the pellet coolers emitting at a rate equivalent to 18.79 tpy (for all of the pellet coolers); once Drax conceded that both plants were indeed major sources, the company submitted new testing showing the pellet coolers emitting VOCs at the rate of 625 tpy. The initial testing that Drax submitted was plainly erroneous, and the subsequent testing is much more in line with other testing in the industry. *See* Letter from Greg Martin, Sr. Vice President of Operations, Drax Biomass, to Rajeev Gupta, Environmental Permits Division, Mississippi Department of Environmental Quality (Oct. 12, 2017). (Attachment EE).

²⁵ Letter from Timothy W. Hardy, counsel for Drax Morehouse BioEnergy, to Elliot B. Vega, LDEQ (Jan. 24, 2019) (Attachment H); Letter from Keith W. Turner, counsel for Drax Amite BioEnergy, to Tim Aultman, Environmental Compliance & Enforcement Division (Nov. 5, 2018) (Attachment I).

²⁶ In calendar year 2018, for instance, it appears that LaSalle BioEnergy produced around 515,000 tons of pellets. We calculate this number based on LaSalle BioEnergy's 2018 emissions inventory reporting, which reported facility-wide VOC emissions at 273.7 tons. From that rate, we have back-calculated the facility's production rate using the emission factors contained in LaSalle BioEnergy's 2018 Title V Renewal Application. Additionally, Drax itself reported to investors that its three U.S. pellet plants, each with a nameplate capacity of 578,000 tpy, produced a total of 1,489,222 tons of pellets in 2018; which means on average each plant produced just under 500,000 tpy. *See* Drax Group PLC, Annual Report and Accounts at 2 (2018). (Attachment DD).

designed. Reliance on eventual stack testing is further unwarranted where, as here, the facility has already failed to conduct stack testing required under the V2 permit, as discussed below.

Thus, to assure the facility's compliance with its existing pellet cooler BACT limits, the draft permit would need to be amended to incorporate an enforceable wood pellet production limit of less than 55,000 tpy. Alternatively, the permit could assure Drax's compliance by requiring the installation and operation of VOC controls for the pellet coolers. Under the latter approach, in addition to the permit conditions requiring installation and operation of the VOC controls, the permit would need to include a compliance schedule providing an enforceable timetable for installation and operation of such controls, and require Drax to restrict the facility's production level until the controls are operational.

C. The Permit Fails to Include Adequate Monitoring, Recordkeeping, and Reporting to Assure Compliance with the Pellet Cooler BACT limit.²⁷

Title V permits must contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.”²⁸ As relevant here, the draft permit requires LaSalle BioEnergy to monitor and demonstrate compliance with the pellet cooler BACT limits by calculating VOC emissions from the pellet coolers using the 0.12 lb/ODT emission factor multiplied by the facility's production rate.²⁹

Utilizing this demonstrably incorrect emission factor means the permit's monitoring, recordkeeping, and reporting scheme fails to “yield reliable data” that are “representative of the source's compliance” with the BACT limit.³⁰ Under the terms of the draft permit, the plant will continue to exceed the BACT limits, yet the calculations required under the permit to monitor rolling emissions will continue to show compliance as long as production remains below 578,000 tpy. This flawed monitoring provision means Drax will likely continue to certify compliance with the BACT limits when it is clear the plant is not in compliance.³¹

While we recognize that the permit provision includes a clause requiring the use of a higher emission factor based on “subsequent performance test or other credible evidence” that the true emission rate is higher than 0.12 lb/ODT, now that LDEQ has received such credible evidence, failing to revise the listed—but incorrect—emission factor of 0.12 lb/ODT renders the draft permit defective and EPA must object.

²⁷ See Petitioners' Comments at 6-7.

²⁸ 40 CFR 70.6(3)(i)(B).

²⁹ Specific Requirement 15.

³⁰ 40 CFR 70.6(3)(i)(B).

³¹ The facility has consistently certified compliance with its BACT limits since becoming operational, *see e.g.* Drax Biomass Inc., Annual Compliance Certification for January 1, 2018 to December 31, 2018 – LaSalle BioEnergy Pellet Mill (Mar. 29, 2019).

II. The Draft Permit Fails to Assure Compliance with Case-by-Case Maximum Achievable Control Technology (MACT) Requirements.³²

As with VOCs, Drax LaSalle’s hazardous air pollutant (HAP) emissions were woefully underestimated prior to construction, and the plant’s potential HAP emissions undoubtedly exceeded the 25 tpy major source threshold for aggregate HAP emissions and the 10 tpy threshold for individual HAPs when originally built. Further, actual and potential HAP emissions continue to exceed the relevant major source thresholds. As such, the facility should have complied with case-by-case MACT requirements pursuant to Clean Air Act § 112(g), and case-by-case MACT is clearly a requirement with which the Title V permit must assure compliance.³³

The emission factors below are from a recent PSD application for Enviva Sampson, a wood pellet plant proposing to process 100% softwood and features similar HAP controls (i.e. an RTO on the wood dryer and no HAP controls on post-dryer units), and are ultimately based on stack testing at several facilities.³⁴

Pellet Cooler HAP Emissions		
Pollutant	Emission Factor (lb/ODT)	Emissions at a production rate of 578,000 (tpy)
Acetaldehyde	0.0084	2.4
Acrolein	0.0504	14.6
Formaldehyde	0.0312	9.0
Methanol	0.24	69.4
Phenol	0.0252	7.2
Propionaldehyde	0.0108	3.1
	Aggregate HAP emissions:	105.7 tpy

³² Petitioners’ Comments at 8.

³³ Title V permits must “include enforceable emission limitations and standards . . . and other such conditions as are necessary to assure compliance with applicable requirements of [the Clean Air Act].” 42 U.S.C. § 7661c(a); Title V permits must specifically ensure compliance with “All requirements of Subchapter I of the [Clean Air Act].” 40 U.S.C. § 7661a(f). Case-by-case MACT requirements are set out at § 7412 of Subchapter I of the Clean Air Act, and therefore the permit must assure compliance with case-by-case MACT.

³⁴ Enviva Sampson, Application for PSD Permit Modification for Softwood Expansion Project (Mar. 2018). (Attachment J).

Dry Hammermill HAP Emissions		
Pollutant	Emission Factor (lb/ODT)	Emissions at a production rate of 578,000 (tpy)
Acetaldehyde	0.0091	2.6
Acrolein	0.0108	3.1
Formaldehyde	0.0080	2.3
Methanol	0.0052	1.5
Phenol	0.0041	1.2
Propionaldehyde	0.0188	5.4
	Aggregate HAP emissions:	16.1 tpy

Based on Enviva’s emission factors, which in turn are based on testing at multiple wood pellet plants, pellet coolers and dry hammermills processing 578,000 tpy of softwood emit more than 120 tpy of the six HAPs listed above. While these emission factors may not perfectly represent Drax’s emissions given potential differences in operations, both Drax and the Enviva plant process mostly southern yellow pine and produce pellets with a similar final moisture content (and Drax is the primary purchaser of Enviva’s pellets, meaning the pellets from the two plants are likely quite similar). It is therefore impossible for Drax to be emitting less than 25 tons of aggregate HAPs per year.

We finally note recent precedence in this industry for requiring retroactive case-by-case MACT due to underestimated HAP emissions prior to construction. The Enviva Sampson plant discussed above also significantly underestimated HAP emissions prior to construction, and based partially on that fact, North Carolina has required Enviva to conduct a new case-by-case MACT determination.³⁵ Given the fact that the Drax LaSalle plant was initially permitted as an area source, and therefore never conducted a MACT analysis, LDEQ must likewise require Drax to now comply with case-by-case MACT by conducting a retroactive MACT determination. Because LDEQ has not done so, the draft permit’s failure to require compliance with MACT renders the draft permit defective and requires EPA to object.

III. The Draft Permit, and in Particular its Stack Testing Requirements, Do Not Satisfy Title V’s Periodic Monitoring Requirements.³⁶

In order to assure compliance with BACT limits, the draft permit relies largely on stack testing, combined with mandates to calculate emissions based on emission factors developed from those

³⁵ Letter from William Willets, Chief, Permitting Section, NCDEQ, to Steven Schaar, Plant Manager, Enviva Pellets Sampson (Mar. 1, 2019). (Attachments K). Ultimately the state and Enviva reached a settlement agreement which required full HAP/VOC controls on the dry hammermills and pellet coolers without conducting the full case-by-case MACT analysis, however these controls were preliminarily determined by NCDEQ to constitute MACT. *Id.*

³⁶ Petitioners’ Comments at 10.

stack tests.³⁷ For numerous reasons, the stack testing conditions are not sufficient to constitute adequate periodic monitoring to assure compliance with the BACT limits.

A. The Permit Must Require Compliance Testing Pursuant to Method 25A or the Wood Products Protocol 1 (WPP1) for VOCs.

For reasons that are unclear, the draft permit requires VOC testing under different EPA methods for different emissions units. For the wood dryers, the draft permit requires testing pursuant to EPA Method 25A; for the other units, however, the draft permit requires Method 18 testing for VOCs. As explained below, Method 18 testing is inappropriate for VOC testing where the constituency of the VOC emissions is highly speciated, such as the wood products industry. We believe the WPP1 protocol, also known as OTM-26, is the most appropriate testing regimen for the wood products industry. At a minimum, however, the permit must at least require Method 25A testing for all of the units in order to constitute “periodic monitoring **sufficient to yield reliable data** from the relevant time period that are representative of the source’s compliance with the permit.”³⁸ EPA must object because the failure to require reliable test methods renders the permit defective.

1. Method 18 is Incapable of Determining the True Rate of VOC Emissions.

As EPA explains, Method 18 was developed for “Synthetic Organic Chemical Manufacturing Industry sources, where a few, known compounds were being used and produced in the process.”³⁹ EPA further explains that Method 18 “should NOT be used at complex sources with a large number of VOCs,” such as the wood products industry.⁴⁰

In contrast, Method 25A has been the standard EPA stack test method for VOCs in the wood products industry (frequently now supplemented by WPP1 aka OTM-26, as discussed below). For instance, EPA’s AP-42 emission factors for Plywood and Composite Wood Products rely almost exclusively on either Method 25 or 25A testing⁴¹ Additionally, we’ve reviewed VOC testing and/or testing conditions in air permits for 19 pellet plants, and none require Method 18, nor have we seen actual testing in this industry utilizing Method 18, with one exception.⁴² The results of that survey is below:

³⁷ See Specific Conditions 4 and 15.

³⁸ 40 CFR 70.6(3)(i)(B) (emphasis added).

³⁹ EPA, Frequently Asked Questions (FAQs) for Method 18, at 1 (Aug 24, 2016), *available at*: https://www.epa.gov/sites/production/files/2016-08/documents/method18_faq.pdf.

⁴⁰ *Id.* (emphasis in original).

⁴¹ EPA, Emission Factor Documentation for AP-42, Chapter 10, Plywood and Composite Wood Products, Final Background Report, at 3.2.1 (July, 2003), *available at*: https://www3.epa.gov/ttn/chief/ap42/ch10/bgdocs/b10s05_s0604.pdf

⁴² Stack tests and permits are available at:

<https://drive.google.com/open?id=1sGN4d2kUt1tuvIfb9bNpKrYTBYYlkuM2>.

Source	Permit Requirement and/or Test Method Used
Appling County Pellets (GA)	OTM-26
Colombo Energy/Enviva Greenwood (SC)	Method 25A
Drax Amite (MS)	Method 25A for 2018 tests, Method 18 for 2016 testing.
Drax Morehouse (LA)	Method 25A
Enviva Ahoskie (NC)	Method 25A
Enviva Amory (MS)	Method 25A
Enviva Northampton (NC)	Method 25A
Enviva Sampson (NC)	OTM-26
Enviva Southampton (VA)	Unspecified
Enviva Wiggins (MS)	Method 25A
Georgia Biomass (GA)	OTM-26
Green Circle (now Enviva Cottdale) (FL)	Method 25A
Hazlehurst (GA)	Method 25A
Highland Pellets (AR)	Method 25A
Highland Pellets South (AR)	Method 25A
Lee Energy (now MRE Crossville) (AL)	Method 25A
Varn Wood Products (GA)	OTM-26
Westervelt Pellets (AL)	Method 25A
Zilkha Biomass (AL)	Unspecified

As the table shows, the vast majority of tests utilize Method 25A, with several recent tests conducted pursuant to OTM26, aka WPP1. The one test we know of that was conducted pursuant to Method 18 was the February 2016 testing on Drax Amite’s wood dryer RTO, and there the testing company intended to test the dryer using Method 25A but could not do so due to technical difficulties.⁴³ Additionally, the unit tested was the wood dryer, which is the unit at LaSalle required to be tested under Method 25A. For these reasons, the one Method 18 test is not supportive of the idea that Method 18 should be used in lieu of Method 25A or OTM26 for non-dryer units at Drax LaSalle.

In sum, Method 18 is not appropriate to evaluate the full spectrum of VOCs emitted in the wood products industry. Testing conducted pursuant to Method 18 will undercount VOC emissions, and therefore cannot be used to demonstrate compliance with VOC BACT limits. Title V permits must contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”⁴⁴ Method 18, by

⁴³ Drax Amite, Emission Compliance Test Report, at 5 (Feb. 2016). (Attachment L).

⁴⁴ 40 CFR 70.6(3)(i)(B).

undercounting VOC emissions, cannot “yield reliable data” and therefore cannot be considered adequate periodic monitoring under Title V’s requirements.

2. WPP1 aka OTM26 is the Preferred Method to Evaluate Wood Product VOC Emissions.

Recognizing that VOC emissions from the wood products industry are a “complex issue,” EPA released its Interim VOC Measurement Protocol for the Wood Products Industry in July 2007.⁴⁵ EPA subsequently designated WPP1 as an acceptable “other method,” known as OTM-26. In short, WPP1 requires Method 25A testing to express total hydrocarbons (THC) as propane, and because Method 25A undercounts formaldehyde and methanol, WPP1 requires testing under other methods to determine the rates of those emissions. Along with some other adjustments, the combined methods under WPP1 represent a “reasonable approximation of total VOC mass.”⁴⁶

LaSalle BioEnergy’s BACT limits are expressed as “VOCs” without any further qualification. In order to demonstrate compliance with these BACT limits, then, a method that determines the total VOC mass is necessary. While Method 25A would be an improvement over Method 18, even Method 25A is not truly representative of total VOCs because it undercounts formaldehyde and methanol. WPP1, as EPA has explained, is currently therefore the best method for determining the total mass of VOC emissions.

3. LDEQ’s Failure to Explain Why It Selected Method 18 Rather Than Method 25A or WPP1 Also Renders the Permit Deficient.

Nothing in the permit record nor the statement of basis explains why LDEQ opted to require Method 18 for the dry hammermills and pellet coolers, despite requiring Method 25A for the wood dryer (and despite the fact that Method 18 appears wholly inappropriate for a source like Drax LaSalle). In fact, the V2 permit required testing for all units pursuant to Method 25A, and LDEQ is silent on why it decided to change methods for the V3 permit.

Title V permits must be accompanied by a statement of basis that “sets forth the legal and factual basis for the draft permit conditions.”⁴⁷ EPA has further emphasized that “the rationale for the selected monitoring method must be clear and documented in the permit record,” and has objected to Title V permits when permitting authorities fail to explain why they selected particular monitoring methods.⁴⁸ Even if Method 18 is somehow adequate, which we dispute, LDEQ’s silence on why it chose Method 18 renders the draft permit deficient and EPA must object.

⁴⁵ EPA, Interim VOC Measurement Protocol for the Wood Products Industry (July 2007), *available at*: <https://www3.epa.gov/ttn/emc/prelim/otm26.pdf>.

⁴⁶ *Id.* (internal quotations omitted).

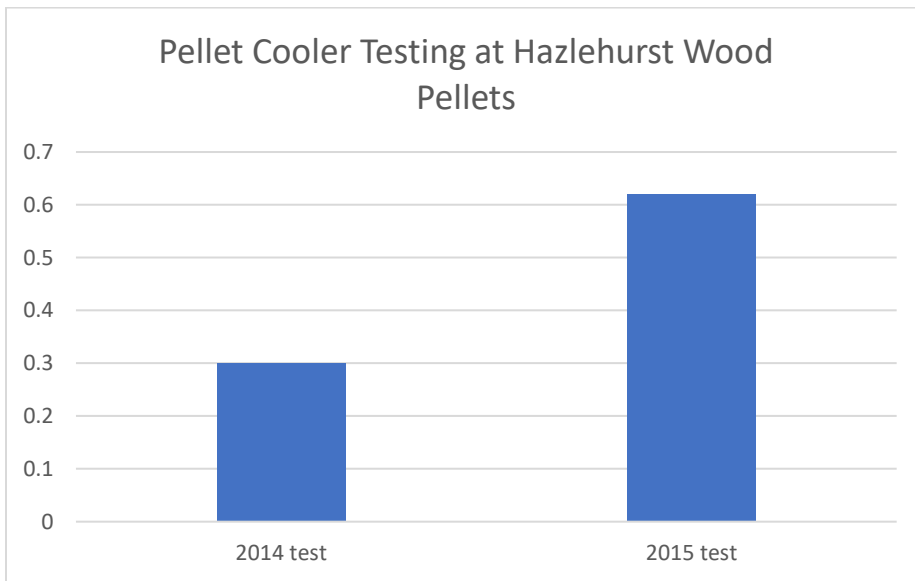
⁴⁷ 40 CFR 70.7(a)(5).

⁴⁸ *In the Matter of Fort James Camas Mill*, Order on Petition No. X-1999-1 (EPA, Dec. 22, 2000), at 8, *available at*: https://www.epa.gov/sites/production/files/2015-08/documents/fort_james_decision1999.pdf; *see also*, Letter from Stephen Rothblatt, Chief, Air Programs Branch, EPA, to Robert F. Hodanbosi, Chief, Division of Air Pollution Control, Ohio EPA, at 1 (Dec. 20, 2001).

B. Testing Every Five Years is Not Adequate Periodic Monitoring to Assure Compliance with the Permit’s BACT Limits.

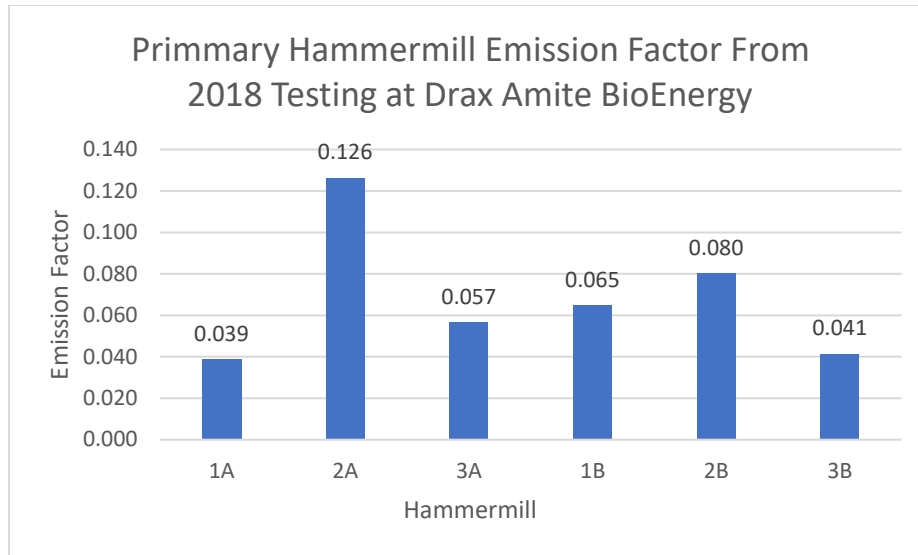
While we appreciate that LDEQ has added conditions requiring VOC testing at least once every five years, this is still insufficient to assure compliance with BACT limits expressed as hourly emission limits (the wood dryers, CRG 0004) or tons per year (the dry hammermills and pellet coolers, CRG 0001 and 0002). VOC emissions from wood pellet manufacturing can be highly variable, and individual stack tests representing just three hours of operations are not sufficient to demonstrate compliance over the course of 43,800 hours (five years).

At least two important factors suggest that emissions from wood pellet plants are highly variable. First, plants that have conducted periodic testing on the same units have shown substantial variations. For instance, testing just a year apart on pellet coolers at one plant produced an emission factor for VOCs that was twice as high as the initial compliance testing.⁴⁹ Second, where plants have tested multiple identical units at the same time, those tests have shown a large degree of inconsistency in emissions. The Drax wood pellet plant in Gloster, Mississippi, recently tested all six of its hammermills for VOC emissions and found highly variable emissions from one hammermill to the next.⁵⁰ The results from the two facilities are below:



⁴⁹ Compare August 28, 2014 stack tests on the pellet coolers at Hazlehurst Wood Pellets in Georgia (producing an emission factor of 0.30 lb/ODT, with testing at that same plant conducted on December 16, 2015, producing an emission factor of 0.62 lb/ODT. (Test excerpts at Attachment M). We note that this testing is not included in the comparison of stack tests for pellet coolers above because Hazlehurst controls VOCs from the pellet presses rather than routing those emissions to the pellet cooler as Drax and most other plants do. We note, however, even these tests show that Drax LaSalle cannot comply with the BACT limits.

⁵⁰ Letter from Keith W. Turner, legal counsel for Amite BioEnergy, to Tim Aultman, Environmental Compliance & Enforcement Division, MDEQ (Nov. 5, 2018). (Attachment I).



The substantial variation in emissions across identical units shows that a single compliance test is unlikely to represent emissions from this industry. We believe that in order to assure compliance with the BACT limits, testing ought to be required annually. Such a testing schedule was recently implemented in a permit for a wood pellet plant in North Carolina.⁵¹ Regardless, testing only once every five years is plainly not adequate to assure compliance with post-dryer BACT limits, as demonstrated by the tests above.

C. Drax LaSalle Appears to be Out of Compliance with Permit V2's Compliance Testing Deadline.

The V2 permit was issued on August 27, 2018, and required performance testing for VOCs on the dry hammermills and pellet coolers within 180 days of issuance.⁵² That deadline fell on February 23, 2019. To our knowledge, Drax has not conducted these tests to date, and there is no documentation on LDEQ's Electronic Document Management System indicating the LDEQ granted an extension or waiver related to the testing requirement. Repeated inquiries to LDEQ's stack testing division and the permit writer for this permit have not provided any clarity as to whether these tests have occurred. The V3 permit, meanwhile, would apparently extend the deadline to test by another 180 days from whenever that permit is issued, which may be a considerable time given the issues raised herein. If the plant has indeed failed to conduct the required testing, the draft permit must implement a compliance schedule requiring testing as promptly as possible.

IV. The Draft Permit Improperly Includes Proposed Units Which Cannot Not be Lawfully Constructed.⁵³

The initial construction permit for the LaSalle plant, issued in May of 2013, authorized the construction of two identical lines of pellet production, Line 1 and Line 2. While construction on Line 1 was completed in March 2015, construction on Line 2 never progressed beyond

⁵¹ NCDEQ, Air Quality Permit No. 10365R03 for Enviva Pellets Hamlet, LLC (Jan. 14, 2019). (Attachment N).

⁵² V2 permit (Attachment E), Specific Conditions 3 and 10.

⁵³ Petitioners' Comments at 17.

preliminary site preparation.⁵⁴ Under LAC 33:III.537(A)(IV), a preconstruction permit “shall become invalid, for the sources not constructed, if . . . construction is discontinued for a period of two years (18 months for PSD permits.”

According to Google Earth imagery dating to March 21, 2019, the only structures visible in the area set out for Line 2 are a handful of concrete pads and/or foundations.⁵⁵ Considering Line 1 was constructed in less than two years,⁵⁶ it is clear that construction on Line 2 has been discontinued for well over 18 months. Accordingly, regardless of whether Line 2 is considered a separate source that was not constructed or part of a single construction that was discontinued, the PSD permit is now invalid as to Line 2.

Despite this fact, the draft permit still allows for the construction and operation of Line 2. In other words, the draft permit allows the plant to double in size and double actual emissions based on an invalid PSD permit issued more than six years ago. This is unlawful and inappropriate, and LDEQ needs to strike references to Line 2 from the permit—if Drax wishes at some point to expand the current operations, Drax may do so only by applying for a major modification under the relevant PSD regulations. Inclusion of the Line 2 operations as permitted units in the draft Title V permit contravenes Louisiana’s PSD requirements and renders the draft Title V permit defective.

We note that requiring a new application for construction of Line 2 is particularly important given the new knowledge of VOC and HAP emissions in this industry since 2013. Additionally, most comparable pellet plants now use VOC and HAP controls on units like the dry hammermills and pellet coolers, meaning new BACT and MACT determinations would almost certainly include such controls.⁵⁷ In sum, a new application in the future would result in a cleaner, lower emitting Line 2.

V. The Draft Permit is Defective Because LaSalle BioEnergy Submitted an Incomplete and Incorrect Permit Application and Failed to Supplement and/or Correct The Application.⁵⁸

One of EIP’s primary concerns with the V2 permit was that Drax had omitted information on VOC emissions from the wet (aka green) hammermills (previously permitted as EQT 0025-0031) when it applied to renew its Title V operating permit. Based on testing and recent permit applications for other pellet plants showing that wet hammermills are indeed sources of considerable VOC emissions, we argued that it was simply not plausible that the wet hammermills at Drax LaSalle were not significant sources of VOCs (as Drax had apparently believed), and that omitting that information rendered the Title V permit deficient.

⁵⁴ See Appendix B to this Petition: Comparison of 2012 Plant Design to 2019 Google Earth Imagery

⁵⁵ *Id.*

⁵⁶ The facility certified completion of construction of Line 1 in March of 2015, 22 months after receiving the initial preconstruction permit. See Letter from Peter Beibold, CEO, German Pellets Louisiana, to Tegan Treadaway, Assistant Secretary, LDEQ (Feb. 24, 2015). (Attachment B)

⁵⁷ By our count, 12 of the 14 existing wood pellet plants in the U.S. with a production rate greater than 500,000 tpy use at least some post-dryer VOC/HAP controls or have applied to do so, eight of which are fully controlled or will be soon.

⁵⁸ Petitioners’ Comments at 7.

Now, apparently in response to our comments, Drax has notified LDEQ that its wet hammermills are no longer point sources of any pollutant. This is because, according to Drax, in January 2018, the facility modified the wet hammermills—without a permit and seemingly without notification to LDEQ—to remove and stop operating the seven cyclones selected as BACT to control the wet hammermills (Emission Points ID No. 1-IIIa through 1-IIIg). Drax states that the facility now vents wet hammermill emissions to the wood dryer.

This unpermitted modification occurred prior to the submission of the Title V renewal application upon which both the existing V2 permit and the draft V3 permit at issue now were based. Despite that fact, Drax did not include the modification in Drax’s May 2018 Title V permit application, which still showed that the wet hammermills were point sources controlled by the seven cyclones.⁵⁹ In fact, Drax only revealed this modification to LDEQ in a March 5, 2019 e-mail (well after the issuance of the V2 permit) after LDEQ apparently inquired about VOC emissions in response to petitioners’ comments.⁶⁰

In Drax’s brief e-mail concerning the wet hammermills, which to our knowledge is the only information the company has provided LDEQ about the unpermitted modification, the company provides a one paragraph description of how the seven wet hammermills now operate. According to Drax, after removing the cyclones, Drax ceased using process air to aspirate the wet hammermills, stating that now “[t]here are a series of air inlet holes in the top body of the hammermill,” through which “air is drawn into the holes by the rotary action of the hammers” and eventually discharged into the dryer.⁶¹

Other than the March 5 e-mail, the permit record is completely devoid of emissions information related to the removal of the cyclones and the new operating scenario, which renders the draft permit defective.⁶² For instance, there is no quantification of emissions from the dryer’s RTO after the modification, which now controls wet hammermill emissions. Most significantly, the brief e-mail is not accompanied by any “certification by a responsible official of truth, accuracy, and completeness,” as required by 40 C.F.R. § 70.5(d).

Ultimately, venting the wet hammermill air to the dryers’ WESP and RTO is an appropriate control solution for both particulates and VOCs, and we are not objecting to that control scenario in general. However, we are skeptical that the wet hammermill air is fully routed to the dryer by the “rotary action of the hammers,” without any fan or other aspiration, and that the units may be partially or fully venting directly to the atmosphere.⁶³

Because the modification was made without a permit and the only information underlying the Title V revisions—i.e. striking the BACT limits and related monitoring, recordkeeping and

⁵⁹ Drax LaSalle BioEnergy Application at 4.

⁶⁰ Email from Sharon Killian, Trinity Consultants, to Bryan Johnston, LDEQ (Mar. 5, 2019). (Attachment O).

⁶¹ *Id.*

⁶² Title V applications must contain “a description of the source’s process,” “Identification and description of all points of emissions,” and “may not omit information needed to determine the applicability of, or to impose, any applicable requirement.” 40 C.F.R. § 70.5(c). EPA has specifically objected to permits where applicant failed to provide adequate information, *see In the Matter of Cash Creek Generation*, Order on Petition No. IV-2010-4 (EPA June 22, 2012), at 9 (*quoting* 40 C.F.R. § 70.5(a)(2), “[i]nformation required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements.”).

⁶³ *Id.*

reporting requirements from the Title V permit⁶⁴—were not part of a valid Title V application, our concerns about the modification are particularly heightened. In short, Drax should have applied for a proper permit modification via an application that complies with the requirement that the application be certified as truthful, accurate, and complete by a responsible official. Failure to do so renders any revisions to the Title V permit that were based on Drax’s e-mail defective.

If the wet hammermills are in fact emitting pollutants to the atmosphere rather than the dryer, the units would clearly be point sources, since they are capable of being controlled as demonstrated by Drax’s prior use of cyclones.⁶⁵ Moreover, they would be point sources no longer controlled by the controls selected as BACT, and they would be emitting VOCs at rates not accounted for in Drax’s application, an issue we raised in our prior comments.⁶⁶ Given these issues, EPA must object to the permit and direct LDEQ to require a complete and certified Title V permit application, and further should require LDEQ to confirm whether or not the wet hammermills are properly controlled by the current operations.

VI. The Draft Permit is Defective Because it Lacks a Compliance Schedule.⁶⁷

As demonstrated above, the LaSalle BioEnergy plant is out of compliance with the Clean Air Act and the terms of its existing permits on at least three counts. First, the plant is plainly exceeding the pellet cooler BACT limit. Second, the plant has not conducted mandatory stack testing which would demonstrate the BACT violations. Finally, the plant is a major source of HAPs and has been since constructed but is not subject to nor complying with any case-by-case MACT limits. The draft permit and LaSalle BioEnergy’s application, however, do not contain a compliance schedule addressing any of these violations, in contravention of 40 C.F.R. 70.5(c)(8) and 40 C.F.R. 70.6(c)(3). EPA must object and require LDEQ to implement a compliance schedule.

While somewhat outside the scope of this petition, we address briefly here the compliance options available to LaSalle BioEnergy with regard to the BACT violations. First, of course, the facility could (and should) restrict production by around 90% such that the plant complies with the existing BACT limit (this option would need to be supplemented with an enforceable production limit). Assuming that Drax desires the ability to produce pellets at its nameplate capacity, LDEQ must modify the permit to require the use of new VOC controls and place Drax on a Title V compliance schedule designed to bring the source into prompt compliance with its BACT obligations.

EPA has set forth guidance, known as the *Ogden Memo*, for scenarios where sources are not meeting BACT limits.⁶⁸ Specifically, under this long-standing guidance, a source has an “initial

⁶⁴ PSD Permit No. PSD-LA-773, Table III, BACT Summary (May 28, 2013); Title V Permit No. 1680-00097-V2, Conditions 15, 16, & 17.

⁶⁵ The PSD regulations distinguish between point sources and fugitive sources by providing the definition of fugitive emissions as follows: “[f]ugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.” 40 CFR 52.21(b)(20). Drax’s prior use of cyclones, as well as its current venting to the dryer and ultimately to RTO demonstrate that the green hammermill emissions can reasonably pass through a stack.

⁶⁶ See August 7, 2018 comments at I.

⁶⁷ Petitioners’ Comments at 2, 15.

⁶⁸ EPA, Request for Determination on Best Available Control Technology (BACT) Issues – Ogden Martin Tulsa Municipal Waste Incinerator Facility (Nov. 19, 1987), <https://www.epa.gov/sites/production/files/2015-07/documents/ogden.pdf>.

obligation to comply with the permit,” and EPA further explains that “[a]t a minimum the source should be required to investigate and report to the permitting agency all available options to reduce emissions to a lower . . . level. If compliance with the permit can be reasonably achieved, the source should be required to take steps to reduce emissions.”⁶⁹ Only if compliance with the BACT limit cannot be achieved with these steps, then a “reevaluation of the permit may be warranted.”⁷⁰ Significantly, however, if the BACT limit is reevaluated, then “current BACT technology and requirements must be considered.”⁷¹

As applied to Drax LaSalle, the *Ogden Memo* unequivocally requires the installation of new VOC control technology. The installation of a regenerative thermal or catalytic oxidizer (RTO/RCO) on the pellet coolers and the dry hammermills is not only feasible, but is now industry standard.⁷² In fact, German Pellets Texas, Drax LaSalle’s sister facility, has recently applied for and received a permit modification to install RTOs on its dry hammermills and pellet coolers.⁷³ Drax Morehouse (another Drax pellet mill, also in Louisiana), meanwhile, has recently submitted a BACT determination selecting RCOs as BACT for its dry hammermills and pellet coolers.⁷⁴ Both RTOs and RCOs achieve at least 95% VOC destruction, and should allow Drax LaSalle to comply with the existing BACT limits. Therefore, under the first step of the *Ogden Memo*, Drax should select an RTO or RCO as a solution for compliance with the BACT limits—alternatively, if LDEQ and Drax somehow reach the second step under the *Ogden Memo* and reevaluate BACT, using today’s information, RTOs or RCOs would have to be selected as BACT given their wide-spread use generally, and their installation at the German Pellets Texas plant and Drax’s Morehouse plant.

VII. The Draft Permit Improperly Exempts Drax LaSalle From Key Reporting Requirements of Title V.⁷⁵

Title V permits must require “[s]ubmittal of reports of any required monitoring at least every 6 months.”⁷⁶ Despite this requirement, the draft permit only requires the facility to maintain records of the plant’s production rate (Specific Condition 89), visible emissions monitoring (Specific Condition 52), and parametric monitoring for the dryer outlet control systems (Specific Conditions 27 through 30). We are particularly concerned that the production rate monitoring is not being reported, given the fact that the facility has been exceeding the BACT limits, as

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Of the 14 wood pellet mills with a production capacity greater than 500,000 tpy in the U.S., 12 either currently operate an RTO or RCO on a portion or all of the post-dryer units, or intend to install these controls in the near future. Specifically, Georgia Biomass, German Pellets Texas, Enviva Greenwood, Enviva Hamlet, Enviva Sampson, Enviva Northampton, and Enviva Southampton have all either installed an RTO/RCO on their pellet coolers or have submitted a permit application to do so. We further believe that Enviva Cottondale and Drax Amite are in the process of preparing permit applications to control their pellet coolers. Finally, we note that all of these RTOs and RCOs on post-dryer units were installed after the respective plants had begun operating, with the exception of Enviva Hamlet, which did so during the construction process.

⁷³ See Letter from Joel Stanford, Air Permits Division, Texas Commission on Environmental Quality, to Frank Ledermuller, CEO, German Pellets Texas (June 29, 2018) (stating that the “technical practicability and economic reasonableness” of RCOs/RTOs “have been firmly established by industry practice.”) (Attachment P); see also, TCEQ, Permit No. 98014 for German Pellets Texas (Apr. 5, 2019) (Attachment Q).

⁷⁴ Morehouse BioEnergy, BACT Analysis for VOC Emissions PSD Application (May 1, 2019). (Attachment R).

⁷⁵ Petitioners’ Comments at 15.

⁷⁶ 40 CFR 70.6(a)(3)(iii)(A).

discussed above. Without access to the production rates, the public has no feasible way to determine the degree and extent of Drax's exceedances. In other words, because the draft permit requires the plant to demonstrate compliance with the BACT limits by multiplying an emission factor by the production rate, the production rate is a key factor to determining whether the plant is in compliance, or as is almost certainly the case, in non-compliance with the BACT limits.

By keeping the public in the dark concerning Drax's production rate, emission rates, and the core data necessary to determine whether Drax is complying with the Clean Air Act, the draft permit runs afoul not only of the Title V regulations, but also the entire purpose of the Title V permit program, which Congress enacted to make it easier for the public, EPA, and permitting authorities to ensure sources are complying with the Act. *See, e.g.*, S. Rep. No. 101-228, at 347 (1990), *as reprinted in* A Legislative History of the Clean Air Act Amendments of 1990 (1993), 8687 (explaining that Title V would "enable the State, EPA, and the public to better determine the requirements to which the source is subject, and whether the source is meeting those requirements" and that "[b]etter enforcement [would] result for all air pollution requirements."). Without requiring this vital information to be submitted to LDEQ, the draft permit is defective and EPA must object.

VIII. The Draft Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements Sufficient to Assure Compliance with Opacity Limits.⁷⁷

One of the revisions made to the original V2 permit is the addition of a condition requiring daily visible emissions monitoring on the wood dryer outlets—Specific Condition 27. We appreciate that LDEQ has incorporated this new provision and agree that it is necessary to assure compliance with the dryer opacity limits. The reopened permit, however, does not contain similar conditions for other units that are subject to opacity limits, including units likely to have issues with visible emissions, such as the dry hammermills (CRG 0001) and the pellet coolers (CRG 0002).⁷⁸ The permit lacks any monitoring, recordkeeping, and reporting requirements to assure compliance with those opacity limits and EPA must object.

IX. LDEQ Has Not Explained How the WESP Secondary Voltage and Current Ranges Assure Compliance with Hourly Particulate Matter (PM) Emissions Limits.⁷⁹

The draft permit requires LaSalle BioEnergy to maintain the WESP's secondary current range between 50 milliamperes (mA) and 1,800 mA and secondary voltage at a minimum of 30 kilovolts (kV) prior to initial performance testing in order to assure compliance with the facility's BACT PM limits of 4.09 lb/hr.⁸⁰ Secondary current and voltage are key parameters that assure WESPs achieve proper PM destruction, and low secondary current and voltage result in poor PM control.⁸¹ A survey of permits for other wood pellet mills shows that the draft permit's minimum secondary current and voltage rates are significantly lower than parameters for WESPs at comparable facilities. For instance, LDEQ's permit for Morehouse BioEnergy defines "an exceedance or excursion" to be a secondary current below 250 mA and/or a secondary voltage

⁷⁷ Petitioners' Comments at 16.

⁷⁸ Draft Specific Requirements 1 and 12.

⁷⁹ Petitioners' Comments at 16.

⁸⁰ Draft Specific Requirement 29.

⁸¹ EPA Air Pollution Control Technology Fact Sheet for Wet Electrostatic Precipitators, EPA-452/F-03-029.

below 45 kV.⁸² Additionally, Enviva Northampton, a comparable pellet mill in North Carolina, operated at approximately 1,000 mA and 62 kV during stack testing, and emissions were 3.07 lb/hr, relatively close to LaSalle BioEnergy's limit of 4.09 lb/hr.⁸³ When this facility subsequently requested to operate at lower secondary current and voltage, 200 mA and 20 kV respectively, North Carolina permitting officials would not allow the facility to operate at those parameters until the facility conducted new emissions testing at those parameters to assure compliance (the facility apparently has not yet conducted those tests).⁸⁴

LDEQ's failure to provide a rational basis for why it believes the low minimum secondary current and voltage limits assure that LaSalle BioEnergy will not exceed the 4.09 lb/hr PM limit renders the draft permit deficient because LDEQ has failed to provide an explanation for the selected monitoring conditions.

X. The Permit Does Not Assure Compliance with the Requirement to Design and Maintain a Safe Facility Under the Clean Air Act Section 112(r)(1) General Duty Clause.⁸⁵

The Title V operating permit for LaSalle BioEnergy also lacks sufficient detail to assure compliance with LaSalle BioEnergy's general duty under Clean Air Act section 112(r)(1) to design and maintain their facility in a way that prevents the accidental release of any extremely hazardous substance and minimizes the consequences of accidental releases that do occur. This statutory provision, commonly referred to as the "General Duty Clause," qualifies as an "applicable requirement" that must be addressed in LaSalle BioEnergy's Title V permit.⁸⁶ The extremely hazardous substance at issue for LaSalle BioEnergy is combustible wood dust, which carries an extreme risk of fires and explosions. Indeed, the risk of explosions and fires caused by combustible dust at wood pellet plants is well-documented in the wood pellet industry.⁸⁷ Since

⁸² Morehouse BioEnergy Title V Permit No. 1920-00018-V2, Condition 105 (Nov. 17, 2017).

⁸³ Stack Test Report for Enviva Northampton (Conducted Oct. 3, 2013, Report Submitted Oct. 18, 2013). (Attachment S).

⁸⁴ Emails between Joe Harrell, Corporate EHS Manager for Enviva, and Yuki Puram, North Carolina DAQ, (Jun. 2017). (Attachment T).

⁸⁵ Petitioners' Comments at 18.

⁸⁶ See 40 C.F.R. § 70.2 (defining "[a]pplicable requirement" to include "[a]ny standard or other requirement under section 112 of the Act.").

⁸⁷ Melin, Staffan, Wood Pellet Association of Canada, Determination of Explosibility of Dust Layers in Pellet Manufacturing Plants (Aug. 30, 2012) ("Dust explosions and fires has become a major issue in the pellets industry as well as in other woodworking industries with devastating consequences in many cases.") (available at: https://www.pellet.org/images/2012-08-29_Determination_of_Explosibility_of_Dust_in_Pellet_Manufacturing_Plants.pdf); Biomass Handling, *Biomass Dust Fire and Explosion Control* (Apr. 24, 2013), at 2 ("Historically, wood pellet production was a small industry with more than its share of fires and explosions. However with the emphasis on green energy, wood pellet production has skyrocketed and very large plants are being constructed. There have been several recent major fires and explosions within the wood pellet manufacturing, shipping, receiving, storage and power plant facilities. These new facilities are learning that they have to employ safe handling practices for dry wood materials.") (available at: <https://www.advancedbiomass.com/2013/04/biomass-dust-fire-and-explosion-control/>); *The Florida Times-Union*, Jacksonville.com, "Overheated Assembly Caused Georgia Biomass Explosion," (July 13, 2011) ("Wood pellet production should resume today at Georgia Biomass, which was crippled by a dust explosion last month.") (available at: <https://www.jacksonville.com/news/georgia/2011-07-13/story/overheated-assembly-caused-georgia-biomass-explosion>); Baghouse.com, "Dust Collector Fire and Explosion Highlights Need for Combustible Dust Consideration in System Designs (available at www.docuarchive.com/.../Dust-Collector-Fire-and-Explosion-

2010, more than half of the 15 largest wood pellet mills in the nation have had newsworthy fires or explosions.⁸⁸ A fire at a wood pellet storage facility in Port Arthur, Texas burned for more than 50 days in 2017, leading to dozens of nearby residents to seek medical attention.⁸⁹ In another incident, a “flash fire” at the Hazlehurst pellet mill in Hazlehurst, Georgia—the facility’s second fire since commencing operations in 2013—seriously injured four employees.⁹⁰ A wood dust explosion at another Georgia pellet mill “rattled windows in homes about five miles away.”⁹¹ While it is fortunate that there have been no fatalities from wood dust explosions in at pellet mills in the US, a wood dust explosion at a Canadian mill in 2012 killed an employee.⁹²

Due to the significant risk posed by combustible dust at the LaSalle BioEnergy Plant, it is critical that the Title V permit state that the General Duty Clause applies to the facility’s handling of

[Highlights-Need.pdf](#)); Simet, Anna, *Biomass Magazine*, “Dusting Up on Risk & Regulation” (Jan. 26, 2016) (“Dust explosions resulting in injuries, fatalities and facility destruction are not uncommon at . . . biomass facilities that utilize pulverized or ground wood material to make energy or wood pellets.”) (available at <http://biomassmagazine.com/articles/12794/dusting-up-on-risk-regulation>); Harrington Group, “Fire Prevention Tips for Wood Pellet Plants” (“The amount of wood, dust, various ignition sources inherent in the wood pellet production process presents a high risk of explosion and fire. However, there are strategies that can be implemented to reduce the risk of fire and explosions and to mitigate the impact should they occur.”) (available at <http://hgi-fire.com/blog/fire-prevention-tips-for-wood-pellet-plants/>); NBC 10 News, “Fire Chief: Dust Caused Pellet Company Explosion,” (Aug. 20, 2013)(available at <http://turnto10.com/archive/fire-reported-at-east-providence-wood-pellet-company>); Griffin, Jeff, Fauske & Associates, LLC, “Managing Combustible Dust & Safety Concerns in Biomass/Wood Pellet Industry (Nov. 1, 2013) (available at <http://blog.fauske.com/blog/bid/346875/Managing-Combustible-Dust-Safety-Concerns-in-Biomass-Wood-Pellet-Industry>).

⁸⁸ “2 Burn Victims Remain Hospitalized after Hazlehurst Flash Fire,” WALB (June 4, 2015), <http://www.walb.com/story/28983516/4-seriously-burned-after-fire-at-hazlehurst-wood-pellets>; Stepzinski, Teresa, “Explosion Damages Waycross Plant; No Injuries Reported,” jacksonville.com (June 21, 2011), <http://www.jacksonville.com/news/crime/2011-06-21/story/explosion-damages-waycross-plant-no-injuries-reported>; “Fire Reported at Highland Pellets Plant,” *The Pine Bluff Commercial* (Aug. 16, 2017), <http://www.pbcommercial.com/news/20170816/fire-reported-at-highland-pellets-plant>; “Enviva’s Cottondale Facility Damaged by Fire,” *mypanhandle.com*, (June 11, 2017), <http://www.mypanhandle.com/news/envivas-cottondale-facility-damaged-by-fire/737627383>; Voegele, Erin. “Fire at Enviva Facility Not Expected to Result in Major Downtime.” *Biomass Magazine* (Jan. 9, 2014), <http://biomassmagazine.com/articles/9882/fire-at-enviva-facility-not-expected-to-result-in-major-downtime>; Bryant, Cal. “Enviva Fire Quickly Contained.” *Roanoke-Chowan News-Herald* (Jan. 24, 2013), <http://www.roanoke-chowannewsheald.com/2013/01/24/enviva-fire-quickly-contained/>; Taylor, Stephanie. “Aliceville Plant Closed After Explosion.” *Tuscaloosa News* (Oct. 24, 2016), <http://www.tuscaloosaneews.com/news/20161024/aliceville-plant-closed-after-explosion>; German Pellet Plant in Woodville has Fire in Silo.” *Beaumont Enterprise* (Apr. 30, 2014), <http://www.beaumontenterprise.com/jasper/news/article/German-pellet-Plant-in-Woodville-has-fire-in-Silo-5442052.php>; Waldrep, Emily. “Firefighters Respond to Second Fire at Woodville German Pellet Plant.” *Tyler County Booster* (May 07, 2015), <https://www.tylercountybooster.com/index.php/news/1848-firefighters-respond-to-second-fire-at-woodville-german-pellet-plant>; Langford, Cameron. “Residents Go to Court Over Months-Long Texas Plant Fire.” *Courthouse News* (Oct. 27, 2017), <https://www.courthousenews.com/residents-go-court-months-long-texas-plant-fire/>.

⁸⁹ *Id.*

⁹⁰ “2 Burn Victims Remain Hospitalized after Hazlehurst Flash Fire,” WALB, (June 4, 2015), (available at <http://www.walb.com/story/28983516/4-seriously-burned-after-fire-at-hazlehurst-wood-pellets>).

⁹¹ Stepzinski, Teresa, “Explosion Damages Waycross Plant; No Injuries Reported,” jacksonville.com (June 21, 2011) (available at <http://www.jacksonville.com/news/crime/2011-06-21/story/explosion-damages-waycross-plant-no-injuries-reported>).

⁹² “Fatal Sawdust Blast in B.C. Comes After Five Explosions at Similar Plants Since 2009,” *National Post* (Apr. 28, 2012) (available at <http://nationalpost.com/news/canada/fatal-sawdust-blast-in-b-c-comes-after-five-explions-at-similar-plants-since-2009>).

explosive dust, and to require the facility to perform specific steps that are sufficient to ensure that workers and others who live, work, recreate, or simply commute in the facility's vicinity are protected from the dangers posed by combustible dust.⁹³ The permit also must include monitoring, recordkeeping, and reporting to assure the facility's compliance with these requirements.

Wood dust at LaSalle BioEnergy easily qualifies as an "extremely hazardous substance" that is subject to the General Duty Clause. According to Clean Air Act section 112(r)(1), the General Duty Clause applies to "owners and operators of stationary sources producing, processing, handling or storing any extremely hazardous substances." The legislative history of this provision indicates that an accidental release is one which causes or may cause immediate (or near term) death, serious injury or substantial property damage as the result of exposure to an extremely hazardous substance over limited periods of time.⁹⁴ Although the Clean Air Act does not define "extremely hazardous substances," the legislative history provides criteria which EPA may use to determine if a substance is extremely hazardous. Specifically, the Senate Report states that "extremely hazardous substance" would include any agent "which may or may not be listed or otherwise identified by any Government agency which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity."⁹⁵ Further, the Senate Report states, "the release of any substance which causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or which causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous."⁹⁶ There is ample evidence that wood dust generated by pellet plants is flammable and can be explosive, leading to death, injury, or substantial property damage.

Aside from failing to clearly state LaSalle BioEnergy's obligation to handle wood dust in accordance with the General Duty Clause, the permit is also deficient in that it fails to provide adequate specificity regarding what the facility must do to comply with the General Duty Clause and fails to require the facility to perform monitoring to assure its compliance with this requirement. As the D.C. Circuit confirmed in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), a permitting authority is obligated to add monitoring, recordkeeping, and reporting requirements to a source's Title V permit where needed to assure the source's compliance with an applicable requirement. Clarifying a source's obligations under the Clean Air Act's General Duty Clause and developing monitoring, recordkeeping, and reporting sufficient to assure a source's compliance with those obligations falls squarely within what Congress intended by enacting the Title V operating permit program in 1990. The fact that a source's specific obligations under this requirement may be unique from those of other sources strongly supports

⁹³ See 40 C.F.R. § 70.6(a)(1) (Each permit must include "those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."), see also 40 C.F.R. §§ 70.6(a)(3) and (c)(1).

⁹⁴ Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989) ("Senate Report"), at 210-211.

⁹⁵ Senate Report at 211.

⁹⁶ *Id.*

the argument that a Title V permit must clarify what the source's obligations are and incorporate any conditions needed to assure the source's compliance with those obligations.⁹⁷

To assure LaSalle BioEnergy's compliance with the General Duty Clause, the permit would need to incorporate, at a minimum, provision that:

- (1) Identify Clean Air Act section 112(r)(1) as an applicable requirement with respect to the facility's handling of combustible dust.
- (2) Specifically require the facility to prepare a hazard analysis identifying the hazards associated with explosive dust and the facility's processes, potential fire and explosion scenarios, and the consequences of a fire or explosion.
- (3) Establish specific design and operation standards that the facility must meet to prevent a dust-related fire or explosion.
- (4) Establish recordkeeping and reporting requirements sufficient to demonstrate that the facility is meeting its General Duty Clause obligations.

Without these provisions, the permit is deficient and EPA must object.

XI. LDEQ's Concurrent Review Process Violates the Clean Air Act's Procedural Requirements and Undermines Public Participation.⁹⁸

The Clean Air Act and EPA's Title V regulations establish a clear order of action for Title V permitting that require to LDEQ to first solicit public comment on the draft permit, and then, based on consideration of those comments, send EPA a subsequent version that LDEQ formally proposes to issue. *See* 42 U.S.C. § 7661d(a) and (b); 40 C.F.R. § 70.2, § 70.7, § 70.8. In direct contravention of these requirement, LDEQ sent a *draft* permit to EPA for review at the start of the public comment period, and then refused to withdraw that permit from EPA's review after receiving public comments calling for significant revisions to the draft permit.

LDEQ's process not only violates the plain language of the Clean Air Act's requirements, it effectively renders the public's input on this permit irrelevant and deprives Petitioners and other members of the public of the opportunity to participate in the permitting process as afforded by the Act. It also leaves EPA to review the so-called "proposed" permit as well as this petition without a full permit record that includes the public's comments and LDEQ's responses to those comments.

⁹⁷ Additional information on implementation of General Duty Clause requirements is provided in the EPA's guidance document, "Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)," available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>.

⁹⁸ Petitioners' Comments at 22. Although Petitioners raised this issue with sufficient specificity in the public comments by pointing out that LDEQ must withdraw the draft permit from EPA review, it is important to note that the grounds for this petition did not arise until after the close of the comment period. Petitioners could not have known when they submitted their comments that LDEQ would fail to withdraw the draft permit from EPA review while considering public comments and making any necessary revisions. Therefore, Petitioners may properly petition for an objection on these grounds. *See* 42 U.S.C. § 7661d(b)(2) (a petition to object "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the 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).").

By its plain terms, the Clean Air Act does not allow LDEQ to submit a draft permit to EPA to review to start EPA's 45-day review period before LDEQ has received, reviewed, and responded to public comments. A "draft permit" is not a "proposed permit." The Act clearly distinguishes between them, requiring LDEQ to provide an opportunity for public comment and a hearing on a "draft permit," and then—after consideration of public comments and deciding the content of the permit the state proposes to issue—provide EPA with a "proposed permit."

In particular, both the Act and EPA's Title V regulations require that the State must give EPA 45 days to review the "proposed permit" and decide whether to issue an objection. 42 U.S.C. §§ 7661d(a) and (b); 40 C.F.R. §70.8; 70.7(a)(1)(v). It does not satisfy these requirements to submit a *draft* permit to EPA. The Act makes clear that a state permitting authority must transmit to the Administrator "a copy of each permit *proposed* to be issued and issued as a final permit," and the "proposed permit" is the version of the permit upon which EPA will base its 45-day review. 42 U.S.C. § 7661d(a)(1)(B),(b)(1) (emphasis added).

Likewise, EPA's regulations plainly and deliberately distinguish between a "draft permit" and a "proposed permit," and specify review requirements for each. A "draft permit" is the version of the permit that the permitting authority submits for public review and comment pursuant to 40 C.F.R. § 70.7(h). 40 C.F.R. § 70.2 ("Draft permit means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part."). By contrast, a "proposed permit" is "the version of the permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8." *Id.*; *see also* 40 C.F.R. § 70.8(a)(1) (requiring that the permitting authority "provide to the Administrator a copy of each permit application . . . , each proposed permit, and each final part 70 permit"); *id.* § 70.8(a)-(c) (illustrating that "draft permit" which is provided "to any affected State on or before the time that the permitting authority provides this notice to the public," and "proposed permit," which must be provided "to the Administrator," are different documents, and making clear that the EPA Administrator's 45-day review period applies to the "proposed permit"); 40 C.F.R. § 70.8(c)(1) ("No permit... shall be issued if the Administrator objects to the issuance in writing within 45 days of receipt of the *proposed permit* and all necessary supporting information.") (emphasis added). The regulations clearly refer to the "draft" when describing the version of the permit that exists prior to the close of the 30-day public comment period, and "proposed" when describing the version that follows the close of the 30-day public comment period.

In designing the Clean Air Act Title V process in this way, Congress paid particular attention to the importance of public participation and promised "[a]dequate" and "reasonable procedures...for public notice, including an opportunity for public comment and a hearing." 42 U.S.C. § 7661a(b)(6). A "proposed permit" is one that a state has created after assuring those opportunities, precisely to make sure both that the state considers any public comments *before* deciding what permit to propose to EPA, and to make sure that EPA also considers any public comments while deciding whether to object to a permit proposed by a state. Indeed, Congress clearly intended for state permitting authorities to consider and resolve public concerns about a draft permit *before* it proposes the permit, and before EPA determines whether to object to the "proposed permit." Section 502(b)(2) provides that a petition to object "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). Relatedly, EPA’s regulations provide that the “permitting authority shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted.” 40 C.F.R. § 70.7(h)(5).

The Act and the regulations differentiate between a “draft” permit and a “proposed” permit for important reasons that are central to implementation of Title V and its purpose. Because a “draft permit” has not yet been subject to public scrutiny, it does not (and cannot) account for any defects and/or improvements identified by members of the public, or an affected state. The “proposed permit,” on the other hand, is issued after the permitting authority’s consideration of any public comments (or other state comments) submitted during the comment period on the draft permit, and is therefore a version that the state creates after considering and addressing the public’s concerns (as well as any concerns of other affected states).

The United States District Court of the District of Columbia has explained how the Title V permitting process is required to work. In *Sierra Club v. Whitman*, the Court held that a state’s submission of a “draft” permit to EPA “did not commence the Administrator’s 45-day review period.” Slip Op. at 16-17, No. 01-01991-ESH (D.D.C. Jan 30, 2002). There, the Court considered whether a state’s submission of a draft permit for EPA review just one day after the permit was made available for public review triggered EPA’s 45-day review period under the Act, as EPA contended. Rejecting EPA’s argument that its 45-day review period began when the permitting authority submitted a “draft” permit to EPA, the Court held that it is incorrect and unlawful to treat a “draft” permit that has not been subject to public review as the “proposed” permit for purposes of EPA’s review. *Id.* (citing 42 U.S.C. § 7661d(a)(1), (b)(1), (b)(6)); 40 C.F.R. § 70.7(h)(4)). The Court explained that the Act and the Title V regulations clearly distinguish between “draft” permits and “proposed” permits based on whether the public comment period was completed at the time the document was provided to EPA. *Id.* The Court’s ruling confirmed that a “proposed” permit that triggers EPA’s 45-day review period is the version prepared by the permitting authority *after* it has had an opportunity to consider all of the concerns raised about the “draft” permit during the public comment period and hearing. *Id.* As the Court explained, the state permitting agency “simply did not have the statutory authority to submit a proposed permit before the close of the 30-day public comment period.” *Id.* at 17 (citing 42 U.S.C. § 7661d(a)(1); 40 C.F.R. § 70.7(h)).

Significantly, the Court also explained that “permitting EPA review prior to the close of the public comment period would undermine the ability of the public to participate in the permitting process and thereby frustrate the purposes of the Act.” Slip Op. at 17. Citing Congress’ promise of “[a]dequate” public notice and comment procedures, the Court noted that a “permit program would not be ‘adequate’ if it allowed the permitting authority to pass on and EPA to review a draft permit that had never been subjected to public scrutiny.” *Id.* In particular, a “procedure that allows for simultaneous permit review by the public and the EPA provides little time to address public comments that may raise serious questions about a draft permit. Such a process also

signals the irrelevance of public input, which clearly contravenes the intent of Title V.” *Id.* at 17-18.

Thus, concurrent review that treats a draft permit as a proposed permit is unlawful. Such a process violates the plain text of the statute and EPA regulations designed both to ensure adequate EPA review and to allow for meaningful public participation and consideration of public comments by the permit decisionmakers (the state and EPA).

At a bare minimum here, LDEQ was required to withdraw the permit from EPA’s review after receiving relevant public comments, and LDEQ’s failure to do so is flatly inconsistent with the Clean Air Act provisions cited above. EPA must object to the permit at the very least because public comments have been received and a public hearing has been held, thus changing the permit record in ways that LDEQ must consider and address before submitting a proposed permit to EPA for its 45-day review. LDEQ’s refusal to withdraw the permit from EPA’s review indicates that LDEQ will not consider or address the public comments it has received at all, and is a blatant violation of Title V and the public participation requirements cited above.

EPA has generally recognized that Title V and public participation requirements require the permitting authority to withdraw the permit from EPA’s review if public comments are filed or a public hearing is held on the draft permit because the public’s input through their comments and the hearing require consideration and change the permit record. *See, e.g.,* EPA, Approval of Revisions and Notice of Resolution of Deficiency for Clean Air Act Operating Permit Program in Texas, 70 Fed. Reg. 16,134, 16,137 (Mar. 30, 2005) (approving state program that ensured “that EPA’s review period may not run concurrently with the State public review period if any comments are submitted or if a public hearing is requested” after finding this “consistent with section 505(b) of the Act and 40 CFR 70.8”). For example, in 2016, in proposing to change the Title V regulations to ensure no state could try to avoid the proposed permit requirement, EPA explained that a permit cannot be considered “proposed” if submitted before the public participation process has been completed and if the permitting authority receives comment on the draft permit which would require “revisions to the permit or permit record,” including an “RTC,” which is the permitting authority’s response to any such comments. EPA, Revisions to the Petition Provisions of the Title V Permitting Program, 81 Fed. Reg. 57,822, 57,839 (Aug. 24, 2016); *id.* at 57,844-45 (proposing revisions to 40 C.F.R. § 70.8(a)(1) and stating that “[t]he agency considers both the statement of basis and the written RTC to be integral components of the permit record.”).

In sum, if EPA were to allow concurrent review of the permit absent public comment, EPA would violate the Clean Air Act. EPA must object to the permit because LDEQ has not met the requirement to submit a proposed permit to EPA. That LDEQ has refused to withdraw the draft permit and wait to submit a proposed permit until after it has considered and addressed the actual comments only puts its Title V violations into stark relief. LDEQ’s process violates the Title V requirements and denies Petitioners and other public commenters a meaningful opportunity to have their comments considered and addressed by LDEQ and EPA. Finally, to be consistent with its own practice and interpretation, EPA must object to the permit given the circumstances at issue here, based on all of the legal reasoning and facts EPA has previously found important in following its practice. *See, e.g., F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516

(2009) (explaining that an agency’s failure to acknowledge a change and provide a reasoned explanation would be arbitrary and capricious, and where a new policy rests on factual findings that contradict a prior policy, a “more detailed justification that would suffice for a new policy created on a blank slate” is required).

The concurrent review process that LDEQ has used for this permit plainly does not satisfy the Clean Air Act’s Title V statutory and regulatory requirements. And EPA does not meet its review requirement by considering a “draft” permit rather than a “proposed” permit. Accordingly, EPA must object to this permit and direct LDEQ to not issue the permit before it has considered the public comments and has submitted a proposed permit for EPA’s full 45-day review period as required.

Conclusion

For the foregoing reasons, EPA must object to the Title V permit for Drax’s LaSalle BioEnergy wood pellet plant due to both procedural and substantive defects in the draft permit identified above. We close by reminding EPA that the noncompliance identified herein with regard to excess HAP and VOC emissions is part of a troubling pattern endemic to the wood pellet industry, including at Drax’s two other plants. EPA’s attention to this matter is therefore especially important.

Respectfully submitted,

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*On behalf of Delta Chapter of the Sierra Club,
Dogwood Alliance, Partnership for Policy Integrity,
Natural Resources Defense Council, and Our
Children’s Earth.*

Attachments: Comment Attachments A through EE.

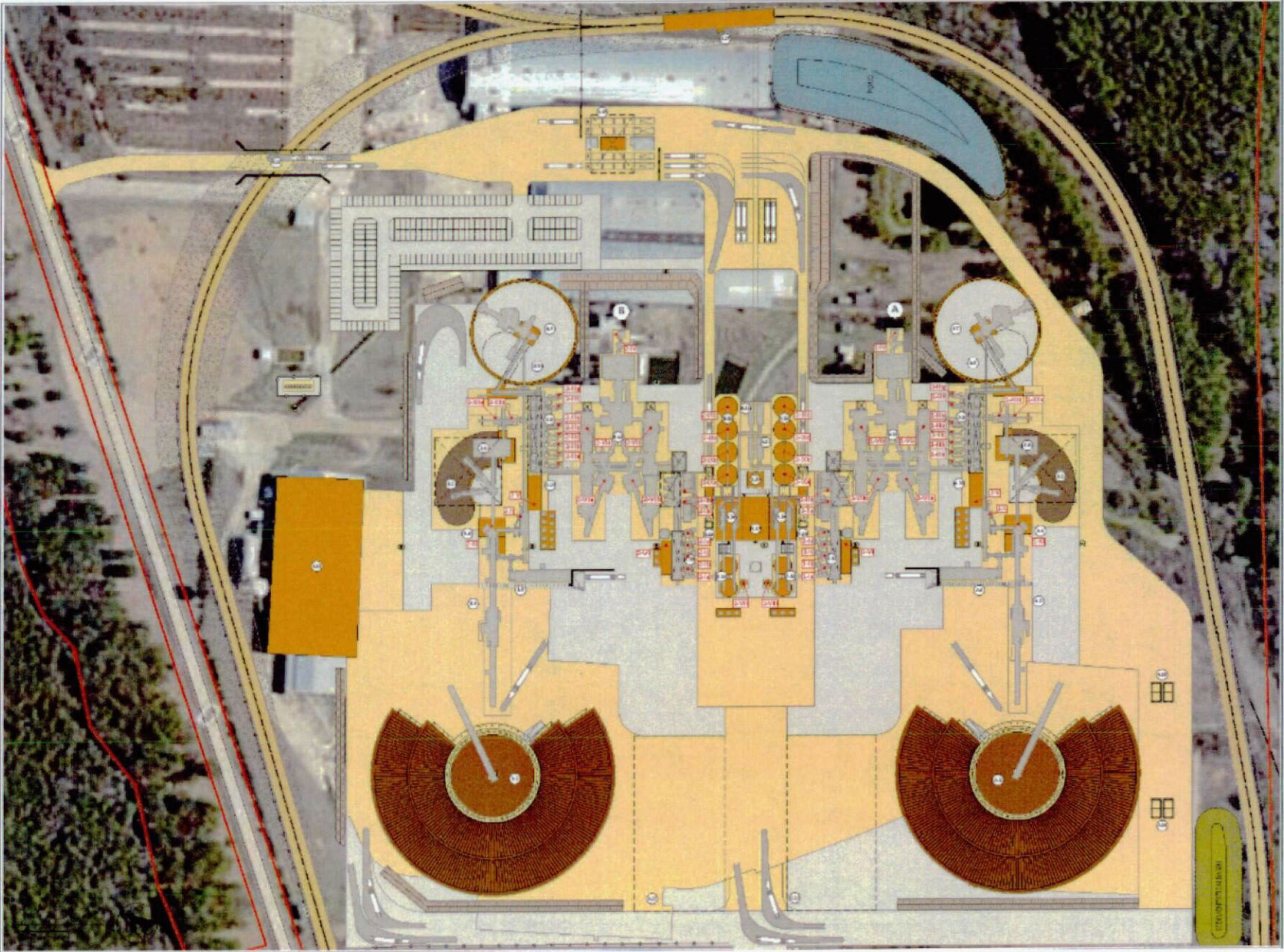
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Appendix A: Stack Test Citations

Pellet Cooler Tests		
Test	Citation	Attachment
Drax Morehouse	Letter from Timothy W. Hardy, counsel for Drax Morehouse BioEnergy, to Elliot B. Vega, LDEQ (Jan. 24, 2019). Note: Production Rate assumed to be 578,000 tpy for purposes of calculating emission factor (production rate listed in permit applications).	H
Drax Amite	Letter from Keith W. Turner, counsel for Drax Amite BioEnergy, to Tim Aultman, Environmental Compliance & Enforcement Division (Nov. 5, 2018). Note: Production Rate assumed to be 578,000 tpy for purposes of calculating emission factor (production rate listed in permit applications).	I
Enviva Amory	Air Emission Test Report for Enviva Pellets Amory (Submitted Oct. 31, 2013, revised Nov. 14, 2013); For softwood percentage, <i>see</i> Enviva Source Test Detail Summary, Attachment CC.	U
Enviva Wiggins	Memorandum from Shannon M. Vogel, North Carolina Division of Air Quality, Stationary Source Compliance Branch, to Patrick Butler, Raleigh Regional Office, Re: VOC and Hazardous Air Pollutant Testing Performed November 15 and 16, 2012 at Enviva Pellets Wiggins LLC, Perkinston, Mississippi (July 15, 2013).	V
German Pellets Texas	German Pellets Texas, Permit Amendment Application, Table 1(a) Emission Point Summary (Sep. 2016). The emission rates were developed as the result of a confidential and privileged audit and the underlying stack tests are not publicly available.	G
Green Circle Bio Energy	This facility has tested its pellet mills and pellet coolers separately. For pellet cooler results, <i>see</i> Air Control Techniques, P.C., Stack Test Report for Enviva Cottdale, Test Dates Aug. 30, 31, and Sep. 1, 2016 (Sep. 28, 2016) (Emission factor from testing on Pellet Cooler 1), for pellet mill results, <i>see</i> Ambient Air Services, Green Circle Bio Energy Engineering Test Report at 2 (undated, tests conducted April 23-25, 2013).	W & X
Georgia Biomass (with steam injection)	Memorandum from Manny Patel, Georgia EPD, to Eric Cornwell, Georgia EPD, entitled “Emission Factors for Wood Pellet Manufacturing,” (Jan. 29, 2013).	Y
Colombo	Air Emission Test Report for Colombo Energy Testing October 2-6, 2017 (Dec. 4, 2017), For softwood percentage, <i>see</i> Enviva Source Test Detail Summary, Attachment CC.	Z
Georgia Biomass (without steam injection)	Memorandum from Manny Patel, Georgia EPD, to Eric Cornwell, Georgia EPD, entitled “Emission Factors for Wood Pellet Manufacturing,” dated January 29, 2013.	Y
Enviva Ahoskie	Memorandum from Shannon M. Vogel, North Carolina Division of Air Quality, Stationary Source Compliance Branch, to Robert Fisher, Washington Regional Office (Mar. 25, 2015).	AA
Enviva Sampson	Air Emission Test Report for Enviva Sampson, testing conducted March 14, 2017 (May 30, 2017); For softwood percentage, <i>see</i> Enviva Source Test Detail Summary, Attachment CC.	BB

Appendix B: Comparison of 2012 Plant Design to 2019 Google Earth Imagery



SPITZNER

SPITZNER ENGINEERING AND ARCHITECTURE
1000 N. GAVIN AVENUE
SUITE 100
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DATE:



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Imagery Date: 3/21/2019 31°52'41.95" N 92°16'55.30" W elev 114 ft eye alt 2328 ft