

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

IN THE MATTER OF:)
)
ADEQ Draft Operating Air Permit)
No. 0597-AOP-R19)
) Permit No. 0597-AOP-R19
For Georgia-Pacific Consumer Operations LLC)
)
Prepared by the Arkansas Department of)
Environmental Quality)

**PETITION #2 TO OBJECT TO THE TITLE V OPERATING PERMIT FOR
GEORGIA-PACIFIC CONSUMER OPERATIONS LLC’S CROSSETT, ARKANSAS
PULP 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), Crossett Concerned Citizens for Environmental Justice (“CCCEJ”) hereby respectfully petitions the Administrator of the U.S. Environmental Protection Agency (“EPA”) to object to the above-referenced draft Title V permit (“the permit”) prepared by the Arkansas Department of Environmental Quality (“ADEQ”) for the Georgia-Pacific Consumer Operations LLC pulp mill (“the G-P mill”) located at 100 Mill Supply Road, Crossett, Arkansas 71635. This petition is based on comments that were raised during the comment period on the draft permit, with the exception of comments pertaining to issues that arose after the close of the public comment period, or that were otherwise impracticable to raise during the comment period. This petition is filed by the October 30, 2019 petition deadline posted for this permit on EPA’s website.¹

BACKGROUND

I. Background on this Permit Proceeding

Prior to the start of the public comment period for the draft permit, on November 6, 2017, ADEQ forwarded a permit to EPA for its 45-day review period. Subsequently, on December 14, 2017, and January 4, 2018, CCCEJ submitted timely comments on the draft permit during the public comment period, which ended on January 4, 2018.² CCCEJ also provided comments on the permit at the public hearing held on December 14, 2017. In December 2017 and January 2018, CCCEJ requested that ADEQ withdraw the permit from EPA review while ADEQ

¹ Attachment 1, Screen Shot of EPA Region 6 Petition Deadline website.

² See Attachment 2, CCCEJ Written Comments to ADEQ, Dec. 14, 2017 (referred to herein as “CCCEJ Comments”); Attachment 3, CCCEJ Supplemental Comments to ADEQ, Jan. 4, 2018 (referred to herein as “CCCEJ Supplemental Comments”).

considered whether CCCEJ's comments warranted revisions to the permit.³ ADEQ refused.⁴ EPA's 45-day review period for that proposed permit concluded on December 21, 2017, and the 60-day period during which members of the public could petition the EPA Administrator to object to the proposed permit commenced immediately thereafter. Thus, in order not to lose its statutory right to petition EPA for an objection, CCCEJ had no choice but to file a petition with EPA before receiving ADEQ's response to CCCEJ's comments on the permit and before ADEQ decided whether to revise the permit in light of those comments. That initial petition, filed on February 19, 2018, is still pending before EPA.⁵

On September 26, 2019, ADEQ announced that it had issued the G-P Mill's final permit. In the response to comments made available with the final permit, ADEQ explained that despite its claim back in December 2017 and January 2018 that it would not withdraw the proposed permit from EPA's consideration that it had proposed prior to the start of the comment period, it had changed its position and submitted a new proposed permit to the agency on July 15, 2019—a year and a half after CCCEJ submitted comments on the draft permit. ADEQ made no attempt to notify the CCCEJ or its counsel, or the public, generally, of its submission of a new proposed permit to EPA. Thus, while the petition period for the final permit that is the subject of this petition commenced on August 30, 2019, no one outside of EPA and ADEQ was aware of that fact until ADEQ announced issuance of a final permit on September 26, 2019.

In response to CCCEJ's comments, ADEQ made a number of valuable improvements to the G-P Mill's Title V permit which will help to assure the facility's compliance with applicable requirements. As detailed below, however, the permit continues to suffer from procedural and substantive defects which require EPA's objection.

II. Facility Background

The G-P mill sits in the heart of Crossett, Arkansas, near homes and schools, including some at the mill's fenceline. According to the most recent U.S. Census data, there are 5,389 residents in the town of Crossett, 45.3% of whom are classified as minority and 22.8% of whom are classified as living in poverty.⁶ As shown by EPA's environmental justice mapping tool, EJSCREEN, 1,964 of those residents live within just one mile of the G-P mill, and of those residents 63% are classified by the U.S. Census data as minority,⁷ and 67% are classified as low-income. According to the latest Toxics Release Inventory ("TRI") data summarized in EPA's

³ See Attachment 4, Dec. 19, 2017 e-mail to ADEQ; Attachment 5, E-mail correspondence with ADEQ.

⁴ *Id.*, Attachment 5.

⁵ See Attachment 6, CCCEJ Petition to Object to Permit, Feb. 19, 2018.

⁶ ACS Demographic and Housing Estimates: 2012-2016 American Community Survey 5-Year Estimates, U.S. CENSUS BUREAU, 2014, *available at* <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷ In comparison to the average national, EPA regional, and state percentage: 38%, 50%, and 26%, respectively. See Attachment 7, EJSCREEN ACS Summary Report, Georgia-Pacific Pulp Mill, One Mile Radius.

ECHO, in 2016, the G-P mill alone added 962,714 pounds of TRI-reported chemicals into Crossett's air, along with other dangerous pollutants listed in the permit.⁸

III. Petitioner: Crossett Concerned Citizens for Environmental Justice

For years, the G-P mill has released harmful air pollution into the Crossett community.⁹ Members of the community formed CCCEJ to advocate for strong health and environmental protections for the families in Crossett. CCCEJ is a community-based organization in Crossett, Arkansas, whose mission is to seek to improve the quality of life of low-income residents in the Crossett area, including for its members, by encouraging active civic participation, and to make sure safety precautions are being taken to effectively keep the environment clean.

In furtherance of their aim, CCCEJ has actively engaged with ADEQ and EPA for years to inform these agencies of the ongoing adverse and disproportionate health effects suffered by Crossett residents, and to seek solutions that would mitigate these burdens and reduce toxic air emissions from the G-P mill.¹⁰ As part of this permitting process, CCCEJ collected and shared personal accounts of various pollution-related challenges that members of the Crossett community living near the G-P mill have confronted. These include, but are not limited to, death, cancers and other diseases, breathing problems, skin and eye irritation, costly health care visits, property damage, persistent foul smells, and concerns about accidental chemical releases.¹¹ However, this ambient monitoring only assesses hydrogen sulfide.¹² The G-P mill emits many

⁸ ECHO, Enforcement and Compliance History Online, Environmental Protection Agency, available at <https://echo.epa.gov/detailed-facility-report?fid=110000450921>; Letter enclosing final copy of Crossett Paper Operations Air Permit # 0597-AOP-R16 from Tammera Harrelson, ADEQ Interim Deputy Director, to Sarah Ross, Georgia Pacific LLC Environmental Department, (March 11, 2015), available at <https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/Air/0597-AOP-R16.pdf> (last visited 9/19/2016); Facility Profile Report (2015 Dataset), Environmental Protection Agency, Sept. 2016, available at <https://echo.epa.gov/facilities/facility-search>.

⁹ ECHO, Enforcement and Compliance History Online, Environmental Protection Agency, available at <https://echo.epa.gov/detailed-facility-report?fid=110000450921>. There is also a film describing the community's longstanding concerns about the air pollution from the G-P mill. See Company Town (2017), <http://www.companytownfilm.com/> (film created by Penn Road Productions, Inc., providing footage summarizing community concerns and steps EPA has taken to acknowledge and begin to evaluate those concerns); Sue Sturgis, *Koch Industries Plant Linked to Cancer Epidemic in Arkansas community* (video), FACING SOUTH: A VOICE FOR A CHANGING SOUTH, Oct. 12, 2011, available at <https://www.facingsouth.org/2011/10/koch-industries-plant-linked-to-cancer-epidemic-in-arkansas-community-video>.

¹⁰ See, e.g., EPA, Environmental Justice Collaborative Action Plan (Arkansas Community) at 23-24 (Jan. 26, 2017), https://www.epa.gov/sites/production/files/2017-03/documents/qtrly_update_ar_ej_action_plan_1-26-17.pdf.

¹¹ See CCCEJ Comments at pp. 4-6.

¹² Hydrogen Sulfide Testing at Georgia-Pacific in Crossett, ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY, Sept. 2016, available at https://www.adeq.state.ar.us/air/compliance/georgia_pacific.aspx.

other air pollutants, including hazardous air pollutants that can cause cancer and adverse health effects even at low levels.¹³

IV. General Title V Permitting 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, 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 40 C.F.R. § 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

¹³ See sources cited notes 8 and 9, *supra*.

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

hearing. 40 C.F.R. § 70.2, § 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 submits 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).

GROUND FOR OBJECTION

For the reasons set forth below, the G-P mill permit fails to comport with procedural and substantive requirements of the Clean Air Act.

I. ADEQ Unlawfully Circumvented the Public’s Right to a Full 60-Day Petition Period.

In an apparent rush to issue the G-P Mill permit, ADEQ initially forwarded a “proposed” permit to EPA for review even before the start of the public comment period, and then refused repeated requests by CCCEJ representatives to withdraw that permit from EPA review while considering public comments. Apparently, however, ADEQ was persuaded by CCCEJ’s subsequent petition to EPA detailing why ADEQ’s approach violated the Clean Air Act. Thus, eighteen months after declaring that it would not withdraw the initially proposed permit, it proposed a new permit to EPA without notifying commenters or the general public. Then, even though EPA’s review period ended on August 30, 2019, ADEQ waited until September 26, 2019 to notify the public that it had issued the final permit¹⁵—and accordingly, to notify the public and CCCEJ that it had decided to forward a new proposed permit to EPA for review. As a result, the public had only 34 days, rather than the 60 days specified in the Clean Air Act, to prepare and file a petition to EPA to object to the permit.

Under 40 C.F.R. § 70.8(d), for a state’s Title V “program” to be approved by EPA, it “shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the

¹⁵ *See* Attachment 8, Email from ADEQ regarding Air Permit Application Updates, Sep. 26, 2019.

Administrator’s 45-day review period to make such objection.” On paper, ADEQ’s program is consistent with that requirement, instructing: “If the Administrator does not object in writing to a proposed part 70 permit, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator’s forty-five (45) day review period to make that objection.” Arkansas Pollution Control and Ecology Commission Regulation #26, § 26.606. As a practical matter, however, ADEQ’s “program” does not provide any person with 60 days to petition EPA for objection if ADEQ fails to notify the public—or even just those who commented on the draft permit—that it has forwarded a proposed permit to EPA. This is especially true when ADEQ (1) previously forwarded a different proposed permit to EPA using their unlawful “concurrent review” procedure, (2) rebuffed requests from public commenters to withdraw and re-propose a permit after considering their comments, forcing those commenters to file a petition with EPA before receiving ADEQ’s response to their comments on the draft permit, and (3) left the commenters in the dark regarding the fact that a new petition period might commence at some undefined point in coming years without any public notice. Certainly, EPA would not consider its own 45-day review period to commence before EPA staff had any reason to be aware that the state had forwarded a proposed permit to EPA for review. Likewise, ADEQ does not fulfill its legal obligation to provide public commenters with a 60-day petition period under circumstances where it blinds public commenters to the start of their 60-day petition period by failing to notify them that a new proposed permit has been filed, or that the 60-day petition period has begun.

If CCCEJ had the full 60-day period to evaluate ADEQ’s response to their comments, they would have been in a better position to research and understand the basis for ADEQ’s rejection of some of their comments. For example, throughout their comments, CCCEJ noted that ADEQ had not provided an explanation in the statement of basis for why the permit’s process limits (e.g., daily limit on wet wood processed through the woodyard) are sufficient to assure the Permittee’s compliance with an extensive list of applicable pound per hour (lb/hr) and ton per year (tpy) emission limitations. Though it is ADEQ’s obligation to provide a statement of the legal and factual justification for permit conditions, 40 C.F.R. § 70.7(a)(5), ADEQ did not provide such explanation in response to CCCEJ’s comments, but instead generally directed CCCEJ to refer to the very extensive permit application for information regarding how the permit’s limits were calculated. *See, e.g.*, Attachment 9, ADEQ, Response to Comments (“RTC”) at 12 (Sep. 24, 2019) (addressing relationship between limits on bleached pulp production and total dissolved solids and applicable lb/hr and tpy emission limits in Specific Conditions 12 and 13), RTC at 13 (addressing relationship between daily wood chip production limit for pulp mill’s batch digesters and applicable emission limits in Specific Conditions 18, 19, and 20), RTC at 16 (addressing relationship between the limits on bleached pulp production and total dissolved solids and applicable lb/hr and tpy emission limits in Specific Conditions 41-43). Unfortunately, ADEQ did not tell commenters *where* these explanations purportedly appear in the G-P Mill’s permit application, and the potentially relevant application material CCCEJ has been able to locate during its abbreviated petition period is unclear. If CCCEJ had the full 60-day petition period, it would have a better opportunity to search the permit application for the purported explanations and consult with a technical expert.

ADEQ’s failure to notify commenters of the start of the new petition period (or at least, of ADEQ sending a new proposed permit to EPA), is unfair and unlawful, and requires EPA objection. 40 C.F.R. § 70.7(a)(1)(ii) (a Title V permit “may be issued only if ... the permitting

authority has complied with the requirements for public participation under [70.7(h)]”); § 70.7(h) (“Except for modifications qualifying for minor permit modification procedures, all permit proceedings ... shall provide adequate procedures for public notice”); § 70.8(d) (a state’s “program shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.”), § 70.8(c)(1) (EPA “will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with the applicable requirements or requirements under this part.”). While 40 C.F.R. § 70.7(h) does not specifically instruct that a state must notify the public when it forwards a proposed permit to EPA (or when EPA’s review period concludes without objection), this provision does generally instruct states that they must provide “adequate procedures for public notice,” and § 70.8 *requires* that a state program provide a 60-day period for commenters to petition EPA to object to a proposed permit. If the state fails to provide any way for commenters to know that it has forwarded a proposed permit to EPA, or that EPA’s 45-day review period for a particular permit ended without objection, then the state is not providing a 60-day period for citizen petitions as required, and the state’s procedures cannot reasonably be viewed as providing “adequate procedures for public notice.” In instructing EPA to promulgating regulations requiring “[a]dequate streamlined, and reasonable procedures ... for public notice,” Congress could not have intended for these procedures to leave the public in the dark as to the start of their 60-day opportunity to petition EPA to object to a permit.¹⁶

II. ADEQ’s Permit Does Not Comply with the Clean Air Act’s Substantive Requirements.

Title V requires every permit to include operational requirements and limitations that assure compliance with all applicable Clean Air Act requirements at the time the permit is issued. 40 C.F.R. § 70.6(a)(1). Yet ADEQ’s permit for the G-P mills falls short of satisfying that fundamental requirement in numerous, significant ways.

A. The Permit Unlawfully Excludes the Results of Recordkeeping Requirements Designed to Assure Compliance with Applicable Requirements from the Six-Month Monitoring Reports Required by General Provision # 7.¹⁷

In comments on the draft permit, CCCEJ requested that ADEQ clarify that the results of *all* monitoring required under the permit—including monitoring that consists of recordkeeping—must be included in the “reports of all required monitoring” that must be submitted every six months pursuant to General Provision 7. Attachment 9, ADEQ Operating Air Permit for Georgia-Pacific Consumer Operations LLC, Permit No. 0597-AOP-R19 (Sept. 24, 2019) (hereinafter, “Permit”), at p. 305. This provision is meant to implement the Part 70 requirement that a permittee submit “reports of any required monitoring at least every 6 months.” 40 C.F.R. § 70.6(a)(3)(iii)(A), which in turn implements Clean Air Act § 504(a). CCCEJ pointed out that while some of the permit’s monitoring conditions require monitoring results to be included in the six-month monitoring reports (*see, e.g.*, Specific Condition 7 (p. 73); Specific Condition 23

¹⁶ Because this issue arose well after the close of the comment period, it was not possible for CCCEJ to raise this issue in their comments on the draft permit.

¹⁷ *See* CCCEJ Supplemental Comments at pp. 7-8.

(Permit, p. 88), Specific Condition 30 (Permit, p. 91)), other monitoring conditions are silent, or, worse, provide that records are to be provided to ADEQ only “upon request.” *See, e.g.*, Specific Condition 5 (p. 72) (requiring opacity observation records to be “made available to Department personnel upon request.”). *See also* Specific Condition 7 (Permit, p. 73), Specific Condition 9 (Permit, p. 73), Specific Condition 10 (Permit, p. 73), Specific Condition 11 (Permit, p. 74) Specific Condition 15 (Permit, p. 83), Specific Condition 17(e) (Permit, p. 85), Specific Condition 23 (Permit, p. 88), Specific Condition 28 (Permit, p. 90), Specific Condition 31(c) (Permit, p. 91). CCCEJ commented that all monitoring results must be included in the six-month monitoring results, and that ADEQ must revise the permit to clarify this obligation.

ADEQ did not make any change to the permit in response to this comment, declaring that “[a]s stated in General Provision #7 of the draft permit, all required monitoring must be submitted every six (6) months.” RTC at 32. However, ADEQ went on to explain that “in addition” to the six-month monitoring report requirement, “[t]he permit includes ... various recordkeeping requirements.” *Id.* ADEQ declares that records kept pursuant to these recordkeeping requirements are “provided to the Division upon request.” *Id.* In other words, it appears that ADEQ is seeking to exempt these “recordkeeping” results from the six-month monitoring report requirement. This is unlawful and EPA must object. As explained in the federal Title V regulations, monitoring for Title V purposes “may consist of recordkeeping designed to serve as monitoring.” 40 C.F.R. § 70.6(a)(3)(i)(B). *See also, id.* (“Recordkeeping provisions may be sufficient to meeting the requirements of [40 C.F.R. § 70.6(a)(3)(i)(B)].”). As such, where a Title V permit relies on recordkeeping for purposes of assuring a facility’s compliance with an applicable requirement, this recordkeeping qualifies as “monitoring,” the results of which must be addressed in the facility’s statutorily required six-month monitoring report.

A review of the specific permit conditions identified by CCCEJ as only requiring records to be provided to ADEQ “upon request” reveals that each of these permit conditions do, in fact, utilize recordkeeping to monitor the facility’s compliance with an applicable requirement.¹⁸

Specific Condition 5 (Permit, p. 72): requiring Permittee to keep a log of opacity observations that must be “made available to Department personnel upon request.”.

Specific Condition 7 (Permit, p. 73): requiring Permittee to “maintain records which demonstrate compliance” with the daily throughput limit in Specific Condition 6 and to provide those records “to Department personnel upon request,” but only requiring the six-month monitoring report to include a “twelve month total and each individual month’s data” (which would not show whether the facility is complying with its *daily* throughput limit).

¹⁸ The specifically identified permit conditions are intended to illuminate the issue; Petitioners seek EPA’s objection to ADEQ’s overall approach of treating recordkeeping requirements as distinct from “monitoring” and relying on that distinction to exclude results of recordkeeping from the six-month monitoring reports.

Specific Condition 9 (Permit, p. 73): requiring Permittee to utilize a non-resettable hour meter to verify that neither the debarker nor the chipper engine are operated in excess of 2,160 hours per twelve consecutive months, and to maintain monthly and 12-month total records demonstrating the facility's compliance with the limit. Such records apparently need not be addressed by the six-month monitoring report, but only maintained on site and provided to ADEQ personnel "upon request."

Specific Condition 10 (Permit, p. 73): requiring Permittee to maintain records of equipment placement and removal in order to demonstrate compliance with requirement to remove debarker/chipper engines after 12 months or maximum specified hours. Such records "shall be kept on site and shall be made available to Department upon request."

Specific Condition 11 (Permit, p. 74): requiring Permittee to keep records of required maintenance on site and make them "available to Department personnel upon request."

Specific Condition 15 (Permit, p. 84): requiring Permittee to keep records of its monthly collection and sampling of total dissolved solids. Records "shall be kept on site and made available to Department personnel upon request."

Specific Condition 17(e) (Permit, p. 86): requiring Permittee to keep records of results of LDAR monitoring available for review by EPA and ADEQ personnel "upon request."

Specific Condition 23 (Permit, p. 88): requiring Permittee to "maintain records which demonstrate compliance" with the daily throughput limit in Specific Condition 22 and to provide those records "to Department personnel upon request," but only requiring the six-month monitoring report to include a "twelve month total and each individual month's data" (which would not show whether the facility is complying with its *daily* throughput limit).

Specific Condition 28 (Permit, p. 90): requiring Permittee to maintain records of weekly opacity observations that must be "made available to Department personnel upon request."

Specific Condition 31(c) (Permit, p. 91): requiring Permittee to "monitor and maintain records" to demonstrate compliance with the applicable 3-hour average scrubber liquid flow rate and 2-hour average pH and instructing that these records "shall be kept onsite and made available to the Department upon request."

If the results of required monitoring are not provided in a facility's six-month monitoring reports (and deviations observed through such monitoring submitted promptly), the public likely will not have access to this information. While ADEQ can request and obtain this information, nothing in the permit enables the public to obtain this information. It cannot be disputed that Congress intended for the public to have full access to the results of any monitoring required under a Title V permit; Clean Air Act section 504(e) expressly states that any "emissions or compliance monitoring report" shall be available to the public. Access to this information is essential to enabling the public to oversee state implementation of the Title V program, including

by filing citizen suits where needed to bring sources into compliance. *See* Clean Air Act § 304(a) (authorizing citizen suits to enforce “an emission standard or limitation” under the Act, defined to include any “standard, limitation, or schedule established under any permit issued pursuant to [Title] V”). EPA must object to ADEQ’s attempt to allow the G-P Mill to exclude from its six-month monitoring reports the results of recordkeeping designed to assure the G-P Mill’s compliance with applicable requirements.

B. The Permit Unlawfully Fails to Specifically Identify the State Implementation Plan Provisions on Which the Permit Conditions are Based.

Pursuant to 40 C.F.R. § 70.6(a)(1)(i), a Title V permit “shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.” Throughout the permit, ADEQ repeatedly cites to Arkansas statutory provisions as the legal basis for permit conditions. EPA has approved these statutory provisions into Arkansas’ state implementation plan (SIP) (*see* 40 C.F.R. § 52.170(e)), but not since the 1970s and 1980s, and the Arkansas legislature has revised these statutes repeatedly since then. Despite Arkansas’ revision of these statutory requirements, the versions of the requirements that have been approved by EPA as part of Arkansas’ SIP are the “applicable requirements” for purposes of this Title V permit. *See, e.g.*, Clean Air Act § 110 (describing the required methodology for incorporating requirements into a federally enforceable SIP).¹⁹ In accordance with 40 C.F.R. § 70.6(a)(1)(i), ADEQ must specifically identify the version of the statute that is included and being cited in support of each permit condition, *i.e.*, by identifying the year that the version of the statute that is in the SIP was promulgated, usually 1972 or 1985 according to 40 C.F.R. part 52, Subpart E. ADEQ must also find the version of the statutes that are in the SIP and ensure that they support the permit conditions for which they are cited, and clarify whether there is any difference in form between the permit conditions and the statutory provisions incorporated into the Arkansas SIP. *See, e.g.*, Specific Conditions 2, 6-9, 11, 13, 14, 20, 22, 26, 29, 40, 43, 44, 46, 66, 69-71, 73-74, 77-79, 84, 87-89, 94, 98, 104, 106-107, 110-112, 116, 120, 144, 146, 149, 153-155, 158-159.

In response to CCCEJ’s comments on this issue, ADEQ responded that “[t]here is no regulatory requirement to include adoption dates and the stated exercise in reconstructing past EPA SIP approvals is unnecessary.” RTC at 31. But contrary to ADEQ’s claim, 40 C.F.R. § 70.6(a)(1)(i) requires that a Title V permit “specify and reference the origin of and authority for each term or condition.” Where the SIP-approved version of the applicable statutory or regulatory requirement is not the same as the current version, simply providing a statutory or regulatory citation without identifying the version of that statute or regulation that serves as the “applicable requirement” is insufficient to “specify and reference” the authority for a permit condition. Accordingly, the permit does not satisfy Title V requirements and EPA must object.

¹⁹ We cannot verify that the version of these statutes that are approved into the Arkansas SIP support the permit conditions for which they are cited, as EPA has not been including the statutory provisions as part of the SIP compilation that it is required to complete every three years pursuant to Clean Air Act section 110(h).

C. The Permit Unlawfully States that Any Permit Condition Citing to the Arkansas Water and Air Pollution Control Act as the Sole Origin of and Authority for that Condition is Not Federally Enforceable.

EPA also must object to ADEQ's inclusion in the permit of General Provision 1 (Permit, p. 304), which generically states that any permit condition that cites to the Arkansas Water and Air Pollution Control Act as the sole origin of and authority for that condition is not federally enforceable. This generic statement is incorrect. As explained above, many provisions of the Arkansas Water and Air Pollution Control Act are included in Arkansas' federally enforceable SIP, including the statutory predecessor to A.C.A. § 8-4-203 (formerly A.S.A. § 82-1904), which is frequently cited as the legal basis for permit conditions. *See* 40 C.F.R. § 52.170(e) (identifying statutory provisions approved into the Arkansas SIP). Any permit condition derived from a federally enforceable SIP provision is federally enforceable. 40 C.F.R. § 52.23. ADEQ cannot simply deem a permit condition promulgated pursuant to SIP authority to not be federally enforceable. EPA should instruct ADEQ that to the extent that there are any permit conditions that are based on statutory authority that has never been incorporated into the SIP, ADEQ can specifically identify those particular permit conditions as not being federally enforceable. *See* 40 C.F.R. § 70.6(b)(2) (“[T]he permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.”).

Though ADEQ acknowledged receipt of this comment during the comment period on the draft permit (RTC at 31), ADEQ provided no response. Accordingly, in addition to objecting to General Provision 1 due to its substantive unlawfulness, EPA should also object to the permit due to ADEQ's failure to provide a reasoned explanation as to why it apparently considers General Provision 1 to be lawful.

D. Various Permit Conditions Lack Enforceable Monitoring and Recordkeeping Requirements Necessary to Assure Compliance.²⁰

The Clean Air Act requires every Title V permit to contain enforceable permit conditions that require the facility to perform monitoring, recordkeeping, and reporting sufficient to assure the facility's ongoing compliance with applicable requirements. 42 U.S.C. § 7661c(a) (“Each permit issued under this subchapter shall include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.”); 42 U.S.C. § 7661c(c) (“Each permit issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.”); *see also* 40 C.F.R. § 70.6(c)(1). Additionally, a Title V permit is required to explain the original and legal authority for each permit condition, and how the permit's monitoring, recordkeeping, and reporting requirements are sufficient to assure the facility's compliance with all applicable requirements. 40 C.F.R. §70.7(a)(5) (each draft Title V

²⁰ *See* CCCEJ Comments at pp. 6-26.

permit must be accompanied by “a statement that sets forth the legal and factual basis for the draft permit conditions.”²¹

As shown below, numerous provisions set forth in “Section IV: Specific Conditions” of the permit are far too general and fail to include enforceable conditions and adequate monitoring to assure the G-P mill complies with applicable Clean Air Act requirements for inspection, work practice, throughput limit, recordkeeping, reporting, operation, and maintenance. EPA must object to these deficiencies.

1. The Permit’s Production/Process Limits are Insufficient to Assure Compliance with the Applicable Pound per Hour Emission Limits.

Throughout the permit, ADEQ relies on the G-P Mill’s compliance with specified production/process limits to assure compliance with applicable pounds per hour (lb/hr) emission limits. For example, Specific Conditions 12 and 13 (Permit, pp. 79-80) establish pounds per hour (lb/hr) emission limits for VOC, TRS, PM₁₀, PM_{2.5}, and an array of hazardous air pollutants for the facility’s pulp mill. Both conditions state that “[c]ompliance with this Specific Condition shall be demonstrated by compliance with Specific Conditions #14 and 46.” Specific Condition 14 provides that “total dissolved solids shall not exceed 750 mg/L for SN-124,” (Permit, p. 84) while Specific Condition 46 states that the Permittee “shall not produce in excess of 2,150 air dried tons of bleached pulp per day, 30-day rolling average.” (Permit, p. 102). ADEQ fails to provide a reasoned explanation for why a mg/L limit on total dissolved solids and a daily bleached pulp production limit, measured on a 30-day rolling average, are sufficient to assure compliance with the *hourly* emission limits in Specific Conditions 12 and 13. And, in fact, it does not appear that a reasoned explanation is possible; regardless of whether the G-P Mill complies with the process limits, it is quite possible that the facility will exceed the permit’s strict lb/hr limits. Because the specified production/process limits do not apply to the same time period as the applicable emission limits (e.g., the emission limit is in lb/hr while the bleached pulp production limit is a daily limit measured based on a 30-day rolling average), the production/process limits cannot assure the facility’s ongoing compliance with the applicable lb/hr emission limits. Accordingly, these permits do not satisfy Title V’s compliance assurance provisions at 42 U.S.C. §§ 7661c(a), (c) and 40 C.F.R. §§ 70.6(a)(1), (a)(3), (c)(1) and EPA must object. At a minimum, EPA must object to the state’s failure to provide a reasoned explanation for why the permit’s process limits are sufficient to demonstrate that the facility’s hourly emissions remain below the lb/hr limits. 40 C.F.R. § 70.7(a)(5) (“[T]he permitting authority shall provide a statement that sets for the legal and factual basis for the draft permit conditions.”).

Other permit conditions containing this deficiency are as follows:

²¹ See also Letter from Stephen Rothblatt, U.S. EPA, to Robert F. Hodanbosi, Ohio EPA, dated Dec. 20, 2001 (EPA Statement of Basis Guidelines), *available at* <https://www.epa.gov/sites/production/files/2015-08/documents/sbguide.pdf>.

Woodyard:

Specific Condition 6 (Permit, p. 73) states that the Permittee “shall not process in excess of 8,400 tons of wet wood as received in the Woodyard per day, 30 day rolling average.” Specific Conditions 1 (Permit, pp. 70-71) and 2 (Permit, p. 71) set lb/hr limits on an array of air pollutants, and state that compliance shall be demonstrated by compliance with Specific Conditions 6 and 8.

Pulp Mill:

Specific Condition 22 (Permit, p. 88) applies a wood chip production limit of 8,757 tons of wood chip per day, 30-day rolling average, to the pulp mill’s batch digesters which, under Specific Conditions 18, 19, and 20 (Permit, pp. 87-88) will purportedly demonstrate compliance with applicable lb/hr emission limits set forth in those conditions.

Specific Condition 46 (Permit, p. 102) establishes a production limit of 2,150 air dried tons of bleached pulp per day, 30 day rolling average. Specific Condition 26 (Permit, p. 89) establishes a long list of lb/hr and tpy emission limits and declares that the Permittee’s compliance with Specific Condition 46 will demonstrate compliance with these lb/hr emission limits.

Bleach Plant:

Specific Condition 44 (Permit, p. 101) applies a total dissolved solids limit of 750 mg/L to SN-125. Specific Condition 46 (Permit, p. 102) establishes a production limit of 2,150 air dried tons of bleached pulp per day, 30 day rolling average. Specific Conditions 41 (Permit, p. 99) and 43 (Permit, p. 100) establish a long list of lb/hr emission limits and declare that the Permittee’s compliance with Specific Conditions 44 and 46 will demonstrate compliance with these lb/hr emission limits.

Specific Condition 42 (Permit, p. 99) establishes lb/hr and tpy CO limits for the Bleach Plant Scrubber, and states that compliance shall be demonstrated by compliance with Specific Condition 46.

Liquor Recovery:

Specific Condition 69 (Permit, p. 113) states that the Permittee “shall not fire black liquor solids in excess of 3,450 tons/day, maximum, and 3,000 tons/day, annual average” measured on “a daily rolling average.”²² Specific Condition 70 states that the Permittee “shall not fire in excess of 5,256,000 gallons of glycerin to the recovery furnace per twelve consecutive months.” Specific Conditions 58 through 66 (Permit, pp. 106-110) establish lb/hr emissions limits for SN-26 and SN-96. The conditions state that

²² The draft permit contained an entirely different stating that the Permittee “shall not fire in excess of 1,095 million tons of black liquor solids to the recovery furnace per twelve consecutive months.” ADEQ changed this limit in the final permit without explanation.

compliance shall be demonstrated by compliance with Specific Conditions 68, 69, 70, and 73.

Specific Condition 69 (Permit, p. 113) states that the Permittee “shall not fire black liquor solids in excess of 3,450 tons/day, maximum, and 3,000 tons/day, annual average” measured on “a daily rolling average.”²³ Specific Conditions 81(Permit, p. 116) and 84 (Permit, pp. 117-120) establish lb/hr and tpy limits on an array of air pollutants from the Smelt Dissolving Tanks (East and West), and state that compliance shall be demonstrated by compliance with the daily limits in Specific Condition 69.

Specific Conditions 93 (Permit, p. 126) and 94 (Permit, pp. 126-127) place lb/hr and tpy limits on the black liquor storage basin and storage tanks, and explain that “[e]missions are limited by the production levels of the mill.”

Causticizing:

Specific Condition 104 (Permit, p. 136) states that “[c]alcium oxide production at this source is limited to 632.4 tons/day, maximum, and 550 tons/day on an annual average” measured on a “daily rolling average.” Specific Conditions 95 (Permit, p. 130), 96 (Permit, p. 130), 97 (Permit, p. 130), 98 (Permit, pp. 130-132), and 114 (Permit, p. 138) establish lb/hr limits on an array of air pollutants, and state that compliance shall be demonstrated by compliance with Specific Condition 104 and 120.

Specific Conditions 115 (Permit, p. 139) and 116 (Permit, pp. 139-145) establish lb/hr and tpy emission limits for various air pollutants released by causticizing units. Both conditions provide that compliance “is demonstrated by compliance with Specific Condition #104.”

Fine Paper Machines:

Specific Condition 149 (Permit, p. 160) states that the Permittee shall “not produce in excess of 1050 machine dried tons of paper per day from the Fine Paper Machines No. 1 and No. 2 combined, 30 day rolling average.” Specific Conditions 144 (Permit, p. 156-157), 145 (Permit, p. 157), and 146 (Permit, p. 157-159) establish lb/hr limits on an array of air pollutants, and state that the “pollutant emission rates are effectively limited by Specific Condition #149.”

Board Machines:

Specific Condition 158 (Permit, p. 165) states that the Permittee “shall not produce in excess of 850 machine dried tons of paper per day, 30 day rolling average, from the Board Machine No. 3.” Specific Conditions 151 (Permit, p. 162), 152 (Permit, p. 162), and 153 (Permit, pp. 162-164) establish lb/hr limits on an array of air pollutants emitted from Board Machine No. 3 and its burners, and the Board Machine Starch Silo. The

²³ The draft permit contained an entirely different stating that the Permittee “shall not fire in excess of 1.095 million tons of black liquor solids to the recovery furnace per twelve consecutive months.” ADEQ changed this limit in the final permit without explanation.

conditions state that compliance shall be demonstrated by compliance with Specific Conditions 155 and 158.

Tissue Machines:

Specific Condition 168 (Permit, p. 171) states that the Permittee “shall not produce in excess of 173 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 4.” Specific Conditions 160 (Permit, p. 168), 161 (Permit, p. 168), and 162 (Permit, pp. 168-169) establish lb/hr limits on an array of air pollutants emitted from Tissue Machine No. 4 and its burner and dust system. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 167, 168, and 169.

Specific Condition 179 (Permit, p. 176) states that the facility “shall not produce in excess of 97 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 5.” Specific Conditions 171 (Permit, p. 172), 172 (Permit, pp. 172-173), and 173 (Permit, pp. 173-174) establish lb/hr, ton/yr, and lb/MMBtu limits on an array of air pollutants emitted from Tissue Machine No. 5 and its related units. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 178, 179, and 180.

Specific Condition 192 (Permit, p. 181) states that the Permittee “shall not produce in excess of 270 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 6.” Specific Conditions 183 (Permit, p. 177), 184 (Permit, p. 177-178), and 185 (Permit, pp. 178-179) establish lb/hr, ton/yr, and lb/MMBtu limits on an array of air pollutants emitted from Tissue Machine No. 6 and its related units. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 191, 192, and 193.

Specific Condition 203 (Permit, p. 185) states that the Permittee “shall not produce in excess of 250 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 7.” Specific Conditions 195 (Permit, p. 182), 196 (Permit, p. 182), and 197 (Permit, pp. 182-183) establish lb/hr and ton/yr limits on an array of air pollutants emitted from Tissue Machine No. 7 and its related units. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 202, 203, and 204.

Specific Condition 221 (Permit, p. 192) states that the Permittee “shall not produce in excess of 253.1 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 8.” Specific Conditions 207 (Permit, p. 187), 208 (Permit, p. 187), 209 (Permit, pp. 187-188), and 215 (Permit, pp. 190-191) establish lb/hr, ton/yr, and lb/MMBtu limits on an array of air pollutants emitted from Tissue Machine No. 8 and its related units. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 220, 221, and 222.

Specific Condition 230 (Permit, p. 196) states that the Permittee “shall not process in excess of 270 tons per day of broke, 30-day rolling average, total combined, at all

repulpers at SN-93. This limit does not apply to purchased pulp or pulp produced in-house for purposes of recycle.” Specific Condition 228 (Permit, p. 196) and 229 (Permit, p. 196) establish lb/hr and ton/yr limits on VOC and chloroform pollutants emitted from Tissue Repulpers A, B, and C. Specific Conditions 228 and 229 state that compliance shall be demonstrated by compliance with Specific Condition 230.

Specific Condition 242 (Permit, p. 201) applies a total dissolved solids limit of 750 mg/L for SN-115-ct, SN-116-ct, SN-117-ct, and SN-122. Specific Conditions 240 (Permit, p. 200) and 241 (Permit, p. 200) establish lb/hr and ton/yr limits for particulate matter emissions from cooling towers. The conditions state that compliance shall be demonstrated by compliance with Specific Condition 242.

Extrusion Plant:

Specific Condition 247 (Permit, p. 204) applies a total dissolved solids limit of 4,792 mg/L for SN-126. Specific Condition 251 (Permit, p. 205) states that the Permittee “shall not produce in excess of 750 machine dried tons of coated paper per day, 30 day rolling average, from the No. 8 and No. 9 Extruder Machines combined.” Specific Conditions 244 (Permit, p. 202), 245 (Permit, p. 203) and 246 (Permit, pp. 203-204) establish lb/hr and tpy limits on an array of air pollutants. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 247 and 251.

Steam Generation:

Specific Condition 294 (Permit, p. 226) states that the Permittee “shall not burn in excess of 35 pounds per minute of TDF in the 9A Boiler.” Specific Condition 295 (Permit, p. 226) states that the Permittee “shall not burn in excess of 250 tons of RDF per day in the 9A Boiler.” Specific Condition 296 (Permit, p. 226) states that the Permittee “shall not burn in excess of 45 BDT sludge per hour in the 9A Boiler.” Specific Conditions 280 (Permit, p. 221) and 281 (Permit, pp. 221-223) establish lb/hr and tpy limits on an array of air pollutants emitted from the 9A Boiler. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 294, 295, and 296.

Specific Condition 369 (Permit, p. 262) states that the Permittee “shall not burn in excess of 669 thousand standard cubic feet of natural gas per hour and 5860.5 million scf of natural gas per twelve consecutive months in the 10A Boiler (SN-03).” Specific Condition 370 (Permit, p. 262) states that the Permittee “shall not burn in excess of 100 pounds of TDF per minute in the 10A Boiler (SN-03).” Specific Condition 371 (Permit, p. 262) states that the Permittee “shall not burn in excess of 250 tons of RDF per day in the 10A Boiler.” Specific Condition 372 (Permit, p. 262) states that the Permittee “shall not burn in excess of 62.5 BDT sludge per hour in the 10A Boiler.” Specific Conditions 303 (Permit, p. 229), 304 (Permit, p. 229), 305 (Permit, pp. 229-230), 306 (Permit, p. 230), and 307 (Permit, pp. 230-232) establish lb/hr, ton/yr, tpy, and lb/MMBtu limits on an array of air pollutants emitted by 10A Boiler. The conditions state that compliance shall be demonstrated by compliance with Specific Conditions 311, and 368 through 372.

Wastewater Treatment System:

Specific Conditions 377 (Permit, p. 264) and 378 (Permit, p. 268) establish lb/hr and ton/yr limits on an array of air pollutants emitted by the Wastewater Treatment System. Both conditions state that emissions are limited by the production levels of the mill.

Miscellaneous:

Specific Conditions 379 (Permit, p. 267) and 380 (Permit, p. 267) establish lb/hr and ton/yr limits on an array of air pollutants emitted by Road Emissions and Landfill Operations. Both conditions state that emissions are limited by the production levels of the mill.

Specific Condition 416 (Permit, p. 278) applies a total dissolved solids limit of 750 mg/L for SN-123. Specific Conditions 414 (Permit, p. 278) and 415 (Permit, p. 278) establish lb/hr and ton/yr limits for particulate matter emissions from SN-123. The conditions state that compliance with the particulate matter emissions shall be demonstrated by compliance with Specific Condition 416.

In response to CCCEJ's comments on each of the above conditions stating that compliance with short-term lb/hr limits cannot be demonstrated by the Permittee's compliance with production/process limits measured in other terms, such as average daily or mg/L limits, ADEQ simply declared that the permit conditions are sufficient to assure the facility's compliance with emission limitations, and generally directs CCCEJ to the permit application for specific details on the method used to calculate the limits. ADEQ made no attempt to identify the specific part of the lengthy permit application providing this information. *See, e.g.,* RTC at 12, 13, 16, 17, 18, 20, 21, 22.

Our review of the G-P Mills Title V permit application fails to reveal a reasonable explanation for why the Permittee's compliance with the various production/process limits cited above is sufficient to demonstrate the Permittee's compliance with applicable lb/hr emission limits.

The only connection between production/process limits and applicable lb/hr emission limits that the Permittee provides is in the "Example Calculations" for specific sources. Far from assuring compliance or clarity, however, these calculations further demonstrate the incongruity between production/process limits and lb/hr emission limits.

In the "Example Calculations" for several specific sources, the Permittee uses production/process limits in its calculation of lb/hr emission rates. The Permittee does this by multiplying the production/process limits by day/24 hours. For example, the Permittee uses the following equation to calculate applicable lb/hr emission rates for the pulp mill's bath digesters (SN-59) (Application, p. PM-28):

$$\text{Emission Rates (lb/hr)} = \text{Emission Factor (lb/ODT chips)} \times \text{Maximum Production Rate (ODT chips/day)} \times \text{Safety Factor} \times (\text{day}/24 \text{ hr})$$

As evidenced by the equation, the Permittee converts the daily wood chip production limit provided in Specific Condition 22 into an applicable lb/hr emission rate simply by multiplying the entire equation by day/24 hours. Such mathematical manipulation averages the emission rate over a 24-hour period, and glosses over any particularly harmful episodes of pollution. This is plainly insufficient to assure that emissions during any given hour do not exceed the lb/hr limit.

The Permittee engages in this same mathematical ploy for the Bleach Plant Scrubber (SN-30) (Application, p. BP-13), Board Machine No. 3 (SN-64) (Application, p. BM-9), Tissue Machine No. 4 (SN-66) (Application, p. TM-14), Tissue Machine No. 5 (SN-68) (Application, p. TM-17), Tissue Machine No. 6 (SN-69) (Application, p. TM-20), and EOP Stage Vents (SN-127) (Application, p. BP-18).

Ultimately, it is ADEQ's responsibility to provide a statement of the legal and factual basis for the conditions in a Title V permit, and that explanation must include a reasoned basis for selected monitoring conditions. ADEQ's general reference to the G-P Mill's permit application in response to CCCEJ's comments is far from adequate to fulfill ADEQ's statement of basis obligation, and EPA should object to the permit for that reason. Furthermore, on its face, ADEQ's approach of relying on production and process limitations that are not measured in lb/hr to demonstrate the Permittee's compliance with lb/hr limits, without any demonstration that the facility cannot exceed the lb/hr limits when complying with the production/process limits, is arbitrary and capricious and cannot satisfy Title V's command that a permit "assure compliance" with all applicable emission limitations, 42 U.S.C. §§ 7661c(a), (c) and 40 C.F.R. §§ 70.6(a)(1), (a)(3), (c)(1), and require monitoring sufficient to show the facility's compliance during the "relevant time period," 40 C.F.R. §§ 70.6(a)(3), here, lb/hr.

2. The Permit Fails to Specify a Monitoring Methodology for Determining Compliance with the Permit's Various Production/Process Limits and Fails to Require Monitoring Results to be Provided for the Relevant Time Permit of the Applicable Requirement.

Aside from failing to provide a reasoned explanation for how the permit's production/process limits demonstrate compliance with the permit's lb/hr limits, ADEQ also fails to require monitoring, recordkeeping, and reporting sufficient to assure compliance with the production/process limits themselves. In particular, ADEQ repeatedly fails to specify the methodology that the Permittee must use to determine compliance with the production/process limits, and also fails to require monitoring, recordkeeping, and reporting that is consistent with the relevant time period of the underlying applicable requirement. As a result, the permit is insufficient to assure compliance with these limits, and EPA must object.

For example, Specific Conditions 6 (Permit, p. 73) states that the Permittee "shall not process in excess of 8,400 tons of wet wood as received in the Woodyard per day, 30-day rolling average." To assure compliance with the wet wood processing limit in Specific Condition 6, Specific Condition 7 (Permit, p. 73) requires that the Permittee "maintain records which demonstrate compliance with the limit" and update those records "on a monthly basis." Those records are to be provided to Department personnel "upon request." The only information that

must be included in the Permittee’s six-month monitoring reports required by General Provision #7 is “[a] twelve month total and each individual month’s data.”

The provisions in Specific Condition 7 are insufficient to assure compliance with the woodyard’s wet wood processing limit. First, the condition fails to identify *how* the G-P mill must monitor the amount of wet wood processed by the woodyard. Simply requiring a Permittee to keep records that demonstrate compliance without specifying how the methodology that the Permittee must use to determine compliance is insufficient to assure the Permittee’s compliance with the applicable requirement. *See, e.g., In the Matter of Piedmont Green Power*, Order on Petition No. IV-2015-2 (U.S. EPA, Dec. 13, 2016), at 11 (objecting to permit on the basis that it failed to “specify the methodology used to determine” compliance and instructed that the final permit “must identify the method that the facility will use.”).²⁴

Second, the Specific Condition 7 fails to require the facility to produce records that demonstrate the G-P mill’s compliance over the *relevant time period* for the applicable requirement. *See* 40 C.F.R. § 70.6(a)(3)(i)(B) (Title V permits must include “periodic monitoring sufficient to yield reliable data *from the relevant time period* that are representative of the source’s compliance with the permit”) (emphasis added); § 70.6(c)(1) (Title V permits must include “monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.”).²⁵ In particular, the wet wood processing limit is a *daily* limit, based on a 30-day rolling average of the daily amounts. This means that every day, the facility needs to perform the monitoring needed to determine the throughput that day, and then needs to calculate the average daily processing rate based on that day and the 29 previous days.

In response CCCEJ’s comment on this issue, ADEQ simply repeated the permit condition requirements, and declared that “Specific Condition #7 is sufficient to assure compliance with the throughput limit in Condition #6.” RTC at 10. But ADEQ fails to explain why it is unnecessary for the permit to specify the methodology that the Permittee must utilize to track throughput or why reporting of the “twelve month total and each individual month’s data” is sufficient to ensure that the facility complies with a *daily* throughput limit measured on a 30-day rolling daily average. ADEQ’s unsubstantiated declaration that Specific Condition #7 is “sufficient” does not constitute a reasoned, non-arbitrary response to CCCEJ’s concerns.

These same deficiencies—the failure to specify a monitoring method, and failure to require monitoring recordkeeping, and reporting consistent with the time period of the

²⁴ Available at https://www.epa.gov/sites/production/files/2016-12/documents/piedmont_response2015.pdf

²⁵ *See, e.g., In the Matter of New York City Transit Authority*, Order on Petition No. II-2002-04 (U.S. EPA, May 24, 2004), at 36-37 (objecting to a weekly inspection requirement in a permit where a daily inspection was needed to assure compliance with the underlying requirement); *In the Matter of Buckingham Lumber Company*, Order on Petition No. VIII-2002-1 (U.S. EPA, Nov. 1, 2002), at 7-8 (objecting to a single daily visual observation where compliance with the underlying standard applied based on a six-minute average, and the feedstock was likely to result in variable emissions).

underlying requirement, afflicts numerous other permit conditions. CCCEJ identified all of these deficiencies in its comments on the draft permit, but in each case, just as described above, ADEQ declared without explanation that the permit conditions were adequate and refused to make improvements. *See, e.g.*, RTC at 10, 13, 16, 17, 19, 21, 22, 23, 25, 26, 27. Specifically, the following permit conditions suffer from the same (or substantially the same) monitoring defects:

Woodyard:

Specific Condition 6 (Permit, p. 73) states that the Permittee “shall not process in excess of 8,400 tons of wet wood as received in the Woodyard per day, 30 day rolling average.” Specific Condition 7 states that the facility “shall keep records that demonstrate compliance” with that limit, and that “[a] twelve month total and each individual month’s data shall be submitted in accordance with General Provision #7.”

Pulp Mill

Specific Condition 22 (Permit, p. 88) applies a wood chip production limit of 8,757 tons of wood chip per day, 30-day rolling average, to the pulp mill’s batch digesters. Specific Condition 23 instructs the permittee to “maintain records which demonstrate compliance,” to update those records “on a monthly basis,” and provides that the permittee’s six-month monitoring report shall include a “rolling twelve month total and each individual month’s data.”

Specific Condition 46 states that the Permittee “shall not produce in excess of 2,150 air dried tons of bleached pulp per day, 30-day rolling average.” (Permit, p. 102). Specific Condition 47 (Permit, p. 102) instructs the permittee to “maintain records which demonstrate compliance with the limits listed in Specific Condition #46” and to update those records “on a monthly basis.” (Permit p. 102). The only information that must be included in the six-month monitoring report required by General Provision #7 is “[a] twelve-month total and each individual month’s data.” *Id.*

Liquor Recovery:

Specific Condition 69 (Permit, p. 113) states that the Permittee “shall not fire black liquor solids in excess of 3,450 tons/day, maximum, and 3,000 tons/day, annual average” measured on “a daily rolling average.”²⁶ Specific Condition 72 (Permit, p. 114) directs the permittee to “maintain records of fuel usage which demonstrate compliance,” update

²⁶ The draft permit contained an entirely different stating that the Permittee “shall not fire in excess of 1,095 million tons of black liquor solids to the recovery furnace per twelve consecutive months.” ADEQ changed this limit in the final permit without explanation. Because the draft permit condition did not mention that the limits were “daily,” it was impracticable for Petitioner to raise the issue of the permit’s failure to include monitoring sufficient to demonstrate compliance on a “daily” basis in their comments on the draft permit, though they did allege that monitoring was insufficient for the original permit condition.

these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Causticizing

Specific Condition 104 (Permit, p. 136) states that “[c]alcium oxide production at this source is limited to 632.4 tons/day, maximum, and 550 tons/day on an annual average” measured on a “daily rolling average.” Specific Condition 105 (Permit, p. 136) requires the facility to maintain a record of daily calcium oxide production (one of the few conditions that does actually specify that records must be kept that are in accordance with the relevant time period of the underlying requirement). However, Specific Condition 105 goes on to state that the six-month monitoring reports need only include “twelve month total and each individual month’s data,” which fails to demonstrate the facility’s compliance with the daily limit. Requiring the Permittee to submit a “twelve month total” is insufficient to demonstrate compliance with a maximum tons/day limit and an average daily limit. Rather, ADEQ must require the Permittee to monitor and report actual and average daily calcium oxide production.

Fine Paper Machine:

Specific Condition 149 (Permit, p. 160) states that the Permittee shall “not produce in excess of 1050 machine dried tons of paper per day from the Fine Paper Machines No. 1 and No. 2 combined, 30 day rolling average.” Specific Condition 150 (Permit, p. 160) states that the Permittee “shall maintain records which demonstrate compliance with the paper production limits” in Specific Condition 149. The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Board Machines:

Specific Condition 158 (Permit, p. 165) states that the facility “shall not produce in excess of 850 machine dried tons of paper per day, 30 day rolling average, from the Board Machine No. 3.” Specific Condition 159 provides that the facility “shall maintain records which demonstrate compliance with the paper production limits” in Specific Condition 158. The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Tissue Mill Converting:

Specific Condition 168 (Permit, p. 171) states that the facility “shall not produce in excess of 173 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 4.” Condition 169 (Permit, p. 171) provides that the facility “shall maintain records which demonstrate compliance with the paper production limits” in Specific Condition 168.” The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Specific Condition 179 (Permit, p. 176) states that the facility “shall not produce in excess of 97 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 5.” Condition 180 (Permit, p. 176) provides that the facility “shall maintain

records which demonstrate compliance with the paper production limits” in Specific Condition 179. The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Specific Condition 192 (Permit, p. 181) states that the Permittee “shall not produce in excess of 270 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 6.” Specific Condition 193 (Permit, p. 181) provides that the facility “shall maintain records which demonstrate compliance with the paper production limits” in Specific Condition 192. The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Specific Condition 203 (Permit, p. 185) states that the Permittee “shall not produce in excess of 250 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 7.” Specific Condition 204 provides that the facility “shall maintain records which demonstrate compliance with the paper production limits” in Specific Condition 203. The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Specific Condition 221 (Permit, p. 192) states that the Permittee “shall not produce in excess of 253.1 machine dried tons of paper per day, 30 day rolling average, from the Tissue Machine No. 8.” Specific Condition 222 (Permit, pp. 192-193) provides that the facility “shall maintain records which demonstrate compliance with the paper production limits” in Specific Condition 221. The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Specific Condition 230 (Permit, p. 196) states that the Permittee “shall not process in excess of 270 tons per day of broke, 30-day rolling average, total combined, at all repulpers at SN-93. This limit does not apply to purchased pulp or pulp produced in-house for purposes of recycle.” Specific Condition 231 (Permit, p. 196) provides that the Permittee is to “maintain records of the amount of broke that is processed in Repulpers A, B, and C which demonstrate compliance with the limits” in Specific Condition 230. The condition further instructs that the Permittee is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Extrusion Plant:

Specific Condition 251 (Permit, p. 205) states that the Permittee “shall not produce in excess of 750 machine dried tons of coated paper per day, 30 day rolling average, from the No. 8 and No. 9 Extruder Machines combined.” Specific Condition 252 (Permit, p. 206) provides that the facility “shall maintain records which demonstrate compliance” with the limit in Specific Condition 251. The condition further instructs that the Permittee

is to update these records “monthly,” and include in the six-month monitoring report a “twelve month total and each month’s individual data.”

Steam Generation:

Specific Condition 294 (Permit, p. 226) states that the Permittee “shall not burn in excess of 35 pounds per minute of TDF in the 9A Boiler.” Specific Condition 295 (Permit, p. 226) states that the Permittee “shall not burn in excess of 250 tons of RDF per day in the 9A Boiler.” Specific Condition 296 (Permit, p. 226) states that the Permittee “shall not burn in excess of 45 BDT sludge per hour in the 9A Boiler.” For all of these limits, Specific Condition 297 (Permit, p. 227) simply instructs that the permittee “shall maintain records which demonstrate compliance,” update those records “monthly,” and include in the six-month monitoring report a “twelve month total and each individual month’s data.”

Specific Condition 369 (Permit, p. 262) states that the Permittee “shall not burn in excess of 669 thousand standard cubic feet of natural gas per hour and 5860.5 million scf of natural gas per twelve consecutive months in the 10A Boiler (SN-03).” Specific Condition 370 (Permit, p. 262) states that the Permittee “shall not burn in excess of 100 pounds of TDF per minute in the 10A Boiler (SN-03).” Specific Condition 371 (Permit, p. 262) states that the Permittee “shall not burn in excess of 250 tons of RDF per day in the 10A Boiler.” Specific Condition 372 (Permit, p. 262) states that the Permittee “shall not burn in excess of 62.5 BDT sludge per hour in the 10A Boiler.” For all of these limits, Specific Condition 373 (Permit, p. 262) instructs that the permittee “shall maintain records which demonstrate compliance.” While this condition does specify that the records should involve “the types and quantities of fuels being used,” this condition lacks the specificity needed to ensure that the fuel use is tracked using a reliable methodology and that the records will reflect fuel usage in the same time periods as the applicable limits. Rather, the condition simply states that the permittee must update the records “monthly,” and include in the six-month monitoring report only a “twelve month total and each individual month’s data,” which clearly would be inadequate to demonstrate compliance with the daily, hourly, and minute restrictions described above.

EPA must object to each of the above permit conditions due to their failure to specify the methodology that the Permittee must use to demonstrate compliance, and their failure to require that the monitoring be performed for the relevant time period of the applicable emission limitation. In addition, EPA must object to ADEQ’s failure to provide a reasoned explanation in the permit record, including in its response to comments, for why the selected monitoring is sufficient to assure compliance with the applicable process/production limits.

EPA should instruct that ADEQ add sufficient monitoring requirements to the permit; ADEQ’s approach of simply instructing the facility to “maintain records which demonstrate compliance” plainly does not satisfy Title V monitoring requirements. EPA must further instruct ADEQ that it must require the G-P Mill to submit monitoring results that are sufficient to demonstrate the facility’s compliance with applicable limits (as measured during the time period of the applicable limits) as part of the six-month monitoring report required by General Provision

#7. Finally, EPA must instruct ADEQ to require that any exceedances be promptly reported to ADEQ in accordance with 40 C.F.R. §70.6 (iii)(B).

3. The Permit Condition Requiring That Woodyard Engines and Control Equipment be Operated in Accordance with Manufacturer’s Specifications or Other Procedures Approved by the Engine Manufacturer are Unenforceable as a Practical Matter and Fail to Specify Monitoring Sufficient to Assure the Facility’s Compliance.

Specific Condition 11 (Permit, p. 74) states that the Permittee “shall operate and maintain the engines and control equipment according to the manufacturer’s written instructions or procedures developed by the owner or operator that are approved by the engine manufacturer.” The condition goes on to require the Permittee to keep “[r]ecords of required maintenance” on site and make those records available to ADEQ personnel “upon request.” This condition is unenforceable because it neither incorporates by reference the manufacturer’s written instructions nor specifies any other particular instructions or procedures that the Permittee must follow. *See* Clean Air Act § 504(a) (Title V permit must include “enforceable emission limitations and standards ... and such other conditions as are necessary to assure compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan.”); 40 C.F.R. § 70.6(a)(1) (a Title V permit must include “those operational requirements and limitations that assure compliance with all applicable requirements”). *See also, e.g., In the Matter of Scherer Steam-Electric Generating Plant, et al.*, Order on Petition Nos. IV-2012-1—IV-2012-5 (U.S. EPA, Apr. 14, 2014), at 19 (objecting to Title V permits that failed to specifically identify the “reasonable precautions” that the permittee needed to take to satisfy applicable fugitive dust control requirements).

In addition to lacking adequate specificity regarding the source’s equipment operation and maintenance obligations, this condition lacks monitoring, recordkeeping, and reporting sufficient to assure the Permittee’s compliance with these requirements. Instructing a Permittee to keep records without specifying what those records must consist of, and without requiring any information regarding what these records show in the Permittee’s required six-month monitoring reports, fails to comply with Title V requirements.

In response to CCCEJ’s comments on this issue, ADEQ simply declared that “[a]s written, Specific Condition #11 is enforceable and contains adequate specificity.” RTC at 11. ADEQ’s unsubstantiated declaration that Specific Condition 11 is “enforceable” does not constitute a reasoned, non-arbitrary response to CCCEJ’s concerns. EPA must object and instruct ADEQ that it must revise the permit to specify the required operation and maintenance procedures along with monitoring, recordkeeping, and reporting requirements sufficient to demonstrate the facility’s compliance with those procedures. *See, e.g., Operating Permit Program, Proposed Rule*, 56 Fed. Reg. 21,712 (May 10, 1991) (“proper implementation of the permit program will ensure that all SIP provisions applicable to a particular source be defined, clarified, interpreted (as necessary), and collected into a single document”).

4. The Permit Unlawfully Authorizes Bypass of the Incinerator's Sulfuric Acid Mist Eliminator During Emergency Maintenance.

Specific Condition 40 authorizes the Permittee to “allow emissions from the incinerator and associated scrubber to be released to the atmosphere bypassing the associated candle filter sulfuric acid mist eliminator ... during periods of emergency maintenance to the sulfuric acid mist eliminator.” Operation of the incinerator, scrubber, and sulfuric acid mist controls appears to be required by the applicable New Source Performance Standard, 40 C.F.R. part 60, Subpart BB, and the National Emission Standards for Hazardous Pollutants at 40 CFR Part 63, Subpart S. The permit condition cites to ADEQ’s general authority to require pollution controls as the basis for this exemption. However, it does not appear that this exemption is authorized by the applicable federal regulations.

In response to CCCEJ’s comments on this condition, ADEQ said nothing to support its legal authority to allow bypass of the sulfuric acid mist eliminator, but simply declared that “the facility is still required to comply with the stated annual emission rates which further restrict the use of bypass,” and explained that “[t]he permit has been revised to clarify that the permittee shall maintain records of these instances.” RTC at 15. ADEQ conceded that emissions during bypass will be 13.7 lb/hr, well in excess of the applicable sulfuric acid mist limit in Specific Condition 26 of 0.96 lb/hr. *Id.*

ADEQ does not have legal authority to carve out exemptions from federal regulations. While we recognize that there may be emergency situations that prevent compliance with applicable requirements, ADEQ may use its enforcement discretion and decide not to levy a penalty under such circumstances. As written, however, the Specific Condition 40 lacks safeguards to ensure that compliance is achieved if possible. For example, if “emergency” maintenance is needed, it may still be possible to turn off the equipment while the maintenance is performed. Likewise, if the facility violates the control requirement due to the need for emergency maintenance, but it turns out that the emergency maintenance would not have been necessary if the facility had properly performed regular maintenance, the permittee should not be immune from enforcement and penalties for a violation.

Furthermore, while it appears that the “annual” limit that ADEQ refers to in its response to comments appears in Specific Condition 26, that condition declares that compliance is demonstrated via compliance with Specific Condition 46. That appears to be an error, as Specific Condition 46 applies to the bleach plant. It seems more likely that ADEQ meant to refer to Specific Condition 37. In any event, neither condition accounts for additional emissions resulting from bypassed controls.

ADEQ must object to Specific Condition 40’s unlawful authorization for the Permittee to bypass the incinerator’s sulfuric acid mist eliminators during “emergency maintenance.” Alternatively, EPA must object to the permit’s failure to require the Permittee to include the additional emissions resulting from the bypass in its demonstration of compliance with the applicable tpy emission limit.

5. Numerous Permit Emission Limits are Unenforceable Because They Merely Declare that the “Permittee Estimates” That They Will Not Be Exceeded and That Emission Rates are “Effectively Limited” By Other Conditions That Do Not Apply to the Same Period as the Emission Limits.

Clean Air Act Title V instructs that a Title V permit must include “enforceable” emission limitations and standards. 42 U.S.C. §7661c(a). In their comments on the draft permit, CCCEJ states that the emission limits in Specific Conditions 185, 197, 215, 229, and 241 (pp. 178, 182, 190, 196, 200) are unenforceable because rather than explicitly state that the lb/hr and tpy emission limits set forth in those conditions apply to the facility, the conditions state that the “permittee estimates” that the emission rates will not be exceeded and that the rates “are effectively limited” by other conditions. CCCEJ explained that declaring that emission rates are “effectively limited” by another condition is insufficient to make the limits enforceable and to assure the facility’s compliance with these limits. Rather, each permit condition must unambiguously require and assure compliance with the emission limits set forth in the condition. CCCEJ also commented that ADEQ had failed to provide a reasoned explanation in the permit’s statement of basis regarding why compliance with the other specified conditions equates to compliance with the applicable lb/hr and tpy emission limits.

ADEQ dismissed CCCEJ’s comments on these permit conditions on the basis that they “are not Title V applicable requirements” and therefore are not subject to Title V requirements. RTC at 26. Contrary to ADEQ’s assertion, however, these conditions are in fact based on a federally enforceable Arkansas SIP provision, and therefore constitute “applicable requirement[s]” for Title V purposes. *See* 40 C.F.R. § 70.2 (defining “applicable requirement” to include “[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act.”). Specifically, each of these conditions identify as their legal basis A.C.A. § 8-4-203, an earlier version of which was approved into Arkansas SIP on 5/31/1972. *See* 40 C.F.R. § 52.170(e) (showing that EPA approved the predecessor to A.C.A. § 8-4-203, A.S.A. § 82-1904, into the Arkansas SIP on May 31, 1972). Any permit condition derived from a federally enforceable SIP provision is federally enforceable. 40 C.F.R. § 52.23. EPA must object to each of these permit conditions on the basis that they are unenforceable as written, and that ADEQ failed to provide a reasoned explanation for why the cited permit conditions that purportedly “effectively limit[]” the facility’s emissions to the levels required by these conditions. In addition, EPA must object to ADEQ’s characterization of these permit conditions as not being based on Title V “applicable requirements.”

III. The Permit Fails to Incorporate a Compliance Schedule as the Clean Air Act Requires.

If ADEQ is aware that the G-P Mill is not currently in compliance with an applicable requirement, ADEQ must include an enforceable schedule of remedial measures in the permit designed to bring the facility into prompt compliance. 40 C.F.R. § 70.6(c)(3).²⁷ A compliance

²⁷ *See, also, New York Public Interest Group, Inc. v. Johnson*, 427 F.3d 172, 182-83 (2d Cir. 2005) (concluding that EPA was obligated to object to a permit that failed to include a compliance schedule).

schedule is required for any applicable requirement “for which the source will be in noncompliance at the time of permit issuance.” 40 C.F.R. § 70.5(c)(8)(iii)(C). Such schedule “shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.” *Id.* However, a permitting authority cannot omit a compliance schedule for a source that is in violation of an applicable requirement at the time of permit issuance simply because the permitting authority has not yet finalized a consent decree addressing the violation.

A. ADEQ Failed to Include a Compliance Schedule for Non-Compliant Operations Identified Prior to the Draft Permit’s Release.

In comments on the draft permit, CCCEJ noted that there are numerous outstanding notices and investigations alleging that the G-P Mill is violating applicable requirements, and that ADEQ has an obligation to review the available information and determine whether the mill will be in non-compliance at the time of permit issuance, which would necessitate inclusion of a compliance schedule in the mill’s Title V permit. Several of these ongoing investigations were noted in the Section V of draft permit identifying the “Compliance Plan and Schedule.” However, Section V was plainly written by the permit applicant, not by ADEQ, and thus, did not reflect ADEQ’s determinations regarding the G-P Mill’s compliance status with respect to each of the applicable requirements at issue. Nor did draft Section V include an actual compliance schedule for any applicable requirement. Section V begins by stating that “GP provides this Compliance Plan and Schedule.” It further states that “GP believes that the current mechanisms ADEQ has to track the progress of each of the matters listed below satisfy the progress report requirement.” Whatever those “mechanisms” are, they were not included in the permit. In sum, the draft permit showed that ADEQ had made no attempt to exercise its own judgment regarding what compliance schedule requirements must be included in the G-P Mill’s Title V permit, but instead simply cut and pasted Georgia-Pacific’s discussion of ongoing compliance issues directly into the draft permit.

CCCEJ’s comments on the draft permit specifically flagged the following ongoing compliance issues as likely necessitating an enforceable compliance schedule designed to bring the facility into compliance with applicable requirements:

- Violations of the Clean Air Act Risk Management Program regulations outlined in the January 9, 2017, Administrative Order on Consent between EPA and Georgia-Pacific;
- Non-compliance issues shown in a U.S. EPA National Environmental Investigation Center inspection report based on a February 2015 investigation.²⁸

Unfortunately, ADEQ dismissed CCCEJ’s concerns by simply declaring that “[t]he Division reviews compliance status each time a permit application is considered. It is not necessary to revise the permit.” RTC at 30. Accordingly, ADEQ left the “Compliance Plan and Schedule” in Section V of the permit exactly as it appeared in the draft permit—as written by Georgia-Pacific. Regardless of whether ADEQ did, as it alleges, review the G-P Mill’s compliance status prior to issuing the G-P Mill’s final Title V permit, there is no indication that ADEQ sought to remedy

²⁸ CCCEJ Comments at 29-30.

the facility's non-compliance with an enforceable compliance schedule as required by Title V. ADEQ's failure to specifically respond to CCCEJ's comments and exercise its own independent judgement as to what the compliance schedule must include was arbitrary and capricious and likely resulted in a permit deficiency; specifically, the permit lacks an enforceable compliance schedule that is designed to bring the facility into full compliance with applicable requirements discussed above and that is "at least as stringent as" any applicable consent order. 40 C.F.R. § 70.5(c)(8)(iii)(C).

B. ADEQ Failed to Include a Compliance Schedule Addressing Ongoing Violations Identified in the 2018 Enforcement Action

On December 14, 2018, EPA and ADEQ jointly filed a major new enforcement action against Georgia-Pacific which alleged that the G-P Mill "violated or continues to violate" various New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, as well as the Chemical Accident Prevention Provisions for Air Programs. *United States v. Georgia-Pacific Chemicals LLC, Georgia Pacific Consumer Ops., LLC*, No. 1:18-cv-01076-SOH (W.D. Ark.) (filed Dec. 14, 2018).²⁹ EPA must object because the final Permit does not include a Compliance Schedule that brings the G-P mill into compliance with each of the requirements where ADEQ and EPA found a violation, as listed in the Complaint.³⁰ G-P filed no answer and presented no defenses in response to this Complaint. Instead, it signed a Consent Decree that the parties purport to resolve all violations and to bring G-P into compliance with the violated requirements.³¹

The Complaint includes specific allegations of ongoing non-compliance, including:

- a. Emissions from the pulping systems two washers (GP-2 and GP-3) are "not enclosed and vented into a closed-vent system and routed to a control device" in violation of 40 C.F.R. § 63.443(c). (Complaint ¶¶ 180-181)
- b. "HAP emissions from the D2 Upflow Tower are not enclosed and vented into a closed-vent system and routed to a control device in violation of 40 C.F.R. § 63.445(b)"; (¶¶ 204.);
- c. The HAP emissions from the bleach plant scrubber booster fan were not enclosed and vented into a closed-vent system and routed to a control device in violation of 40 C.F.R. § 63.445(b)" (¶¶ 211).

²⁹ See Attachment 10, Complaint, *United States v. Georgia-Pacific Chemicals LLC, Georgia Pacific Consumer Ops., LLC*, No. 1:18-cv-01076-SOH (W.D. Ark.) (filed Dec. 14, 2018).

³⁰ CCCEJ did not raise this variation of the problem of failure to include a Compliance Plan because the enforcement action was filed by EPA and ADEQ after the close of the comment period for the draft permit. Under the law, any person may petition the Administrator based on an objection "that it was impracticable to raise . . . within [the public comment period] or . . . [that] arose after such period." 42 U.S.C. § 7661d(b)(2). Petitioner CCCEJ so petitions here.

³¹ Attachment 11, Lodged Consent Decree at 33 ¶ 76 ("This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.").

Further, in the proposed Consent Decree, EPA, ADEQ, and the G-P Mill agreed that several projects would be implemented within certain timeframes outlined therein. Those projects include:

- a. Within 30 days, implement an operation and maintenance program to rebuild or replace the capping valves on all 13 Digesters. That work is to be completed within 180 days and a 2-year rotation for rebuilding or replace the capping valves in the future, the operations and maintenance program is to be incorporated into the Title V permit, and all the Hazardous Air Pollutant emissions are to be vented into a closed-vent system (§ 18(a)(1)-(3));
- b. Within 180 days, apply for a permit for the “GP Consumer Washers improvement project” and complete that project within 365 days of specified occurrences. (§ 18(a)(2));
- c. Within 30 days, “implement standard operating procedures that require the pulp mill to shut down” with the incinerator is down to control HAP emissions. § 18(c);
- d. Within 30 days, “design and install a proximity switch device for the D2 Upflow Tower’s pressure relief device.”

EPA cannot ignore and must object to ADEQ’s failure to include Compliance Schedule requirements in the permit that includes task necessary to ensure that the G-P mill is in compliance with the Act.

While the Consent Decree is not yet final (EPA, ADEQ, and Georgia-Pacific purport to be working to finalize it by December 1, 2019)³² this does not mean that ADEQ and EPA can ignore the evidence of ongoing non-compliance when issuing the G-P Mill’s Title V permit. EPA must object to ADEQ’s failure to include an enforceable remedial schedule in the final permit addressing the facility’s ongoing violations. Insofar as the final Consent Decree differs from the proposed decree in a way that impacts the remedial schedule, Georgia-Pacific can apply for a permit modification.

The community needs protection from the violations that EPA’s enforcement action aims to remedy and mitigate. While we appreciate EPA and ADEQ’s effort to enforce Clean Air Act requirements at the G-P Mill, it is important to recognize that a Title V compliance schedule provides additional community benefits that will not be provided by the final Consent Decree. First, Title V makes the required remedial measures federally enforceable, which means that they can be enforced via a citizen suit filed under Clean Air Act § 304 if necessary. Second, Title V requires that the facility regularly file publicly available reports documenting its compliance with compliance schedule requirements, which is not necessarily true under a Consent Decree. There can be no lawful or rational basis for ADEQ to ignore the facility’s ongoing Clean Air Act violations when issuing the facility’s Title V permit and deny the public their right to an enforceable Title V compliance schedule.

³² Attachment 12, Parties’ Joint Status Report Regarding Lodged Consent Decree, *United States v. Georgia-Pacific Chemicals LLC, Georgia Pacific Consumer Ops.*, No. 1:18 cv-01076-SOH (W.D. Ark.) (filed Aug. 2, 2019) (attaching Lodged Consent Decree as Att. A).

CONCLUSION

For the reasons set forth herein, EPA must object to the Title V permit prepared by ADEQ for the G-P mill in Crossett, Arkansas.

Respectfully submitted on October 30, 2019, on behalf of Crossett Concerned Citizens for Environmental Justice,

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LIST OF ATTACHMENTS

1. Screen Shot of EPA Region 6 Petition Deadline website
2. CCCEJ Written Comments to ADEQ (Dec. 14, 2017)
3. CCCEJ Supplemental Comments to ADEQ (Jan. 4, 2018)
4. Dec. 19, 2017 E-mail to ADEQ
5. E-mail Correspondence with ADEQ
6. CCCEJ Petition to Object to Permit (Feb. 19, 2018)
7. EJSCREEN ACS Summary Report, Georgia-Pacific Pulp Mill, One Mile Radius
8. Email from ADEQ regarding Air Permit Application Updates (Sep. 26, 2019)
9. ADEQ, Permit No. 0597-AOP-R19 and Response to Comments (Sep. 24, 2019)
10. Complaint, *United States v. Georgia-Pacific Chemicals LLC, Georgia Pacific Consumer Ops., LLC*, No. 1:18-cv-01076-SOH (W.D. Ark.) (filed Dec. 14, 2018).
11. Lodged Consent Decree, *United States v. Georgia-Pacific Chemicals LLC, Georgia Pacific Consumer Ops., LLC*, No. 1:18-cv-01076-SOH (W.D. Ark.) (filed Dec. 14, 2018)
12. Joint Status Report regarding Lodged Consent Decree, *United States v. Georgia-Pacific Chemicals LLC, Georgia Pacific Consumer Ops., LLC*, No. 1:18-cv-01076-SOH (W.D. Ark.) (Aug. 2, 2019)