BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NO. V-2016-16
	)	
AK STEEL DEARBORN WORKS	)	ORDER RESPONDING TO
WAYNE COUNTY, MICHIGAN	)	PETITION REQUESTING
	)	OBJECTION TO THE ISSUANCE OF
PERMIT NO. MI-ROP-A8640-2016A	)	TITLE V OPERATING PERMIT
	)	
ISSUED BY THE MICHIGAN DEPARTMENT OF	)	
ENVIRONMENTAL QUALITY	)	
	)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated September 27, 2016 (the Petition) from South Dearborn Environmental Improvement Association, Great Lakes Environmental Law Center, and Sierra Club (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The Petition requests that the EPA Administrator object to the operating permit No. MI-ROP-A8640-2016a (the 2016a title V Permit) issued by the Michigan Department of Environmental Quality (MDEQ)[1] to AK Steel Dearborn Works (Dearborn Works or the facility) in Dearborn, Wayne County, Michigan. The operating permit was issued pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f. *See, e.g.*, Mich. 1994 PA 451, MCL 324.5506, and Mich. R 336.1210-1219; *see also* 40 C.F.R. part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

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

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The state of Michigan first submitted a

[1] On April 22, 2019, MDEQ was reorganized and the agency responsible for issuing air permits is now the Michigan Department of Environment, Great Lakes, and Energy. This Order will refer to the older nomenclature (MDEQ), given that this was the entity that issued the Permit on which the Petition is based.

title V program governing the issuance of operating permits on May 16, 1995, and following subsequent submittals, the EPA granted interim approval effective February 10, 1997. 62 FR 1387 (February 10, 1997). The EPA granted full approval of Michigan's title V operating permit program effective November 30, 2001. 66 FR 62949 (December 4, 2001). Most of this program is codified in Mich. 1994 PA 451, MCL 324.5506, and Mich. R 336.1210-1219. Title V permits issued by MDEQ are known as Renewable Operating Permits, or ROPs.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. CAA §§ 502(a), 503, 504(a), 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

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

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

§ 7661d(b)(2); 40 C.F.R. § 70.8(c)(l).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[3]

The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).[4] When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g.*, *MacClarence*, 596 F.3d at 1130–31.[5] Certain aspects of the petitioner's demonstration burden are discussed below. A more detailed discussion can be found in *In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the state's response to comments), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.[6] Another factor the EPA examines is whether a petitioner

---

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

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

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

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

[6] *See also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. Appx. *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (January 8, 2007)

has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").[7] Relatedly, the EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard. *See, e.g.*, *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013).[8] Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g.*, *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).[9]

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

C. New Source Review

The major New Source Review (NSR) program is comprised of two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the National

---

(*Georgia Power Plants Order*) (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

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

[8] *See also Portland Generating Station Order* at 7 ("[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement]."); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (April 20, 2007); *Georgia Power Plants Order* at 9–13; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

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

Ambient Air Quality Standards (NAAQS) and for other pollutants regulated under the CAA. CAA §§ 160–169, 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. CAA §§ 171–193, 42 U.S.C. §§ 7501–7515. The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA's federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA's regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. The EPA commonly refers to the latter program as the "minor NSR" program. States must also develop minor NSR programs to attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R §§ 51.160 through 51.164. These federal requirements for minor NSR programs are less prescriptive than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs than in major source programs.

Where the EPA has approved a state's title I permitting program (whether PSD, NNSR, or minor NSR), duly issued preconstruction permits will establish the NSR-related "applicable requirements," and the terms and conditions of those permits should be incorporated into a source's title V permit without a further round of substantive review as part of the title V process. *See generally In the Matter of Big River Steel, LLC*, Order On Petition No. VI-2013-10 at 8–20 (October 31, 2017) (*Big River Steel Order*); 56 Fed. Reg. 21712, 21738–39 (May 10, 1991).[10] The legality of a permitting authority's decisions undertaken in the course of preconstruction permitting is not a subject the EPA will consider in a petition to object to a source's title V permit. *See Big River Steel Order* at 8–9, 14–20.[11] Rather, any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

[10] However, as the EPA noted in the *Big River Steel Order*, there may be circumstances that "warrant a different approach." *Big River Steel Order* at 11 n.20.

[11] The EPA does view monitoring, recordkeeping, and reporting to be part of the title V permitting process and will therefore continue to review whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit. *See, e.g.*, *In the Matter of South Louisiana Methanol, LP*, Order on Petition Nos. VI-2016-24 and VI-2017-14 at 10–11 (May 29, 2018) (*South Louisiana Methanol Order*); *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20. Moreover, as the EPA has explained, "[A] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the 'applicable requirement' remains the terms and conditions of the issued preconstruction permit and they should be included in the source's title V permit." *Big River Steel Order* at 19.

The EPA has approved Michigan's PSD, NNSR, and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.1170 (identifying EPA-approved regulations in the Michigan SIP).[12] Michigan's major and minor NSR provisions, as incorporated into Michigan's EPA-approved SIP, are primarily contained in Mich. R 336.1201-1209 (NSR/minor NSR), R 336.2801-2823 (PSD), R 336.2901-2908 (NNSR). Preconstruction permits issued by MDEQ are called Permits to Install, or PTIs.

D. Michigan Rules Governing the Incorporation of NSR Permit Terms into a Title V Permit

As explained above, the terms and conditions of preconstruction permits are "applicable requirements" that must be incorporated into a source's title V permit. There are multiple procedures by which this may occur, depending on the nature of the changes. For example, the source's title V permit could be revised using minor or significant title V modification procedures. *See* 40 C.F.R. § 70.7(e); Mich. R 336.1216(2) and (3). Alternatively, in certain circumstances, permitting authorities may be able to use title V administrative amendment procedures to incorporate the terms of preconstruction permits that were issued through enhanced procedures that satisfy certain part 70 requirements. *See* 40 C.F.R. § 70.7(d)(1)(v). Michigan's EPA-approved part 70 program and NSR SIP rules provide for this latter approach. *See* Mich. R 336.1216(1)(a)(v).

Under Michigan's rules, in order to incorporate the terms of a PTI into a title V permit via an administrative permit amendment as specified in Mich. R 336.1216(1)(c), the PTI must be issued following procedures substantially equivalent to the part 70 procedures contained in Mich. R 336.1214(3) and (4) regarding public participation and review by affected states, among other requirements.[13] Mich. R 336.1216(1)(a)(v). MDEQ refers to this type of PTI permitting action as "enhanced PTI" and this type of title V permit modification as an "AA5" administrative amendment.[14]

The public and affected states are provided the opportunity to review and comment on both the preconstruction and operating permit elements of the permit[15] during the enhanced PTI process (i.e., during PTI issuance). After the PTI is issued, a source may submit an AA5 application,

---

[12] Michigan received delegation for the major source PSD construction permitting program from the EPA on September 10, 1979. The EPA later approved Michigan's PSD permitting program into the Michigan SIP, effective May 24, 2010. 75 FR 14352 (March 26, 2010). The EPA first approved Michigan's NNSR and minor NSR rules into the Michigan SIP effective May 6, 1980. 45 FR 29790 (May 6, 1980).

[13] To satisfy Mich. R 336.1216(1)(a)(v), the PTI must also (1) comply with the title V permit content requirements in Mich. R 336.1213, (2) the source must be in compliance with the provisions of the PTI, (3) the PTI permit terms may not be changed before incorporation into the title V permit, (4) the source must notify MDEQ after completing the project authorized by the PTI, and (5) the source must submit to MDEQ the results of all testing, monitoring, and recordkeeping required by the PTI, as well as a schedule of compliance and a certification of truth, accuracy, and completeness by the source's responsible official. Mich. R 336.1216(1)(a)(v).

[14] This is a reference to subsection (v) of Michigan's administrative amendment rules, which are differentiated from the administrative amendments in subsections (i)-(iv) due to the distinct issuance procedures. *See* Mich. R 336.1216(1)(i)-(v); *see also* MDEQ's Renewable Operating Permit Program Naming Conventions (November 16, 2015), *available at* https://www.michigan.gov/documents/deq/deq-aqd-rop-doc_naming_convention_553103_7.pdf.

[15] *See* Mich. R 336.1216(1)(a)(v) (requiring that an enhanced PTI permit comply with the title V permit content requirements in Mich. R 336.1213); *see also supra* note 13.

subject to the additional requirements specified in footnote 13, *supra*. EPA's 45-day review of the AA5, as well as the public's subsequent 60-day opportunity to petition the EPA to object to the title V permit revision, attach to the title V AA5 administrative amendment action, rather than the underlying enhanced PTI action. Mich. R 336.1216(1)(c)(i)-(ii).

III. BACKGROUND

A. The AK Steel Dearborn Works Facility

AK Steel Corporation currently owns and operates the Dearborn Works steel mill in Dearborn, Wayne County, Michigan.[16] Operations at Dearborn Works consist of carbon steel melting, casting, hot and cold rolling, and finishing operations. Emission units at the facility include blast furnaces, basic oxygen furnaces, ladle metallurgy furnaces, an RH vacuum degasser, slab casters, a hot strip mill, a pickling line tandem cold mill, batch annealing shops, a temper mill, and a hot dipped galvanizing line. Dearborn Works is a major source under title V and an existing major stationary source under NSR.

B. Preconstruction Permitting History

Between 2006 and 2007, Dearborn Works undertook various physical changes to the facility. These changes included modifications (including the addition of additional emission controls) to the C Blast Furnace, the B Blast Furnace, and the basic oxygen furnace, along with other changes associated with increasing production, as well as the planned addition of an on-site coal pulverization facility. Construction commenced in Spring 2006, and operation began in October 2007. For various reasons, Dearborn Works did not complete all of the planned changes to the facility.[17]

These changes triggered PSD as a major modification to the existing major source for carbon monoxide and sulfur dioxide (SO_2) and were initially authorized by a series of PSD permits issued between 2006 and 2007 (PTIs 182-05, 182-05A, and 182-05B).[18] After emissions testing indicated exceedances of the permit limits established in PTI 182-05B, MDEQ and Dearborn Works eventually agreed to revise the facility's PSD permit for a third time in order to update the emission factors and permit limits to better reflect the actual operating conditions at the facility. This third revision to the PSD permit, which did not authorize any additional construction, is identified as PTI 182-05C.

Dearborn Works submitted an application for PTI 182-05C on December 15, 2010. MDEQ released a draft version of PTI 182-05C for public comment on February 12, 2014. In the public notice announcing the permit, MDEQ explained that "the changes will require revisions to Renewable Operating Permit (ROP) No. 199700004 (SRN A8640). This public comment period

[16] The Dearborn Works facility was previously owned by Severstal Dearborn, LLC, and various permitting actions discussed below were issued to Severstal, rather than AK Steel.
[17] For further information, *see* Petition Exhibit 18 at pdf p. 16.
[18] MDEQ issued PTI 182-05 on January 31, 2006. Following additional submission from Dearborn Works, MDEQ amended PTI 182-05 in July 2006 (in a permit labeled PTI 182-05A) and again in April 2007 (in a permit labeled PTI 182-05B). These subsequent permits superseded and replaced the initial PTI 182-05.

meets the public participation requirements for a future administrative amendment to the ROP." Public Notice for PTI 182-05C (February 12, 2014) (Petition Ex. 3 at pdf p. 7). Following an extension of the public comment period and a public hearing, MDEQ finalized PTI 182-05C on May 12, 2014, along with a document containing MDEQ's response to public comments (the PTI-182-05C RTC). A collection of citizen groups (including the Petitioners) appealed the issuance of PTI 182-05C in the Michigan state court system. As of the date this Order was signed, that appeal is still pending. *See South Dearborn Environmental Improvement Ass'n v. MDEQ*, Case No. 14-008887-AA (Mich. 3rd Judicial Circuit Court, dismissed July 16, 2019), *appeal docketed*, Case No. 350032 (Mich. Ct. App., Aug 2, 2019).

C. Title V Permitting History

Dearborn Works received its initial title V operating permit on October 18, 2004. The facility's title V permit was last renewed on April 22, 2016, in permit No. MI-ROP-A8640-2016.[19] On March 30, 2016, Dearborn Works applied for AA5 administrative amendments to its title V permit to incorporate the terms of PTI 182-05C (along with other PTIs) into the source's title V permit, permit No. MI ROP-A8640-2016a. After reviewing the source's applications, MDEQ:

> determined that the changes requested meet the following criteria for an Administrative Amendment pursuant to Rule 216(1)(a)(v): the PTI's [sic] include terms and conditions that comply with the permit content requirements contained in Rule 213; the procedure used to issue the PTI's [sic] was substantially equivalent to the requirements of Rule 214 regarding public participation and review by affected states; and the process or process equipment is in compliance with, and no changes are required to, the terms and conditions of the PTI's [sic] that are to be incorporated into the ROP. Also, the permittee notified the AQD in writing of commencing operation of the processes covered by the PTI's [sic] and has submitted certified results of all required testing, monitoring and recordkeeping performed to date to demonstrate compliance with the PTI's. [sic]

Staff Report for MI-ROP-A8640-2016a at 31 (June 15, 2016) (Petition Ex. 1, pdf p. 194).

MDEQ transmitted the proposed AA5 administrative amendments to the EPA on June 15, 2016. EPA did not object to the 2016a title V Permit. The Petition on the 2016a title V Permit, dated September 27, 2016, was timely filed within 60 days after the expiration of the EPA's 45-day review period. MDEQ finalized the 2016a title V Permit on January 19, 2017.

[19] This renewal permit did not include the terms of multiple PTIs issued to the source—including PTI 128-05C—because "these permits were either issued after the public comment period began or the equipment was not installed at the time the ROP draft went out for public comment which was June 6, 2011." Staff Report Addendum accompanying MI-ROP-A8640-2016 at 20 (April. 22, 2016) (Petition Ex. 1 at pdf p. 183). Instead, MDEQ explained that because PTI 128-05C (and two other preconstruction permits) "already had public comment periods that meet the public participation requirements for future administrative amendments (modifications) to the ROP," these permits would later be incorporated into the title V permit via the AA5 administrative amendment procedures. *Id*. at 21.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

Claim A: The Petitioners Claim That "The proposed amendment permits emissions increases without applying the Act's current standards and regulations."

Petitioners' Claim: The Petitioners claim that "[t]he proposal to amend the company's Title V permit to incorporate the terms of PTI 182-05C is unlawful because PTI 182-05C authorized emissions increases without applying current standards and regulations." Petition at 5. The Petitioners claim that in issuing PTI 182-05C, MDEQ applied the regulations as they existed in 2007, rather than applying the regulations in effect at the time PTI 182-05C was issued in 2014 (the Petitioners refer to this as "grandfathering"). *Id*. at 5, 7. The Petitioners present multiple examples of differences between these regulations. *Id*. at 7. The Petitioners also outline various exchanges between Dearborn Works, MDEQ, the Petitioners (in public comments), and the EPA related to this issue. *See id*. at 5–7.

The Petitioners argue that a "preconstruction permit must apply all legal requirements in effect at the time of a permitting decision." *Id*. at 7 (citing Mich. Admin. Code R 336.1207(1); 42 U.S.C. §§ 7475(a), 7410(j); 40 C.F.R. § 52.21(k); *Sierra Club v. EPA*, 762 F.3d 971, 983 (9th Cir. 2014) ("*Avenal*")). The Petitioners contend "there is no authority authorizing the issuance of a revised permit to increase emissions limits without applying current regulations and standards in the [CAA]." *Id*. at 18. For support, the Petitioners present various arguments, relying on the 9th Circuit's *Avenal* decision and two EPA guidance memoranda from 1987 and 1985. *See id*. at 8–18. The Petitioners also address related arguments from MDEQ and Dearborn Works. *See id*. at 18–19.

The Petitioners assert that because MDEQ did not apply the standards in effect as of 2014, PTI 182-05C is not protective of public health. *Id*. at 19. The Petitioners focus on the fact that MDEQ evaluated SO_2 emissions under the PSD regulations applicable in attainment areas (in 2007, the area was designated as attainment for the relevant SO_2 NAAQS), rather than the more stringent NNSR regulations applicable in nonattainment areas (in 2013, the area was designated as nonattainment for the primary 2010 SO_2 NAAQS, 78 FR 47191 (August 5, 2013)). *See id*. at 19–21.

Next, in addressing MDEQ's position that PTI 182-05C was a revision of PTI 182-05, rather than a new permit, the Petitioners assert that "MDEQ lacks authority under state or federal law to revise, amend, or otherwise open and redo a permit to install." *Id*. at 9. The Petitioners claim that in circumstances presented here, Michigan law allows for revocation and resubmission of a permit. *Id*. (citing Mich. R 336.1201(8). The Petitioners question the propriety of MDEQ's decision not to apply the cited rule, but instead to "make up a new procedure to retroactively amend an existing permit." *Id*.

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

Claim A challenges whether MDEQ correctly applied the proper substantive NSR requirements in issuing PTI 182-05C, and whether MDEQ followed the proper procedural requirements in

processing PTI 182-05C as a revision of a prior PSD permit. These claims raise the issue whether decisions made in issuing a title I preconstruction permit, like the PSD permit revision issued to Dearborn Works in PTI 182-05C, should be considered by the EPA when responding to a petition to object to the issuance of a title V operating permit. As noted in Section II.C of this Order, the EPA reviewed this question in the *Big River Steel Order*, among others. After a review of the structure and text of the CAA and the EPA's regulations in part 70, and in light of the circumstances presented by the petitions at issue in each of those Orders, the EPA concluded that the title V permitting process was not the appropriate forum to review the preconstruction permitting issues raised in those petitions when a preconstruction permit has been duly issued. After considering the situation presented in the Petition regarding the Dearborn Works facility, the EPA has likewise concluded that a title V petition to object is not the appropriate forum for reviewing the merits of similar preconstruction permitting decisions made in issuing PTI 182-05C.[20]

In circumstances such as those present here, where a permitting authority has made a source-specific permitting decision with respect to a particular construction project under title I and issued a permit following notice and comment and the opportunity for judicial review, those preconstruction permitting decisions "define certain applicable SIP requirements for the title V source" for purposes of title V permitting. 57 Fed. Reg. at 32259. This interpretation, as explained more fully in the *Big River Steel Order*, was based on a variety of factors. Notably, while section 504 of the CAA requires title V permits to "include enforceable emissions limits and standards . . . to assure compliance with applicable requirements of this chapter," 42 U.S.C. § 7661c(a), the term "applicable requirements" is not defined in the Act and the Act does not specify how to determine what the "applicable requirements" are for a particular title V permit. The EPA's regulations do define the "applicable requirements" under title V. *See* 40 C.F.R. § 70.2; *see also* Mich. R 336.1101(o) (similar definition). However, as the EPA noted in *Big River Steel*, there is an ambiguity in the definition of "applicable requirement" when a source has already obtained a preconstruction permit. *Big River Steel Order* at 10. To resolve this ambiguity and avoid an incongruous result of requiring permitting agencies or the EPA to use the title V permit or petition process to reconsider whether a permitting authority correctly applied all relevant title I rules when issuing a preconstruction permit, the EPA interprets its regulations such that a duly-issued preconstruction permit defines the "applicable requirements" for the title V permit as the terms and conditions of that preconstruction permit. This interpretation of the EPA's regulations and the rationale supporting the interpretation are more fully explained in the *Big River Steel Order*.

The Agency's reading of part 70 takes into account the authority and procedures MDEQ used to issue the title V permit for Dearborn Works: that is, the use of AA5 administrative amendment procedures to incorporate the terms of an "enhanced PTI" preconstruction permit into the

[20] This determination is based on the facts present here and the nature of the arguments made by the Petitioners. If different circumstances arise, such as a situation where no preconstruction permit was issued, there was no public notice on the preconstruction permit, or the grounds giving rise the complaint arose after the preconstruction permit was issued, the EPA will evaluate those individual cases based on their unique facts. *See Big River Steel Order* at 11 n.20. Additionally, as noted above, the EPA will and has reviewed whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit. *See supra* note 11; *see, e.g.*, *South Louisiana Methanol Order* at 10–11. However, the Petitioners do not raise any claims regarding the sufficiency of such provisions in the current Petition.

source's title V permit. Under these procedures, MDEQ first issues a title I permit with full (in this case, "enhanced") opportunities for public participation, including public notice, a minimum 30-day public comment period, an opportunity for a public hearing, and an opportunity for review by affected states. Such a duly-issued title I permit establishes the NSR-related "applicable requirements" for title V purposes, which must then be incorporated into the title V permit. Depending on each program's EPA-approved title V rules, a permitting authority may have multiple mechanisms to accomplish this incorporation. Here, MDEQ can incorporate the terms and conditions of an "enhanced PTI" title I permit into the title V permit through a special type of administrative amendment action.[21] The streamlined method by which MDEQ incorporates the terms and conditions of the preconstruction permit into the title V permit is consistent with the principle that the decisions made in establishing the title I requirements in issuing the NSR permit should not be re-evaluated by the EPA through a petition to object to the title V permit. Thus, although Michigan's rules provide for EPA review of the AA5 administrative amendment action (necessarily followed by a public petition opportunity), this will generally not involve the EPA's review of substantive decisions made in the NSR permit action to establish the title I-based terms and conditions of the NSR permit.[22]

In Claim A, the Petitioners contest whether MDEQ correctly applied its NSR permitting rules in issuing PTI 182-05C. However, PTI 182-05C was a PSD permit issued under MDEQ's EPA-approved title I permitting rules.[23] As a duly-issued title I preconstruction permit, PTI 182-05C establishes the NSR-related "applicable requirements" that must be incorporated into the title V permit, generally without further review. *See Big River Steel Order* at 9–11. Therefore, the task of MDEQ in modifying the title V permit in the current permit action was to faithfully incorporate the terms and conditions of PTI 182-05C and to ensure that the title V permit contains adequate monitoring, recordkeeping, and reporting requirements to assure compliance with those terms and conditions. *See Citizens Against Ruining the Environment*, 535 F.3d at 672 ("Title V does not impose additional requirements on sources but rather consolidates all

[21] Notably, the AA5 administrative amendment proceeding requires the opportunity for the public to comment at the time the preconstruction permit is issued. The public retains the full ability to comment on the terms and conditions of the NSR permit during the enhanced PTI permit issuance (and to challenge these terms subsequent state administrative and judicial review). The public also retains the full ability to comment on additional issues related to title V (e.g., title V permit content requirements, including monitoring, recordkeeping, and reporting issues) during the enhanced PTI permit issuance. *See* Mich. R 336.1216(a)(1)(v), 336.1213. Finally, the public retains the full ability to seek EPA review of issues specific to title V during the title V petition process on the AA5 administrative amendment action, including issues related to the proper incorporation of the NSR permit terms and whether all permit terms are supported by adequate monitoring, recordkeeping, and reporting requirements. *See supra* note 11. To the extent any such claims arise after the public comment period or are otherwise impracticable to raise during the public comment period on the enhanced PTI action, these petition claims would not be barred by the requirement of CAA § 505(b)(2) that claims be raised with reasonable specificity during the public comment period.

[22] As discussed above, the EPA would still review whether the title V permit accurately reflects the applicable requirements established in the underlying NSR permit, and whether the title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with those terms and conditions. *See supra* note 11.

[23] Although the Petitioners briefly challenged the propriety of issuing PTI 182-05C as a modification to a previously-issued PSD permit (PTI 182-05B), the Petitioners do not contest the basic premise that PTI 182-05C was a title I PSD permit. As a revised version of a prior PSD permit, it is clear that PTI 182-05C was also a PSD permit. This was readily apparent in the public notice for PTI 182-05C, which referred to the permit as a "Permit to Install . . . subject to the federal [PSD] rules and regulations for a major modification to an existing major stationary source . . . ." PTI 182-05C Public Notice (Feb. 12, 2014) (Petition Ex. 3 at pdf p. 7).

applicable requirements in a single document to facilitate compliance."); *Big River Steel Order* at 8–9, 14–20. In issuing the 2016a title V Permit, MDEQ did just that. Unless and until PTI 182-05C is revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through another available mechanism, the 2016a title V Permit should simply incorporate the terms and conditions of PTI 182-05C as applicable requirements. The Petitioners do not assert, much less demonstrate, that the 2016a title V Permit fails to properly incorporate the terms and conditions of PTI 182-05C. The Petitioners' challenges to the PTI terms, and whether MDEQ correctly applied its NSR rules in establishing these terms, are not properly raised through the title V petition process.[24]

Instead, any challenges to the validity of decisions made in issuing PTI 182-05C—including which set of NSR rules MDEQ should have applied to PTI 182-05C, and whether MDEQ had authority in these circumstances to revise PTI 182-05B rather than issue a new permit—should be raised through the appropriate title I avenues or through an enforcement action. In fact, the Petitioners have followed this path by challenging these determinations through the title I process by submitting comments on PTI 182-05C and by subsequently challenging PTI 182-05C in the Michigan state court system. This proceeding is currently ongoing. *See South Dearborn Environmental Improvement Ass'n v. MDEQ*, Case No. 14-008887-AA (Mich. 3rd Judicial Circuit Court, dismissed July 16, 2019), *appeal docketed*, Case No. 350032 (Mich. Ct. App., Aug 2, 2019).[25] This state court adjudication is the proper process under the CAA to obtain review of these preconstruction permitting decisions. As evidenced by the briefs filed in this state court appeal by the Petitioners, MDEQ, and Dearborn Works, the current challenges to PTI 182-05C pose particularly complex legal and technical questions involving preconstruction permitting requirements. These complex questions warrant resolution through an in-depth adjudicatory process provided by the state court system—where all interested parties, including Dearborn Works and MDEQ, can actively participate and develop a full record for review—rather than through the limited, 45-day administrative review process or 60-day petition review period in title V. *See Big River Steel Order* at 17–19.[26] Judicial review of title I permitting decisions through the state court system rather than through title V is also consistent with Congress's initial designs for the review of preconstruction permitting decisions. *See Big River Steel Order* at 15 n.26. As the circumstances here clearly demonstrate, review of the terms and conditions of a title I permit within the title V permitting process would have the potential to raise significant federalism concerns with the potential for conflicting decisions at the federal and state level. Congress carefully balanced the roles of the EPA and the states in implementing the requirements of the Act. The EPA has specific oversight authorities to "approve or

[24] MDEQ, as the title I permitting authority, may have the discretion to take action to modify, correct, or revoke any title I preconstruction permits it has issued, and the EPA retains its authority to enforce violations of the CAA. As the EPA has explained, "a decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the 'applicable requirement' remains the terms and conditions of the issued preconstruction permit and they should be included in the source's title V permit." *Big River Steel Order* at 19.

[25] As of the date this Order is signed, the parties to that case have filed briefs and oral argument has not yet been scheduled.

[26] Unlike an adjudicatory process in state court, there is no defined mechanism in title V or EPA regulations for the permitted source to participate by submitting technical or legal arguments to respond to those made by the Petitioners.

disapprove state permitting programs, 42 U.S.C. § 7410(a)(2)(C), call for revisions to those programs, *id.* § 7410(k)(5), issue injunctive orders to halt construction, *id.* § 7477, and pursue various types of enforcement actions pursuant to sections 113 and 167 of the Act, *id.* § 7413, § 7477." *Big River Steel Order* at 15–16. The EPA does not believe Congress intended to upset this system of state review of preconstruction permitting decisions (and the other title I authorities available to the EPA and the public) through the enactment of title V. *See id*.

If the ongoing state court litigation results in material changes to PTI 182-05C, it may then be appropriate to reopen or modify the title V permit to incorporate those hypothetical material changes. Until then, the Petitioners may not get a "second bite at the apple" on these preconstruction permitting decisions by separately litigating these issues through a title V petition to the EPA. *Big River Steel Order* at 18.

The CAA requires the EPA to object to a title V permit if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the CAA, and delegates to the EPA the authority to establish regulations to implement this petition process. 42 U.S.C. § 7661d(b)(2). The EPA's title V regulations state that the "Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with *applicable requirements* or requirements under this part." 40 C.F.R. § 70.8(c)(1) (emphasis added). Here, the Petitioners have not alleged that MDEQ failed to incorporate the terms and conditions of a preconstruction permit "issued pursuant to regulations approved or promulgated through rulemaking under title I." 40 C.F.R. § 70.2 (definition of "applicable requirement"). Further, the Petitioners have not alleged that the monitoring, recordkeeping, or reporting provisions in the title V permit are inadequate to assure compliance. Therefore, the Petitioners have not demonstrated in Claim A that the title V permit is "not . . . in compliance with applicable requirements" or the requirements of part 70. 40 C.F.R. § 70.8(c)(1); *see* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). Accordingly, the EPA denies Claim A.

Claim B: The Petitioners Claim That "The Proposed Amendment does not comply with the Act because it authorizes the operation of the long-defunct B Blast Furnace."

Petitioners' Claim: The Petitioners state that the B Blast Furnace suffered a major explosion in 2008 that caused extensive damage. Petition at 27. The Petitioners claim that Dearborn Works has not operated the furnace nor taken steps to rebuild and restart the furnace since that time. *Id*. at 27–28.

Claim B includes two distinct subclaims. In Claim B.1, the Petitioners claim that "PTI 182-05C, and amending the operating permit to incorporate that permit, is invalid to the extent they authorize the [B Blast] furnace's future operation." *Id*. at 28. The Petitioners assert that any future operation or rebuild of the B Blast Furnace would require a new preconstruction permit.[27] *Id*. at 28, 30. For support, the Petitioners discuss EPA guidance, case law, and Michigan rules specifying when a source would be subject to new permitting requirements following the

[27] The Petitioners note that in September 2008, MDEQ determined that the planned rebuild of the B Blast Furnace (which was contemplated soon after the January 2008 explosion) would not require a new preconstruction permit at that time. *Id*. at 27 (citing Petition Ex. 31).

reactivation of a previously shut down source or emissions unit. *See id*. at 28–29. The Petitioners conclude that because "the proposed amendment of the company's operating permit purports to" allow "the future operation of the B-Blast furnace" without undergoing additional preconstruction permitting (as the Petitioners claim the Act requires), the EPA must object to the permit. *Id*. at 30.

In Claim B.2, the Petitioners claim that "[t]he netting analysis for PTI 182-05C is erroneous because it does not assign zero emissions to the B Blast Furnace." *Id*. at 30. The Petitioners explain that the netting analysis associated with PTI 182-05C included emissions from the inoperable B Blast Furnace, instead of "zero[ing] out" the baseline and future emissions of this inactive unit, which the Petitioners assert was required. *See id*. at 30–31. As a result, the Petitioners claim that the analysis in PTI 182-05C overstated the emissions reductions and diluted the impact of permitted emissions increases associated with that permit. *Id*. at 30. The Petitioners assert that if emissions from the B Blast Furnace had been correctly accounted for, the emissions authorized by PTI 182-05C would have resulted in significant increases in multiple additional pollutants, resulting in additional requirements. *Id*. at 31. The Petitioners claim that EPA should object to the proposed amendment of the operating permit because "absent an analysis of the emissions increased by PTI 182-05C without the B-Blast Furnace emissions, the application and analyses were incomplete." *Id*. at 30.

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

Claim B.1

As acknowledged by the Petitioners, and based on the EPA's current understanding, the B Blast Furnace has not yet been rebuilt. If and when Dearborn Works decides to rebuild the B Blast Furnace and resume its operations, MDEQ will have to evaluate whether such a rebuild will require authorization by a new preconstruction permit.[28] At that point in time, the public (and the EPA) may have various options to challenge such a decision, including title I permitting and enforcement avenues.[29] However, as explained below, this is a forward-looking compliance issue and the Petitioners have not demonstrated that this is a problem with how the current permits are structured.

The concerns raised in Claim B.1 are based on the premise that PTI 182-05C and the 2016a title V Permit purport to authorize the future rebuild or operation of the B Blast Furnace. As an initial

[28] The EPA's response below uses the word "shutdown" to refer to the circumstances preceding and including the unit's current non-operational status, and the word "rebuild" to refer to any future changes that may be necessary prior to the future operation of the B Blast Furnace. Nothing in the EPA's use of these or similar words, or any other portions of the EPA's response to Claim B, should be interpreted as a judgment by the EPA concerning whether any future changes to the B Blast Furnace may require an additional permitting action. Additionally, as the Petitioners observe, in 2008, MDEQ indicated in a letter to Dearborn Works that the then-planned rebuild of the B Blast Furnace would not require a new preconstruction permit. *See* Petition Ex. 31. However, the EPA does not consider this letter controlling on a future decision to rebuild this unit, particularly given that over a decade has passed since that decision was made, during which time the B Blast Furnace has remained shut down.

[29] *See, e.g.*, *In the Matter of ExxonMobil Corp. Baytown Refinery*, Order on Petition No. VI-2016-14 at 13–14 n.25 (April 2, 2018).

matter, the Petitioners do not explain how PTI 182-05C or the 2016a title V Permit could be interpreted to authorize the future rebuild of the B Blast Furnace. Although this concern is unclear (it is not explained in the Petition), it may be related to the fact that both permits contain conditions pertaining to the operation of this unit, derived from requirements that applied to the unit before the unit's shutdown. In any case, this concern is unwarranted and presents no grounds for an EPA objection to the title V permit. Simply put, the presence of permit terms in PTI 182-05C and the 2016a title V Permit reflecting operational requirements of the pre-shutdown B Blast Furnace should not be interpreted to authorize the future rebuild of this unit or its operation following any such rebuild.

With respect to the 2016a title V Permit's treatment of the B Blast Furnace, the Petitioners are incorrect to suggest that the title V permit authorizes the future operation of the B Blast Furnace simply because it contains terms reflecting the pre-shutdown status of the B Blast Furnace. Any future operation of the unit would necessarily follow a rebuild of the B Blast Furnace, which, as explained above, would be an NSR issue, not a title V issue.[30] If and when an additional preconstruction permit is issued to authorize the rebuild of the B Blast Furnace, the facility's title V permit would need to be updated to reflect any new applicable requirements related to the rebuild, as discussed above in Claim A. However, until that time, it is appropriate for the title V permit to reflect the applicable requirements from all current preconstruction permits, including the terms and conditions of PTI 182-05C. The Petitioners have not demonstrated that the title V permit, by including terms related to the B Blast Furnace, does not comply with any applicable requirements of the Act.

Additionally, with respect to PTI 182-05C, the Petitioners are incorrect to suggest that PTI 182-05C authorizes the future rebuild or operation of the B Blast Furnace. PTI 182-05C does not authorize any such rebuild; it neither contemplates the 2008 shutdown nor the future rebuild of the B Blast Furnace. Instead, as MDEQ explained, the PTI 182-05C permit terms related to the B Blast Furnace were intended as updates to the corresponding permit terms in PTI 182-05B (issued prior to the unit's shutdown), and do not authorize any additional construction at the facility.[31] To the extent that Claim B.1 contains an implicit challenge to MDEQ's decision to include permit terms applicable to the B Blast Furnace in PTI 182-05C (i.e., MDEQ's decision to update, rather than remove, the PTI 182-05B terms related to this unit), this challenge relates to

[30] The current title V permit terms have no bearing on whether additional preconstruction permitting actions may be necessary to authorize any such future rebuild and operation of the unit. *See* 42 U.S.C. § 7661a(a) ("Nothing in [title V] shall be construed to alter the applicable requirements of [the CAA] that a permit be obtained before construction or modification."); 2016a title V Permit Condition A.43 ("The process or process equipment included in this permit shall not be reconstructed, relocated, or modified unless a PTI authorizing such action is issued by the department, except to the extent such action is exempt from the PTI requirements by any applicable rule."); *id*. at p. 5 ("Issuance of this permit does not obviate the necessity of obtaining such permits or approvals from other units of government as required by law.").

[31] *See* PTI 182-05C Fact Sheet at 1 (Petition Ex. 3 at pdf p. 8) ("There will not be any physical changes . . . beyond what was approved in current PTI 182-05B."); PTI 182-05C RTC at 31 (Petition Ex. 4 at pdf p. 33) ("The B Blast Furnace was part of the original [PTI 182-05] netting analysis and was operational at that time, as well as when PTI No. 182-05B was issued, therefore it should be included in the permit application and the updated netting analysis. Since this is an update and verification that the original netting analysis is still valid, all emission units included previously should be included in this application."). Although PTI 182-05B authorized certain changes to the B Blast Furnace, this permit predated the shutdown of the B Blast Furnace and did not authorize the specific physical changes that would be required to rebuild the B Blast Furnace.

whether MDEQ correctly applied its NSR rules in issuing PTI 182-05C. As discussed more fully with respect to Claim A above, this is not an appropriate challenge to raise in a petition seeking objection to the facility's title V permit.

Claim B.2

In Claim B.2, the Petitioners challenge MDEQ's treatment of emissions from the B Blast Furnace in performing emissions analyses underlying PTI 182-05C. This claim, like those discussed in Claim A, concerns whether MDEQ correctly applied its NSR rules in issuing PTI 182-05C. For the reasons explained more fully with respect to Claim A, this is not an appropriate challenge to raise in a petition seeking objection to the facility's title V permit. Claim B.2 does not otherwise demonstrate that the title V permit does not comply with all applicable requirements.

Claim C: The Petitioners Claim That "The proposed permit is contrary to Environmental Justice [EJ] requirements."

Petitioners' Claim: The Petitioners claim that "EPA must object to the proposed Title V permit amendment because no agency has analyzed the disproportionate impact of the increased emissions permitted by the preconstruction and operating permits on Michigan's most vulnerable residents. As a result, federal and state [EJ] mandates have not been satisfied, the amendment to the operating permit is not in compliance with law, and EPA must object to it." Petition at 32.

The Petitioners first provide background relevant to their assertion that Dearborn Works is located in an area of critical concern for EJ. The petitioners detail the facility's location in relation to various neighborhoods, discuss the demographics of these neighborhoods, and discuss health concerns related to air emissions of multiple pollutants, both generally and specific to these neighborhoods and their residents. *See id*. at 32–33.

Next, the Petitioners claim that both MDEQ and the EPA were obligated to analyze the EJ impacts before amending both the preconstruction and title V permits. *Id*. at 34. For support, the Petitioners cite Executive Order (EO) 12898, which directs federal agencies to make achieving EJ part of their mission by identifying and addressing EJ impacts. *Id*. The petitioners acknowledge that MDEQ is not a federal agency, but claim that MDEQ "'exercises delegated authority to administer and enforce the federal PSD program' and thus 'stands in the shoes' of EPA for purposes of implementing the federal PSD program." *Id*. at 35 (quoting *In re Knauf Fiber Glass GmbH*, 8 EAD 121 (EAB 1999)).

The Petitioners address MDEQ's argument that "the state and federal air quality standards that have been established are designed to be protective for all segments of society, including the most sensitive." *Id*. at 35 (quoting PTI 182-05C RTC at 44 (Petition Ex. 4)). The Petitioners assert that MDEQ should have analyzed the impact of the facility's emissions in light of current air quality standards. *Id*. at 35–36 (citing *In re Shell Gulf of Mexico*, 15 EAD 103, 154 (EAB 2010)). The Petitioners claim that "MDEQ's reliance on 2007 standards to conclude the permit is sufficiently protective of protected populations ignores the subsequent determinations by EPA [in establishing the 2010 SO_2 NAAQS] that those standards are *not* sufficiently protective of

public health." *Id*. at 36; *see id*. at 35 n.163 and accompanying text. The Petitioners also refer to evidence allegedly documenting the facility's impact on high levels of manganese and other toxins in the community. *Id*. at 33, 36.

The Petitioners also discuss MDEQ's other efforts to address EJ concerns raised in public comments—including MDEQ's outreach efforts, extended public participation opportunities, and efforts to protect the public health and welfare of all Michigan citizens equally—and claim that these efforts were insufficient. *Id*. at 35. The Petitioners assert that these efforts do not amount to a substantive or meaningful environmental justice analysis. *Id*. at 36.

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

As an initial matter, the Petition is unclear regarding which permitting authority was allegedly required to conduct an EJ analysis, and during which permit action. Although much of Claim C appears to challenge MDEQ's consideration of EJ issues in issuing PTI 182-05C, *see* Petition at 36, the Petitioners also refer to the lack of EJ analysis by the EPA, as well as a lack of EJ analysis accompanying the title V permit, *e.g.*, *id*. at 34. In any case, as explained further below, the Petitioners have not demonstrated that any permitting authority failed to satisfy any applicable requirements related to EJ during any of the permit actions at issue.

To the extent that Claim C implicates MDEQ's issuance of PTI 182-05C, these challenges relate to whether MDEQ correctly applied or satisfied certain rules in issuing PTI 182-05C. For the reasons explained more fully with respect to Claim A, this is not an appropriate challenge to raise in a petition seeking objection to the facility's title V permit.

Additionally, even if it were appropriate for the EPA to address issues related to the issuance of PTI 182-05C in the current title V petition, the Petitioners have not identified any EJ-related requirements applicable to MDEQ's issuance of PTI 182-05C. The support provided by the Petitioners is EO 12898 and multiple Environmental Appeals Board (EAB) decisions interpreting the provisions of EO 12898.[32] The Executive Order provides policy direction to federal government agencies, and the EAB decisions apply that policy in the context of EPA-issued PSD permits or permits issued by states under delegated federal authority. The Petitioners are incorrect in asserting that MDEQ "exercises delegated authority to administer and enforce the federal PSD program." Petition at 35. As discussed in Section II.C of this Order, since before the time PTI 182-05C was issued, MDEQ has administered its own PSD program, approved by the EPA into the Michigan SIP. Therefore, EO 12898 and the cited EAB decisions do not establish policy that pertains to MDEQ's issuance of PTI 182-05C. *See, e.g.*, *In the Matter of*

[32] EO 12898, signed by President Clinton on February 11, 1994, focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. The EO is also intended to promote non-discrimination in federal programs substantially affecting human health and the environment, and to provide minority and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment. It does not create legal requirements and generally directs federal agencies to use discretion available under existing law to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.

Pencor-Masada Oxynol, LLC, Order on Petition No. II-2000-07 at 33 (May 2, 2001). The Petitioners have not cited legal authority governing the Michigan PSD program to support their EJ-related claims pertaining to PTI 182-05C.[33]

To the extent that Claim C implicates the 2016a title V Permit, the Petitioners have failed to demonstrate that MDEQ was required to conduct an EJ analysis during this title V action. As with its PSD program, MDEQ administers its title V program pursuant to the state's EPA-approved regulations. Again, EO 12898 and the cited EAB decisions pertaining to EO 12828 do not establish or apply policy that pertains to permits issued by states under their EPA-approved program rules. Thus, the authorities cited by the Petitioners are inapplicable to MDEQ's issuance of the 2016a title V permit. Accordingly, the Petitioners have not demonstrated how MDEQ's treatment of EJ issues in any permit action resulted in the title V permit not complying with applicable requirements of the CAA.

To the extent that Claim C implicates the 2016a title V Permit, the Petitioners have failed to demonstrate that MDEQ was required to conduct an EJ analysis during this title V action. As with its PSD program, MDEQ administers its title V program pursuant to the state's EPA-approved regulations. Again, EO 12898 and the cited EAB decisions pertaining to EO 12828 do not govern permits issued by states under EPA-approved program rules. Thus, the authorities cited by the Petitioners are inapplicable to MDEQ's issuance of the 2016a title V permit. The Petitioners have cited no other authority governing MDEQ's consideration of EJ issues in issuing title V permits. Accordingly, the Petitioners have not demonstrated how MDEQ's treatment of EJ issues in any permit action resulted in the title V permit not complying with applicable requirements of the CAA.

To the extent that Claim C suggests that the *EPA* was required to conduct an EJ analysis during any of the permit actions at issue, this claim is without merit. MDEQ—not the EPA—is the permitting authority for Dearborn Works and implements its own EPA-approved permitting programs under both title I and title V; the EPA's role in MDEQ's permitting decisions is limited.[34] The Petitioners have provided no citation to or analysis of any authority that would give rise to such an obligation on the EPA, whether during MDEQ's issuance of these permits, during the EPA's 45-day review of the title V permit, or in the current title V petition response. *See In the Matter of Piedmont Natural Gas, Inc., Wadesboro Compressor Station*, Order on Petition No. IV-2014-13 at 10 (March 20, 2019) (denying a claim where petitioners failed to

[33] The Petitioners occasionally refer generally to the facility's "preconstruction permit" in challenging the lack of EJ analysis. To the extent that the Petitioners' claims were intended to address prior versions of PTI 182-05C (i.e., PTI 182-05, 05A, or 05B), as an initial matter, these claims would be outside the scope of the current title V permit action, which is restricted to the incorporation of PTI 182-05C (and other permits not relevant to the claim). *See In the Matter of Wisconsin Public Service Corp., Weston Generating Station*, Order on Petition No. V-2006-4 at 5–7 (Dec. 19, 2007). Moreover, although MDEQ was issuing PSD permits on delegated authority on behalf of EPA when those prior permits were issued in 2006 and 2007, EPA has long held that challenges to any such delegated permits lies before the EAB, and not in a title V petition. *See In the Matter of Kawaihe Cogeneration Project*, Order on Petition, Permit No. 0001-01-C at 2–4 (Mar. 10, 1997) ("*Kawaihe Order*"). Accordingly, to the extent Claim C implicates prior versions of PTI 182-05C, these claims would present no basis for an EPA objection to the 2016a title V Permit.

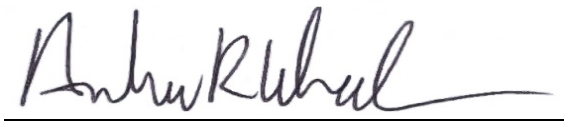
[34] Even if the EPA were the title I permitting authority, an appeal to the EAB, not a petition on the title V permit, would be the proper method for challenging any alleged deficiencies. *Kawaihe Order* at 2–4.

demonstrate that EPA was required to conduct an EJ analysis for a state-issued permit).[35] For this reason and the reasons discussed above, the Petitioners have failed to demonstrate that the 2016a title V Permit does not comply with applicable requirements of the Act.

V. CONCLUSION

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

Dated: January 15, 2021



Andrew R. Wheeler
Administrator

[35] *See also supra* note 7 and accompanying text.