
From: Bill WOLFE <bill_wolfe@comcast.net>
Sent: Tuesday, May 27, 2025 11:00 AM
To: Zeldin, Lee; TitleVPetitions
Cc: Ruvo, Richard; Chan, Suilin; shawn.latourette@dep.nj.gov; Bill WOLFE
Subject: Title V Petition - 40 C.F.R. § 70.8(d). - NJ DEP

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Via Email

May 27, 2025

Lee Zeldin, Administrator

U.S. Environmental Protection Agency

1200 Pennsylvania Ave NW

Washington, DC 20460

Dear Administrator Zeldin:

This petition is filed pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d).

The petition raises procedural and substantive objections to the review and approval of a final Title V Operating Permit issued by New Jersey Department of Environmental Protection (NJ DEP) to the Passaic Valley Sewerage Commission (PVSC).

The petition is timely filed, as the 60 day review clock tolls on May 31, 2025. The EPA 45-day review period ended on March 31, 2025. The 60-day EPA petition period commenced on April 1, 2025 and ends on May 31, 2025.

The petition is filed by Bill Wolfe, a citizen who filed timely substantive public comments on the draft permit issued by the NJ DEP. The NJ DEP responded, in part, to those comments in a "Hearing Officer's Report and Response to public comment" document made a part of the the final permit.

Petitioner requests, as set forth below, that the EPA Administrator object to this NJ DEP Title V permit on the basis that the NJ DEP review and approval of the subject Title V Permit was procedurally and substantively defective and not in accordance with law.

The NJ DEP permit was based upon an "environmental justice" review and the final federal Title V permit mandated permit conditions that were based on the EJ review. Accordingly, the permit

conflicts with a federal court decision regarding the scope of the Clean Air Act with respect to "environmental justice" and disparate impacts. Specifically, a federal District Court decision in Louisiana found that **Congress did not authorize EPA to implement an environmental justice program under the Clean Air Act**, see: U.S. District Court Judge Cain, Judgment pursuant to the ruling in [*State of Louisiana v. EPA, No. 2:23-cv-00692, W.D. La. Jan. 23, 2024, Aug. 22, 2024.*](#)

The permit raises issues regarding the scope of the Clean Air Act with respect to regulatory requirements similar to those rejected by the Supreme Court in the Obama EPA Clean Power Plan, see: West Virginia v. EPA
https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf

The NJ DEP permit review process violated State and federal Administrative Procedure Act requirements.

The NJ DEP permit also conflicts with numerous Executive Orders issued by President Trump.

On or about February 13, 2025, the NJ Department of Environmental Protection (DEP) issued a final Title V operating permit to:

Facility Name: PASSAIC VALLEY SEWERAGE COMMISSION

Program Interest Number: 07349

Permit Activity Number: BOP210002

<https://dep.nj.gov/wp-content/uploads/boss/public-notices/07349-bop210002-proposedpermit.pdf>

Hearing Officer's Report And Response To Public Comment:

<https://dep.nj.gov/wp-content/uploads/boss/public-notices/07349-bop210002-responsetocomments.pdf>

As outlined below, the DEP permit has significant procedural and substantive flaws and is "not in compliance with applicable requirements" (40 C.F.R. § 70.8(d)).

Furthermore, EPA approval of this permit would establish national regulatory policy precedents under the Clean Air Act for several highly controversial issues, all of which conflict with President Trump's Executive Orders and federal court decisions that found are not authorized by the Clean Air Act and applicable EPA regulations.

EPA approval of the subject Title V permit also would raise complex issues of federalism and EPA's role in supervising delegated Clean Air Act authority. EPA can not approve a federal Title V permit that would authorize a State to expand the scope of the federal Clean Air Act.

These controversial national precedents include, but are not limited to, the following:

1. NJ DEP imposed State requirements for the permit applicant PVSC to conduct an "environmental justice" impact review procedure. Based on this EJ process, the NJ DEP mandated permit conditions to mitigate EJ impacts.

In contrast, while the NJ DEP imposed EJ requirements, the NJ DEP Hearing Officer's Report and response to public comments document clearly states that the **NJ State Environmental Justice law and DEP EJ regulations do not apply to this permit application:**

*"PVSC's permit application was deemed complete for Department review on July 23, 2021. The EJ Law at N.J.S.A. 13:1D-157, specifies that implementation of the law begins upon adoption of rules pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The EJ Rule at N.J.A.C. 7:1C became effective on April 17, 2023, almost two full years after the Department determined that PVSC's permit application was deemed complete. **Therefore, the EJ rule does not apply to the PVSC permit.**" (@ p. 13)*

If the NJ State EJ law and NJ DEP EJ regulations do not apply to this permit, **then where did NJ DEP find the authority and regulatory basis to impose the EJ review process and permit conditions?**

NJ DEP imposed these requirements based solely on an Administrative Order issued by the NJ DEP Commissioner. As the NJ DEP admits in the Hearing Officer's report and response to the petitioner's comments, the Administrative Order was issued retroactively (i.e. AFTER the permit application was submitted and deemed complete). The Order did not follow public notice and comment rulemaking required by NJ and federal Administrative Procedure Acts.

The DEP imposed State mandated permit conditions being challenged by petitioner require installation of renewable energy technology (solar and battery storage) in a federal permit based upon State imposed environmental justice permit review procedures and permit conditions.

As the petitioner commented on the draft permit:

***"5. COMMENT:** The NJ APCA does not authorize the Department to base permit conditions on EJ reviews or EJ issues, including location in a designated EJ community or the presence of disparate impacts. The regulations adopted by the Department to implement New Jersey's APCA do not authorize the Department to consider and base permit conditions on EJ issues. The EJ conditions were state-only applicable requirements; thus, the basis for the conditions appears to be State law. However, the state-only conditions impact a Federal permit subject to EPA review and approval pursuant to the CAA. It appears Federal and State law are implicated. (Written: Bill Wolfe)"*

The DEP's asserted legal basis for mandating these DEP procedural and substantive requirements was an "Administrative Order" issued by the DEP Commissioner. The DEP acknowledged this fatal flaw in response to my public comment: (@ page 14):

***"3. COMMENT:** The draft permit is fatally flawed. An Administrative Order (AO) of the Commissioner may not establish substantive binding regulatory requirements. An AO is only binding on Department employees in their administrative functions. Binding substantive regulatory requirements can only be imposed pursuant to rulemaking, as authorized by the legislature. (Written: Bill Wolfe)*

***RESPONSE:** The APCA and CAA grant the Department the authority to issue a final Operating Permit pursuant to N.J.A.C. 7:27-22. Once issued, an "applicant, registrant, or permittee may request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1 regarding a decision made by the Department." N.J.A.C. 7:27-1-32. Thus, PVSC has the opportunity to request a hearing to contest any of the requirements in the final permit."*

In mandating these permit review procedure and substantive permit conditions, the DEP violated administrative procedure and due process requirements protected under federal and State Administrative Procedure Acts (i.e. DEP **retroactive** State imposed regulatory mandates based upon a unilateral State agency Administrative Order by the DEP Commissioner, **an Order that was issued AFTER submission of the permit application by PVSC and AFTER the DEP determined that the application was administratively and technically complete**).

The NJ DEP imposed the permit conditions based on an “Administrative Order” issued by the NJ DEP Commissioner. The Order was the basis NJ DEP relied on to conduct an environmental justice review and impose additional procedural and substantive permits conditions which are beyond the scope of the Clean Air Act and the State Air Pollution Control Act.

The State and federal Title V permit regulations do NOT authorize the environmental justice review process or mandatory renewable energy permit conditions imposed by the NJ DEP.

In fact, the NJ DEP Administrative Order was issued **because the permit application was exempt from the State environmental justice law and regulations because it was submitted prior to the effective date of the law and regulations.**

The EPA can not allow States to impose burdensome Title V permit conditions and review procedures via retroactively issued State Administrative Orders that lack any regulatory basis.

Here is the permit review procedure conducted by NJ DEP for this permit:

1. Commissioner LaTourette issued an Administrative Order (AO) AFTER the permit application had been deemed complete.
2. The DEP then relied on the AO to mandate both additional procedural and substantive permit requirements, **broader in scope and stringency than current federal EPA and State DEP permit regulations.**
3. The procedural and substantive requirements have no regulatory basis or authorization.

Substantively, the NJ DEP permit conditions required installation of solar panels and battery storage.

These permit conditions fit the definition of “arbitrary and capricious” **because the DEP did not even attempt to a regulatory basis and provide a nexus between the permit conditions and Clean Air Act standards or impact mitigation.**

As I commented:

*"7. **COMMENT:** Neither the New Jersey EJ Law nor the New Jersey APCA authorize the imposition of some of the "conditions" in the draft permit (e.g. solar and battery storage). Furthermore, there is no data or scientific rationale linking the emissions from the facility and the proposed conditions. The Department did not provide a scientific basis or data for a causal nexus between the conditions and a cognizable adverse impact. The Department cannot just pull permit conditions out of a hat. (Written: Bill Wolfe)"*

I raised all these issues in public comment on the draft permit. DEP's response ignored, misrepresented and/or distorted my comments and were not responsive.

Additionally, DEP State imposed permit conditions severely limit the operating time of a \$200 million federally funded power plant. The restrictions are so severe as to effectively preclude the plant from operating to produce power. That would result in a \$200 million waste of scarce federal and State funds.

The PVSC project is federally funded infrastructure. The infrastructure investment is based on a NJ DEP State "climate resilience" policy and technical analysis. The PVSC project is designed to provide back up power at a sewage treatment plant.

Approval of the NJ DEP permit would provide an EPA endorsement and approval of the State DEP's climate impact risk analysis and the DEP "resilience" policy to leverage Clean Air Act permit requirements to address State determined climate risks and implement renewable energy policies.

EPA approval of the DEP permit would provide an EPA imprimatur on this EPA delegated State Clean Air Act permit and a EPA endorsement of all these issues and DEP regulatory policies and permit review procedures and permit conditions regarding energy policy and climate adaptation and environmental justice.

Some argue that the EPA review of the objections raised by this petition is constrained by President Trump's Executive Orders on energy policy, climate mitigation and adaptation, DEI, and renewable energy.

Some argue that the EPA review also is constrained by a federal District Court decision in Louisiana that found that Congress did not authorize EPA to implement an environmental justice program under the Clean Air Act, see: U.S. District Court Judge Cain, Judgment pursuant to the ruling in [State of Louisiana v. EPA, No. 2:23-cv-00692, W.D. La. Jan. 23, 2024, Aug. 22, 2024.](#)

As I commented:

"COMMENT: A Federal court has recently struck down EPA's authority to consider disparate impacts and cumulative impacts in EPA permits, finding that Congress did not provide that authority (see: U.S. District Court Judge Cain, Judgment pursuant to the ruling in *State of Louisiana v. EPA*, No. 2:23-cv-00692, W.D. La. Jan. 23, 2024, Aug. 22, 2024). Additionally, there are other Title VI cases out of New Jersey that make it virtually impossible to litigate the issue of whether the issuance of a draft permit violates the Civil Rights Act. For example, the Third Circuit Court's holding, in *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*, 274 F.3d 771 (3d Cir. 2001) <https://www.gibbonslaw.com/resources/publications/third-circuit-closes-seconddoor-on-plaintiffs-in-south-camden-environmental-justice-case-05-02-2002> (Written: Bill Wolfe)"

Given the multiple controversial and precedent setting legal, policy, and infrastructure and climate resilience financial issues involved in EPA Region 2 review and approval of this DEP permit, EPA Region 2 should kill the permit outright or refer it to EPA Washington DC Headquarters for review pursuant to 40 CFR 70.8.

CONCLUSION

Pursuant to 42 U.S.C. § 7611d(b)(2) and 40 C.F.R. § 70.8(d), the EPA must object to the issuance of the Title V Permit for PVSC. As this Petition demonstrates, the Title V Permit fails to assure compliance with applicable requirements.

Accordingly, the petitioner requests the Administrator object to the Title V Permit and require the DEP to revise and reissue the Permits in a manner that complies with the requirements of the Clean Air Act.

EPA must not approve of a blatantly illegal State permit review procedure under State and federal law and imposition of mandatory substantive permit conditions that lack any authorization under applicable State and federal laws and implementing regulations.

I urge EPA to object pursuant to:

"Any EPA objection under [paragraph \(c\)\(1\)](#) of this section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections."

I look forward to your timely and favorable reply.

Respectfully submitted,

*Bill Wolfe
235 Montrose Street
Philadelphia, PA. 19147

*Retired former NJ DEP policy analyst (14 years); Policy Director of NJ Sierra Club Chapter (7 years); and Director, NJ Public Employees For Environmental Responsibility (PEER, 10 years)

From: Bill WOLFE <bill_wolfe@comcast.net>
Sent: Tuesday, May 27, 2025 12:32 PM
To: Spangler, Matthew
Cc: TitleVPetitions; Bill WOLFE
Subject: RE: Title V Petition - 40 C.F.R. § 70.8(d). - NJ DEP

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Thank you Mr. Spangler of EPA -

In the event EPA denies the petition, that would green light what DEP has done here. In that event, I would expect there will be many more Title V petitions filed for failure by the NJ DEP to impose consistent requirements in all Title V permits issued in designated environmental justice communities and mapped flood hazard areas. That would be a huge expansion in the scope of DEP's power and Title V permit program. I understand that there is a significant backlog in NJ DEP's various air, water and waste permit programs due to EJ review requirements. Overlaps with Title V permitting inject even more delays and regulatory uncertainty.

Should EPA deny the petition, I also can't imagine that the NJ regulated community will accept DEP unilateral regulatory authority under Title V permits to impose limits on operating hours and mandate installation of solar panels and battery storage.

Please consider this email a revision and supplement of my prior petition.

Wolfe

On 05/27/2025 11:18 AM EDT Spangler, Matthew <spangler.matthew@epa.gov> wrote:

Mr. Wolfe,

This email serves as confirmation that EPA received your submission.

Matt Spangler

National Lead for Title V Petitions

Operating Permits Group

U.S. EPA/ OAR/ OAQPS/ AQPD