BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Petition No. V-2025-25

In the Matter of

Cleveland-Cliffs Steel LLC, Indiana Harbor

Permit Nos. 089-46463-00316 & 089-46464-00318

Issued by the Indiana Department of Environmental Management

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ORDER DENYING A PETITION FOR OBJECTION TO TITLE V OPERATING PERMITS

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated June 2, 2025, (the "Petition") from the Environmental Law & Policy Center, the Conservation Law Center, the Environmental Integrity Project, BP & Whiting Watch, Gary Advocates for Responsible Development, Indiana Conservation Voters, Just Transition Northwest Indiana, Mighty Earth, and Northern Lake County Environmental Partnership (the "Petitioners"), pursuant to Clean Air Act (CAA) section 505(b)(2).[1] The Petition requests that the EPA Administrator object to two operating permits (the "Permits") issued by the Indiana Department of Environmental Management (IDEM) to Cleveland-Cliffs Steel LLC for the Indiana Harbor integrated steel mill ("Indiana Harbor") in Lake County, Indiana: Permit No. 089-46463-00316 for Indiana Harbor East (the "East Permit") and Permit No. 089-46464-00318 for Indiana Harbor West (the "West Permit"). The Permits were issued pursuant to title V of the CAA and IDEM's EPA-approved operating permit program rules.[2] This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Permits, the permit records, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, the EPA denies the Petition requesting that the EPA Administrator object to the Permits.

[1] 42 U.S.C. § 7661d(b)(2).
[2] 42 U.S.C. §§ 7661–7661f; 326 IAC 2-7-1 *et seq*.; *see also* 40 C.F.R. part 70 (title V implementing regulations).

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

CAA section 502(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 Agency's implementing regulations at 40 C.F.R. part 70.[3] The State of Indiana submitted a title V program governing the issuance of operating permits in 1994. The EPA granted interim approval of Indiana's title V operating permit program in 1995 and full approval in 2001.[4]

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.[5] One purpose of the title V operating permit 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."[6] Title V operating permits compile and clarify, in a single document, the substantive air quality control requirements derived from numerous provisions of the CAA. By clarifying which requirements apply to emission units at the source, title V operating permits enhance compliance with those applicable requirements of the CAA. The title V operating permit program generally does not impose new substantive air quality control requirements, but does require that permits contain adequate monitoring, recordkeeping, and reporting requirements to assure the source's compliance with the underlying substantive applicable requirements.[7] 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 operating permit programs. Under CAA section 505(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.[8] Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit

[3] 42 U.S.C. § 7661a(d)(1).
[4] 60 Fed. Reg. 57188 (Nov. 14, 1995); 66 Fed. Reg. 62969 (Dec. 4, 2001). This program is codified in 326 IAC 2-7-1 *et seq*.
[5] 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a).
[6] 57 Fed. Reg. 32250, 32251 (July 21, 1992).
[7] 40 C.F.R. § 70.1(b); *see* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1).
[8] 42 U.S.C. § 7661d(a).

if the Agency determines that the proposed permit is not in compliance with applicable requirements under the CAA.[9] If the EPA does not object to a permit on the Agency's 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.[10]

Each petition must identify the proposed permit on which the petition is based and identify the petition claims.[11] Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under 40 C.F.R. part 70.[12] Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must generally be contained within the body of the petition.[13]

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).[14]

In response to such a petition, the CAA requires the Administrator to issue an objection to the permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the CAA.[15] Under CAA section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA.[16] As courts have recognized, CAA section 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 CAA, and a nondiscretionary duty on the Administrator's part to object if such a demonstration is made.[17] Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA section 505(b)(2) if the Administrator determines that the petitioner has demonstrated

[9] 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c).
[10] 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).
[11] 40 C.F.R. § 70.12(a).
[12] 40 C.F.R. § 70.12(a)(2).
[13] If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id*.
[14] 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see* 40 C.F.R. § 70.12(a)(2)(v).
[15] 42 U.S.C. § 7661d(b)(2); *see also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).
[16] 42 U.S.C. § 7661d(b)(2); *see 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.
[17] *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA section 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.

that the permit is not in compliance with requirements of the CAA.[18] When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and the Agency's determination as to whether the demonstration has been made, they have applied a deferential standard of review.[19] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraphs. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule.[20]

The EPA considers a number of factors in determining whether a petitioner has demonstrated noncompliance with the CAA.[21] For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under 40 C.F.R. part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under 40 C.F.R. part 70.[22]

If a petitioner does not satisfy these requirements and provide sufficient citations and analysis, the EPA is left to work out the basis for the petitioner's objection, which is contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA section 505(b)(2).[23] Relatedly, the EPA has pointed out in numerous previous orders that generalized assertions or allegations did not meet the

[18] *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that CAA section 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)); *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)).

[19] *See, e.g.*, *Voigt v. EPA*, 46 F.4th 895, 902 (8th Cir. 2022), *WildEarth Guardians*, 728 F.3d at 1081–82; *MacClarence*, 596 F.3d at 1130–31.

[20] When the EPA finalized this rulemaking in 2020, the Agency referred back to (but did not repeat) the proposed rule's extensive background discussion regarding the petitioner's demonstration burden. *See* 85 Fed. Reg. 6431, 6433, 6439 (Feb. 5, 2020) (final rule); 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016) (proposed rule); *see also 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*).

[21] *See generally Nucor II Order* at 7.

[22] 40 C.F.R. § 70.12(a)(2)(i)–(iii).

[23] *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."); *see also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (Sept. 21, 2011) (denying a title V petition claim in which 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*).

demonstration standard.[24] 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.[25]

Another factor the EPA examines is whether the petitioner has addressed the State or local permitting authority's decision and reasoning contained in the permit record.[26] This includes a requirement that petitioners address the permitting authority's final decision and final reasoning (including the State's response to comments) if these documents were available during the timeframe for filing the petition. Specifically, the petition must identify if the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment.[27]

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) 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 required by § 70.7(a)(5) (sometimes referred to as the "statement of basis"), any comments the permitting authority received during the public participation process on the draft permit, the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit, and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority

[24] *See, e.g.*, *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition No. VI-2011-05 at 9 (Jan. 15, 2013); *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 (Apr. 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (Jan. 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (Mar. 15, 2005).

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

[26] 81 Fed. Reg. at 57832; *see Voigt*, 46 F.4th at 901–02; *MacClarence*, 596 F.3d at 1132–33; *see also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (Dec. 14, 2012) (denying a title V petition issue in which 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 in which 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); *Georgia Power Plants Order* at 9–13 (denying a title V petition issue in which petitioners did not address a potential defense that the State had pointed out in the response to comments).

[27] 40 C.F.R. § 70.12(a)(2)(vi).

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 EPA's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition.[28]

III. BACKGROUND

A. The Indiana Harbor Facility

Indiana Harbor, operated by Cleveland-Cliffs Steel LLC, is an integrated steel mill in Lake County, Indiana, which includes Indiana Harbor East, Indiana Harbor West, and several other operations managed by on-site contractors. These activities are collectively considered a single title V major source, but IDEM issues separate title V permits to each separate operation for administrative convenience. Indiana Harbor emits a variety of air pollutants from numerous emission units; the Petition addresses emissions of particulate matter <10 μm in diameter (PM_{10}) and nitrogen oxides (NO_x) from blast furnaces (and an associated coal handling system and baghouse controls), batch anneal facilities, and several boilers. Indiana Harbor is subject to New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants (NESHAP), and requirements of the Indiana State Implementation Plan (SIP), including preconstruction permits issued under the SIP.

B. Permitting History

Prior owners of Indiana Harbor first obtained a title V permit for Indiana Harbor East in 2006 and Indiana Harbor West in 2004, each of which was last renewed in 2019. On -March 27, 2023, Cleveland-Cliffs applied to renew the title V permits for both Indiana Harbor East and Indiana Harbor West. On November 3, 2023, IDEM published notice of two separate draft permits and technical support documents, subject to a public comment period that ended on January 16, 2024. On February 17, 2025, IDEM submitted two separate proposed permits, along with its responses to public comments (contained in a single document titled Addendum to the Technical Support Document (ATSD)), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on April 3, 2025, during which time the Agency did not object to the proposed permits. On April 29, 2025, IDEM issued the final East Permit and West Permit.

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during the Agency's 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object.[29] The EPA's 45-day

[28] 40 C.F.R. § 70.13.
[29] 42 U.S.C. § 7661d(b)(2).

review period ended on April 3, 2025. Thus, any petition seeking the EPA's objection to the Permits was due on or before June 2, 2025. The Petition was submitted by email on June 2, 2025. Therefore, the EPA finds that the Petitioners timely filed the Petition.

IV. EPA DETERMINATIONS ON PETITION CLAIMS

A. Claim 1: The Petitioners Claim That "The Indiana Harbor East Renewal Permit fails to include adequate monitoring requirements sufficient to assure compliance with numeric PM10 emission limits applicable to Baghouses #187 and #188."

Petition Claim: Prior to presenting Claim 1, the Petitioners discuss the statutory and regulatory requirements associated with the testing, monitoring, recordkeeping, and reporting issues discussed in Claims 1, 2, and 3.[30] The Petitioners state that under CAA section 504(c), each title V permit "shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions."[31] The Petitioners further assert that emission limits must be enforceable as a practical matter, and therefore "a permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit."[32] The Petitioners introduce various additional regulatory provisions and prior EPA statements, including the Agency's statement that "the rationale for the selected monitoring requirements must be clear and documented in the permit record."[33]

In Claim 1, the Petitioners assert that the East Permit lacks sufficient monitoring to assure compliance with PM_{10} limits that apply to the Coal Pulverizer D Baghouse and Coal Pulverizer E Baghouse ("Baghouses 187 and 188"). Baghouses 187 and 188 each have limits of 0.0015 grains per dry standard cubic foot and 0.93 pounds per hour.[34] The Petitioners further claim that "the lack of clarity in the monitoring terms of Condition D.4.4 renders it and the underlying numeric PM10 emission limits in Condition D.4.1 practically unenforceable" and that the permit record does not provide a clear rationale supporting the existing monitoring.[35]

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[30] *See* Petition at 8–10.
[31] *Id*. (quoting 42 U.S.C. § 7661c(c); citing 40 C.F.R. § 70.6(c)(1)).
[32] *Id*. (citing *Hu Honua I Order*).
[33] *Id*. at 9–10 (quoting *In the Matter of CITGO Refining and Chemicals Company, L.P.*, Order on Petition No. VI-2007-01 (May 28, 2009) (*CITGO Order*); citing 40 C.F.R. § 70.7(a)(5)).
[34] *Id*. at 10–11 (citing East Permit Conditions D.4.1(b), (c)). The Petitioners' reference to East Permit Conditions D.4.1(b) and (c) appears to be a typographical error, as East Permit Conditions D.4.1(c) and (d) contain the limits identified by the Petitioners. The Petitioners state that these limits are "applicable requirements" of the Indiana SIP. *Id*. at 10 (citing 326 IAC 6.8-2-17). Further, because the SIP does not contain specific monitoring requirements, the Petitioners assert that the East Permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of compliance with the East Permit. *Id*. at 13 (citing 40 C.F.R. § 70.6(a)(3)(i)(B)).
[35] *Id*. at 11–12.

The Petitioners focus on monitoring requirements related to the detection of visible emissions, which require, among other things: "A trained employee shall record whether emissions are normal or abnormal."[36] The Petitioners take issue with the terms "trained employee" and "normal or abnormal," claiming that these terms are not enforceable. The Petitioners assert that it is not clear how any such training would allow an employee to estimate numeric PM emissions, especially "if the employees have been trained during a period where normal emissions would be 'a potentially nonzero reference amount,' i.e., where the condition of the Baghouses have been degrading and some unspecified amount of PM10 emissions in the exhaust are thus 'normal.'" The Petitioners further contend that "'[n]ormal or abnormal' are vague terms that do not have any clear connection to the applicable numeric emission limits."[37]

Additionally, the Petitioners contend:

> [T]he specific terms in Condition D.4.4(a) make the PM10 emission limits of Condition D.4.1 practically unenforceable because they specifically limit the PM10 compliance determination, and thus any finding of noncompliance, to a multi-step process that begins with and is limited to observations of a "trained employee." Not only is this "training" insufficient, as discussed above, but the compliance determination – and the monitoring required to determine compliance – cannot be limited to only the source's employees; the CAA requires that it be enforceable by IDEM, EPA, and the public.[38]

The Petitioners further assert that other monitoring requirements in the East Permit fail to assure compliance with the PM_{10} emission limits.[39] The Petitioners characterize as "unenforceable" two related permit terms with "similarly vague terms."[40] The Petitioners assert that requirements to conduct Method 9 observations of opacity are insufficient because, among other reasons, those permit terms specify activities that occur only "*after* observations using the problematic provisions in Condition D.4.4(a) discussed above," and because the permit record does not explain "how opacity readings would correlate with specific numeric PM10 amounts."[41] The Petitioners acknowledge IDEM's position that permit conditions requiring parametric monitoring of pressure drop can indicate that the Baghouses 187 and 188 are working properly, but the Petitioners claim that pressure drop readings "do not directly correlate with specific,

[36] *Id*. at 11 (quoting East Permit Condition D.4.4).
[37] *Id*. at 12–13.
[38] *Id*. at 14.
[39] *Id*. at 15.
[40] *Id*. (citing Permit Conditions D.4.4(b), D4.4(d)).
[41] *Id*. (citing Permit Condition D.4.4(c)).

numeric readings of PM emissions" and it is therefore not clear that this monitoring can assure compliance with the numeric PM_{10} emission limits.[42]

The Petitioners conclude: "IDEM's response does not address the issues of enforceability and compliance assurance raised in the public comments, and Condition D.4.4(a) is insufficient to assure compliance with the applicable requirements for numeric PM10 emission limits contained in Condition D.4.1."[43]

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

The East Permit limits PM_{10} emissions from Baghouses 187 and 188—which are associated with a pulverized coal injection system serving the No. 7 blast furnace—to 0.0015 grains per dry standard cubic foot and 0.93 pounds per hour.[44] The Petitioners are correct that the East Permit must include monitoring requirements that are sufficient to assure compliance with these limits.[45] However, the Petitioners fail to demonstrate that the East Permit does not assure compliance with these limits.

As an initial matter, many portions of the Petitioners' claim were not raised with reasonable specificity in public comments, as required by CAA section 505(b)(2). The comments giving rise to this Petition claim raised a narrow issue: concerns about whether the visible emissions monitoring approach in Condition D.4.4.(a), which requires a trained employee to reliably assess "normal" or "abnormal" visible emissions in comparison to a potentially nonzero reference amount, was sufficient to assure compliance with the respective emission limits.[46] No comments raised the Petitioners' specific concerns about the sufficiency of training that employees receive; no comments raised the Petitioners' specific allegation that compliance monitoring cannot be limited to the source's employees; and no comments raised concerns regarding other requirements in the East Permit related to Method 9 observations or parametric monitoring of pressure drop. The Petitioners make no attempt to demonstrate that it was impracticable to raise these concerns during the public comment period, and these purported grounds for objection did not arise after the public comment period. Therefore, those arguments can not now be raised in the Petition.[47]

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[42] *Id*. at 14–15.
[43] *Id*. at 15.
[44] East Permit Condition D.4.1(c), (d).
[45] 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). Additionally, as the Petitioners correctly state, because the underlying applicable requirement (the Indiana SIP provisions in 326 IAC 6.8-2-17) do not include monitoring requirements, the East Permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of compliance with the applicable requirements. 40 C.F.R. § 70.6(a)(3)(i)(B).
[46] ATSD at 43.
[47] 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d), 70.12(a)(2)(v).

The remaining issues that were raised with reasonable specificity during the public comment period do not present a basis for the EPA's objection to the East Permit.[48] The Petitioners' arguments focus on the allegedly vague, subjective nature of the daily visible emissions monitoring requirements in East Permit Condition D.4.4 and the lack of a connection between those visible emissions requirements and the numerical PM_{10} emission limits with which they are intended to assure compliance. These arguments are beside the point because the East Permit does not rely exclusively on those visible emission requirements to assure compliance with the PM_{10} limits. Instead, notably, the East Permit requires Indiana Harbor to conduct performance testing of Baghouses 187 and 188 to verify PM emissions and daily parametric monitoring of pressure drop across the Baghouses.[49] Performance testing will provide quantitative information about the relationship between the numerical emission limits and the parametric monitoring of pressure drop, thus addressing many of the Petitioners' apparent concerns.[50]

Even if the monitoring requirements in the East Permit were not correlated to numerical emission values (as the Petitioners suggest), that would not necessarily indicate that the East Permit does not assure compliance with the numerical PM_{10} emission limits. Parametric monitoring requirements need not always or exclusively provide additional quantitative information on emissions or control efficiency to contribute meaningful information that assures compliance with numerical emission limits. As IDEM suggests—and the Petitioners appear to concede—the East Permit's requirements for parametric monitoring of pressure drop, as well as the visible emissions monitoring requirements, provide information indicating that Baghouses 187 and 188 continue to function properly and thus continue to effectively control PM_{10} emissions. Viewed alongside the performance testing requirement, this parametric monitoring may assure that Baghouses 187 and 188 continue to control PM_{10} emission levels to the levels observed during the performance test.

Critically, the Petitioners neglect to acknowledge this performance testing requirement or how it interacts with the other monitoring requirements in the East Permit.[51] The Petitioners fail to present any arguments demonstrating that this testing requirement,

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[48] Even if the aforementioned issues had been raised with reasonable specificity during the public comment period, they likewise would not present a basis for the EPA's objection. At bottom, those arguments all suffer the same fundamental flaw discussed elsewhere in this this response: the Petitioners fail to demonstrate that the collective set of testing and monitoring requirements in the East Permit are insufficient to assure compliance with the PM_{10} limits on Baghouses 187 and 188.

[49] East Permit Conditions D.4.3.1, D.4.5.

[50] *See* East Permit Condition D.4.5 (requiring parametric monitoring of pressure drop and identifying normal pressure drop ranges, which can be modified by a compliance stack test). Thus, even if the Petitioners' concerns regarding the parametric monitoring of pressure drop had been raised with reasonable specific in public comments, that portion of the Petition would not present a basis for the EPA's objection.

[51] The performance testing requirement was added to the East Permit after the public comment period. *See* ATSD at 36. Thus, the Petitioners could have challenged the sufficiency of this testing requirement in the Petition.

viewed alongside the other monitoring requirements, are collectively insufficient to assure compliance with the PM_{10} limits. Thus, even assuming for the sake of argument that the visible emission requirements were unenforceable or otherwise insufficient to assure compliance with the PM_{10} limits when viewed individually,[52] the Petitioners fail to demonstrate that the East Permit's collective testing and monitoring requirements are insufficient to assure compliance with the PM_{10} limits on Baghouses 187 and 188. Therefore, the EPA denies the Petitioners' request for an objection on Claim 1.

B. Claim 2: The Petitioners Claim That "The Indiana Harbor East Renewal Permit fails to include adequate testing and monitoring requirements sufficient to assure compliance with the NOx emission limit applicable to the No. 6 Batch Anneal facilities."

Petition Claim: The Petitioners claim that the East Permit lacks sufficient monitoring to assure compliance with a NO_x emission limit on the No. 6 batch anneal facilities because the East Permit does not require any stack testing.[53]

The Petitioners state that the East Permit limits NO_x emissions from the No. 6 batch anneal facilities to 20.19 tons per 12-month period.[54] The Petitioners recognize that in response to comments, IDEM revised the East Permit to add a "NO_x compliance

[52] To be clear, the EPA need not take, and is not taking, any position on the sufficiency of the visible emission requirements within this Order. Nonetheless, the EPA notes that some of the Petitioners' arguments are misplaced. First, the Petitioners are incorrect to suggest that requirements to conduct Method 9 observations of opacity are insufficient because they depend on the contested "normal" or "abnormal" visible emissions monitoring. The requirement in the East Permit to conduct Method 9 opacity observations are triggered "[if] visible emissions are observed," not by "abnormal" emissions. East Permit Condition D.4.4(c). Second, the fact that personnel at Indiana Harbor are responsible for conducting the visible emissions monitoring does not render the permit limits unenforceable by the EPA, IDEM, or members of the public. *See* Petition at 14. By design, essentially all testing, monitoring, and recordkeeping requirements included in title V permits are conducted by personnel affiliated with the permittee. The results of such monitoring must then be reported to regulators after a responsible official affiliated with the permittee certifies the truth, accuracy, and completeness of such results. 40 C.F.R. §§ 70.5(d), 70.6(a)(3)(iii)(A), (c)(1); *see* 42 U.S.C. § 7413(c)(2) (criminal penalties for knowingly falsifying such reports). The CAA further provides the EPA and State regulators with the authority to conduct on-site inspections to confirm compliance as well as the accuracy of reported information. *See* 42 U.S.C. § 7414(a)(2), (b); *see also id*. § 7661c(c). The EPA, the State permitting authority, and members of the public can bring an enforcement action alleging violations of title V permit terms based on the information reported by the permittee, along with any other credible evidence. *See* 42 U.S.C. §§ 7413(a)(3), (b)(2), (c)(1), (d)(1)(B), 7604(a)(1), (f)(4), 7661c(a); 40 C.F.R. § 70.6(b)(1); 62 Fed. Reg. 8314 (Feb. 24, 1997).

[53] *See* Petition at 16–21.

[54] *Id*. at 16 (citing East Permit Condition D.12.4). The Petitioners state that this limit is an "applicable requirement." *Id*. at 16. The Petitioners further note that the limit was established in a previously issued construction permit, which does not contain specific monitoring provisions associated with this limit. *Id*. at 20 (citing Petition Ex. 5). The Petitioners therefore assert that the East Permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of compliance with the East Permit. *Id*. (citing *Sierra Club*, 536 F.3d at 677).

equation" to estimate monthly NO_x emissions based on an emission factor and facility throughput, as well as other monitoring and recordkeeping requirements.[55]

The Petitioners claim that the NO_x compliance equation does not rest on valid emission factors. The Petitioners focus on the fact that "there is no accompanying testing to ensure the accuracy and adequacy of this equation." The Petitioners claim that "[f]or that reason alone, there is no way to ensure that the NOx emission factor in the 'NOx Compliance Equation' is correct and that the NOx emissions calculated with it accurately reflect the No. 6 Batch Anneal facility's compliance with the emission limits in Condition D.12.4." The Petitioners contend that "[w]ithout such testing or more detailed, site-specific information, Condition D.12.8 is insufficient to determine compliance with the 20.19 ton 12-month NOx emission limit in Condition D.12.4."[56]

The Petitioners acknowledge IDEM's statement that the "IDEM Compliance and Enforcement Branch has determined that a one-time test on the NOx emission factor of the No. 6 Batch Anneal Furnace would not be possible."[57] However, the Petitioners allege that "NOx emissions stack testing of batch annealing furnaces is possible and was completed at another source in Indiana," and the Petitioners state that "IDEM provides no detail on why NOx emissions stack testing is not possible at Indiana Harbor East or whether changes could be made to allow such testing."[58]

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

The East Permit limits emissions from the No. 6 batch anneal facilities to 20.19 tons of NO_x per consecutive 12-month period.[59] The Petitioners are correct that the East Permit must include monitoring requirements that are sufficient to assure compliance with these limits.[60] Among other requirements, the East Permit requires Indiana Harbor to demonstrate compliance with this limit by calculating NO_x emissions using monthly natural gas fuel throughput and an emission factor of 0.2 pounds NO_x per million British thermal unit (MMBtu) of fuel.[61] The Petitioners fail to demonstrate that this compliance demonstration methodology does not assure compliance with the NO_x limit.

[55] *Id*. at 17, 18 (citing Permit Conditions D.12.8, D.12.9, D.12.10).
[56] *Id*. at 18.
[57] *Id*. (quoting ATSD at 44).
[58] *Id*.
[59] East Permit Condition D.12.4.
[60] 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). Because the underlying applicable requirement (construction permit No. CP 089-8672) does not include monitoring requirements, the East Permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of compliance with the applicable requirements. 40 C.F.R. § 70.6(a)(3)(i)(B).
[61] East Permit Condition D.12.8; *see* East Permit Condition D.12.3 (requirement to fire natural gas only).

The central premise of the Petitioners' argument is that the aforementioned compliance equation is insufficient because it relies on an emission factor to calculate emissions without any testing to verify the emission factor. Essentially, the Petitioners' argument amounts to a general challenge to any compliance demonstration methodology that does not include direct emissions testing or monitoring to verify assumptions such as emission factors. This argument is flawed. The EPA recently rejected a nearly identical argument, explaining:

> The Petitioners' argument criticizing the lack of verification for . . . emissions factors is based on the flawed premise that there must always be some form of verification of the accuracy of emission factors (*e.g.*, through periodic stack testing). Using . . . emission factors without initial or periodic stack testing may or may not be appropriate, depending on the facts at issue.
>
> To demonstrate a basis for the EPA's objection, a petitioner must provide sufficient arguments for why use of a particular emission factor is not sufficient to assure compliance with a particular limit. In general, while the EPA has cautioned against the use of . . . emission factors for compliance demonstrations, these cautionary statements do not equate to an EPA finding that . . . emission factors are never sufficient to assure compliance with any permit limits, or to a finding that such use is presumptively inadequate to assure such compliance. The determination of whether it is necessary to develop or confirm a source-specific emission factor to calculate emissions of a particular pollutant from a particular unit depends on the circumstances.
>
> In this instance, the Petitioners do not explain why the particular . . . emission factors relevant here are not sufficient to assure compliance with the NO_x and CO emission limits for the thermal oxidizer. The Petitioners do not explain why the . . . factors are unlikely to be accurate or reliable, or how any such inaccuracies in the emission factors could impact compliance with the associated emission limits.
>
> For the reasons stated above, the Petitioners have not demonstrated that the Permit does not contain adequate monitoring to assure compliance with hourly and annual emission limits for NO_x and CO from a thermal oxidizer. Therefore, the EPA denies the Petitioners' request for an objection on this part of Claim 1.[62]

[62] *In the Matter of Neville Chemical Co.*, Order on Petition No. III-2024-22 at 12–13 (Sept. 16, 2025) (citations omitted); *see In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII-2022-13 & VIII-2022-14 at 24–25 (July 31, 2023) (extensive discussion of prior EPA decisions regarding the use of emission factors to demonstrate compliance with emission limits).

Here, too, the Petitioners do not present any specific reasons why the East Permit's 0.2 pounds per MMBtu NO_x emission factor included in the Permit may be inaccurate or otherwise insufficient to assure compliance with the NO_x emission limit. The Petitioners do not even mention the numerical value of this emission factor, much less demonstrate that it is insufficient.

The only technical argument supplied by the Petitioners is that "testing of batch annealing furnaces is possible" because another steel plant in Indiana conducted such a test.[63] Although the feasibility of performance testing may be relevant to a permitting authority's decisions about the overall structure of a compliance demonstration methodology, the feasibility or infeasibility of testing does not resolve questions about whether a particular emission factor is sufficient to assure compliance with a particular emission limit. In other words, regardless of whether testing is feasible or infeasible, the possibility that the East Permit could be supplemented (for example, by adding a testing requirement) does not, in and of itself, demonstrate that the existing permit terms are insufficient to assure compliance without such a supplement.[64] Because the Petitioners fail to demonstrate that the existing permit requirements are insufficient to assure compliance, the EPA denies the Petitioners' request for an objection on Claim 2.[65]

C. Claim 3: The Petitioners Claim That "The Indiana Harbor West Renewal Permit fails to include adequate monitoring, recordkeeping, and reporting requirements sufficient to assure NESHAP Subpart DDDDD applicability and compliance at No. 6, No. 7, and No. 8 Boilers."

Petition Claim: The Petitioners claim that the West Permit does not provide adequate and enforceable monitoring, recordkeeping, and reporting requirements to determine when Boilers 6, 7, and 8 are affected facilities under the NESHAP in 40 C.F.R. part 63,

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[63] Petition at 18.

[64] Additionally, to the extent the feasibility of testing is relevant to the question at bar, the Petitioners have not demonstrated that testing is possible at the Indiana Harbor batch anneal facilities. The fact that testing was conducted on one type of emission units at one steel plant does not necessarily mean that testing is feasible for the same category of units at a different steel plant, which may be configured differently. The Petitioners provide no comparison of the relevant emission units here, and the Petitioners do not provide any other analysis that would demonstrate, as a technical matter, that IDEM was incorrect to conclude that testing of the batch anneal facilities is not possible.

[65] Given that the Petitioners have failed to demonstrate that the compliance demonstration equation based on emission factors and fuel throughput is insufficient to assure compliance, the EPA need not reach arguments regarding whether other permit terms, such as parametric monitoring of scrubber pressure drop, are sufficient. It is not clear to the EPA whether or how the pressure drop monitoring in East Permit Condition D.12.9 is relevant to the NO_x limit on the No. 6 batch anneal facilities. The East Permit's description of the No. 6 batch anneal facilities indicates that the emission units exhaust inside of the building and exit through a roof stack #113, without any mention of a scrubber. *See* East Permit Condition D.12. The parametric monitoring requirement discussing scrubber pressure drop references a scrubber on stack # 176, and IDEM's RTC references a scrubber on stack # 174, but neither of those stacks are associated with the No. 6 batch anneal facilities. *See* East Permit Condition D.12.9; ATSD at 44.

subpart DDDDD, and therefore the West Permit does not assure compliance with this NESHAP.[66]

The Petitioners assert that to assure compliance with the applicable requirements of a NESHAP, the West Permit must be "specific enough to define how the applicable requirement applies to the facility," its application must be unambiguous, and it must provide for practical enforceability of the NESHAP.[67] The Petitioners claim that several issues create ambiguity and applicability questions that render the West Permit unenforceable as a practical matter and detract from the usefulness of the West Permit as a compliance tool for Indiana Harbor.[68]

The Petitioners observe that the West Permit requires Indiana Harbor to comply with a number of requirements from the subpart DDDDD NESHAP.[69] The Petitioners further observe that the West Permit provides that, under this NESHAP, "when one of boilers 6 through 8 is receiving less than 90% of its total annual gas volume from blast furnace gas (BFG), it is considered an affected facility" that is subject to the NESHAP.[70]

After restating comments from EPA Region 5 related to this issue, the Petitioners acknowledge IDEM's response that "monitoring of BFG fuel usage in D.4.7(a)(1) will be used in tracking the 90% BFG fuel threshold to be subject to 40 CFR 63, Subpart DDDDD."[71]

The Petitioners claim that this permit requirement is insufficient for several reasons. First, the Petitioners claim that the BFG fuel usage recordkeeping requirement in West Permit Condition D.4.7(a)(1) does not mention, and is not contained in or cited by, Section E.5 of the West Permit, which contains the NESHAP requirements for Boilers 6, 7, and 8. The Petitioners claim that this renders "the specific application of Condition D.4.7 to determine NESHAP applicability . . . ambiguous."[72] Second, the Petitioners claim that West Permit Condition D.4.7 does not contain any reporting requirements and therefore fails to provide for practical enforceability.[73] Third, the Petitioners state that the West Permit does not require Indiana Harbor to track and report the percentage of BFG fuel used (as suggested by the EPA's comment) or to specifically monitor, record, or report when BFG usage falls below 90 percent of total gas volume used.[74]

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[66] Petition at 21; *see id*. at 21–25.
[67] *Id*. at 23–24 (quoting *In the Matter of Tesoro Refining and Marketing Co.*, Order on Petition No. IX-2004-6 at 9 (Mar. 15, 2005) (*Tesoro Order*); citing several other title V petition orders).
[68] *Id*. at 24–25 (citing *Tesoro Order*).
[69] *Id*. at 21 (citing West Permit Condition E.5.2).
[70] *Id*. (quoting West Permit at 65).
[71] *Id*. at 23 (quoting ATSD at 50).
[72] *Id*. at 24.
[73] *Id*.
[74] *Id*. at 23, 24.

The Petitioners concede that the West Permit's requirement to report "the total fuel usage for each type of fuel each day" will provide information that can be used to track the 90 percent BFG fuel threshold.[75] Nonetheless, the Petitioners argue that this is insufficient because this "after-the-fact calculation scheme" provides Indiana Harbor (as opposed to IDEM, the EPA, or the public) with the responsibility for ensuring Indiana Harbor complies with subpart DDDDD.[76] The Petitioners request the EPA's objection on the basis that the West Permit does not assure compliance with subpart DDDDD NESHAP requirements.[77]

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

CAA section 504(a) requires title V permits to "include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements."[78] The EPA's regulations define applicable requirements "as they apply to emissions units in a part 70 source."[79] In general, a permit written so ambiguously that it is impossible to determine which requirements are applicable to an emission unit can present grounds for the EPA's objection.[80] However, here, the Petitioners fail to demonstrate that the West Permit does not contain provisions sufficient to determine whether and when Boilers 6, 7, and 8 are subject to the subpart DDDDD NESHAP.

The subpart DDDDD NESHAP applies to certain boilers but not "Blast furnace gas fuel-fired boilers," which are defined as "an industrial/commercial/institutional boiler or process heater that receives 90 percent or more of its total annual gas volume from blast furnace gas."[81]

Although Boilers 6, 7, and 8 historically were not subject to this standard, they are anticipated to become subject to this standard due to a reduction in BFG usage.[82] IDEM

[75] *Id*. at 24 (quoting West Permit Condition D.4.8; citing ATSD at 50).
[76] *Id.*
[77] *Id*. at 25.
[78] 42 U.S.C. § 7661c(a); *see* 40 C.F.R. § 70.6(a)(1).
[79] 40 C.F.R. § 70.2.
[80] *See, e.g.*, *In the Matter of South32 Hermosa Inc.*, Order on Petition No. IX-2024-20 at 27–28 (May 30, 2025); *Tesoro Order* at 9.
[81] 40 C.F.R. §§ 63.7491, 63.7575.
[82] *See* Technical Support Document for the West Permit at 20 ("The requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Industrial, Commercial, and Institutional Boilers and Process Heaters, 40 CFR 63, Subpart DDDDD and 326 IAC 20-95 are not included in the permit for Boilers No. 6, 7 and 8 fired by [BFG], since they are exempt from this rule pursuant to 40 CFR 63.7491(k) provided each one receives 90% or more of its total annual gas volume from [BFG]. However, with the idling of blast furnaces IH 3 and IH4, the boilers are projected to burn less than 90% BFG total annual gas volume and will operate on natural gas instead. Therefore, the Boilers No. 6, 7 and 8 will be subject to the requirements of 40 CFR 63, Subpart DDDDD every time each boiler fires less than 90% BFG total annual gas volume.").

elected to include provisions in the West Permit that proactively identify Boilers 6, 7, and 8 as emission units that may be subject to the subpart DDDDD NESHAP.[83] Specifically, the West Permit identifies dozens of specific requirements in the subpart DDDDD NESHAP as applicable requirements.[84] The West Permit further describes the emission units subject to these requirements, including the following: "Under 40 CFR 63, Subpart DDDDD, when one of boilers 6 through 8 is receiving less than 90% of its total annual gas volume from [BFG], it is considered an affected facility."[85]

As the Petitioners observe, this permit term introduces some ambiguity regarding whether and when the subpart DDDDD NESHAP is an applicable requirement for Boilers 6, 7, and 8. To resolve this ambiguity, IDEM elected to rely on other requirements in the West Permit, which require Indiana Harbor to maintain "[r]ecords of the total fuel usage ([BFG] and natural gas) for each day at the Nos 6, 7, and 8 Boilers" and to submit reports including "[a] quarterly summary of . . . the total fuel usage for each type of fuel used at each emissions unit for each day."[86] IDEM asserts that these requirements will provide the information necessary to track the 90 percent BFG fuel threshold relevant to whether and when those emission units are subject to the subpart DDDDD NESHAP.[87]

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[83] Title V permits must include all currently applicable standards, as well as standards that are not currently applicable to a facility, but which have been promulgated and have known future effective dates during the term of the permit. *See* 40 C.F.R. § 70.2 (defining "applicable requirement" to include "requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates"). However, in general, title V permits are not required to include requirements that are not currently applicable and which are contingent upon uncertain, hypothetical future actions at a facility. *See, e.g.*, *In the Matter of Warrick Newco LLC*, Order on Petition No. V-2024-10 at 8–9 (Oct. 9, 2024). Instead, the EPA's regulations provide a mechanism for updating a title V permit if and when such requirements become applicable: either reopening for cause, or waiting until the next renewal permit, depending on the facts. *See* 40 C.F.R. § 70.7(f)(1)(i).

[84] West Permit Condition E.5.2.

[85] West Permit Condition E.5.

[86] West Permit Conditions D.4.7(a)(1), D.4.8.

[87] *See* ATSD at 50 ("The monitoring of BFG fuel usage in D.4.7(a)(1) will be used in tracking the 90% BFG fuel threshold to be subject to 40 CFR 63, Subpart DDDDD."). The EPA observes that neither the CAA nor the EPA's regulations require this particular strategy that IDEM elected to apply here. That is, neither the CAA nor the EPA's regulations require that title V permits include monitoring, recordkeeping, and reporting conditions to confirm the applicability or non-applicability of standards that may or may not be applicable during the duration of the permit. *See In the Matter of Riverview Energy Corp.* Order on Petition No. V-2019-10 at 10 (Mar. 26, 2020); *In the Matter of Newark Bay Cogeneration Partnership LP*, Order on Petition No. II-2019-4 at 12–14 (Aug. 16, 2019). The EPA's regulations provide flexible mechanisms to accommodate situations like this; these mechanisms generally do not mandate enforceable monitoring requirements. For example, the EPA's regulations allow permits to proactively authorize multiple "alternative operating scenarios" (AOS) that are subject to different requirements over the life of a title V permit. *See* 40 C.F.R. §§ 70.2 (definition of AOS), 70.6(a)(9) (requiring permit terms that "require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating"); *see also* 40 C.F.R. §§ 70.4(d)(3)(xi), 70.5(c)(7), (c)(8)(ii)(D), (c)(8)(iii)(D). Here, IDEM expressly declined to utilize the AOS mechanism for the anticipated fuel switch at Boilers 6, 7, and 8. West Permit Condition B.19(e). Thus, the EPA is evaluating the sufficiency of the recordkeeping and reporting requirements that IDEM elected to include in the West Permit.

Notably, the Petitioners concede that these requirements will provide information to track the 90 percent BFG fuel threshold.[88] Notwithstanding this concession, the Petitioners contend that these requirements are not clear enough to assure compliance with the subpart DDDDD NESHAP. The Petitioners' arguments are unpersuasive. The Petitioners fail to demonstrate that is necessary for the recordkeeping and reporting requirements in the West Permit to expressly reference the subpart DDDDD NESHAP or for these requirements to expressly require recordkeeping or reporting of the 90 percent BFG threshold.[89] The requirements to record and report the daily total amount of each type of fuel used by each emissions unit will, by definition, provide sufficient information to identify precisely whether and when any of Boilers 6, 7, and 8 combust less than 90 percent BFG on an annual basis. Therefore, the EPA denies the Petitioners' request for an objection on Claim 3.

V. CONCLUSION

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

Dated: February 3, 2026

Lee Zeldin
Administrator

[88] Petition at 24.

[89] The Petitioners are incorrect to suggest that the West Permit does not require reporting of this information. *See* Petition at 24; West Permit Condition D.4.8.