

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
OPERATING PERMIT)	
PORT HUDSON OPERATIONS)	
GEORGIA PACIFIC)	
ZACHARY)	PETITION NO. 6-03-01
EAST BATON ROUGE PARISH)	
LOUISIANA)	
)	
Part 70 Operating Permit 0840-00010-VO)	
(Also designated as 0840-0010))	

**ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR OBJECTION TO PERMIT**

I. INTRODUCTION

On February 19, 2002, the Environmental Protection Agency (“EPA”) received a petition from the Louisiana Environmental Action Network and Juanita Stewart (“Petitioners”) requesting that EPA object to the issuance of a state operating permit to the Georgia-Pacific Corporation, pursuant to Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f. The Georgia-Pacific permit was issued by the Louisiana Department of Environmental Quality (“LDEQ”) on January 25, 2002, pursuant to Title V of the Act, the federal implementing regulations at 40 C.F.R. part 70, and the LDEQ implementing regulations at L.A.C. 33:III:Chapter 5. *See* Permit No. 0840-00010-VO (“Title V permit”). While the petition also requests that the Agency object to two preconstruction permits issued to Georgia-Pacific and the banking of emission reduction credits (“ERCs”), the authority to object to permits under Section 505(b) of the Act is limited to Title V permits. Petitioners’ request to object to the non-Title V permits and ERC approval issued by LDEQ is construed as an allegation that the Title V permit is invalid because it fails to assure

compliance with applicable requirements of the Act, including Nonattainment New Source Review (“NNSR”) and Prevention of Significant Deterioration (“PSD”) requirements, by incorporating the requirements of allegedly invalid permits that fail to set forth NNSR and PSD requirements for increases in emissions of volatile organic compounds (“VOCs”), nitrogen oxides (“NOx”), and total reduced sulfur (“TRS”).

In particular, Petitioners have requested that EPA object to the Georgia-Pacific Title V permit for the reasons listed below. (Following each item in this list is a reference to the section of this order primarily discussing that item.)

1. Invalid emission reductions were used to avoid NNSR for emissions increases from projects occurring from 1986 through 1992. (Section IV.B)
2. Invalid emission reductions were used to avoid NNSR and PSD for emissions increases associated with a new towel machine project. (Sections IV.C.1, IV.C.2)
3. Specific conditions in the new towel machine permit should require Georgia-Pacific to undergo additional PSD review if certain limits are exceeded. (Section IV.C.3)
4. No ERCs are available because the Louisiana ERC bank is mismanaged and fails to require that credits be “surplus” when used. (Section V.A)
5. ERCs were not identified specifically enough to inform the public. (Section V.B)
6. The Title V permit incorporates an emission limit from an invalid state permit. (Section VI.A)
7. The Title V permit fails to provide for sufficient monitoring of particulate emissions from some units. (Section VI.B)
8. LDEQ failed to provide an adequate statement of basis in the Title V permit. (Section VI.C)

EPA has conducted a thorough review of the Title V permit, the material identified as the Statement of Basis, other information in the permit file, additional information provided by the permitting authority and Georgia-Pacific in response to inquiries, and the information provided by

Petitioners. Based on this review, we conclude that Petitioners have demonstrated significant deficiencies in the record supporting the Title V permit in connection with issues 1, 7, and 8 on the list above. Therefore, as further detailed below, the petition is granted in part and denied in part. LDEQ must reopen the permit to address the concerns identified in this order. The Title V permit need not be reopened on other issues.

II. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V of the Act. The State of Louisiana submitted a Title V program governing the issuance of operating permits on November 15, 1993, and revised this program on November 10, 1994. 40 C.F.R. Part 70, Appendix A. In September 1995, EPA granted full approval to Louisiana's Title V operating permits program. 60 Fed. Reg. 47296 (September 12, 1995); 40 C.F.R. Part 70, Appendix A.¹ Major stationary sources of air pollution and other sources covered by Title V are required to obtain an operating permit that includes emission limitations and such other conditions necessary to assure compliance with all applicable requirements of the Act in accordance with 40 C.F.R. Part 70. *See* CAA Sections 502(a) and 504(a).

The Title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as “applicable requirements”), but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with existing applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the Title V program is to “enable the source, States, EPA, and the

¹ This program, which became effective on October 12, 1995, is codified in Louisiana Administrative Code (L.A.C.), Title 33, Part III, Chapter 5.

public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” *Id.* Thus, the Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document, thereby enhancing compliance with the requirements of the Act. *Id.*

Under Section 505(b) of the Act, the Administrator of the EPA is authorized to review state operating permits issued under Title V, and to object to permits that fail to comply with the applicable requirements of the Act, including the requirements of a State implementation plan (“SIP”) and 40 C.F.R. Part 70.²

In this case, the “applicable requirements” include Louisiana’s New Source Review (“NSR”) Procedures, L.A.C. 33:III.504 and 509 (the Nonattainment New Source Review and Prevention of Significant Deterioration regulations, respectively), and Louisiana Emission Reduction Credits (“ERC”) Banking regulations, L.A.C. 33:III.Chapter 6.³ When EPA does not object to a Title V

² Under 40 C.F.R. § 70.1(b), “all sources subject to [Title V must] have a permit to operate that assures compliance by the source with all applicable requirements.” “Applicable requirements” are defined in 40 C.F.R. § 70.2 to include “(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R.] Part 52.” The State’s definition of applicable requirements is substantially the same. *See* L.A.C. 33:III.502.

³ Sections 110(a)(2)(C) and 172(c) of the Act require each state to revise its SIP to include NSR. EPA has approved the NSR and related banking regulations as part of the Louisiana SIP. *See* 62 Fed. Reg. 52948 (Oct. 10, 1997); 64 Fed. Reg. 415 (Jan. 5, 1999); 66 Fed. Reg. 29,491 (May 31, 2001); 64 Fed. Reg. 35930 (July 2, 1999). It bears noting that one month before the final Title V and related PSD permits were issued to Georgia-Pacific, Louisiana revised the NNSR and banking regulations, and EPA subsequently approved the changes as part of the SIP. *See* 27 La. Reg. 2049 (Dec. 20, 2001); 28 La. Reg. 301 (Feb. 20, 2002); 67 Fed. Reg. 60,871 (Sept. 27, 2002); 27 La. Reg. 2225 (Dec. 20, 2001); 67 Fed. Reg. 61,260 (Sept. 30, 2002). Because the permits at issue were proposed and subject to public review before these

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permit on its own initiative, Section 505(b)(2) of the Act provides that any person may petition the Administrator to object to the issuance of a permit by demonstrating that the permit is not in compliance with all applicable requirements. *See also* 40 C.F.R. § 70.8(d). It also provides that such petitions “shall be based only on objections that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period).”

A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA’s 45-day review period and before receipt of the objection. If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 C.F.R. § 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

III. BACKGROUND

On October 15, 1996, Georgia-Pacific submitted a Title V permit application to LDEQ for a pulp and paper mill on the east bank of the Mississippi River, near Port Hudson, East Baton Rouge Parish, Louisiana. This mill has been in operation since 1968. Site emissions that had occurred before 1969 qualified for grandfathered status, and as new construction and modifications were undertaken at the site, permits were periodically obtained for affected

³(...continued)
revisions took effect, these changes are not relevant to the Georgia-Pacific Title V permit. *See also* 67 Fed. Reg. 60871, 60873 (Sept. 27, 2002) (LDEQ makes its determination of validity of ERCs at the time a permit is deemed administratively complete). Accordingly, unless otherwise specified in this Order, all citations to Louisiana regulations are to the versions in effect before December 20, 2001.

emission units. *See* Permit No. 0840-00010-00 at 2 (“the 1989 permit”); L.A.C. 33:III.501.B.6. Georgia-Pacific obtained a consolidated state permit on January 28, 1989 which set a VOC emissions level (referred to in the permit as “HC,” or hydrocarbon) of 192.7 tons per year, and in 1994 obtained an amended consolidated permit, which changed the VOC emissions level to 102.8 tpy. *See* Permit No. 0840-00010-01 (“the 1994 permit”). Among other things, the Title V application sought to revise the VOC emissions level to 1,147 tons per year to reflect updated emissions factors known as NCASI factors.⁴ At all relevant times, the Baton Rouge area has been a nonattainment area for ozone under the Clean Air Act. VOCs are a precursor for ozone.

Subsequent to the application, an internal audit by Georgia-Pacific and an investigation by LDEQ raised the issue of whether Georgia-Pacific had obtained the necessary NSR permits for production increases and physical modifications to the facility dating back to the mid-1980s and whether it had complied with the relevant New Source Performance Standard (40 C.F.R. Part 60, Subpart BB). *See* June 12, 2000, Settlement Agreement between LDEQ and Georgia-Pacific Corporation (“Settlement Agreement”) at 1-2. The Title V permit refers to these activities as the 1986-1992 production increase projects. Title V Permit at 3. The production increase projects resulted in increased emissions of particulate matter (“PM/PM10”), sulfur dioxide (“SO₂”), carbon monoxide (“CO”), NO_x, TRS, and VOCs. *See* Settlement Agreement at 2 (describing PM, SO₂, NO_x, CO, and TRS); Title V Permit at 3 (describing VOCs). LDEQ determined that the VOC emissions increase of 472 tpy – generated in part by modifications to the two recovery

⁴ The 1989 VOC emission level was based on AP-42 factors. In late 1994, the National Council for Air and Stream Improvement (“NCASI”), an association of members of the forest products industry, released revised emission factors for pulp and paper mills which resulted in improved emission factors for this industry and became widely used. *See* Response to Comments (“RTC”) to the 2001 Permit at 1. The new emission factors generally resulted in higher emission estimates, as they did here.

furnaces and resulting increased utilization of capacity from the black liquor oxidation (“BLOx”) system⁵ – was not subject to NNSR requirements because Georgia-Pacific had netted out the increase with a contemporaneous decrease of 770 tpy of VOC emissions.⁶ *See* Title V Permit at 3. The June 12, 2000, administrative settlement agreement between Georgia-Pacific and LDEQ resolved the PSD and NSPS allegations regarding the other pollutants. *See* Settlement Agreement at 2. The Settlement Agreement required Georgia-Pacific, *inter alia*, to implement a “beneficial environmental project” (“BEP”) to resolve an alleged TRS PSD violation by reducing emissions of TRS through conversion of the two recovery furnaces to a non-direct contact evaporation system which it stipulated exceeded BACT for TRS. *See id.* at 8. The BEP was also expected to result in incidental reductions of VOCs, 50 percent of which Georgia-Pacific could seek to deposit in the Louisiana Emission Reduction Credit bank for future use. *Id.* at 8. The BEP conversion of the recovery furnaces was completed by June 15, 2001, and enabled Georgia-Pacific to eliminate the BLOx system, creating additional VOC reductions. *See* RTC to Title V

⁵ The Settlement Agreement uses the term “recovery boilers.” Settlement Agreement at 2-3, 6-8. The permits use the term “recovery furnaces” in referring to the same units. *See* Permit PSD-LA-581(M-2), at 3; Title V Permit at 4 (describing the same project).

We assume that LDEQ included VOC emissions from both the recovery furnaces and the BLOx system in the 472 tpy estimate. This is required under federal regulations. *See* Memorandum from Director, Stationary Source Compliance Div., Office of Air Quality Planning and Standards, to M. Johnston, Region X, July 28, 1983 (in calculating New Source Review applicability, a source must include emissions increases from both the units being modified and the non-modified units where those units operated at higher levels and thus increased emissions as a result of the modification; however, BACT/LAER does not apply to non-modified units).

⁶ “Netting” is defined as “the use of an ERC at an existing facility to compensate for emission increases associated with a proposed modification at the same facility and to, thus, avoid the requirements of new source review. ERCs used for netting are always internal to the source seeking credit.” L.A.C. 33:III.605.

Permit at 4. Pursuant to the Agreement (*id.* at 10), Georgia-Pacific submitted an application for a retroactive PSD permit that would authorize the 1986-1992 production increase projects.

In January and May of 2001, Georgia-Pacific submitted a request to revise all of its permitted emission levels to reflect existing emissions at its facility. With regard to VOCs, LDEQ found that such a change was appropriate to take into account emissions units omitted from the prior permits, to reflect actual VOC emissions data, including data from recent stack tests of the recovery furnaces and the BLOx system required under the Settlement Agreement, and to reflect changes in emissions rates due to revised emissions factors. *See* Permit No. 0840-00010-02, at 2 (Aug. 21, 2001) (“the 2001 permit”) and accompanying RTC at 1. LDEQ believed that its action did not implicate NSR requirements because it did not authorize Georgia-Pacific to increase production or perform physical modifications. *See* RTC to 2001 Permit at 3. After public notice and comment, LDEQ revised the facility-wide VOC emissions limit from 102.8 tpy to 2,368.94 tpy. *See* 2001 Permit at 2.

On August 10, 2001, Georgia-Pacific applied for a PSD permit to authorize the construction of a new paper towel machine (the No. 6 TAD towel machine) and associated equipment. *See* Georgia-Pacific Presentation to EPA at 6 (September 26, 2001). The new towel machine was expected to result in VOC emissions increases of 409.41 tpy. *See* Title V Permit at 3; Public Notice at 1. Georgia-Pacific sought a determination that it could net out this increase with the credits resulting from the BEP (using the 2001 permit limit as the baseline), and thereby qualify as a minor modification not subject to NNSR requirements. LDEQ found that Georgia-Pacific had achieved 1497.33 tpy of creditable VOC reductions as a result of the BEP (410.02 tpy from the recovery furnaces conversion; 1087.31 tpy from the BLOx system removal), and pursuant to the

Settlement Agreement, allowed Georgia-Pacific to use half of these, 748.67 tpy, in the netting analysis. *See* Title V Permit at 4; RTC at 4. Georgia-Pacific also sought to net out of NNSR for NO_x and TRS emissions increases of 267.55 tpy and 10.87 tpy, respectively, based on contemporaneous decreases in NO_x and TRS emissions at other emission units.

In August 2001 Georgia-Pacific submitted an amended Title V application addressing these and other changes. On November 8, 2001, LDEQ published for comment (1) the proposed Title V permit, (2) the proposed retroactive PSD permit for the 1986-1992 production increase projects, (3) the proposed PSD permit for the new towel machine, and (4) the request to approve the VOC ERCs from the BEP. The comment period closed on December 23, 2001. LDEQ subsequently issued the permits as follows:

- (1) Retroactive PSD permit for the 1986-1992 production increase projects (PSD-LA-544(M-1), January 4, 2002;
- (2) PSD permit for the new towel machine (PSD-LA-581(M-2), January 25, 2002: and
- (3) Part 70 permit for all operations at the Port Hudson facility (Permit 0840-00010-VO), including the projects addressed in the above permits and the revised emission limits in the 2001 permit, January 25, 2002.

LDEQ also approved the VOC credits from the Settlement Agreement BEP project for banking on January 25, 2002. LDEQ stated that these credits were used to net out the VOC emissions increase from the new towel machine. *See* Title V Permit at 3; RTC at 6.

Petitioners raise the following objections to the Title V permit and other permits as incorporated into the Title V permit: (1) invalid netting credits were used to avoid NNSR requirements for VOC emissions increases associated with the 1986-92 production increase projects; (2) invalid netting credits were used to avoid NNSR and PSD requirements for the VOC, NO_x, and TRS emissions increases associated with the new towel machine project; (3) the

specific conditions in the towel machine PSD permit should require Georgia-Pacific to undergo PSD review for NOx emissions if the firing rate and lime throughput limits are violated; (4) no netting credits are available for use because the Louisiana emission reduction credit bank is mismanaged and fails to require that credits are “surplus” at the time of use; (5) the netting credits were not identified with the specificity necessary to inform the public; (6) the Title V permit incorporates a VOC emission limit from an invalid state permit; (7) the Title V permit fails to provide for sufficient monitoring of PM emissions from the cyclones and baghouses; and (8) LDEQ failed to provide an adequate statement of basis. EPA reviews these allegations pursuant to the standard set forth by Section 505(b)(2) of the Act, which puts the burden on the petitioner to “demonstrate[] to the Administrator that the permit is not in compliance” with the applicable requirements or the requirements of 40 C.F.R. Part 70. *See also* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 note 11 (2nd Cir. 2002).

IV. Analysis of NSR Applicability

A. The Standard for NNSR and PSD Applicability

Nonattainment New Source Review (NNSR) applies to the construction of any new major stationary source or to any major modification at a major stationary source, provided such source or modification will be located within a nonattainment area so designated pursuant to the Clean Air Act, and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment. *See* 40 C.F.R. § 51.165; L.A.C. 33:III.504.A. If applicable, it requires that the source use technology achieving the “lowest achievable emission rate” (“LAER”) and obtain offsetting reductions. *Id.*

A modification is major if, inter alia, there is “any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase, as listed in Table 1, of any regulated air pollutant for which the stationary source is already major.” L.A.C. 33:III.504.G. The Table 1 “significance” threshold is 25 tpy for the ozone precursor VOC.⁷ Prior to the Clean Air Act Amendments of 1990, the significance threshold for VOC emissions was 40 tpy. 40 C.F.R. § 51.18(j)(1)(x) (1986); 40 C.F.R. § 51.165(a)(1)(x) (1989).

If these emissions meet or exceed a trigger value stated in L.A.C. 33:III.504, Table 1, then for that particular pollutant, the source is required to perform a calculation of the net emissions increase over the contemporaneous period (the year of the proposed increase plus the preceding four years) to determine whether it is “significant” (as set forth by Table 1). “Net emissions increase” is defined as:

any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source and any other creditable increases and decreases in actual emissions at the major stationary source over a period including the calendar year of the proposed increase and the preceding four consecutive calendar years.

L.A.C. 33:III.504.G. Determination of the net emissions increase – the sum of the creditable increases and decreases – is commonly referred to as netting. Decreases in emissions are creditable only to the extent that “the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions.” *Id.* The reductions

⁷ NOx also is a precursor to ozone regulated under NNSR. However, Louisiana has been authorized to exempt NOx from NNSR pursuant to Section 182(f) of the Act. EPA recently rescinded this NOx exemption, pursuant to a request from the State. *See* 67 Fed. Reg. 30638 (May 7, 2002) (proposal); 68 Fed. Reg. 23597 (May 5, 2003) (final rule).

also must be “federally enforceable at and after the time the actual construction of the particular change begins.” *Id.*

The Prevention of Significant Deterioration (PSD) program operates in a parallel manner for construction of new major stationary sources or modifications thereto in an attainment area, where the source emits a regulated pollutant for which it is major and for which the area is designated attainment. If applicable, it requires the installation of “best available control technology (“BACT”), among other things. *See* L.A.C. 33:III.509. At all relevant times, the Baton Rouge area has been an attainment area for NO_x and TRS. The calculation of the net emissions increase to determine whether a modification is major is substantially similar to the NNSR rule for purposes of evaluating the PSD issues presented by the Georgia-Pacific permits. *See* L.A.C. 33:III.509.A, B. The significance threshold is 10 tpy for TRS and 40 tpy for NO_x.

Finally, the Louisiana ERC banking regulations impose requirements for ERCs to be valid, and thus usable for netting (or, in other contexts, as offsets), that duplicate and also go beyond those in the NNSR and PSD regulations, as discussed in more detail below. *See* L.A.C. 33:III.605.F.

B. NNSR Applicability to VOC Emission Reductions from the 1986-1992 Production Increase Projects

Petitioners contend that Georgia-Pacific used invalid emission reduction credits (“ERCs”) to avoid new source review for a VOC emissions increase of 472 tpy associated with the production increase projects from 1986-1992.⁸ The Title V permit states that VOC emissions

⁸ Petitioners refer to the use of “offsets,” when the appropriate term under the Act and Louisiana law would be “netting.” Although offsets and netting both involve the analysis of emission reductions, offsets are required of facilities as a part of nonattainment new source review process, while netting is an analysis performed to determine whether a facility needs to undergo
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reductions relied upon for this netting analysis occurred in 1989 when Georgia-Pacific made changes at certain emissions units to comply with NSPS Subpart BB for TRS emissions, a change which resulted in an incidental reduction of 742 tpy of VOC emissions.⁹ *See* Title V Permit at 3. Georgia-Pacific also shut down Boiler No. 3, which reduced VOC emissions by an additional 28 tpy. *Id.* LDEQ found that these VOC reductions (total 770 tpy) netted out the 472 tpy increase in VOC emissions from the production increase projects. *Id.* Petitioners contend that these ERCs are not valid because (1) they were not surplus, (2) they were not enforceable or permanent, and (3) they were not contemporaneous with the emission increases. Before addressing these issues, we first address a recent submission from LDEQ that provides additional factual information about the production increase projects and netting credits.

1. Relevant information submitted by LDEQ

Information relevant to a netting analysis includes identification of the modified emission units, the impact on emissions, the dates of the modifications, and the contemporaneous period. To this end, LDEQ has recently provided information addressing these issues with regard to the 1986-1992 production increase projects and resulting VOC emissions increases. *See* Email from D. Trahan, LDEQ, to B. Braganza, EPA, Att. at ¶ 2 (Mar. 18, 2003) (“Trahan/Braganza 3/18/03

⁸(...continued)
new source review in the first place. *Compare* L.A.C. 33:III.605 (defining offsets); Sections 173(a)(1)(A) and 173(c) of the Act; and 40 C.F.R. § 51.165(a)(2) and (3) (describing when offsets are required) *with* L.A.C. 33:III.605 (defining netting) and 40 C.F.R. § 51.165 (a)(1) (defining netting through “significant net emissions increase”). As no offsets are used in support of any of the permits at issue, we understand Petitioners’ objections to be to the netting credits, and address them as such.

⁹ Georgia-Pacific brought two digesters and the evaporators into compliance by routing noncondensable gas (“NCG”) to the lime kilns for TRS destruction. Burning NCG in the lime kilns resulted in 742 tpy of VOC destruction. *See* Title V Permit at 3.

Email”); Email from D. Trahan, LDEQ, to B. Braganza, EPA (Apr. 17, 2003) and accompanying September 3, 1999, report from Georgia-Pacific (faxed to B. Braganza, EPA, Apr. 17, 2003).

LDEQ states that the 1986-1992 production increase projects that potentially increased VOC emissions at currently existing units were:

- (1) the construction of Power Boiler No. 5 at some time after January 28, 1989; and
- (2) the modifications identified in the Settlement Agreement, including the modifications to the recovery furnaces.

Trahan/Braganza 3/18/03 Email.¹⁰ The 1999 Georgia-Pacific report characterizes the modifications identified in the Settlement Agreement from the 1986-1989 period as “one project” with the objective of providing the facility an increase in capacity and a change in the product produced. *See* 1999 Georgia-Pacific Report, Att. No. 1, § 1.0; *see also* Trahan/Braganza 3/18/03 Email, Att. No. 2 (characterizing these modifications as a “single millwide expansion project”). It further expressly states that VOC emissions increased above the significance thresholds (i.e., above the 40 tpy threshold), as a result of physical and operational changes at each of the following emissions units: (1) Recovery Furnaces Nos. 1 and 2 (*see* 1999 Georgia-Pacific Report § 2.3); (2) the No. 3 Brown Stock Washing System (§ 3.3); (3) the Bleach Plant Operations (§ 4.3); and (4) the No. 1 Lime Kiln (§ 5.3). A VOC emissions increase from changes to the No. 2 Lime Kiln is also indicated, but without reference to the significance threshold. Physical changes commenced in 1986 at the No. 1 Lime Kiln, in “early 1988” at the recovery furnaces, and

¹⁰ Two other units that have since been shut down also were modified: Power Boiler No. 3 authorized in 1987, was shut down in 1993; and a rental boiler was operated on a temporary basis under the 1989 permit. Because the units have been removed, the Title V permit does not address them, and they are beyond the scope of this response.

at an unspecified time in 1988 at the other units. LDEQ also provided information about the VOC reductions achieved during that time period, clarifying that 742 tpy of the VOC netting credits were based on reductions that occurred in September 1988 (in contrast to the 1989 date give in the Title V permit), and that the reductions were made federally enforceable on January 28, 1989, through the 1989 permit. Trahan/Braganza 3/18/03 Email, Att. No. 2, ¶1(c), ¶ 3.

The supplemental materials lack a netting analysis for the two projects – Power Boiler No. 5 and the 1986-1992 production increase projects identified in the Settlement Agreement – and do not identify the contemporaneous periods, which to date remain unknown. A netting analysis should examine whether each project resulted in a significant increase in VOC emissions, rather than grouping the two projects together. *See* 40 C.F.R. § 51.165(a)(vi)(A) (netting analysis is to be conducted with focus on changes in emissions from “a particular physical change or change in the method of operation” at the source); L.A.C. 33:III.504.G (same). Additionally, the contemporaneous period would differ for each project if the date of the increase in emissions for each project is different, because the contemporaneous period is set by reference to that date. *Id.* With this background, we proceed to address the issues raised by Petitioners.

2. The validity of the netting credits

a. The “surplus” requirement.

Under applicable Louisiana law, for emission reductions to be valid – whether for netting or offsets – the reductions must be surplus, permanent, quantifiable, and enforceable. L.A.C. 33:III.607.F.1. Petitioners argue that the reductions fail to meet the first element. “Surplus Emission Reductions” are defined in L.A.C. 33:III.605 as:

emission reductions that are voluntarily created for an emissions unit and have not been required by any local, state or federal law, regulation, order, or requirement and are in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards.

Petitioners' objection addresses the first half of this definition: that to be surplus, reductions must be voluntarily created and not required by any local, state, or federal law, regulation, order, or requirement. Specifically, Petitioners charge that the reductions used by Georgia-Pacific are not surplus because they were legally required under the terms of its 1994 permit. The bulk of the VOC reductions at issue (742 tpy) occurred in 1988 as a result of routing non-condensable gas to the lime kilns for TRS destruction, and the remainder (28 tpy) occurred as a result of the shutdown of Power Boiler No. 3 in 1993. The legal requirement identified by Petitioners as requiring these reductions is the emissions level of 102.8 tpy in the 1994 permit. However, the 1994 permit requirement is not relevant to this netting analysis because the netting is for projects that pre-dated the 1994 permit (*i.e.*, the 1986-1992 time period). To determine whether the 1988 VOC reductions are creditable to net out a project on which construction commenced in that time frame, we should look at the legal requirements with regard to VOC reductions *at the time the modifications took place*. This approach is an inherent component of the netting regulation, which ties the netting analysis to the creditable increases and decreases in existence as of "the date that the increase from the particular change occurs." 40 C.F.R. § 51.165(a)(1)(vi)(B); L.A.C. 33:III.504.G (creditable decreases to be considered in netting "up to the date on which the proposed increase [from the particular physical change] will occur"). The current record does not indicate that there were any other legal requirements that would have required the 742 tpy in VOC reductions achieved in 1988, other than the 1989 permit that made these very same

reductions enforceable by incorporating the reduced levels into that permit.¹¹ Petitioners raise no other legal requirements that would have required these reductions before 1989.¹²

The “surplus” issue does touch, however, on another netting requirement. This is the requirement that reductions be creditable to the extent that “the *old* level of actual emissions or the *old* level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.” L.A.C. 33:III.504.G (emphasis added); 40 C.F.R. § 51.165(a)(1)(vi)(E). The current record does not indicate either the old level of actual or allowable emissions (i.e., before the 1989 permit). Because the record provides insufficient information to determine the extent to which the reductions are creditable under this requirement, the petition is granted on this issue, and, as discussed in more detail in the next section, LDEQ must reopen this portion of the Title V permit to resolve this objection.

b. Enforceability of the reductions

Petitioners also allege that the reductions were not enforceable or permanent, because they were not required by any Georgia-Pacific permit. Petition, Att. 2, at 5. The definitions of

¹¹ The fact that a permit incorporates and sets a level of emissions that represents a reduction from a prior level of emissions does not, by itself, imply that the reductions were required by law and thus not surplus. *See* In the Matter of Operating Permit Engage Plant Modification Dow Chemical Company, Permit No. 2179-V2, at 13 (Oct. 30, 2002) (“Dow Order”) (available at <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm>). Such an approach would render all reductions “required” and thus unavailable for use as surplus credits. Rather, additional information is necessary in order to determine whether particular reductions were required by law or were voluntary.

¹² To the extent that Petitioners argue, based on Section 173(c), that *netting* credits must be surplus to all federal and state requirements when used, and presume use here to be 2001, Petitioners err on two fronts. First, Section 173(c) applies only to offsets, not netting. Additionally, the time of “use,” as presented here, is the time of the modification because a netting determination must rest on whether netting requirements were met at the time of the modification.

“enforceable” and “permanent” under Louisiana regulations are overlapping as to this issue because both terms are defined in terms of making the reductions “enforceable”:

Enforceable – each transaction that revises any emission limit must be approved by the state and be *federally enforceable*. Means of making emission limits federally enforceable include SIP revisions, EPA-approved generic emissions trading regulations, and permits issued by states under EPA-approved SIP regulations, as well as permits issued by EPA or by states under delegation. . . .

Permanent – a reduction shall be guaranteed through an *enforceable* permit limitation confirming the amount and duration of the decrease or other *enforceable* mechanism including, but not limited to, permanently dismantling the emissions unit or surrendering the permit. . . .

L.A.C. III:33.605. In turn, emissions reductions are “federally enforceable” under LDEQ’s regulations where they are enforceable by the EPA Administrator through, for example, SIP or federal permit limits, or federal New Source Performance Standards under 40 C.F.R. Part 60 or National Emission Standards for Hazardous Air Pollutants under 40 C.F.R. Parts 61 and 63.

L.A.C. 33:III.504.G.¹³ The State requirement that emissions reductions be federally enforceable to be used as netting credits mirrors that of federal law. 40 C.F.R. § 51.165(a)(1)(vi)(E)(2).

LDEQ has clarified that the VOC reductions (742 tpy) from the Subpart BB emission unit modifications occurred in September 1988, and became federally enforceable on January 28, 1989, through Specific Condition C1 of the 1989 permit. *See* Trahan/Braganza 3/18/03 Email, Att. 2 at ¶ 1(c) and 3; *see also* 1989 Permit at Specific Condition C1.¹⁴ LDEQ has further stated

¹³“Federally enforceable” is defined as: “all limitations and conditions which are federally enforceable by the administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63, requirements within any applicable State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I including 40 CFR 51.165 and 40 CFR 51.166.” L.A.C. 33:III.504.G.

¹⁴ We considered whether the reductions became federally enforceable when they occurred (continued...)

that the reductions from Boiler No. 3 (Emission Point No. 24) occurred in 1993 when it was shut down. This reduction became federally enforceable, at the latest, at the time of issuance of the 1994 permit when this emission point was delisted from the permit, and thus the reductions are enforceable and permanent.

However, to be creditable, a decrease must also be “federally enforceable at and after the time that actual construction of the particular change begins.” 40 C.F.R. § 51.165(a)(1)(vi)(E)(2); L.A.C. 33:III.504.G. In this case, the VOC reductions were made federally enforceable after certain modifications that had already commenced. The Settlement Agreement suggests, and the 1999 Georgia-Pacific report confirms, that the physical modifications that resulted in significant VOC increases began in 1986 at the No. 1 Lime Kiln, early 1988 at the recovery furnaces, and an unspecified date in 1988 as to the other emission units. Because the foregoing modifications were part of a single expansion project, the date on which actual construction began is the first modification, 1986. Actual construction on the separate project – Power Boiler No. 5 – appears to have begun after the reductions were made federally enforceable in the 1989 permit.¹⁵ Thus, with the exception of Power Boiler No. 5, the present record indicates that the VOC reductions were made federally enforceable too late, i.e., after actual construction began in 1986, to be used

¹⁴(...continued)

in September 1988 because they were achieved as an incidental result of compliance with NSPS Subpart BB to achieve required TRS reductions, and also whether the reductions became federally enforceable as early as October 6, 1987, through a State compliance order. The information in the record did not support either possibility, but in any case it is unlikely that establishing federal enforceability at either of these dates would make a difference in the creditability of the 742 tpy of VOC reductions, because even those earlier dates postdate the beginning of actual construction in 1986.

¹⁵ LDEQ states that Power Boiler No. 5 was constructed on an unspecified date after issuance of the January 28, 1989 permit.

for netting.¹⁶ Accordingly, the petition is granted on this issue, since the record does not demonstrate the validity of the netting credits relied on to avoid NNSR.

Thus, with respect to the Title V permit and pursuant to the requirements of Part 70, LDEQ must reopen this portion of the permit to resolve this objection. Specifically, LDEQ must reconsider whether NNSR is an applicable requirement for the 1986-1992 production increase projects in light of this determination, and any other information it may develop during the reopening proceedings, such as the proper definition of the contemporaneous period and whether there are other creditable reductions that took place during the contemporaneous period.

3. Relationship of the Settlement Agreement to the Title V Permit

Georgia-Pacific asserts that a veto petition may not be used to make a “collateral attack” on the Settlement Agreement which it states addressed all alleged NSR violations from the 1986-1992 production increase projects. *See* Trahan/Braganza 3/18/03 Email, Att. No. 1 (Georgia-Pacific Submission), at 1-2. In responding to a veto petition, the Agency’s task is to determine whether the petitioner has demonstrated that the Title V permit is not in compliance with all applicable requirements, including NNSR. *See* 42 U.S.C. § 7661(d)(b)(2) (“The Administrator shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable

¹⁶ Petitioners allege that the permit is objectionable because “netting requires that the reductions be tied to a *proposed* modification.” Petition, Attachment 2, at 5. There was no “proposed” increase, Petitioners charge, since the modifications were never presented to LDEQ as requests for new or modified permits. *Id.* While LDEQ’s regulations contemplate that a request to net out NNSR requirements will occur before a proposed emissions increase, the Agency recognizes that it is consistent with 40 C.F.R. § 51.165(a)(1)(vi), for a permitting authority to recognize, *after* a modification, that a source satisfied the netting requirements at the time of the modification where the source makes that demonstration.

[SIP].”). EPA is not bound by the outcome of a state enforcement action, and may pursue alleged violations using federal enforcement authority notwithstanding a State judicial or administrative settlement. *See United States v. Power Engineering Co.*, 303 F.3d 1232 (10th Cir. 2002).

Likewise, for purposes of Title V, it would be inconsistent with Section 505(b)(2) to adopt the interpretation that the Agency is bound by a State settlement agreement that purports to resolve such issues.

In EPA’s experience, most settlements by state enforcement authorities adequately and reasonably resolve the question of whether certain applicable requirements are triggered by a particular set of alleged circumstances at a facility, and thus are appropriate for inclusion in a Title V permit without revision. However, on the present record, we find that this does not constitute such a case. First, the Settlement Agreement does not address whether an increase in VOC emissions occurred as a result of the 1986-1992 production increase projects. *See Settlement Agreement at 2-5* (setting forth the allegations that form the basis of the enforcement action). Thus, contrary to Georgia-Pacific’s assertion, the Settlement Agreement does not clearly address the applicability of NNSR to those modifications with regard to the VOC emissions increase.¹⁷ Second, as discussed above, LDEQ’s stated rationale for finding that NNSR was not an applicable requirement contains significant errors. Under these circumstances, matters allegedly resolved by

¹⁷ Georgia-Pacific cites a letter from Region 6 to LDEQ, issue January 24, 2002, in support of the proposition that EPA already has validated the Settlement Agreement. That letter does not validate the agreement, nor does it indicate that a comprehensive review of the Settlement Agreement was undertaken. Rather, it states only that: “Based on the facts as represented to us, Region 6 believes that the settlement agreement provides enough credits to net out the towel machine project increase.” While this Order is still in agreement with that conclusion (*see* Section IV.C), it is important to note that under Section 505(b)(2), the duty to respond to veto petitions may not be delegated to the Regions, and thus the Region’s letter is not binding in a veto petition response.

a settlement agreement may be addressed during the Title V veto petition process as provided for in Section 505(b)(2) of the Act. Thus, we reject Georgia-Pacific's contention that the veto petition must be denied as an impermissible collateral attack on the Settlement Agreement.

C. Analysis of NSR Applicability to VOC, NO_x, and TRS Emissions from the Towel Machine Project

Petitioners also contend that Georgia-Pacific used invalid ERCs to avoid NSR requirements for increases in emissions of VOC (409.41 tpy), NO_x (267.66 tpy), and TRS (10.87 tpy) from the towel machine project proposed in 2001, authorized in Permit No. PSD-LA-581(M-2).¹⁸

Petition, Att. 2, at 6. Petitioners contend that the reductions claimed are required by Georgia-Pacific's Settlement Agreement with LDEQ, and are thus not voluntary or surplus. Petitioners further contend that, if netting is allowed for the NO_x emissions, the PSD permit should require PSD review if Georgia-Pacific violates the firing rate and lime throughput limits, which maintain NO_x emissions below PSD significance levels.

1. The Netting Analysis for the VOC Emissions Increase

LDEQ found that Georgia-Pacific had sufficient VOC ERCs (748.67 tpy) from the recovery furnace conversion projects and elimination of the BLO_x system to net out the 409.41 tpy increase in VOC emissions from the towel machine project and other VOC emissions over the contemporaneous period, 1998-2002. *See* Title V Permit at 3-4; RTC at 4-6. Petitioners argue that these reductions are the result of an "order" – the Settlement Agreement – and hence are not "voluntary" and thus not "surplus" under Section 605. We disagree with this contention.

¹⁸ Petitioners cite Permit PSD-LA-544(M-2), but their discussion of the towel machine makes clear they intended to cite to 581(M-2).

Emission reductions that occur as a result of a settlement agreement may be voluntary for netting purposes, and thus “surplus,” if the reductions are not required by the agreement. *See In the Matter of Operating Permit, Formaldehyde Plant, Borden Chemical, Inc., Permit No. 2631-V1, Petition No. 6-02-01, at 12-13 (September 30, 2002) (“Borden Order”)* (available at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm>). This is such a case. The Settlement Agreement, having found PSD violations for TRS emissions increases at the recovery furnaces, provided that conversion of the recovery furnaces would result in TRS reductions well beyond BACT improvements. *See Settlement Agreement at 8.* No particular level of VOC reductions was “required” by the Settlement Agreement. Rather, as LDEQ explained, the Agreement offered Georgia-Pacific an incentive to voluntarily enter the Agreement by permitting it to retain 50 percent of the VOC reduction credits. RTC to Title V Permit at 4. After implementing the BEP, Georgia-Pacific had reduced VOC emissions by 1497.33 tpy (50% of which it “donated” to the State) – 410.02 tpy from the recovery furnaces conversion and 1087.31 tpy from the BLOx system elimination. *Settlement Agreement at 8; Part 70 Permit at 4; RTC to Title V Permit at 4.*

However, the determination that the BEP VOC reductions were not required by the Settlement Agreement does not, by itself, resolve the “surplus” issue. As noted above, LDEQ must conduct further proceedings on the Title V permit to determine whether NNSR for VOC emissions is an applicable requirement for the 1986-1992 modifications to these very same emissions units – Recovery Furnaces No.1 and 2. If LDEQ determines that NNSR applies, installation of controls achieving the lowest achievable emission rate (“LAER”) would be legally required for the recovery furnaces. *See 42 U.S.C. § 7403(a)(2).* If the conversion of the recovery

furnaces were in turn legally required as LAER, the reductions would no longer be voluntary or surplus.¹⁹ However, the reductions from elimination of the BLOx units are surplus because, as they are non-modified units, LAER is not applicable. *See supra note 5* (non-modified units not subject to LAER). This point is significant because the ERCs from the BLOx units, if otherwise valid, are sufficient in number to support LDEQ's determination that the VOC emissions from the new towel machine are netted out by those ERCs.

Thus, we address Petitioners' next contention that "Georgia Pacific seeks credit for reductions from emissions levels that violated its permit," referring to the 102.8 tpy level in the SIP and in the 1994 State permit. Petition Attachment 2, at 7. As a threshold matter, Petitioners are incorrect in their assertion that 40 C.F.R. § 51.165(a)(3)(i) sets the appropriate baseline for calculating netting credits. That regulation addresses offsets required for new major sources and major modifications, and is not applicable to netting – that is, the calculation of a source's net emissions increase for purposes of determining whether a proposed modification is major or minor. Rather, as discussed above, the relevant regulation is 40 C.F.R. § 51.165(a)(1)(vi), mirrored at L.A.C. 33:III.504.G, which provides for netting purposes that the "old level of allowable emissions or the old level of actual emissions, whichever is lower" shall be used to calculate creditable emissions reductions. At the time Georgia-Pacific's application for a PSD permit for the towel machine project became complete, October 29, 2001 (*see* Permit PSD-LA-

¹⁹ LAER generally requires the installation of add-on pollution control equipment, but may in some instances be reflected in a change in processes equipment design or operation. LAER is evaluated at the date of final issuance of the NNSR permit; thus, if a source violates NNSR in 1988, and applies for an NNSR permit in 2001, the technology that is LAER in 2001 should be required in the NNSR permit. *See* "Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements," at 4, note 7 (EPA/OECA, Nov. 17, 1998).

581(M-2), at 4), the “old level of allowable emissions” was the level in the state permit, amended on August 21, 2001, which set 2,368.94 tpy as the facility-wide permitted VOC emissions level, a limit which included individual limits for the recovery furnaces and BLOx units. *See also* RTC to Title V Permit at 6 (stating that the revised level of 2,368.94 tpy was the proper level for determining ERCs for different reasons). Thus, in determining whether the old level of allowable emissions or the old level of actual emissions should be used as the baseline, LDEQ appropriately considered the levels revised in the August 2001 permit.

However, setting the baseline by reference to the August 2001 permit as the “old level of allowable emissions” does not end the inquiry, because we must also evaluate Petitioners’ claim that the August 2001 revision to the VOC level is invalid. *See* Petition, Att., 2, at 12. Georgia-Pacific stated that it was necessary to revise the VOC level to, *inter alia*, reflect the more accurate NCASI emissions factors, reflect actual VOC emissions data from the recovery furnaces and the BLOx system, and include VOC emissions from sources that were not included in the 1994 state permit. *See* Georgia-Pacific Presentation at 7 (Sept. 26, 2001). Thus, Georgia-Pacific acknowledges that the VOC level was revised to authorize increased emissions from the recovery furnaces and the BLOx system. With regard to the recovery furnaces, it remains to be determined by LDEQ whether those increased VOC emissions from the recovery furnaces were subject to NNSR requirements. If they were, then the August 2001 permit revision improperly authorizes the VOC emissions increase from the recovery furnaces without an NNSR permit. *See infra*, discussion at Section VI.A.

With regard to the BLOx units, the validity of the VOC emissions level is not subject to the same reevaluation, as the present record indicates that these are non-modified units. The 2001

permit sets a VOC permit level of 426.82 tpy for each of the three BLOx units, for a total of 1280.46 tpy. 2001 Permit, Annual Emissions Rate Table. The actual emissions from these units were lower – 1087.31 tpy for all three units.²⁰ RTC to Title V Permit at 4. Thus, applying L.A.C. 33:III.504.G, a comparison of the new level of allowable emissions – zero – to the lower of the old level of actual or allowable emissions – 1087.31 tpy – yields 1087.31 tpy in ERCs, of which 50 percent (543.65 tpy) have been allocated to Georgia-Pacific under the Settlement Agreement. *Id.*

These remaining ERCs from the BLOx units – 543.65 tpy – are sufficient to net out the 409.21 tpy in VOC emissions from the new towel machine as well as other VOC increases (10.29 tpy) during the contemporaneous period. *See* Title V Permit at 3. Thus, the Title V permit appropriately does not list NNSR as an applicable requirement for the new towel machine project. While the validity of ERCs from the recovery furnaces is in question, they are not necessary to support LDEQ’s VOC netting determination for the towel machine. Therefore, the petition is denied on this issue.

2. The netting analysis for the NOx and TRS emissions

We agree with the netting analysis Georgia-Pacific performed in connection with NOx and TRS emissions, and with LDEQ’s discussion of the issue. Petitioners contend that Georgia-Pacific may not net out of NSR for the NOx and TRS emissions increases associated with the towel machine project on the ground that the NOx and TRS reductions used for netting are not surplus

²⁰ Under L.A.C. 33:III.605 and 607.G, the baseline level for actual emissions is determined by selecting two consecutive years of the five years immediately preceding the date the emission reduction occurred that is determined to be representative of normal source operation. Here, LDEQ chose 1996-1997 as that two-year period. *See* Title V Permit at 4.

because they are required by the Settlement Agreement. We find that LDEQ adequately explained the basis for this determination. *See* RTC to Title V Permit at 2.

The proposed towel machine (No. 6) would increase NOx emissions by 261.93 tpy, which is above the PSD significance level of 40 tpy and the NNSR significance level of 25 tpy.²¹ During the contemporaneous period (i.e., the year of the proposed increase plus the preceding four years), NOx emissions from the Tissue Machine No. 5 Project increased 15.73 tpy. NOx emissions decreases during the same period totaled 271.80 tpy: 129.94 tpy from the Boiler No. 5 modification and 141.86 tpy from the Methane DeNOx project on Boiler No. 1. Accordingly, the net NOx increase during the contemporaneous period was 5.86 tpy, which is less than the PSD and NNSR significance levels. Contrary to Petitioners' contention, neither the Boiler No. 5 modification nor the Boiler No. 1 Methane DeNOx project was required by the Settlement Agreement. Therefore, LDEQ had sufficient basis for its finding that those reductions could be used to net out of NSR for the NOx increases from the towel machine.

The proposed towel machine would increase TRS emissions by 10.98 tpy, which is above the PSD significance level of 10 tpy. RTC to Title V Permit at 2. During the contemporaneous period, NESHAP Subpart S required that Hazardous Organic Pollutants (HAPs) be collected and routed to control devices. Georgia-Pacific installed a collection and control system that not only controls HAPs as required by Subpart S, but also incidentally controls non-HAP TRS, resulting in

²¹ NOx has two separate significance levels – one for PSD and one for NNSR – because it is regulated both as an independent criteria pollutant, and as a precursor to ozone, a separate criteria pollutant. As LDEQ noted, it was not required to analyze NOx for NNSR applicability because it had a NOx waiver under Section 182(f) of the Act, but conducted an analysis because it had proposed rules making NNSR applicable to NOx emissions increases based on an expected rescission of the NOx waiver. *See* PSD Permit for the New Towel Machine at 2-3.

a reduction of 159.80 tpy of non-HAP TRS. Other actions on the Bleach Plant reduced TRS emissions by 0.01 tpy. Therefore, net TRS emissions decreased 147.75 tpy during the contemporaneous period. Contrary to Petitioners' contention, the non-HAP TRS emissions reductions were not required by the Settlement Agreement. Therefore, LDEQ had sufficient basis for its finding that those reductions could be used to net out of PSD review.

3. Permit conditions to maintain NOx emissions below PSD significance levels.

Petitioners further contend that, if netting is allowed for the NOx emissions from the towel machine project, the PSD permit should require PSD review "the first time it violates" the firing rates and lime throughput limits, which maintain NOx emissions below PSD significance levels. *See* Petition, Att. 2, at 11. EPA disagrees. Determining the appropriate response of enforcement authorities to permit violations is committed to those agencies' discretion. Here, for example, enforcement of the existing permit limits may be a reasonable response if the violation is infrequent and known to be minor in nature. *See* NSR Injunctive Relief Guidance at 6, *supra* note 19. We find that the requirement to report exceedances of the limits is sufficiently frequent and specific to enable appropriate enforcement actions to be taken when circumstances warrant. As Petitioners acknowledge, the PSD permit conditions (restated in the Title V Permit, Specific Conditions 5 and 6) require Georgia-Pacific to monitor and record the firing rates and lime throughput limits each month, and record the totals for the preceding twelve months. *See* Title V Permit, Specific Conditions 5 and 6, at 6-7. Additionally, Georgia-Pacific must submit semiannual reports to LDEQ's Office of Environmental Compliance reporting the monthly firing rates and lime throughput for the preceding six months, and the totals for the preceding twelve-month period. *Id.* If the firing rates or lime throughput exceed the limits for any twelve month

period, the violation must be reported to LDEQ. *Id.* Additionally, exceedances of the permit limits are subject to more frequent prompt reporting requirements, within 7 days or on a quarterly basis, as set forth in General Condition R of the Title V Permit. The reporting requirements under these circumstances is sufficient to identify any potential need for PSD review.

V. Analysis of and Response to Petitioners’ Remaining Objections to Emission Reduction Credits

A. General objections to the implementation of the Louisiana emission reduction credit bank

Petitioners allege that the bank of emission reduction credits (“ERCs”) in Louisiana violates federal requirements, and request an audit of the bank and allocation of any valid credits in the bank to facilities with permits based on ERCs that cannot be certified as valid. *See* Petition, Att. No. 2, at 9. Petitioners also request that the application to bank ERCs be denied. *Id.* Att. No. 2, at 8. As a threshold matter, the relief requested by Petitioners is beyond the scope of the relief authorized by Section 505(b) of the Act. The only relief authorized by Section 505(b) is an objection to the Title V permit where a petitioner demonstrates that the permit is not in compliance with the Act.

We construe the Petition to allege that the Georgia-Pacific Title V permit is invalid on the ground that it relies on ERCs from the bank to support the exclusion of NNSR as an applicable requirement. Petitioners argue that the bank fails to meet minimum federal standards by allowing use of previously banked ERCs without considering whether the reductions are “surplus when used” – that is, whether subsequently enacted regulations have made part or all of the reductions mandatory by the time of use.

The State’s SIP-approved banking rule in effect when the permits at issue were processed applies the “surplus” requirement to all ERCs, whether they are used as offsets or netting.²² *See* L.A.C.33:III.607.F.1(a) and 613.B.²³ LDEQ has committed to evaluate the validity of all ERCs at the time of use – the outcome sought by Petitioners. *See* RTC to Title V Permit at 7. While we have concerns with certain aspects of LDEQ’s surplus analysis on the facts presented in this record, LDEQ did indeed follow the practice of evaluating the Georgia-Pacific credits to determine whether they were surplus when used. *See id.* Thus, Petitioners’ categorical objection to any permits relying upon ERCs from the State’s bank is denied.

Next, Petitioners contend that LDEQ has been unable to keep an accurate accounting of its emission reduction credit bank, and thus sources should not be allowed to bank any credits until the bank complies with the Act. Petition, Att. 2, at 9-10. In support of this contention, Petitioner cites to a judicial filing in which EPA acknowledges that it is difficult to access data documenting the amount of valid CAA offset credits in Louisiana’s bank. *See* Petition, Exhibit C at 4 (citing Joint Motion for Voluntary Remand, *LEAN v. U.S. EPA*, 9960570 (5th Cir. Oct. 9, 2000)). As an example of LDEQ’s failure to accurately account for the balances in the Louisiana ERC bank, Petitioners cite to a document LDEQ submitted to the 19th Judicial District Court entitled “VOC

²² Section 173(c)(2) of the Clean Air Act, often cited as the basis for the “surplus when used” requirement, applies only to sources that must obtain offsets as part of their NNSR permits to ensure that reasonable further progress toward attainment of the NAAQS is achieved. *See* 42 U.S.C. 7503(c)(2) (“emission reductions otherwise required by [the Act] shall not be creditable as emission reductions for purposes of any such offset requirement.”); *see generally* Dow Order at 21-24. Thus, to the extent Petitioners rely on this provision to support their claim that the netting credits are invalid, their reliance is misplaced.

²³ Louisiana has since amended its banking regulations to remove the ERC requirement for netting credits, and make its netting requirements equivalent to those at 40 C.F.R. § 51.165(a)(1)(vi). *See* 67 Fed. Reg. 60871, 60874 (Sept. 27, 2002).

Emissions Reductions Credits Banked in the Baton Rouge Ozone Nonattainment Area as of March 13, 2000.” (Petitioners then refer to credits associated with Dow Chemical Company, which appear to be irrelevant to this petition.)

The claims of general accounting difficulties in LDEQ’s administration of the ERC bank do not provide a basis for objecting to the Georgia-Pacific permit at issue. The Agency reviews the validity of ERCs underlying netting determinations and NNSR permits by reviewing individual permits. *See* Dow Order at 24. Here, Petitioners have failed to demonstrate how alleged defects in the State’s bank resulted in a deficiency in the permit. Therefore, EPA denies these claims in the Petition.²⁴

B. Adequacy of public participation

Petitioners contend that public comment on the validity of the netting credits was impaired by Georgia-Pacific’s request to bank a large pool of VOC ERCs without specifying which ERCs would be used for banking and which for netting – apparently referring to the 748.67 tpy from the BEP, and another set of 159.50 tpy, which appears to be a reference to the 159.50 tpy reductions from the NESHAP Subpart S Cluster Rule Compliance Project. *See* Petition, Att. 2, at 8. The issue raised by the Petition is whether the public participation requirements of the NNSR and Title V regulations have been met by Georgia-Pacific’s designation of a larger pool of purported credits

²⁴ By letter dated April 10, 2002, LEAN submitted an administrative petition to audit the Louisiana ERC banking system based on substantially the same “surplus” and mismanagement comments made in this veto petition. The audit petition is currently pending.

(allegedly about 900 tpy) in support of a permit relying on only a subset of that pool (748.67 tpy).²⁵ Under the circumstances presented, public participation requirements were satisfied.

The requirement to provide public participation is set forth in Louisiana's Title V and banking regulations. *See* L.A.C. 33:III.531 (30 day notice and comment period on Title V permits); *id.* § 617 (30 day notice and comment period on LDEQ's preliminary decision to approve ERCs). Specifically, Louisiana law requires that the public notice include, in relevant part: "the activities involved in the permit action; the emissions change involved; [and contact information of an LDEQ employee] from whom additional information may be obtained, including copies of the proposed permit, the application, and all supporting materials." *Id.* § 531.A.3.

In order for the opportunity to comment to be meaningful, under a banking system such as LDEQ's, the permit application should identify the ERCs relied upon by identifying and describing the specific emissions units and records supporting the creditability of the reductions. *See* Dow Order at 18-21. Without such an identification, the public, the State and EPA may be impeded in their ability to determine whether the requirements of the Act have been satisfied.

The public participation requirements were satisfied in this case. Although a large volume of ERCs were at issue – 748.67 from the BEP – the reductions all came from a single emissions

²⁵ Of the 748.67 tpy of VOC credits generated by the BEP and allocated to Georgia-Pacific, LDEQ appears to have used the entire amount in its netting analysis, as is contemplated by the State and federal regulations. *See* Title V Permit at 4; *see* L.A.C. 33:III:613.B ("ERCs that are relied upon for netting are deducted from the balance available for offsets *but not from the balance available for netting (since all emission increases and decreases are included in the contemporaneous period.)*"); *see also* 40 C.F.R. § 51.165(a)(1)(vi)(A). Georgia-Pacific's statement that only some of those ERCs were included in the netting analysis is thus inaccurate, but of no consequence for resolving this veto petition. *See* ERC Application at 1 (Oct. 29, 2001). Although L.A.C. 33:III:613.B suggests that there are now no ERCs available for future use as *offsets* (contrary to balance listed in the ERC certificate), this is a question that is not ripe for resolution in responding to this veto petition.

reduction project at a discrete group of emissions units (two recovery furnaces and the BLOx system). The November 8, 2001, public notice of the Title V permit and towel machine PSD permit expressly identified the recovery furnace conversion and BLOx system elimination as the source of the ERCs. Thus, there was no uncertainty regarding the emission units on which the public should focus its comments, as the Petitioners did. Additionally, Petitioners are incorrect in their assertion that the record is unclear as to whether another group of 150 tpy VOC ERCs from the Cluster Rule Compliance Project was used in the netting analysis or banked. The Title V permit states: “The netting analysis does not include 159.50 [tpy] of non-HAP VOC reductions by the Cluster Rule Compliance Project.” Title V Permit at 4. The Petition is denied as to this issue.

VI. Remaining Issues

A. The baseline revision to the August 2001 permit.

Petitioners object to the Title V permit on the ground that the VOC emissions limit in it is based on the August 2001 permit modification revising the facility-wide emissions baseline from 102.8 tpy to 2266 tpy, which LEAN is challenging in state court on state law grounds (*LEAN v. LDEQ*, No. 488025 (19th Jud. Dist., Sep. 21, 2001)). Petitioners assert that the August 2001 permit revision established a huge increase in the VOC emissions baseline for the facility; that an environmental assessment was not submitted under La. R.S. 30:2018(A); and that LDEQ did not examine social and environmental concerns in accordance with *Save Ourselves v. Louisiana Environmental Control Comm’n*, 452 So. 2d 1152 (La. 1984). The existence of a state court challenge to the August 2001 permit does not provide grounds for objecting to the Title V permit in the absence of a demonstration in the petition that the VOC permit limits incorporated from the August 2001 permit are invalid. Petitioners have failed to make that demonstration, with the

following exception. As discussed above in Section IV.C, whether the August 2001 permit revision properly authorizes the VOC emissions increases from the units modified as part of the 1986-1992 production increase projects depends on whether NNSR is an applicable requirement for those units, an issue that LDEQ is to address with respect to the Title V permit consistent with this Order. The increase in the VOC baseline in 2001 is due, in part, to those emissions increases. Accordingly, the petition is granted in part on this issue, because the record contains insufficient information to uphold the VOC limit for those units. LDEQ must reconsider the appropriate VOC limit for those units based on a valid NNSR applicability determination. The petition is denied on this issue in all other respects.

B. Monitoring of PM emissions from the cyclones and baghouses

Petitioners contend that the monitoring condition for visual inspections of the cyclones and baghouses is insufficient under L.A.C. 33:III.507.H.1, which requires “monitoring sufficient to assure compliance with the terms and conditions of the permit as required by 40 CFR 70.6(a)(3)” and also cites 40 C.F.R. § 70.6(c)(1) and Section 504 of the Act in support of its claim.

Petitioners assert that visual monitoring is insufficient because the pollutant monitored – particulate matter – is “invisible,” and alternatively, that inspections on a weekly basis are too infrequent to monitor compliance. Petition, Att. 2, at 13 (alleging that LDEQ proposed daily inspections in draft permit and changed to weekly without explanation). Section 70.6(a)(3) requires that each permit contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit” where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring. Because the underlying applicable requirement imposes no monitoring requirement

of a periodic nature, we address the adequacy of the monitoring exclusively under 40 C.F.R. § 70.6(a)(3).²⁶

We agree with Petitioners that LDEQ has not explained why visual inspections of cyclones and baghouses constitute monitoring sufficient to assure compliance with particulate matter emission limits. LDEQ did not provide a statement of basis for the Part 70 periodic monitoring requirements in the permit and also did not adequately explain the rationale in its response to comments.

With regard to the cyclones, LDEQ's response to comments stated in conclusory fashion that visible emissions inspections are adequate to assure compliance:

Cyclones are used to control particulate emissions from the paper broke and chip bin. . . . Visible emission check is one of the best methods to demonstrate compliance with particulate emission limits. Even "microscopic" particles present in sufficient quantity to exceed the standard can be monitored through opacity checks. Weekly visual inspections from cyclones are adequate to demonstrate compliance.

RTC to Title V Permit at 11. Supplemental information provided by LDEQ provides a justification for the frequency of the visual inspections,²⁷ but does not answer the threshold issue raised during the comment period of whether the type of monitoring – visual inspection – is

²⁶ The scope of applicability of § 70.6(a)(3) was addressed in *Appalachian Power v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000). The court concluded that, under 40 C.F.R. § 70.6(a)(3)(i)(B), the periodic monitoring rule applies only when the underlying applicable rule requires "no periodic testing, specifies no frequency, or requires only a one-time test." *Id.* at 1028. The court did not address the content of the periodic monitoring rule where it does apply, *i.e.*, the question of what monitoring would be sufficient to "yield reliable data from the relevant time period that are representative of the source's compliance with the permit," as is required by § 70.6(a)(3)(i)(B) and L.A.C. 33:III.507.H.1. This is the issue presented here.

²⁷ LDEQ's justification for the frequency of inspections is that: "Cyclones, by the nature of their operation, are not subject to drastic variations in operating efficiencies. . . . Decreases in operating efficiency are usually gradual over extended periods of time. Weekly inspections track the overall performance of the device . . . [I]f the device is operating within the required limits on a particular day, it is reasonable to conclude it will continue to do so for [the] next seven days." See Email from D. Trahan, LDEQ, to B. Braganza and M. Boydston, EPA, Att. (Apr. 21, 2003).

adequate to demonstrate compliance for this source. *See* Email from D. Trahan, LDEQ, to B. Braganza and M. Boydston, EPA, Att. (Apr. 21, 2003). With regard to baghouses, LDEQ did not provide any response to the comments. While LDEQ's recent submission on monitoring provides additional information about the baghouses and explains the rationale for the frequency of the visual inspections – once during each material transfer (the period for potential of emissions) – it is again silent on whether the type of monitoring is adequate to demonstrate compliance.²⁸ Because the rationale for the selected monitoring is insufficient, the petition is granted on this issue. *See* In the Matter of Ft. James Camas Mill, Petition No. X-1999-1, Permit No. 000025-6, at 9, 27-28 (Dec. 22, 2000) (granting petition where State did not explain why no further testing for cyclones was required beyond visual inspections to satisfy, *inter alia*, the periodic monitoring requirement at 40 C.F.R. § 70.6(a)(3)) (available at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm>). When the permit is reopened, LDEQ will need to include an adequate explanation of the selected monitoring in the statement of basis for the permit.²⁹

Petitioners also allege that Specific Conditions No. 2 and 3 are not practically enforceable because: (1) cleaning and preventive maintenance is not required for cyclones, which are

²⁸ LDEQ states: “The baghouses serve as the collection device for a pneumatic transfer system to load a silo. The transfer system . . . is operated only intermittently when necessary to fill the silo. The potential for emissions is during the periods of material transfer.” *See* Email from D. Trahan, LDEQ, to B. Braganza and M. Boydston, EPA, Att. (Apr. 21, 2003).

²⁹ LDEQ may ultimately be able to justify visual inspections. For example, it may be the case that direct or parametric monitoring devices are not available to accurately measure hourly rates as low as those specified in the Title V permit from these types of control devices – that is, 0.06 pounds per hour (“pph”) and 0.16 pph for the cyclones (Emission Points 65 and 98), and 0.08 pph for each baghouse (Emission Points 71A, 71B, 71C). However, the current record lacks information to make such a determination, and the burden is on LDEQ to provide the rationale and explain it in a sufficient statement of basis, as discussed further below in section VIC.

necessary to maintain their effectiveness; (2) the requirement that “parts shall be replaced as required” for both cyclones and baghouses does not specify the manufacturers’ specification as to when parts should be replaced; and (3) the requirement that the cyclones and baghouses “shall be inspected annually and whenever visual checks indicate an inspection is warranted” does not clearly state under what conditions an inspection “is warranted.” Petitioners do not explain the legal basis of their claim that more specificity is required in the conditions. We interpret Petitioners to argue that without the additional enumerated conditions the permit fails to meet the requirement that it contain “such other conditions as are necessary to assure compliance with applicable requirements.” *See* CAA Section 504(a); 40 C.F.R. § 70.6(c)(1). However, Petitioners have failed to demonstrate that the requirement for annual inspections of these control devices, additional inspections when visual checks warrant, and replacement of parts as required are inadequate on this record (*see* RTC to Title V Permit at 11), and have not shown a clear need for requiring the greater specificity they seek. Accordingly, the Petition is denied on this issue.

C. Statement of Basis

Petitioners have objected that LDEQ failed to provide an adequate statement of basis as required under 40 C.F.R. § 70.7(a)(5) and state law. Petition, Att. 2, at 11-12. Louisiana’s Part 70 regulations, like § 70.7(a)(5), state:

the Permitting Authority shall provide a statement that sets forth the legal and factual basis for draft permit conditions including references to the applicable statutory and regulatory provisions. The permitting authority shall send this statement to any person who requests it and to EPA.

LAC 33:III.531.A.4; *see also* 40 C.F.R § 70.7(a)(5). LDEQ has asserted that the Air Permit Briefing Sheet incorporated into the proposed and final permits along with unspecified elements of the permit conditions are sufficient to satisfy the statement of basis requirement. RTC to Title V Permit at 7.

The statement of basis serves to highlight elements that EPA and the public would find important to review. *Id.* at 1, 4. *See* Letter from S. Rothblatt, EPA Region V, to R. Hodanbosi, OEPA (available at <http://www.epa.gov/region07/programs/artd/air/title5/t5memos/sbguide.pdf>). Thus, it should include a discussion of the decision-making that went into the development of the Title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding issuance of the permit. *Id.* at 1-2. The elements of statement of basis relevant in this proceeding include a discussion of complex applicability determinations (such as the NNSR and PSD applicability determinations incorporated into the Title V permit here); construction and permitting history of the source; compliance history, including inspections, violations, a listing of settlement agreements or consent decrees into which the permittee has entered, and corrective action taken to address noncompliance; and the rationale for the monitoring methods selected. *Id.* at 2, 4; 67 Fed. Reg. 732, 735 (Jan. 7, 2002). As EPA has stated in other orders, the full decision-making record, however, extends beyond the statement of basis:

EPA is mindful that each reviewer will have a different knowledge level of title V and what information should be included in the permit record. While the permitting authority should strive to strike an even balance, there is no obligation on the part of the permitting authority to write the Statement of Basis to satisfy all experience levels from beginner to expert. If a reviewer has questions, it is appropriate to raise them during the public comment period. As a follow-up, the permitting authority must then explain any additional details in its Response to Comments document.

See In the Matter of Doe Run Company Buick Mine and Mill, Petition No. VII-1999-001, at 24-25 (July 31, 2002) (“Doe Run Order”) (available at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm>).

The Air Permit Briefing Sheet contains an adequate explanation for the significant elements of the permit, with the exception of the following: the determination that NNSR was not an

applicable requirement for the 1986-1992 production increase projects, and the rationale for the Part 70 monitoring for the cyclones and baghouses.³⁰ As to these latter issues, the Air Permit Briefing Sheet, even as supplemented by the permit and other documents in the record, fails to adequately explain the basis for the permit terms and conditions, or lack thereof.

While the absence of an adequate statement of basis does not always require an objection to the Title V permit,³¹ the deficiencies in this case raise serious questions as to the validity of the NNSR nonapplicability determination for the 1986-1992 production increase projects and the adequacy of monitoring required under 40 C.F.R. Part 70. Because the lack of an adequate statement of basis on these two issues renders us unable to determine on the present record that the permit is in compliance with the requirements of Part 70 identified above, Petitioners'

³⁰ In contrast, the Air Permit Briefing Sheet does provide an adequate explanation for the NNSR applicability determination regarding the new No. 6 towel machine, including a detailed description of the emissions units and volume of emissions at issue, a discussion of the BEP project creating the netting credits, and a full netting analysis for the contemporaneous period. *See* Title V Permit at 4. Additionally, LDEQ's response to comments provided supplemental information addressing the issues raised by commenters. RTC to Title V Permit at 4-6.

³¹ In exercising the discretion to determine whether an objection is warranted for an alleged procedural flaw such as lack of a statement of basis (in contrast to a deficiency in permit content), EPA considers whether the Petitioner has demonstrated that the alleged flaw resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA Section 505(b)(2) (objection required "if the Petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]."); 40 C.F.R. § 70.8(c)(1). Thus, in the Doe Run Order and other Orders, flaws in the statement of basis did not result in an objection where the record as a whole supported the terms and conditions of the permit. *See* Doe Run Order at 15, 18, 20, 25-26; *In the Matter of Starrett City, Inc.*, Petition Number II-2001-01 at 9-11, (Dec. 16, 2002), *In the Matter of Suffolk County Bergen Point Sewage Treatment Plant*, Petition Number II-2001-03 at 6-8, (Dec. 15, 2002), *In the Matter of Maimonides Medical Center*, Petition Number II-2001-04 at 6-8, (Dec. 16, 2002), *In the Matter of Columbia University*, Petition Number II-2000-08 at 9-12, (Dec. 16, 2002), and *In the Matter of Elmhurst Hospital*, Petition Number II-2000-09 at 9-11, (Dec. 16, 2002) (available at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm>). In contrast, in the Ft. James Camas Mill Order (*supra*), EPA concluded that flaws in the statement of basis resulted in deficiencies in the Title V permit and thus granted the petition.

objection on this issue is granted. Thus, the permit must be reopened to make available to the public an adequate statement of basis that provides the public an opportunity to comment on the Title V permit as to the two issues identified above: applicability of NNSR to the 1986-1992 production increase projects and the adequacy of the monitoring of PM emissions from the cyclones and baghouses. The Title V permit need not be reopened on other issues.

VII. Conclusion

For the reasons set forth above, and pursuant to section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d), I grant in part and deny in part the request to object to the issuance of the Title V permit. LDEQ is ordered to address the deficiencies identified in Sections IV.B and VI of this order.

Date: 5/9/03

/s/
Christine Todd Whitman
Administrator