



CLEAN AIR. HEALTHY COMMUNITIES.

October 27, 2020

VIA ELECTRONIC MAIL

Ronald W. Gore, Chief
ADEM-Air Division
1400 Coliseum Blvd.
Montgomery, AL 36110-2400
rwg@adem.alabama.gov; airmail@adem.alabama.gov

Re: Comments on Draft Permit No. 503-8010

Dear Mr. Gore:

Gasp¹, Mobile Environmental Justice Action Coalition (“MEJAC”), Clean Healthy Educated Safe Sustainable Africatown (“CHESS”) and the Deep South Center for Environmental Justice respectfully submits the following comment on draft permit No. 503-8010. We appreciate the opportunity to make these public comments. Gasp hopes that you will take into consideration our comments and recommendations.

Purpose

Gasp is a health advocacy organization focused on air quality issues in the Greater Birmingham Area. However, Gasp has been actively involved in addressing community concerns involving air quality issues in communities throughout the State. One way in which Gasp seeks to improve air quality and address historic and ongoing air pollution issues is through advocating for a stronger Title V permit for UOP, LLC’s Plant Mobile (hereinafter “UOP Plant Mobile.”). We look forward to the Alabama Department of Environmental Management (hereinafter “ADEM”) considering our comments and making changes to the Draft permit that better protect the health of residents and air quality in Mobile County.

¹Gasp is a non-profit health advocacy organization fighting for healthy air in Alabama. Gasp’s mission is to advance healthy air & environmental justice in the greater-Birmingham area through education, advocacy, and collaboration. <http://www.gaspgroup.org>.

I. The Permit Must Incorporate Enforcement Orders.

A primary purpose of Title V was to increase public involvement in air quality regulation. The Title V program is meant to “make it easier for the public to learn what requirements are being imposed on sources to facilitate public participation in determining what future requirements to impose.” 56 Fed. Reg. 21712, 21713 (May 10, 1991). Applicable requirements of 40 C.F.R. §70.2 include more than just those requirements spelled out in the regulations; applicable requirements also include consent orders resulting from enforcement actions².

A Draft permit must assure compliance with consent decrees, court judgments, administrative orders or other enforcement orders against UOP Plant Mobile. Accordingly, ADEM must incorporate any consent decrees, court judgments, administrative orders, or other enforcement orders into the Final Permit, which are not currently incorporated into the Draft permit.

II. The Statement of Basis is Lacking Key Elements that Are Important for the Public to Review.

A. The Statement of Basis Should Include Additional Information to Fulfill Required Elements of §502 of the CAA.

40 C.F.R. §70.7(a)(5) requires that a permitting authority provide “a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.” Additionally, “a statement of basis must describe the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that U.S. EPA and the public would find important to review.” *In the Matter of Onyx Environmental Services*, Order on Petition No. V-2005-1 (February 1, 2006).

Certain factual information should be included in the Statement of Basis that currently is absent:

1. Attainment status of the area in which UOP Plant Mobile operates;
2. Construction and permitting history of UOP Plant Mobile;
3. An adequate summary of what the facility is and what it produces. Currently, even at the emissions unit level, it is not clear what each unit does in its relation to the production of chemicals;
4. An explanation of the plantwide applicability limits (hereinafter “PALs”) and what PALs exist and to which emissions units they apply; and

² *In Re Request for a Determination that the New York State Department of Environmental Conservation is Inadequately Administering New York’s Title V Program*, at 13-14 (April 13, 1999) available at <https://www.epa.gov/sites/production/files/2015-08/documents/ny1999.pdf>

5. A description of how specific emission points within certain emissions units will meet more stringent limits to avoid PSD review. More information is needed than merely asserting “the facility has committed to more stringent limits.”

In addition to suggestions provided by the *Onyx Order*, EPA Region 9 Air Division provided a list of air quality factors to serve as guidance to California permitting authorities when developing a statement of basis³. In addition to the updates provided in this section, it would be prudent, and in line with the *Onyx Order* guidance, to also include the following sections upfront:

1. Where Compliance Assurance Monitoring (hereinafter “CAM”) is addressed in General Condition 34 of the Draft Permit, the Statement of Basis should clearly describe the CAM requirements applicable to UOP Plant Mobile;
2. A list of any previous air permits for the source;
3. Any compliance schedules; and
4. The Statement of Basis should mention that the permit contains a permit shield.

ADEM should make these changes in order to fulfill their duty to ascertain that the Permit Analysis highlights elements EPA and the public would find important to review.

B. The Statement of Basis Should Include a Section for Compliance History.

EPA explained to the Ohio Environmental Protection Agency that certain factual information should be included that is important for the public to be aware of. Specifically, “compliance history including inspections, any violations noticed, a listing of consent decrees into which the permittee has entered and corrective action(s) taken to address noncompliance⁴.”

The current Permit Analysis does not mention compliance history. Through a review of the files publicly available on ADEM’s e-File, Gasp discovered no Notices of Violation (“NOV”) or similar enforcement documents. If no such compliance issues exist, ADEM should simply include a section in the Statement of Basis stating so.

Additionally, it would be equally helpful to include in this section any times in which UOP Plant Mobile could not certify compliance. Specifically, this section should address whether UOP Plant Mobile is subject to a compliance schedule. For the foregoing reasons, and in order to adequately highlight elements that U.S. EPA and the public would find important to

³ See Memorandum from Stephen D. Page on Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits to Regional Air Division Directors, Regions 1-10 (August 30, 2014) available at <https://www.epa.gov/sites/production/files/2015-08/documents/20140430.pdf>.

⁴ Memorandum from Stephen D. Page on Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits to Regional Air Division Directors, Regions 1-10 (August 30, 2014) available at <https://www.epa.gov/sites/production/files/2015-08/documents/20140430.pdf> (quoting Letter from Stephen Rothblatt, EPA Region 5 to Robert Hodanbosi, Ohio EPA, December 20, 2001 available at <http://www.epa.gov/region07/air/title5/t5memos/sbguide.pdf>)

review, ADEM should include a section about compliance history in UOP Plant Mobile Statement of Basis.

III. Many Applicable Requirements are Approved by the Director, and Without the Record of Such Approval by the Director Addressed Clearly in the Permit Record and/or the SOB, Many Applicable Requirements in the Draft Permit are Not Sufficiently Specific and Meaningless to Commenters.

Monitoring requirements must “assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.”⁵ EPA’s Part 70 monitoring rules are designed to satisfy the statutory requirement of the CAA that “[e]ach permit issued under [Title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.”⁶

Permitting authorities must take three steps to satisfy the monitoring requirements in the Part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that Title V permits contain all applicable monitoring requirements. Second, if an applicable CAA requirement contains no periodic monitoring, permitting authorities must add “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”⁷ Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance.⁸ In all cases, the rationale for the selected monitoring requirements must be clear and documented in the permit record.⁹

In addition to setting forth adequate monitoring requirements for emission limits, the permitting authority is required to set forth its rationale in a statement of basis describing why the chosen monitoring regime is adequate to assure compliance with the emissions limit.¹⁰

The determination of what monitoring is adequate is a context-specific exercise.¹¹ EPA has described the permit writer’s monitoring analysis as beginning by “assessing whether the monitoring required in the applicable requirement is sufficient to assure compliance with the permit terms and conditions.”¹² Appropriate factors for the permit writer to consider include: (1) variability of emissions from the unit in question; (2) likelihood of violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission

⁵ 40 C.F.R. § 70.6(a)(3)(i)(B); ADEM Admin. Code R. 335-3-16-.05(a).

⁶ 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(3)(i)(A)-(B), (c)(1).

⁷ 40 C.F.R. § 70.6(a)(3)(i)(B).

⁸ 40 C.F.R. § 70.6(c)(1).

⁹ See 40 C.F.R. § 70.7(a)(5).

¹⁰ 40 C.F.R. § 70.7(a)(5); *In re United States Steel Corporation – Granite City Works*, Petition No. V-2009-03, Order Responding to Petitioner’s Request that the Administrator Object to Issuance of State Operating Permit, at 6-7 (hereinafter “U.S. Steel”) at 7

¹¹ *U.S. Steel* at 7.

¹² *Id.*

unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.¹³

Although not an exhaustive list of every instance in which the Director's Discretion is employed, below is a list in which the Director of ADEM may approve an alternative:

- Monitoring: The draft permit cites ADEM Admin. Code r. 335-3-14-.04 in the Emission Monitoring section for every emissions unit except for Permit No. 023 – Emergency Engines¹⁴; and
- PAL MRR requirements¹⁵.

Compounding the deficiencies in the SOB discussed in Section II. above, ADEM did not fulfill its obligations under 40 C.F.R § 70.7(a)(5) where no rationale for its monitoring regime for UOP Plant Mobile is established. Further exacerbating this serious deficiency is the fact that the rationale for the selected monitoring requirements are certainly not clear and documented in the permit record. In fact, the permit record does not contain the original air permit that likely established such rationale. Further, the permit record, as it exists currently available to Commenters and the public, is virtually silent on these critical analyses. As such, ADEM must supplement its SOB and permit record and re-notice the Draft Permit for public comment.

IV. ADEM Has Not Demonstrated UOP Plant Mobile Is Entitled to a Permit Shield.

Title V permits are valid for no more than five years, at which point they must be renewed to incorporate any new regulatory requirements that have become applicable.¹⁶ For expiring permits, ADEM requires that permittees who wish to continue their operations submit a renewal application 180 days before a permit's expiration date.¹⁷ ADEM must act upon a permit renewal application within 18 months of receiving a complete application.¹⁸ "Unless the Department notifies the permit applicant in writing that the application is not complete, the application is considered complete 60 days after receipt by the Department."¹⁹

As discussed below, there is no evaluation by the State of whether the source is in compliance and whether a compliance schedule is needed. General Condition 33 of the Draft Permit contains a "Permit Shield."²⁰ The State lacks authority to include the shield in this permit because the renewal permit cannot shield UOP Plant Mobile from enforcement actions alleging violations of any applicable requirements (including orders and consent decrees) that occurred before, or at the time of, permit issuance.²¹

¹³ *Id.*

¹⁴ For PM monitoring, Ala. Admin Code r. 335-3-14-.04(k) allows for Director's discretion of PM10 monitoring methods. Every EU except 023 includes this Condition citing back to Director approval of a monitoring method.

¹⁵ See also Section IX.B. of this Comment

¹⁶ 42 U.S.C. § 7661a(b)(5)(B); 42 U.S.C. § 7661a(b)(9).

¹⁷ Ala. Admin. Code § 335-3-16-.04(3).

¹⁸ Ala. Admin. Code r. 335-3-16-.12(2)(a); Ala. Admin. Code r. 335-3-16-.12(1)(d).

¹⁹ Ala. Admin. Code 335-3-16-.04(5).

²⁰ ADEM, Draft Permit No. 503-8010 for UOP Plant Mobile (June 30, 2020) at 0-10.

²¹ 56 Fed. Reg. 32250, 32255, 32276-8 (July, 21 1992).

Furthermore, the SOB fails to disclose when the initial renewal application was submitted (the SOB says only “UOP LLC Mobile Plant (UOP) has applied for renewal of Major Source Operating Permit No. 503-8010.”²²). Therefore, it is unclear from the SOB whether UOP submitted a timely renewal application. Additionally, the SOB fails to disclose whether the State determined that the initial renewal application was complete or whether UOP later lost the completeness determination when it failed to timely respond to the State’s subsequent requests for information²³. A source subject to Title V must submit a timely and complete renewal application, or it will not be protected by a permit application shield.

Additionally, according to the State’s online records, which are what the public is referred to in reviewing this permit, over the past ten years the State only conducted a handful of onsite inspections.

- **Inspection May 10, 2019²⁴:** The visible emissions records were not entirely accurate as one emission point was missing from the visible emission observation form and two other emission points that were no longer in operation were still on the form.
- **Inspection September 26, 2018²⁵:** No problems noted with emission points or emission records. No visible emissions were observed during this inspection. UOP applied to replace two unpermitted storage tanks and were allowed to replace them without any change to their permit. New pellet size separation equipment to assist with Molecular Sieve Production Line 15 was installed.
- **Inspection April 13, 2017²⁶:** No problems noted with emission points or emission records. UOP applied to replace two unpermitted storage tanks and were allowed to replace them without any change to their permit.
- **Inspection October 10, 2016²⁷:** No problems were noted during this inspection.
- **Inspection May 14, 2015²⁸:** Two of the visible emission points were difficult to identify. UOP was told to clearly label them to make them easier to identify. A strong ammonia smell was detected on the roof of one of the buildings but was not detectable offsite. The daily visible emission records were missing for some of the emission points. This is being investigated further.

²² Statement of Basis for UOP LLC Mobile, MSOP No. 503-8010, at 1.

²³ We do know from a review of ADEM’s e-file that the initial renewal application was submitted May 2017 and an addendum was submitted almost two years later (April 2019).

²⁴ Letter from Stephanie Childress, to Samantha Sims (May 10, 2019) (on file with author).

²⁵ Letter from Stephanie Childress, to Samantha Sims (Sept. 26, 2018) (on file with author).

²⁶ Letter from Holly Yeargen, to Wes Thornhill (Apr. 13, 2017) (on file with author).

²⁷ Letter from Holly Yeargen, to Wes Thornhill (Oct. 10, 2016) (on file with author).

²⁸ Letter from Coralie Eddins, to Wes Thornhill (May 14., 2015) (on file with author).

- **Inspection March 12, 2015²⁹**: The automated solids equipment for emissions associated with EP140 were in full operation, but the Temporary Authorization to Operate (from 11-14-14) only applied to the equipment associated with EP136 and EP137. No other problems were found during this inspection.
- **Inspection September 30, 2014³⁰**: A significant amount of dust was observed on the first floor of Building 14. This was due to the failure of the Pulse Air System that caused pluggage in the Line 7 Recycle Transfer Line. Several dates were missing from the Visible Emissions Observations records. There were 3 holes in emission point 97.
- **Inspection December 20, 2012³¹**: No problems were noted during this inspection.
- **Inspection June 7, 2012³²**: A hole was found in the Line 10 Wet Scrubber Exhaust Vent. This vent had previously been found to have a hole which had been repaired. Visible emissions were found from Emission point 83. Fugitive emissions from the Feed Hopper in Line 10 were observed with no apparent explanation.
- **Inspection August 10, 2011³³**: A yellow plume was observed from emission point 105. The equipment was shut down immediately and it took 45 minutes for the plume to dissipate. Visible emissions were coming from three unpermitted emission points. A strong ammonia smell was detected on the top of one of the buildings but was not detected off site. Some of the emission points were difficult to find and needed to be properly labeled.
- **Inspection August 17, 2010³⁴**: No problems were noted during this inspection.
- **Inspection May 28, 2010³⁵**: No visible emissions were observed from the emission points. Authorization to operate was granted to the scrubber and the baghouse.
- **Inspection September 8, 2009³⁶**: No problems were noted during this inspection.

The SOB fails to explain how, based on merely thirteen inspections, several of which were unable to observe emission units of significant concern, the State has sufficient information to grant a permit shield over the entire plant. As such, UOP Plant Mobile should not be granted a permit shield and General Condition 33 must be removed in its entirety.

²⁹ Letter from Holly Yeargen, to Wes Thornhill (Mar. 12, 2015) (on file with author).

³⁰ Letter from Holly Yeargen, to Wes Thornhill (Sept. 30, 2014) (on file with author).

³¹ Letter from Jeremy Weant, to Wes Thornhill (Dec. 20, 2012) (on file with author).

³² Letter from Jeremy Weant, to Wes Thornhill (June 7, 2012) (on file with author).

³³ Letter from Jeremy Weant, to Wes Thornhill (Aug. 10, 2011) (on file with author).

³⁴ Letter from James H. Adams, to Wes Thornhill (Aug. 17, 2010) (on file with author).

³⁵ Letter from James H. Adams, to Wes Thornhill (May 28, 2010) (on file with author).

³⁶ Letter from James H. Adams, to Wes Thornhill (Sept. 8, 2009) (on file with author).

V. Certain General Conditions Are Missing From or Misstated in the Draft Permit, Which Violates Federal Requirements and Thus Must be Revised.

The Clean Air Act (“CAA”) directs EPA to promulgate regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These regulations are published in 40 CFR Part 70. 40 CFR §70.5(c) explains that though state and local permitting authorities may exercise discretion in developing permit applications forms, the forms and attachment must include certain information. 40 C.F.R. §70.6 enumerates standard permit requirements.

A thorough review of Draft Permit No. 503-8010 highlighted several missing or misstated general permit conditions. Each Title V permit must include and assure compliance with all federally enforceable³⁷ applicable requirements.³⁸ Where a general permit condition, required by 40 C.F.R. §70.6, is missing the draft permit violates federal requirements and must be revised. Additionally, where a general permit condition varies significantly from Part 70, that permit condition also violates federal requirements. Below is a comprehensive list and discussion of all missing or misstated general permit conditions that violate federal requirements and are due to be revised.

A. The Draft Permit Does Not Contain a Condition for a Claim of Confidential Information.⁴

40 C.F.R. §70.6(a)(6)(v) specifies that “for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.” This language is neither its own condition in the General Permit Conditions, nor is it incorporated into another condition. ADEM must revise the permit to comply with federal requirements by including a confidential information condition, or in the alternative, incorporating the requirements of §70.6(a)(6)(v) into another, applicable condition relevant to providing information.

In the past, ADEM has responded to arguments raised by Gasp on this issue that the permittee has not claimed any confidential information, thus such a condition is not necessary. UOP Plant Mobile in its permit application mentions the “confidential process flow diagrams.”³⁹

³⁷The term “federally enforceable” is defined in three places in the Federal Register, where all three definitions are identical.

Federally enforceable means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 C.F.R. parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 C.F.R. 52.21 or under regulations approved pursuant to 40 C.F.R. part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program

³⁸ 42 U.S.C. §7661c(a); 40 C.F.R. §70.6(a) and (c).

³⁹] UOP Plant Mobile, “Addendum to Title V Operating Permit Application – UOP, LLC Mobile, AL Plant,” (April 2019) at 3. The Addendum to the original permit application submitted in May 2017 included updates where UOP Plant Mobile omitted nickel-compound air emissions. The initial permit

Accordingly, Gasp wants to assert that the source has, in fact, claimed in both permit applications that the process flow diagrams are confidential business information. As such, ADEM must include a condition for confidential information in the permit.

B. As written, General Condition 12 is Incomplete and Thus Must be Revised

40 C.F.R. § 70.6(a)(1) requires that Title V permits contain “[e]mission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirement at the time of permit issuance.” Part 70 of the CAA requires permitted facilities to certify compliance with all permit conditions under the CAA and relevant SIP, not only those provisions required for monitoring.⁴⁰ Permits must include compliance schedules to remedy any past and current violations.⁴¹

General Condition 12 addresses Compliance Certification⁴². 40 C.F.R. §70.6(c)(5) sets forth requirements for compliance certification with terms and conditions of the permit and stipulates what shall be included in the permit. ADEM also stipulates requirements for compliance certifications in Ala. Admin. Code r. 335-3-16-.07(e). Generally, a permit must not be ambiguous on the point that compliance certification covers every term and condition of the permit.

First, the text proceeding (a) and (b) in General Condition 12 is incomplete. To fulfill the requirements of 40 C.F.R. 70.6 (c)(5), the first sentence of General Condition 12 must be revised to read “A compliance certification with terms and conditions contained in the permit, including emissions limitations, standards and work practices shall be submitted yearly [...]” By adding in the underlined language, the deficiency would be corrected.

Second, General Condition 12(a)(1) should read that “The identification of every term or condition of this permit that is the basis for certification.” Without the addition of the underlined language, as written, General Condition 12 is not sufficiently specific and is ambiguous that certification covers every term and condition of the permit. By adding in the word “every” this deficiency would be corrected.

Next, additional language must be added to General Condition 12(a). 40 C.F.R. 70.6(c)(5)(ii) includes the requirement that in regards to compliance in the part 70 permit must include “a means for monitoring the compliance of the source with its emissions limitations, standards and work practices.” This language must be included in General Condition 12.

Finally, General Condition 12 must require that the source identify and take into account each deviation from compliance with permit terms, and identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or

application in Section 2.20 also says “these process flow diagrams are considered confidential business information by the UOP Mobile Plant”. Title V Operating Permit Application – UOP Plant Mobile Mobile, AL Plant,” (May 2017) at 15.

⁴⁰ 40 C.F.R. § 70.6(c)(6).

⁴¹ *Id.* § 70.6(c)(3); Ala. Admin. Code r. 335-3-1-.06.

⁴² ADEM, Draft Permit No. 503-8010 for UOP Plant Mobile (June 30, 2020) at 0-3.

exceedance, as defined in 40 C.F.R. § 64, occurred.⁴³ The compliance certification in the Draft Permit does not require UOP Plant Mobile to include each deviation or possible exceptions and must be amended to include these certifications.

C. The Fugitive Dust Provision in General Condition No. 18 is Inadequate and Must be Revised to be Source-Specific.

General Condition No. 18 addresses fugitive dust⁴⁴. The fugitive dust provision references Ala. Admin Code r. 335-3-4-.02[5]. “Fugitive Dust” is defined as “solid air-borne particulate matter emitted from any source other than a flue or stack⁴⁵.” Ala. Admin Code r. 335-3-1-.02(ff). ADEM rules also provide that “[n]o person shall cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished without taking *reasonable precautions* to prevent particulate matter from becoming airborne⁴⁶.” Such reasonable precautions shall include, but not be limited to (a)-(c) in 335-3-4-.02(1). “When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance or to violate any rule or regulation, the Director may order that the building or equipment in which processing, handling and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air⁴⁷.”

In 2014, when EPA was petitioned to object to certain Title V permits’ vague terms relating to fugitive dust control requirements⁴⁸, EPA granted such request for an objection. EPA agreed with the Petitioners that the condition in each permit requiring “reasonable precautions” is vague and unenforceable. “While the SIP regulation identifies various fugitive dust control methods that may constitute ‘reasonable precautions’ *it does not mandate the use of any of those methods*. For a title V permit to assure a particular source’s compliance with this requirement, consistent with 40 C.F.R. § 70.6(a)(1) [...] the permit terms must specify the emissions limitations and standards, including those operational requirements and limitations that assure

⁴³ 40 C.F.R. 70.6(c)(5)(iii)(C); Ala. Admin. Code r. 335-3-16-.07(e).

⁴⁴ ADEM, Draft Permit No. 503-8010 for UOP, LLC (June 30, 2020) at 0-6.

⁴⁵ Ala. Admin Code r. 335-3-4-.02(1).

⁴⁶ ADEM, Draft Permit No. 503-8010 for UOP, LLC (June 30, 2020) at 0-6.

⁴⁷ Ala. Admin Code r. 335-3-4-0.2(3). (emphasis added).

⁴⁸ In 2012, GreenLaw on behalf of Sierra Club and other environmental organizations raised issues in five related petitions. The petitions sought the EPA’s objection to operating permits issued by Georgia Environmental Protection Division (Georgia EPD) to Georgia Power/Southern Company for five existing coal-fired power plants. Specifically, EPA granted the Petitioners’ request for an objection to the permits based on deficiencies in the permit conditions implementing the fugitive dust control requirements of Georgia SIP Rule 391-3-1-.02(2)(n). Order Granting in Part and Denying in Part Five Petitions for Objections to Permits, Petitions Nos. IV-2012-1-IV-2012-2, IV-2012-3, IV-2012-4 and IV-2012-5 (Apr. 14, 2014) available at https://www.epa.gov/sites/production/files/2015-08/documents/ga_power_plants_response2012.pdf.

compliance with the applicable requirement in Georgia[‘s] SIP⁴⁹.” EPA then directed Georgia Environmental Protection Division (Georgia EPD) to include in Title V permits emissions limitations and standards, including operational requirements and limitations to assure compliance with Georgia’s SIP⁵⁰. Further, EPA also ordered that Georgia EPD must provide a rationale in the permit record explaining why the permit conditions are sufficient to assure compliance with Georgia’s SIP⁵¹.

The Draft Permit for UOP Plant Mobile contains similar, vague and unenforceable terms. General Condition 18. Simply states that “reasonable precautions to prevent fugitive dust shall be taken so that provisions of the Department’s rules and regulations shall not be violated⁵².” General Condition 18 fails to provide emissions limitations and standards and lacks the specificity required to make the Fugitive Dust provision federally enforceable.

“A permitting authority cannot simply choose to omit an applicable SIP requirement from a source's title V permit on the basis that the requirement is too vague. Rather, the permitting authority must include such additional permit terms and conditions in the source's title V permit as needed to assure the source's compliance with the applicable requirement⁵³.” Accordingly, ADEM need not remove the language in General Condition 18. However, ADEM must include additional permit terms for the “reasonable precautions to prevent fugitive dust.” For example, wet suppression techniques such as those mentioned in Ala. Admin Code r. 335-3-4-0.2(1)(a) and (b), which should specify the required frequency, quantity and duration of dust suppression techniques should be added to General Condition 18⁵⁴. As such, the Draft Permit must be revised to include more details, specific and enforceable measures, including recordkeeping and reporting requirements that assure compliance with Alabama’s SIP and ensure federal enforceability of the permit.

VI. UOP Plant Mobile’s Use of AP-42 Emission Factors Results in Underestimated Potential to Emit for Multiple EUs.

UOP Plant Mobile’s April 2017 permit application relies routinely on underestimated, and often inappropriate emissions factors for assessing the sources potential to emit (hereinafter “PTE”). Accurate PTE estimates are critical for determining the complex’s overall emissions profile and impacts on ambient air quality.

⁴⁹ Order Granting in Part and Denying in Part Five Petitions for Objections to Permits, Petitions Nos. IV-2012-1-IV-2012-2, IV-2012-3, IV-2012-4 and IV-2012-5, 19 (Apr. 14, 2014) *available at* https://www.epa.gov/sites/production/files/2015-08/documents/ga_power_plants_response2012.pdf

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² ADEM, Draft Permit No. 503-8010 for UOP, LLC (June 30, 2020) at 0-6.

⁵³ Order Denying Petitions for Objections to Permits, Petitions Nos. IV-2014-5 and IV-2014-6 (July 15, 2016) at *available at* https://www.epa.gov/sites/production/files/2016-07/documents/gasp_response2014.pdf.

⁵⁴ In fact, EPA agreed with this same argument presented by Petitioners when granting their Petition to Object. Order Granting in Part and Denying in Part Five Petitions for Objections to Permits, Petitions Nos. IV-2012-1-IV-2012-2, IV-2012-3, IV-2012-4 and IV-2012-5, 18(Apr. 14, 2014) *available at* https://www.epa.gov/sites/production/files/2015-08/documents/ga_power_plants_response2012.pdf.

The EPA document commonly referenced as AP-42 has been widely used and cited as the basis for many of the PTE estimates throughout UOP Plant Mobile's April 2017 permit application. Almost every emissions unit at the source utilizes AP-42 to establish its PTE.⁵⁵

As the U.S. EPA itself explicitly acknowledges, there are many flaws and short-comings inherent to its use of AP-42; the EPA accordingly cautions users to take those flaws into account. These caveats, however, are neither recognized nor respected in FG LA's applications or in DEQ's analysis record, and, as a result, the PTE emissions estimates – the critical foundation of the proposed permits -- are deeply flawed. The persistent bias introduced by this inappropriate reliance on the AP-42 is that resulting emissions projected are major underestimates.

The primary limitation on the use of AP-42 for PTE calculations is that its factors are designed only to approximate average emission rates, not the maximum emission rate necessary to appropriately calculate PTE for permitting purposes. As stated by U.S. EPA:

“In most cases, these factors are simply averages of all available data of acceptable quality, and are generally assumed to be representative of long-term averages for all facilities in the source category (i.e., a population average).”⁵⁶

“Emission factor ratings in AP-42...provide indications of the robustness, or appropriateness, of emission factors for estimating average emissions for a source activity.”⁵⁷

“Emission factors in AP-42 are neither EPA-recommended emission limits . . . nor standards. . . Use of these factors as source-specific permit limits and/or as emission regulation compliance determination is not recommended by EPA. Because emission factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor and the other half will have emission rates less than the factor.”⁵⁸

And, additionally:

⁵⁵ Title V Operating Permit Application – UOP Plant Mobile, Mobile, AL Plant," (May 2017). EP001 *UOP Permit Application* at 529; EP014 *UOP Permit Application* at 536; EP016 *UOP Permit Application* at 540; EP030 *UOP Permit Application* at 552; EP032 *UOP Permit Application* at 554; EP037 *UOP Permit Application* at 556; EP048 *UOP Permit Application* at 563; EP053 *UOP Permit Application* at 568; EP056 *UOP Permit Application* at 573; EP058 *UOP Permit Application* at 575; EP062 *UOP Permit Application* at 577; EP 066-67 *UOP Permit Application* at 581; EP074 *UOP Permit Application* at 588; EP078 *UOP Permit Application* at 591; EP081 *UOP Permit Application* at 595; EP082 *UOP Permit Application* at 597; EP083 *UOP Permit Application* at 600; EP087 *UOP Permit Application* at 604; EP090-93 *UOP Permit Application* at 611; EP100 *UOP Permit Application* at 621; EP101 *UOP Permit Application* at 623; EP107 *UOP Permit Application* at 634; EP108 *UOP Permit Application* at 636; EP111 *UOP Permit Application* at 634; EP112 *UOP Permit Application* at 643.

⁵⁶ AP-42 Introduction, p. 1. Available at <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors> (emphasis added)

⁵⁷ *Id.* at 2 (emphasis added).

⁵⁸ *Id.* at 2 (emphasis added).

“Average emissions differ significantly from source to source and, therefore, emission factors frequently may not provide adequate estimates of the average emissions for a specific source. The extent of between-source variability that exists, even among similar individual sources, can be large depending on process, control system, and pollutant. . . As a result, some emission factors are derived from tests that may vary by an order of magnitude or more. Even when the major process variables are accounted for, the emission factors developed may be the result of averaging source tests that differ by factors of five or more.”⁵⁹

Based on the above, it is clear that AP-42 emission factors are inappropriate for developing PTE estimates, since PTE, per the definition provided earlier, is supposed to represent the “potential” or high-end emission estimate value. In contrast, AP-42 emission factors represent “average” and not maximum emission rates.

Accordingly, in each instance that the applicant’s PTE calculations rely on AP-42 emission factors – such as in the examples listed in Footnote 55– the resulting PTE emissions are unquestionably underestimated. This deficiency affects the entire Draft Permit, where PTE estimates are a key input in the modeling impacts analysis. ADEM should require UOP Plant Mobile to redo all PTE emissions estimates that rely on AP-42 factors, instead using data that more accurately reflect the source’s maximum emissions rate. This can include modifying AP-42 based emission factors or methods.

VII. The Draft Permit Does Not Include Monitoring Sufficient to Ensure Compliance.

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 section 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. . .”⁶⁰

42 U.S.C. 661c.(c) states that each Title V permit “issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b) of this section. A draft permit *must include all applicable emission limits and standards and must also include all monitoring, reporting and recordkeeping requirements to assure compliance with those standards*.”⁶¹

⁵⁹ *Id.* at 3 (emphasis added).

⁶⁰ See 40 CFR § 70.1(b); CAA section 504(a).

⁶¹ See CAA §§ 502(a) and 504(a), 42 U.S.C. §§7661a(a) and 7661c(a) and 57 Fed. Reg. 32,250, 32,251 (July 21,1992) (EPA final action promulgating the part 70 rule) (emphasis added).

The Draft Permit does not contain sufficient monitoring requirements to assure compliance with the terms and conditions of the permit. In some instances, the monitoring requirements for specific emissions units themselves are insufficient. For other emissions units, monitoring requirements provide conditions citing to federal requirements that offer options, without identifying which option UOP Plant Mobile is choosing to comply.

A. Where the Draft Permit Requires Only Visual Observations as CAM Compliance for Multiple EUs⁶², the Monitoring is Inadequate to Assure Compliance with the Opacity Limits Therein.

The Draft Permit's opacity monitoring requirements are inadequate to assure compliance with the opacity limits therein because monitoring is too infrequent, uses inadequate methods, and is inconsistent with 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c)(1) and Ala. Admin Code r. 335-3-14-.04. Most of the emission limits and standards applicable to emission units at Title V sources include adequate monitoring to show that the units meet the limits and standards. For those requirements that do not include monitoring, or *where the monitoring is not sufficient to assure compliance, the federal operating permit must include such monitoring for the emission units affected.*⁶³

The *EME Homer* Order stands for the idea that the permit record must explain how the alternative monitoring that was selected assures compliance with the terms and conditions of the permit.⁶⁴ Further, the permitting agency must explain how visual observations (in lieu of monitoring) relates to an opacity limit that must be met at all times. ADEM has made no such showing, neither in the Draft Permit nor in any other record within the permit record. As such, ADEM must re-notice the Draft Permit to correct this deficiency with sufficient analysis that the monitoring assures compliance.

B. Many Conditions for Specific Emissions Units (hereinafter "EUs") Contain Severe Deficiencies in That They Merely Cite to Applicable Requirements Whole Cloth, Which Contain Different Options, Methods or Standards for Compliance That are Not Specifically Applied to the Source.

Throughout the Draft Permit, for all EUs except 023, although the Condition itself provides some specific requirements, the underlying regulation cited is ADEM Admin. Code r. 335-3-14-.04. Starting with the particulate matter (hereinafter "PM") emission rate and opacity

⁶² ADEM, Draft Permit No. 503-8010 for UOP, LLC (June 30, 2020): • EU012: Emissions Monitoring 2: only visible emissions as CAM compliance at 9-4; EU016: Emissions Monitoring 2: only visible emissions as CAM compliance at 12-3; EU020 Emissions Monitoring 1: only visible emissions as CAM compliance at 16-3.

⁶³ *In the Matter of EME Homer City Generation LP Indiana County, Pennsylvania*, EPA Order on Petition Petition Numbers III-2012-06, III-2012-07, and III-2013-02 (July 30, 2014) at 47.

⁶⁴ *Id.* at 47.

standard, the Conditions themselves appear to be tailored to the EUs⁶⁵. However, the regulations cited are ADEM Admin. Code r. 335-3-14-.04 in its entirety, which contains 58 pages of subparts. Throughout 335-3-14-.04 requirements are subject to Director's Discretion: "(k) At the discretion of the Director, the requirements for air quality monitoring of PM10 in subparagraphs (12)(a)1. through 4. of this Rule may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this Rule on or before June 1, 1988 and the Director subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring PM10 in subparagraphs (12)(a)1. through 4."⁶⁶

The Emissions Monitoring requirements for NOX⁶⁷ and SO2⁶⁸ also contain some specificity in the Conditions themselves, but also broadly cite to ADEM Admin. Code r. 335-3-14-.04. Taking all of these Conditions and the underlying requirement of Ala. Admin. Code r. 335-3-14-.04 together with the Director's Discretion for air quality monitoring, it is clear that at some point UOP Plant Mobile had approved by the Director the monitoring requirements recited in the specific conditions. However, the Draft Permit does not cite to, nor does it include in the Draft Permit anywhere else a record of the Director's discretion for which monitoring requirements contained in the subparts of 335-3-14-.04 apply to the source. Further, a thorough review of the files publicly available on ADEM's e-file also do not readily produce a record of the Director's discretion for which monitoring requirements apply to UOP Plant Mobile under 335-3-14-.04. As written, the Draft Permit does not include all applicable emission limits and standards and must also include all monitoring, reporting and recordkeeping requirements to assure compliance with those standards without a record of the Director's discretion for which monitoring requirements apply to each Condition referring to ADEM Admin. Code r. 335-3-14-.04. As such, the Draft Permit and permit record are deficient and impede the public's ability to determine the applicability of the requirements to UOP Plant Mobile and require ADEM to revise these sections and re-notice the Draft Permit.

VIII. Emissions Unit Specific Arguments

A. All EUs except 003 and 0023 contain a condition for Compliance and Performance Test Methods and Procedures for SO2 is unenforceable as written.

A primary purpose of Title V was to increase public involvement in air quality regulation. The Title V program is meant to "make it easier for the public to learn what requirements are being imposed on sources to facilitate public participation in determining what future requirements to impose." 56 Fed. Reg. 21712, 21713 (May 10, 1991). Citizens possess the

⁶⁵ For example, for EU 008, Condition 1 under Emissions Monitoring specifies visible emissions checks once per day at least two calendar days per week for each emissions point in the EU. ADEM, Draft Permit No. 503-8010 for UOP Plant Mobile (June 30, 2020) at 9-4.

⁶⁶ Ala. Admin. Code r. 335-3-14-.04(8)(k).

⁶⁷ EUs 012 and 021. *Id.* at 9-4, 17-5.

⁶⁸ EU 05. *Id.* at 5-2.

right to enforce federally enforceable provisions under the CAA. *See* 42 U.S.C. §7604 (1998 & Supp. V 1993). “Citizen enforceability is intrinsically tied to federal enforceability and was seen by Congress as vitally important to the success of the CAA⁶⁹.” A draft permit must include all applicable emission limits and standards and must also include all monitoring, reporting and recordkeeping requirements to assure compliance with those standards. *See* CAA §§ 502(a) and 504(a), 42 U.S.C. §§7661a(a) and 7661c(a) and 57 Fed. Reg. 32,250, 32,251 (July 21,1992) (EPA final action promulgating the part 70 rule).

All EUs except 003 and 023 contain a condition stating “Compliance with SO2 emissions rates shall be determined by EPA Reference Method 6 in Appendix A of 40 CFR 60. Alternate test methods may be used provided prior approval by the Department is granted.”⁷⁰ The Conditions do not specify which of the options contained in 6A-6C UOP Plant Mobile or any combination thereof will use to comply with this Condition. The most recent compliance certification does not provide any additional information, where the method for determining compliance with Condition 3 for EU001, for example, states “the proviso is in force as stated.”⁷¹ The permit record does not contain sufficient information about how UOP Plant Mobile is complying with the permit terms, and conditions themselves do not specify how the source will demonstrate compliance with the compliance and performance test methods and procedures for SO2. The Condition parrots the SIP⁷², but don't specify which of the subparts of Method 6 apply to the source. As such, it is impossible for Gasp to meaningfully weigh in on this issue in the Draft Permit.

Accordingly, where public participation is integral in determining what future requirements to impose, this particular deficiency is so severe that ADEM must re-notice the Draft Permit for public comment. The permit record, as produced through ADEM's e-file, did not provide the requisite information in order for Gasp to learn what which subpart of Method 6 UOP Plant Mobile is following, and the Draft Permit, as mentioned above, does not specify how the source will demonstrate compliance with those compliance and performance test methods and procedures for SO2 for all EUs except 003 and 023. As such, Gasp's public participation in this public comment process was inhibited by the lack of information required by ADEM and to be submitted by the source. As such, ADEM must not only correct this deficiency in the Draft Permit, but the permit record should be supplemented and the Draft Permit should be re-noticed for public comment.

⁶⁹ Joyce M. Martin, Crossroads for Federal Enforcement of the Clean Air Act, 6 Duke Environmental Law & Policy Forum 77-104 (1996)

Available at: <https://scholarship.law.duke.edu/delpf/vol6/iss1/2>

⁷⁰ ADEM, Draft Permit No. 503-8010 for UOP Plant Mobile (June 30, 2020) at 0-10. Additionally, this Condition also contains the problematic “Director's Discretion Provision” discussed more in depth in Section III. of this Comment.

⁷¹ 2018-2019 Compliance Certification, UOP Mobile Plant (Sept. 17, 2019)

⁷² Ala. Admin.. Code r. 335-10-.03.

B. Condition 1 for EU 003 Compliance and Performance Test Methods and Procedures for PM is unenforceable as written.

A primary purpose of Title V was to increase public involvement in air quality regulation. The Title V program is meant to “make it easier for the public to learn what requirements are being imposed on sources to facilitate public participation in determining what future requirements to impose.” 56 Fed. Reg. 21712, 21713 (May 10, 1991). Citizens possess the right to enforce federally enforceable provisions under the CAA. *See* 42 U.S.C. §7604 (1998 & Supp. V 1993). “Citizen enforceability is intrinsically tied to federal enforceability and was seen by Congress as vitally important to the success of the CAA⁷³.” A draft permit must include all applicable emission limits and standards and must also include all monitoring, reporting and recordkeeping requirements to assure compliance with those standards.⁷⁴

Condition 1 of Compliance Performance Test Methods and Procedures for EU 003 states that 40 CFR 60 Appendix A Method 5 shall be used to determine compliance with PM emissions rates. However, Method 5 contains Methods 5A-5I. The Draft Permit does not specify which Method UOP Plant Mobile is using to comply. The most recent compliance certification for UOP Plant Mobile states that the method for determining compliance with Condition 3 for EU001 as “[p]erformance of visible emission checks,”⁷⁵ which also does not describe which Method 5 option applies to the source. The permit record does not contain sufficient information about how UOP Plant Mobile is complying with the permit terms, and conditions themselves do not specify how the source will demonstrate compliance with the compliance and performance test methods and procedures for SO₂. The Condition parrots the SIP⁷⁶, but don't specify which of the subparts of Method 6 apply to the source. As such, it is impossible for Gasp to meaningfully weigh in on this issue in the Draft Permit.

Further, the Director seems to have unqualified discretion to approve an alternate method: “Alternate test methods may be used provided prior approval by the Department is granted.”⁷⁷ This leaves the public with no opportunity to comment, as the methods on which to comment are not stated.

Once again, the deficiency in Condition 1 of Compliance Performance Test Methods and Procedures for EU 003 is deficient. Compounding this issue is the permit record itself is deficient, providing no helpful additional information to Commenter. As such, Gasp’s public participation in this public comment process was inhibited by the lack of information required by

⁷³ Joyce M. Martin, Crossroads for Federal Enforcement of the Clean Air Act, 6 Duke Environmental Law & Policy Forum 77-104 (1996)

Available at: <https://scholarship.law.duke.edu/delpf/vol6/iss1/2>

⁷⁴ See CAA §§ 502(a) and 504(a), 42 U.S.C. §§7661a(a) and 7661c(a) and 57 Fed. Reg. 32,250, 32,251 (July 21, 1992) (EPA final action promulgating the part 70 rule).

⁷⁵ 2018-2019 Compliance Certification, UOP Mobile Plant (Sept. 17, 2019)

⁷⁶ Ala. Admin. Code r. 335-10-.03.

⁷⁷ ADEM, Draft Permit No. 503-8010 for UOP Plant Mobile (June 30, 2020) at 3-2. *See also* Section III. of this Comment.

ADEM and to be submitted by the source. As such, ADEM must not only correct this deficiency in the Draft Permit, but the permit record should be supplemented and the Draft Permit should be re-noticed for public comment.

IX. The Draft Permit is Deficient Because it Does Not Include Emission Limits and Other Conditions Necessary to Assure Compliance with Prevention of Significant Deterioration requirements.

Consideration of whether a facility constitutes a “major stationary source” for Prevention of Significant Deterioration (hereinafter “PSD”) purposes depends on whether the facility emits or has the potential to emit certain pollutants in excess of specified thresholds: the threshold for sources within listed categories, including chemical production plants such as UOP Plant Mobile, is 100 TPY; for all other sources, 250 TPY.⁷⁸ Under Alabama’s federally approved SIP the calculation of a facility’s PTE for purposes of determining whether the facility triggers PSD requirements for a particular pollutant includes consideration of:

“the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source's potential to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder.”⁷⁹

Therefore, if a permit applicant agrees to enforceable limits that are sufficient to restrict PTE, the facility’s “maximum capacity to emit” for PTE purposes is calculated based on those limits.⁸⁰

Importantly, only limits that meet certain enforceability criteria may be used to restrict a facility’s PTE and the permit must include sufficient terms and conditions such that the source cannot lawfully exceed the limit.⁸¹ One of the key concepts in evaluating the enforceability of

⁷⁸ See 42 U.S.C. § 7479(1) (defining “major emitting facility”); Ala. Admin. Code r. 335-3-16-.01(1)(q) (defining “Major Source”); see also 40 C.F.R. § 51.166(b)(1)(i) (defining “major stationary source” in EPA regulations that identify minimum requirements for SIP approved PSD programs); cf. 40 C.F.R. § 52.21 (b)(1)(i) (defining “major stationary source” in EPA regulations for PSD permits issued under the EPA’s permitting authority).

⁷⁹ Ala. Admin. Code r. 335-3-16-.01(1)(u). See also 40 C.F.R. § 51.166(b)(4) (PTE definition in EPA regulations that identify minimum requirements for SIP approved PSD programs); cf. 40 C.F.R. § 52.21(b)(4) (PTE definition in EPA regulations for PSD permits issued under EPA’s permitting authority).

⁸⁰ *In the Matter of: Yuhuang Chemical Inc. Methanol Plant St. James Parish, Louisiana*, Order on Petition No. VI-2015-03 (Aug. 31, 2016) at 13 (quoting *In the Matter of Hu llonua Bioenergy Facility*, Order on Petition No. IX-2011-1 (Feb. 7, 2014) at 9 (*Hu Honua Order*); *Cash Creek Order* at 15; *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 (June 22, 2012) at 28 (*Kentucky Syngas Order*)).

⁸¹ *Id.* at 14 (quoting *Cash Creek Order* at 15 (explaining that an “emission limit can be relied upon to restrict a source’s PTE only if it is legally and practicably enforceable”); *In the Matter of Orange*

PTE limits is whether the limit is enforceable as a practical matter.⁸² In order for an emission limit to be enforceable as a practical matter, the permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit.⁸³ Thus, limitations must be supported by monitoring, recordkeeping, and reporting requirements “sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.”⁸⁴ Further, generally speaking, to effectively restrict a facility’s PTE under the relevant major stationary source threshold, a permit’s emission limits must apply at all times to all actual emissions, and all actual emissions must be considered in determining compliance with the respective limits.⁸⁵ Additionally, as the EPA has previously explained: “Although it is generally preferred that PTE limitations be as short-term as possible (e.g., not to exceed one month), EPA guidance allows permits to be written with longer term limits if they are rolled (meaning recalculated periodically with updated data) on a frequent basis (e.g., daily or monthly). [EPA guidance] also recognizes that such longer rolling limits may be appropriate for sources with ‘substantial and unpredictable variation in production.’”⁸⁶ This type of rolling cumulative limit may be appropriate where the permitting authority determines that the limit, in combination with applicable monitoring, reporting, and recordkeeping, provides an assurance that compliance can be readily determined and verified.⁸⁷

A. All EUs Except EU003 and EU023 are Subject to Minor PSD Limits.

Where every EU except 003 and 023 are subject to synthetic minor PSD emissions limitations,⁸⁸ UOP Plant Mobile clearly agreed to enforceable limits that are sufficient to restrict PTE, the facility’s “maximum capacity to emit” for PTE purposes is calculated based on those limits. For every permit condition citing the PSD emissions limits, there is only a blanket cite to Ala. Admin Code r. 335-3-14-.04.⁸⁹

Commenters are unable to meaningfully engage in whether limits that meet certain enforceability criteria may be used to restrict a facility’s PTE and the permit must include sufficient terms and conditions such that the source cannot lawfully exceed the limit. Because the original air permit establishing the PSD limits referred to throughout the Draft Permit is neither part of the permit record nor publicly available, Commenters are unable to determine what, if any, analysis was performed by ADEM to establish these limits. This deficiency is so severe that

Recycling and Ethanol Production Facility. Pencor- Masada Oxynol, LLC, Order on Petition No. 11-2001-05 (April 8, 2002) at 4-7 (2002 Pencor- Masada Order)).

⁸² *Id.* at 14 (quoting *See, e.g., 2002 Pencor-Masada Order* at 4- 7 (emphasizing the importance of practical enforceability in the permit terms and conditions that limit PTE). Moreover, the concept of “federal enforceability” has also been interpreted to encompass a requirement for practical enforceability. *See, e.g., In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*. 13 E.A.D. 357. 394 n.54 (EAB 2007)).

⁸³ *Id.* at 14 (citing *Hu Honua Order* at 10).

⁸⁴ *Id.* at 14 (citing *2002 Pencor-Masada Order* at 7).

⁸⁵ *Id.* at 14 (citing *Hu Honua Order* at 10-11; *Cash Creek Order* at 15; *Kentucky Syngas Order* at 29-30).

⁸⁶ *Id.* at 14 (citing *2002 Pencor-Masada Order* at 6).

⁸⁷ *Id.* at 14 (citing *Pencor-Masada Order* at 7).

⁸⁸ ADEM, Draft Permit No. 503-8010 for UOP Plant Mobile (June 30, 2020).

⁸⁹ *See also* Section X of this Comment.

ADEM must renounce the Draft Permit and include the underlying permit establishing the PSD limits.

B. Although Not Explicit in the Draft Permit or SOB, it Appears a Majority, if Not All EUs are Bound by PALs.

Subparagraph 23 of Ala. Admin Code r. 335-14-.04 is entitled “Actual PALs.” MRR requirements are found in (1)-(n). Even if the Draft Permit cited to 335-14-.04(23), for monitoring requirements for example, this citation is also not specific enough to enforce. At a minimum, PAL permits must adopt one of four approved monitoring approaches or a Director-approved alternative. The draft permit fails to indicate which approach(es) has been selected for monitoring. See below excerpt of Subparagraph 23 which illustrates this open-ended question.

“(i) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(ii) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subparagraphs (23)(1)2.(i) through (iv) of this Rule and must be approved by the Director.

(iii) Notwithstanding subparagraph (23)(1)1.(ii) of this Rule, an alternative monitoring approach that meets subparagraph (23)(1)1.(i) of this Rule may be employed if approved by the Director.

(iv) Failure to use a monitoring system that meets the requirements of this Rule renders the PAL invalid.”⁹⁰

The SIP also sets forth acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subparagraphs (23)(1) 3.through 9 of the Rule.

(i) Mass balance calculations for activities using coatings or solvents;

(ii) CEMS;

(iii) CPMS or PEMS; and

(iv) Emission factors.

Similar to the argument raised in Section IX.A. above, the permit record is severely deficient in that the underlying permit establishing PAL enforceable requirements is not publicly available. Further, even from reviewing the Draft Permit as is, and the permit record, where the monitoring requirements for each EU is either visual observations or work practice standards, it is questionable whether the monitoring required for the PAL limits is enforceable. This issue is

⁹⁰ Ala. Admin Code r. 335-3-14-.04(23) (emphasis added).

also compounded by those raised in Sections III. And X. o this Comment. As such, ADEM must renotece the Draft Permit and include in the permit record the underlying permit establishing their reasoning for the PAL limits and the analysis provided by the Director in approving any alternative monitoring approaches.

X. The Public’s Ability to Meaningfully Comment on the Draft Permit was Impeded Where the Permit Establishing the Synthetic Minor PSD Limits UOP Plant Mobile has Taken is Not Part of the Permit Record, SOB or Otherwise Publicly Available.

A. Background: PSD Permitting Requirements.

The CAA and Agency PSD regulations require that every proposed PSD permit be subjected to a preconstruction review by the permitting authority, which must include an opportunity for a public hearing that allows interested persons to comment on the air quality impact of the proposed source, alternatives thereto, control technology, and other appropriate considerations.⁹¹ As part of the preconstruction review process, new major stationary sources and major modifications of such sources employ the “best available control technology,” or BACT, to minimize emissions of regulated pollutants.⁹² As the Board explained in *In re Northern Michigan University (“NMU”)*, the BACT definition requires permit issuers to “proceed[] on a case-by-case basis, taking a careful and detailed look, attentive to the technology or methods appropriate for the particular facility, [] to seek the result tailor-made for that facility and that pollutant.”⁹³ BACT is therefore a site-specific determination that results in the selection of an emission limitation representing application of control technology or methods appropriate for the particular facility.⁹⁴

In 1990, EPA issued draft guidance for permitting authorities to use in analyzing PSD requirements (among others) in a consistent and systematic way.⁹⁵ The *NSR Manual* sets forth a “top-down” process for determining BACT for each particular regulated pollutant that is summarized as follows:

⁹¹ CAA § 165(a)(2), 42 U.S.C. § 7475(a)(2); 40 C.F.R. § 124.12(a); *In re Sierra Pac. Indus.*, 16 E.A.D. 1 (EAB 2013)

⁹² CAA § 165(a)(4), 42 U.S.C. § 7475(a)(4); 40 C.F.R. § 52.21(j)(2). The statute defines the BACT requirements as follows: The term “best available control technology” means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. CAA § 169(3), 42 U.S.C. § 7479(3); accord 40 C.F.R. § 52.21(b)(12) (similar regulatory definition).

⁹³ 14 E.A.D. 283, 291 (EAB 2009), (citations and quotations omitted).

⁹⁴ *In re Prairie State Generating Co.*, 13 E.A.D. 1, 12 (EAB 2006), *aff’d sub nom. Sierra Club v. EPA*, 499 F.3d 653 (7th Cir. 2007); *In re Three Mountain Power, LLC*, 10 E.A.D. 39, 47 (EAB 2001); *Knauf I*, 8 E.A.D. at 128-29

⁹⁵ See generally Office of Air Quality Planning & Standards, U.S. EPA, *New Source Review Workshop Manual* 1 (draft Oct. 1990) (“*NSR Manual*”)

The top-down process provides that all available control technologies be ranked in descending order of control effectiveness. The PSD applicant first examines the most stringent - or “top” - alternative. That alternative is established as BACT unless the applicant demonstrates, and the permitting authority in its informed judgment agrees, that technical considerations, or energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not “achievable” in that case.⁹⁶

Permit issuers apply the top-down method on a case-by-case basis to each permit they evaluate.⁹⁷ The *NSR Manual*'s recommended top-down analysis employs five steps:

Step 1: Identify all available control options with potential application to the source and the targeted pollutant;

Step 2: Analyze the control options' technical feasibility;

Step 3: Rank feasible options in order of effectiveness;

Step 4: Evaluate the energy, environmental, and economic impacts of the options; and

Step 5: Select a pollutant emission limit achievable by the most effective control option not eliminated in a preceding step.⁹⁸

B. As Written, the Draft Permit Does Not Contain a Top Down PSD Analysis by ADEM. Nor is Such Analysis Included in the Permit Record, Which Results in Commenters' Inability to Meaningfully Comment on the PSD Limits and Terms and Conditions in the Draft Permit are Adequate.

As previously discussed in Section II of this Comment, the SOB is lacking key elements that are important for the public to review. Namely, the SOB itself does not include even a reference to the original air permit (likely a Synthetic Minor Operating Permit, hereinafter “SMOP”) where ADEM should have followed the 5 step top-down PSD analysis establishing the PSD limits and Plantwide Applicability Limits (hereinafter “PAL”) for UOP Plant Mobile.

Additionally, the Draft Permit merely contains a blanket citation to Ala. Admin Code r. 335-3-14-.04 for multiple EUs throughout the permit.⁹⁹ Commenters reasonably assume that Conditions such as “7. This source is subject to synthetic minor PSD emissions limitations” for

⁹⁶ *Id.* at B.2

⁹⁷ *See id.* at B.1 (explaining that all BACT analyses are done case-by-case).

⁹⁸ *Id.* at B.5-.9

⁹⁹ 335-14-.04 is a subchapter entitled Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]. The subchapter discusses a variety of procedural and substantive requirements in 23 subparagraphs. The draft permit cites ADEM Admin. Code r. 335-3-14-.04 in the *Emission Monitoring* section for every emissions unit except for Permit No. 023 – Emergency Engines. *See* ADEM, Draft Permit No. 503-8010 for UOP Plant Mobile (June 30, 2020).

EU 001¹⁰⁰ likely relate back to an air permit at some point in time that established these limits that are vaguely referenced in the current Draft Permit. However, what is likely an SMOP permit is not mentioned in the Draft Permit, SOB, permit application or otherwise available on ADEM's e-file. Commenters attempted to obtain the SMOP establishing these limits through a records request from ADEM. However, based off ADEM's response, such record would not even be produced before the end of the public comment period.¹⁰¹ As such, Commenters were never able to even evaluate whether ADEM has established adequate permit terms and conditions in the Draft Permit for all EUs except EU 023.

Accordingly, ADEM must renote the Draft Permit and make publicly available the original air permit establishing the PSD limits cited for every EU except EU023. As written, the Draft Permit is deficient, and the permit record's deficiency inhibits Commenters' ability to determine whether ADEM has established adequate PSD terms and conditions in the permit for UOP Plant Mobile.

XI. ADEM Has Failed to Consider Environmental Justice Concerns, in Violation of Executive Order 12898 and ADEM's Own Mission.

"Environmental justice" is defined as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies".¹⁰² ADEM has followed this definition before.¹⁰³ ADEM must continue to do so to meet its mission: "assure for *all citizens* of the State a safe, healthful, and productive environment".¹⁰⁴ Protecting Alabama's environment for the benefit of "all citizens" fits the definition of environmental justice. ADEM must consider the disparate and cumulative impacts of its permitting decisions on people living near the UOP Plant Mobile.

Mobile County's population is 59% white and Mobile's population is 50.6% black. Of the people living within a 1 mile radius of UOP Plant Mobile, 62% are minorities and 64% of people are near the poverty line (ratio of household income to poverty level in the past 12 months was less than 2).¹⁰⁵

One measure of a safe and healthful environment is the average temperature. Black Americans in particular face higher, more dangerous temperatures as a result of global climate change. Between 1971 and 2000, US counties with more than 25 percent Black residents endured an average of 18 days with temperatures above 100 degrees Fahrenheit, compared to the seven days per year for counties with fewer than 25 percent Black residents. If current emissions trends continue, by mid-century, US counties with larger Black populations will face 72 very hot days

¹⁰⁰ *Id.* at 1-2. This Condition appears for every emissions unit except EU 023.

¹⁰¹ Letter from Haley Colson Lewis, Gasp to Azure Jones, ADEM (Oct. 21, 2020) and Response from Azure Jones, ADEM to Haley Colson Lewis, Gasp (Oct. 23, 2020) (on file with author). *See also* ATTACHMENT A to this Comment.

¹⁰² *Environmental Justice*, EPA.gov, www.epa.gov/environmentaljustice

¹⁰³ ADEM *UPDATE*, Vol. X No. 3, at 2 (July 19, 2017),

<http://adem.alabama.gov/MoreInfo/pubs/ADEMUpdateJuly2017.pdf>

¹⁰⁴ ADEM, *Welcome to ADEM*, <http://www.adem.state.al.us/default.cnt>.

¹⁰⁵ EPA EJScreen: 1-Mile Radius Standard Report (Oct 23, 2020), <https://ejscreen.epa.gov/mapper/>.

per year, compared with 36 days in counties with smaller Black populations.¹⁰⁶ According to the Union of Concerned Scientists, if current emissions trends continue, Mobile County, Alabama could see up to 77 days per year above 100 degrees Fahrenheit by mid-century, up from just 14 days per year now. By the late century, Mobile County could see around 116 days per year above 100 degrees Fahrenheit.¹⁰⁷ This increase in temperature, combined with the majority low-income and minority community that lives near the UOP Plant Mobile, demonstrates the need for an environmental justice analysis within this permit.

A safe and healthful environment is also affected by the proximity and density of industrial activities. In a 2019 EPA study, Alabama ranked fifth out of all the states in most toxic substances released into the air.¹⁰⁸ Mobile County had the highest amount of reported toxic releases of all the counties in the state, with 13.5 million pounds of total releases in 2017 [*Id.*]. Mobile County is home to 48 facilities registered on the Toxic Release Inventory (the “TRI”).¹⁰⁹ The UOP Plant Mobile is one of them, and three other facilities on the TRI are within one mile.¹¹⁰ In 2017, the UOP Plant Mobile was the fourth largest contributor to all air releases in Mobile County, the fifth largest contributor to barium releases in the state, and the largest contributor to diethanolamine releases in the state.

¹⁰⁶ “Disproportionate exposure to heat is a result of systemic racism and has been linked to the discriminatory practice of redlining. According to the American Economic Journal, without air conditioning, a 1-degree Fahrenheit increase in a school can reduce that year’s learning by 1 percent. Hot school days disproportionately impact minority students, and account for around 5 percent of the racial achievement gap.” Park, R. Jisung, Joshua Goodman, Michael Hurwitz, and Jonathan Smith. 2020. “Heat and Learning.” *American Economic Journal: Economic Policy*, 12 (2): 306-39. DOI: 10.1257/pol.20180612); Nina Lakhani, *Killer heat: US racial injustices will worsen as climate crisis escalates*, *The Guardian*. July 28, 2020. <https://www.theguardian.com/us-news/2020/jul/28/us-racial-injustices-will-worsen-climate-crisis-escalates>.

¹⁰⁷ Dahl, Kristina, Erika Spanger-Siegfried, Rachel Licker, Astrid Caldas, John Abatzoglou, Nicholas Mailloux, Rachel Cleetus, Shana Udvardy, Juan Declet-Barreto, and Pamela Worth. 2019. *Killer Heat in the United States: Climate Choices and the Future of Dangerously Hot Days*. Cambridge, MA: Union of Concerned Scientists. <https://www.ucsusa.org/resources/killer-heat-united-states-0>. See interactive data tool: <https://www.ucsusa.org/resources/killer-heat-interactive-tool?location=mobile-county--al>.

¹⁰⁸ Al.com, *Alabama ranks 5th for industrial toxic releases in air and water*, Mar. 24, 2019, <https://www.al.com/news/2019/03/alabama-ranks-5th-for-industrial-toxic-releases-in-air-and-water.html>.

¹⁰⁹ EPA.gov, 2018 TRI Fact Sheet--Mobile County, released April 2020, https://enviro.epa.gov/triexplorer/tri_factsheet.factsheet?pYear=2018&pstate=AL&pcounty=Mobile&pParent=NAT

¹¹⁰ Comparing a search for UOP LLC on Google Maps to the list of TRI facilities in Alabama cited below showed three TRI facilities within a one-mile radius of the UOP LLC Mobile Plant: Harcros Chemicals, Occidental Chemicals, and Kemira Water Solutions. See Google Maps, <https://www.google.com/maps/place/UOP+Molecular+Sieves/@30.7495812,-88.0780126,15z/data=!4m5!3m4!1s0x889a516cef0eba5f:0x361243260f9f9339!8m2!3d30.7591992!4d-88.0710959?hl=en>; Pillion, Dennis, AL TRI 2017, Tableau Public, published Mar 17, 2019, last updated Mar. 21, 2019, <https://public.tableau.com/profile/dennis.pillion#!/vizhome/ALTRI2017/Airreleasesbyfacility>; Al.com, *Alabama ranks 5th for industrial toxic releases in air and water*, Mar. 24, 2019, <https://www.al.com/news/2019/03/alabama-ranks-5th-for-industrial-toxic-releases-in-air-and-water.html>.

A. ADEM’s internal procedures for considering environmental justice are inadequate.

It is unclear whether state law requires ADEM to generate an environmental justice statement during the permit renewal process. In 2009, as part of an analysis of its permitting business processes, ADEM stated where environmental justice issues are addressed as part of potential health impacts, ADEM need not address disparate impacts.¹¹¹ The Environmental Management Commission has also held that ADEM does not have statutory authority to consider disparate racial impacts.¹¹² However, as discussed below, recent actions by ADEM suggest that the Department may analyze environmental justice factors in its regulatory work. Accordingly, ADEM’s failure to consider environmental justice factors is arbitrary and capricious.

In 2018, ADEM adopted and published “Nondiscrimination Investigation Grievance Procedures.” These procedures were developed while EPA’s External Civil Rights Compliance Office (ECRCO) was investigating a formal complaint against ADEM after it rescinded but did not publicly replace the “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process.” ECRCO found ADEM had failed to meet all the requirements of 40 CFR parts 5 and 7 and corresponded with ADEM on how to come into compliance.¹¹³ The history of ADEM’s grievance procedure demonstrates ADEM’s recognition and awareness of environmental justice as a necessary component of environmental regulation--so necessary, in fact, that it warrants its own reporting and investigating process should violations occur.

More recently, two environmental impact studies published by ADEM in 2020 include an Environmental Justice section. The section considers both race and socio-economic status in determining that neither proposed action raised environmental justice concerns.¹¹⁴ Additionally, Ala. Admin. Code r. 335-13-11-.04(1)(f) states that, in determining the location for Solid Waste Dump sites, ADEM shall consider “the location of the site in an area of minority and/or low-income populations pursuant to Executive Order 12898,” which requires that environmental

¹¹¹ See Holmes v. Alabama Department of Environmental Management, EMC Dkt. No. 98-04, 1998 WL 75094, 1998 AL ENV LEXIS 1 (AEMC Feb. 17, 1998), Ex. P-82; See East Central Alabama Alliance for Quality Living v. Alabama Department of Environmental Management, EMC Dkt. No. 03-01 & 03-02, 2003 WL 1957880, 2003 AL ENV LEXIS 6 (AEMC Apr. 22, 2003), aff’d, No. CV-2003-000356.00 (Lee County Cir. Ct. Nov. 20, 2003), aff’d mem., 915 So. 2d 1186 (Ala. Civ. App. 2004), Ex. P-83.

¹¹² [*Id.*]

¹¹³ On June 5, 2018, Director of ADEM Lance Lefleur rescinded Memorandum 108, the “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process. ADEM adopted an interim grievance procedure that was not made publicly available and did not meet all the requirements of Title VI of the Civil Rights Act and 40 CFR parts 5 and 7. ECRCO accepted a complaint in July 2018 and over the summer advised ADEM on its deficiencies. ECRCO issued a Resolution and Closure Letter for the complaint in November 2018 after ADEM adopted the current “Nondiscrimination Grievance Investigation Procedure,” still in effect today. See Dorka, Lilian S. External Civil Rights Compliance Office, Office of General Counsel *Re: Resolution and Closure of EPA Administrative Complaint No. 03R-18-R*.

¹¹⁴ “F. Environmental Justice. The proposed project lies within a non-Environmental Justice area. All residents receive equal access to the water system regardless of race or socio-economic status.” Walnut Hill Water Authority, Finding of No Significant Impact, SRF Project No. FS010188-02, July 30, 2020; see also Curry Water Authority, Inc., Finding of No Significant Impact, DWSRF#: FS010265-01, June 16, 2020.

justice studies be undertaken during permitting processes. Last amended in 2009, this rule seems to be in direct conflict with the EMC's ruling that ADEM cannot consider disparate racial impacts.¹¹⁵

The contradiction between the older ADEM practice of not addressing disparate racial impacts and the current ADEM practice of including environmental justice analyses in the permitting and grievance processes is stark. It is not clear whether ADEM is required, or even permitted, by state law to consider environmental justice as a factor when issuing permits. ADEM must resolve this contradiction and clarify its position on the inclusion of environmental justice analyses. To the extent state law curtails or bars ADEM's ability to address environmental justice, ADEM's Title V permitting program is at risk of being inconsistent with applicable federal law.

ADEM's mission is impossible to achieve without addressing environmental justice concerns before it makes decisions. Because the current grievance procedure can only provide reactive relief, it is an inadequate mechanism for ensuring environmental justice for "all citizens of the State." By considering environmental justice as part of the permitting process, ADEM would be proactively addressing these issues, potentially mooted the need for grievance procedures. The ideal phase for public involvement is now – during the application process.

Meaningful involvement from the communities who will be most affected by ADEM's decision begins with the disclosure of specific information that is coherent to a wide audience. The communication should include what and how much the UOP Mobile Plant is emitting, how emissions will be controlled and monitored to protect health and the environment, and how a publicly accessible compliance record will be kept.¹¹⁶ Requirements in the draft permit must be particular enough for enforcement rather than leaving it to the Director or permittee's discretion or supplying a menu of options which can be used to meet to achieve compliance.¹¹⁷

B. As the ultimate reviewer of this permit, and bound by Executive Order 12898, EPA must consider environmental justice impacts, which would require ADEM to also consider such impacts.

The purpose of Executive Order 12898 is to focus federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities. Where EPA will ultimately review whatever permit is proposed by ADEM, it is incumbent on ADEM to focus their attention

¹¹⁵ "(f) The location of the site in an area of minority and/or low-income populations pursuant to Executive Order 12898, 'Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'" ADEM Admin. Code r. 335-3-11-.04(1)(f), last updated May 26, 2009.

¹¹⁶ In the Matter of United States Steel Corp., 2012 EPA CAA Title V LEXIS 10 (E.P.A. December 3, 2012) at 26 ("The rationale for the monitoring requirements selected by a permitting authority must be clear and documented in the permit record (*e.g.*, the Statement of Basis)."); ("The recordkeeping requirements in the permit do not specify the emission factors or equations that [permittee] intends to use to demonstrate that emissions from the affected emission units are complying with the permit limits[.]")

¹¹⁷ [*Id.* at 27]

on the environmental and human health effects of their actions on minority and low income populations.

Furthermore, environmental justice provisions like Executive Order 12898 do not impose enforceable duties or responsibilities that are distinct from other regulations. However, in a 2012 partial grant to a petition to object, EPA acknowledged that because “[t]he immediate area around the [permitted] facility is home to a high density of low-income and minority populations and a concentration of industrial activity. . . [f]ocused attention to the adequacy of monitoring and other compliance assurance provisions is warranted in this context.” Such “[f]ocused attention” is also required in this case, in light of the environmental justice concerns and the abuses of government power that have obscured the voices and interests of the population most affected by UOP Plant Mobile.

Residents in Mobile County will be exposed to air pollution from UOP Plant Mobile, and suffer direct climate impacts from the GHGs emitted by UOP Plant Mobile. ADEM has not adequately considered public health impacts. Where residents who are minority populations have not had their health adequately protected by this permitting, a disparate impact exists that requires ADEM to consider the environmental justice impacts of the proposed permit. This is the case in Mobile County, evidenced by the recent lawsuit against International Paper over that company’s polluting activities.¹¹⁸ Additionally, the sheer amount of polluting industry located in Mobile County and around Chickasaw demonstrates the lack of regard that ADEM has shown for the health of the minority and low-income residents who live there.¹¹⁹ In order for EPA to meet its obligation of focused attention to the adequacy of monitoring and other compliance assurances provisions, ADEM must consider the same factors as EPA--including environmental justice.

XII. Conclusion

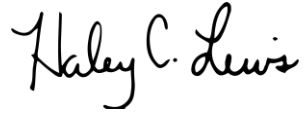
ADEM published several general conditions in the Draft permit that must be revised before a final permit is issued. Additionally, the Draft Permit and permit record are so severely deficient as it pertains to monitoring requirements, PSD limits and PALs that ADEM must supplement the permit record, rewrite the SOB and re-notice the Draft Permit for public comment. Gasp looks forward to ADEM addressing our concerns, recommendations and revisions suggested in this comment.

We appreciate the opportunity to comment.

¹¹⁸ Deaton, Jeremy, *This polluted neighborhood shows the damage caused by environmental racism*, (Sept. 14, 2018) <https://www.fastcompany.com/90236776/mobiles-africatown-has-been-hobbled-by-pollution>.

¹¹⁹ Google Maps, <https://www.google.com/maps/place/UOP+Molecular+Sieves/@30.7495812,-88.0780126,15z/data=!4m5!3m4!1s0x889a516cef0eba5f:0x361243260f9f9339!8m2!3d30.7591992!4d-88.0710959?hl=en>

Respectfully submitted,

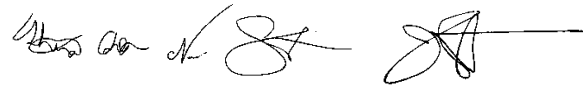


Haley Colson Lewis
Staff Attorney
Gasp

Monique Harden
Assistant Director of Law and Policy
Deep South Center for Environmental Justice

s/Joe Womack
President, Executive Director
CHESS

s/ Ramsey Sprague
President
MEJAC



Shira Cohen, Naomi King, and Jonathan Skinner-Thompson
Getches-Green Natural Resources & Environmental Law Clinic
University of Colorado Law School
Contributors to Comment

Childress, Stephanie

From: Sims, Samantha P
Sent: Monday, October 19, 2020 12:26 PM
To: Childress, Stephanie
Subject: Fwd: Public comment on UOP Application

Samantha

Begin forwarded message:

From: Airmail <Airmail@adem.alabama.gov>
Date: October 19, 2020 at 12:14:38 PM CDT
To: "Gore, Ron" <RWG@adem.alabama.gov>, "Thornhill, James W." <JWT@adem.alabama.gov>, "Sims, Samantha P" <SSims@adem.alabama.gov>
Subject: **FW: Public comment on UOP Application**

Doug Carr, P.E.
Chief, Energy Branch
Air Division
Alabama Department of Environmental Management
DKC@ADEM.ALABAMA.GOV
334-271-7899

From: Robert Clopton <robertcloptonsr@gmail.com>
Sent: Monday, October 19, 2020 8:58 AM
To: Airmail <Airmail@adem.alabama.gov>
Subject: Public comment on UOP Application

Mr. Gore,

UOP LLC has applied for a renewal of their Clean Air Act Title V Major Source Operation Permit for the UOP Mobile Plant. UOP is *SEEKING Permission TO NOT HAVE HAVE TO USE ANY MODERN POLLUTION MONITORING EQUIPMENT.*

Based on their Title V application, their Africatown-area refinery is a major source of many federally regulated harmful pollutants including Particulate Matter (PM and PM10), Carbon Monoxide (CO), Nitrogen Oxides (NOx), as well as Carbon Dioxide Equivalents (CO2e). UOP is also an area source of Hazardous Air Pollutant (HAP) emissions

As President of the local NAACP, we have a concern with the health and safety of the residents of Africatown, therefore we are asking that UOP LLC use MODERN POLLUTION MONITORING EQUIPMENT to further ensure the safety of the affected residents of this most Historic community.

Thank you,
Robert E. Clopton Sr.
President, Mobile County NAACP

--

Robert E. Clopton Sr.

Lella B. Lowe
2609 Shay Ct.
Mobile, AL 36695

October 27, 2020

Ronald W. Gore, Chief
ADEM-Air Division
1400 Coliseum Blvd.
Montgomery, AL 36110-2400

Re: UOP Clean Air Act Title V Major Source Operating (MSOP) Permit Number: 503-80101

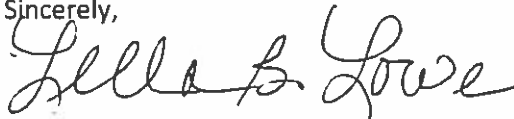
Dear Mr. Gore,

The subject permit renewal application, affecting the Africatown Planning Area in Mobile, would allow the UOP refinery to operate with ZERO facility-based air quality monitors. I understand that the company is asserting that visual inspection of invisible gasses is good enough, and apparently ADEM has agreed with them until now. This permit renewal is a chance to hold one of the Africatown area's biggest polluters accountable for what they are releasing into the air. Therefore, I demand that ADEM **require facility-based air quality monitors for criterion air pollutants at Major Source facilities like the UOP LLC chemical refinery in the Africatown Planning Area.**

Any resident living along the fenceline of this refinery will tell you that the plant's emissions don't just stink. They cause headaches, respiratory irritation, asthma, and more. The health effects of pollution generated should not be treated as an externality to be paid by residents of this environmental justice community, but as a factor that the refinery should be dealing with, to the satisfaction of applicable laws and regulations and the neighboring community. Compliance can only be determined by requiring adequate monitoring to measure polluting output.

This is my third comment submitted within a week to ADEM about permit applications in Mobile County. It is time for ADEM step up to protect the citizens of this area by holding the corporate entities accountable for what they are doing to the air quality.

Sincerely,

A handwritten signature in black ink that reads "Lella B. Lowe". The signature is written in a cursive, flowing style.

Lella B. Lowe



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P.O. BOX 2682 MOBILE AL 36652

October 27, 2020

Ronald W. Gore, Chief
ADEM-Air Division
1400 Coliseum Blvd.
Montgomery, AL 36110-2400
rwg@adem.alabama.gov
airmail@adem.alabama.gov

Re: Comments on Permit No. 503-80101 for
UOP LLC Mobile Plant
1 Linde Drive
Chickasaw, AL 36611

Dear Chief Ron Gore,

The chemical refinery UOP LLC in the Africatown Planning Area of Mobile is seeking a renewal of its Clean Air Act Title V Major Source Operating (MSOP) Permit.

The permit application would allow the refinery to operate with ZERO facility-based air quality monitors. UOP LLC Mobile Plant asserts that visual inspection of invisible gasses is good enough, and until now the Alabama Department of Environmental Management (ADEM) has actually agreed with them.

Mobile Bay Sierra Club understands that neighboring residents often smell strong unpleasant odors coming from the plant and the UOP Plant's pollution causes headaches, respiratory irritation, asthma, and more. On many days it is hard to be outdoors.

Based on their Title V application, the UOP LLC Africatown-area refinery is a major source of many federally regulated harmful pollutants including Particulate Matter (PM and PM10), Carbon Monoxide (CO), Nitrogen Oxides (NOx), as well as Carbon Dioxide Equivalents (CO2e). UOP is also an area source of Hazardous Air Pollutant (HAP) emissions.

Africatown's polluters have to be held accountable for the pollutants that they release!

ADEM should require facility-based air quality monitors for criterion air pollutants at Major Source facilities like the UOP LLC chemical refinery in the Africatown Planning Area.

Mobile Bay Sierra Club is concerned about the lack of air quality monitors in the Africatown Planning Area!

Sincerely,

Carol Adams-Davis

Carol Adams-Davis, Vice Chair, Executive Committee
Sierra Club Mobile Bay Group