



November 15, 1995. See 60 Fed. Reg. 57,346 (November 15, 1995). The program is now incorporated into Alabama's Administrative Code as Chapter 335-3-16. All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the Act, including the applicable implementation plan. See CAA sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements") on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. See 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." Id. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document, therefore enhancing compliance with the requirements of the Act.

Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 CFR § 70.8(a) require that states submit all proposed title V operating permits to EPA for review. The statute and regulations also require EPA to object to permits determined by the Agency not to be in compliance with applicable requirements or the requirements of title V. If EPA does not object to a permit on its own initiative, CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. These sections also provide that petitions shall be based only on objections to the permit raised with reasonable specificity during the public comment period (unless the petitioner demonstrates that it was impracticable to raise such objections within that period or the grounds for such objections arose after that period).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR part 70 and the applicable implementation plan. To demonstrate that a permit is not in compliance with the Act requires a petitioner to show how the permit fails to meet those requirements. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. See 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR § 70.8(d).

## II. PROCEDURAL BACKGROUND

### A. Permitting Chronology

Kerr-McGee submitted a title V permit application to ADEM on December 16, 1996. ADEM determined that the application was complete on February 14, 1997. On January 21, 2000, ADEM published a public notice providing for a 30-day public comment period on the draft title V permit for Kerr-McGee. Petitioner submitted comments to ADEM in a letter dated February 22, 2000, which accompanies its petition. ADEM issued this permit to Kerr-McGee on April 4, 2000.

### B. Timeliness of Petition

Permitting authorities must provide at least 30 days for public comment on draft permits and give notice of any public hearing at least 30 days in advance of the hearing. 40 CFR § 70.7(h). Following consideration of any comments submitted during this time, the proposed permit is transmitted to EPA. The EPA then has 45 days from receipt of the proposed permit to object to the issuance of the permit should it determine the permit is not in compliance with the applicable requirements. 40 CFR § 70.8(c). Pursuant to 40 CFR § 70.8(d), any person may petition the Administrator to object to the permit within 60 days after the expiration of the EPA 45-day review period, provided the petition is based on objections to the permit that were raised with reasonable specificity during the public comment period or other grounds outlined in 70.8(d). Petitioner here based its petition on objections raised during the public comment period. However, some of the objections lack specificity.

The EPA's 45-day review period for the Kerr-McGee permit ended on April 4, 2000; the 60th day following that date was June 3, 2000. Since June 3, 2000, was a Saturday, the 60-day period for petitioning EPA to object to the permit officially ended on the following Monday, June 5, 2000. The instant petition, dated May 17, 2000, was received by EPA Region 4 on May 22, 2000. Accordingly, EPA finds that this petition was timely filed.

## III. FACILITY BACKGROUND

Kerr-McGee operates a synthetic rutile production facility in the Theodore Industrial Park in Theodore, Alabama. The plant uses a hydrochloric acid beneficiation process that leaches iron from ilmenite ore, yielding a substitute product for natural rutile. The final product is shipped to a sister facility in Mississippi where it is used to produce titanium dioxide pigment. Kerr-McGee's process begins with raw ilmenite sand containing 50-65 percent titanium dioxide. In a rotary kiln the sand is heated with heavy fuel oil that acts as a reducing agent to convert most of the ferric iron in the ilmenite to ferrous iron. The reduced ilmenite is discharged from the kiln directly into a rotary cooler. After passing through the cooler, the reduced ilmenite is conveyed to the reduced ore surge bin. The reduced ilmenite and slag mixture is then treated with hydrochloric acid in rotary ball digesters. This digestion process converts the ferrous oxide in

the reduced ilmenite to soluble ferrous chloride, leaving the titanium dioxide portion of the ilmenite as a solid. At the completion of the digestion process, the spent acid liquor containing excess hydrochloric acid and iron chloride is sent to an acid regeneration section. Wet cake solids from the reactor are washed with water to remove excess acid and ferrous chloride and are then filtered and heated to remove water. This yields the synthetic rutile product containing about 93 percent titanium dioxide.

The Kerr-McGee facility is subject to emission standards for particulate matter and sulfur dioxide and also standards for plume opacity. Under normal operating conditions the facility stacks have no visible emissions. The absence of any visible emissions indicates that control devices are working properly and preventing exceedance of particulate matter emission standards. Therefore, periodic observations which verify the absence of visible emissions provide reasonable assurance that control devices are working properly and thus Kerr-McGee is in compliance with both the opacity and particulate matter emission standards. See 39 Fed. Reg. 9308, 9309 (NSPS Additions and Miscellaneous Amendments) (March 8, 1974) for a discussion of opacity as an indicator of whether control equipment is properly maintained and operated. The facility uses scrubbing equipment to meet emission standards for sulfur dioxide and monitors operation of that equipment continuously. Hydrogen chloride emissions are also controlled. However, no emission standard applies for this pollutant. More detailed justification of EPA's position on these and other specific issues raised by Petitioner is provided in the next section.

#### **IV. ISSUES RAISED BY THE PETITIONER**

##### **A. Monitoring**

Most of the issues raised by Petitioner concern the adequacy of the monitoring required by the title V operating permit. Pursuant to sections 504(a) and 504(c) of the Clean Air Act, the purpose of monitoring is to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan, and the terms and conditions of the permit. Specifically, section 504 provides that each title V permit must include "conditions as are necessary to assure compliance with applicable requirements of [the Act], including the requirements of the applicable implementation plan" and "inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. §§ 7661c(a) and (c). In addition, section 114(a) of the Act requires "enhanced monitoring" at major stationary sources and authorizes EPA to establish monitoring, recordkeeping, and reporting requirements at such sources. 42 U.S.C. § 7414(a).

The regulations at 40 CFR § 70.6(a)(3) specifically require that each permit contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). In addition, 40 CFR § 70.6(c)(1)

requires that all part 70 permits contain, consistent with 40 CFR § 70.6(a)(3), “compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.” These requirements are incorporated into Alabama’s regulations at Ala. Admin. Code R. 335-3-16-.05(3)(a)2 and 335-3-16-.07(1).<sup>1</sup>

Petitioner states that the periodic monitoring requirements in the Kerr-McGee facility’s permit for sources of particulate matter emissions, visible emissions, and sulfur dioxide emissions are inadequate. Petitioner contends that several sources at the facility need more frequent monitoring than provided by the permit but provides no basis to support these conclusions. Each of the following comments, drawn from Petitioner’s discussion of the permit monitoring requirements in its February 22, 2000, letter to ADEM, is followed by EPA’s response.

1. Monitoring of Particulate Matter Emissions from EP 70, 72 and 73

Petitioner’s comment: Petitioner states that the permit does not require monitoring of particulate matter for sources EP 70, 72, and 73 but merely depends on the manufacturer’s guarantee to ensure compliance.

EPA’s response: The permit does require periodic monitoring in the form of visible emission surveys for these units as follows:

The exhaust plumes from the Raw Ore Dust Collector (EP 73), Reduction Kiln Venturi Scrubber (EP 72), and the Reduced Ore Dust Collector (EP 70) shall be observed for at least two minutes per day. If no visible emissions have been noted for 15 consecutive days, the frequency of observations may be reduced to one two-minute observation per week. Any observation of visible emissions shall require corrective action or performance of an 18-minute Visual Determination of Opacity within 24 hours of the initial observance of visible emissions. If visible emissions continue for more than 24

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<sup>1</sup>The U.S. Court of Appeals for the District of Columbia Circuit has addressed the proper interpretation of these requirements in two decisions. See Appalachian Power Co. v. EPA, 208 F.3d 1015 (D.C. Cir. 2000) (reviewing EPA’s periodic monitoring guidance under title V); Natural Resources Defense Council v. EPA, 194 F.3d 130 (D.C. Cir. 1999) (addressing EPA’s compliance assurance monitoring (“CAM”) rulemaking). In two recent orders responding to petitions under title V requesting that the Administrator object to certain permits, EPA described the impact of these judicial decisions on the monitoring requirements of the Act. See In re Pacificorp’s Jim Bridger and Naughton Electric Utility Steam Generating Plants, Petition No. VIII-00-1, November 16, 2000 (available on the internet at <http://www.epa.gov/region07/programs/artd/air/title5/t5memos/woc020.pdf>); In re Fort James Camas Mill, Petition No. X-1999-1, December 22, 2000 (available on the internet at <http://www.epa.gov/region07/programs/artd/air/title5/titlevhp.htm>).

hours, the daily 2-minute observations shall be replaced by a daily Visual Determination of Opacity. Upon cessation of visible emissions, the daily 2-minute observations shall continue until such time as 15 consecutive days without visible emissions are accomplished.

Emissions from EP 70 are from a reduced ore surge bin controlled with a baghouse. Kerr-McGee estimates actual controlled particulate matter emissions from this unit of 1.5 lb/hr (6.6 tons per year (8,760 hours)). This is based upon a concentration factor of 0.025 gr/ft<sup>3</sup> (which is more conservative than the baghouse manufacturer's guarantee of 0.021 gr/ft<sup>3</sup>), a volumetric flow of 7,150 ft<sup>3</sup>/min, and a conversion factor of 7,000 gr/lb. A 1995 stack test showed an emission rate of 0.05 lb/hr. The allowable particulate matter emission limit from this unit is 32.4 lbs/hr. Ala. Admin. Code R. 335-3-4-.04(1).

Emissions from EP 72 are from a reduction kiln controlled with a wet scrubber in series with a cyclone. Kerr-McGee estimates actual controlled particulate matter emissions from this unit of 2.0 lb/hr (8.8 tons per year (8,760 hours)) based upon stack testing from 1994 and 1995. Because the venturi neck, fan speed, and pump speed of the wet scrubber are fixed and not adjustable, control efficiency is not expected to vary significantly (and therefore additional monitoring is not necessary). The allowable particulate matter emission limit from this unit is 29.8 lbs/hr. Ala. Admin. Code R. 335-3-4-.04(1).

Emissions from EP 73 are from a feed surge bin and ore storage area controlled with a baghouse. Kerr-McGee estimates actual controlled particulate matter emissions from this unit of 1.4 lb/hr (6.1 tons per year (8,760 hours)). This is based upon a concentration factor of 0.025 gr/ft<sup>3</sup> (which is more conservative than the baghouse manufacturer's guarantee of 0.021 gr/ft<sup>3</sup>), a volumetric flow rate of 6,400 ft<sup>3</sup>/min, and a conversion factor of 7,000 gr/lb. A 1995 stack test showed an emission rate of 0.11 lb/hr under normal operation. The allowable particulate matter emission limit from this unit is 29.8 lbs/hr. Ala. Admin. Code R. 335-3-4-.04(1).

Because Petitioner's only comment regarding units EP 70, 72, and 73 (i.e., that the permit does not require monitoring of particulate matter emissions) is incorrect, Petitioner has not provided a basis upon which EPA must object to the permit issued. See CAA section 502(b)(2), 42 U.S.C. § 7661d(b)(2). However, EPA has evaluated the sufficiency of the monitoring required by the permit for these units. Source testing has shown these units emitting less than 7 percent of the respective particulate matter emission standards. This is a very substantial difference between controlled emissions and allowable emissions. Considering this margin of compliance, periodic observations which verify the absence of visible emissions will provide reasonable assurance of compliance with the particulate matter emission standards. See Fort James Camas Mill, Petition No. X-1999-1, (December 22, 2000) for further discussion of the relationship between margins of compliance and acceptable monitoring approaches.

## 2. Monitoring of Particulate Matter Emissions from EP 77A, 77B and 77C

Petitioner's comment: Petitioner states that sources EP 77A, 77B, 77C, and 52 do not require any periodic monitoring for particulate matter.

EPA's response: EP 77A, 77B, and 77C (hydrochloric acid regeneration plants with tail scrubbers) have emission limits for particulate matter emissions of 24.7 lbs/hr each. Ala. Admin. Code R. 335-3-4-.04(1). Hydrochloric acid regeneration plants are not significant sources of particulate matter emissions. The purpose of the tail scrubbers is to remove hydrochloric acid from the exit gases of the acid regeneration process. Three sets of stack test data from 1994 and 1995 show average particulate matter emission rates from these units of 3.1 lb/hr, 2.3 lb/hr, and 3.9 lb/hr. This is less than 16 percent of the limit, and the units have no control equipment for particulate matter. Because potential emissions of particulate matter from units EP 77A, 77B, and 77C are significantly less than the allowable rates, and because compliance with the particulate matter emission rate is not dependent upon proper operation and maintenance of a control device, no monitoring requirements for particulate matter from these units are necessary in order to provide a reasonable assurance of compliance. In re Fort James Camas Mill, Petition No. X-1999-1, (December 22, 2000). Therefore, the petition is denied with respect to the adequacy of periodic monitoring of particulate matter emissions from these units.

EP 52 (55 MMBtu/hr utility boiler) has a limit for particulate matter emissions of 0.237 lbs/MMBtu (Ala. Admin. Code R. 335-3-4-.03(1)) which equates to 13.0 lb/hr. The permit application indicates that the only fuel burned in EP 52 is natural gas, and ADEM has stated that the boiler is not equipped to burn an alternate fuel. As ADEM pointed out in the statement of basis, under these circumstances, no additional monitoring is necessary for particulate matter from the boiler due to the clean burning nature of natural gas. Therefore, the petition is denied with respect to the adequacy of periodic monitoring from unit EP 52.

## 3. Monitoring of Particulate Matter Emissions from EP 8050 and EP 8070

Petitioner's comment: Petitioner states that sources EP 8050 and 8070 depend on proper operation of the baghouse for compliance with particulate matter emission limits.

EPA's response: Emissions from EP 8050 (a venturi scrubber) are from the drum of the iron oxide pelletizer. Kerr-McGee estimates actual controlled particulate matter emissions from EP 8050 of 0.18 lb/hr (0.8 tons per year (8,760 hours)) based upon two sets of stack test data from 1994 and 1995. Emissions from EP 8070 (a baghouse in series with an "air-veying" absorber stack) are from the storage bins of the iron oxide pelletizer. Kerr-McGee estimates actual controlled particulate matter emissions from EP 8070 of 1.4 lb/hr (6.2 tons per year (8,760 hours)). This is based upon a concentration factor of 0.025 gr/ft<sup>3</sup> (which is more conservative than the baghouse manufacturer's guarantee of 0.021 gr/ft<sup>3</sup>), a volumetric flow of 8,200 ft<sup>3</sup>/min, and a conversion factor of 7,000 gr/lb. In addition, two sets of stack test data from 1994 and 1995 showed an emission rate of 0.18 lb/hr from EP 8070 as well as EP 8050. These units are

each limited to 3.4 lbs/hr of particulate matter emissions to avoid applicability of Prevention of Significant Deterioration (“PSD”) requirements. Ala. Admin. Code R. 335-3-4-.04(2)(b)1.

The permit requires periodic monitoring for these units in the same form of visible emission surveys as was discussed in item 1 above. These units normally operate with no visible emissions. They also operate with no visible steam plume that might interfere with the visible emission surveys required by the permit. (This was recently verified by a State inspector while the ambient temperature was relatively low (28 degrees F). The absence of a steam plume at such a cold temperature indicates that there is rarely any steam plume from this unit.)

With a combined estimated emission rate from EP 8050 and 8070 of about 0.4 lb/hr shown through stack testing, the margin of compliance between controlled emissions and allowable emissions for these units is significant. Considering the difference between actual emissions and allowable emissions, the monitoring approach selected by ADEM will provide reasonable assurance of compliance. In re Fort James Camas Mill, Petition No. X-1999-1, (December 22, 2000). Therefore, the petition is denied with respect to the adequacy of periodic monitoring from units EP 8050 and 8070.

#### 4. Monitoring of Particulate Matter Emissions from EP 71

Petitioner’s comment: Petitioner states that source EP 71 relies on visible emissions as a monitoring mechanism for particulate matter emissions. The visible emission requirement is limited to visual observation of emissions for at least two minutes per day. If no visible emissions have been noted for 15 consecutive days, the frequency of observations may be reduced to one two-minute observation per week.

EPA’s response: Emissions from EP 71 (a baghouse) are from the calciner cooler discharge and storage bins. Kerr-McGee estimates actual controlled particulate matter emissions from this unit of 1.2 lb/hr (5.3 tons per year (8,760 hours)). This is based upon a concentration factor of 0.025 gr/ft<sup>3</sup> (which is more conservative than the baghouse manufacturer’s guarantee of 0.022 gr/ft<sup>3</sup>), a volumetric flow rate of 5,500 ft<sup>3</sup>/min, and a conversion factor of 7,000 gr/lb. A 1995 stack test showed an emission rate of 0.22 lb/hr under normal operation. The allowable particulate matter emission limit from this unit is 31.7 lbs/hr. Ala. Admin. Code R. 335-3-4-.04(1).

Contrary to Petitioner’s statement, EPA’s review of the permit showed that it contained no monitoring for particulate matter from unit EP 71. Since the time of the petition, however, ADEM modified the permit to require daily visual observations that may be reduced to a weekly basis when no visible emissions have been noted for 15 consecutive days. The modified permit also requires that corrective measures be taken whenever visible emissions are observed and that observation records be kept.

Because Petitioner's only comment regarding unit EP 71 (i.e., that the permit relies on visible emissions as a monitoring mechanism for particulate matter emissions) is incorrect, Petitioner has not provided a basis upon which EPA must object to the permit issued. See CAA section 502(b)(2), 42 U.S.C. § 7661d(b)(2). However, EPA has evaluated the sufficiency of the monitoring required by the revised permit for this unit. Source testing has shown this unit emitting less than 0.7 percent of the particulate matter emission standard. This is a very substantial difference between controlled emissions and allowable emissions. Considering this margin of compliance, periodic observations which verify the absence of visible emissions will provide reasonable assurance of compliance with the particulate matter emission standards. In re Fort James Camas Mill, Petition No. X-1999-1, (December 22, 2000).

#### 5. Frequency of Visible Monitoring of Particulate Matter Emissions

Petitioner's comment: Petitioner states that the frequency for visible emission monitoring is not adequate. It should be increased to once per hour and should be required for all sources of particulate emissions. All particulate emission sources should be required to have analytical measurements for particulate matter required to be performed on a daily basis.

EPA's response: Petitioner apparently believes that visible emissions monitoring should be conducted at least once per hour and that analytical measurements should be performed daily for all sources of particulate matter emissions. The EPA believes that this level of monitoring is not always necessary and that the need for monitoring must be considered in the context of the specific technical and regulatory issues presented by the source in question. Furthermore, EPA does not agree that visible emissions from any unit at the Kerr-McGee facility are significant enough to warrant monitoring via analytical measurements on an hourly or daily basis. Analytical measurements would be conducted according to EPA Reference Test Method 9 (See 40 CFR part 60, Appendix A, Method 9) or a similar federally approved method. This method involves the determination of the opacity of a visible plume by trained and certified observers. Where there are normally no visible plumes (except water vapor) from a stack, analytical measurements such as Method 9 generally serve no useful purpose. In such cases, monitoring for opacity may be conducted by simple observation for the presence of any visible emissions. When any emissions are observed, corrective action and possibly analytical testing is required. Based upon Kerr-McGee's permit application and the permit statement of basis provided by ADEM, there are no units at this facility that normally operate with visible emissions from the stacks. Therefore, EPA finds that the visible emissions monitoring required by the Kerr-McGee permit is adequate to assure compliance, and the petition is denied with respect to this issue.

#### 6. Monitoring of Sulfur Dioxide Emissions from EP 52, 72, 75, 77A, 77B and 77C

Petitioner's comment: Petitioner states that the sulfur dioxide monitoring requirements should be increased to continuous monitoring for all emission points EP 52, 72, 75, 77A, 77B,

and 77C. Currently, these emission points are not required to be periodically monitored.

EPA's response: Petitioner apparently believes that continuous monitoring should be conducted for all sources of sulfur dioxide emissions. The EPA believes that this level of monitoring is not always necessary and that the need for monitoring must be considered in the context of the specific technical and regulatory issues presented by the source in question. Emission unit EP 52 is subject to a SIP limit on sulfur dioxide emissions of 1.8 lb/MMBtu. As indicated in Kerr-McGee's permit application and the permit statement of basis prepared by ADEM, this unit is only equipped to burn natural gas. Use of an alternate fuel would require significant modification to the title V permit. Because unit EP 52 burns natural gas only, its emissions of sulfur dioxide are inherently extremely low, and continuous monitoring for sulfur dioxide emissions is accordingly not warranted.

The permit does require continuous parametric monitoring for sulfur dioxide emissions from units EP 72, 75, 77A, 77B, and 77C. For these wet scrubber units, the facility must monitor the scrubbing liquor flow rates continuously and record them frequently (hourly, every three hours, or every four hours). The flow rate monitors are also required to be equipped with low flow alarms. The EPA considers the monitoring approach for these units adequate to assure compliance, and the petition is denied with respect to this issue.

#### B. Monitoring of Hydrogen Chloride Emissions

Petitioner's comment: Petitioner points out that no standard for the emissions of hydrogen chloride, a hazardous air pollutant, is established in the permit for EP 76B (a blowdown scrubber). Petitioner states that since Kerr-McGee is a major source of this pollutant under title V, monitoring requirements should be included in the permit for hydrogen chloride emissions.

EPA's response: The Kerr-McGee facility operates several units that emit a combined total of 74 tons of hydrogen chloride per year. However, because there is currently no applicable requirement of the Act that applies for hydrogen chloride, and thus no hydrogen chloride emission limit in the permit, no monitoring is required for emissions of this pollutant. The purpose of the title V permit program is not to evaluate the need for new emission standards or to create new substantive permit requirements, but simply to incorporate all existing standards and requirements into a permit in a way that improves implementation of those standards. Title V does not require that permitting authorities conduct evaluations of the need for new emission standards nor does it independently authorize creation of new emission limits except in limited circumstances (e.g., establishment of limits on potential to emit in order to avoid major source status for a particular pollutant). While monitoring sufficient to assure compliance by providing reliable data from the relevant time period that are representative of the source's compliance with the permit is required (See 40 CFR §§ 70.6(a)(3)(i)(B) and 70.6(c)(1)), title V does not require monitoring of emissions for which no applicable requirements exist. Therefore, the petition is denied with respect to this issue.

C. Federally Enforceable Limitations

Petitioner's comment: Petitioner notes that Kerr-McGee requested in its permit application that the number of federally enforceable limitations in the operating permit be minimized. Petitioner states that this could present problems if the facility fails to meet the emission limitations and the state fails to take appropriate enforcement action. Petitioner further states that if the permit limits are not federally enforceable, enforcement ability is removed from the public as well as the federal government.

EPA's response: Kerr-McGee's request that federally enforceable limitations be minimized in the permit is without consequence. Permitting authorities have no option but to include all requirements applicable to a facility that are already federally enforceable in the federally enforceable portion of a title V permit and to draft permit conditions so that they are practically enforceable. In addition, all conditions of the final Kerr-McGee permit are federally enforceable. The petition is denied with respect to this issue.

D. Permit Shield

Petitioner's comment: Petitioner notes that Kerr-McGee requested in its permit application that the permit include a permit shield which would provide that compliance with conditions of the permit would be deemed compliance with any applicable requirements as of the date of permit issuance. Petitioner states that the shield removes the ability to enforce other applicable requirements and should not be allowed to be included in the permit.

EPA's response: Permitting authorities may expressly include in a part 70 permit a "permit shield" stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that such applicable requirements are included and are specifically identified in the permit. See CAA section 504(f), 42 U.S.C. § 7661c(f), and 40 CFR § 70.6(f). However, because neither the draft nor the final title V permit for Kerr-McGee contains a permit shield, there are no permit shield issues to be considered. The petition is denied with respect to this issue.

E. Section 112(r) (Accidental Release Prevention) Requirements

Petitioner's comment: Petitioner notes that Kerr-McGee states in its permit application that the facility does not contain any substances regulated by section 112(r) (Accidental Release Prevention) in quantities greater than the threshold limit. Petitioner maintains, without a supporting explanation, that the facility should still be required to prepare the Risk Management Plan as well as Worst Case Scenario and Planning Case Scenario as described in section 112(r).

EPA's response: Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention

and detection of accidental releases of hazardous chemicals. This provision applies to owners or operators of stationary sources that produce, process, handle or store more than a threshold quantity of a substance regulated under section 112(r). The substances regulated under section 112(r) and the threshold quantities for applicability are listed at 40 CFR § 68.130. In establishing threshold quantities, EPA considered the toxicity, reactivity, volatility, dispersibility, combustibility, and flammability of each substance. The EPA also considered the amount of each substance which, as a result of an accidental release, is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health. The list of substances regulated under section 112(r) includes hydrochloric acid in concentrations of 37 percent or greater. Kerr-McGee keeps hydrochloric acid on site at its Mobile facility, but only in concentrations of less than 30 percent. Furthermore, the facility does not use any of the other substances listed at 40 CFR § 68.130 above threshold quantities. Therefore, EPA finds that the record contains no evidence, and Petitioner has produced none, suggesting that the facility is subject to any requirements of section 112(r), and the petition is thus denied with respect to this issue.

F. Permit Issuance Time Frame

Petitioner's comment: Petitioner states that the time between the date of the permit application (December 1996) and the issuance of the draft permit (January 2000) was too long. Petitioner asks if there are issues that caused this permit to take this long to draft that should be addressed.

EPA's response: Petitioner expresses a reasonable concern regarding the length of time between submission of the permit application by Kerr-McGee and issuance of the draft permit by ADEM. The initial issuance of title V permits has generally taken longer than anticipated nationwide, and there appear to be no unique issues that delayed drafting of the Kerr-McGee permit. While the normal period for a permitting authority to act on an application is no more than 18 months, the title V program approval notices included transition plans with extended periods for initial permit issuance. See 40 CFR § 70.7(a)(2). Nevertheless, if any change in circumstances results in the application being out-of-date, the applicant must provide additional information to the permitting authority as necessary to address any requirements that become applicable to the source. See 40 CFR § 70.5(b). Because the EPA has no information that indicates the title V permit issued to Kerr-McGee is based upon incomplete or inaccurate information, the petition is denied with respect to this issue.

G. Permitting Authority's Response to Comments

Petitioner's comment: Petitioner alleges that ADEM summarily dismissed all comments of Mobile Bay Watch without taking any action to modify the permit.

EPA's response: EPA finds that ADEM met its obligation to provide opportunities for public participation consistent with title V and the requirements of its federally approved

permitting program. ADEM considered the issues raised by Petitioner and responded with a letter dated April 4, 2000. The absence of a more detailed written response to public comments on the draft permit does not mean that the comments were not adequately considered by ADEM. Furthermore, EPA regulations for state title V permit programs (40 CFR part 70) contain no provision expressly requiring a state to respond in writing to public comments on a draft permit in administering an EPA-approved title V program, nor is such a provision contained in the public participation regulations in Alabama's State Implementation Plan at Ala. Admin. Code R. 335-3-14-.01(7) or for its title V program at Ala. Admin. Code R. 335-3-16-.15(4). The EPA strongly encourages permitting authorities to provide written responses to significant public comments to aid in greater understanding of agency decisions in the permitting process. In addition, there may be circumstances where comments identify apparent permit deficiencies of such significance that, in the absence of a response from the permitting authority explaining why there is no actual deficiency, EPA may have no choice but to object to the permit. However, that is not the case here, where ADEM's April 4, 2000, letter responded adequately to the concerns raised by Mobile Bay Watch. Because the record here shows no error by ADEM in not providing a more detailed written response to comments from Petitioner, the petition is denied with respect to this issue.

#### H. EPA Obligation to Review Permits

Petitioner's comment: Petitioner asserts that sections 505(a)(1)(A) and (b)(1) of the Act together require EPA to review all state-proposed title V permits. Petitioner requests a full EPA review of the Kerr-McGee title V permit, including consideration of issues beyond those Petitioner has raised.

EPA's response: The purpose of title V permit review is to enable EPA to provide timely and effective quality assurance of the permitting process and to object to proposed permits that fail to meet the requirements of the Act. In contrast, the petition process allows citizens to bring claims that EPA failed to object to a deficient permit. The subject of the petition process is limited to whether the permit, not EPA's review, is adequate. Section 505(b)(2) of the Act directs the Administrator to object to a permit based on issues raised in a petition "if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661d(b)(2). This section clearly places the burden on the petitioner to show that the permit is not in compliance with the Act. Petitioner's objection that EPA's review of Kerr-McGee's permit was not adequate is not relevant to a determination of the permit's compliance with the requirements of the Act. Accordingly, the petition is denied with respect to this issue.

**V. CONCLUSION**

For the reasons discussed above, I deny the petition of Mobile Bay Watch, Inc., requesting the Administrator to object to the issuance of the Kerr-McGee Chemicals, LLC/Mobile, Alabama title V operating permit pursuant to CAA section 505(b)(2).

So ordered.

FEB 1 2002  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
Christine Todd Whitman  
Administrator