

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF

DRIFTWOOD LNG LLC

**To construct and operate five (5) natural
gas liquefaction trains and associated
equipment near Carlyss, Calsacieu Parish,
Louisiana**

**Part 70 Operating Permit
No. 0520-00504-V0**

**Issued by the Louisiana Department of
Environmental Quality.**

**PETITION TO OBJECT TO THE TITLE V OPERATING PERMIT FOR THE
PROPOSED EXTENSION OF THE DEADLINE TO COMMENCE CONSTRUCTION
AT DRIFTWOOD LNG LLC'S DRIFTWOOD LNG FACILITY IN CARLYSS
CALSAIEU PARISH**

Pursuant to 505(b) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7661d(b)(2) and 40 C.F.R. § 70.8(d), Sierra Club ("Petitioner")¹ petitions the Administrator of the U.S. Environmental Protection Agency ("EPA") to object to the Part 70 Operating Permit No. 0520-00504-V0 ("Permit") initially issued on July 10, 2018 and commencement of construction

¹ The Sierra Club is America's largest and most influential grassroots environmental organization, with millions of members and supporters. In addition to protecting every person's right to get outdoors and access the healing power of nature, the Sierra Club works to promote clean energy, safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and legal action. The Sierra Club has a longstanding interest and expertise in the development and use of natural resources along the Louisiana and Mississippi coasts and has more than 3,700 members in Louisiana, some of whom live, work, and recreate in the area affected by the proposed facility.

deadline extended on June 2, 2021 by the Louisiana Department of Environmental Quality (“LDEQ”) to Driftwood LNG LLC (“Applicant”), to construct and operate five natural gas liquefaction trains and associated equipment at the proposed Driftwood LNG facility in Carlyss, Calsacieu Parish Louisiana.

Petitioner asks the Administrator to object to the Permit because it fails to comply with the “applicable requirements” of the Act, including: Louisiana’s State Implementation Plan (SIP) and New Source Review (“NSR”) and Prevention of Significant Deterioration (“PSD”) permitting requirements. *See* 40 C.F.R. § 70.2 (defining “applicable requirement” as used in the CAA). Specifically, the Administrator must object to the Permit modification for the following reasons:

- The underlying PSD permit has expired, the Applicant failed to provide a satisfactory justification for an extension, and neither the Applicant nor LDEQ performed a substantive re-evaluation of PSD criteria;
- The underlying PSD permit application is fatally flawed and contrary to the requirements of the CAA; and
- LDEQ conducted an illegally opaque review process.

LEGAL FRAMEWORK

“The Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document. ... Such applicable requirements include the requirement to obtain preconstruction permits that comply with applicable new source review requirements.” *In re Monroe Elec. Generating Plant*, Petition No. VI-1999-02 at 2 (EPA Adm’r 1999). The Administrator, therefore, must determine whether an emission unit has gone through the proper NSR or PSD permitting process, complies

with the Louisiana SIP, and whether the Title V operating permit contains accurate “applicable requirements.” 40 C.F.R. § 70.2; *In re Chevron Prod. Co., Richmond Cal.*, No. IX-2004-08 at 11-12 n. 13 (EPA Adm’r 2005). If the Administrator objects to a permit, “the Administrator shall modify, terminate, or revoke” the permit. 42 U.S.C. § 7661d(b)(3).

The CAA requires the Administrator to issue an objection if Petitioner demonstrates that a permit is not in compliance with the requirements of the CAA. 42 U.S.C. § 7661d(b)(2). *See also* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group (NYPIRG) v. Whitman*, 321 F.3d 316, 333 n. 11 (2d Cir. 2003). When specifically reviewing a petition to object to a Title V permit that raises concerns about a State’s PSD permitting decision, EPA considers whether the petitioner has shown that the state agency failed to comply with its SIP-approved regulations governing PSD permitting or the state agency’s exercise of discretion under such regulations was unreasonable or arbitrary. *In re American Electric Power Service Corp., Fulton, Ark.*, Petition No. VI-2008-01 at 3 (EPA Adm’r 2009).

Pursuant to 40 C.F.R. § 70.8(d), a petitioner must base its Petition “only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” In the instant matter, the included exhibits comprise the permit record for EPA’s review and form the basis for this Petition. Sierra Club’s objections were raised specifically in comments submitted during the public comment period.

The Administrator must grant or deny this Petition within sixty days after it is filed. 42 U.S.C. § 7661d(b)(2). If the Administrator determines that the Permit does not comply with the requirements of the CAA, or fails to include any “applicable requirement,” he must object to

issuance of the permit. 42 U.S.C. § 7661d(b); 40 C.F.R. § 70.8(c)(1) (“The Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part.”). “Applicable requirements” include, among other things, any provision of the Louisiana SIP, including PSD requirements, any term or condition of any preconstruction permit, any standard requirement under CAA §§ 111, 112, 114(a)(3), or 504, acid rain program requirements. 40 C.F.R. § 70.2; *In re Monroe Electric Generating Plant*, Petition No. VI-1999-02 at 2 (EPA Adm’r 1999).

In addition, the Administrator has grounds to object to a proposed permit based on procedural flaws pursuant to 40 C.F.R. § 70.8(c)(3) even where the Administrator has not determined applicable requirements or requirements of Part 70 have been violated:

Failure of the permitting authority to do any of the following also shall constitute grounds for objection: (i) Comply with paragraphs (a) [requiring the permitting authority to transmit the proposed permit, the permit application, and other information needed to effectively review the proposed permit] or (b) [requiring the permitting authority to give notice of the proposed permit to any affected state] of this section; (ii) Submit any information necessary to review adequately the proposed permit; or (iii) Process the permit under the procedures approved to meet § 70.7(h) of this part [governing public participation] except for minor permit modifications.

PROCEDURAL BACKGROUND

The facility was first permitted on July 10, 2018, but has yet to begin construction.² Pursuant to LAC 33:III:509.R.2, the Applicant was required to begin construction within 18 months of permit issuing. On December 17, 2019, the Applicant requested an extension to

² LDEQ, PSD Extension Briefing Package at pdf 1, Driftwood LNG Facility, Carlyss, Calsacieu Parish; AI Number 201334 (Attached as Exhibit A) [hereinafter “Extension Package”] (“Public Notice” at 1).

extend the deadline to commence construction.³ On January 6, 2020, LDEQ approved an 18-month extension of the PSD permit.⁴ On September 10, 2020, the Applicant requested a second extension to extend the deadline to commence construction.⁵ LDEQ issued a public notice for the second proposed extension on December 23, 2020 with a comment deadline of January 27, 2021.⁶ Sierra Club submitted comments on the second proposed extension on January 27, 2021.⁷ On June 2, 2021, LDEQ granted the second extension.⁸ The Applicant's deadline to commence construction of the proposed facility is now January 10, 2023.⁹

THE PETITION IS TIMELY

Title V petitions, such as this one, must be filed within 60 days of the end of EPA's 45-day review period. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). Indeed, EPA's revised 2020 Title V regulations make clear that the Administrator's 45-day review period—and by extension, the public's 60-day deadline to petition to object—"will not begin until" the state submits to EPA the permit, the statement of basis, any response to significant comments, and any other

³ Driftwood LNG LLC, Construction Authorization Extension Request, Driftwood LNG Facility, Carlyss, Calsacieu Parish; AI Number 201334 (Attached as Exhibit B) [hereinafter "First Extension Request"].

⁴ LDEQ, Commencement of Construction Deadline Extension, Driftwood LNG Facility, Carlyss, Calsacieu, Parish; AI Number 201334 (Attached as Exhibit C) [hereinafter "First Extension Approval"].

⁵ Driftwood LNG LLC, 2nd Extension for LDEQ PSD Permit PSD-LA-824, Driftwood LNG Facility, Carlyss, Calsacieu Parish; AI Number 201334 (Attached as Exhibit D) [hereinafter "Second Extension Request"].

⁶ Extension Package, *supra* note 2 at pdf 1 ("Public Notice" at 1).

⁷ Sierra Club, Comments on Proposed Extension of the Deadline to Commence Construction, Driftwood LNG Facility, Carlyss, Calsacieu Parish; AI 201334 (Jan. 27, 2021) (Attached as Exhibit E) [hereinafter "Sierra Club Comments"].

⁸ LDEQ, Commencement of Construction Deadline Extension II, Driftwood LNG Facility, Carlyss, Calsacieu Parish; AI 201334 (Jan. 27, 2021) (Attached as Exhibit F) [hereinafter "Second Extension Approval"].

⁹ *Id.*

supporting documentation. 40 C.F.R. § 70.8(a)(1). In finalizing those regulations, EPA reasoned that any response to comments and the statement of basis are “two critical documents in the administrative record for a proposed permit,” and without those documents “EPA usually cannot provide as effective a review under CAA section 505(b)(1) as when a full administrative record, including these documents, is available during that review.” 85 Fed. Reg. 6431, 6440 (Feb. 5, 2020); *see also id.* at 6439 (noting that the statement of basis is a “necessary part of the permit record.”).

Here, LDEQ has not submitted the underlying PSD permit or the other relevant documents for EPA review. The state agency’s administrative record does not include any indication that LDEQ submitted to EPA the statement of basis or response to comments for the Driftwood permit. And, to the best of Petitioner’s knowledge, EPA had no record of any correspondence from LDEQ; nor had LDEQ provided the permit record for review.¹⁰ Unless and until LDEQ submits to EPA the underlying permit, the statement of basis, and the agency’s response to comments, EPA’s limitations period has not commenced and, thus, has not expired. Accordingly, the public’s 60-day deadline to petition EPA to object has likewise not commenced or expired. This petition is timely filed.

I. EPA MUST OBJECT TO LDEQ’S ISSUANCE OF A PSD PERMIT EXTENSION BECAUSE THE UNDERLYING PSD PERMIT HAS EXPIRED, AND THE APPLICANT FAILED TO PROVIDE A SATISFACTORY JUSTIFICATION FOR AN EXTENSION.

The Applicant’s second attempt to extend its PSD permit another 18 months lacked a sufficient justification and, therefore, LDEQ did not have authority to extend the commencement of construction deadline for a second time. Under Louisiana’s SIP, extensions to commence

¹⁰ Joshua Smith & Brad Toups, *Emails Concerning EPA review of Driftwood Permit* (Jan. 13, 2022) (attached as Exhibit H).

construction of activities permitted under the PSD program are only allowed upon “a satisfactory showing that an extension is justified.” LAC 33:III.509.R.2. EPA’s PSD regulations contain a parallel provision. *See* 40 C.F.R. § 52.21(r)(2). EPA Guidance interpreting this provision requires two things to satisfy this standard on a second extension request. First, it requires applicants to provide a detailed justification for why it “cannot commence construction by the current deadline”. EPA, *Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2)* 5 [hereinafter “EPA Guidance”]. For second requests, a justification for a failure to meet the construction deadline will only be sufficient in “rare circumstances”. *Id.* Second, generally, second extension requests trigger an obligation to perform a substantive re-evaluation of the PSD permitting requirements to ensure that the data supporting the initial application has not gone stale in the intervening time between the initial application and the second extension request. *Id.* at 5-6.

The Applicant’s second extension request and LDEQ’s summary approval of the request fail to provide the detailed justification and substantive re-evaluation to ensure compliance with the CAA. The Applicant’s justification for its failure to meet its construction deadline is a terse statement that “Covid-19 slowed some aspects of commercial development and have temporarily depressed global economic conditions.” Second Extension Request at 2. Plainly, this is insufficient and does not constitute a detailed justification for failing to begin construction despite having already obtained a full 18-month extension before the onset of the COVID-19 pandemic. *See* First Extension Approval.

EPA’s 2017 decision to grant a five-month second extension for construction of a renewable energy project required much more to satisfy the detailed justification standard. *See* EPA, *Final PSD Extension Letter – Energy Answers Arecibo/Energy Answers Arecibo Puerto*

Rico Renewable Energy Project, PR (Apr. 10, 2017), available at <https://www.epa.gov/caa-permitting/final-psd-permit-extension-letter-energy-answers-arecibo-llcenergy-answers-arecibo>.

There, to justify a second extension, the applicant provided specific milestones representing “continued steady progress toward commencing construction.” *Id.* at 2. These milestones included completing contract execution, on-site work and test piles, loan commitment letter issuance, fill and foundation work, and obtaining government approvals. In other words, that applicant was very close to commencing construction and requested a short, tailored extension to finish the last necessary steps before beginning the project in earnest.

Here, to the contrary, Driftwood provides no record of any actual progress toward a construction start date. Instead, the opposite is true. In its second extension request, the Applicant admits that it has yet to make a Final Investment Decision. Second Extension Request at 2. The Applicant’s only statement resembling a justification is to characterize the current global economic condition as adverse but “temporary.” *Id.* But there is nothing in the record to support this characterization. Instead, the fact that the Applicant has now requested two extensions suggests that whatever conditions that may exist to keep this project from getting off the ground are long-term rather than temporary. Likewise, the fact that the Applicant’s second extension request was for 18 months rather than for a shorter duration tailored to specific circumstances or conditions suggests that the Applicant is unsure whether construction will ever begin.

Rather than providing a detailed justification, the Applicant relied on a single vague statement to request an extension, for the second time, of an arbitrary duration. This is tantamount to requesting a blank check. And, rather than demanding more, LDEQ approved the request with almost no consideration. *See* Second Extension Approval. Simply put, the record is entirely bereft of any information that would constitute sufficient circumstances, let alone “rare

circumstances,” to justify granting a second request to extend the date to commence construction for this permit. Accordingly, EPA would be required to object to the Permit on this basis alone.

Alternatively, even if the Applicant’s second extension request was supported by a sufficient justification, neither the Applicant nor LDEQ performed a substantive re-evaluation of PSD criteria. As the EPA Guidance explains, “it is more likely that technology and air quality considerations will become outdated when construction does not begin until 36 months or longer” after the permit is initially issued. EPA Guidance at 6. Nevertheless, there is nothing in the record to establish that a substantive re-evaluation of these considerations occurred or to explain why such a substantive re-evaluation is unnecessary.

Given the time that has elapsed, the Applicant’s perfunctory extension request, and LDEQ’s rote approval, is insufficient. Rather than systematically accounting for the more than three years of changes between the initial application and the proposed extension, the extension request simply ignores this stretch of time. *See* Second Extension Request at A-1, B-1 – B-2. Specifically, the Applicant briefly noted two facilities that were approved after this project was initially approved for the premise that the relevant BACT standards did not change, *Id.* at A-1, and broadly described changes in new local air pollution sources (and includes a still-pending permit revision for a downsized facility as part of the reduction in local air pollution) but then ends with the statement that “conclusions from the original modeling analysis [are expected to] remain unaffected.” *Id.* B-1 – B-2. It goes without saying, but will be explained further below, that this “analysis” is neither a proper BACT analysis nor a proper air quality analysis and is insufficient to ensure that the data justifying approval of this project is not stale.

This is particularly true given that the Applicant never performed its own air modelling analysis for the ozone impacts of the Project in the first place. Instead, the Company used Sasol’s

modelling information for ozone.¹¹ Further compounding the problem, this modelling was performed in 2013 and, thus, is nearly a decade old. Public Notice Package at pdf 69 n. 1. As described more below, Driftwood, if constructed, would be a significant source of pollution. LDEQ should have required the Applicant to conduct a new modelling analysis rather than allowing it to guess that its data remained fresh.

For these reasons, the Applicant's request for a PSD permit extension failed to provide an adequate justification for the extension and failed to either provide a substantive re-evaluation of PSD criteria or explain why such a re-evaluation would be unnecessary. EPA must object.

II. EPA MUST OBJECT TO LDEQ'S ISSUANCE OF A PSD PERMIT TO DRIFTWOOD BECAUSE THE PSD PERMIT APPLICATION IS FATALLY FLAWED AND CONTRARY TO THE REQUIREMENTS OF THE CLEAN AIR ACT.

The proposed Driftwood facility would be a major source of several criteria pollutants, emitting significant quantities of PM_{2.5}, PM₁₀, NO_x, carbon monoxide (CO), and VOCs. *See* Extension Package at pdf 6 ("Briefing Sheet" at 1). As such, the Company was required, but failed, to undertake an air quality analysis for these pollutants. Specifically, the Clean Air Act requires Driftwood to show:

that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, would not cause or contribute to air pollution in violation of:

- i. any national ambient air quality standard in any air quality control region; or

¹¹ LDEQ, Public Notice Permit Package at pdf 61, Driftwood LNG Facility, Carlyss, Calsacieu Parish; AI 201334 (Feb. 1, 2018) ("Briefing Sheet" at 3) ("Driftwood LNG utilized the Relative Response Factor (RRF) approach to estimate impacts of emissions from the proposed facility on area ozone concentrations based on the photochemical modeling conducted in support of Sasol Chemicals (USA) LLC's Gas-to-Liquids (GTL) Project and Lake Charles Cracker Project (LCCP).") (Attached as Exhibit G) [hereinafter "Public Notice Package"].

- ii. any applicable maximum allowable increase over the baseline concentration in any area.

42 U.S.C. § 7475(a)(3); *see also* LAC 33:III.509.K.1. As noted, Driftwood did not perform this analysis. Instead, the Company relied on a 2013 Sasol modeling analysis for the Lake Charles Cracker Project. Accordingly, LDEQ never should have approved this project because the Applicant did not satisfy CAA requirements and the Louisiana SIP.

A. LDEQ allowed Driftwood to use an incorrect Ozone modeling approach.

The Driftwood ozone air quality analysis is flawed in several respects. First, the analysis was based on the photochemical grid modeling analysis performed for the Sasol Chemicals LLC's Gas-to-Liquids Project and Lake Charles Cracker Project. *See* Public Notice Package at pdf 61 (“Briefing Sheet” at 3). The total NO_x and VOC emissions from Sasol’s proposed Lake Charles and Gas-to-Liquids Projects are 4881 tons/year, resulting in a peak impact of Sasol’s projects on ozone concentrations at the Carlyss Monitoring Station would be 0.3 ppb and, in unmonitored areas, 0.6 ppb. Sierra Club Comment at Ex. A, p. 1.

Driftwood then used a Relative Response Factor (RRF) approach to estimate impacts of emissions from the proposed facility on area ozone concentrations. *Id.* Because the Driftwood LNG facility will emit a total of 2,260 tons per year of NO_x and VOC emissions—approximately 46% of the Sasol projects’ emissions—Driftwood assumed that the peak impacts of the LNG facility would be approximately 0.3 ppb at the Carlyss monitor. *Id.* And based on the Carlyss monitor’s current 68 ppb ozone design value, Driftwood asserts that the LNG facility is “not expected to cause or contribute to any ozone NAAQS exceedances.” Extension Package at pdf 7 (“Briefing Sheet” at 2).

This proportionality-based analysis is not technically supportable since the sources of NO_x and VOC emissions at Driftwood are very different from the sources of NO_x and VOCs at the Sasol and Lake Charles projects. Source heights, building downwash, exit velocities, temperatures, and geometry are all different. Additionally, given the complex chemistry of ozone formation and the significant differences between the Driftwood and Sasol projects, LDEQ cannot just use the linear proportionality approach.

Although Driftwood and LDEQ do not explicitly say so, they have impermissibly adopted a version of EPA's so-called Modelled Emission Rates for Precursors ("MERP") analysis. EPA describes MERP analysis as follows:

A Modeled Emission Rate for Precursors (MERP) is a type of Tier 1 demonstration tool that would represent a level of increased precursor emissions that is not expected to contribute to levels of ozone or PM_{2.5}. For Tier 1 assessments, EPA generally expects that applicants would use existing empirical relationships between precursors and secondary impacts based on modeling systems appropriate for this purpose...The use of existing credible technical information that appropriately characterize the emissions to air quality relationships will need to be determined on a case-by-case basis...Examples of existing relevant technical information that may be used by a permit applicant, in consultation with the appropriate permitting authority, include air quality modeling conducted for the relevant geographic area reflecting emissions changes for similar source types as part of a State Implementation Plan (SIP) demonstration, other permit action, or similar policy assessment as well air quality modeling of hypothetical industrial sources with similar source characteristics and emission rates of precursors that are located in similar atmospheric environments and for time periods that are conducive to the formation of O₃ or secondary PM_{2.5}.

Sierra Club Comment at Ex. A p. 2-3.

Thus, any MERP analysis should use predicted ozone (and PM_{2.5}) from sources that have *similar characteristics* (i.e., emissions quantities, types of emissions, release heights, etc.) and that are located in "similar atmospheric environments." In its most recent updated

MERP Guidance, EPA recommends the following three-step process to address ozone (and PM_{2.5} impacts from single sources):

(1) Identify a representative hypothetical source (or group of sources for an area) from EPA’s modeling as detailed in Appendix Table A-1 or the Excel spreadsheet available on SCRAM. If a representative hypothetical source is not available, then consider whether an EPA derived MERP value available for the broader geographic area of the project source may be adequately representative and thus appropriate to use (see Table 4-1). Alternatively, one can consider conducting photochemical modeling (as described in Section 3.2.2) to derive appropriate information to derive a source- or area-specific value.

The permit applicant should provide the appropriate permitting authority with a technically credible justification that the source characteristics (e.g., stack height, emissions rate) of the specific project source described in a permit application and the chemical and physical environment (e.g., meteorology, background pollutant concentrations, and regional/local emissions) near that project source are adequately represented by the selected hypothetical source(s).

(2) Acquire the source characteristics and associated modeling results for the hypothetical source(s). If using EPA modeling, then access these data from the on-line spreadsheet on EPA’s SCRAM website. If using other modeling, then access these data from the relevant input and output files.

(3) Apply the source characteristics and photochemical modeling results from Step 2 to the MERP equation with the appropriate SIL value to assess the project source impacts.”

EPA, *Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier 1 Demonstration Tool for Ozone and PM_{2.5} under the PSD Permitting Program* 40-41 (Apr. 30, 2019), available at <https://www.epa.gov/sites/production/files/2019-05/documents/merps2019.pdf> [hereinafter “EPA MERP Guidance”].

EPA’s guidance makes clear that where, as here, a proposed project opts to rely on an air quality analysis for a different facility, that facility must truly be “representative”—that is, it must have similar stack heights, generally similar emission rates, similar meteorology, etc. If such representative sources are not available, the source should consider a MERP value that is

available for the broader geographic area. And if a representative facility is still unavailable, photochemical modeling must be used.

Here, the record contains no discussion of how LDEQ determined that the Sasol facility was a truly “representative” source. That failure should alone be sufficient to reject Driftwood’s reliance on the Sasol analysis. Because the Sasol facilities are not, in fact, representative of the Driftwood LNG facility’s operational, structural, and emissions profile, LDEQ should require the Applicant to conduct its own source-specific ozone photochemical modeling and should provide the public with an opportunity to evaluate and comment on that revised analysis. Additionally, Driftwood should evaluate the facility’s maximum ozone impacts, not simply the impact at the Carlyss monitoring station.

B. LDEQ allowed Driftwood to use Significant Impact Levels improperly.

Driftwood’s use of Sasol modeling purports to show that none of its primary criteria pollutant emissions’ concentrations would exceed the “Significant Impact Level” (“SIL”) at the location of any modeled, ground-level “receptor” for any pollutant, never examining the cumulative air emissions of the facility in combination with other sources. Public Notice Package at pdf 69 (“Preliminary Determination Summary” at 11). Sasol impermissibly also relied on the MERP and the corresponding SIL, to find that its emissions of ozone and secondary PM_{2.5} precursors did not warrant a full air quality analysis either. Reliance on illegal portions of LDEQ air quality modeling policy allowed Sasol (and thus, Driftwood) to substitute “meeting” the SIL for its true Clean Air Act obligation to examine its cumulative air quality impacts on the Lake Charles area, in conjunction with existing and proposed sources. *See* LAC 33:III.509.K.

The Clean Air Act unambiguously prohibits the use of SILs, as well as MERP values that rely upon a SIL. The Act’s and Louisiana’s PSD provisions require Driftwood to demonstrate

that the emissions from its proposed complex will “not cause, or contribute to” an exceedance of any NAAQS or any increment. *See* 42 U.S.C. § 7475(a)(3); LAC 33:III.509.K.1. Congress used mandatory and expansive language throughout Section 7475(a) to make its directive clear and leave no gaps for EPA or LDEQ: “no” covered source may be constructed, “unless” that source “demonstrates” that it “will not” “cause, or contribute to,” “any” violation of the NAAQS or “any” increment. *See Alabama Power Co. v. Costle*, 636 F.2d 323, 362 (D.C. Cir. 1979); H.R. Rep. No. 95-294, at 9; S. Rep. No. 95-127, at 11, 32 (1977); *see also* 42 U.S.C. § 7475(a)(3). Congress specifically used the terms “cause” and “contribute” together to ensure the PSD program would prevent increments and the NAAQS from being exceeded by considering all possible violations or contributions to violations. *Alabama Power Co.*, 636 F.2d at 362. A contribution to an ongoing violation can be either quite small or quite large: the term “contribute,” “has no inherent connotation as to the magnitude or importance of the relevant ‘share’ in the effect; certainly it does not incorporate any ‘significance’ requirement.” *Bluewater Network v. EPA*, 370 F.3d 1, 13 (D.C. Cir. 2004) (interpreting nearly identical language in another section of the Clean Air Act). Congress left no room to forego demonstrating that air quality would meet the NAAQS and increments, simply because an agency believes a facility’s emissions would not make a significant enough contribution to any violations.

In keeping with that statutory text, the D.C. Circuit vacated EPA’s PM_{2.5} SILs regulation, recognizing EPA’s “lack of authority to exempt sources from the requirements of the Act.” *Sierra Club v. EPA*, 705 F.3d 458, 465-66 (D.C. Cir. 2013). The court specifically rejected the part of the regulation that “simply states that the demonstration required under § 165(a)(3) is deemed to have been made if a proposed source or modification’s air quality impact is below the SIL.” *Id.* Moreover, the Driftwood analysis appears to rely on a modeling analysis that, in turn,

relies on EPA guidance, Public Notice Package at pdf 378 (“PSD Air Quality Modeling Analysis” at 5-22), that bears most of the same flaws that the D.C. Circuit found in the regulation. *See Sierra Club v. EPA*, 955 F.3d 56 (D.C. Cir. 2020) (“In the SILs Guidance, EPA described the document as the first of a two-step approach, explaining it hoped to ‘first obtain experience with the application of these values in the permitting program before establishing a generally applicable rule.’”) (internal citation omitted). In 2020, the D.C. Circuit took up a challenge to this policy document. *Id.* Although the court concluded that it lacked the authority to strike the new EPA policy document in a facial challenge, it made clear that “[t]he SILs Guidance is not sufficient to support a permitting decision—simply quoting the SILs Guidance is not enough to justify a permitting decision without more evidence in the record, including technical and legal documents.” *Id.* at 63-64.

Driftwood’s use of the SILs and MERPs in its air quality analysis, and LDEQ’s willingness to approve of that use, violates the Clean Air Act, because it excuses the Company from making the mandatory NAAQS and increments compliance demonstration. LDEQ must order Driftwood to perform a cumulative air quality analysis to assess whether it causes or contributes to any violation of the NAAQS or increment overconsumption in the area.

LDEQ’s SILs policy is also illegal as applied to Driftwood’s application, in part, because modeling already shows NAAQS exceedances and PSD increment consumption for the same area. Extension Package at pdf 75 (“Preliminary Determination Summary” at 15). As the D.C. Circuit in *Sierra Club* held, and EPA ultimately conceded, use of the SILs is particularly unlawful when it “does not give permitting authorities that implement the SILs discretion to require a cumulative air quality analysis for sources that are below the SIL, but could

nevertheless cause a violation of the NAAQS or increment.” *Sierra Club*, 705 F.3d at 465. But that is precisely what LDEQ did here.

LDEQ’s policy bears the exact same flaw highlighted by the court in *Sierra Club*:

If the modeled concentration is less than the significance level, the project’s impact is insignificant (i.e., the project increases will not cause or significantly contribute to an exceedance of the NAAQS or PSD Increment standards); therefore, no further analysis is required.”.

LDEQ, *Air Quality Monitoring Procedures 2-3* (Aug. 2006), available at <https://deq.louisiana.gov/assets/docs/Air/ModelingProcedures0806.pdf>.

LDEQ’s policy does not leave the agency discretion to find a violation even in an area that is at risk of violating the NAAQS, or even for a facility that might cause or contribute to a violation when it emits concentrations less than the SIL. And in this case, Driftwood and LDEQ were similarly rigid, offering no justification beyond simply determining that Driftwood did not exceed the SIL, and therefore “no further analysis is necessary.” Public Notice Package at pdf 358 (“PSD Air Quality Modeling Analysis” p. 5-2).

As discussed in more detail below, there is strong reason to believe that Driftwood’s considerable criteria air pollution could cause or contribute to NAAQS or increment violations in the area, even if Driftwood emits less than the relevant SIL. Again, the air quality monitoring Driftwood relied on reflects exceedances of the NAAQS based on proposed and permitted sources in 2013. Extension Package at pdf 75 (“Preliminary Determination Summary” at 15). Given the explosive growth of gas exploration and processing facilities throughout the Gulf region, NAAQS exceedances are likely even greater than the Sasol modeling suggests.

Moreover, by focusing on the SIL alone, LDEQ impermissibly commits itself to issue permits to source after source that contributes less than the SILs, in an area that will in fact violate the standards or increments. *See Sierra Club*, 705 F.3d at 463 (“The Sierra Club further

notes that because the EPA’s regulation automatically exempts a source with a proposed impact below the SIL from demonstrating it will not cause or contribute to a violation of the NAAQS, unlimited numbers of sources whose impacts are less than the SILs could cumulatively cause a violation of the NAAQS or increments.”). In light of the air quality modeling produced by Sasol for the area, this appears to be exactly what is happening in the Lake Charles area. This flips the purpose and broader structure of the PSD program on its head. The “emphatic goal of PSD is to prevent [increments] from being exceeded,” as well as to prevent exceedances of NAAQS.

Alabama Power, 636 F.2d at 362 (“On their face, these provisions establish the thresholds as limitations that are not to be exceeded ...”); *Sierra Club*, 705 F.3d at 465 (permitting authorities must “prevent violations by requiring demonstration that a proposed source or modification will not cause [or contribute to] a violation.”); *see also* 42 U.S.C. § 7473(b)(4) (defining “maximum allowable concentration” for pollutant as being no great than NAAQS for that pollutant); *see also* H.R. Rep. 95-294, at 9 (1977), reprinted at 1977 U.S.C.C.A.N. 1077, 1087 (“The purpose of the permit is to assure that the allowable increments and [NAAQS] will not be exceeded as a result of emissions from any new or modified major stationary source.”). By allowing Driftwood to use SILs to avoid assessing whether it would contribute to potential NAAQS and/or increment exceedances, LDEQ appears to be authorizing rather than preventing significant deterioration of air quality. Even if LDEQ had discretion to promulgate and apply a SILs policy under the Clean Air Act in general, it certainly could not be allowed to inflexibly invoke the policy here to claim that Driftwood would not cause or contribute to NAAQS exceedances or increment consumption in an area where modeling shows clear violations.

Notably, EPA’s newest SILs policy document does not even go this far, as it presupposes that “[i]f a permitting authority chooses to use these SIL values to support a case-by-case

permitting decision, it must justify the values and their use in the administrative record for the permitting action.” EPA, *Guidance on SILs for Ozone and Fine PM in the PSD Program* 3 (2018) https://www.epa.gov/sites/production/files/2018-04/documents/sils_policy_guidance_document_final_signed_4-17-18.pdf. And “[a] determination that a proposed source does not cause or contribute to a violation can only be made by a permitting authority on a permit-specific basis after consideration of the permit record.” *Id.*

Because, as discussed above, the modeling analysis relied upon by Driftwood already shows modeled violations of the PM_{2.5}, SO₂, and NO₂ 1-hour and annual NAAQS, LDEQ must require Driftwood to conduct a full impact analysis that includes area emissions to determine whether the LNG facility’s emissions contribute to these violations.

Furthermore, beyond being unlawful under the Clean Air Act and state law, LDEQ’s argument runs exactly opposite to the agency’s public trustee duty, discussed in more detail below. The NAAQS are to be met with precision, because the standards are to be set “not lower or higher than is necessary—to protect public health with an adequate margin of safety,” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 475-76 (2001). Driftwood’s additional emissions that create or worsen violations of those standards could add measurable harm to human health that LDEQ failed to examine. *See United States v. Ameren Mo.*, 421 F.Supp.3d 729, 817 (E.D. Mo. 2019) (“[T]he SILs do not establish a level below which there is no risk of harm from a facility’s pollution.”). By proposing to allow Driftwood to construct without even assessing whether it would exacerbate air quality in violation of health thresholds, LDEQ is falling short of its duty to avoid environmental harm to the maximum extent possible. *See In re Am. Waste and Pollution Control Co.*, 633 So.2d 188, 194 (La. App. 1st Cir. 1993).

C. LDEQ allowed Driftwood to underestimate the facility's potential to emit.

The Driftwood PSD application is based on flawed calculations of the facility's potential to emit. First, the Company repeatedly misuses using AP-42 algorithms to estimate emissions, Sierra Club Comments at Ex. A, pp. 10-11, and therefore substantially underestimates the potential to emit NO_x and VOC from its numerous flaring and tank source and HAP emissions. *Allan K. Chambers et al., Direct Measurement of Fugitive Emissions of Hydrocarbons from a Refinery*, 58 JOURNAL OF THE AIR AND WASTE MANAGEMENT ASSOCIATION 1047 (Aug. 2008). Specifically, many studies have demonstrated that the method used to estimate tank emissions, the TANKS 4.09d model based on AP-42 algorithms, significantly underestimates them. *See EPA, Compilation of Air Pollutant Emission Factors ("AP-42") ch. 7, available at <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emission-factors#5thed>*. Actual measurements of tank emissions using differential absorption lidar (DIAL)¹² compared to those calculated using AP-42 algorithms indicate that AP-42 substantially underestimates VOC and HAP emissions. *See Chambers et al.* For example, the Chambers study demonstrates an underestimation of VOC emissions by the AP-42 algorithms used in the TANKS program by a factor of 33. *Id.* Another similar study demonstrated underestimates by factors of 5 to 15, as summarized in Table 1. *EPA, Critical Review of DIAL Emission Test Data for BP Petroleum Refinery in Texas City, Texas 2* (Nov. 2010), *available at https://www3.epa.gov/airtoxics/bp_dial_review_report_12-3-10.pdf*.

¹² LIDAR is a surveying technology that measures distance by illuminating a target with a laser light. Differential absorption lidar (DIAL) measurements utilize two or more closely spaced (<1 nm) wavelengths to factor out surface reflectivity as well as other transmission losses, since these factors are relatively insensitive to wavelength. When tuned to the appropriate absorption lines of a particular gas, DIAL measurements can be used to determine the concentration (mixing ratio) of that particular gas in the atmosphere. *See Wikipedia, Lidar*; available at https://en.wikipedia.org/wiki/Lidar#Meteorology_and_atmospheric_environment.

**Table 1: Comparison of DIAL Results and
Tank Emissions Estimated Using AP-42**

Source	Source Description	Compound	Average DIAL flux, lb/hr ^d	Estimated emissions using standard estimating procedures with actual conditions at the time of the DIAL test, lb/hr
Tanks 1020, 1021, 1024, and 1025	EFR ^c tanks storing crude oil	VOC	6.4 ^d	1.3 – 1.9 ^e
Tanks 1052, 1053, and 1055	EFR tanks storing crude oil	VOC	16.3 ^d	1.8 – 2.3 ^e
Tanks 501, 502, 503, and 504	EFR tanks storing light distillates	VOC	8.6 ^d	3.0 – 3.9 ^e
Tank 43	VFR ^f tank storing fuel oil #6	VOC	2	1.3
			9.3	1.3
Tanks 60, 63, 11, 12, 18, 42, 61, and 65	VFR and EFR tanks storing various products	VOC	9	0.6 – 9.1 ^e
Tanks 54, 55, 56, and 98	VFR and EFR tanks storing various products	VOC	3.1 ^d	0.3 – 9.7 ^e
Tanks 53 and 55	VFR tanks storing diesel fuel	VOC	23.8 ^d	4.8 – 5.2 ^e

Other studies have similarly concluded that “[c]rude oil and heated oil tank emissions measured by DIAL were 5–10 times higher than estimated by TANKS.” Rod Robinson, *The Application of Differential Absorption Lidar (DIAL) for Pollutant Emissions Monitoring*, January 2015, pdf 46, *available at* [https://www.h-gac.com/board-of-directors/advisory-committees/regional-air-quality-planning-advisory-committee/documents/2015/Jan%202015/DIAL%20%202015%20Houston%20Meeting%20January%20\(sent%20version\).pdf](https://www.h-gac.com/board-of-directors/advisory-committees/regional-air-quality-planning-advisory-committee/documents/2015/Jan%202015/DIAL%20%202015%20Houston%20Meeting%20January%20(sent%20version).pdf). In fact, a recent study commissioned by the South Coast Air Quality Management District (“SCAQMD”) using real-time monitoring to measure the emissions of VOCs and other pollutants at six refineries and a tank farm confirmed these results. *See* FluxSense Inc., *Emission Measurements of VOCs, NO2 and SO2 from Refineries in the South Coast Air Basin Using Solar Occultation Flux and Other Remote Sensing Methods, Final Report* (Apr. 2017), *available at* <https://www.courthousenews.com/wp-content/uploads/2017/06/FluxSense-Study.pdf>.

In sum, Driftwood used the AP-42 algorithms as the basis of estimating PTE throughout the application. *See* Sierra Club Comments Ex. A, pp. 10-11. This approach is fundamentally flawed and outdated because AP-42 emission factors are *average* emission factors and cannot be

used to estimate PTE, which must evaluate the upper-end or *maximum* emissions. *Id.* By using AP-42 emission factors improperly, Driftwood systematically underestimated the facility's potential to emit. *Id.* Because emission calculations are a critical input for any modeling analysis, Driftwood's erroneous PTE assumptions likely skewed the results of the modeling and significantly underestimated the total impacts of emissions from the facility. Moreover, as noted, the use of AP-42 emission factors is inadequate where, as here, advancements in technology are capable of measuring PTE with greater accuracy. LDEQ must require Driftwood to reevaluate and properly substantiate its PTE analysis.

D. LDEQ accepted an incorrect Best Available Control Technology analysis that is not enforceable.

The 2018 permit BACT determinations (conducted in 2017 by the Applicant and accepted by the LDEQ) were incorrect in many instances and are now outdated. Instead of doing a proper Top Down BACT analysis, including technology-forcing options, Driftwood simply compares two/three additional LNG facilities that appear on EPA's RACT/BACT/LAER Clearinghouse (RBLC) and declares that the 2017 BACT still stands. Second Extension Request at A-1. These facilities are: Venture Global, Calcasieu Pass; Venture Global Plaquemines; and Rio Grande LNG. Instead of comparing to just the LNG facilities, Driftwood should have investigated, at a minimum the BACT determinations for similar *equipment*, regardless of facility. In other words, similar sized turbines instead of turbines at other LNG facilities; combustion equipment, etc.

Moreover, relying on EPA's RACT/BACT/LAER Clearinghouse RBLC alone is not a proper basis for a BACT determination. Instead, BACT is designed to be "technology-forcing," meaning that a BACT analysis results in permit limits and pollution controls that are more stringent over time, as control technologies improve and new cleaner processes are introduced.

Natural Resources Defense Council v. Thomas, 805 F.2d 410, 429 (D.C. Cir. 1986). BACT is therefore forward-looking and should include all cost-effective options and stringent emission levels, not just those adopted by others in the past. Here, Driftwood’s BACT analysis failed to take a hard look at the feasibility of newer, more effective, and economically feasible options.

Additionally, Driftwood’s PSD permit relating to BACT is unenforceable. Permit limits must be both legally and practically enforceable (i.e., enforceable as a practical matter). *See In the Matter of Yuhuang Chemical Inc. Methanol Plant*, Order on Petition No. VI-2015-03 at 14 (August 31, 2016). As EPA has explained, in order to be enforceable as a practical matter, the permit must, among other things, “clearly specify how emissions will be measured or determined for purposes of demonstrating compliance.” *Id.* To that end, “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.” *Id.* (emphasis added). The New Source Review Manual, upheld in numerous Environmental Appeals Board (EAB) cases, requires that BACT emission limits must be met on a continual basis at all levels of operation. The Manual states that applicants must:

- Be able to show compliance or noncompliance (i.e., through monitoring times of operation, fuel input, or other indices of operating conditions and practices); and
- Specify a reasonable compliance averaging time consistent with established reference methods, contain reference methods for determining compliance, and provide for adequate reporting and recordkeeping so that the permitting agency can determine the compliance status of the source.

EPA, *New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting*, Draft 56 (Oct. 1990).

Here, several of the conditions in the Driftwood LNG facility's proposed permit are not practically enforceable. As noted, for BACT for VOC emissions from fugitive sources, the Driftwood permit relies on rotary pumps and compressors handling stream containing VOC with a true vapor pressure of 1.5 psia or greater at handling conditions are required to be equipped with mechanical seals or other equivalent equipment. Extension Package at pdf 70 ("Preliminary Determination Summary" at 10). Additionally, Driftwood LNG will conduct good work practices to minimize VOC emissions. *Id.* This so-called BACT is unenforceable since "good work practices" is vague and not defined. As discussed above, proper BACT for fugitives is use of Optical Gas Imaging (OGI) supplemented by standard Leak Detection and Repair (LDAR) programs.

LDEQ's final BACT determinations for multiple sources, as shown below, are similarly unenforceable, as the "good equipment design" and "best" practice provisions are vague and undefined. *Id.* at 16.

TABLE III. BACT SELECTION

Equipment	PM ₁₀ /PM _{2.5}	SO ₂	NO _x	CO	VOC
Compressor Turbines	0.0068 lb/MM BTU Good Combustion Practices Use of Low Sulfur Facility Fuel Gas	Good Combustion Practices Use of Low Sulfur Facility Fuel Gas	5 ppmvd at 15% O ₂ DLN and/or SCR	25 ppmvd at 15% O ₂ Good Combustion Practices	0.0021 lb/MM BTU (HHV) Good Combustion Practices Use of Low Sulfur Facility Fuel Gas
Hot Oil Heaters	0.0075 lb/MM BTU Good Combustion Practices Use of Low Sulfur Facility Fuel Gas	Good Combustion Practices Use of Low Sulfur Facility Fuel Gas	JLNB Good Combustion Practices	Good Combustion Practices	0.0054 lb/MM BTU Good Combustion Practices Use of Low Sulfur Facility Fuel Gas
Acid Gas Thermal Oxidizers	0.0075 lb/MM BTU Good Combustion Practices Use of Low Sulfur Facility Fuel Gas	Acid Gas H ₂ S Minimization Good Combustion Practices Use of a triazine-based H ₂ S scavenger system	LNB Good Combustion Practices	Good Combustion Practices	0.16 lb/MM BTU Good Combustion Practices Use of Low Sulfur Facility Fuel Gas
Condensate Vapor Thermal Oxidizer	0.008 lb/MM BTU Good Combustion Practices Use of Low Sulfur Facility Fuel Gas	Good Combustion Practices Use of Low Sulfur Facility Fuel Gas	LNB Good Combustion Practices	Good Combustion Practices	Good Combustion Practices Use of Low Sulfur Facility Fuel Gas
Flares	2.5 lb/MM scf Good Equipment Design/Best Operational Practices Use of Low Sulfur Facility Fuel Gas	Good Equipment Design/Best Operational Practices Use of Low Sulfur Facility Fuel Gas	0.0680 lb/MM BTU (HHV) Good Equipment Design/Best Operational Practices Use of Low Sulfur Facility Fuel Gas	0.31 lb/MM BTU (HHV) Good Equipment Design/Best Operational Practices Use of Low Sulfur Facility Fuel Gas	Good Equipment Design/Best Operational Practices Use of Low Sulfur Facility Fuel Gas
IC Engines	40 CFR 60 Subpart IIII Good Combustion Practices	40 CFR 60 Subpart IIII Good Combustion Practices	40 CFR 60 Subpart IIII Good Combustion Practices	40 CFR 60 Subpart IIII Good Combustion Practices	40 CFR 60 Subpart IIII Good Combustion Practices
Amine Surge Tanks, Stormwater Pond 2 Diesel Tank					Fixed roofs, Submerged fit pipes, Good work practices
Process WW Tank Waste Oil/Amine Tank					Internal Floating Roofs
Spent Scavenger Tank					Closed vent system and Control device
Truck Loading Operations Condensate Tank					Controlled by Condensate Vapor Thermal Oxidizer

LDEQ must revisit all of these generic “best” or “good” practices requirements, and impose actual BACT conditions that are clearly defined and practically enforceable.

Moreover, the PSD permit conditions unlawfully fail to include any monitoring for the vast majority of these emission rates; and for those that are included, the monitoring is inadequate to demonstrate compliance with BACT limits and facility design. Thus, the Permit is wholly unacceptable and should be withdrawn and redrafted.

III. LDEQ CONDUCTED AN OPAQUE REVIEW PROCESS

A. The Air Quality Analysis Cannot be Reviewed as Presented in Publicly Available Files.

The Sasol air quality analysis included in publicly disclosed files is simply a summary of an air quality analysis, not the analysis itself. See Public Notice Package at pdf 377-379 (“PSD Air Quality Modeling Analysis” at 5-21 – 5-23). It does not contain sufficient information to allow a subject matter expert to evaluate whether the analysis is accurate and was performed correctly. The AERMOD modeling files are required to evaluate the analysis; but these files are

missing from the information provided for public review. Numerous inputs and assumptions are required to run AERMOD, the model used to estimate the air quality impacts of the project. These include background ambient air quality data; meteorological data, including wind velocity, wind direction, ambient temperatures, atmospheric stability and mixing height; source characteristics, including emission rates, stack heights, exit velocities, exit temperatures, and stack diameters; terrain data; surface characteristics; grid spacing; building and stack locations and dimensions; urban/rural dispersion coefficient determination; and the handling of variable wind speeds and calm hours, which are often the controlling meteorological conditions for National Ambient Air Quality Standards (NAAQSs) based on 1-hour concentrations. The processing of the meteorological data is critically important and cannot be assessed without access to the raw meteorological data files.

None of the modeling files supporting Driftwood's air quality analysis were provided for public review. As a result, LDEQ has placed the onus on the public to recreate the information from scratch, which is impossible for anyone in the 30-day review period and well beyond the reach of the lay reviewer, regardless of the review time.

LDEQ should make the data underlying the air quality modeling report available to public and allow additional time for comment.

B. Driftwood's Emissions Are Unsupported.

The air quality analysis depends on the magnitude of emissions during project operation. The application includes spreadsheets that calculate operational emissions, but the information is contained in pdf versions of formerly live Excel spreadsheets, which were used to calculate emissions. *See generally* Public Notice Package at pdf 354 *et seq.* ("PSD Permit Application" at § 5). LDEQ's EDMS database also fails to include the unlocked Excel spreadsheets, thus

preventing any meaningful review of the pdf versions without trial-and-error re-creation, which is not feasible within the very short review period.

An unlocked Excel spreadsheet allows a reviewer to click on any cell and inspect the calculations that were made to yield the result in the cell. Unlocked Excel spreadsheets are required to review emissions calculations. The pdf versions included in the record, on the other hand, do not allow inspection of underlying formulas. Compounding the problem, the pdf spreadsheets are often not annotated with footnotes that divulge sources and equations used to make the calculations in the emission tables. Without the unlocked Excel spreadsheets, it is impossible for anyone, including a subject-matter expert, to review and verify the emission calculations without manually replicating the calculations by trial and error, a tedious process that would take longer than the 30 days allotted to review the Public Notice Document.

C. LDEQ Failed to Comply with EPA's Title V Regulations.

As noted, LDEQ failed to submit for EPA review the proposed Driftwood Title V permit, the statement of basis, and any response to comments, as required by the Clean Air Act and EPA's regulations. EPA's ability to meaningfully review and timely object to the issuance of any Title V permit is a fundamental requirement of the Clean Air Act. *See* 42 U.S.C. § 7661d(a)(1) ("Each permitting authority—(B) shall provide to transmit to the Administrator a copy of each permit proposed to be issued and issued as a final permit.); see also *id.* § 7661d(b)(1) (If any permit is "not in compliance with the applicable requirements" of the Clean Air Act, "the Administrator shall, . . . object to its issuance.>"). Under EPA's revised 2020 Title V regulations, the state "permitting authority must provide certain documents including the statement of basis and (when applicable) the written response to comment document along with the proposed permit for the EPA's 45-day review period" to begin. 85 Fed. Reg. at 6433; *see also* 40 C.F.R. § 70.8(a).

EPA's preamble makes clear that the agency adopted that requirement because the response to comments and the statement of basis are "two critical documents in the administrative record for a proposed permit," and without those documents "EPA usually cannot provide as effective a review under CAA section 505(b)(1) as when a full administrative record." 85 Fed. Reg. 6431, 6440 (Feb. 5, 2020); *see also id.* at 6439 ("to stress the importance of the statement of basis document, the EPA proposed to revise 40 CFR 70.4(b), 70.7(h), and 70.8(a) to specifically identify the statement of basis document as a necessary part of the permit record throughout the permitting process.").

Here, LDEQ failed to provide EPA with the underlying Part 70 or PSD permit for review, as contemplated by EPA's regulations. As such, LDEQ's extension of Driftwood's PSD construction deadline and the extension of the Title V permit fails to comply with the applicable requirements of the Clean Air Act, and is arbitrary, capricious, and contrary to law. EPA should object to the permit.

CONCLUSION

For these reasons Petitioner respectfully requests that EPA object to the above referenced permit because it is not in compliance with applicable requirements and the requirements of the Part 70 regulations.

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Respectfully Submitted,

/s/ Thomas Gosselin

Thomas Gosselin
Associate Attorney
Sierra Club
P.O. Box 4998
Austin, TX 78765
(424) 346-3276
tom.gosselin@sierraclub.org

Joshua Smith
Staff Attorney
Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612
(415) 977-5560
joshua.smith@sierraclub.org