

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

IN THE MATTER OF: )  
)  
LDEQ Proposed Part 70 Air Operating Permit )  
No. 1920-00018-V3 )  
) Permit No. 1920-00018-V3  
For Morehouse BioEnergy )  
)  
Prepared by the Louisiana Department of )  
Environmental Quality )

**PETITION TO OBJECT TO THE TITLE V OPERATING PERMIT FOR  
MOREHOUSE BIOENERGY’S BASTROP, LOUISIANA WOOD PELLET MILL**

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Louisiana Environmental Action Network, Dogwood Alliance, Partnership for Policy Integrity, Natural Resources Defense Council, Our Children’s Earth, and Environmental Integrity Project (“Petitioners”) hereby respectfully petition the Administrator of the U.S. Environmental Protection Agency (“EPA”) to object to the above-referenced draft Title V permit (“the permit”) prepared by the Louisiana Department of Environmental Quality (“LDEQ”) for the Morehouse BioEnergy, LLC wood pellet mill located at 7070 Carl Road, Bastrop, Morehouse Parish, Louisiana.

LDEQ forwarded this permit to EPA for its 45-day review period on approximately April 13, 2018, prior to the close of the public comment period, which ran from April 10 to May 15, 2018 and again from June 20 to July 23, 2018.<sup>1</sup> On May 14, 2018 and July 20, 2018, Petitioners submitted timely comments on the draft permit during the public comment periods.<sup>2</sup> Following the close of the initial public comment period, Environmental Integrity Project (EIP) contacted LDEQ and requested that LDEQ withdraw the permit from EPA review while LDEQ considered whether Petitioners’ comments warranted revisions to the permit.<sup>3</sup> LDEQ refused. Thus, EPA’s 45-day review period concluded on May 29, 2018, and the 60-day period during which members of the public may petition the EPA Administrator to object to the proposed permit commenced immediately thereafter. As a result, in order not to lose its statutory right to petition EPA for an objection, Petitioners have no choice but to file this petition before receiving LDEQ’s response

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<sup>1</sup> Due to an outage of Louisiana’s “Electronic Document Management System” during the initial public comment period, LDEQ issued the draft permit for a second round of public notice and comment. *See* LDEQ, Public Notice, Extension of Public Comment Periods Due to EDMS Outage (June 20, 2018). (Attachment A)

<sup>2</sup> *See* Environmental Integrity Project, et al., Written Comments on Draft Permit Submitted to LDEQ, May 14, 2018; Environmental Integrity Project, et al., Written Comments on Draft Permit Submitted to LDEQ, July 20, 2018 (the July 20 comments are identical to the May 14 comments with the exception that the July 20 comments were submitted on behalf of the Delta Chapter of the Sierra Club (referred to herein as “Petitioners’ Comments”) (Attachment B). Petitioners’ Comments are incorporated herein.

<sup>3</sup> *See* e-mails between Patrick Anderson, *of counsel* for EIP, and Dr. Hassan Ghosn, permit engineer, LDEQ, May 18, 2018. (Attachment C).

to Petitioners' comments on the permit and before LDEQ decides whether to revise the permit in light of those comments.

As detailed below, LDEQ's concurrent review process and refusal to wait until after considering public comments to submit a proposed permit to EPA violate the Clean Air Act. For that reason alone, EPA must grant this petition and object to the permit. Furthermore, and as shown below, the permit suffers from significant substantive flaws, including the fact that the facility is almost certainly emitting two to three times more volatile organic compound (VOC) pollution than LDEQ believes, meaning the facility cannot comply with New Source Review under the terms of the permit, therefore EPA must object.

## BACKGROUND

### I. PETITIONERS

- a. **Louisiana Environmental Action Network (LEAN):** LEAN is a non-profit corporation organized under the laws of the State of Louisiana. Its purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. One way LEAN works to protect the environment and the health of state residents is to comment on and challenge air permits issued by LDEQ that do not conform to the law.
- b. **Environmental Integrity Project (EIP):** EIP is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or comply with environmental laws; and (3) to help communities obtain protections guaranteed by environmental laws.
- c. **The Dogwood Alliance:** Dogwood Alliance mobilizes diverse voices to protect Southern forests and communities from destructive industrial logging. Dogwood Alliance opposes industrial wood pellet facilities for their negative impacts on our forests, environment, and communities. The production of wood pellets creates fine particulates and other air pollutants that have been linked to respiratory illness, heart disease, and cancer.
- d. **Natural Resources Defense Council (NRDC):** NRDC is a national, non-profit, environmental organization that works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. We combine the power of more than three million members and online activists with the expertise of some 500 scientists, lawyers, and policy advocates across the globe to ensure the rights of all people to the air, the water, and the wild.
- e. **Partnership for Policy Integrity (PFPI):** PFPI is a non-profit corporation that provides scientific and legal support so that citizen groups, environmental organizations, and policymakers can better understand energy development impacts on air quality, ecosystems, and the climate.

- f. Our Children's Earth: Our Children's Earth:** Our Children's Earth Foundation advocates on behalf of children, who are most vulnerable to pollution, to enable them to breathe clean air and use clean water. OCE educates the public about health problems caused by pollution in their neighborhoods, and empowers affected communities to take action to reduce pollution. Throughout its history, OCE has successfully challenged and exposed governmental agencies that fail to meet their responsibility to protect and serve the public. This pro-transparency work reflects our commitment to educate communities about environmental issues, to investigate noncompliant and negligent polluters, and to enforce environmental laws and regulations.

## II. PROCEDURAL BACKGROUND

This petition addresses LDEQ's renewal and modification of Part 70 Operating Permit No. 1920-00018 authorizing operation of the Morehouse BioEnergy wood pellet manufacturing plant. The permit apparently classifies the facility as a synthetic minor source with regard to New Source Review, in that the permit contains production and emission limits that attempt to reduce the facility's emissions to below the major New Source Review threshold of 250 tons per year (tpy) for criteria pollutants. This is the first opportunity that the public has had to comment on the adequacy of these limits in terms of restricting the facility's potential to emit (PTE) to below the New Source Review threshold.

Morehouse BioEnergy initially applied for a Part 70 Operating Permit concurrent with its application to construct the facility on July 31, 2012.<sup>4</sup> After public notice and comment, LDEQ issued state preconstruction and initial Part 70 Operating Permit No. 1920-00018-V0 on December 3, 2012.<sup>5</sup> This permit did not contain any production or operating limit, nor did it limit facility-wide VOC emissions. LDEQ's statement of basis for that permit estimated facility-wide VOC emissions at 33 tpy.<sup>6</sup>

LDEQ subsequently issued a permit modification (Permit No. 1920-00018-V1) on February 14, 2014, this time without public notice or comment.<sup>7</sup> This permit modification was necessary after stack testing of similar wood pellet plants in neighboring states revealed that industrial wood pellet plants emit vastly higher levels of VOC emissions than previously known.<sup>8</sup> The permit modification implemented several unit-specific limits on VOC emissions, however the permit still did not contain a facility-wide VOC emission limit, nor any production or operating limits. The statement of basis for this permit estimated facility-wide VOC emissions at 245.22 tpy.<sup>9</sup>

LDEQ issued another permit modification (Permit No. 1920-00018-V2), which is Morehouse BioEnergy's current permit, on November 17, 2017, again without public notice or comment.<sup>10</sup> This permit instituted a production limit of 525,600 tpy but still does not contain a limit on

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<sup>4</sup> Statement of Basis for Permit No. 1920-00018-V0, at 2. (Attachment D).

<sup>5</sup> LDEQ Permit Cover Letter for Permit No. 1920-00018-V0. (Attachment E).

<sup>6</sup> Statement of Basis for Permit No. 1920-00018-V0, at 7. (Attachment D).

<sup>7</sup> Air Permit Briefing Sheet for Permit No. 1920-00018-V1, at 8. (Attachment F).

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> Air Permit Briefing Sheet for Permit No. 1920-00018-V2, at 7. (Attachment G).

facility-wide VOC emissions.<sup>11</sup> The statement of basis for this permit estimates facility-wide VOC emissions at 249.21.<sup>12</sup>

Morehouse BioEnergy's Part 70 Operating Permit was set to expire on December 3, 2017, unless Morehouse BioEnergy applied for a renewal at least six months prior to that date,<sup>13</sup> which was June 3, 2017. Morehouse BioEnergy applied to renew its Part 70 Operating Permit and make several modifications on June 2, 2017.<sup>14</sup> Morehouse BioEnergy submitted another renewal and modification application on January 24, 2018, which replaced the June 2, 2017 application in its entirety.<sup>15</sup>

LDEQ released the draft Part 70 Operating Permit renewal permit for public comment on April 10, 2018.<sup>16</sup> LDEQ submitted the draft permit to EPA for EPA's 45-day review on approximately April 13, 2018, which expired May 29, 2018.<sup>17</sup> Due to issues with LDEQ's online document system, LDEQ re-opened the public comment period from June 20 to July 23, 2018.<sup>18</sup>

The draft Part 70 Operating Permit raises Morehouse BioEnergy's production limit to 578,052 tpy, and the statement of basis for the draft permit estimates facility-wide VOC emissions at 249.3 tpy.<sup>19</sup> The draft permit again does not contain a facility-wide limit on VOC emissions.

As noted above, this is the first opportunity for public comment since LDEQ and Morehouse BioEnergy realized the facility's VOC emissions were dramatically higher than 33 tpy, and the first since LDEQ instituted synthetic minor production limits in an attempt to restrict the facility's PTE to below the major New Source Review threshold.

### **III. GENERAL TITLE V PERMIT REQUIREMENTS**

To protect public health and the environment, the Clean Air Act prohibits stationary sources of air pollution operating without or in violation of a valid permit, which must be designed to include and assure implementation and compliance with health-based emission standards and all other applicable requirements. 42 U.S.C. §§ 7661a, 7661c. To that end, Title V permits must include such conditions as necessary to assure compliance with all applicable requirements. 40 C.F.R. § 70.6(a)(1); 42 U.S.C. § 7661c(a), (c). As defined, "applicable requirements" include all standards, emissions limits, and requirements of the Clean Air Act. 40 C.F.R. § 70.2. "The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular polluting source." *Virginia v.*

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<sup>11</sup> Permit No. No. 1920-00018-V2, Specific Condition 132. (Attachment H).

<sup>12</sup> Air Permit Briefing Sheet for Permit No. 1920-00018-V2, at 4. (Attachment G).

<sup>13</sup> LAC 33:III.507(D)(4).

<sup>14</sup> Draft Permit Statement of Basis at 3.

<sup>15</sup> *Id.*

<sup>16</sup> LDEQ, Public Notice, Extension of Public Comment Periods Due to EDMS Outage (June 20, 2018). (Attachment A)

<sup>17</sup> EPA, "Operating Permit Timeline for Louisiana," Available at: <https://www.epa.gov/caa-permitting/operating-permit-timeline-louisiana>.

<sup>18</sup> LDEQ, Public Notice, Extension of Public Comment Periods Due to EDMS Outage (June 20, 2018). (Attachment A)

<sup>19</sup> Draft Permit Specific Condition 140; Draft Statement of Basis at 6.

*Browner*, 80 F.3d 869, 873 (4th Cir. 1996) (purpose of Title V permit is to provide “a source-specific bible for Clean Air Act compliance”); *Sierra Club v. EPA*, 536 F.3d 673, 681, 674-75 (D.C. Cir. 2008) (“But Title V did more than require the compilation in a single document of existing applicable emission limits...It also mandated that each permit...shall set forth monitoring requirements to assure compliance with the permit terms and conditions.”). Thus, Title V requirements aim to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” *Operating Permit Program, Final Rule*, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992).

Title V permits must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements that sufficiently assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). In accordance with 40 C.F.R. § 70.7(a)(5), “the permitting authority shall provide a statement that sets for the legal and factual basis for the draft permit conditions.” This “statement of basis” must include, among other things, a reasoned explanation for why the selected monitoring, recordkeeping, and reporting requirements are sufficient to assure the facility’s compliance with each applicable requirement.<sup>20</sup>

Title V regulations include several procedural requirements to ensure that members of the public have a meaningful opportunity to review and comment on a draft permit. A Title V permit may not be issued unless all of the public participation requirements set forth in 70.7(h) are satisfied. 40 C.F.R. § 70.7(a)(1)(ii). Among other things, the issuing state authority must maintain a mailing list of interested persons and use it to provide notice of the public review period and the public hearing. 40 C.F.R. § 70.7(h)(1). Furthermore, the permitting authority must offer a draft of the permit for public review and comment, and provide at least 30 days for public comment and notice of any public hearing at least 30 days in advance of the hearing. 40 C.F.R. § 70.2, § 70.7(h)(4); *see also* 42 U.S.C. § 7661a(b)(6). Following public review, the permitting authority is to prepare a proposed permit in light of its consideration of public comments, and send the permit that it proposes to issue to EPA for a 45-day review period. 42 U.S.C. § 7661d(a), (b)(1); 40 C.F.R. § 70.8(a), (c); *see also* 40 C.F.R. § 70.2 (defining “proposed permit” as “the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8.”).

If a state proposes a Title V permit that fails to include and assure compliance with all applicable Clean Air Act requirements, EPA must object to the issuance of the permit before the end of the 45-day review deadline. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If EPA does not object to a Title V permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period... to take such action.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). The Clean Air Act provides that EPA “shall issue an objection...if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the” Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see also N.Y. Pub. Interest Group v. Whitman*, 321 F.3d 316, 333 n.12 (2d Cir. 2003) (explaining that under Title V, “EPA’s duty to

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<sup>20</sup> *See, e.g., In re Los Medanos Energy Center*, EPA Order in Response to Petition (May 24, 2004), available at [https://www.epa.gov/sites/production/files/2015-08/documents/los\\_medanos\\_decision2001.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/los_medanos_decision2001.pdf).

object to non-compliant permits is nondiscretionary”). EPA must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

## GROUNDS FOR OBJECTION

For all the reasons set forth below, the Morehouse BioEnergy permit fails to comport with procedural and substantive requirements of the Clean Air Act. Each of these objections was raised in the public comments that Petitioners timely submitted to LDEQ.<sup>21</sup>

### **I. LDEQ’s Concurrent Review Process Violates the Clean Air Act’s Procedural Requirements and Undermines Public Participation.<sup>22</sup>**

The Clean Air Act and EPA’s Title V regulations establish a clear order of action for Title V permitting that require to LDEQ to first solicit public comment on the draft permit, and then, based on consideration of those comments, send EPA a subsequent version that LDEQ formally proposes to issue. *See* 42 U.S.C. § 7661d(a) and (b); 40 C.F.R. § 70.2, § 70.7, § 70.8. In direct contravention of these requirement, LDEQ sent a *draft* permit to EPA for review at the start of the public comment period, and then refused to withdraw that permit from EPA’s review after receiving public comments calling for significant revisions to the draft permit. Because LDEQ re-opened the public comment period from June 20 to July 23, 2018, and EPA’s 45-day review ended on May 29, 2018, LDEQ was still soliciting public comments *after* EPA had concluded its review.

LDEQ’s process not only violates the plain language of the Clean Air Act’s requirements, it effectively renders the public’s input on this permit irrelevant and deprives Petitioners and other members of the public of the opportunity to participate in the permitting process as afforded by the Act. It also leaves EPA to review the so-called “proposed” permit as well as this petition without a full permit record that includes the public’s comments and LDEQ’s responses to those comments.

By its plain terms, the Clean Air Act does not allow LDEQ to submit a draft permit to EPA to review to start EPA’s 45-day review period before LDEQ has received, reviewed, and responded to public comments. A “draft permit” is not a “proposed permit.” The Act clearly distinguishes between them, requiring LDEQ to provide an opportunity for public comment and a hearing on a “draft permit,” and then—after consideration of public comments and deciding the content of the permit the state proposes to issue—provide EPA with a “proposed permit.”

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<sup>21</sup> Specific citations to comments are provided in footnotes to the heading of each objection below.

<sup>22</sup> *See* Petitioners’ Comments at 20. Although Petitioners raised this issue with sufficient specificity in the public comments by pointing out that LDEQ must withdraw the draft permit from EPA review, it is important to note that the grounds for this petition did not arise until after the close of the comment period. Petitioners could not have known when they submitted their comments that LDEQ would fail to withdraw the draft permit from EPA review while considering public comments and making any necessary revisions. Therefore, Petitioners may properly petition for an objection on these grounds. *See* 42 U.S.C. § 7661d(b)(2) (a petition to object “shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period).”).

In particular, both the Act and EPA’s Title V regulations require that the State must give EPA 45 days to review the “proposed permit” and decide whether to issue an objection. 42 U.S.C. §§ 7661d(a) and (b); 40 C.F.R. §70.8; 70.7(a)(1)(v). It does not satisfy these requirements to submit a *draft* permit to EPA. The Act makes clear that a state permitting authority must transmit to the Administrator “a copy of each permit *proposed* to be issued and issued as a final permit,” and the “proposed permit” is the version of the permit upon which EPA will base its 45-day review. 42 U.S.C. § 7661d(a)(1)(B),(b)(1) (emphasis added).

Likewise, EPA’s regulations plainly and deliberately distinguish between a “draft permit” and a “proposed permit,” and specify review requirements for each. A “draft permit” is the version of the permit that the permitting authority submits for public review and comment pursuant to 40 C.F.R. § 70.7(h). 40 C.F.R. § 70.2 (“Draft permit means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part.”). By contrast, a “proposed permit” is “the version of the permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8.” *Id.*; *see also* 40 C.F.R. § 70.8(a)(1) (requiring that the permitting authority “provide to the Administrator a copy of each permit application . . . , each proposed permit, and each final part 70 permit”); *id.* § 70.8(a)-(c) (illustrating that “draft permit” which is provided “to any affected State on or before the time that the permitting authority provides this notice to the public,” and “proposed permit,” which must be provided “to the Administrator,” are different documents, and making clear that the EPA Administrator’s 45-day review period applies to the “proposed permit”); 40 C.F.R § 70.8(c)(1) (“No permit... shall be issued if the Administrator objects to the issuance in writing within 45 days of receipt of the *proposed permit* and all necessary supporting information.”) (emphasis added). The regulations clearly refer to the “draft” when describing the version of the permit that exists prior to the close of the 30-day public comment period, and “proposed” when describing the version that follows the close of the 30-day public comment period.

In designing the Clean Air Act Title V process in this way, Congress paid particular attention to the importance of public participation and promised “[a]dequate” and “reasonable procedures...for public notice, including an opportunity for public comment and a hearing.” 42 U.S.C. § 7661a(b)(6). A “proposed permit” is one that a state has created after assuring those opportunities, precisely to make sure both that the state considers any public comments *before* deciding what permit to propose to EPA, and to make sure that EPA also considers any public comments while deciding whether to object to a permit proposed by a state. Indeed, Congress clearly intended for state permitting authorities to consider and resolve public concerns about a draft permit *before* it proposes the permit, and before EPA determines whether to object to the “proposed permit.” Section 502(b)(2) provides that a petition to object “shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period).” 42 U.S.C. § 7661d(b)(2). Relatedly, EPA’s regulations provide that the “permitting authority shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted.” 40 C.F.R. § 70.7(h)(5).

The Act and the regulations differentiate between a “draft” permit and a “proposed” permit for important reasons that are central to implementation of Title V and its purpose. Because a “draft permit” has not yet been subject to public scrutiny, it does not (and cannot) account for any defects and/or improvements identified by members of the public, or an affected state. The “proposed permit,” on the other hand, is issued after the permitting authority’s consideration of any public comments (or other state comments) submitted during the comment period on the draft permit, and is therefore a version that the state creates after considering and addressing the public’s concerns (as well as any concerns of other affected states).

The United States District Court of the District of Columbia has explained how the Title V permitting process is required to work. In *Sierra Club v. Whitman*, the Court held that a state’s submission of a “draft” permit to EPA “did not commence the Administrator’s 45-day review period.” Slip Op. at 16-17, No. 01-01991-ESH (D.D.C. Jan 30, 2002). There, the Court considered whether a state’s submission of a draft permit for EPA review just one day after the permit was made available for public review triggered EPA’s 45-day review period under the Act, as EPA contended. Rejecting EPA’s argument that its 45-day review period began when the permitting authority submitted a “draft” permit to EPA, the Court held that it is incorrect and unlawful to treat a “draft” permit that has not been subject to public review as the “proposed” permit for purposes of EPA’s review. *Id.* (citing 42 U.S.C. § 7661d(a)(1), (b)(1), (b)(6)); 40 C.F.R. § 70.7(h)(4)). The Court explained that the Act and the Title V regulations clearly distinguish between “draft” permits and “proposed” permits based on whether the public comment period was completed at the time the document was provided to EPA. *Id.* The Court’s ruling confirmed that a “proposed” permit that triggers EPA’s 45-day review period is the version prepared by the permitting authority *after* it has had an opportunity to consider all of the concerns raised about the “draft” permit during the public comment period and hearing. *Id.* As the Court explained, the state permitting agency “simply did not have the statutory authority to submit a proposed permit before the close of the 30-day public comment period.” *Id.* at 17 (citing 42 U.S.C. § 7661d(a)(1); 40 C.F.R. § 70.7(h)).

Significantly, the Court also explained that “permitting EPA review prior to the close of the public comment period would undermine the ability of the public to participate in the permitting process and thereby frustrate the purposes of the Act.” Slip Op. at 17. Citing Congress’ promise of “[a]dequate” public notice and comment procedures, the Court noted that a “permit program would not be ‘adequate’ if it allowed the permitting authority to pass on and EPA to review a draft permit that had never been subjected to public scrutiny.” *Id.* In particular, a “procedure that allows for simultaneous permit review by the public and the EPA provides little time to address public comments that may raise serious questions about a draft permit. Such a process also signals the irrelevance of public input, which clearly contravenes the intent of Title V.” *Id.* at 17-18.

Thus, concurrent review that treats a draft permit as a proposed permit is unlawful. Such a process violates the plain text of the statute and EPA regulations designed both to ensure adequate EPA review and to allow for meaningful public participation and consideration of public comments by the permit decisionmakers (the state and EPA).



At a bare minimum here, LDEQ was required to withdraw the permit from EPA's review after receiving relevant public comments, and LDEQ's failure to do so is flatly inconsistent with the Clean Air Act provisions cited above. EPA must object to the permit at the very least because public comments have been received and a public hearing has been held, thus changing the permit record in ways that LDEQ must consider and address before submitting a proposed permit to EPA for its 45-day review. LDEQ's refusal to withdraw the permit from EPA's review indicates that LDEQ will not consider or address the public comments it has received at all, and is a blatant violation of Title V and the public participation requirements cited above.

EPA has generally recognized that Title V and public participation requirements require the permitting authority to withdraw the permit from EPA's review if public comments are filed or a public hearing is held on the draft permit because the public's input through their comments and the hearing require consideration and change the permit record. *See, e.g.*, EPA, Approval of Revisions and Notice of Resolution of Deficiency for Clean Air Act Operating Permit Program in Texas, 70 Fed. Reg. 16,134, 16,137 (Mar. 30, 2005) (approving state program that ensured "that EPA's review period may not run concurrently with the State public review period if any comments are submitted or if a public hearing is requested" after finding this "consistent with section 505(b) of the Act and 40 CFR 70.8"). For example, in 2016, in proposing to change the Title V regulations to ensure no state could try to avoid the proposed permit requirement, EPA explained that a permit cannot be considered "proposed" if submitted before the public participation process has been completed and if the permitting authority receives comment on the draft permit which would require "revisions to the permit or permit record," including an "RTC," which is the permitting authority's response to any such comments. EPA, Revisions to the Petition Provisions of the Title V Permitting Program, 81 Fed. Reg. 57,822, 57,839 (Aug. 24, 2016); *id.* at 57,844-45 (proposing revisions to 40 C.F.R. § 70.8(a)(1) and stating that "[t]he agency considers both the statement of basis and the written RTC to be integral components of the permit record.").

In sum, if EPA were to allow concurrent review of the permit absent public comment, EPA would violate the Clean Air Act. EPA must object to the permit because LDEQ has not met the requirement to submit a proposed permit to EPA. That LDEQ has refused to withdraw the draft permit and wait to submit a proposed permit until after it has considered and addressed the actual comments only puts its Title V violations into stark relief. LDEQ's process violates the Title V requirements and denies Petitioners and other public commenters a meaningful opportunity to have their comments considered and addressed by LDEQ and EPA. Finally, to be consistent with its own practice and interpretation, EPA must object to the permit given the circumstances at issue here, based on all of the legal reasoning and facts EPA has previously found important in following its practice. *See, e.g.*, *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009) (explaining that an agency's failure to acknowledge a change and provide a reasoned explanation would be arbitrary and capricious, and where a new policy rests on factual findings that contradict a prior policy, a "more detailed justification that would suffice for a new policy created on a blank slate" is required).

The concurrent review process that LDEQ has used for this permit plainly does not satisfy the Clean Air Act's Title V statutory and regulatory requirements. And EPA does not meet its review requirement by considering a "draft" permit rather than a "proposed" permit.

Accordingly, EPA must object to this permit and direct LDEQ to not issue the permit before it has considered the public comments and has submitted a proposed permit for EPA's full 45-day review period as required.

## **II. LDEQ's Permit Does Not Comply with the Clean Air Act's Substantive Requirements.**

As explained above, EPA must immediately object to the permit based on LDEQ's unlawful concurrent review approach. Petitioners are compelled to file this petition to request that EPA object to the permit due to LDEQ's illegal process, before Petitioners have the benefit of seeing any response by LDEQ to its timely-filed comments or the permit that LDEQ actually proposes to issue after consideration of such comments. Therefore, Petitioners raise additional substantial issues herein, but also maintains all objections it has presented on the permit and reserves its right to raise any issues regarding the permit that are not corrected once LDEQ has properly issued a proposed permit to EPA for its review in accordance with the process required by the Clean Air Act.

Title V requires every permit to include operational requirements and limitations that assure compliance with all applicable Clean Air Act requirements at the time the permit is issued. 40 C.F.R. § 70.6(a)(1). LDEQ's permit for the Morehouse BioEnergy facility falls short of satisfying that fundamental requirement in numerous, significant ways.

LDEQ's failure to issue a legally adequate Title V permit likely arises in large part due to the unique nature of this facility and industry. Wood pellet manufacturing on the scale of Morehouse BioEnergy is a relatively new phenomenon, with the first large, export-based wood pellet plant constructed in 2008.<sup>23</sup> Consequently, little was known about emissions from facilities like Morehouse BioEnergy that were built between 2008 and around 2013. The first comprehensive stack testing in the industry for VOC emissions did not occur until mid-2012, when a Georgia facility tested each of its major emission points and found that it was emitting more than 1,400 tpy of VOCs, despite being permitted as a synthetic minor source for PSD avoidance with previously-estimated VOC emissions of 200 tpy.<sup>24</sup> Subsequently, a synthetic minor pellet mill in Florida discovered that it was emitting more than 1,300 tpy of VOCs<sup>25</sup> and a synthetic minor pellet mill in Texas discovered it was emitting at least 580 tpy of VOCs.<sup>26</sup> And while emission

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<sup>23</sup> The first wood pellet plant with a production rate of more than 500,000 tpy was Green Circle Bioenergy, now Enviva Cottondale, in Florida.

<sup>24</sup> State of Georgia, Department of Natural Resources, Consent Order No. EPD-AQC-6566 (March 4, 2013). (Attachment I).

<sup>25</sup> Florida DEP, Technical Evaluation & Preliminary Determination for Green Circle Bio Energy Project No. 0630058-014-AC (August 6, 2013), at 4. (Attachment J).

<sup>26</sup> TCEQ Draft Preliminary Determination Summary for German Pellets Texas, Permits No. 98014, PSDTX1508, and GHGPSDTX162 (released for public comment on October 10, 2017), at 1. (Attachment K).

rates are not known, synthetic minor pellet mills in Virginia,<sup>27</sup> Alabama,<sup>28</sup> and South Carolina<sup>29</sup> have also had to take action to reduce VOCs to below the major source threshold in the wake of the revelation that wood pellet manufacturing emits substantially more VOCs than originally thought. Each of these mills had a production rate similar to, or lower than, Morehouse BioEnergy, and each originally operated the same set of VOC controls as Morehouse BioEnergy—a regenerative thermal oxidizer (RTO) controlling only the wood dryer.

In fact, the only two wood pellet mills in the nation constructed before 2014 with comparable operating parameters to Morehouse BioEnergy (i.e. production rate and softwood content) that have not yet had to address VOC emissions that exceed 250 tpy for VOCs are Morehouse BioEnergy and its sister facility, Amite BioEnergy, in Mississippi.<sup>30</sup> Not coincidentally, Louisiana and Mississippi have failed to require stack testing on key units that are likely to be emitting upwards of 500 tpy of VOCs.

#### **A. The Permit Fails to Contain Adequate PSD Avoidance Conditions.<sup>31</sup>**

EPA must object to the permit because the permit’s synthetic minor limits are insufficient to restrict the facility’s emissions to below the major source PSD threshold of 250 tpy. As demonstrated by stack testing from nearly every comparable wood pellet mill, it is simply not plausible that Morehouse BioEnergy’s PTE for VOC emissions is below 250 tpy when allowed

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<sup>27</sup> Upon learning of higher-than-anticipated VOC emissions from post-dyer units, Enviva Southampton, a facility with a production rate lower than Morehouse BioEnergy, switched from processing softwood to processing only hardwood to remain a synthetic minor source, which greatly reduces VOC emissions. *See* Enviva Pellets Southampton Application Cover Letter (May 9, 2013), at 1-2. (Attachment L).

<sup>28</sup> After learning that its VOC emissions exceeded the PSD threshold, Westervelt Pellets (with a production rate of 300,000 tpy) installed an additional regenerative thermal oxidizer to control VOC emission from its pre- and post-dryer units. *See* Memorandum from Jeff Strickland, Alabama DEM, to Lisa Cole, Alabama DEM, re Meeting with Westervelt Pellets I LLC, Aliceville, Facility No. 409-0010 (April 3, 2014). (Attachment M).

<sup>29</sup> Colombo Energy, now Enviva Greenwood, had a production capacity of 550,000 tpy but after construction realized it could not operate at that rate without exceeding the PSD applicability threshold. The facility subsequently applied to install two additional RTOs on its pellet coolers. *See* SCDHEC Statemen of Basis for Colombo Energy, Permit No. 1240-0133-CB (January 12, 2018). (Attachment N).

<sup>30</sup> EIP has submitted extensive comments on the draft Title V Permit No. 0080-00031 for Amite BioEnergy. The facility was constructed and is operated by Drax Biomass, the same company who built and operated Morehouse BioEnergy.

<sup>31</sup> Petitioners’ Comment I. This issue is not barred by EPA’s recent decision in *In the Matter of PacifiCorp Energy Hunter Power Plant*, Order on Petition No. VIII-2016-4 (October 16, 2017) (*Hunter*). While we disagree with the legality of EPA’s position in *Hunter*, even under that reasoning EPA must still object to this permit because the public had no notice or opportunity to comment on the revisions to the facility’s Part 70 permit that implemented the synthetic minor limits. EPA has explicitly stated that the *Hunter* decision only applied “where a permitting authority issued a source-specific title I preconstruction permit subject to public notice and comment.” *Hunter* at 11, fn 21. Here, LDEQ only realized that this facility needed synthetic minor limits, and only implemented those limits in permitting decisions that were not subject to public notice and comment (Permits V1 and V2). By implementing those limits, LDEQ was revisiting the question of PSD applicability, as the state originally believed the facility would emit only 33 tpy, but then revised those estimates all the way up to 249.21 tpy. Where a state agency itself second-guesses the level of emissions so massively, the state agency’s initial determination related to PSD applicability or the need for synthetic minor limits is not entitled to deference from the EPA. Finally, even when this facility’s first permit was subject to public notice and comment in 2012, there was no publicly available knowledge of excess VOC emissions in the wood pellet industry, as Georgia, where the first testing occurred, did not issue any public documents concerning the Georgia Biomass emission testing until 2013. Petitioners and the public therefore could not have properly challenged the initial PSD determination in 2012.

to produce 578,052 tpy of wood pellets. Although the facility has conducted stack tests for VOCs from most of its units, LDEQ has never required the facility to conduct VOC testing on units known as pellet coolers, nor has Morehouse BioEnergy voluntarily conducted legitimate tests on these units. At comparable plants, pellet coolers alone frequently exceed the 250 tpy threshold unless they utilize VOC controls, which Morehouse BioEnergy does not. For example, stack testing on pellet coolers at Colombo Energy (now Enviva Greenwood), a facility with a slightly lower production rate than Morehouse BioEnergy, showed the units emitting 349 tpy of VOCs when producing 550,000 tpy of wood pellets.<sup>32</sup>

The statement of basis for the draft permit estimates Morehouse BioEnergy's facility-wide VOC emissions are 249.3 tpy.<sup>33</sup> This estimate includes either 20.23 tpy or 25.14 tpy of VOCs from the facility's pellet coolers, meaning the remainder of the units at Morehouse Energy are estimated to emit 224 to 229 tpy of VOCs.<sup>34</sup> As shown below, LDEQ and Morehouse BioEnergy's estimate of the pellet coolers' VOC emissions is seven to 23 times lower than pellet cooler emissions from eight similar U.S. facilities that have conducted stack testing.

Even with the lowest emission factor available from stack tests from comparable pellet plants, Morehouse BioEnergy's pellet coolers emit 144 tpy of VOCs, for a facility-wide VOC emission rate of 373 tpy. As explained below, however, in the absence of legitimate source-testing to establish facility-wide emission factors for this facility, it is inappropriate for LDEQ to assume that the lowest emission factor ever obtained from wood pellet plant testing is the correct emission factor for this plant. Rather, to ensure that the facility's VOC emissions do not exceed the PSD applicability threshold, LDEQ must utilize a more conservative (higher) emission factors for pellet coolers (again, based on actual testing). As shown below, use of such emission factors indicates that Morehouse BioEnergy's facility-wide VOC emissions may be more than 690 tpy under the permit's authorized 578,052 tpy production rate. Using the more conservative emission factor, LDEQ should have limited production to 210,000 tpy to assure the facility's compliance with New Source Review.

### **1. LDEQ Greatly Underestimates VOC Emissions from Morehouse BioEnergy's Pellet Coolers.**

In its Part 70 renewal application, Morehouse BioEnergy claims that each of its six pellet coolers emit 4.19 tpy of VOCs, which the company states is "based on stack test results."<sup>35</sup> Morehouse BioEnergy in turn cites to "stack tests conducted at Morehouse BioEnergy LLC February 10-16, 2016."<sup>36</sup> The problem is, these tests did not actually test the pellet coolers for VOC emissions, contrary to Morehouse BioEnergy's claims. The emission test protocol and the test report

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<sup>32</sup> Air Emission Test Report, Colombo Energy (December 4, 2017). (Attachment O). These tests produced an emission factor for the pellet coolers of 1.27 lb/ODT.

<sup>33</sup> Draft Statement of Basis at 6.

<sup>34</sup> There is a discrepancy in the draft permit and permit record regarding the pellet cooler VOC emissions. Specific Requirement 26 limits Morehouse BioEnergy's pellet coolers to .07 lb/ODT for VOC emissions, which equates to 20.23 tpy at a production rate of 578,000 tpy, while the pages titled "Emission Rates for Criteria Pollutants" gives an estimate of 25.14 tpy for the pellet cooler VOC emissions.

<sup>35</sup> Title V Permit Renewal/Minor Modification Application for Morehouse BioEnergy LLC, Prepared by Providence Engineering and Environmental Group, LLC (January 2018), at 6-10. (Attachment P).

<sup>36</sup> *Id.*

submitted by the facility, as well as all of the LDEQ review material, contain references only to particulate matter testing on the pellet coolers.<sup>37</sup> Further, according to LDEQ staff, Morehouse BioEnergy has never submitted stack tests for VOCs on its pellet coolers for agency review.<sup>38</sup> This is likely because, bafflingly, LDEQ has exempted these units from VOC testing requirements despite requiring VOC testing for each of the other major units at the facility. While Morehouse BioEnergy may have conducted limited “engineering tests” for pellet cooler VOC emissions, these tests were not conducted pursuant to permit requirements, agency oversight or review, or prior notification requirements.<sup>39</sup> Given these serious flaws, combined with the fact that the results of the “engineering tests” are vastly lower than the rates found when similar facilities conduct legitimate tests, LDEQ cannot rely on these tests to estimate Morehouse BioEnergy’s PTE.

To compound Morehouse BioEnergy’s already implausibly low emission estimates in its application, LDEQ estimates that the facility’s pellet coolers can comply with an even lower emission factor. Whereas Morehouse BioEnergy’s application yields a VOC emission factor of .086 pounds per oven dried ton (lb/ODT) for the facility’s pellet coolers, draft permit Specific Requirement 26 limits these emissions to .07 lb/ODT. Neither the .086 nor the .07 lb/ODT emission factor is remotely plausible when compared to emission factors from legitimate tests at comparable wood pellet facilities. Table 1, below, shows emission factors from similar wood pellet plants that have conducted stack testing, as well as pellet cooler emissions at Morehouse BioEnergy’s production rate of 578,000 tpy. To the best of our knowledge, this table presents every emission factor available from wood pellet mills that have conducted stack testing in the Southeastern United States processing mostly softwood.<sup>40</sup> Not a single facility has pellet cooler emissions anywhere near as low as what Morehouse BioEnergy claims for its pellet coolers.

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<sup>37</sup> See Letter from James Meyers, Engineering Manager, Waste Permits Division, LDEQ to Michael Bellow, Drax Environmental Health & Safety Monitor, RE: Compliance Tests February 10-24, 2016. (Attachment Q); See also Emission Compliance Test Report for Drax Morehouse, prepared by Providence Consultants, submitted to LDEQ April 2016. (Attachment R); Drax Morehouse Biomass Stack Test Protocol, (January 2016). (Attachment CCC).

<sup>38</sup> A December 22, 2017 phone conversation with Steven Schwartz, Louisiana DEQ’s Waste Permits Division (the Division’s officer responsible for reviewing Drax Morehouse’s stack tests), confirmed that the department never received any VOC stack testing data concerning the pellet coolers. Further, Drax Morehouse’s stack testing report only shows PM testing from the pellet coolers, and Louisiana DEQ’s review of these tests also only show PM testing from the pellet coolers.

<sup>39</sup> In response to comments submitted by EIP on a draft Title V permit for the Amite BioEnergy facility in Mississippi, Drax (owner of both Amite and Morehouse BioEnergy) submitted a one-page excerpt of testing at the Morehouse facility. See Letter from Greg Martin, Sr. Vice President of Operations, Drax Biomass to Rajeev Gupta, Mississippi DEQ, re Response to Draft Title V Permit Conditions (October 12, 2017). (Attachment S). This excerpt indicates that Drax conducted engineering tests on March 17, 2016 on the Morehouse BioEnergy pellet coolers (the tests are labeled with an asterisk stating “VOC engineering testing data”). It does not appear that these tests were ever reviewed by any state agency, nor does Drax reveal who conducted the tests, what EPA methods, if any were utilized, and the excerpt leaves out other crucial information such as raw data and calculations. Finally, these tests were conducted at a fraction of total production capacity (about 4 tons per hour on average, while each pellet cooler has a production capacity of 13 tons per hour), which further renders them unreliable. LDEQ requires stack tests to occur at 90% capacity or greater, while these engineering tests occurred at approximately 30% capacity (see, for instance, Specific Requirement 58, requiring Morehouse BioEnergy to conduct RTO stack tests “within 10 percent of 100 percent maximum achievable load.”).

<sup>40</sup> Processing softwood emits much higher levels of VOCs than processing hardwood. Compare, for instance, AP-42 emission factors for particle board dryers at 100% softwood of 4.9 lb/ODT to 100% hardwood at .24 lb/ODT. (AP-42 § 10.6.2, Table 10.6.2-3). Therefore Enviva Northampton (NC) and Enviva Southampton (VA) are not considered representative of Morehouse BioEnergy’s PTE because they process between 10% and 30% softwood.

<b>Table 1. Proposed Pellet Cooler VOC Emission Factor Compared to Comparable Sources</b>					
Facility	State	Facility Production Capacity (at the time of testing)	Uncontrolled Pellet Cooler VOC Emission Factor (lb/ODT) <sup>41</sup>	Comparison	Pellet Cooler Emissions at 578,052 tpy
Morehouse BioEnergy	LA	578,000	.07	-	20 tpy
Enviva Amory <sup>42</sup>	MS	99,000	1.6	23 times higher	462 tpy
Enviva Wiggins (Nov. 2012 test) <sup>43</sup>	MS	185,000	1.59	23 times higher	459 tpy
German Pellets <sup>44</sup>	TX	578,000	1.54	22 times higher	445 tpy
Enviva Cottondale <sup>45</sup>	FL	610,000	1.5	21 times higher	433 tpy
Georgia Biomass (with steam injection) <sup>46</sup>	GA	820,000	1.3	19 times higher	375 tpy
Enviva Greenwood <sup>47</sup>	SC	550,000	1.27	18 times higher	367 tpy
Enviva Wiggins (Oct. 2013 test) <sup>48</sup>	MS	185,000	1.1	15 times higher	317 tpy
Hazlehurst Wood Pellets <sup>49</sup>	GA	525,000	.62	9.6 times higher	179 tpy
Enviva Sampson (75% softwood) <sup>50</sup>	NC	535,000	.504	7.1 times higher	145 tpy
Georgia Biomass (without steam injection) <sup>51</sup>	GA	820,000	.5	7.1 times higher	144 tpy
		Average	1.15	16 times higher	332 tpy

<sup>41</sup> ODT = oven dried ton. Expressed as propane where test results show emission factors expressed in multiple ways.

<sup>42</sup> Air Emission Test Report for Enviva Pellets Amory (Oct. 31, 2013, revised Nov. 14, 2014). (Attachment T).

<sup>43</sup> NCDEQ Stationary Source Compliance Branch, Memorandum from Shannon M. Vogel to Patrick Butler re Enviva Pellets Ahoskie . . . Air Pollution Testing Performed November 15 and 16, 2012 at Enviva Pellets Wiggins (July 15, 2013). (Attachment U). Unlike Morehouse BioEnergy, this facility exhausts its pellet presses and pellet coolers separately. For the sake of comparison, this table has combined the pellet presses and pellet coolers into a single emissions factor.

<sup>44</sup> Note that stack testing for German Pellets is not available because the facility conducted testing pursuant to a confidential and privileged audit. Emission factor for that facility is based on the facility's application for PSD permitting, which in turn is based on stack testing. German Pellets Permit Amendment Application, September 2016, Appendix A Emissions Calculations. (Attachment BBB).

<sup>45</sup> FDEP Technical Evaluation And Preliminary Determination for Permit No. 0630058-14-AC (Aug. 6, 2013), at 5. (Attachment J). Green Circle emitted VOCs from both the pellet presses and the pellet coolers (Morehouse BioEnergy combines these emissions through the pellet coolers), and tested both individually with an hourly emission rate of 14.6 lb/hr and 20.6 lb/hr respectively. The facility has three pelletizing lines, for a total VOC emission rate from the pellet presses and coolers of 105.6 lb/hr. At the time of testing, the facility was limited to 610,000 tpy production rate at the time of testing (Permit No.0630058-13-AV, July 9, 2013, Condition C.4), so this emission factor is based on that production rate.

<sup>46</sup> Memorandum from Manny Patel, Georgia EPD, to Eric Cornwell, Georgia EPD, entitled "Emission Factors for Wood Pellet Manufacturing," (Jan 29, 2013). (Attachment V).

<sup>47</sup> Air Emission Test Report, Colombo Energy (December 4, 2017). (Attachment O).

<sup>48</sup> Air Emission Test Report for Enviva Pellets Wiggins (Oct. 31, 2013, revised Nov. 14, 2014). (Attachment W).

<sup>49</sup> GAEPD Source Test Report Review for Hazlehurst Wood Pellets (May 8, 2017). (Attachment X). Hazlehurst Wood Pellets exhausts its pellet presses and pellet coolers separately, but because it uses VOC controls on its pellet presses the emission factor listed here is significantly lower than facilities like Morehouse BioEnergy which combine both pellet press and pellet cooler emissions and use no VOC controls.

<sup>50</sup> Emission Test Report for Enviva Pellets Sampson (May 30, 2017). (Attachment Y).

<sup>51</sup> Georgia EPD Memorandum, *see supra*, note 47.

At the lowest emission factor from stack testing at similar facilities, Morehouse BioEnergy's pellet coolers emit 144 tpy of VOCs. At the average emission factor, the facility's pellet coolers emit 332 tpy of VOCs. Finally, at the highest emission factor, the pellet coolers emit 462 tpy of VOCs. Given that these emission factors are based on legitimate stack testing conducted in accordance with EPA methods and approved by the relevant state permitting authorities, it is clear that Morehouse BioEnergy's supposed emission rate of 20 tpy, based at best on highly flawed and unreviewed engineering tests, is plainly not legitimate.

Most importantly, with any of the above emission factors, Morehouse BioEnergy's facility-wide VOC emissions exceed the 250 tpy PSD threshold by at least 100 tpy and may be as high as 690 tpy. As noted above, LDEQ estimates Morehouse BioEnergy's facility-wide VOC emissions are 249.3 tpy, with either 20.23 tpy or 25.14 tpy emitted from the pellet coolers.<sup>52</sup> That means that LDEQ estimates the remainder of the facility emits between 224 and 229 tpy of VOCs. With these narrow margins, almost any emission factor higher than the .07 lb/ODT rate will push the facility's total VOC emissions past the major source threshold of 250 tpy. For instance, an emission factor of .09 lb/ODT—still implausibly low—would result in facility-wide VOC emissions surpassing the major source threshold.

The fact that Morehouse BioEnergy has massively higher emissions than it represents should not come as a surprise when viewed in context of the entire industry. Many similar mills built at the same time as Morehouse BioEnergy have had to either install additional controls on their pellet coolers to remain minor sources (Georgia Biomass in Georgia, Enviva Greenwood in South Carolina, Westervelt Pellets in Alabama) or apply for major source PSD permits (German Pellets in Texas and Enviva Cottondale in Florida).<sup>53</sup> In fact, Louisiana is home to a very similar pellet plant to Morehouse BioEnergy with VOC emissions above 600 tpy: the LaSalle BioEnergy pellet plant in LaSalle Parish, now owned by Drax, operates at a very similar production rate to Morehouse BioEnergy, utilizes the same set of VOC controls, and processes trees from an extremely similar forest resource (the two plants are located just 70 miles apart).<sup>54</sup> The LaSalle facility estimates its facility-wide VOC emissions are 611 tpy, due in large part to its uncontrolled pellet coolers and other post-dryer emissions.<sup>55</sup>

Morehouse BioEnergy, along with its sister facility, Amite BioEnergy in Mississippi, have conspicuously evaded addressing excess VOC emissions because both Louisiana and Mississippi have not required emissions testing for VOCs on pellet coolers. These two facilities appear to be

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<sup>52</sup> *Supra*, note 34.

<sup>53</sup> Narrative for Georgia EPD Air Quality Permit 2499-299-0053-E-01-4 for Georgia Biomass, May 15, 2013 (Attachment Z); Statement of Basis for South Carolina DHEC Air Quality Construction Permit No. 1240-0133-CB for Colombo Energy (now Enviva Greenwood), Jan. 12, 2018 (Attachment N); Engineering Analysis for Alabama DEM Air Permits No. 409—10-X003 and X010 for Westervelt Pellets, March 3, 2016 (Attachment AA); Draft Preliminary Determination Summary for TCEQ Air Permit No. PSDTX1508 for German Pellets Texas (draft permit released for public comment on October 10, 2017) (Attachment K); Retroactive PSD Permit Application for Enviva Pellets Cottondale, March 30, 2018 (Attachment BB).

<sup>54</sup> See Air Permit Briefing Sheet for German pellets Louisiana (now LaSalle BioEnergy), Agency Interest No. 185544, Permit No. 1680-00097-V1, Issued November 14, 2014. (Attachment CC). The facility was permitted in early 2013 as a PSD major source, before Georgia Biomass and other facilities had demonstrated that using VOC controls on post-dryer units is economically and technically feasible.

<sup>55</sup> *Id.*

the only large pellet mills remaining in the nation that have not discovered the true rate of their post-dryer emissions.<sup>56</sup>

## **2. EPA Must Object to the Permit Because the Permit Does Not Contain Enforceable Limitations that Adequately Assure the Facility Complies with the Clean Air Act's New Source Review.**

As described above, Morehouse BioEnergy's VOC emissions when operating at 578,052 tpy far exceed the major source PSD threshold. Utilizing the average emission factor from the available stack testing, the permit would need to limit production to 255,000 tpy or less in order for the facility to avoid exceeding the PSD threshold, and using the highest emission factor, the permit would need to limit production to 210,000 tpy. In addition to the lack of an adequate production or operating limit in the permit, the permit fails to restrict VOC emissions themselves. As such, the permit does not comply with Title V's requirements that permits contain conditions assuring compliance with applicable requirements.

Title V permits must contain "enforceable emissions limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements" of the Clean Air Act. 42 U.S.C. § 7661c(a). Permits must further contain "those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. § 70.6(a)(1).

Draft Permit Condition 140, which implements a facility-wide production limit, is necessary to assure that Morehouse BioEnergy complies with the Clean Air Act's New Source Review (NSR) regime. The synthetic minor limit is intended to ensure that the facility does not exceed the major source threshold of 250 tpy for VOC emission. Unfortunately, the chosen production limit is vastly too high to assure compliance with NSR because it fails to restrict the facility's PTE to below the major source threshold.

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<sup>56</sup> EIP has surveyed the 14 wood pellet mills with production rates greater than 300,000 tpy in the United States and found that all but Morehouse BioEnergy and Amite BioEnergy have taken steps to either mitigate post-dryer emissions or are permitted as major sources for PSD. Georgia Biomass (GA, 820,000 tpy) installed VOC controls on all of its post-dryer units after discovering it was emitting more than 1,000 tpy of VOCs; Enviva Cottontale (FL, 821,000 tpy) installed controls on its hammermills and pellet mills after making the same discovery in 2013 but still emits more than 500 tpy of VOCs because it does not control its pellet coolers, this facility is currently applying for a major source PSD permit; Enviva Northampton (NC, 628,000 tpy) processes mostly hardwood and therefore emits less VOCs, but still exceeds the major source threshold by emitting 377 tpy of VOCs; German Pellets Texas (578,000 tpy) is currently applying for a major source PSD permit because it emits nearly 600 tpy of VOCs; Enviva Southampton (VA, 535,000 tpy) discovered in 2013 that even with an RTO on its dryer, its facility-wide VOC emissions greatly exceeded the major source threshold due to post-dryer emissions, this facility then switched to processing only hardwood to avoid major source permitting; Enviva Sampson (NC, 535,000 tpy) is permitted as a major source and emits more than 600 tpy of VOCs; Hazlehurst Wood Pellets (GA, 525,000 tpy) controls VOC emissions from its hammermills and pellet mills while its pellet coolers emit 162 tpy; Highland Pellets (AR, 500,000 tpy) controls its hammermill and pellet mill VOC emissions, and its pellet coolers are the same design as Hazlehurst Wood Pellets, meaning it likely emits similar levels of VOCs; Drax's LaSalle pellet plant (LA, 500,000 tpy), formerly German Pellets Louisiana, is permitted as a major source and emits more than 600 tpy of VOCs; Enviva Ahoskie (NC, 420,000 tpy) processes mostly hardwood but is still permitted as a major source, with VOC emissions of 390 tpy; Westervelt Renewable Energy (AL, 320,000 tpy) discovered that it was exceeding the major source threshold even with an RTO on its wood dryer and subsequently installed an additional RTO to control post-dryer VOC emissions to remain a synthetic minor source.



In addition to the inadequate production limit, the draft permit is also insufficient to restrict the Morehouse BioEnergy facility's PTE to below the PSD applicability threshold because the permit lacks enforceable, facility-wide annual emission limits for VOCs. EPA guidance explains that to appropriately limit PTE, a permit "must contain a production or operational limitation in addition to the emission limitation."<sup>57</sup>

Though the draft permit's Specific Requirements contain a handful of emission limits for VOCs emitted from the hammermills and pellet coolers,<sup>58</sup> these conditions fail to limit the facility's annual VOC emissions to below the 250 tpy major source PSD threshold. Because the Specific Requirements do not include limits on VOC emissions from each source of VOCs, limits on the hammermills and pellet coolers alone do not restrict facility-wide VOC emissions. The draft permit must either incorporate a facility-wide VOC limit, or include limits on each source of VOCs, including the wood dryer, screened material return system, pellet loading system, emergency generator, and fire pump engine, which currently do not have VOC limits. Additionally, as explained below, the VOC limits on the hammermills and pellet coolers are not tied to sufficient periodic monitoring, rendering them unenforceable and therefore incapable of limiting the facility's PTE.

While the permit package does contain four pages titled "Emission Rates for Criteria Pollutants and CO<sub>2</sub>e," the draft permit does not clearly identify these pages as part of the permit nor that the rates contained in the tables are emissions limits.<sup>59</sup> Only in the statement of basis—which itself is not part of the permit—does LDEQ state that the rates found on the "Emission Rates" pages are a part of the permit. For numerous reasons, these rates are not enforceable limits adequate to restrict Morehouse BioEnergy's PTE to minor source thresholds. First, no Specific Requirement in the permit requires adherence to these limits, and nowhere in the "Emission Rates" pages themselves are the rates identified as enforceable limits.<sup>60</sup> Further, the rates, expressed as maximum pounds per hour and tons per year, are fundamentally unenforceable. The hourly rates are unenforceable because there is no monitoring to demonstrate that the facility complies with those limits on an ongoing basis. The annual limits not only lack monitoring, but also lack a rolling averaging period that enables compliance to be determined on a periodic short-term basis (i.e., at least monthly). Longstanding EPA guidance is clear that an annual limit that lacks an averaging period rolled on a short-term basis is *per se* unenforceable.<sup>61</sup>

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<sup>57</sup> U.S. EPA, "Guidance Limiting Potential to Emit in New Source Permitting" (June 13, 1989) at 9.

<sup>58</sup> Draft Permit Specific Requirements 2, 14, 26.

<sup>59</sup> Likewise, the permit package contains pages titled "Emission Rates for TAP/HAP & Other Pollutants." For the same reasons identified in this section pertaining to criteria pollutants, LDEQ should incorporate the limits on TAP/HAPs into the Specific Requirements portion of the permit and make these limits enforceable by expressing them in terms of a 12-month rolled average.

<sup>60</sup> Additionally, these "limits" do not include references to the applicable statutory or regulatory provisions, meaning they run afoul of 40 C.F.R. 70.7(a)(5), which requires Title V permits to include such references.

<sup>61</sup> *See supra*, "Guidance Limiting Potential to Emit in New Source Permitting," note 58. ("EPA recognizes that in some rare situations, it is not reasonable to hold a source to a one month limit. In these cases, a limit spanning a longer time is appropriate if it is a rolling limit. However, the limit should not exceed an annual limit rolled on a monthly basis.").

In sum, EPA must object to this permit because the permit fails to incorporate adequate and enforceable limits on operations or emissions sufficient to assure the facility will comply with NSR by avoiding the major source PSD threshold.

**B. The Permit Fails to Require Compliance with PSD Requirements, Including the Use of Best Available Control Technology (BACT).<sup>62</sup>**

As established above, Morehouse BioEnergy is currently a major source of VOC emissions requiring PSD permitting. EPA must therefore object because the permit fails to require compliance with PSD requirements, including failing to require compliance with BACT requirements.

The Clean Air Act and Louisiana's federally-approved state implementation plan require that a major-source PSD permit include emission limits representing the level of pollution control achieved by the best available control technology for each emission unit at a facility.<sup>63</sup> Control technology that greatly reduces VOC emissions from post-dryer units is readily available and in widespread use in the wood pellet industry.<sup>64</sup> In particular, Georgia Biomass, a slightly larger pellet plant in Georgia, has installed two RCOs to fully control all of its post-dryer units (in addition to two RTOs controlling the wood dryers), including hammermills, pellet mills, and pellet coolers. Despite producing 820,000 tpy of pellets, Georgia Biomass emits just 130 tpy of VOCs. Under the Clean Air Act, Georgia Biomass has established these controls as BACT for wood pellet plants, and the permit is therefore deficient because it fails to require this level of control at Morehouse BioEnergy.

**C. LDEQ Has Failed to Provide an Explanation in the Statement of Basis for How the Draft Permit's Authorized Production Increase of 52,425 tpy Results in Minimal Increases in VOC Emissions.<sup>65</sup>**

Even assuming Morehouse BioEnergy's pellet coolers do not emit more VOCs than LDEQ believes, the draft permit's proposed increase in allowable production likely means the facility

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<sup>62</sup> Petitioners' Comment I.B. This issue is not barred by EPA's recent *Hunter* decision, as discussed *supra*, note 31.

<sup>63</sup> 42 U.S.C. §§ 7471, 7475(a)(2), 7479(3); 40 C.F.R. 51.21(j)(2); LAC 33:III.509.

<sup>64</sup> While Georgia Biomass has established BACT by controlling each of its post-dryer units, many other wood pellet mills control at least a portion of their post-dryer units by either installing additional RTO/RCOs or by routing emissions to either the furnace burner or the wood dryer's RTO (achieving at least 90% destruction). For instance: Westervelt Pellets (AL) installed an additional RTO to control its pellet coolers and green hammermills, *see* Engineering Analysis for Alabama DEM Air Permits No. 409—10-X003 and X010 for Westervelt Pellets, March 3, 2016. (Attachment AA); Carolina-Pacific (aka Thunderbolt Biomass, in SC) routes 50% of its post-dryer emissions, including from hammermills and pellet coolers, to its furnace, *see* Statement of Basis for SC DHEC Air Permit No. 0160-0025-CA for Carolina-Pacific Briquetting Co, July 28, 2015. (Attachment DD); Enviva Greenwood (SC) is installing an RTO to control its pellet coolers, *see* Statement of Basis for South Carolina DHEC Air Quality Construction Permit No. 1240-0133-CB for Colombo Energy (now Enviva Greenwood), Jan. 12, 2018. (Attachment N); Highland Pellets (AR) routes emissions from its hammermills and pellet mills to its burners, *see* Arkansas DEQ Operating Air Permit No. 2341-AOP-R0, September 15, 2015. (Attachment EE); Hazlehurst Wood Pellets (GA) routes emissions from its hammermills to its furnace, *see* Narrative for Georgia EPD Air Permit No. 2499-161-0023-E-01-0 for Hazlehurst Wood Pellets, May 30, 2013. (Attachment FF); Enviva Cottondale (FL) controls its hammermills (but still emits more than 500 tpy of VOCs because it does not control its pellet coolers), *see* Retroactive PSD Permit Application for Enviva Pellets Cottondale, March 30, 2018. (Attachment BB).

<sup>65</sup> Petitioners' Comment I.A.4.

will exceed the 250 tpy major source threshold regardless. At a bare minimum, LDEQ has failed to provide an adequate rationale in the statement of basis explaining how the increase in production will not result in the facility's PTE exceeding the PSD threshold. The Clean Air Act requires that permitting authorities "provide a statement that sets forth the legal and factual basis for the draft permit conditions."<sup>66</sup> The draft permit is therefore deficient because LDEQ has not provided any factual basis for the 578,052 tpy production limit or the 52,452 tpy increase.

Morehouse BioEnergy's current Title V permit restricts wood pellet production to 525,600 tpy, while the proposed draft permit authorizes an increase to 578,052 tpy.<sup>67</sup> The statement of basis for the draft permit estimates nearly no increase in VOC emissions, however, with a change from 249.21 to 249.3 tpy. The statement of basis provides no explanation for how this production increase of 52,458 tpy results in only .09 tpy of additional VOC emissions. This amounts to a 10% increase in production while VOC emissions increase only .04%. Expressed differently, this amounts to a facility-wide VOC emission factor of an absurdly low .0034 lb/ODT, in the sense that LDEQ apparently believes producing 52,458 tons of wood pellets emits just 180 *pounds* of VOCs.

Any increase in production should be accompanied by a commensurate increase in VOC emissions. VOCs are primarily released from the wood being processed rather than combustion or other factors, therefore VOC emissions are tied directly to the amount of wood processed at a wood pellet manufacturing facility.<sup>68</sup> Even ignoring the excess VOC emissions from the pellet coolers discussed above, a 52,458 tpy increase in production should equate to at least 24 tpy of VOCs.<sup>69</sup> Including excess pellet cooler VOC emissions, this increase results in an additional 62 tpy of VOC emissions.<sup>70</sup>

The statement of basis fails to set forth any explanation or provide any evidence to support LDEQ's extremely low estimate of emissions increase, stating only that proposed modifications associated with this permit activity include "revisions to emission limitations to reflect current calculation methodologies and to correct inaccuracies."<sup>71</sup> In fact, the statement of basis does not even mention the increase in allowed production. EPA must therefore object to the permit because LDEQ has failed to meet the 40 C.F.R. § 70.7(a)(5) requirement to provide a legal and factual basis for Permit Condition 140, which authorizes the increase in emissions.

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<sup>66</sup> 40 C.F.R. 70.7(a)(5).

<sup>67</sup> Permit No. 1920-00018-V2, Specific Requirement 132. (Attachment H); draft Permit No. 1920-00018-V3, Specific Requirement 140.

<sup>68</sup> EPA AP-42 § 10.6.2 Particleboard Manufacturing, at 4. ("Both the VOCs and condensable PM are primarily compounds evaporated from the wood, with a minor constituent being combustion products.")

<sup>69</sup> Assuming for the sake of argument that LDEQ's pellet cooler emission estimates are accurate, Morehouse BioEnergy's facility-wide VOC emission factor is .95 lb/ODT, which multiplied by 52,458 equates to 24.86 tpy of VOCs.

<sup>70</sup> This is based on facility-wide emission factor of 2.37 lb/ODT from the most conservative pellet cooler emission factor (Enviva Amory testing) and LDEQ's estimates of emissions for the other units.

<sup>71</sup> Draft Permit Statement of Basis at 5.

**D. The Draft Permit is Deficient Because It Fails to Require Sufficient Emissions Testing to Assure Compliance with Emission Limits and PSD Avoidance for VOCs and Particulate Matter (PM).<sup>72</sup>**

The draft permit fails to require any emissions testing on Morehouse BioEnergy’s pellet coolers—which are significant sources of VOCs and PM—and only infrequent testing on other units. The draft permit is therefore deficient as it fails to require sufficient periodic monitoring to assure the facility’s compliance with emissions limits contained in the permit as well as failing to assure that the facility does not exceed the major source PSD threshold.

**1. The Draft Permit Does Not Require Adequate VOC Testing to Assure Compliance with Permit Limits and PSD Avoidance.**

As discussed above, pellet coolers are substantial sources of VOC emissions, with pellet coolers at similar plants in neighboring states emitting more than 400 tons of VOCs per year. Despite this fact, the draft permit inexplicably exempts the pellet coolers from VOC testing. Other post-dryer units at Morehouse BioEnergy also have significant issues with VOC emissions and likewise are not subject to adequate VOC emissions testing. Morehouse BioEnergy failed its initial compliance testing for the primary and secondary hammermills in 2016, emitting VOCs at a rate of .35 lb/ODT and .174 lb/ODT respectively.<sup>73</sup> The draft permit, however, restricts the primary hammermills to .22 lb/ODT and the secondary hammermills to .11 lb/ODT.<sup>74</sup> The only monitoring, recordkeeping, and reporting requirements associated with these limits is the requirement to conduct compliance testing every five years, plus or minus six months.<sup>75</sup> Under the draft permit, therefore, Morehouse BioEnergy is not required to conduct another round of compliance testing until August 2021. This monitoring requirement is far too infrequent to assure compliance with the VOC limits, especially given that the facility has already failed to comply with these limits.

Part 70 permits must include “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”<sup>76</sup> Where a facility does not utilize continuous emissions monitoring, Part 70 permits must include monitoring requirements “that provide sufficiently reliable and timely information for determining compliance.”<sup>77</sup> A monitoring requirement that allows a facility to exceed emissions limits for five years—or in the case of the pellet coolers, indefinitely—before an exceedance is detected does not provide “timely information for determining compliance.” Further, on its face, a once-per-permit-term test does not constitute “periodic monitoring.” EPA has previously objected to Title V permit conditions on the basis that once-per-permit-term testing requirements do not constitute periodic monitoring sufficient to comply with 40 C.F.R. 70.6(a)(3)(B), *see in re Consolidated Edison Co. of NY, Inc, Ravenswood Steam Plant*, Petition No. II-2001-08 at 12.

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<sup>72</sup> Petitioner’s Comment II.

<sup>73</sup> LDEQ Consolidated Compliance Order & Notice of Penalty, Enforcement Tracking No. AE-CN-16-00436 (May 23, 2017). (Attachment GG).

<sup>74</sup> Draft Permit Specific Requirements 2 and 14.

<sup>75</sup> Draft Permit Specific Requirements 7 and 19.

<sup>76</sup> 40 C.F.R. 70.6(3)(i)(B).

<sup>77</sup> 42 U.S.C. § 7661c(b).

At a bare minimum, LDEQ must require at least annual emissions compliance testing on all of the significant sources of VOCs (this is especially vital for those sources not subject to parametric monitoring under a compliance assurance monitoring plan) in order to demonstrate that Morehouse BioEnergy is complying with emissions limits. This should include the wood dryer, primary and secondary hammermills, as well as pellet coolers.

More frequent testing is especially important as it is highly likely that Morehouse BioEnergy's primary and secondary hammermills will continue to exceed the permit's VOC limits. Specific Requirements 2 and 4 limit VOC emission in terms of pounds of VOCs per ton product produced, meaning the facility cannot comply by simply reducing production rates. This means the facility must take steps to reduce VOC emissions in other ways. Nothing in the permit record or application, however, reveals what Morehouse BioEnergy has done to reduce the rate of VOC emissions from the .35 lb/ODT and .174 lb/ODT rates ascertained from the February 2016 tests.

## **2. The Draft Permit Does Not Require Sufficient Testing for Particulate Matter (PM) to Assure Compliance with Permit Limits and PSD Avoidance.**

The draft permit only requires emissions testing for PM every five years, and only for select units. Notably, the draft permit again does not require any emissions testing of the facility's pellet coolers. While Morehouse BioEnergy's first Title V permit did require initial compliance testing for the pellet coolers for PM, the units are no longer subject to any periodic testing for PM emissions. This is despite the fact that LDEQ lists the pellet coolers as the second-highest emitting source of PM at the facility, higher than units with continuing testing obligations such as the hammermills.<sup>78</sup> The draft permit therefore lacks any method to assure that the facility continues to comply with unit-specific limits on PM as well as avoiding the major-source PSD threshold.

As discussed above in the context of VOCs, testing every five years does not constitute "periodic monitoring" and is far too infrequent to "provide sufficiently reliable and timely information for determining compliance."<sup>79</sup> This is especially true in the case of PM emissions, as control devices for PM like cyclones and baghouses are particularly susceptible to losing control efficiency over time due to maintenance and reliability issues.<sup>80</sup>

## **3. The Statement of Basis Fails to Provide a Rationale for the Limited Testing Requirements.**

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<sup>78</sup> See Draft Permit Package "Emissions Rates for Criteria Pollutants and CO<sub>2</sub>e," listing the pellet coolers at 10 tpy of PM. Only the wood dryer RTO outlet has higher PM emissions, at 14.59 tpy.

<sup>79</sup> 42 U.S.C. § 7661c(b).

<sup>80</sup> Morehouse BioEnergy controls its PM emissions with fabric filters (aka baghouses), cyclones, and an WESP on the wood dryer. Filters and cyclones are particularly subject to declining destruction efficiency. For instance, cyclones are subject to high erosion rates and leakages, which can result in decreased efficiency. EPA Air Pollution Training Institute, "Control of Particulate Matter Emissions Student Manual" (Jan. 2000) at 7-13. Likewise, fabric filters can develop holes and gaps that allow particulates to pass through the filters, decreasing efficiency. *Id.* at 4-20 ("Gaps in bag seals or in the welds around the tube sheet also create paths for unfiltered gas to pass through the baghouse.").

To comply with the statement of basis requirement found at 40 C.F.R. § 70.7(a)(5), a permitting authority must ensure that the rationale for selected monitoring is “clear and documented in the permit record.”<sup>81</sup> LDEQ’s statement of basis for the draft permit fails to provide any explanation whatsoever for exempting the pellet coolers from any VOC testing, or for not requiring periodic PM testing from the pellet coolers. Further, the statement of basis fails to explain how a five-year testing cycle for the other units will assure compliance with the permit limits.

**E. The Draft Permit is Deficient Because It Fails to Incorporate Specific Monitoring Requirements Developed Under the Compliance Assurance Monitoring (CAM) Plan.<sup>82</sup>**

The draft permit subjects Morehouse BioEnergy’s wet electrostatic precipitator (WESP) and regenerative thermal oxidizer (RTO) to CAM requirements, but the monitoring requirements developed under an approved CAM plan have not been incorporated into the draft permit, in contravention of Part 64 and Title V rules. 40 C.F.R. 64.6(c) requires that “at a minimum, the permit shall specify the approved monitoring approach that includes all of the following: the indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter) [and] the mean or device to be used to measure the indicator(s) . . .” The Title V rules, meanwhile, state that each Title V permit shall contain “[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, *including part 64 of this chapter.*”<sup>83</sup>

RTO and WESP parameters are crucial to assuring the facility does not exceed limits on VOC and PM emissions as well as the major source PSD threshold, yet nothing in the permit specifies what RTO and WESP parameters shall be monitored, nor does the permit state the frequency of monitoring, the methods or devices to be used, the acceptable accuracy of monitoring devices, or other basic requirements that assure the facility’s compliance with applicable requirements. EPA must object to the permit because it fails to incorporate these specific monitoring requirements contained in an approved CAM plan as enforceable permit conditions.

**F. The Draft Permit is Deficient Because It Does Not Contain Monitoring, Recordkeeping, and Reporting Requirements to Assure Compliance with Limits on Visible Emissions.<sup>84</sup>**

Most of the emission sources at Morehouse BioEnergy are subject to LAC 33:III.1311.C, which limits visible emissions to less than 20%. Units that combust fuel or waste, meanwhile, are also subject to LAC 33:III.1101.B, which likewise limits visible emissions to 20%. While the draft permit does contain a requirement that the facility conduct daily emissions monitoring for units subject only to § 1311.C, the draft permit fails to specify the frequency of visible emissions monitoring for units subject to both § 1311.C and § 1101.B.<sup>85</sup> This means that the permit does

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<sup>81</sup> *In re United States Steel Corporation—Granite City Works*, Order on Petition V-2009-03 (Jan. 11, 2011), at 7.

<sup>82</sup> Petitioners’ Comment III.

<sup>83</sup> 40 C.F.R. 70.6(a)(3)(i)(A) (emphasis added).

<sup>84</sup> Petitioners’ Comment IV.

<sup>85</sup> For instance, Specific Requirement 53 requires that the facility monitor opacity utilizing EPA Reference Method 9, yet the condition does not state how frequent this must occur.

not specify any schedule of visible emissions monitoring for the fire water pump, emergency generator, and, most crucially, the facility's wood chip dryer and biomass furnace.<sup>86</sup> The draft permit is therefore deficient because it fails to require periodic monitoring sufficient to assure compliance with the limits on opacity.

Where, as here, applicable requirements do not specify periodic testing or monitoring, Title V permits must contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance" with applicable permit requirements.<sup>87</sup> The lack of any schedule for monitoring at all renders the permit deficient, since the monitoring cannot be considered periodic without a requirement specifying how frequently monitoring should occur.

Finally, the permit is completely devoid of any recordkeeping or reporting requirements explicitly tied to the opacity limits set forth in either LAC 33:III § 1311 or § 1101. Title V permits must incorporate "records of required monitoring information that include . . . the date(s) analyses were performed; the company or entity that performed the analyses; the analytical techniques or methods used; the results of such analyses; and the operating conditions as existing at the time of sampling or measurement." 40 C.F.R. 70.6(a)(3)(ii). Title V permits must also require "[s]ubmittal of reports of any required monitoring at least every six months" as well as "prompt reporting of deviations from permit requirements." 40 C.F.R. 70.6(a)(3)(iii)(A) and (B). The lack of any recordkeeping and reporting requirements related the permit's opacity monitoring requirements renders the permit deficient, and EPA must object.

### **G. The Draft Permit Improperly Ignores Emissions from the Wood Chipper, Wood Rechipper and Other Pre-Dryer Operations.<sup>88</sup>**

Morehouse BioEnergy utilizes a debarker, wood chipper, and wood rechipper before the wood dryer, yet emissions from these units are completely ignored in the draft permit and statement of basis. At similar wood pellet facilities, pre-dryer units used to reduce the size of whole logs are significant sources of PM.<sup>89</sup> In Morehouse BioEnergy's 2012 initial application, Morehouse accounted for only the wood rechipper, but still estimated that it would emit 22 tpy of PM. Before the facility was complete, however, Morehouse Bioenergy applied for a modification to remove the wood rechipper as an emission source, arguing that a re-design would eliminate all emissions. Morehouse BioEnergy Provided only minimal justification for the claim that the

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<sup>86</sup> EQT 0003.

<sup>87</sup> 40 C.F.R. 70.6(a)(3)(i)(B).

<sup>88</sup> Petitioners' Comment V.

<sup>89</sup> While woodchippers tend to have relatively low PM emissions, most similar sized pellet plants utilize green or wet hammermills to reduce the size of wood chips prior to wood drying. At German Pellets, for instance, green hammermills produce 40 tpy of PM, *see* Preliminary Determination Summary for TCEQ Air Permit No. PSDTX1508 for German Pellets Texas (draft permit released for public comment on October 10, 2017). (Attachment K). At Enviva Sampson, meanwhile, green hammermills emit VOCs at a rate of .203 lb/hr, which equates to 58 tpy at a production rate of 578,000 tpy, *see* Emission Test Report for Enviva Pellets Sampson, Conducted by Air Control Techniques, March and April of 2017 (Attachment Y). While EIP Understands that Morehouse BioEnergy's pre-dryer operations may be substantially different in that they do not utilize green hammermills, if the facility is using chippers and rechippers in a similar manner to how other facilities use green hammermills, then these units are likely still significant sources of PM. Regardless, LDEQ's failure to explain why it believes pre-dryer operations have minimal or no PM emissions renders the draft permit deficient.

redesigned rechipper would have zero emissions, and LDEQ approved this modification without any discussion in the statement of basis for the modified permit.<sup>90</sup> LDEQ has again failed to explain why it believes the pre-dryer size reduction systems emit no PM, rendering the draft permit deficient.

#### **H. The Draft Permit Does Not Assure Compliance with the Requirement to Design and Maintain a Safe Facility Under the Clean Air Act Section 112(r)(1) General Duty Clause.<sup>91</sup>**

The draft Title V operating permit for Morehouse BioEnergy also lacks sufficient detail to assure compliance with Morehouse BioEnergy's general duty under Clean Air Act section 112(r)(1) to design and maintain their facility in a way that prevents the accidental release of any extremely hazardous substance and minimizes the consequences of accidental releases that do occur. This statutory provision, commonly referred to as the "General Duty Clause," qualifies as an "applicable requirement" that must be addressed in Morehouse BioEnergy's Title V permit.<sup>92</sup> The extremely hazardous substance at issue for Morehouse BioEnergy is combustible wood dust, which carries an extreme risk of fires and explosions. Indeed, the risk of explosions and fires caused by combustible dust at wood pellet plants is well-documented in the wood pellet industry.<sup>93</sup> Since 2010, more than half of the 15 largest wood pellet mills in the nation have had

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<sup>90</sup> Morehouse BioEnergy stated that "during design, it was decided to use a "bottom discharge" chipper that discharges directly into a conveyor without creating the conveying air that the blow chipper creates." See E-Mail from Phoebe Christ, Providence Engineering, to Lourdes Dugas, LDEQ, November 21, 2013, re: Morehouse BioEnergy LLC – Wood Pellet Manufacturing Facility AI-183215 PER20130001 Expedited. (Attachment HH).

<sup>91</sup> Petitioners' Comment VII.

<sup>92</sup> See 40 C.F.R. § 70.2 (defining "[a]pplicable requirement" to include "[a]ny standard or other requirement under section 112 of the Act.").

<sup>93</sup> *Id.* See also Melin, Staffan, Wood Pellet Association of Canada, Determination of Explosibility of Dust Layers in Pellet Manufacturing Plants (Aug. 30, 2012) ("Dust explosions and fires has become a major issue in the pellets industry as well as in other woodworking industries with devastating consequences in many cases.") (Attachment II); Biomass Handling, *Biomass Dust Fire and Explosion Control* (Apr. 24, 2013), at 2 ("Historically, wood pellet production was a small industry with more than its share of fires and explosions. However with the emphasis on green energy, wood pellet production has skyrocketed and very large plants are being constructed. There have been several recent major fires and explosions within the wood pellet manufacturing, shipping, receiving, storage and power plant facilities. These new facilities are learning that they have to employ safe handling practices for dry wood materials.") (Attachment JJ); *The Florida Times-Union*, Jacksonville.com, "Overheated Assembly Caused Georgia Biomass Explosion," (July 13, 2011) ("Wood pellet production should resume today at Georgia Biomass, which was crippled by a dust explosion last month.") (Attachment KK); Baghouse.com, "Dust Collector Fire and Explosion Highlights Need for Combustible Dust Consideration in System Designs (available at [www.docuarchive.com/.../Dust-Collector-Fire-and-Explosion-Highlights-Need.pdf](http://www.docuarchive.com/.../Dust-Collector-Fire-and-Explosion-Highlights-Need.pdf)) (Attachment LL); Simet, Anna, *Biomass Magazine*, "Dusting Up on Risk & Regulation" (Jan. 26, 2016) ("Dust explosions resulting in injuries, fatalities and facility destruction are not uncommon at . . . biomass facilities that utilize pulverized or ground wood material to make energy or wood pellets.") (available at <http://biomassmagazine.com/articles/12794/dusting-up-on-risk-regulation>) (Attachment MM); Harrington Group, "Fire Prevention Tips for Wood Pellet Plants" ("The amount of wood, dust, various ignition sources inherent in the wood pellet production process presents a high risk of explosion and fire. However, there are strategies that can be implemented to reduce the risk of fire and explosions and to mitigate the impact should they occur.") (available at <http://hgi-fire.com/blog/fire-prevention-tips-for-wood-pellet-plants/>) (Attachment NN); NBC 10 News, "Fire Chief: Dust Caused Pellet Company Explosion," (Aug. 20, 2013)(available at <http://turnto10.com/archive/fire-reported-at-east-providence-wood-pellet-company>) (Attachment OO); Griffin, Jeff, Fauske & Associates, LLC, "Managing Combustible Dust & Safety Concerns in Biomass/Wood Pellet Industry (Nov. 1, 2013) (available at <http://blog.fauske.com/blog/bid/346875/Managing-Combustible-Dust-Safety-Concerns-in-Biomass-Wood-Pellet-Industry>) (Attachment PP).



newsworthy fires or explosions.<sup>94</sup> A fire at a wood pellet facility in Port Arthur, Texas burned for more than 50 days in 2017, leading to dozens of nearby residents to seek medical attention.<sup>95</sup> In another incident, a “flash fire” at the Hazlehurst pellet mill in Hazlehurst, Georgia—the facility’s second fire since commencing operations in 2013—seriously injured four employees.<sup>96</sup> A wood dust explosion at another Georgia pellet mill “rattled windows in homes about five miles away.”<sup>97</sup> While it is fortunate that there have been no fatalities from wood dust explosions in at pellet mills in the US, a wood dust explosion at a Canadian mill in 2012 killed an employee.<sup>98</sup>

Due to the significant risk posed by combustible dust at the Morehouse BioEnergy Plant, it is critical that the draft Title V permit be amended to state that the General Duty Clause applies to the facility’s handling of explosive dust, and to require the facility to perform specific steps that are sufficient to ensure that workers and others who live, work, recreate, or simply commute in the facility’s vicinity are protected from the dangers posed by combustible dust.<sup>99</sup> The permit also must include monitoring, recordkeeping, and reporting to assure the facility’s compliance with these requirements.

Wood dust at Morehouse BioEnergy easily qualifies as an “extremely hazardous substance” that is subject to the General Duty Clause. According to Clean Air Action section 112(r)(1), the

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<sup>94</sup> “2 Burn Victims Remain Hospitalized after Hazlehurst Flash Fire,” WALB (June 4, 2015), <http://www.walb.com/story/28983516/4-seriously-burned-after-fire-at-hazlehurst-wood-pellets> (Attachment QQ); Stepzinski, Teresa, “Explosion Damages Waycross Plant; No Injuries Reported,” jacksonville.com (June 21, 2011), <http://www.jacksonville.com/news/crime/2011-06-21/story/explosion-damages-waycross-plant-no-injuries-reported> (Attachment RR); “Fire Reported at Highland Pellets Plant,” *The Pine Bluff Commercial* (Aug. 16, 2017), <http://www.pbcommercial.com/news/20170816/fire-reported-at-highland-pellets-plant> (Attachment SS); “Enviva’s Cottondale Facility Damaged by Fire,” *mypanhandle.com*, (June 11, 2017), <http://www.mypanhandle.com/news/envivas-cottondale-facility-damaged-by-fire/737627383> (Attachment TT); Voegelé, Erin. “Fire at Enviva Facility Not Expected to Result in Major Downtime.” *Biomass Magazine* (Jan. 9, 2014), <http://biomassmagazine.com/articles/9882/fire-at-enviva-facility-not-expected-to-result-in-major-downtime> (Attachment UU); Bryant, Cal. “Enviva Fire Quickly Contained.” *Roanoke-Chowan News-Herald* (Jan. 24, 2013), <http://www.roanoke-chowannews-herald.com/2013/01/24/enviva-fire-quickly-contained/> (Attachment VV); Taylor, Stephanie. “Aliceville Plant Closed After Explosion.” *Tuscaloosa News* (Oct. 24, 2016), <http://www.tuscaloosaneews.com/news/20161024/aliceville-plant-closed-after-explosion> (Attachment WW); German Pellet Plant in Woodville has Fire in Silo.” *Beaumont Enterprise* (Apr. 30, 2014), <http://www.beaumontenterprise.com/jasper/news/article/German-pellet-Plant-in-Woodville-has-fire-in-Silo-5442052.php> (Attachment XX); Waldrep, Emily. “Firefighters Respond to Second Fire at Woodville German Pellet Plant.” *Tyler County Booster* (May 07, 2015), <https://www.tylercountybooster.com/index.php/news/1848-firefighters-respond-to-second-fire-at-woodville-german-pellet-plant> (Attachment YY); Langford, Cameron. “Residents Go to Court Over Months-Long Texas Plant Fire.” *Courthouse News* (Oct. 27, 2017), <https://www.courthousenews.com/residents-go-court-months-long-texas-plant-fire/>. (Attachment ZZ).

<sup>95</sup> *Id.*

<sup>96</sup> “2 Burn Victims Remain Hospitalized after Hazlehurst Flash Fire,” WALB, (June 4, 2015), (available at <http://www.walb.com/story/28983516/4-seriously-burned-after-fire-at-hazlehurst-wood-pellets>) (Attachment QQ).

<sup>97</sup> Stepzinski, Teresa, “Explosion Damages Waycross Plant; No Injuries Reported,” jacksonville.com (June 21, 2011) (available at <http://www.jacksonville.com/news/crime/2011-06-21/story/explosion-damages-waycross-plant-no-injuries-reported>) (Attachment RR).

<sup>98</sup> “Fatal Sawdust Blast in B.C. Comes After Five Explosions at Similar Plants Since 2009,” *National Post* (Apr. 28, 2012) (available at <http://nationalpost.com/news/canada/fatal-sawdust-blast-in-b-c-comes-after-five-explions-at-similar-plants-since-2009>) (Attachment AAA).

<sup>99</sup> See 40 C.F.R. § 70.6(a)(1) (Each permit must include “those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”), see also 40 C.F.R. §§ 70.6(a)(3) and (c)(1).

General Duty Clause applies to “owners and operators of stationary sources producing, processing, handling or storing any extremely hazardous substances.” The legislative history of this provision indicates that an accidental release is one which causes or may cause immediate (or near term) death, serious injury or substantial property damage as the result of exposure to an extremely hazardous substance over limited periods of time.<sup>100</sup> Although the Clean Air Act does not define “extremely hazardous substances,” the legislative history provides criteria which EPA may use to determine if a substance is extremely hazardous. Specifically, the Senate Report states that “extremely hazardous substance” would include any agent “which may or may not be listed or otherwise identified by any Government agency which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity.”<sup>101</sup> Further, the Senate Report states, “the release of any substance which causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or which causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous.”<sup>102</sup> There is ample evidence that wood dust generated by pellet plants is flammable and can be explosive, leading to death, injury, or substantial property damage.

Aside from failing to clearly state Morehouse BioEnergy’s obligation to handle wood dust in accordance with the General Duty Clause, the draft permit is also deficient in that it fails to provide adequate specificity regarding what the facility must do to comply with the General Duty Clause and fails to require the facility to perform monitoring to assure its compliance with this requirement. As the D.C. Circuit confirmed in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), a permitting authority is obligated to add monitoring, recordkeeping, and reporting requirements to a source’s Title V permit where needed to assure the source’s compliance with an applicable requirement. Clarifying a source’s obligations under the Clean Air Act’s General Duty Clause and developing monitoring, recordkeeping, and reporting sufficient to assure a source’s compliance with those obligations falls squarely within what Congress intended by enacting the Title V operating permit program in 1990. The fact that a source’s specific obligations under this requirement may be unique from those of other sources strongly supports the argument that a Title V permit must clarify what the source’s obligations are and incorporate any conditions needed to assure the source’s compliance with those obligations.<sup>103</sup>

To assure Morehouse BioEnergy’s compliance with the General Duty Clause, the permit would need to incorporate, at a minimum, provision that:

- (1) Identify Clean Air Act section 112(r)(1) as an applicable requirement with respect to the facility’s handling of combustible dust.
- (2) Specifically require the facility to prepare a hazard analysis identifying the hazards associated with explosive dust and the facility’s processes, potential fire and explosion scenarios, and the consequences of a fire or explosion.

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<sup>100</sup> Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101<sup>st</sup> Congress, 1<sup>st</sup> Session 211 (1989) (“Senate Report”), at 210-211.

<sup>101</sup> Senate Report at 211.

<sup>102</sup> *Id.*

<sup>103</sup> Additional information on implementation of General Duty Clause requirements is provided in the EPA’s guidance document, “Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1),” available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>.

- (3) Establish specific design and operation standards that the facility must meet to prevent a dust-related fire or explosion.
- (4) Establish recordkeeping and reporting requirements sufficient to demonstrate that the facility is meeting its General Duty Clause obligations.

Without these provisions, the permit is deficient and EPA must object.

### **Conclusion**

For the foregoing reasons, and as explained in Petitioners' timely-filed public comments, the draft permit is deficient and EPA must object on substantive grounds. Additionally, LDEQ's failure to withdraw the draft permit from EPA review while it considers Petitioners' public comments and any necessary revisions violates the Clean Air Act, therefore EPA is also obligated to object on procedural grounds.

Respectfully submitted,

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Attachments: Comment Attachments A through CCC.

CC, without Attachments:

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