

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

Petition Nos. V-2022-8 & V-2022-15

In the Matter of

Premcor Refining Group, Inc., Premcor Alsip Distribution Center
Permit No. 96030063

ExxonMobil Pipeline Company, Des Plaines Terminal
Permit No. 95060060

Issued by the Illinois Environmental Protection Agency

**ORDER DENYING PETITIONS FOR OBJECTION TO TITLE V OPERATING
PERMITS**

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received two petitions dated July 23, 2022 (the Premcor Petition) and November 14, 2022 (the ExxonMobil Petition, collectively, the Petitions) from an anonymous petitioner, C23D32 (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petitions request that the EPA Administrator object to operating permit No. 96030063 (the Premcor Permit) issued by the Illinois Environmental Protection Agency (IEPA) to the Premcor Refining Group's Alsip Distribution Center (Premcor Alsip Facility) as well as operating permit No. 95060060 (the ExxonMobil Permit, collectively, the Permits) issued by IEPA to ExxonMobil Pipeline Company's Des Plaines Terminal (ExxonMobil Des Plaines Terminal). Both facilities are located in Cook County, Illinois. The operating permits were issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and 415 Illinois Compiled Statutes (ILCS) 5/39.5. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

Based on a review of the Petitions and other relevant materials, including the Permits, the permit records, and relevant statutory and regulatory authorities, and for the reasons explained in Section IV of this Order, EPA denies the Petitions requesting that the EPA Administrator object to the Permits.

II. SUMMARY OF TITLE V PETITION RULES AND REQUIREMENTS

State and local permitting authorities, including IEPA, issue title V permits pursuant to their EPA-approved title V programs. EPA granted full approval of IEPA's title V program in 2001, which is codified in 415 ILCS 5/39.5. *See* 66 Fed. Reg. 62946 (December 4, 2001).

Under CAA § 505(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the proposed permit if EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of EPA's 45-day review period, petition the Administrator to object to the permit. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

In essence, title V petitions are similar to formal legal challenges to the state's issuance of a permit, as established by Congress in the CAA. *See* 42 U.S.C. § 7661d(b)(2). As such, petitions asking EPA to object to the issuance of a title V operating permit are subject to various requirements. Each petition must identify the proposed permit on which the petition is based and identify the petition claims. 40 C.F.R. § 70.12(a). Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under EPA's part 70 rules. *Id.* § 70.12(a)(2). Any arguments or claims the petitioner wishes EPA to consider in support of each issue raised must generally be contained within the body of the petition.¹ *Id.*

Generally, a petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v). Naturally, this requirement would not apply in situations where there was no public comment period on the permit action being challenged.

The Act requires the Administrator to issue an objection if a petitioner *demonstrates* that a 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). Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to EPA. EPA's regulations specify requirements that a petitioner must include in a petition to satisfy this demonstration burden.² *See* 40 C.F.R. § 70.12(a). For example, the petitioner must identify the specific grounds for an objection, citing to a specific permit term or condition where applicable. The petitioner must also identify the applicable requirement of the CAA (or the relevant regulations) that is not met. Importantly, the petitioner must *explain why* the permit term or permit process is not adequate to comply with the corresponding CAA or

¹ If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *See* 40 C.F.R. § 70.12(a).

² *See also* 85 Fed. Reg. 6431, 6438 (February 5, 2020) (characterizing the criteria in § 70.12 as codifying longstanding elements of the CAA § 505(b)(2) demonstration burden); *see also* 81 Fed. Reg. 57822, 57832, 57834 (August 24, 2016).

regulatory requirement. *Id.* § 70.12(a)(2)(i)–(iii). General and conclusory claims, presented without sufficient citations or analysis, usually do not meet this requirement. The petitioner is also expected to address the state’s reasoning behind the permitting decision when such information is available during the timeframe for filing the petition. *See* 81 Fed. Reg. 57822, 57832 (August 24, 2016) (citing cases where EPA denied petitions that did not adequately address the permitting authority’s articulated rationale for the permitting decision). Aspects of the permit record that may contain a permitting authority’s rationale can include a statement of basis (SOB) (also called a Summary of Changes by IEPA for minor modifications). If the petitioner does not meet the demonstration standard by providing a sufficient analysis, EPA is left to decipher a basis for the petitioner’s objection. This is contrary to Congress’s express allocation of the burden of demonstration to the petitioner.³

Overall, the petitioner’s demonstration burden is a critical component of CAA § 505(b)(2). A more detailed discussion about what a petitioner must provide, including court cases that address these principles, can be found in the preamble to EPA’s proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016). Examples of prior title V petitions, and of EPA responses, may be found at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

It is also important to understand that the title V petition process can only be used to ask the EPA Administrator to object to a title V permit to resolve specific issues related to the content or issuance of a title V permit, based on issues related to the CAA. *See* 42 U.S.C. § 7661d(b)(2). The title V petition process is designed to address issues related to whether a title V permit is consistent with an applicable requirement of the CAA, not issues such as alleged behavior or motives of a state permitting authority or its employees. EPA acknowledges that the title V permitting program, as created by Congress and implemented in regulations issued by EPA and IEPA, does not cover all environmental issues that may be of concern to a community. States may implement laws, regulations, and policies on their own initiative that are above and beyond what is required by the federal EPA, such as laws and policies related to environmental justice (EJ).⁴ However, because such state-specific laws and policies are not applicable requirements under the CAA, they are not grounds on which the CAA directs EPA to object to the issuance of a title V permit. Concerns about the way that a state permitting authority is implementing its state-specific environmental justice policy should be raised through the appropriate grievance procedures identified by the state that are specific to that policy.

EPA is committed to advancing environmental justice and incorporating equity considerations into all aspects of its work.⁵ EPA appreciates and takes seriously the Petitioner’s concerns regarding the potential impacts of emissions from the Premcor Alsip Facility and ExxonMobil Des Plaines Terminal on communities living near the facilities. As explained in this Order, EPA has thoroughly reviewed and evaluated the title V petitions submitted by the Petitioner. EPA’s response is based on the legal requirements described in this section—in other words, whether

³ *See In the Matter of Luminant Generation Company – Shadow 5 Generation Plant*, Order on Petition No. VI-2011-05 at 9 (January 15, 2013).

⁴ *See* Illinois Environmental Justice Policy at <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx> and 415 ILCS 155 (Environmental Justice Act).

⁵ Executive Orders 13990 and 14008, signed by President Biden on January 20, 2021, and January 27, 2021, respectively, affirm the federal government’s commitment to environmental justice.

the Petitioner demonstrated that the Permits, permit processes, or permit records are not in compliance with applicable requirements of the CAA and EPA's and IEPA's regulations governing the issuance of operating permits.⁶

III. BACKGROUND

A. *The Premcor Alsip Facility*

The Premcor Alsip Facility, owned by Premcor Refining Group, Inc., is a petroleum bulk station and terminal located in Cook County, Illinois. The facility includes various storage tanks, such as external and internal floating roof storage tanks, and uses truck loading racks and a barge loading operation to load and unload various products and additives. The facility is considered a major source of volatile organic material (VOM)⁷ and is subject to title V of the CAA. It is a minor source of particulate matter, nitrogen oxides, carbon monoxide, and sulfur dioxide. Emissions units within the facility are also subject to various New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and other preconstruction permitting requirements.

EPA conducted an analysis using EPA's EJScreen⁸ to assess key demographic and environmental indicators within a five-kilometer radius of the Premcor Alsip Facility. This analysis showed a total population of approximately 128,583 residents within a five-kilometer radius of the facility, of which approximately 56 percent are people of color and 31 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 12 environmental indicators. Table 1 identifies the Environmental Justice Indices for the five-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Illinois.⁹

⁶ EPA has previously addressed environmental justice in title V petition orders. *See, e.g., In the Matter of ExxonMobil Fuels & Lubricant Co., Baton Rouge Refinery*, Order on Petition Nos. VI-2020-4, VI-2020-6, VI-2021-1, & VI-2021-2 at 11-12 (March 18, 2022); *see also In the Matter of United States Steel Corp.- Granite City Works*, Order on Petition No. V-2011-2 at 5-6 (December 3, 2012).

⁷ EPA usually describes this pollutant as "volatile organic compounds" or "VOC."

⁸ EJScreen is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. *See* <https://www.epa.gov/ejscreen/what-ejscreen>.

⁹ EPA conducted an EJScreen analysis to assess demographic and environmental indicators within a one-mile radius of the Premcor Alsip Facility as well. The analysis showed a total population of approximately 4,653 residents, of which approximately 80 percent are people of color and 37 percent are low income. EPA also observes that ten of the Environmental Justice Indices in this one-mile radius are above the 80th percentile when compared to the rest of the state of Illinois.

Table 1 - Environmental Justice Indices for the Premcor Alsip Facility

EJ Index	Percentile in State
Particulate Matter 2.5	81
Ozone	79
Diesel Particulate Matter	78
Air Toxics Cancer Risk	73
Air Toxics Respiratory HI	74
Traffic Proximity	77
Lead Paint	67
Superfund Proximity	82
RMP Facility Proximity	75
Hazardous Waste Proximity	75
Underground Storage Tanks	71
Wastewater Discharge	74

i. Permitting History: Premcor Alsip Facility

Premcor Refining Group, Inc. first obtained a title V permit for the Premcor Alsip Facility in 2003, which was last renewed in 2019. On November 2, 2021, Premcor applied for a minor modification of the facility’s title V permit. The application sought to modify a testing provision for the facility’s barge loading to account for changes in the operating schedule. IEPA did not publish notice of a draft permit and did not hold a public comment period for the minor modification. On May 26, 2022, IEPA submitted the Proposed Permit containing Premcor’s requested minor modification to EPA for its 45-day review. EPA’s 45-day review period ended on July 10, 2022, during which time EPA did not object to the Proposed Permit. IEPA finalized the minor permit modification for the Premcor Alsip Facility on July 11, 2022.

ii. Timeliness of Petition: Premcor Alsip Facility

Pursuant to the CAA, if EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). EPA’s 45-day review period expired on July 10, 2022. Any petition seeking EPA’s objection to the Proposed Permit was due on or before September 9, 2022. The Premcor Petition was received on July 23, 2022, and, therefore, EPA finds that the Petitioner timely filed the Petition.

B. The ExxonMobil Des Plaines Terminal

The ExxonMobil Des Plaines Terminal, owned by ExxonMobil Pipeline Company, is a petroleum bulk station and terminal located in Cook County, Illinois. Materials are transferred to the terminal by pipeline or truck, where they may be temporarily stored prior to shipment to petroleum bulk plants or gasoline dispensing operations. A truck loading and unloading rack are used for the shipment operations. The ExxonMobil Des Plaines Terminal is a major source of VOM and is subject to title V of the CAA. It is a minor source of particulate matter, nitrogen

oxides, carbon monoxide, sulfur dioxide, and hazardous air pollutants. Emissions units within the facility are also subject to various NSPS and NESHAP.

EPA conducted an analysis using EPA’s EJScreen to assess key demographic and environmental indicators within a five-kilometer radius of the ExxonMobil Des Plaines Terminal. This analysis showed a total population of approximately 90,610 residents within a five-kilometer radius of the facility, of which approximately 38 percent are people of color and 23 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 12 environmental indicators. Table 2 identifies the Environmental Justice Indices for the five-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Illinois.¹⁰

Table 2 - Environmental Justice Indices for the ExxonMobil Des Plaines Terminal

EJ Index	Percentile in State
Particulate Matter 2.5	70
Ozone	48
Diesel Particulate Matter	69
Air Toxics Cancer Risk	67
Air Toxics Respiratory HI	71
Traffic Proximity	68
Lead Paint	36
Superfund Proximity	45
RMP Facility Proximity	68
Hazardous Waste Proximity	78
Underground Storage Tanks	62
Wastewater Discharge	63

i. Permitting History: ExxonMobil Des Plaines Terminal

ExxonMobil first obtained a title V permit for the Des Plaines Terminal in 1999, which was last renewed in 2019 and previously in 2014. On June 2, 2022, ExxonMobil applied for a minor modification of the terminal’s title V permit. The application sought to revise the timing of a VOM testing requirement in the permit. IEPA did not publish notice of a draft permit and did not hold a public comment period for the minor modification. On September 20, 2022, IEPA submitted the Proposed Permit containing ExxonMobil’s requested minor modification to EPA for its 45-day review. EPA’s 45-day review period ended on November 4, 2022, during which time EPA did not object to the Proposed Permit. IEPA finalized the minor permit modification for the ExxonMobil Des Plaines Terminal on November 9, 2022.

¹⁰ EPA conducted an EJScreen analysis to assess demographic and environmental indicators within a one-mile radius of the Des Plaines Terminal as well. The analysis showed a total population of approximately 10,673 residents, of which approximately 62 percent are people of color and 31 percent are low income. EPA also observes that five of the Environmental Justice Indices in this one-mile radius are above the 80th percentile when compared to the rest of the state of Illinois.

ii. Timeliness of Petition: ExxonMobil Des Plaines Terminal

Pursuant to the CAA, if EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). EPA’s 45-day review period expired on November 4, 2022. A petition seeking EPA’s objection to the Proposed Permit was due on or before January 3, 2023. The ExxonMobil Petition was received on November 14, 2022, and, therefore, EPA finds that the Petitioner timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

EPA will address the Premcor Petition and ExxonMobil Petition separately. Each response includes a summary of the arguments presented in the Petitions followed by EPA’s analysis of the arguments.

A. The Premcor Petition

Petitioner’s Claim: The Petitioner’s primary claim in the Premcor Petition is that IEPA improperly processed a significant change to testing requirements in Premcor’s title V permit as a minor modification.¹¹ Accordingly, the Petitioner argues that EPA must object to the issuance of the Premcor Permit and IEPA’s failure to provide proper notice and opportunity for public comment. The Petitioner states that it previously asked IEPA to resubmit the permit change as a significant modification and that it also submitted comments to EPA explaining why EPA should object to the proposed permit modification. The Petitioner appended these “comments” to EPA to the end of the Premcor Petition.¹²

In the Premcor Petition, the Petitioner makes various arguments that are either directly or loosely related to IEPA’s decision to process the revision to the Premcor Permit as a minor

¹¹ The Petitioner submitted the Petition within the body of an email. The Petition was not separately paginated, and is approximately two pages long when converted into a standard word processing format. The summary that follows therefore lacks citations to specific pages of the Petition.

¹² The Petitioner’s “comments” to EPA appear to reflect a misunderstanding of how public comments relate to title V petitions. Normally, title V petitions must be based on issues that were presented to the state permitting authority during the public comment period. Here, because IEPA processed the permit revision as a minor modification, there was no public comment period. Thus, the requirement that all petition claims be based only on issues raised in public comments does not apply. In any case, in situations where this requirement does apply, it requires members of the public to submit comments to the state permitting authority—not to EPA. That is because the state permitting authority, and not EPA, is responsible for making the permitting decision. There is no formal mechanism for the public to submit comments to EPA on a state-issued permit. The Petitioner’s “comments” to EPA, therefore, are not public comments as that term is used in the CAA and EPA’s regulations. EPA considers the “comments” appended to the end of the Petition to be an exhibit or attachment to the Petition. As explained in Section II of this Order, any arguments or claims a petitioner wishes EPA to consider in support of each issue raised must generally be contained within the body of the petition, as opposed to attachments. If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. 40 C.F.R. § 70.12(a)(2). Because the Petitioner does not make specific references to its comments within the Petition or describe why the information therein supports its claim, EPA will not specifically address the comments in EPA’s analysis of the Petition.

modification.¹³ The discussion that follows addresses each of the Petitioner’s arguments, though not necessarily in the same order presented in the Premcor Petition. Some of these arguments are contained within enumerated “claims,” and some are not. The Petitioner structures the Premcor Petition into five “claims.”

The Petitioner’s first argument in the Premcor Petition (“Claim 1”) is that IEPA relaxed testing requirements without public outreach, in violation of IEPA’s EJ Practices and Policies. The Petitioner claims that the area where this facility is located is an EJ community, and alleges that the relaxation of this testing requirement is “of significant public interest.” Therefore, IEPA’s EJ Practices and Policy required IEPA to conduct outreach before issuing the permit modification. The Petitioner claims that the public was not given the opportunity to comment on the “gross relaxation” of testing at the Premcor Alsip Facility, which the Petitioner argues has allowed the facility “to continue operating without any valid means of demonstrating compliance.”

In the second argument of the Premcor Petition (“Claim 2”), the Petitioner alleges that IEPA made changes to the Premcor Permit based on changes to a “secretive template” that IEPA uses to write its minor modifications. The Petitioner argues IEPA did not identify the changes the Agency made to the Premcor Permit based on its changed template, or provide a redline version of the Premcor Permit to the public. The Petitioner argues that it is a “disgrace” that IEPA allows companies to make changes to and comment on the Agency’s template but does not afford the public the same opportunity. The Petitioner notes that it made these statements in its comments to EPA.

In the third argument of the Premcor Petition (“Claim 3”), the Petitioner argues that the “sheer amount of changes” that IEPA appears to have made to the Premcor Permit is enough to show that IEPA “made significant changes that warranted a public comment period.” The Petitioner then claims that due to a lack of transparency it is “unknown” how many changes, and where and what changes, IEPA and Premcor made to the Premcor Permit.

In the fourth argument of the Premcor Petition (“Claim 4”), the Petitioner contends that IEPA apparently made changes to title I construction permits that should have been considered a significant change to the Premcor Permit. As with the third argument, the Petitioner argues that IEPA did not identify these changes.

In the fifth argument of the Premcor Petition (“Claim 5”), the Petitioner alleges that the “delay” in testing is a violation of human rights. The Petitioner argues that because the permit modification allows the Premcor Alsip Facility to delay testing while barge loading is not operating, the permit modification will result in “no testing ever being conducted” and no “demonstration of compliance.” The Petitioner offers various suggestions for how to structure the Premcor Permit’s testing requirements, including a requirement that Premcor must be capable of testing on day 1 after beginning barge loading (not 90 days after barge loading begins), and a requirement that Premcor complete testing before barge loading is stopped. The Petitioner suggests that this is necessary to ensure that Premcor cannot indefinitely delay testing.

¹³ For example, prior to presenting its various arguments, the Petition states: “The following are all reasons why the permitting action must be objected to by the USEPA because it did not meet the criteria for a minor modification.”

Elsewhere within the Premcor Petition, the Petitioner also argues that IEPA did not disclose the permit modifications in a statement of basis and that the modifications are not supported by the permit record for the facility. The Petitioner cites to past EPA orders¹⁴ to argue that the unavailability of information needed to determine applicability of or to impose an applicable requirement may also result in a deficiency in the permit's content.

EPA's Response: For the following reasons, EPA denies the Petitioner's request for an objection on these claims.

The Petitioner has not demonstrated that the permit amendment is not in compliance with the CAA or that IEPA did not comply with EPA's regulations governing state operating permit programs at 40 C.F.R. part 70 by processing the Premcor permit modification as a minor modification. EPA also does not consider the permit modification to be a significant modification. A further explanation of EPA's expectations for the Petitioner's demonstration burden and an overview of EPA's and IEPA's minor and significant modification criteria are included next, followed by EPA's analysis of the Premcor Petition.

Legal Background

Minor modifications of title V permits do not require public notice or an opportunity for public comment; significant modifications do. 40 C.F.R. § 70.7(h); 415 ILCS 5/39.5(8). States have discretion to devise appropriate procedural schemes to process permit modifications, consistent with the governing statutory and regulatory requirements. 40 C.F.R. 70.7(e)(1); *see* 57 Fed. Reg. 32280 (July 21, 1992). Under EPA's rules and Illinois' statute, the permitting authority, IEPA in this case, may use a minor modification procedure if certain requirements are met, including that the modification does "not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit." 40 C.F.R. § 70.7(e)(2)(i)(A); 415 ILCS 5/39.5(14)(a)(i)(B). The state must use significant modification procedures for all modifications that do not qualify as minor permit modifications or administrative permit amendments. 40 C.F.R. § 70.7(e)(4)(i); 415 ILCS 5/39.5(14)(c)(i). At a minimum, every "significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant." 40 C.F.R. § 70.7(e)(4)(i); 415 ILCS 5/39.5(14)(c)(ii). Additionally, Illinois' statute requires IEPA to process permit changes as significant if IEPA deems the issues technically complex. 415 ILCS 5/39.5(14)(c)(ii).

As explained in Section II of this Order, petitions to object under CAA § 505(b)(2) are subject to various requirements established by the CAA and EPA's regulations. To demonstrate a basis for objection, a petition must be based on a claim that the permit, permit record, or permit process is not in compliance with the requirements under the CAA, the part 70 regulations, or Illinois' approved title V program. 40 C.F.R. § 70.12(a)(2). Furthermore, the petitioner must identify each specific statutory or regulatory requirement that the petitioner asserts is not satisfied and explain why that is so. *See Id.* § 70.12(a)(2)(ii)-(iii). This analysis from the petitioner is particularly

¹⁴ Specifically, the Petitioner cites to *In the Matter of Cash Creek Generation, LLC*, Order on Petition No. IV-2010-4 (June 22, 2012); *In the Matter of Alliant Energy – WPL Edgewater Generating Station*, Order on Petition No. V-2009-02 (August 17, 2010); *In the Matter of WE Energies Oak Creek Power Plant* (June 12, 2009); and *In the Matter of Louisiana Pacific Corporation*, Order on Petition No. V-2006-3 (November 5, 2007).

important for issues that involve the state’s exercise of discretion, including actions involving permit modifications.

Thus, in a petition claim challenging the permitting authority’s use of a minor modification procedure (which results in a lack of a public comment period), the petitioner must demonstrate to EPA that the modification in question should have been processed as a significant modification. This requires the petitioner to evaluate the modification under the rules that dictate whether minor modification or significant procedures are appropriate and/or required. **More specifically, for claims involving changes to testing or monitoring requirements, the petitioner must demonstrate that the changes reflected a “significant change in existing monitoring” requirements or a “relaxation of reporting or recordkeeping” requirements.** In so doing, the petitioner should, as explained in preceding sections, 1) address the change(s) to the permit, 2) address the permitting authority’s explanation for the action/change(s), and 3) explain why the permitting authority is incorrect and how the permitting authority failed to comply with the modification criteria under the relevant statutes or regulations. *See* 40 C.F.R. § 70.12(a)(2)(i)–(iii).

EPA’s Analysis of Changes to Premcor’s Testing Requirements

As noted in the summary of arguments in the Premcor Petition, the central focus of the Premcor Petition (scattered across various sections of the Premcor Petition, including “Claim 1” and “Claim 5”) concerns a change to a permit term regarding stack testing requirements. EPA’s response to the Premcor Petition begins with an analysis of the issues directly related to this primary argument, followed by an analysis of the Petitioner’s other “claims.”

The Petitioner has failed to meet its burden to demonstrate that IEPA has not complied with the CAA, the part 70 regulations, or Illinois’ approved title V program by processing the Premcor permit modification as a minor modification.¹⁵ As explained in detail in the following analysis, the Petitioner offers only brief critiques of the modification to the Premcor Permit and does not demonstrate that the change at issue should have been processed as a significant modification under the relevant legal authorities. *See* 40 C.F.R. § 70.7(e)(4) and 415 ILCS 5/39.5(14)(c).¹⁶

As discussed in the Legal Background, a petitioner must explain how the permitting authority failed to comply with the relevant statutory or regulatory requirements. In claiming that the Premcor permit revision should have been processed as a significant modification instead of a minor modification, the Petitioner does not cite *any* relevant EPA regulations or Illinois statutes that IEPA allegedly failed to satisfy, namely the specific criteria for minor and significant modifications discussed previously. Although the Petitioner claims that the permit modification involved a “gross relaxation” of testing requirements in “Claim 1” of the Premcor Petition and

¹⁵ The Petitioner also alleges it was denied an opportunity to comment on the permit modification because IEPA did not afford a public comment period for this modification. As previously explained, IEPA is not required to hold a public comment period for minor modifications of title V permits. 415 ILCS 5/39.5(8). In failing to demonstrate that IEPA should have processed the permit modification as a significant modification, the Petitioner did not demonstrate that IEPA was required to provide public notice or a public comment period for this permit action.

¹⁶ EPA has previously denied a petition claim where the petitioner failed to demonstrate that a minor modification to a permit should have been considered a significant modification. *See In the Matter of Northampton Generating Co. LP.*, Order on Petition No. III-2020-01 at 14-15 (July 15, 2020).

that “significant changes” were made to the permit—apparent references to the modification criteria—the Petitioner does not sufficiently explain *why* the change amounted to a “relaxation” or any other type of “significant change to existing monitoring” that would require IEPA to use a significant modification procedure.

The Petitioner characterizes the permit change as a “testing delay” in “Claim 5” of the Premcor Petition, and expresses concern that the facility will never demonstrate compliance with “multiple applicable requirements”¹⁷ if it continues to delay testing when barge loading is not operational. However, the Petitioner does not fully analyze the text of the relevant permit term or adequately explain why the purported testing “delay” is a significant change from the previously applicable requirements. As explained in EPA’s following review, a closer examination of the permit term at issue reveals that the change was not, in fact, significant, and will not allow the source to avoid testing entirely.

As explained in Section II of this Order, a petitioner is expected to address the permitting authority’s reasoning behind a permit action if such information was available during the petition period. The Petitioner concludes the Premcor Petition in part by arguing that the permit change was not disclosed in a statement of basis or supported by the permit record. The Petitioner also argues in “Claim 2” that IEPA did not identify the changes made to the Premcor Permit. But in fact, IEPA did publish an SOB, or Summary of Changes, for the Premcor Permit that identifies and explains this specific permit modification. The SOB for the modification of Condition 4.10(h)(ii)(B) was published on May 26, 2022,¹⁸ and was publicly available on IEPA’s Bureau of Air Permit Notice database for the Petitioner to evaluate at the time it submitted the Premcor Petition. Thus, the Petitioner is incorrect that IEPA did not discuss this permit modification in a statement of basis.¹⁹ In failing to address the state’s reasoning or demonstrate that it was unreasonable or contrary to the law, the Petitioner has failed to demonstrate that IEPA inappropriately processed the Premcor permit modification as minor instead of significant.²⁰

As previously explained, IEPA is allowed to use a minor modification procedure if the permit modification does not involve a significant change to the permit’s existing monitoring, recordkeeping, or reporting requirements. 415 ILCS 5/39.15(14)(a)(i)(B). If the Petitioner wished to challenge IEPA’s decision to process the permit modification as a minor modification, the Petitioner was required to demonstrate that the state’s decision was unreasonable, invalid, or

¹⁷ This portion of the Petitioner’s claim may have been intended to challenge not only the procedure used to process the change to the Premcor Permit, but also the substance of the permit term itself. To the extent the Petitioner intended to allege that the Premcor Permit does not contain sufficient testing, monitoring, recordkeeping, or reporting requirements, the Petitioner has similarly failed to meet its demonstration burden for such a claim. The Petitioner fails to identify any applicable requirements with which the Premcor Permit does not assure compliance, and does not explain why changed testing requirements may be insufficient to assure compliance, beyond a brief and conclusory statement that the permit modification involved a “gross relaxation of testing.”

¹⁸ See Summary of Changes for Premcor Alsip Distribution Center (May 26, 2022) (Premcor Alsip SOB) at <https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/8258>.

¹⁹ The Petitioner’s incorrect assertion that IEPA did not discuss the permit modification within a statement of basis is puzzling, given that the Petitioner itself acknowledges the existence of the Summary of Changes document in the “comments” previously submitted to EPA and appended to the Petition.

²⁰ EPA also recognizes that it is important for permitting authorities to provide a clear and accessible permit record for members of the public to evaluate. EPA is committed to working with IEPA to improve how the Agency documents and explains permit changes for members of the public.

inappropriate by explaining how the permit modification was significant according to relevant part 70 regulations and/or Illinois statutes. Because the Petitioner failed to do so, it did not meet its burden under the CAA and implementing regulations, and the Premcor Petition must be denied.

Not only did the Petitioner fail to provide sufficient information to demonstrate that the change at issue constituted a significant modification procedure, but EPA also considers IEPA's decision to process the Premcor permit modification as a minor modification to be reasonable and consistent with the applicable legal requirements. 40 C.F.R. § 70.7(e)(4); 415 ILCS 5/39.5(14)(c). As explained below, IEPA reasonably concluded that the change at issue did not involve a significant change to existing monitoring, reporting, or recordkeeping requirements in the Premcor Permit, or a relaxation of recordkeeping or reporting requirements, which would have qualified as a significant modification.

In the Petitioner's fifth "Claim" in the Premcor Petition, the Petitioner contends that the Premcor Permit was modified to continue the delay of testing of a barge loading operation in Condition 4.10(h)(ii)(B). The modified permit term previously stated:

Pursuant to Section 39.5(7)(d)(ii) of the Act, the Permittee shall conduct a test of the control system at the flare using Test Methods 2A or 2B, 25A, or 25B, and 21 **within 27 months after the issuance of this permit and 5 years thereafter** to demonstrate compliance with the destruction efficiency requirements in Condition 4.10.2(h)(i)(F).

2020 Premcor Permit at 76 (emphasis added).²¹ The permit term now states:

Pursuant to Section 39.5(7) (d) (ii) of the Act, the Permittee shall conduct a test of the control system at the flare using Test Methods 2A or 2B, 25A or 25B, and 21 within 27 months after the January 1, 2020 effective date for the [sic] of the permit, unless during this time period product is not loaded at the barge dock, in which case this initial testing shall occur **within 90 days from the next time product is loaded at the barge dock.**

2022 Premcor Permit at 77 (emphasis added). The Petitioner's concern seems to be with the modified language that allows the facility to test the VOM destruction efficiency within 90 days from the next time product is loaded at the barge dock if barge loading has not occurred within 27 months after January 1, 2020. As explained by IEPA in the supporting Summary of Changes/statement of basis for this permit modification, barge loading has not occurred since October 2019.²² IEPA modified the barge loading testing requirement "to account for this situation" because, according to IEPA, testing of the barge loading operations "is only feasible

²¹ EPA notes that the permit term is labeled as Condition 4.10(h)(ii)(A) in the 2020 permit.

²²"Because barge loading last occurred on October 24, 2019, and testing of the loading operations is only feasible when loading operations have resumed, [the permit has been modified] to account for this situation. The revised permit will now requires [sic] the source to test the VOM destruction efficiency within 90 days after barge loading operations have resumed, and every 5 years thereafter under the same criterion." Premcor Alsip SOB.

when loading operations have resumed.” The following timeline summarizes the relevant context for the changes to this testing regime:

- **October 2015:** Control system at the flare tested (as mandated by Condition 4.10(h)(ii)(B)).²³ The 2019 renewal permit required that the next test be completed by September 2020.
- **October 2019:** Premcor stopped the barge loading operation at the Alsip facility.
- **July 2020:** Premcor submitted an application to IEPA for an extension of the 2020 test date.²⁴
- **October 2020:** Application for extension is granted by IEPA. Test extended to 27 months from the last title V permit renewal (which was effective January 1, 2020), which would have required the test in March 2022.²⁵
- **November 2021:** Premcor submitted an application to IEPA for the minor permit modification, which is the subject of the Premcor Petition, to add the 90-day testing provision to Condition 4.10(h)(ii)(B).
- **July 2022:** Application for minor modification is approved by IEPA.

Based on EPA’s review of the permit record described in this section, the modification at issue did not change the test method itself or even the frequency of testing. Testing has always been expected only during barge loading; the permit modification simply shifted the *timing* of the testing based on the barge loading operating timeline.

The Petitioner’s primary concern appears to be that, under the revised permit term, Premcor could indefinitely delay testing even after restarting barge loading operations, or request another test extension from IEPA, if the facility operates the barge loading for less than 90 days and then ceases operation again. However, this concern is unfounded. The plain text of the modified permit term requires without exception that “initial testing shall occur within 90 days from the next time product is loaded at the barge dock.” Thus, EPA interprets this permit term to require Premcor to test the VOM destruction efficiency even if barge loading operates for only one day and shuts down again right away.

With regard to the Petitioner’s claim that the facility could request another test extension, a potential hypothetical change to the Premcor Permit in the future is not a basis for concluding that the change at issue here qualifies as a significant change to the testing requirement. Further, as previously mentioned, the original 2019 renewal permit required that testing be conducted by September 2020, which IEPA extended to March 2022. EPA notes that testing was infeasible under either the original or the extended deadline because *barge loading has not occurred since October of 2019*.

In light of the above, IEPA reasonably modified the permit term to require Premcor to test the barge loading operation soon after the operation resumes. There is no evidence that the modified

²³ See 2019 Statement of Basis for Premcor Alsip Distribution Center at 14 (June 17, 2019) at <https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/4737>.

²⁴ See Summary of Changes for Premcor Alsip Distribution Center (September 10, 2020) at <https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/6564>.

²⁵ See *Id.*

deadline for testing is less stringent than the original testing requirements, or less likely to yield timely, reliable information to demonstrate compliance with relevant emission limits. Thus, EPA does not consider the change to the testing date, to one shortly after the unit operates again, to be a significant change to existing monitoring requirements or a relaxation of recordkeeping or recording requirements. As such, it was reasonable for IEPA to conclude that this permit modification could be processed as a minor modification and EPA does not find reason for concern in this case. Moreover, again, the Petitioner has not presented any basis to demonstrate that IEPA's decision was unreasonable or contrary to law. Thus, EPA denies this part of the Premcor Petition.

EPA also observes that IEPA's decision to modify the testing deadline is consistent with the purpose of the CAA. Under the original, unmodified, permit language, the facility would have been required to start barge loading for the sole purpose of testing, even if the barge loading was not otherwise operating. This action could create unnecessary emissions and adversely affect air quality in the community.²⁶

EPA's Analysis of Other Claims in the Premcor Petition

The Petitioner makes various other "claims" in an attempt to support its primary claim that IEPA should have processed the Premcor permit change as a significant modification. However, none of these claims demonstrate that the permit modification was significant, or otherwise show that IEPA failed to comply with an applicable statutory or regulatory requirement. Each of these claims is addressed in the following paragraphs.

In "Claim 1" of the Premcor Petition, the Petitioner alleges that IEPA violated its EJ Practices and Policy by not providing outreach on a permit action that allegedly involves significant public interest. Regardless of whether the changes at issue involved significant public interest,²⁷ EPA cannot object to the Premcor Permit based on an alleged violation of the state's EJ Practices and Policy. This policy is not—so far as EPA is aware—based on the federal CAA, was not approved by EPA into the Illinois State Implementation Plan or part 70 program, is not federally enforceable, and is exclusively a matter of state law and/or policy. Thus, alleged violations of this policy do not provide a basis for EPA to object to the Premcor Permit. Instead, EPA could only object to IEPA's issuance of the Premcor Permit if the Petitioner demonstrated that IEPA did not comply with applicable requirements under the CAA, such as the procedural requirements governing permit modifications or the public notice requirements. The Petitioner did not cite any other relevant legal authority that governs IEPA's public outreach in issuing title V permits, and did not demonstrate that IEPA's failure to conduct public outreach before issuing the permit modification resulted in any violation of applicable requirements under the CAA, part 70 regulations, or Illinois' rules.²⁸ As explained in Section II of this Order, concerns about

²⁶ EPA also notes that if Premcor were to start the barge loading just to test emissions, the operation could be an impractical use of the facility's resources.

²⁷ The Petitioner does not provide further analysis as to why the permit modification was of significant public interest. In any case, for the reasons discussed in EPA's analysis, EPA doubts that is the case.

²⁸ EPA has previously denied a petition claim that a permitting authority was obligated to satisfy a state-level EJ requirement during issuance of a title V permit. *See In the Matter of AK Steel Dearborn Works*, Order on Petition No. V-2016-16 at 17–18 (January 15, 2021).

IEPA's implementation of a state-specific environmental justice policy should be raised through the appropriate grievance procedures identified by IEPA.

Regarding "Claim 2" of the Premcor Petition, the Petitioner claims that IEPA made changes to the Premcor Permit by changing a "secretive template" IEPA uses to write minor modifications. It is unclear what this argument is based on, as the Petitioner does not describe any resulting changes to the Premcor Permit and even acknowledges that it is "unknown" what changes were made. Because the Petitioner has not identified any changes made based on the "template," it has not demonstrated that these alleged changes were significant such that IEPA was required to process the permit modification as a significant modification.²⁹

The Petitioner also argues that IEPA was required to provide a redline version of the minor modification. However, the Petitioner does not identify any applicable part 70 or Illinois authority that would require IEPA to issue a redline version of the Premcor Permit. This requirement does not exist under EPA's regulations.

Regarding "Claim 3" in the Premcor Petition, the Petitioner vaguely claims that the "sheer amount of changes" IEPA made to the Premcor Permit warranted a public comment period. However, again, the Petitioner does not identify any of these changes (other than its brief discussion of the change to testing, discussed above) while arguing that it does not know what these purported changes were. In order to demonstrate that IEPA made significant changes to the Premcor Permit that required public notice, the Petitioner has the burden to provide EPA with enough information about the changes to the Premcor Permit for EPA to determine whether those changes were significant. The Petitioner simply has not provided any information on which EPA can make this determination.

Regarding "Claim 4" of the Premcor Petition, the Petitioner does not demonstrate that changes were indeed made to Premcor's title I construction permits that would constitute a significant modification to the facility's title V permit. The Petitioner asserts that, "[a]pparently there were changes made to Title I construction permits that were not identified in the materials posted with the minor modification." But, again, the Petitioner does not identify any of these alleged changes. Without additional information about the specific changes of concern to the Petitioner, EPA cannot evaluate the Petitioner's claim.

²⁹ Although it is not entirely clear from the Petition itself, EPA suspects that the arguments in "Claim 2" relate to the following IEPA statement: "A number of changes were made to clean up the model, including updating the language to match the current model language, inserting missing [T1] designations, including missing origins of authority and inserting missing condition numbers." Premcor Alsip SOB. Provided this statement is, in fact, the subject of the Petitioner's allegations in Claim 2 concerning the allegedly "secretive template," the Petitioner has not alleged, much less demonstrated, that the types of changes described must be treated as significant modifications. In any case, the types of ministerial changes described by IEPA do not appear to be the sort that would prohibit minor modification procedures. The Petitioner's allegations in Claim 2 may have also been intended to challenge the adequacy of IEPA's *explanation* of the changes at issue. If so, the Petitioner is incorrect that IEPA's Summary of Changes did not identify (or at least summarize) the changes at issue. The Petitioner fails to acknowledge or address the content of IEPA's explanation, and therefore has not demonstrated that this explanation was insufficient. 40 C.F.R. 70.12(a)(2)(vi).

EPA's responses relating to the changes to the Premcor Permit's testing requirements, as well as the Petitioner's environmental justice concerns, address the rest of "Claim 5" in the Premcor Petition. Again, EPA does not consider—and the Petitioner has not demonstrated—that the change to the barge loading testing deadline was a significant change to existing monitoring requirements or a relaxation of recordkeeping or recording requirements.

B. The ExxonMobil Petition

Petitioner's Claim: The Petitioner's primary claim in the ExxonMobil Petition is that IEPA improperly processed a significant change to testing requirements in ExxonMobil's title V permit as a minor modification.³⁰ The Petitioner argues that EPA must object to the issuance of the ExxonMobil Permit and IEPA's failure to provide proper notice and opportunity for public comment. The Petitioner states that it previously asked IEPA to resubmit the permit change as a significant modification and that it also submitted comments to EPA explaining why EPA should object to the proposed permit modification. The Petitioner appended these "comments" to EPA to the end of the ExxonMobil Petition.³¹

Similar to the Premcor Petition, the Petitioner makes various arguments in the ExxonMobil Petition that are either directly or loosely related to IEPA's decision to process the ExxonMobil permit revision as a minor modification.³² The discussion that follows will once again address each of the Petitioner's arguments, this time as presented in the ExxonMobil Petition, though not necessarily in the same order presented in the ExxonMobil Petition. The Petitioner structures the ExxonMobil Petition into two "claims," which the Petitioner labels "Claim 1" and "Claim 5." These "claims" are similar to what the Petitioner labels "Claim 1" and "Claim 5" in the Premcor Petition.

Similar to the Petitioner's first argument in the Premcor Petition, the Petitioner's first argument in the ExxonMobil Petition ("Claim 1") is that IEPA violated its EJ Practices and Policies by relaxing a "critical air pollution control device test requirement" without public outreach. The Petitioner similarly claims that the public was not given the opportunity to comment on the "gross relaxation" of testing at the ExxonMobil Des Plaines Terminal, which the Petitioner argues allows the terminal "to test only once per permit term."

Similar to the Petitioner's fifth argument in the Premcor Petition, the Petitioner's second argument of the ExxonMobil Petition ("Claim 5") is an allegation that the "deletion" of the testing requirement in the ExxonMobil Permit is a violation of human rights. The Petitioner also suggests that EPA Region 5 is responsible for IEPA's actions because Region 5 is supposed to oversee IEPA and act as a "role model" for the state.

Elsewhere within the ExxonMobil Petition, the Petitioner makes additional allegations regarding the testing requirement that is the subject of "Claim 5." The Petitioner again argues that IEPA did not disclose or discuss the permit modifications in a statement of basis, "that the permit record provides no support," and that IEPA "is not transparent with the public in its permitting

³⁰ See *supra* note 11.

³¹ See *supra* note 12.

³² See *supra* note 13.

actions or its materials used to justify its permitting actions.” The Petitioner cites to the same EPA orders³³ that it cites in the Premcor Petition to argue that the unavailability of information needed to determine applicability of or to impose an applicable requirement may also result in a deficiency in the permit’s content.

The Petitioner further argues that EPA’s Region 5 office ignored the comments submitted by the Petitioner to EPA on the ExxonMobil permit modification and allowed IEPA to issue the modification without objection. The Petitioner claims that this is a “violation of procedure” that mandates EPA’s objection and return of the ExxonMobil Permit to IEPA for revision.

EPA’s Response: For the following reasons, EPA denies the Petitioner’s request for an objection on these claims.

The Petitioner has not demonstrated that the permit modification is not in compliance with the CAA or that IEPA did not comply with EPA’s regulations governing state operating permit programs at 40 C.F.R. part 70 by processing the ExxonMobil permit modification as a minor modification. EPA also does not consider the permit modification to be a significant modification.³⁴

EPA’s Analysis of the Change to ExxonMobil’s Testing Requirements

As noted in the summary of arguments presented in the ExxonMobil Petition, the central focus of the ExxonMobil Petition concerns a change to a permit term regarding stack testing requirements. EPA’s response to the ExxonMobil Petition begins with an analysis of the arguments directly related to this primary argument, followed by an analysis of the Petitioner’s other “claims.”

Like the Premcor Petition, the Petitioner has failed to meet its burden in the ExxonMobil Petition to demonstrate that IEPA failed to satisfy any applicable requirements under the CAA, part 70 regulations, or Illinois’ rules by processing the ExxonMobil permit modification as a minor modification.³⁵ As explained in more detail below, the Petitioner does not provide a sufficient analysis of the modification to the ExxonMobil Permit and therefore fails to demonstrate that the change at issue (i.e., the testing requirement) should have been processed as a significant modification under the relevant legal authorities. *See* 40 C.F.R. § 70.7(e)(4) and 415 ILCS 5/39.5(14)(c). Similar to the Premcor Petition, the Petitioner claims that the ExxonMobil permit modification involved a “gross relaxation” of a critical testing requirement in “Claim 1” of the ExxonMobil Petition. However, again, the Petitioner does not *explain why* the modification amounted to a “relaxation” or any other type of “significant change to existing monitoring” that would require IEPA to use a significant modification procedure.

The Petitioner does not offer a thorough explanation of the changed permit term in the ExxonMobil Permit. Instead, the Petitioner makes a brief accusation in the ExxonMobil Petition

³³ *See supra* note 14.

³⁴ A further explanation of EPA’s expectations for the Petitioner’s demonstration burden and an overview of EPA’s and IEPA’s minor and significant modification criteria are included on pages 9-10 of this Order.

³⁵ *See supra* note 15.

that “ExxonMobil asked the IEPA to delete critical testing twice per permit term on a barge loading operation.” The Petitioner then states that it considers the change to be a “relaxation of a critical air pollution control device test” in “Claim 1” of the ExxonMobil Petition. Again, the Petitioner does not provide a further analysis of how this permit modification is a significant change to the previously applicable requirements, and therefore does not demonstrate that IEPA should have processed this modification as significant.

Similar to the Premcor Petition, the Petitioner did not address IEPA’s reasoning behind this permit action. The Petitioner raises general concerns regarding IEPA’s transparency and concludes incorrectly in the ExxonMobil Petition that IEPA did not disclose or discuss this permit change in a SOB.³⁶ Like in the Premcor permit modification process, IEPA did identify and explain the modification to Condition 4.3.2(a)(ii)(C) in the ExxonMobil Permit in an SOB (or Summary of Changes), which was published on September 20, 2022.³⁷ Specifically, IEPA explained that “the requirement for a test after 9 months after the issuance of the permit is obsolete after the initial issuance of the permit and the language has been removed as obsolete.” This SOB was publicly available on IEPA’s Bureau of Air Permit Notice database for the Petitioner to evaluate at the time it submitted the ExxonMobil Petition. Without addressing the state’s reasoning or demonstrating that it was unreasonable or contrary to relevant part 70 regulations and/or Illinois statutes, the Petitioner failed to demonstrate that IEPA inappropriately processed the ExxonMobil permit modification.³⁸

Not only did the Petitioner fail to provide sufficient information to demonstrate that the change at issue constituted a significant modification procedure, but EPA also considers IEPA’s decision to process the ExxonMobil permit modification as a minor modification to be reasonable and consistent with the applicable legal requirements. 40 CFR § 70.7(e)(4); 415 ILCS 5/39.5(14)(c). As explained below, the change at issue did not involve a significant change to existing monitoring, reporting, or recordkeeping requirements in the ExxonMobil Permit, or a relaxation of recordkeeping or reporting requirements, which would have qualified as a significant modification.

The Petitioner claims that the ExxonMobil permit modification deleted a provision that required the facility to test the barge loading operation twice per permit term. The modified permit term in question, Condition 4.3.2(a)(ii)(C), previously stated:

Pursuant to Section 39.5(7)(c) of the Act, the Permittee shall conduct a test of the primary VCU by using methods 2A, 2B, 25B, and 21 **within 9 months after of issuance of this permit and every 5 years thereafter.**

³⁶ See *supra* note 19.

³⁷ See Summary of Changes for ExxonMobil Pipeline Company – Des Plaines Terminal (September 20, 2022) at <https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetAirPermitDocument/8652>.

³⁸ See *supra* note 20.

2020 ExxonMobil Permit at 31 (emphasis added). The permit term now states:

Pursuant to Section 39.5(7)(c) of the Act, the Permittee shall conduct a test of the primary VCU by using methods 2A, 2B, 25B, and 21 **every 5 years from the most recent test.**

2022 ExxonMobil Permit at 29 (emphasis added). To begin with, this particular permit term concerns a gasoline tank truck-loading operation, which EPA will assume is what the Petitioner was referring to instead of barge loading. As EPA understands the modification and the explanation provided by IEPA in the corresponding Summary of Changes/SOB, ExxonMobil did not “delete testing” from the ExxonMobil Permit, as the Petitioner claims; instead, it removed an obsolete permit term that was inadvertently carried over from the 2014 renewal of the title V permit. The SOB for the modification at issue states:

Pursuant to Section 39.5(14)(a) of the Act, the following permit modification(s) qualify as a minor modification:

1. Revised the Volatile Organic Material (VOM) testing frequency in Condition 4.3.2(a)(ii)(C) from “within 9 months after of issuance of this permit and every 5 years thereafter” to every 5 years from the most recent test.

Note: The change in monitoring frequency is not considered to be a significant change in existing monitoring requirements because the changes do not reduce the enforceability of the permit and they would not be considered “significant” prior to issuance of the modification. In support of the above, the requirement for a test after 9 months after the issuance of the permit is obsolete after the initial issuance of the permit and the language has been removed as obsolete.

Summary of Changes for ExxonMobil Pipeline Company – Des Plaines Terminal (September 20, 2022) (2022 ExxonMobil SOB). Again, the Petitioner did not address this reasoning provided by IEPA. This omission alone would be sufficient grounds for EPA to deny this claim.

Additionally, EPA observes that Condition 4.4.2(a)(ii)(D) in the 2014 title V permit renewal required the terminal to test its primary vapor combustion unit (VCU) within 9 months after issuance of that permit and every 5 years thereafter (2014 Exxon Mobil Des Plaines Permit at 32). The terminal completed this initial testing requirement in 2015.³⁹ However, the requirement appears to have been inadvertently carried over in the 2019 renewal permit (Condition 4.3.2(a)(ii)(C) at 30) and again in the 2020 version of the permit (Condition 4.3.2(a)(ii)(C), 2020 Permit at 31). ExxonMobil corrected the permit term and removed the now-obsolete reference to the already-completed initial test through the minor modification that is the subject of this petition.⁴⁰ This revision did not significantly change the overall testing or monitoring

³⁹ See Letter from Steve Gluth, ExxonMobil, to Illinois EPA Re: ExxonMobil Des Plaines Terminal – Source Test Report for June 10, 2015 (August 21, 2015) (June 2015 ExxonMobil Test Report).

⁴⁰ See 2022 ExxonMobil SOB.

requirements—including the testing frequency—that have applied to the source since 2014.⁴¹ Thus, it was reasonable for IEPA to conclude that this permit modification could be processed as a minor modification, and EPA does not find reason for concern in this case. More to the point, EPA does not consider the removal of an obsolete requirement to perform an initial stack test that has already been completed to constitute a “significant change to existing monitoring” or a “relaxation of recordkeeping or reporting requirements” under the relevant EPA regulations and Illinois statute. Again, the Petitioner has not presented any basis to demonstrate that IEPA’s decision was unreasonable or contrary to the CAA. Thus, EPA denies this part of the ExxonMobil Petition.

EPA’s Analysis of Other Claims in the ExxonMobil Petition

Similar to the Premcor Petition, the Petitioner makes various other “claims” in the ExxonMobil Petition to support its primary claim that IEPA should have processed the ExxonMobil permit change as a significant modification. Likewise, none of these claims demonstrate that the permit modification is significant, or otherwise show that the ExxonMobil Permit is not in compliance with an applicable statutory or regulatory requirement. Each of these claims is addressed in the following paragraphs.

In “Claim 1” in the ExxonMobil Petition, which is similar to “Claim 1” in the Premcor Petition, the Petitioner argues that IEPA violated its EJ Practices and Policy by not providing outreach on a permit action that allegedly involves significant public interest.⁴² Again, EPA cannot object to the ExxonMobil Permit based on an alleged violation of the state’s EJ Practices and Policy, as this policy is not a requirement of the CAA, and is not federally enforceable. Like in the Premcor Petition, the Petitioner does not demonstrate that IEPA’s treatment of EJ issues in the ExxonMobil permit modification resulted in a permit that is not in compliance with applicable requirements under the CAA, part 70 regulations, or Illinois’ rules.

As previously mentioned, “Claim 5” includes an alleged deletion of a testing requirement and concerns regarding EPA’s oversight of IEPA’s permitting activities. EPA’s analysis of the changes to the ExxonMobil Permit’s testing requirements, and response to the Petitioner’s environmental justice concerns, address the Petitioner’s arguments pertaining to the alleged deleted testing in “Claim 5” of the ExxonMobil Petition. With regard to the claim related to EPA’s oversight role, EPA notes that this is not a proper claim to raise in a petition submitted under CAA § 505(b)(2). To demonstrate a basis for EPA’s objection to a permit, a petitioner must demonstrate a substantive flaw with the permit, or a procedural flaw with how the *permitting authority*, IEPA in this case, processed the permit. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. §§ 70.8(c)-(d), 70.12(a)(2). The title V petition process is not the appropriate forum for

⁴¹ Additionally, EPA observes that the facility has, in fact, conducted its periodic stack testing of the primary VCU multiple times since the 2014 permit: first in June 2015, and subsequently in August 2017 and July 2022. *See* June 2015 ExxonMobil Test Report; Letter from Steve Gluth, ExxonMobil, to Illinois EPA Re: Emissions Test Report for ExxonMobil Des Plaines Terminal on August 23, 2017 (October 16, 2017); Statement of Basis for ExxonMobil Corporation – Des Plaines Terminal at 13 (June 17, 2019); Letter from Marshall Berg, ExxonMobil, to Illinois EPA Re: Source Test Report for ExxonMobil Des Plaines Vapor Combustion Unit (July 13, 2022).

⁴² *See supra* note 27.

challenging alleged oversight-related actions or inactions by EPA.⁴³ Regarding the Petitioner's allegation that EPA's Region 5 office did not respond to the Petitioner's submission of comments on the ExxonMobil permit modification, EPA notes that members of the public should send comments to the state permitting authority if the permitting authority offers a comment period. As explained in Footnote 12, there is no formal mechanism for members of the public to submit comments to EPA on a state-issued permit.

V. CONCLUSION

In these petitions, the Petitioner does not demonstrate that the relevant permits are not consistent with the applicable requirements of the CAA, nor that IEPA improperly processed the Premcor and ExxonMobil permit modifications as minor modifications. It appears to EPA that the specific changes at issue were reasonably processed as minor modifications in accordance with EPA's and IEPA's rules. The Petitioner's other claims do not provide support for its primary claim that the permit modifications should have been considered significant. Because the Petitioner has failed to demonstrate to EPA that issuance of the Permits ran afoul of the CAA, part 70 regulations, or the relevant IEPA statutes, I hereby deny the Petitions as described in this Order. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Dated: MAY 01 2023



Michael S. Regan
Administrator

⁴³ EPA has previously denied a similar petition claim regarding EPA's oversight role. *See In the Matter of Hu Honua Bioenergy Facility*, Order on Petition No. IX-2011-1 at 6-7 (February 7, 2014).