

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

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Petition No. V-2024-10

In the Matter of

Warrick Newco LLC

Permit No. T173-46378-00007

Issued by the Indiana Department of Environmental Management

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**ORDER DENYING A PETITION FOR OBJECTION TO A TITLE V OPERATING PERMIT**

**I. INTRODUCTION**

The U.S. Environmental Protection Agency (EPA) received a petition dated July 9, 2024 (the Petition) from the Sierra Club (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 Petition requests that the EPA Administrator object to operating permit No. T173-46378-00007 (the Permit) issued by the Indiana Department of Environmental Management (IDEM) to the Warrick Newco LLC aluminum production plant (Warrick Newco) in Warrick County, Indiana. The operating permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and 326 Indiana Administrative Code (IAC) 2-7-1 *et seq.* See also 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Permit, the permit record, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, the EPA denies the Petition requesting that the EPA Administrator object to the Permit.

**II. STATUTORY AND REGULATORY FRAMEWORK**

**A. Title V Permits**

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The state of Indiana submitted a title V program governing the issuance of operating permits on August 10, 1994. The EPA granted interim approval of Indiana's title V operating permit program in 1995. 60 Fed. Reg. 57188 (Nov. 14, 1995), and the EPA granted full approval in 2001. 66 Fed. Reg. 62969 (Dec. 4, 2001). This program, which became effective on November 30, 2001, is codified in 326 IAC 2-7-1 *et seq.*

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 40 C.F.R. § 70.1(b); 42 U.S.C. § 7661c(c). One purpose of the title V program is 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.” 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source’s emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

## **B. Review of Issues in a Petition**

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. 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 the EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the 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 the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the 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).

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 part 70. 40 C.F.R. § 70.12(a)(2). Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must generally be contained within the body of the petition.<sup>1</sup> *Id.*

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (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); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v).

In response to such a petition, 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.

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<sup>1</sup> 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. *Id.*

§ 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).<sup>2</sup> Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.<sup>3</sup> The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).<sup>4</sup> When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., MacClarence*, 596 F.3d at 1130–31.<sup>5</sup> Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").<sup>6</sup> Relatedly, the EPA has pointed out in numerous previous orders that general assertions

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<sup>2</sup> *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

<sup>3</sup> *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

<sup>4</sup> *See also Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' . . . plainly mandates an objection whenever a petitioner demonstrates noncompliance." (emphasis added)).

<sup>5</sup> *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

<sup>6</sup> *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007) (*Portland Generating Station Order*).

or allegations did not meet the demonstration standard. *See, e.g., In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (Jan. 15, 2013).<sup>7</sup> Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).<sup>8</sup>

Another factor the EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning contained in the permit record. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.<sup>9</sup> This includes a requirement that petitioners address the permitting authority's final decision and final reasoning (including the state's response to comments) where these documents were available during the timeframe for filing the petition. 40 C.F.R. § 70.12(a)(2)(vi). Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment. *Id.*

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the "statement of basis"); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition. *Id.*

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<sup>7</sup> *See also Portland Generating Station Order* at 7 ("[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement]."); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (Apr. 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (Jan. 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

<sup>8</sup> *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

<sup>9</sup> *See also, e.g., Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x \*11, \*15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *Georgia Power Plants Order* at 9–13 (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

### **C. New Source Review**

The major New Source Review (NSR) program encompasses two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and for other pollutants regulated under the CAA. 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. 42 U.S.C. §§ 7501–7515. The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA’s federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA’s regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. The EPA commonly refers to the latter program as the “minor NSR” program. States must also develop minor NSR programs to, along with the major source programs, attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R. §§ 51.160 through 51.164. These federal requirements for minor NSR programs are less prescriptive than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs than in major source programs.

The EPA has approved Indiana’s PSD and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.800 (identifying EPA-approved regulations in the Indiana SIP). Indiana’s PSD and minor NSR provisions, as incorporated into Indiana’s EPA-approved SIP, are contained in portions of 326 IAC 2.

## **III. BACKGROUND**

### **A. The Warrick Newco Facility**

Warrick Newco LLC, a subsidiary of Alcoa Corporation, is an aluminum production plant located in Newburgh, Indiana. The facility consists of potlines that reduce alumina ore to elemental aluminum and supporting processes, including an anode bake furnace and a paste production facility. Warrick Newco is a major source of particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), sulfur dioxide, nitrogen oxide, volatile organic compounds, and carbon monoxide emissions under title V and PSD programs, and is also a major source of hazardous air pollutants. Among other requirements, the facility is subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Aluminum Reduction Plants under 40 C.F.R. part 63, subpart LL.

## B. Permitting History

Warrick Newco first obtained a title V permit in February 2000, which was subsequently renewed. On March 6, 2023, Warrick Newco applied for a title V permit renewal. IDEM published notice of a draft permit on October 24, 2023, subject to a public comment period that ran until November 23, 2023. On April 25, 2024, IDEM submitted the Proposed Permit, along with its responses to public comments (RTC), to the EPA for its 45-day review. The EPA's 45-day review period ended on June 10, 2024, during which time the EPA did not object to the Proposed Permit. IDEM issued the final title V renewal permit for Warrick Newco on May 14, 2024.

## C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator to object within 60 days after the expiration of the 45-day review period. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on June 10, 2024. Thus, any petition seeking the EPA's objection to the Permit was due on or before August 9, 2024. The Petition was received July 9, 2024, and, therefore, the EPA finds that the Petitioner timely filed the Petition.

## D. Environmental Justice

The EPA used EJScreen<sup>10</sup> to review key demographic and environmental indicators within a five-kilometer radius of the Warrick Newco facility. This review showed a total population of approximately 3,057 residents within a five-kilometer radius of the facility, of which approximately 12 percent are people of color and 13 percent are low income. In addition, the EPA reviewed the EJScreen Environmental Justice Index, which combine certain demographic indicators with 13 environmental indicators. The following table 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 Indiana.

EJ Index	Percentile in State
Particulate Matter 2.5	39
Ozone	13
Nitrogen Dioxide	26
Diesel Particulate Matter	28
Toxic Releases to Air	57
Traffic Proximity	28
Lead Paint	19
Superfund Proximity	0
RMP Facility Proximity	44
Hazardous Waste Proximity	35
Underground Storage Tanks	34

<sup>10</sup> EJScreen is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. See <https://www.epa.gov/ejscreen/what-ejscreen>. The information herein is based on a July 18, 2024, report using EJScreen version 2.3.

Wastewater Discharge	56
Drinking Water Non-Compliance	0

#### IV. EPA DETERMINATION ON PETITION CLAIM

##### **The Petitioner Claims That “the Permit, as Issued by IDEM, Fails to Ensure That Any Restart of Potlines Number 2 or 6 Will Occur in Compliance with All Applicable Requirements.”**

**Petition Claim:** The Petitioner alleges that the Permit is not in compliance with the CAA and part 70 because the Permit fails to ensure that any restart of potlines #2 or #6 will occur in compliance with all applicable requirements. Petition at 3. The Petitioner points to a statement in the Permit record that the Petitioner argues “[purports] to excuse Warrick Newco from applicable requirements.” *Id.* at 4 (citing 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)).

The Petitioner claims that all Warrick Newco potlines were “shut down” in 2016, and potlines #3, #4, and #5 were “restarted” in 2017, citing several news articles in support. *Id.* at 2. The Petitioner also claims that according to a press release from Warrick Newco, two of the potlines—#2 and #6—were classified as “curtailed capacity” and remained idle. *Id.*

The Petitioner explains that public comments on the draft permit stated that the “shutdown” potlines #2 and #6 should be removed from the Permit, or, alternatively, the Permit should explain the procedures and requirements for restarting and operating them, specifically requirements related to NSR permitting and NESHAP applicability review. *Id.* at 4. The Petitioner claims that IDEM’s response to these comments stated that Warrick Newco never submitted an application to remove the potlines from the Permit, that IDEM would not remove the potlines from the Permit without an application requesting such removal, and that no prior re-approval from IDEM would be required to restart the potlines. *Id.* at 5 (citing RTC at 18).

The Petitioner describes IDEM’s statements in the permit record as a “blanket future non-applicability determination” and states: “IDEM cannot issue such a blanket statement of inapplicability without an evaluation of the facts and the regulatory landscape that exists at the time that Warrick Newco decides to begin operation of potline #2 or #6 in the future.” *Id.* The Petitioner claims that IDEM’s statement appears to be “a future regulatory applicability determination without review of the facts or regulations that may apply,” and, therefore, “does not ensure that the Warrick Newco facility will comply with applicable requirements of the Indiana SIP or the Clean Air Act.” *Id.* at 6 (citing 42 U.S.C. § 7475(a)).

The Petitioner questions whether potlines #2 and #6 are capable of complying with applicable emission limits under 40 C.F.R. part 63, subpart LL, based on alleged noncompliance of other potlines at the facility and “because the potlines shut down before the first compliance dates in October 2016 (for potline work practice standards) and in October 2017 (for potline work practice standards, new carbonyl sulfide (COS) and PM limits for potlines).” *Id.* at 4–5 (citing 80 Fed. Reg. 62390, 62414-62427 (Oct. 15, 2015)).

Additionally, the Petitioner claims that Warrick Newco failed to submit “performance testing information” with the title V permit application to show compliance with subpart LL, information which

the Petitioner argues is required by 40 C.F.R. § 70.5(c)(3)(v). *Id.* at 5. The Petitioner also claims that the permit record does not reflect compliance with a notification-of-compliance-status requirement under 40 C.F.R. § 63.9(h). *Id.* at 5–6.

**EPA Response:** For the following reasons, the EPA denies the Petitioner’s request for an objection on this claim.

The Petitioner raises a concern that a potential future restart of two emission units (potlines #2 and #6) may not comply with the applicable requirements of the Indiana SIP or the Clean Air Act, including NSR and NESHAP requirements that may apply at the time of restart due to IDEM’s statements in the current permit record. In essence, this claim presents a forward-looking permitting or compliance issue, not a problem with how the current title V permit is written.

An IDEM inspection report of the facility reflects that Warrick Newco has not operated potlines #2 and #6 since 2016.<sup>11</sup> It is not clear to the EPA, and the Petitioner does not actually claim, that Warrick Newco intends to restart either potline #2 or #6.<sup>12</sup> Whether restarting these units would require additional authorization or approval is not an issue that the EPA needs to address at this time. If Warrick Newco decides to restart the units in the future, the EPA would expect IDEM to evaluate, at that time, whether any NSR permitting requirements apply, notwithstanding IDEM’s statements in the current permit record. As the Petitioner notes, IDEM states in its RTC that “the restart of the potlines does not require Warrick Newco LLC to get a prior re-approval from IDEM.” RTC at 19. However, the EPA does not consider this statement controlling on any future determination concerning a restart of these units. *See In the Matter of AK Steel Dearborn Works Order on Petition No. V-2016-16 at 14 (Jan. 15, 2021) (AK Steel Order); In the Matter of Salt River Project Coronado Generating Station Order on Petition No. IX-2022-1 at 11 (Jun. 14, 2022) (Coronado Order)* (both denying forward-looking NSR claims where the permitting authority had stated that a specific project or rebuild of an emission unit would not require a new preconstruction permit). Should Warrick Newco seek to restart potline #2 or #6 in the future, the EPA expects IDEM to evaluate compliance with the existing permit conditions, and any new applicable requirements under its SIP-approved NSR program.<sup>13</sup> Any future decision by IDEM with respect to NSR applicability could be challenged through title I permitting and enforcement

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<sup>11</sup> In an inspection report dated October 31, 2023, IDEM describes potlines #2 and #6 as “non-operable” and lists both units as “last operated – prior to 3/31/2016.” Warrick Newco LLC (Plant ID 173-00007) Inspection Report at 5, 14 (Oct. 31, 2023) available at:

[https://ecm.idem.in.gov/cs/idcplg?IdcService=GET\\_FILE&dID=83549425&dDocName=83553434&Rendition=web&allowInterrupt=1&noSaveAs=1](https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83549425&dDocName=83553434&Rendition=web&allowInterrupt=1&noSaveAs=1).

<sup>12</sup> The EPA’s response uses the word “restart” to refer to any future changes that may be necessary prior to the future operation of potline #2 or #6. Nothing in the EPA’s use of this or similar words, or any other portions of the EPA’s response, should be interpreted as a judgment by the EPA concerning whether any future changes to potline #2 or #6 may require a permitting action.

<sup>13</sup> The EPA also notes that potlines #2 and #6 are subject to 40 C.F.R. part 63, subpart LL, including the requirement for notification of “startup of an existing potline or potroom group, anode bake furnace, or paste production plant that was shut down for a long period and subsequently restarted.” 40 C.F.R. § 63.850(a)(9); *see* Permit Attachment A at 27. Based on the EPA’s current understanding of the permit and inspection record here, Warrick Newco would likely be subject to this notification requirement upon restarting potlines #2 and #6, dependent upon when such restart occurred and whether the period that the potlines were shut down accordingly qualifies as a “long period” under the regulations.



avenues (*e.g.*, through the state appeal process<sup>14</sup> or through a citizen suit under section 304 of the CAA, depending on the specific claim). The Petitioner does not claim, and it does not otherwise appear, that the Permit shields the source from any future NSR requirements.<sup>15</sup>

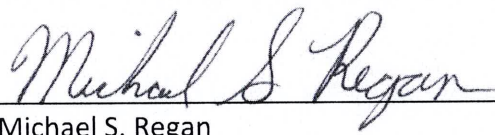
The Petitioner also does not explicitly claim that the Permit is missing any requirements (*e.g.*, NESHAP requirements under subpart LL) that are currently applicable to potlines #2 and #6.<sup>16</sup> To the extent the Petitioner raises potential future noncompliance issues with NESHAP requirements, the statutory and regulatory structure contemplates avenues for addressing those potential noncompliance issues through mechanisms outside the title V petition process, including through administrative or civil enforcement initiated by the EPA under section 113 of the CAA, enforcement by IDEM, or enforcement by citizens under section 304 of the CAA. To the extent Petitioner claims that the Permit does not assure compliance with the applicable NESHAP requirements because potlines #2 and #6 were shut down before the relevant NESHAP compliance dates, the EPA notes that the Permit currently imposes NESHAP subpart LL requirements on potlines #2 and #6. Permit at 81–83. As a factual matter, potlines #2 and #6 have been included in the Permit since 2000, and the permit record indicates that the potlines have been subject to NESHAP subpart LL requirements since at least 2018. Ultimately, the Petitioner fails to connect its concerns about compliance with subpart LL with any flaw in the Permit, and thus presents no basis for an EPA objection.

To the extent the Petitioner raises issues with the application for the title V permit submitted by Warrick Newco (*i.e.*, that the application did not contain performance testing information required by 40 C.F.R. § 70.5(c)(3)(v), or a notification of compliance status required by 40 C.F.R. § 63.9(h)), these subclaims are denied because these issues were not raised with reasonable specificity in public comments on the draft permit as required by CAA section 505(b)(2) and 40 C.F.R. § 70.8(d), and the Petitioner has not demonstrated that it was impracticable to raise such objections within the public comment period. *See* 40 C.F.R. § 70.12(a)(2)(v).

## V. CONCLUSION

For the reasons set forth in this Order and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby deny the Petition as described in this Order.

Dated: October 9, 2024

  
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Michael S. Regan  
Administrator

<sup>14</sup> *See* Ind. Code §§ 4-21.5-3 *et seq.* (Administrative Orders and Procedure Act chapter on adjudicative proceedings), 4-21.5-5 *et seq.* (Administrative Orders and Procedure Act chapter on judicial review); IAC Title 315 (regulations governing adjudicatory proceedings before environmental law judges).

<sup>15</sup> The current title V permit terms have no bearing on whether additional preconstruction permitting actions may be necessary to authorize any future restart and operation of the units. *See* 42 U.S.C. § 7661a(a) (“Nothing in [title V] shall be construed to alter the applicable requirements of [the CAA] that a permit be obtained before construction or modification.”); *AK Steel Order* at 14–15; *Coronado Order* at 11.

<sup>16</sup> The Permit incorporates the entirety of 40 C.F.R. part 63, subpart LL (in Attachment A) and lists potlines #2 and #6 as subject to its requirements. Permit at 81–83.