Response to Petition No. III-2023-16

In the Matter of

Union Carbide Corporation, Union Carbide Institute Facility

Permit No. R30-03900005-2023 (2 of 2)

August 21, 2024

The West Virginia Department of Environmental Protection's (WVDEP) Division of Air Quality published "draft" operating permit No. R30-03900005-2023 (2 of 2) to Union Carbide Corporation's Institute Facility for their Logistics Unit on October 15, 2022 and submitted the "proposed" permit to the U.S. Environmental Protection Agency (USEPA) for review on July 14, 2023. The "proposed" comment period ended on August 28, 2023. USEPA notified WVDEP on August 8, 2023 that they did not intend to object to the "proposed" permit; accordingly, WVDEP issued the permit on August 10, 2023.

"The program shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 40 CFR 70.8(d). Accordingly, the 60-day deadline for submitting a petition to the USEPA was October 27, 2023. The USEPA received a petition dated October 27, 2023 from People Concerned About Chemical Safety and Earthjustice (Petitioners) which requested that the EPA Administrator object to operating permit No. R30-03900005-2023 (2 of 2).

USEPA Administrator Michael S. Regan signed the agency's "Order Granting a Petition for Objection to a Title V Operating Permit" on May 24, 2024, 210 days after the Petition was submitted to the USEPA. The USEPA's Order violates the Clean Air Act (CAA) on its face. The CAA states, "The Administrator shall grant or deny such petition within 60 days after the petition is filed". In this matter, the Administrator was required to submit a response on or before December 27, 2023, but missed this statutory requirement by 150 days and issued the Order on May 24, 2024. The USEPA did not make any findings to explain why the Petitioners or the USEPA were unable to keep to the statutory timeframes.

Based on a review of the petition and other relevant materials, including the permit and permit record, the USEPA granted the petition requesting objection to the permit on the following claims: (1) The Proposed Title V Permit's monitoring and testing requirements cannot ensure compliance with particulate matter and opacity limits for the flares; and (2) The Proposed Title V Permit could be read to allow [WVDEP] to approve alternative testing and monitoring without following the required procedures.

When USEPA grants a Title V petition, the permitting authority may address USEPA's objection by either revising the permit or by revising the permit record to provide additional rationale to support its permitting decision. After careful review and consideration of the petition order and the Title V permit, WVDEP is not revising the Title V permit for Claim 1, but instead is revising the permit record to provide additional rationale. For Claim 2, WVDEP is adding clarifying language to the Title V boilerplate condition 3.3.1(b) and is also revising the permit record to provide additional rationale.

Claim 1: The Petitioners Claim That "The Proposed Title V Permit's Monitoring and Testing Requirements Cannot Ensure Compliance with Particulate Matter and Opacity Limits for the Flares."

The Petitioners asserted that USEPA must object to the Permit because it does not include adequate monitoring, testing, reporting, or recordkeeping requirements to ensure compliance with particulate matter (PM) and opacity limits for the Logistics Unit's two flares, B410 and A410. Specifically, the Petitioners claimed that section 4.3.4 of the Permit (testing upon the request of the Director) is the only permit provision used to ensure compliance with the hourly PM limit of 1.19 lb/hr for the flares and they

also claimed that section 4.2.2 of the Permit (monthly visual emissions monitoring) is the only permit provision used to ensure compliance with the opacity limits for the flares.

The Petitioners argued that section 4.3.4 does not require monitoring on a regular basis and also questioned whether flares can even be stack tested and suggest the necessity of hourly monitoring or continually determining emissions to ensure compliance with the hourly PM limit. The Petitioners stated that because testing is only required to be conducted at such reasonable times as the Secretary may designate, that this could result in no testing and therefore Petitioners could conclude that there is no testing or monitoring to ensure compliance with the flares' hourly PM emission limits. The Petitioners also argued that the provision does not provide any details on how the tests are to be conducted.

The Petitioners alleged that section 4.2.2 cannot ensure compliance with the flares' opacity because the frequency and duration of the monitoring are too infrequent to assure compliance with the 20% limit. They also suggested that because a follow-up Method 9 evaluation is not required for up to three days, that the flares could be violating their opacity limits but that those violations could go undetected for up to three days after the visible emissions are first observed. Petitioners also claimed that visible emission observations and Method 9 evaluations cannot be conducted at night or under adverse weather conditions, and for this reason, they have a "free pass from opacity limits at night and under adverse weather conditions." The Petitioners also argued that the no visible emissions requirement from 40 C.F.R. §63.11(b) alone cannot ensure compliance with the SIP opacity limits from flare B410 since it is required to be conducted once and testing cannot be performed at night or adverse weather conditions.

USEPA granted the Petitioners' request for an objection on this claim on the sufficiency of periodic testing. In the order, USEPA described the following five factors permitting authorities may consider as a starting point in determining appropriate monitoring for a particular facility: (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar units at other facilities.

(1) The variability of emissions from the unit in question.

The facility is an ethylene oxide distribution operation where rail cars of ethylene oxide are unloaded into one of two storage tanks. During routine operations, emissions of ethylene oxide are routed to a primary flare (B410) for control. During periods of planned maintenance, periods of outages, or malfunctions of the primary flare (B410) a secondary flare (A410) is used for control. In addition to combusting ethylene oxide emissions for control, the flares use pipeline quality natural gas with a maximum sulfur content of 20 gr/100 scf and a BTU value greater than 1,000 BTU/scf as a supplemental fuel. There are no ash forming compounds in the flare header gas or supplemental fuel. A small amount of soot could be produced as a by-product of combustion, but the flares are designed to be smokeless. From the United States Environmental Protection Agency's *AP-42: Compilation of Air Emission Factors for Stationary Sources*, Section 13.5 for Industrial Flares (February 2018), Table 13.5-1, Footnote d states that soot in

concentration values are 0 micrograms per liter (µg/L) for nonsmoking flares. Therefore, since the materials combusted in the flares are not variable and there are no ash forming compounds in the flare header gas or supplemental fuel, particulate matter emissions resulting from combustion of materials in the flares are not variable nor expected from a smokeless flare.

(2) The likelihood of a violation of the requirements.

The maximum allowable hourly particulate matter emission limits for the primary and secondary flares under 45CSR§6-4.1 are calculated as follows:

PM emissions (lb/hr) = F x Incinerator Capacity (tons/hr);

where

Incinerator Capacity is 946 lbs/hr per flare

and

F = 5.43 since the incinerator capacity is less than 15,000 lbs/hr

45CSR§6-4.1 PM emission limit per flare = 5.43 x (946/2000) = 2.56 lb/hr[1]

[1]The Title V permit provides an allowable PM emission limit of 1.19 lb/hr per flare. This limit was calculated based on a flare capacity of 412 lb/hr which is the normal hourly loading, not the maximum hourly loading as used above, and is therefore a more stringent limit. Regardless, the calculated potential PM emissions from the flares are much less than the 45CSR§6-4.1 limit as demonstrated below.

Union Carbide Corporation provided their total PM emissions reported for the last five years. These emissions were calculated using an emission factor from AP-42, Table 13.5-1 (February 2018) of 40 micrograms per liter (µg/L) for soot emissions in lightly smoking elevated flares, which is conservative since these flares are designed to be smokeless. The PM emissions factor from AP-42 for non-smoking flares is 0 µg/L. The total PM emissions from both the primary and secondary flare are:

Year	**Total PM for Both Flares tpy**
2023	0.04 (80 lbs/yr)
2022	0.04 (80 lbs/yr)
2021	0.04 (80 lbs/yr)

Year	Total PM for Both Flares tpy
2020	0.04 (80 lbs/yr)
2019	0.03 (60 lbs/yr)

The potential hourly particulate matter emission rates calculated for the primary and secondary flares using the AP-42 emission factor of 40 µg/L for lightly smoking flares are 0.00024 lb/hr each (less than 1% of the allowable 45CSR§6-4.1 hourly limit). As the potential hourly particulate matter emission rates from the flares are significantly less than the allowable emission limits calculated under 45CSR§6-4.1, it is unlikely that the emission limits will be exceeded since the particulate matter emissions are the by-products of the combustion of ethylene oxide and natural gas which are non-ash forming in a flare designed to be smokeless.

The primary flare (B410) is subject to the general control device requirements of 40 C.F.R. §63.11(b). Under 40 C.F.R. §63.11(b)(4), flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. For any period of 5 minutes during any 2 consecutive hours, 40 C.F.R. §63.11(b)(4) does not specify a maximum opacity for the flare. The opacity limits under 45CSR§§6-4.3 and 4.4 are less than twenty percent (20%) except for periods of startup which shall not exceed forty (40%) for no more than eight (8) minutes. Streamlining the opacity limits, the primary flare shall have no visible emissions and if it does have visible emissions, these emissions should not occur for more than 5 minutes during any 2 consecutive hours and during any of those periods of visible emissions they should not be 20 percent opacity or greater during normal operations or 40 percent opacity or greater during startup. Compliance with the no visible emissions limit under 40 C.F.R. §63.11(b)(4) is demonstrated using Method 22 in Appendix A of 40 C.F.R. 60. 40 C.F.R. §63.1437(c)(1) (40 C.F.R. 63 Subpart PPP for Polyether Polyols Production) requires testing to demonstrate compliance with the no visible emissions opacity limit only once. Since 45CSR6 provides for additional opacity requirements with no monitoring specified under 45CSR6, the Title V permit included "gap-filling" for monthly visible emissions observations. The WVDEP concluded that monthly visible emissions observations are adequate given the likelihood of a violation of the opacity limits (0% from 40 C.F.R. 63 Subpart PPP and 20 or 40 % from 45CSR6) based on: (1) 40 C.F.R. 63 Subpart PPP does not require additional compliance testing for flares, since the likelihood of a violation of the no visible emissions opacity limit is minimal. If violations were likely, additional monitoring would have been required by Subpart PPP. (2) There are no ash forming compounds in the flare header gas or supplemental fuel. A small amount of soot could be produced as a by-product of combustion, but the design specifications for the flare indicates it is smokeless; and (3) Maximum calculated hourly emissions based on the design heat input of flare B410 and an AP-42 emission factor

from Table 13.5-1 (February 2018) of 40 µg/L for soot emissions from lightly smoking flares was 0.00024 lb/hr.

40 C.F.R. §§63.119(e)(3) and (e)(4) (conditions 4.1.1.1.b and 4.1.1.1.c of the Title V permit) allow for periods of planned routine maintenance of the primary flare (B410) not to exceed 240 hours per year in which it does not have to meet the control device specifications for a flare. 40 C.F.R. 63 Subpart PPP also does not require the flare to meet the control device specifications during periods of control system malfunctions (see 40 C.F.R. §63.119(e)(5)), however, Union Carbide Corporation routes emissions to the secondary flare (A410) during planned routine maintenance and control system malfunctions. These periods account for a maximum of less than 2% of the year as shown in the table below where the most hours operated in a year in the last 5 years was 171.8 hours.

Year	**Hours of Operation for the Secondary Flare**
2023	0
2022	145.5
2021	171.8
2020	0
2019	10.17

When operating, the secondary flare is subject to the hourly particulate matter emission limits and opacity limits of 45CSR6. Since any particulate emissions would be the by-products of the combustion of ethylene oxide and pipeline quality natural gas in a flare designed to be smokeless which is operated for a limited number of hours per year (less than 2%), opacity from the secondary flare (A410) is expected to be minimal and the current requirement to conduct visual emissions monitoring on a monthly basis is adequate.

(3) Whether add-on controls are being used for the unit to meet the emission limit.

The primary (B410) and secondary flares (A410), are used to control emissions of ethylene oxide, so the flares are the add-on control devices for ethylene oxide emissions, while also being the source of PM emissions and opacity from the by-products of combustion. Therefore, the controls are not being used to meet the particulate matter and opacity limits of 45CSR6.

(4) The type of monitoring, process, maintenance, or control equipment data already available for the emission unit.

The primary flare (B410) is subject to the general control device requirements of 40 C.F.R. §63.11(b). Some applicable requirements to note are that the primary flare (B410) shall be operated at all times when emissions may be vented to it; the primary flare (B410) shall be designed with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours; and the primary flare (B410) shall be operated with a flame present at all times which shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame. During planned routine maintenance, emissions are routed to the secondary flare (A410) and per the requirements of 40 C.F.R. 63 Subpart PPP, these maintenance periods shall not exceed 240 hours per year.

UCC is also required to maintain records for the primary flare (B410) of routine maintenance; hourly records of whether the monitor was continuously operating and whether a flame was continuously present at the pilot light; and records of the times and duration of all periods during which all pilot flames are absent. Additionally, for the primary flare (B410), they must submit reports of the planned routine maintenance and reports of the reason the flare did not meet the general requirements specified in 40 C.F.R. §63.11(b).

This monitoring and record keeping is in addition to the one-time opacity testing required by 40 C.F.R. §63.1437(c)(1) for the primary flare (B410) and the monthly visible emissions checks to demonstrate compliance with the 45CSR6 particulate matter and opacity limits for both flares (B410 and A410) which are designed to be smokeless and each emit less than 0.001 lb/hr of PM with total PM emissions from both flares of 0.40 tpy (reported maximum for the last 5 years).

(5) The type and frequency of the monitoring requirements for similar emission units at other facilities.

45CSR6, "Control of Air Pollution from Combustion of Refuse," establishes emission standards for particulate matter and requirements for activities involving incineration of refuse. "Incineration" is defined under Section 2.7 of 45CSR6 as "the destruction of combustible refuse by burning in a furnace designed for that purpose. For the purposes of 45CSR6, the burning in a flare or flare stack, thermal oxidizer or thermal catalytic oxidizer stack shall be considered incineration." The rule also defines "industrial waste incinerators" which are used "to incinerate gaseous, liquid, semi-liquid and/or solid by-product waste from industrial sources"; and "pathological waste" which is "waste material consisting of only human or animal remains, anatomical parts or tissue, the bags or containers used to collect and transport the waste material, and animal bedding (if applicable)." 45CSR6 regulates a variety of sources of particulate matter emissions from combustion of refuse and the same hourly particulate matter and opacity limits are

applied universally to flares, thermal oxidizers, thermal catalytic oxidizers, and human and animal crematories. Hourly particulate matter emission limits are calculated based on the incinerator capacity only and no consideration is given to the type of incinerator or type of waste being combusted.

To demonstrate compliance with the hourly particulate matter emission limits of 45CSR§6-4.1, the rule only requires testing upon request using Method 5 or equivalent U.S. EPA approved method approved by the Secretary (45CSR§6-7.1).

Title V requires applicability review under 40 C.F.R. 64, Compliance Assurance Monitoring (CAM). Combustion of ethylene oxide and natural gas in the flares is the source of the particulate matter emissions. The flare is not defined as a pollutant specific emissions unit (PSEU) for particulate matter emissions under CAM because the flares are not used to control particulate matter emissions to meet the emission limits of 45CSR§6-4.1 and opacity limits of 45CSR§§6-4.3 and 4.4. Therefore, CAM did not apply for particulate matter emissions and no additional monitoring was required to be added under CAM for the 45CSR6 limits.

Title V also allows for "gap-filling" if monitoring is not sufficient to demonstrate compliance with the applicable requirements specified in the permit. For flares, such as the primary flare (B410) used at Union Carbide Corporations's Institute Facility which combusts volatile organic compounds and natural gas, and are designed to meet the requirements of either the New Source Performance Standards (NSPS, 40 C.F.R. §60.18) or National Emission Standards for Hazardous Air Pollutants (NESHAP, 40 C.F.R. §63.11), DAQ has typically not required additional testing or monitoring to demonstrate compliance with the hourly particulate matter emission limits of 45CSR§6-4.1 because there is such a large margin of compliance between the hourly particulate matter emission limits from 45CSR6 and the potential hourly particulate matter emissions generated from combustion of the volatile organic compounds and pipeline quality natural gas. For these sources, DAQ has determined that the design criteria of the flare specified in the NSPS or NESHAP, the Method 22 testing required under the NSPS or NESHAP, and the NSPS or NESHAP requirements that the flame must be present at all times and the presence of the flare pilot flame must be monitored using a thermocouple or equivalent device to detect the presence of the flame are sufficient to demonstrate that the flare has been designed and will be operated in a manner to minimize emissions and maintain the margins of compliance for the hourly particulate matter emission limits of 45CSR§6-4.1.

For opacity, monthly visible emissions monitoring and record keeping of this monitoring has been required to demonstrate compliance with the opacity limits of 45CSR§§6-4.3 and 4.4 for smokeless flares that combust volatile organic compounds and pipeline quality natural gas like the primary flare (B410) at Union Carbide Corporation's Institute Facility. The monitoring which has been included in the Title V permit for this flare is more stringent than the monitoring prescribed under 40 C.F.R. §63.1437(c)(1) which only requires a one-time visible emissions test.

> For the secondary flare (A410) used as backup for the primary flare, like other flares which combust volatile organic compounds and pipeline quality natural gas with a large margin of compliance with the hourly particulate matter emission limits of 45CSR§6-4.1, it would also not be required to conduct additional monitoring or testing. These flares would be required to conduct monthly visible emissions checks to demonstrate compliance with the opacity limits, but more frequent monitoring would not be required because particulate emissions are not expected from volatile organic compounds and natural gas combustion in a flare which is designed to be smokeless.

WVDEP considers the current monitoring and testing sufficient to ensure compliance with the 45CSR6 particulate matter and visible emissions limits for the flares given that: (1) the source of the particulate matter emissions is the by-product of combustion of non-ash forming compounds consisting of ethylene oxide and pipeline quality natural gas in flares designed to be smokeless; (2) the likelihood of a violation of the particulate matter and opacity limits from SIP rule 45CSR6 is minimal as the PM emission limits are much higher than the maximum potential emissions and the flares are designed to be smokeless (no opacity); (3) the primary flare (B410) is required by 40 C.F.R. 63 Subpart PPP to have no visible emissions and has additional flare design specifications, monitoring, recordkeeping, and reporting requirements under 40 C.F.R. 63, Subparts A and PPP; and (4) the secondary flare has limits on operating hours under 40 C.F.R. 63 Subpart PPP and operates for less than 2% of the year.

WVDEP does not agree with Petitioners that hourly monitoring or continuous emissions monitoring is necessary to demonstrate compliance with the 45CSR§6-4.1 SIP particulate matter emissions limits from smokeless flares with such a high margin of compliance. WVDEP also does not agree that the flares get a "free pass from opacity limits at night and under adverse weather conditions." Although visible emissions readings at night or during adverse weather conditions may not be possible, 40 C.F.R.§63.11(b)(5) requires that a thermocouple or equivalent device be used to detect that a flame is present at all times in the primary flare (B410). If the flame is present, the flare is operating, and opacity limits should be met because the flare is designed to be smokeless. For the secondary flare (A410), it is also designed to be smokeless and it operates less than 2% of the year and only during maintenance and control system malfunctions. The likelihood of a violation of opacity during the night or adverse weather conditions is minimal. Also, WVDEP is not relying entirely on the one-time test required under 40 C.F.R. 63 Subpart PPP for the primary flare (B410) and has added, under the "gap-filling" provisions of Title V, monthly visible emission checks on both the primary and secondary flares (B410 and A410) which is appropriate given the amount of particulate emissions expected from a smokeless flare combusting volatile organic compounds and pipeline quality natural gas.

The WVDEP has addressed each of the five factors suggested by USEPA to be used to demonstrate adequacy of the existing monitoring in the Title V permit. For this objection, WVDEP is revising the permit record and is not revising the Title V Permit.

Claim 2: The Petitioners Claim that "The Proposed Title V Permit Could be Read to Allow [WVDEP] to Approve Alternative Testing and Monitoring without following the Required Procedures."

The Petitioners allege that section 3.3.1(b) could be read to unlawfully allow WVDEP to unilaterally weaken SIP testing and monitoring requirements and approve testing and monitoring changes without following the required procedures for a Title V minor or significant modification. Section 3.3.1(b) states the following:

> "The Secretary may on a source-specific basis approve or specify additional testing or alternative testing to the test methods specified in the permit for demonstrating compliance with applicable requirements which do not involve federal delegation. In specifying or approving such alternative testing to the test methods, the Secretary, to the extent possible, shall utilize the same equivalency criteria as would be used in approving such changes under Section 3.3.1.a. of this permit."

The Petitioners claim that if a SIP rule specifies a testing or monitoring requirement, WVDEP cannot weaken that requirement through an "alternative" without USEPA approval to revise the SIP. They also allege that except for more frequent monitoring or reporting, which can be incorporated through an administrative amendment to a Title V Permit, all changes to a Title V permit's monitoring, testing, and reporting requirements must be made through either a minor or significant permit modification; and without going through a significant modification, the public does not have an opportunity for comment.

USEPA in its response to the order states that it is unclear what authority WVDEP has under permit condition 3.3.1(b) to approve or specify alternative testing to the test methods specified in the Permit and is also unclear what specific applicable requirements this condition allows WVDEP to change.

This condition, 3.3.1(b) from the Title V permit boilerplate refers to testing specified in West Virginia's SIP rules. Particularly, for the flares at the Logistics Unit, the Title V permit includes testing condition 4.3.4 from West Virginia's SIP rule 45CSR6 which states:

> "At such reasonable time as the Director may designate, the operator of any incinerator shall be required to conduct or have conducted stack tests to determine the particulate matter loading, by using 40 C.F.R. 60, Appendix A, Method 5 or other equivalent EPA approved method approved by the Director, in exhaust gases. Such tests shall be conducted in such manner as the Director may specify and be filed on forms and in a manner acceptable to the Director. The Director, or the Director's authorized representative, may at the Director's option witness or conduct such tests. Should the Director exercise his option to conduct such tests, the operator will provide all the necessary sampling ports to be located in such manner as the Director may require, power for test equipment and the required safety equipment such as scaffolding, railings and ladders to comply with generally accepted good safety practices. *(B410 and A410)* **[45CSR§6-7.1]**"

As previously explained under Claim 1, 45CSR6 regulates a variety of sources of particulate matter emissions from combustion of refuse, such as flares, thermal oxidizers, thermal catalytic oxidizers, and human and animal crematories. The rule was designed as a one size fits all for combustion sources, and the testing requirements in the rule were written to allow testing flexibility because stack testing is not a one size fits all for various combustion sources. The rule states the following: "shall be required to conduct or have conducted stack tests to determine the particulate matter loading, by using 40 C.F.R. 60, Appendix A, Method 5 or **other equivalent EPA approved method approved by the Director**." Section 3.3.1(b) is written to allow this flexibility that was included in the SIP rules.

Another example of this flexibility written into West Virginia's SIP rules is from 45CSR§2-8.1 which states:

> "The owner or operator of a fuel burning unit(s) shall demonstrate compliance with section 3 by periodic testing in accordance with 40 CFR Part 60, Appendix A, Method 9 and 45CSR16, or a certified continuous opacity monitoring system, as approved by the Secretary, and section 4 by periodic particulate matter stack testing, conducted in accordance with the appropriate test method set forth in the Appendix 45-2 to this rule **or other equivalent EPA approved method approved by the Secretary**. The owner or operator shall conduct such testing at a frequency to be established by the Secretary."

Again, the SIP rule allows for a certain amount of flexibility as long as the testing is a USEPA approved method approved by the Secretary. Because of the flexibility allowed in many of West Virginia's SIP rules, Section 3.3.1(b) was written to allow for this flexibility.

WVDEP agrees with the Petitioners and USEPA that specific testing requirements included in the Title V Permit cannot be changed without a minor or significant modification if such flexibility is not already stated in the requirement. However, in the cases regarding the SIP testing examples presented above, a change would not be required under Title V because the condition allows for an alternative USEPA approved test method approved by the Director. This would not be a change to the SIP rule and the Title V permit condition as this is already allowed. However, if for example, a minor NSR permit included a specific test method such as Method 5 to demonstrate compliance with a particulate matter emission limit and offered no language to allow for an additional equivalent USEPA approved method, a change to the minor NSR permit and Title V permit through a minor or significant modification would be required if the permittee wanted to use another test method other than the one prescribed in the permits.

WVDEP does not agree with Petitioners and USEPA that as written, condition 3.3.1(b) allows for changes to the SIP or to Title V that would bypass the SIP approval process or the permit revision process. This Title V permit boilerplate language has been included in all Title V permits since late 2005. USEPA, the regulated community, and the public have had numerous opportunities to review and comment on the boilerplate language of 3.3.1(b) over the last 19 years. WVDEP cannot point to any instance where confusion over the language in 3.3.1(b) has led to relaxation of testing requirements specified in a Title V permit. Petitioners also could not point to any instance where a relaxation has occurred as a result of confusion over this language nor specifically to any condition in Union Carbide Corporation's Institute Facility's Title V Permit for Logistics where condition 3.3.1(b) could cause a relaxation of a testing

requirement. Petitioners only suggested that someone "could" interpret this condition in that manner. However, in order to respond to this claim and to avoid additional petitions from the Petitioner, WVDEP is adding the following clarifying language to Title V boilerplate condition 3.3.1(b) (in red underline):

> "The Secretary may on a source-specific basis approve or specify additional testing or alternative testing to the test methods specified in the permit for demonstrating compliance with applicable requirements which do not involve federal delegation. In specifying or approving such alternative testing to the test methods, the Secretary, to the extent possible, shall utilize the same equivalency criteria as would be used in approving such changes under Section 3.3.1.a. of this permit. If a testing method is specified or approved which effectively replaces a test method specified in the permit, the permit will be revised in accordance with 45CSR§30-6.4. or 45CSR§30-6.5 as applicable."

In USEPA's order granting the petition, the first complete paragraph of page 5 states:

> "If a final permit has been issued prior to the EPA's objection, the permitting authority should determine whether its response to the EPA's objection requires a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. §70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V program."

WVDEP has an EPA-approved title V program, which is 45CSR30. Section 6.5 of 45CSR30 defines the criteria for both minor and significant modifications. Minor modifications do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit (45CSR§30-6.5.a.1.A.2). Significant modifications involve a significant change in existing monitoring terms or conditions, or constitute a relaxation of reporting or recordkeeping permit terms or conditions (45CSR§30-6.5.b.1.B). WVDEP has determined that addition of clarifying language to Title V boilerplate condition 3.3.1(b) constitutes a minor modification under 45CSR30 and this change will be processed as such. USEPA will be sent a proposed Title V permit with the revised condition 3.3.1(b) which begins a 45 day proposed comment period.