BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF WHEELABRATOR FRACKVILLE ENERGY, INC. SCHUYLKILL COUNTY, PENNSYLVANIA PERMIT NO. 54-00005 ISSUED BY THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION	)	PETITION NUMBER III-2016-17 ORDER RESPONDING TO THE PETITIONERS' REQUEST THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF A STATE OPERATING PERMIT

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

On October 15, 2016, the U.S. Environmental Protection Agency (EPA or the agency) received a petition (Petition) from the Sierra Club and the Environmental Integrity Project (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The Petitioners request that the EPA object to a proposed renewal of air pollution control operating permit no. 54-00005 prepared by the Pennsylvania Department of Environmental Protection (PADEP) for the operation of the Wheelabrator Frackville Energy, Inc. Facility (Wheelabrator or the Facility) in Schuylkill County, Pennsylvania. Petitioners sought the EPA's objection to a non-final version of the renewal permit, which they received for comment on June 3, 2016 (the draft 2016 Renewal Permit). PADEP separately submitted a non-final version of the renewal permit to the EPA on July 6, 2016 (the 2016 Renewal Permit submission).[1] On September 1, 2017, PADEP submitted a "superseding" proposed renewal permit to the EPA (the 2017 Proposed Permit). None of these versions of the renewal permit have been finalized, and the Facility currently continues to operate under a title V permit issued November 28, 2007. The operating permit renewal was prepared pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and 25 Pa. Code §§ 127.501–127.543. *See also* 40 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.

[1] The Petition includes, in Exhibit 2, a June 3, 2016, email from David F. Matcho, PADEP, to Ms. Isabella Riu, Sierra Club, transmitting a draft Renewal Permit to Petitioners. For purposes of this Order, "draft 2016 Renewal Permit" refers to the version transmitted by PADEP to Petitioners on June 3, 2016, and "2016 Renewal Permit submission" refers to the version of the renewal permit received by the EPA from PADEP on July 6, 2016. For further discussion, see Section III.B regarding Permit History below.

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As explained further below, based on a review of the Petition and other relevant materials, including the 2016 Renewal Permit submission, PADEP's September 1, 2017, submission of a superseding proposed permit to the EPA, the permit record, and relevant statutory and regulatory authorities, the EPA denies the Petition.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 766la(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 Commonwealth of Pennsylvania submitted a title V program governing the issuance of operating permits on May 18, 1995. The EPA granted full approval of Pennsylvania's title V operating permit program in 1996. *See* Clean Air Act Final Full Approval of Operating Permits Program; Final Approval of Operating Permit and Plan Approval Programs Under Section 112(l); Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Plan Approvals and Operating Permits Under Section 110; Commonwealth of Pennsylvania, 61 Fed. Reg. 39597 (July 30, 1996) (codified at 40 C.F.R. § 52.2020(c)). This program, which became effective on August 29, 1996, is codified in 25 Pa. Code §§ 127.501–127.543.

All major stationary sources of air pollution and certain other sources are required to apply for 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. CAA §§ 502(a), 504(a), 42 U.S.C. §§ 7661a(a), 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 sources' compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." *Id.* Thus, the title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring 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), 42 U.S.C. § 7661d(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. 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. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a proposed permit on its own initiative, any person may petition the Administrator, within 60 days of the expiration of

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the EPA's 45-day review period, to object to the permit. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

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 agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). 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. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(l).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[3]

The information that the EPA considers in making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) on a proposed permit generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 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 of basis for the draft and proposed permits; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; relevant supporting materials made available to the public according to 40 C.F.R. § 70.7(h)(2); and all other 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). 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 as part of making a determination whether to grant or deny the petition.

III. BACKGROUND

A. The Wheelabrator Frackville Energy Facility

The Facility is a 48 megawatt cogeneration power plant located in Schuylkill County, Pennsylvania. The Facility burns waste anthracite coal (culm) as its primary fuel in a circulating fluidized bed (CFB) boiler. A turbine generator uses the steam created from the CFB to generate electricity. A portion of the steam generated from the CFB is sent to the Frackville Correctional Institution, where it is used for heating, cooking, and hot water. The Facility is independently owned by Wheelabrator Technologies, Inc.

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

[3] *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); *c.f. NYPIRG*, 321 F.3d at 333 n.11.

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B. Permitting History

PADEP issued an initial title V operating permit for the Facility on May 7, 1999. The permittee is currently operating under a title V permit issued November 28, 2007. On September 14, 2009, PADEP received a title V permit renewal application for the Facility, which was submitted pursuant to 40 CFR § 70.8(a)(1) and 25 Pa Code § 127.522(a). On May 21, 2016, PADEP initiated a 30-day public comment period (the 2016 Public Comment Period) on the draft 2016 Renewal Permit through publication of notice in the *Pennsylvania Bulletin*.[4] By letter dated June 20, 2016, the Petitioners submitted comments on the draft 2016 Renewal Permit (Petitioners' 2016 Comments or the June 2016 Comments).

Prior and subsequent to May 21, 2016, the EPA and PADEP engaged in a technical exchange regarding revisions to a renewal permit for the Facility. PADEP submitted to the EPA drafts of the permit on May 5, 2016 and July 6, 2016. EPA Region 3 listed the July 6, 2016, submission as a proposed permit on the EPA's Title V Operating Permit Public Petition Deadlines Webpage (the Title V Deadlines Webpage).[5] The Title V Deadlines Webpage listed the following dates for the permit action for the Facility: a) the "EPA 45-day Review Period Start Day" was July 6, 2016, and b) the "60-Day public Petition Period Start Date" was August 20, 2016. The 2016 Renewal Permit submission did not include PADEP's response to public comments received during the above-referenced 30-day public comment period on the draft 2016 Renewal Permit.

On or about October 27, 2016, agency staff withdrew the listing associated with the 2016 Renewal Permit submission from the Title V Deadlines Webpage, on the belief that the permit should not have been listed as a proposed permit for purposes of CAA § 505. From October 2016 through August 2017, the EPA and PADEP continued to engage in a series of technical exchanges regarding the Renewal Permit.

On September 1, 2017, PADEP submitted to the EPA several documents, including: a new version of a proposed renewal permit for the Facility (the 2017 Proposed Permit), PADEP's proposed responses to the June 2016 Comments, and an Application Review Memo dated August 31, 2017. As discussed further below, the 2017 Proposed Permit includes revisions to the portions of the 2016 Renewal Permit submission at issue in the Petition.

In addition, PADEP sent the EPA a draft notice to be published in the *Pennsylvania Bulletin* announcing that the 2017 Proposed Permit had been submitted to the EPA. The draft notice stated, "The proposed permit that is the subject of this notice supersedes any previous permit submitted to EPA Region 3 for review." The agency understands this to mean that PADEP intends for the 2017 Proposed Permit to fully supersede and replace any and all prior versions of Renewal Permit 54-00005, including any that had been shared previously with EPA Region 3. On September 16, 2017, PADEP published notice of its submission to the EPA in the *Pennsylvania Bulletin*.[6]

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[4] 46 Pa.B. 2562 (May 21, 2016), available at *http://www.pabulletin.com/secure/data/vol46/46-21/868a.html*.

[5] U.S. EPA, Title V Operating Permit Public Petition Deadlines Webpage, *https://www.epa.gov/caa-permitting/title-v-operating-permit-public-petition-deadlines*.

[6] 47 Pa.B. 5795 (September 16, 2017), available at *http://www.pabulletin.com/secure/data/vol47/47-37/1522a.html*.

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PADEP's submittal of the 2017 Proposed Permit to the EPA initiated the EPA's 45-day review period to object to final issuance of the 2017 Proposed Permit. Upon receipt of the 2017 Proposed Permit, the EPA revised the Title V Deadlines Webpage to reflect the following deadlines relating to the renewal permit action for the Facility:

a) "EPA 45-day Review Period Start Day": September 1, 2017;
b) "EPA 45-day Review Period End Day": October 17, 2017;
c) "60-Day Public Petition Period Start Date": October 18, 2017; and
d) "60-Day Public Petition Period End Date": December 18, 2017.

Thus, the 2017 Proposed Permit is currently in the EPA 45-day review period that began September 1, 2017, and ends October 17, 2017.

C. Timeliness of Petition

On October 15, 2016, Petitioners filed the Petition to the EPA. Exhibit 2 of the Petition indicates that the Petition is based upon the draft 2016 Renewal Permit submitted by PADEP to Petitioners via email dated June 3, 2016. *See* Petition at Exhibit 2. That transmittal email states in its entirety: "Enclosed is a copy of the current draft TV [title V] permit for Wheelabrator Frackville Energy for your review." *See* Petition at Exhibit 2. Through subsequent email exchanges, PADEP informed Petitioners that "the review memo is still in draft form and not a completed work product at this time." *See* Petition at Exhibit 2. Following receipt of the draft 2016 Renewal Permit and in response to the May 21, 2016, *Pennsylvania Bulletin* notice, Petitioners timely filed their June 2016 Comments.

On or before August 15, 2016, Petitioners reviewed the EPA's Title V Deadlines Webpage. *See* Notice of Intent to Sue, dated December 22, 2015, at Exhibit 1. The Webpage indicated the following four dates relating to an initial permit issuance or renewal permit action for the Facility:

a) "EPA 45-day Review Period Start Day": July 6, 2016;
b) "EPA 45-day Review Period End Day": August 19, 2016;
c) "60-Day Public Petition Period Start Date": August 20, 2016; and
d) "60-Day Public Petition Period End Date": October 18, 2016.

The agency acknowledges that it posted these dates on the Title V Deadlines Webpage. As explained in Section III.B above, however, this website was later revised and these entries were removed. For purposes of the Petition in this matter, however, the EPA will treat the Petition, dated and electronically submitted to EPA Region 3 on October 15, 2016, as timely filed.[7] Nonetheless, as explained below, the superseding 2017 Proposed Permit, submitted to the agency by PADEP on September 1, 2017, renders the Petition moot.

[7] Recognizing the lack of clarity in the public record regarding the status of the 2016 Renewal Permit submission, including its own erroneous posting of the submission as a proposed permit, for purposes of this Petition, the EPA will consider the version it received on July 6, 2016, to have been a proposed permit under CAA § 505 for the purposes of this order, and thus the agency will treat the Petition as timely (i.e., not prematurely) filed.

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IV. DETERMINATION ON THE PETITION

Since October 15, 2016, PADEP has revised the renewal permit for this Facility, specifically taking into account issues raised in the Petitioners' June 2016 Comments and the Petition, and prepared a response to the June 2016 Comments. On September 1, 2017, PADEP submitted to the EPA several documents, including: the 2017 Proposed Permit, PADEP's proposed responses to the June 2016 Comments, and the August 31, 2017, Application Review Memo. The 2017 Proposed Permit includes revised requirements for the portions of the draft 2016 Renewal Permit at issue in the Petition. Further, PADEP's response to comments addresses Petitioners' challenge that PADEP failed to respond to the June 2016 Comments. Further, the notice sent to the EPA on September 1, 2017, and published September 16, 2017, in the *Pennsylvania Bulletin*, expressly states that all prior versions of the Renewal Permit are superseded.[8]

To the extent Petitioners' concerns regarding the issues they raised in the Petition persist, or to the extent they believe the 2017 Proposed Permit otherwise is not in compliance with the requirements of the CAA, they may petition the Administrator to object to the issuance of the permit in accordance with CAA § 505(b) during the time period described in Section III.B above.

Thus, PADEP's September 1, 2017, submittal of a superseding proposed permit to the EPA, the relevant provisions of which have materially changed from the version of the permit to which Petitioners seek objection, renders this Petition moot.

A. Issues Raised in the Petition

Petitioners raised four issues with the draft 2016 Renewal Permit for which they sought the EPA Administrator's objection. First, they argued that the permit failed to require monitoring of particulate matter (PM) emissions from its CFB boiler sufficient to assure compliance with the continuous 0.012 pounds per million British thermal units (lbs/MMBtu) PM emission limitation set forth in the permit. Petitioners stated that the testing requirements of Condition #007 were inadequate and no other testing, monitoring, recordkeeping, or reporting requirements on this unit were apparent on the 2016 Renewal Permit. Petition at 2.

Second, Petitioners alleged that the infrequency of monitoring in the 2016 Renewal Permit violated part 70 "periodic" and/or "umbrella" monitoring requirements, see 40 C.F.R. § 70.6(a)(3)(i)(A) and (B) and (c)(1). Petition at 3. They alleged that "monitoring PM from the Plant's CFB boiler only once every two years is inadequate to assure compliance with the continuous 0.012 lbs/MMBtu emission limit" found in the permit. *Id.* Petitioners stated that this emission limitation "must be accompanied by periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of Wheelabrator's compliance with its Title V permit." *Id.*

[8] 47 Pa.B. 5795, available at *http://www.pabulletin.com/secure/data/vol47/47-37/1522a.html*.

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Third, Petitioners argued that PADEP had failed to set forth a rationale for these monitoring requirements in a statement of basis describing why the chosen monitoring method is adequate to assure compliance with the unit's PM emissions limit. This, they alleged, violated 40 C.F.R. § 70.7(a)(5) requiring permitting agencies to "provide a statement that sets forth the legal and factual basis for the draft permit conditions." Petition at 3. Petitioners argued that PADEP must be required to document its rationale for how the permit's monitoring requirements assure compliance with the applicable requirement. *Id.* at 4.

Fourth, Petitioners argued that certain factors regarding what would constitute adequate monitoring in a title V permit "strongly support more frequent stack testing and continuous PM monitoring from the Plant's CFB boiler." Petition at 4. Petitioners pointed in particular to alleged variability in the emissions from the unit in question, the use of add-on controls (in this case, a fabric filter baghouse) for the unit to meet its emission limit, and the type and frequency of the monitoring requirements for similar emission units at other facilities. *Id.* Considering these factors, petitioners alleged that installation and continuous operation of a PM continuous parameter monitoring system is the proper means of monitoring emissions from the CFB boiler. Petition at 5. Petitioners further argued that the biennial stack test requirement would be likely to miss variability in rates of emissions and operation of the add-on pollution control such that "this already subpar testing method simply cannot assure compliance with the Plant's continuous PM emission limit." *Id.*

B. Provisions in the 2017 Proposed Permit Pertaining to the Issues Raised in the Petition

The provisions of the superseded 2016 Renewal Permit submission relevant to the issues raised in the Petition have changed in the 2017 Proposed Permit. These changes lead the EPA to conclude that the issues raised in the Petition have been rendered moot.

Conditions #036 and #048, 2017 Proposed Permit at 43 and 49 respectively, now make clear that continuous parametric indicator monitoring for PM will be required for the CFB boiler unit, using a "[p]ressure drop range of 4 – 10 inches w.g. based on a 24 hour daily average. An excursion is defined as a daily pressure drop reading outside of the pressure drop range of 4 – 10 inches w.g." *Id.* Condition #048. The recorded 24-hour daily average is also required by the permit to be recorded in the plant control room or CEM data system and the record maintained for a minimum five (5) year period. *Id.* Condition #036. Further, the agency observes that PADEP has submitted to the EPA an Application Review Memo, which now includes an explanation of the monitoring requirements of the 2017 Proposed Permit. *See* Application Review Memo, at 3. The Administrative Review Memo also provides a discussion of the testing protocols required for this unit. *Id.* at 9.

In addition, the EPA observes that the following other conditions, as set forth in the 2016 Renewal Permit submission, related to PM emission limits and associated monitoring and testing requirements for the CFB boiler unit, to which Petitioners requested the EPA object, have been revised in the 2017 Proposed Permit:

- Condition #007, Proposed Permit at 26-27, related to PM emission limits.

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- Condition #008, Proposed Permit at 27-28, related to monitoring and work practice standards.
- Condition #017, Proposed Permit at 36, related to culm sampling and related monitoring, recordkeeping, and reporting requirements.[9]

Finally, the EPA observes that PADEP's submission of the Application Review Memo and Response to Comments accompanying the 2017 Proposed Permit addresses the Petition's argument that PADEP failed to set forth a rationale for the monitoring requirements, as required by 40 C.F.R. § 70.7(a)(5), or respond to Petitioners' comments.

C. Analysis: Petitioners' Claims Have Been Mooted by PADEP's 2017 Submission

A title V petition may be rendered moot when the version of the permit on which it is based has been withdrawn, superseded, or otherwise no longer operative. *See In the Matter of Consolidated Envt'l Mgmt., Inc. – Nucor Steel Louisiana et al.*, Order on Petition Nos. 3086-V0 & 2560-00281-V1, at 13 (June 19, 2013) (hereinafter *Nucor* Order); *In the Matter of Duke Energy Indiana Edwardsport Generating Station*, Order on Permit No. T083-27138-00003, at 11 (Dec. 13, 2011). Where a superseding proposed permit, with a new rationale, has been put before the EPA, to the extent that the changes relate to the specific objection(s) raised in the petition, the petition is moot. *Nucor* Order at 13. It makes little sense for the EPA to review an issue that has been overtaken by later events. *Id.* Where there are relevant substantive differences between a permit before the EPA on review and a superseded version of that permit on which a party has petitioned the EPA to object, the "disconnect" between the permitting posture and the posture of the petition makes a determination of mootness appropriate. *In the Matter of Meraux Refinery St. Bernard Parish, Louisiana*, Order on Petition No. VI-2012-04, at 18 (May 29, 2015) (hereinafter *Meraux* Order). Among other things, the relief sought by the petition—an objection by the Administrator to the superseded permit under CAA § 505(b)(2)—would be of uncertain legal or practical consequence, given that the proposed permit terms objected to have already changed. *Id.*

The agency finds that the provisions of the 2016 Renewal Permit submission relevant to the issues raised in the Petition have materially changed in the superseding 2017 Proposed Permit, and the Petition should be denied as moot. In particular, the Petitioners' concerns regarding the adequacy of the monitoring requirements for PM emissions from the CFB boiler have been at least partially addressed by the revised conditions set forth in the 2017 Proposed Permit, which now require continuous parametric indicator monitoring. *See* 2017 Proposed Permit Conditions #036 and #048. In addition, Petitioners' concerns regarding the lack of a statement of basis related to these monitoring requirements have been at least partially addressed by the Administrative Review Memo accompanying the 2017 Proposed Permit, *see* Administrative Review Memo, at 3, and Response to Comments.

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[9] In addition, Condition #009, 2017 Proposed Permit at 28, related to PM standards, which was in the July 6, 2016, version of the Renewal Permit, was not in the May 5, 2016 draft version of the Renewal Permit.

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Under these circumstances, further review by the EPA of the Petition would be a futile exercise. Even if the Petition had demonstrated that the 2016 Renewal Permit submission was not in compliance with the Act, an objection by the agency would not have any legal or practical effect because the 2016 Renewal Permit submission has been wholly superseded by the 2017 Proposed Permit, the relevant provisions of which have materially changed. Granting the relief that the Petitioners request would require the EPA to issue an objection under CAA § 505(b)(2) to a proposed permit that has been superseded and is no longer under review. Under the statute, an objection would initiate a process requiring the state permitting authority to revise and reissue the proposed permit or require the EPA to take action directly issuing or denying the permit. 42 U.S.C. § 7661d(b)(3) & (c). Such a process may be wholly unnecessary in this instance and could only serve to create administrative confusion regarding the process and the roles and responsibilities of PADEP and the EPA with respect to the superseding 2017 Proposed Permit. *See Meraux* Order, at 18.

PADEP's September 1, 2017, submission of the revised Administrative Review Memo and the Response to Comments to the EPA is also relevant to the EPA's response to the Petition. Even if the EPA had determined that the Petition demonstrated that PADEP has not offered an adequate justification for the monitoring and testing of the PM emissions from the Facility's CFB boiler as set forth in the 2016 Renewal Permit submission, an objection by the agency would not have any legal or practical effect because PADEP has already submitted a revised Administrative Review Memo and Response to Comments. Thus, the EPA's duty to respond to this challenge has been overtaken by subsequent events. *Nucor* Order, at 13.

D. Ongoing Review of PADEP's 2017 Submission

The EPA is currently reviewing the 2017 Proposed Permit and the relevant administrative record, including the revised Administrative Review Memo and the Response to Comments under CAA § 505(b)(1). The agency expresses no views in this Order as to whether the 2017 Proposed Permit, as submitted on September 1, 2017, meets all applicable requirements of the CAA. *See* CAA § 505(b), 42 U.S.C. § 7661d(b); 40 C.F.R. § 70.8(c). The EPA merely observes that the provisions of the 2016 Renewal Permit submission that were at issue in the Petition have materially changed. Thus, further review and action on the prior version of the permit that was the subject of the Petition is moot.

The energy, attention, and resources of the agency, and all parties, at this point would be better directed toward evaluating the superseding 2017 Proposed Permit. If the EPA does not object within the 45-day review period that began on September 1, 2017, Petitioners will have the opportunity to petition the EPA to object to the 2017 Proposed Permit, according to the provisions of CAA § 505. Ultimately, any EPA objection or failure to act in a timely manner on a petition to object to the 2017 Proposed Permit, may be challenged in court and subject to judicial review. 42 U.S.C. §§ 7604, 7607, 7661d(b)(2). By denying the Petition as moot, the EPA is in no way prejudging the outcome of the process that is available under CAA § 505 and already underway for the 2017 Proposed Permit.

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V. CONCLUSION

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

Dated: OCT 6 2017

E. Scott Pruitt
Administrator

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