February 2, 2021

Ronald W. Gore, Chief
ADEM-Air Division
1400 Coliseum Blvd.
Montgomery, Alabama 36110-2400

Sent via email to **airmail@adem.alabama.gov**

Re: Comments Regarding ADEM's Proposed Approval of the Construction **Permits Nos. 307-0051-X002** and **307-0051-X001** to Pilgrim's Pride Corporation for the new Gadsden Rendering Plant, Etowah County, Alabama

Dear Mr. Gore,

GASP, Inc., Coosa Riverkeeper, the Center for Biological Diversity, Alabama Coalition for Immigrant Justice, Greater Gadsden Area Tourism, Jobs to Move America - Southern Program, and Alabama Sustainable Agriculture Network (ASAN), respectfully submit the following comments on Alabama Department of Environmental Management's (ADEM's) proposed approval of the two above-mentioned "Air Permits," which identify the following equipment:

- 66.986 MMBtu/hr Boiler No. 1,
- 66.986 MMBtu/hr Boiler No. 2,
- 66.986 MMBtu/hr Boiler No. 3,
- One (1) Air Washer,
- One (1) 15,000 SCFM Regenerative Thermal Oxidizer (RTO),
- Two (2) 100,000 SCFM Packed Bed Scrubbers,
- One (1) 75,000 SCFM Packed Bed Scrubber, and
- Finished Meal Loadout.

GASP is a nonprofit organization with a mission to advance healthy air environmental justice in the Greater-Birmingham area through education, advocacy, and organizing. However, GASP has been actively involved in addressing community concerns involving air quality issues in communities throughout the State. One way in which GASP seeks to improve air quality and address historic and ongoing air pollution issues is through advocating for a stronger air permits. **The Center for Biological Diversity** is an international nonprofit environmental organization dedicated to the protection of native species and their habitats. The Center and its more than 1.7 million members and supporters, including its members in Alabama, believe that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. Combining conservation biology with litigation, policy advocacy, and strategic vision, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the clean air and water they need to survive, and by extension, for the health and welfare of generations of Alabamians to come. **ASAN's** mission is to deepen relationships between the people of Alabama, the food we eat, and the place we live, in order to build a more resilient agricultural system in Alabama.

We appreciate the opportunity to comment on these actions given the significant public health and welfare concerns regarding the proposed permits. As our comments explain, it would be unlawful for the ADEM to issue the final permits as proposed because the permits and analysis do not meet regulatory and statutory requirements under the Clean Air Act.

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I. Introduction

ADEM's public notice announced that it was proposing to approve two Air Permits for the "Gadsden Animal Feed Ingredients" facility – a poultry rendering facility – that would be located at 3900 Steele Station Road, Gadsden, Alabama 35906, in response to the application submitted by the applicant Pilgrim's Pride Corporation (Pilgrim's). If constructed, the rendering facility would receive raw materials from poultry slaughterhouses (e.g., raw chicken parts, offal (the entrails and internal organs), trims, bones, feathers, blood and secondary protein nutrients (SPN is oil/grease recovered from wastewater pretreatment operations at poultry processing facilities)) via diesel trailer trucks from poultry processing plants.[1] The raw materials would then be rendered into products (e.g., poultry meals, poultry fat and feather meal), which would then be loaded into diesel truck trailers and transported offsite to animal feed manufacturers. The poultry proteins and fat would typically go to pet food manufacturing, while the meal products would be used for soil conditioners. Additionally, the industry also uses the feather meal to feed the poultry that is raised for slaughter.[2]

Pilgrim's July 29, 2020 application explains that the facility would include a Wastewater Pretreatment System (WWPTS).[3] The applicant also submitted a State Indirect Discharge (SID) Permit Application to ADEM on October 23, 2020 for discharging wastewater to the Gadsden West River publicly-owned wastewater treatment plant. The planned on-site WWPTS would provide pretreatment of wastewater generated by cookers, scrubbers, plant washdown and stormwater prior to discharge of the pretreated wastewater to the Gadsden West River plant subject to the terms of any SID permit. The applicant further explained that a chicken meal line will be added to the facility in the near future, within the next three years, that will increase the wastewater volume by approximately 20%.[4] The facility will also include plant, equipment and vehicle washing, which would also be routed to the WWPTS. Figure 1 below is an excerpt from the site plan showing the wastewater treatment facility on the left, and on the right the rendering plant.

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[1] The permit lacks requirements that the trailers be enclosed. Further, there is no requirement that the trailers have a fixed top, thus fabric could be used to transport the dead chicken parts. Open trailers contribute to odors as well as loose chicken parts during delivery, as the Gadsden community currently observes and experiences with the current poultry slaughterhouse activity in East Gadsden.

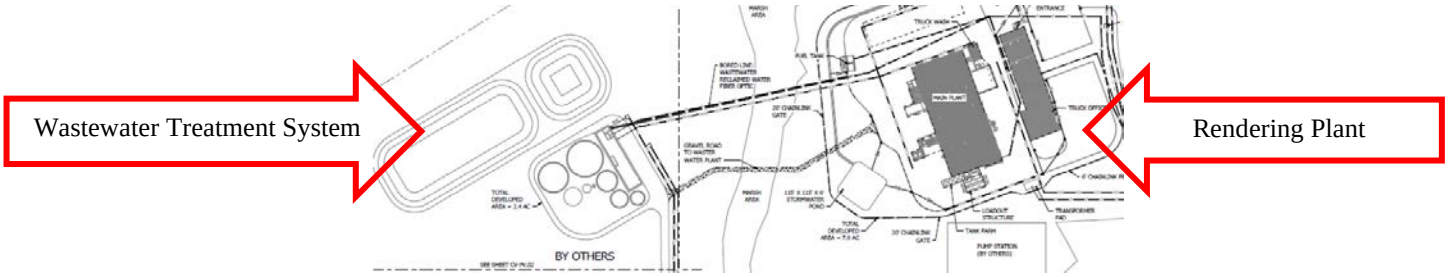
[2] "A possible means of maintaining supply of broiler meat all year round at cheaper prices is by reducing the cost of production. Feeding of feather meal can fulfil the requirements for growth promoting protein in an economically viable form. Hydrolysed feather meal may be added up to 6% of the ration for broilers, 7% for layers and 5% for turkeys in well balanced diets, without harmful effect as far as production or health are concerned. Inclusion of the processed, water boiled feather meal up to 3.0% in the diets did not significantly affect mean body weights, feed intake, and feed conversion ratio of broiler chickens. The carcass data from the slaughtered chickens showed that birds fed diets containing 0, 1.5, and 3% feather meal had higher ($P<0.05$) carcass yields compared to those fed the 4.5% feather meal diet." Poultry World, Feather meal and its nutritional impact (Feb. 17, 2017), available at https://www.poultryworld.net/Nutrition/Articles/2017/2/Feather-meal-and-its-nutritional-impact-95745E/.

[3] Commenters note that the application was modified after the proposed permits were on public notice via a letter from Pilgrim's to ADEM. The public was not made aware of the fact that the application had been modified.

[4] Draft SID permit at 8 ("It is anticipated a chicken meal line will be added to the facility in the future. This process is estimated to increase wastewater volume by approximately 20%.")

ADEM's response to the "Title V Permit Application," as identified and submitted by Pilgrim's on July 29, 2020, is to propose approval to construct a portion of the proposed new greenfield rendering plant via the two "Air Permits."

Figure 1. Proposed WWPTS Facility and Rendering Plant.[5]



II. Summary of Defects In The Proposed Permit That Warrant Its Rejection.

- Contrary to the permitting requirements, neither ADEM nor Pilgrim included all emitting units and sources from the planned facility nor was information provided on how emissions were estimated.
- Pilgrim's application is incomplete and deficient because it failed to include the information required by the Act and regulations for synthetic minor permits.
- Despite regulations that require ADEM to request and obtain complete permit application materials, it failed to do so, which results in an analysis and proposed permits that do not meet the Act and regulatory requirements.
- The proposed permits fail to contain the required practicably enforceable limits for the facility to avoid the PSD major source permit program.
- ADEM failed to assess and include emission control requirements for emissions from the Wastewater Pretreatment System.
- Contrary to the statutory requirements, ADEM and Pilgrim's withheld emission data, which is required to be shared with the public.

[5] Pilgrim's Site Plan at 12 (Nov. 11, 2020) (File name: 20-712_SITE-PLAN_11-10-2020.pdf).

III. ADEM's Legal Obligations to Review and Propose Actions on Construction Permits.

A. The National Ambient Air Quality Standards (NAAQS), Criteria and Hazardous Air Pollutants

The Clean Air Act's (CAA or Act) central purpose is to protect public health and welfare.[6] A key driver for achieving the Act's public health goal is the requirement that all areas in the country comply with primary (health-based) national ambient air quality standards (NAAQS), which reflect the maximum permissible levels of common pollutants in the ambient air.[7] The Act also requires that EPA designate the areas that are in "attainment" and "nonattainment" of the NAAQS for each listed air pollutant. 42 U.S.C. § 7407(d)(1)(A). The area in which the proposed Pilgrim's Pride rendering plant would be constructed is classified as attainment area for all the NAAQS pollutants. Although the NAAQS set threshold ambient concentration limits for the criteria pollutants, issuance of permits to companies that seek approval to construct facilities that emit air pollutants play a key role in protecting public health, because air pollution from new sources can harm and potentially even kill members of the public.[8]

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[6] The EPA has established the NAAQS that it has deemed "requisite to protect the public health" and "the public welfare." 42 U.S.C. § 7409(b); *see* 40 C.F.R. § 50.1 *et seq.*

[7] *Id.* §§ 7401, 7409.

[8] *See, e.g., Conservation Law Found. v. Pub. Serv. Co. of New Hampshire*, No. 11-CV-353-JL, at 3 (D.N.H. Sept. 27, 2012) (In Clean Air Act enforcement action against coal-fired power plant, in dismissing claims regarding NOx emissions increases, court finds that "NOx and SO2 emissions have significant adverse effects on public health. These emissions also contribute to the formation of secondary particulate matter that may cause decreased lung function, worsened respiratory infections, heart attacks, and the risk of early death."); *North Carolina v. EPA*, 531 F.3d 896, 903 (D.C.Cir.2008) ("NOx emissions contribute to the formation of fine particulate matter, also known as $PM_{2.5}$, as well as ground-level ozone, a primary component of smog."); *Catawba Cnty. v. EPA*, 571 F.3d 20, 26 (D.C.Cir.2009) ("Elevated levels of fine particulate matter have been linked to "adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma."); *Ass'n of Irritated Residents v. EPA*, 686 F.3d 668, 671 n. 1 (9th Cir.2012) ("And 'even at very low levels,' inhalation of ozone 'can cause serious health problems by damaging lung tissue and sensitizing lungs to other irritants.'"); *North Carolina v. TVA*, 593 F.Supp.2d 812, 822 (W.D.N.C. 2009) *rev'd on other grounds*, 615 F.3d 291 (4th Cir. 2010) (In tort case against coal-fired power plants "Court finds that, at a minimum, there is an increased risk of incidences of premature mortality in the general public associated with PM2.5 exposure, even for levels at or below the NAAQS standard of 15 [u]g/m 3."); *Ohio Power Co. v. EPA*, 729 F.2d 1096, 1098 (6th Cir. 1984) (in challenge to Clean Air Act regulation of power plants 25 years ago, court holds "there is now no longer any doubt that high levels of pollution sustained for periods of days can kill. Those aged 45 and over with chronic diseases, particularly of the lungs or heart, seem to be predominantly affected. In addition to these acute episodes, pollutants can attain daily levels which have been shown to have serious consequences to city dwellers."); *Sierra Club v. TVA*, 592 F.Supp.2d 1357, 1371 (N.D. Al. 2009) (In Clean Air Act enforcement action against coal-fired power plant, court holds "there is no level of primary particulate matter concentration at which it can be determined that no adverse health effects occur."); *Catawba County v. EPA*, 571 F.3d 20, 26 (D.C. Cir. 2009) ("A 'significant association' links elevated levels of PM2.5 with adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma.); 70 Fed. Reg. 65,983, 65,988 (Nov. 1, 2005) ("emissions reductions resulting in reduced concentrations below the level of the standards may continue to provide additional health benefits to the local population."); 71 Fed. Reg. 2620, 2635 (Jan. 17, 2006) (U.S. EPA unable to find evidence supporting the selection of a threshold level of PM2.5 under which the death and disease associated with PM2.5 would not occur at the population level).

1. Criteria Pollutants: Public Health and Environment Concerns

The criteria pollutants regulated under the Act can harm public health and the environment, all of which the proposed Pilgrim's Pride rendering plant would emit. Public health concerns about the criteria pollutants include the following:

- Breathing **Volatile Organic Compounds (VOCs)** can irritate the eyes, nose and throat, can cause difficulty breathing and nausea, and can damage the central nervous system as well as other organs. Some VOCs can cause cancer. Outdoors, VOCs can cause similar health effects, but also can react with nitrogen oxides to produce ozone pollution.
- **Oxides of nitrogen (NO_X)** are a precursor to ground-level ozone which is associated with respiratory disease and asthma attacks. NO_X also reacts with ammonia, moisture and other compounds to form particulates that can cause and/or worsen respiratory diseases, aggravate heart disease, and lead to premature death.
- **Sulfur dioxide (SO_2)** increases asthma symptoms, leads to increased hospital visits. Nitrogen and sulfur gases emitted into the atmosphere can become particulate matter through a chemical transformation and when dissolved in water, become acid rain, creating devastating effects on our ecosystems.
- **Fine particulate matter (PM2.5)** is one of the most dangerous of our criteria pollutants, with no real known safe level of exposure for humans.
- **Hydrogen Sulfide (H_2S)** the effects include eye irritation, nose irritation, throat irritation, difficulty breathing in people with asthma, headaches, poor memory, tiredness, and balance problems. If one is exposed to very high concentrations of hydrogen sulfide, one may have severe problems breathing even if the person did not have a pre-existing respiratory condition.
- **Ammonia (NH_3)** inhalation of ammonia may cause nasopharyngeal and tracheal burns, bronchiolar and alveolar edema, and airway destruction resulting in respiratory distress or failure.

Commenters are also deeply concerned about the new emissions from the proposed rendering plant in light of recent scientific studies demonstrating that air pollution is a contributing factor to coronavirus fatality[9]

2. Hazardous Air Pollutants: Public Health Concerns

Commenters are also concerned about hazardous air pollutant (HAP) emissions, which are also regulated under the Act. ADEM's proposed action did not evaluate and calculate HAP emissions and lacks permit terms to control, monitor, maintain records and report HAP emissions. This is a significant omission by ADEM in light of other rendering plant permits that have assessed and include permit terms for HAPs. For example, a recently issued permit by EPA

[9] E.g., Marc Travaglio et al., "Links between air pollution and COVID-19 in England," (April 16, 2020), available at https://www.sciencedirect.com/science/article/pii/S0269749120365489; Yaron Ogen, Assessing nitrogen dioxide (NO2) levels as a contributing factor to coronavirus (COVID-19) fatality, Vol. 726 Science of The Total Environment (April 2020), available at https://doi.org/10.1016/j.scitotenv.2020.138605.

for a rendering plant found that the total HAP emissions exceed the 25 tpy permitting threshold, and that one HAP – Xylene – approached the 10 tpy threshold.[10] Moreover, public health information for Xylenes[11] reveals that they are:

> [R]apidly absorbed by your lungs after you breathe air containing it. The amount of xylene retained ranges from 50 to 75% of the amount of xylene that you inhale. Physical exercise increases the amount of xylene absorbed by the lungs.[12] Short-term exposure of people to high levels of xylene can cause irritation of the skin, eyes, nose, and throat; difficulty in breathing; impaired function of the lungs; delayed response to a visual stimulus; impaired memory; stomach discomfort; and possible changes in the liver and kidneys. Both short- and long-term exposure to high concentrations of xylene can also cause a number of effects on the nervous system, such as headaches, lack of muscle coordination, dizziness, confusion, and changes in one's sense of balance. Some people exposed to very high levels of xylene for a short period of time have died.[13]

3. Recent air monitoring studies of rendering plant: hazardous air pollutants emissions

Recent and ongoing California studies clearly show that contrary to what may be historical impressions about *odors* and *nuisance* from rendering operations, the public health risk are significant. Over the past few years, the South Coast Air Quality Management District (SCAQMD) assigned significant resources to the study and characterization of emissions from rendering plant operations,[14] and issued enforcement orders.[15] Although early press accounts represented the SCAQMD's efforts as a way to curb the "stink"[16] – the air samples and monitoring reports clearly demonstrate the rendering plants emit numerous hazardous air pollutants in addition to the odiferous compounds. Information included in the SCAQMD's proposal requesting that its Governing Board take the first step in adopting regulations to control emissions from rendering plants, contains extensive documentation of the hazardous air

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[10] EPA, Region 10, "Non-Title V Air Quality Operating Permit issued to Washington Beef, LLC. Toppenish Plant," (Jan. 23, 2015), available at https://www.epa.gov/sites/production/files/2016-09/documents/wa_beef_non_titlev_permit_final_integrated_permit_2015_01_23.pdf. (EPA Rendering Permit)

[11] The health effects of total xylenes is described in the Public Health Statement – Xylene-CAS#: 1330-20-7 (Aug., 2007), issued by the U.S. Agency for Toxic Substances and Disease Registry, available at https://www.atsdr.cdc.gov/ToxProfiles/tp71-c1-b.pdf. ("ATSDR")

[12] ATSDR at 3.

[13] ATSDR at 4.

[14] *See, e.g.*, California South Coast Air Quality Management District, Nastri,Wayne, Executive Officer "Proposal Packet: Certify Final Environmental Assessment and Adopt Rule 415 – Odors from Rendering Facilities," for the Governing Board Meeting (Nov. 3, 2017), available at http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-nov3-030.pdf?sfvrsn=7; Bay Area Air Quality Management District, Regulation 12 Rule 2: Rendering Plants (Revised April 24, 2018) (Bay Area Rendering Plant Rule), available at https://www.baaqmd.gov/rules-and-compliance/rules/reg-12-rule-2-rendering-plants.

[15] California South Coast Air Quality Management District Press Release, "South Coast AQMD Hearing Board orders Vernon, Calif. animal rendering plant to reduce odors**,** *Facility failed to comply following multiple inspections*," (June 20, 2019), available at https://www.aqmd.gov/docs/default-source/news-archive/2019/rendering-plant-june20-2019.pdf.

[16] Sulaiman, Sahra, "Proposed Rule Meant to Curb Stink from Animal Rendering Plants," StreetsBlog (Oct. 24. 2017), available at https://la.streetsblog.org/2017/10/24/proposed-rule-meant-to-curb-stink-from-animal-rendering-plants/.

pollutants from these plants.[17] Moreover, given the SCAQMD's clear commitment to continue to monitor HAP emissions, these rules appear to be merely the SCAQMD's first in a number of regulatory actions to control emissions. Furthermore, the District is providing extensive public education on the monitoring results, including during the pandemic season, sharing information about the community air monitoring plan (*i.e.*, VOCs, odorous compounds, mass spectrometer mobile laboratory) to numerous community groups.[18] In the air quality field, the SCAQMD rules and programs are known to lead the states and air districts in identifying and providing leadership in requiring state-of-the-art requirements to control emissions. Given the SCAQMD's extensive work to date, there are many "best practices" identified by the District to control emissions from rendering plants thus far. Commenters encourage the ADEM to carefully review the information provided as enclosures to these comments related to California's efforts and apply the "lessons learned" there to the proposed permits, at other odor emitting facilities in Alabama.[19]

Finally, as the SCAQMD's efforts are ongoing, including the establishment of a new mass spectrometer mobile laboratory, Commenters strongly urge that the ADEM assign staff to track the SCAQMD's results regarding monitoring and future regulations. Although some aspects of the SCAQMD's regulations may be unique to its situation, there is no need for the ADEM to reinvent the wheel.

B. The Construction Permit and Related Programs: Overview and Purposes

Compliance with the NAAQS is at the core of the CAA's preconstruction permitting program for both major[20] and minor sources[21] of air pollution. For areas that do not meet the NAAQS (nonattainment areas), Congress created New Source Review (NSR) to prevent the

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[17] California South Coast Air Quality Management District, Nastri,Wayne, Executive Officer "Proposal Packet: Certify Final Environmental Assessment and Adopt Rule 415 – Odors from Rendering Facilities," for the Governing Board Meeting (Nov. 3, 2017), available at http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-nov3-030.pdf?sfvrsn=7.

[18] *See, e.g.*, California South Coast Air Quality Management District, Community Meeting and Workshop #6, "Rendering Facilities and General Industrial Facilities" (Sept. 17, 2020)(overview of new Rule 415, community air monitoring plan (VOCs, odorous compounds, mass spectrometer mobile laboratory), available at http://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/southeast-los-angeles/presentation-sept17-2020.pdf?sfvrsn=8; California South Coast Air Quality Management District, "Action: Air Monitoring of Volatile Organic Compounds (VOCs) near rendering facilities," (Aug. 2020), available at http://www.aqmd.gov/docs/default-source/ab-617-ab-134/camps/elabhwc-progress-reports/elabhwc-rendering-facilities---coming-soon.pdf?sfvrsn=6; California South Coast Air Quality Management District, CERP Archive - Southeast Los Angeles (SELA) (Dec. 2020) (this page contains drafts of the Southeast Los Angeles Community Emissions Reduction Plan (CERP) that will be circulated during the plan development process and includes options of community notification of odor events, compliance inspections, responding to complaints), available at http://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/southeast-los-angeles/draft-cerp/ch5c-rendering-facilities.pdf?sfvrsn=8.

[19] Finally, as the SCAQMD's efforts are ongoing, including the establishment of a new mass spectrometer mobile laboratory, Commenter(s) strongly urge that the ADEM assign staff to track the SCAQMD's results regarding monitoring and emission controls.

[20] The Act defines a "major emitting facility" as "any stationary facility . . . which directly emits, or has the *potential to emit* " the relevant quantity of pollutant as established by the EPA. 42 U.S.C. § 7602(j). (emphasis added)

[21] Sources that do not have the potential to emit over the major source thresholds are minor sources.

addition of new sources of pollution.[22] For areas that meet the NAAQS (attainment areas), Congress enacted the Prevention of Significant Deterioration (PSD) program. [23]

The federal PSD program is designed "to assure that any decision to permit increased air pollution in [an attainment area] is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process."[24] As part of the PSD program, "[n]o major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—(1) a [PSD] permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part."[25]

The PSD program defines "major emitting facility," also known as a "major source," as a facility possessing the potential to emit either 100 tons per year or 250 tons per year of the regulated pollutant. The threshold depends on the facility's industry source category.[26] Major sources must obtain PSD permits and are subject to stricter regulatory controls than sources that do not fall under the definition of "major source."

The PSD programs require the following: installation of the "Best Available Control Technology" (BACT); an air quality analysis; an additional impacts analysis; and public involvement. Section 160 of Part C of the Clean Air Act lists the following purposes of the PSD Program:

- Protect public health and welfare;
- Reserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;
- Insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;
- Assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and
- Assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process.[27]

The Act functions through a cooperative federalism approach and requires that each state implement and enforce the NAAQS standards through a "state implementation plan," or "SIP," which is approved by EPA and must include permitting regulations, for regulating the construction of and modifications to air pollution sources within the state.[28] Section 110(a)(2)(C)

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[22] Id. §§ 7501-7515
[23] *See id*. §§ 7470-79.
[24] *Id*. § 7470(5).
[25] *Id*. § 7475(a).
[26] *Id*. § 7479(1).
[27] 42 U.S.C. § 7470.
[28] *See generally* 42 U.S.C. §§ 7410–7411.

of the Act requires SIPs to include a program to provide for the enforcement stationary sources to assure the NAAQS are achieved.

1. The Major Source Permit Program: Congressional Intent and State Implementation

The Clean Air Act aims to "protect and enhance the quality of the Nation's air resources."[29] The PSD provisions were added to the CAA in 1977 to focus on "facilities which, due to their size, are financially able to bear . . . substantial regulatory costs . . . and which, as a group, are primarily responsible for emissions of the deleterious pollutants that befoul our nation's air."[30] The ultimate purpose of the PSD program is to maintain air quality better than the NAAQS and Congress repeatedly emphasized that NAAQS alone were insufficient to protect public health and welfare.[31] For example, the

> Senate Report emphasized the 'shortcomings and limitations' of the ambient standards—they do not provide an adequate margin of safety on health impacts; they are based on a false assumption that no-effects threshold levels exist; they do not adequately protect against genetic mutations, birth defects, cancer, or diseases caused by long-term chronic exposures or periodic short-term peak concentrations, and hazards due to derivative pollutants and to cumulative or synergistic impacts of various pollutants; and they do not adequately protect against crop damage and acid rain.[32]

Congress designed the Prevention of Significant Deterioration program with the goal of "assur[ing] that any decision to permit increased air pollution . . . is made *only after careful evaluation of all the consequences of such a decision*."[33]

States can seek federal approval to administer the PSD permit program through a State Implementation Plan (SIP). To gain EPA approval, a SIP must "include enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable [Clean Air Act] requirements" and to "assure that national ambient air quality standards are achieved."[34] SIPs also must "contain emission limitations and such other measures as may be necessary . . . to prevent significant deterioration of air quality."[35]

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[29] 42 U.S.C. § 7401.
[30] *Ala. Power Co. v. Costle*, 636 F.2d 323, 353 (D.C. Cir. 1980)("Alabama Power").
[31] *Hawaiian Elec. Co. v. U.S. E.P.A.*, 723 F.2d 1440, 1446-7 (9th Cir. 1984)("Hawaiian Elec.").
[32] *Id.*, citing, H.R. Rep. No. 294, 95th Cong., 1st Sess. 105–132, *reprinted in* 1977 U.S. Code Cong. & Ad. News 1183–1211; *see also* Statement by Senator Muskie in *A Legislative History of the Clean Air Act Amendments of 1977*, 95th Cong., 2d Sess. No. 16 (1979), vol. 3, pp. 1032–1035. "The non-degradation amendment is intended to help reduce overall emissions and thus provide protection against these kinds of adverse impacts." *Legislative History*, *supra*, at 728.
[33] 42 U.S.C. § 7470 (emphasis added). In furtherance of that goal, EPA permitting guidance requires state agencies to make independent determinations about necessary emissions controls and not to rely solely on applicant information. EPA, New Source Review Workshop Manual, at B.53-54 (Draft Oct. 1990) ("NSR Workshop Manual"), available at https://www.epa.gov/sites/production/files/2015-07/documents/1990wman.pdf (last visited. Nov. 30, 2020).
[34] 42 U.S.C. § 7410(a)(2).
[35] 42 U.S.C. § 7471; *see also* 40 C.F.R. §§ 51.166, 52.21.

While EPA approves state programs, it retains oversight authority over implementation by a state.[36]

Alabama administers the PSD program through an EPA-approved SIP.[37] Like its federal counterpart, Alabama's PSD program requires would-be permittees to analyze all potential impact of their proposal on air quality, visibility, soils, and vegetation.

2. The Minor Source Permit Program

In addition to the Act's PSD permit requirements for major sources, it also requires that state SIPs include a minor source permit program, which covers pollutants from stationary sources that do not require major source permits. The minor source permits prevent the construction of sources that would interfere with attainment or maintenance of the NAAQS or violate the control strategy in nonattainment areas. EPA's minor source regulations, set forth in 40 C.F.R. sections 51.160 through 51.164, require that the state minor source program must enable the permitting agency to reject any construction application if it will interfere with attainment. A state's minor source permit program must meet the minimum requirements in the Act and EPA's regulations.

3. The Synthetic Minor Source Permit Program

A source with the potential for emissions over the emissions threshold for major source status can be issued a minor permit and receive minor source status if the permit includes the required permit terms and conditions to create what is generally called a "synthetic minor" permit. State SIP regulations include substantive and procedural rules that give it authority under the Act to issue synthetic minor permits. To receive such a permit, the permit applicant must include in its application all information necessary for a state to evaluate whether it is entitled to synthetic minor status under the regulations. Without the necessary information the state would be unable to make an accurate evaluation of the application for a synthetic minor permit and the permit applicant's eligibility for exemption from major source permitting requirements.

Federal case law and EPA guidance further guide what is required by permitting authorities to create a synthetic minor permit. In *National Mining Association v. EPA*, 59 F.3d 1351, 1364 (D.C. Cir. 1995) (National Mining), the D.C. Circuit held that the EPA exceeded its authority by considering only "federally enforceable" controls in calculating PTE. Therefore, the Court redefined "federally enforceable," instead holding that "[t]o qualify as 'federally enforceable,' " controls must simply be "effective as a practical matter" and "approved by the EPA and integrated into the [SIP]." *Id.* at 1363.[38] Additionally, "[o]nce included within the SIP, a state control becomes enforceable not only by the state which is its primary regulating authority, but also by the Administrator under [the CAA] and, in certain settings, by private

[36] *Alaska Dep't of Envtl. Conservation v. E.P.A.*, 540 U.S. 461 (2004) (affirming EPA's reversal of a state permitting decision) ("ADEC").

[37] ADEM EPA-Approved SIP Regulations referenced in these comments include: Ala. Admin. Code r. 335-3-1 General Provisions; Ala. Admin. Code r. 335-3-4 Control of Particulate Emissions; Ala. Admin. Code r. 335-3-5 Control of Sulfur Compound Emissions; Ala. Admin. Code r. 335-3-6 Control of Organic Emissions; Ala. Admin. Code r. 335-3-14 Air Permits; Ala. Admin. Code r. 335-3-15 Synthetic Minor Permits, available at https://www.epa.gov/sips-al/epa-approved-statutes-and-regulations-alabama-sip (codified at 40 C.F.R. § 52.50).

[38] ALA. ADMIN. CODE r. 335-3-15-.04 (1)(h), reflects the D.C. Court's holding.

citizens" pursuant to citizen suit provisions. *Id.* Shortly after *National Mining* the D.C. Circuit issued a corollary opinion vacating the definition of "federally enforceable" under certain regulations under the Act.[39]

In 1996, responding to the D.C. Court's decisions, the EPA issued guidance explaining that "the term 'federally enforceable' should now be read to mean 'federally enforceable *or* legally and practicably enforceable by a state or local air pollution control agency.' "[40] EPA's 1996 guidance and subsequent guidance documents remain EPA's direction to state agencies on this matter.[41]

4. Determination of Major or Minor Source Status

In reviewing a permit application to construct a new facility, a state must first determine whether the facility would be a "major source" or a "minor source" of air pollutants. This initial categorization is essential to determine because as discussed above, different requirements apply to the two groups. To determine major or minor source status, the state must first determine *what emitting units constitute the source*, and then estimate the *potential to emit* (PTE) of all emissions

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[39] *Id.*; *see Chem. Mfrs. Ass'n v. EPA*, 70 F.3d 637 (D.C. Cir. 1995) (table) (reiterating that it is improper to define PTE as excluding controls unless they are federally enforceable).

[40] EPA, Interim Policy on Federal Enforceability Requirement for Limitations on Potential to Emit (1996) (emphasis added) (Policy on Federal Enforceability, 1996 Interim PTE Policy), https://www.epa.gov/sites/production/files/2015-08/documents/pottoemi.pdf.

[41] *See United States v. Questar Gas Mgmt. Co.*, No. 2:08-CV-167 TS, 2011 WL 1793172, at *2 (D. Utah May 11, 2011); EPA, National Emission Standards for Hazardous Air Pollutants: General Provisions, 72 C.F.R. 69, 70 n.1 (Jan. 3, 2007); EPA, Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations, 77 Fed. Reg. 14226 n.44 (Mar. 8, 2012); U.S. EPA, Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (1995) (1995 Options for Limiting PTE), https://www.epa.gov/sites/production/files/documents/limit-pte-rpt.pdf; Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency" (Sept. 23, 1987)(1987 SIP Enforceability), available at https://nepis.epa.gov/Exe/ZyNET.exe/9101SGKF.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1986+Thru+1990&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C86thru90%5CTxt%5C00000031%5C9101SGKF.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL (as part of the compilation of memos in the "New Source Review : Prevention of Significant Deterioration and Nonattainment Area Guidance Notebook v.3." (1998)); Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, "Guidance on Limiting Potential to Emit in New Source Permitting" (June 13, 1989)(1989 NSR PTE Guidance), available at https://www.epa.gov/sites/production/files/2015-07/documents/lmitpotl.pdf; Kathie A. Stein, Director Air Enforcement Division, "Guidance on Practicable Enforceability" (Jan. 25, 1995)(1989 NSR PTE Guidance), available at https://www.epa.gov/sites/production/files/2015-08/documents/potoem.pdf; John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" (Jan. 25, 1995)(1989 NSR PTE Guidance), available at https://www.epa.gov/sites/production/files/documents/limit-pte-rpt.pdf (while this applies to stationary sources subject to CAA Section 112 and Title V, shows EPA consistently applies the same general practicable enforceability principles).

from the source.[42] As discussed further below, ADEM does not appear to have conducted such a review in this instance.

5. Operating Permit Program

Congress amended the Act in 1990 to require that each major source obtain a comprehensive operating permit ("Title V permit") that sets forth all of the Act's standards applicable to the source in one document, including those applicable under the construction permit requirements in Title I of the Act.

6. Hazardous Air Pollutant Requirements

The Act also regulates requirements for HAPs.[43] Major sources of HAPs must comply with the CAA's maximum achievable control technology ("MACT") requirements.[44] A source is considered major for HAPs if it emits or has the potential to emit 10 tons per year or more of any individual listed HAP or 25 tons per year of an aggregation of HAPs.[45]

C. Cooperative Federalism, Oversight and Enforcement

Under the Act's cooperative federalism principle, while EPA approves state permitting programs, it retains oversight authority over implementation by a state. In addition to EPA's oversight, the Act provides for citizen suits.[46] More specifically, the Act provides for a federal

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[42] ALA. ADMIN. CODE r. 335-3-14-.04(2)(d) "**Potential to Emit**" shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions (see Paragraph 16.4.2(r)) do not count in determining the potential to emit of a stationary source; *see also* ALA. ADMIN. CODE r. 335-3-14-.04(2)(p) **"Allowable Emissions"** shall mean the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: (1) The applicable standards as set forth in 40 CFR 60, 61, and 63; (2) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or (3) The emissions rate specified as an enforceable permit condition, including those with a future compliance date; ALA. ADMIN. CODE r. 335-3-14-.04(2)((q) **"Enforceable"** shall mean all limitations and conditions which are enforceable, including those requirements developed pursuant to 40 CFR 60, 61, and 63, requirements within the State Implementation Plan and any permit requirements established pursuant to Chapters 14, 15, or 16 of these regulations.

[43] 42 U.S.C. § 7412.

[44] *See id.* § 7412(g)(2)(B).

[45] 42 U.S.C. § 7412(a)(1)–(2).

[46] *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 560 (1987) ("Congress enacted § 304 specifically to encourage "citizen participation in the enforcement of standards and regulations established under this Act," S.Rep. No. 91–1196, p. 36 (1970), and intended the section "to afford ... citizens ... very broad opportunities to participate in the effort to prevent and abate air pollution." 1 Leg.Hist., p. 138 (Senate Consideration of the Report of the Conference Committee, Dec. 18, 1970) (remarks of Sen. Eagleton). Congress found that "Government initiative in **3096 seeking enforcement under the Clean Air Act has been restrained," S.Rep. No.

cause of action in 42 U.S.C. § 7604(a)(1) for any violation of "an emission standard or limitation," which includes "any requirement to obtain a permit as a condition of operations."[47] Additionally, if the EPA disagrees with the state's assessment of a facility's potential to emit, it may take action on its own, including filing a civil action to mandate compliance with the major source requirements.[48] Further, § 7604(a)(3), also provides for federal cause of action "against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I (relating to significant deterioration of air quality)…" Given the plain language of § 7604(a)(3), it is not surprising that those courts that have squarely addressed the argument - that the issuance by a state permitting agency of minor source permit based upon a determination that a major source permit is not required precludes the exercise of federal jurisdiction pursuant to § 7604(a)(3) - have rejected it.[49]

IV. ADEM's Proposed Permit Does Not Allow Pilgrim's Pride to Avoid Major Source Status and the Prevention of Significant Deterioration Permitting Requirements.

Under the Act, Congress gives states "the primary responsibility for assuring air quality within the entire geographic area comprising such State." 42 U.S.C. § 7407(a). In Alabama, ADEM shoulders some of that responsibility with its review of permit applications and work to ensure that facilities comply with Act's requirements. Although Congress gave primary responsibility to the states for assuring air quality, state actions must be consistent with the Act's requirements. For the two proposed permits, ADEM's Engineering Analysis lacks the necessary technical information, determinations, practically enforceable permit terms, and monitoring, recordkeeping, and reporting requirements to establish a practically enforceable plantwide limit below the 100 tpy threshold to avoid major source PSD permit requirements.

91–1196, at 36S.Rep. No. 91–1196, at 36, and urged the courts to "recognize that in bringing legitimate actions under this section citizens would be performing a public service and in such instances the courts should award costs of litigation to such party." *Id*., at 38.")

[47] 42 U.S.C. § 7604(a)(1), (f)(1) and (4).

[48] *E.g., United Steelworkers of Am. v. Oregon Steel Mills*, 322 F.3d 1222, 1224 (10th Cir.2003) (noting the EPA's disagreement with the state regulator's determination that a source was not subject to major source restrictions).

[49] *Voigt v. Coyote Creek Mining Company,* LLC, No. 1:15-CV-00109, 2016 WL 3920045, at 4 (D.N.D. July 15, 2016) ("*E.g*., *Weiler v. Chatham Forest Products, Inc*., 392 F.3d 532, 537-39 (2d Cir. 2004) (Weiler) (state-issued minor source construction permit did not foreclose a suit pursuant to § 7604(a)(3) alleging that a major source permit was required); *Ellis v. Gallatin Steel Co*., 390 F.3d 461, 481 (6th Cir. 2004) (Ellis) (same); *Northwest Environmental Defense Center v. Cascade Kelly Holdings, LLC*, 155 F.Supp.3d 1100, 1118-1119 (D. Ore. Dec. 30, 2015) (Cascade Kelly Holdings) (same); *Citizens for Pennsylvania's Future v. Ultra Resources, Inc*., 898 F.Supp.2d 741, 746 (M.D. Pa. 2012) (Citizens for Pennsylvania's Future) (same); *Natural Resources Defense Council, Inc. v. BP Products North America, Inc*., No. 2:08–CV–204, 2009 WL 1854527, at 8 (N.D. Ind. June 26, 2009) (BP Products) (same);" *see also, Sierra Club v. Portland General Electric Co. 663 F.Supp.2d* 983, 996 (D. Ore. Sept. 30, 2009) (court held that it had jurisdiction to review a defendant's failure to obtain an appropriate permit before commencing construction of a federal major source, and emphasized that the citizen suit provision of the CAA "grant[s] citizens the right to challenge the actions of companies alleged to be in violation of the law, regardless of whether the government believes them to be in violation of the law." *Id*. at 997.); *Nat. Res. Def. Council, Inc. v. BP Prod. N. Am., Inc*., No. 2:08-CV-204 PS, 2009 WL 1854527, at 6 (N.D. Ind. June 26, 2009)("…section [42 U.S.C. § 7604(a)(3)] is clear: federal district courts have jurisdiction to hear citizen suits against parties that either construct or propose to construct an emission source that will emit pollutants beyond the specified thresholds under parts C or D, whichever is applicable, unless the party has first obtained the necessary permit.")

A. ADEM's Proposed Permit Action Lacks a Determination of the Source

ADEM's proposed permit approvals appear to start at the "ground up" in that the cover page to both approvals describes the "equipment, article, or device" covered by the proposed permit. A review of ADEM's proposed actions finds that, contrary to its regulations, it did not make a determination as to all the *sources* that comprise the proposed stationary source.[50] As discussed above, the Act requires that that owners and operators of emitting facilities must obtain a permit prior to construction of the facility and the assessment of whether a permit is needed, starts with whether a major source permit is needed, and if not, then the proposed facility is subject to minor source permit requirements. As such, the characterization of what constitutes the *source* for purposes of major and minor source construction permitting is done by applying the major source rules,[51] not by arbitrarily identifying a subset of sources at the outset (here, boilers, emission control equipment and one loadout operation) and then drafting the proposed permit around an artificially limited scope. Accordingly, the entire Gadsden Pilgrim's Pride facility/project must be considered as "one source" under the Act so that the cumulative impacts on air quality are assessed and permitted collectively. ADEM may elect to propose individual construction permits for different parts of the proposed project, but it must consider all permits part of the same source.[52]

Because the Act's construct is set up so that one first determines if a new source is a major source, and if not, it is a minor source, we must look to ADEM's major source permitting rules that are found in ALA. ADMIN. CODE r. 335-3-14-.04 "Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD)," which apply to "any new major stationary source."[53] In determining the major stationary source the "permitting authority must take into account the emissions from all parts of a single source when determining the applicable requirements and conditions for operation of that source."[54] Federal and state regulations define a "stationary source" as "any building, structure, facility or installation that emits or may emit a regulated . . . pollutant."[55] Both sets of regulations further define a "building structure, facility or installation" (and therefore a single "source") according to

[50] The proposed Engineering Analysis project description indicates that "[t]he units at the facility will include three 66.958 MMBtu/hr gas fired boilers, an air washer, a regenerative thermal oxidizer, two 100,000 scfm packed bed scrubbers, one 75,000 scfm packed bed scrubber, and one diesel above-ground storage tank." Engineering Analysis at 1. But merely describes the units considered, it does not indicate these units are the "source." Furthermore, ADEM's project description is missing other information necessary to correctly characterize the source and the PTE of its emissions.

[51] While ADEM's rules contain an optional synthetic minor construction permit program for facilities that would otherwise be major, one must first determine what comprises the stationary source.

[52] If Pilgrim's intends to construct the project in phases, constructing the boilers and other equipment identified in the second permit now, that does "not obviate the need for preconstruction review as the EPA [ADEM} must consider the pollution resulting from the construction itself" *Save the Valley v. Ruckelshaus*, 565 F. Supp. 709, 710 (D.C. Cir. 1983). Although Pilgrim's seeks a synthetic minor permit, the same principle applies, as ADEM's synthetic minor rules include the same protections for analyzing a project's cumulative impacts on air quality.

[53] 40 C.F.R. 52.21(a)(2); ALA. ADMIN. CODE r. 335-3-14-.01(1)(a)

[54] *In the Matter of Seneca Energy, II, LLC*, Order on Petition No. II-2012-01, at (June 29, 2015) (2015 Seneca Energy Order) available at https://www.epa.gov/sites/production/files/2016-08/documents/seneca_energy_ii_response_7-29-16_0.pdf.

[55] 40 C.F.R. § 52.2l(b)(5), (6); ALA. ADMIN. CODE r. 335-3-15-.04(2)(e).

a three-part test. Under this test, a single source includes "all of the pollutant-emitting activities" that:

> (a) *belong to the same industrial grouping* according to the federal government's Standard Industrial Classification (SIC) system,
>
> (b) *are located on one or more contiguous or adjacent properties*, and
>
> (c) *are under the control of the same person* (or persons under common control).[56]

ADEM's proposed action does not include a determination of the "stationary source" and in particular the buildings, structures, facilities or installations that may emit a regulated pollutant. The Engineering Analysis contains limited information on the emission units[57] that comprise the stationary source.[58] As the D.C. District Court explained:

> Section 165 of the Act, 42 U.S.C. § 7475, provides that the owner or operator of a facility seeking a permit *must* demonstrate "that emissions from construction or operation of such facility will not cause, or contribute to, air pollution ...."

42 U.S.C. § 7475(a)(3) (emphasis added). Thus, the permit applicant (and ADEM) must include all the emitting units in the application; failure to do so means the required demonstration has not been made.

Indeed, "pursuant to the plain language of the statute, and its obvious intent to regulate pollution attendant to the construction as well as the operation of the finished generating units," the permit application must include the emission units that comprise of the facility's structure.[59] The permitting authority "must prevent any construction not specifically presented and approved during the permit process. This is the only reading of the statute that will effect its manifest purpose."[60] "[I]f the EPA [here ADEM] did not have the opportunity to consider the cumulative impact of the additional construction resulting" from the other unit(s), "then the pollution control aims of the statute have not been protected."[61] Because determining the relevant source is a "fundamental" aspect of the permit program, state permitting authorities are required to provide in the record a "reasoned explanation of their source determinations . . . consistent with the Act."[62]

1. ADEM's Proposed Action Does Not Determine That The Two Permits Constitute One Source

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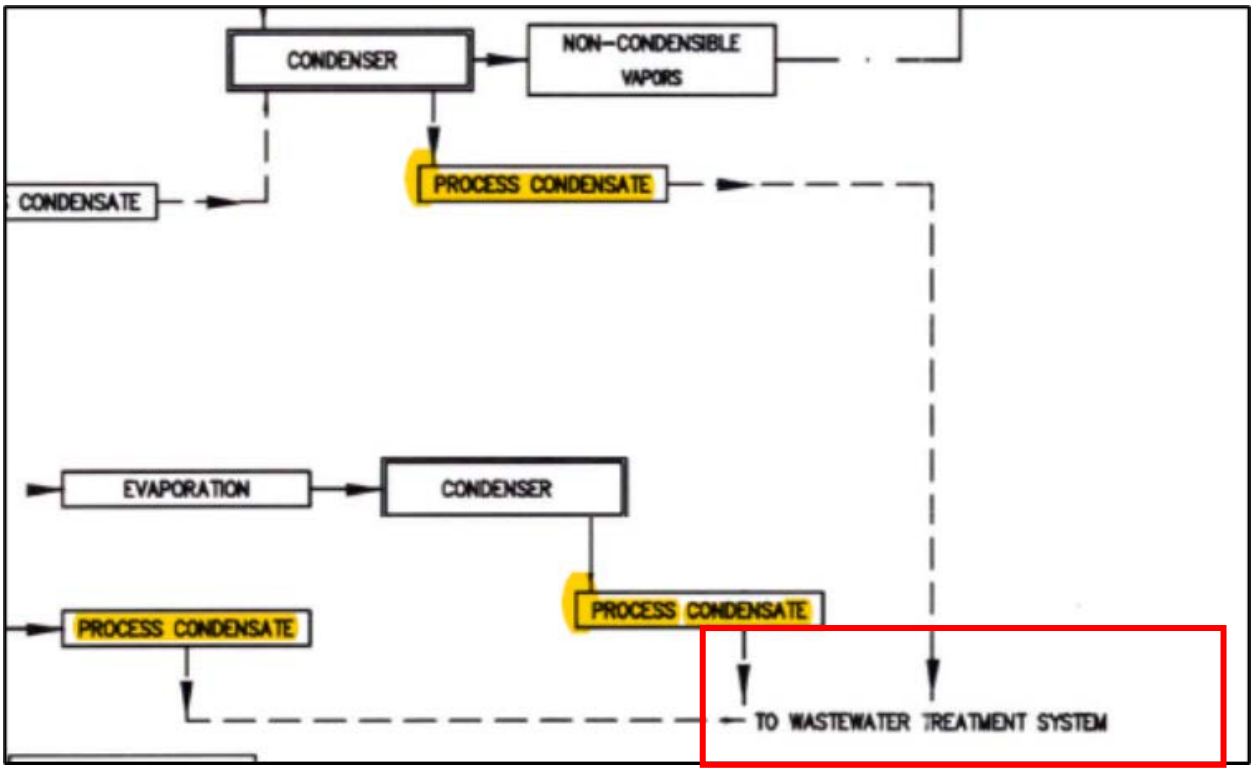
[56] 40 C.F.R. § 52.2l(b)(6)(emphasis added); ALA. ADMIN. CODE r. 335-3-15-.04(2)(f).
[57] ALA. ADMIN. CODE r. 335-3-15-.04(2)(g)(" Emissions Unit" shall mean any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant including an electric utility steam generating unit as defined in subparagraph (2)(vv) of this Rule….")
[58] Technical Analysis at 1 (i.e., (3) 66.958 MMBtu/hr gas fired boilers, Air washer, Regenerative thermal oxidizer, (2) 100,000 scfm packed bed scrubbers; 75,000 scfm packed bed scrubber; Diesel above-ground storage tank.)
[59] *Id.*
[60] *Id.*
[61] *Id.* at 711 (further explaining in n.3 that "…if the operator plans to install both lines at the same time, there is little burden in requiring it to present such plan to the EPA.")
[62] 2015 Seneca Energy Order at 10.

First, ADEM proposes two separate construction permits for the facility: PERMIT NOS.: 307-0051-X001 & -X002. These two permits are part of the same source. While there is nothing that prohibits ADEM from proposing separate permits for the same source, the permits must contain language clearly indicating that they comprise the same source. No such language appears in either permit. By not linking the two permits into the one planned facility, the owner/operator could propose modifications in the future to one or the other and escape major source permit requirements, and avoid BACT and other provisions to protect the NAAQS, as well as public health and welfare. Therefore, ADEM must amend its Engineering Analysis to include this determination and include clear language in each permit.

2. ADEM's Proposed Action Does Not Include Emissions from the Planned WWPTS

Second, ADEM's proposed action does not include all the buildings, structures, facilities and installations that comprise the source and that emit or may emit a regulated pollutant. Notably absent from ADEM's Engineering Analysis is the WWPTS. The permit application shows that *process concentrate* from at least three different processes would be directly routed to the WWPTS, see Figure 2 below.

Figure 2. Excerpt from the Flow Diagram for the Facility Showing Three Process Concentrate Streams That Would Flow to the WWPTS.



The permit applicant's Air Permit Application[63] alleges that the facility's WWPTS is expected to be an insignificant source of fugitive emissions, including the WWPTS as a planned activity on the Title V Permit Form as a "Trivial and Insignificant Activities List."[64] However, there is nothing in the application that provides support or justification for this conclusion. For example, no information about the processes planned at the WWPTS, what chemicals are planned for use, whether such chemicals will be held in tanks or silos (emitting fugitives), if the plans include pumps, generators, and if mixing the treated wastewater will result in release of emissions regulated by the Clean Air Act. Air permits issued for construction of other rendering plants, including those owned by this applicant, include permit terms and conditions for emissions from the WWPTS.[65] Therefore, before proceeding with this proposed approval of the construction permits, ADEM must first request additional information from applicant, as well as compare air permits for similar facilities.

Neither the Air Permit Application nor the SID Permit Application provide a basis for the permit applicants assertion in the Air Permit that emissions from the WWPTS will be insignificant. Indeed a review of the Title V regulations as discussed above finds that there is no basis for excluding "insignificant" emissions from the proposed permits. Stage 1 of the planned pretreatment process would use a dissolved air flotation (DAF) unit operated with chemical coagulation and flocculation. Stage 2 would involve use of floating surface aerators and floating mixers. After the DAF, biological treatment using lagoons will occur before discharging to the local publicly-owned wastewater treatment plant (POTW).[66]

Moreover, review of the application submitted to ADEM for the WWPTS reveals that at Stage 1 of the planned pretreatment process would use a dissolved air flotation (DAF) unit operated with chemical coagulation and flocculation. Stage 2 would involve use of floating surface aerators and floating mixers. After the DAF, biological treatment using lagoons will occur before discharging to the local POTW. Neither the Air Permit Application nor the SIP Permit Application provide a basis for the permit applicant's assertion that emissions from the WWPTS will be insignificant.

The proposed system is similar to other rendering plants, which have air permits that include in the permit terms and conditions for control of air pollutant emissions from the WWPTS.[67] In addition to requirements to cover and enclose the wastewater treatment lagoons, the many rendering industry operations are required to construct an effluent treatment system that captures and uses biogas released by the anaerobic digestion as a renewable energy source

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[63] Because these comments are submitted in response to proposed Air Permits, we generally refer to the application submitted for the air permits as "Permit Application." For purposes of this section where we include discussion of the SID Permit Application and the application submitted for the air permits, we refer to the later as "Air Permit Applications."

[64] Permit Application at pdf 8, 92.

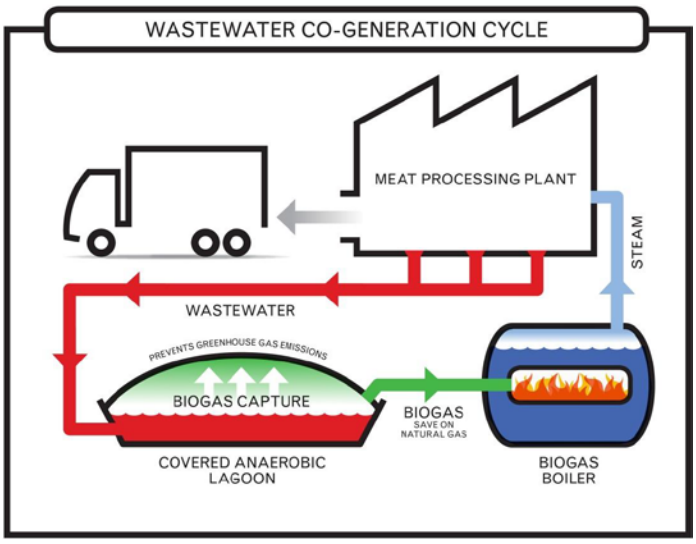
[65] *Infra* note 84.

[66] It appears the City of Gadsden either recently modified the POTW in anticipation of receiving wastewater from the applicant's proposed rendering plant, or plans to modify the POTW in the future. Therefore, ADEM should also assess and determine if POTW is also part of the planned new source under the Clean Air Act and include information and its proposed determination when it renotices a complete permit package for the proposed plant

[67] *See, e.g.*, EPA, Region 10, "Non-Title V Air Quality Operating Permit issued to Washington Beef, LLC. Toppenish Plant," (Jan. 23, 2015), available at https://www.epa.gov/sites/production/files/2016-09/documents/wa_beef_non_titlev_permit_final_integrated_permit_2015_01_23.pdf; 49.JBS USA, Annual Emission Inventory Report, Grand Island, Nebraska (March 26, 2020).

for the rendering plant. Figure 3 below is a schematic of the wastewater co-generation cycle for one of the rendering plants within the same corporate family as Pilgrim's Pride: the JBS Dinsmore facility.[68] The Dinsmore facility's wastewater treatment system was optimized for generation of biogas,[69] and the project was completed in April 2014.[70] The biogas is used for combustion in the existing natural gas-fired boiler plant, which was modified to burn biogas.[71] JBS USA as well as other rendering plant owners and operators also install and are required to install systems to capture and use emissions from the wastewater lagoons under the Act's permitting programs.[72]

Figure 3. Wastewater Co-Generation Cycle at JBS Rendering Plant



Moreover, Commenters identified a number of air permits that require capture and reuse of the fugitive emissions from the lagoons for energy, which are included as enclosures to these comments.

Additionally, if they are not already, Commenters urge the air and water staff at ADEM to work together to resolve the inconsistencies in the two applications so that ADEM's actions

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[68] Wiley, Biogas Recovery project gives JBS environmental and financial edge [JBS Australia Pty Limited], (Jan. 2015) (Wiley), available at https://www.wiley.com.au/wp-content/uploads/2015/01/Project_Profile_-_JBS_Australia_-_Biogas_Recovery.pdf.

[69] *Id.*

[70] Blue Star, "JBS DINMORE BIOGAS RECOVERY & EFFLUENT TREATMENT" (Undated), available at https://bluestarcorporate.com.au/portfolio/jbsdinmorebiogasrecovery/.

[71] Wiley.

[72] *See, e.g,.* JBS USA, Annual Emission Inventory Report, Grand Island, Nebraska (March 26, 2020); JBS USA, "Energy and Emissions," (as demonstrated in this comment letter and the lack of Pilgrim's permit applications to adhere to ADEM's regulations, the JBS corporate statement indicates that "[a]ir quality and greenhouse gases are a top concerns for our team and the communities where we operate – as such we are constantly looking for opportunities to improve our energy efficiency and reduce air emissions" and further offering that "11 of our facilities use biogas as a renewable energy source"), available at https://sustainability.jbssa.com/chapters/environment/energy-emissions/.

speak in unison and do not contradict one another.[73] For example, while the air permit application shows three processes leading to the WWPTS (Figure 2), the water permit shows the 10 listed in Figure 4, as well as sanitary wastewater. Therefore, is seems there is a discrepancy for the ADEM staff to resolve.

Figure 4. Wastewater Sources From the Planned Facility.[74]

Raw Material Condensate Wastewater
SPN Process Wastewater
Blood Serum Wastewater
Washdown/Plant Sanitation
Truck Drainage Wastewater
Total Process Wastewater
Boiler Blowdown(1)
Air Pollution Control Systems
Other Miscellaneous Sources (e.g., cooling loop system/cooling tower blowdown [6 gpm], water softener wastewater, equipment maintenance, etc)
Industrial Storm Water (Wastewater)(2)

3. ADEM Must Determine the "Source" Under the Clean Air Act

In addition to the above, ADEM must obtain further information regarding the proposed plant and the WWPTS in order to form a defensible basis for what constitutes the "source."

Applying the three-part test from the rule,[75] it is clear that the applicant's proposed poultry rendering plant "source" includes at least the new Animal Feed Ingredients Plant, the onsite natural gas boilers, and the WWPTS. First, all three of these "building[s] structure[s], facility[ies] or installation[s]" will all be under the control of the same person:[76] the Pilgrim's

[73] To support this recommendation, Commenters include the comments that Justinn Overton Riverkeeper and Executive Director Coosa Riverkeeper and Hannah Connor, Senior Attorney, Center for Biological Diversity, submitted to Russell Kelly, Chief, Permits and Services Division, Alabama Department of Environmental Management, regarding Pilgrim's Pride Corporation SID Permit Application and Gadsden West River Wastewater Treatment Plant NPDES Permit (AL00S320 I) (Feb. 2, 2021).
[74] SID Permit Application at 30. In addition to those listed, "sanitary" wastewater is another source listed.
[75] Discussed above on pages 15-16.
[76] Person is the owner or operator, including corporations.

Pride Corporation.[77, 78] Second, all of these elements are located on one or more contiguous or adjacent properties. The WWPTS is characterized as an onsite plant,[79] along with the natural gas boilers and the Animal Feed Ingredients Plant itself. Moreover, the WWPTS is a "support facility" to the plant.[80] Third and finally, the air and water permits both characterize the facility under the same SIC code, 2077. [81, 82, 83]

B. ADEM's Engineering Analysis Does Not Consider Whether the Facility is Covered by One of the PSD Listed Categories

The planned facility meets the first part of the PSD rule's definition of major stationary source because it has the potential to emit 100 tons per year or more at least one of the regulated NSR pollutants."[84] The definition of major stationary source also includes a list of stationary source categories, and if a source meets one on the list, PSD also applies. ADEM's proposed Permit No. 307-0051-X002, would approve construction of three 66.986 MMBtu/hr boilers, for a total of 200.958 MMBtu/hr. It is necessary to include the manufacturer and model number for the boilers in the construction permit and Engineering Analysis, and that information is missing from ADEM's proposed actions.[85] Therefore, it is not possible for the public to verify the

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[77] ALA. ADMIN. CODE r. 335-3-1-.02 ("(yy) "Owner or Operator" shall mean any person who owns, leases, operates, controls, or supervises an affected facility, article, machine, equipment, other contrivance, or source.")
[78] Pilgrim's Pride is a subsidiary of JBS USA. SID Permit Application at pdf 3.
[79] Air Permit Application at 6.
[80] *See, e.g.*, EPA Memorandum with Subject: "Analysis of the Applicability of Prevention of Significant Deterioration (PSD) to the Anheuser-Busch, Incorporated Brewery and Nutri-Turf, Incorporated Landfarm at Fort Collins, Colorado," (Aug. 27, 1996), available at https://www.epa.gov/nsr/analysis-applicability-psd-anheuser-busch-incorporated-brewery-and-nutri-turf-incorporated; Letter from Becky Weber, Director, Air and Waste Management Division, EPA Region 7, to Kevin Stoner, Air Administrator, Air Quality Division, Nebraska Department of Environmental Quality (Feb. 1, 2018), available at https://www.epa.gov/sites/production/files/2018-02/documents/pacific_aurora_source_applicability.pdf; Letter from Richard R. Long, Director, Air Program, EPA Region 8, to Julie Wrend, Legal Administrator, Air Pollution Control Division, Colorado Department of Public Health and Environment (Nov. 12, 1998), available at https://www.epa.gov/sites/production/files/2015-07/documents/coorstri.pdf.
[81] SID Permit Application at 5.
[82] Permit Application at pdf 6.
[83] Further, there is an apparent inconsistency in how SIC code is described in the air and water permits, although water permit indicates the SIC code is "2077" – it describes that code as "Rendering Poultry By Products." While the air permit indicates "primary SIC Code 2077" it describe the code as – "Animal Fats and Oils." SIC code 2077 is characterized by OSHA as "Establishments primarily engaged in manufacturing animal oils, including fish oil and other marine animal oils, and fish and animal meal; and those rendering inedible stearin, grease, and tallow from animal fat, bones, and meat scraps." OSHS SIC Manual, available at https://www.osha.gov/sic-manual/2077. Regardless of the SIC codes applied to the plant and WWPTS – and in the event the Company decides to revise one of them in its application(s) – in the preamble to the 1980 PSD rule discussed the EPA's view on how to evaluate what SIC code applies to support facilities. *See*, Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 45 FR 52676 (Aug. 7, 1980). The preamble to the rule, starting at 45 FR 52694, discusses a number of concerns raised by commenters during the public review and clarifications made by the EPA. In particular, the EPA notes that "each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. Support facilities are typically those which convey, store, or otherwise assist in the production of the principal product." *Id.* at 52695.
[84] ALA. ADMIN. CODE r. 335-3-14-.04(2)(a).
[85] ADEM's Engineering Analysis also lacks these essential details for the other equipment it proposes to approve.

combined total million British thermal units per hour heat input of the natural gas-fired boilers planned for construction is as represented in the proposed permit. Furthermore, given the arbitrariness with which the equipment was subdivided between the two proposed permits, and the fact that the two permits do not cover all emissions from the proposed rendering plant, the ADEM has not provided the information Commenters need to meaningfully review the two permits. Additionally, whether this source falls within one of the source categories listed in the regulation impacts what requirements the source is subject. This is because fugitive emissions are only included in determining whether the source is "major" for an air pollutant if the source category is on the list in the PSD rule.[86] Moreover, within three years of plant start-up, Pilgrim's plans to add an additional processing line. Therefore, it appears the plant may also be subject to PSD because the combined total of million British thermal units per hour heat input for the fossil fuel boilers would total more than 250.

C. ADEM's proposed permit action does not include all emitting sources

ADEM's Engineering Analysis further does not discuss emissions from the following: emergency generators and engines; and volatile HAPs emitted from chemicals that will be used at the rendering plant (cleaners and sanitizers). Pilgrim's process flow diagram includes numerous emitting equipment not included in the proposed permits, for example: cookers, silos, storage tanks, dryers, cyclone separators, and condensers.[87] Furthermore, portions of the flow diagram are redacted, so the public and Commenters did not have information about the entire process that is planned. Additionally, a review of permits issued by other agencies identifies considerably more rendering equipment covered by air permits.[88] Finally, in light of the accident where several were killed at a rendering plant on January 28, 2021, ADEM must consider emissions from liquid nitrogen, whether that is planned for use at the Gadsden rendering plant, and identify the requirements from the Act that apply to its use.[89]

In addition to including emissions that pass through a stack, emissions from a stationary source include fugitive emissions, which are defined as those that cannot "reasonably pass

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[86] Indeed, although neither the applicant nor ADEM considered fugitive emissions in setting the plantwide VOC restrictions, the applicant did indicate in the application that the "entire facility" will have fugitive emissions from one of the criteria pollutants - PM. Permit Application at pdf 86.

[87] Permit Application at pdf 64.

[88] *See, e.g.*, EPA, Region 10, "Non-Title V Air Quality Operating Permit issued to Washington Beef, LLC. Toppenish Plant," (Jan. 23, 2015), available at https://www.epa.gov/sites/production/files/2016-09/documents/wa_beef_non_titlev_permit_final_integrated_permit_2015_01_23.pdf; Darling Ingredients, Inc., San Joaquin Valley Air Pollution Control District, Authority to Construct Application Review, Natural. Gas/Yellow Grease-Fired Boiler (Replacement Emission Unit) (Dec. 26, 2018); Darling Ingredients, Inc., San Joaquin Valley Air Pollution Control District, Authority to Construct Application Review, Modification of Animal Rendering and Loadout Operations (July 17, 2016); Darling Ingredients, Inc., San Joaquin Valley Air Pollution Control District, Notice of Preliminary Decision - Authority to Construct Facility Number: C-9251, Project Number: C-1172884 (Sept. 20, 2019); Baker Commodities Facility Permit to Operate, South Coast Air Quality Management District (Oct. 8, 2020).

[89] Levenson, Michael, Several Killed in Liquid Nitrogen Leak at Georgia Poultry Plant, New York Times (Jan. 28, 2021), available at https://www.nytimes.com/2021/01/28/us/foundaiton-food-group-liquid-nitrogen-plant.html; *see also* Dohmeyer, Rendering plants, (Information on use of liquid nitrogen at rendering plants), available at https://dohmeyer.com/rendering-plants/?fbclid=IwAR2s73OcPg3LY79v1BrSw4M85BXAuK46WOLQ0vG_3c4OBlMxrb00KYMSsbw.

through a stack, chimney, vent or other functionally equivalent opening,"[90] because they are also subject to permitting. "[A] a major emitting facility is subject to the requirements of section 165 for each pollutant it emits irrespective of the manner in which it is emitted."[91] Although so-called "fugitive emissions" from are not always included in determining whether the potential to emit of a stationary source exceeds the major stationary source emission thresholds under the PSD program, ADEM's SIP unequivocally considers such fugitive emissions to be "emissions of a stationary source."[92] ADEM's Engineering Analysis neither indicates whether it included fugitive emissions nor quantifies fugitive emissions. ADEM's permit action must include controls for fugitive emissions, because the plant's fugitive emissions contain the "odors" that would impact the surrounding community.

Moreover, ADEM's proposed action also omits explanation of an entire category of emitting units: those that are responsible for "secondary emissions."[93] Examples of secondary emissions include emissions from materials loaded into and out of the trucks, emissions from the materials themselves (transported in open air trucks) and emissions from the diesel truck engines, which may remain idle for periods of time both in the open building bays and at the truck wash facility. As the SCAQMD air monitoring results have shown, in order to control odors, it is necessary to include work practice standards regarding truck hygiene and require that trucks are enclosed.

D. ADEM's Proposed Permit Action Does Not Include All Pollutants

ADEM's proposed permit action does not include the potential to emit of the 189 hazardous air pollutants covered by the Act, in addition to the California monitoring studies referenced earlier in our comments, EPA's recently issued air permit for a rendering plant provides an example of source testing that was required to assess HAP emissions.[94] Noticeably missing as well are the emissions from the WWPTS ponds and equipment.

E. ADEM's Proposed Permit Action Does Not Include Its Calculates for the PTE Emission Values

As discussed earlier, the PSD rules require that PTE is calculated for all emissions from the source. ADEM's Engineering Analysis includes the following table – Figure 5 - which presents single numerical values for the potential to emit for the criteria pollutants. Its

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[90] 40 C.F.R. § 51.166(b)(20), ALA. ADMIN. CODE r. 335-3-14-.04 (2) (t) **"Fugitive Emissions"** shall mean those emissions which could not reasonably pass through a stack, chimney, vent, roof monitor, or other functionally equivalent opening. Moreover, the PSD requirements apply to "apply to each regulated pollutant that a "major" source emits in "significant" amounts, e.g., 40 C.F.R. § 52.21(j). The regulations do not distinguish between stack and fugitive emissions for this purpose. *Masonite Corp*., 5 E.A.D. 551, 568-569 (E.A.B. 1994)("Masonite"). *Masonite* at 582, citing 54 Fed. Reg. 48870 (Nov. 28, 1989).

[91] *Ala. Power Co. v. Costle*, 636 F.2d 323, 369 (D.C. Cir. 1980)("Alabama Power").

[92] *See* ALA. ADMIN. CODE r. 335-3-14-.04 (2)(a) and 40 C.F.R. §51.166(b)(1).(definition of "major stationary source").

[93] ALA. ADMIN. CODE r. 335-3-14-.04 (2)(r)

[94] EPA, Region 10, "Non-Title V Air Quality Operating Permit issued to Washington Beef, LLC. Toppenish Plant," (Jan. 23, 2015) (source test data for one of the HAPs nearly exceeded the 10 tpy threshold, and emissions from all HAPs similarly approached that threshold), available at https://www.epa.gov/sites/production/files/2016-09/documents/wa_beef_non_titlev_permit_final_integrated_permit_2015_01_23.pdf.

Engineering Analysis explains that the "[p]otential emissions are based on 8,760 hours of operation, emission factors from stack testing from a similar facility, and a maximum process weight of 145,500 lbs/hr."[95] Since this is the only information included in ADEM's Engineering Analysis, the public is unable to meaningfully review its proposed values and comment on whether they are technically accurate.[96, 97] The ADEM does not "show its work" and explain how the values were calculated.

Figure 5. Uncontrolled Potential Emissions.[98]

Pollutant	Animal Feed Ingredients Processing R1 + RTO	Scrubber #1 100,000 scfm	Scrubber #2 100,000 scfm	Scrubber #3 75,000 scfm
PM_{total}	5.71	9.84		
PM_{cond}	3.94	7.94		
PM_{fil}	1.77	1.90		
PM_{10}	5.26	9.86		
$PM_{2.5}$	2.56	9.86		
NO_x	9.00	-		
SO_2	35.9	-		
VOC	274.5	274.5		
H_2S	18.86	0.94		
NH_3	6.11	1.51		

It is unclear from ADEM's brief description in the PTE emission table where and how the values were derived, for example:

- What stack testing does ADEM refers to, what test methods were used? Were the methods ones that are EPA-approved?
- Were the stack testing results reviewed by ADEM to ensure accuracy and compliance with the test requirements?

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[95] Engineering Analysis at 1. (It is unclear whether ADEM's analysis relied on stack test data referenced at pdf page 41 of Pilgrim's application, which appears was only conducted for one of the three scrubbers. Moreover, the "Mt. Pleasant Stack Testing Data" – referenced by the applicant – was not made available to the public during the comment period, nor does the public know whether ADEM was provided access to it. It appears the applicant's reference to "Mt. Pleasant" was regarding its facility in Mt. Pleasant, Texas; but without additional details the Commenters were unable to locate the stack testing data on the Texas Commission of Environmental Quality's website, https://www.tceq.texas.gov/permitting/air.))

[96] ADEM's analysis does not indicate that it reviewed the permit applicant's application and proposes to determine that the certain information from the permit applicant's accurate and that ADEM relies on it for purposes of ADEM's PTE values.

[97] Here and throughout ADEM's proposed approval, the information it relies on must be technical accurate. Indeed, the EPA's Environmental Appeals Board has emphasized that a practically enforceable limitation is based on "technically-accurate" information. *In Re Peabody W. Coal Co.*, 2005 WL 428833, at *8 (E.P.A. Feb. 18, 2005).

[98] Engineering Analysis at 1.

- What emission units, controls, fuel, etc., does the similar facility use? What information did ADEM base its assessment on to suggest that the facility that conducted the stack test is "similar" to the proposed facility?
- What emission factors did ADEM use to generate these numbers?
- How does ADEM know that the maximum process weight at the facility that conducted the stack test is similar to its proposed permit?[99]

Without supporting detail and rationale, ADEM's table of PTE emissions lacks a reasoned basis.[100] Furthermore, its Engineering Analysis does not include the PTE for HAPs, which are also emitted from and regulated by other permitting agencies for rendering plants.[101] ADEM must redo the PTE table of pollutants and provide rationale for the public to review and understand the basis for the emissions presented. Moreover, ADEM must include the missing sources, units and pollutants in the revised table.

F. ADEM Does Not Comply with the Construction Permit Requirements

ADEM's proposed permits do not cite to the rule *minor source* or *synthetic minor source rule* provisions as its authority for proposing to approve construction of the applicant's rendering plant. Instead, ADEM cites to its major source rules (PSD) and adds the notation "Anti-PSD" below the cited rule. Figure 6 is an example of how this appears in the proposed permit.

[99] Notably, the permit applicant has not disclosed the maximum process weight for the applicant's rendering plant.
[100] It is further unclear whether ADEM developed these numbers on its own, or whether it used information from the permit applicant. There are no statements in the Engineering Analysis that indicate it either did – or did not – use information from the applicant in developing this table.
[101] *Infra* note 84.

Figure 6. Excerpt from Proposed Animal Feed Ingredients Plant Permit.[102]

Emission Standards	
1. Total particulate matter emissions from the RTO stack shall not exceed the lesser of 1.20 lb/hr or the allowable set by ADEM Admin. Code. r. 335-3-4-.04(1).	Rule 335-3-4-.04(1) Rule 335-3-14-.04 (Anti-PSD)
2. Total particulate matter emissions from the combined packed-bed scrubbers (S-1, S-2, & S-3) shall not exceed the lesser of 2.25 lb/hr or the allowable set by ADEM Admin. Code r. 335-3-4-.04(1).	Rule 335-3-4-.04(1) Rule 335-3-14-.04 (Anti-PSD)
3. Volatile organic compound (VOC) emissions from the RTO stack shall not exceed 3.36 lb/hr when the RTO and air washer are operating.	Rule 335-3-14-.04 (Anti-PSD)
4. VOC emissions from the packed-bed building air scrubbers No. 1 and No. 2 shall not exceed 10.6 lb/hr per scrubber while they are operating.	Rule 335-3-14-.04 (Anti-PSD)
5. VOC emissions from the packed-bed building air scrubber No. 3 shall not exceed 7.98 lb/hr while the scrubber is operating.	Rule 335-3-14-.04 (Anti-PSD)

There are no requirements in ALA. ADMIN. CODE r. 335-3-14-.04 for an "Anti-PSD" permit proviso. It is unclear what authority ADEM relies on with its Anti-PSD approach – Anti-PSD is not defined in this proposed action, Further, it is unclear what regulations ADEM applied in analyzing the application to form the basis of its proposed approval, as none are cited for *construction* of the plant.[103] ADEM's Engineering Analysis only cites the specific rules for specific equipment, fuel use, and industrial categories. It neither mentions nor applies the overarching authority it relies on to propose approval of the two permits. ADEM missed a step. It needed to first decide what category of construction permit this facility needs. The three options under the federal Clean Air Act construct are: major, minor, or synthetic minor. "Anti-PSD" is not an option.

Although not mentioned in ADEM's proposed approval of the two permits, its SIP rules contain provisions that allow "Potential Major Sources"[104] - greenfield[105] major stationary sources that would otherwise need a major source permit - to seek synthetic minor status via a permit. This rule is titled the "Synthetic Minor Operating Permits" and requires that a Potential Major Source "apply to the Department for a Synthetic Minor Operating Permit."[106] The

[102] Proposed Animal Feed Ingredients Plant Permit, at 6 ("These units have enforceable limits in place in order to prevent them from being subject to the requirements of ADEM Admin. Code r. 335-3-14-.04, "Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration);" "Total particulate matter emissions from the RTO stack shall not exceed the lesser of 1.20 lb/hr or the allowable set by ADEM Admin. Code. r. 335-3-4-.04(1);" "Total particulate matter emissions from the combined packed-bed scrubbers (S-1, S-2, & S-3) shall not exceed the lesser of 2.25 lb/hr or the allowable set by ADEM Admin. Code r. 335-3-4-.04(1);" "Volatile organic compound (VOC) emissions from the RTO stack shall not exceed 3.36 lb/hr when the RTO and air washer are operating;" "VOC emissions from the packed-bed building air scrubbers No. 1 and No. 2 shall not exceed 10.6 lb/hr per scrubber while they are operating;" and "VOC emissions from the packed-bed building air scrubber No. 3 shall not exceed 7.98 lb/hr while the scrubber is operating.

[103] The Engineering Analysis also characterizes its proposal as including a "PSD avoidance limit." Engineering Analysis at 3. But no citation for authority is provided in that discussion.

[104] ALA. ADMIN. CODE r. 335-3-15-.03.

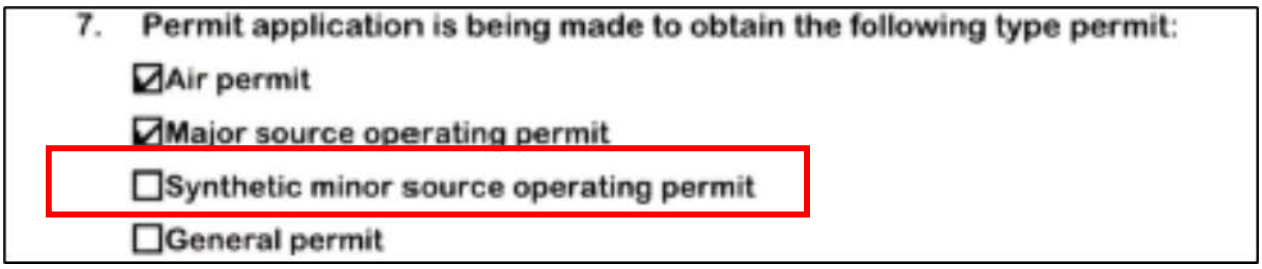
[105] "Greenfield" sources are those that construct on land that is undeveloped.

[106] ALA. ADMIN. CODE r. 335-3-15-.04 (3).

Synthetic Minor Operating Permits includes substantive requirements that must be met before ADEM issues a permit, and we discuss those requirements below.

ADEM's permit application forms include an area for the applicant to indicate the type of permit requested. A review of the application submitted by the permit applicant reveals that it did *not* request a "synthetic minor source operating permit," rather as seen in Figure 7, it requested an "air permit."[107]

Figure 7. Excerpt from Permit Application: Applicant did not Request Synthetic Minor Source Operating Permit.


7. Permit application is being made to obtain the following type permit:

☑ Air permit

☑ Major source operating permit

☐ Synthetic minor source operating permit

☐ General permit

Moreover, Pilgrim's application was titled under the operating permit program – Title V of the Clean Air Act, as seen in Figure 8 below:

[107] Permit Application at pdf 10.

Figure 8. Excerpt from Pilgrim's Pride Application: Requesting Title V Permit to Operate.

Title V Permit Application
Gadsden Animal Feed Ingredients Plant

Pilgrim's

Pilgrim's Pride Corporation
Gadsden, Alabama

RECEIVED
JUL 31 2020
ADEM AIR DIVISION

Pilgrim's application used the ADEM's forms for Title V permits. Title V permits are for sources that received a construction permit(s) and are operating. The Title V permit forms do not contain the information required for a major source that seeks approval to construct using synthetic minor terms and conditions limiting its PTE. This is no doubt why the information that the ADEM considered does not contain the information required by the regulations. Although portions of the Title V form may contain some of the required information, they do not include all information needed. As detailed throughout our comments the application is incomplete. Moreover, as seen in Figure 9, below, ADEM's website identifies to companies and the public the synthetic minor permit as one type of permit available, citing to the relevant rules. Additionally, ADEM's website explains that "[t]he Air Division utilizes the same application forms for Air Permits, MSOPs, and SMOPs. Each permit applicant must complete an ADEM Form 103 (Facility Identification Form) for each project. This form must be signed by the appropriate facility representative. Process/equipment specific forms are also required to be submitted in an application." It is unclear why the ADEM proceeded with proposing to approval this permit without the information required on Form 103.

Title V permit applications are required and submitted *after* construction permits and once a facility has begun operation.[108] This proposed rendering plant is not at that stage yet. Indeed, operating permit applications are due within 12 months *after* commencing construction.[109] Therefore, Pilgrim's Pride submitted the wrong application because it is not yet operating.[110] It is no wonder the application does not contain the necessary information for construction, and prematurely includes other information without a basis.[111, 112] Furthermore, ADEM's website provides the following explanatory information regarding the various permits it issues and its authority for issuing them.

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[108] Chapter 335-3-16 Major Source Operating Permits; ALA. ADMIN. CODE r. 335-3-16-.01(2)("Sources … subject to preconstruction
review under Title I of the Act must apply for a permit under this chapter within 12 months after commencing operation…)

[109] *Id.*

[110] Commenters note that the applicant's Permit Application shows that it was aware of the construction permitting regulations for PSD and synthetic minor sources. Permit Application at pdf 86. ("General Permitting Procedures 335-3-14 (As applicable) 335-3-16 (As applicable)".)

[111] For example, including lists of activities identified as "trivial and insignificant." Permit Application, Attachment I, Trivial and Insignificant List, at pdf 91. Identification of "insignificant activities" is done by an owner or operator at an operating facility subject to the Title V permit program. Moreover, similar to the construction permit program, the Title V regulations prohibit the permit applicant from omitting information needed to determine the applicability of, or to impose, any applicable requirement that apply to the source. 40 C.F.R. §70.5(c)(" Standard application form and required information. The State program under this part shall provide for a standard application form or forms. Information as described below for each emissions unit at a part 70 source shall be included in the application. The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. *An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement*, or to evaluate the fee amount required under the schedule approved pursuant to §70.9 of this part.") (emphasis added) *At construction the construction permitting stage, the applicant must identify units and emissions and present information and a basis for the PTE calculations.*

[112] Relevant to these comments, but not relevant for these proposed permits, Commenters note that under the State's Title V list of "TRIVIAL AND INSIGNIFICANT ACTIVITIES" (Sept. 23, 2009), wastewater treatment activities for poultry rendering plants is not on the list, available at http://adem.alabama.gov/programs/air/permitting.cnt. Additionally, ADEM's regulation covering insignificant activities for Title V permits, which requires EPA review and approval before air emissions or air emission units are added to the list, is in ALA. ADMIN. CODE r. 335-3-16-.01(o)(" "Insignificant Activity" generally means any air emissions or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1000 pounds per year of any pollutant listed in Appendix G of ADEM Admin. Code r. 335-3. Subject to EPA review and approval, the Director may determine that certain types or classes of units may be considered insignificant at higher emission levels, or that, due to the nature of the pollutant(s) emitted, a unit may be considered significant at a lower emission rate. The Director shall maintain lists of air emissions or air emission units which are considered to be insignificant without a determination of emission levels by the permittee. Changes to this list are subject to EPA review and approval. Activities subject to applicable requirements as defined in paragraph (e) of this rule shall not be classified as insignificant.")

Figure 9. ADEM's Permit Categories and Authority for Issuance

Type	Basis for Permit	Duration
Air Permit (Minor Source)	335-3-14-.01	Does not expire
Air Permit (NSR/PSD)	335-3-14-.04	Does not expire
Air Permit (Gasoline Transporters)	335-3-6-.20	Permit does not expire, but Air Sticker must be renewed annually
Major Source Operating Permit (MSOP)	335-3-16-.03	5 years
Synthetic Minor Operating Permit (SMOP)	335-3-15-.03	Does not expire
Acid Rain Permit	335-3-18	5 years
Clean Air Interstate Rule (CAIR) Permit	335-3-8-.18	5 years*
NOx Budget Trading Program Permit	335-3-8-.05	5 years
Clean Air Mercury Rule (CAMR) Permit	335-3-21	5 years**
Asbestos Removal Contractor Certifications	335-3-11-.05	1 year

It seems ADEM ignored the fact that it was reviewing applicant's "Title V" permit application, and attempted to characterize the emission requirements as "PSD-avoidance limits" using the "Anti-PSD" notations. ADEM does not have regulations that provide for "Anti-PSD" emission limits. The rules to create the synthetic minor permit emission limitations, which appears what the applicant seeks are clearly found in ADEM's regulations.

ADEM's regulations contained in Chapter 335-3-15, Synthetic Minor Operating Permits, include provisions for "New Potential Major Sources,"[113] which allows Potential Major Sources to "apply to the Department for a Synthetic Minor Operating Permit."[114] The rule further provides

> Any new *Stationary Source* applying for a Synthetic Minor Operating Permit at a greenfield site shall not initiate construction until the Synthetic Minor Operating Permit has been issued, "Greenfield site" shall have the same meaning as defined in ALA. ADMIN. CODE r. 335-3-14-(7)(a)1.(i).[115]

Therefore, ADEM lacks authority to proceed with the permits as currently proposed.[116] Finally, under these circumstances Pilgrim's Pride cannot proceed with construction activities at the proposed Gadsden Animal Feed Ingredients plant because ADEM's rules provide that the

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[113] ALA. ADMIN. CODE r. 335-3-15-.04(3)("(a) Any new Potential Major Source which commences construction after November 15, 1995, may apply to the Department for a Synthetic Minor Operating Permit. This application shall be accurately completed and submitted to the Department prior to such construction.
(b) A Synthetic Minor Operating Permit for a new Potential Major Source shall expire and the application shall be canceled two years from the date of issuance of the Synthetic Minor operating Permit if construction has not begun.
(c) Any new Stationary Source applying for a Synthetic Minor Operating Permit at a greenfield site shall not initiate construction until the Synthetic Minor Operating Permit has been issued, "Greenfield site" shall have the same meaning as defined in ALA. ADMIN. CODE r. 335-3-14-(7)(a)1.(i).")
[114] ALA. ADMIN. CODE r. 335-3-15-.04(3)(a)(" Any new Potential Major Source which commences construction after November 15, 1995, may apply to the Department for a Synthetic Minor Operating Permit.")
[115] ALA. ADMIN. CODE r. 335-3-15-.04(3)(c).
[116] In contrast, we note that for other Clean Air Act permits issued by ADEM to Pilgrim's, EPA's ECHO database identifies several that hold "operating synthetic minor permits" (e.g., Enterprise Processing Plant and Gunthersville Processing Plant, these are examples not an inclusive list) (screenshots enclosed). It is unclear why ADEM has arbitrarily decided to propose "Anti-PSD" permits for the current permit applications.

source: "… *[S]hall not initiate construction until the Synthetic Minor Operating Permit has been issued …*"[117]

G. ADEM Does Not Comply with the Synthetic Minor Operating Permit Requirements

In addition to incorrectly characterizing the basis for it proposed approval, ADEM's proposal lacks information and analysis required by ADEM's Synthetic Minor Operating[118] Permits Rule.[119] The following is a discussion what is missing from these proposed permit actions:[120]

- **The Permits Lack the Terms Required for Practical Enforceability.** ADEM's rule requires that the permit conditions
  - [S]hall be permanent, quantifiable and otherwise enforceable as a practical matter. Synthetic Minor Operating Permits which do not conform to the provision in this Chapter and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.[121]

  As discussed below in Section III.H, ADEM's proposed permits lack provisions that are enforceable as a practical matter.

- **Public Notice Inaccurate.** ADEM's public notice for the two permits indicated "proposed issuance of **Air Permits**"[122] for the two permits covered by its announcement. "Air Permits" are defined as "any permit issued pursuant to the regulations in Chapter Rule 335-3-15-14"[123] – which includes ADEM's major source permitting rules. Therefore, the public notice for this action misinformed the public and did not provide critical information the public needed to know to meaningfully review and provide comments.

- **Missing Information Requires Denial**. ADEM's rules provide that the "Department shall deny a Synthetic Minor Operating Permit if the applicant does not show that every article, machine, equipment, or other contrivance, the use of which may cause

[117] ALA. ADMIN. CODE r. 335-3-15-.04(3)(c). Additionally, "Greenfield site" shall have the same meaning as defined in ALA. ADMIN. CODE r. 335-3-14-(7)(a)1.(i).
[118] We note here that ADEM's requirements for synthetic minor construction permits are found within the Synthetic Minor Operating Permit Rule, which includes requirements for new sources that seek a construction permit, as well as existing sources.
[119] ALA. ADMIN. CODE r. Chapter 335-3-15. Synthetic Minor Operating Permits.
[120] Note, this is not a comprehensive list. Furthermore, as ADEM neither proposed the permits in accordance with the correct rules, nor applied the requirements from those rules, is cannot do a "surprise switcheroo" and issue permits at the end of this proceeding after the fact. Such actions would not be a logical outgrowth of what was proposed. Additionally, the public has had no opportunity to review and comment on how an "after the public comment" Engineering Analysis considers and applies the substantive requirements in the Synthetic Minor Operating Permit to the proposed construction activities.
[121] 335-3-15-.04(1)(h)
[122] Public Notice at 1.
[123] ALA. ADMIN. CODE r. 335-3-15-.01(b).

the issuance of air contaminants, is so designed, controlled, or equipped with such air pollution control equipment, that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of this Administrative Code."[124] As discussed in our comments, ADEM's Engineering Analysis is incomplete and it lacks information to conclude that the proposed facility will operate in compliance with the Administrative Code.

- **Missing Information Not Requested From Applicant.** Despite substantial information missing from the application as submitted,[125] we found nothing in ADEM's eFile to indicate that prior to proposal, it used its authority to "require the applicant to furnish further information or further plans or specifications."[126]

- **No Determination NAAQS Will Be Protected**. ADEM's Engineering Analysis does not consider whether this proposed "[n]ew Stationary Source" would "interfere with attaining or maintaining a standard when such Stationary Source … would, at a minimum, exceed the … significance levels at any locality that does not or would not meet the National Primary and Secondary Ambient Air Quality Standards, as defined in ALA. ADMIN. CODE r. 335-3-1.03…"[127] ADEM's Engineering Analysis contains no consideration of the impacts from the proposed source on the NAAQS.

- **Noncompliance at Other Facilities Not Considered.** Noncompliance at other facilities owned and operated by the permit applicant - and facilities owned and operated by other corporations within the JBS Swift corporate family - are of significant concern to the commenters. Contrary to the regulatory requirements, ADEM's analysis in preparing and proposing the two permits does not show it considered noncompliance at the other facilities the applicant operates.[128]

  The rule further provides that the Director may deny the application for construction of a new source, if the Director determines that the applicant operates other facilities in the state that are in substantial noncompliance, until the noncompliance is corrected.[129] Moreover, since ADEM did not explain to the public that the provisions of the Synthetic Minor Operating Permit rule apply to the proposed facility, the public did not have an opportunity to provide information alleging violations at Pilgrim's facilities in the State. Gadsden residents have expressed concerns regarding the lack of ADEM's enforcement response to complaints and presence within their

[124] ALA. ADMIN. CODE r. 335-3-15-.02 (8)(a).
[125] As discussed here, and elsewhere in our comments.
[126] ALA. ADMIN. CODE r. 335-3-15-.02 (8)(d); Alabama Code § 22-28-18 (1975) ("Providing of information. The commission may require the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods, at such locations, intervals and procedures as the commission shall prescribe, and provide such other information as the commission reasonably may require.")
[127] ALA. ADMIN. CODE r. 335-3-15-.02 (8)(f).
[128] ALA. ADMIN. CODE r. 335-3-15-.02 (8)(g).
[129] ALA. ADMIN. CODE r. 335-3-15-.02 (8)(g) (the rule includes other provisions not summarized here).

community over allegations of noncompliance for the existing rendering facilities in Gadsden.[130]

EPA's Enforcement and Compliance History Online (ECHO) database indicates there are a total of *16 Pilgrim's Pride facilities in Alabama*, located in the following cities, which ADEM did not evaluate in this proposed action.[131]

- Cullman
- Enterprise (3)
- Falkville (2)
- Tuscumbia
- Boaz
- Midland City (2)
- Russellville (2)
- Guntersville (3)
- Athens.[132]

While ADEM's Air Program did not evaluate the Pilgrim's Pride facilities in Alabama, Attachment A to Pilgrim's Pride SID Permit Application includes the follow list of its Alabama Facilities with Alabama Permits.

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[130] Gadsden residents are also concerned given information they have learned about other communities in the U.S. significantly impacted by rendering plant owners. *See, e.g.*, Lynch, Kevin, "Ohio EPA investigating foul stench in Holmes County," Times Reporter (Oct. 21, 2019), available at https://www.the-daily-record.com/news/20191020/ohio-epa-investigating-foul-stench-in-holmes-county; AP, "Odor from troubled rendering plant overwhelms neighbors," (Sept. 24, 2018), available at https://apnews.com/article/4f3738c892c54eb6bb54597b73399f16; Floyd, John F., "JOHN F. FLOYD COMMENTARY: Can Pilgrim's promises be trusted?," The Gadsden Times (Dec. 20, 2020), available at https://www.gadsdentimes.com/story/opinion/columns/2020/12/20/can-pilgrims-promises-plant-trusted/3959964001/?fbclid=IwAR2jUtx_s3GHVP0D0gPBd376331tqSZpQydDjuUNavbbYzGcCq65XYnBmaM; Patrick, Anna, The Poultry Plant That's Changed the Face of This Appalachian Town, (Aug. 15, 2019), available at https://www.wvpublic.org/news/2019-08-15/the-poultry-plant-thats-changed-the-face-of-this-appalachian-town?fbclid=IwAR0QCwQWFglQ3LZA8r4edQ5BYB6RfAqbRuuIw6skKFXi5A46NKxlGVho3gs.

[131] EPA ECHO Database Corporate Compliance Screener, which organizes existing ECHO facility data into reports that highlight recent compliance issues or enforcement actions based upon data entered into national data systems of record. Search for "Pilgrim's Pride," in Alabama identified 16 facilities, 11 of which are subject to the Clean Air Act (accessed Jan. 29, 2020), available at https://echo.epa.gov/facilities/compliance-screener (enclosed). Also enclosed is a report generated from the ECHO Database listing the Alabama and EPA enforcement actions taken against Pilgrim's Pride in Alabama.

[132] *Id.*

Figure 10. Pilgrim's Pride Corporation Alabama Facilities with Alabama Permits.[133]

Falkville Feed Mill (4234 Hwy 31 SW, Falkville AL)
Facility ID: 2023

Permit Type	Permit #	Issued By	Expires
General NPDES Permit	ALG150053	ADEM	5/31/2022
Air Permit (Grain Dryer)	712-0053-X004	ADEM	
Air Permit (Pelleting System)	712-0053-X009	ADEM	
Air Permit (Dry Ingredients Receiving)	712-0053-X010	ADEM	
Air Permit (Nat. Gas Boiler)	712-0053-X012	ADEM	
Air Permit (Truck Receiving)	712-0053-X013	ADEM	
Air Permit (Rail Receiving)	712-0053-X014	ADEM	
Air Permit (Pnuematic Receiving)	712-0053-X017	ADEM	
Air Permit (Bulk Grain Loadout)	712-0053-X018	ADEM	

Enterprise Processing Plant (4693 County Rd 636, Enterprise AL)
Facility ID:

Permit Type	Permit #	Issued By	Expires
NPDES Permit	AL0003697	ADEM	6/30/2022
Air Permit (Nat. Gas Boiler)	602-0005-X006	ADEM	
Air Permit (Nat. Gas Boiler)	602-0005-X007	ADEM	

Tuscumbia Feed Mill (2022 Golden Rd, Tuscumbia AL)
Facility ID:

Permit Type	Permit #	Issued By	Expires
UIC Permit	ALSI9917427	ADEM	Issuance Pending
General NPDES Permit	ALG150040	ADEM	5/31/2022
Air Permit (Grain Loadout)	701-0038-X006	ADEM	
Air Permit (Nat. Gas Boiler)	701-0038-X012	ADEM	
Air Permit (Nat. Gas Boiler)	701-0038-X014	ADEM	
Air Permit (Receiving and Storage Systems)	701-0038-X016	ADEM	
Air Permit (Hammermill)	701-0038-X017	ADEM	
Air Permit (Pelleting System)	701-0038-X018	ADEM	
Air Permit (Pelleting System)	701-0038-X019	ADEM	

Guntersville Truck Shop (3801 Lake Guntersville Pk Dr, Guntersville AL)
Facility ID:

Permit Type	Permit #	Issued By	Expires
General NPDES Permit	ALG140080	ADEM	9/30/2022

[133] SID Permit Application at 19-21.

Midland City Feed Mill (1042 Forest Drive, Midland City)
Facility ID:

Permit Type	Permit #	Issued By	Expires
General NPDES Permit	ALG150169	ADEM	5/31/2022
Air Permit (Receving)	604-0026-X004	ADEM	
Air Permit (Grain Grinding)	604-0026-X005	ADEM	
Air Permit (Pneumatic Receiving	604-0026-X006	ADEM	
Air Permit (Pelleting System)	604-0026-X007	ADEM	
Air Permit (Finished Feed Loadout)	604-0026-X008	ADEM	
Air Permit (Bulk Grain Loadout)	604-0026-X009	ADEM	
Air Permit (Nat. Gas Boiler)	604-0026-X010	ADEM	

Ranburne Hatchery (6624 County Rd 49, Ranburne)
Facility ID:

Permit Type	Permit #	Issued By	Expires
UIC Permit	ALSI9915003	ADEM	1/12/2021
Air Permit (Hammermills and Bins)	604-0028-X002	ADEM	
Air Permit (Pelleting Systems)	604-0028-X003	ADEM	
Air Permit (Finished Feed)	604-0028-X004	ADEM	
Air Permit (2 Boilers)	604-0028-X005	ADEM	
Air Permit (DDG Bin Baghouse)	604-0028-X006	ADEM	
NPDES Permitting (SW, Blowdown)	ALG150175	ADEM	5/31/2022
UIC Permit for boiler blowdown	ALSI9923006	ADEM	5/15/2022

Guntersville Feed Mill (2950 E Lake Rd, Guntersville)
Facility ID:

Permit Type	Permit #	Issued By	Expires
General NPDES Permit	ALG150045	ADEM	5/31/2022
Air Permit (Nat. Gas Boiler)	711-0006-X017	ADEM	
Air Permit (Crane Barge Unloading System)	711-0006-X028	ADEM	
Air Permit (Pelleting System)	711-0006-X030	ADEM	
Air Permit (Hammermill)	711-0006-X031	ADEM	
Air Permit (Nat. Gas Boiler)	711-0006-X032	ADEM	
Air Permit (Headhouse Grain Handling)	711-0006-X033	ADEM	
Air Permit (Pneumatic Truck Receiving)	711-0006-X034	ADEM	
Air Permit (Pelleting System)	711-0006-X035	ADEM	
Air Permit (Pellet System)	711-0006-X036	ADEM	

Guntersville Processing Plant (3500 E Lake Rd, Guntersville)
Facility ID:

Permit Type	Permit #	Issued By	Expires
SID Permit	IU084800032	ADEM	10/31/2025
Stormwater NPDES Permit	AL0082384	ADEM	6/30/2024
Air Permit (Nat. Gas Boiler)	711-0058-X001	ADEM	
Air Permit (Nat. Gas Boiler)	711-0058-X002	ADEM	

Russellville Processing Plant (3500 E Lake Rd, Guntersville)
Facility ID:

Permit Type	Permit #	Issued By	Expires
NPDES Permit	AL0060470	ADEM	Reissuance Pending

Additionally, Pilgrim's SID Application also identifies a list of four of its nine facilities with "Alabama Violations, seen in the below Figure 11.[134]

[134] Of note is that in addition to the information presented here, EPA's ECHO database includes additional EPA penalties assessed for Pilgrim's Pride Alabama facilities.

Figure 11. Pilgrim's Pride Corporation Alabama Facilities – Alabama Violations.[135]

Enterprise Processing Plant
Facility ID:

Action Type	Date of Action	Permit Violated	Issued By
Notice of Violation	5/22/2020	NPDES	ADEM
Notice of Violation	5/21/2018	NPDES	ADEM
Consent Order	6/12/2012	NPDES	ADEM
Notice of Violation	5/6/2009	NPDES	ADEM

Tuscumbia Feed Mill
Facility ID: 13306

Action Type	Date of Action	Permit Violated	Issued By
Warning Letter	11/9/2010	NPDES	ADEM
Notice of Violation	12/7/2007	UIC	ADEM

Guntersville Feed Mill
Facility ID:

Action Type	Date of Action	Permit Violated	Issued By
Warning Letter	5/17/2016	NPDES	ADEM
Warning Letter	12/10/2015	NPDES	ADEM

Russellville Processing Plant
Facility ID:

Action Type	Date of Action	Permit Violated	Issued By
Warning Letter	2/19/2010	NPDES	ADEM
Warning Letter	12/10/2015	NPDES	ADEM
Notice of Violation	4/20/2007	NPDES	ADEM

- **Missing Stack Height Requirements.** ADEM must apply the stack height provisions to this facility's stacks, so that a permit applicant is not allowed to construct a stack at a height that exceed the requirements in an attempt to avoid good engineering practice and other requirements for air quality the stack height rule protects.[136] ADEM's Engineering Analysis lacks detailed information about the manufacturers and model numbers of the equipment, emission controls, and construction it proposes to approve and does not reference information in its files it relied on for its proposed approval. Thus the public lacks the information to determine whether the permit applicant's plans include construction of stacks and if so, whether the stack height rules will be complied with.

[135] SID Application Permit at 22.
[136] ALA. ADMIN. CODE r. 335-3-15-.02 (9).

H. ADEM's proposed permit lacks plant wide emission limits necessary for all pollutants subject to major source status

ADEM's proposed approval of the two permits apparently concludes that the mechanisms in place to limit pollutant output would be effective and enforceable. ADEM's conclusion is misplaced and unsupported.

ADEM's PTE emissions table divided into two categories: (1) "Animal Feed Ingredients Processing R1 + RTO); and (2) scrubbers 1, 2 and 3.[137] Therefore, the public has no information regarding PTE contributions from each of the proposed permits, and also lacks information on the amount of emissions from emission units and activities. Because of this, there is no way to assess whether the proposed plant wide limit includes emissions from the limited set of equipment covered by these two permits.[138]

The proposed Air Permit No. 307-0051-X001 attempts to create a plant wide emission limit for only one pollutant – VOCs - since ADEM's PTE table only identifies VOCs as exceeding the 250 tpy threshold for PSD major sources. Based on PTE values provided by other permitting agencies,[139] once ADEM prepares a complete and accurate assessment of emissions from the proposed plant, it appears very likely that other pollutants will also exceed the major source threshold, including SO2 and HAPs (both on a combined, and single pollutant basis).

Additionally, although ADEM does not identify and include the manufacturer and model number for proposed Air Permit No. 307-0051-X002 for the three proposed boilers (Boiler Permit), the permit applicant identifies Boilers #1, 2, 3 as "Victory Energy F2-WB-1600-S165."[140] While one can make certain engineering assumptions regarding boiler criteria pollutant emissions (e.g., NO_x and CO), for permitting, CAA methodology is necessary to develop PTE emission estimates. Information on the Victory Energy fire tube boilers that Pilgrim's plans to purchase does not appear to be available of the Victory Energy's website where it posts information on its fire tube boilers.[141] Thus, the Commenters were neither able to review nor locate information about the boilers mentioned in the application.[142] Furthermore, as the proposed permit does not identify the manufacturer and model number, the permit would allow the applicant to install a boiler made by any company. This is of concern as emission testing is done on particular boiler models to ensure accuracy.

I. ADEM's proposed permit fails to limit PTE: Its Proposed Emission Limitations - in Contrast to the Required Physical and Operational Limitations - Do Not Allow the Proposed Plant to Escape PSD

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[137] *Id.*
[138] Which as discussed elsewhere, do not meet the construction permit regulations for synthetic minor sources.
[139] *Supra* note 84.
[140] Permit Application at 18, 21, 24.
[141] *E.g.*, Victory Energy, FRONTIER Wetback Firetube Brochure, available at http://eb-victory-dev.us-east-1.elasticbeanstalk.com/fa-content/uploads/2017/05/FRONTIER-FIRETUBE_WETBACK.pdf. Perhaps the permit applicant intends to order a custom-made boiler, if that is the plan, it should be noted as such.
[142] The burden should not be on the public to track this information down to verify information regarding boiler size and emissions.

As discussed in Section II, a source may avoid the requirement to obtain a PSD permit by limiting their PTE. ADEM's regulations further provide that a source seeking a synthetic minor permit shall have permit terms that are "permanent, quantifiable and otherwise enforceable as a practical matter." In order to determine whether the proposed terms and conditions that are included in these permits are "enforceable as a practical matter" to limit PTE and exempt the source from PSD review, we apply the definition of PTE. The definition of PTE states that:

> Any physical or operation limitation' on the ability of a source to emit a pollutant shall be considered in calculating the potential to emit if the limitation is federally enforceable.[143]

"In describing what is meant by "physical or operational limitation," the regulation specifically refers to (1) air pollution control equipment, (2) restrictions on hours of operation, and (3) restrictions on the amount of material combusted, stored, or processed. ... The definition at no point suggests that the term "physical or operational limitation" extends to restrictions on actual emissions."[144]

The proposed emission standards for Permit No. 307-0051-X002 appear in Figure 12 below.[145] The emission standards in this proposed permit include the following types of emission limits: lb/MMBtu, opacity standards, and a restriction to use of a specific fuel. None of which is a physical or operational limitation. Furthermore, the proposed emission standards are restrictions on actual emissions, and the definition of PTE does not extend to actual emissions. The second proposed permit suffers the same flaws.

Figure 12. Excerpt from Proposed Permit No. 307-0051-X002: Emission Standards.

Emission Standards	
1. Particulate emissions from the boilers shall not exceed 0.217 lb/MMBtu.	Rule 335-3-4-.03(1)
2. Sulfur dioxide (SO_2) emissions from the boilers shall not exceed 4.0 lb/MMBtu.	Rule 335-3-5-.01(1)
3. The boilers shall meet the following opacity standards:	Rule 335-3-4-.01(1)
a. Except for one 6-minute period during any 60-minute period, no unit shall discharge into the atmosphere particulate that results in an opacity greater than 20%, as determined by a 6-minute average.	
b. At no time shall any unit discharge into the atmosphere particulate that results in an opacity greater than 40%, as determined by a 6-minute average.	

[143] 40 C.F.R. § 52.21(b)(4), ALA. ADMIN. CODE r. 335-3-14-.04 (2)(d).
[144] *U.S. v. Louisiana-Pacific Corp*., 682 F.Supp. 1122, 1132 (1987) (Louisiana-Pacific), *accord Cascade Kelly Holdings* at 1105. After the Court's decision, and in subsequent years, EPA issued numerous memorandums (*e.g.*, 1987 SIP Enforceability, 1989 NSR PTE Guidance, 1989 NSR PTE Guidance, 1989 NSR PTE Guidance, 1995 Options for Limiting PTE, 1996 Interim PTE Policy) that provided guidance, explanations, and examples for federal, state and local air permitting agencies, all of which echoed the Louisiana-Pacific Court's decision.
[145] Proposed Air Permit No. 307-0051-X002 at 6-7

4. The facility is limited to the use of natural gas only as a fuel for the boilers. Any plans to change the type of fuel must receive prior approval from the Department.	

The proposed emission standards for Permit No. 307-0051-X001, seen in the below Figure 13, include the following types of emission limits: lbs/hr or the allowable set by ADEM Code r. 335-3-4-.04(1),[146] lbs/hr, limitation on use of natural gas (unless fuel change approved by ADEM) and opacity standards. This permit also lacks the restrictions necessary to limit PTE because it does not include restrictions on the hours of operation or on the amount of material combusted, stored, or processed.

Figure 13. Excerpt from Proposed Permit No. 307-0051-X001 Emission Standards[147]

Emission Standards	
1. Total particulate matter emissions from the RTO stack shall not exceed the lesser of 1.20 lb/hr or the allowable set by ADEM Admin. Code. r. 335-3-4-.04(1).	Rule 335-3-4-.04(1) Rule 335-3-14-.04 (Anti-PSD)
2. Total particulate matter emissions from the combined packed-bed scrubbers (S-1, S-2, & S-3) shall not exceed the lesser of 2.25 lb/hr or the allowable set by ADEM Admin. Code r. 335-3-4-.04(1).	Rule 335-3-4-.04(1) Rule 335-3-14-.04 (Anti-PSD)
3. Volatile organic compound (VOC) emissions from the RTO stack shall not exceed 3.36 lb/hr when the RTO and air washer are operating.	Rule 335-3-14-.04 (Anti-PSD)
4. VOC emissions from the packed-bed building air scrubbers No. 1 and No. 2 shall not exceed 10.6 lb/hr per scrubber while they are operating.	Rule 335-3-14-.04 (Anti-PSD)
5. VOC emissions from the packed-bed building air scrubber No. 3 shall not exceed 7.98 lb/hr while the scrubber is operating.	Rule 335-3-14-.04 (Anti-PSD)

[146] ALA. ADMIN. CODE r. 335-3-4-.04 (1) ("Class 1 Counties: No person shall cause or permit the emission of particulate matter in any one hour from any source in a Class 1 County in excess of the amount shown in Table 4-2 for the process weight allocated to such source. For sources in Class 1 Counties, interpolation of the data in Table 4-1 for process weight per hour up to 60,000 lbs/hr shall be accomplished by the use of the equation:
E = 3.59 P0.62 P<30 tons /hr
and interpolation and extrapolation of the data for process weight per hour values equal to or in excess of 60,000 lbs/hr shall be accomplished by use of the equation:
E = 17.31 P0.16 P>30 tons/hr
where E = Emissions in pounds per hour
P = Process weight per hour in tons per hour."

[147] Proposed Air Permit No. 307-0051-X002 at 6-7

6. The facility is limited to the use of natural gas only as a fuel for the RTO. Any plans to change the type of fuel must receive prior approval from the Department.	Rule 335-3-1-.04(1)
7. These sources shall meet the following opacity standards:	Rule 335-3-4-.01(1)
a. Except for one 6-minute period during any 60-minute period, no unit shall discharge into the atmosphere particulate that results in an opacity greater than 20%, as determined by a 6-minute average.	
b. At no time shall any unit discharge into the atmosphere particulate that results in an opacity greater than 40%, as determined by a 6-minute average.	

Permit issued by ADEM for sources that seek synthetic minor status must include "[r]estrictions on hours of operation or on the amount of material which may be combusted or produced" because they "are conditions which are, relatively speaking, much easier to 'federally enforce.'"[148] Moreover, "[c]ompliance with such conditions could be easily verified through the testimony of officers, all manner of internal correspondence, and accounting, purchasing, and production records. In contrast, compliance with blanket restrictions on actual emissions would be virtually impossible to verify or enforce."[149] Therefore, contrary to its SIP rule requirements, ADEM's proposed permit does not contain the "production or operational limitations" for the air pollutants for which it attempts to create synthetic minor status.

[148] *Louisiana-Pacific* at 1133.
[149] *Louisiana-Pacific* at 1133.

J. ADEM's proposed permits lacks adequate terms for monitoring, recordkeeping and reporting

Additionally, the permit lacks adequate terms and conditions necessary for monitoring, recordkeeping and reporting. For example:

- The four permit monitoring requirements for the RTO give inappropriate authority for the permit applicant to independently make decisions, without approval by ADEM.
- There are no recordkeeping and reporting requirements for the following, nor are there requirements on what the "visual inspection" is to look for, and if something is identified that is an issue, what, if anything, the permit applicant must do about it.
    - "A visual inspection of the temperature sensor components shall be performed at least semiannually or following a deviation."
- The emission monitoring requirements indicate the permit applicant with follow "manufacturer's procedures." The permit does not contain a requirement for the permit applicant to maintain those procedures onsite (or submit them to the ADEM), so that the State (and public) can verify that they are being followed. This is an issue throughout the permit.
- All reports required by the permit should be submitted to ADEM, because of the significant public concerns about the proposed plant.
- The requirements to monitor visible emissions are unclear, how often must the observation occur, what method is used, what timeframe must the corrections occur in, the correction activity should be documented and reported, when is the visible emission check done, that should also be documented and reported.
        - "1. If visible emissions are observed at any time, corrective actions shall be initiated within 4 hours, followed by an additional visible emissions check to confirm that emissions are reduced."
- There do not appear to be any requirements for reporting the following measurements: "Daily pH scrubbant readings shall be manually checked and recorded." Proposed Permit condition 5.(b) at pdf 17.This permit condition is not enforceable, "A deviation is defined as any pH reading outside the established range." Permit Condition 5.(b)b. at pdf 17. The proposed permit neither sets an "established range" for pH readings, nor does it include procedures for the permit applicant to develop an "established range." Rather, for the two scrubbants that are planned, (basic and acidic) the permit sets a minimum and maximum value. Moreover, the permit does not authorize use of the two scrubbants, which is an issue, as different scrubbants will have different emission levels. Furthermore, ADEM provides no analysis to support the effectiveness of the scrubbants to limit or reduce odors, contrary to the odor regulation requirements. The liquid flow rate monitoring requirements are similarly vague and not enforceable.

- The following permit condition is not enforceable, it only requires one monitoring device to measure liquid flow rate for two different pieces of air control equipment (the device and method to be used is not specificized, and it is unclear how one device is capable of measuring flow from two different pieces of equipment: "A monitoring device that measures the liquid flow rate for the scrubbers and the air washers shall be installed and operated according to the following"
- The liquid flow rate requirements are only recorded once per operating day. Permit Condition 6.(b). This does not demonstrate continuous compliance. While the condition includes the following "The flow rate shall be continuously monitored and recorded once per operating day" the permit lacks provisions for whether the system performs the monitoring and notifies the permit applicant that the liquid flow rate is not maintained at an adequate level, or whether there is another method to "monitor" this.
- Where is the requirement for a compliance test for the following, is that test reviewed, verified and approved by ADEM? "The liquid flow rate shall not drop below the average flow rate established during the most recent compliance test." Proposed Permit Condition 6.(c), at pdf 18.
- Recordkeeping and Reporting Requirements

  a) Proposed Permit Conditions 2, 3, 4, and 5, all require a "record of each incidence when corrective action was required" but the permit does not require the permit applicant to record what corrective action was taken.
- It appears the permit lacks recordkeeping and reporting requirements for the scrubber monitoring.

V. ADEM's Proposed Permits Lacks a Reasoned Basis

Permitting agencies required to make decisions based on a reasoned analysis. The ADEM fails to include supporting analysis for its proposed decisions, which is an abuse of the permitting authority's discretion.[150]

This section of our comments highlights several critical areas in which ADEM's proposed permit approvals are inadequate.

[150] Additionally, we note that the Engineering Analysis includes the recommendation that "[p]ending an inspection of the proposed construction site…. that Pilgrim's Pride Corporation be issued the following air permits for the new animal feed ingredient production facility in Gadsden, AL. If the facility adheres to the permit conditions, it should be in compliance with all State and Federal Air Pollution Regulations. Pilgrim's Pride should submit a Title V application within one year of startup." Engineering Analysis at 6. We have a number of concerns with this statement: (1) there was no information provided to the public regarding the results and activities performed during the planned inspection (although Commenters did discover information about a virtual site inspection that was described in an internal memo in an eFile folder not related to the proposed permits; and (2) based on our extensive comments, it is clear that by adhering to these two air permits will in no way ensure the facility is in compliance with the State and Federal Air Pollution Regulations. Moreover, the recommendation fails to address the fact that the Corporation prematurely submitted a "Title V application."

A. Lacks rationale for the control efficiency of the PTO

In this proposed action, ADEM's proposed Engineering Analysis does not specifically state what equipment will be used to control VOCs. For example, if ADEM assumes the PTO will control VOCs, its analysis must include information that supports the emissions capture efficiency it assumed for the PTO. Questions ADEM should have asked and provided public information on in making the permit applications available for public review and comment include: what vendor guarantee did the applicant obtain? What information does the vendor guarantee rely on? Where has the proposed PTO been applied that supports the assertion that it can successfully control VOC emissions at the proposed facility? What is the level of uncertainty in the PTO's performance and emission stack test data or other data collected regarding its control efficiency? Does the proposed level of control include uncertainty? Ultimately, in considering this information, if the control efficiency is demonstrated at 95% but the level of uncertainty is plus or minus 8 percent, it would be unreasonable for ADEM to assume a level of control that exceeds the uncertainty. None of this information appears in this proposed action.

B. Does not meet the odor regulation requirements

The definition of "air contaminant"[151] in ADEM's SIP regulations includes "any odor." Additionally, ADEM's definition of "air pollution"[152] – also in its SIP – includes "air contaminants [that would] would interfere with the enjoyment of life or property throughout the state." Furthermore, the definition of "air pollution" also includes "air contaminants [that] are, or tend to be, injurious to human health or welfare, animal or plant life or property…" Therefore, because odors from the proposed facility will impact the public's enjoyment of "life" and "property" ADEM was required to consider and propose controls for odor emissions. We not that these regulatory provisions are in the ADEM's SIP-approved rules, and thus federally enforceable.[153]

Furthermore, as the EPA Region 10 rendering plant source tests for its permitting action and extensive California air monitoring studies of rendering plants clearly demonstrate, rendering plants emit hazardous air pollutants, many of which are attributable to the odors released. Thus in addition to impacting one's enjoyment of life and property, odors from rendering plants are also injurious to human health.

ADEM's Engineering Analysis contains no consideration of, no supporting analysis explaining how the permit will control odor from the proposed plant. Odors from the plant would be released via work practices: loading and unloading trucks that contain materials with known odors; washing trucks that contain odorous materials; odors released to the environment when doors are opened and closed; odors released from the uncovered – and not enclosed – trucks

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[151] 335-3-1-.02(d)("Air Contaminant" shall mean any solid, liquid, or gaseous matter, *any odor*, or any combination thereof, from whatever source.) (emphasis added) (The control of air contaminant is used throughout the ADEM's regulations).

[152] 335-3-1-.02(e)("Air Pollution" shall mean the presence in the outdoor atmosphere of one or *more air contaminants* in such quantities and duration as are, or tend to be, *injurious to human health or welfare, animal or plant life, or property*, or *would interfere with the enjoyment of life or property throughout the State* and in such territories of the State as shall be affected thereby.") (emphasis added)

[153] 40 C.F.R. § 52.50.

transporting the materials; odors from materials transported in trucks that are parked/stored on the property; odors released from vents and other fugitive sources. If the scrubbers are going to be used for controlling odorous VOCs, which is likely given alleged controls at other JBS USA rendering plants, ADEM's Engineering Analysis and permit must consider and support assumptions regarding the ability of the scrubbers and the chemicals used therein to control odors. Supporting information regarding the ability of scrubbers and chemicals to control odors must be supported with scientific information. Moreover, it would be unreasonable for a permitting authority to rely on anecdotal information alleging that emission control equipment is *state-of-the-art.* Finally, for the equipment and chemicals used to control odors, what vendor guarantee did the applicant obtain? What information does the vendor guarantee rely on? Where have the proposed equipment and chemicals been applied that supports the assertion that it can successfully control VOC emissions at the proposed facility, what scientific information supports this? What is the level of uncertainty is present in the controls and how was that taken into account in developing permit requirements?

Furthermore, the proposed permit lacks provisions to control odors, the proposed permit only contains the following provisions:

- A record shall be maintained of all problems which affect the odor reducing capability of the air pollution control equipment.[154]

- This permit is issued with the condition that, should obnoxious odors arising from the plant operations be verified by Air Division inspectors, measures to abate the odorous emissions shall be taken upon a determination by the Alabama Department of Environmental Management that these measures are technically and economically feasible.[155]

First, while the permit requires a record on what impacts the ability of equipment to control odors, it lacks requirements for the applicant to do anything about those "problems." The permit should require that the applicant resolve such problems, that the problems be resolved within a short amount of time (e.g., three days), and that it document how the problem was resolved including the equipment, chemicals and work practice standards that hindered odor control.

Second, the ADEM must provide for transparency and accountability in the permit. Monitoring and recordkeeping information must be required in the permit, must be *reported* to the ADEM on a quarterly basis. The ADEM must upload the reports promptly to its online electronic files so that the public has full access. Furthermore, all complaints regarding odors received by the ADEM for a facility should be communicated to the facility for response, with the ADEM responding to the individual filing the complaint regarding the resolution.

Third, the permit requires that the ADEM Air Division inspector must "verify" the odor. ADEM fails to explain how what "verification" is required. Further, it is unclear how what

[154] Proposed Permit at PDF 19.
[155] Proposed Permit at PDF 11.

appears to be a limitation on information regarding noncompliance is consistent with the EPA's requirement of the use of any credible evidence to demonstrate noncompliance.[156]

Fourth, ADEM provides no authority for the burden it places on itself to make a determination that before it can require the applicant to control odors using a particular measure to control odors, it must first determine that the measure is technically and economically feasible.

VI. Contrary to Statutory Requirements for Disclosure, Pilgrim's and ADEM Withheld Emissions Data

Sections 110 and 114(c) of the Clean Air Act require emission data to be made available to the public, even if it otherwise qualifies as trade secret information.[157, 158] Alabama's statute contains similar provisions.[159] In 1991, EPA determined that emission data does not qualify as

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[156] The EPA requirement for use of any credible evidence applies because emissions from odors are included in the ADEM's SIP regulations approved by EPA.

[157] *See* Notice of Policy on Public Emission Data within the meaning of Sections 110 and 114(c) of the Clean Air Act (CAA), 56 Fed. Reg. 7042 (Feb. 21,1991) (1991 EPA Policy Statement on Emission Data); 42 U.S.C. §§ 7410, 7414; *see also* EPA Letter from Jeff Robinson, Chief, Air Permits Section, to Richard Hyde, Director, Air Permits Division, Texas Commission on Environmental Quality, "Review of maintenance, start-up, shutdown activities by Region 6 of the Texas Commission on Environmental Quality draft model permit" at pdf 5 (May 21, 2008) (EPA 2008 Letter to Texas), available at https://www.epa.gov/sites/production/files/2015-07/documents/tceqssm.pdf; EPA Letter from Judith M. Katz, Director Air Protection Division, EPA Region III, to Glen Besa, Chapter Director, Sierra Club, Virginia Chapter and Alexander Sagady, Environmental Consultant to Sierra Club, "Response to March 12, 2001 Virginia Chapter of the Sierra Club Comments on Virginia's Title V Program" at pdf 2 (March 12, 2001) (in commenting on EPA's solicitation of comments on perceived title V program and program implementation deficiencies, alleging that "certain data contained in new source review (NSR) permits issued by the Commonwealth contain information protected as CBI and that information would be relevant to any title V operating permit application developed by the subject source." *Id.* EPA's response was that while some information is entitled to protection…"[e]missions data, however, cannot be protected under section 114(c) of the Act." *Id.* EPA further explained that is may assess whether the Commonwealth was adequately implementing the permit programs, including the construction permit program "approved by EPA under Virginia State implementation plan (SIP). See 40 C.F.R. §52.2420(c)." *Id.* EPA further explains that "[s]hould EPA find that sufficient evidence exists that the Commonwealth is failing to implement its SIP, EPA could make a finding of such failure under sections 113(a)(2) and 179(a)(4) of the Clean Air Act. See, 42 U.S.C. §§7413 and 7509. *Id.* Further, if EPA determines that the existing SIP is inadequate in terms of regulatory or programmatic construction, the Agency may require Virginia to amend its SIP pursuant to section 110(k)(5) of the Act. See, 42 U.S.C. §7409." *Id.* Finally, EPA's letter explained that "Should Virginia attempt to protect confidential business information in a title V permit, including any terms and conditions from NSR permits incorporated or reference therein, EPA has a statutory obligation to object to that permit and, if warranted, issue a notice of deficiency. See, 42 U.S.C. §7661d(b).") (EPA 2001 Letter to Sierra Club). at https://www.epa.gov/title-v-operating-permits/response-march-12-2001-virginia-chapter-sierra-club-comments-virginias.

[158] As explained elsewhere in our comments, it is unclear what authority ADEM used to propose approval of the permits. Pilgrim's Pride's application is similarly unclear as it used Title V operating permit forms. Our comments on Pilgrim's CBI claims refer to the provisions of the Act that should apply to what Pilgrim's apparently intended to request, which was a synthetic minor permit under Section 110 of the Act. We note that as explained in the EPA 2008 Letter to Texas and the EPA 2001 Letter to Virginia, the same legal requirements regarding full disclosure of emission data apply in the Title V operating permit program.

[159] Ala. Code § 22-28-20 (1975) ("Availability of records, reports or information.
(a) Any records, reports or information obtained under this chapter shall be available to the public; except, that upon a showing satisfactory to the commission by any person that records, reports or information, or particular part thereof, other than emission data, to which the commission has access if made public would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely

confidential if it meets the definition under 40 CPR 2.301(a)(2)(l) for information necessary to determine the identity, amount, frequency, "concentration, or other characteristics of any emission which has been emitted by the source or information necessary to determine the identity, amount, frequency, concentration, or other characteristics of the emission which, under an applicable standard or limitation, the source was authorized to emit. The rules governing the confidentiality of business information obtained under Section 114 of the Clean Air Act confirm that emission data is not entitled to confidential treatment.[160] "Emission data" is defined very broadly as:

> (A) Information necessary to determine the identity, amount, frequency, concentration or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
>
> (B) Information necessary to determine the identity, amount, frequency, concentration or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and
>
> (C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation or operation constituting the source).[161]

Therefore, both federal and Alabama law require that emissions data be made available to the public.

Pilgrim's application requests that the ADEM treat information submitted with the application as confidential, and further requested that the information "not be publicly available."[162] In particular, "Pilgrim's Pride Corporation formally request[ed] that" the following forms and information "be considered as confidential business information and not made publicly available:"[163]

- Form 105 - Animal Feed Ingredient Processing, which includes
  - Form 110 Air Washer
  - Form 110 RTO

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the competitive position of such person by revealing trade secrets, the commission shall consider such record, report or information, or particular portion thereof, confidential in the administration of this chapter.
(b) Nothing in this section shall be construed to prevent disclosure of such report, record or information to federal, state or local representatives as necessary for purposes of administration of any federal, state or local air pollution control laws or when relevant in any proceeding under this chapter."

[160] *See* 40 C.F.R. § 2.301(e) and (f).

[161] *See* 40 C.F.R. § 2.301(a)(2)(i).

[162] Permit Application at 1.("Please note that portions of this application, specifically Forms 105, Attachment B and Attachment F, contain confidential business information and we request this information not be publicly available. Redacted and protected copies of these documents are included herein. Please refer to the confidentiality request letter in this application.")

[163] *Id.* at 5.

    - Form 110 Scrubber #1
    - Form 110 Scrubber #2
    - Form 110 Scrubber #3,
- Attachment B - Emission Inventory,
- Attachment C - Process Flow Diagram, and
- Attachment F - Emission Factors and References.[164]

Pilgrim's further explains that "[t]hese "Confidential" forms and Attachments contain proprietary engineering data, internal engineering stack testing data and plant production capacity information. This process information constitutes a trade secret because this information and data derives significant economic value from not being generally known to our competitors in a highly competitive industry. The global marketplace requires that knowledge of our production capacity remain unknown to the general public. A public (redacted) version of these forms and attachments are also provided."[165]

Our review of the information asserted to be covered by CBI protection by Pilgrim's appears below in Figure 14. Based on the provisions in the Act, the EPA's 1991 policy statement on emission data submitted under section 110 and 114(c) of Act published in the Federal Register, EPA's regulations, and EPA's response to comments where other state permitting agencies withheld similar data, our analysis shows that nearly all the claims asserted by the applicant must be *denied* by ADEM, and the below table identifies our comments on those assertions in green. We provide citations to our comments via footnotes. For the remaining CBI assertions, there is not enough information regarding the proposed redaction, if any, for Commenters to be able to evaluate whether Commenter's agree or disagree with the Company's assertion: the below table identifies our comments on those assertions in yellow. Finally, the applicant's assertions that stack testing data submitted as part of its application is entitled to CBI treatment because it is "internal" and "engineering" in nature, is misplaced, there are no protections afforded stack test data that was "engineered." Furthermore, once the data was submitted to ADEM as part of the application, it is no longer "internal." Finally, stack test data is data obtained when testing emissions from a stack, thus because of the nature of the data - it is not protected under a CBI claim.

It is troubling that ADEM did not review and determine that the information asserted to be CBI was in fact not entitled to such protection *before* initiating the public comment period. As EPA explained in response to concerns regarding Virginia's implementation of its SIP construction permit program, is clearly expects state permitting agencies to timely address CBI claims, most certainly prior to the start of the public comment process. Otherwise, consider time and energy is wasted and the public is not provided access to the information Congress intended to be disclosed so that it can meaningfully participate in the process. ADEM has kept the emission data behind closed doors and must correct its error.

[164] *Id*. at 5.
[165] Permit Application at pdf 5.

Figure 14. Pilgrim's Permit Application: Commenter's Assessment of the Portions of the Application Alleged to be CBI.

Pilgrim's Pride Permit Application (pdf page #)	Title of Page	Information Alleged by Pilgrim's to be CBI	ADEM Must Release ~~~ Information Contains Emissions Data
27	PERMIT APPLICATION FOR MANUFACTURING OR PROCESSING OPERATION. Page 1 of 5	Redacted on this form is information required under "#3. Type of unit or process, which Pilgrim's explains is "Various Heat and pressure intensive processes, including cookers, presses, centrifuges, etc." The response to the following is redacted, "Rated process capacity (manufacturer's or designer's guaranteed maximum) in pounds/hour."	Yes.[166]
28	PERMIT APPLICATION FOR MANUFACTURING OR PROCESSING OPERATION. Page 2 of 5	Redacted on this form is information required under "#5 Materials (feed input) used in unit or processes." The materials identified include: "poultry offal, meat, bones, poultry blood, poultry feathers, SPN/Sludge" and also "Poultry offal, meat,	Yes[167]

[166] *Comment:* EPA's 1991 Federal Register notice explains that EPA considers the "process design capacity" to constitute emissions data. 1991 EPA Policy Statement on Emission Data at 7041. Additionally, the definition of emission data includes a description of the device, installation, or operation constituting the source, which is needed to determine emissions. 40 C.F.R. § 2.301(a)(2)(i)(C). Therefore, ADEM must release this information.

[167] *Comment:* The materials used and products produced are used in emission factors to estimate emissions at rendering plants, and is information necessary to determine the identity, amount, frequency, concentration, or other characteristics of emissions data and essential to determine PTE prior to construction. Moreover, to the extent the applicant applied stack test data from another facility to determine PTE at the proposed plant, one needs to know the raw materials going in the plants and finished product leaving the plants in order to assess whether the stack test data from an existing plant is indeed comparable. For example, if the so-called existing similar plant were tested when it was only operating at 50 percent capacity, the stack test results would not be comparable to operating the proposed facility at full capacity. Under the Act, Congress clearly intended that the public have access to that information so that they could meaningfully participate in th permitting process. Therefore, ADEM must release this information.

Pilgrim's Pride Permit Application (pdf page #)	Title of Page	Information Alleged by Pilgrim's to be CBI	ADEM Must Release ~~~ Information Contains Emissions Data
		bones (future expansion" [sic]. The forms requires information on "process rate average, maximum and quantity" – all of which is redacted. "#7. Products of process unit," which are identified as "Finished Meals (includes future expansion)" and "Finished Fat (includes future expansion)." The form requires information on the "quantity/year" which is redacted for both products.	
29	PERMIT APPLICATION FOR MANUFACTURING OR PROCESSING OPERATION. Page 3 of 5	Unclear what is redacted on this page	No information to evaluate. If there is "emission data" redacted, it must be released. ADEM must respond and explain if information is redacted from this page.
30	PERMIT APPLICATION FOR MANUFACTURING OR PROCESSING OPERATION. Page 4 of 5	#11. Air contaminants emitted: Basis of estimate (material balance, stack test, emission factor, etc.) must be clearly indicated on calculations appended to this form. Fugitive emissions must be included and calculations must be appended." The response on this page is that the "Emission Point" is ""R1." For the	It appears there is no information redacted on this page. If we are mistaken, to the extent it is "emission data" it must be released.

Pilgrim's Pride Permit Application (pdf page #)	Title of Page	Information Alleged by Pilgrim's to be CBI	ADEM Must Release ~~~ Information Contains Emissions Data
		"Pollutants" from that point, the response is "See Attachment B"	
31	PERMIT APPLICATION FOR MANUFACTURING OR PROCESSING OPERATION. Page 5 of 5	Unclear what is redacted on this page	No information to evaluate. If there is "emission data" redacted, it must be released. ADEM must respond and explain if information is redacted from this page.
62	Cover page, "Attachment B Emission Inventory Redacted"	Unclear what, if anything is redacted from this page	No information to evaluate. If there is "emission data" redacted, it must be released. ADEM must respond and explain if information is redacted from this page.
63	Attachment B - Emission Inventory Pilgrim's Pride Corporation - Gadsden Animal Feed Ingredients Gadsden, Alabama	Page 1 of 4 There appear to be four pages in the Emission Inventory, information from the first page (pdf 62) is included in the "public" version, it is unclear if anything is redacted from this page. Pages 3, 4 and 5 of the Emissions Inventory are apparently redacted in their entirety, as they are not included in the "public" version	Yes[168]
64	"Attachment C Process Flow Diagram"	Label on the page "PUBLIC/REDACTED"	No information to evaluate. If there is "emission data"

[168] *Comment:* The redactions and withholding of information identified by Pilgrim's Pride as "Emission Inventory" is unlawful. An "emission inventory" contains information on the pollutants emitted at a facility. It is a compilation of "emissions data" and as such not entitled to CBI treatment. Further, an emission inventory generally also contains the emission estimation methods, which are also considered emission data. 1991 EPA Policy Statement on Emission Data at 7041. ADEM must release this information.

Pilgrim's Pride Permit Application (pdf page #)	Title of Page	Information Alleged by Pilgrim's to be CBI	ADEM Must Release ~~~ Information Contains Emissions Data
		no redactions on the page	redacted, it must be released. ADEM must respond and explain if information is redacted from this page.[169]
NA	"Attachment B - Emission Inventory Pilgrim's Pride Corporation - Gadsden Animal Feed Ingredients Gadsden, Alabama"	Page 1 of 4 not included in the Public/Redacted information	Yes[170]
65	"Attachment B - Emission Inventory Pilgrim's Pride Corporation - Gadsden Animal Feed Ingredients Gadsden, Alabama"	Page 2 of 4. Information on this page is emission information for Boilers 1, and 2. It appears the "Emissions Control" information has been redacted, as that part of the form is blank.	Yes[171]
66		Page 3 of 4. Information on this page is emission information for Boiler 3 and the RTO. It appears the "Emissions Control" information has been redacted, as that part of the form is blank.	Yes[172]

[169] Moreover, rendering plant permit applications often include detailed engineering flow schematic diagrams. For example, in 2019, another corporation within the JBS USA family submitted an air permit application to the State of Texas. The permit renewal application included three highly detailed flow diagrams for different parts of the plant's rendering processes, in addition to a schematic of the anaerobic lagoon and biogas recovery system. *See*, Application for Air Quality Permit Renewal, Swift Beef Company (March 29, 2010) (enclosed).
[170] *Id*.
[171] *Comment*: It is necessary to know the level of "emissions control" assumed in calculating the PTE of emissions from boilers 1 and 2. As such, the emissions control information is part of the emission estimation methodology, and is not entitled to a CBI claim. ADEM must disclose this information.
[172] *Comment:* It is necessary to know the level of "emissions controls" assumed in calculating the PTE of emissions from boiler 3 and the RTO. As such, the emissions control information is part of the emission estimation methodology, and is not entitled to a CBI claim. ADEM must disclose this information.

Pilgrim's Pride Permit Application (pdf page #)	Title of Page	Information Alleged by Pilgrim's to be CBI	ADEM Must Release ~~~ Information Contains Emissions Data
67	"Attachment B - Emission Inventory Pilgrim's Pride Corporation - Gadsden Animal Feed Ingredients Gadsden, Alabama"	Page 4 of 4. Information on this page is for the "Truck Load-Out of Meal" and "Aboveground Fuel Storage Tank" - It appears the "Emissions Control" information has been redacted, as that part of the form is blank.	Yes[173]
68	"Attachment C Process Flow Diagram (Redacted)"	It appears this is the cover page to what is provided at another location in the application, but it is not clear. There are no process flow pages following this cover sheet	No information to evaluate. If there is "emission data" redacted, it must be released. ADEM must respond and explain if information is redacted from this page.
83	"Attachment F Emission Factors and References (Redacted)"	It appears this is the cover page to the attachment, but it is not clear	No information to evaluate. If there is "emission data" redacted, it must be released. ADEM must respond and explain if information is redacted from this page.
84	"REDACTED Emission Factors and References"	Page(s) redacted in their entirety	Yes[174]

[173] *Comment:* It is necessary to know the level of "emissions control" assumed in calculating the PTE of emissions from the truck load-out meal and the aboveground fuel storage tank. As such, the emissions control information is part of the emission estimation methodology, and is not entitled to a CBI claim. ADEM must disclose this information.

[174] *Comment:* EPA's 1991 Policy Statement on Emission Data explicitly states that emission data include the "emission estimation method" and provides examples of different methods. One example provided are the EPA's "AP-42 emission factors." *Id.* Thus, there is no question that the "REDACTED Emission Factors and References" are emission data. ADEM must release this information.

Conclusion

The ADEM must either deny the request from Pilgrims' for a permit to construct the rendering facility, *or* in accordance with its regulations: (1) request and obtain the missing information identified in our comments from the permit applicant; (2) revise the proposed permit and supporting analysis; and (3) provide for another round of public notice, comment and hearing.

The enclosures were submitted via OneDrive link to Jennifer Youngpeter (jennifer.youngpeter@adem.alabama.gov). The list of enclosure is attached to these comments.

Sincerely,

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Enclosures

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References

1. ADEM EPA-Approved SIP Regulations: Ala. Admin. Code r. 335-3-1 General Provisions; Ala. Admin. Code r. 335-3-4 Control of Particulate Emissions; Ala. Admin. Code r. 335-3-5 Control of Sulfur Compound Emissions; Ala. Admin. Code r. 335-3-6 Control of Organic Emissions; Ala. Admin. Code r. 335-3-14 Air Permits; Ala. Admin. Code r. 335-3-15 Synthetic Minor Permits, available at https://www.epa.gov/sips-al/epa-approved-statutes-and-regulations-alabama-sip (codified at 40 C.F.R. § 52.50).

2. ADEM Proposed Construction Permits Nos. 307-0051-X002 (Boilers 1, 2, 3, 66.986 MMBtu/hr) and 307-0051-X001 (Animal Feed Ingredients Plant with one (1) Air Washer, one (1) 15,000 SCFM Regenerative Thermal Oxidizer (RTO), two (2) 100,000 SCFM Packed Bed Scrubbers, and one (1) 75,000 SCFM Packed Bed Scrubber, and Finished Meal Loadout) (Undated)

3. ADEM, PILGRIM'S PRIDE CORPORATION, PILGRIM'S PRIDE NEW ANIMAL FEED INGREDIENT PRODUCTION FACILITY. PERMIT NO.: 307-0051-X001 & -X002, ENGINEERING ANALYSIS (Sept. 18, 2020).

4. ADEM, "ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT NOTICE OF PROPOSED AIR PERMITS AND REQUEST FOR COMMENTS FACILITY NO. 307-0051 PUBLIC NOTICE".

5. ADEM, Title V list "TRIVIAL AND INSIGNIFICANT ACTIVITIES" (Sept. 23, 2009), available at http://adem.alabama.gov/programs/air/permitting.cnt.

6. ADEM, "PUBLIC NOTICE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (ADEM) NOTICE OF PUBLIC HEARING FOR PROPOSED AIR PERMITS AND REQUEST FOR COMMENTS" (Dec. 22, 2020).

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8. "ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AIR DIVISION INSTRUCTIONS FOR COMPLETION OF FACILITY IDENTIFICATION FORM ADEM 103," available at http://adem.alabama.gov/DeptForms/Form103.pdf.

9. Agency for Toxic Substances and Disease Registry, "Public Health Statement – Xylene-CAS#: 1330-20-7" (Aug., 2007), available at https://www.atsdr.cdc.gov/ToxProfiles/tp71-c1-b.pdf.

10. AP, Odor from troubled rendering plant overwhelms neighbors (Sept. 18, 2018), available at https://apnews.com/article/4f3738c892c54eb6bb54597b73399f16 .

11. Baker Commodities Facility Permit to Operate, South Coast Air Quality Management District (Oct. 8, 2020).

12. Benoît Anet, et al., “Characterization of gaseous odorous emissions from a rendering plant by GC/MS and treatment by biofiltration,” Journal of Environmental Management, Elsevier, 128, 981-987 (Oct. 15, 2013), available at https://doi.org/10.1016/j.jenvman.2013.06.028.

13. Bhatti, Z.A. et al., “Rendering plant emissions of volatile organic compounds during sterilization and cooking processes,” Environmental Technology 35 (9-12) (Jan. 9, 2014), available at https://doi.org/10.1080/09593330.2013.867364.

14. Bay Area Air Quality Management District, Regulation 12 Rule 2: Rendering Plants (Revised April 24, 2018), available at https://www.baaqmd.gov/rules-and-compliance/rules/reg-12-rule-2-rendering-plants.

15. Blue Star, “JBS DINMORE BIOGAS RECOVERY & EFFLUENT TREATMENT” (Undated), available at https://bluestarcorporate.com.au/portfolio/jbsdinmorebiogasrecovery/.

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