BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of the Proposed Operating Permit for

DUNKIRK POWER LLC
to operate the Dunkirk Steam Generating Station
located in Dunkirk, New York

Permit ID: 9-0603-00021/00030

Proposed by the New York State Department of
Environmental Conservation
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PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR THE DUNKIRK STEAM GENERATING STATION

Pursuant to Clean Air Act § 505(b)(2) and 40 CFR § 70.8(d), the New York Public Interest Research Group, Inc. ("NYPIRG") hereby petitions the Administrator ("the Administrator") of the United States Environmental Protection Agency ("U.S. EPA") to object to proposed Title V Operating Permit for the Dunkirk Steam Generating Station. NYPIRG expects a response from EPA within sixty days of its receipt of this petition as required by Clean Air Act § 505(b)(2).[1]

[1] It is unclear exactly when this permit was proposed to EPA by DEC. DEC's initial letter to NYPIRG in which it announced that the permit had been proposed to EPA is dated September 10, 2001. In the aftermath of the terrorist attack on September 11, NYPIRG's office was closed for five weeks and the post office that serves NYPIRG remains closed. EPA's Region 2 office was also closed for a substantial period of time. Thus, neither NYPIRG nor EPA received notification that a permit had been proposed for the Dunkirk Plant. Shortly after NYPIRG and EPA Region 2 gained access to their offices, the anthrax scare resulted in further disruption of mail service to lower Manhattan, and EPA Region 2's mailroom was closed for testing. At about this time, EPA Region 2 staff informed NYPIRG that the computer network that connects DEC and the EPA Region 2 office was not in service. DEC's typical method of proposing permits to EPA is to send EPA a letter announcing that the permit is available on the shared computer network. Thus, the only way for DEC to propose the Dunkirk permit to EPA was for DEC to mail a paper copy to the EPA Region 2 office. NYPIRG does not know when this took place. In fact, NYPIRG was entirely unaware that DEC was operating under the assumption that the permit had been properly proposed until mid-December, when NYPIRG contacted DEC Region 9 to inquire as to the status of the Dunkirk permit. In light of the confusion over the date on which the proposed permit was filed with EPA, NYPIRG asks that this petition be treated as a timely petition to object under Clean Air Act § 505(b)(2). Under § 505(b)(2), EPA must respond to such a petition within 60 days. If U.S. EPA determines that this petition is not timely, U.S. EPA should evaluate this petition as a petition to reopen the Dunkirk Permit. Even if EPA chooses to treat this petition as a petition to reopen, however, NYPIRG expects a response from EPA within 60 days. Sixty days is reasonable because EPA needs no more time to respond to a petition to reopen than needs to respond to a petition to object.

NYPIRG is a not-for-profit research and advocacy organization that specializes in environmental issues. NYPIRG has more than 20 offices located in every region of New York State. Many of NYPIRG's members live, work, pay taxes, and breathe the air in the area where the Dunkirk Steam Generating Station is located.

If the U.S. EPA Administrator determines that this permit does not comply with applicable requirements or the requirements of 40 CFR Part 70, she must object to issuance of the permit. See 40 CFR § 70.8(c)(1) ("The [U.S. EPA] Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part."). We hope that U.S. EPA will act expeditiously to respond to NYPIRG's petition, and in any case, will respond within the 60-day timeframe mandated in the Clean Air Act.

I. The Administrator Must Object to the Proposed Permit Because it Lacks a Compliance Schedule Designed to Bring the Dunkirk Plant Into Compliance With Clean Air Act Requirements

The permit description accompanying the Dunkirk Steam Generating Station states that the Dunkirk Plant is subject to two Notices of Violation ("NOVs") that relate to ongoing violations at the plant. The first involves ongoing violations of opacity limitations that included in New York's approved State Implementation Plan ("SIP") and are published as 6 NYCRR Subpart 227-1. The opacity NOV is attached as **Exhibit 1**. The plant has been violating the opacity standard on a regular basis for many years and there is no reason to believe that these violations will cease after issuance of the Title V permit. The second NOV alleges that the plant was modified in violation of the federal Clean Air Act Prevention of Significant Deterioration Program ("PSD"). The PSD NOV is attached as **Exhibit 2**. According to DEC, the plant owners were required to apply for and obtain a PSD permit prior to plant modification and were required to control plant emissions with the Best Available Control Technology ("BACT"). Continued operation of the plant without a PSD permit and without BACT is an ongoing violation of the Clean Air Act. On January 10, 2002, New York State Attorney General Elliot Spitzer announced that it was filing an enforcement action in federal district court against the Dunkirk Plant based on its PSD violations.

Under 40 C.F.R. § 70.1(b) and Clean Air Act § 504(a), each facility that is subject to Title V permitting requirements must obtain a permit that "assures compliance by the source with all applicable requirements." Applicable requirements include the requirement to comply with SIP requirements and the requirement to obtain a preconstruction permit that complies with preconstruction review requirements under the Clean Air Act, U.S. EPA regulations, and the state implementation plan ("SIP"). See 40 C.F.R. § 70.2. If a facility is in violation of an applicable requirement at the time that it receives an operating permit, the facility's permit must include a compliance schedule. See 40 C.F.R. § 70.5(c)(8)(iii)(C). The compliance schedule must contain "an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance." See 40 C.F.R. § 70.5(c)(8)(iii)(C). Thus, if a power plant is in violation of PSD or SIP requirements, the plant's operating permit must include an enforceable compliance schedule designed to bring the plant into compliance with those requirements.

The plant is then bound to comply with that schedule or risk becoming the target of an enforcement action for violating the terms of its permit. (This violation would be in addition to the original violation resulting from the plant's failure to obtain a PSD permit). Such an enforcement action could be brought by the permitting authority (usually the state or local environmental agency), U.S. EPA, or the public.

Since DEC has already determined that the Dunkirk Steam Generating Station is operating in violation of PSD and SIP requirements, the plant's Title V permit must include a compliance schedule designed to bring the plant into prompt compliance with these requirements.

Including a compliance schedule in a proposed permit does not override a pending enforcement proceeding. Rather, "[a]ny such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based." 40 C.F.R. § 70.5(c)(8)(iii)(C). An enforcement proceeding may be commenced regardless of whether a facility is in compliance with or subject to a Title V compliance schedule. There is no reason why DEC cannot place a compliance schedule in the Dunkirk Plant's Title V permit and still proceed with the pending enforcement action.

With respect to opacity violations at the Dunkirk Plant, the settlement process in which DEC is engaging is obviously not working, since opacity violations at the Dunkirk Plant continue unabated more than four years after DEC issued the first opacity NOV to the plant. Similarly, DEC's decision to file suit over the Dunkirk Plant's PSD violations indicates that those settlement negotiations failed. It is under these circumstances that a Title V compliance schedule is needed the most. In the absence of a Title V compliance schedule, the Dunkirk Plant will continue polluting the air illegally while plant owners argue with DEC about how to settle the enforcement actions. By contrast, if a compliance schedule is included in the plant's Title V permit, the plant must immediately begin taking steps to bring the plant into compliance with air quality requirements. The plant may continue to contest the enforcement action even if it is simultaneously subject to a Title V compliance schedule.

The key distinction between a compliance schedule and an enforcement action is that while an enforcement action is based on a facility's past violations, a Title V compliance schedule is meant to avoid future violations. Certainly, a facility has a right to contest an enforcement action brought by DEC for past violations. When DEC decides whether to grant the facility a permit for future operations, however, DEC is charged with responsibility for issuing a permit that assures that the facility will operate in compliance with all applicable requirements. If DEC believes that a facility will be in violation of a requirement at the time that the permit is issued, DEC has both the authority and the legal obligation to place that facility on a compliance schedule. If the facility believes that the compliance schedule is unjustified, it can challenge its permit. If the facility chooses to continue operating while it challenges the permit, it runs the risk that the permit will be upheld and the facility will be charged with violations of both the underlying applicable requirement AND the compliance schedule in the permit.

A Title V compliance schedule is quite useful in cases where it is clear that a facility is in violation of an applicable requirement, but the parties to an enforcement action are unable to agree on the monetary penalty. There is no reason why people must continue to breathe dirty air while settlement negotiations proceed. Title V requires that a facility begin the process of achieving compliance even

while settlement negotiations play out. In the case of the Dunkirk Plant, it cannot be disputed that the plant is in ongoing violation of the opacity standard. It is likely that there is dispute over exactly how many violations occurred, whether they were avoidable, and the appropriate penalty for each violation. Regardless of how these issues are resolved, it is clear that the plant must take additional steps to control opacity. DEC must include a compliance schedule in the Dunkirk Plant permit that is designed to bring the plant into full compliance within a reasonable time frame. Negotiations over the amount of the penalty for past violations can continue after the Title V permit is issued.

DEC apparently only intends to include a compliance schedule in a Title V permit if (1) the facility proposes inclusion of such a schedule, or (2) the facility is already subject to an administrative order or consent decree. 40 C.F.R. Part 70 does not support such an interpretation of the compliance schedule requirement. Under 40 C.F.R. § 70.5(c)(8)(iii)(C), a Title V compliance schedule "shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." By stating that the compliance schedule must be at least as stringent as "any" existing consent decree or administrative order, U.S. EPA indicated that a facility can be subject to a Title V compliance schedule even if the facility is not subject to a consent decree of administrative order. If U.S. EPA intended for a permit to include a compliance schedule only if the applicant is also subject to a consent decree or administrative order, it could have said so in 40 C.F.R. Part 70.

The U.S. EPA Administrator has already objected to at least one proposed Title V permit due to the fact that the permit lacked a compliance schedule even though the facility was subject to an ongoing enforcement action. According to U.S. EPA's objection to the permit proposed for Gallatin Steel Company in Warsaw, Kentucky:

> The EPA filed a civil judicial complaint against the Gallatin Steel Company in February 1999 for prior Clean Air Act violations and anticipates amending that complaint to include violations cited in a January 27, 2000 Notice of Violation (NOV). Therefore, the permit must include a schedule of compliance in accordance with 40 C.F.R. 70.6(c)(3). In addition, EPA and Gallatin have been engaged in settlement negotiations. If the permit is issued prior to completion of these negotiations, any compliance schedule included may have to be revised.

U.S. EPA Region 4 Objection, Proposed Part 70 Operating Permit, Gallatin Steel Company, Permit No. V-99-003, under cover of letter from Winston A. Smith, EPA Region 4, to John E. Hornback, Kentucky DEP, dated August 7, 2000 (Attached as **Exhibit 3**).

As U.S. EPA stated in its objection to the Gallatin Steel permit, a facility that is operating in violation of an applicable requirement must be made subject to a compliance schedule even if a related enforcement action remains unresolved as of the date of permit issuance. No such schedule is included in the proposed permit for the Dunkirk Plant, despite DEC's clear determination that the plant is currently operating in violation of PSD and opacity requirements. Since the lack of a compliance schedule under these circumstances is a violation of 40 C.F.R. Part 70, the U.S. EPA Administrator

must object to this proposed permit.

II. DEC Violated the Public Participation Requirements of Clean Air Act § 502(b)(6) and 40 CFR § 70.7(h) by Inappropriately Denying NYPIRG's Request for a Public Hearing

Under 40 CFR § 70.7(h), "all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit." NYPIRG requested a public hearing in written comments submitted to DEC during the applicable public comment period. DEC denied NYPIRG's request for a public hearing, stating first that "[t]he permit changes made to address the comments received are considered to be minor and not significant." Cover letter to DEC Responsiveness Summary, Dunkirk Steam Generating Station, dated September 10, 2001. Later in the same response letter, DEC stated that NYPIRG's request for a public hearing "is denied because any substantive issues brought up in NYPIRG comments have been addressed in permit revisions where appropriate." DEC Responsiveness Summary, p. 1.

DEC's contention that it adequately addressed NYPIRG's written comments does not justify DEC's decision to deny NYPIRG's request for a public hearing. Obviously, NYPIRG did not intend to limit its participation in a public hearing to simply restating its written comments. Rather, NYPIRG requested a hearing so that its members could participate in the permit proceeding by submitting oral comments on the draft permit. Certainly, NYPIRG's submission of thirty pages of written comments suggests that there is a significant degree of public interest in the permit. Certainly, then, NYPIRG was not given "an opportunity for a public hearing" as required under 40 C.F.R. § 70.7(h).

DEC's refusal to hold a public hearing on the draft permit for the Dunkirk Steam Generating Station is a violation of the public participation requirements of Clean Air Act § 502(b)(6) and 40 CFR § 70.7(h). The Administrator must object to this proposed permit and direct DEC to hold a public hearing in accordance with federal law.

III. The Administrator Must Object to the Proposed Permit Because it is Based on an Inadequate Permit Application

Dunkirk Power LLC's application for a Title V permit for the Dunkirk Steam Generating Station must be denied because Dunkirk Power LLC did not submit a complete permit application in accordance with the requirements of CAA § 114(a)(3)(C), 40 CFR §70.5(c), and 6 NYCRR § 201-6.3(d).

First, Dunkirk Power LLC's permit application lacks an initial compliance certification. Dunkirk Power LLC is legally required to submit an initial compliance certification that includes:

> (1) a statement certifying that the applicant's facility is currently in compliance with all applicable requirements (except for emission units that the applicant admits are out of compliance) as

required by Clean Air Act § 114(a)(3)(C), 40 CFR §70.5(c)(9)(i), and 6 NYCRR § 201-6.3(d)(10)(i);

(2) a statement of the methods for determining compliance with each applicable requirement upon which the compliance certification is based as required by Clean Air Act §114(a)(3)(B), 40 CFR § 70.5(c)(9)(ii), and 6 NYCRR § 201-6.3(d)(10)(ii).

The initial compliance certification is one of the most important components of a Title V permit application. This is because the initial compliance certification indicates whether the permit applicant is currently in compliance with applicable requirements.

Because Dunkirk Power LLC failed to submit an initial compliance certification, neither government regulators nor the public can truly determine whether the Dunkirk Steam Generating Station is currently in compliance with every applicable requirement.

In the preamble to the final 40 CFR part 70 rulemaking, U.S. EPA emphasized the importance of the initial compliance certification, stating that:

> [I]n § 70.5(c)(9), every application for a permit must contain a certification of the source's compliance status with all applicable requirements, including any applicable enhanced monitoring and compliance certification requirements promulgated pursuant to section 114 and 504(b) of the Act. This certification must indicate the methods used by the source to determine compliance. This requirement is critical because the content of the compliance plan and the schedule of compliance required under § 70.5(a)(8) is dependent on the source's compliance status at the time of permit issuance.

57 FR 32250, 32274 (July 21, 1992). A permit that is developed in ignorance of a facility's current compliance status cannot possibly assure compliance with applicable requirements as mandated by 40 CFR § 70.1(b) and § 70.6(a)(1).

In addition to omitting an initial compliance certification, Dunkirk Power LLC's permit application lacks certain information required by 40 CFR § 70.5(c)(4) and 6 NYCRR § 201-6.3(d)(4), including:

(1) a description of all applicable requirements that apply to the facility, and

(2) a description of or reference to any applicable test method for determining compliance with each applicable requirement.

The omission of this information makes it significantly more difficult for a member of the public to determine whether a draft permit includes all applicable requirements. For example, an existing facility that is subject to major New Source Review ("NSR") requirements should possess a pre-construction permit issued pursuant to 6 NYCRR Part 201. Minor NSR permits, Title V permits, and state-only

permits are also issued pursuant to Part 201. In the Title V permit application, a facility that is subject to any type of pre-existing permit simply cites to 6 NYCRR Part 201. Because DEC does not require the applicant to describe each underlying requirement, it virtually impossible to identify existing NSR requirements that must be incorporated into the applicant's Title V permit. Without clear documentation in the permit application of the requirements of pre-existing permits, it is difficult for members of the public to ascertain when permit requirements have been erroneously left out of a Title V permit.

The lack of information in the permit application also makes it far more difficult for the public to evaluate the adequacy of monitoring included in a draft permit, since the public permit reviewer must investigate far beyond the permit application to identify applicable test methods.

On April 13, 1999, NYPIRG petitioned the U.S. EPA Administrator, requesting a determination pursuant to 40 CFR § 70.10(b)(1) that DEC is inadequately administering the Title V program because the agency relies upon a legally deficient standard permit application form. The petition is still pending. Because Dunkirk Power LLC relied upon this legally deficient Title V permit application form, the legal arguments made in the petition are relevant to this permit proceeding. Thus, the entire petition is incorporated by reference into this petition and is attached at **Exhibit 4**.

The Administrator must object to the proposed permit for the Dunkirk Steam Generating Station because the proposed permit is based on a legally deficiency permit application and therefore does not comply with 40 CFR Part 70.

IV. The Administrator Must Object to the Proposed Permit Because it Distorts the Annual Compliance Certification Requirement of Clean Air Act § 114(a)(3) and 40 CFR § 70.6(c)(5)

Under 6 NYCRR § 201-6.5(e), a permittee must "certify compliance with terms and conditions contained in the permit, including emission limitations, standards, or work practices," at least once each year. This requirement mirrors 40 C.F.R. § 70.6(b)(5). The general compliance certification requirements included in this proposed permit (Condition 27) do not require the permitee to certify compliance with all permit conditions. Rather, the proposed permit only requires that the annual compliance certification identify "each term or condition of the permit that is the basis of the certification." DEC then proceeds to identify certain conditions in the draft permit as "Compliance Certification" conditions. Requirements that are labeled "Compliance Certification" are those that identify a monitoring method for demonstrating compliance. There is no way to interpret this designation other than as a way of identifying which conditions are covered by the annual compliance certification. The permit conditions that lack monitoring (often a problem in its own right) are excluded from the annual compliance certification. This is an incorrect application of state and federal law. The permittee must certify compliance with every permit condition, not just those permit conditions that are accompanied by a monitoring requirement.

The annual compliance certification requirement is the most important aspect of the Title V program. The Administrator must object to any permit that fails to require the permittee to certify compliance (or noncompliance) with <u>all</u> permit conditions on at least an annual basis.

V. The Administrator Must Object to the Proposed Permit Because it Does Not Require Prompt Reporting of All Deviations From Permit Requirements as Mandated by 40 CFR § 70.6(a)(3)(iii)(B)

The Administrator must object to this proposed permit because it does not require the permittee to submit prompt reports of any deviations from permit requirements as mandated under 40 CFR § 70.6(a)(3)(iii)(B). Currently, no prompt reporting condition is included in the proposed permit.

With respect to the prompt reporting requirement, DEC may either (1) include a general condition that defines what constitutes "prompt" under all possible circumstances, or (2) develop facility-specific conditions that define what constitutes "prompt" for each individual permit requirement. While Part 70 gives DEC discretion over how to define "prompt," the definition that DEC selects must be reasonable. U.S. EPA has already issued statements in dozens of Federal Register notices setting out what it believes to be a reasonable definition of "prompt." For example, when proposing interim approval of Arizona's Title V program U.S. EPA stated:

> The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under Sec. 70.6(a)(3)(iii)(A).

60 Fed. Reg. 36083 (July 13, 1995). The proposed permit for the Dunkirk Steam Generating Station fails to specify either a general prompt reporting requirement or requirement-specific prompt reporting requirements. The Administrator must require DEC to include prompt reporting requirements in the permit for the Dunkirk Steam Generating Station that that are consistent with U.S. EPA's past interpretations of what qualifies as "prompt."

In addition to requiring DEC to include a prompt reporting requirement in this proposed permit, U.S. EPA must require that these reports be made in writing. Under 40 CFR § 70.5(d), "[a]ny application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness." U.S. EPA's White Paper #1 interprets this provision of Part 70 as requiring "responsible officials to certify monitoring reports, which must be submitted every 6 months, and 'prompt' reports of any deviations from permit requirements whenever they occur." U.S. EPA, *White Paper for Streamlined Development of Part 70 Permit Applications* (July 10, 1995) at 24. A deviation report that is submitted orally rather than in writing cannot be "certified" by a responsible official as required by Part 70.

In response to NYPIRG comments on the draft permit, DEC stated that:

> This permit contains periodic monitoring conditions which require reporting of deviations

> according to the time frames contained within the applicable requirement, where such time frames have been stated. Otherwise, the reporting is based on a case by case basis.

DEC Responsiveness Summary, Dunkirk Steam Generating Station, September 10, 2001. DEC's response is unsatisfactory for two reasons. First, the time frames contained within an applicable requirement are not necessarily sufficient to satisfy the prompt reporting requirement. Under 40 CFR § 70.6(a)(3)(iii)(B), each Title V permit must require "prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements." While it is appropriate for DEC to consider the frequency of reporting required under an existing applicable requirement when deciding how "prompt" is to be defined with respect to that requirement, the frequency of reporting under an existing applicable requirement is not the deciding factor in what constitutes "prompt." Rather, DEC must also examine "the degree and type of deviation likely to occur." There is no evidence that DEC examined the degree and type of deviation likely to occur with respect to any applicable requirement included in this draft permit. Instead, DEC simply repeats existing reporting requirements where such requirements exist. When an applicable requirement does not specify a reporting obligation, DEC only requires the facility to submit reports every six months.

DEC's interpretation of the prompt reporting requirement has the effect of making the requirement superfluous. A separate section of 40 CFR Part 70 already requires a Title V permit to include "[e]mission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." 40 CFR § 70.6(a)(1). If a reporting requirement is already included in an applicable requirement, that requirement must be included in the Title V permit under 40 CFR § 70.6(a)(1). Yet another provision of 40 CFR Part 70 states that a Title V permit must require "[s]ubmittal of reports of any required monitoring at least every 6 months." 40 CFR § 70.6(a)(3)(iii)(A). The six month reports must identify "[a]ll instances of deviations from permit requirements." Id. Thus, under DEC's reading of 40 CFR § 70.6(a)(3)(iii)(B), that provision adds nothing to Title V permit requirements that is not already required under other sections of the regulation.

NYPIRG disagrees with DEC's interpretation of the prompt reporting requirement. Rather, NYPIRG believes that the prompt reporting requirement is intended to make it possible for government authorities and members of the public to become aware of an air pollution problems at a facility as soon as possible so that they can respond appropriately. While it is logical for a permitting authority to determine how quickly a report must be submitted based on the degree and type of violation at issue, it is NOT logical for a permitting authority to make this determination by blindly relying on a reporting requirement that pre-dates the Title V program. Moreover, NYPIRG does not believe that a report submitted every six months ever qualifies as a "prompt" report under 40 CFR § 70.6(a)(3)(iii)(A). As EPA stated in dozens of Federal Register notices, "prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under Sec. 70.6(a)(3)(iii)(A)."

VI. The Administrator Must Object to the Proposed Permit Because its Startup/Shutdown, Malfunction, Maintenance, and Upset Provision Violates 40 CFR Part 70

Condition 6 in this proposed permit states in part that "[a]t the discretion of the commissioner, a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions and malfunctions or upsets may be excused is such violations are unavoidable." The condition goes on to describe the actions and recordkeeping and reporting requirements that the facility must adhere to in order for the Commissioner to excuse a violation as unavoidable. In this petition, we refer to this condition as the "excuse provision." As detailed below, the excuse provision included in this proposed permit violates 40 CFR Part 70 in a number of ways.

A. The Excuse Provision Included in the Proposed Permit is Not the Excuse Provision that is in New York's SIP

The excuse provision included in this proposed permit reflects the requirements of a New York State regulation, 6 NYCRR § 201-1.4. This regulation states in part that "[a]t the discretion of the commissioner, a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions and malfunctions or upsets may be excused if such violations are unavoidable." The version of Part 201 approved by U.S. EPA as part of New York's SIP contains the same language, except that it does not cover violations that occur during "shutdown" or during "upsets." See 6 NYCRR § 201.5(e), state effective date 4/4/93, U.S. EPA approval date 12/23/97[2] (stating that "[a]t the discretion of the commissioner, a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up conditions and malfunctions may be excused if such violations are unavoidable."). Since the SIP rule is the federally enforceable requirement, DEC must delete the words "shutdown" and "upsets" from the proposed permit.

B. The Draft Permit Must Describe What Constitutes "Reasonably Available Control Technology" During Conditions that Are Covered by the Excuse Provision

The excuse provision included in the draft permit and in New York's SIP mandates that "[r]easonably available control technology, as determined by the commissioner, shall be applied during any maintenance, start-up, or malfunction condition." See 6 NYCRR § 201.5(e); see also 6 NYCRR § 201-1.4. Under 40 CFR § 70.6(a)(1), each Title V permit must include "operational requirements and limitations that assure compliance with all applicable requirements." Since the requirement to apply RACT during maintenance, startup, or malfunction conditions is included in New York's SIP, it is an applicable requirement. To assure each facility's compliance with this requirement, DEC must include terms and conditions in each permit that clarify what constitutes RACT for this facility during maintenance, startup, and malfunction conditions. The final permit issued for this facility must also include monitoring, recordkeeping, and reporting requirements that will assure that RACT is employed during maintenance, startup, and malfunction conditions. See 40 CFR § 70.6(c)(1) (requiring each Title

[2] 40 CFR 52.1679 (2001).

V permit to include "monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit"). In situations where RACT is no different during these periods from what is required under other operating conditions, DEC must explain and justify this determination in the statement of basis. The permit must be clear that compliance with the requirement to employ RACT during startup, maintenance, and malfunction conditions does not excuse the facility from compliance with applicable emission limitations.

C. The Excuse Provision Does Not Assure the Facility's Compliance Because it is Contains Vague, Undefined Terms that are Not Enforceable as a Practical Matter

New York's SIP-approved excuse provision gives the Commissioner the authority to excuse a violation of an applicable requirement during startup, maintenance, and malfunction conditions if they qualify as "unavoidable." The standard by which the Commissioner is to determine whether a violation is unavoidable is not included in either the regulation or the draft permit. Without a clear standard to guide the Commissioner's determination as to whether a violation is unavoidable, there is no basis on which a member of the public or U.S. EPA may challenge a Commissioner's decision to excuse a violation. Since New York's SIP provision allows the Commissioner to entirely excuse a violation, rather than simply exercising her discretion by not bringing an enforcement action, the lack of a practicably enforceable standard by which the excuse provision will be applied seriously undermines the enforceability of this permit.[3] The permit must explicitly define the circumstances under which a facility can apply for a violation to be excused.

Though New York's SIP-approved excuse provision lacks an explicit definition as to what qualifies for an excuse, the Commissioner must exercise her discretion in accordance with Clean Air Act requirements. In other words, the Commissioner must define "unavoidable" as it is defined by EPA in its Startup/Shutdown/Malfunction Policy, as set forth in EPA's 9/28/82, 2/15/83, and 9/20/99 memorandums. In order to clarify the standard that applies to the Commissioner's determinations regarding whether a violation is unavoidable and therefore assure the public that permitted facilities are not allowed to operate in violation of applicable requirements, the permit must be modified to state that the Commissioner shall determine whether a violation is unavoidable based on the criteria in U.S. EPA's memorandum dated September 20, 1999 entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." In addition, the permit must include specific criteria regarding when this permittee's emission exceedances may qualify for an excuse. Specifically, what constitutes "startup," "malfunction," and "maintenance" must be explicitly defined in the permit. This clarifying language is necessary in order to assure each facility's compliance with all applicable requirements under 40 CFR § 70.6(a)(1).

[3] New York's excuse provision actually goes farther than those provisions adopted in other states that give facilities an "affirmative defense" against enforcement actions resulting from unavoidable violations. This is because under an affirmative defense provision, the facility is required to maintain clear documentation that the excuse provision applies, and bears the burden of proof in establishing that a violation was unavoidable. Here, there are no standards governing when a violation can be deemed unavoidable. Also, in all likelihood, once the Commissioner agrees to excuse a violation, EPA and members of the public are not able to bring their own enforcement action because the violation no longer exists.

D. The Proposed Permit Fails to Require Prompt Written Reports of Deviations From Permit Requirements Due to Startup, Shutdown, Malfunction and Maintenance as Required Under 40 CFR § 70.6(a)(3)(iii)(B).

The Administrator must object to this proposed permit because it does not require the facility to submit timely written reports of any deviation from permit requirements in accordance with 40 CFR § 70.6(a)(3)(iii)(B). 40 CFR § 70.6(a)(3)(iii)(B) demands:

> Prompt reporting of deviations from permit requirements, *including those attributable to upset conditions as defined in the permit*, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

(Emphasis added). As currently written, the permit violates the above requirement because the permittee is allowed to submit reports of "unavoidable" violations by telephone rather than in writing. Thus, a violation can be excused without creating a paper trail that would allow U.S. EPA and the public to monitor whether the facility is abusing the excuse provision by improperly claiming that violations qualify to be excused. Since a primary purpose of the Title V program is to allow the public to determine whether polluters are complying with all applicable requirements on an ongoing basis, reports of deviations from permit requirements must be in writing so that they can be reviewed by the public. An excuse provision that keeps the public ignorant of violations cannot possibly satisfy the Part 70 mandate that each permit assure compliance with applicable requirements.

U.S. EPA must require DEC to add the following reporting obligations to the proposed permit:

(1) *Violations due to Startup, Shutdown and Maintenance*.[4] The facility must submit a written report whenever the facility exceeds an emission limitation due to startup, shutdown, or maintenance. (Proposed permit condition 8 only requires reports of violations due to startup, shutdown, or maintenance "when requested to do so in writing").[5] The written report must describe why the violation was unavoidable, as well as the time, frequency, and duration of the startup/shutdown/maintenance activities, an identification of air contaminants released, and the estimated emission rates. Even if a facility is subject to continuous stack monitoring and quarterly reporting requirements, it still must submit a written report explaining why the violation was unavoidable. (The draft permit does not require submittal of a report "if a facility owner/operator is subject to continuous stack monitoring and quarterly reporting requirements"). Finally, a deadline for submission of these reports must be included in the permit.

[4] NYPIRG interprets U.S. EPA's 1999 memorandum as prohibiting excuses due to maintenance.

[5] See Condition 6(a) in the proposed permit.

(2) *Violations due to Malfunction*. The facility must provide both telephone and written notification and to DEC within two working days of an excess emission that is allegedly unavoidable due to "malfunction." (Proposed permit condition 8 only requires notification by telephone, which means that there is no documentation of the exchange between the facility operator and DEC and there is no way for concerned citizens to confirm that the facility is complying with the reporting requirement.)[6] The facility must submit a detailed written report within thirty days after the facility exceeds emission limitations due to a malfunction. The report must describe why the violation was unavoidable, the time, frequency, and duration of the malfunction, the corrective action taken, an identification of air contaminants released, and the estimated emission rates. (The proposed permit only requires the facility to submit a detailed written report "when requested in writing by the commissioner's representative".)[7]

E. The Proposed Permit Fails to Clarify That a Violation of a Federal Requirement Cannot be Excused Unless the Underlying Federal Requirement Specifically Provides for an Excuse.

The proposed permit apparently allows the DEC Commissioner to excuse the violation of any federal requirement by deeming the violation "unavoidable," regardless of whether an "unavoidable" defense is allowed under the requirement that is violated. U.S. EPA was concerned about this issue when it granted interim approval to New York's Title V program. In the Federal Register notice granting program approval, 61 Fed. Reg. 57589 (1996), U.S. EPA noted that before New York's program can receive full approval, 6 NYCRR §201-6.5(c)(3)(ii) must be revised "to clarify that the discretion to excuse a violation under 6 NYCRR Part 201-1.4 will not extend to federal requirements, unless the specific federal requirement provides for affirmative defenses during start-ups, shutdowns, malfunctions, or upsets." 61 Fed. Reg. at 57592. Though New York incorporated clarifying language into state regulations, the proposed permit lacks this language. U.S. EPA must require DEC to make it clear that a violation of a federal requirement that does not provide for an affirmative defense will not be excused.

VII. The Administrator Must Object to the Proposed Permit Because it Fails to Include Federally Enforceable Emission Limits Established Under Pre-Existing Permits

The Dunkirk Steam Generating Station is subject to a number of preconstruction/operating permits that contain short term and annual limits on the plant's emission of regulated air contaminants.[8] These permits were issued pursuant to 6 NYCRR Part 201, which has been part of New York's SIP for decades. Thus, the emission limits and associated permit conditions are applicable requirements that

[6] See Condition 6(b) in the proposed permit.

[7] Id.

[8] Though the permits indicate that they expired several years ago, current 6 NYCRR Part 201 extends the expiration date for all pre-existing certificates to operate until the date that a facility receives a Title V permit.

must be included in the Dunkirk Plant's Title V permit. Nevertheless, these limits do not appear in the proposed permit. DEC gave no notice to the public that these limits were being eliminated. Nor did DEC evaluate the air quality impact of eliminating these limits or assess whether the removal of these limits triggers applicability of the Clean Air Act Prevention of Significant Deterioration ("PSD") program or Nonattainment New Source Review ("NNSR") program. Pre-existing permits issued to the Dunkirk Plant are attached to this petition as **Exhibit 5.**

Permit A06 0300032500004I applies to the plant's ash silo. It limits particulate emissions to 0.05 grains/DSCF and 0.76 lbs/yr. It also requires Dunkirk to "maintain effectiveness of filters."

Permit A060300325000005I applies to the spray paint booth located in the Maintenance Shop building. It limits particulate emissions to 0.05 grains/DSCF and 1.50 lbs/yr.

Permit A060300032500007C applies to a 750 HP diesel generator. Though it includes specific permissible emission limits, it states that these limits are waived because the generator is limited to 475 hours of operation per year.

Permit A060300032500001C applies to Boiler #1. It places the following emission limits on the boiler: PM (0.23 lbs/mmBtu, 2.07 x 10^5 lbs/yr), SO_2(3.4 lbs/mmBtu, 28.2 x 10^6 lbs/yr), NO_X(0.42lbs/mmBtu, 3.18 x 10^6 lbs/yr).

Permit A060300032500002C applies to Boiler #2. It places the following emission limits on the boiler: PM (0.23 lbs/mmBtu, 2.48 x 10^5 lbs/yr), SO_2(3.4 lbs/mmBtu, 27.8 x 10^6 lbs/yr), NO_X(0.42lbs/mmBtu, 3.1 x 10^6 lbs/yr).

Permit A060300032500003C applies to Boilers #3 and #4. It places the following emission limits on the boilers: PM (0.17 lbs/mmBtu, 12.2 x 10^5 lbs/yr), SO_2(3.4 lbs/mmBtu, 109 x 10^6 lbs/yr), NO_X(0.42lbs/mmBtu, 12.2 x 10^6 lbs/yr).

Special conditions dated September 25, 1995 apply to the 4 boilers. Among other things, NMPC is limited to burning 10 tons per week of sludge from the waste water treatment facility.

The majority of the emission limits described above are missing from the Title V permit. A few are included but improperly described as "state-only" requirements. DEC decided to include the limit on the amount of sludge being burned at the plant after NYPIRG submitted comments on the draft permit, but DEC took the liberty of making the limit 12 tons per week rather than 10 tons per week as required under the pre-existing permit.

DEC is incorrect in believing that terms and conditions from SIP-approved permits may be omitted from a facility's Title V permit. U.S. EPA is already on record requiring the terms and conditions of permit issued pursuant to SIP regulations to be included in Title V permits. In a letter to Robert Hodanbosi of STAPPA/ALAPCO, U.S. EPA stated:

> Title V and the part 70 regulations are designed to incorporate all Federal applicable requirements for a source into a single title V operating permit. To fulfill this charge, it is important that all Federal regulations applicable to the source such as our national emission standards for hazardous air pollutants, new source performance standards, and the applicable requirements of SIP's and permits issued under SIP-approved permit programs, are carried over into a title V permit. All provisions contained in an EPA-approved SIP and all terms and conditions in SIP-approved permits are already federally enforceable (see 40 CFR § 52.23). The enactment of title V did not change this. To the contrary, all such terms and conditions are also federally enforceable "applicable requirements" that must be incorporated into the Federal side of a title V permit [see CAA § 504(a); 40 CFR § 70.2)]. Thus, if a State does not want a SIP provision or SIP-approved permit condition to be listed on the Federal side of a title V permit, it must take appropriate steps in accordance with title I substantive and procedural requirements to delete those conditions from its SIP or SIP-approved permit. If there is not such an approved deletion and a SIP provision or condition in a SIP-approved permit is not carried over to the title V permit, then that permit would be subject to an objection by EPA.

Letter from John Seitz, U.S. EPA, to Robert Hodanbosi, STAPPA/ALAPCO, dated May 20, 1999. The relevant portions of this letter are attached to this petition as **Exhibit 6**.

The emission limits in the underlying permits issued to the Dunkirk Plant are expressed as "permissible" emission rates. "Permissible emission rate" is defined in 6 NYCRR § 200.1(bj) as "[t]he maximum rate at which air contaminants are allowed to be emitted to the outdoor atmosphere. This includes . . . (3) any emission limitation specified by the commissioner as a condition of a permit to construct and/or certificate to operate." Similarly, the SIP version of 6 NYCRR § 201 states that "a certificate to operate will cease to be valid under the following circumstances . . . (3) the permissible emission rate of the air contamination source changes." 6 NYCRR § 201.5(d)(3) (effective 4/4/93). Thus, the SIP makes it clear that the "permissible emission rate" included in SIP-based Part 201 permits is an enforceable requirement. The permissible emission rates included in the Part 201 permits previously issued to this facility must therefore be included in this Title V permit.

The EPA Administrator must object to the proposed Title V permit for the Dunkirk Steam Generating Station based on the fact that the permit does not include all requirements from the plant's pre-existing SIP-approved permits. All terms and conditions from pre-existing SIP-based permits must be included in the Title V permit issued to the Dunkirk Plant. Any condition in the Title V permit that is based on a pre-existing SIP-based permit must specifically identify the permit that serves as the basis for the underlying applicable requirement.

VIII. The Administrator Must Object to the Proposed Permit Because it Lacks Monitoring that is Sufficient to Assure the Facility's Compliance with all Applicable Requirements

A basic tenet of Title V permit development is that the permit must require sufficient monitoring and recordkeeping to provide a reasonable assurance that the permitted facility is in compliance with legal requirements. As U.S. EPA explained in its recent response to a Title V permit petition filed by the Wyoming Outdoor Council:

> [W]here the applicable requirement does not require any periodic testing or monitoring, section 70.6(c)(1)'s requirement that monitoring be sufficient to assure compliance will be satisfied by establishing in the permit 'periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.' See 40 C.F.R. § 70.6(a)(3)(I)(B). Where the applicable requirement already requires periodic testing or instrumental or non-instrumental monitoring, however, as noted above the court of appeals has ruled that the periodic monitoring rule in § 70.6(a)(3) does not apply even if that monitoring is not sufficient to assure compliance. In such cases the separate regulatory standard at § 70.6(c)(1) applies instead. By its terms, § 70.6(c)(1) - like the statutory provisions it implements - calls for sufficiency reviews of periodic testing and monitoring in applicable requirements, and enhancement of that testing or monitoring through the permit necessary to be sufficient to assure compliance with the terms and conditions of the permit.

U.S. EPA, *In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Order Partially Granting and Partially Denying Petition for Objection to Permits,* November 16, 2000, pp. 18-19.

In addition to containing adequate monitoring, each permit condition must be "enforceable as a practical matter" in order to assure the facility's compliance with applicable requirements. To be enforceable as a practical matter, a condition must (1) provide a clear explanation of how the actual limitation or requirement applies to the facility; and (2) make it possible to determine whether the facility is complying with the condition.

The following analysis of specific proposed permit conditions identifies requirements for which monitoring is either absent or insufficient and permit conditions that are not practicably enforceable.

A. <u>The Proposed Permit Because Fails to Assure the Plant's Ongoing Compliance with Particulate Matter Emission Limits That Apply to the Boilers</u>

The Dunkirk Steam Generating Station includes 4 coal-fired boilers. Particulate emissions from all of the boilers are controlled by electrostatic precipitators (ESPs). According to the proposed Title V permit, boilers 1 and 2 are subject to a particulate matter emission limit of 0.23 lbs/mmBtu under 6 NYCRR § 227-1.2(a)(4). (See Conditions 52 and 53). Condition 54 indicates that boilers 3 and 4 are subject to a particulate matter limit of 0.17 lbs/mmBtu.

In accordance with 40 CFR § 70.6(a)(3)(i)(B), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's

compliance with the permit.[9] The proposed permit violates this requirement because it only requires the Dunkirk Plant to perform one Method 5 test per permit term and it fails to require surrogate monitoring that could assure the plant's ongoing compliance with PM limits between stack tests.

Though Condition 37 of the proposed permit purports to establish parametric monitoring to assure compliance with particulate emission limits, this monitoring is inadequate because the permit fails to establish any sort of indicator range for each parameter that could be used to measure compliance. The U.S. EPA Administrator has already taken the position that parametric monitoring designed to assure a facility's compliance with an applicable requirement must include indicator ranges that have been correlated with emissions. For example, in objecting to the proposed permit for a Kentucky plant, the Administrator explained:

> Since several of the emission points are equipped with a control device to control PM emissions, EPA recommends using parametric monitoring to assure that PM emissions are adequately controlled. For example, a parametric range that is representative of the proper operation of the control equipment could be established using source data to develop a correlation between control parameters(s) and PM emissions. <u>The permit must specify the parametric range or procedure used to establish that range, as well as the frequency for re-evaluating the range</u>.

U.S. EPA Region 4 Objection, Proposed Part 70 Operating Permit, Oxy Vinyls, LP, Louisville Kentucky, Permit NO. 212-99-TV, under cover of letter from Winston A. Smith, U.S. EPA Region 4, to Arthur Williams, February 1, 2001, (emphasis added). This objection letter is attached as **Exhibit 7.** Similarly, U.S.EPA objected to the proposed Title V permit for Tampa Electric Company's F.J. Gannon Station for, among other things, not including an acceptable performance range for the parameters being monitoring. U.S. EPA stated:

> While the permit does include parametric monitoring of emission unit and control equipment operations in the O & M plans for these units . . . the parametric monitoring scheme that has been specified is not adequate. The parameters to be monitored and the frequency of monitoring have been specified in the permit, but the parameters have not been set as enforceable limits. In order to make the parametric monitoring conditions enforceable, a correlation needs to be developed between the control equipment parameter(s) to be monitored and the pollutant emission levels. The source needs to provide an adequate demonstration (historical data, performance test, etc.) to support the approach used. In addition, an acceptable performance range for each parameter that is to be monitored should be established. The range, or the procedure used to establish the parametric ranges that are representative of proper operation of the control equipment, and the frequency for re-evaluating the range should be specified in the permit. Also, the permit should include a condition requiring a performance test

[9] The underlying applicable requirement does not specify a compliance monitoring method.

> to be conducted if an emission unit operates outside of the acceptable range for a specified percentage of normal operating time. The Department should set the appropriate percentage of the operating time that would serve as trigger for this testing requirement.

U.S. EPA Region 4 Objection, Proposed Part 70 Operating Permit, Tampa Electric Company, F.J. Gannon Station, Permit no. 0570040-002-AV, under cover of letter from Winston A. Smith, U.S. EPA Region 4, to Howard Rhodes, Florida Department of Environmental Protection, September 8, 2000. This objection letter is attached as **Exhibit 8.** See also *U.S. EPA Region 4 Objection, Proposed Part 70 Operating Permit, Tampa Electric Company, Big Bend Station, Permit no. 0570039-002-AV*, under cover of letter from Winston A. Smith, U.S. EPA Region 4, to Howard Rhodes, Florida Department of Environmental Protection, September 5, 2000. This objection letter is attached as **Exhibit 9.** See also *U.S. EPA Region 4 Objection, Proposed Part 70 Operating Permit, North County Regional Resource Recovery Facility, Permit no. 0990234-001-AV*, under cover of letter from Winston A. Smith, U.S. EPA Region 4, to Howard Rhodes, Florida Department of Environmental Protection, August 11, 2000. This objection letter is attached as **Exhibit 10.** See also *U.S. EPA Region 4 Objection, Proposed Part 70 Operating Permit, Pinellas County Resource Recovery Facility, Permit no. 1030117-002-AV*, under cover of letter from Winston A. Smith, U.S. EPA Region 4, to Howard Rhodes, Florida Department of Environmental Protection, July 20, 2000. This objection letter is attached as **Exhibit 11.**

This proposed permit fails to satisfy the monitoring requirements contained in 40 C.F.R. Part 70 because it does not establish a monitoring regime that is designed to assure the facility's compliance over the course of the permit term. In addition, DEC failed to provide information in the statement of basis that explains why it believes that the monitoring requirements contained in the permit are adequate to assure compliance. The Administrator must object to this proposed permit and require DEC to (1) establish parametric monitoring to assure compliance with the PM limit, (2) provide data that supports the link between compliance and the parameter(s) being monitored, (3) include a clear and enforceable indicator range in the permit for each parameter, and (4) require the plant to perform regular stack testing to confirm that the plant is operating in compliance with the PM standard so long as it is operating within the specified indicator ranges. The Administrator must require DEC to release the new monitoring conditions for a 30-day public comment period.

B. The Proposed Permit is Defective Because it Fails to Assure the Plant's Compliance With Applicable Opacity Limits

1. The proposed permit must include more detailed reporting requirements.

The Administrator must object to this proposed permit because it does not include monitoring, recordkeeping, and reporting requirements that will allow DEC, U.S. EPA, and the public to know when the plant is violating opacity requirements. It is obvious that monitoring and reporting undertaken by Dunkirk Plant operators in the past was inadequate. In particular, the information provided has been inadequate for the DEC Commissioner to determine whether exceedances were unavoidable and

therefore qualify to be excused. For example, in a letter to Thomas Allen, ARG Engineering from Anthony Adamczyk, DEC dated June 8, 1999, we find that "DEC staff advised [Niagara Mohawk] that simply coding startup as the reason for an opacity excursion was not adequate for demonstrating that a violation was unavoidable." The letter continued to say that "without more detailed information regarding opacity at the Albany, Huntley and Dunkirk facilities, [DEC] cannot recommend that the Commissioner excuse opacity exceedances which occur during startup or shutdown as unavoidable."

2. The requirement that the plant maintain and calibrate the COMS must be identified as a federally enforceable condition.

The Administrator must object to this proposed permit because it fails to include federally enforceable requirements for the maintenance and calibration of the COMS. Instead, this requirement is identified as only enforceable by the state. Since maintenance and calibration of the COMS is necessary to assure the plant's compliance with federally enforceable opacity limits, these requirements must be placed in the federally enforceable section of the permit.

A Title V permit must include monitoring that is sufficient to assure the plant's compliance with all applicable requirements. Thus, DEC is obligated to add monitoring to a Title V permit under circumstances where the underlying SIP requirement does not specify sufficient monitoring to assure the plant's ongoing compliance. The fact that the COMS maintenance and calibration requirements are contained in a state regulation that has not been incorporated into New York's SIP does not prevent DEC from including COMS maintenance and calibration requirements as federally enforceable requirements in a Title V permit. Only monitoring requirements that are included in the federally enforceable section of the Title V permit can be used to fulfill the Part 70 requirement that monitoring be sufficient to assure ongoing compliance. Without the COMS maintenance and calibration requirements, this proposed Title V permit does not assure compliance because there is no assurance that the COMS will correctly measure opacity.

Conclusion

In light of the numerous and significant violations of 40 CFR Part 70 identified in this petition, the Administrator must object to the proposed Title V permit for the Dunkirk Steam Generating Station

Respectfully submitted,

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New York, New York

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