EPA Region 8 Air Program's Comments

Submitted to

the South Dakota Department of Environment and Natural Resources

on

the Draft PSD Permit for the Hyperion Energy Center

November 14, 2008

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Hyperion Energy Center Draft PSD Permit Comments
November 2008

I. Background

Hyperion Energy Center (HEC) is a proposed 400,000 barrels per day (BPD) crude oil refinery and Integrated Gasification Combined Cycle (IGCC) power plant with nominal gross power output of 532 MW. The draft PSD permit issued by SD-DENR would authorize Hyperion Refining LLC to construct the HEC near Elk Point, Union County, South Dakota.

II. Permit Format

EPA notes that the current permit format is somewhat confusing to review and understand. It is an important component of the public participation process that DENR proposes a permit that lends itself to public participation, technical content of such document notwithstanding. DENR should revise the format by evaluating each of the major emitting units separately for all pollutants it emits as did the application. Such a format will facilitate review of the permit by EPA, the citizens and interested parties and will enhance compliance demonstration.

III. Project Emissions Summary and Crude Slate

Table 1.4-1 of the application and Table 7-1 ("NSR Regulated Air Pollutants Significant Emission Comparison") of the Statement of Basis (SOB) list a summary of the proposed facility's potential to emit both regulated and unregulated air pollutants (the table includes the controlled emissions and the significant rate for the pollutants). The application describes the table as summary of proposed facility's PTE while the SOB labeled it "Controlled emissions" of NSR regulated air pollutants. Table 7-1 also indicated that the applicant did not submit uncontrolled emissions. The uncontrolled emission information should be included in the DENR's analysis. Additionally, where did the annual emissions rates titled "controlled emissions" by the SOB and "proposed facility's PTE" by the application come from? These references and supporting information for these emission estimates need to be documented and provided to EPA and the public for review.

The SOB and the application should be revised to provide a detailed analysis of the source(s) of these emission estimates, including necessary supporting documentation for both potential hourly and annual emission rates for all the emission units and other sources of emissions (i.e., cooling towers, equipment leaks, internal combustion engines, and all other emission sources covered by the proposed permit).

It has been noted that this refinery is proposing to use crude derived from Canadian tar sands. While EPA recognizes that a refinery crude slate can vary greatly depending on operations and product demand, in its review, EPA could not find any

discussion of the design crude characteristics. EPA requests that this be better defined and discussed with other necessary permit assumptions, so that a more complete understanding of refinery crude constituents and the ultimate refinery emissions in the application, statement of basis, and permit can be developed. EPA requests that, at a minimum, this discussion include sulfur content, hydrogen/carbon (H/C) ratio, and metals in the refinery's representative crude.

IV. Petroleum Refinery Process Heaters

A. Oxides of Nitrogen (NOx) BACT

Table 4.2-1 of the application lists process heaters with low-NOx burners and SCR to achieve a BACT emission limit of 0.006 lb/MMBtu heat input (HHV), based on a rolling three-hour average. Table 4.2-2 of the application also lists process heaters with low-NOx burners only to achieve a BACT limit of 0.025 lb/MMBtu, based on a rolling three-hour average. Table 7-55 (pp87) of the SOB also proposes BACT limits of 0.006 lb/MMBtu for Units #1 through 20 using low-NOx burners and SCR and BACT limits of 0.025 lb/MMBtu for Units 21-30 using only Ultra low-NOx burners.

Both the draft permit (page 40) and the SOB (page 88) state "compliance with the emission limit is based on a 3-hour rolling average, excluding periods of startup, shutdown, and malfunction, and based on a 365-day rolling average, including periods of startup, shutdown and malfunction using a continuous emission monitoring system that meets procedures specified in permit condition 11.1."

EPA notes that DENR's decision to accept the same numerical value (0.006 lb/MMBtu and 0.025 lb/MMBtu) for BACT limits based on a 365-day rolling average for periods that include startup, shutdown, and malfunction presents compliance demonstration problems. It is generally accepted that emissions during startup, shutdown, and malfunction are usually higher than during normal operation. Therefore, it is difficult to ascertain emissions associated with these high periods of emissions if compliance is based on a 365-day rolling average. EPA also notes that none of the previous determinations used by DENR as the basis for its proposed determinations have required compliance based on a 365-day rolling average. The DENR's proposed BACT limits based on a 365-day rolling average for periods that include startup, shutdown, and malfunction are the least stringent we have seen, and thus are unacceptable to EPA. For example, the Arizona Clean Fuels Yuma Refinery PSD permit issued on September 18, 2006, does not include such an averaging time.

We recommend two different options for solving this problem. First, DENR could require that the BACT limits proposed by HEC, and accepted as BACT by DENR, apply at all times including periods of normal operation, startup, shutdown, and malfunction with a 3-hour rolling average. Second, DENR could establish separate BACT limits for startup and shutdown. DENR would need to define startup and shutdown in the permit using objective criteria and require appropriate monitoring and

recordkeeping of when such periods start and end to demonstrate compliance with a separate BACT limit during those periods.

Large and Small Process Heaters' BACT limits

Hyperion proposed, and DENR agrees with basing the BACT emission limits for NOx on the size of the unit based on what was considered economically feasible for the different process heaters in the Hyperion's application (see page 87 of the SOB, table 7-55). DENR agrees with Hyperion's proposal of a BACT limit of 0.006 lb/MMBtu for large process heaters (Units #s 1-20) by utilizing both low-NOx burners and SCR as control system. DENR also agrees that a BACT limit of 0.025 lb/MMBtu for small process heaters (Units #21-30) by utilizing ultra low-NOx burners as control equipment.

As discussed in the SOB (page 88), DENR's review of the South Coast Air Quality Management District's permit to Ceneco Refining Company for its Santa Fe Springs Refinery issued on November 17, 2000, notes a BACT limit of 0.006 lb/MMBtu was required for a heater with HHV of 50 MMBtu/hr utilizing SCR as emission control. Nonetheless, DENR accepts Hyperion's proposal of a BACT limit of 0.025 lb/MMBTU for heaters (Units 21-30) with HHV of 66.9 MMBtu/hr. utilizing only ultra low-NOx burners. Hyperion argues that the incremental cost effectiveness of adding SCR systems to these ten process heaters is more than $30,000 per ton of NOx emission reduction and thus does not represent BACT for these units. They also contend that requiring SCR for the small heaters would result in adverse environmental impact and relatively insignificant air quality benefits.

The discussion in the application as well as DENR's discussion in the SOB does not support the above conclusion. For example, our review of summary cost data provided in Appendix D to this application, referenced as the basis for the $30,000 incremental cost effectiveness of adding SCR, did not contain any referenced or supporting analysis for arriving at this figure. As discussed in Section XIV below, the costs must be documented. Hyperion and DENR need to provide detailed analysis that establishes the incremental cost of selecting SCR in addition to low-NOx burners that would effectively reduce NOx emissions from 0.025 lb/MMBtu to 0.006 lb/MMBtu. The DENR's analysis should also discuss the potential adverse environmental impact of selecting SCR alluded to in its discussion. EPA notes that there is precedence in this case for using SCR for NOx emissions control for process heaters with HHV as small as 50 MMBtu/hr as discussed above.

B. Oxides of Sulfur (SOx) BACT

Hyperion found many options for controlling refinery fuel gas (RFG) sulfur level in emissions from the process heaters and these include fuel gas cleanup by chemical absorption (methyl diethanolamine (MDEA)), fuel gas cleanup by physical absorption (Rectisol and Selexol), and fuel gas desulfurization. Hyperion then concluded that the two highest-ranked control options (Rectisol and Selexol) would cause significant adverse energy and economic impacts that would outweigh the beneficial environmental

impacts. Hyperion also concludes that capital and operating costs are greatly increased by stating that the cost effectiveness of fuel gas cleanup by physical absorption is more than $35,000 per ton of SO2 removal for Selexol process and nearly $70,000 per ton of SO2 removal for the Rectisol wash process as shown in Appendix D of the application.

EPA finds the economic impact analysis for refinery fuel gas desulfurization, as well as the other emission control equipment in Appendix D, inadequate. Hyperion needs to present all the appropriate corresponding costs, in particular the documentation for the costs presented for MDEA process (with an emission limit of 35 ppmv refinery sulfur content) to allow valid comparison with Selexol (with an emission limit of 10 ppmv) and Rectisol (with an emission limit of 1.0 ppmv) physical absorption methods. In order to evaluate whether the Selexol process is cost prohibitive, as Hyperion proposes, EPA notes that it is necessary to review the incremental cost effectiveness of Selexol over MDEA since the emissions reduction with Selexol is on the order of more than three times that of MDEA. EPA requests that the State provide this information to us. Although DENR agrees with Hyperion that fuel gas cleanup by physical absorption (Selexol and Rectisol) was not cost effective, we are not making any comments on the proposed BACT determination until we have had the opportunity to review the cost effectiveness and incremental cost analysis for the three sulfur reduction methods.

In the meantime, based on our research EPA agrees with DENR that sulfur dioxide of no greater than 35 parts per million by volume refinery gas determined as sulfur appears to represent the range of BACT emission limits through the use of the MDEA chemical absorption method. However, in light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed limit. Furthermore, we do not agree with DENR's decision to allow for compliance to be demonstrated on a 24-hour rolling average, which excludes startup, shutdown, and malfunction; and also provides for a 365-day rolling average, that includes startups, shutdowns and malfunction. As we have discussed previously in this comment letter (see NOx BACT section above), we recommend one of two options: DENR needs to either require that the BACT limit applies at all times, including periods of startup, shutdown, and malfunction; or DENR needs to establish a separate BACT limit for explicitly defined startup, shutdown periods. DENR must also require monitoring and recordkeeping to demonstrate compliance during these explicit time periods.

C. Carbon Monoxide (CO) BACT

Based our research, EPA agrees with DENR that a carbon monoxide (CO) emission limit of 0.007 lb/MMBtu on a dry basis through good combustion practices represents BACT for all refinery process heaters (Units #1-30) appears to be within the range of what constitutes BACT. We base our conclusion on the relatively recent permit for the Arizona Clean Fuels Yuma Refinery issued on September 18, 2006, where the emission limit for the process heaters is 0.018 to 0.04 pounds per million Btus and California's Bay Area Air Quality Management District's Regulation 9 Rule 10 – Nitrogen Oxides and Carbon Monoxides from Boilers, Steam Generators and Process

Heaters in Petroleum Refineries where the emission limit is 0.3 pound per million Btu. However, in light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed limit.

Additionally, in reviewing DENR's discussion in the SOB and the basis for the limit, we found neither any justification for the 24-hour rolling average that excludes startup, shutdown, and malfunction, nor did we find any reference to a 365-day rolling average for periods including startup, shutdown, and malfunction for demonstrating compliance with this limit as agreed to by DENR. In fact, averaging times in the Arizona Clean Fuels Yuma Refinery range from hourly to a three hour average, which is an example of a permitted refinery meeting much more stringent limits. Furthermore, DENR needs to require that the BACT limit apply at all times, including periods of startup, shutdown, and malfunction or require a separate BACT limit for appropriately defined startup and shutdown periods and require monitoring and recordkeeping to demonstrate compliance with these periods. DENR also needs to appropriately reduce the averaging times for compliance demonstration through the use of the CO continuous emission monitoring system (CEMS).

D. Volatile Organic Compounds (VOCs) BACT

Based on our research, EPA agrees with DENR that volatile organic compounds (VOCs) emission limit of 0.0015 lb/MMBtu on a 3-hr average falls within the range of what we would expect to see for BACT for all refinery process heaters (Units #1-30). However, in light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed limit. Our RBLC database review indicates that the emission rate for process heaters at the Exxon Corporation's Exxon Bay Refinery permit issued on May 5, 1999, varies between 0.0013 to 0.006 pounds per million Btus. However, Permit condition 10.10 (page 62) only requires one set of initial VOCs performance stack tests for these units within three years after initial startup of the petroleum refinery, and does not require ongoing compliance demonstrations after these initial performance tests. The permit should require ongoing BACT compliance demonstration for these emission units.

Additionally, DENR needs to include a permit condition that requires Hyperion to correlate the BACT CO emission limits that are established for these units, and monitored through CO CEMS, with the BACT VOC emissions limits that are established during the initial VOC performance tests. The correlated CO and VOC results should be used to demonstrate compliance with the BACT VOC emission limits achieved through good combustion practices.

E. Particulate Matter (PM) BACT

Hyperion proposes and DENR accepts that an emission limit of 0.0075 lb/MMBtu for PM10 emissions including both filterable and condensable from refinery fuel gas-fired process heaters (units #1-30) is representative of a BACT limit through good

combustion practices. Thus, DENR proposes to require that Hyperion demonstrate compliance with this limit by a 3-hour average based on a stack performance test. Condition 10.7 (page 59) of the permit requires Hyperion to conduct stack tests for all the refinery process heaters within three years of the refinery startup. DENR also proposes that the BACT emission limit for PM10 is not applicable during startup, shutdown, or malfunction. Finally, DENR states that the PM10 emission limit during startup, shutdown, or malfunction is discussed elsewhere in the statement of basis (pages 55-56). We have several issues with the above proposed determination and proposed testing requirements.

First, DENR proposes a one time initial performance test to demonstrate compliance with the BACT limit for filterable PM10. However, no filterable PM10 BACT limit is specified (see pages 23 to 26 and page 61, footnote 1); the proposed BACT limit is for both filterable and condensable emissions. DENR also discusses in the statement of basis its review of the Texas Commission on Environmental Quality's technical review of the PSD permit for Fina Oil & Chemical Company's Port Arthur Refinery permit issued in 1998, which indicated that Method 202 is the promulgated method for demonstrating compliance with PM10 condensable limits. Yet, DENR's proposed permit only proposes testing of PM10 filterable emissions. DENR needs to require a compliance demonstration for both filterable and condensable PM10 using EPA Methods 201A and 202 respectively.

Second, we strongly recommend DENR require the use of a PM CEMS to demonstrate on-going compliance with the BACT limit proposed. DENR's proposal to conduct a one time initial performance test within three years of startup of the refinery does not constitute, or demonstrate, on-going compliance with the BACT limit proposed. EPA also notes that the PM CEMS will solve the problem of demonstrating compliance during startup, shutdown, or malfunction.

Finally, our review of DENR's BACT analysis for startup, shutdown, and malfunction (page 137 of the SOB) raises additional questions. For example, DENR states that periods of startup, shutdown, and malfunction are not considered representative conditions to conduct a performance test for compliance demonstration. Therefore, DENR believes it is not prudent to establish a numerical BACT limit where compliance cannot be verified. Yet, DENR concluded its analysis by stating that Hyperion would likely meet the BACT emission limit in pounds per hour because startup and shutdown periods occur at low operational loads. Furthermore, we reject the notion that BACT limits should be limited in application based on the performance test specified; an exception based on this concept is inconsistent with EPA's longstanding interpretation that BACT applies at all times. Reference: January 28, 1993 memo from John Rasnic, EPA, entitled "Automatic or Blanket Exemptions for Excess Emissions During Startup, and Shutdowns Under PSD.

Thus, consistent with our earlier comments regarding BACT for other pollutants, BACT must apply at all times, including periods of startup, shutdown, and malfunction. In the alternative, if it is not feasible to meet BACT during startup and shutdown, DENR

may establish a separate BACT limit during these periods. In the latter approach, the permit must adequately define startup and shutdown based on objective criteria and require Hyperion to appropriately monitor and record instances of startup and shutdown per the permit definitions. In either approach, the permit must specify means to determine compliance with applicable BACT limits during all periods, including startup, shutdown, and malfunction. DENR needs to apply this same approach for all BACT limits for which the ability to determine compliance during startup, shutdown, or malfunction may be an issue.

V. Refinery and IGCC Flare BACT for SO_2, CO, NOx, PM, PM_{10}

A. Refinery & IGCC Flare Design

EPA generally agrees with both Hyperion and DENR that good combustion practices and a flare minimization plan should be part of BACT for SO2, CO, NOx, PM, and PM10 for the refinery flares and IGCC flare for this source. However, we are not satisfied with certain aspects of the BACT requirements, as specified in this section and sections V.B, C, and D below. While Chapter 12.0 of the permit (p.70) includes refinery flare design, operation, emissions' minimization plan, recordkeeping and reporting, and root cause analysis requirements, the permit does not include emission limits and standards that could be used to demonstrate compliance. For example, Condition 12.4(4) (p.72) requires the source to perform a Method 9 visible emissions observation no more than 15 minutes after the start of the flare event and for the duration of the event, but does not specify what constitutes a violation. DENR needs to require that all refinery and IGCC flares be designed for and operated with no visible emissions, and require Method 22 for compliance demonstration and not Method 9. DENR should also require a minimum threshold for higher (gross) heating value of the gas flow to each flare in addition to determining and recording such value as required by Condition 12.4(6). Such minimum higher heating value should be established to correspond to minimum emissions. Also, DENR needs to require Hyperion to design the flares with a maximum exit velocity that ensures minimum emissions during flaring. Such flow velocity should be monitored and recorded to demonstrate compliance.

Finally, DENR should consider and evaluate as potential BACT for refinery and IGCC flare emissions the imposition of annual limits, which would include malfunction periods. While EPA doesn't generally consider annual limits acceptable as stand-alone BACT limits, they may make sense for flares in combination with other measures. Such limits are being imposed at ConocoPhillips' Wood River refinery in Illinois, and the South Coast Air Quality Management District has imposed annual SO2 emissions caps on flares, violation of which are subject to penalties.

B. Refinery & IGCC Flare Work Standards

The proposed language in 12.1 defines malfunction and then says, "A failure caused entirely or in part by poor maintenance, careless operation, preventable equipment

breakdown, or any other cause within the control of the owner or operator of the source is not a malfunction." It then goes on to say that flaring during a malfunction shall be completed per a flare minimization plan.

We are not convinced that this approach to malfunction flaring constitutes BACT. Also, we are concerned about potential emissions during malfunction flaring and potential impacts to the NAAQS and increments.

EPA acknowledges that malfunctions occur and that flaring is necessary to deal with emissions during malfunctions. However, consistent with the requirement that BACT apply at all times, it is important that malfunctions be avoided if at all possible, and minimized if they do occur. Accordingly, the permit should include provisions to strongly incentivize proper operation and maintenance of the facility, consistent with the goal of minimizing malfunction flaring. The proposed language in 12.1 regarding malfunctions is not sufficiently robust to ensure this goal is achieved. It is not sufficiently detailed and it does not specify that the owner/operator has the burden of showing that the event was truly a malfunction. An approach that would address our concerns would be to include in the permit the criteria from EPA's 1999 excess emissions policy for establishing that an event was a malfunction, and require the source to demonstrate that it met the criteria.

These criteria are:

1. The flaring emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator;

2. The flaring emissions (a) did not stem from any activity or event that could have been foreseen and avoided, or planned for, and (b) could not have been avoided by better operation and maintenance practices;

3. To the maximum extent practicable the air pollution control equipment or processes and other facility processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

4. Repairs were made in an expeditious fashion when the operator knew or should have known that a malfunction was occurring. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

5. The amount and duration of the flaring emissions were minimized to the maximum extent practicable during periods of such emissions;

6. All possible steps were taken to minimize the impact of the flaring emissions on ambient air quality;

7. All emission monitoring systems were kept in operation if at all possible;

8. The owner or operator's actions in response to the flaring emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence;

9. The flaring emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

10. The owner or operator properly and promptly notified the appropriate regulatory authority.

Regarding protection of NAAQS and increments, if some limit on emissions is needed to protect the NAAQS or increments (or put another way, if uncontrolled flare emissions could threaten NAAQS or increments), then those limits should be met at all times and any flaring above those values should be considered a violation. EPA's 1999 excess emissions policy allows establishment of an affirmative defense to penalties (but not injunctive relief) for such a violation, based on meeting the criteria above. The DENR could write such an affirmative defense into the permit.

C. The Refinery and IGCC Flare Minimization Plan

The flare minimization plan is not part of the permit. Given that this is part of BACT, it should be included in the permit and not be developed later. In *In re Rockgen Energy Center*, EPA's Environmental Appeals Board (EAB) held that a PSD permit was deficient because a startup/shutdown emissions minimization plan was not included in the permit. See 8 E.A.D. 536, at 551 - 555, 1999 The plan should be enforceable and not be changeable without public process. Id. We note that condition 12.3 of the proposed permit says the minimization plan will be revised once a year.

D. Root Cause Analysis

We have several concerns related to the root cause analysis. First, the permit should require a root cause analysis for the IGCC flare. Second, the permit should specify that a recurrence of the same root cause constitutes a violation of the permit. This is consistent with the refinery settlements and should be considered part of BACT. Third, in 12.5(4)(p. 72), the text should be changed to read, "The steps taken to limit the duration of the flaring event ***and*** the quantity of emissions associated with the event." Fourth, consistent with the refinery settlements, a root cause analysis should also be required if flare SO2 emissions exceed 500 pounds in a 24-hour period.

VI. Catalyst Regeneration Vents

A. NOx BACT

Based on our experience, EPA agrees with DENR and Hyperion that work practice standards and 0.1 lb/hr. (units 31 and 32) and 0.02 lb/hr. (unit 33), for Platformer Catalyst Regenerators and Oleflex Catalyst Regenerator respectively fall within the range of what we would anticipate to see for the BACT emission limits. In light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed limit. We do not agree with the compliance demonstration requirement proposed by DENR (footnote 2, page 40 of the permit). Chapter 10 of the permit concerning performance tests, outlines a number of permit Conditions that DENR secretary may or may not require to be carried out to demonstrate compliance with the emission limit based on an average of three test runs (Condition 10.1, page 58). This provides the Secretary with inappropriate discretion. Although, DENR establishes Condition 10.1 in accordance with Administrative Rule of South Dakota (ARSD) 74:36:11:02, EPA believes ARSD 74:36:09:02, as referenced to 40 C.F.R § 52.21 and the demonstration of compliance with BACT limit is more appropriate in this case. Thus, DENR needs to re-cite the basis for its authority for this permit Condition and require Hyperion to conduct the initial permit test to demonstrate compliance with BACT limit by removing the Secretary's discretion.

DENR needs to require Hyperion to comply with all the applicable requirements outlined in NESHAP 40 CFR 63 Subpart UUU. Since Units 31, 32 and 33 are not equipped with CEMS, DENR also needs to outline the specific provisions of this subpart that require Hyperion to demonstrate compliance during periods of startup, shutdown, and malfunction according to a plan and ensure on-going compliance during periods of normal operation.

B. Oxides of Sulfur BACT

Hyperion proposes that the SO2 BACT emission limits for the catalyst regenerators at HEC be established as 0.2 lb/hr from each of the Platformer catalyst regenerators (units 31 and 32) and 0.03 lb/hr. from the Oleflex regenerator (unit 33) based on adherence to manufacture's recommended operating and work practices. DENR agrees with these BACT limits as proposed by Hyperion, but lists a caustic scrubber as a control device for these units (see Table 1-1, page 3 of the permit). Hyperion considered add-on air pollution control such as wet caustic scrubber in its BACT analysis for SO2 control for the catalyst regenerators and concluded it was infeasible due to its adverse economic impact. (See Hyperion's application –section 4.4.2.2, page 64). DENR needs to revise table 1-1 of the permit and include the appropriate control device or practice for catalyst regenerators.

The issue of compliance demonstration by a 3-hour average based on a stack performance test proposed by DENR has been discussed above (see NOx BACT). We recommend DENR include applicable requirements and/or specific work plan provisions to demonstrate compliance during startup, shutdown, and malfunction and to ensure on-going compliance demonstration during normal operations as in the case of NOx emissions. Finally, because Hyperion proposed SO2 emissions BACT limits based on design maximum exhaust gas flow rates and an SO2 concentration of 15 ppm in the

regenerator exhaust gases, Hyperion should provide the number that represents maximum exhaust gas flow rate. DENR should incorporate both the concentration and the maximum flow rate from regenerators' vents into the permit and both should have permit conditions that require monitoring and recordkeeping to demonstrate compliance with BACT limits.

C. CO and PM BACT Limits

Based on our experience, EPA agrees with the proposed BACT emission limits of 0.5 lb/hr. for CO and 0.01 lb/hr. for PM from each of the Platformer catalyst regenerators (units 31 & 32) and 0.1 lb/hr. for CO and 0.002 lb/hr. for PM from the Oleflex regenerator (unit 33) through adherence to manufacturer's recommended work and operating practices fall within the range of the limits we would expect to see for these units. In light of the insufficient cost documentation, incomplete incremental cost analysis, and lack of permit condition specificity, EPA is unable to make a determination and provide final comments on the proposed BACT limit. As discussed above (see NOx & SOx BACT in section VI), DENR needs to incorporate into the permit specific compliance requirements including monitoring and recordkeeping requirements to demonstrate compliance with these BACT limits (i.e., establishment of, and requirement to comply with, the maximum design exhaust gas flow rates from the vents).

VII. Coker Drum Overhead Steam Vents

This comment covers Units #34a, 34b, 34c, 34d, 35a, 35b, 35c, 35d, the coke drum overhead steam vents

Section 4 of the Hyperion Energy Center PSD permit establishes particulate and VOC limits for the coke drum overhead steam vents (Units #34a, 34b, 34c, 34d, 35a, 35b, 35c, 35d). These limits are based upon work practice standards required by NSPS Subpart Ja, found in Section 6.4 of the PSD permit. However, it does not appear that there was any analysis of SO2 emissions from these process vents. As stated in the background information document for NSPS Subpart Ja these emission points can also be significant sources of SO2 emissions. As such, these emission points should have gone through BACT review for SO2. DENR must develop an SO2 BACT analysis, and the required supporting documentation, for these steam vents. EPA requests that the DENR submit the additional BACT analysis to us for our review and comment.

In addition, in establishing BACT limits for VOC and particulate emissions from these emission units, DENR cites the May 14, 2007 federal register notice for NSPS Subpart Ja as stating that it is technically infeasible to control coker drum steam vents to a level lower than that established in NSPS Subpart Ja. That notice is no longer relevant because since the publication of the federal register notice, EPA has become aware of a PSD permit (issued to the Marathon Petroleum Company by the State of Michigan on June 20, 2008) requiring a design requirement of 2.0 psig rather than the NSPS requirement of 5.0 psig. Therefore, this demonstrates the feasibility of a lower emission limit.

EPA recommends that DENR review this new permit data that demonstrates that controls greater than those required by NSPS Subpart Ja are technically feasible and determine if lower levels are appropriate for the Hyperion Energy Center. EPA requests that the DENR submit the additional BACT analysis to us for our review and comment.

VIII. Cooling Tower

PM BACT Limits

Based on EPA's review, it appears that the proposed PM BACT emission limit is based on the assumption that 0.0005 percent of the circulating water flow rate is emitted as PM emissions (see table 7-23 in the statement of basis). This limit would be achieved through the use of a fan air cooler with high efficiency drift eliminators on the wet cooling tower and falls within the range of limits we would expect to see for BACT. However, in light of the insufficient cost documentation, incomplete incremental cost analysis, and lack of permit condition specificity (as discussed below) EPA is unable to make a determination and provide final comments on the proposed BACT limit. Hyperion noted in its application (page 68) that emission testing is not feasible for wet cooling towers due to the exhaust characteristics. Therefore, the BACT determination is expressed as an equipment specification rather than an emission limit. This statement contradicts the PM BACT emission limit proposed by Hyperion and accepted by DENR. Unfortunately, DENR did not discuss, or seek to dispute, this assertion in the statement of basis. In fact, Condition 5.3, which is the only permit Condition that addresses the installation, operation, and maintenance of the tower, only requires the operator to meet a PM limit of 0.0005 percent of the water flow rate.

Hyperion should provide the design parameters of the cooling tower sized for the HEC refinery, including but not limited to, the maximum water flow rate that will ensure that the PM BACT limit of 0.0005 percent is met. DENR should incorporate such parameter(s) into the permit as a mechanism for ensuring compliance with the PM BACT emission limit. To demonstrate compliance with such permit Condition, DENR needs to require monitoring and recordkeeping of these parameters and clearly define what constitutes a violation.

IX. Refinery Sulfur Recovery Plant

A. SO_2 BACT

The HEC refinery design includes six complete sulfur recovery trains (units 42a, 42b, 42c, 42d, 42e, 42f), sized so that four trains can meet the facility's sulfur recovery requirements while two trains are offline. Each train is has a thermal oxidizer that represents the emission point for the unit. DENR has determined that 0.056 pound per

long ton represents BACT for each of these units to ensure that each thermal oxidizer is operated properly. Based on our experience, EPA agrees with that the proposed limit falls within the range we would expect. However, in light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed BACT limit. Additionally, we do not agree with the 114.2 lb/hr. limit for the sulfur recovery plant (i.e., the assumption that all the thermal oxidizers are in operation at any given time) as outlined in permit Condition 4.2, footnote 8 on page 35 of the permit. We note that the 114.2 lb/hr. limit for the sulfur recovery unit would not ensure that each thermal oxidizer is operating properly if three or two thermal oxidizers are in operation at any given time. Furthermore, requiring compliance based on pounds per long ton would ensure consistency regardless of mode of operation under either the maximum coke design or natural gas design cases.

DENR needs to require compliance with the 0.056 pound per long ton for each oxidizer based on the continuous emission monitoring system (CEMS) data. Again, EPA disagrees with DENR's decision to use a 365-day rolling average for periods that include startup, shutdown, and malfunction even when using CEMS data. DENR must require the BACT limits to apply at all times, including periods of startup and shutdown and malfunction, or DENR needs to establish a separate BACT limit for explicitly defined startup and shutdown periods. DENR must also require monitoring and recordkeeping to demonstrate compliance during these explicit time periods.

B. H_2S, NOx, CO and VOCs BACT Limits

Based on EPA's experience, we agree that DENR's recommendation that the H_2S BACT limit should be 0.00015 pound per long ton falls within the range we would anticipate for the BACT limit. However, in light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed BACT limit. Also, we disagree with the proposed limit of 0.3 pound per hour for the same reasons discussed above (see section VIII(a) – SO2 BACT limit discussion).

EPA also agrees, based on our experience, that the NOx, CO and VOCs BACT determinations for the sulfur recovery plant fall within the range of what we would anticipate seeing for the BACT limits. However, in light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed limit. EPA disagrees with the use of a 365-day rolling average for periods that include startup, shutdown, and malfunctions for NOx as stated in the statement of basis on page 91. Consistent with our earlier comments regarding BACT for other units and pollutants, BACT must apply at all times. If it is not feasible to meet BACT during startup and shutdown, DENR can establish a separate BACT limit during these periods, along with appropriate definitions of startup and shutdown and monitoring and recordkeeping requirements regarding these periods.

C. PM BACT Limits

Based on the discussion on the SO2 BACT limit for the sulfur recovery plant (see section VIII(a) above), EPA recommends that DENR adopt a 0.0055 pounds per long ton sulfur loaded for each of the thermal oxidizers (filterable and condensable) as a PM BACT limit to ensure that each thermal oxidizer is operated properly. We note that the 11.2 lb/hr. limit for the sulfur recovery unit would not ensure that each thermal oxidizer is operating properly if three or two thermal oxidizers are in operation at any given time. As discussed above, this limit will also ensure consistency in compliance demonstrations under either the maximum coke design or the natural gas design scenario.

X. Storage Tanks

A. VOCs, NOx, PM and SOx BACT Limit

DENR proposes two operating scenarios as BACT for all storage tanks storing organic volatile compounds (units #71 through #174) as follows: Routing all emissions to one of the two thermal oxidizers (units 175 and 176), or routing all storage tanks with floating roofs storing a liquid with a maximum true vapor pressure greater than or equal to 0.3 pounds per square inch to one of the two thermal oxidizers. The DENR proposed that all other floating roof tanks storing VOCs shall be limited to storing liquids with a maximum true vapor pressure less than 0.3 pounds per square inch. Condition 5.11 (Tank farm operational restriction) incorporates both scenarios into the permit to allow Hyperion operational flexibility. We disagree with this approach. EPA believes DENR can establish BACT based on the maximum degree of reduction achievable for this pollutant with due consideration to cost and still afford Hyperion its operational flexibility. Such an approach will firmly establish threshold emissions that will be considered BACT and will make compliance demonstration more readily achievable. However, Hyperion may achieve better than the threshold emissions if operational flexibility dictates.

DENR needs to revise Condition 5.11 to include additional design and operational restrictions to ensure tank farm thermal oxidizers (units 175 and 176) comply with PM, SO2, NOx, VOCs, and CO BACT limits beyond the initial performance tests required in chapter 10 of the permit. Such requirements should include, but are not limited to, minimum destruction efficiency, maximum exit flow rate, minimum combustion chamber temperature, minimum residence time and specification of the combustion fuel to be combusted in the thermal oxidizers.

XI. Wastewater Treatment Plant

A. VOCs BACT Limit

Based on our experience with refineries, EPA agrees with DENR that the BACT limit for VOCs of 20 ppm by weight VOCs as carbon or 98% destruction efficiency,

whichever is less stringent, through the use of a thermal oxidizer while firing refinery fuel gas or natural gas as control on the oil/water separator and dissolved air flotation (DAF) units (page 110 of statement of basis), falls within the range of what we would anticipate to see for BACT emission limits. However, in light of the insufficient cost documentation and incomplete incremental cost analysis, EPA is unable to make a determination and provide final comments on the proposed BACT limit. Furthermore, DENR needs to revise table 1-1 (Description of permitted units, operation and process) to reflect the appropriate control for the wastewater treatment plant. Based on our judgment, the control should be a thermal oxidizer with the appropriate operating design rate. The permit currently lists a catalytic oxidizer and selective catalytic reduction with a heat input rate 1.0 MMBtu/hr rate, which is what Hyperion proposed in its application and DENR disagreed with in the Statement of Basis.

Condition 15.4 – Oil/water Separator and Dissolved Air Flotation (DAF) units – requires the owner or operator to meet the closed vent system and thermal oxidizer design standards in 40 CFR §61.341 and the 98% control efficiency or 20 ppm by weight of VOCs as carbon in permit Condition 4.4 for the wastewater treatment plant thermal oxidizer. Since DENR did not propose CEMS for monitoring VOC emissions from the wastewater treatment plant as it did for SO2 and NOx, Condition 15.4 must be revised to require the wastewater plant to comply with all the applicable requirements of Condition 14.9. Condition 15.4 must be revised to include periodic monitoring of closed vent systems and control devices in order to demonstrate ongoing compliance with the proposed BACT emission limits.

B. NOx BACT Limit

DENR agrees with Hyperion's proposed NOx BACT limit of 5.0 lbs per hour from the catalytic oxidizer. In step 3 of the BACT analysis (page 87-Hyperion Application), Hyperion states that the most effective strategy for the wastewater collection system involves the use of a VOC control strategy that does not involve incineration to control VOC emissions. Thus, Hyperion proposed a catalytic oxidizer to control VOCs emissions from wastewater plant and SCR to control NOx emissions from the catalytic oxidizer with a BACT limit of 5.0 lbs per hour. However, the DENR's proposed control for VOCs for the wastewater plant is not a catalytic oxidizer as proposed by Hyperion, but rather a thermal oxidizer (see Condition 15.4). The proposed SO2 BACT limit of 98% destruction efficiency or 20 ppm by weight VOCs as carbon is based on the use of thermal oxidizer (see both table 11.1 and 11.2 – pp 66-68).

Therefore, EPA strongly recommends that the NOx BACT limit for the wastewater treatment plant should be based on a thermal oxidizer. The NOx BACT limit should be expressed as lb/MMBtu and the hourly emission rate should be based on the thermal oxidizer design capacity.

XII. BACT Analysis for Startup, Shutdown, and Malfunction

DENR suggests an alternative method will be used to demonstrate compliance during periods of startup, shutdown, and malfunction for units that use only performance tests to demonstrate compliance (see page 138 of SOB), and Condition 4.8 (page 50 of the permit) requires an alternative plan. We are concerned that DENR may intend condition 4.8 to exempt the source from compliance with the numerical BACT limits during periods of startup, shutdown, and malfunction. DENR's reasoning, expressed in the SOB, is that it "does not believe it is prudent to establish a numerical BACT limit where compliance cannot be verified." While we think it's a good thing for DENR to require an SSM plan in addition to the numerical BACT limits,[1] we have a significant problem with the notion that the numerical BACT limits would not apply during these periods just because performance tests are not run during these periods. Among other things, there may be other means to calculate emissions during these periods or surrogate measurements that could be employed. Also, monitoring and testing techniques may be developed in the future.

Consistent with our earlier comments regarding BACT for the various emission units and pollutants, BACT must apply at all times. If it is not feasible to meet BACT during startup and shutdown, DENR can establish a separate BACT limit during these periods. (This is not true for malfunctions, which should be handled through enforcement discretion or affirmative defense provisions.) As noted elsewhere, if DENR chooses to establish separate BACT limits, the permit must objectively define startup and shutdown and require Hyperion to appropriately monitor and record instances of startup and shutdown per the permit definitions.

Regardless of the approach, the permit should specify means to determine compliance with applicable BACT limits during all periods, including startup, shutdown, and malfunction. To the extent CEMS are not used and performance tests wouldn't apply during startup, shutdown, and malfunction periods, DENR should consider requiring other techniques to calculate or estimate emissions during these periods, or to ensure compliance.

XIII. Fugitive Emissions BACT

EPA disagrees with DENR's decision of proposing only a "work practice standard" as BACT for fugitive emissions. Although, Condition 5.4 (page 51) requires all haul roads and parking lots within the Hyperion Energy Center's property boundaries at this location be paved, EPA believes that all primary and secondary haul roads within and leading to the facility should be paved to protect National Ambient Air Quality Standards. Based on EPA's experience, there is significant ongoing traffic going to and from refineries.

EPA notes DENR's discussion in the Statement of Basis (see page 153), that "Hyperion modeled the roads at the site as if they were paved, that specific units would

[1] If the startup, shutdown, malfunction plan is part of BACT, it should become part of the permit and be subject to public notice and comment. See our comments regarding the flare minimization plan, above.

operate limited hours per year and did not model those units that would be used as redundant operations." DENR's SOB further indicated that "[t]he PSD permit will specify that the roads must be paved, the equipment is limited to a number of hours per year, and that only a specified number of system may be operated at any given time." While the Statement of Basis identifies certain modeling assumptions used by Hyperion and indicates that those assumptions will be PSD permit conditions, there are neither operational restrictions on any of the equipment nor are there any limitations on the number of systems that may be operated at any given time. These, as well as any additional assumptions used to develop the modeling analyses, must be included as permit provisions.

XIV. Cost Estimates must be Documented

The BACT analysis should include a compilation of all equipment and its associated operating costs. The cost data should be included in the BACT analysis and documented for the particular source. Appendix D of the Application contains five tables with limited information on the economic impacts for the following units subject to BACT: (1) Heater SCR Systems; (2) Refinery Fuel Gas Desulfurization; (3) Wastewater Treatment Plant; (4) Tank Farm Vapor Recovery System; and (5) Tank Farm Thermal Oxidizer. The tables list only the estimated costs (e.g., costs associated with capitol investments and then the annual costs). There is no mention of where the costs are derived from. Therefore, the costs have not been documented. Generally, cost information is provided from equipment vendors. Other sources of cost data can be found in referenced source documents, for example, EPA's cost manuals. The DENR's and applicant's cost data is inadequate as presented and supplemental application information detailing the documentation for the costs should be provided. The permit application and DENR's analyses should be revised to include this information for EPA and the public's review.

XV. Modeling

The modeled point source emission rates shown in Table 7-124 appear to be based on the annual potential emission rate for each stack (or source) divided by the number of hours in a calendar year. This is appropriate for modeling compliance with annual average NAAQS and PSD increments, however, for demonstrating compliance with short term NAAQS and PSD increments, maximum emission rates consistent with the averaging time of the standard/increment should be used (See tables 8-1 and 8-2 in 40 CFR Part 51, Appendix W). Thus, in modeling PM10 maximum allowable 24 hour average emission rates should be used to demonstrate compliance with the 24 hour NAAQS and PSD Class II increment. Short term emission rates are typically greater than annual average emissions since they may reflect startup and shutdown scenarios as well as periods of peak load/production. Documentation should be provided in a supplemental permit application on how the emission rates used in modeling were derived, and if necessary, additional modeling should be conducted to reflect revised short term emission rates.

Increment consumption from the proposed Big Stone II should be included in the modeling if that facility had a complete PSD application prior to the Hyperion analysis, and the Big Stone facility is within the impact area of Hyperion. Any nearby PSD increment sources that cause a significant concentration gradient in the vicinity of Hyperion should, as discussed above, be modeled at short term emission rates to show compliance with the 3-hour and 24-hour average PSD increments.

XVI. Additional Impact Analysis

A. Soils and Vegetation

The statement that, "based on the fact that land use in the vicinity of the proposed project site is predominantly agricultural, the analysis focused on assessing impacts to agricultural crops grown near the proposed project site", is subjective without supporting information (Hyperion Application Submittal, Appendix F, Soil and Vegetation Impacts Analysis, page 1 and page 158 of DENR's SOB).

40 CFR 52.21(o)(1), adopted by the DENR, states that "the owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value." However, the proposed facility will be approximately 10 miles from the Ponca State Park in Nebraska, and the Oak Grove State Park and Big Sioux County Parks in Iowa, which should be within the envelope of the soil and vegetation analysis. The public utilizes these parks for recreation. Therefore, it is necessary to ensure that the soil and vegetation of the area will be adequately protected from significant deterioration. To achieve this, the analysis should establish soil and vegetation baselines and project whether the Hyperion Energy Center facility could pose a threat of significant deterioration to commercial or recreational value. The missing information and analysis discussed here needs to be included in the record for this proposed PSD permit.

B. Growth

The regulations require that the "owner or operator shall provide an analysis of air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification." 40 CFR 52.21(o)(2) Appendix G of the permit application contains a growth analysis, which estimates the "additional population that would be expected to take residence in the vicinity of the proposed HEX site, as a direct result of the HEC." Hyperion Application Submittal, Appendix G, page 1. The analysis only includes the residential population estimate, and fails to include the growth associated from commercial, industrial and other growth associated with the proposed source. Furthermore, the analysis only estimates the population growth, it fails to provide an analysis of the air quality impacts projected for the area as a result of this growth. The State's analysis predicts certain emission increases, but it is not clear what these emission estimates are based on (DENR Statement

of Basis, page 158). This missing information should be developed and included in the record for this proposed PSD permit.

XVII. New Source Performance Standards (NSPS)

A. Subpart J and Ja Applicability

EPA received two August 20, 2007, letters from RTP Environmental Associates Inc. (RTP), on behalf of Hyperion Resources, Inc., that were addressed to Michael S. Alushin, Director of EPA's Compliance Assessment and Media Programs Division in Washington, D.C. Among other things, RTP requested an NSPS applicability determination from EPA as to whether Subpart J or Subpart Ja applied to certain units at the facility. EPA is currently evaluating RTP's request, and a response letter to Hyperion from the EPA Region 8 Office of Enforcement, Compliance and Environmental Justice is forthcoming.

If, upon completing its review of RTP's applicability determination request, EPA were to determine that Subpart Ja applies, then the DENR would be required to have the permit applicant re-evaluate and supplement the BACT analysis for units #50 through #64. If Subpart Ja applies, DENR would need to set BACT limits that, at a minimum, meet the requirements of that subpart. 40 CFR 52.21(j)(1).

B. NSPS Permit Conditions

It is unclear in reviewing the NSPS permit Conditions (Chapter 6.0 of the permit) which specific requirements of NSPS subparts apply to which emission units. For example, Condition 6.4 – New Source Performance Standards – Subpart Ja lists Units #1 through # 40, #42a through #42f, and #45a as being subject to this subpart. However, it is unclear if these Units are subject to SO2, NOx, or PM limits under the applicable standard. It is also unclear what methods of compliance determination will be used on each specific unit or what test, if any, is applicable to these Units under this subpart.

EPA recommends that DENR define the standards, compliance methods and testing requirements of each applicable subpart for all of the emission Units.

XVIII. Maximum Achievable Control Technology Standards

A. MACT Permit Conditions

The proposed permit includes permit conditions for several MACT standards. It is unclear whether the proposed permit is a "merged" permit that would include both title V and PSD permit conditions. With the exception of preconstruction requirements

relevant to the case-by-case MACT determination that may be processed administratively in a PSD permit, see 40 C.F.R. 63.43(c)(2)(ii), the PSD permit itself may not include emission limits for hazardous air pollutants, because section 112(b)(6) of the Clean Air Act exempts hazardous air pollutants listed under section 112(b)(1) from the PSD requirements in Part C. We had understood that South Dakota does not have a merged PSD/Title V permit program and therefore, it does not appear that the MACT standards should be included in this PSD permit. However, since it is not clear if this is a "merged" permit, EPA is unable to provide definitive comments on this issue.

In the event that this is a merged permit, EPA offers the following comments. It is unclear from the draft permit which provisions of the NESHAP standard apply to each unit. There are eight NESHAP and MACT subparts that the State has identified are applicable to this source (these include NESHAP Subpart A and FF, and MACT Subparts A, B, H, Q, CC[2], and UUU). Regarding the additional detail needed throughout the permit, we provide the following example. For section 8.6 – Maximum Achievable Control Technology Standard – Subpart UUU states that the owner or operator shall comply with all applicable limitations, work practice standards, testing, monitoring, reporting and recordkeeping requirements. However, the proposed permit neither identifies which units this standard applies to nor does it state what limitations, work practice standards, testing, monitoring, reporting and recordkeeping requirements apply to an individual emission unit.

In the event this is a "merged" permit, EPA recommends that DENR clearly define the applicable limitations, work practice standards, testing, monitoring, reporting, and recordkeeping requirements of each applicable subpart all the emission units. If, however, the permit is not a merged permit, EPA suggests that the DENR take the above comments into account in developing the title V permit.

B. Case-by-Case MACT Determination

The Hyperion Application contains a case-by-case MACT determination for the process heaters, which the Company indicates is necessary "because the NESHAP promulgated for process heaters at subpart DDDDD of 40 CFR part 63 was recently vacated by the D.C. Circuit Court of Appeals." (Application at page 145.) The Company does not indicate whether any other units are subject to this subpart and from the Application EPA can not make a determination. Draft permit condition 8.2 contains some case-by-case MACT limits, which are specified in Table 8-1. (Permit at pages 56-57.) The Statement of Basis also includes a brief discussion of the case-by-case MACT determination. (SOB at pages 40-41.)

EPA agrees that case-by-case-case MACT limits must be established for the process heaters. Under CAA section 112(g), no person may construct or reconstruct any

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[2] EPA has received an applicability determination request from RTP as to whether certain MACT standards, including Subpart CC, apply to the Hyperion facility. EPA is still evaluating RTP's request and hopes to issue a response shortly.

major source of hazardous air pollutants "unless the Administrator (or the State) determines that the MACT emission limitations for the new sources will be met." 42 U.S.C. 7412(g)(2)(B). Section 112(g) provides that such determinations will be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator. The federal regulations implementing section 112(g) are set out at 40 CFR 63.40-63.44. The section 112(g) regulations set forth in 40 CFR Part 63 identify several review processes that can be used to make section 112(g) case-by-case MACT determinations. See 40 CFR 63.43(c). The other case-by-case MACT provision is section 112(j) of the Clean Air Act. Section 112(j) provides generally that major sources in a category or subcategory for which standards are not promulgated must submit permit applications by given dates, and that federal or state permit writers must then determine on a case-by-case basis an emission limitation equivalent to the limitation that would apply if an emission standard had been issued in a timely manner under section 112(d) or (h) of the Act. See CAA 112(j)(5), 40 CFR 63.55(a). The federal regulations implementing section 112(j) are set out at 40 CFR 63.50-63.56.

We are unable to determine which of the mechanisms under the section 112(g) or 112(j) regulations the State used to establish the case-by-case limit. Therefore, EPA is unable to determine whether all applicable administrative process requirements have been satisfied.

With respect to the limits in the draft permit, we provide EPA's initial comments here. The units identified as process heaters would have been subject to EPA's vacated subpart DDDDD standards for gaseous fuel boilers and process heaters. As such, these units require case-by-case limits. Section 112 of the Clean Air Act requires emissions standards to be established for all HAP listed under section 112(b) which are emitted by a major source. National Lime Assn. v. EPA, 233 F.3d 625 (D.C. Cir. 2000). The draft permit includes only a limit for HCl, and no limit for organic HAP, which are emitted by gaseous fuel process heaters. In the event that there is an existing gas-fired boiler at the facility, we refer you to the part 71 permit recently issued by EPA Region 5 for Veolia Environmental Services. That permit contains a section 112(j) case-by-case MACT limit for an existing gas-fired boiler. EPA continues to review the proposed limits and case-by-case materials and, as necessary, will provide additional comments under separate cover.

XIX. Permit Conditions

A. Condition 10.5

Condition 10.5 should be revised to be consistent with condition 10.1 and the NSPS requirement that the test will not extend the deadline past a federally required performance test deadline (see 40 CFR 60.8(a)).

B. Conditions 10.8, 10.9, 10.10, 10.11, 10.12 and 10.13

These conditions only required that the source perform initial performance tests to demonstrate compliance with the respective limits established in the permit and the units are not monitored by CEMS. DENR should revise these conditions to require periodic monitoring to demonstrating on-going compliance.

C. Conditions 11.1, 11.2 and 11.3

These conditions allow for CEMS downtime to be excluded from the record. This is not consistent with the requirements of NSPS 40 CFR 60.7. DENR should modify these conditions and subject these conditions to the requirements of NSPS CFR 60.7.

XX. Director's Discretion and Related Concerns

The proposed permit has numerous provisions that should be revised (the list of provisions appears below). This type of language is not appropriate for permits as this language is a form of "director's discretion" that would allow the State to unilaterally change permit provisions without benefit of EPA review or public comment. We recommend that the DENR remove these from the permit. An alternative for purposes of this permit for those provisions that relate to test methods would be for the DENR to include a role for EPA approval of alternatives. Additionally, there are several provisions that need additional clarity for enforceability. Here are the problematic provisions that should be revised:

Regarding the granting of permit term extension, the permit indicates that "[t]he Secretary may grant an extension after the owner or operator satisfactorily demonstrates that an extension is justified." (Permit Condition 2.1, the basis for what is "satisfactory" is unclear and should be clarified.)

Regarding the need for recordkeeping provisions related to the startup, shutdown, and malfunction plan, the permit appears to indicate that the requirements in this provision could be revised and the owner or operator no longer would be subject to these provisions. The permit does not indicate how the owner or operator may at some point in the future no longer be subject to this permit condition and we recommend clarification (Permit Condition 3.7).

The permit provision that requires the owner or operator to submit the startup, shutdown, and malfunction plan to the Secretary, appears to require the plan to be approved by the Secretary, however, it is not entirely clear (Permit Condition 4.8, which indicates the plan shall be submitted and approved by the Secretary). The permit condition should be revised to indicate that the Secretary will approve the plan if the permit conditions and other applicable requirements are met.

Similarly, the provisions in Permit Condition 5.9 do not clearly specify that the Secretary approves the operation, maintenance and monitoring plan, and that permit condition should be clarified.

EPA questions how this particular provision of the permit will be implemented and enforced, Condition 5.10 specifies that the "Startup, Shutdown, and Malfunction Plan does not need to address any scenario that would not cause an exceedance of an applicable emission limit."

Condition 5.10 also provides for a form of "source discretion" in allowing the owner or operator to unilaterally use another plan to meet these requirements, without any approval by the DENR. The DENR should maintain review and approval authority over the Startup, Shutdown and Malfunction Plan. The permit condition should be amended accordingly.

The last paragraph of Condition 5.10 presents the various scenarios when revisions to the Startup, Shutdown and Malfunction Plan are necessary. However, the provision fails to identify which entity makes the determination that such revisions are necessary. We recommend that the permit provide clarity on this question.

Permit condition 10.6 requires that performance test reports be submitted within 60 days after completion of the test. The permit condition also allows the Secretary to designate another date and unilaterally change the permit condition, this condition should be removed.

Permit condition 16.2 allows for an alternative method to be approved by the Secretary for control of dust on unpaved roads. This is a form of director's discretion and should be removed, any changes to the BACT requirements must go through public notice and comment.

Permit condition 16.5(4), allows the Secretary to approve an alternative control method for the open storage pile control, this provision should be removed.

XXI. Miscellaneous

112r Requirement

The Region notes that if Hyperion has more than a threshold quantity of a regulated toxic or flammable substance (threshold quantities and regulated substances are listed in 40 CFR Part 68), the facility must submit a Risk Management Plan to EPA and develop a Risk Management Program pursuant to 40 CFR Part 68 prior to the date that the regulated substances listed in 40 CFR Part 68 are present in excess of the listed threshold quantities. As you may know, this would be included as an applicable requirement in any title V permit.