

permit issuer be given the opportunity to address potential problems with draft permits before they become final."⁵⁴ Petitioner failed to preserve its argument for appeal as required by 40 C.F.R. §§ 124.13 and 124.19(a), and review should therefore be denied.

V. The MDEQ correctly performed its BACT analysis based on the coal to be delivered by truck from two local power plants

Petitioner claims that the MDEQ's BACT analysis was flawed because it did not require NMU to burn coal from the Powder River Basin (PRB) that has a lower sulfur content than the PRB coal NMU proposes to receive by truck from the two local power plants in Marquette (the WE Presque Isle Power Plant and the Marquette Board of Light and Power). According to Petitioner, the SO₂ limits should have been based on lower sulfur coal from the PRB rather than the PRB coal to be supplied by the two local power plants.

The MDEQ developed the SO₂ limits based on a number of factors. First, the Ripley Heating Plant has an extremely limited storage capacity for fuel. The entire facility (including the operations for the three existing boilers, fuel delivery/storage/handling operations, and the new boiler housing, turbine, and baghouse structure) occupy an area of approximately 200 by 350 feet.⁵⁵ Within the extremely small area at the facility for fuel storage, NMU has proposed to construct silos to maximize the storage capacity for the wood and coal that will be delivered to the facility by truck. As the MDEQ explained, "Northern Michigan University proposes to install storage silos for both wood and coal with a storage capacity sufficient for three days operation of the boiler. There is no space available at the site for a stockpile of fuel separate from that used at the local power plants."⁵⁶ NMU's ability to burn any fuel is constrained by the extremely limited fuel storage capacity at the facility.

⁵⁴ *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 250 (EAB 1999).

⁵⁵ Exhibit 2, at Appendix A, drawing entitled Equipment Arrangement.

⁵⁶ Exhibit 4, at 20.

Second, to burn coal with a sulfur content lower than the coal from the local utilities, NMU would have to arrange for it to be transported from mines in the PRB and would have to make fundamental changes in the design of the facility to receive the coal, stockpile it, and feed it to the boiler. Among other things, coal shipped from the PRB would somehow have to be stockpiled at the facility and equipment to feed the coal to the boiler from the stockpiles would need to be installed. The MDEQ therefore determined that to require NMU to receive, stockpile and burn coal from the PRB instead of from the nearby power plants "would redefine the source as proposed by Northern Michigan University."⁵⁷

The MDEQ's determination is supported by the Board's decision in *In re Prairie State Generating Co.*⁵⁸ In that case, the permit applicant proposed to construct a "mine-mouth" coal-fired power plant to be located at mine in southern Illinois containing a 30-year supply of high-sulfur coal. The coal would be brought by a conveyor belt from the mine to the plant. Petitioner argued the BACT required the use of low-sulfur coal from the PRB. The Environmental Appeals Board concluded that to require the permit applicant to receive coal from distant mines rather than the adjacent mine would require it to reconfigure the facility and change its fundamental scope, thereby impermissibly redefining the source.⁵⁹

The same reasoning applies here. There is no space at the proposed facility to receive and stockpile coal from the PRB. As explained above, the facility would have to substantially reconfigured if coal from the PRB was to be received, stockpiled, and fed to the boilers. Any such reconfiguration would fundamentally change the scope of the proposed facility and would redefine the source. Petitioner has failed to demonstrate any error by the MDEQ and its argument should be rejected.

⁵⁷ *Id.*, at 19.

⁵⁸ Slip op. (Aug. 24, 2006), *aff'd by Sierra Club v. EPA*, 499 F.3d 653 (7th Cir. 2007).

⁵⁹ *Id.*, at 18-37.

VI. The MDEQ correctly calculated the SO₂ limits based on the coal to be delivered from the local power plants

Petitioner asserts that the SO₂ emission limits are incorrect because the MDEQ based them on the sulfur content of the coal the local power plants are authorized to burn and would supply to NMU. According to Petitioner, the MDEQ should have based the SO₂ limits on the sulfur content of the coal the WE Presque Isle power plant has actually burned (during an undefined period), rather than what it is authorized to burn. Additionally, Petitioner claims that the MDEQ further erred because the agency's response to comments and calculations regarding the SO₂ limits are framed in terms of the percentage of sulfur in coal by weight, rather than the units presented in Petitioners' comments (pounds of SO₂ per MMBtu).

The MDEQ correctly calculated the SO₂ emission limits. The sulfur content of the coal NMU will receive from the local power plants is legally allowed to be as high as 1.5% by weight. In its response to comments, the MDEQ explained that "the coal used at the Presque Isle Power Plant (one of the two local stockpiles from which coal would be obtained) may, by permit, contain up to 1.5% sulfur[.]"⁶⁰ Similarly, the permit evaluation form prepared by the MDEQ explained that "[c]oal will be obtained from one two local utilities that are "limited by permit to 1.5% sulfur coal . . . and 1.0% sulfur coal."⁶¹ The sulfur content the MDEQ relied on for its calculations is less than half the "3.5 percent by weight" requested by NMU in its permit application.⁶²

In light of the fact that the coal to be supplied to NMU can legally contain as much 1.5% sulfur by weight, the MDEQ appropriately calculated the SO₂ emission limits based on that sulfur content. The MDEQ satisfactorily explained the basis for its conclusion. The fact that it

⁶⁰ Exhibit 4, at 20.

⁶¹ Exhibit 7, at 4.

⁶² Exhibit 2, at 25.

used different units of measurement than those presented by Petitioner fails to show any error by the agency. Review on these issues should therefore be denied.

VII. Petitioner has failed to demonstrate how the permit condition regarding a startup, shutdown and malfunction plan violates a PSD requirement

Permit special condition 1.5 states that NMU "shall develop, and submit to the [MDEQ's Air Quality Division] for review and approval, a written startup, shutdown and malfunction plan (SSMP)."⁶³ The SSMP "must describe in detail, procedures for operating and maintaining [the CFB boiler] during periods of startup, shutdown, and malfunction, and include a program of corrective action for malfunctioning process equipment and associated air pollution control and monitoring equipment." The Permit also requires NMU is required to operate the CFB boiler pursuant to the SSMP during periods of startup, shutdown, or malfunction.⁶⁴

Petitioner claims that this permit condition is unlawful because the SSMP will not be "available to the public as part of the public review and comment period."⁶⁵ In support, it cites this Board's decision in *In re RockGen Energy Center*, 8 E.A.D. 536 (EAB 1999). That case, however, involved a fundamentally different issue. The permit in that matter authorized RockGen to exceed the permit's BACT emission limits if the emissions were temporary and were due to startup or shutdown carried out in accord with a startup and shutdown plan to be submitted to the Wisconsin Department of Natural Resources (WDNR) after permit issuance.

⁶³ Exhibit 1, at 7.

⁶⁴ *Id.* Since NMU has not yet determined the specific equipment (*e.g.*, manufacturers and models) it will purchase, install and operate, the SSMP cannot be developed at the time of permit issuance. For example, the specific preventative maintenance tasks NMU is to perform to avoid malfunctions cannot be drafted until the equipment on which those tasks will be performed has been identified.

⁶⁵ Petition, at 38.

The Board remanded the case. If WNDR intended to include a provision that would allow exceedances of the BACT limits, the Board ordered it "make an on-the record determination as to whether compliance with existing permit limitations is infeasible during startup and shutdown, and, if so, what design, control, methodological or other changes are appropriate for inclusion in the permit to minimize the excess emissions during these periods."⁶⁶ The Board also ordered that if WNDR determined that compliance with the BACT limits cannot be achieved during startup and shutdown, it must "specify and carefully circumscribe in the permit the conditions under which RockGen would be permitted to exceed otherwise applicable emissions limits and establish that such conditions are nonetheless in compliance with applicable requirements."⁶⁷ Once those conditions were developed, WDNR was ordered to provide the public with an opportunity to submit comments in accordance with the procedures of 40 C.F.R. part 124.

Unlike the permit in *RockGen*, the Permit in this case does not allow NMU to exceed any BACT limits during periods of startup or shutdown. Nor does it any way allow NMU to operate in noncompliance with the Act's NAAQS and increment provisions. NMU must operate the CFB boiler in compliance with all of the applicable PSD requirements at all times. Similarly, the submittal of an SSMP to the MDEQ for review and approval will not change any of the PSD requirements contained in the Permit. Petitioner has failed to show how the Permit provision for an SSMP violates the public participation requirements in 40 C.F.R. part 124 and review on this issue should be denied.

⁶⁶ *In re RockGen*, 8 E.A.D. at 554.

⁶⁷ *Id.*

VIII. The MDEQ correctly accounted for increases in emissions since the baseline date in conducting its SO₂ increment analysis

Petitioner maintains that the MDEQ, in performing its increment analysis for SO₂, did not accurately calculate the increases in emissions since the PSD major source baseline date of January 6, 1975.⁶⁸ Petitioner asserts that all of the SO₂ that the WE Presque Isle Power Plant emitted in 2006 should be excluded from the baseline concentration and should be considered as increment consuming emissions.

The federal PSD regulations establish which emissions are to be excluded from the baseline concentration:

The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions, as defined in paragraph (b)(21) of this section, from any major stationary source on which construction commenced after the major source baseline date[.]. [40 C.F.R. § (b)(13)(ii)].

"Construction" is defined as any physical change or change in the method of operation (including modification of an emission unit) that would result in a change in emissions.⁶⁹

"Actual emissions" are defined as "the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation[.]"⁷⁰ Alternatively, allowable emissions may be presumed to be actual emissions.⁷¹

⁶⁸ The PSD major source baseline date for SO₂ emissions is January 6, 1975. See MDEQ's website for Air, Assessment and Planning, Modeling and Meteorology, PSD Baseline Dates, at http://www.michigan.gov/deq/0,1607,7-135-3310_30151_4198-11673--00.html#Major%20Source%20Baseline%20Dates.

⁶⁹ 40 C.F.R. § 52.21(b)(8).

⁷⁰ 40 C.F.R. § 52.21(b)(21)(ii).

⁷¹ 40 C.F.R. § 52.21(b)(21)(iii).

In this case, the MDEQ was required to exclude from the baseline concentration actual emissions from the WE Presque Isle Power Plant (a major stationary source) on which construction commenced after the major source baseline date of January 1, 1975. That is precisely what occurred. The MDEQ explained in its response to comments that it reviewed emissions for the WE plant before and after the baseline date and excluded the actual emissions from construction that commenced after that date:

The SO₂ major source baseline date was set by the Clean Air Act to be January 6, 1975. Emissions associated with modification at a major stationary source consume increment after this date. A comparison was made between the reported SO₂ emissions from [the WE Presque Isle Power Plant] for 1973 and 2006 which were found to be 15,274 tpy and 16,609 tpy. This increase of 1335 tpy should not be part of the baseline and should be considered in the PSD increment analysis. New modeling was conducted by the [MDEQ] which added the 1335 tpy to the increment analysis and the results indicated that this change had no effect on either the 30-hr or 24-hr PSD maximum (100%) SO₂ PSD increment levels. However, the addition of the 1335 tpy did cause the annual PSD increment concentration to increase to approximately 10 percent which is still well below the State's 80% allowable Class II PSD increment criterion.⁷²

In other words, the MDEQ accurately determined that the amount of actual SO₂ emissions from the WE Presque Isle power plant on which construction commenced after the major source baseline date was 1335 tpy. Those emissions were correctly excluded from the baseline concentration. Petitioner has failed to demonstrate any error by the MDEQ.

IX. MDEQ correctly determined NAAQS impacts and PSD increment consumption for SO₂ based on maximum emissions

Petitioner's next argument is that the MDEQ erred in its analysis of NAAQS impacts and PSD increment consumption for SO₂. Petitioner asserts that the MDEQ used the SO₂ emission limits in the Permit for its analysis, that those limits do not apply during startup and shutdown, and that the MDEQ should have used "maximum theoretical emissions" in its analysis.⁷³

⁷² Exhibit 4, at 14.

⁷³ Petition, at 45.

Petitioner argument fails for several reasons. First, the MDEQ's analysis used the maximum, worst-case, hourly emission rate of SO₂ emissions, and assumed the boiler would be operated continuously (*i.e.*, 24 hours per day and 365 days per day). The MDEQ's analysis is documented in both its Air Dispersion Analysis Summary and the information provided by NMU in its permit application.⁷⁴ Petitioner's claim that the MDEQ relied on the SO₂ emission limits in the Permit is simply incorrect.

Second, Petitioner's assertion that the Permit limits do not apply during periods of startup and shutdown is also wrong. The Permit's SO₂ emission limits apply at all times. Petitioner misreads the Permit's provisions. In addition to the SO₂ emission limits, the Permit requires NMU to establish *operating limits* (during the initial performance test) to ensure that the boiler is operated in a manner consistent with good air pollution control practices and that emissions are minimized.⁷⁵ Those operating limits include parameters such as maximum fuel use rate and minimum fabric filter pressure drop. The operating limits must be met at all times except during periods of startup, shutdown and malfunction.⁷⁶ There is nothing in the Permit, however, that allows NMU to exceed the SO₂ *emission limits* during startup and shutdown. Moreover, the Permit conditions regarding operating limits had no role in the MDEQ's analysis regarding NAAQS impacts and PSD increments.

Third, the MDEQ's analysis was based on NMU burning a higher sulfur coal than it is authorized to burn. The agency performed its analysis based on NMU burning coal with 3.5%

⁷⁴ See Air Dispersion Analysis Summary, attached as Exhibit 9, at 2 (listing an SO₂ emission rate of 8.78E+01 lb/hour, or 87.8 lb/hr, for its modeling, and identifying its conclusions regarding PSD increments and NAAQS impacts); Exhibit 2, at 64 (identifying maximum emission rates based on worst-case emissions).

⁷⁵ Exhibit 1, at 7.

⁷⁶ *Id.*

sulfur by weight, whereas the Permit requires that the sulfur content of the coal used in the boiler not exceed 1.5% by weight.⁷⁷ In other words, the MDEQ's analysis was extremely conservative.

Based on the maximum emissions of sulfur with the boiler burning coal containing more than twice the amount of sulfur allowed, the MDEQ determined that the SO₂ emissions will not exceed the NAAQS. The agency also determined the emissions will not exceed the PSD increments. The actual SO₂ emissions, NAAQS impacts, and PSD increment consumption will be even less (indeed, much less) when NMU burns 1.5% sulfur coal as required by the Permit. Petitioner has therefore failed to show any error, and review on this issue should be denied.

X. Appropriate air quality monitoring data was used

Petitioner asserts that the MDEQ erred by not requiring NMU to submit ambient air quality monitoring data collected exclusively for the purpose of determining whether emissions from the proposed boiler will exceed the NAAQS or the PSD increment. According to Petitioner, NMU must itself install and operate air quality monitors in the area around the proposed facility. It may not, Petitioner contends, use data from monitors installed by anyone else for any purpose other than the permit application.⁷⁸

Nothing in the Clear Air Act requires that the preconstruction monitoring data be collected solely for the purpose of analyzing NAAQS impacts or PSD increment consumption. Nor does the Act mandate that the permit applicant gather the data itself. Instead, the Act provides that the permitting analysis must include "continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the [NAAQS or PSD increment]."⁷⁹ Pursuant to that provision, a permit applicant may use air quality monitoring data, regardless of who collected it, that serves the dual purposes of, for

⁷⁷ Exhibit 2, at 24, Table 4-1, note 1 (maximum SO₂ emission rates are based on 3.5 percent sulfur coal); Exhibit 1, at 7, special condition 1.3.

⁷⁸ Petition, at 45-48.

⁷⁹ 42 U.S.C. § 7475(e)(2).

example, demonstrating a region is in attainment with a NAAQS and evaluating whether emissions from a proposed facility will exceed the NAAQS or PSD increment. To require an applicant to collect additional monitoring information when representative data collected by others already exists would needlessly require the applicant to expend resources. Nothing in the Act requires the wasteful result sought by Petitioner.

Here, the data gathered consists of continuous air quality monitoring data from different locations in Michigan and Wisconsin that the MDEQ provided to NMU.⁸⁰ NMU and the MDEQ appropriately relied on that data in analyzing whether the emissions from the proposed boiler will exceed the NAAQS or PSD increment.

XI. The continuous air quality monitoring data was provided by the MDEQ and was appropriate for use in the air quality analysis

Petitioner claims that the regional ambient air quality monitoring data NMU submitted cannot be used by the MDEQ because the agency did not determine whether the data was representative of air quality near the proposed boiler. Petitioner also asserts that no such determination could have been made. As discussed below, Petitioner ignores the information in the record. The ambient monitoring data of background concentrations, as well as the modeled ambient impacts from existing emission sources and the proposed boiler, were used correctly to analyze where the NAAQS and PSD increments would be met.

Prior to submitting its permit application, NMU followed EPA guidance and contacted the MDEQ to determine which continuous air quality monitoring data it should use in its air quality analysis.⁸¹ As stated in the permit application, "background concentrations CO, SO₂ emissions, PM₁₀, and NO_x, were obtained from the MDEQ's [Air Quality Division] via email on

⁸⁰ See Exhibit 2, at 69 and at Appendix C, Background Concentrations spreadsheet.

⁸¹ The New Source Review Workshop Manual prepared by EPA in 1990 (NSR Manual) states that "applicants are advised to review the details of their proposed modeling analysis with the appropriate reviewing agency before a complete PSD application is submitted." NSR Manual, at C.2.

August 21, 2006."⁸² The MDEQ determined that regional monitoring data from monitors located in Michigan and Wisconsin was appropriate for NMU's air quality analysis because it was either representative of air quality near NMU or even more conservative because it reflected higher concentrations of criteria pollutants in the ambient air than those present in Marquette. The data included, for example, information from a PM₁₀ monitor in Green Bay and a CO monitor in Milwaukee, both of which are much larger, urban areas than Marquette and have substantially higher pollutant concentrations.

In addition to the MDEQ determining that the monitor location was satisfactory, the agency also determined that it was current (it was collected during the three prior years: 2003, 2004, and 2005) and of appropriate quality. The MDEQ provided the monitoring data to NMU in a spreadsheet dated August 21, 2006. The spreadsheet the MDEQ provided is included in the permit application.⁸³

The NSR Manual states that "existing ambient data" may be used in an air quality analysis if it is "judged by the permitting agency to be representative of the air quality for the area in which the proposed project would construct and operate."⁸⁴ In determining whether the existing ambient data is acceptable, the permitting agency must consider monitor location, quality of the data, and currentness of the data. The MDEQ considered all of the factors when it provided the monitoring data to NMU.

Petitioner's claim that the MDEQ made no investigations or determinations as to the representativeness of the monitoring data is simply wrong. Petitioner fails to acknowledge that it was the MDEQ that selected and provided the existing ambient data to NMU in response to

⁸² Exhibit 2, at 69. NMU also contacted the MDEQ and obtained a list of off-site emissions sources the MDEQ determined was appropriate for NMU to use in its dispersion modeling analysis. *Id.*, at 67-68.

⁸³ *Id.*, at Appendix C, Background Concentrations spreadsheet.

⁸⁴ NSR Manual, at C.18.

NMU's request for data to use in its air quality analysis. The MDEQ provided data it deemed to be acceptable for purposes of the air quality analysis.

Petitioner makes the related claim that NMU failed to demonstrate why it should not be required to collect site-specific ambient air quality monitoring data. Such data collection is needed, however, only if existing, acceptable ambient data is not available. Here, the MDEQ provided existing ambient data that it determined was acceptable.

Petitioner also maintains that the only ambient data that can be used is data collected from monitors within Michigan. Petitioner offers no support for that claim, other than its repeated assertion that the record lacks information to show that such data is representative and acceptable. As discussed, the record establishes that the MDEQ affirmatively determined the data from Green Bay and Milwaukee is representative and acceptable when it provided the data to NMU for use in its air quality analysis.

In sum, Petitioner has failed to show any error, and review on this issue should be denied.

XII. The MDEQ correctly analyzed increment consumption in Class I areas

Petitioner maintains that the MDEQ erred when it did not perform a full PSD increment analysis for the Seney National Wildlife Refuge (Seney), a Class I area located approximately 55 miles to the east-southeast of the proposed boiler.

The NSR Manual states that "EPA requires a NAAQS and increment analysis of any PSD source the emissions from which increase pollutant concentrations by $1 \mu\text{g}/\text{m}^3$ or more (24-hour average) in a Class I area."⁸⁵ The MDEQ determined "that the maximum increase in the 24-hr SO_2 concentration from the facility at Seney would only be $0.42 \mu\text{g}/\text{m}^3$."⁸⁶ Accordingly, no further analysis was required to demonstrate compliance with PSD increments.

⁸⁵ NSR Manual, at E.16-E.17.

⁸⁶ Exhibit 4, at 13.

The MDEQ also contacted the Federal Land Manager for Seney so the manager could consider whether the proposed boiler will have an adverse impact on air quality related values.⁸⁷ In light of the distance from the facility to Seney and the modest increase in the 24-hour SO₂ concentration, the Federal Land Manager determined that the proposed boiler was not expected to have adverse impact on visibility or air quality related values.⁸⁸ The MDEQ correctly followed EPA guidance and the Clean Air Act in evaluating the PSD increments at Seney.

In addition, Petitioner asserts for the first time in its petition that the MDEQ erred by not conducting a full PSD increment analysis regarding a Class I area within the reservation of the Forest County Potawatomi (FCP) Community. On February 14, 1995, the FCP Community submitted to EPA its request for redesignation of the area to Class I. EPA announced the redesignation on April 29, 2008, after the close of the public comment period.⁸⁹ Petitioner asserts "there was no way to know whether or when, EPA might grant the Tribe's request," and that therefore it was not required to provide comments to the MDEQ about purported errors regarding the Class I area.⁹⁰

In fact, any arguments regarding the FCP Community Class I area were reasonably available to Petitioner during the public comment period. On July 10, 1997, EPA proposed to approve the FCP Community's request for redesignation.⁹¹ Moreover, on December 18, 2006, EPA proposed that it would promulgate a Federal Implementation Plan (FIP) if it approved the request, with the FIP to be implemented by EPA until it was replaced by a Tribal Implementation Plan.⁹² The agency's announcement in the Federal Register was made just nine months before

⁸⁷ See 42 U.S.C. § 7475(d)(2)(B); Exhibit 4, at 13.

⁸⁸ Exhibit 4, at 13; E-mail dated April 4, 2008 from U.S. Fish and Wildlife Service, attached as Exhibit 10.

⁸⁹ 73 Fed. Reg. 23,086 (April 29, 2008).

⁹⁰ Petition for Review, at 56.

⁹¹ 73 Fed. Reg. at 23,089.

⁹² 71 Fed. Reg. 75,694 (Dec. 18, 2006).

the public comment period for the Permit. It gave Petitioner notice that EPA was actively evaluating whether to approve the redesignation request.

Petitioner's suggestion that the request was laying dormant for more than 10 years is contradicted by EPA's recent actions. Any comments Petitioner may have regarding increments at the Class I area within the reservation were therefore "reasonably available" to it.⁹³ Petitioner was required to submit such comments to the MDEQ so that the agency could "make timely and appropriate adjustments to the permit determination."⁹⁴ Petitioner waived its argument by failing to raise it during the public comment period.

Additionally, the MDEQ considered the impact emissions would have on the Class I area within the FCP Community reservation. The MDEQ determined that, since the air quality impacts on Seney (roughly 55 miles from Marquette) met EPA guidance and the Act's requirements for an air quality analysis, the impacts at the newly designated Class I area (which is approximately 100 miles away) were also acceptable. As the MDEQ explained in its response to comments, "the closest Class I area to the facility is the Seney National Wildlife Refuge located approximately 55 miles to the ESE. Modeling indicated that the maximum increase in the 24-hr average SO₂ concentration from the facility at Seney would only be 0.42 µg/m³."⁹⁵ The FCP Community "reservation is located at least 100 miles (160 kilometers) from Marquette. No additional evaluation is required."⁹⁶

None of Petitioner's arguments regarding increment consumption at Class I areas have merit, and review on this issue should be denied.

⁹³ 40 C.F.R. § 124.13.

⁹⁴ *In re Union County Res. Recovery Facility*, 3 E.A.D. 455, 456 (1990).

⁹⁵ Exhibit 4, at 13.

⁹⁶ *Id.* Petitioner misrepresents the MDEQ's statement that the reservation is 100 miles from Marquette as "reli[ance] on an unlawful distance threshold of 100 miles[.]" Petition, at 57. The MDEQ reference to 100 miles was to identify the approximate distance from Marquette to the reservation.

Conclusion

For the reasons stated above, the petition filed by the Sierra Club fails to show that the MDEQ's PSD analysis is based on a clearly erroneous finding of fact or conclusion law or involves an important matter of policy or exercise of discretion that warrants review. The petition should therefore be denied.

Respectfully submitted,

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