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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	)	
Salt River Project Agricultural Improvement and Power District – Navajo Generating Station	)	NSR Appeal No. 16-01
Tribal NSR Permit No. T-0004-NN	)	

[Decided August 30, 2016]

ORDER DENYING PETITION FOR REVIEW

Before Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

IN RE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT – NAVAJO GENERATING STATION

NSR Appeal No. 16-01

ORDER DENYING PETITION FOR REVIEW

Decided August 30, 2016

Syllabus

Mr. Shawn Dolan ("Petitioner") petitions the Environmental Appeals Board ("Board") to review a Minor New Source Review ("NSR") permit that the United States Environmental Protection Agency, Region 9 ("Region"), issued to the Salt River Project Agricultural Improvement and Power District at its Navajo Generating Station on the Navajo Indian Reservation in Coconino County, Arizona. The Region issued the permit pursuant to the Federal Minor New Source Review Program in Indian Country, 40 C.F.R. §§ 49.151-.161, authorizing the construction and operation of a refined coal treatment system. Petitioner asserts that the permit's compliance monitoring provisions for opacity, EPA Methods 9 and 22, are inadequate and that the permit should be revised to require the use of the "Digital Camera Opacity Technique," referred to as "Alternative Method 082" or "ALT-082."

Held: (1) Although the Board has not previously addressed the standard of review for NSR appeals under 40 C.F.R. Section 49.159, the applicable regulatory language is nearly identical to the regulatory language governing review of other types of permits such as PSD and NPDES permits under 40 C.F.R. part 124. The part 49 rulemaking record indicates that the Agency intended for its appeal procedures to reflect the Agency's longstanding approach under part 124. Therefore, in reviewing appeals under part 49, the Board will look to decisions regarding review of permitting matters brought under part 124 as relevant precedent in the NSR context.

(2) The Board affirms the Region's technical determination that the use of EPA Methods 9 and 22 to monitor opacity are sufficient for the refined coal treatment system. The Petition fails to demonstrate that the Region made a clear error of law or fact or abused its discretion.

Before Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

Opinion of the Board by Judge Lynch:

I. *STATEMENT OF THE CASE*

In April 2016, the United States Environmental Protection Agency ("Agency" or "EPA"), Region 9 ("Region") issued a Minor New Source Review ("NSR") permit ("NSR Permit" or "Permit") to Salt River Project Agricultural Improvement and Power District ("SRP" or "District") at its existing 2,250 megawatt Navajo Generating Station ("NGS") on the Navajo Indian Reservation in Coconino County, Arizona. The Region issued the Permit pursuant to the Federal Minor New Source Review Program in Indian Country, 40 C.F.R. §§ 49.151-.161. The NSR Permit was attached as an addition to the District's existing Prevention of Significant Deterioration ("PSD") Permit ("PSD Permit") issued in 2008, and authorized construction and operation of a refined coal treatment system ("RCTS").[1] *See* Prevention of Significant Deterioration Permit Pursuant to 40 CFR 52.21 and Minor NSR Permit in Indian Country Pursuant to 40 CFR 49.151.161 (Apr. 20, 2016). Mr. Shawn Dolan ("Petitioner") filed a request for review of the NSR permit.[2] Petitioner argues that the NSR Permit's compliance monitoring provisions for opacity, EPA Methods 9 and 22, are inadequate and that the Permit should be revised to require the use of the "Digital Camera Opacity Technique," referred to as "Alternative Method 082" or "ALT-082." Petition at 5.

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[1] With regard to the existing PSD Permit, the Region states:

> It is Region 9's practice to include the requirements from the PSD and Tribal Minor NSR program in a single permit document. As such, we are revising NGS's existing PSD permit, No. AZ 08-01A, to add the Tribal Minor NSR requirements of this action. * * * All existing conditions in PSD permit No. AZ 08-01A remain unchanged by this action. The equipment being added at NGS pursuant to this minor NSR permit [No. T-0004-NN] will have no effect on the existing emission limits for any pollutants.

Region 9 Technical Support Document ("Tech. Sup. Doc.") at 7 (Att. 2 to Region's Response).

[2] Mr. Dolan's filing is titled: "Plaintiffs, request to include US EPA Alternative Method 082 (ALT 082) as means to monitor Opacity of all sources listed in the NSR filing." The Board will refer to this filing as the "Petition."

Both the Region and the District filed a response to the Petition. For the reasons explained below, the Board denies the Petition for review.[3]

II. *STANDARD OF REVIEW*

As a general matter, the Environmental Appeals Board ("Board" or "EAB") will grant a petition for review only where the petition demonstrates that the permitting authority's decision involves a clearly erroneous finding of fact or conclusion of law, or that the decision involves an important policy consideration which the Board, in its discretion, should review. *See* 40 C.F.R. § 49.159(d)(3); *see also In re City of Palmdale*, 15 E.A.D. 700, 704 (EAB 2012) (applying similar language under 40 C.F.R. § 124.19); *In re MHA Nation Clean Fuels Refinery*, 15 E.A.D. 648, 652 (EAB 2012) (same).

Although the Board has not previously addressed the standard of review for NSR appeals under 40 C.F.R. section 49.159, the applicable regulatory language is nearly identical to the regulatory language governing review of other types of permits such as PSD and National Pollutant Discharge Elimination System permits under 40 C.F.R. part 124. *Compare* 40 C.F.R. § 49.159(d)(3) *with* 40 C.F.R. § 124.19(a)(4). Moreover, the part 49 rulemaking record indicates that the Agency intended for appeal procedures under 40 C.F.R. part 49 to reflect the Agency's longstanding approach under part 124. *See* 76 Fed. Reg. 38,748, 38,766 (July 1, 2011) (stating that EAB review of minor NSR permits "will be similar to review of major PSD permits issued under 40 CFR [§] 52.21 and which occurs in accordance with EPA's permitting regulations at 40 CFR part 124."); *see also* Review of New Sources and Modifications in Indian Country, 71 Fed Reg. 48,696, 48,717 (proposed Aug. 21, 2006) ("[T]he proposed administrative and judicial review process for the minor NSR program parallels the process for PSD permits issued under 40 CFR [§] 52.21, which is found in 40 CFR part 124."). Therefore, the Board's decisions under part 124 serve as relevant precedent in this NSR context. *See Peabody W. Coal Co.*, 12 E.A.D. 22, 32-33 & n.26 (EAB 2005) (stating that

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[3] On March 27, 2013, the Board issued a revised standing order adopting certain procedures intended to facilitate resolution of petitions requesting review of permits issued under the Clean Air Act NSR program. *See* Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits. This Standing Order applies to permits issued under the Federal Minor New Source Review Program in Indian Country under 40 C.F.R. §§ 49.151-.161. This and other Standing Orders are available on the Environmental Appeals Board's website at www.epa.gov/eab.

prior Board decisions addressing the standard of review under part 124 serve as valuable precedent in reviewing permit appeal under 40 C.F.R. part 71).[4]

As the Board has stated regarding the part 124 regulations, EPA intended that this review should be only sparingly exercised. Consolidated Permit Regulations, Preamble at 40 C.F.R. § 124.19, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); *see also In re Beeland Grp., LLC*, 14 E.A.D. 189, 195-96 (EAB 2008). In considering a permitting decision under the applicable regulations, the Board first evaluates whether the petitioner has met threshold procedural requirements such as timeliness, standing, issue preservation and specificity. *See* 40 C.F.R. §§ 49.159(d)(2)-(3), 124.19(a)(2)-(4); *see also In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006). If the Board concludes that a petitioner satisfies all threshold pleading obligations, then the Board evaluates the merits of the petition for review. *See Indeck-Elwood*, 13 E.A.D. at 143.

In any appeal from a permit decision, the petitioner bears the burden of demonstrating that review is warranted. *See* 40 C.F.R. §§ 49.159(d)(3), 124.19(a)(4). The petitioner bears this burden even when the petitioner is unrepresented by counsel, as is the case here.[5] *In re New Eng. Plating Co.*, 9 E.A.D. 726, 730 (EAB 2001); *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 249-50 (EAB 1999). Self-represented petitioners do not need to make sophisticated legal arguments or use precise technical or legal terms. *In re Sutter Power Plant*, 8 E.A.D. 680, 687 (EAB 1999). A self-represented petitioner must, however, "articulate some supportable reason or reasons as to why the permitting authority erred or why review is otherwise warranted." *Id.*, 8 E.A.D. at 688; *accord In re Beckman Prod. Servs.*, 5 E.A.D. 10, 19 (EAB 1994). But it is not enough for a petitioner to rely on previous statements of its objections, such as comments on a draft permit. A petitioner must demonstrate why the region's basis for its decision

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[4] Part 71 establishes the federal operating permits program consistent with the requirements of Title V of the Clean Air Act and defines the requirements and corresponding procedures by which the Agency will issue operating permits. 40 C.F.R. § 71.1(a).

[5] The Board generally construes liberally the issues presented by an unrepresented petitioner so as to fairly identify the substance of the arguments being raised. The Board nevertheless "expect[s] such petitions to provide sufficient specificity to apprise the Board of the issues being raised." *Sutter*, 8 E.A.D. at 687-88; *see also In re Seneca Res. Corp.*, UIC Appeal Nos. 14-01 through 14-03, slip op. at 2-3 n.1 (May 29, 2014), 16 E.A.D. ___.

is clearly erroneous or otherwise warrants review. *See In re: ExxonMobil Chem. Co.*, PSD Appeal No. 13-11, slip op. at 7 (EAB May 14, 2014), 16 E.A.D. ___.

III. *PROCEDURAL AND FACTUAL HISTORY*

The existing Navajo Generating Station consists of three 750-megawatt coal-fired steam generating units as well as associated air pollution control devices and auxiliary equipment, including coal storage and transferring, coal pulverizing, and lime handling operations. *See* Tech. Sup. Doc. at 3-5. The NSR permit at issue in this matter authorizes construction and operation of the Refined Coal Treatment System ("RCTS") and would allow the District to treat coal with cement kiln dust and calcium bromide in order to reduce emissions of mercury and oxides of nitrogen ("NO_x"). *Id.* The RCTS would consist of two new coal feed belt conveyers that would divert coal from the existing conveyer system, mix the coal with additives (cement kiln dust and calcium bromide), and then return the coal to the existing conveyer system. *Id.* The cement kiln dust will be delivered by truck and stored in three new 150-ton silos and two 20-ton day bins. *Id.* The calcium bromide will also be delivered by truck and stored in a new 8,700-gallon storage tank and two 450-gallon day tanks. *Id.* While the RCTS will reduce NO_x and mercury emissions, it will result in an increase in emissions of particulate matter (PM) and particulate matter less than or equal to 10 micrometers in diameter (PM_{10}) (collectively referred to as "particulate matter" or "PM") due primarily from increased truck delivery traffic on existing unpaved roads. *Id.*

The Region concluded that while the increased PM emissions would not exceed thresholds for a major modification triggering PSD review, they would exceed the minor NSR permitting thresholds in the Tribal Minor NSR Rule at 40 C.F.R. Section 49.153(a) and Table 1. *See* Region's Response at 3; Tech. Supp. Doc. at 4. Under the part 49 regulations, minor NSR permits must include monitoring requirements "sufficient to assure compliance with the emissions limitations and annual allowable emissions limits that apply to the affected emission units." 40 C.F.R. § 49.155(a)(3).

In order to comply with the part 49 regulations and address the increase in particulate matter, the Region included in the NSR Permit monitoring and recordkeeping requirements to ensure proper control of PM emissions from the refined coal treatment system. *See* Permit Conds. X.B.1-8. The Region also included requirements for the installation and operation of baghouses and dust collectors to control emissions at transfer points at the new and existing belt conveyers and at the cement kiln dust silos and day bins. Permit Cond. X.B.; Tech. Supp. Doc. at 3, 9, 17-18. The monitoring and record keeping requirements in the

NSR Permit apply to the RCTS equipment that will have PM emissions, including the baghouses and dust collectors. The Permit's monitoring provisions require that an observer trained in EPA Method 22 perform a visible emissions survey at least once per week for silos, dust collectors, and cement kiln dust storage bins. If visible emissions are detected during the survey, the District must perform an EPA Method 9 observation. The Permit obligates the District to take corrective action to address any visible emissions. *See* Permit Cond. X.B.4. The Permit also includes operational controls to mitigate the impacts of additional truck deliveries, such as limits on vehicle miles traveled and work practice standards for treatment of unpaved roads. See Permit Conds. X.A.1-6; Tech. Supp. Doc. at 6, 17.

Petitioner does not challenge the adequacy of any of the operational Permit conditions designed to ensure proper control of PM emissions. Rather, as explained further below, Petitioner appears to challenge only permit conditions containing requirements for monitoring visible emissions, also referred to as opacity monitoring. *See* Petition at 18. The term "opacity" is defined as "the degree to which emissions reduce the transmission of light and obscure the view of an object in the background." 40 C.F.R. § 49.123(a). The relevant condition in this permit appeal that addresses opacity monitoring is Permit Condition X.B.1.4.

IV. *ANALYSIS*

A. *Region's Technical Determination*

The Petition in this matter requests that EPA require Alternative Method 082 to monitor opacity at "all sources listed in the NSR filing." Petition at 1. Petitioner's comment on the draft permit stated that the facility operations should be amended to support the use of the alternative method for "opacity limits with the permit and facility" and referenced a number of permit provisions. *See* Petitioner's Comment on Draft Permit, Petition at 17 (Att. 5).

Both Region 9 and the District contend that Petitioner's comment and request for review consist of conclusory statements and personal observations and that Petitioner seeks relief for sources not covered by the opacity monitoring requirements in the Tribal Minor NSR permit before the Board. As noted above, the NSR Permit before the Board applies only to the RCTS and contains only one condition that addresses opacity monitoring requirements -- Permit Condition X.B.4. The other Permit provisions the Petitioner lists in his comment address other types of inspection or control, not opacity monitoring; nor do they modify the provisions in the existing PSD Permit for the facility. The Region used the EPA-approved monitoring methods for opacity in this Permit.

The two EPA-approved monitoring methods for opacity are Method 22 and Method 9. EPA Method 22 is a qualitative measurement tool that indicates the presence or absence of emissions, and EPA Method 9 is a quantitative measurement of emissions. The federal opacity standards for the type of facility in this case require the use of Method 9 or Method 22 contained in Appendix A of Part 60 for the determination of the level or frequency of visible emissions. 40 C.F.R. part 60, apps. A-4, A-7.[6]

EPA adopted Method 22 as a means of determining the existence of fugitive emissions from material handling, processing, and transfer operations. *See id.* at app. A-7. Under this method, a trained observer determines whether visible emissions are occurring. *Id.* EPA adopted Method 9 as a means of visually determining the opacity of emissions from stationary sources by a qualified observer. *Id.* at app. A-4. In assessing opacity under Method 9, a qualified observer with a valid certification will quantify and record 15-second observations of plume opacity under specified conditions. *Id.* at ¶ 2. EPA gave limited approval for the use in 40 C.F.R. parts 60, 61, and 63[7] of a test method adopted by the American Society of Testing and Materials Alternative Method D7520-09 (referred to as ALT-082) for determining opacity in lieu of Method 9. *See* 77 Fed. Reg. 8,865 (Feb. 15, 2012) (Recent Postings of Broadly Applicable Test Methods). ALT-082 uses a digital camera to record images and a certified human operator to review those images with analysis software to determine the opacity.

Petitioner claims that Methods 22 and 9 are not sufficient to adequately monitor opacity and that the Permit should require the use of ALT-082. Petition at 5-12. Petitioner asserts that the use of Method 9 at the existing facility has resulted in exceedances of opacity limits and that the method is therefore "clearly not adequate." *Id.* at 5. Petitioner raised this issue in his comment on the draft permit. *See* Petitioner's Comments on Draft Permit, Petition at 17 (att. 5). The comment did not refer to any attachments or supporting material. The comment included personal observations about emissions from facility operations not covered by the NSR Permit under consideration.

As to the NSR Permit, the Region made a technical determination that for this Permit, EPA monitoring Methods 22 and 9 are sufficient to monitor emissions

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[6] Part 60 establishes standards of performance for new stationary sources under the Clean Air Act.

[7] Parts 61 and 63 concern national emission standards for hazardous air pollutants.

from this project, especially where, as here, any increases in particulate emissions are expected to be minor. Response to Comments at 8 (Att. 3 to Region's Response). The Region's technical support document, prepared for the NSR Permit, provides an explanation of the Region's technical determination. *See* Tech. Sup. Doc. at 17-18. The Region explained the use of EPA-approved Methods 9 and 22 to meet applicable regulatory requirements to monitor the increased PM emissions from the RCTS, and explained the use of the operating conditions included in the permit to address PM emission increases from the RCTS (e.g., requiring installation of dust collectors to control PM emissions from the coal feed belt conveyors and baghouses to control emissions from the cement kiln dust application process, limitations on truck traffic, work practice standards for loading and unloading trucks, water spraying to prevent fugitive dust emissions from unpaved roads, and additional monitoring and record keeping requirements). Tech. Sup. Doc. at 5-9, 17-18. Whatever the Region may think of the merits of the alternative method for the entire facility, it did not deem it necessary for this project. Nothing in the Petition demonstrates that the Region made a clear error of law or fact or abused its discretion in its technical determination.

Further, the Region noted in its response to comments that the EPA-approved monitoring Method 9 is in use at the rest of the NGS facility. *See* Response to Comments at 8. Given that fact, the Region determined it was not appropriate or practical to require a different method for the additional minor emissions sources associated with the instant permit. *Id.*

As this Board has previously stated, on matters that are fundamentally technical or scientific in nature, the Board typically will defer to a permit issuer's technical expertise and experience, as long as the permit issuer adequately explains its rationale and supports its reasoning in the administrative record. *See In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 510, 560-62, 645-47, 668, 670-74 (EAB 2006); *see also, e.g.*, *In re Russell City Energy Ctr.*, 15 E.A.D. 1, 12 (EAB 2010), *petition denied sub nom. Chabot-Las Positas Cmty. Coll. Dist. v. EPA*, 482 F. App'x 219 (9th Cir. 2012); *NE Hub Partners, L.P.*, 7 E.A.D. 561, 570-71 (EAB 1998). Because the Region's rationale in this case is adequately explained in and supported by the record, the Board defers to the Region's technical determination.

At best, Petitioner has reiterated the fact that ALT-082 may be used in lieu of Method 9 in appropriate circumstances. The Agency made clear in approving the use of ALT-082, however, that the use of this and other alternative test methods are not mandatory but permissive. 77 Fed. Reg. 8,865, 8,866 (Feb. 15, 2012). There also is nothing in the record or applicable regulations to support Petitioner's

argument that the alternative method he advocates is superior to EPA Method 9. Further, while the regulations authorize the Agency to require the use of Method 22 and 9, EPA's approval of Alternative Method 082 is limited and its adoption is voluntary. The record does not support a finding that the Region's determination not to require the use of ALT-082 for this Permit is clearly erroneous or an abuse of discretion.[8]

In response to Petitioner's assertion in his comment that he has personally observed exceedances of the existing opacity limits, the Region reiterated that these assertions concerned facility operations that were different from the RCTS project and Permit at issue in the NSR Permit action.[9] The Region also makes clear that Petitioner's assertions regarding alleged opacity exceedances relate to compliance with emissions requirements under the existing PSD Permit rather than issues related to the conditions in the NSR Permit at issue here.[10] As the Region stated:

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[8] Petitioner cites to the Ferroalloys national emission standards for hazardous air pollutants ("NESHAP") as support for his assertion that ALT-082 is required in this NSR permit. Petition at 11. However, that rule finalizes the residual risk and technology review conducted for the Ferroalloys production source category regulated under the NESHAP. *See* 80 Fed. Reg. 37,366 (June 30, 2015). Petitioner fails to demonstrate that this rule applies in the present context or dictates a different result. Petitioner also suggests that the "National Institute of Standards and Technology Act" requires the use of ALT-082 in this permit. *See* Petition at 6, 10, 11. Petitioner, however, has failed to demonstrate that this Act requires the use of ALT-082 in the present context. Further, as stated above, the Region has provided an explanation as to why the use of ALT-082 is neither necessary nor practical here and Petitioner has failed to demonstrate that the Region's determination was clearly erroneous or otherwise warrants Board review.

[9] The Petition includes a number of images of emissions from existing sources at the facility purporting to show, without supporting documentation, that Method 9 has failed to adequately monitor opacity. Because these images were not provided during the comment period, they are not part of the permitting record in this matter. *See In re City of Attleboro,* 14 E.A.D. 398, 406, 444 (EAB 2009)*; In re New Eng. Plating Co.,* 9 E.A.D. 726, 732-35 (EAB 2001). Further, these images relate to emissions from sources governed by the facility's underlying PSD permit issued in 2008 and are not related to the emission sources addressed by the NSR Permit at issue here.

[10] The Board generally declines to review a permit based on concerns regarding compliance with permit terms. *See In re Peabody Western Coal*, 15 E.A.D. 406, 428 n.35 (EAB 2011). As the Board has explained on several occasions, "fear of lax enforcement by the permit issuer is not grounds for review of the permit." *In re Russell City Energy Ctr., LLC*, 15 E.A.D. 1, 85 (EAB 2010); *accord In re EcoElectrica, LP*, 7 E.A.D. 56, 70-

> ***[T]he stack opacity limits or the method by which stack exit opacity is measured is not up for review under this minor NSR permit action. Coal dust emissions from existing coal handling and storage facilities***, fly ash and storage, road sweeping activities, crushers, grinding mills, screening operations, belt conveyors, truck loading or unloading operations, or railcar unloading stations ***are also outside the project scope of this minor NSR permit action. NGS is expected to comply with all opacity limits and control measures*** * * * codified at 40 CFR [§] 49.5513(d).

Response to Comments at 8 (emphases added). In short, the Region concluded that Petitioner's allegations of opacity violations from other existing emission sources at the facility that are not implicated in the NSR Permit at issue here do not support requiring a different method for monitoring opacity emissions and compliance for the RCTS. And again, nothing in the Petition demonstrates that the Region made a clear error of law or fact or abused its discretion in this technical determination.

B. *Petitioner's Supplemental Filing*

In a supplemental filing with the Board on July 7, 2016, Petitioner raises a new argument not previously raised in the Petition. In particular, Petitioner asserts that the Agency's environmental justice policy supports the use of ALT-082. However, because Petitioner did not raise this argument in his Petition, it was not preserved for Board review. *See In re Knauf Fiber Glass, GMBH*, 8 E.A.D. 121, 126 n.9 (EAB 1999) (new issues raised in reply briefs are equivalent to late filed appeals and must be denied on the basis of timeliness); *see also Russell City Energy Cntr.*, 15 E.A.D. 1, 34 n.35 (EAB 2010) (explaining that issue may not be raised for the first time in a reply brief); *In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 595 (EAB 2006) (declining to consider issue that could have

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71 (EAB 1997); *In re Federated Oil & Gas*, 6 E.A.D. 722, 730 (EAB 1997); *In re Genesee Power Station*, 4 E.A.D. 832, 865 (EAB 1993) (explaining that issue relating to permit issuer's ability to enforce a valid permit "is not an issue the Board can address in the context of a PSD permit appeal"); *In re Brine Disposal Well*, 4 E.A.D. 736, 746 (EAB 1993) (explaining that the Board "cannot undertake to review th[e] permit decision on the basis of [petitioner's] assertion that EPA's inspection (i.e., enforcement) capabilities are inadequate").

been raised in a timely petition but was instead raised in a response brief). Review is therefore denied on this issue.[11]

The Board also observes that while some commenters expressed concerns about the effects of certain emissions on the local population and minority groups, those comments did not concern the means to monitor opacity and they were addressed by the Region in its response to comments. Further, we note that given the presence of potentially overburdened communities in the vicinity of the NGS facility, Region 9 conducted an enhanced public participation process for this permit. Region 9 also conducted an environmental justice analysis and concluded that "issuance of this minor NSR permit is not expected to have disproportionately high or adverse human health effects on overburdened communities in the vicinity of the facility on the Navajo Nation Reservation or in surrounding areas." Tech. Sup. Doc. at 20.

V. *CONCLUSION*

For the reasons stated above, the Board denies the Petition for review of the Region's permitting decision filed by Mr. Shawn Dolan.

So ordered.

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[11] SRP has filed a motion to strike Petitioner's supplemental filing or, alternatively, for leave to file a sur-reply. However, because we conclude that Petitioner's environmental justice argument was not preserved for review, SRP's motion is moot.

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Petition for Review in the Matter of Salt River Project Agricultural Improvement and Power District - Navajo Generating Station, NSR Appeal Nos 16-01, were sent to the following parties in the manner indicated below:

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Dated: August 30, 2016

Annette Duncan, Secretary
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