



March 25, 2022

Ms. Cristina Fernandez  
Division Director, Air & Radiation Division  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

Dear Ms. Fernandez:

The Pennsylvania Department of Environmental Protection (“DEP” or “Department”) appreciates your, and all of the staff at EPA Region 3, efforts regarding DEP’s Title V permit modifications prepared to resolve the United States Court of Appeals for the Third Circuit’s judgement and order issued in the *Sierra Club v. United States Environmental Protection Agency* (*Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020)). Obviously, DEP is surprised and disappointed that after all of the work and collaboration between EPA, particularly Region 3, and the Department, that we were informed that the final-form Keystone Generating Title V modification sent to EPA for review was deemed insufficient to support approval of a SIP to resolve the Court’s order, and that EPA would not participate in any further efforts with the Department regarding these issues.

The Department had over 1,000 employee hours into preparation of the Keystone and four other necessary permit modifications. DEP staff had also been sharing information with Region 3 staff in a very transparent manner, meeting with Region 3 staff on a regular basis. DEP believed its working relationship with Region 3, which included more than 20 meetings, was working extremely well through submission of the final-form Keystone permit to EPA on January 11, 2022, for EPA’s final 45-day review. Many changes were incorporated into the final-form Title V permit as a result of discussions between DEP and Region 3. Although it is not clear why, during the end of the final 45-day review period, EPA sharply departed from the year-long cooperative approach and the agreed-upon follow-up efforts. It was at the February 24, 2022 meeting, that DEP became aware of EPA’s change in approach.

The final-form Keystone Title V air permit modification package was submitted to EPA on January 11, 2022, for EPA’s statutorily required review. EPA and DEP agreed that EPA would provide substantive feedback on the permit during the 45-day comment period so that any issues regarding the permit’s ability to support a SIP revision could be corrected before the modified permit was issued. EPA also requested, and DEP agreed, to withhold submission of the remaining four final-form Title V permits until EPA provided their feedback on the Keystone permit. The shared and repeatedly stated purpose of withholding submission of the other four permits was to ensure that any issues identified in the Keystone permit could be immediately incorporated into the other permits, prior to submission to EPA. Finally, EPA agreed to do everything possible to expediate the permit review and communicate any identified issues to DEP prior to the expiration of EPA’s 45-day comment period.

EPA never submitted the agreed-upon feedback to DEP on the Keystone permit. On February 24, 2022, the last day of EPA’s 45-day comment period, EPA informed DEP that while they had no objection to the issuance of the permit, EPA believed that the permit would not support a SIP approval and therefore would not satisfy the court’s order. In addition, EPA would not provide the information necessary to resolve the permit

issues. EPA further declined to continue to collaborate with DEP on this or any of the other 4 pending permits due to “resource allocation” issues. DEP was also informed that EPA would not process an administratively complete SIP submission by DEP and would instead prepare and issue a Federal Implementation Plan (FIP). You recommended that DEP not submit the SIP revisions request prior to finalizing the FIP. Please keep in mind that EPA explicitly requested that DEP withhold submission of the remaining final-form Title V permit modifications, which were necessary prerequisites to submission of a SIP by DEP. If you disagree with any of these statements, please let me know. DEP will hold off submitting the SIP revision requests until we hear from you.

It should be noted that all of EPA’s comments submitted to DEP on October 21, 2021, were addressed with detailed responses in the official Comment & Response document, which was submitted to EPA on January 11, 2022. During the intervening eleven weeks, DEP and EPA Region 3 discussed the substance of each of EPA’s comments on multiple occasions. The first 10-pages of the official Comment & Response document provided a detailed explanation of the methodology used to analyze the facts and data to determine what constitutes RACT technology, and was crafted to specifically capture both the essence and detail of the discussions between DEP and EPA Region 3. These 10-pages are almost exclusively responsive to EPA’s comments. Furthermore, each individual comment that EPA submitted on October 21, 2021, was also addressed individually (an additional 6 pages in the Comment & Response document).

Additionally, during the February 24, 2022 meeting, EPA specifically cited the 0.03 lb/MMBtu emission rate as being indicative that the 0.08 lb/MMBtu hourly emission limit was not sufficiently stringent, despite the information provided in the response to their initial comment. The Response to Washington D.C.’s Department of Energy & Environment (DOEE) Comment 5 includes a 6-page technical analysis of the nature of the chemical reactions inside the Keystone SCR unit as well as specific scientific and engineering reasons that a 0.03 lb/MMBtu emission rate is not sustainable based on the detailed explanation provided by the permittee. More specifically, the 0.08 lb/MMBtu emission limit was derived from emission and operational data obtained from EPA and the facility. DEP compared historical ammonia injection rates to historical heat inputs to determine the maximum amount of ammonia that could be injected into the system and the resulting emission rate. The 0.08 lb/MMBtu emission limit was derived because this is the emission rate that occurs when the maximum amount of ammonia is injected into the SCR.

For over a year, DEP and Region 3 collaborated on this issue. I am very proud of how well we worked together—transparently, effectively, honestly, and with respect. However, the end result decided by EPA is extremely disheartening. We look forward to having a good discussion with you when you are ready to discuss the details of the draft FIP in the coming weeks.

Sincerely,

*/s/ Mark Hammond*

Mark Hammond  
Director