

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
COLORADO INTERSTATE GAS	)	
COMPANY – LATIGO STATION	)	
	)	ORDER RESPONDING TO
	)	PETITIONER’S REQUEST THAT
Permit Number: 950PAR037	)	THE ADMINISTRATOR OBJECT
	)	TO ISSUANCE OF A
	)	STATE OPERATING PERMIT
Issued by the Colorado Department of	)	
Public Health and Environment, Air	)	
Pollution Control Division	)	
	)	Petition Number: VIII-2005-01
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ORDER PARTIALLY GRANTING AND PARTIALLY DENYING  
PETITION FOR OBJECTION TO PERMIT

The United States Environmental Protection Agency (“EPA”) received a petition dated July 5, 2005, from Jeremy Nichols (“Nichols” or “Petitioner”) requesting that EPA object, pursuant to section 505(b)(2) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7661d(b)(2), to the issuance of a state operating permit to the Colorado Interstate Gas Company for a facility located approximately 7.5 miles south-east of Byers, Arapahoe County, Colorado. The permittee will be referred to as “CIG-Latigo” for purposes of this Order. The primary function of the CIG-Latigo facility is to compress and store pipeline-quality gas in storage wells during an injection phase, and to process, condition, and compress this gas back to the sales pipeline during a withdrawal phase. The CIG-Latigo permit was issued by the Colorado Department of Public Health and Environment, Air Pollution Division (“CDPHE” or “Colorado”) on July 1, 2005, pursuant to title V of the Act, the federal implementing regulations at 40 C.F.R. part 70, and the Colorado State implementing regulations at Regulation No. 3 part C.

The petition alleges that the CIG-Latigo permit does not comply with 40 C.F.R. part 70 in that: (I) the operating permit fails to ensure compliance with volatile organic compound and hazardous air pollutant emission standards for the dehydrator; (II) the operating permit fails to require opacity monitoring; and (III) the operating permit fails to appropriately control VOC emissions from internal combustion engines. Petitioner has requested that EPA object to the issuance of the CIG-Latigo permit pursuant to section 505(b)(2) of the Act.

EPA has reviewed these allegations pursuant to the standard set forth by Section 505(b)(2) of the Act, which places the burden on the Petitioner to “demonstrate to the Administrator that the permit is not in compliance” with the applicable requirements of the Act or the requirements of Part 70. See also 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002).

In reviewing the merit of the various allegations made in the petition, EPA considered information in the permit record including: the petition; pertinent sections of the permit application; Mr. Nichols’ March 26, 2005 comments and CIG’s November 29, 2004 and April 13, 2005 comments on the draft permit; CDPHE’s response to the comments submitted by Mr. Nichols (April 15, 2005); CDPHE’s response to comments submitted by CIG (April 28, 2005 and February 14, 2005); Final Operating Permit for CIG-Latigo issued by CDPHE (July 1, 2005); Technical Review Document for Renewal of the Operating Permit 95OPAR037 (April 2005); Technical Review Document for Operating Permit 96OPDE134 (June 12, 1998); CDPHE Operating Permit for Public Service Company – Zuni Station (April 1, 2004); and the October 12, 2005 letter from CDPHE to CIG responding to request for exemption under Regulation No. 7, Section XVI.C.4. Based on a review of all the information before me, I grant in part and deny in part the Petitioner’s request for an objection to the CIG-Latigo title V permit for the reasons set forth in this Order.

## **STATUTORY AND REGULATORY FRAMEWORK**

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted interim approval to the title V operating permit program submitted by the State of Colorado effective February 23, 1995. 60 Fed. Reg. 4563 (January 24, 1995); 40 C.F.R. part 70, Appendix A. See also 61 Fed. Reg. 56367 (October 31, 1996) (revising interim approval). Effective October 16, 2000, EPA granted full approval to Colorado’s title V operating permit program. 65 Fed. Reg. 49919 (August 16, 2000). Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. See CAA §§ 502(a) and 504(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as “applicable requirements”) but does require permits to contain monitoring, record keeping, reporting, and other conditions to assure compliance by sources with existing applicable emission control requirements. See 57 Fed. Reg. at 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, states, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under section 505(a) of the Act and 40 C.F.R. § 70.8(a), States are required to submit all proposed title V operating permits to EPA for review. Section 505(b)(1) of the Act authorizes EPA to object if a title V permit contains provisions not in compliance with applicable requirements, including the requirements of the applicable SIP. *See also* 40 C.F.R. § 70.8(c)(1).

Section 505(b)(2) of the Act states that if the EPA does not object to a permit, any member of the public may petition the EPA to take such action, and the petition shall be based on issues that were raised during the public comment period, unless the petitioner demonstrates that it was impracticable to do so or unless the grounds for objection arose after the close of the comment period. *See also* 40 CFR § 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

Petitioner commented during the public comment period, raising concerns with the draft operating permit that provide a partial basis for this petition. *See* Electronic Mail Letter from Jeremy Nichols to CDPHE (March 25, 2005) (“Nichols Comment Letter”). As discussed below, the Petitioner failed to raise certain issues with the requisite “reasonable specificity” to allow the Agency to respond to his concerns, as required under the Act. These issues will therefore be denied in this Response Order.<sup>1</sup>

## A. ISSUES RAISED BY PETITIONER

### (I) Compliance with Volatile Organic Compound and Hazardous Air Pollutant Emission Standards for the Dehydrator.

Petitioner’s first claim alleges that the “operating permit fails to ensure compliance with volatile organic compound and hazardous air pollutant emission standards for the dehydrator.” Latigo Petition at 3. Neither the Petitioner nor any other party raised any issues relating to the ability of the permit to ensure compliance with hazardous air pollutant (“HAP”) emission standards during the public comment period so the Petitioner’s claims regarding failure of the operating permit to ensure compliance with HAP emissions standards are denied.

Regarding Petitioner’s claims relating to compliance with volatile organic compound (“VOC”) emission standards, the Petitioner is making two arguments. First, in Sections I.A., I.C., and I.E. of the petition, the Petitioner raises concerns about the adequacy of the VOC periodic monitoring provisions specified in the following sections of the operating permit: Section II, 4.1.1; Section II, 4.1.3; and Section II, 4.1.5. Neither the Petitioner nor any other party commented on the adequacy of these periodic

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<sup>1</sup> The Petitioner requested that to the extent his comments were not raised with reasonable specificity, the Agency consider his petition a petition to reopen the CIG-Latigo permit in accordance with 40 C.F.R. § 70.7(f). This order is not a response to such a petition.

monitoring provisions for the glycol dehydrator during the public notice opportunity; therefore, those claims are denied.

In addition, in Section I.F. of the petition, the Petitioner argues that because these monitoring provisions are inadequate to ensure compliance with the operating permit's limitations on VOC emissions from the glycol dehydrator, the CDPHE erred in concluding that the VOC emission reduction standards for glycol dehydrators, as specified in Colorado Regulation No. 7, Section XII.C, do not apply.

Although the Petitioner did comment on the applicability of the Early Action Compact provisions of Regulation No. 7, Section XII.C, his previous claim was not based on the inadequacy of the monitoring provisions to ensure compliance as it is now articulated in his petition.

As part of his original public comments, the Petitioner alleged only that because CIG-Latigo was allowed to emit 25 tons per year of VOCs (including nine tons per year from the glycol dehydrator), the Early Action Compact, which required operations emitting more than 15 tons per year of VOCs to reduce VOC emissions from dehydrators, applied. The Petitioner was arguing erroneously that Regulation No. 7, Section XII.C applied to a dehydrator when an entire facility's emissions exceeded 15 tons per year. CDPHE's response to the original comment accurately clarified that the glycol dehydrator applicability criteria for the VOC emissions standard in Regulation No. 7, Section XII.C include a 15 tons per year threshold from each individual glycol dehydrator unit, not 15 tons per year from the entire facility. Because the CIG-Latigo glycol dehydrator was limited to 9 tons of VOC emissions per year, CDPHE was correct in finding that the provisions for glycol dehydrators in Regulations No. 7, Section XII.C do not apply.

The Petitioner's current argument, as presented in his petition, is sufficiently different from the public comments such that the Agency could not have reasonably anticipated, and could not have been expected to address, it. The Agency is not required to imply every possible basis for a commenter's allegation and then refute each one. *See Mossville Env'tl. Action Now v. Environmental Prot. Agency*, 370 F.3d 1232, 1238-40 (D.C. Cir. 2004) (requiring Agency to answer all possible implied arguments in challenges it receives does not meet the standard of "reasonable specificity"; "reasonable specificity requires something more than a 'general [challenge] to EPA's approach'").

There were no comments made on the adequacy of the monitoring provisions for this 9 tons per year limit. The Petitioner did not comment that the 9 tons per year emission limit was allowed to be exceeded by the permit, which would trigger the VOC standard requirements. As the issue was raised in public comments, EPA believes that CDPHE's response was correct and adequate. Since Section I.F. of the petition raises a distinctly different argument, EPA does not believe the specific petition objection was raised with reasonable specificity during the public comment period. As a result of this failing, and because the grounds for this objection were present and practicable for the

Petitioner to raise during the comment period, Petitioner's claim is hereby denied. *See* CAA § 505(b)(2); 40 C.F.R. § 70.8(d).<sup>2</sup>

Accordingly, for the reasons stated above, Petitioner's first claim is hereby denied. *See* CAA § 505(b)(2); 40 C.F.R. § 70.8(d).

## II. Opacity Monitoring Requirements.

In comments submitted to CDPHE on March 26, 2005, the Petitioner alleged that the permit must require monitoring of opacity to demonstrate compliance with the SIP 20% opacity standard for the six internal combustion engines covered by the permit (E001-E006). The Petitioner also challenged the presumption of compliance with the opacity limits (absent credible evidence to the contrary) whenever pipeline quality gas is burned by the engines, as outlined in the permit Section II, Conditions 1.3, 2.3, and 3.3.

In its response to public comments, CDPHE stated

[i]t has been the Division's experience that opacity emissions from natural-gas fired internal combustion engines are well below the 20% limitation. Therefore, the Title V operating permit does not require any intermittent Method 9 visible emission observations. Although the permit does not require any monitoring for opacity, when the Division inspects a facility, the inspector look (sic) for visible emissions and would conduct a Method 9 reading if he/she believed that opacity from a given emission unit would exceed the applicable standard.

In his petition, the Petitioner restates the alleged permit deficiency regarding the provisions for monitoring opacity. The Petitioner asserts that the Clean Air Act and its regulations require explicit monitoring provisions. In addition, the Petitioner objects to the use of a fuel restriction as a method of monitoring compliance with opacity restrictions because he believes past experience at the Public Service Company of Colorado's Zuni Station indicates such restrictions are unreliable to ensure compliance with opacity standards. Furthermore, the Petitioner challenges the use of fuel restrictions as not being in compliance with annual compliance certification requirements. As discussed below, EPA does not agree with the Petitioner that direct opacity monitoring would always be required for emission sources firing natural gas or that the use of fuel restrictions are invalid per se. EPA also disagrees that the use of fuel restrictions is inconsistent with the compliance certification obligations. However, with regard to the CIG-Latigo title V permit in particular, we do believe that the permit is ambiguous in its

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<sup>2</sup> At the time of permit proposal and issuance, these VOC emissions standards for glycol dehydrators standards were State-only requirements (i.e., not federally enforceable) and therefore not required to be included in an operating permit under title V. The Early Action Compact Plan rules did not become part of Colorado's State Implementation Plan until September 19, 2005. 70 Fed. Reg. 48652 (August 19, 2005). Even assuming these standards are now applicable requirements, as defined in 40 C.F.R. § 70.2, CDPHE would have up to 18 months from the date the standards were incorporated into the SIP to reopen and revise the permit to incorporate the new requirements. *See* 40 C.F.R. § 70.7(f)(1)(i). Thus, even if I were to consider this issue on the merits, I would deny the petition on this claim because the permit is consistent with the requirements of the CAA and the applicable implementation plan.

fuel restriction for all internal combustion engines and deficient in terms of recordkeeping requirements for emission units E004, E005, and E006 and will require CDPHE to revise the CIG-Latigo permit to address these issues.

#### A. Direct Monitoring Under CAA

The Petitioner argues broadly in Section II.A. of the petition that Section 504(a) of the CAA requires emission limitations and standards set forth in title V permits to be enforceable and that permits must demonstrate compliance and that to do so permits must require monitoring of emissions. The Petitioner further argues that “it would be impossible to demonstrate compliance with any standard, such as opacity, without explicit monitoring.” Petition at 11.

As a general matter, EPA does not believe that direct or instrumental monitoring is always required under the Act, or its implementing regulations under 40 C.F.R. Part 70. While 40 C.F.R. § 70.6(a)(3)(i)(B) requires “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit,” that provision also recognizes that “recordkeeping provisions may be sufficient to meet the requirements of this paragraph . . . .” Furthermore, in its Order Responding to the Petition to Object for the Fort James Camas Mill operating permit (Petition No. X-1999-1), EPA stated

EPA recognizes that there may be limited cases in which the establishment of a regular program of monitoring would not significantly enhance the ability of the permit to reasonably assure compliance with the applicable requirement and where the status quo (i.e., no instrumental monitoring) could meet the requirements of 40 C.F.R. § 70.6(a)(3). For example, where a prior stack test showed that emissions were only a small percentage of the applicable emission limit, and the source owner or operator periodically certifies that the relevant production information (e.g., fuels, materials, processes operations) remain substantially unchanged, ongoing compliance could be assured without any additional monitoring beyond the periodic certification of operating conditions.

*Id.* at 13-14.

As can be seen, EPA does not believe that *direct* monitoring is always required to demonstrate compliance with an emission limit and to satisfy the periodic monitoring requirements of 40 CFR § 70.6(a)(3).<sup>3</sup> As these cases indicate, these types of determinations are based on engineering judgment and must be handled on a case-by-case basis. As discussed below, EPA believes that the CIG-Latigo facility presents conditions such that recordkeeping provides sufficient monitoring for the opacity limit.

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<sup>3</sup> In addition to the Fort James Camas Mill Petition Response Order, EPA has made other determinations that direct emission monitoring is not required in every situation in order to satisfy 40 CFR § 70.6(a)(3) (see Petition Response Orders for Kerr-McGee Chemicals, LLC’s Mobile Alabama Chemical Manufacturing Facility (IV-2000-1), Doe Run Company Buick Mine and Mill (VII-1999-001), Shaw Industries, Inc. Plant No. 2 (IV-2001-10), and Shaw Industries, Inc. Plant No. 80 (IV-2001-9)).

## B. Zuni Station Operating Permit

Section II.B. of the petition references opacity violations that have been documented at the Public Service Company of Colorado's Zuni Station, which consists of three natural gas fired boilers. The Petitioner cites the Technical Review Document for the 1998 Zuni Station title V permit, which notes there were opacity violations documented for one of the boilers while burning natural gas. As a result, CDPHE did require periodic monitoring for the boiler in the original title V permit. The Petitioner asserts that based on the single boiler experience at the Zuni Station, the CDPHE (and EPA) should require periodic opacity measurements for the internal combustion engines in the CIG-Latigo title V permit.

EPA does not agree that one incidence of opacity problems at a natural gas fired boiler should dictate monitoring requirements at a facility that operates natural gas fired internal combustion engines. First, the situation at the Zuni Station involved opacity from a natural gas fired boiler. This is an external combustion unit, as opposed to the internal combustion engines at the CIG-Latigo facility. Combustion of fuel in a boiler typically occurs at much different temperatures and pressures as compared to internal combustion engines. Furthermore, the combustion chamber for a boiler would typically be much larger than that of an internal combustion engine, making for significant differences in the mixing of air and fuel during combustion. These factors significantly affect the combustion mechanisms and consequently the formation of emissions. Therefore, the Zuni Station in relevant part was not similar to the CIG-Latigo facility nor has the Petitioner provided any evidence that there have been any violations of the opacity standards at the CIG-Latigo facility.

## C. Midwest Generation, LLC, Fisk Generating Station Operating Permit

Finally, the Petitioner cites a paragraph out of the Response Order for Midwest Generation, LLC Fisk Generating Station (V-2004-1), where EPA required the removal of a permit condition note that says, "(f)urther compliance procedures are not set by this *permit as compliance is assumed to be inherent* in operation of an affected boiler under operating conditions other than startup or shutdown." (emphasis in original). The Petitioner claims this note is analogous to the presumption in the CIG-Latigo title V permit that the internal combustion engines will be in compliance with the opacity limits whenever natural gas is combusted. The Petitioner alleges that the CIG-Latigo permit fails to contain any opacity monitoring whatsoever. As such, the Petitioner insists that the position taken by EPA in the Fisk Response Order must also be applied by EPA in the Response Order for CIG-Latigo.

EPA disagrees with the Petitioner's argument that the CIG-Latigo permit condition is analogous to the condition in the Fisk Operating permit to which EPA objected. As described in the Fisk Response Order, the permit condition does require direct emission testing for the emission limit in question, "(c)ompliance with the CO emission limitation in 7.1.4(d) is addressed by emission testing in accordance with

Condition 7.1.7.” Petition no. V-2004-1 (March 25, 2005) at 9. EPA’s problem with the note’s language “compliance is assumed to be inherent” was that it “could be read as eliminating the need for any of the compliance requirements (testing, monitoring, recordkeeping, and reporting) of part 70 to determine whether the facility is complying with the CO emission limits in the permit.” *Id.* In addition, EPA said that the language was “not in compliance with the annual compliance certification requirements under part 70” because the “permit may not authorize the facility to certify compliance based on something else, such as an assumption that compliance is inherent.” *Id.*

The distinction between the two permit conditions is that compliance with the opacity standard in the CIG-Latigo permit is not automatically assumed to be inherent. The CIG-Latigo permit does contain opacity monitoring requirements in the form of recordkeeping requirements to allow the facility to certify compliance. For CIG-Latigo, compliance for each engine is determined based on the source’s natural gas fuel restriction, which in turn, is based on CDPHE’s experience with the use of natural gas in internal combustion engines. The fuel restriction and associated recordkeeping is intended to be the means of satisfying the periodic monitoring requirement under 40 C.F.R. § 70.6(a)(3), which would then be used by the source in its compliance certification. Section 70.6(a)(3) states that recordkeeping provisions may be sufficient to meet the periodic monitoring requirements of that paragraph.

EPA agrees with CDPHE’s response to Petitioner’s public comments, which concluded that based on experience, opacity emissions from natural gas fired internal combustion engines are typically well below the 20% limitation. As stated previously, EPA believes that natural gas is a clean burning fuel and the likelihood of these units exceeding the applicable opacity standard (i.e., 20 percent) is considered minimal. *See Shaw Industries, Inc. Plant No 2, Petition IV-2001 at 10.* Furthermore, in the preamble to the proposed New Source Performance Standard for Stationary Combustion Turbines (40 C.F.R. Part 60, proposed Subpart KKKK, Federal Register, Volume 70, No. 33, February 18, 2005), EPA explains why it is not proposing a particulate matter standard for this source category (combustion turbines are also internal combustion in design), “[p]articulate matter emissions are negligible with natural gas firing due to the low sulfur content of natural gas.” Based on this experience, direct opacity readings do not need to be required for such facilities in order to assure compliance with opacity limits.

Although, as described below, we believe the permit is somewhat ambiguous and needs to be more explicit in terms of the fuel use restriction for the internal combustion engines (E001-E006), we do not believe that the use of a fuel restriction to monitor compliance for some sources is inconsistent with the requirements of the Act or 40 C.F.R. Part 70.

#### D. Fuel Restriction Language for Internal Combustion Engines and Recordkeeping Requirements for Emission Units E004, E005, E006

Notwithstanding the general permissibility of using fuel restrictions to monitor compliance, EPA is concerned that the title V permit is somewhat ambiguous in terms of

how fuel use is restricted for all internal combustion engines and that it fails to satisfy the recordkeeping requirements found in 40 C.F.R. § 70.6(a)(3) for emission units E004, E005, and E006. The tables in Section II, Conditions 1, 2, and 3 that cover the internal combustion engines, all list the SIP opacity condition of 20% (conditions 1.3, 2.3, and 3.3). Under the “Monitoring” column in each of these tables, the method for each engine is listed as “Fuel Restriction” with the interval listed as “Whenever Natural Gas is Used as Fuel.” In addition, these conditions themselves all presume compliance with the opacity standards (absence credible evidence to the contrary), “whenever natural gas is used as fuel.” The phrase “whenever natural gas is used” does not make clear that these units are restricted to using only natural gas. While we do not believe the intent of this condition is to allow the CIG-Latigo internal combustion engines to use any fuel other than natural gas,<sup>4</sup> this language makes the fuel restriction somewhat ambiguous. Upon permit revision CDPHE should make clearer that these engines are restricted to burning only pipeline quality natural gas.

Emission units E001-E003 are required under Section II, Condition 1.2 to track and record fuel use in order to comply with the fuel use limit of 76.53 MMscf/yr (fuel type not listed, but presumed to be natural gas). This recordkeeping requirement could serve as the required periodic monitoring to show compliance with the fuel restriction and the opacity limits for these units. However, there is no requirement to track or record fuel use for emission units E004, E005, and E006. Therefore, there is no apparent periodic monitoring for the fuel restriction and opacity limit for these units. Accordingly, I am requiring CDPHE to revise the CIG-Latigo permit in order to add permit conditions for units E004, E005, and E006 that require records of the type of fuel combusted, or other periodic monitoring that satisfies the requirements of 40 C.F.R. § 70.6(a)(3)(i)(B).

For the reasons discussed above, this petition issue is granted in part to require CDPHE to revise the permit to refine the fuel restrictions and recordkeeping provisions to adequately assure compliance with the SIP opacity condition of 20% (conditions 1.3, 2.3, and 3.3), and denied with respect to the remaining issues asserting the inadequacy of opacity monitoring provisions generally.

### III. VOC Emissions from Internal Combustion Engines.

Regarding Petitioner's third claim, “the operating permit fails to appropriately control VOC emissions from internal combustion engines,” Latigo Petition at 14, the Petitioner bases this claim on provisions of Colorado’s Early Action Compact Plan, which at the time of permit proposal and issuance, were “State-only” requirements. As noted above, State-only terms are not required to be included in operating permits pursuant to title V and, therefore, are not evaluated by EPA unless those terms may either impair the effectiveness of the title V permit or hinder a permitting authority’s ability to implement or enforce the title V permit.<sup>5</sup> Although the Early Action Compact plan was

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<sup>4</sup> Indeed Condition 1.2 contains additional language on fuel consumption limits for units E001-E003 that is consistent with a natural gas fuel restriction.

<sup>5</sup> *In the Matter of Harquahala Generating Station Project*, Order Responding to Petitioner’s Request that the Administrator Object to Issuance of a State Operating Permit, Permit No. V99-015, at 5

later incorporated into the SIP, CDPHE has 18 months from the date of that incorporation (Sept. 19, 2005) to reopen and revise the permit to incorporate the new applicable requirements. Therefore, even assuming the provisions of the Early Action Compact Plan were applicable to these engines, the failure to include them in the facility's title V permit (which was issued on July 1, 2005) would not be a basis for EPA to object to the permit.

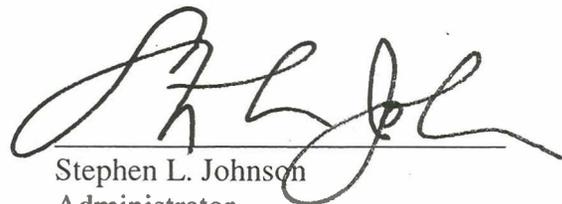
Furthermore, in CDPHE's December 1, 2005 letter to CIG-Latigo, the State informed CIG-Latigo that the four engines listed in the title V permit as being subject to the Early Action Compact VOC control requirements (E001-E004) qualify for an exemption listed under Colorado Regulation No. 7, XVI.C.4. and are no longer considered subject to the control requirements. CDPHE indicated in its October 12, 2005 and December 1, 2005 letters to CIG-Latigo that the relevant State-only provisions in the title V permit would need to be modified in order to address the corresponding changes in control requirements for these emission units. CDPHE has informed EPA in an October 17, 2005 electronic mail that this permit modification will be processed as a significant modification and will therefore be subject to a public notice period.<sup>6</sup>

Finally, Petitioner alleged in Section III.C. of the petition that the Compliance Assurance Monitoring requirements (40 CFR § 64.2) apply to Emission units E001-E004, as a result of controls alleged to be required pursuant to State requirements and the Early Action Compact. Neither the Petitioner nor any other party raised the specific issues regarding these sections of the operating permit during the public notice opportunity. Accordingly, the Petitioner's claim under Section III.C. of the petition is not based upon an objection that was raised with reasonable specificity during the public comment period on the draft operating permit. As a result of this failing, and because the grounds for this objection were present and practicable for Petitioner to raise during the comment period, Petitioner's third claim is hereby denied. *See* CAA § 505(b)(2); 40 CFR § 70.8(d).

### C. CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I grant in part and deny in part the petition of Mr. Nichols requesting an objection to the issuance of the CIG-Latigo title V permit.

Dated: FEB 17 2006



Stephen L. Johnson  
Administrator

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(July 2, 2003). EPA finds that at the time the permit was issued, the Early Action Compact Plan was not inconsistent with the requirements of the CAA.

<sup>6</sup> Email from Jackie Joyce, Permit Engineer, CDPHE to Hans Buenning, Environmental Engineer, EPA Region 8 (October 17, 2005).