

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION No. X-2020-7
	)	
BULLSEYE GLASS CO.	)	ORDER RESPONDING TO
MULTNOMAH COUNTY, OREGON	)	PETITION ON TITLE V
PERMIT No. 26-3135-TV-01	)	OPERATING PERMIT
	)	
ISSUED BY THE OREGON DEPARTMENT OF	)	
ENVIRONMENTAL QUALITY	)	

**ORDER DENYING PETITION**

**I. INTRODUCTION**

The U.S. Environmental Protection Agency (EPA) received a petition dated June 1, 2020 (the Petition) from Daniel Forbes (the Petitioner). The Petition concerns operating permit No. 26-3135-TV-01 (the Permit) issued by the Oregon Department of Environmental Quality (Oregon DEQ) to Bullseye Glass Co. (Bullseye Glass or the facility) in Portland, Multnomah County, Oregon. The operating permit was issued pursuant to title V of the Clean Air Act (CAA or Act), CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and the Oregon Administrative Rules (OAR) 340-218-0010 *et seq.* See also 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

As explained further below, it is unclear whether the Petition was intended to request an EPA objection to the Bullseye Glass title V operating permit under section 505(b)(2) of the Act. To the extent that the Petition could be properly characterized as a petition to object, the EPA is responding to the Petition as if it were a petition submitted under CAA § 505(b)(2), but the Agency does not waive any claim that the Petition was not properly filed. For the reasons discussed below, the Petition is denied.

**II. SUMMARY OF STATUTORY AND REGULATORY FRAMEWORK**

State and local permitting authorities, including Oregon DEQ, issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA’s 45-day review period, petition the Administrator to object to the permit. CAA § 505(b)(2); 40 C.F.R. § 70.8(d).

Each petition must identify the proposed permit on which the petition is based and identify the petition claims. 40 C.F.R. § 70.12(a). Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under part 70. 40 C.F.R. § 70.12(a)(2). Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must generally be contained within the body of the petition. *Id.*

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v).

In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1). Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA. The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). Additional information on title V permits and title V petitions is provided as an Appendix to this Order. Examples of prior title V petitions, and of EPA responses, may be found at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

### **III. BACKGROUND**

Bullseye Glass is an existing colored art glass manufacturer located in Portland, Oregon. Bullseye Glass historically operated under a minor source, non-title V Air Contaminant Discharge Permit issued by Oregon DEQ, Permit No. 26-3135-ST-01.

Oregon DEQ determined that Bullseye Glass was subject to the National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources (the subpart SSSSSS NESHAP), and consequently required the facility to apply for a federally-enforceable title V operating permit. Bullseye Glass submitted a title V permit application dated May 30, 2017. On November 15, 2019, Oregon DEQ published public notice of a draft title V permit for Bullseye Glass. Oregon DEQ provided a public comment period that ran until January 10, 2020, and held a public hearing on December 17, 2019. On February 14, 2020, Oregon DEQ transmitted to the EPA the proposed title V permit and its response to public comments for the EPA's 45-day review. The EPA did not object to the Bullseye Glass permit during its 45-day review period. Oregon DEQ finalized title V permit No. 26-3135-TV-01 on April 14, 2020.

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object—in this case, by May 29, 2020. 42 U.S. C § 7661d(b)(2). On June 1,

2020, the Petitioner submitted the Petition via email to the EPA.<sup>1</sup> On June 2, 2020, the Petitioner submitted another email to the EPA containing additional information related to the Petition.<sup>2</sup>

#### IV. EPA DETERMINATION ON THE PETITION

**Petitioner's Claim:** The Petition “express[es] . . . concern over what [the Petitioner] see[s] as Bullseye’s alleged failure to comply with 40 CFR Part 63 Subpart SSSSSS.” Petition at 1.<sup>3</sup> Specifically, the Petitioner contends that Bullseye Glass violated subpart SSSSSS because a required stack test in 2017 was conducted using a glass formula that did not contain the greatest potential to emit chromium as a hazardous air pollutant (HAP). *Id.* The Petitioner alleges that the facility “regularly makes and sells” a type of glass (Aventurine glass) containing ten times more chromium than the recipe used during the emissions test. *Id.* at 4.

Additionally, the Petitioner questions whether Bullseye Glass complied with the requirement in subpart SSSSSS that the facility must “provide in your Notification of Compliance Status documentation that demonstrates why the tested glass formulation has the greatest potential to emit the glass manufacturing metal HAP.” Petition at 4 (quoting 40 C.F.R. § 63.11452(a)(3)(iii)) (emphasis in Petition). The Petitioner asserts that there is no indication in documentation provided by Bullseye Glass or Oregon DEQ that explains how the glass used in the emissions test had the greatest potential to emit chromium as a HAP. *Id.*

**EPA Response:** For the following reasons, the EPA denies the Petition. In sum, it is not clear that the Petition is properly considered a petition to object to the Bullseye Glass Permit. However, to the extent that it is, the Petition issues were not raised with reasonable specificity during the public comment period for this title V permit, and the Petitioner’s concerns related to the facility’s alleged noncompliance do not demonstrate a basis for the EPA to object to the Bullseye Glass Permit through the title V petition process.

As an initial matter, it is not clear that the Petition is properly considered a petition to object to the Bullseye Glass permit under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d). The opportunity to petition the EPA to object to a permit under CAA § 505(b)(2) is unique to title V and is not available for other types of air permits, such as preconstruction permits issued by states under

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<sup>1</sup> The EPA understands that Oregon DEQ’s Permit Review Report accompanying the final permit indicated that June 1, 2020, was the deadline for submitting a petition to the EPA on the Bullseye Glass title V permit. However, the EPA’s 45-day review period began on February 15, 2020, and ended on March 30, 2020. Therefore, the public’s 60-day petition period began on March 31, 2020, and ended on May 29, 2020. Petitioners are responsible for independently verifying the appropriate petition dates. Nonetheless, as explained above, the EPA is responding to the Petition, but without waiving any claim that the Petition was not timely filed.

<sup>2</sup> The EPA generally does not address (and has no obligation to address) amendments, supplements, or additions to title V petitions that are submitted after the close of the 60-day petition period. *See, e.g., In the Matter of Big River Steel*, Order on Petition No. VI-2013-10 at 6 n.11 (October 31, 2017). However, the EPA notes that the Petitioner’s June 2, 2020 submittal contains no information that would change the EPA’s response described below.

<sup>3</sup> The Petition was submitted by email and is not paginated. Citations within this Order refer to a paginated version created by the EPA, which is available on the EPA’s public database at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

title I of the CAA.<sup>4</sup> The procedures and requirements for petitioning the EPA to object to an air permit, and the consequences of an EPA objection to the issuance of an air permit, are likewise also unique to title V. As noted in Section II of this Order and explained further below, among the purposes of the public petition procedures is to explain what a member of the public must do to file a petition to the Administrator to object to the issuance of a title V permit, and to describe the conditions under which the Administrator will generally grant such a petition. The principal substantive condition is that a petitioner must demonstrate to the EPA's satisfaction that a proposed permit does not comply with the Act or the EPA's implementing regulations.

Here, the Petition does not request an EPA objection to the Permit. Nor, for that matter, does it explicitly request any relief from the EPA relevant to the Permit. As discussed further below, the Petitioner presents no claims that the Bullseye Glass Permit itself is flawed in a manner warranting an EPA objection. Instead, the Petitioner "write[s] today to express . . . concern over what [the Petitioner] see[s] as Bullseye's alleged failure to comply with 40 CFR Part 63 Subpart SSSSSS." Thus, it is not clear what, if any, aspect of the title V permit the Petitioner requests the EPA to object to through the title V permitting or petition process.

However, the Petition was submitted to the EPA's email address designated as a means through which petitions to object may be submitted, *see* 40 C.F.R. § 70.14, and the EPA believes that the Petitioner attempted to submit the Petition within the 60-day deadline that applies only to petitions to object.<sup>5</sup> Accordingly, to the extent that the Petition may properly be characterized as a petition to object under CAA § 505(b)(2), the EPA is responding to the Petition, but does not waive any claim that the Petition was not properly filed.

As explained in Section II of this Order, petitions to object under CAA § 505(b)(2) are subject to various requirements imposed by the CAA and the EPA's regulations. One longstanding, fundamental threshold requirement is that all petition claims "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period." 42 U.S.C. § 7661d(b)(2); *see* 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v). As the EPA has explained:

The EPA believes that Congress did not intend for petitioners to be allowed to create an entirely new record before the Administrator that the State has had no opportunity to address. Accordingly, the Agency believes that the requirement to raise issues "with reasonable specificity" places a burden on the petitioner, absent unusual circumstances, to adduce before the State the evidence that would support a finding of noncompliance with the Act.

56 Fed. Reg. 21712, 21750 (May 10, 1991). The CAA provides that this requirement will not bar petition claims where "the petitioner demonstrates in the petition to the Administrator that it was

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<sup>4</sup> The subject line of the Petition references Permit No. 26-3135-ST-01, which corresponds to a non-title V air quality permit issued by Oregon DEQ to Bullseye Glass in 2011. However, the Petition is titled "a Petition on Bullseye Glass's Title V Permit," and the Petition repeatedly references dates and other materials associated with the facility's title V permit issued in 2020. Accordingly, it appears that the Petitioner intended to relate to Permit No. 26-3135-TV-01, the title V permit issued in 2020 to Bullseye Glass.

<sup>5</sup> *See supra* note 1.

impracticable to raise such objections within such period or unless the grounds for such objection arose after such period.” 42 U.S.C. § 7661d(b)(2).

In this case, the entirety of the Petition concerns the facility’s alleged noncompliance with the stack testing requirements of subpart SSSSSS. This issue was not raised with reasonable specificity during the public comment period, and the Petitioner has not claimed or demonstrated that it was impracticable to raise this issue or that this issue arose after the public comment period. To the contrary, the Petitioner asserts that he raised these issues in “public statements made at a December 17, 2019 public meeting on Bullseye’s pending permit, as well as [in] my written comments submitted to DEQ in January 2020.” However, based on the EPA’s review of the permit record, this does not appear to be the case. The written public comments and the public testimony recorded during the December 17, 2019, hearing raise various issues, including concerns about the ability of the baghouse to control chromium emissions, as well as requests for regular stack testing and the removal of permit terms allowing Oregon DEQ to waive future stack testing requirements. However, none of these comments assert generally that Bullseye Glass did not comply with the subpart SSSSSS stack testing requirements, much less do any comments or testimony contain the specific Petition claim that the facility did not conduct its test using a glass formula with the greatest potential to emit chromium as a HAP. The Petitioner also asserts that Oregon DEQ was aware of this issue based on a 2016 news article published by the Petitioner. However, it is not enough that the Petitioner may have communicated this issue publicly, or directly to Oregon DEQ outside of the current title V permitting process; petition claims must be raised during the comment period for the relevant permit action so that the state has an opportunity to respond on the record to any comments before the permit is issued. Thus, the fact that the Petitioner’s claim was not raised during the public comment period with reasonable specificity provides an independent basis for the EPA’s denial of the Petition. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. §§ 70.8(d), 70.12(a)(2)(v).

Even if the Petition claim had been adequately raised during the public comment period, it would present no basis for an EPA objection. The CAA requires the EPA to issue an objection “if the petitioner demonstrates that *the permit* is not in compliance with the requirements” of the Act. 42 U.S.C. § 7661d(b)(2) (emphasis added). The EPA’s regulations explain the circumstances in which the EPA will object to a permit. *See* 40 C.F.R. § 70.8(c) (the EPA will object if *the permit* is not in compliance with applicable requirements or requirements under part 70). The EPA recently promulgated additional regulations governing title V petitions, which became effective April 6, 2020. *See* 40 C.F.R. § 70.12; *see also* 85 Fed. Reg. 6431 (February 5, 2020). Among other requirements, the EPA’s regulations specify: “Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under” the EPA’s part 70 regulations. 40 C.F.R. § 70.12(a)(2). Specifically, each petition must identify the following:

- (i) The specific grounds for an objection, citing to a specific permit term or condition where applicable.
- (ii) The applicable requirement as defined in § 70.2, or requirement under this part, that is not met.

(iii) An explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under this part.

*Id.* To summarize these requirements at their most basic level: a petition claim must relate to a flaw in *the permit*.

Here, the Petitioner asserts that the *facility* is not in compliance with an applicable requirement: the subpart SSSSSS stack testing requirements in 40 C.F.R. § 63.11452(a)(3). However, the Petitioner does not claim that there is a flaw in the Bullseye Glass title V *permit*—e.g., that the Permit does not include or assure compliance with all applicable requirements. The Petition contains only passing references to the Permit, and the Petition does not advance a single argument that the Permit itself contains a flaw that is causing, or caused by, the facility’s alleged noncompliance with subpart SSSSSS. Because the Petitioner has failed to demonstrate that *the Permit* does not comply with the Act, the Petitioner has presented no basis for an EPA objection. The Petitioner’s concerns related to *the facility’s* alleged noncompliance with an applicable requirement contained in the Permit may be pursued through mechanisms other than the title V permit petition process, including administrative or civil enforcement initiated by the EPA under section 113 of the CAA, enforcement by Oregon DEQ, or potentially enforcement by citizens under section 304 of the CAA. *See* 42 U.S.C. §§ 7413, 7604. The EPA encourages the public to report possible violations of environmental laws and regulations at the following website: <https://echo.epa.gov/report-environmental-violations>.

## V. CONCLUSION

For the reasons set forth above I hereby deny the Petition.

Dated: August 18, 2020



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Andrew R. Wheeler  
Administrator

## Appendix: STATUTORY AND REGULATORY FRAMEWORK

### A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. CAA §§ 502(a), 503, 504(a), 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate testing, monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate testing, monitoring, recordkeeping, and reporting to assure compliance with such requirements.

### B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Each petition must identify the proposed permit on which the petition is based and identify the petition claims. 40 C.F.R. § 70.12(a). Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under part 70. 40 C.F.R. § 70.12(a)(2). Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must generally be contained within the body of the petition.<sup>6</sup> *Id.*

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<sup>6</sup> If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id.*

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. 70.12(a)(2)(v).

In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).<sup>7</sup> Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.<sup>8</sup> The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).<sup>9</sup> When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., MacClarence*, 596 F.3d at 1130–31.<sup>10</sup> Certain aspects of the petitioner's demonstration burden are discussed below. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (August 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether a petitioner has provided the relevant analyses and citations to support its claims. For

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<sup>7</sup> *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

<sup>8</sup> *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

<sup>9</sup> *See also Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' . . . plainly mandates an objection *whenever* a petitioner demonstrates noncompliance." (emphasis added)).

<sup>10</sup> *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, the EPA is left to work out the basis for the petitioner’s objection, contrary to Congress’s express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 (“[T]he Administrator’s requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.”).<sup>11</sup> Relatedly, the EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard. *See, e.g., In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013).<sup>12</sup> Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).<sup>13</sup>

Another factor the EPA examines is whether the petitioner has addressed the state or local permitting authority’s decision and reasoning. Petitioners are required to address the permitting authority’s final decision and final reasoning (including the state’s response to comments) where these documents were available during the timeframe for filing the petition. 40 C.F.R. § 70.12(a)(2)(vi); *see MacClarence*, 596 F.3d at 1132–33.<sup>14</sup> Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority’s response is inadequate to address (or does not address) the issue raised in the public comment. *Id.*

The information that the EPA considers in making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the

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<sup>11</sup> *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007) (*Portland Generating Station Order*).

<sup>12</sup> *See also Portland Generating Station Order* at 7 (“[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement].”); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (April 20, 2007); *Georgia Power Plants Order* at 9–13; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

<sup>13</sup> *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

<sup>14</sup> *See also, e.g., Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App’x \*11, \*15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state’s explanation in response to comments or explain why the state erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state’s response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (January 8, 2007) (*Georgia Power Plants Order*) (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the ‘statement of basis’); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority’s written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the agency’s review of a petition on a proposed permit, those documents may also be considered when making a determination whether to grant or deny the petition. *Id.*