BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition No. VIII-2024-23

In the Matter of

Kinder Morgan Altamont LLC, Altamont South Compressor Station

Permit No. 1300041005

Issued by the Utah Department of Environmental Quality

ORDER GRANTING A PETITION FOR OBJECTION TO A TITLE V OPERATING PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated October 15, 2024 (the Petition) from the Center for Biological Diversity (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to operating permit No. 1300041005 (the Permit) issued by the Utah Department of Environmental Quality, Division of Air Quality (UDEQ) to the Kinder Morgan Altamont LLC's Altamont South Compressor Station (Altamont South) in Duchesne County, Utah. The Permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and Utah Admin. Code R307-415. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Permit, the permit record, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, the EPA grants the sole claim in the Petition and objects to the issuance of the Permit.

II. 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. The state of Utah submitted a title V program governing the issuance of operating permits on April 14, 1994. The EPA granted full approval of Utah's title V operating permit program in 1995. 60 Fed. Reg. 30192 (June 8, 1995). This program, which became effective on July 10, 1995, is currently codified in Utah Admin. Code R307-415.[1]

[1] The Utah operating permit program regulations that were approved by the EPA were originally codified in Utah Admin. Code R307-15. These regulations were subsequently re-numbered to R307-415. The Petitions refer to the relevant

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. 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 monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 40 C.F.R. § 70.1(b); 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. 32250, 32251 (July 21, 1992). 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 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) 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. 42 U.S.C. § 7661d(a). 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. 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. 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.[2] *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). 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).

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provisions of the Utah Administrative Code as the Utah Air Conservation Regulations or Utah Air Conservation Rules (UACR). Both the Utah Administrative Code and UACR section numbers and content are identical.

[2] 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*.

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. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[3] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[4] 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)).[5] 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.[6] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (Aug. 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 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

[3] *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).
[4] *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.
[5] *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)).
[6] *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

persuasive.").[7] 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 (Jan. 15, 2013).[8] 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).[9]

Another factor the EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning contained in the permit record. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.[10] This includes a requirement that petitioners 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). 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 determining 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 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

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[7] *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (Sept. 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*).

[8] *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 (Apr. 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (Jan. 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (Mar. 15, 2005).

[9] *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (Feb. 7, 2014); *Georgia Power Plants Order* at 10.

[10] *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 (Dec. 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); *Georgia Power Plants Order* at 9–13 (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).

during the agency's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition. *Id*.

If the EPA grants a title V petition and objects to the issuance of a permit, a permitting authority may address the EPA's objection by, among other things, providing the EPA with a revised permit. 42 U.S.C. § 7661d(b)(3), (c); 40 C.F.R. § 70.8(d); *see id*. § 70.7(g)(4); 70.8(c)(4); *see generally* 81 Fed. Reg. at 57842 (describing post-petition procedures); *Nucor II Order* at 14–15 (same). In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record. For example, when the EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing an additional rationale to support its permitting decision.

When the permitting authority revises a permit or permit record in order to resolve an EPA objection, it must go through the appropriate procedures for that revision. If a final permit has been issued prior to the EPA's objection, the permitting authority should determine whether its response to the EPA's objection requires a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V program. If the permitting authority determines that the revision is a significant modification, then the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the state's corresponding regulations.

In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, and regardless of the procedures used to make such revision, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA § 505(b) and 40 C.F.R. § 70.8(c) and (d). *See Nucor II Order* at 14. As such, it would be subject to the EPA's 45-day review per CAA § 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity for the public to petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) if the EPA does not object during its 45-day review period.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that the EPA identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to the EPA's objection. As described in various title V petition orders, the scope of the EPA's review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action. *See In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (Sept. 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (Dec. 19, 2007).

III. BACKGROUND

A. The Altamont South Facility

Kinder Morgan Altamont LLC's Altamont South compressor station receives and compresses natural gas from the Altamont field. The station is located on State Road 35, approximately 3 miles west of the

junction with State Road 87. The equipment at this source consists of compressors and compressor engines, dehydration equipment, a flare, and various tanks. This source is subject to the regulatory requirements in 40 C.F.R. part 60 subparts A, JJJJ, and OOOO; 40 C.F.R. part 63 subparts A, HH, ZZZZ; and Utah Admin. Code R307-501 and R307-503. The Altamont South facility is a major source of nitrogen oxides.

B. Permitting History

Kinder Morgan Altamont, LLC first obtained a title V permit for the Altamont South facility in 1998, which was subsequently renewed in February 2023. On April 27, 2023, Kinder Morgan Altamont LLC applied for a title V permit significant modification. Utah published notice of a draft permit on April 24, 2024, subject to a public comment period that ran until May 24, 2024. On July 12, 2024, Utah submitted the Proposed Permit, along with its responses to public comments (RTC), to the EPA for its 45-day review. The EPA's 45-day review period ended on August 26, 2024, during which time the EPA did not object to the Proposed Permit. Utah issued the final title V permit revision for the Altamont South facility on September 6, 2024.

C. Timeliness of Petition

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. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on August 26, 2024. Thus, any petition seeking the EPA's objection to the Permit was due on or before October 25, 2024. The Petition was submitted October 15, 2024. Therefore, the EPA finds that the Petitioner timely filed the Petition.

IV. EPA DETERMINATION ON PETITION CLAIM

Claim 1: The Petitioner Claims That "Utah Did Not Respond to Significant Public Comments on the Draft Title V Permit."

Petition Claim: The Petitioner claims that UDEQ's Division of Air Quality (DAQ) failed to provide a written response to significant comments on the Title V permit and to make this written response to comments available to the public as required by 40 C.F.R. §§ 70.7(h)(6) and 70.8(a)(1). Petition at 5. The Petitioner asserts that while a notice and comment opportunity on the draft permit was provided by the state, "the DAQ never responded to Petitioner's significant comments," which the Petitioner identifies as "clear grounds for the Administrator to object." Petition at 4.

The Petitioner explains that its comments on the draft permit were submitted on May 22, 2024, and UDEQ acknowledged receipt of said comments the following day. *Id*. Following the beginning of EPA's 45-day review period, the Petitioner reached out to UDEQ on July 30, 2024, "inquiring as to whether a response to comments would be forthcoming." *Id*. UDEQ informed the Petitioner that "[w]e provide our response to comments with the proposed permit to EPA only." *Id.* (citing Petition Exhibit 6 E-mail thread between Center for Biological Diversity and Jared Crosby with UDEQ). The Petitioner states that UDEQ "never responded" to follow-up inquiries. *Id.*

Despite additional inquiries to UDEQ and EPA Region 8, neither agency provided the Petitioner a copy of the RTC. *Id*. at 5. The Petitioner argues that "in spite of obvious failures by the DAQ to comply with Title V public process requirements and obvious grounds for objection," the EPA did not object to the proposed permit following the conclusion of its 45-day review. Further, the Petitioner claims that "[e]ven though DAQ clearly failed to transmit to EPA Region 8 any 'written response to comments' or an 'explanation of how those comments and the permitting authority's responses are available to the public,' no action was taken by EPA Region 8 to ensure compliance with Title V permitting requirements." *Id*. (quoting 40 C.F.R. § 70.8(a)(1)).

The Petitioner acknowledges that UDEQ "may have responded" to the Petitioner's significant comments, but, in light of the fact that the Petitioner has been unable to locate an RTC despite inquiries and requests for clarification, the Petitioner "can only conclude that DAQ did not actually respond to Petitioner's comments on the draft Title V Permit." *Id.* The Petitioner contemplates various scenarios where "perhaps DAQ believes it did respond to Petitioner's significant comment." The Petitioner ultimately concludes, however, that "just because DAQ may have believed that it responded to comments does not mean the agency actually did." *Id.*

The Petitioner states that UDEQ "was required to provide a written response to significant comments on the title V Permit and to make this written response to comments available to the public. In response to Petitioner's timely and significant comments, DAQ did neither." *Id.* (citing 40 C.F.R. §§ 70.7(h)(6) and 70.8(a)(1)).

EPA Response: For the following reasons, the EPA grants this Petition claim and objects to the issuance of the Permit.

EPA's regulations include multiple provisions that expressly require permitting agencies to respond in writing to all significant comments and to make these responses "available to the public." 40 C.F.R. § 70.7(h)(5) requires:

> The permitting authority shall keep a record of the commenters and of the issues raised during the public participation process, as well as records of the written comments submitted during that process, so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and *such records shall be available to the public* (emphasis added).

40 C.F.R. § 70.7(h)(6) states: "The permitting authority *must respond in writing to all significant comments raised during the public participation process,* including any such written comments submitted during the public comment period and any such comments raised during any public hearing on the permit" (emphasis added). And, finally, 40 C.F.R. § 70.8(a)(1) requires:

> The permit program must require that the permitting authority provide to the Administrator . . . each proposed permit, each final permit, and, if significant comment is received during the public participation process, the written response to comments (which must include a written response to all significant comments raised during the public participation process on the draft permit and recorded under § 70.7(h)(5) of this

part), and *an explanotion of how those public comments and the permitting authority's responses are available to the public* (emphasis added).

Given that UDEQ did indeed develop and submit an RTC to EPA Region 8 on July 12, 2024, the state appears to have satisfied the requirement under 40 C.F.R. § 70.7(h)(6). The Petitioner is correct, however, that there was no way for the public to know whether the RTC did exist, as the state did not make the written comments or its responses "available to the public" per 40 C.F.R. §§ 70.7(h)(5) and 70.8(a)(1). Utah took no proactive steps to publicly post or distribute the RTC, nor did it share the RTC directly with the Petitioner upon request.

Direction to Utah DEQ: UDEQ must make the RTC available to the public. The state may accomplish this in various ways, including but not limited to posting it to a publicly accessible electronic database, or by retaining it in UDEQ's public files and providing it to members of the public upon request. After making the RTC available to the public, UDEQ must re-submit the proposed permit package (including the required explanation concerning the public availability of the comments and RTC) to the EPA for a new 45-day EPA review period, followed by a new 60-day public petition period, according to the standard process described in Section II.B of this Order. *See supro* page 5.

V. CONCLUSION

For the reasons set forth in this Order and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby grant the Petition and object to the issuance of the Permit as described in this Order.

Dated: May 30, 2025

Lee M. Zeldin
Administrator