

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF	)	
	)	
Clean Air Act Minor Modification to	)	
Title V Operating Permit	)	
	)	
Issued to Phillips 66 Pipeline LLC, Denver	)	Title V Permit No. 96OPAD160
Terminal, Adams County, Colorado	)	
	)	
Issued by the Colorado Department of	)	
Public Health and Environment, Air	)	
Pollution Control Division	)	
	)	
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**PETITION TO OBJECT TO MINOR MODIFICATION TO  
TITLE V OPERATING PERMIT NO. 96OPAD160 FOR  
PHILLIPS 66 PIPELINE LLC’S DENVER TERMINAL**

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Pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Center for Biological Diversity (“Center” or “Petitioner”) petitions the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to object to the final minor modification to the Title V Operating Permit (“Title V Permit”) issued by the Colorado Department of Public Health and Environment’s Air Pollution Control Division (“Division”) authorizing Phillips 66 Pipeline LLC (“Phillips 66”) to operate the Denver Terminal located in Adams County, Colorado. The minor modification to the Title V Permit authorized Phillips to modify a gasoline storage tank at the Denver Terminal.

Petitioners request the EPA Administrator object on the basis that the Division improperly approved the modification to the Denver Terminal as a minor modification.

The Division’s final modified Title V Permit and associated Technical Review Document (“TRD”) were issued August 1, 2025 and are attached as Exhibits 1 and 2, respectively.

**THE DENVER TERMINAL**

The Denver Terminal is a petroleum storage and marketing terminal located north of Denver. The facility receives via pipeline and distributes large amounts of gasoline, jet fuel, and diesel products. The primary sources of air pollution at the facility include 21 storage tanks, a loading rack, leaking equipment, and a vapor combustion unit, or flare.

## PETITIONER

The Center for Biological Diversity is a nonprofit, 501(c)(3) conservation organization. The Center's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

## PROCEDURAL BACKGROUND

On October 3, 2024, Phillips 66 applied for a minor modification to the Title V Permit for the Denver Terminal. The company requested the modification to convert an existing fixed roof gasoline storage tank to an internal floating roof storage tank and removal of the tank from the Denver Terminal's vapor combustion unit emission control system. The Division processed Phillips 66 requested modification as a minor modification. Under EPA's Title V regulation at 40 C.F.R. § 70, as well as Colorado's approved Title V permitting program at Air Quality Control Commission ("AQCC") Regulation No. 3, Part C, no public notice or opportunity for public comment is provided for minor modifications to Title V permits.

The Division submitted the proposed modified Title V Permit to EPA for the agency's 45-day review on June 5, 2025. The EPA did not object to the modified Title V Permit. The Division issued the final minor modification to the Title V Permit on August 1, 2025.

According to EPA Region 8's Title V Operating Permit Public Petition Deadlines website, the 60-day deadline to file a petition to object to the minor modification of the Title V Permit is September 19, 2025. *See* EPA Region 8, "Title V Operating Permit Public Petition Deadlines in Region 8," website available at <https://www.epa.gov/caa-permitting/title-v-operating-permit-public-petition-deadlines-region-8> (last accessed Sept. 19, 2025). Pursuant to 42 U.S.C. § 7661d(b)(2), this petition is thus timely submitted within 60 days following a lack of objection from the EPA during the agency's 45-day review period.

## GENERAL TITLE V PERMITTING REQUIREMENTS

The Clean Air Act prohibits qualifying stationary sources of air pollution from operating without or in violation of a valid Title V permit, which must include conditions sufficient to "assure compliance" with all applicable Clean Air Act requirements. 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). "Applicable requirements" include all standards, emissions limits, and requirements of the Clean Air Act, including all requirements in an applicable implementation plan, or SIP. 40 C.F.R. § 70.2. Congress intended for Title V to "substantially strengthen enforcement of the Clean Air Act" by "clarify[ing] and mak[ing] more readily enforceable a source's pollution control requirements." S. Rep. No. 101-228, at 347, 348 (1990),

as reprinted in A Legislative History of the Clean Air Act Amendments of 1990, at 8687, 8688 (1993). As EPA explained when promulgating its Title V regulations, a Title V permit should “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.” Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1).

Under the Clean Air Act, “any person” may petition EPA to object to a proposed permit “within 60 days after the expiration of [EPA’s] 45-day review period.” 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8. Each objection in the petition must have been “raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” 40 C.F.R. § 70.8(d). Any objection included in the petition “must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements [of 40 C.F.R. Part 70].” 40 C.F.R. § 70.12(a)(2).

Upon receipt of a petition, EPA “*shall* issue an objection within [60 days] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b)(2) (emphasis added); *see also* 40 C.F.R. § 70.8(c) (“The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.”). When deciding whether a petitioner has met this demonstration requirement, EPA will evaluate the entirety of the permit record, including the statement of basis and response to comments. *See In re Valero Refining-Texas, L.P.*, Order on Petition No. VI-2021-8 (June 30, 2022). Indeed, EPA’s review of a Title V petition is confined to the petition itself, including exhibits, the permitting record, and any final permit that may be available. *See* 40 C.F.R. § 70.13.

## GROUND FOR OBJECTION

For the reasons set forth below, the Title V Permit fails to comply with applicable requirements under the Clean Air Act.

### **I. The Division Improperly Approved the Modification of the Denver Terminal Title V Permit as a Minor Modification<sup>1</sup>**

Under Title V regulations and Colorado’s approved Title V Permitting program, a Title V permit may be modified using “minor permit modification procedures,” which allow permitting

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<sup>1</sup> The Division did not provide opportunity for public comment on the Title V Permit modification and an opportunity for comment was not otherwise provided according to 40 C.F.R. § 70.7(h). The requirement under 40 C.F.R. § 70.8(d) that petitions be based only on objections raised during the public comment period are therefore not applicable to this petition.

authorities to modify permits with no public notice and opportunity for public comment. *See* 40 C.F.R. § 70.7(e)(2). Under applicable Title V regulations and Colorado’s approved Title V Permitting program, minor modification procedures may only be used for permit modifications that, among other criteria, “[d]o not violate any applicable requirement[.]” *See* 40 C.F.R. § 70.7(e)(2)(i)(A)(I); *see also* AQCC Regulation No. 3, Part C, Section X.A.1.

On October 3, 2024, Phillips 66 applied for a modification to the Title V Permit for the Denver Terminal. The company requested a modification to convert a fixed roof gasoline storage tank, Tank T201, to an internal floating roof tank and to “remove the Vapor Combustion Unit control system.” Exhibit 3, Application Cover Letter at 1. The Division processed and ultimately approved the modification as a minor modification.

In approving the modification of the Denver Terminal Title V Permit as a minor modification, the Division asserted, “This modification does not result in any emissions increase and does not violate any applicable requirements.” Exhibit 2, TRD at 8. However, this assertion is incorrect and approval of the modification as a minor modification is contrary to applicable requirements.

Under Title V, applicable requirements include the terms and conditions of a preconstruction permit issued pursuant to Title I of the Clean Air Act. *See* 40 C.F.R. § 70.2. Here, Title V Permit indicates the underlying preconstruction permit for the Denver Terminal is Construction Permit No. 11AD935, Issuance No. 5. *See* Exhibit 1, Title V Permit at 1. This preconstruction permit was issued by the Division pursuant to Title I of the Clean Air Act on May 2, 2019. *See* Exhibit 4, Construction Permit No. 11AD935, Issuance No. 5 (May 2, 2019). This permit sets forth terms and conditions applicable to the Denver Terminal. Among other things, the construction permit requires that a “Vapor Combustion Unit” be used to control volatile organic compound (“VOC”) and hazardous air pollutant (“HAP”) emissions by at least 98% from gasoline storage tank T201. *See* Exhibit 4, Construction Permit at 6, Condition 19. According to the permit, the vapor combustion unit “must be installed, operated and maintained to ensure satisfactory performance[.]” *Id.*

In approving the modification to the Title V Permit for the Denver Terminal, the Division expressly approved the “removal of tank T201 from the vapor combustion unit (VCU) control system.” Exhibit 2, TRD at 2. Accordingly, the modified Title V Permit now contains no requirement that a vapor combustion unit be used to control VOC and HAP emissions from Tank T201. This is contrary to the applicable requirements set forth in Construction Permit No. 11AD935. Thus, Title V requirements prohibited the Division from approving the modification via minor permit modification procedures.

In the TRD for the permit modification, the Division appears to take the position that because the modification did not result in any emissions increase, it did not violate applicable requirements. However, while the modification may not have increased emissions, it did change applicable emission control requirements set forth in Construction Permit No. 11AD935.

While the Division may have authority to authorize Phillips 66 to remove Tank T201 from the vapor combustion unit control system, this authorization cannot be processed via minor

permit modification procedures. Rather, such a modification must occur pursuant to the Division's procedures for either a construction permit modification pursuant to AQCC Regulation No. 3, Part B, Section III or a combined construction permit/Title V permit modification pursuant to AQCC Regulation No. 3, Part C, Section IV.

The EPA has addressed this very issue in its review of Title V permits and is clear that minor permit modification procedures cannot be used to modify applicable requirements in an underlying preconstruction permit. Objecting to the issuance of a Title V permit for an aluminum manufacturing facility, the Administrator found that the permitting authority inappropriately increased an applicable coke sulfur content limit set forth in an underlying preconstruction permit via minor permit modification procedures. *See In the Matter of Century Aluminum of South Carolina, Inc.*, Order on Petition No. IV-2023-09 (Nov. 2, 2023) at 14-15 ("Century Aluminum Order"). The Administrator found the revised limit "violates the applicable requirements" in the underlying preconstruction permit. Finding that revised Title V permit incorporated this inappropriately modified limit, the EPA objected, holding the permit was not issued according to proper applicable Title V permitting procedures.

The Administrator further held that "unless and until title I permit terms are changed through the appropriate title I process, they remain 'applicable requirements' for title V purposes." *Century Aluminum Order* at 15. Accordingly, the EPA ruled, "A title V permit that reduces the stringency of such an applicable requirement cannot be said to 'assure compliance' with the applicable requirement." *Id.*

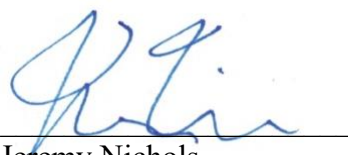
Here, the Administrator must object for virtually the same reasons. The Division improperly removed applicable VOC and HAP control requirements set forth in Construction Permit No. 11AD935 via minor Title V permit modification procedures. Thus, issuance of the modified Title V Permit violates applicable requirements, warranting an objection. If the Division is to modify the Title V Permit to remove applicable VOC and HAP control requirements, it cannot rely on minor modification procedures under Title V and Colorado's approved Title V Permitting program.

## CONCLUSION

Pursuant to 42 U.S.C. § 7611d(b)(2) and 40 C.F.R. § 70.8(d), the EPA must object to the issuance of the modified Title V Permit for Phillips 66's Denver Terminal in Adams County, Colorado. The Division improperly modified the Title V Permit using minor modification procedures, contrary to applicable requirements. Accordingly, the Center requests the Administrator object to the Title V Permit and require that if the Division is to approve the requested modification, it cannot rely upon minor modification procedures under Title V

DATED: September 19, 2025

Respectfully submitted,



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Pursuant to 40 C.F.R. § 70.8(d), copies of this petition have been concurrently transmitted to the following parties:

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Denver, CO 80246

Phillips 66 Company  
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Houston, TX 77042

## **TABLE OF EXHIBITS**

### Exhibit

1. Final Modified Title V Permit
2. Final Technical Review Document for Permit Modification
3. Phillips 66 Permit Modification Application (Oct. 3, 2024)
4. Construction Permit No. 11AD935, Issuance No. 5 (May 2, 2019)