BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition No. VIII-2025-7

In the Matter of

Caerus Piceance, LLC, Hunter Mesa Water Treatment Facility

Permit No. 03OPGA267

Issued by the Colorado Department of Public Health and Environment

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

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated March 27, 2025 (the "Petition") from the Center for Biological Diversity (the "Petitioner"), pursuant to Clean Air Act (CAA) section 505(b)(2).[1] The Petition requests that the EPA Administrator object to operating permit No. 03OPGA267 (the "Permit") issued by the Colorado Department of Public Health and Environment (CDPHE) to the Caerus Piceance, LLC, Hunter Mesa Water Treatment Facility (the "Hunter Mesa facility") in Garfield County, Colorado. The Permit was issued pursuant to title V of the CAA and title 5 of the Code of Colorado Regulations (CCR) 1001-5, Part C.[2] 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 denies the Petition requesting that the EPA Administrator object to the Permit.

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[1] 42 U.S.C. § 7661d(b)(2).

[2] 42 U.S.C. §§ 7661–7661f; 5 CCR 1001-5, Part C; *see also* 40 C.F.R. part 70 (title V implementing regulations).

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

CAA section 502(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.[3] The state of Colorado submitted a title V operating permit program on November 5, 1993. The EPA granted interim approval of Colorado's operating permit program in January 1995 and full approval in August 2000.[4]

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.[5] One purpose of the title V operating permit 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."[6] Title V operating permits compile and clarify, in a single document, the substantive air quality control requirements derived from numerous provisions of the CAA. By clarifying which requirements apply to emission units at the source, title V operating permits enhance compliance with those applicable requirements of the CAA. The title V operating permit program generally does not impose new substantive air quality control requirements, but does require that permits contain adequate monitoring, recordkeeping and reporting requirements to assure the source's compliance with the underlying substantive applicable requirements.[7] 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 operating permit programs. Under CAA section 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.[8] Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit

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[3] 42 U.S.C. § 7661a(d)(1).

[4] *See* 60 Fed. Reg. 4563 (Jan. 24, 1995) (interim approval); 61 Fed. Reg. 56368 (Oct. 31, 1996) (revising interim approval); 65 Fed. Reg. 49919 (Aug. 16, 2000) (full approval). This program is codified in 5 CCR 1001-5, Part C.

[5] 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a).

[6] 57 Fed. Reg. 32250, 32251 (July 21, 1992).

[7] 40 C.F.R. § 70.1(b); *see* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1).

[8] 42 U.S.C. § 7661d(a).

if the EPA determines that the proposed permit is not in compliance with applicable requirements under the CAA.[9] 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.[10]

Each petition must identify the proposed permit on which the petition is based and identify the petition claims.[11] 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.[12] 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.[13]

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).[14]

In response to such a petition, the CAA requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the CAA.[15] Under CAA section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA.[16] As courts have recognized, CAA section 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 CAA, and a nondiscretionary duty on the Administrator's part to object if such a demonstration is made.[17] Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA section 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is

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[9] 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c).

[10] 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

[11] 40 C.F.R. § 70.12(a).

[12] 40 C.F.R. § 70.12(a)(2).

[13] 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.*

[14] 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see* 40 C.F.R. § 70.12(a)(2)(v).

[15] 42 U.S.C. § 7661d(b)(2); *see also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

[16] 42 U.S.C. § 7661d(b)(2); *see 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.

[17] *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA section 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.

not in compliance with requirements of the CAA.[18] 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.[19] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraphs. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule.[20]

The EPA considers a number of factors in determining whether a petitioner has demonstrated noncompliance with the CAA.[21] 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.[22]

If a petitioner does not satisfy these requirements and provide sufficient citations and analysis, the EPA is left to work out the basis for the petitioner's objection, which is contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA section 505(b)(2).[23] Relatedly, the EPA has pointed out in numerous previous orders that generalized assertions or allegations did not meet the demonstration standard.[24] Also, the failure to address a key element of a particular

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[18] *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that CAA section 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)); *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)).

[19] *See, e.g., Voigt v. EPA*, 46 F.4th 895, 902 (8th Cir. 2022), *WildEarth Guardians*, 728 F.3d at 1081–82; *MacClarence*, 596 F.3d at 1130–31..

[20] *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*).

[21] *See generally Nucor II Order* at 7.

[22] 40 C.F.R. § 70.12(a)(2)(i)–(iii).

[23] *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."); *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*).

[24] *See, e.g., In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition No. VI-2011-05 at 9 (Jan. 15, 2013); *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).

issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit.[25]

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.[26] 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. 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. [27]

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. 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). If a final permit and a statement of basis for the final permit are available during the EPA's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition.[28]

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[25] *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); *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.

[26] 81 Fed. Reg. at 57832; *see Voigt*, 46 F.4th at 901–02; *MacClarence*, 596 F.3d at 1132–33; *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).

[27] 40 C.F.R. § 70.12(a)(2)(vi).

[28] 40 C.F.R. § 70.13.

III. BACKGROUND

A. The Hunter Mesa Facility

Caerus Piceance, LLC[29] operates a facility to treat and recycle water originating from oil and gas extraction activities in the surrounding basin near Hunter Mesa in Garfield County, Colorado. As relevant to the issues in the Petition, the Hunter Mesa facility includes two 5,000-barrel tanks to store produced water after offloading, a dissolved air flotation (DAF) unit to control volatile organic compound (VOC) emissions from VOC-laden water, various impoundment ponds, and a 500-barrel tank to store sludge generated by the DAF unit. The Hunter Mesa facility is a major source of VOC emissions under title V and is subject to various other regulatory programs, including New Source Performance Standards and requirements of the Colorado State Implementation Plan (SIP).

B. Permitting History

Previous owners first obtained a title V permit for the Hunter Mesa facility in 2009, which was last renewed in 2017. On November 1, 2021, Caerus Piceance, LLC applied for a title V permit renewal. On September 24, 2024, CDPHE published notice of a draft permit, subject to a public comment period that ended on October 24, 2024. On December 11, 2024, CDPHE submitted a proposed permit, along with its responses to public comments (RTC), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on January 27, 2025, during which time the EPA did not object to the proposed permit. On February 1, 2025, CDPHE issued the final Permit for the Hunter Mesa facility.

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during the Agency's 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 ended on January 27, 2025. Thus, any petition seeking the EPA's objection to the Permit was due on or before March 28, 2025. The Petition was submitted on March 27, 2025. Therefore, the EPA finds that the Petitioner timely filed the Petition.

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[29] The EPA understands that the Hunter Mesa facility was recently acquired by QB Energy, LLC. However, given that the Petition, Permit, and associated permit record documents refer to Caerus Piceance, LLC, this Order also refers to Caerus Piceance, LLC.

IV. EPA DETERMINATION ON PETITION CLAIM

Claim: The Petitioner Claims That "The Title V Permit Fails to Assure Compliance With Applicable Requirements in the Colorado SIP."

Petition Claim: The Petitioner states that title V permits must include conditions sufficient to assure compliance with all applicable CAA requirements, including requirements in a SIP.[30] The Petitioner asserts that the Permit fails to assure compliance with a SIP provision that provides: "[N]o person shall dispose of volatile organic compounds through evaporation or spillage unless RACT [reasonably available control technology] is utilized."[31]

The Petitioner observes that the Permit includes RACT requirements for the Hunter Mesa facility's DAF impoundments, but not for other sources of VOC emissions, including the Hunter Mesa facility's two 5,000-barrel produced water tanks and 500-barrel sludge tank. The Petitioner claims that this SIP-based RACT provision is also applicable to these water and sludge tanks.[32]

Petitioner argues that although the produced water tanks and sludge tank are identified as insignificant sources of VOC, that does not mean the tanks do not emit any VOCs, and "[t]he Colorado SIP at AQCC Regulation No. 7, Part B, Section III.A is clear that any disposal of VOCs through evaporation is subject to RACT requirements."[33]

The Petitioner contests CDPHE's position that "VOCs emitted due to venting of tanks are not being disposed of through either evaporation or spillage; therefore, [the RACT requirement at issue] does not apply to the venting of these tanks."[34]

In rebuttal, the Petitioner argues:

> [T]he purpose of venting VOC gases is to get rid of VOCs, in other words "dispose" of these undesirable gases. The fact that the produced water tanks and sludge tank vent gaseous VOCs indicates these tanks are indeed disposing of VOCs through evaporation. Indeed, if VOCs vented from tanks

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[30] Petition at 3, 4 (citing 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.2, 70.6(a)(1), (c)(1)).

[31] *Id.* at 4 (quoting Colorado Air Quality Control Commission (AQCC) Regulation No. 7, Part B, Section III.A). The Petitioner states that the version of this provision that is approved into the SIP is set forth in AQCC Regulation No. 7, Part B, Section III.A. Petition at 4 n.1. The Petitioner observes that the Permit includes a similar provision, but that the Permit identifies AQCC Regulation No. 24, Part B, Section III.A—which is not part of the SIP—as the authority for this provision. *Id.*

[32] *Id.*; *see id.* at 6.

[33] *Id.* at 5.

[34] *Id.* (quoting RTC at 2).

> are not being disposed of, then there would be no VOC emissions from the tanks.[35]

Additionally, the Petitioner asserts that "the nature of VOC emissions from the tanks are identical to VOC emissions from the dissolved air floatation impounds at Hunter Mesa, which [CDPHE] acknowledges are subject to RACT requirements in the Colorado SIP." The Petitioner argues that "VOC emissions from the tanks are released from the same substances handled by the dissolved air floatation impoundments"—namely, wastewater and skimmed solids—"meaning that VOC emissions from the tanks are the same VOC emissions released by the dissolved air floatation impounds."[36] *Id.*

The Petitioner summarizes its request for the EPA's objection as follows:

> The Title V Permit does not assure compliance with the Colorado SIP because it does not assure operation of the produced water tanks and sludge tank at Hunter Mesa utilizes RACT to control VOC emissions. These tanks dispose of VOCs by evaporation just as the dissolved air floatation impoundments at Hunter Mesa dispose of VOCs by evaporation and are therefore subject to RACT requirements set forth under AQCC Regulation No. 7, Part B, Section III.A. The Division's response to the Center's comments did not resolve this issue or otherwise demonstrate that the Title V Permit assures compliance with applicable requirements.[37]

EPA Response: For the following reasons, the EPA denies the Petitioner's request for an objection on this claim.

The Petitioner fails to demonstrate that produced water and sludge tanks are subject to the RACT requirements of the Colorado SIP. The operative provision of the Colorado SIP provides: "No person shall dispose of volatile organic compounds by evaporation or spillage unless RACT is utilized."[38] CDPHE determined that this RACT provision is not applicable to the produced water and sludge tanks, explaining: "VOCs emitted due to venting of tanks are not being disposed of through either evaporation or spillage;

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[35] *Id.*

[36] *Id.*

[37] *Id.* at 6.

[38] 5 CCR 1001-9, Part B, III.A. As the Petitioner correctly states, the version of this regulation included in the Federally enforceable Colorado SIP is the version of 5 CCR 1001-9 (*i.e.*, AQCC Regulation No. 7), Part B, III.A, last approved in 2021. *See* 40 C.F.R. § 52.320, Table C; 86 Fed Reg. 61070 (Nov. 5, 2021). Colorado has since reorganized some of its regulations, and a substantively identical provision is now contained in 5 CCR 1001-28 (*i.e.*, AQCC Regulation No. 24), Part B, III.A. That recodified provision is not part of the EPA-approved Colorado SIP. Nonetheless, the Permit currently cites Regulation No. 24 as the basis for a permit term that mirrors the SIP provision at issue. Permit at 43–44. This Order cites and discusses the operative Federally enforceable SIP provision, 5 CCR 1001-9, Part B, III.A.

therefore, [the RACT requirement at issue] does not apply to the venting of these tanks."[39]

The Petitioner offers an alternative interpretation of the Colorado SIP, but the Petitioner's interpretation is flawed and thus fails to demonstrate that CDPHE's interpretation is unreasonable or contrary to the CAA. Fundamentally, the Petitioner's overbroad interpretation of the Colorado SIP conflates various terms and concepts in a manner inconsistent with the plain language and context of the SIP provision at issue.

The operative RACT requirement applies to the "dispos[al] of [VOC] *by* evaporation or spillage." The word "by" is critical, as it unambiguously identifies evaporation (or spillage) as the *mechanism* of disposal.[40] In other words, the *process* used to dispose VOC emissions is critical to the applicability of this SIP provision. This provision does not apply to all types of VOC disposal or to all emissions of VOCs that originate from evaporation. It applies to VOCs that are disposed of *by* evaporation. Each of the Petitioner's arguments neglects to consider this important element of the Colorado SIP.

Several of the Petitioner's arguments focus on "disposal" and are entirely silent regarding the critical "by evaporation" language. As an initial matter, the Petitioner's arguments suffer various flaws and do not demonstrate that venting gases from tanks equates to disposal of VOCs.[41] But even assuming for the sake of argument that the venting of VOCs from water and sludge tanks equates to the "disposal" of VOCs, this would still be irrelevant. It is not simply the disposal of VOCs that triggers this SIP RACT requirement, but rather the disposal of VOCs *by evaporation* (or spillage).

The Petition's brief analysis mentions evaporation only twice with respect to the Hunter Mesa facility's operations.[42] The more substantive of the two sentences reads: "These

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[39] RTC at 2.

[40] The operative SIP provision, the more recently recodified version of the Colorado regulations, and the Permit all use the word "by." The Petition misquotes these provisions, substituting "through" for "by." Petition at 4. This distinction is ultimately not relevant to the EPA's response.

[41] For example, the Petitioner argues that "if VOCs vented from tanks are not being disposed of, then there would be no VOC emissions from the tanks." Petition at 5. The Petitioner's logic appears to be if there were no disposal, there would be no emissions, but since there are emissions, there must be disposal. This overbroad and faulty logic takes emissions as evidence of disposal. But not all emissions arise from disposal, so this logic is flawed. The Petitioner also offers a narrower view, seeming to acknowledge that not all emissions to the atmosphere qualify as disposal, in asserting that "the purpose of venting VOC gases is to get rid of VOCs, in other words 'dispose' of these undesirable gases." *Id.* This, too, is not correct. The purpose of venting gases from tanks is to regulate pressure, in order to prevent safety issues and structural damage to the tanks. While it is true that VOCs are emitted during pressure venting, it would be an overstatement to describe VOC emissions or "disposal of VOC" or as the *purpose* of venting. VOC emissions are incidental to tank venting. Additionally, the fact that emissions from these tanks are relatively insignificant—a point the Petitioner does not contest—supports the idea that these tanks, and their vents, were not designed as a means of intentionally disposing of (or "getting rid of") VOCs.

[42] *See* Petition at 5–6.

tanks dispose of VOCs by evaporation just as the dissolved air floatation impoundments at Hunter Mesa dispose of VOCs by evaporation . . . ."[43] Nothing in the Petition explains the portion of this statement concerning disposal by evaporation. Earlier in the Petition, the Petitioner compares VOC emissions from tanks and impoundments, characterizing them as "the same VOC emissions" and asserting that "the nature of VOC emissions . . . [is] identical" because the VOC emissions "are released from the same substances."[44] Here, too, the Petitioner misses the point. The fact that VOC emissions from the tanks originate from the same VOC-laden wastewater as the VOC emissions from the impoundments is not directly relevant to the SIP provision at issue. Applicability of this SIP RACT requirement does not depend on where the VOC emissions *originate*, but instead on the *process* used to *dispose* of the VOCs. In this respect, emissions from the tanks and impoundments are markedly different. It is undisputed that VOCs from the wastewater in the uncovered impoundments are emitted by evaporation (and therefore are subject to the SIP RACT requirement). By contrast, VOCs from the tanks are emitted by venting.

The Petition's only other discussion of evaporation is embedded within the following unexplained conclusion: "The fact that the produced water tanks and sludge tank vent gaseous VOCs indicates these tanks are indeed disposing of VOCs through evaporation." Petition at 5. As explained above, this statement appears to conflate the mechanism by which the VOCs are formed or *originate* with the mechanism by which the VOCs are *disposed*. Here, evaporation may be the mechanism by which these VOC emissions are formed or originate, but evaporation is *not* the mechanism by which these VOCs are disposed from the tanks. Instead, to the extent disposal occurs, *venting* is the mechanism of disposal.

It is possible that the Petitioner intended to argue that disposing of VOCs by venting from an enclosed tank is equivalent to disposing of VOCs by evaporation. Notably, the Petitioner does not provide any analysis that would demonstrate why tank venting should be considered disposal by evaporation. In any case, the Petitioner's unexplained position would not reflect a reasonable interpretation of the Colorado SIP. Tank venting and evaporation are distinct processes from practical, technical, and legal perspectives. From a practical standpoint, there are two functionally and temporally distinct processes occurring within the tanks at issue: first, VOCs escape from wastewater and accumulate in the gaseous headspace within the enclosed tank; second, those VOCS are subsequently expelled from the tank into the atmosphere through a vent.[45] From a technical standpoint, evaporation involves the transition from a liquid to a gas, while venting involves the movement of gases from one location to another. From a legal standpoint, disposal by evaporation and venting from enclosed tanks are regulated

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[43] *Id.* at 6.

[44] *Id.* at 5.

[45] In this regard, the VOC emissions from the tanks at the Hunter Mesa facility are factually distinguishable from the VOC emissions from the uncovered DAF impoundments, for which there is a single step: evaporative VOCs are released directly into the atmosphere from the uncovered surface of the water.

separately. Perhaps most directly relevant is the portion of the Colorado SIP that addresses VOC emissions from oil and gas activities (Regulation 7). The Colorado SIP regulates VOCs associated with the disposal of VOCs by evaporation (in Part B, Section III, which is the subject of this Petition) separately from VOCs associated with enclosed storage tanks (which are regulated in various provisions, including Part D, Sections I.D, I.E, and I.F).[46] In general, most CAA programs regulate evaporative emissions from unenclosed emission sources such as impoundments, ponds, open containers, storage piles, etc. differently from emissions from enclosed devices such as storage tanks and similar units with discrete emission points. For example, the title V and NSR permitting programs separately account for fugitive and non-fugitive emissions; emissions from evaporative ponds are often considered fugitive, whereas emissions from vents are categorically defined as non-fugitive.[47] Overall, the Petitioner's conclusory statements are insufficient to demonstrate that emissions from tank venting should be treated the same as disposal by evaporation under the Colorado SIP.

Finally, the Petitioner's overbroad interpretation of the Colorado SIP is problematic because it would greatly expand the applicability of this provision. The logical implication of the Petitioner's largely unexplained reasoning is that any VOCs that originate from evaporation and are subsequently released into the atmosphere—whether intentionally or not, and regardless of the mechanism of release—are disposed of by evaporation. In other words, the Petitioner seems to reinterpret the SIP RACT requirement to apply to 'the disposal of VOCs by *any mechanism, provided the VOCs originate from* evaporation' (invented text emphasized). As explained above, that is not what the Colorado SIP states. Reinterpreting the Colorado SIP this way would significantly expand its scope, transforming this seemingly narrow SIP provision into a mandate for RACT on a broad range of existing sources of VOC emissions, regardless of the process associated with emissions or the magnitude of emissions.[48] This would supplant and render irrelevant other SIP provisions that establish thresholds for determining whether existing sources are or are not subject to RACT.[49] Such an

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[46] Although the SIP does not specifically define disposal by evaporation or identify the precise activities covered by this term, it provides enough context to distinguish the covered activities from those associated with tank venting. In addition to the reference in Part B, Section III.A to "disposal or spillage," Section III.B contains more detail about how similar principles apply to bulk gasoline terminals and related facilities; the SIP prohibits gasoline from being "intentionally spilled, discarded in sewers, stored in open containers, or disposed of in any other manner that would result in evaporation."

[47] *See, e.g.*, 40 C.F.R. § 70.2 ("Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.").

[48] Any VOC that volatilizes and escapes from a liquid could be said to originate from evaporation. A broad range of operations handle VOCs originating this way, such as wastewater treatment ponds, loading and unloading operations, and storage tanks. Uncontrolled VOC emissions may be emitted from these processes in various ways, including evaporation, leaks, or venting. VOCs may be emitted even when these same processes are controlled, such as when combustion-based emission controls do not destroy all evaporation-derived VOCs. Following the Petitioner's logic, any such emissions that originate from evaporation and are subsequently released into the atmosphere would be subject to this SIP RACT requirement.

[49] *See* 5 CCR 1001-9, Part B, II.C.1.

interpretation would also supplant other, more specific SIP provisions governing VOC emissions from tanks (some of which CDPHE determined were not applicable here).[50]

In sum, the Petitioner fails to demonstrate that CDPHE's interpretation of the Colorado SIP—that VOCs emitted from the venting of tanks do not constitute the disposal of VOCs by evaporation, and accordingly that RACT is not applicable—is unreasonable or contrary to the CAA. Thus, the Petitioner fails to demonstrate that the RACT requirements of the Colorado SIP in 5 CCR 1001-9, Part B, III.A are "applicable requirements" for the produced water and sludge tanks at the Hunter Mesa facility. Therefore, the Petitioner fails to demonstrate that the Hunter Mesa facility's title V permit does not assure compliance with all applicable requirements. For these reasons, the EPA denies the Petition.

V. CONCLUSION

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

Dated: November 19, 2025

Lee Zeldin
Administrator

[50] *See, e.g.*, Petition Ex. 2, Technical Review Document at 3; 5 CCR 1001-9, Part D, I.D.a.(i), II.C.1.b.(ii).