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

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Petition No. VIII-2025-4

In the Matter of

DCP Operating Company LP, Platteville Natural Gas Processing Plant

Permit No. 02OPWE252

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 February 18, 2025 (the "Petition") from the Center for Biological Diversity (the "Petitioner"), pursuant Clean Air Act (CAA) section 505(b)(2).[1] The Petition requests that the EPA Administrator object to operating permit No. 02OPWE252 (the "Permit") issued by the Colorado Department of Public Health and Environment (CDPHE) to the DCP Operating Company LP, Platteville Natural Gas Processing Plant (the "DCP Platteville facility") in Weld 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.

## 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

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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).

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 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

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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).

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

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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[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 DCP Platteville Facility

The DCP Platteville facility, owned by the DCP Operating Company, is located in Platteville, Weld County, Colorado. This area is classified as being in severe non-attainment for the eight-hour ozone National Ambient Air Quality Standard. The DCP Platteville facility is a natural gas processing plant that extracts field-produced natural gas, recompresses processed gas, and transmits gas to the sales pipeline. The DCP Platteville facility is a major source under title V for volatile organic compounds (VOCs), nitrogen oxides ($NO_x$), and carbon monoxide.

### B. Permitting History

The DCP Operating Company first obtained a title V permit for the DCP Platteville facility in 2007, which was renewed in 2013. On August 1, 2023, CDPHE issued a renewal permit to DCP Platteville. That permit was the subject of a petition to the EPA filed on September 19, 2023.The EPA issued an order on April 2, 2024, granting that petition in part and objecting to the renewal permit.[29]

In response to the *DCP Platteville I Order*, CDPHE reopened and revised the permit. On August 16, 2024, CDPHE published notice of a draft permit, subject to a public comment period that ended on September 16, 2024. On October 29, 2024, CDPHE submitted a proposed permit, along with its responses to public comments (RTC) and technical review document (TRD), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on December 13, 2024, during which time the EPA did not object to the proposed permit. On December 18, 2024, CDPHE issued the final Permit for the DCP Platteville 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 expired on December 13, 2024. The EPA's website indicated that any petition seeking the EPA's objection to the Permit was due on or before February 17, 2025, a Federal holiday. The Petition was submitted February 18, 2025. Therefore, the EPA finds that the Petitioner timely filed the Petition.

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[29] *In the Matter of DCP Operating Company LP, Platteville Natural Gas Processing Plant*, Order on Petition No. VIII-2023-14 (Apr. 2, 2024) (*DCP Platteville I Order*).

## IV. EPA DETERMINATION ON PETITION CLAIMS

The Petitioner raises an overarching claim that the Permit fails to assure compliance with a 95 percent VOC control efficiency requirement applicable to an enclosed combustion device (ECD) controlling emissions from an ethylene glycol dehydration unit at the DCP Platteville facility.[30] The Petitioner details its arguments in two claims. The first claim focuses on the Petitioner's concerns with a performance testing requirement applicable to the ECD.[31] The second claim focuses on related parametric monitoring requirements.[32] This Order summarizes the claims individually but responds to both claims in a single response due to the underlying concerns and overlapping arguments that the Petitioner presents.

### A. Claim 1: Adequacy of Performance Testing Requirements

***Petition Claim:*** The Petition presents this summary of its first claim: "The new performance testing requirement applicable to the enclosed combustion device serving the ethylene glycol dehydration unit (AIRS ID 009) is inadequate to assure compliance with the 95% control requirement and, regardless, requires testing that is far too infrequent to ensure compliance with a continuous control efficiency requirement—Section II, Conditions 3.1.1.2—and the monthly and annual VOC emissions limits the 95% control requirement the permit is dependent on to achieve, Section II, Conditions 3.1."[33]

Next, the Petitioner relates various statutory and regulatory requirements for monitoring and compliance assurance under title V.[34] The Petitioner states that in order for a limit to be enforceable as a practical matter, the permit must clearly specify how emissions will be measured or determined for compliance demonstration.[35] The Petitioner asserts that the rationale for monitoring requirements must be in the permit record, and that permitting authorities have an obligation to respond to comments.[36] The Petitioner also recites the EPA's previous statements concerning some relevant factors to consider when determining appropriate monitoring ("CITGO factors").[37]

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[30] *See* Petition at 7, 10, 17.
[31] *See id.* at 10–17.
[32] *See id.* at 17–42.
[33] *Id.* at 10; *see id.* at 10–17.
[34] *Id.* at 10–11, 14 (citing 42 U.S.C. § 7661c(a), (b), (c); 40 C.F.R. § 70.6(a)(1), (a)(3), (a)(3)(i)(B), (c)(1); 5 CCR 1001–5, Part C, V.C.1, V.C.5, V.C.16.a).
[35] *Id.* at 11–12 (citing *In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. IX-2011-1 at 10 (Feb. 7, 2014) (*Hu Honua II Order*); *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Order on Petition No. II-2001-05 at 7 (Apr. 8, 2002)).
[36] *Id.* at 12–13 (citing 40 C.F.R. § 70.7(a)(5); *In the Matter of CITGO Refining and Chemicals Company L.P.*, Order on Petition No. VI-2007-01 at 7–8 (May 28, 2009) (*CITGO Order*); *In the Matter of United States Steel Corporation, Granite City Works*, Order on Petition No. V-2009-03 at 7–8 (Jan. 31, 2011)).
[37] *Id.* at 12 (citing *CITGO Order* at 7–8).

The Petitioner claims that Permit Condition 3.1.1.2 assumes that the ECD serving the DCP Platteville facility's ethylene glycol dehydration unit achieves 95 percent control efficiency without adequate testing, monitoring, recordkeeping, and reporting.[38] The Petitioner notes that Permit Condition 3.1.1.2 functions in part to demonstrate compliance with the monthly and annual VOC mass emission limits in Permit Condition 3.1 and asserts that it also represents an independently enforceable emission limit of 95 percent VOC control efficiency applicable to the ECD.[39]

The Petitioner acknowledges that CDPHE's addition of Permit Condition 3.9.5 (requiring an initial performance test of the ECD and periodic performance tests every five years thereafter) in response to the *DCP Platteville I Order* is "an improvement over an utter lack of testing" but claims "this infrequent and unsupported testing requirement does not satisfy the requirements of EPA's Platteville Order and the Clean Air Act."[40] *Id.* at 13. The Petitioner then explicates several reasons why, in its opinion, the performance testing is insufficient to assure compliance with the 95 percent control efficiency requirement and mass VOC emission limits.[41]

*Test Protocol*

The Petitioner notes that the Permit requires the performance test to be conducted in accordance with a CDPHE-approved test protocol and "the most recent version of the APCD Compliance Test Manual."[42] However, the Petitioner claims that the Permit does not require testing "pursuant to a specific performance specification or performance specifications."[43] The Petitioner also argues that there will be no opportunity for the EPA or the public to comment on the testing protocol (including the test method) because it is not included in the permit record.[44]

*Recordkeeping and Reporting*

The Petitioner claims: "Further the permit does not contain a clear reporting and recordkeeping requirement applicable to the performance testing requirements of Condition 3.9.5, and thus is not practically enforceable by [CDPHE], nor federally and practically enforceable by the public and EPA."[45]

*Testing Frequency*

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[38] All conditions are located in Section II of the Permit, unless otherwise indicated.
[39] *Id.* at 11.
[40] *Id.* at 13.
[41] *Id.; see id.* at 13–17.
[42] *Id.* at 13 (quoting Permit Condition 3.9.5; Permit at 70).
[43] *Id.*
[44] *Id.* at 13–14 (citing *In the Matter of Blanchard Refining Company, Galveston Bay Refinery*, Order on Petition No. VI-2017-7 at 31–32 (Aug. 9, 2021)).
[45] *Id.* at 15.

The Petitioner claims that testing once every five years is "far too infrequent" to assure compliance with a requirement for continuous control efficiency and that permitting authorities have an obligation to supplement periodic monitoring if such periodic monitoring is insufficient to assure compliance.[46] The Petitioner argues that even frequent stack testing alone—in the absence of adequate parametric monitoring—is inadequate to assure compliance with continuous emission limits, since a stack test is only a "snapshot of emissions."[47] The Petitioner states that monitoring is a context-specific determination and quotes the EPA's explanation that "the more variable or less well-understood the emissions the less likely that a single stack test will reflect the operating conditions (and emissions) between stack tests, and the greater the need for more frequent stack testing or parametric monitoring between stack tests."[48]

The Petitioner claims that CDPHE "failed to demonstrate" that stack testing once every five years is sufficient to assure compliance with the 95 percent control efficiency requirement, arguing that the permit record lacks sufficient rationale for the selected testing frequency and that projecting test results across large temporal gaps is unreliable.[49] The Petitioner specifically points to the CITGO factors and claims that CDPHE's explanations that compare the monitoring in the Permit to monitoring in the 2016 CTG[50] and 40 C.F.R. part 63, subpart HH are inappropriate because those requirements, in addition to five-year testing, are "accompanied by a host of additional parametric monitoring requirements that EPA has supported with technical analyses, unlike [CDPHE]'s parametric monitoring requirements."[51] The Petitioner claims that the "EPA has already rejected the parametric monitoring requirements that apply to the ECD," and that these parametric monitoring requirements are still not supported in the permit record, referring to additional arguments under Claim 2.[52]

In support, the Petitioner refers to examples of flares not achieving their required control efficiency, again reserving further explanation until Claim 2. The Petitioner claims that the DCP Platteville facility reported a deviation from the control efficiency requirement during 2024 caused by "draining of liquids in related closed vent system."[53] The Petitioner argues that this explanation undercuts "[CDPHE]'s reliance on pilot light

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[46] *Id.* at 14 (citing 40 C.F.R § 70.6(c)(1)).
[47] *Id.*
[48] *Id.* (quoting *In the Matter of BP Products North America, Inc., Whiting Business Unit*, Order on Petition No. V-2021-9 at 20 (Mar. 4, 2022) (*BP Whiting Order*)).
[49] *Id.* at 15.
[50] U.S. Environmental Protection Agency. (2016). Control Techniques Guidelines for the Oil and Natural Gas Industry: https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/2016-control-techniques-guidelines-oil-and ("2016 CTG").
[51] *Id.* at 16 (citing RTC at 5).
[52] *Id.* at 15 (citing *DCP Platteville I Order* at 11–12), 17.
[53] *Id.* at 16 (quoting Petition Ex. 19, *DCP Deviation Report*).

monitoring" and emphasizes the importance of other unmonitored factors that influence flare combustion efficiency.[54]

The Petitioner declares that continuous emission monitoring systems (CEMS) are required to make the Permit's limits enforceable as a practical matter, or, at a minimum, semi-annual stack testing of the ECD.[55]

### B. Claim 2: Sufficiency of Parametric Monitoring Requirements

***Petition Claim:*** The Petitioner presents this summary of its second claim: "Given the excessive, five-year lapse between performance tests, the permit still predominantly relies on insufficient parametric monitoring requirements and unjustifiably assumes a control efficiency of 95 percent for control devices, without proper testing, monitoring, and reporting to assure compliance with Section II, Condition 3.1.1.2, despite evidence to the contrary."[56]

The Petitioner prefaces its claims about the Permit's parametric monitoring for the ECD by arguing that testing every five years could only be adequate if combined with adequate operation and maintenance requirements and a Compliance Assurance Monitoring (CAM) plan. The Petitioner contends that, because the testing requirement is insufficiently frequent, the Permit predominantly relies on parametric monitoring requirements and a CAM plan that the EPA previously rejected and that CDPHE has not justified in the permit record.[57] The Petitioner states: "[T]he renewed permit has a far-too infrequent and unjustified testing requirement; parametric monitoring requirements that still go unjustified, contrary to the requirements of the Platteville Order; and a CAM plan that does not add additional substantive monitoring requirements that could assure compliance."[58]

According to the Petitioner, rather than providing new justification for the parametric monitoring requirements for the ECD (as the Petitioner claims the EPA directed CDPHE to do in the *DCP Platteville I Order*), CDPHE instead attempted to remedy the identified deficiencies with new testing requirements. The Petitioner argues that testing does not supply any new support for the deficient parametric monitoring requirements and that

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[54] *Id.*

[55] *Id.* at 15 (citing Petition Exhibit 8, Dr. Ranajit Sahu, *Technical Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30* at 5), 16.

[56] *Id.* at 17; *see id.* at 17–42.

[57] *Id.* at 17–18 (citing *In the Matter of Public Service Company of Colorado, Xcel Energy*, Order on Petition No. VIII-2010-XX (Sep. 29, 2011)), 22, 25–29, 41 (citing *DCP Platteville I* Order at 11–13; *In the Matter of Bonanza Creek Energy Operating Company, LL*, Order on Petition No. VIII-2023-11 (Jan. 30, 2024); *In the Matter of HighPoint Operating Corporation, Anschutz Equus Farms 4-62-28*, Order on Petition No. VIII-2024-6 (July 31, 2024)).

[58] *Id.* at 41.

the EPA previously rejected the arguments that CDPHE makes in its RTC on the current Permit.[59]

Repeating the assertion that CEMS or semi-annual stack testing is needed to assure compliance and make the Permit's limits enforceable as a practical matter, the Petitioner alleges that the Permit is "invalid as a synthetic minor permit" with respect to VOCs and $NO_x$.[60]

In support, the Petitioner presents several examples of ECDs that were found to be operating at VOC control efficiencies less than 95 percent. The Petitioner claims that these examples rebut the presumption of 95 percent control efficiency and the effectiveness of pilot light monitoring. The Petitioner points out that these "violations" were only revealed through testing and argues that parametric monitoring cannot reveal such violations.[61] The Petitioner claims that the EPA rejected the idea that CDPHE's testing data (in which many of the ECDs were found to meet or exceed the 95 percent control efficiency requirement) support the compliance assurance conditions in the Permit. The Petitioner also repeats the information about the DCP Platteville facility's 2024 report of a deviation from the 95 percent VOC control efficiency requirement.[62] Furthermore, the Petitioner references a report that discusses the results of testing ECDs, quoting its findings that: "ECDs were observed to be operating over a wide range of combustion efficiencies ranging from below 20% to above 99% . . . test conditions/operational setup can dramatically affect individual ECD performance."[63]

The Petitioner claims that ECDs are unreliable because they do not control key parameters such as temperature, residence time, and the variable composition of gas, thus making quantitative assumptions about control efficiency invalid. The Petitioner claims that control efficiency is also affected by weather, altitude, equipment damage, installation and construction, the composition of fuel and waste gas, and field conditions.[64]

The Petitioner contends that CDPHE's own policies reflect the need for more frequent testing. Specifically, the Petitioner references a memorandum that it claims establishes a policy requiring at least annual testing of flares whenever a permittee requests a control efficiency greater than 95 percent.[65] The Petitioner argues that there is no

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[59] *Id.* at 18 (citing RTC at 9–12), 27.
[60] *Id.* at 19–20, 28, 42 (citing Petition Ex. 8 at 5).
[61] *Id.* at 20–22 (citing Petition Ex. 1–6).
[62] *Id.* at 27, 30.
[63] *Id.* at 22–23 (quoting Petition Ex. 7, U.S. EPA, Region 8, Wyoming DEQ, *Measuring Enclosed Combustion Device Emissions Using Portable Analyzers* at 9 (May 14, 2020)).
[64] *Id.* at 23 (citing Petition Ex. 8 at 2–5; Petition Ex. 9, EPA, Parameters for Properly Designed and Operated Flares, Report for Flare Review Panel (Apr. 2012); Petition Ex. 20, EPA, Cost Control Manual, Chapter 1: Flares at 1-1 (Apr. 2019)).
[65] *Id.* at 24 (citing Petition Ex. 11, *Oil and Gas Industry Enclosed Combustion Device Overall Control Efficiency Greater than 95%, Permitting Section Memo 20-02* at 4–5 (Feb. 4, 2020).

support for what it describes as an arbitrary cutoff at 95 percent control efficiency and notes that other permits issued by CDPHE contain semi-annual testing for flares with 98 and 98.5 percent control efficiency.[66] The Petitioner claims that CDPHE's acknowledgement in a 2021 rulemaking (AQCC Regulation No. 7, Part B, Section II.B.2.h) that testing is necessary to ensure flares operate effectively further supports its arguments.[67]

The Petitioner then criticizes each of the compliance assurance provisions in the Permit related to VOC control, explaining how, in its opinion, each does not assure compliance with the 95 percent control efficiency requirement, stating: "They do not produce any quantitative data of what percentage control efficiency the flare is working at."[68]

The Petitioner claims that Permit Condition 3.9.3 (pilot light monitoring) only ensures combustion occurs and that control efficiency is, therefore, not zero and the Petitioner repeats its arguments that the test results undermine the importance of pilot light monitoring.[69]

The Petitioner describes Permit Condition 3.9.4 (smoke/visible emissions monitoring) as, in theory, qualitative monitoring for VOC control efficiency, but argues that the presence of smoke could also be unrelated to VOC control.[70]

The Petitioner claims that Permit Conditions 8.1.1 and 8.1.2 (design, sizing, and operation and maintenance requirements) reference Colorado law improperly, and moreover are too vague to assure compliance. The Petitioner also argues that the requirement to operate and maintain the ECD in accordance with manufacturer's specifications cannot assure compliance because those specifications are not in the permit record.[71] Additionally, the Petitioner asserts that operation and maintenance requirements are designed to maintain the status quo in terms of control efficiency, "[b]ut as the permit lacks enforceable requirements for initial testing to determin[e] if the ECD is achieving 95% control efficiency, maintaining the status quo could mean maintaining a control efficiency that was initially below 95%."[72]

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[66] *Id.* at 25 (citing Petition Ex. 10 *Operating Permit, D90 Energy, LLC— Bighorn 0780 S17 CTB Facility, Permit No. 17OPJA401* (Jan. 1, 2020)), 41–42.
[67] *Id.* at 25.
[68] *Id.* at 29; *see id.* at 29–41.
[69] *Id.* at 30 (citing Petition Ex. 1–7).
[70] *Id.* at 30–31.
[71] *Id.* at 31–35 (citing *In the Matter of WE Energies, Oak Creek Power Plant*, Order on Petition (June 12, 2009); *In the Matter of Delaware City Refining Company, LLC, Delaware City Refinery*, Order on Petition No. III-2022-10 (July 5, 2023)).
[72] *Id.* at 33.

Finally, the Petitioner dismisses several state-only enforceable conditions related to the ECD, arguing that these cannot assure compliance with Federally enforceable emission limits and are inadequate for other reasons.[73]

***EPA Response:*** For the following reasons, the EPA denies the Petitioner's request for an objection on these claims.

Although the Petitioner splits its challenges to the Permit across two claims, this Order responds to the claims together since both claims ultimately challenge whether the Permit assures compliance with the 95 percent VOC control efficiency requirement (and associated monthly and annual limits) applicable to the ECD.

All title V permits must "set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions."[74] Determining whether monitoring is adequate in a particular circumstance is generally a context-specific determination made on a case-by-case basis.[75] Title V does not require the use of CEMS "if alternative methods are available that provide sufficiently reliable and timely information for determining compliance."[76] The EPA has previously found that periodic stack testing alone is insufficient to assure compliance with short-term emission limits.[77] The EPA has also found that periodic stack testing in combination with other parametric monitoring or inspection and maintenance requirements may be sufficient to assure compliance with short-term emission limits.[78]

Here, the monitoring requirements that establish and assure compliance with the presumption of 95 percent VOC control efficiency by the ECD include operating the ECD with a pilot light present and auto-igniter (Permit Condition 3.9.3), daily visual inspections to verify pilot light presence and auto-igniter functionality (Permit Condition 3.9.3.1), continuous monitoring of pilot light presence (Permit Condition 3.10), daily visible emissions observations (Permit Condition 3.9.4), and operation and maintenance of the ECD consistent with manufacturer specifications (Permit Condition 8.1.1). CDPHE describes these requirements as parametric monitoring.[79] Additionally, the Permit contains an initial and periodic (once every five years) testing requirement by which the DCP Platteville facility must demonstrate that the ECD "achieves a minimum destruction

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[73] *Id.* at 25, 35–41.
[74] 42 U.S.C. § 7661c(c); *see* 40 C.F.R. § 70.6(c)(1).
[75] *CITGO Order* at 7.
[76] 42 U.S.C. § 7661c(b).
[77] *See e.g., In the Matter of Oak Grove Management Company, Oak Grove Steam Electric Station*, Order on Petition No. VI-2017-12 at 25–26 (Oct. 15, 2021); *In the Matter of Owens-Brockway Glass Container Inc.*, Order on Petition No. X-2020-2 at 14–15 (May 10, 2021).
[78] *See, e.g., In the Matter of Public Service of New Hampshire, Schiller Station*, Order on Petition No. VI-2014-04 at 15 (July 28, 2015); *In the Matter of Xcel Energy, Cherokee Station*, Order on Petition No. VIII-2010-XX at 11–12 (Sept. 29, 2011).
[79] TRD at 4.

efficiency of 95% for VOC."[80]

In the *DCP Platteville I Order*, the EPA found that the permit record was inadequate to determine whether the Permit set forth the necessary monitoring requirements to assure compliance with the requirement for the ECD to achieve 95 percent control efficiency. At that time, the Permit did not contain a Federally enforceable testing requirement applicable to the ECD to verify VOC control efficiency, and the EPA found that CDPHE had not adequately explained how the parametric monitoring, on its own, assured compliance with the 95 percent control efficiency requirement. The EPA directed CDPHE to either revise the permit record to more fully explain how the parametric monitoring assures compliance, and/or to revise the Permit to add additional monitoring and explain how the selected monitoring assures compliance.[81]

In response to the *DCP Platteville I Order*, CDPHE added Permit Condition 3.9.5—the initial and periodic testing requirement—to the Permit and supplemented the permit record to explain this revision.[82] CDPHE clearly articulates that the Permit employs a combination of periodic testing with parametric monitoring and operation and maintenance requirements to assure compliance with 95 percent VOC control efficiency. The Petitioner never holistically considers this combined approach to compliance assurance and thereby fails to demonstrate that the Permit overall does not assure compliance with the 95 percent VOC control efficiency requirement. Instead, the Petitioner challenges the individual components of this approach in isolation, with a series of distinct challenges to both the testing and the parametric monitoring requirements, relying on the presumption of inadequacy of each component to establish the insufficiency of the other component. In other words, the Petitioner argues generally that periodic testing cannot assure compliance without adequate parametric monitoring, and parametric monitoring cannot assure compliance without adequate periodic testing. The Petitioner then argues circularly that (i) since the parametric monitoring is inadequate, the Permit must rely predominantly on testing, but testing once every five years is too infrequent, and (ii) given that testing is too infrequent, the Permit must rely predominantly on parametric monitoring, but the parametric monitoring, on its own, is inadequate to assure compliance. These arguments depend on each other, and neither is demonstrated in the Petition.

*Testing Protocol*

In situations, such as the case here, where an underlying applicable requirement "does not require periodic testing or instrumental or noninstrumental monitoring," regulations require title V permits to include "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's

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[80] Permit Condition 3.9.5, Permit at 75.
[81] *DCP Platteville I Order* at 11–13.
[82] TRD at 2–4; RTC at 5–7.

compliance with the permit . . ." and that "assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement."[83]

The Petitioner does not directly address these regulatory requirements but instead presents arguments related to "test protocols" and "performance specifications." The Petitioner alleges that the absence of a specifically identified test protocol in Permit Condition 3.9.5 and the permit record results in "undefined conditions" that cannot assure compliance with the 95 percent VOC control efficiency requirement applicable to the ECD.[84]

Concerning the inclusion of test protocols—comprehensive documents detailing overall plans for conducting performance tests—or similar plans in permits, the EPA has previously explained:

> As a general matter, the EPA agrees with CDPHE's suggestion that this type of plan is not typically included in title V permits. Test protocols or test plans are a common element of compliance assurance requirements across the nation, as they are often required alongside stack testing requirements. *See, e.g.*, 40 C.F.R. § 63.7(c)(2). These plans typically contain details beyond those which are necessary to assure compliance. Thus, normally, the EPA would not expect it necessary to include (or directly incorporate by reference) such a plan in a title V permit, provided the permit otherwise contains the requirements sufficient to assure compliance.[85]

CDPHE quoted this passage in its RTC, explaining why it did not include the test protocol in the Permit. RTC at 7. The Petitioner does not mention or address this response from CDPHE and instead repeats verbatim in the Petition its comments on the draft permit on this issue.[86]

In the *West Elk Order*, and in other petition orders, the EPA has also clarified that certain details within test protocols or similar plans that are critical to assuring compliance with

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[83] 40 C.F.R. § 70.6(a)(3)(i)(B). CDPHE added the testing requirement in Permit Condition 3.9.5 through its title V reopening procedures. TRD at 1.

[84] Petition at 13–14.

[85] *In the Matter of Mountain Coal Co., LLC, West Elk Mine*, Order on Petition No. VIII-2024-3 at 37 (May 24, 2024) (*West Elk Order*) (citing *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 13 (June 22, 2012) (*Kentucky Syngas Order*)). These plans take many forms and serve many functions. In general, these plans usually contain details beyond those contained in underlying applicable requirements or permit terms and are usually developed by the source and submitted to the permitting authority for approval.

[86] 40 C.F.R. § 70.12(a)(2)(vi); *see supra* note 26 and accompanying text.

a permit's terms must be included or incorporated in the permit.[87] As with essentially all issues concerning which requirements are necessary or sufficient to assure compliance, determining which details of a test protocol or similar plan must be included in a permit is a context-specific question, and the burden to demonstrate that any specific detail must be included resides with the petitioner. Accordingly, the EPA has denied claims where "the Petitioners have not demonstrated that the . . . plan's content is needed to impose an applicable requirement or as a compliance assurance measure."[88]

Here, Permit Condition 3.9.5 requires the facility to:

> [M]easure and record, using EPA approved methods, VOC mass emission rates at the enclosed combustor inlet and outlet to determine the destruction and removal efficiency of the enclosed combustor (process models must not be used to determine the flow rate or composition of waste gas (waste gas stream from the still vent) sent to the enclosed combustor for the purposes of this test). The natural gas throughput to the dehydration unit, waste gas throughput, assist gas throughput, pilot gas throughput, and lean glycol circulation rate, must be monitored and recorded during this test.[89]

The only detail the Petitioner claims is missing from this Permit Condition is a requirement "that the performance test be performed pursuant to a specific performance specification or performance specifications."[90] The Petitioner does not explain what "specific performance specification" the Permit should include, or why such information, or any other information contained in the test protocol, is necessary to assure compliance.[91]

The Petitioner also fails to acknowledge or analyze the requirements related to testing that are in the Permit, particularly the requirements to use EPA-approved test methods and to monitor the flow rate and composition of waste gas and other parameters during the test. The EPA notes that several EPA-approved test methods meet these Permit requirements; there is a publicly available, limited set of EPA-approved test methods for measuring VOC mass emission rates at ECDs.[92] The Petitioner has therefore failed to demonstrate that the Permit's testing requirements do not "assure use of terms, test

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[87] *West Elk Order* at 36–37; *see also, e.g., In the Matter of Drummond Co., Inc., ABC Coke Plant,* Order on Petition No. IV-2019-7 at 13–15 (June 30, 2021).

[88] *Kentucky Syngas Order* at 11; *see also, e.g., In the Matter of Cash Creek Generation, LLC,* Order on Petition No. IV-2010-4 at 11–12 (June 22, 2012); *In the Matter of Big River Steel, LLC,* Order on Petition No. VI-2013-10 at 24 (Oct. 31, 2017).

[89] Permit at 75.

[90] Petition at 13.

[91] 40 C.F.R. § 70.12(a)(2)(iii); *see supra* notes 23–25 and accompanying text.

[92] *E.g.*, Methods 18, 25, and 25A. *See* Appendices A-6 and A-7 to 40 C.F.R. part 60. The EPA is not making any determination as to the appropriateness of these test methods to the testing requirements applicable to the ECD in this case.

methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement."[93]

*Recordkeeping & Reporting Requirement*

The Petitioner's claim concerning recordkeeping and reporting requirements associated with the testing requirement is a general, conclusory allegation unaccompanied by analysis or support. The Petitioner fails to acknowledge or address CDPHE's response that explains the Permit's recordkeeping and reporting requirements or the conditions that CDPHE references in the Permit.[94]. The Petitioner does not explain why, given the Permit's other recordkeeping and reporting requirements, it must contain an additional recordkeeping and reporting requirement specific to the testing requirement in Permit Condition 3.9.5.[95] The Petitioner, therefore, has not demonstrated that that the recordkeeping and reporting requirements in the Permit are insufficient.

*Testing Frequency*

The Petitioner claims that the requirement to test the ECD once every five years is too infrequent to assure compliance with the Permit's continuous 95 percent VOC control efficiency requirement.[96]

Determining the adequacy of monitoring in a particular circumstance is generally a context-specific determination, though the EPA has provided several factors to aid permitting authorities in considering the appropriateness of monitoring conditions (the CITGO factors):

> (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.[97]

The EPA has also previously explained, and the Petitioner reiterates:

> Variability of emissions is a key factor in determining the appropriate frequency of monitoring. If emissions are relatively invariable and well-understood (*e.g.*, $PM_{10}$ emissions from an uncontrolled natural gas-fired boiler), frequent monitoring may not be necessary. However, the more

[93] 40 C.F.R. §§ 70.6(a)(3)(i)(B); 70.12(a)(2)(iii).
[94] 40 C.F.R. § 70.12(a)(2)(i), (vi); *see* RTC at 11–12 (citing Section IV, Condition 22).
[95] 40 C.F.R. § 70.12(a)(2)(iii); *see supra* notes 23–25 and accompanying text.
[96] *See* Petition at 14–15.
[97] *CITGO Order* at 7–8.

> variable or less well-understood the emissions, the less likely that a single stack test will reflect the operating conditions (and emissions) between stack tests, and the greater the need for more frequent stack testing or parametric monitoring between stack tests.[98]

Notwithstanding its recitation of this principle, the Petitioner does not provide any evidence or make any arguments related to the variability of emissions from the ECD. The Petitioner does present examples of ECDs that have been found to operate below 95 percent control efficiency (including the ECD at the DCP Platteville facility).[99] Neither the DCP Platteville facility's reported deviation nor the broader testing dataset directly evinces emissions variability in between tests. The Petitioner offers no other analysis or evidence that would suggest emissions from an ECD that has been shown via testing to meet 95 percent control efficiency would vary significantly on timescales shorter than the five-year interval between tests required by the Permit.

Moreover, despite alleging that CDPHE "failed to demonstrate" the sufficiency of five-year testing, the Petitioner does not substantively address CDPHE's justifications in the permit record that explain its determinations according to each of the CITGO factors, including the variability of emissions from the ECD.[100] The Petitioner briefly dismisses some (but not all) of CDPHE's arguments, apparently relying on the alleged inadequacy of the Permit's parametric monitoring requirements or the alleged lack of support for these in the permit record.[101] However, as further explained below, the Petitioner fails to demonstrate that these monitoring requirements are inadequate and, thereby, more generally fails to demonstrate that CDPHE's permit record is insufficient to support the monitoring in the Permit.

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[98] *BP Whiting Order* at 20; *see* Petition at 14.

[99] Petition at 16, 20–22.

[100] *See* TRD at 2–4; RTC at 5–7. Congress specifically placed the burden on *petitioners* to "*demonstrate* to the Administrator that the permit is not in compliance with the requirements of" the CAA. 42 U.S.C. § 7661d(b)(2) (emphasis added); *see* 40 C.F.R. §§ 70.8(d), 70.12(a). Here, the burden is on the Petitioners to demonstrate any unsupported permitting decision or insufficient response to a significant comment. The EPA has denied petition claims attempting to shift this demonstration burden to a permitting authority. That is, the EPA has denied claims requesting the EPA's objection to a state's purported failure to justify permit terms in cases where petitioners failed to adequately call into question the validity of the state's decisions. *See, e.g., In the Matter of Suncor Energy, Commerce City Refinery, Plants 1 and 3*, Order on Petition No. VIII-2018-5 at 11 (Dec. 20, 2018) ("[T]he Petitioners have attempted to shift the burden to the Division to demonstrate the adequacy of the chosen emission factor and monitoring method."); *In the Matter of Waelz Sustainable Products, LLC*, Order on Petition No. V-2021-10 at 25 (Mar. 14, 2023); *In the Matter of Riverview Energy Corp.*, Order on Petition No. V-2019-10 at 10 (Mar. 26, 2020). To the extent the Petitioner intended these arguments to raise additional grounds for objection related to CDPHE's obligations to provide a statement setting forth the legal and factual basis of the Permit's conditions under 40 C.F.R. § 70.7(a)(5), any such claim is denied for the reasons described in this Order.

[101] The Petitioner specifically refers to CDPHE's comparison of monitoring requirements in the 2016 CTG and 40 C.F.R. part 63, subpart HH to those in the Permit. Petition at 16.

The Petitioner's only other argument relevant to testing frequency is the claim that CDPHE has a policy of requiring more frequent (annual) testing when applicants request control efficiencies greater than 95 percent.[102] The memorandum cited by the Petitioner appears to be non-binding guidance and, as such, cannot conclusively establish the necessary testing frequency in this particular case.[103] Even to the extent the memorandum could be informative here, it does not directly apply to the ECD at the DCP Platteville facility, since that ECD is not required to achieve a VOC control efficiency greater than 95 percent. In characterizing this threshold as "arbitrary," the Petitioner appears to suggest that the guidance should be revised or extended and used as a basis for imposing similarly frequent annual testing for lower control efficiencies. But the Petitioner does not relate any substantive details or technical analysis from the memorandum, nor any other relevant technical analysis, that would indicate why certain testing frequencies are more or less appropriate for certain levels of control efficiency. That is, the Petitioner fails to present any evidence as to why the annual testing frequency recommended in the memorandum should be extended to cover ECDs, like that at the DCP Platteville facility, that presume only a 95 percent control efficiency.

In summary, the Petitioner fails to demonstrate that five-year testing is insufficiently frequent to assure compliance with the 95 percent VOC control efficiency requirement applicable to the ECD.

*Parametric Monitoring*

As an initial matter, the Petitioner predicates its claims against the Permit's parametric monitoring requirements on the idea that the testing requirement in Permit Condition 3.9.5 is insufficiently frequent, and, therefore, that the Permit "predominantly relies on" parametric monitoring to assure compliance with the 95 percent VOC control efficiency requirement applicable to the ECD.[104] For the foregoing reasons, the Petitioner fails to demonstrate its claims about testing frequency and, therefore, its arguments about the role of the parametric monitoring requirements are similarly unconvincing.

The Petitioner's challenges to the parametric monitoring conditions focus on showing that the parametric monitoring conditions do not provide quantitative information about VOC control efficiency. This approach may be effective in the context of a permit that does not require testing to validate control efficiency. Indeed, in the *DCP Platteville I Order*, the EPA wrote of the same parametric monitoring requirements:

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[102] *See* Petition at 24–25.

[103] Oil & Gas Section, Colorado Air Pollution Control Division, *Permitting Section Memo 20-02, Oil & Gas Industry Enclosed Combustion Device Overall Control Efficiency Greater than 95%* (Feb. 4, 2020).

[104] Petition at 17.

> The Petitioner provides a detailed, condition-by-condition refutation of these monitoring requirements, explaining for each permit condition how, in its opinion, the monitoring is unrelated to achieving a specific control efficiency. The Petitioner persuasively argues that these monitoring requirements may ensure the ECD is not malfunctioning, and that combustion is actually occurring. Therefore, they may also ensure that the ECD maintains a certain, initial control efficiency. It is unclear to the EPA, however, how the monitoring requirements assure that the ECD continually achieves the specific 95 percent control efficiency required in the Permit.[105]

However, the EPA did not find, contrary to the Petitioner's implications, that the parametric monitoring requirements were more generally deficient.[106]

Repeating the same arguments now, in the context of a permit that *does* require periodic testing of VOC control efficiency, is much less appropriate. Whether the parametric monitoring provides quantitative information on control efficiency is not dispositive of its compliance assurance effectiveness, if that is not its purpose. The parametric monitoring ensures that the ECD functions properly and maintains control efficiency in between the tests that provide such quantitative information. The EPA indicated this potential function in the *DCP Platteville I Order*, CDPHE describes it in the permit record, and even the Petitioner appears to concede that the monitoring in the Permit may "be designed to maintain the status quo."[107] The Petitioner does not allege, much less demonstrate, that the parametric monitoring and operation and maintenance requirements in the Permit are ineffective for this purpose or insufficient to assure compliance when combined with periodic testing requirements.

## 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: December 3, 2025

Lee Zeldin
Administrator

[105] *DCP Platteville I Order* at 11.

[106] To the extent the Petitioner suggests that CDPHE failed to resolve the EPA's objection in the *DCP Platteville I Order* by not further justifying the parametric monitoring requirements, *see* Petition at 18, such a claim does not present grounds for the EPA to object to the current permitting action. *See* 40 C.F.R. §§ 70.8(c)(1), 70.12(a)(2). Moreover, as explained in this Order, the Petitioner fails to demonstrate that the Permit does not assure compliance with the 95 percent VOC control efficiency requirement, or that the permit record is insufficient to support the Permit's monitoring conditions.

[107] Petition at 33; *see* TRD at 4.