

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition No. VIII-2025-31

In the Matter of

Holly Energy Partners, L.P., Denver Products Terminal

Permit No. 96OPAD172

Issued by the Colorado Department of Public Health and Environment

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 September 2, 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. 96OPAD172 (“the Permit”) issued by the Colorado Department of Public Health and Environment (CDPHE) to the Holly Energy Partners, L.P. (HEP) Denver Products Terminal (the “Holly Denver Terminal”) in Adams County, Colorado. The Permit was issued pursuant to title V of the CAA and CDPHE’s EPA-approved operating permit program rules.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.

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 Agency'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

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).

proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the Agency 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 the Agency's 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 40 C.F.R. 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 to the permit if a petitioner demonstrates that the 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

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 also* 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.

section 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the CAA.¹⁸ When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and the Agency's 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 40 C.F.R. 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 40 C.F.R. 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

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 When the EPA finalized this rulemaking in 2020, the Agency referred back to (but did not repeat) the proposed rule's extensive background discussion regarding the petitioner's demonstration burden. See 85 Fed. Reg. 6431, 6433, 6439 (Feb. 5, 2020) (final rule); 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016) (proposed rule); *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 in which 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*).

demonstration standard.²⁴ Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit.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) if these documents were available during the timeframe for filing the petition. Specifically, the petition must identify if 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

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).

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 in which 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 in which 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 in which 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).

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

III. BACKGROUND

A. The Holly Denver Terminal

The Holly Denver Terminal, owned by HEP, is a petroleum products terminal located in Henderson, Adams County, Colorado. This area is classified as a severe nonattainment area for the 2008 8-hr ozone standard. Emission units at the Holly Denver Terminal include storage tanks for gasoline, fuel oil, ethanol, and petroleum liquids, a tank truck loading/unloading rack, and a railcar loading/unloading rack. Emissions from these units are controlled by a vapor combustion unit (VCU). The Holly Denver Terminal is a title V major source of volatile organic compounds (VOC).

B. Permitting History

HEP first obtained a title V permit for the Holly Denver Terminal in 1998, which was last renewed in 2023. On February 22, 2024, HEP applied for a significant modification to the permit and on April 5, 2024, HEP applied for a minor modification to the permit. On March 3, 2025, CDPHE published notice of a draft permit, subject to a public comment period that ended on May 1, 2025. On May 19, 2025, 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 July 3, 2025, during which time the Agency did not object to the proposed permit. On May 29, 2025, CDPHE issued the final Permit for the Holly Denver Terminal.

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.²⁹ The EPA's 45-day review period ended on July 3, 2025. Because September 1, 2025, was a Federal Holiday, Labor Day, any petition seeking the EPA's objection to the Permit was due on or before September 2, 2025. The Petition was submitted by email on September 2, 2025. Therefore, the EPA finds that the Petitioner timely filed the Petition.

²⁸ 40 C.F.R. § 70.13.

²⁹ 42 U.S.C § 7661d(b)(2).

IV. EPA DETERMINATION ON PETITION CLAIM

The Petitioner Claims That “The Title V Permit Fails to Assure Compliance with Title V Monitoring Requirements.”

Petition Claim: The Petitioner claims that the Permit does not assure compliance with facility-wide annual emission limits on VOC, nitrogen oxides (NO_x), and carbon monoxide (CO), as well as a 95 percent VOC control efficiency requirement applicable to the VCU at the Holly Denver Terminal, because testing requirements are too infrequent and parametric monitoring requirements do not supply the necessary data in between tests.³⁰

First, the Petitioner notes that its public comments pointed out that the draft permit did not require any periodic testing of emissions to verify emission factors used to demonstrate compliance with NO_x and CO limits or to assure compliance with a 95 percent VOC control efficiency requirement applicable to the VCU controlling emissions from storage tanks and loadout operations. The Petitioner asserts that, in response to its comments, CDPHE agreed that the monitoring in the draft permit was inadequate and, therefore, added to the Permit requirements for periodic performance testing of the VCU. The Petitioner claims that the frequency of testing—once every five years—is insufficient to assure compliance with the Permit’s terms.³¹

Next, the Petitioner lists title V monitoring requirements. The Petitioner states that “[a] Title V permit must set forth monitoring requirements to assure compliance with the permit terms and conditions.”³² The Petitioner also asserts that title V permits must contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit[.]”³³

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.”³⁴

The Petitioner contends that emissions at the Holly Denver Terminal will be highly variable. The Petitioner notes that the Holly Denver Terminal operates with flexibility to process products of varying compositions and potential emissions. Specifically, the

³⁰ Petition at 6 (citing Permit Condition 2 and 2.2.1); *see id.* at 6–12. All Permit Conditions referenced in this Order are in Section II of the Permit.

³¹ *Id.* at 6 (citing Permit Condition 2.12; Permit at 36).

³² *Id.* at 5–6 (citing 42 U.S.C. § 7661c(c)).

³³ *Id.* (quoting 40 C.F.R. § 70.6(a)(3)(i)(B); citing 40 C.F.R. § 70.6(c)(1)).

³⁴ *Id.* at 7 (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)).

Petitioner states that in response to comments as to why the draft Title V Permit did not establish additional operational limits to ensure compliance with the applicable facility-wide annual VOC limit, CDPHE pointed to EPA guidance regarding surface coating operations and noted the need for operational flexibility to process different material.³⁵

The Petitioner contends that the need for more frequent testing is clearly evident in CDPHE's "own policies and in other permits."³⁶ The Petitioner specifically references a permit for a different oil and gas production facility in Colorado that requires semiannual testing of a combustion device that is required to achieve 98 percent VOC control efficiency.³⁷ The Petitioner also references a memorandum that the Petitioner claims requires more frequent (annual) testing of combustion devices whenever a permittee requests a VOC control efficiency greater than 95 percent.³⁸ The Petitioner claims that CDPHE did not respond to comments on these points and "did not provide any rationale for requiring annual or more frequent testing only when a permittee is required to comply with a control efficiency greater than 95%."³⁹

The Petitioner claims that the parametric monitoring in the Permit—specifically referring to pilot light and visible emissions monitoring—cannot substitute for more frequent testing because the parametric monitoring does not yield data representative of the source's compliance with the quantitative limits.⁴⁰ The Petitioner contends that the parametric monitoring could only assist in compliance assurance if CDPHE demonstrated in the permit record that the parametric monitoring yields quantitative data indicative of compliance in between tests. The Petitioner alleges that CDPHE has not demonstrated this: "The monitoring certainly yields data as to whether the flare is operating and perhaps malfunctioning or not, but there is no demonstrated relationship between the qualitative parametric monitoring set forth in the Title V Permit and compliance with the quantitative limits applicable to the flare at the Denver Terminal."⁴¹ The Petitioner also asserts that public comments provided examples of combustion devices failing to achieve required control efficiencies, even where such parametric monitoring was in place, and contends that these examples reveal the deficiency of the parametric monitoring in the Permit.⁴²

³⁵ *Id.* at 11 (citing RTC at 3).

³⁶ *Id.* at 10–11.

³⁷ *Id.* (citing Petition Ex. 7)

³⁸ *Id.* at 11 (citing Petition Ex. 8, *Oil and Gas Industry Enclosed Combustion Device Overall Control Efficiency Greater than 95%, Permitting Section Memo 20-02* at 4–5 (Feb. 4, 2020)).

³⁹ *Id.*

⁴⁰ See *id.* at 9–10 (citing Permit Conditions 2.5.2 and 2.5.3).

⁴¹ *Id.* at 10 (citing *In the Matter of Inter Power Ahlcon Partners LP, Colver Power Plant*, Order on Petition No. II-2020-13 at 10 (June 7, 2022)).

⁴² *Id.* at 10–11.

The Petitioner emphasizes that the need to assure compliance with control efficiency requirements is important due to large potential emissions that could result if the VCU does not achieve 95 percent control.⁴³

Additionally, the Petitioner alleges that CDPHE's failure to justify the testing frequency in the permit record is also grounds for objection to the Permit.⁴⁴ The Petitioner claims that even though comments on the draft permit addressed the subject of testing frequency and specifically questioned the rationale for testing once every five years, CDPHE failed to supply a source-specific rationale. Rather, the Petitioner claims, CDPHE referenced EPA orders that only generally support the approach to monitoring in the Permit—*i.e.*, combining testing once every five years with parametric monitoring to assure compliance with short-term or continuous emission limits. The Petitioner contends that the details of each order (which regard monitoring to assure compliance with limits on emissions of particulate matter at facilities substantively different than the Holly Denver Terminal) are not relevant to the issue of monitoring to assure compliance with the requirements in the Permit related to VCU performance.⁴⁵

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

All title V permits must “set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.”⁴⁶ Determining whether monitoring is adequate in a particular circumstance is generally a context-specific determination made on a case-by-case basis.⁴⁷ The EPA has previously found that periodic stack testing alone is insufficient to assure compliance with short-term emission limits.⁴⁸ 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.⁴⁹

Here, the monitoring requirements designed to assure compliance with the facility-wide emission limits and VOC control efficiency requirement applicable to the VCU at the

⁴³ *Id.* at 11–12.

⁴⁴ *Id.* at 7 (citing *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)); *see id.* at 7–10.

⁴⁵ *Id.* at 7–10 (citing RTC at 6; *In the Matter of CF Industries East Point, LLC, Waggaman Complex*, Order on Petition No. VI-2024-II (June 25, 2024); *In the Matter of Public Service Company of Colorado, Pawnee Station*, Order on Petition No. VIII-2010-XX (June 30, 2011); *In the Matter of Public Service of New Hampshire, Schiller Station*, Order on Petition No. VI-2014-04 (July 28, 2015) (Schiller Order)).

⁴⁶ 42 U.S.C. § 7661c(c); *see* 40 C.F.R. § 70.6(c)(1).

⁴⁷ CITGO Order at 7.

⁴⁸ *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).

⁴⁹ *See, e.g.*, Schiller Order at 15; *In the Matter of Xcel Energy, Cherokee Station*, Order on Petition No. VIII-2010-XX at 11–12 (Sept. 29, 2011).

Holly Denver Terminal include initial and periodic (once every five years) testing requirements to demonstrate that the VCU achieves the required 95 percent VOC control efficiency. The Permit also requires operation of the VCU with a pilot light present and auto-igniter, daily visual inspections to verify pilot light presence and auto-igniter functionality, daily visible emissions observations, and operation and maintenance of the VCU consistent with manufacturer specifications.⁵⁰

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 emission limits and VOC control efficiency requirement.

In particular, the Petitioner's claim about testing frequency lacks any arguments specific to the Holly Denver Terminal, VCU, units, or emissions at issue. Instead, the Petitioner relies almost entirely on what it describes as CDPHE's "policy" of requiring more frequent (annual) testing when applicants request VOC control efficiencies greater than 95 percent. The memorandum cited by the Petitioner appears to be non-binding guidance and, as such, could not conclusively establish the necessary testing frequency in any particular case.⁵¹ Moreover, the guidance does not directly apply to the VCU at the Holly Denver Terminal since the VCU is not required to achieve a VOC control efficiency greater than 95 percent. In noting that CDPHE did not provide a rationale for requiring annual testing only for combustion devices required to achieve control efficiencies greater than 95 percent, the Petitioner appears to suggest, without support, that the guidance should be revised or extended and then used as a basis for imposing similarly frequent annual testing for lower control efficiencies. To the extent the memorandum could be informative here, the Petitioner does not relate any substantive details or technical analysis from the memorandum, or 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 applied to the VCU at the Holly Denver Terminal.

Determining the adequacy of monitoring in a particular circumstance is generally a fact-based, context-specific determination. To guide this determination, the EPA has previously explained:

Variability of emissions is a key factor in determining the appropriate frequency of monitoring. If emissions are relatively invariable and well-understood (e.g., PM₁₀ emissions from an uncontrolled natural gas-fired boiler), frequent monitoring may not be necessary. However, the more variable or less well-understood the emissions, the less likely that a single

⁵⁰ See Permit Conditions 2.5, 2.6, 2.11, 2.12; Permit at 27–28, 31–37.

⁵¹ 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).

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.⁵²

The Petitioner does not provide any evidence related to the variability of emissions from the VCU. The Petitioner leaves its only assertion regarding emissions variability unexplained; the Petitioner fails to detail how the operational flexibility in terms of products stored at the Holly Denver Terminal would affect the variability of the VCU's performance or its control efficiency.

Similarly, the examples of combustion devices that have been found to operate below required efficiencies that the Petitioner provided in public comments on the draft permit do not necessarily evince emissions variability in between tests. The Petitioner offers no other analysis or evidence that would suggest emissions from a combustion device, such as the VCU at the Holly Denver Terminal, that has been shown via testing to meet a certain control efficiency would vary significantly on timescales shorter than the five-year interval between tests required by the Permit.

Notably, the Permit's testing requirements are designed to function in concert with parametric monitoring requirements. The Petitioner's dismissal of the Permit's parametric monitoring requirements is predicated on the assumption that their purpose is to provide quantitative information about VOC control efficiency and that the EPA previously rejected similar parametric monitoring requirements for that purpose. However, this is a mistaken assumption and a mischaracterization of the EPA's prior findings.

In three previous orders, the EPA objected to permits with similar parametric monitoring requirements in a context in which the permits at issue did not require any periodic testing to quantitatively validate VOC control efficiency.⁵³ For example, in the *DCP Platteville I Order*, the EPA wrote of similar parametric monitoring requirements:

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 [enclosed combustion device] is not malfunctioning, and that combustion is actually occurring. Therefore, they may also ensure that the [enclosed combustion device] maintains a certain, initial control efficiency. It is unclear to the EPA, however, how the

⁵² *BP Whiting Order* at 20.

⁵³ *In the Matter of Bonanza Creek Operating Company, LLC*, Order on Petition No. VIII-2023-11 (Jan. 30, 2024); *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*); *In the Matter of HighPoint Operating Corporation, Anschutz Equus Farms 4-62-28*, Order on Petition No. VIII-2024-6 (July 31, 2024).

monitoring requirements assure that the [enclosed combustion device] continually achieves the specific 95 percent control efficiency required in the Permit.⁵⁴

Contrary to the Petitioner's implications, the EPA did not find that the parametric monitoring requirements were more generally deficient or that they could not serve a useful function in the context of a permit that requires periodic testing and quantitative validation of VOC control efficiency. Parametric monitoring need not always or exclusively provide additional quantitative information on control efficiency to contribute to compliance assurance for such a requirement. By the Petitioner's own admission, the information that the parametric monitoring supplies is relevant to the performance and operation of control equipment. The EPA previously indicated that similar parametric monitoring may ensure that a combustion device functions properly and maintains control efficiency in between the tests that provide quantitative information on such control efficiency.⁵⁵ Here, the Petitioner does not allege, much less demonstrate, that the parametric monitoring requirements in the Permit are ineffective for such a purpose or insufficient to assure compliance when combined with periodic testing requirements.

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 or emission limits applicable to the Holly Denver Terminal.

The Petitioner also claims that CDPHE failed to provide a sufficient rationale for the testing frequency. 40 C.F.R. § 70.7(a)(5) requires States to prepare "a statement that sets forth the legal and factual basis for the draft permit conditions." The EPA's regulations do not dictate the specific content or level of detail that must be contained in such a statement, which the Agency often calls a "statement of basis."

The EPA generally evaluates permit record-focused claims under 40 C.F.R. § 70.7(a)(5) by evaluating whether the permit record as a whole—not only the statement of basis, but also the response to comments and potentially other parts of the permit record—supports the terms and conditions of the permit.⁵⁶

The EPA has granted title V petitions in which a permitting authority failed to explain the basis for its monitoring decisions in response to public comments. In so doing, the EPA clarified:

⁵⁴ *DCP Platteville I Order* at 11.

⁵⁵ *See id.*

⁵⁶ *See, e.g., In the Matter of US Steel Seamless Tubular Operations, LLC, Fairfield Works Pipe Mill, Order on Petition No. IV-2021-7 at 8–9 (June 16, 2022) (US Steel Fairfield Order).*

EPA is not suggesting that [the State] must go out of its way to explain the technical basis for every condition of every permit it has issued to a source each time it renews a title V permit. However, when a state receives public comments raising legitimate challenges to the sufficiency of [a] monitoring provision, the EPA expects [the State] to engage with these comments and explain the basis for its decisions (or specifically identify where any prior justification may be found).⁵⁷

In these cases, the obligation for a permitting authority to explain the basis for individual permit terms is inextricably tied to the prompting of public comments. The EPA has never interpreted 40 C.F.R. § 70.7(a)(5) to require permitting authorities to proactively justify every permit term or monitoring requirement.⁵⁸

Additionally, the EPA's evaluation of petition claims under 40 C.F.R. § 70.7(a)(5) considers whether "the petitioner has demonstrated that the permitting authority's alleged failure resulted in, or may have resulted in, a deficiency in the content of the permit."⁵⁹ If petitioners have failed to demonstrate a flaw in a permit resulting from permit record-focused concerns, the EPA has denied related claims alleging a deficiency with the permit record with respect to 40 C.F.R. § 70.7(a)(5).⁶⁰

Here, CDPHE's permit record articulates its position that the added five-year testing requirements, in combination with already present parametric monitoring requirements, are adequate and sufficiently frequent to assure compliance with the Permit's emission limits and 95 percent VOC control efficiency requirement.⁶¹ Additionally, as previously explained, the Petitioner has failed to demonstrate any flaw in the Permit with respect to testing frequency. The EPA, therefore, denies the Petitioner's request for objection on this claim.

⁵⁷ *In the Matter of Valero Refining-Texas, Valero Houston Refinery*, Order on Petition No. VI-2021-8 at 62 (June 30, 2022); *see In the Matter of BP Amoco Chemical Company, Texas City Chemical Plant*, Order on Petition No. VI-2017-6 at 18 (July 20, 2021) (same text).

⁵⁸ *See In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII-2022-13 & VIII-2022-14 at 28–34 (July 31, 2023).

⁵⁹ *US Steel Fairfield Order* at 8.

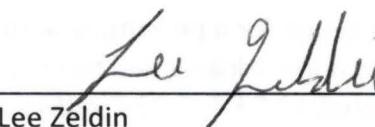
⁶⁰ *See, e.g., In the Matter of Waelz Sustainable Products, LLC*, Order on Petition No. V-2021-10 at 18–19 (Mar. 14, 2023); *US Steel Fairfield Order* at 8–10; *In the Matter of U.S. Dep't of Energy, Hanford Operations*, Order on Petition Nos. X-2014-01 & X-2013-01 at 25–26 (May 29, 2015); *In the Matter of Tesoro Refining and Marketing Co., Martinez, California Facility*, Order on Petition No. IX-2004-6 at 25, 44 (Mar. 15, 2005); *In the Matter of Sirmos Division of Bromante Corp.*, Order on Petition No. II-2002-03 at 15–16 (May 24, 2004).

⁶¹ *See RTC at 5–6; TRD at 27.*

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: January 6, 2026


Lee Zeldin
Administrator