

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

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Petition Nos. VIII-2025-13, VIII-2025-14, VIII-2025-15, and VIII-2025-16

In the Matter of

Rocky Mountain Midstream, LLC

Latham Compressor Station  
Permit No. 21OPWE436

Mustang Compressor Station  
Permit No. 21OPWE439

Auburn Compressor Station  
Permit No. 21OPWE433

West Brighton Compressor Station  
Permit No. 21OPWE440

Issued by the Colorado Department of Public Health and Environment

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**ORDER DENYING PETITIONS FOR OBJECTION TO TITLE V OPERATING PERMITS**

**I. INTRODUCTION**

The U.S. Environmental Protection Agency (EPA) received four petitions (collectively the “Petitions”) from the Center for Biological Diversity (the “Petitioner”) pursuant to Clean Air Act (CAA) section 505(b)(2).<sup>1</sup> The first petition, dated April 14, 2025, (the “Latham Petition”) requests that the EPA Administrator object to operating permit No. 21OPWE436 (the “Latham Permit”) issued by the Colorado Department of Public Health and Environment (CDPHE) to the Rocky Mountain Midstream, LLC, Latham Compressor Station (“Latham”) in Weld County, Colorado. The second petition, dated April 24, 2025, (the “Mustang Petition”) requests that the EPA Administrator object to operating permit No. 21OPWE439 (the “Mustang Permit”) issued by CDPHE to the Rocky Mountain Midstream, LLC, Mustang Compressor Station (“Mustang”) in Weld County, Colorado. The third petition, dated April 24, 2025, (the “Auburn Petition”) requests that the EPA Administrator object to operating permit No. 21OPWE433 (the “Auburn Permit”) issued

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<sup>1</sup> 42 U.S.C. § 7661d(b)(2).

by CDPHE to the Rocky Mountain Midstream, LLC, Auburn Compressor Station (“Auburn”) in Weld County, Colorado. The fourth petition, dated April 24, 2025, (the “West Brighton Petition”) requests that the EPA Administrator object to operating permit No. 21OPWE440 (the “West Brighton Permit”) issued by CDPHE to the Rocky Mountain Midstream, LLC, West Brighton Compressor Station (“West Brighton”) in Weld County, Colorado. The four Permits were issued pursuant to title V of the CAA and title 5 of the Code of Colorado Regulations (CCR) 1001-5, Part C.<sup>2</sup> These types of operating permits are also known as a title V permits or part 70 permits.

Based on a review of the Petitions and other relevant materials, including the Permits, the permit records, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, the EPA denies the Petitions requesting that the EPA Administrator object to the Permits.

## **II. STATUTORY AND REGULATORY FRAMEWORK**

### **A. Title V Permits**

CAA section 502(d)(1) requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA’s implementing regulations at 40 C.F.R. part 70.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.”<sup>6</sup> 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,

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

<sup>3</sup> 42 U.S.C. § 7661a(d)(1).

<sup>4</sup> *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.

<sup>5</sup> 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a).

<sup>6</sup> 57 Fed. Reg. 32250, 32251 (July 21, 1992).

but does require that permits contain adequate monitoring, recordkeeping, and reporting requirements to assure the source's compliance with the underlying substantive applicable requirements.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

Each petition must identify the proposed permit on which the petition is based and identify the petition claims.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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).<sup>14</sup>

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

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<sup>7</sup> 40 C.F.R. § 70.1(b); see 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1).

<sup>8</sup> 42 U.S.C. § 7661d(a).

<sup>9</sup> 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c).

<sup>10</sup> 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

<sup>11</sup> 40 C.F.R. § 70.12(a).

<sup>12</sup> 40 C.F.R. § 70.12(a)(2).

<sup>13</sup> 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.*

<sup>14</sup> 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); see 40 C.F.R. § 70.12(a)(2)(v).

the CAA.<sup>15</sup> Under CAA section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA.<sup>16</sup> 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.<sup>17</sup> 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 not in compliance with requirements of the CAA.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

The EPA considers a number of factors in determining whether a petitioner has demonstrated noncompliance with the CAA.<sup>21</sup> 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.<sup>22</sup>

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<sup>15</sup> 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).

<sup>16</sup> 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.

<sup>17</sup> *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.

<sup>18</sup> *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)).

<sup>19</sup> *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.

<sup>20</sup> 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*).

<sup>21</sup> *See generally Nucor II Order* at 7.

<sup>22</sup> 40 C.F.R. § 70.12(a)(2)(i)–(iii).

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).<sup>23</sup> Relatedly, the EPA has pointed out in numerous previous orders that generalized assertions or allegations did not meet the demonstration standard.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

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<sup>23</sup> 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*).

<sup>24</sup> 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).

<sup>25</sup> 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.

<sup>26</sup> 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).

<sup>27</sup> 40 C.F.R. § 70.12(a)(2)(vi).

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.<sup>28</sup>

### **III. BACKGROUND**

#### **A. The Latham Facility and Permitting History**

Latham, owned by Rocky Mountain Midstream, LLC, is located in Greeley, Weld County, Colorado. This area is classified as being in severe non-attainment for the 8-hour ozone standard. Latham is a natural gas compressor station. Emission units at Latham include an enclosed combustion device (ECD), triethylene glycol dehydrators, and internal combustion engines. Latham is a title V major source of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>).

On January 25, 2021, Rocky Mountain Midstream, LLC applied for an initial title V permit for Latham. On January 23, 2024, CDPHE published notice of a draft permit, subject to a public comment period that ended on March 23, 2024. On December 30, 2024, CDPHE submitted a proposed permit, along with its responses to public comments (“Latham RTC”) and technical review document, to the EPA for the Agency’s 45-day review. The EPA’s 45-day review period ended on February 13, 2025, during which time the Agency did not object to the proposed permit. On March 1, 2025, CDPHE issued the final Latham Permit.

#### **B. The Mustang Facility and Permitting History**

Mustang, owned by Rocky Mountain Midstream, LLC, is located in LaSalle, Weld County, Colorado. This area is classified as being in severe non-attainment for the 8-hour ozone standard. Mustang is a natural gas compressor station. Emission units at Mustang

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<sup>28</sup> 40 C.F.R. § 70.13.

include ECDs, triethylene glycol dehydrators, storage tanks, and internal combustion engines. Mustang is a title V major source of VOC and NO<sub>x</sub>.

On January 25, 2021, Rocky Mountain Midstream, LLC applied for an initial title V permit for Mustang. On January 9, 2024, CDPHE published notice of a draft permit, subject to a public comment period that ended on March 29, 2024. On January 8, 2025, CDPHE submitted a proposed permit, along with its responses to public comments ("Mustang RTC") and technical review document ("Mustang TRD"), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on February 24, 2025, during which time the Agency did not object to the proposed permit. On March 1, 2025, CDPHE issued the final Mustang Permit.

### **C. The Auburn Facility and Permitting History**

Auburn, owned by Rocky Mountain Midstream, LLC, is located in Greeley, Weld County, Colorado. This area is classified as being in severe non-attainment for the 8-hour ozone standard. Auburn is a natural gas compressor station. Emission units at Auburn include ECDs, triethylene glycol dehydrators, storage tanks, and internal combustion engines. Auburn is a title V major source of VOC and NO<sub>x</sub>.

On January 25, 2021, Rocky Mountain Midstream, LLC applied for an initial title V permit for Auburn. On January 9, 2024, CDPHE published notice of a draft permit, subject to a public comment period that ran ended on March 29, 2024. On January 8, 2025, CDPHE submitted a proposed permit, along with its responses to public comments ("Auburn RTC") and technical review document ("Auburn TRD"), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on February 24, 2025, during which time the Agency did not object to the proposed permit. On March 1, 2025, CDPHE issued the final Auburn Permit.

### **D. The West Brighton Facility and Permitting History**

West Brighton, owned by Rocky Mountain Midstream, LLC, is located in Brighton, Weld County, Colorado. This area is classified as being in severe non-attainment for the 8-hour ozone standard. West Brighton is a natural gas compressor station. Emission units at West Brighton include ECDs, triethylene glycol dehydrators, storage tanks, and internal combustion engines. West Brighton is a title V major source of VOC and NO<sub>x</sub>.

On January 25, 2021, Rocky Mountain Midstream, LLC applied for an initial title V permit for West Brighton. On January 9, 2024, CDPHE published notice of a draft permit, subject to a public comment period that ended on March 29, 2024. On January 8, 2025, CDPHE submitted a proposed permit, along with its responses to public comments ("West Brighton RTC") and technical review document ("West Brighton TRD"), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on February

24, 2025, during which time the Agency did not object to the proposed permit. On March 1, 2025, CDPHE issued the final West Brighton Permit.

#### **E. Timeliness of Petitions**

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.<sup>29</sup> The EPA's 45-day review period for the Latham Permit ended on February 13, 2025. The EPA's website indicated that any petition seeking the Agency's objection to the Latham Permit was due on or before April 16, 2025. The Latham Petition was submitted April 14, 2025. The EPA's 45-day review period for the Mustang, Auburn, and West Brighton Permits ended on February 24, 2025. The EPA's website indicated that any petition seeking the Agency's objection to the Mustang, Auburn, or West Brighton Permits was due on or before April 28, 2025. The Mustang, Auburn, and West Brighton Petitions were submitted April 24, 2025. Therefore, the EPA finds that the Petitioner timely filed the Petitions.

#### **IV. EPA DETERMINATION ON PETITION CLAIMS**

The four Petitions contain nearly identical claims challenging nearly identical permit terms applicable to different units across the four facilities.

**Claim: The Petitioner Claims That "The Title V Permit Does Not Ensure Adequate Monitoring to Assure the Flare Controlling Emissions from the [Dehydrators or Tanks] Complies with Applicable Emission Limits."**

**Petition Claim:** The Petitioner presents an overarching claim that the Permits fail to assure compliance with emission limits and VOC destruction efficiency requirements applicable to ECDs controlling emissions from dehydrators or storage tanks at the facilities, raising various issues with related testing requirements in the Permits.<sup>30</sup>

First, the Petitioner asserts that all title V permits must set forth monitoring requirements to assure compliance with all permit terms and conditions, and that where a permit fails to do so, it is unenforceable as a practical matter.<sup>31</sup>

The Petitioner identifies the various units and applicable emission limits at issue in each claim—*e.g.*, two glycol dehydrators (AIRS ID 002 and 003) and an associated ECD at Latham subject to annual NO<sub>x</sub>, carbon monoxide (CO), and VOC emission limits and a 98

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<sup>29</sup> 42 U.S.C. § 7661d(b)(2).

<sup>30</sup> See Latham Petition at 4–8; Mustang Petition at 4–12; Auburn Petition at 4–12; West Brighton Petition at 4–12.

<sup>31</sup> Latham Petition at 4 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3)(i)(B), (c)(1)); Mustang Petition at 4, 8 (same); Auburn Petition at 4, 8 (same); West Brighton Petition at 4, 8–9 (same).

percent VOC destruction efficiency requirement.<sup>32</sup> The Petitioner claims that the Permits do not set forth sufficient monitoring of the ECDs controlling emissions from these units to assure compliance with the applicable emission limits and destruction efficiency requirements. The Petitioner then supplies several distinct reasons why, in its opinion, the monitoring in the Permits is deficient.<sup>33</sup>

#### *Testing Frequency*<sup>34</sup>

The Petitioner notes that, in public comments, it pointed out that the draft permits did not require any periodic testing of emissions to verify emission factors used to demonstrate compliance with the applicable NO<sub>x</sub> and CO limits or to assure compliance with the VOC destruction efficiency requirements. The Petitioner asserts that CDPHE “agreed” that the monitoring in the draft permits was inadequate and, therefore, added periodic performance testing of the ECDs.<sup>35</sup>

The Petitioner claims that the frequency of testing—once every five years, in every case—is insufficient to assure compliance with the applicable emission limits and destruction efficiency requirements.<sup>36</sup>

In support, the Petitioner contends that more frequent testing is clearly needed due to CDPHE’s “prior permitting and its own policies.”<sup>37</sup> The Petitioner specifically references a permit for a different oil and gas production facility in Colorado that requires semiannual testing of an ECD that is required to achieve 98 percent VOC control

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<sup>32</sup> Latham Petition at 4. The Petitioner similarly identifies glycol dehydrators and associated ECDs at Mustang, Auburn, and West Brighton subject to annual NO<sub>x</sub>, CO, and VOC emission limits and 98 percent VOC destruction efficiency requirements. Mustang Petition at 4; Auburn Petition at 4; West Brighton Petition at 4. The Petitioner also identifies and challenges permit terms applicable to storage tanks and associated ECDs at Mustang, Auburn, and West Brighton subject to annual VOC emission limits and 95 percent VOC destruction efficiency requirements. Mustang Petition at 8–9; Auburn Petition at 8–9; West Brighton Petition at 9.

<sup>33</sup> See Latham Petition at 5–8; Mustang Petition at 5–8, 9–12; Auburn Petition at 5–8, 9–12; West Brighton Petition at 5–8, 9–12.

<sup>34</sup> This subclaim is included in each Petition, challenging permit terms for each unit at each facility identified by the Petitioner.

<sup>35</sup> Latham Petition at 4–5 (citing Latham RTC at 2); Mustang Petition at 5, 9 (citing Mustang RTC at 2, 3); Auburn Petition at 5, 9 (citing Auburn RTC at 3); West Brighton Petition at 5, 9 (citing West Brighton RTC at 1–2, 3).

<sup>36</sup> Latham Petition at 5, 6, 8. The Petitioner identifies relevant performance testing requirements in Condition 1.4 of the Latham Permit, in Conditions 3.1.2 and 4.2.6 of the Mustang Permit, and in Conditions 1.1.1 and 4.2.6 of the Auburn and West Brighton Permits. Latham Petition at 5; Mustang Petition at 5, 9; Auburn Petition at 5, 9; West Brighton Petition at 5, 9. All permit conditions referenced in this Order are in Section II of each Permit.

<sup>37</sup> Latham Petition at 6–7; see Mustang Petition at 6–7, 10–11; Auburn Petition at 6, 11; West Brighton Petition at 7, 11.

efficiency.<sup>38</sup> The Petitioner also references a memorandum that it claims establishes a policy requiring at least annual testing of ECDs whenever a permittee requests a VOC control efficiency greater than 95 percent.<sup>39</sup>

Challenging the requirements for storage tanks and associated ECDs (which are required to achieve only 95 percent VOC destruction efficiency) in the Mustang, Auburn, and West Brighton Permits, the Petitioner argues that there is no support for the idea that more frequent testing is only necessary at VOC control efficiencies greater than 95 percent. The Petitioner characterizes this cutoff as an arbitrary threshold and contends that ECDs required to meet either 95 percent or greater than 95 percent VOC control efficiency are just as likely to fail to achieve the required control efficiency.<sup>40</sup>

The Petitioner claims that the parametric monitoring in the Permits—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 applicable quantitative limits, contrary to 40 C.F.R. § 70.6(a)(3)(i)(B).”<sup>41</sup> The Petitioner also asserts that its comments on the draft permits identified numerous examples of ECDs failing to achieve required destruction efficiencies, even where such parametric monitoring was in place, and argues that these examples reveal the deficiency of the parametric monitoring in the Permits.<sup>42</sup> Further, the Petitioner claims that the EPA has previously “generally rejected” reliance on this kind of parametric monitoring to assure compliance with quantitative limits.<sup>43</sup>

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<sup>38</sup> Latham Petition at 6 (citing Latham Petition Ex. 5, *Air Pollution Control Division Colorado Operating Permit No. 17OPJA401* at Section II, Condition 2.8 (Jan. 1, 2020)); Mustang Petition at 6–7, 10–11 (same); Auburn Petition at 6–7, 11 (same); West Brighton Petition at 7, 11 (same).

<sup>39</sup> Latham Petition at 6 (citing Latham Petition Ex. 6, *Oil and Gas Industry Enclosed Combustion Device Overall Control Efficiency Greater than 95%, Permitting Section Memo 20-02* at 4–5 (Feb. 4, 2020); Mustang Petition at 7, 11 (same); Auburn Petition at 7, 11 (same); West Brighton Petition at 7, 11 (same).

<sup>40</sup> Mustang Petition at 11; Auburn Petition at 11; West Brighton Petition at 11.

<sup>41</sup> Latham Petition at 7; Mustang Petition at 7, 11; Auburn Petition at 7, 11–12; West Brighton Petition at 7, 12.

<sup>42</sup> Latham Petition at 7 (citing Latham Petition Ex. 3 at 6–8); Mustang Petition at 7, 11 (citing Mustang Petition Ex. 3 at 4–6); Auburn Petition at 7, 12 (citing Auburn Petition Ex. 3 at 6–8); West Brighton Petition at 7, 12 (citing West Brighton Petition Ex. 3 at 5–7).

<sup>43</sup> Latham Petition at 7 (citing *In the Matter of Bonanza Creek Operating Company, LLC*, Order on Petition No. VIII-2023-11 (Jan. 30, 2024) (“*Bonanza Creek Order*”); *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) (“*HighPoint Equus Farms Order*”)); Mustang Petition at 8, 12 (same); Auburn Petition at 8, 12 (same); West Brighton Petition at 8, 12 (same).

The Petitioner claims that CDPHE's RTCs did not resolve these issues but merely provided general responses asserting that the Permits' monitoring requirements were sufficient.<sup>44</sup>

Additionally and relatedly, the Petitioner alleges that CDPHE's failure to justify the testing frequency in the permit records is grounds for objection to the Permits.<sup>45</sup> The Petitioner claims that even though its comments on the draft permits addressed the subject of testing frequency and questioned "whether once-every-five-year testing of flare VOC destruction efficiency, which is required by state-only rules, was sufficiently frequent," CDPHE did not respond or provide a rationale to support the five-year testing frequency.<sup>46</sup>

#### *Enforceability of Deadlines for Initial Tests<sup>47</sup>*

The Petitioner notes that the Mustang, Auburn, and West Brighton Permits require an initial compliance test "by the date required by Colorado Regulation No. 7, Part B, Section II.B.2.h.(ii)."<sup>48</sup> The Petitioner claims that this provision does not actually set a deadline for an initial test and only requires a certain percentage of ECDs be tested by certain dates, with the actual date left to the discretion of the operator. The Petitioner argues, therefore, that the testing requirements do "not actually establish a clear, enforceable date for an initial test."<sup>49</sup>

#### *Stringency of Applicable Destruction Efficiency Requirements<sup>50</sup>*

The Petitioner claims that, although the Auburn and West Brighton Permits require 95 percent destruction efficiency of VOC emissions from the storage tanks at the facilities, underlying construction permits for both facilities require the ECDs to meet 95 percent control efficiency and 98 percent destruction efficiency.<sup>51</sup> The Petitioner argues that the

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<sup>44</sup> Latham Petition at 7 (citing Latham RTC at 2–3); Mustang Petition at 7–8, 11–12 (citing Mustang RTC at 2, 3); Auburn Petition at 7–8, 12 (citing Auburn RTC at 2–3); West Brighton Petition at 7, 12 (citing West Brighton RTC at 2).

<sup>45</sup> Latham Petition at 5 (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*")); Mustang Petition at 5–6, 9–10 (same); Auburn Petition at 5–6, 10 (same); West Brighton Petition at 5–6, 10 (same).

<sup>46</sup> Latham Petition at 6 (citing Latham Petition Ex. 3 at 1–2, 6–9); Mustang Petition at 6, 10 (citing Mustang Petition Ex. 3 at 4–8); Auburn Petition at 6, 10 (citing Auburn Petition Ex. 3 at 6–9); West Brighton Petition at 6, 10 (citing West Brighton Petition Ex. 3 at 5–7).

<sup>47</sup> This subclaim is included in the Mustang (challenging terms for the storage tanks), Auburn (challenging terms for the storage tanks), and West Brighton Petitions (challenging terms for the dehydrators and storage tanks). See Mustang Petition at 9 n.2; Auburn Petition at 9 n.3; West Brighton Petition at 5 n.1, 10 n.4.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> This subclaim is included in the Auburn and West Brighton Petitions, challenging terms for the storage tanks in both permits. See Auburn Petition at 9 n.2; West Brighton Petition at 9 n.3.

<sup>51</sup> *Id.* (citing Auburn Permit Appendix H at 4–5; West Brighton Permit Appendix H at 4).

requirements from the underlying construction permits are applicable requirements as they were issued under the Colorado SIP.<sup>52</sup> The Petitioner claims to have noted in its comments that the draft permits “did not assure compliance with the applicable VOC control efficiency requirements for the tanks.”<sup>53</sup> The Petitioner claims that CDPHE “did not respond to this specific comment and appears to have issued the final Title V Permit with an erroneous destruction efficiency requirement.”<sup>54</sup>

#### *Testing Exemptions*<sup>55</sup>

The Petitioner notes that the Mustang, Auburn, and West Brighton Permits exempt the facilities from testing the ECDs “[i]f the combustor is EPA certified for the performance requirements of 40 CFR §60.5412(a)(1)(i).”<sup>56</sup> The Petitioner asserts that this regulation is related to compliance with New Source Performance Standards (NSPS) at 40 C.F.R. part 60 subpart OOOO, which are not applicable to the facilities, and therefore the exemption is inappropriate “and does not assure compliance with requirements applicable to the [facilities] and does not represent sufficient periodic monitoring.”<sup>57</sup>

**EPA Response:** For the following reasons, the EPA denies the Petitioner’s requests for objection on this claim.

#### *Testing Frequency*

All title V permits must “set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.”<sup>58</sup> Determining whether monitoring is adequate in a particular circumstance is generally a context-specific determination made on a case-by-case basis.<sup>59</sup> The EPA has previously found that periodic stack testing alone is insufficient to assure compliance with short-term emission limits.<sup>60</sup> The EPA has also found that periodic stack testing in combination with other parametric monitoring or

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<sup>52</sup> *Id.* (citing 40 C.F.R. § 70.2).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> This subclaim is included in the Mustang, Auburn, and West Brighton Petitions, challenging terms for the dehydrators and storage tanks in each petition. See Mustang Petition at 6 n.1, 10 n.3; Auburn Petition at 6 n.1, 10 n.4; West Brighton Petition at 6 n.2, 11 n.5.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> 42 U.S.C. § 7661c(c); see 40 C.F.R. § 70.6(c)(1).

<sup>59</sup> CITGO Order at 7.

<sup>60</sup> 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).

inspection and maintenance requirements may be sufficient to assure compliance with short-term emission limits.<sup>61</sup>

Here, the monitoring requirements designed to assure compliance with the emission limits and VOC destruction efficiency requirements applicable to the ECDs include, generally, initial and periodic (once every five years) testing requirements to demonstrate that the ECDs achieve the required VOC destruction efficiencies, operating the ECDs 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 ECDs consistent with manufacturer specifications.<sup>62</sup>

The Petitioner never holistically considers this combined approach to compliance assurance and thereby fails to demonstrate that the Permits overall do not assure compliance with the emission limits and VOC destruction efficiency requirements.

In particular, the Petitioner's claim about testing frequency lacks any arguments specific to the facilities, ECDs, and emissions at issue. Instead, the Petitioner relies, almost entirely, on what the Petitioner 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.<sup>63</sup> Moreover, the guidance does not directly apply to the ECDs that control emissions from the storage tanks at Mustang, Auburn, and West Brighton, since those are not required to achieve a VOC control efficiency greater than 95 percent. In characterizing this threshold as "arbitrary," 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.<sup>64</sup> To the extent CDPHE's non-binding guidance does apply—*e.g.*, to the ECDs that control emissions from the dehydrators and that are required to achieve a VOC destruction efficiency greater than 95 percent—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 destruction 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 any of the ECDs at the facilities.

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<sup>61</sup> 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).

<sup>62</sup> The Latham Permit requires weekly visual inspections and visible emissions observations. Latham Permit at 18.

<sup>63</sup> 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).

<sup>64</sup> Mustang Petition at 11; Auburn Petition at 11; West Brighton Petition at 11.

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.*, PM<sub>10</sub> 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 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.<sup>65</sup>

The Petitioner does not provide any evidence or make any arguments related to the variability of emissions from the ECDs. The examples of ECDs that have been found to operate below required efficiencies that the Petitioner provided in its public comments on the draft permits do not necessarily evince emissions variability in between tests.<sup>66</sup> The Petitioner offers no other analysis or evidence that would suggest emissions from an ECD that has been shown via testing to meet a certain destruction efficiency would vary significantly on timescales shorter than the five-year interval between tests required by the Permits.

Notably, the Permits' testing requirements are designed to function in concert with parametric monitoring requirements. The Petitioner's cursory dismissal of the Permits' parametric monitoring requirements is predicated on the assumption that their purpose is to provide quantitative information about VOC destruction 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 orders.<sup>67</sup>

Those orders objected to permits with similar parametric monitoring requirements in a context in which the permits did not require any periodic testing to quantitatively validate control or destruction efficiency. 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

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<sup>65</sup> *In the Matter of BP Products North America, Inc., Whiting Business Unit*, Order on Petition No. V-2021-9 at 20 (Mar. 4, 2022).

<sup>66</sup> See *e.g.*, Latham Petition Ex. 3 at 6–7.

<sup>67</sup> *Bonanza Creek Order*; *DCP Platteville I Order* at 7–13; *HighPoint Equus Farms Order* at 7–11.

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.<sup>68</sup>

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 destruction efficiency. Parametric monitoring need not always or exclusively provide additional quantitative information on destruction 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 ECD performance and emissions. The EPA previously indicated that similar parametric monitoring may ensure that an ECD functions properly and maintains destruction efficiency in between the tests that provide quantitative information on such destruction efficiency.<sup>69</sup> Here, the Petitioner does not allege, much less demonstrate, that the parametric monitoring requirements in the Permits 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 either the 98 or 95 percent VOC destruction efficiency requirements and emission limits applicable to the ECDs, and the EPA, therefore, denies the Petitioner's requests for objection on this subclaim.

The Petitioner also claims that CDPHE failed to provide a sufficient rationale for the testing frequency in violation of 40 C.F.R. § 70.7(a)(5). As the Petitioner points out, 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 EPA 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.<sup>70</sup>

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<sup>68</sup> DCP Platteville I Order at 11.

<sup>69</sup> See *id.*

<sup>70</sup> 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*").

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:

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).<sup>71</sup>

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.<sup>72</sup>

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."<sup>73</sup> Where 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).<sup>74</sup>

Here, CDPHE's RTCs primarily address the focus of the Petitioner's public comments—the lack of periodic testing in the draft permits—and assert that the added five-year testing requirements are "consistent with EPA's intent for title V testing, recordkeeping, and reporting requirements."<sup>75</sup> Additionally, as previously explained, the Petitioner has failed to demonstrate any flaw in the Permits with respect to testing frequency. The EPA, therefore, denies the Petitioner's requests for objection on this subclaim.

#### *Enforceability of Deadlines for Initial Tests*

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<sup>71</sup> *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).

<sup>72</sup> 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).

<sup>73</sup> *US Steel Fairfield Order* at 8.

<sup>74</sup> 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).

<sup>75</sup> Latham RTC at 2; Mustang RTC at 2; Auburn RTC at 1–2; West Brighton RTC at 1–2.

The Petitioner has failed to demonstrate that the Mustang, Auburn, and West Brighton Permits do not establish enforceable deadlines for initial performance tests of the ECDs at the facilities. The Petitioner refers to the testing schedule in 5 CCR 1001-9 (*i.e.*, Air Quality Control Commission Regulation No. 7), Part B, Section II.B.2.h.(ii)(A), which sets forth dates by which certain percentages—reaching 100 percent in each case—of ECDs must be tested at facilities in different locations. That is, the regulation establishes an outermost compliance deadline by which all ECDs in all locations must be tested, including the ECDs implicated here.<sup>76</sup> The Petitioner does not explain how these outermost compliance deadlines are unenforceable or how the fact that the specific test date is left to the discretion of the operator (who may decide which ECDs to test prior to the outermost compliance deadline) impedes the enforceability of these deadlines. The EPA, therefore, denies the Petitioner’s requests for objection on this subclaim.

#### *Stringency of Applicable Destruction Efficiency Requirements*

As an initial matter, a “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 agency.”<sup>77</sup>

Here, the Petitioner’s comments on the draft Auburn and West Brighton permits raised the following concern:

We are primarily concerned that the draft Title V permit does not incorporate applicable limits requiring the enclosed combustors to reduce VOC emissions by at least 95%. Condition 16 of Permit 23WE0410 explicitly states that VOCs must be reduced by at least 95% (*i.e.*, control efficiency) from the storage tanks. The Notes to Permit Holder section also states that controlled emissions calculations for the dehydrators “are based on a control efficiency of 95%.” Given these applicable requirements, the Title V permit must explicitly require that the enclosed combustors reduce VOC emissions by at least 95%.<sup>78</sup>

In the Auburn and West Brighton Petitions, the Petitioner no longer challenges that the Permits do not incorporate underlying 95 percent control efficiency requirements, but instead raises for the first time an argument that the Permits must also incorporate a different requirement from the underlying construction permits—mandating a 98 percent destruction efficiency. The subclaim in the Auburn and West Brighton Petitions alleging a discrepancy between 95 and 98 percent destruction efficiency was not raised

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<sup>76</sup> For example, the regulation provides that 100 percent of ECDs at facilities located within the 8-hour ozone control area and northern Weld County must be tested by May 1, 2027.

<sup>77</sup> 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).

<sup>78</sup> Auburn Petition Ex. 3 at 9–10 (Mar. 29, 2024); *see* West Brighton Petition Ex. 3 at 9–10 (Mar. 29, 2024).

with reasonable specificity during the public comment period. The Petitioner also does not allege that it was impracticable to do so or that the grounds for objection arose after the public comment period, and the EPA, therefore, denies the Petitioner's requests for objection on this subclaim.<sup>79</sup>

Even if this subclaim had been raised in public comments, it would not present grounds for the EPA's objection. The Petitions mischaracterize the requirements in the underlying construction permits. Those construction permits do not require that the ECDs in question continuously maintain 98 percent destruction efficiency, as the Petitioner alleges. The construction permits merely require that the ECDs be designed to achieve 98 percent destruction efficiency: "The owner or operator must install and operate air pollution control equipment that achieves an average hydrocarbon control efficiency of 95%. If a combustion device is used, it must have a *design* destruction efficiency of at least 98% for hydrocarbons . . . ." <sup>80</sup>

Moreover, the EPA finds no merit in any claim that the Auburn and West Brighton Permits do not adequately incorporate applicable requirements from the underlying construction permits referenced by the Petitioner. The Permits clearly incorporate the entire construction permits and all of their requirements by reference:

The owner or operator must comply with the terms and conditions of Colorado Construction Permit 23WE0410, included in Appendix H of this permit. The owner or operator must monitor compliance with the emission, process, and operational limits listed in the table above utilizing the monitoring and calculation methodologies specified in Colorado Construction Permit 23WE0410 including the Notes to Permit Holder section. The owner or operator is subject to Colorado Construction Permit 23WE0410, including operational limits, monitoring, recordkeeping, reporting, and testing requirements.<sup>81</sup>

The EPA, therefore, denies the Petitioner's requests for objection on this subclaim.

#### *Testing Exemptions*

The Petitioner's sole argument here is that the Permits should not include testing exemptions related to the EPA's subpart OOOO NSPS because that rule is inapplicable to

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<sup>79</sup> 42 U.S.C. § 7661d(b)(2), 40 C.F.R. §§ 70.8(d); 70.12(a)(2)(v).

<sup>80</sup> Auburn Permit, Appx H, Construction Permit 23WE0410 at 4–5 (emphasis added); West Brighton Permit, Appx H, Construction Permit 23WE0413 at 4–5.

<sup>81</sup> Auburn Permit at 25; see West Brighton Permit at 25.

the facilities.<sup>82</sup> It is not clear to the EPA, and the Petitioner does not explain why, the inapplicability of subpart OOOO should conclusively determine the appropriateness of the potential testing exemptions. In general, it may be reasonable for a state to determine that testing or monitoring requirements (and corresponding exemptions) from inapplicable EPA rules may assure compliance with similar applicable requirements not based on EPA rules. As with other questions regarding compliance assurance, this a case-by-case determination, and the Petitioner bears the burden to demonstrate that the permit terms are insufficient to assure compliance with the relevant applicable requirements. Here, the Petitioner's subclaim about potential testing exemptions is bereft of any analysis supporting its allegation that the exemptions render related monitoring conditions insufficient to assure compliance.<sup>83</sup> The Petitioner fails to consider, *e.g.*, the specific performance requirements of 40 C.F.R. § 60.5412(a)(1)(i) compared to the requirements in the Permits, under what conditions the exemptions would apply, or any technical similarities of sources subject to subpart OOOO compared to the facilities here. These are all examples of factors relevant to the appropriateness of the potential testing exemptions. The Petitioner fails to demonstrate that the inclusion of these potential exemptions renders the monitoring for the ECDs insufficient to assure compliance, and the EPA, therefore, denies the Petitioner's requests for objection on this subclaim.

## 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 Petitions as described in this Order.

Dated: December 8, 2025

  
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Lee Zeldin  
Administrator

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<sup>82</sup> The TRDs for the Mustang, Auburn, and West Brighton Permits all base the inapplicability of subpart OOOO on the date of construction of the facilities. Mustang TRD at 4; Auburn TRD at 4; West Brighton TRD at 4. The EPA notes that Mustang, Auburn, and West Brighton are, however, subject to the NSPS in subpart OOOOa, which contains substantively similar requirements related to testing, and exemptions thereto, of ECDs. See 40 C.F.R. §§ 60.5412a(a)(1)(i), 60.5413a(a).

<sup>83</sup> 40 C.F.R. § 70.12(a)(2)(iii).