

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

Petition No. IX-2025-1

In the Matter of

Humboldt Redwood Company, LLC

Permit No. NCU 060-12

Issued by the North Coast Unified Air Quality Management District

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

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA or the “Agency”) received a petition dated January 1, 2025, (the “Petition”) from the Environmental Protection Information Center and the Humboldt Coalition for Clean Energy (the “Petitioners”), pursuant to Clean Air Act (CAA) section 505(b)(2).¹ The Petition requests that the EPA Administrator object to operating permit No. NCU 060-12 (the “Permit”) issued by the North Coast Unified Air Quality Management District (NCUAQMD) to the Humboldt Redwood Company, LLC (HRC) sawmill (the “HRC facility”) in Humboldt County, CA. The Permit was issued pursuant to title V of the CAA and NCUAQMD’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; NCUAQMD Regulation V; *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 NCUAQMD submitted a title V program governing the issuance of operating permits in 1994. The EPA granted interim approval of NCUAQMD's title V operating permit program in 1995 and full approval in 2001.⁴

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan.⁵ One purpose of the title V operating permit program is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements."⁶ Title V operating permits compile and clarify, in a single document, the substantive air quality control requirements derived from numerous provisions of the CAA. By clarifying which requirements apply to emission units at the source, title V operating permits enhance compliance with those applicable requirements of the CAA. The title V operating permit program generally does not impose new substantive air quality control requirements, but does require that permits contain adequate monitoring, recordkeeping, and reporting requirements to assure the source's compliance with the underlying substantive applicable requirements.⁷ Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V operating permit programs. Under CAA section 505(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), States are required to submit each proposed title V operating permit to the EPA for review.⁸ Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit

³ 42 U.S.C. § 7661a(d)(1).

⁴ 60 Fed. Reg. 21720 (May 3, 1995); 66 Fed. Reg. 63503 (Dec. 7, 2001). This program is codified in NCUAQMD Regulation V.

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

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

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

⁸ 42 U.S.C. § 7661d(a).

if the 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 section 505(b)(2) if the Administrator determines that the petitioner has demonstrated

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

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

¹¹ 40 C.F.R. § 70.12(a).

¹² 40 C.F.R. § 70.12(a)(2).

¹³ If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id.*

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

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

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.

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

C. New Source Review

The major New Source Review (NSR) program encompasses two core types of preconstruction permit requirements for major stationary sources. CAA title I, part C establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the National Ambient Air Quality Standards (NAAQS) and for other pollutants regulated under the CAA.²⁹ CAA title I, part D establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment.³⁰ The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that State PSD programs must meet to be approved as part of a State Implementation Plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA's Federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA's regulations specifying requirements for State NNSR programs are contained in 40 C.F.R. § 51.165.

While CAA title I, parts C and D address the major NSR program for major sources, CAA section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. The EPA commonly refers to this program as the "minor NSR" program. States must also develop minor NSR programs, along with the major source programs, to attain and maintain the NAAQS. The Federal requirements for State minor NSR programs are outlined in 40 C.F.R. §§ 51.160–51.164. These Federal requirements for minor NSR programs are less prescriptive than those for major sources and, as a result, there is a larger variation of requirements in EPA-approved State minor NSR programs than in major source programs.

The EPA partially approved NCUAQMD's PSD program as part of the California SIP for all pollutants other than nitrogen oxides (NO_x) and particulate matter <2.5 µm in diameter (PM_{2.5}), as well as PM_{2.5} precursors.³¹ NCUAQMD's major and minor NSR provisions, as

²⁸ 40 C.F.R. § 70.13.

²⁹ 42 U.S.C. §§ 7470–7479.

³⁰ 42 U.S.C. §§ 7501–7515.

³¹ See 40 C.F.R. §§ 52.220(c)(153)(ii)(B), (155)(v)(B), 52.270(b)(2); 50 Fed. Reg. 30941 (July 31, 1985). Although NCUAQMD has amended its local regulations governing its NSR program after the EPA approved those rules into the SIP, the 1985 version of those regulations remains the version that is incorporated into the federally enforceable SIP.

incorporated into the California SIP, are contained in portions of NCUAQMD Regulation I, Rules 200 and 220. The EPA promulgated two limited Federal Implementation Plans (FIPs) that govern the PSD program for NO_x and PM_{2.5} (and PM_{2.5} precursors) to fill in the gaps of NCUAQMD's SIP-approved PSD program. Those FIPs incorporate the provisions of 40 C.F.R. § 52.21 into the California SIP for NCUAQMD.³²

If the EPA has approved a State's title I permitting program or if a permitting authority has been delegated authority to implement a Federal title I permitting program (whether PSD, NNSR, or minor NSR), NSR permits issued following public notice and the opportunity for public comment and judicial review establish the NSR-related "applicable requirements" for the purposes of title V. As with "applicable requirements" established through other CAA authorities, the terms and conditions of those permits should be incorporated into a source's title V permit without a further round of substantive review as part of the title V process. The EPA has explained and reiterated this interpretation in numerous orders.³³ The EPA also recently proposed rule revisions to more clearly reflect this approach, and that proposed rulemaking explains at length the legal and policy underpinnings of this approach.³⁴ Accordingly, the EPA will generally not consider the merits of a permitting authority's NSR permitting decisions in a petition to object to a source's title V permit.³⁵ Rather, any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

³² See 40 C.F.R. 52.270(b)(2)(iv) and (v); 76 Fed. Reg. 48006 (Aug. 8, 2011); 82 Fed. Reg. 14608 (Mar. 22, 2017).

³³ See, e.g., *In the Matter of Big River Steel, LLC*, Order on Petition No. VI-2013-10 at 8–20 (Oct. 31, 2017) (*Big River Steel Order*).

³⁴ See 89 Fed. Reg. 1150, 1160–84 (Jan. 9, 2024).

³⁵ See *Big River Steel Order* at 8–9, 14–20. However, as the EPA noted in the *Big River Steel Order*, there may be circumstances that "warrant a different approach." *Big River Steel Order* at 11 n.20. The preamble to the proposed Applicable Requirements Rule includes a summary of the different fact patterns in which EPA has (or has not) applied this approach. See 89 Fed. Reg. at 1163–64, 1165–70. Additionally, even in situations where this approach applies, the EPA does view monitoring, recordkeeping, and reporting to be part of the title V permitting process and will therefore continue to review whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in a preconstruction permit. See, e.g., *In the Matter of South Louisiana Methanol, LP*, Order on Petition Nos. VI-2016-24 and VI-2017-14 at 10–11 (May 29, 2018) (*South Louisiana Methanol Order*); *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20. Moreover, as the EPA has explained, "[a] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the 'applicable requirement' remains the terms and conditions of the issued preconstruction permit and they should be included in the source's title V permit." *Big River Steel Order* at 19.

III. BACKGROUND

A. The Humboldt Redwood Company Facility

Humboldt Redwood Company, LLC owns and operates the HRC facility, a combined lumber manufacturing and electric generating facility in Scotia, California.³⁶ This stationary source of air pollution was initially constructed in 1989. The HRC facility consists of three wood waste fired boilers, each capable of contributing up to 150,000 pounds of steam per hour (equivalent to 235 million British thermal unit (MMBtu) of heat input per hour) to three steam turbine generators to produce electricity for internal use and sale. The HRC facility has a total rated power output of 57.5 megawatts. For each boiler, PM₁₀ and PM_{2.5} from the combustion process are controlled with a mechanical multiclone followed by an electrostatic precipitator (ESP). The HRC facility controls NO_x and carbon monoxide (CO) by a forced overfire air system. The HRC facility is a title V major source of PM₁₀, PM_{2.5}, NO_x, and CO.

B. Permitting History

NCUAQMD first issued a title V permit to HRC in 1998. On April 12, 2023, HRC applied for three authorizations to construct a modification to the HRC facility (to allow for the installation of a multiclone control as a replacement of an existing cyclone system on three boilers) as well as a title V permit modification (incorporating the terms of the authorizations to construct).³⁷ On July 24, 2024, NCUAQMD published notice of a draft permit, subject to a public comment period that ended on August 26, 2024. On September 24, 2024, NCUAQMD submitted the proposed permit, along with its responses to public comments (RTC), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on November 7, 2024, during which time the Agency did not object to the proposed permit. On November 14, 2024, NCUAQMD issued the three authorizations to construct and separately finalized the modification to the title V Permit. On December 17, 2024, NCUAQMD further revised the title V Permit, which NCUAQMD posted to the NCUAQMD website and provided to the EPA.

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.³⁸ The EPA's 45-day review period ended on November 7, 2024. Thus, any petition seeking the EPA's

³⁶ The Permit was issued to the Humboldt Redwood Company, LLC. The Petition, as well as certain portions of the Permit, refer to the Humboldt Sawmill Company, LLC (HSC), a related corporate entity that was listed as the permittee of the associated preconstruction permits discussed below.

³⁷ The three authorizations to construct and the title V permit described in this paragraph were processed during the same time period but issued in separate documents.

³⁸ 42 U.S.C § 7661d(b)(2).

objection to the Permit was due on or before January 6, 2025. The Petition was submitted by email on January 1, 2025. Therefore, the EPA finds that the Petitioners timely filed the Petition.

IV. EPA DETERMINATIONS ON PETITION CLAIMS

A. Claim 1: The Petitioners Claim That “Failure to Apply BACT in Response to a Substantial Increase in Post Project [Potential to Emit] PTE Violates Federally Approved District PSD Rules and Commits an Environmental Injustice.”

Petition Claim: The Petitioners claim that the PSD program requirement to install Best Available Control Technology (BACT) was applicable to the replacement of the boilers’ cyclones for multiclone control devices, and that the EPA must object to the Permit because it failed to include conditions to implement this requirement.³⁹

The Petitioners provide background on the demographics on the population surrounding the HRC facility to emphasize the point that NCUAQMD’s failure to require BACT for this project will harm local residents with a disproportionate impact on low-income youth, elders, and residents with heart and lung disease.⁴⁰

The Petitioners claim that NCUAQMD Rules 110 and 220 require BACT when modifications of existing facilities increase PTE.⁴¹ The Petitioners disagree with several points of NCUAQMD’s engineering evaluation, in which NCUAQMD concluded that there would be no change in emissions. Specifically, the Petitioners disagree that the HRC facility’s pre-project PTE should be calculated based on the maximum hourly heat rating of each boiler operating for 8,760 hours per year and that the replacement of the existing boiler cyclones with multiclones is a replacement with devices of similar size, capacity, and pollution collection efficiency.⁴²

The Petitioners state:

40 CFR 70.2 defines PTE as “the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation . . . shall be treated as part of its design if the limitation is enforceable by the Administrator.” HSC’s cyclones are part of its physical design which limit its capacity to emit pollutants by limiting the number of

³⁹ See Petition at 4–7.

⁴⁰ See *id.* at 4–5.

⁴¹ *Id.* at 5 (citing NCUAQMD Rule 110(a), Rule 220(a), (b); 40 C.F.R. § 52.220(c)(155)(v)(B)).

⁴² *Id.* at 7 (citing NCUAQMD Engineering Evaluation, Humboldt Sawmill Company, LLC Multiclone Replacement – Boiler A (Nov. 13, 2024)).

boilers that operate at one time. This limitation is federally enforceable because failure to shut down and clean up the ESPs would result in violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Major Source Industrial Boilers particulate emissions and opacity operating limits. 40 CFR 63 Subpart DDDDD.⁴³

The Petitioners suggest that frequent shutdowns at the HRC facility required the redundancy of three boilers to generate two boilers' worth of electricity and that this was a physical and operational limit on the HRC facility's pre-project PTE. The Petitioners reference a June 20, 2018, letter from HRC to NCUAQMD that explains that one of the boilers, which was previously not in operation, was being brought back online to fill in during maintenance shutdowns of two other boilers. The Petitioners provide that the three boilers' continuous emission monitoring system records from 2018–2024 show a pattern of rotating operation of the three boilers.⁴⁴ The Petitioners suggest that NCUAQMD's calculation of the pre-project PTE fails to account for the "operational and design limitations posed by the cyclones, requiring three boilers to generate two boilers' worth of electricity."⁴⁵

The Petitioners contend that the HRC facility's PTE must be based on the operational capacity of the whole emissions unit, including the boiler, cyclone, and ESP.⁴⁶ The Petitioners claim that replacing cyclones with multiclones for the purpose of increasing efficiency and capacity and decreasing the frequency of shutdowns for ESP maintenance downtime would result in a significant increase in maximum emissions given that the replacements would allow all three boilers to function full time. The Petitioners suggest that NCUAQMD's conclusion that the post-project PTE will not change "ignores the superior capacity and pollution collection efficiency of multiclones . . . and the significant increase in maximum emissions that would occur if Boilers A, B, and C went from a rotating dyad to a full time triad."⁴⁷ The Petitioners propose that "[g]iven the limitations posed by the cyclones, the net pre-project PTE is double this amount and the net post-project PTE is triple this amount, representing an increase of CO, PM, and NO_x greater than the Significance Thresholds in District Rule 110 E.1. Table 1."⁴⁸

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

Claim 1 challenges NCUAQMD's determination that minor NSR requirements, as opposed to major NSR requirements (including BACT), are the applicable requirements of the SIP that apply to the HRC facility's project to replace the cyclone with a multiclone

⁴³ *Id.* at 6.

⁴⁴ *Id.*

⁴⁵ *Id.* at 7.

⁴⁶ *Id.* at 6.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.*

in each boiler line. Claim 1 raises the question whether challenges to permit conditions based on NSR preconstruction permitting authority under title I of the CAA should be considered by the EPA in addressing a petition to object to a title V operating permit under CAA section 505(b)(2).

As noted in section II.C of this Order, the EPA’s position on this issue can be summarized as follows: if a permitting authority authorizes construction by issuing a title I NSR permit that was subject to public notice and the opportunity for public comment and judicial review, the terms and conditions of that NSR permit define the “applicable requirements” of the SIP for purposes of title V permitting. As with “applicable requirements” established through other CAA authorities, the terms and conditions of the NSR permit should be included in a source’s title V permit without a further round of substantive review as part of the title V process. This interpretation is explained more fully in the proposed Applicable Requirements Rule, the *Big River Steel Order*, and many subsequent orders, including the *South Louisiana Methanol Order*.⁴⁹

The *South Louisiana Methanol Order* addressed a procedurally similar situation. There, the EPA explained:

In this case, those emissions units at the site required to undergo PSD review are found in the PSD permit for [South Louisiana Methanol]. This PSD permit—Permit No. PSD-LA780(M-1)—was issued in a separate permit document from the title V permit, pursuant to regulations approved by the EPA under title I of the CAA. As such, this PSD permit, including the BACT limits established in that permit, establishes the NSR-related “applicable requirements” that must be incorporated into the title V permit. The fact that the PSD permit was finalized at the same time as the title V permit does not affect this determination. Therefore, the task of LDEQ in issuing or modifying the title V permit is to incorporate the terms and conditions of the underlying title I permit (PSD-LA-780(M-1)), and to ensure that the title V permit contains adequate monitoring, recordkeeping, and reporting requirements to assure compliance with those terms and conditions. Any challenges to the validity of decisions made during the PSD permit proceeding—including the determination of BACT and the establishment of BACT limits—should have been raised through the appropriate title I avenues or through an enforcement action. See *Big River Steel Order* at 15–20; La. R.S. 30:2050.11 (administrative adjudicatory hearings); La. R.S. 30:2050.21 (judicial review, appeal). The Petitioners may not now use the title V petition process to raise concerns

⁴⁹ See 89 Fed. Reg. at 1160–84. The EPA has applied the same approach to questions regarding PSD applicability in cases in which a title V permit and minor NSR permit were issued at the same time. See, e.g., *In the Matter of Yuhuang Chemical Inc. Methanol Plant*, Order on Petition Nos. VI-2017-5 & VI-2017-13 at 7-8 (Apr. 2, 2018).

over those PSD decisions. Accordingly, the challenges in Claim IV of the Petition to the BACT determinations made in Permit No. PSD-LA-780(M1) are denied.⁵⁰

Here, too, NCUAQMD issued three authorizations to construct the modifications at the HRC facility. These NSR permits—Permit Nos. ATC#001241-1, ATC#001262-1, ATC#001263-1—were issued in a separate permit document from the title V permit, pursuant to regulations approved by the EPA under title I of the CAA. As such, the terms and conditions of those NSR permits establish the NSR-related “applicable requirements” that must be incorporated into the Permit. To the extent the public wished to challenge those NSR-related decisions, the public had other available avenues to do so. For example, the minor NSR authorizations in the Permit were subject to legal challenge through the NCUAQMD Hearing Board administrative appeal process, followed by an appeal in State court.⁵¹ Alternatively, the public could pursue enforcement if the public believes HRC violated requirements of the SIP.⁵² Unless and until the relevant underlying NSR permit terms are revised, the terms of those underlying NSR permits establish the “applicable requirements” that should be incorporated into the Permit without further substantive review. Here, the Petitioners do not claim that NCUAQMD failed to properly incorporate into the Permit the terms and conditions of a preconstruction permit “issued pursuant to regulations approved or promulgated through rulemaking under title I.”⁵³ Thus, the Petitioners have failed to demonstrate the title V Permit is “not in compliance with the applicable requirements,” and therefore the EPA denies the Petitioners’ request for an objection on Claim 1.⁵⁴

Alternatively, even if it were appropriate for the EPA to consider the merits of the Petitioners’ challenges to NCUAQMD’s NSR permitting decisions in the present title V petition Order, the Petitioners have not demonstrated a basis for the Agency to object to the Permit.

The PSD program requirement to install BACT only applies to the construction of a new major stationary source or a major modification at an existing stationary source.⁵⁵ Thus, to substantiate a claim that HRC was required to install additional pollution controls reflecting BACT, the Petitioners needed to demonstrate that replacing the cyclones with multiclones was a “major modification” subject to the PSD permit program.

As the EPA has previously stated:

⁵⁰ *South Louisiana Methanol Order* at 9–10 (some citations omitted).

⁵¹ See NCUAQMD Regulation VI (Hearing Board Procedures); Cal. Health and Safety Code §§ 42302.1 (appeals to hearing board), 40864 (judicial review of hearing board decision).

⁵² 42 U.S.C. § 7604(a)(1), (a)(3).

⁵³ 40 C.F.R. § 70.2 (definition of “applicable requirement,” paragraph (1)).

⁵⁴ 42 U.S.C. § 7661d(b)(2).

⁵⁵ NCUAQMD Regulation 200; 42 U.S.C. § 7479(2)(C); 40 C.F.R. § 51.166.

[W]here a petitioner’s request that the Administrator object to the issuance of a title V permit is based in whole, or in part, on a permitting authority’s alleged failure to comply with the requirements of its approved PSD program (as with other allegations of inconsistency with the Act), the burden is on the petitioner to demonstrate to the Administrator that the permitting decision was not in compliance with the requirements of the Act. Specifically in the case where a permitting authority determined that a project was not subject to PSD requirements, the petitioner must demonstrate that a project resulted in a “major modification,” including the requisite emission increases. The EPA has acknowledged that PSD applicability determinations are complex In particular, determining whether a significant emissions increase or a significant net emissions increase would occur in the context of PSD can be particularly challenging. . . . Nevertheless, examining whether the requisite emissions increases would occur are basic elements of a PSD applicability determination. The EPA is under no duty to object where, as is the case here, commenters had not raised all of these elements before the state permitting authority. Further, where petitioners do not provide an adequate demonstration with regard to these elements, as is the case here, the EPA is under no duty to object.⁵⁶

As explained in section II.C of this Order, for the pollutant CO, the 1985 version of NCUAQMD Rule 220 (which the EPA approved into the California SIP) governed the source obligations under PSD in 2024. NCUAQMD Rule 220 references and incorporates the August 7, 1980, version of the EPA’s PSD program regulation at 40 C.F.R. § 52.21.⁵⁷ Thus, for purposes of the modification in 2024, a “major modification” is defined as a physical change or change in the method of operation at an existing major stationary source that causes a significant “net emissions increase” at that source of any pollutant regulated under the CAA.⁵⁸

The term “net emissions increase” is defined as:

[T]he amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases

⁵⁶ *In the Matter of Appleton Coated, LLC, Combined Locks Mill*, Order on Petition Nos. V-2013-12 and V-2013-15 at 15 (Oct. 14, 2016) (citing *In the Matter of Georgia Pacific, Consumer Products LP Plant*, Order on Petition No. V-2011-1 at 6–7 (July 23, 2012); *In the Matter of CEMEX, Inc., Lyons Cement Plant*, Order on Petition No. VIII-2008-01 at 3 (Apr. 20, 2009)).

⁵⁷ An introductory section of the NCUAQMD regulations titled “Chapter II – Permits” specifically identifies the August 7, 1980, version of 40 C.F.R. § 52.21 as referenced or incorporated by various other provisions within NCUAQMD Rule 220. Both Chapter II and the relevant sections of Rule 220 are incorporated into the California SIP. See 40 C.F.R. § 52.220(c)(155)(v)(B).

⁵⁸ 40 C.F.R. § 52.21(b)(2)(i) (1980); 45 Fed. Reg. 52676, 52736 (Aug. 7, 1980).

and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.⁵⁹

The term “actual emissions” is defined as:

[T]he actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subparagraphs (ii)—(iv) below. (ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which [precedes] the particular date and which is representative of normal source operation. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. (iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit. (iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the [PTE] of the unit on that date.⁶⁰

The EPA has historically applied the text in these provisions to require that one must first determine whether the physical or operational change in question would itself result in an increase in actual emissions. If it would not, the EPA has reasoned that such a change could not result in a “net emissions increase.” In determining the difference in emissions from the change at the unit, the 1980 version of these regulations was generally understood to require that the actual emissions after the change be based on the PTE of the modified units, based on the language in paragraphs (iii) and (iv) above.

If the difference between emissions before and after the modification is “significant,” the next step under this 1980 version of 40 C.F.R. § 52.21 is to identify and quantify any other prior increases and decreases in actual emissions that would be contemporaneous with the particular change and otherwise creditable. The final step is to total the increase from the particular change with the other contemporaneous increases and decreases. If the total exceeds zero, a “net emissions increase” would result from the change.

By contrast, for the pollutants PM_{2.5} and NO_x, the Federal rules that govern the applicability of PSD are those in the modern version of 40 C.F.R. § 52.21, pursuant to the partial FIP described in section II.C of this Order. The current version of this regulation, adopted in 2002, more explicitly requires a two-step process similar to that which the

⁵⁹ 40 C.F.R. § 52.21(b)(3) (1980); 45 Fed. Reg. at 52736.

⁶⁰ 40 C.F.R. § 52.21(b)(21) (1980); 45 Fed. Reg. at 52737.

EPA had applied under the 1980 version of this regulation, but the current regulations contain different requirements for calculating the rate of emissions before and after the change. The physical or operational change (*i.e.*, project) must result in a “significant emissions increase” of a regulated NSR pollutant and a “significant net emissions increase” of that pollutant from the source.⁶¹ Federal regulations define a “significant emissions increase” as “an increase in emissions that is significant (as defined in paragraph (b)(23) of this section) for that pollutant.”⁶² Further, the regulations define a “significant net emissions increase” as “the amount by which the sum of the following exceeds zero: (A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv) of this section; and (B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.”⁶³

The Petitioners have not demonstrated that the multiclone replacement project constituted a major modification under the applicable regulations described above, which the Petitioners generally fail to acknowledge or evaluate. As an initial matter, the Petitioners do not show that the baseline emissions period selected for analysis in NCUAQMD’s engineering evaluation failed to comply with these requirements. NCUAQMD used the previous two years (2022–2023) to calculate the pre-project actual emissions for Boilers A, B, and C.⁶⁴ The Petitioners do not demonstrate that this selection was inconsistent with the regulatory requirements for calculating baseline emissions described above. Instead of addressing whether NCUAQMD’s calculation of baseline emissions was inconsistent with the relevant regulatory requirements, the Petitioners suggest an alternative baseline emissions value, generally asserting that the “net pre-project PTE is double” the annual emission limits of a single boiler.⁶⁵ However, the Petitioners fail to demonstrate that such a baseline value is compelled by the relevant regulations. Similarly, the Petitioners do not address the applicable rules for projecting post-project emissions. Instead of addressing whether NCUAQMD’s calculation of post-project emissions was inconsistent with the relevant regulatory requirements, the Petitioners again suggest an alternative post-project emissions value, generally asserting that the “net post-project PTE is triple” the annual emission limits of a single boiler.⁶⁶ These conclusory assertions—untethered to the relevant legal framework and generally unsupported by technical analysis—do not meet the Petitioners’ burden to demonstrate that the project involved a significant emissions

⁶¹ 40 C.F.R. § 52.21(b)(2)(i).

⁶² 40 C.F.R. § 52.21(b)(40).

⁶³ 40 C.F.R. § 52.21(b)(3); *see* 40 C.F.R. § 52.21(b)(23) (defining “significant”).

⁶⁴ NCUAQMD Engineering Evaluation, Humboldt Sawmill Company, LLC Multiclone Replacement – Boiler A at 18–22 (Nov. 13, 2024); NCUAQMD Engineering Evaluation, Humboldt Sawmill Company, LLC Multiclone Replacement – Boiler B at 18–22 (Nov. 13, 2024); NCUAQMD Engineering Evaluation, Humboldt Sawmill Company, LLC Multiclone Replacement – Boiler C at 18–22 (Nov. 13, 2024).

⁶⁵ Petition at 7.

⁶⁶ *Id.*

increase, as required to determine whether PSD should apply, and therefore the Petitioners do not demonstrate that the Permit is missing applicable BACT requirements. In summary, the Petitioners focus simply on comparing what the Petitioners believe is the correct calculation of baseline (pre-project) actual emissions to post-project potential emissions, but the Petitioners do not demonstrate that their conclusion is compelled by the applicable regulations or that NCUAQMD's conclusion is inconsistent with those regulations.

Even if the Petitioners had demonstrated based on applicable regulations that the comparison of baseline (pre-project) actual emissions to post-project potential emissions would have resulted in a significant emissions increase, the second step of the PSD applicability analysis involves consideration of a significant net emission increase. The Petitioners' argument omits the necessary analysis of a significant net emission increase. Specifically, the Petitioners have not analyzed if there were "any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable," as required to determine whether PSD should apply.

In summary, even if it were appropriate for the EPA to consider the merits of the Petitioners' NSR-related challenges—a point the Agency does not concede—the Petitioners have failed to demonstrate that the Permit does not assure compliance with any applicable requirements related to NSR because the Petitioners have failed to demonstrate that this project triggered PSD. The Petitioners have not put forth the adequate analysis to determine that the project would have resulted in a major modification and that, as a result, the Permit is missing applicable requirements. Therefore, the EPA denies the Petitioners' request for an objection on Claim 1.

B. Claim 2: The Petitioners Claim That "Reasonable Possibility Reporting of Post Project Emissions is Omitted from the Permit."

Petition Claim: The Petitioners assert that "[i]f EPA finds that BACT is not applicable, the Reasonable Possibility Standard still applies to this project."⁶⁷ The Petitioners suggest that fuel supply and high market prices for renewable energy in California create a reasonable possibility that HRC would take advantage of the increase in net boiler operating hours provided by the multiclones and cause a significant emissions increase as defined in 40 C.F.R. § 52.21(b)(23).⁶⁸ The Petitioners opine that while the Permit requires annual emissions reporting, it does not specify that this reporting requirement is also associated with the reasonable possibility obligations in 40 C.F.R. § 52.21(r)(6)(iv). The Petitioners surmise that "including [the reasonable possibility reporting obligations] as an applicable requirement is important to increase the awareness of the source,

⁶⁷ *Id.* (citing 40 C.F.R. § 52.21(r)(6)(iv)).

⁶⁸ *Id.*

[NCUAQMD], and the public that [NCUAQMD] has a duty to apply BACT if HSC's reported emissions increase."⁶⁹

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

The Petitioners have not demonstrated that the "reasonable possibility" reporting requirements in 40 C.F.R. § 52.21(r)(6)(iv)⁷⁰ were triggered by the project to install the multiclone control and therefore the Petitioners have not demonstrated that these reporting requirements are applicable requirements that must be included in the Permit.

As explained in section II.C of this Order, for the pollutant CO, the 1985 version of NCUAQMD Rule 220 (which the EPA approved into the California SIP) governs the source obligations under PSD. NCUAQMD Rule 220 references and incorporates the August 7, 1980, version of 40 C.F.R. § 52.21.⁷¹ That prior version of the EPA's regulations does not include any of the "reasonable possibility" reporting obligations that are now codified at 40 C.F.R. § 52.21(r)(6), which were promulgated in 2002.⁷² Thus, those reporting requirements are not applicable requirements for CO.

For the pollutants PM_{2.5} and NO_x, the Federal rules that govern the source obligations under PSD are those in the modern version of 40 C.F.R. § 52.21, pursuant to the partial FIP described in section II.C of this Order. The reporting obligations in 40 C.F.R. § 52.21(r)(6) only apply "in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of this section for calculating projected actual emissions."⁷³ Notably, the reporting requirements of 40 C.F.R. § 52.21(r)(6) are not applicable if the owner or operator elects to calculate post-project emissions using PTE (instead of projected actual emissions), as allowed by 40 C.F.R. 52.21(b)(41)(ii)(D).

⁶⁹ *Id* at 8.

⁷⁰ This regulation states, in part: "If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the unit's annual emissions during the calendar year that preceded submission of the report." 40 C.F.R. § 52.21(r)(6)(iv).

⁷¹ An introductory section of the NCUAQMD regulations titled "Chapter II – Permits" specifically identifies the August 7, 1980, version of 40 C.F.R. § 52.21 as referenced or incorporated by various other provisions within NCUAQMD Rule 220. Both Chapter II and the relevant sections of Rule 220 are incorporated into the California SIP. *See* 40 C.F.R. § 52.220(c)(155)(v)(B).

⁷² *See* 67 Fed. Reg. 80186 (Dec. 31, 2002).

⁷³ 40 C.F.R. § 52.21(r)(6). Note that the paragraphs cross-referenced by this regulation, which were formerly codified at 40 C.F.R. § 52.21(b)(41)(a)–(c), were recently re-codified at 40 C.F.R. § 52.21(b)(41)(A)–(C).

Here, the Petitioners have not demonstrated that HRC elected to calculate post-project NO_x or PM_{2.5} emissions using the projected actual emissions methodology specified in 40 C.F.R. § 52.21(b)(41)(ii)(A)–(C). Instead, according to the Petitioner’s own analysis (discussed in Claim 1) and portions of NCUAQMD’s engineering evaluation, it appears that post-project emissions estimates were based on an analysis of post-project PTE.⁷⁴

In summary, the Petitioners have failed to demonstrate that the Permit should contain provisions to assure compliance with the reasonable possibility requirements in 40 C.F.R. § 52.21(r)(6). For the pollutant CO, these reporting requirements are not applicable, and for the pollutants PM_{2.5} and NO_x, the Petitioners have not demonstrated that these reporting requirements were triggered by the multiclone project. Therefore, the EPA denies the Petitioners’ request for an objection on Claim 2.

C. Claim 3: The Petitioners Claim That “Annual Boiler Emissions Limits Far Exceed PSD Significance Thresholds, Don’t Assure Compliance with Applicable Requirements and Mislead the Source, the District, and the Public about How Much Pollution HSC is Allowed to Emit.”

Petition Claim: The Petitioners argue that the basis for HRC’s avoidance of PSD and BACT applicability—specifically, statements that proposed project actual emissions will not increase—“creates an applicable requirement under New Source Review . . . that HSC not increase its emissions above PSD significance thresholds, and a need for limits in the permit which ensure compliance.”⁷⁵ The Petitioners state that the Permit’s annual emission limits for each boiler are not consistent with this obligatory applicable requirement. The Petitioners request that the EPA object to the Permit “and require a facility wide limit on boiler emissions, hours of operation, or fuel combustion that will keep net boiler emissions below the PSD threshold.”⁷⁶

EPA Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

As a preliminary matter, this claim was not raised with reasonable specificity during the public comment period, as required by CAA section 505(b)(2) and 40 C.F.R. §§ 70.8(d) and 70.12(a)(2)(v). In addition, the Petitioners have not demonstrated that it was impracticable to raise this objection within such period, and there is no basis for finding that grounds for such objection arose after such period. This presents an independent basis for the EPA to deny Petitioners’ request for an objection on this claim.

⁷⁴ NCUAQMD Engineering Evaluation, Humboldt Sawmill Company, LLC Multiclone Replacement – Boiler A at 20 (Nov. 13, 2024); NCUAQMD Engineering Evaluation, Humboldt Sawmill Company, LLC Multiclone Replacement – Boiler B at 20 (Nov. 13, 2024); NCUAQMD Engineering Evaluation, Humboldt Sawmill Company, LLC Multiclone Replacement – Boiler C at 20 (Nov. 13, 2024).

⁷⁵ Petition at 8.

⁷⁶ *Id.*

Even if this Petition claim had been adequately raised during the public comment period, it would present no basis for an EPA objection. The EPA can only object to title V permits that do not comply with the CAA. More specifically, the CAA provides the EPA with authority to object to permits that contain provisions “not in compliance with the applicable requirements of [the CAA], including the requirements of an applicable implementation plan.”⁷⁷

The Petitioners generally cite to 40 C.F.R. § 52.21 as the “applicable requirement” that would “require a facility wide limit on boiler emissions, hours of operation, or fuel combustion that will keep net boiler emissions below the PSD threshold.”⁷⁸ The Petitioners do not identify any specific applicable requirement under either NCUAQMD’s SIP or the FIP at 40 C.F.R. § 52.21 that would automatically transform emission estimates upon which a PSD non-applicability decision was based into binding, enforceable emission limits. There is no such requirement in the EPA’s regulations. The Petitioners provide no additional information in support of this claim. Therefore, the EPA denies Petitioners’ request for an objection on Claim 3.

D. Claim 4: The Petitioners Claim That the “2029 Expiration Date Continues District’s Long Standing Deprivation of Public Right to Comment on Title V Permit Renewals.”

Petition Claim: The Petitioners state that the Permit, first issued in 1998, has never been renewed. The Petitioners opine that NCUAQMD’s “failure to renew HSC’s Title V permit and provide public notification and opportunity for public comment has deprived the public of its rights under 40 CFR 70.7(h) for over 20 years.”⁷⁹ The Petitioners request that the EPA object to the Permit “on the basis of the 2029 expiration date” listed in the Permit.⁸⁰ The Petitioners express concern that including a 2029 expiration date in the Permit could be interpreted by the public as evidence that the Permit has been renewed, when in fact it has not been renewed in 20 years.⁸¹

EPA Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

The Petitioners specifically request the EPA object to the Permit on the basis of the 2029 expiration date that was listed on the Permit. This claim was rendered moot when NCUAQMD revised the Permit to remove the erroneous 2029 expiration date. NCUAQMD then provided that revised final Permit to the EPA and made it available on NCUAQMD’s public website on December 17, 2025. Thus, even assuming for the sake of

⁷⁷ 42 U.S.C. § 7661d(b)(1), (2).

⁷⁸ Petition at 8.

⁷⁹ *Id.*

⁸⁰ *Id.* at 9.

⁸¹ *Id.*

argument that including the incorrect expiration date in the Permit could have presented a basis for the EPA's objection to the Permit, this issue has been resolved.

The Petitioners do not identify any other way in which NCUAQMD's delayed issuance of a renewal permit resulted in the specific permit action that is the subject of the Petition failing to satisfy the CAA or the EPA's implementing regulations at 40 C.F.R. part 70. Therefore, the EPA denies the Petitioners' request for an objection on Claim 4.⁸²

V. CONCLUSION

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

Dated: May 5, 2026



Lee Zeldin
Administrator

⁸² Although the Petitioners have not identified any basis for the EPA to object to the Permit at this time, the Agency observes that per CAA and regulatory timelines, permitting authorities are obligated to issue final permits on title V permit renewal applications within 18 months of receipt of application. 42 U.S.C. § 7661b(c); 40 C.F.R. § 70.4(b)(6), 70.7(a)(2). The EPA encourages NCUAQMD to prioritize issuance of timely permit renewals.