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Title V/Clean Air Act: U.S. Environmental Protection Agency Addresses Petition Objecting to Natural Gas-Fired Power Generating Facilities

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The Administrator of the United States Environmental Protection Agency (“EPA”) issued a May 10th Order responding to a Petition (“Petition”) requesting objection to the issuance of Title V Operating Permits for the Colton Power, LP, Drews and Century Power Generating Facilities in San Bernardino County, California.

The Petition had been submitted by the Sierra Club, Center for Community Action, and Environmental Justice (collectively, “Sierra Club”).

The Petition requested that the EPA Administrator object to the proposed permits issued by the South Coast Air Quality Management District (“SCAQMD”).

The Clean Air Act Title V program includes a provision that allows the EPA Administrator to object to a Title V permit issued by a delegated state. In other words, Congress provided EPA a Clean Air Act oversight role by mandating that every Title V permit be subject to a 45-day EPA review period before the Title V permit is finalized.

The EPA Administrator can object to a Title V permit at two points.

An objection may be made during the 45-day review period and in response to a public petition within 60 days after the end of the 45-day review period. Further, even if EPA fails to object to a proposed Title V permit, a right to petition the agency to reconsider its failure to object to the permit is potentially available. However, only those persons who have submitted comments to the draft permit during the applicable public comment period have a right to petition.

The right to petition EPA arises at the close of the agency’s 45-day review period.

The Order denying the Petition for Objection to Permit (“Order”) states that both the Century Generating Station and Drews Generating Station are natural gas-fired power generating facilities that provide peaking power to the grid. Each facility is stated to consist of four 10 megawatt simple cycle gas turbines.

The turbines are equipped with selective catalytic reduction and an oxidation catalyst. The potential to emit for each facility’s nitrogen oxides emissions is greater than the applicable Title V major source threshold (10 tons per year) making them subject to Title V requirements.

SCAQMD submitted the proposed Title V permits to EPA on September 10, 2019. Sierra Club filed their Petition on November 24, 2020.

Sierra Club alleges deficiencies to the permits which include:

- SCAQMD Title V Rules Require that Renewal Permits Include Conditions to Assure Compliance with All Regulatory Requirements at the Time of Permit Issuance, and Both Plants Must Comply with Rule 1134 During the 5-Year Term of the Title V Renewal Permit
- Revisions to the Title V Permits for Both Plants are Needed to Ensure that the Plants Will Comply with Rule 1134 Requirements Starting January 1, 2024.

EPA rejects both arguments.

The basis for EPA's rejection of the arguments include:

- Rule 1134 has not been approved into SCAQMD's State Implementation Plan
- Rule 1134 is therefore not an applicable requirement necessary to be included in the Title V permits
- Even if Rule 1134 is more stringent than the current requirement and will probably be approved (according to Sierra Club) its cited guidance does not mandate including it in the Title V permits
- Failure to include in a Title V permit regulatory requirements that are not applicable requirements of the Clean Air Act is not a ground for EPA objection

A copy of the Order can be downloaded [here](#).