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Title V/Clean Air Act: U.S. Environmental Protection Agency Order Granting Petition Objecting to Pecos County, Texas, Gas Plant Permit

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The Administrator of the United States Environmental Protection Agency (“EPA”) issued a January 28th Order granting a Petition objecting to the issuance of a Clean Air Act Title V Operating Permit (“Permit”) for the ETC Waha Gas Plant (“ETC”) in Pecos County, Texas. See Petition No. VI-2020-3.

The Petition had been submitted by the following organizations:

- Environmental Integrity Project
- Sierra Club
- Texas Campaign for the Environment

(collectively “Petitioners”)

The federal Clean Air Act Title V program includes a provision that allows the EPA 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 review period before the Title V permit is finalized.

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

Any 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.

ETC is described as a facility in Pecos County, Texas, that separates condensate and other impurities from raw natural gas. The main products produced at the facility are stated to be methane and natural gas liquids.

ETC is described as a major source of:

- Volatile Organic Compounds (“VOCs”)
- Sulfur dioxide
- Nitrogen oxides

- Carbon monoxide

ETC is subject to Title V of the Clean Air Act. Further, emission units within the facility are stated to be subject to preconstruction permitting requirements and various New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

Petitioners raised the following objections:

- Claim A: The Petitioners Claim That “The Proposed Permit Must Include a Schedule Addressing Noncompliance at the Waha Gas Plant.” (EPA grants this request for an objection on the basis that the Petitioners have demonstrated that the permit record is not clear as to whether the source is or is not in compliance with the applicable requirements relevant to its annual SO₂ emissions from its acid gas flare and, thus, whether the Title V Permit must include a compliance schedule.)
- Claim B: The Petitioners Claim That “The Proposed Permit Fails to Identify Any Emission Unit(s) Authorized by One PBR and Three Standard Exemptions Incorporated as Applicable Requirements.” (EPA grants this request for an objection on the basis that neither the Permit nor the permit record identifies the emission units to which the PBR at 30 Tex. Admin. Code § 106.492 and Standard Exemptions 66 apply and therefore cannot assure compliance of these applicable requirements.)
- Claim C: The Petitioners Claim That “The Permit Fails to Establish Monitoring, Testing, and Recordkeeping Provisions that Assure Compliance with PBR and Standard Exemption Requirements.” (EPA grants this request for an objection as certain referenced provisions are stated to not contain specific monitoring, recordkeeping, and reporting requirements.)
- Claim D: The Petitioners Claim That “The Proposed Permit Fails to Include Specific Enforceable Terms and Conditions for Applicable NSPS Requirements.” (EPA grants this request for an objection because the Permit is stated to be deficient by failing to identify specific regulatory citations which provisions in Subpart Dc establish emission limitations, standards, and/or equipment specifications for which emission sources at ETC.)
- Claim E: The Petitioners Claim That “The Proposed Permit’s Incorporation of ETC’s PBR Registrations is Deficient.” (EPA grants this request for an objection stating that the Final Permit and the PBR Supplemental Table contain no direct reference to PBRs listed in the Response to Comment and does not include or incorporate all requirements that are applicable to the facility.)

As outlined in the Order, EPA grants the Petition.

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