

Title V/Clean Air Act: U.S. Environmental Protection Agency Grants Petition Objecting to Cambria County, Pennsylvania, Power Plant



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

07/05/2022

The Administrator of the United States Environmental Protection Agency (“EPA”) issued a June 7th Order granting a Petition objecting to the issuance of a Clean Air Act Title V Operating Permit (“Permit”) to the Colver Power Plant in Cambria County, Pennsylvania. See Petition No. III-2020-13.

The Petition had been submitted by the Sierra Club.

The federal 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 Colver Power Plant (“Facility”) is described as a waste coal-fired electrical generation plant. The Facility is stated to be mainly sourced by a circulating fluidized bed (“CFB”) waste coal-fired boiler. The boiler powers a single electrical generator. Emissions from the CFB are controlled by limestone fed into the fluidized bed.

The Facility is a major source of particulate matter, nitrogen oxide, sulfur dioxide, carbon monoxide, and carbon dioxide equivalent. It is also a minor source for volatile organic compounds (“VOCs”). Emission units within the Facility are also stated to be subject to various New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and other preconstruction permitting requirements.

Inter Power Ahlcon Partners LP (“IPAP”) submitted an application for renewal of the Facility’s Title V permit. The Pennsylvania Department of Environmental Protection (“DEP”) submitted the proposed

permit to EPA for its 45-day review. EPA did not object. DEP issued the final Title V renewal permit for the Facility on November 25, 2020.

Sierra Club raised an objection which argued:

. . . the Colver permit's monitoring regime does not ensure that the emissions restrictions are met.

Sierra Club argued that the Title V permit does not comply with Section 504(c) of the Clean Air Act and the implementing regulations at 40 C.F.R. § 70.6(a)(3)(i) and 70.6(c)(1) because it does not contain sufficient monitoring, recordkeeping, and reporting to assure compliance with the hourly VOC emission limit. This is based on the argument that the permit's stack testing regime in permit condition 011 of testing for VOCs every two years, or every three years if the Facility qualifies as a Low Emitting EGU, is too infrequent to comply with hourly VOC emission limits.

The objection also stated that DEP does not establish the hourly limits of CO₂ and O₂ levels in the permit's parametric monitoring scheme that are needed to ensure compliance with the hourly VOC limit.

EPA's basis for granting the Petition includes its determination that the Sierra Club demonstrated that the permit record does not establish a relationship between monitoring of O₂ and CO₂ and compliance with the hourly VOC emission limit. This is based on the federal agency's concern that neither the permit nor permit records specify the acceptable range of O₂ or CO₂ that would indicate compliance with the hourly VOC limit. It further concludes that the permit does not require the source to update the indicator range, if necessary, after each stack test.

EPA states:

As explained in previous orders, if a facility relies on parametric monitoring to assure compliance with an emission limit, the values for these parameters should be included in the permit.

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