



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

# Title V/Clean Air Act: U.S. Environmental Protection Agency Grants in Part and Denies in Part Petition Objecting to Berkeley County, South Carolina, Aluminum Reduction Facility Permit

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The Administrator of the United States Environmental Protection Agency (“EPA”) issued a November 7th Order (“Order”) granting in part and denying in part a Petition objecting to the issuance of a Clean Air Act Title V Operating Permit (“Permit”) for Century Aluminum of South Carolina, Inc. (“Century”) in Berkeley County, South Carolina. See Petition No. IV-2023-09.

Century is stated to own a primary aluminum reduction facility (“Facility”) that is the subject of the Petition.

The Petition was submitted by the Sierra Club and the Environmental Integrity Project (collectively, “Petitioners”).

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 Order states that the Century Facility produces high grade aluminum from aluminum oxide using an electrolytic process. Various pollutants are emitted from the Facility’s different emission units and subject to certain Clean Air Act requirements. These requirements include Title V and preconstruction permitting requirements.

The Facility's emissions include SO<sub>2</sub> from the green carbon plant. Further, emissions of particulate matter occur.

EPA states in the Order that it used EJScreen to assess key demographic and environmental indicators within a five-kilometer radius of the Century Facility. The Order provides the Environmental Justice Indices for the five-kilometer radius surrounding the Facility and their associated percentiles were compared to the rest of the State of South Carolina.

The Facility first obtained a Permit in 2001 which was last renewed in 2021. On January 23rd and January 27th Century submitted two applications to revise its Title V Permit. The SCDHEC submitted a proposed Title V Permit reflecting both permit revisions to EPA for its 45-day review on February 23rd. EPA did not object to the proposed Permit.

The Petitioners subsequently submitted their Petition which was deemed timely by EPA.

The Petitioners raised the following objections:

Claim 1: The Petitioners Claim that the Changes to the Coke Sulfur Content Permit Conditions Cannot be Processed as a Minor Permit Modification.

EPA grants the Petitioners' request for an objection on this claim.

EPA determines that the change violated an applicable requirement (i.e., the terms and conditions of preconstruction permits issued under Title I constitute "applicable permits for Title V purposes") and that the change should not have been undertaken through a Title V permit action regardless. Further, EPA states that the change established or changes a permit term or condition for which there is no corresponding underlying applicable requirement and that the source assumed to avoid an applicable requirement to which the source would otherwise be subject. Cited specifically, a federally enforceable emissions cap is stated to have been assumed to avoid classification as a modification under any provision of title I.

Claim 2: The PSD Construction Permit Cannot be Incorporated into the Title V Permit via an Administrative Permit Amendment Because SCDHEC Failed to Meet Applicable Public Notice Requirements.

EPA grants in part and denies in part a request for an objection on this claim.

EPA first notes that its authority to object only extends to the particular proposed Title V Permit before the agency for review (noting an alleged procedural defect in a separate permit action that does not result in substantive or procedural defects in the current Title V Permit cannot present a basis for objection to the current Title V Permit.) However, EPA does state that the Petitioners demonstrated that the public notice associated with the 2023 PSD permit did not:

. . . identify. . . the activity or activities involved in the permit action; [and] the emissions change involved in any permit modification. (Stating that the notice provided no information about the emission change involved in the permit action and did not indicate the magnitude, significance, relevance, or even direction of such changes.)

The Administrator ultimately grants in part and denies in part the Petition.

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