

# Title V/Clean Air Act: Petition to Object Filed Addressing Gunnison County, Colorado, Coal Mine Permit



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The Center for Biological Diversity and WildEarth Guardians (collectively, “CBD”) filed a Clean Air Act Title V Petition to Object (“Petition”) before the United States Environmental Protection Agency (“EPA”) related to Arch Coal, Inc. Energy.

The Title V Petition objects to a combined initial Title V Permit and Construction Permit (“Title V Permit”) issued by the Colorado Department of Public Health and Environment’s Air Pollution Control Division (“Division”) for the West Elk Coal Mine (“West Elk Mine”) in Gunnison County, Colorado.

Title V of the Clean Air Act requires certain stationary sources of air pollution to obtain Operating Permits. States that administer Title V do so through adopted implementation plans. These plans are submitted to and approved by the United States Environmental Protection Agency (“EPA”). The intent of a Title V permit is to organize in a single document all the requirements which apply to the permit holder.

42 U.S.C. § 7661 requires that states submit each proposed Title V permit to EPA for review. § 505(v)1 of the Clean Air Act requires that EPA object to the issuance of a proposed Title V permit in writing within 45 days of receipt of the proposed permit (and all necessary supporting documentation) if the federal agency determines that it was not in compliance with the applicable requirements under the Clean Air Act.

If EPA does not object to a permit, § 505(v)2 provides that any person may petition the EPA administrator, within sixty (60) days of the expiration of the 45-day review period to object to the permit.

The Petition states that the Division issued a final Title V Permit to Arch for the West Elk Coal Mine on December 8, 2023.

The West Elk Mine is described as an underground mine. It is stated to use a ventilation system which includes ventilation shafts as well as mine ventilation bore holes.

Coal is stated to be mined and conveyed to storage piles above ground where the coal is then crushed, screened, graded, processed, and otherwise handled. It is then stated to be conveyed to storage silos or other storage piles prior to being loaded onto trains for shipment.

The West Elk Mine is permitted to produce up to 8.5 million tons of coal annually.

Emissions from the West Elk Mine are stated to include:

- PM10
- PM2.5
- Sulfur Dioxides

- Nitrogen Dioxides
- Carbon Monoxides
- Volatile Organic Compounds
- Hazardous Air Pollutants

CBD states as grounds for objection to the issuance of the initial Title V Permit the following:

1. Fails to ensure the West Elk Mine operates in compliance with applicable major source permitting requirements under the Clean Air Act's Prevention of Significant Deterioration (PSD) permitting program set forth in the Colorado SIP. The Title V Permit fails to ensure that Arch Coal meets, among other requirements, best available control technology (BACT) limits on VOC emissions from the mine's ventilation system;
2. Fails to assure the West Elk mine utilizes maximum achievable control technology (MACT) to limit emissions of HAPs. The Title V Permit fails to meet Clean Air Act requirements to limit HAPs, in particular hexane.
3. Fails to ensure the West Elk Mine operates in compliance with the applicable VOC emission limits in the Title V Permit. The Title V Permit fails to contain any operational limits or standards to ensure Arch Coal operates in compliance.
4. Fails to require sufficient periodic monitoring of VOC emissions from the West Elk Mine ventilation system. The Title V Permit relies on vague and unenforceable monitoring requirements that do not constitute sufficient periodic monitoring that assures compliance under Title V.

The Petition also states as an alternative that if EPA determines that the document is not based on comments raised with reasonable specificity during the public comment period that it be considered a request to reopen the Title V Permit in accordance with 40 C.F.R. § 70.7(f).

The Permit reopening and revision is stated to be mandated for one or both of the following reasons:

1. Material mistakes or inaccurate statements were made in establishing the terms and conditions in the permit. See 40 CFR § 70.7(f)(1)(iii). As will be discussed in more detail, the proposed Title V permit for the West Elk mine suffers from material mistakes in violation of applicable requirements, etc.; and
2. The permit fails to assure compliance with the applicable requirements. See 40 CFR § 70.7(f)(1)(iv). As will be discussed in more detail, the Title V Permit for the West Elk Mine fails to assure compliance with several applicable requirements.

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