Title V/Clean Air Act: U.S. Environmental Protection Agency Addresses Petition to Object to Commerce City, Colorado, Refinery

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The Administrator of the United States Environmental Protection Agency ("EPA") issued an Order responding to a Petition requesting objection to the issuance of a Title V operating permit ("Permit") for the Suncor Energy Commerce City, Colorado, refinery.

The Petition had been submitted by groups including:

- Colorado Latino Forum
- Colorado People's Alliance
- Cross Community Coalition
- Elyria and Swansea Neighborhood Association
- Sierra Club
- Western Resource Advocates

(Collectively, "Petitioners")

The Petition requested that the EPA Administrator object to the proposed Permit issued by the Colorado Air Pollution Control Division ("Division") of the Colorado Department of Public Health and Environment for certain parts of the refinery.

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 the 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 who have submitted comments on 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 Petitioners basis for objections included:

- Claim A: The Petitioners claim that "The Division cannot lawfully establish a federally enforceable HCN emission limit solely to abet Suncor in avoiding its EPCRA and CERCLA obligations." (Rejected on the basis the Petitioners did not identify any applicable requirements of the Clean Air Act with which the Permit does not comply.)
- Claim B: The Petitioners claim that "The Division set an unlawful & arbitrarily high HCN emissions limit."
- Sub-Claim B-1: the HCN limit is based on an arbitrary estimate, rather than actual emission data. (Petitioners held to have not contradicted the reason provided by the Division for calculating the emission factor).
- Sub-Claim B-2: The Division has not demonstrated that the HCN limit is at least as stringent as federal requirements. (Petitioners held to have not contradicted the reason provided by the Division for calculating the emission factor).
- Sub-Claim B-3: Suncor's HCN emissions limit does not protect public health (Modeling deemed not an applicable requirement of the Clean Air Act and therefore inappropriate for EPA to evaluate it in the Title V petition process.)
- Claim C: The Petitioners claim that "The HCN emissions limit lacks adequate Provisions to assure compliance." (Petitioners deemed to have failed to demonstrate that reporting would be inadequate when viewed in context of all required reporting for assuring compliance with the limit in the Permit.)

A copy of the Administrator's Order can be found here.