

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:)
)
The Clean Air Act Significant Permit)
Revision to Title V Operating Permit) **PETITION FOR OBJECTION**
)
For Tucson Electric Power Co.) **Significant Permit Revision**
Springerville Generating Station) **No. 91093**
In Springerville, Arizona)
)
Prepared by the Arizona Department of)
Environmental Quality)

**PETITION FOR OBJECTION TO THE SIGNIFICANT PERMIT REVISION
NO. 91093 TO THE TITLE V PERMIT NO. 65614 FOR TUCSON ELECTRIC
POWER CO.'S SPRINGERVILLE GENERATING STATION
PROPOSED FOR ISSUANCE ON JANUARY 20, 2022, AND
FINALIZED ON MAY 2, 2022**

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Sierra Club and National Parks Conservation Association (NPCA) petition the Administrator of the U.S. Environmental Protection Agency (EPA) to object to the Title V Significant Permit Revision No. 91093 issued by the Arizona Department of Environmental Quality (ADEQ) on January 20, 2022, to Tucson Electric Power Company (TEP) and finalized on May 2, 2022, for Class I, Title V Permit No. 65614 for the Springerville Generating Station.

Springerville is a four-unit, 1,766-megawatt (MW) coal-fired plant located in eastern Arizona, about thirty-one miles northeast of Mt. Baldy Wilderness and about forty-seven miles southeast of Petrified Forest National Park—both Class I areas protected under the Clean Air Act's Regional Haze Program. Units 1 and 2, together about 850 MW, operate without selective catalytic reduction. In 2019, Springerville emitted about 5,742 tons of nitrogen oxides (NO_x) and about 7,228 tons of sulfur dioxide (SO₂), two of the primary visibility-impairing pollutants. Because of these significant emissions, ADEQ identified Springerville as a source requiring a four-factor reasonable progress analysis during the second implementation period of the Regional Haze Program.

EPA must object to the significant permit revision because it incorporates “voluntary” SO₂ emission limits that circumvent the detailed analysis that the Regional Haze Program requires. The limits for Units 1 and 2 are included in “Attachment ‘E’: Regional Haze Provisions” and take effect one year after EPA approves Arizona’s state implementation plan (SIP) revision, while the limit for Unit 3 is included in the body of the permit. The limits for all three units are nearly identical to those that ADEQ proposed in its April 2021 preliminary reasonable progress determination for Springerville, which Sierra Club and NPCA—as well as EPA—criticized as falling short of the Regional Haze Program’s reasonable progress requirement. Yet, without explanation, ADEQ claims that the “voluntary” SO₂ limits are “more stringent”—even though ADEQ just released Arizona’s regional haze SIP revision for public comment on June 13, 2022, and EPA has yet to take final action on it. Nothing in the record provides any legal or factual support for the “voluntary” limits; nor did ADEQ mention the Regional Haze Program in the public notice, despite its significance to this permit action. Sierra Club and NPCA detailed these deficiencies in comments filed with ADEQ on February 23, 2022. ADEQ’s March 7 and April 14, 2022 responses to comments did not resolve these issues.

PETITIONERS

Sierra Club is the oldest and largest grassroots environmental group in the United States, with over 762,300 members nationally, including more than 15,600 members in Arizona. Sierra Club’s members live, work, attend school, travel, and recreate in and around areas affected by the Springerville Generating Station’s emissions. These members enjoy and are entitled to the benefits of natural resources including air, water and soil; forests and cropland; parks, wilderness areas and other green space; and flora and fauna, all of which are harmed by air pollutants emitted from the Springerville Generating Station.

NPCA is a national organization whose mission is to protect and enhance America’s national parks for present and future generations. NPCA performs its work through advocacy and education, with its main office in Washington, D.C. and twenty-four regional and field offices. NPCA has over 1.5 million members and supporters nationwide, with more than 39,165 in Arizona. NPCA is active nationwide in advocating for strong air quality requirements to protect our parks, including submission of petitions and comments relating to visibility issues, regional haze state implementation plans, air quality standards, and climate change regulations including as related to emissions from power plants, oil and gas operations and other sources of pollution affecting national parks and communities. NPCA’s members live near, work at, and recreate in all the national parks, including those directly affected by emissions from Arizona’s Springerville Generating Station.

PROCEDURAL BACKGROUND

On September 11, 2017, ADEQ issued Class I, Title V Air Permit No. 65614 to TEP for the Springerville Generating Station, with an expiration date of September 11, 2022. In September 2021, TEP submitted an application for “Significant Permit Revision and Regional Haze Statement Implementation Plan Revision for the Springerville Generating Station.”¹ TEP’s application requested that ADEQ revise the Class I permit to incorporate new combined SO₂ limits for Units 1 and 2, citing, without attaching, ADEQ’s preliminary reasonable progress determination for Springerville as the basis for the limits.² On December 17, 2021, TEP requested, via email, “an additional, voluntary emission limit” for SO₂ emissions from Unit 3.³ On January 20, 2022, ADEQ issued a public notice for Significant Permit Revision No. 91093 accompanied by TEP’s September 2021 application, a draft technical support document (TSD), and a draft permit.⁴ No statement of basis was included. The public notice stated that the proposed permit revision would “incorporate more stringent sulfur dioxide (SO₂) emission limitations for Units 1, 2, and 3,” but the notice did not reference the Regional Haze Program.⁵ On February 23, 2022, Sierra Club and NPCA filed comments on the proposed permit revision.⁶ On March 7, 2022, ADEQ responded to comments and submitted a proposed final permit to EPA.⁷ On April 14, 2022, ADEQ supplemented its comment

¹ TEP, Application for Significant Permit Revision and Regional Haze State Implementation Plan Revision for the Springerville Generating Station (Sept. 2021) (Exhibit 1) [hereinafter Application].

² *Id.* at 2-2 to 2-3.

³ Email from Zigang Fang, TEP, to Balaji Vaidyanathan, ADEQ (Dec. 17, 2021) (Exhibit 2).

⁴ ADEQ, Public Notice for Proposed Significant Revision to No. 91093 for Tucson Electric Power Company’s Springerville Generating Station (Jan. 20, 2022) (Exhibit 3) [hereinafter Public Notice]; ADEQ, Draft Technical Support Document for Proposed Significant Revision to No. 91093 for Tucson Electric Power Company’s Springerville Generating Station (Jan. 20, 2022) (Exhibit 4); ADEQ, Draft Permit #65614 (As Amended by Significant Permit Revision #91093), Springerville Generating Station (Jan. 20, 2022) (Exhibit 5) [hereinafter Draft Permit Revision].

⁵ Ex. 3, Public Notice 1.

⁶ Letter from Marta Darby & Rumela Roy, Earthjustice, to Balaji Vaidyanathan, ADEQ (Feb. 23, 2022) (Exhibit 6) [hereinafter NPCA & Sierra Club Permit Revision Comments].

⁷ Letter from Balaji Vaidyanathan, ADEQ, to Marta Darby, Earthjustice (Mar. 7, 2022) (Exhibit 7); ADEQ, Responsiveness Summary to Public Comments and Questions for Tucson Electric Power Company – Springerville Generating Station Significant Permit Revision No. 91093 (Mar. 7, 2022) (Exhibit 8).

responses to comments.⁸ On May 2, 2022, ADEQ emailed a letter stating that the final permit revision had been issued, accompanied by the final permit revision, final TSD, and responsiveness summary.⁹ In the final permit revision, ADEQ included, for the first time, citations to authority for the “voluntary” SO₂ emission limits and labeled those limits as “state enforceable only.”¹⁰ EPA did not object to the permit revision by the end of the statutory 45-day review period. *See* 40 C.F.R. § 70.8.

This significant permit revision appears to bypass the ongoing work on Arizona’s regional haze SIP revision. On April 13, 2021, ADEQ released a preliminary reasonable progress determination for the Springerville Generating Station.¹¹ On May 18, 2021, Sierra Club and NPCA submitted comments detailing flaws with ADEQ’s preliminary analysis.¹² On May 27, 2021, EPA submitted comments that identified several additional flaws.¹³ On June 13, 2022, the public comment period on Arizona’s draft regional haze SIP revision opened, with comments currently due July 14, 2022.¹⁴ Arizona has therefore not concluded its regional haze rulemaking process, including addressing forthcoming public comments on the proposed rule, finalizing the rule, or submitting it to EPA for review and action. EPA has yet to issue a final decision on Arizona’s proposed SIP

⁸ ADEQ, Responsiveness Summary to Public Comments and Questions for Tucson Electric Power Company – Springerville Generating Station Significant Permit Revision No. 91093, Addendum (Apr. 14, 2022) (Exhibit 9) [hereinafter ADEQ Responses Addendum].

⁹ Ex. 10, Letter from Mike Sonenberg, ADEQ, to Sandy Bahr, Sierra Club (May 2, 2022) (Exhibit 10); Ex. 8, ADEQ Responses 13; ADEQ, Technical Support Document for Proposed Significant Revision to No. 91093 for Tucson Electric Power Company’s Springerville Generating Station (May 2, 2022) (Exhibit 11); ADEQ, Final Permit #65614 (As Amended by Significant Permit Revision #91093), Springerville Generating Station (May 2, 2022) (Exhibit 12) [hereinafter Final Permit Revision].

¹⁰ Ex. 12, Final Permit Revision 52, 150.

¹¹ ADEQ, *2021 Regional Haze Four Factor Initial Control Determination: Tucson Electric Power, Springerville Generating Station* (Apr. 13, 2021) [hereinafter Springerville Preliminary Determination].

¹² Letter from Marta Darby & Michael Hiatt, Earthjustice, to Ryan Templeton & Elias Toon, ADEQ (May 18, 2021) (Exhibit 13) [hereinafter NPCA & Sierra Club Preliminary Determination Comments].

¹³ Letter from EPA to ADEQ (May 27, 2021) (Exhibit 14) [hereinafter EPA Preliminary Determination Comments].

¹⁴ ADEQ, *Comment Period Begins: Regional Haze State Implementation Plan Revision* (June 13, 2022), <http://www.azdeq.gov/notices/comment-period-begins-regional-haze-state-implementation-plan-revision>.

revision or on the reasonable progress measures required of the Springerville Generating Station for the second implementation period.

LEGAL BACKGROUND

All major stationary sources of air pollution must apply for operating permits under Title V of the Clean Air Act. 42 U.S.C. § 7661a(a); *see also* Az. Rev. Stat. § 49-426; Az. Admin. Code R18-2-302(B). An operating permit must set forth all federal and state requirements in one legally enforceable document, thereby ensuring that all requirements are applied to the facility and that the facility is complying with those requirements. 42 U.S.C. § 7661c(a); *see also* 40 C.F.R. §§ 70.1(b), 70.6(a)(1); Az. Admin. Code R18-2-306(A). Each operating permit must include “[e]nforceable emission limitations and standards, including operational requirements and limitations that ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted under R18-2-306.01.” Az. Admin. Code R18-2-306(A); *see also* 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.1(b). A state permitting authority “shall provide a statement that sets forth the legal and factual basis for the proposed permit conditions including references to the applicable statutory or regulatory provisions.” Az. Admin. Code R18-2-304(A), (J)(4); *see also* 40 C.F.R. § 70.7(a)(5), (h)(2). The public notice must clearly notify the public of “the activity or activities involved in the permit action.” 40 C.F.R. § 70.7(h)(2); *see also* Ariz. Admin. Code R18-2-330(C)(3).

Under Arizona’s air permitting rules, a source may obtain a permit containing “voluntarily accepted emission limitations, controls, or other requirements” to “avoid classification as a source that requires a Class I permit or to avoid one or more other applicable requirements.” Az. Admin. Code R18-2-306.01. A source may only incorporate voluntarily accepted emission limits or other requirements if the source demonstrates in its permit application that (1) the voluntary requirements are “at least as stringent as the emissions limitations, controls, or other requirements that would otherwise be applicable to that source, including those that originate in an applicable implementation plan,” and (2) “the permit does not waive, or make less stringent, any limitations or requirements contained in or issued pursuant to an applicable implementation plan, or that are otherwise federally enforceable.” *Id.* R18-2-306.01(B).

SUMMARY OF PETITION CLAIMS

Claim 1

The Administrator must object to the permit revision because it unlawfully incorporates “voluntary” SO₂ emission limits that circumvent the Regional Haze Program.

Relevant Conditions in the Significant Permit Revision:

- **Condition III.D.1.a(3):** Unit 3 SO₂ emission limit
- **Attachment “E”: Regional Haze Provisions:** Units 1 and 2 SO₂ emission limits

Relevant Authority: 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 70.1(b), 70.6(a)(1), 70.7(a)(5), (h)(2); Az. Admin. Code R18-2-304(A), (J)(4), R18-2-306(A), (F), R18-2-306.01

Raised in Comments: NPCA & Sierra Club Permit Revision Comments 2–11

Rationale Provided by ADEQ for the Voluntary SO₂ Emission Limits: For the first time in response to comments, ADEQ claims that the permit revision is required under the Regional Haze Rule, specifically 40 C.F.R. § 51.308(f)(2), and that the Regional Haze Program is otherwise outside the scope of this permit action, including support for the SO₂ emission limits.¹⁵ ADEQ admits that the “voluntary” SO₂ emission limits do not satisfy Arizona Administrative Code Rule 18-2-306.01, which provides authority to incorporate “voluntarily accepted” emission limits in defined circumstances.¹⁶ Instead, in its addendum to comment responses, ADEQ states that it “updated” the citations to “reference the Department’s authority to add emission limits and associated monitoring, recordkeeping and reporting requirements.”¹⁷ Specifically, the final permit revision includes citations to Arizona Administrative Code Rule 18-2-306(A)(2) and Arizona Revised Statutes, Section 49-426(E) and labels the SO₂ emission limits “state enforceable only.”¹⁸ ADEQ acknowledges that, if EPA’s final action on Arizona’s regional haze SIP differs from the terms and conditions in this permit revision, TEP must comply with EPA’s final action and submit another permit application to revise the emission limits.¹⁹

¹⁵ Ex. 9, ADEQ Responses Addendum 6–8, 10.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 13.

¹⁸ Ex. 12, Final Permit Revision 52, 150.

¹⁹ Ex. 9, ADEQ Responses Addendum 10.

Claim 2

The Administrator must object to the permit revision because the record lacks legal and factual support for the SO₂ emission limits.

Relevant Authority: 40 C.F.R. § 70.7(a)(5), (h)(2); Az. Admin. Code R18-2-304(A), (J)(4), R18-2-306.01

Raised in Comments: NPCA & Sierra Club Permit Revision Comments 10–11

Rationale Provided by ADEQ for the Lack of Support: ADEQ claims, without citation to authority, that no support for the SO₂ emission limits is required because the TSD and public notice state that the limits are “voluntary.”²⁰ ADEQ claims that “the Four Factor Analysis used to develop these limits is not a part of this revision” and will be addressed in the regional haze SIP.²¹

Claim 3

The Administrator must object to the permit revision because the public notice fails to mention a significant “activity” involved in the permit action—the Regional Haze Program, which ADEQ identified as the revision’s purpose.

Relevant Authority: 40 C.F.R. § 70.7(h)(2); Ariz. Admin. Code R18-2-330(C)(3)

Raised in Comments: NPCA & Sierra Club Permit Revision Comments 11–12

Rationale Provided by ADEQ for the Public Notice: ADEQ claims that it did not need to mention the Regional Haze Program in the public notice because the permit revision incorporates “voluntary” emission limits, the regional haze SO₂ emission limits for Units 1 and 2 will not become effective until after EPA approves Arizona’s regional haze SIP, and ADEQ provided more than thirty days for public comment.²²

²⁰ *Id.* at 8.

²¹ *Id.*

²² *Id.* at 9.

DETAILED DEMONSTRATION OF PERMIT DEFICIENCY

Both TEP's application and the permit revision anticipate that the "voluntary" SO₂ emission limits for Units 1, 2, and 3 satisfy Springerville's regional haze obligations for SO₂ pollution for the second implementation period. TEP's application is titled "Application for Significant Permit Revision and Regional Haze State Implementation Plan Revision for the Springerville Generating Station" and states that the SO₂ limits are based on ADEQ's preliminary reasonable progress determination for Springerville.²³ The Unit 1 and 2 SO₂ limits are included in "Attachment 'E': Regional Haze Provisions" and take effect one year after EPA approves Arizona's regional haze SIP revision; the Unit 3 SO₂ limit is included as Condition III.D.1.a(3).²⁴ ADEQ claims that these limits are "more stringent."²⁵ Yet ADEQ just released Arizona's draft regional haze SIP revision for public comment on June 13, 2022, and EPA has yet to take final action on it. Previously, EPA, Sierra Club, and NPCA criticized nearly identical proposed regional haze SO₂ emission limits for Units 1, 2, and 3 as falling short of what reasonable progress requires for the second implementation period. Nothing in the record offers any legal or factual basis for these SO₂ limits; and the public notice fails to mention the Regional Haze Program, despite its significance to this permit action.

The Administrator must object to the permit revision. The permit revision violates the Clean Air Act and Arizona's air permitting rules because (1) it unlawfully incorporates "voluntary" SO₂ emission limits that circumvent the Regional Haze Program; (2) the record lacks legal and factual support for the SO₂ emission limits; and (3) the public notice fails to mention the Regional Haze Program, a significant "activity" involved in the permit action.

I. The Permit Revision is Deficient Because It Incorporates "Voluntary" SO₂ Emission Limits That Circumvent the Regional Haze Program.

The permit revision incorporates "voluntary" SO₂ emission limits for Units 1, 2, and 3 that circumvent the detailed analysis required under the Regional Haze Program. Although ADEQ maintains that the SO₂ emission limits are "voluntary," ADEQ also claims that the permit revision is "required" for a complete regional haze SIP submittal to EPA and acknowledges that TEP must comply with EPA's final action on Arizona's regional haze SIP.²⁶ The process ADEQ has proposed, in which "voluntary" regional haze emission limits are incorporated into Title V permits, circumvents the Regional Haze Rule and violates the Title V of the Clean

²³ Ex. 1, Application 2-2 to 2-3.

²⁴ Ex. 12, Final Permit Revision 52, 150.

²⁵ Ex. 3, Public Notice 1.

²⁶ Ex. 9, ADEQ Responses Addendum 6-9, 10.

Air Act and Arizona’s air permitting rules.²⁷ The Administrator, therefore, must object to the permit revision.

To improve air quality in our most treasured landscapes, Congress established the Regional Haze Program, which establishes a national goal of preventing future, and remedying any existing, “impairment of visibility in mandatory class I Federal areas” from manmade air pollution. 42 U.S.C. § 7491(a)(1). The statutory four-factor analysis is the vehicle for identifying the reasonable progress measures necessary to achieving that goal. For each source or group of sources, that analysis considers the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. 42 U.S.C. § 7491(g)(1); 40 C.F.R. § 51.308(f)(2)(i); *see also* Final Amendments to Requirements for State Plans for Protection of Visibility, 82 Fed. Reg. 3078, 3090 (Jan. 10, 2017). When reviewing a SIP, EPA must exercise its independent technical judgment to ensure its adequacy, including the state’s reasonable progress determinations for particular sources. 42 U.S.C. §§ 7410(a)(2)(J), (l), (k)(3), 7491(a)(1), (b)(2)(B); *Oklahoma v. EPA*, 723 F.3d 1201 (10th Cir. 2013).

The permit revision circumvents this detailed process and EPA’s independent judgment by incorporating ADEQ’s draft regional haze SO₂ emission limits for Units 1, 2, and 3 into “Attachment ‘E’: Regional Haze Provisions” (Units 1 and 2) and Condition III.D.1.a(3) (Unit 3) of Springerville’s Title V permit.²⁸ These limits are nearly identical to those that ADEQ proposed in its April 2021 preliminary reasonable progress determination for Springerville—even though EPA criticized that preliminary determination as falling short of what reasonable progress requires.²⁹ Among other flaws, EPA explained that ADEQ likely should require Springerville to install and operate wet flue gas desulfurization (FGD) on Units 1 and 2, rather than merely basing the SO₂ limits on upgraded spray dry absorbers (SDA).³⁰ Sierra Club and NPCA likewise showed that ADEQ’s preliminary SO₂

²⁷ See Ex. 6, NPCA & Sierra Club Permit Revision Comments 2–11.

²⁸ Ex. 12, Final Permit Revision 52, 150–51.

²⁹ Ex. 14, EPA Preliminary Determination Comments. For comparison, for Units 1 and 2, the permit revision and ADEQ’s preliminary reasonable progress determination include (1) an annual SO₂ limit of 3,729 tons/year (12-month rolling average); and (2) similar daily SO₂ limits—16.1 tons/day and 17.1 tons/day (30-day rolling average), respectively. Ex. 12, Final Permit Revision 150; ADEQ Preliminary Determination 27. For Unit 3, ADEQ concluded that no reasonable progress measures were warranted, as the permit’s 1.5 lb/MWh emission limit was sufficient. ADEQ Preliminary Determination 17. The permit revision includes a 1.4 lb/MWh SO₂ limit for Unit 3 (30-day rolling average). Ex. 12, Final Permit Revision 52.

³⁰ Ex. 14, EPA Preliminary Determination Comments 2–3.

limits do not satisfy reasonable progress and identified similar flaws with ADEQ's analysis.³¹

The Clean Air Act and Arizona's rules preclude ADEQ from circumventing the Regional Haze Program in this manner. Under Title V of the Clean Air Act, an operating permit must set forth all applicable federal and state requirements to ensure that the requirements are applied to the facility and that the facility is complying with those requirements. 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 70.1(b), 70.6(a)(1); Az. Admin. Code R18-2-306(A). The permit record must provide the legal and factual basis for permit conditions, including references to applicable statutory or regulatory provisions. 40 C.F.R. § 70.7(a)(5), (h)(2); Az. Admin. Code R18-2-304(A), (J)(4); *see also* Revisions to Petition Provisions of the Title V Permitting Program, 85 Fed. Reg. 6431, 6436 (Feb. 5, 2020). Under Arizona's rules, a source may only incorporate voluntary emission limits into a permit to avoid classification as a Class I source or to avoid compliance with an applicable requirement; and the source must demonstrate, in its permit application, that the voluntary emission limits are at least as stringent as the otherwise applicable requirement. Az. Admin. Code R18-2-306.01.

The permit revision violates these requirements. First, the "voluntary" SO₂ emission limits have no legal basis under the Clean Air Act or Arizona law, yet both federally enforceable and "state-only" requirements must be supported by legal authority. *See* 40 C.F.R. § 70.7(a)(5), (h)(2); Az. Admin. Code R18-2-304(A), (J)(4); *see also Env't Integrity Project v. EPA*, 960 F.3d 236, 243 (5th Cir. 2020) ("state-only" requirements are "issued pursuant to state-specific standards," such as state-approved preconstruction permits).³² As EPA has explained, Title V is "not generally intended to create any new substantive requirements"—"title V is primarily procedural." Operating Permit Program, 57 Fed. Reg. 32,250, 32,284 (July 21, 1992); *see also* 40 C.F.R. § 70.1(b). The only potential legal basis for incorporating the "voluntary" emission limits, Administrative Code Rule 18-2-306.01, does not apply. *See* Az. Admin. Code R18-2-306(A) (referencing Az. Admin.

³¹ Ex. 13, NPCA & Sierra Club Preliminary Determination Comments 8–11. For example, for Units 1 and 2, ADEQ based the SO₂ limits on upgrading the existing SDA, rather than requiring wet FGD, which would better control SO₂ pollution at a cost of \$5,287 per ton according to ADEQ's analysis. Ex. 6, NPCA & Sierra Club Significant Permit Revision Comments 5–8; Ex. 13, NPCA & Sierra Club Preliminary Determination Comments 8–10. For Unit 3, ADEQ established the SO₂ emission limit based on the existing SDA, but the emission limit reflects only about 75 percent SO₂ control effectiveness—a surprisingly low value given that the Unit 3 SDA likely was constructed to achieve, at minimum, 90 percent control effectiveness. Ex. 6, NPCA & Sierra Club Permit Revision Comments 8; Ex. 13, NPCA & Sierra Club Preliminary Determination Comments 11.

³² *See also infra* pp.13–15.

Code R18-2-306.01 as the authority for including voluntary limits in Title V permits). Springerville already has a Class I, Title V permit, which the permit revision seeks to revise; and there are no “applicable requirements” under Arizona’s regional haze SIP revision to avoid because EPA has not yet taken final action. *See* Az. Admin. Code R18-2-306.01(A); 40 C.F.R. § 70.2 (“applicable requirements” are those that “have been promulgated or approved”). Further, nothing in the record demonstrates that the SO₂ limits for Units 1, 2, and 3 are at least as stringent as what would be required under Arizona’s regional haze SIP.³³ *See* Az. Admin. Code R18-2-306.01(B).

Second, even if ADEQ could incorporate “voluntary” emission limits without a legal basis (which it may not), the limits for Units 1, 2, and 3 are misleading and consequently fail to “assure” compliance with all applicable requirements, including EPA’s final action on Arizona’s regional haze SIP revision. *See* 40 C.F.R. § 70.6(a)(1); Az. Admin. Code R18-2-306(A). Attachment “E” states—without qualification—that the SO₂ limits for Units 1 and 2 will take effect one year after EPA approves Arizona’s regional haze SIP revision, and Condition III.D.1.a(3) does not reference the Regional Haze Program, on which the draft limit is based.³⁴ These draft limits are an outcome of an illogical process and, based on EPA’s own comments, likely will conflict with EPA’s final action on Springerville’s reasonable progress determination.³⁵ Beyond creating unnecessary confusion about Springerville’s obligations, if EPA’s final action differs, the limits for Units 1 and 2 would never be enforceable. *See* 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(1); Az. Admin. Code R18-2-306(A); *see also* 40 C.F.R. § 52.23 (source must comply with SIP provisions).

ADEQ does not cite any authority under Title V of the Clean Air Act or Arizona law that would support incorporating these “voluntary” SO₂ emission limits, and ADEQ admits that the permit revision does not satisfy Arizona Administrative Code Rule 18-2-306.01.³⁶ For all three units, the final permit revision cites Arizona Revised Statutes, Section 49-426(E), and Arizona Administrative Code Rule 18-2-306(A)(2).³⁷ But that statute simply supplies ADEQ

³³ Ex. 6, NPCA & Sierra Club Permit Revision Comments 8–11; *see also* Ex. 14, EPA Preliminary Determination Comments 2–3; *supra* pp.9–10 & nn.29, 31; *infra* pp.13–15.

³⁴ Ex. 12, Final Permit Revision 52, 150.

³⁵ Ex. 6, NPCA & Sierra Club Permit Revision Comments 9.

³⁶ Ex. 9, ADEQ Responses Addendum 6–8.

³⁷ Ex. 12, Final Permit Revision 52, 150; Ex. 9, ADEQ Responses Addendum 13. For Units 1 and 2, the draft permit revision did not include any citation to either Az. Rev. Stat. § 49-426(E) or Az. Admin. Code R18-2-306(A)(2). Ex. 5, Draft Permit Revision 150. For Unit 3, the draft permit revision did not contain a citation to Az. Rev. Stat. § 49-426(E). Ex. 5, Draft Permit Revision 52. Thus, this petition is the first opportunity to address these apparent claims. *See* 40 C.F.R. § 70.8(d).

with authority to revise air permits—ADEQ may do so if the revisions are “consistent with” the Clean Air Act and “found by the director to be necessary,” the latter of which Arizona defines to be when requirements “become applicable to a source,” i.e., when they have been “promulgated or approved.” Az. Rev. Stat. § 49-426(E); *see* Az. Admin. Code R18-2-306(F) (ADEQ “shall” require revisions to incorporate requirements that “become applicable to a source”); 40 C.F.R. § 70.2 (“applicable requirement” is one that is “promulgated or approved”). And that rule simply establishes what air permits must include—permits “shall include . . . [e]nforceable limitations and standards, including . . . limitations that have been voluntarily accepted under R18-2-306.01.” Az. Admin. Code R18-2-306(A)(2). Neither provides ADEQ with authority to incorporate whatever emission limits it chooses into a Title V permit, as ADEQ appears to claim. ADEQ also may not escape Title V of the Clean Air Act and Arizona’s rules simply by labeling the SO₂ limits “state enforceable only,” as it did for the first time in the final permit revision.³⁸ The limits for Units 1 and 2 only become effective after EPA approves Arizona’s regional haze SIP revision, and ADEQ maintains that the permit revision is “required” by federal law.³⁹ Thus, per ADEQ’s characterization, the limits for all three units must be grounded in federal law, not state law only. Further, as explained, permit conditions must be “applicable” through a valid legal basis, which is entirely lacking here.

For the first time in comment responses, ADEQ claims that the “voluntary” emission limits are “required” to support its regional haze SIP submittal to EPA, citing 40 C.F.R. § 51.308(f)(2), which requires that reasonable progress measures be enforceable.⁴⁰ Under ADEQ’s proposed approach, a state would be required (1) to revise the Title V permits for all major sources at issue in a proposed SIP revision before EPA has issued a final decision on the SIP, and then (2) to again revise the Title V permits to incorporate the requirements that EPA approves.⁴¹ Neither the Clean Air Act nor Arizona’s rules permit such an illogical process.

The provision of the Regional Haze Rule on which ADEQ relies simply requires that reasonable progress measures, including emission limits, be enforceable—not that “voluntary,” or even draft, emission limits be incorporated into a Title V permit before EPA issues a final decision on a SIP. 40 C.F.R. § 51.308(f)(2). Indeed, the Clean Air Act and Arizona’s rules already fill the

³⁸ Ex. 9, ADEQ Responses Addendum 13. Because ADEQ labeled the SO₂ limits “state enforceable only” after the public comment period closed, this petition is the first opportunity to address this issue. *See* 40 C.F.R. § 70.8(d).

³⁹ Ex. 9, ADEQ Responses Addendum 7.

⁴⁰ *Id.* at 7. ADEQ made this claim for the first time in comment responses. Thus, this petition is the first opportunity to address this claim. *See* 40 C.F.R. § 70.8(d).

⁴¹ Ex. 9, ADEQ Responses Addendum 10.

enforcement gap that ADEQ purports to fill. Under the Clean Air Act, a source must comply with approved regulatory provisions in a SIP upon their effective date, regardless of what the source's Title V permit says. 40 C.F.R. § 52.23 (failure to comply with a SIP's approved regulatory provisions violates the SIP and is enforceable). A Title V permit does not shield a source from compliance with requirements that come after the permit issuance date. 40 C.F.R. § 70.6(f); Ariz. Admin. Code R18-2-325.⁴²

Further, allowing states to incorporate draft limits into a Title V permit would contravene a central purpose of Title V. As EPA has explained, one purpose of the Title V program is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. at 32,251. Here, if the terms of Springerville's Title V permit are not promptly updated after EPA's final action on Arizona's regional haze SIP revision, then there likely would be inconsistencies between the new terms incorporated into Springerville's Title V permit as result of this permit revision and the requirements that Springerville must follow under Arizona's regional haze SIP.⁴³ Both EPA's and Sierra Club and NPCA's comments show that the permit revision's SO₂ emission limits for Units 1, 2, and 3 likely do not satisfy the Regional Haze Rule's reasonable progress requirement.⁴⁴

The Administrator accordingly must object to the permit revision. Neither the Clean Air Act nor Arizona's rules allow ADEQ to incorporate the “voluntary” SO₂ emission limits into Springerville's Title V permit. Instead, ADEQ must wait until EPA makes a final decision on what the applicable requirements will be.

II. The Permit Revision is Deficient Because It Fails to Provide the Legal and Factual Basis for the SO₂ Emission Limits.

The permit revision is unlawful because the record contains no legal or factual support for the “voluntary” SO₂ emission limits for Units 1, 2, and 3, as Title V of the Clean Air Act and Arizona's rules require. To escape this requirement, ADEQ claims that establishing a basis for the “voluntary” SO₂ limits is outside the scope of this permit revision and that the limits “are equal to or more stringent than existing limits,” without providing any support.⁴⁵ The Clean Air Act and Arizona's rules do not permit such a laissez-faire approach to remedying air pollution. ADEQ's failure to support the SO₂ limits is another reason that the Administrator must object to the permit revision.⁴⁶

⁴² Ex. 6, NPCA & Sierra Club Permit Revision Comments 9.

⁴³ *Id.*

⁴⁴ *See supra* pp.9–10 & nn.29, 31.

⁴⁵ Ex. 9, ADEQ Responses Addendum 6, 8.

⁴⁶ Ex. 6, NPCA & Sierra Club Permit Revision Comments 8–11.

Under the Clean Air Act and Arizona’s rules, a state permitting authority “shall provide a statement that sets forth the legal and factual basis for the proposed permit conditions including references to the applicable statutory or regulatory provisions.” Az. Admin. Code R18-2-304(A), (J)(4); *see also* 40 C.F.R. § 70.7(a)(5), (h)(2). The statement of basis is “more than just a short form of the permit.” *In re Onyx Env’t Servs.*, Order on Petition No. V-2005-1, 2006 WL 6672985 (Feb. 1, 2006). The statement “should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit.” *Id.*; *see also* 85 Fed. Reg. at 6436. The statement of basis “is a necessary component for an effective permit review.” 85 Fed. Reg. at 6436.

ADEQ did not provide the required statement of basis.⁴⁷ Neither the public notice nor the draft TSD identify any legal authority that would allow ADEQ to incorporate the “voluntary” SO₂ limits into Springerville’s Title V permit, and nothing in the record describes the factual basis for the limits. *See* 40 C.F.R. § 70.7(a)(5), (h)(2); Az. Admin. Code R18-2-304(J)(4); *see also In re Onyx Env’t Servs.*, Order on Petition No. V-2005-1, 2006 WL 6672985. None of ADEQ’s documents, aside from ADEQ’s responses to comments, even mention ADEQ’s preliminary reasonable progress determination for Springerville—even though ADEQ claims that compliance with the Regional Haze Program is the purpose of this permit revision.⁴⁸ Without explanation, ADEQ claims that the SO₂ limits for Units 1, 2, and 3 are “more stringent” and maintains that support for the limits is outside the scope of this permit action.⁴⁹ But absent an EPA-approved reasonable progress determination specifying the degree of reductions required for the second implementation period, ADEQ has no basis for claiming that the “voluntary” limits are more stringent—or for assuring that the SO₂ limits are sufficient. Under the Regional Haze Program, the statutory four-factor analysis is the vehicle for identifying the reasonable progress measures required of Springerville. *See* 42 U.S.C. § 7491(g)(1); 40 C.F.R. § 51.308(f)(2)(i). The record contains no such support.

To justify the lack of support, ADEQ claims, without citation to authority, that “the Four Factor Analysis used to develop these limits is not a part of this

⁴⁷ On February 8, 2022, Sierra Club and NPCA requested the statement of basis from ADEQ. Email from Rumela Roy, Earthjustice, to Balaji Vaidyanathan & Jennifer Paskash, ADEQ 2 (Feb. 8, 2022) (Exhibit 15). ADEQ responded: “Everything relevant to this permit action is what is on the web site.” *Id.* at 1–2.

⁴⁸ Ex. 9, ADEQ Responses Addendum 7. Aside from ADEQ’s comment responses, only TEP’s application mentions the preliminary reasonable progress determination. Ex. 1, Application 2-2 to 2-3.

⁴⁹ Ex. 9, ADEQ Responses Addendum 6, 8; *see also* Ex. 3, Public Notice 1.

revision” because the limits are “voluntary.”⁵⁰ As EPA has explained, however, a state permitting authority may not pick and choose when it provides the statement of basis—that document is “require[d] . . . at all points in the permit review process for every permit.” 85 Fed. Reg. at 6436; *see also* 40 C.F.R. § 70.7(h)(2); Az. Admin. Code R18-2-304(J)(4). Nor may ADEQ evade this requirement by labeling the SO₂ limits “state enforceable only.”⁵¹ The SO₂ limits cannot both be required by federal law, while simultaneously be of “state origin” only, as ADEQ appears to claim. Moreover, even “state only” limits must have a valid legal basis, and the record must show that any “voluntary” “state only” limits are at least as stringent as the otherwise applicable requirements. *See* Az. Admin. Code R18-2-304(A), (J)(4), R18-2-306.01(B).⁵²

ADEQ’s failure to supply the legal and factual basis for the permit revision violates Title V of the Clean Air Act and Arizona’s rules. The Administrator therefore must object to the permit revision.

III. The Permit Revision is Deficient Because the Public Notice Failed to Inform the Public of the Permit Revision’s Significance to the Regional Haze Program.

ADEQ’s public notice for the proposed permit revision is deficient because it makes no mention of the Regional Haze Program, even though the permit revision incorporates SO₂ emission limits for that purpose.⁵³ Because the public notice is silent on this important “activity” involved in the permit action, the Administrator must object to the permit revision.⁵⁴

EPA’s regulations and Arizona’s rules unambiguously require that a state permitting authority clearly identify in the public notice “the activity or activities involved in the permit action.” 40 C.F.R. § 70.7(h)(2); *see also* Ariz. Admin. Code R18-2-330(C)(3). A permit may be issued only if “the permitting authority has complied with the requirements for public participation under paragraph (h) of [40 C.F.R. § 70.7].” 40 C.F.R. § 70.7(a)(1)(ii). Thus, when the public notice is deficient, EPA must object to the permit. *See Sierra Club v. Johnson*, 436 F.3d 1269, 1280 (11th Cir. 2006).

⁵⁰ Ex. 9, ADEQ Responses Addendum 6, 8.

⁵¹ Ex. 12, Final Permit Revision 52, 150. Because ADEQ labeled the SO₂ limits “state enforceable only” after the public comment period closed, this petition is Sierra Club and NPCA’s first opportunity to address this issue. *See* 40 C.F.R. § 70.8(d).

⁵² *See also supra* pp.10–11.

⁵³ Ex. 3, Public Notice; Ex. 9, ADEQ Responses Addendum 7.

⁵⁴ Ex. 6, NPCA & Sierra Club Permit Revision Comments 11–12.

Here, the public notice states only that ADEQ “proposes . . . to incorporate more stringent sulfur dioxide (SO₂) emission limitations for Units 1, 2 and 3 at Springerville Generating Station.”⁵⁵ Nothing in the public notice mentions the Regional Haze Program. Yet, according to ADEQ, “the purpose of this significant permit revision is to support the ADEQ Regional Haze State Implementation Plan submittal to EPA.”⁵⁶ Given its significance, ADEQ should have explicitly identified in the public notice that the Regional Haze Program is an activity involved in the permit action. *See* 40 C.F.R. § 70.7(h); *In re Midwest Generation, LCC Waukegan Generating Station*, Order on Petition No. V-2004-5, 2005 WL 6588841 (Sept. 22, 2005) (public notice for Title V permit deficient when it failed to “clearly state that the permitting action includes action on title I terms”). Further, as explained, it is impossible to know whether the SO₂ limits, in fact, will be more stringent. EPA has not yet taken final action on Arizona’s regional haze SIP revision, and the emission limits for Units 1 and 2 will not take effect until one year after EPA approves Arizona’s SIP revision. Neither EPA’s regulations nor Arizona’s rules permit such misleading statements in the public notice. *See* 40 C.F.R. § 70.7(h)(2); Ariz. Admin. Code R18-2-330(C).

Nonetheless, ADEQ claims that the public notice did not need to mention the Regional Haze Program. First, because the permit revision incorporates “voluntary” emission limits and, second, because the SO₂ requirements will not become effective until after EPA approves Arizona’s regional haze SIP.⁵⁷ The SO₂ limits here cannot be both “voluntary” and “required,” particularly when ADEQ states that purpose of the permit revision is compliance with the Regional Haze Rule.⁵⁸ Further, it is irrelevant that the SO₂ emission limits for Units 1 and 2 will not become effective until after EPA issues a final decision on Arizona’s regional haze SIP revision. Neither EPA’s regulations nor Arizona’s rules make any timing exception for what must be included in a public notice. *See* 40 C.F.R. § 70.7(h); Ariz. Admin. Code R18-2-330(C)(3).

Because the public notice fails to mention the Regional Haze Program—ADEQ’s stated purpose for the permit revision, the Administrator must object to the revised permit.

⁵⁵ Ex. 3, Public Notice 1.

⁵⁶ Ex. 9, ADEQ Responses Addendum 7.

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 7.

CONCLUSION

The Clean Air Act and Arizona's rules forbid ADEQ's attempt to bypass the Regional Haze Program. ADEQ may not incorporate whatever SO₂ emission limits it chooses into Springerville's Title V permit, nor may ADEQ hide behind its wholly unsupported claim that the SO₂ limits are "more stringent." The "voluntary" SO₂ limits for Springerville Units 1, 2, and 3, now incorporated into "Attachment 'E': Regional Haze Provisions" and the body of the permit, have no legal or factual basis and are nearly identical to the limits that EPA, Sierra Club, and NPCA criticized as falling short of the Regional Haze Program's reasonable progress requirement. ADEQ just released Arizona's draft regional haze SIP revision for public comment on June 13, 2022, and EPA has yet to take final action on it. Thus, it is impossible to know whether the SO₂ limits are "more stringent" or even sufficient for reasonable progress. Because the permit revision unlawfully circumvents the Regional Haze Program, fails to include any legal or factual support for the SO₂ limits, and misleadingly omits any reference to the Regional Haze Program in the public notice, EPA must object to ADEQ's issuance of the permit revision. *See* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

DATED: June 20, 2022

Sincerely,

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LIST OF EXHIBITS

- Exhibit 1:** TEP, Application for Significant Permit Revision and Regional Haze State Implementation Plan Revision for the Springerville Generating Station (Sept. 2021)
- Exhibit 2:** Email from Zigang Fang, TEP, to Balaji Vaidyanathan, ADEQ (Dec. 17, 2021)
- Exhibit 3:** ADEQ, Public Notice for Proposed Significant Revision to No. 91093 for Tucson Electric Power Company's Springerville Generating Station (Jan. 20, 2022)
- Exhibit 4:** ADEQ, Draft Technical Support Document for Proposed Significant Revision to No. 91093 for Tucson Electric Power Company's Springerville Generating Station (Jan. 20, 2022)
- Exhibit 5:** ADEQ, Draft Permit #65614 (As Amended by Significant Permit Revision #91093), Springerville Generating Station (Jan. 20, 2022)
- Exhibit 6:** Letter from Marta Darby & Rumela Roy, Earthjustice, to Balaji Vaidyanathan, ADEQ (Feb. 23, 2022)
- Exhibit 7:** Letter from Balaji Vaidyanathan, ADEQ, to Marta Darby, Earthjustice (Mar. 7, 2022)
- Exhibit 8:** ADEQ, Responsiveness Summary to Public Comments and Questions for Tucson Electric Power Company – Springerville Generating Station Significant Permit Revision No. 91093 (Mar. 7, 2022)
- Exhibit 9:** ADEQ, Responsiveness Summary to Public Comments and Questions for Tucson Electric Power Company – Springerville Generating Station Significant Permit Revision No. 91093, Addendum (Apr. 14, 2022)
- Exhibit 10:** Letter from Mike Sonenberg, ADEQ, to Sandy Bahr, Sierra Club (May 2, 2022)
- Exhibit 11:** ADEQ, Technical Support Document for Proposed Significant Revision to No. 91093 for Tucson Electric Power Company's Springerville Generating Station (May 2, 2022)
- Exhibit 12:** ADEQ, Final Permit #65614 (As Amended by Significant Permit Revision #91093), Springerville Generating Station (May 2, 2022)

- Exhibit 13:** Letter from Marta Darby & Michael Hiatt, Earthjustice, to Ryan Templeton & Elias Toon, ADEQ (May 18, 2021)
- Exhibit 14:** Letter from EPA to ADEQ (May 27, 2021)
- Exhibit 15:** Email from Rumela Roy, Earthjustice, to Balaji Vaidyanathan & Jennifer Paskash, ADEQ (Feb. 8, 2022)