BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition No. VI-2023-4

In the Matter of

XTO Energy Inc., Wildcat Compressor Station

Permit No. P290

Issued by the New Mexico Environment Department, Air Quality Bureau

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ORDER GRANTING IN PART AND DENYING IN PART A PETITION FOR OBJECTION TO A TITLE V OPERATING PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated March 1, 2023 (the Petition) from WildEarth Guardians (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to operating permit No. P290 (the Proposed Permit) proposed by the New Mexico Environment Department's Air Quality Bureau (AQB) for the XTO Energy Inc., Wildcat Compressor Station (XTO Wildcat) in Eddy County, New Mexico. The Permit was proposed pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and New Mexico Administrative Code (NMAC) 20.2.70. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Permit, the permit record, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, EPA grants in part and denies in part the Petition requesting that the EPA Administrator object to the Permit. Specifically, EPA grants Claim I, a portion of Claim II.C, and Claim III, and denies the rest of the claims.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to EPA an operating permit program to meet the requirements of title V of the CAA and EPA's implementing regulations at 40 C.F.R. part 70. The state of New Mexico submitted a title V program governing the issuance of operating permits on November 15, 1993. EPA granted

interim approval to the title V operating permit program submitted by New Mexico on December 19, 1994. EPA granted full approval of New Mexico's title V operating permit program in 1996 and approved a revision to the program in 2004. 61 Fed. Reg. 60032, 60034 (November 26, 1996) and 69 Fed. Reg. 54244, 54247 (September 8, 2004). This program, which became effective on December 26, 1996, is codified in 20.7.70 NMAC.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* 42 U.S.C. § 7661c(c). 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 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the proposed permit if EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of EPA's 45-day review period, petition the Administrator to object to the permit. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Each petition must identify the proposed permit on which the petition is based and identify the petition claims. 40 C.F.R. § 70.12(a). Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under part 70. 40 C.F.R. § 70.12(a)(2). Any arguments or claims the petitioner wishes EPA to consider in support of each issue raised must generally be contained within the body of the petition.[1] *Id.*

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the

[1] If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id*.

petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v).

In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to EPA.[3] The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).[4] When courts have reviewed EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g.*, *MacClarence*, 596 F.3d at 1130–31.[5] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (August 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70.

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[2] *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

[3] *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

[4] *See also Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' . . . plainly mandates an objection *whenever* a petitioner demonstrates noncompliance." (emphasis added)).

[5] *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").[6] Relatedly, EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard. *See, e.g.*, *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013).[7] Also, the failure to address a key element of a particular issue presents further grounds for EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g.*, *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).[8]

Another factor EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning contained in the permit record. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.[9] This includes a requirement that petitioners address the permitting authority's final decision and final reasoning (including the state's response to comments) where these documents were available during the timeframe for filing the petition. 40 C.F.R. § 70.12(a)(2)(vi). Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment. *Id*.

The information that EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the 'statement of basis'); any comments the permitting authority received during the public participation process on the draft permit; the

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[6] *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007) (*Portland Generating Station Order*).

[7] *See also Portland Generating Station Order* at 7 ("[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement]."); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (April 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (January 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

[8] *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

[9] *See also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *Georgia Power Plants Order* at 9–13 (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition. *Id*.

If EPA grants a title V petition, a permitting authority may address EPA's objection by, among other things, providing EPA with a revised permit. 42 U.S.C. § 7661d(b)(3), (c); 40 C.F.R. § 70.8(d); *see id*. § 70.7(g)(4); 70.8(c)(4); *see generally* 81 Fed. Reg. 57822, 57842 (August 24, 2016) (describing post-petition procedures); *Nucor II Order* at 14–15 (same). In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record. For example, when EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing an additional rationale to support its permitting decision.

When the permitting authority revises a permit or permit record in order to resolve an EPA objection, it must go through the appropriate procedures for that revision. The permitting authority should determine whether its response is a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V program. If the permitting authority determines that the modification is a significant modification, then the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the state's corresponding regulations.

In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, and regardless of the procedures used to make such revision, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA § 505(b) and 40 C.F.R. § 70.8(c) and (d). *See Nucor II Order* at 14. As such, it would be subject to EPA's 45-day review per CAA § 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity for the public to petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) if EPA does not object during its 45-day review period.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that EPA identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to EPA's objection. As described in various title V petition orders, the scope of EPA's review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action. *See In The Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (September 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (December 19, 2007).

C. New Source Review

The major New Source Review (NSR) program encompasses two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and for other pollutants regulated under the CAA. 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. 42 U.S.C. §§ 7501–7515. EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains EPA's federal PSD program, which applies in areas without a SIP-approved PSD program. EPA's regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. EPA commonly refers to the latter program as the "minor NSR" program. States must also develop minor NSR programs to, along with the major source programs, attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R. §§ 51.160 through 51.164. These federal requirements for minor NSR programs are less prescriptive than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs than in major source programs.

EPA has approved New Mexico's PSD, NNSR, and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.1640 (identifying EPA-approved regulations in the New Mexico SIP). New Mexico's major and minor NSR provisions, as incorporated into New Mexico's EPA-approved SIP, are contained in portions of 20.2.72 NMAC.

III. BACKGROUND

A. The XTO Wildcat Facility

The XTO Wildcat Compressor Station, owned by XTO Energy Inc., is a natural gas compressor station located in Eddy County, New Mexico. This facility functions to separate oil, natural gas, and water from a nearby pipeline; temporarily store condensate onsite until it is removed via truck or pipeline; and compress dehydrated natural gas for transport through the sales lines. The facility includes, but is not limited to, eleven compressor engines, three dehydration units, three dehydration unit reboilers, four condensate tanks, and one condensate truck loading unit. The facility is a title V major source of NO_x, CO, GHGs, and VOCs. The facility also emits SO_2, PM, and several HAPs. Emission units within the facility are also subject to various NSPS, NESHAP, and preconstruction permitting requirements.

EPA conducted an analysis using EPA's EJScreen[10] to assess key demographic and environmental indicators within a five-kilometer radius of the XTO Wildcat Compressor Station. This analysis did not reveal any residents within a five-kilometer radius of the facility.

B. Permitting History

On May 6, 2022, XTO Energy Inc. submitted an air quality application to the New Mexico Environmental Department's (NMED) Air Quality Bureau (AQB) for an initial title V operating permit for the Wildcat Compressor Station. New Mexico published notice of a draft permit on September 6, 2022, subject to a 30-day public comment period that ran until October 6, 2022. On November 14, 2022, New Mexico submitted the Proposed Permit, along with its responses to public comments (RTC), to EPA for its 45-day review. EPA's 45-day review period ended on December 30, 2022, during which time EPA did not object to the Proposed Permit.

C. Timeliness of Petition

Pursuant to the CAA, if EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). EPA's 45-day review period expired on December 30, 2022. EPA's website indicated that any petition seeking EPA's objection to the Proposed Permit was due on or before March 1, 2023. The Petition was received March 1, 2023, and, therefore, EPA finds that the Petitioner timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Claim I: The Petitioner Claims That "The Proposed Title V Permit Fails to Ensure Compliance with the New Mexico State Implementation Plan as it Relates to Protecting National Ambient Air Quality Standards."

Petitioner's Claim: The Petitioner claims that the Proposed Permit does not assure that emissions from XTO Wildcat will not cause or contribute to exceedances of the ozone NAAQS. Petition at 5. The Petitioner specifically references Condition A103.C, which states that "[c]ompliance with the terms and conditions of this permit regarding source emissions and operation demonstrate compliance with national ambient air quality standards specified at 40 C.F.R. 50, which were applicable at the time air dispersion modeling was performed for the facility's NSR Permit 7474M2." Proposed Permit at A6. The Petitioner asserts that this permit condition is inaccurate because AQB has not completed any analysis or assessment demonstrating compliance with the NAAQS for ozone. Petition at 6.

[10] EJScreen is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. *See https://www.epa.gov/ejscreen/what-ejscreen*.

In justifying their argument that AQB cannot approve a construction permit without a demonstration that the permit would not cause or contribute to air pollution levels exceeding the 2008 and/or 2015 ozone NAAQS,[11] the Petitioner refers to 20.2.72.208.D NMAC, which states:

> The department shall deny any application for a permit revision if considering emissions after controls [] [t]he construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico ambient air quality standard[.]

The Petitioner further notes that because SIP provisions are an applicable requirement under title V,[12] a title V permit must ensure that a source operates such that its emissions would not cause or contribute to an exceedance of the ozone NAAQS. Petition at 6. The Petitioner expands on this point, arguing that where an underlying permit (in this case NSR Permit 7474M2) fails to ensure that a source would not cause or contribute to exceedances of the ozone NAAQS, the title V permit must address the deficiency by being written in a way to ensure protection of the NAAQS. Petitions at 6. The Petitioner claims that the NSR permit application and statement of basis does not analyze or assess the impacts of XTO Wildcat on ambient ozone concentrations, despite acknowledging that the facility would release large and increased amounts of VOCs and NO_x—both of which are ozone precursors. *Id*. The Petitioner provides several tables of ozone data for the area where XTO Wildcat is located, including Carlsbad, Carlsbad Caverns National Park, and Hobbs, which purportedly show regional exceedances of the ozone NAAQS prior to the issuance of NSR Permit 7474M2. *Id*. at 6–7. The Petitioner asserts that because of these alleged prior exceedances, there does not appear to be a possible way that emissions related to the approval of NSR Permit 7474M2 would not have contributed to exceedances of the ozone NAAQS. *Id*. at 8. The Petitioner further contends that because there was no analysis of the ozone impacts related to the facility and NSR Permit 7474M2, there is no support for Condition A103.C in the Proposed Permit. *Id*.

The Petitioner criticizes AQB's RTC, particularly AQB's purported assertion that, because XTO Wildcat is a PSD minor source, it is presumed that it would not cause or contribute to violations of the NAAQS. *Id.* at 8–9 (citing RTC at 8). The Petitioner asserts that this statement is unsupported and ignores the past and present state of air quality in Eddy County, pointing to the alleged ozone NAAQS violations raised earlier in the Petitioner's claim. *Id.* at 9. The Petitioner claims that AQB refers in error to EPA guidance that provides direction for analyzing the impacts of sources considered to be major under PSD for the ozone NAAQS, because this guidance applies only in the context of major source permitting under PSD and only in areas where air quality is not violating the NAAQS (*i.e.*, attaining the NAAQS). *Id.* The Petitioner also notes AQB's reference to an in-house analysis and Environmental Improvement Board hearing testimony, both of which contend that PSD minor sources are presumed not to cause or contribute to violation of the ozone NAAQS. *Id.* The Petitioner claims that these records are insufficient to demonstrate that the issuance of NSR Permit 7474M2 would not cause or contribute to exceedances of the ozone NAAQS. *Id.*

[11] The Petitioner cites 40 C.F.R. §§ 50.15 and 50.19.

[12] The Petitioner cites 40 C.F.R § 70.2 (defining "applicable requirement" as "any standard or other requirement provided for in the applicable [state] implementation plan").

The Petitioner asserts that EPA has already "objected to the AQB's failure to address the impacts of sources of emissions in the Permian Basin to the ozone NAAQS in the region[.]" *Id.* at 10 (citing *In the Matter of Lucid Energy Delaware, LLC, Frac Cat Compressor Station and Big Lizard Compressor Station*, Order on Petition Nos. VI-2022-05 and VI-2022-11 (Nov. 16, 2022) at 12–15). The Petitioner contends that EPA must object here for the same reason EPA objected in the previous case and must direct AQB to address the facility's impacts on the ozone NAAQS by revising or denying any underlying NSR permits and finalizing the title V permit such that it "incorporates legally adequate emission limits that assure compliance with the SIP and other applicable requirements." *Id.*

EPA's Response: For the following reasons, EPA grants the Petitioner's request for an objection on this claim.

EPA has considered similar issues raised by the Petitioner in a recent title V order, *In the Matter of Lucid Energy Delaware, LLC, Frac Cat Compressor Station and Big Lizard Compressor Station*, Order on Petition Nos. VI-2022-05 and VI-2022-11 (Nov. 16, 2022) ("*Lucid Frac Cat and Big Lizard Order"*). Because of the analogous nature of these issues, EPA is responding to the issues raised in this claim in a similar manner.

The Petitioner alleges that both the NAAQS, as well as 20.2.72.208.D NMAC, are "applicable requirements" with which the permit must assure compliance. Petition at 6. First, contrary to the Petitioner's suggestion,[13] EPA has previously stated that the NAAQS themselves are not an "applicable requirement" with which a source must directly comply, and the promulgation of a NAAQS does not, in and of itself, automatically result in actionable measures applicable to a source.[14] Instead, the specific measures contained in each state's EPA-approved SIP to achieve the NAAQS are the relevant applicable requirements. *See* 40 C.F.R. § 70.2. Nonetheless, the Petitioner is correct that the Proposed Permit erroneously indicates that the NAAQS are an applicable requirement,[15] and therefore, the Proposed Permit itself is materially incorrect regarding that provision.

Second, it is unclear whether 20.2.72.208.D NMAC establishes an applicable requirement with which the title V permit must assure compliance. This regulation reads, in part:

> The department shall deny any application for a permit or permit revision if considering emissions after controls: . . . The construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico ambient air quality standard . . .

The Petitioner asserts that the phrase "shall deny any application" in 20.2.72.208.D NMAC implies a mandatory duty to deny *any* application that would cause or contribute to an exceedance of the NAAQS and contends that if this duty is not fulfilled in issuing a

[13] *See* Petition at 6 n.3.
[14] 40 C.F.R. § 70.2 (definition of "applicable requirement"); *see, e.g.*, *In the Matter of Duke Energy, LLC Asheville Steam Electric Plant,* Order on Petition No. IV-2016-06 at 11–12 (June 30, 2017) and *In the Matter of Duke Energy, LLC Roxboro Steam Electric Plant*, Order on Petition No. IV-2016-07 at 10–11 (June 30, 2017).
[15] Proposed Permit at A5.

preconstruction permit, "the Title V permit must address this deficiency and be written in such a manner as to assure protection of the NAAQS." Petition at 6. However, this argument ignores the fact that this SIP provision, on its face, only applies to the issuance of preconstruction permits (as with the rest of Section 20.2.72). More specifically, this SIP provision appears to impose an obligation on the permitting authority to deny an application for a construction permit that would cause or contribute to an exceedance of the NAAQS, but does not impose an obligation to include additional terms in a title V permit that prevents exceedances of the NAAQS.[16] Moreover, because 20.2.72.208.D NMAC does not appear to impose any requirement applicable to the source itself or to any particular emission unit at the source (but instead imposes an obligation on the state regarding permit issuance/revisions), it is unclear whether this provision is an "applicable requirement" with which the title V permit must assure compliance, or that can or should be implemented through title V.[17] The Proposed Permit and permit record exacerbate this uncertainty.[18] Overall, the Proposed Permit and permit record are not clear as to whether (or why) AQB considers 20.2.72.208.D NMAC an "applicable requirement" with which the title V permit must assure compliance.

Additionally, the Petitioner appears to be correct that if, in fact, no analysis was conducted for NSR Permit 7474M2, Condition A103.C would be inaccurate, insofar as this permit term expressly states that modeling was performed at that time.[19] In its RTC, AQB states that "AQB reviewed and evaluated air emissions from the Wildcat Compressor Station prior to issuance of construction permit 7474 in 2018, prior to issuance of construction permit 7474M1 in 2019, and prior to issuance of construction permit 7474M2 in 2022." RTC at 5. AQB then cites NMED AQB Modeling Guidelines to support its assertion that PSD minor sources do not cause or contribute to violations of the ozone NAAQS, and that the emissions, therefore, did not require a modeling analysis. AQB's response strongly suggests that AQB did not conduct any modeling, but rather simply "evaluated" emissions. However, Condition A103.C in the Proposed Permit, as stated, explicitly states that "air dispersion modeling" was performed. In addition, it is unclear how (and if) this permit term is related to 20.2.72.208.D NMAC, which may or may not be an

[16] This distinction is not without consequence. If EPA were to accept the Petitioner's view, the SIP obligation for New Mexico to consider a construction project's impacts on the NAAQS would transform into an obligation to assess the impacts of prior preconstruction permits in a potentially unlimited number of subsequent title V permit actions. That is not what the SIP requires.

[17] Applicable requirements include requirements of the SIP, but only "as they apply to emissions units in a part 70 source." 40 C.F.R. § 70.2 (definition of "applicable requirement"); *see also* 20.2.70.7 NMAC (defining "applicable requirement" to include SIP provisions "as they apply to a Part 70 source or to an emissions unit at a Part 70 source"). The SIP provision at issue here appears to impose an obligation on the *permitting authority* to consider potential emissions in the context of the NAAQS in deciding whether to issue an NSR permit, rather than imposing an obligation on the source or "emissions units" at the source. 40 C.F.R. § 70.2. EPA highlights these regulatory definitions for the state's careful consideration as the question of whether 20.2.72.208.D NMAC is an applicable requirement is a matter for the state to assess in the first instance. For the reasons explained herein, given the ambiguity regarding whether the state considers 20.2.72.208.D NMAC an "applicable requirement," EPA is granting Petitioner's claim.

[18] EPA notes that the purpose of these permit terms is unclear. The terms do not impose any obligation on the source, but rather make a declaratory statement that compliance with the permit itself demonstrates compliance with the NAAQS.

[19] Specifically, Condition A103.C in the Proposed Permit states: "Compliance with the terms and conditions of this permit regarding source emissions and operation demonstrate compliance with national ambient air quality standards specified at 40 C.F.R. 50, which were applicable at the time air dispersion modeling was performed for the facility's NSR Permit 7474M2." Proposed Permit at A6.

applicable requirement. Therefore, to the extent that Condition A103.C is related to 20.2.72.208.D NMAC and to the extent that 20.2.72.208.D NMAC is an applicable requirement, it is unclear whether Condition A103.C assures compliance with applicable requirements. For these reasons, EPA grants the Petition with regard to Claim I.

Lastly, EPA acknowledges the Petitioner's concerns regarding its submitted data suggesting historical violations of the ozone NAAQS in the area surrounding the XTO Wildcat facility. These concerns could be more appropriately addressed through proceedings related to the attainment designation of this area. EPA observes that the Petitioner submitted a petition requesting that EPA undertake a rulemaking to redesignate portions of the Permian Basin on March 2, 2021.[20] EPA is currently evaluating that petition, and to the extent EPA takes action related to the redesignation of this area, the Petitioner may have additional opportunities to participate in that regulatory process.

Direction to AQB: In responding to this order, AQB must revise the Proposed Permit and/or permit record to address the inconsistency between Condition A103.C and the state's RTC regarding whether modeling was actually conducted for ground-level ozone (or its precursors) for NSR Permit 7474M2. AQB should also amend the Proposed Permit to remove the erroneous suggestion that the NAAQS are themselves an "applicable requirement" with which the source has an obligation to comply. Additionally, AQB must clarify whether 20.2.72.208.D NMAC is an "applicable requirement" with which the title V permit must assure compliance or that is intended to be implemented through a title V operating permit. If AQB determines that this SIP provision is not an "applicable requirement," a potential solution may be to remove Condition A103.C from the Proposed Permit altogether.

Claim II: The Petitioner Claims That "The Proposed Title V Permit Fails to Include All Applicable Emission Limitations and Standards."

The Petitioner claims that the Proposed Permit fails to include emission limitations and standards necessary to assure compliance with applicable requirements. The Petitioner specifically contends that Condition 106.A fails to include all emission limits requested by XTO Wildcat as part of its NSR permit application as well as emission limits explicitly set forth in the NSR permit. Petition at 11. The Petitioner asserts that title V permits must include "[e]mission limitations and standards" that assure compliance with all applicable requirements and that applicable requirements under title V include "[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the [Clean Air] Act." *Id.* (citing 40 C.F.R. § 70.2 and 40 C.F.R. § 70.6(a)(1)). The Petitioner claims here the Proposed Permit does not include "emission limitations and standards" that assure compliance with all of the terms and conditions of NSR

[20] *See* Letter from Jeremy Nichols, Climate and Energy Program Director, WildEarth Guardians, to Jane Nishida, Acting Administrator, U.S. EPA, *Petition to Designate Permian Basin of Southeast New Mexico a Nonattainment Area Due to Ongoing Violations of Ozone Health Standards; Petition to Find New Mexico's State Implementation Plan is Failing to Attain and Maintain Ambient Air Quality Standards* (March 2, 2021) and *In the Matter of Designation of the New Mexico Permian Basin Ozone Nonattainment Area and Call for the Revision of the New Mexico State Implementation Plan Over its Failure to Attain and Maintain the National Ambient Air Quality Standards for Ground-level Ozone,* Rulemaking petition under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, and the Clean Air Act, 42 U.S.C. § 7401, *et seq*. (March 2, 2021).

Permit 7474M2, thus EPA should object to the Proposed Permit. *Id.*

Claim II.A: Hourly VOC Limits for Truck Loading

Petitioner's Claim: The Petitioner claims that while the Proposed Permit sets forth an annual VOC emission limit for truck loading of oil and/or condensate,[21] the permit application for NSR Permit 7474M2 contained a request for an hourly VOC emission limit for truck loading that was ultimately not incorporated into the final NSR permit. *Id.* at 11. The Petitioner indicates that Condition B101.A of NSR Permit 7474M2 states "The contents of a permit application specifically identified by the Department shall become the terms and conditions of the permit or permit revision." *Id*. Further, the Petitioner notes that the NSR permit requires XTO to "operate the [Wildcat Compressor Station] in accordance with all representations of the application[.]" *Id*. (alterations in Petition). From these two provisions, the Petitioner contends that the hourly VOC limit requested in the NSR permit application is one of the "terms and conditions" of the NSR permit, and accordingly an applicable requirement with which the title V permit must assure compliance. *Id.* at 11–12.

The Petitioner challenges AQB's response to comment, specifically where AQB states that it "does not require pound per hour VOC emission limits for activities such as truck loading" and that such limits "are not necessary to meet the criteria of meeting the requirements of the Air Quality Control Act and the federal act." *Id.* at 12 (citing RTC at 10). The Petitioner claims that because the hourly VOC emission limit is an applicable requirement under title V, AQB is incorrect that this limit is not required or necessary. *Id.* The Petitioner also challenges AQB's statement that "[t]ruck loading is not a steady state process—it is episodic[,][a]s a result, it does not have a steady state hourly emission rate and an hourly limit is not appropriate." *Id.* (citing RTC at 10). The Petitioner claims that XTO Wildcat explicitly requested the hourly limit, indicating that such a limit is appropriate. *Id.*

EPA's Response: For the following reasons, EPA denies the Petitioner's request for an objection on this claim.

Section 504 of the CAA requires that title V permits "include enforceable emissions limitations and standards . . . to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661c(a).[22] Further, 40 C.F.R. § 70.2 defines "applicable requirement" to include "Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act." Therefore, the terms and conditions of an NSR permit are applicable requirements with which a title V permit must assure compliance.

The Petitioner's assertion that certain representations from an NSR permit application are "applicable requirements" is based on two portions of a generally applicable NSR permit term.

[21] Condition A106.A.

[22] *See also* 40 C.F.R. § 70.6(a)(1) (Stating that each permit shall include "Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.")

First, the Petitioner discusses a portion of Condition B101.A of NSR Permit 7474M2, which mirrors New Mexico's construction permit regulations, specifically 20.2.72.210.A NMAC. This provision states that "the contents of the application *specifically identified by the Department* shall become terms and conditions of the permit or permit revision" 20.2.72.210.A NMAC (emphasis added). In its response to comments, AQB explained this provision as follows:

> This provision allows the Department to incorporate information from the application such as specific calculation methods for emissions into the permit by reference. *The provision does not imply that all information in an application becomes a condition of the permit.* The Department determines the appropriate emission limits for a permit as part of its review of the application and development of the construction (NSR) permit as described under 20.2.72.210.B.(1) NMAC. Emission limits established in the NSR permit are incorporated into the Title V permit. There is no requirement in the regulations to establish new emission limits as part of the Title V permit.

RTC at 11 (emphasis added).

The Petitioner does not acknowledge this explanation or attempt to advance any alternative interpretation of the SIP that would cause *all* representations in a permit application to become terms of an NSR permit (or, consequently, "applicable requirements" for title V purposes). Absent such a demonstration by the Petitioner, and based on the plain language of the SIP as well as AQB's explanation, it is reasonably clear to EPA that AQB has the authority and discretion to "specifically identify" contents of an NSR application that will eventually become the terms and conditions of the NSR permit.[23] Thus, only application representations that are specifically identified by AQB are applicable requirements that must be incorporated into a title V permit.

Regarding the second portion of Condition B101.A of NSR Permit 7474M2, this portion of the permit condition reads, in its entirety:

> Unless modified by conditions of this permit, the permittee shall construct or modify and operate the Facility in accordance with all representations of the application and supplemental submittals *that the Department relied upon to determine compliance with applicable regulations and ambient air quality standards*.

NSR Permit 7474M2 at B2 (emphasis added).[24]

[23] EPA also spoke to this issue in the context of title V permit applications in *White Paper for Streamlined Development of Part 70 Permit Applications*, at 23 (July 10, 1995) ("EPA discourages the incorporation of entire applications by reference into permits. The concern with incorporation of the application by reference into the permit on a wholesale basis is the confusion created as to the requirements that apply to the source and the unnecessary limits to operational flexibility that such an incorporation might cause.").

[24] Notably, the Petitioner's selective quotation of this permit term neglects to acknowledge the qualification italicized above.

Read together, in accordance with 20.2.72.210.A NMAC, AQB appears to have the discretion to "specifically identify" content from an NSR permit application, including representations that it "relied upon to determine compliance with applicable requirements," and to make those requirements enforceable terms and conditions of the NSR permit. By contrast, application representations that are not "specifically identified" by AQB and that are not "relied upon to determine compliance with applicable regulations and ambient air quality standards" do *not* appear to become terms and conditions of the NSR permit. Therefore, the Petitioner has not demonstrated that the facility must operate in accordance with every representation made in the NSR application, as this assertion ignores the discretion AQB has to "specifically identify" terms and conditions from an application to incorporate into the NSR permit.

Claim II.A specifically concerns an hourly VOC emission "limit" requested for truck loading operations in the NSR permit application. However, AQB did not "specifically identify" the hourly VOC emission limit for truck loading operations in the NSR permit and provided a rationale for why that limit was not included (including why such a limit is not necessary to assure compliance with applicable regulations). Specifically, AQB stated:

> The Requested Allowable Emissions of VOCs from truck loading are 62.76 lb/hr and 10.28 tpy. NMED does not require pound per hour VOC emission limits for activities such as truck loading. Truck Loading is not a steady state process—it is episodic. As a result, it does not have a steady state hourly emission rate and an hourly limit is not appropriate. These releases are short term, intermittent activities for which emissions are determined by the event (*e.g.*, loading) rather than the time period over which the event occurs. Hourly emission limits on these types of releases are not necessary to meet the criteria of meeting the requirements of the Air Quality Control Act and the federal act [20.2.72.210.B.(1)(a) and B(2)].

RTC at 10.

Therefore, the hourly limit is not a term of the NSR permit and is not an applicable requirement with which the title V permit must assure compliance. For these reasons, EPA denies the Petition with regard to Claim II.A.

Claim II.B: Fugitive VOC Emissions

Petitioner's Claim: The Petitioner claims that the Proposed Permit does not set forth any hourly or annual emission limits for fugitive VOCs, despite XTO Wildcat explicitly requesting an hourly and annual emission limit for fugitive VOCs in its application for NSR Permit 7474M2. Petition at 12. The Petitioner indicates that Condition B101.A of NSR Permit 7474M2 states "The contents of a permit application specifically identified by the Department shall become the terms and conditions of the permit or permit revision." *Id*. Further, the Petitioner notes that the NSR permit requires XTO to "operate the [Wildcat Compressor Station] in accordance with all representations of the application[.]" *Id*. (alterations in Petition). From these two provisions, the Petitioner contends that the hourly and annual fugitive VOC limits requested in the NSR permit application are "terms and conditions" of the NSR permit and, accordingly, applicable requirements with which the title V permit must assure compliance. *Id.* at 12–13.

The Petitioner refutes AQB's response to comment, specifically where AQB states that it "does not establish numeric emission limits for fugitive VOC emissions of less than 25 tons per year." *Id.* at 13 (citing RTC at 10). The Petitioner claims that because the hourly and annual fugitive VOC emission limits are applicable requirements under title V, AQB cannot choose to exclude them. *Id.* The Petitioner also refutes AQB's statement that XTO Wildcat is subject to "inspection and repair programs" pointing out that AQB also acknowledges that "those inspection programs do not correlate with specific numeric emission limits or fugitive emissions of VOCs." *Id.* (citing RTC at 10). The Petitioner concludes that this statement means the Proposed Permit does not and cannot ensure XTO Wildcat operates in a manner that assures compliance with the fugitive VOC limits. *Id.* Lastly, the Petitioner cites two separate title V permits, the 3 Bear Delaware Operating—NM LLC, 3 Bear Libby Gas Plant and Enterprise Products Operating South Eddy Cryogenic Plant, claiming that these permits are for similar oil and gas processing sources and set forth annual and hourly fugitive VOC limits. *Id.*

EPA's Response: For the following reasons, EPA denies the Petitioner's request for an objection on this claim.

As explained in Claim II.A, the terms and conditions of an NSR permit are applicable requirements, with which a title V permit must assure compliance.

As EPA concluded in Claim II.A, based 20.2.72.210.A NMAC and Condition B101.A of NSR Permit 7474M2, AQB has the discretion to "specifically identify" content from an NSR permit application, including representations that it "relied upon to determine compliance with applicable requirements," and to make those requirements enforceable terms and conditions of the NSR permit. As cited in Claim II.A, in its response to comments, AQB explained this provision as follows:

> The text at 20.2.72.210.A NMAC states "The contents of the application specifically identified by the Department shall become terms and conditions of the permit or permit revision." This provision allows the Department to incorporate information from the application such as specific calculation methods for emissions into the permit by reference. *The provision does not imply that all information in an application becomes a condition of the permit.* The Department determines the appropriate emission limits for a permit as part of its review of the application and development of the construction (NSR) permit as described under 20.2.72.210.B.(1) NMAC. Emission limits established in the NSR permit are incorporated into the Title V permit. There is no requirement in the regulations to establish new emission limits as part of the Title V permit.

RTC at 11 (emphasis added).

By contrast, application representations that are not "specifically identified" by AQB and that are not "relied upon to determine compliance with applicable regulations and ambient air quality standards" do *not* become terms and conditions of the NSR permit. Therefore, the Petitioner is incorrect that the facility must operate in accordance with every representation made in the NSR

application, as this assertion ignores the discretion AQB has to "specifically identify" terms and conditions from an application to incorporate into the NSR permit.

Claim II.B specifically concerns hourly and annual fugitive VOC emission "limits" contained in the NSR permit application. However, AQB did not "specifically identify" hourly and annual emission limits for fugitive VOCs in the NSR permit and provided a rationale for why those limits were not included (including why these limits were not necessary to assure compliance with applicable regulations). Specifically, AQB stated:

> As documented in the AQB fugitive monitoring protocol . . . AQB does not establish numeric emission limits for fugitive VOC emissions of less than 25 tons per year. The fugitive emissions at Wildcat Compressor Station are subject to 20.2.50 NMAC and 40 C.F.R. 60 Subpart OOOOa. Both those regulations reduce fugitive emissions through inspection and repair programs, but those inspection programs do not correlate with specific numeric emission limits for fugitive emissions of VOCs. See Condition A209.

RTC at 10.

Therefore, the hourly and annual limits are not terms of the NSR permit and are not applicable requirements with which the title V permit must assure compliance.[25] For these reasons, EPA denies the Petition with regard to Claim II.B.

Claim II.C: Particulate Matter Emissions

Petitioner's Claim: The Petitioner claims that the Proposed Permit does not set forth any hourly or annual emission limits for particulate matter, including PM_{10} and $PM_{2.5}$, despite XTO Wildcat explicitly requesting these limits in its application for NSR Permit 7474M2 for a number of emission units. Petition at 13–14. The Petitioner indicates that Condition B101.A of NSR Permit 7474M2 states "The contents of a permit application specifically identified by the Department shall become the terms and conditions of the permit or permit revision." *Id*. at 14. Further, the Petitioner notes that the NSR permit requires XTO to "operate the [Wildcat Compressor Station] in accordance with all representations of the application[.]" *Id*. (alterations in Petition). From these two provisions, the Petitioner contends that the hourly and annual PM limits requested in the NSR permit application are "terms and conditions" of the NSR permit and, accordingly, applicable requirements with which the title V permit must assure compliance. *Id*. The Petitioner also asserts that because NSR Permit 7474M2 explicitly sets forth annual particulate matter limits for several engines, there is no question that these limits are applicable requirements. *Id.*

The Petitioner notes that in its response to comment, AQB "acknowledges that the proposed Title V permit must be revised to include the applicable annual particulate matter limits set forth in NSR permit 7474M2 engines 1-9." *Id.* (citing RTC at 10). The Petitioner contends that despite this response, the Proposed Permit was not revised to incorporate these limits and thus is still

[25] EPA notes that the two other title V permits that the Petitioner references, the 3 Bear Libby Gas Plant and South Eddy Cryogenic Plant, are separate and not relevant to the current permit action, despite the Petitioner claiming that these permits are for similar oil and gas processing sources and set forth annual and hourly fugitive VOC limits.

flawed. *Id.* The Petitioner further claims that AQB did not explicitly or directly respond to the Petitioner's comments regarding the applicable hourly PM limits, rather indirectly responded to the matter by stating that it is not required to incorporate all information in an NSR permit application into an NSR permit. *Id.*

EPA's Response: For the following reasons, EPA grants in part and denies in part the Petitioner's request for an objection on this claim.

As explained in Claims II.A and II.B, the terms and conditions of an NSR permit are applicable requirements, with which a title V permit must assure compliance.

As EPA concluded in Claims II.A and II.B, based 20.2.72.210.A NMAC and Condition B101.A of NSR Permit 7474M2, AQB has the discretion to "specifically identify" content from an NSR permit application, including representations that it "relied upon to determine compliance with applicable requirements," and to make those requirements enforceable terms and conditions of the NSR permit. As cited in Claim II.A and II.B, in its response to comments, AQB explained this provision as follows:

> The text at 20.2.72.210.A NMAC states "The contents of the application specifically identified by the Department shall become terms and conditions of the permit or permit revision." This provision allows the Department to incorporate information from the application such as specific calculation methods for emissions into the permit by reference. *The provision does not imply that all information in an application becomes a condition of the permit.* The Department determines the appropriate emission limits for a permit as part of its review of the application and development of the construction (NSR) permit as described under 20.2.72.210.B.(1) NMAC. Emission limits established in the NSR permit are incorporated into the Title V permit. There is no requirement in the regulations to establish new emission limits as part of the Title V permit.

RTC at 11 (emphasis added).

By contrast, application representations that are not "specifically identified" by AQB and that are not "relied upon to determine compliance with applicable regulations and ambient air quality standards" do *not* become terms and conditions of the NSR permit. Therefore, the Petitioner is incorrect that the facility must operate in accordance with every representation made in the NSR application, as this assertion ignores the discretion AQB has to "specifically identify" terms and conditions from an application to incorporate into the NSR permit.

A portion of Claim II.C specifically concerns hourly PM "limits" contained in the NSR permit application. However, AQB did not "specifically identify" hourly PM emission limits in the NSR permit. Therefore, the hourly PM limits are not terms of the NSR permit and are not applicable requirements with which the title V permit must assure compliance. For these reasons, EPA denies the Petition with regard to the hourly PM limits in Claim II.C.

By contrast, with respect to annual PM limits from the NSR permit, the Petition is correct that AQB stated in its RTC that "the corrected proposed Title V permit includes Particulate Matter $PM_{2.5}$ and PM_{10} emission limits in Table 106.A that are explicitly set forth in NSR 7474M2 permit, which specifically limits annual particulate matter emissions from engines 1-9 to 1.7 tpy." RTC at 10. As these limits are explicitly set forth in NSR permit 7474M2, it is clear that they are "applicable requirements" that must be included in the permit and with which the title V permit must assure compliance. However, it is not clear that these emission limits were indeed added to the Proposed Permit. In fact, based on an examination of Table 106.A of the Proposed Permit, there appear to be no $PM_{2.5}$ or PM_{10} limits explicitly listed in the table. *See* Proposed Permit at A11–A12. Therefore, the Petitioner has demonstrated that the permit record and Proposed Permit are incorrect as it appears the Proposed Permit was not corrected to contain all applicable requirements, specifically the annual particulate matter emission limits identified by AQB. Thus, EPA grants the Petition with respect ot this portion of Claim II.C.

Direction to AQB: In responding to this order and consistent with AQB's response to comment, AQB must revise the Proposed Permit to include the $PM_{2.5}$ and PM_{10} emission limits in Table 106.A that are explicitly set forth in NSR permit 7474M2, which specifically limits annual particulate matter emissions from engines 1–9 to 1.7 tpy.

Claim III: The Petitioner Claims That "Condition A107 Fails to Require Sufficient Periodic Monitoring and is Unenforceable as a Practical Matter."

Petitioner's Claim: The Petitioner claims that the Proposed Permit does not comply with 42 U.S.C § 7661c(a) and 7661c(c), and 40 C.F.R. § 70.6(a)(3)(i)(B) and 70.6(c)(1) because it does not contain sufficient monitoring to assure compliance with the requirement that vented VOC emissions during startup, shutdown, maintenance, and malfunctions (SSM/M) shall not exceed 10 tons per year, found in Condition A107.A. Petition at 15. The Petitioner claims that Condition A107.C states that the facility must "perform a facility inlet gas analysis once every year" and comply with monitoring and recordkeeping requirements under other portions of Conditions A107.D and A107.E. The Petitioner argues that although this constitutes some form of monitoring, the Proposed Permit fails to require any other monitoring. *Id.* at 15–16. The Petitioner specifies that its primary concern lies within Conditions A107.D and A107.E, in which the only monitoring required is that the facility "shall monitor" all SSM/M events. *Id.* at 16. (quoting Proposed Permit at A15). The Petitioner argues that these permit terms do not set forth any method for monitoring or otherwise explain how VOC emissions will be measured to accurately track venting emissions and assure compliance with the VOC venting limit. *Id.*

The Petitioner attempts to refute several points raised in AQB's RTC, the first of which is AQB's statement that compliance with the VOC limit during SSM/M events "requires tracking and calculating the total VOC emissions based on the inlet gas analysis (meaning the % VOC content of the gas) and the volume of gas vented." *Id*. (quoting RTC at 12). The Petitioner contends that while the Proposed Permit does require the facility to perform the gas inlet analysis, the Proposed Permit does not require tracking or calculating the volume of gas vented. *Id.* The Petitioner contends that while AQB states that the "volume of vented gas is calculated based on the volumes contained within the various equipment that are being depressurized, including the compressors and associated piping," AQB also explains that this approach for

calculating volume is not set forth in the Proposed Permit, but rather Section 6 of the permit application with demonstrating calculations. *Id.* (quoting RTC at 12). The Petitioner asserts that this approach is not appropriate because title V requires that monitoring is set forth in the permit rather than the application. *Id.*

The Petitioner points out that Section 6 of the XTO Wildcat permit application "does not set forth any methodology or procedure for calculating the volume of gas released during SSM or malfunction events." *Id.* The Petitioner contends that while the application does contain estimated calculations of VOC emissions vented during SSM/M events, the application does not provide any calculations, methodologies, or other means of specifically quantifying the volume of gas released during SSM/M events, rather it appears XTO Wildcat simply assumed a maximum of 10 tpy of vented VOCs during SSM/M "per state guidance." *Id.* The Petitioner also asserts that while AQB indicates that monitoring and recordkeeping requirements in the Proposed Permit ensure recording of the volume of gas vented and tracking "the rolling 12-month total of VOC emissions due to SSM and Malfunction events to ensure compliance with the annual emission limits in the permit," this does not constitute sufficient monitoring. *Id.* at 17.

The Petitioner claims that EPA has already "objected to virtually identical SSM and malfunction VOC venting limits in other Title V permits approved by the AQB for oil and gas processing facilities." Petition at 17 (citing *In the Matter of Lucid Energy Delaware, LLC, Frac Cat Compressor Station and Big Lizard Compressor Station*, Order on Petition Nos. VI-2022-05 and VI-2022-11 at 15–19 (Nov. 16, 2022)). The Petitioner contends that EPA must object here for the same reason as in the previous case—a title V permit must include sufficient monitoring requirements to assure compliance with the terms and conditions of the permit.[26] *Id.* at 17–18.

EPA's Response: For the following reasons, EPA grants the Petitioner's request for an objection on this claim.

EPA has considered similar issues raised by the Petitioner in the recent *Lucid Frac Cat and Big Lizard Order*. Because of the analogous nature of these issues, EPA is responding to the issues raised in this claim in a similar manner.

The 10 tpy limit on VOC emissions from SSM/M events is not currently designated state-only enforceable and therefore is federally enforceable. 40 C.F.R. § 70.6(b)(1). So long as the 10 tpy limit is federally enforceable, XTO Wildcat must comply with title V requirements for monitoring. It is AQB's responsibility, as the title V permitting authority, to ensure that the title V permit "set[s] forth" monitoring sufficient to assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a), (a)(3), (c); and 20.2.70.302.C(1)

[26] The Petitioner cites 42 U.S.C. § 7661c(c), 40 C.F.R. § 70.6(a)(3)(i)(B) and 40 C.F.R. § 70.6(c)(1).

NMAC.[27] EPA agrees with the Petitioner that while Conditions A107.D and A107.E include a compliance method requirement that the facility "shall perform a facility inlet gas analysis once every year based on a calendar year and complete the following monitoring and recordkeeping to demonstrate compliance" with emission limits,[28] the referenced monitoring conditions only generally state that the permittee "shall monitor SSM and maintenance events."[29] These conditions alone do not set forth any monitoring methods for demonstrating compliance with the VOC emission limit. Because the permit conditions do not require XTO Wildcat to follow any particular monitoring or recordkeeping methodology, the Proposed Permit cannot be said to "set forth" monitoring sufficient to assure compliance. 42 U.S.C. § 7661c(c).

AQB's RTC is also deficient and points to flaws both in the permit record and the Proposed Permit itself. In its RTC, AQB states:

> For both planned maintenance events and malfunctions, the facility may need to depressurize portions of the facility by venting gas. The methodology for estimating emissions from these depressurization events is based on the engineering design of the equipment being depressurized. The volume of vented gas is calculated based on the volumes contained within the various pieces of equipment that are being depressurized, including the compressors and associated piping. The gas analysis allows the permittee to calculate the emissions of various pollutants once the volume of vented gas is known.
>
> The SSM and malfunction condition in the permit requires tracking and calculating the total VOC emissions based on the inlet gas analyses (meaning the % VOC content of the gas) and the volume of gas vented. This methodology is provided in the application (Section 6) with the demonstrating calculations. The number of events the permittee uses in the calculation represents their estimated worst-case scenario. The permit conditions in Section 107.D (SSM Venting) and 107.E (Malfunction Venting) state in the recordkeeping section the requirement for the gas analysis and for the volume of gas vented. Records must be kept for at least five (5) years as specified in Condition B109.B of the permit. The permit conditions do not state the number of venting events, because this may vary from year to year. In addition, the same SSM or malfunction activity, such as pigging, releases different volumes of gas when the activity occurs in different parts of the facility. The permittee must monitor for the occurrence of all Malfunction events and keep

[27] 42 U.S.C. § 7661c(a) ("Each permit issued under [title V of the CAA] shall include . . . such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan."); 7661c(c) ("Each permit issued under [title V of the CAA] shall set forth . . . monitoring and reporting requirements to assure compliance with the permit terms and conditions."); 40 C.F.R. § 70.6(a) ("Each permit issued under this part shall include . . ."); 70.6(a)(3)(i) ("Each permit shall contain the following requirements with respect to monitoring: . . . ."); 70.6(c) ("All part 70 permits shall contain the following with respect to compliance: . . . testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit."); and 20.2.70.302.C(1) NMAC ("Each permit shall *contain* all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.") (emphasis added).

[28] Proposed Permit at A15.

[29] *Id.*

records of that monitoring. Monitoring and recordkeeping require monthly tracking of the rolling 12-month total of VOC emissions due to SSM and Malfunction events to ensure compliance with the annual emission limits in the permit.

RTC at 12–13.

AQB's responses indicates the SSM/M condition "requires tracking and calculating the total VOC emissions based on the inlet gas analyses (meaning the % VOC content of the gas) and the volume of gas vented."[30] However, the Proposed Permit does not explicitly require that the facility track the number of venting events per year. EPA also reads the RTC to indicate the methodology for calculating *total VOC emissions* from SSM/M events is included in Section 6 of the permit application. However, the Petitioner is correct in asserting that Section 6 of the permit application for XTO Wildcat does not set forth any methodology for calculating the total VOC emissions from SSM/M events. To the extent the state intended to rely on calculation methodologies in the application, these calculations are not sufficient because they appear not to exist. Because the permit does not specify monitoring methods for demonstrating compliance with the 10 tpy emission limit on VOCs from SSM/M events, including the methodology for calculating total VOC emissions, EPA grants the Petition with regard to Claim III.

Direction to AQB: To the extent the 10 tpy VOC limit for SSM/M events was intended to be federally enforceable, NMED must add monitoring sufficient to assure compliance. Based on discussions with AQB in the context of other related permit actions, EPA understands that AQB does not believe the 10 tpy emission limit on VOCs from SSM/M events is based on any federal requirement, but rather is based on state guidance for permitting SSM/M emissions. If so, it would be appropriate and recommended for AQB to label these conditions as "state-only enforceable" conditions. State-only requirements that are correctly labeled would not be subject to EPA's oversight or other requirements under title V of the CAA or 40 C.F.R. part 70.

V. CONCLUSION

For the reasons set forth in this Order and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the Petition as described in this Order.

Dated: AUG - 7 2023

Michael S. Regan
Administrator

[30] RTC at 12. EPA notes that the Petitioner incorrectly claims that the Proposed Permit does not require tracking or calculating the volume of gas vented, as the recordkeeping requirements in Conditions A107.D and A107.E require that "[r]ecords shall also be kept of the inlet gas analysis, the percent VOC of the gas based on the most recent gas analysis, and of the volume of total gas vented…" Proposed Permit at A15–A16.