BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF U.S. DEPARTMENT OF ENERGY- HANFORD OPERATIONS, BENTON COUNTY, WASHINGTON PERMIT NO. 00-05-006, RENEWAL 3 ISSUED BY THE WASHINGTON STATE DEPARTMENT OF ECOLOGY	)))))))))))	PETITION NO. X-2019-8 ORDER RESPONDING TO PETITION REQUESTING OBJECTION TO THE ISSUANCE OF A TITLE V OPERATING PERMIT

ORDER DENYING A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (the EPA) received a petition dated July 18, 2019 (the 2019 Petition) from Mr. Bill Green of Richland, Washington (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The 2019 Petition requests that the EPA object to the final operating permit No.00-05-006, Renewal 3 (the Final Renewal 3 Permit) issued by the Washington State Department of Ecology (Ecology) to the U.S. Department of Energy (USDOE) for the Hanford Site in Benton County, Washington (Hanford or Hanford Site). This operating permit was issued pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and the Washington Administrative Code (W.A.C.) Chapter (Ch.) 173-401. *See also* 40 C.F.R. part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

Based on a review of the 2019 Petition and other relevant materials, including the Final Renewal 3 Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further below, the EPA denies the 2019 Petition requesting that the EPA object to the Final Renewal 3 Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The EPA granted interim approval of the title V operating permit program submitted by the state of Washington and its local air agencies effective December 9, 1994. 59 *Fed. Reg.* 55813 (November 9, 1994); *see also 60 Fed. Reg.* 62992 (December 8, 1995) (final interim approval after remand on unrelated issue). The EPA promulgated final full approval of Washington's title V operating permit program effective

September 12, 2001, 66 *Fed. Reg.* 42439 (August 13, 2001), and an update to that final approval effective January 2, 2003, 67 *Fed. Reg.* 71479 (December 2, 2002). *See* 40 C.F.R. part 70, Appendix A. The regulations comprising the EPA-approved program in Washington are found in W.A.C. Ch. 171-401.

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. CAA §§ 502(a), 504(a), 42 U.S.C. §§ 7661a(a), 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* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, the 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 ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring 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), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit proposed title V operating permits to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Such petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency unless the 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. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). 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. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(l).[1] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[2]

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

[2] *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

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)).[3] When courts have reviewed the 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.[4] Certain aspects of the petitioner's demonstration burden are discussed below. A more detailed discussion can be found in *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*).

The 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 the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the state's response to comments), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.[5] Another factor the EPA examines is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for petitioner's objection, contrary to Congress' 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]

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.

[3] *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)).

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

[5] *See also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. Appx. *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (Dec. 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); *In the Matter of Georgia Power Company*, Order on Petitions, at 9–13 (Jan. 8, 2007) (*Georgia Power Plants Order*) (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).

support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").[6] Relatedly, the 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 (Jan. 15, 2013).[7] Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that the 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]

The information that the EPA considers in making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) on a proposed permit generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 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 of basis for the draft and proposed permits; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; relevant supporting materials made available to the public according to 40 C.F.R. § 70.7(h)(2); and all other 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 40 C.F.R. § 70.7(h)(2). 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 as part of making a determination whether to grant or deny the petition.

C. Regulation of Radionuclides in Washington

Although Ecology is the title V permitting authority for the Hanford Site, both Ecology and the Washington State Department of Health (Health) have regulatory authority for radioactive air emissions in Washington.[9] The Washington Attorney General opinion accompanying Ecology's initial title V program submittal explains that Ecology's authority for radioactive air emissions is under Revised Code of Washington (R.C.W.) Ch. 70.94, the Washington Clean Air Act, and that Health's authority is under R.C.W. Ch. 70.98, the Nuclear Energy and Radiation Act (NERA). *Attorney General's Opinion for the Washington State Department of Ecology*, dated October 27,

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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); *Georgia Power Plants Order* at 9–13; *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); *Portland Generating Station Order* at 5–6; *Georgia Power Plants Order* at 10.

[9] Title V operating permits are referred to as "air operating permits" in Washington. The term "title V permit" or "title V operating permit" is used in this Order for consistency.

1993, at 4 (Attorney General Opinion). [10] The Attorney General Opinion further explains that, with respect to the Hanford Site, Health will issue a license addressing radioactive air emissions (referred to hereafter as a NERA license), and the NERA license will be incorporated as an applicable requirement into the title V operating permit issued by Ecology. *Id*. The Attorney General Opinion also states that the title V operating permit for the Hanford Site will be required, issued, and enforced pursuant to the authorities set forth in R.C.W. Ch. 70.94 and its implementing regulations, including specifically, W.A.C. Ch. 173-401, Ecology's regulation implementing the EPA-approved title V program in Washington.

In December 1993, Ecology and Health revised their Memorandum of Understanding regarding regulation of radioactive air emissions at the Hanford Site as part of the title V program approval process to clarify the respective roles of Ecology and Health in the issuance and administration of title V operating permits and performing new source review (NSR). The Memorandum of Understanding, which was updated most recently in 2007 in only minor respects not relevant here, states that R.C.W. Ch. 70.98 and W.A.C. Ch. 246-247, both administered by Health, establish radioactive air emissions requirements, which are "'applicable requirements' under Ecology's W.A.C. 173-400-200" and that all air emissions at the Hanford Site, including radioactive air emissions, will be covered under a title V permit. *Memorandum of Understanding between Department of Ecology and the Department of Health Related to the Respective Roles and Responsibilities of the Two Agencies in Coordinating Activities Concerning Hanford Site Radioactive Air Emissions,* dated June 1, 2007, at 2 (MOU). The MOU further provides that USDOE is required to submit two copies of its title V permit application, one to Health for the licensing of radioactive air emissions, and one to Ecology for the permitting of nonradioactive air emissions. Thereafter, the MOU provides that Health will issue a NERA license, which will be incorporated into USDOE's title V permit as an applicable requirement. The MOU states that a title V permit will be issued by Ecology with Health as a signatory reviewer and issuer of the NERA license portion of the permit. MOU, at 2, 4. The MOU makes clear that, although Health is primarily responsible for the regulation of radioactive air emissions at the Hanford Site, such responsibility does not alter in any way existing statutory authorities of Health or Ecology. *Id.,* at 4.

With respect to the title V permit issuance process, the MOU provides that Health will handle all NERA license procedures and Ecology will handle all title V operating permit procedures and requirements. *Id.,* at 7. It further provides that the agencies will hold joint hearings, will jointly assure proper notice of public hearings, and will jointly prepare responses to public comments, but that Ecology is responsible for submitting notices, comments, and the proposed permit to the EPA. *Id.,* at 7. Ecology's regulations for issuing title V permits include provisions for public notice, a 30-day public comment period, opportunity for public hearing and the opportunity for judicial review in state court. *See* W.A.C. 173-401-735; W.A.C. 173-400-800; Attorney General Opinion, at 14, 20–21. As a matter of state law, a NERA license is not subject to a public comment process or eligible for judicial review at the state level. *See Letter from Stuart Clark, Washington Department of Ecology, and Gary Robertson, Washington Department of Health, to Bill Green*, dated July 16, 2010, at 4–5.

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[10] The Attorney General Opinion uses the term "radioactive air emissions," which is not used or defined in either R.C.W. Ch. 70.94 or R.C.W. Ch. 70.98; nevertheless, we understand the term includes radionuclides based on the context in which the Attorney General Opinion applies.

Consistent with the requirements of 40 C.F.R. part 70, Ecology's definition of "applicable requirement" includes specifically identified requirements of the CAA, including any standard or other requirement under section 112 of the CAA. *See* W.A.C. 173-401-200(4)(a). Ecology has adopted by reference all standards in 40 C.F.R. part 61, including subpart H, *see* W.A.C. 173-400-075(1), which are standards adopted under section 112 of the CAA. Ecology's definition of "applicable requirement" also includes other requirements of state law, such as NERA and its implementing regulations. *See* W.A.C. 173-401-200(4)(d). As discussed above, the Attorney General Opinion states that the NERA license issued by Health to USDOE is an "applicable requirement" under state law. *See* Attorney General Opinion, at 4.[11]

Health has also adopted by reference the 40 C.F.R. part 61 standards that regulate radionuclides[12] (Radionuclide NESHAPs), including subpart H.[13] *See* W.A.C. 246-247-035. In 2006, the EPA granted partial approval of Health's request for delegation of authority to implement and enforce the Radionuclide NESHAPs. 71 *Fed. Reg.* 32276 (June 5, 2006) (final approval).[14]

For more information about the regulation of radionuclides in Washington, *see in the Matter of U.S. Dep't of Energy-Hanford Operations*, Order on Petition Nos. X-2016-13 (October 15, 2018) (*2018 Hanford Order*); *In the Matter of U.S. Dep't of Energy-Hanford Operations*, Order on Petition Nos. X-2014-01, X-2013-01 (May 29, 2015) (*2015 Hanford Order*).

III. BACKGROUND

A. The Hanford Site

The Hanford Site occupies approximately 560 square miles in south central Washington, just north of the confluence of the Snake and Yakima Rivers with the Columbia River. The Hanford Site was acquired by the federal government in 1943 and for many years was dedicated primarily to the production of plutonium for national defense and the management of the resulting waste. With the shutdown of the production facilities in the 1970s and 1980s, missions were redirected to decommissioning and site cleanup, and diversified to include research and development in the areas of energy, waste management, and environmental restoration. The Hanford Site is a source of radionuclides and is a major stationary source subject to the requirements of title V of the CAA (42 U.S.C. §§ 7602 and 7661) and the EPA-approved title V program for Washington,

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[11] The EPA made clear in the *2015 Hanford Order* that the NERA license is not an "applicable requirement" under 40 C.F.R. § 70.2 or for purposes of Washington's EPA-approved title V program. *See 2015 Hanford Order* at 14 n. 14. In contrast, 40 C.F.R. part 61, subpart H is a title V applicable requirement.

[12] 40 C.F.R. part 61, subparts B, H, I, K, Q, R, T and W.

[13] The National Emission Standards for Hazardous Air Pollutants (NESHAPs) are established pursuant CAA § 112 as stationary source standards to regulate emissions of hazardous air pollutants (HAPs) from certain stationary source categories. The Radionuclide NESHAPs, and other standards in Part 61, were established prior to the 1990 Clean Air Act Amendments. NESHAPs established after the 1990 Amendments are found in Part 63.

[14] The EPA granted Health partial rather than full delegation. Although Health has the authority required by 40 C.F.R. §§ 70.11(a)(3)(ii) and 63.91(d)(3)(i) to recover criminal penalties for knowing violations, Health did not at the time have express authority to recover criminal fines for knowingly making a false material statement or knowingly rendering inadequate any required monitoring device or method, as required by 40 C.F.R. §§ 70.11(a)(3)(iii) and 63.91(d)(3)(i). *See* 71 *Fed. Reg.* 32276.

codified at W.A.C. Ch. 173-401. The Final Renewal 3 Permit covers numerous emission points on the Hanford Site, including tanks, boilers, emergency generators, a vitrification plant, a fuel station, and a pretreatment plant. Final Renewal 3 Permit, Attachment 1 at v–vii.

B. Permitting History

The first title V permit for the Hanford Site was issued by Ecology in 2001 and was first renewed in 2006. In 2011, the USDOE submitted an application to renew its title V permit for the Hanford Site, referred to as "Renewal 2." *2015 Hanford Order* at 8. After providing for public comment and responding to comments at the state level, Ecology submitted the proposed permit for EPA review on February 14, 2013. When the EPA did not object during its 45-day review period, the Petitioner submitted a petition on April 23, 2013 (2013 Petition), requesting that the EPA object to the proposed Renewal 2 permit. *Id.* In May 2013, Ecology reopened the Renewal 2 permit for public comment and, after responding to comments, submitted another proposed permit known as "Renewal 2, Revision A" or "Revision A" for EPA review on February 13, 2014. *Id.* at 9. After the EPA did not object and Ecology issued the final Revision A permit, the Petitioner submitted a second petition on April 21, 2014, requesting that the EPA object to Revision A on several grounds (2014 Petition). *Id*.

On May 29, 2015, the EPA issued the *2015 Hanford Order*, granting in part and denying in part the Petitioner's 2013 Petition and 2014 Petition. Specifically, the EPA denied all of the Petitioner's claims but one, objecting on the grounds that Ecology's record was inadequate with respect to addressing 40 C.F.R. part 61, subpart H in the Renewal 2 and Revision A permits. *See 2015 Hanford Order* at 20–22.

When the EPA issued the *2015 Hanford Order*, Ecology was already in the process of revising the Revision A permit to incorporate a new NERA license issued by Health for the Hanford Site, which addressed several newly authorized emission units, and to reformat the part of the permit for toxic emission units so all information for each unit would be in one place. *See* Revision B, Response to Comments at 64. Ecology held a public comment period on revisions to the draft permit (which would become the "Revision B" permit that was the subject of a subsequent petition from the Petitioner) from March 22 through May 8, 2015. The Petitioner submitted comments to Ecology on draft Revision B on April 22, 2015.

On June 10, 2016, Ecology submitted to the EPA proposed Revision B for the EPA's 45-day review period under 40 C.F.R. § 70.8(c). When the EPA did not object during its 45-day review period, the Petitioner submitted a petition on September 1, 2016 (2016 Petition), requesting that the EPA object to the proposed Renewal 2, Revision B permit. The Petitioner claimed that Ecology had failed to provide the public with information used to create terms and conditions implementing 40 C.F.R. part 61, subpart H, a federal applicable requirement.

On October 15, 2018, the EPA issued the *2018 Hanford Order*, granting the Petitioner's 2016 Petition. In granting the 2016 Petition, the EPA directed Ecology to provide for public notice on a draft title V permit for the Hanford Site, at which time Ecology was required to make all relevant supporting materials for the permitting decision, including information used by Health to implement 40 C.F.R. part 61, subpart H, available for public review. *2018 Hanford Order* at 12. The EPA noted in the *2018 Hanford Order* that, at the time of issuance, Ecology had already

received an application from USDOE, issued a draft permit, and held a public comment on the draft Renewal 3 Permit, which was ultimately issued by Ecology as the Final Renewal 3 Permit that is the subject to the Petitioner's current petition. *Id.* The EPA stated in the *2018 Hanford Order* that, to the extent Ecology had made available during the public comment process on the draft Renewal 3 Permit all relevant supporting materials for the permitting decision, which the Petitioner contended were not provided during the public comment period on the Renewal 2, Revision B title V Permit, Ecology would have addressed Petitioner's 2016 Petition. *Id.* at 13. At the time the EPA issued the *2018 Hanford Order*, Ecology had not completed its response to comments or issued the Final Renewal 3 Permit.

During the public comment period on the draft Renewal 3 Permit, which was extended several times and closed on September 14, 2018, the Petitioner submitted a total of 151 comments to Ecology. 2019 Petition at 3. Ecology transmitted the proposed Renewal 3 Permit to the EPA for its 45-day review on May 20, 2019.[15] Ecology issued the Final Renewal 3 Permit on July 15, 2019, with an effective date of August 1, 2019.

C. Timeliness of Petition

Pursuant to the CAA, if the 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. CAA § 505(b)(2)42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on July 5, 2019. Thus, any petition seeking the EPA's objection to the Final Renewal 3 Permit was due on or before September 3, 2019. The 2019 Petition was dated and received by the EPA on July 18, 2019. The EPA, therefore, finds that the Petitioner timely filed the 2019 Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Claim 1: The Petitioner's Claim that "Contrary to 40 C.F.R. 61.04(c)(10) n. 16, Ecology exceeded its authority when it developed and require[d] the use of a new monitoring method, unapproved by EPA, for determining compliance with emission limits for federally-enforceable requirements."

Petitioner's Claim: In Ecology Order DE11NWP-001, Revision 4 (an NSR permit), Ecology created a monitoring scheme that uses measurements of ammonia to determine compliance with emission limits for volatile organic compounds (VOCs) and toxic air pollutants (TAPs). The requirements of this Order have been included in the Final Renewal 3 Permit. The Petitioner asserts that these are federally enforceable requirements in the Final Renewal 3 Permit. 2019 Petition at 4–5. The Petitioner claims, briefly, that because the EPA had not delegated to Ecology some of the general provisions of 40 C.F.R. Part 61, Ecology lacks the authority to create a new

[15] The Petitioner submitted a letter to the EPA dated June 10, 2019, requesting that the EPA object under CAA § 505(b)(1), *i.e.*, during the EPA's discretionary 45-day review period, to the proposed Renewal 3 Permit based on, among other things, the allegation that Ecology had not abided by the EPA's 2018 Hanford Order in issuing the proposed Renewal 3 Permit. This Order is intended as a response to the 2019 Petition only and is not intended to respond to this letter.

monitoring method for determining compliance with federally-enforceable requirements. *Id.* at 4, 14.

The Petitioner goes on to criticize what the Petitioner characterizes as a "ratio method" that Ecology included in Order DE11NWP-001, which is incorporated by reference into the Final Renewal 3 Permit. *Id.* at 4–5. The Petitioner argues that the EPA has not preapproved Ecology's use of a ratio method. *Id.* at 5, 14. The Petitioner continues that even if the EPA has generally allowed the use of surrogates as indicators for pollutants of concern, the EPA has never approved the use of a ratio method for "an environment that is never homogeneous and is never in equilibrium." *Id.* at 14.

The Petitioner argues that the use of the ratio method must be discontinued and replaced by a method that includes a method detection limit (MDL). *Id.* at 10, 15. The Petitioner claims that Ecology in its response to comments confused "an MDL for application of the Ratio Method with MDLs for sampling methods applicable to specific pollutants of concern." *Id.* at 10.

The Petitioner faults Ecology's use of the ratio method because the Petitioner asserts the method does not consider "potential additive and synergistic effects of radioactive and non-radioactive releases" and "does not consider any chemical or any physical properties which are unique to every compound, nor does it consider any atmospheric conditions." *Id.* at 10–11.

The Petitioner argues that the ratio method is a "force-fit" attempt to use a straight-line relationship to "predict emissions of non-radionuclide pollutants in an exothermic, radiocatalytic, and radiolytic environment . . . ." *Id.* at 12.

The Petitioner claims the four most significant flaws in the use of the ratio method are: 1) the use of linear proportions to predict emissions; 2) the method overlooks additive or synergic impacts of radioactive gases; 3) the method overlooks that the material is radioactive, continually generating heat, continually catalyzing both known and unknown chemical reactions, continually creating gases and known and unknown chemical products and thus any samples are not representative, and 4) the method does not have an MDL. *Id.* at 14–15.

EPA's Response: As explained in more detail below, the EPA denies the Petitioner's request for an objection on this claim. The Petitioner has failed to identify any monitoring terms or conditions that are missing from the title V permit. The Petitioner points to a regulation that is not relevant to the evaluation of monitoring in the underlying NSR permit (which, in turn, is the source of the relevant monitoring regime in the title V permit) to argue that Ecology lacked sufficient authority to develop the monitoring scheme. Further, the Petitioner has provided insufficient analysis of the monitoring required by the Final Renewal 3 Permit, failed to consider the monitoring scheme as a whole, and neglected to assess Ecology's response to comments. Therefore, the Petitioner has failed to demonstrate that Ecology did not comply with the CAA, 40 C.F.R. part 70, or Ecology's approved title V program when it issued Final Renewal 3 Permit.

Relevant Legal Background

The EPA explained the requirements of title V monitoring, recordkeeping, and reporting in depth in *in the Matter CITGO Refining and Chemicals Company*, Order on Petition No. VI-20007-01 (May 28, 2009) (*CITGO Order*):

> In August 2008, the United States Court of Appeals for the District of Columbia Circuit emphasized that section 504(c) of the Act requires all title V permits to contain monitoring requirements to assure compliance with permit terms and conditions. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008); *see also* 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c)(1)).
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> To summarize, EPA's part 70 monitoring rules (40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1)) are designed to satisfy the statutory requirement that "[e]ach permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions." CAA § 504(c); 42 U.S.C. § 7661c(c). As a general matter, permitting authorities must take three steps to satisfy the monitoring requirements in EPA's part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. Second, if the applicable requirement contains no periodic monitoring, permitting authorities must add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.F.R. § 70.6(c)(1). . . .
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> . . . Permitting authorities have a responsibility to respond to significant comments. *See, e.g.*, *In the Matter of Onyx Environmental Services*, Petition V-2005-1 (February 1, 2006), cited in *In the Matter of Kerr-McGee, LLC, Frederick Gathering Station*, Petition-VIII-2007 (February 7, 2008) (Kerr-McGee Final Order) ("it is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments"). This principle applies to significant comments on the adequacy of monitoring.
>
> . . .
>
> The determination of whether the monitoring is adequate in a particular circumstance generally will be a context-specific determination. The monitoring analysis should begin by assessing whether the monitoring required in the applicable requirement is sufficient to assure compliance with permit terms and conditions. In many cases, such as with monitoring developed pursuant to the CAM rule, monitoring from the applicable requirement will be sufficient. Some factors that permitting authorities may consider in determining appropriate

> monitoring are (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities. The preceding list of factors is only intended to provide the permitting authority with a starting point for their analysis of the adequacy of the monitoring. As stated above, such a determination generally will be made on a case-by-case basis and other site-specific factors may be considered.

CITGO Order at 6–8.

Ecology's Response to Petitioner's Comment

In response to comments made by the Petitioner, Ecology stated:

> The Approval Order DE11NWP-001, Revision 4 requires VOC emissions to be assessed quarterly, TAP emissions to be assessed annually, and ammonia emissions to be assessed quarterly. In addition to these assessments, the approval order requires ammonia monitoring as an indicator compound for TAPs during solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or waste feed delivery operations to the Waste Treatment and Immobilization Plant. This additional monitoring requirement is to verify the safety factors used in the application for these activities are a conservative estimate of the actual emissions. EPA allows monitoring of surrogates as indicators for the pollutant of concern.
>
> Ammonia can be monitored near real time during the activity, whereas TAPs such as dimethyl mercury, n-nitrosodimethylamine, and chromium hexavalent: soluble, except chromic trioxide, cannot be monitored as easily. The method detection limit for ammonia monitoring during waste disturbing activities would be dependent on the device used. The approval order also requires confirmatory samples of ammonia, dimethyl mercury, n-nitrosodimethylamine, and chromium hexavalent: soluble, except chromic trioxide to ensure the permitted ammonia concentration. These samples must be collected following EPA approved procedures, or alternate procedures approved by Ecology, which would identify the method detection limits. The permittee, USDOE, is then required to evaluate this data to determine if the constituents of the ammonia concentration limits provided sufficient indication of emission of other toxic air pollutants during these waste disturbing activities (i.e., the ratio determined from the application material was maintained).
>
> The ammonia monitoring concentrations for these activities was calculated from the best, currently available data at the time, on tank waste characteristics and engineering judgement on actual tank emission activity compared to theoretical

tank emission activity. If the sampled ratio would result in an increased emission limit in Table 6 (i.e., more mass of ammonia is emitted per mass of dimethyl mercury than the original ratio), the permittee, USDOE, must specifically request this increase. If the sampled ratio would result in a decreased emission limit in Table 6 (i.e., less mass of ammonia is emitted per mass of dimethyl mercury than the original ratio), this will become the new ammonia limit in Table 6 used during monitoring of waste disturbing activities. This mechanism does not change the emission limits of the discharge point. This mechanism only changes the ammonia monitoring concentration that triggers the operations to stop to ensure the permitted limits for all constituents are not exceeded during the activity.

> Monitoring requirements for this and similar discharge points for emissions attributed to bolus events and fugitive emissions, addressing the unstable and dynamic emission-generating environment within the tanks, addressing the orders of magnitude increases in emissions resulting from waste disturbing activities, and considers the impact of differing physical and chemical properties among the TAPs of concern are addressed in comments I-7-40, I-7-56, I-7-61, I-10-1, and I-10-7.
>
> Approval Order DE11NWP-001, Revision 4, as incorporated into the [air operating permit (AOP)] under discharge point 1.4.32, contains enforceable emission limits. Based on the above information and responses to other comments in this document, the AOP provides monitoring that is sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the applicable requirement, considering the factors identified in the comment.
>
> No change to the AOP is required.

Ecology Response to Comments for Renewal Permit 3 (RTC) at I-7-55.

Ecology also provided that:

> Regulating non-radioactive emissions and radioactive emissions in separate attachments has no effect in estimating the total risk in the AOP. Neither state nor federal regulations account for synergistic effects of compounds emitted together. Individual constituents have an established emission level that is allowed and within acceptable risk limits. Since all non-radioactive and radioactive emissions are evaluated on an individual pollutant basis in state and federal regulation, organizing the Hanford AOP into separate attachments, rather than a single attachment, results in the same estimate of total risk. The discharge points and emission units at Hanford have followed the applicable state and federal regulations to permit the emission of regulated pollutants.
>
> Furthermore, radiological components in sufficient quantity to create appreciable synergistic effects with chemicals are only present together in the single shell and

> double shell mixed waste tanks and related tank waste streams at Hanford. The underlying requirements (e.g. notice of construction approval orders and radiological air emission licenses) for discharge locations emitting Hanford tank waste utilized tank head space samples for determining the source term. Thus, the samples collected and used in the permitting process have already accounted for these potential synergistic interactions.
>
> Additionally, once toxic and radioactive emissions leave the discharge location (e.g., the stack), any appreciable contamination that releases radiation to synergistically interact with vapors is captured on the [high energy particulate air (HEPA)] filters required by the FF-01 license

Id. at I-7-4.

EPA's Analysis

As an initial matter, the Petitioner has not identified any specific monitoring provisions or requirements that he believes are missing from the title V permit and that are required by an identified applicable requirement of the Act. The Petitioner has, therefore, failed to meet his burden to demonstrate that the Final Renewal 3 Permit is not in compliance with the requirements of the Act due to any alleged flaw in the Permit's monitoring requirements. *See supra* at 2–3. This alone provides sufficient grounds for the EPA to deny this claim. Nevertheless, we will examine Petitioner's claim in detail and explain why, on multiple grounds, the claim does not warrant an objection by the EPA to the Final Renewal 3 Permit.

This claim begins with the Petitioner arguing that "Ecology exceeded its authority" because of the limitations in 40 C.F.R. § 61.04(c)(10) n. 16. 2019 Petition at 4. The Petitioner's argument seems to be that 40 C.F.R. § 61.04(c)(10) n. 16 stands for the proposition that Ecology lacked the authority to use the ratio method in Ecology Order DE11NWP-001, Revision 4 because the "EPA withheld from delegation to Ecology" the authority to create a new monitoring method. *Id.* at 14. The Petitioner's reliance on this provision is misplaced. This provision speaks to the EPA's delegation of authority to Ecology and Health under Part 61, which contains the NESHAPs.[16] Order DE11NWP-001, Revision 4 is an NSR permit under the state's minor NSR program and regulates VOCs and pollutants under the State's TAP program, which is governed by distinct authority.[17] The limitations and monitoring in this Ecology Order DE11NWP-001, Revision 4 were, therefore, not derived from standards under Part 61. Instead, the relevant provisions governing Order DE11NWP-001, Revision 4 are those provisions of state law that comprise Ecology's minor NSR program for regulating VOCs and that the EPA has approved into the state implementation plan (SIP). *See* 40 C.F.R. § 52.2470(c), Table 2 (approval of W.A.C. 173-400-110 through -113). The EPA's approval of the SIP does not set a limited

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[16] *See supra* p. 6.

[17] Although not raised by the Petitioner, the EPA notes that it appears that only a portion of Order DE11NWP-001, Revision 4 is federally enforceable: the limits on the emissions of VOCs under the minor NSR program. The EPA has not approved Washington's TAP program into the SIP and so those provisions should be considered "state only" enforceable. *See* 40 C.F.R. §§ 52.2470(c), Table 2 (exclusion of references to "toxic air pollutants" in EPA approval of minor NSR program), 70.6(b); W.A.C. 173-401-625. The EPA recommends that at the next revision, Ecology clarify which specific provisions of the underlying NSR orders are federally enforceable.

number of approved monitoring methods for minor NSR permits. Therefore, the provision cited by the Petitioner (40 C.F.R. § 61.04(c)(10)) is irrelevant to whether Ecology had authority to develop the monitoring scheme it included in Order DE11NWP-001, Revision 4. The Petitioner has not identified any emission limitations or monitoring requirements in Part 61 that could be relevant to the emission units covered by Order DE11NWP-001, Revision 4 such that the limitation in 40 C.F.R. § 61.04(c)(10) would be relevant to the monitoring in that Order. In addition, a title V permitting authority has the authority (and, in some instances, a duty) to supplement monitoring for underlying applicable requirements in a source's title V permit where the already-existing monitoring provisions included in the relevant applicable requirements are insufficient to assure compliance. *See supra* pp. 9–10. The lack of a delegation of certain authorities in the Part 61 program asserted by the Petitioner does not limit a permitting authority's ability to establish supplemental monitoring in a title V permit. Indeed, in some circumstances, the Act demands such supplemental monitoring. *See* CAA § 504(c). Therefore, the Petitioner's reference to 40 C.F.R. § 61.04(c)(10) n. 16 does not demonstrate that there is a flaw in the Final Renewal 3 Permit.

At various points in the 2019 Petition, the Petitioner also argues that the ratio method "was [not] vetted by EPA . . . ." *See, e.g.*, 2019 Petition at 14. The Petitioner does not explain why this lack of prior EPA approval results in the monitoring being inadequate. Nor does the Petitioner suggest that the CAA or EPA regulations might require prior EPA approval of a monitoring method selected by Ecology in minor NSR permits that it issues under an approved NSR permit program. By failing to provide any authority or analysis for why prior EPA approval might be necessary for Ecology to develop the monitoring scheme it created in Order DE11NWP-001, the Petitioner has failed to demonstrate that incorporating that monitoring into the Final Renewal 3 Permit resulted in a flaw in the permit.[18]

Even if the EPA were to consider the technical arguments that the Petitioner raises against the monitoring Ecology included in the title V permit, the Petitioner fails to demonstrate that the Final Renewal 3 Permit does not comply with 40 C.F.R. part 70 or the CAA. In critiquing the monitoring under the Final Renewal 3 Permit, the 2019 Petition focuses exclusively on only one of the suggested factors described above, *supra* p. 10–11, the variability of emissions, touching only briefly on the description of control equipment (HEPA filters for radionuclides). The Petitioner's failure to consider other factors, such as the likelihood of a violation or the type of monitoring, process, maintenance, or control equipment data already available for the relevant emission unit(s) leaves an incomplete assessment of the adequacy of the monitoring employed by Ecology. The 2019 Petition has, therefore, failed to demonstrate that Ecology erred by not

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[18] *See supra* n. 6 and accompanying text. Indeed, as correctly explained by Ecology, the "EPA allows monitoring of surrogates as indicators for the pollutant of concern." RTC at I-7-55. *Cf. In the Matter of Louisville Gas and Electric, Trimble County*, Order on Petition, at 18–19 (September 10, 2008) (denying a petition claim related to a permit term that relied on sulfur dioxide (SO_2) as a surrogate for fluoride emissions limits); *In the Matter of Luminant Generation Company- Big Brown, Monticello. and Martin Lake*, Order on Petition Nos. VI-2014-01; VI-2014-02; VI-2014-03, at 10–15 (January 2, 2015) (denying a petition claim related to a permit term that relied on opacity as a surrogate for a PM emission limit). The Petitioner fails to rebut Ecology's explanation in the RTC and thus fails to demonstrate that Ecology erred by using a surrogate for monitoring in the Final Renewal 3 Permit. *See supra* n. 5 and accompanying text.

including supplemental monitoring for Order DE11NWP-001 in the Final Renewal 2019 Permit.[19]

Another fundamental flaw with the Petitioner's technical arguments is that he fails to consider the monitoring scheme Ecology developed in Order DE11NWP-001, Revision 4, which has been incorporated into Final Renewal 3 Permit, as a whole.[20] *See in the Matter of Public Service of New Hampshire, Schiller Station*, Order on Petition No. VI-2014-04, at 14 (July 28, 2015) (*Schiller Order*) (explaining that petitioner must demonstrate why the monitoring, viewed as a whole, is insufficient to assure compliance with applicable requirements)*; see also In the Matter of Wheelabrator Frackville Energy*, Order On Petition No. III-2017-19, at 13 (April 6, 2018) (denying a claim because the petitioner did not consider the monitoring scheme as a whole). The monitoring scheme to establish compliance with the emission limits in Conditions 1.1.2, 1.1.3, and 1.1.4[21] is split between quiescent periods and non-quiescent periods.[22] For VOCs, during quiescent periods, compliance is demonstrated by quarterly stack tests. Ecology Order DE11NWP-001 at 8, Condition 1.3.3.2, and 11, Condition 3.2. For TAPs, during quiescent periods, compliance is demonstrated by annual stack tests. *Id.* at 8, Condition 1.3.3.2, and 11, Condition 3.3. The ratio method that the Petitioner argues is deficient is *only* employed during non-quiescent periods, *i.e.* periods of activity. *Id.* at 8, Condition 1.3.4, 11, Condition 3.5.

The Petitioner does mention the use of stack tests to confirm compliance and to adjust the ratio of ammonia to the pollutants of concern. The Petitioner claims that because these ratios are adjusted based on the stack tests "it appears there are NO fixed emission limits under this Order." 2019 Petition at 12 (emphasis in original). On the contrary, emission limits for VOCs and TAPs are established in Conditions 1.1.2 and 1.1.3 of Ecology Order DE11NWP-001. The Petitioner ignores Ecology's RTC, which specifically states, "This mechanism does not change the emission limits of the discharge point. This mechanism only changes the ammonia monitoring concentration that triggers the operations to stop to ensure the permitted limits for all constituents are not exceeded during the activity." RTC at I-77-5. The 2019 Petition does not otherwise discuss the requirement for quarterly or annual stack tests and how they fit within the overall monitoring scheme. In failing to consider the monitoring scheme as a whole, the 2019 Petition fails to demonstrate that there is a flaw in the Final Renewal 3 Permit. *See Schiller Order* at 14.[23]

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[19] *See supra* n. 6 and accompanying text.
[20] *See* Final Renewal 3 Permit at 96–109.
[21] Condition 1.1.2 establishes annual ton per year limits on VOC emissions. Ecology Order DE11NWP-001 at 5–6. Conditions 1.1.3 and 1.1.4 establish shorter term, pounds per 24-hour limits for TAPs and ammonia. *Id*
[22] Quiescent periods are those periods during which the system is stable or dormant.
[23] The Petitioner briefly criticizes Ecology for applying "measurements from tanks not undergoing waste-disturbing activities (quiescent)" to non-quiescent periods when the "environment is not homogeneous" and is not at "steady-state." 2019 Petition at 11. The Petitioner's statement ignores two important factors for how Ecology uses ammonia as a surrogate in Order DE11NWP-001. First, Ecology used the worst-case measurements for each compound to set the limit on ammonia that would assure compliance with the emission limits for the other pollutants. RTC at I-10-1. Second, and more fundamentally, this ratio of ammonia to an emission limit for a pollutant of concern, which used values from measurements during quiescent periods, was only an initial value based on the best data available to Ecology. *See* Order DE11NWP-001, Condition 3.5.2. ("To confirm and then adjust the emission limits as actual performance data is collected during [non-quiescent periods]" the permit establishes "a method of updating the limits . . . ."). The new data that is used to adjust the limits on ammonia, which assures compliance with the

The Petitioner also failed to address the technical considerations that Ecology raised in the RTC. Ecology explained that during non-quiescent periods, "[a]mmonia can be monitored near real time during the activity," whereas for certain TAPs this "cannot be [done] as easily." RTC at I-7-55. The Petitioner fails to provide any retort to Ecology's argument. Indeed, while the Petitioner faults Ecology for using a monitoring mechanism that, for example, the Petitioner claims does not consider "synergistic and/or additive effects" of both non-radionuclide and radionuclide emissions or uses a linear relationship between ammonia and other pollutants, 2019 Petition at 10–11, the Petitioner never suggests, given the lack of ability for real time monitoring for certain pollutants, that there is a monitoring scheme that Ecology *could* use that would satisfactorily address those issues. In the EPA's view, Ecology reasonably considered the limitations of real time testing for these pollutants and determined that the use of ammonia as a surrogate with regular stack testing for VOCs and TAPs was an appropriate compliance method. Although the 2019 Petition raises several technical arguments against this decision, it has not demonstrated that, in accounting for testing limitations, Ecology's decision was unreasonable. Because the Petitioner has not fully considered Ecology's response to comments or all of the factors to be considered in determining appropriate monitoring, the Petitioner fails to demonstrate that there is a flaw in the Final Renewal 3 Permit.[24]

The use of surrogates for assuring compliance with emission limits for a different pollutant of concern is a standard practice, undermining the Petitioner's complaints regarding the lack of an MDL for the ratio method. *Cf. In the Matter of Louisville Gas and Electric, Trimble County*, Order on Petition, at 18–19 (September 10, 2008) (denying a petition claim related to a permit term that relied on SO_2 as a surrogate for fluoride emissions limits); *In the Matter of Luminant Generation Company- Big Brown, Monticello. and Martin Lake*, Order on Petition Nos. VI-2014-01; VI-2014-02; VI-2014-03, at 10–15 (January 2, 2015) (denying a petition claim related to a permit term that relied on opacity as a surrogate for a PM emission limit). As Ecology explained in the RTC, each of the underlying testing methods has its own MDL. *Id.* at I-77-5. The Petitioner argues that this "confuses an MDL for the application of the Ratio Method with MDLs for sampling methods applicable to specific pollutants of concern." 2019 Petition at 10. However, it is the Petitioner's argument that appears incorrect. When using a surrogate, testing for one pollutant to demonstrate compliance with another (*e.g.*, using particulate matter continuous emission monitors to demonstrate compliance with a HAP limit), the relationship between the surrogate and the pollutant of concern does not itself have to have an MDL because it is merely a mathematical relationship based on prior test methods for individual pollutants that do have an MDL. Therefore, the EPA does not believe that an MDL for the *ratio* of ammonia to

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emission limits for other pollutants, is based on measurements taken during non-quiescent periods. *Id.*, Condition 3.5.2.1. The Petitioner's argument, therefore, would only seem to apply to the initial limit on ammonia, based on the best data then available, rather than the updated limit on ammonia based on data gathered during non-quiescent periods. Because the Petitioner did not address these seemingly relevant permit terms means that the Petitioner has failed to demonstrate that this issue results in a flaw in the Final Renewal 3 Permit. *Motiva Order* at 19; *see In the Matter of Raven Power, Fort Smallwood*, Order on Petition No. 111-2017-3 at 20–24 (January 17, 2018); *In the Matter of Yuhuang Chemical Inc. Methanol Plant, St. James Parish, Louisiana*, Order on Petition No. VI-2015-03 at 18 n.16 (August 31, 2016*); In the Matter of Public Service of New Hampshire, Schiller*, Order on Petition No. VI-2014-04 at 13–16 (July 28, 2015); *supra* note 8 and accompanying text.

[24] *See supra* n. 5 and accompanying text.

other pollutants of concern is necessary in Ecology Order DE11NWP-001. Further, while providing his explanation of what an MDL is, the Petitioner fails to cite any authority for the proposition that the use of a ratio between a surrogate and pollutant of concern itself must have an MDL or explain why an MDL is necessary. *See* 2019 Petition at 10 n.17. A petition must provide both relevant analysis and citations to legal authority in order to demonstrate a flaw in a permit.[25] The Petitioner has not demonstrated that an MDL for the ratio of ammonia to other pollutants of concern is necessary. Therefore, the Petitioner has not demonstrated that there is a flaw in the Final Renewal 2019 Permit.

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

Claim 2: The Petitioner's Claim that "Contrary to CAA § 504(a) [42 U.S.C. § 7661c(a)] and 40 C.F.R. 70.6(a)(1) federally enforceable conditions for some emissions units in Renewal 3 do not include emissions limits, only references to other documents where these emission limits are located."

Petitioner's Claim: The Petitioner claims that the Final Renewal 3 Permit fails to include all emission limitations as required by CAA § 504(a), 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.6(a)(1) because the permit incorporates some federally-enforceable emission limits by reference and "does not actually include emission limitations." 2019 Petition at 20, 22.

Specifically, the Petitioner contends that the Final Renewal 3 Permit does not contain emission limits for six emission units authorized by notices of construction (NOCs)[26] and only contains references to other documents that contain the emission limits. *Id.* at 17–18. The Petitioner claims that the incorporation by reference (IBR) of these NOCs does not comply with the requirement in CAA § 504(a), 42 U.S.C. § 7661c(a), for the title V permit to include all emission limitations because emission limits are only included in the NOC applications. *Id.* at 18.

For support, the Petitioner claims that "[i]n White Paper number 2, EPA seems to recognize both 42 U.S.C. 7661c(a) [CAA § 504(a)] and 40 C.F.R. 70.6 (a)(1) place limits on the 'type of information that may be referenced in the permit.'" *Id.* at 21 (quoting White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program, 40 (March 5, 1996) (*White Paper Number 2*)[27]). Furthermore, citing *AK Steel Corp. v. United States*, 226 F.3d 1361, 1372 (Fed. Cir. 2000), the Petitioner contends that the EPA cannot interpret Congress's use of the word "include" in CAA § 504(a), 42 U.S.C. §7661c(a), to mean "include by reference." *Id.* at 21. The Petitioner concludes, "Because Renewal 3 does not actually include emission limitations for federally-enforceable requirements, Renewal 3 is not in compliance with the plain language in either CAA § 504 (a) and 40 C.F.R. 70.6 (a)(1)." Petition at 22.

The Petitioner also claims that Ecology's Response to Comment document "confuses 'emission limits' with 'all applicable requirements'" and does not address the Petitioner's comment. *Id.* at 20.

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[25] *See supra* n. 6 and accompanying text.
[26] NOCs are a type of NSR permit in Washington.
[27] *https://www.epa.gov/sites/production/files/2015-08/documents/wtppr-2.pdf*.

EPA's Response: As explained in more detail below, the EPA denies the Petitioner's request for an objection on this claim. The Petitioner has failed to demonstrate that Ecology's use of IBR in Final Renewal 3 Permit has resulted in unclear or ambiguous permit terms. Therefore, the Petitioner has failed to demonstrate that Ecology's use of IBR in this case did not comply with the CAA or 40 C.F.R. part 70.

Relevant Legal Background

Under title V of the CAA, the EPA's part 70 regulations, and Ecology's EPA-approved title V program, every title V permit must include all applicable requirements that apply to a source, as well as any permit terms necessary to assure compliance with these requirements.[28] "Applicable requirements," as defined in the EPA's and Ecology's rules, include the terms and conditions of NSR permits, which are sometimes referred to NOCs in Washington. *See* 40 C.F.R. § 70.2; W.A.C. 173-401-200(4).

In numerous orders and *White Paper Number 2*, the EPA has previously explained that the CAA requirement to include all applicable requirements, including emission limits, in a title V permit can be satisfied through the use of IBR in certain circumstances. *See, e.g.*, *White Paper Number 2* (explaining how IBR can satisfy CAA § 504, 42 U.S.C. § 7661c, requirements); *In the Matter of Motiva Port Arthur*, Order on Petition No. VI-2016-23 at 26–31 (May 31, 2018) (*Motiva Order*); *In the Matter of Pasadena Refinery*, Order on Petition No. VI-2016-20 8–10 at 26–31 (May 31, 2018) (*Pasadena Order*); *In the Matter of ExxonMobil, Baytown Refinery*, Order on Petition No. VI-2016-14 at 20–21 (April 2, 2018); *In the Matter of Shell Chemical LP and Shell Oil Company, Shell Deer Park Chemical Plant and Shell Deer Park Refinery*, Order on Petition Nos. VI-2014-04 & VI-2014-05 at 8–11 (September 24, 2015); *CITGO Order at 11*; *In the Matter of Tesoro Refining and Marketing*, Order on Petition No. IX-2004-6 at 8–9 (March 15, 2005). Materials incorporated by reference must be "specifically identified" in the permit. *See, e.g.*, *White Paper Number 2* at 37. As recently explained in the *Pasadena Order* and previously in *White Paper Number 2*, IBR of NSR permits may be useful in many instances, although it is important to exercise care to balance the use of IBR with the obligation to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce the permit conditions. *Id.* at 36–41; *see also Pasadena Order* at 9. Further, as the EPA noted in the *Pasadena Order*, the EPA's expectations for what requirements may be referenced and for the necessary level of detail are guided by CAA § 504(a) and (c), 42 U.S.C. § 7661c(a) and (c), and corresponding provisions at 40 C.F.R. § 70.6(a)(1) and (3). *Pasadena Order* at 8. Specifically, the EPA has previously stated that the use of IBR can be appropriate where the "title V permit is clear and unambiguous as to how the emissions limits apply to particular emission units." *Id.* at 9; *CITGO Order* at 11–12 n.5.

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[28] "Each permit issued under this subchapter shall include enforceable emission limitations and standards, . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661c(a), CAA § 504(a); *see also* 40 C.F.R. § 70.6(a)(1) ("Each permit issued under this part shall include the following elements: (1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."); § 70.3(c)(1) ("For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source."); W.A.C. 173-401-605 ("Each permit shall contain emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.").

Ecology's Response to Petitioner's Comment

In response to comments made by the Petitioner, Ecology stated:

> The Hanford AOP Renewal 3 contains terms and conditions that assure compliance with all applicable requirements at the time of permit issuance in accordance with WAC 173-401-600. With a mega-site like Hanford, Ecology has chosen to streamline the process to reduce the complexity of the permit by using language from approval orders, including references to conditions, tables, and applications from approval orders, and references to other regulations. The Hanford AOP contains all approval conditions from current NOC approval orders for the associated discharge points, as well as other applicable regulatory requirements.
>
> WAC 173-401-600(1), WAC 173-401-605(1), and 40 CFR 70.6(a)(a) [*sic*] each require that the operating permit shall contain terms and conditions that assure compliance with all applicable requirements. This is not the same as saying that the permit itself has to include all applicable requirements, as implied by the comment. The regulations do not prohibit the permit from referencing requirements in NOC approval orders, rather than restating the provisions from the NOC approval orders. Ecology has determined that referencing requirements in the underlying orders complies with the above regulations and, furthermore, is appropriate and effective in streamlining the content for the Hanford AOP.
>
> The public comment period was reopened on July 22, 2018, and extended on August 10, 2018, to supply additional supporting and relevant documentation used in the permitting process. The reopened public comment period ended September 14, 2018. Referenced sections, tables, figures and other information cited in AOP discharge point conditions from NOC approval orders were provided for review during this reopened public comment period, including the information from the referenced conditions in the comment.

RTC at I-7-24; *see also id.* at I-7-20, I-7-25, I-7-44, I-7-47, I-7-48, I-7-69 through -77, I-7-85, I-7-88.

EPA's Analysis

A title V permit is required to "include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of [the CAA]." CAA § 504(a); 42 U.S.C. § 7661c(a). As explained above, IBR of applicable requirements into a title V permit can be sufficient in some circumstances to satisfy the requirement for the title V permit to include such terms and conditions. *See supra* at 18. In this case, the Petitioner has not demonstrated that Ecology's use of IBR for the six NOCs raised in the Petition is inconsistent with the requirements of the CAA, 40 C.F.R. part 70, or Ecology's approved title V program.

To the extent the Petitioner is claiming that the EPA's *White Paper Number 2* and the CAA forbid the use IBR for emission limits and standards, the Petitioner is incorrect. *See* 2019 Petition at 22 (arguing that "Renewal 3 does not contain emissions limits, only references to other documents where these emission limits are located."); *id.* at 21 (quoting *White Paper Number 2* at 40)). The Petitioner seems to have interpreted the word "include" in CAA § 504(a), 42 U.S.C. § 7661c(a), and the EPA's statements in *White Paper Number 2* to mean that emission limits and standards may not be incorporated by reference into a title V permit and must always be spelled out in detail on the face of the title V permit itself. On the contrary, nothing in the case cited by the Petitioner,[29] the EPA regulations, or *White Paper Number 2*, interpret this part of title V to be so restrictive. Although Petition is correct that *White Paper Number 2* does not endorse unfettered use of incorporation by reference, the Petitioner overstates the general restrictions the EPA expressed therein. Indeed, in the very same paragraph in *White Paper Number 2* cited by the Petitioner, the EPA explained that, "material may be incorporated into the permit by reference . . . to the extent that its manner of application is clear." *White Paper Number 2* at 40; *see Public Citizen v. EPA*, 343 F.3d 449, 460 (5th Cir. 2003) ("The Title V and part 70 provisions specify what Title V permits 'shall include' but do not state how the items must be included."). The EPA has historically supported the use of incorporation by reference as long as the title V permit clearly and unambiguously indicates how the emissions limits apply to particular emission units. *See, e.g.*, *Pasadena Order* at 9–10; *CITGO Order* at 11–12 (where, in both cases, the EPA denied similar claims where minor NSR permits were incorporated by reference into title V permits). In this case, the Petitioner has not demonstrated that IBR of the six NOCs raised in the 2019 Petition resulted in unclear or ambiguous permit terms in Final Renewal 3 Permit.

To the extent the Petitioner is claiming that the NOCs' references to the application and emission limits tables in W.A.C. 173-460-150 are unclear and ambiguous, the Petitioner has not even asserted, much less demonstrated, that he had difficulty locating the relevant pollutants and emission limits referenced in the Final Renewal 3 Permit or that it was unclear how the emissions limits applied to the six units cited by the Petitioner. *See Pasadena Order* at 17. The Petitioner cannot, therefore, be said to have met his burden to demonstrate that the Final Renewal 3 Permit is not in compliance with the Act due to improper use of IBR. The Petitioner merely states in his public comments that "[n]either the permittee nor the public should be required to seek out the permittee's NOC application in order to ascertain what specific air pollutants the permittee is required to control and the particular limit applicable to the air pollutant in question." 2019 Petition at 17 (quoting RTC at I-7-24). In the RTC, Ecology

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[29] The Petitioner cites to *AK Steel Corp. v. United States*, 226 F.3d 1361 (Fed. Cir. 2000), for the proposition that Congress has directly spoken to *how* a title V permit must "include" all applicable requirements and this cannot mean "reference." Petition at 21. The court in *AK Steel Corp.* evaluated the U.S. Department of Commerce's interpretation of two specifically defined terms of art under *Chevron* Step 1 because the court found that Congress had directly spoken to terms at issue. 226 F.3d at 1372; *see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). However, under the CAA, Congress did not define the word "include" or further specify the method in which a title V permit must include all applicable requirements. The EPA's long-standing view is that the term "include" is ambiguous as to *how* requirements must be included in a title V permit and thus allows for a reading of this term to include the ability to incorporate by reference. The one circuit to court that addressed the issue has agreed. *Public Citizen v. EPA*, 343 F.3d 449, 460-61 (5th Cir. 2003).

explained that some additional materials were made available during the extended public comment period to ensure that the public could review all the relevant materials. RTC at I-7-24. Further, these applications and NOCs are available on Ecology's website.[30] Therefore, the Petitioner has not demonstrated that this information was not available or that the Final Renewal 3 Permit is somehow unclear.

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

Claim 3: The Petitioner's Claim that "Contrary to 40 C.F.R. 70.7 (a)(1)(iv), 40 C.F.R. 70.6 (a)(1), and EPA's determination 'that CAA-related requirements in Administrative Orders are appropriately treated as "applicable requirements" and must be included in title v permits', Ecology did not include in the Permit applicable requirements from Administrative Order of Correction (AO) Number 20030006 for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF)."

Petitioner's Claim: The Petitioner claims that Ecology was required to include in the Final Renewal 3 Permit the requirements for the control of fugitive dust from an Administrative Order of Correction issued by the Benton Clean Air Agency (BCAA) on March 12, 2003 (2003 BCAA Order) for a source at Hanford referred to at the time as the "Marshalling Yard," but now referred to as the "Material Handling Facility" or "MHF." 2019 Petition at 23–31. The Petitioner states that on March 12, 2003, BCAA issued a Notice of Violation (2003 BCAA NOV) and the 2003 BCAA Order to Bechtel National (Bechtel), a USDOE contractor, alleging that BCAA inspectors had observed unreasonable amounts of fugitive dust leaving the MHF in February and March 2003. *Id.* at 24.

The Petitioner asserts that Bechtel prepared and submitted to BCAA a plan entitled "Waste Treatment Plant Marshalling Yard Project Dust Control Plan," dated March 21, 2003 (2003 Dust Plan) in response to the 2003 BCAA Order. *Id.* at 24, 28. The Petitioner claims that the 2003 BCAA Order and the 2003 Dust Plan remain in effect, and that the requirements of the 2003 BCAA Order and the contents of the 2003 Dust Plan must be included in the Final Renewal 3 Permit as title V applicable requirements. *Id.* at 23, 29. In support of the position that the 2003 BCAA Order and the 2003 Dust Plan remain in effect, the Petitioner contends that Ecology provides no support for Ecology's statement that the 2003 BCAA Order has been vacated. *Id.* at 28. The Petitioner also points to a 2007 opinion of the Washington Pollution Control Hearings Board (Washington PCHB) in an appeal of the December 29, 2006 version of the Hanford title V permit and statements from Ecology and BCAA in that appeal, *Bill Green v. State of Washington Department of Ecology, et al*, Summary Judgement Order, Washington Pollution Control Hearings Board No. 07-012 (August 22, 2007) (2007 PCHB Order). *Id.* at 25–26, 29.

In support of the claim that Ecology was required to include in the Final Renewal 3 Permit the requirements for the control of fugitive dust from 2003 BCAA Order and the 2003 Dust Plan, the Petitioner cites to 40 C.F.R. §§ 70.6 (a)(1) and 70.7(a)(1)(iv). *Id.* at 24, 27, 30. The Petitioner also relies on the EPA's 2009 *CITGO Order*. *Id.* at 23–24, 26, 28, 30. Based on these authorities, the Petitioner asserts that the 2003 BCAA Order and the 2003 Dust Plan are "applicable requirements" that must be included in the Final Renewal 3 Permit. *Id.* at 26, 30.

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[30] *https://fortress.wa.gov/ecy/nwp/permitting/Air/NOC/Current/Current_NOC.html.*

While acknowledging that there is a dust control plan currently in the Final Renewal 3 Permit, the Petitioner contends that the dust control requirements that Ecology has included in the Final Renewal 3 Permit are not the same as the requirements of the 2003 BCAA Order and 2003 Dust Plan. *Id.* at 29–30. In this regard, the Petitioner claims that the dust control provisions in the Final Renewal 3 Permit do not specify a date by which the required dust control plan must be prepared, which, the Petitioner asserts, renders Ecology's requirement for a dust control plan unenforceable and meaningless. *Id.* The Petitioner also claims that BCAA issued the 2003 BCAA Order under its own authority, and Ecology does not have authority to vacate requirements in an administrative order issued by BCAA or the authority to grant the permittee permission to disregard the requirements of the 2003 Dust Plan. *Id.* Furthermore, the Petitioner asserts that Ecology's response to comments confuses the requirement to have a dust control plan with the requirement from the 2003 BCAA Order to have a dust plan that is compliant with that Order, such as the 2003 Dust Plan. *Id.* at 29. The Petitioner argues that the two dust plans are not interchangeable. *Id.*

The Petitioner also claims that the Washington PCHB's position in the 2007 PCHB Order is not consistent with the EPA's determination in the *CITGO Order* that CAA-related requirements in administrative orders are to be treated as "applicable requirements" and must be included in Title V permits. *Id*. Citing to a letter from the EPA Administrator, dated June 12, 2009, which discusses the *CITGO Order*, the Petitioner claims that this letter supports the position that the 2003 BCAA Order is an applicable requirement for title V that must be included in the Final Renewal 3 Permit. *Id.* at 26.

EPA's Response: As explained in more detail below, the EPA denies the Petitioner's request for an objection on this claim. The Petitioner has failed to demonstrate that Ecology's contention that the 2003 BCAA Order was closed and no longer in effect as of October 2003 was incorrect. Because the 2003 BCAA Order is no longer in effect, both the Order and the 2003 Dust Plan developed pursuant to that Order are no longer applicable requirements. Therefore, the Petitioner has failed to demonstrate that Ecology did not comply with the CAA, 40 C.F.R. part 70, or Ecology's approved title V program when it issued Final Renewal 3 Permit.

Relevant Legal Background

Part 70 Requirements

Under 40 C.F.R. § 70.6(a)(1), title V permits must contain emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Additionally, 40 C.F.R. § 70.7(a)(1)(iv) provides that a permitting authority may issue a title V permit only if, among other things, the conditions of the permit provide for compliance with all applicable requirements and the requirements of 40 C.F.R. part 70.

The EPA relied on the language in 40 C.F.R. §§ 70.6(c)(3) and 70.5(c)(8)(iii)(C) in issuing the May 28, 2009 *CITGO Order* referred to in the 2019 Petition. In the *CITGO Order*, the EPA was responding to a petition alleging that the final permit in that case did not adequately address the

requirements of a state-issued administrative order (AO) and a consent decree (CD) that CITGO had entered into with the EPA. The *CITGO Order* states, in part:

> EPA believes that, because CDs and AOs reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such CDs and AOs are appropriately treated as "applicable requirements" and must be included in title V permits, regardless of whether the applicability issues have been resolved in the CD.

CITGO Order at 12.

Additional Relevant Washington State Law Background

As discussed above, on March 12, 2003, BCAA issued the 2003 BCAA NOV and the 2003 BCAA Order to Bechtel to address fugitive dust emissions leaving the MHF. The 2003 BCAA Order required Bechtel to take the following actions to insure compliance with W.A.C. 173-400-040(2) and (8a):

> 1. Immediately take steps to minimize fugitive dust emissions from the site;
> 2. Submit a dust control plan to BCAA within five calendar days of receipt of the 2003 BCAA Order, which plan was subject to review and comment by BCAA and required to include certain elements;
> 3. Actively implement and manage the provisions of the plan to minimize fugitive dust emissions; and
> 4. If the primary and contingency control measures outlined in the dust control plan subsequently proved to be inadequate or ineffective, select and utilize additional control measures.

2003 BCAA Order at 2.

Further, W.A.C. 173-400-040(9)(a), which was codified at W.A.C. 173-400-040(8)(a) in 2003 when the 2003 BCAA Order was issued, requires the owner or operator of a source or activity that generates fugitive dust to take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions. This provision was and continues to be in the Washington SIP, 40 C.F.R. § 52.2470(c), Table 2, and is, therefore, a federally-enforceable applicable requirement under Washington's title V program.[31] *See* 40 C.F.R. § 70.2 (definition of applicable requirement); W.A.C. 173-401-200(4).

As also discussed above, in response to an appeal of a December 29, 2006 version of the Hanford title V permit, the Washington PCHB issued the 2007 PCHB Order, which held:

[31] W.A.C. 173-400-040(3), which was codified at W.A.C. 173-400-040(2) in 2003, is a prohibition on fallout and is not approved in the Washington SIP. *See* 40 C.F.R. § 52.2470(c), Table 2.

> We conclude that the plain language of WAC 173-401-200(4)(b), which includes statutes, rules, and orders as "applicable requirements," does not extend to the specific content of the [Dust Control] Plan developed in response to the Order of Correction issued by BCAA [the 2003 BCAA Order]. The [2003 BCAA] Order itself required Energy [USDOE] to submit and implement a plan to control dust. These requirements are included in the AOP [Hanford title V permit].[footnote omitted] The specific provisions of the [2003 Dust] Plan were developed after the [2003 BCAA] Order was issued and are not "requirements *in* a regulatory order." *WAC 173-401-200(4)(b) emphasis added.* Summary judgement on Legal Issue No. 2 should be granted to Ecology.
>
> We note, however, that Ecology's decision not to include the [2003 Dust] Plan as an applicable requirement in the AOP [Hanford title V permit] does not diminish its role in controlling dust at the marshalling yard [MHF]. The [2003 Dust] Plan remains in effect and is subject to enforcement by the Benton Clean Air Authority. [citation omitted]. Additionally, because energy [USDOE] is using the [2003 Dust] Plan in fulfillment of the AOP's [Hanford title V permit] requirement to implement a dust control plan, Ecology also has authority to enforce the Plan's requirements.

2007 PCHB Order at 16–17.

Ecology's Response to Petitioner's Comment

In response to comments made by the Petitioner, Ecology stated:

> The Administrative Order (AO) is not in effect and is not an applicable requirement for the Hanford AOP. The AO was closed and disposed of, but the dust control requirements from that AO that remain in effect are found in the terms of the underlying requirement in Approval Order DE02NWP-002, Revision 2. Ecology offers the following history of the AO for control of fugitive dust from the Material Handling Facility (formerly the Marshalling Yard).
>
> - The Dust Control Plan for the Waste Treatment Plant (WTP) Construction Site (24590-WTP- GPP-SENV-015) was originally prepared December 23, 2002, to meet DE02NWP-002, Condition 8.1. The original DE02NWP-002 did not include the WTP Marshalling Yard.
> - On March 21, 2003, a separate WTP Marshalling Yard Dust Control Plan was developed in response to a BCAA Order of Correction 20030006.
> - On October 16, 2003, BCAA's case involving Order of Correction 20030006 was closed.
> - In 2006, Ecology incorporated the requirement for the WTP Marshalling Yard dust control plan into DE02NWP-002 via Amendment 4 [to that NSR permit] in response to a public comment made during review of AOP 00-05-006 [Hanford title V permit], Renewal 1. The separate dust control

plans for the Marshalling Yard and the remaining WTP locations continued to be implemented.

- On March 3, 2010, the [WTP Construction Site and WTP Marshalling Yard] implemented and compliant Dust Control Plans were consolidated into one [Fugitive Dust Control] plan with issuance of 24590-WTP-GPP-SENV-015, Revision 1 []
- The Material Handling Facility dust control plan is a requirement of DE02NWP-002, Revision 2. DE02NWP-002, Revision 2 states the Construction Phase Fugitive Dust Control Plan(s) "shall address fugitive dust control at the WTP construction site adjacent to the Hanford 200 Area and the Material Handling Facility." Additionally, the dust control plan "shall be made available to Ecology upon request."
- The fugitive dust control plan addressing the Material Handling Facility is a requirement in the permit which is issued under the authority of Ecology.

The fugitive dust control condition from DE02NWP-002, Revision 2, which requires a dust control plan addressing the Material Handling Facility, is found in discharge point 1.4.23 on page 63 of the draft Hanford AOP Renewal 3. Therefore, the draft Hanford AOP Renewal 3 contains the applicable requirements in regards to the control of fugitive dust at the Material Handling Facility.

No change to the AOP is required.

RTC at I-7-18.

EPA's Analysis

The Petitioner's claim rests on the argument that the 2003 Dust Plan is an "applicable requirement" that must be included in the title V permit because the 2003 BCAA Order is still "in effect." The Petitioner cites to multiple EPA title V Orders which explain that the terms or requirements of an administrative order may constitute applicable requirements for purposes of title V. However, in responding to the Petitioner's comments on the Draft Renewal 3 Permit, Ecology explained that the 2003 BCAA Order that gave rise to the specific requirement for the 2003 Dust Plan was closed later that same year and no longer serves as a basis for applicable requirements for the Hanford site. RTC at I-7-18, I-7-141.

The Petitioner has not demonstrated that Ecology is incorrect on this point. The fact that the 2003 BCAA Order was issued almost 17 years prior to this permitting action to address an issue of noncompliance identified in 2003 supports Ecology's statement that the 2003 BCAA Order is no longer in effect. To dispute Ecology's statement, the Petitioner points to the fact that neither Ecology nor USDOE[32] claimed that the 2003 BCAA Order had been terminated during the 2007 appeal of the December 29, 2006 version of the Hanford title V permit. The Petitioner notes that, in the 2007 PCHB appeal, the PCHB stated, "The Plan remains in effect and is subject to enforcement by the Benton Clean Air Authority." 2019 Petition at 29. However, this speaks to

[32] As discussed above, Bechtel was USDOE's contractor for the MHF.

whether the *2003 Dust Plan* was still in effect in 2007, not whether the *2003 BCAA Order* was still in effect. The Petitioner did not contend in that 2007 PCHB appeal, as he does now, that the 2003 BCAA Order itself is still in effect and is an applicable requirement or otherwise required to be included in the Hanford title V permit. Indeed, the Petitioner concedes that the PCHB never determined that the 2003 BCAA Order was an applicable requirement. Petition at 25. Therefore, the PCHB did not consider whether the 2003 BCAA Order was still in effect at that time. The PCHB 2007 Order, and Ecology's arguments in the 2007 PCHB appeal, therefore, do not demonstrate that Ecology's assertion that the 2003 BCAA Order was terminated on October 16, 2003—and as such, that the 2003 Dust Plan ceased being an applicable requirement under title V—is incorrect.

Furthermore, the fact that the 2003 Dust Plan itself continued to be "in effect" for some years after the 2003 BCAA Order had been terminated as a compliance assurance measure for a *different* regulatory requirement does not render that plan or the original requirement for that plan in the 2003 BCAA Order "applicable requirements" for the current title V permit. Even though there was apparently no longer a requirement that there be a dust control plan for the MHF to prevent fugitive dust under W.A.C. 173-400-040(9)(a), Bechtel, USDOE's contractor, appears to have continued to implement the 2003 Dust Plan in order to meet the fugitive dust requirements in the SIP. In its response to comments, Ecology explained that after the 2003 BCAA Order had been terminated, Ecology revised the underlying NSR permit for the MHF to include a requirement for a dust control plan, and this requirement was carried over to the 2006 title V permit. RTC at I-7-18. USDOE appears to have initially relied on the 2003 Dust Plan to fulfill that NSR requirement. However, in 2010, USDOE prepared a single dust control plan for the MHF and another emission unit (the waste treatment plant) to serve a similar function—*i.e.*, to demonstrate compliance with fugitive dust requirements of the Washington SIP and to meet the requirement in the underlying NSR permit that the MHF have a plan for the control of fugitive dust. RTC at I-7-18. The fact that the 2003 Dust Plan remained "in effect" and was used by USDOE after the 2003 BCAA Order was terminated, however, does not in any way demonstrate that either the 2003 BCAA Order or the 2003 Dust Plan continues to be a title V applicable requirement.

The 2019 Petition also discusses a records request submitted by the Petitioner to BCAA on March 13, 2013 for "any records addressing actions that occurred after [Bechtel] submitted the required dust control plan on March 21, 2003." 2019 Petition at 24–25. BCAA responded to the Petitioner's records request by stating that the original records requested "reached retention and have been properly destroyed." *Id.* If anything, this information provided by the Petitioner tends to support Ecology's statement that the 2003 BCAA Order has long since been terminated rather than demonstrate that the 2003 BCAA Order is still in effect as the Petitioner claims.

In summary, the EPA concludes that the Petitioner has not met his burden to demonstrate that the 2003 BCAA Order remains in effect. Therefore, the EPA finds that the Petitioner has not met his burden to demonstrate that the requirements of the 2003 BCAA Order, or the 2003 Dust Plan required by that order, are "applicable requirements" that must be included in the Final Renewal 3 Permit. *See in the Matter of CFI Steel LP dba EVRAZ Rocky Mountain Steel*, Order on Petition No. VIII-2011-1, at 23 (May 31, 2012) (*EVRAZ Order*) (denying the petition because the consent decree was terminated and was no longer an applicable requirement).

It is notable, however, that the Final Renewal 3 Permit continues to require the permittee to take reasonable precautions to prevent and minimize fugitive dust from the MHF, and also to have a plan for the control of fugitive dust from the MHF. *See* Final Renewal 3 Permit, Attachment 1, Table 1.1 at 10; 1.4.23 Discharge Point: P-WTP-001 2 at 62; Condition 2.3 at 175.33. The Petitioner's complaint is that the fugitive dust requirements in the Final Renewal 3 Permit are not identical to (or as stringent as) the requirements in the 2003 BCAA Order or the 2003 Dust Plan. Petition at 29. However, as discussed above, the Petitioner has not carried his burden to show that the 2003 BCAA Order remains in effect. The Petitioner has not pointed to any authority under title V, 40 C.F.R. part 70, or Washington's regulations that prevented Ecology from imposing in the underlying NSR permit or the title V permit for the MHF terms and conditions for the control of fugitive dust that differed from those in the 2003 BCAA Order once that Order had expired.

In addition, the Petitioner has not attempted to show that the terms and conditions of the Final Renewal 3 Permit do not assure compliance with the underlying applicable requirements for the control of fugitive dust in W.A.C. 173-400-040(9)(a) (requiring reasonable precautions to prevent fugitive dust from becoming airborne and to minimize dust generation) and W.A.C. 173-400-040(4)(a) (reasonable precautions to prevent the release of air contaminants from any emission unit engaging in materials handling, construction, demolition or any other operation that is a source of fugitive emissions).

With respect to the Petitioner's assertion that the current permit requirement for the dust plan is unenforceable because the Final Renewal 3 Permit does not include a date by which the plan must be developed, this objection was not raised with reasonable specificity in the Petitioner's comments on the draft permit. *See* CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). Thus, Ecology did not have an opportunity to consider and respond to this claim raised in the petition. *See in the Matter of Luminant Generation Co. – Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05, at 5 (January 15, 2013) ("A title V petition should not be used to raise issues to the EPA that the State has had no opportunity to address."). Moreover, the Petitioner has not provided any information to suggest that the permittee has not developed a dust control plan consistent with the requirements of the Final Renewal 3 Permit.

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

Claim 4: The Petitioner's Claim that "Contrary to 40 C.F.R. 70.7(h)(2), Ecology based some Renewal 3 terms and conditions on information supplied verbally by the Permittee and information destroyed before public review, thereby depriving the public the opportunity to review information used in the permitting process."

Petitioner's Claim: The Petitioner claims that Ecology did not comply with the public participation requirements of 40 C.F.R. § 70.7(h)(2) in two instances related to Emission Unit

[33] The underlying SIP requirement that BCAA was enforcing through the 2003 BCAA Order did not mandate that a source of fugitive emissions have a dust management plan. Instead, BCAA in the now-terminated 2003 BCAA Order required a dust management plan for the MHF as a compliance assurance measure for the underlying fugitive dust control requirements in the SIP.

(EU) 1371, authorized by NOC 899, and EU 1384, authorized by NOC 908, and changes made to Table 6 in Ecology Order DE11NWP-001. 2019 Petition at 46–50.

First, the Petitioner asserts that Ecology failed to provide applications and materials considered in the permitting process related to EU 1371 and EU 1384. *Id*. at 48. The Petitioner contends that "the public was deprived of the opportunity to review information used in the permitting process, contrary to 40 C.F.R. 70.7(h)(2)," because Ecology and Health only received verbal information to supplement the application for EU 1371 and EU 1384 and could not provide the public with that information. *Id*. at 48–50. The Petitioner asserts that this information needed to be available to the public to determine if NOC 899 and NOC 908 properly implemented the requirements of 40 C.F.R. part 61, subpart H. *Id.* at 39.

Second, the Petitioner claims that Ecology did not comply with 40 C.F.R. § 70.7(h)(2) and W.A.C. 173-401-800(1)(d)(iv) when it "destroyed" calculations from a white board that formed the basis for modifying Table 6 in Ecology Order DE11NWP-001. *Id*. at 49. Further, the Petitioner contends that by not recording the white board calculations, "Ecology also denies the public those records needed to ascertain whether monitoring is sufficient to assure continuous compliance [40 C.F.R. 70.6 (a)(3)(i)(B)]." *Id*.

EPA's Response: As explained in more detail below, the EPA denies the Petitioner's request for an objection on this claim. The Petitioner has failed to demonstrate that Ecology did not comply with the public participation requirements of title V because NOC 899 and 908 are not applicable requirements for the Final Renewal 3 Permit. In addition, the Petitioner has not addressed the state's final reasoning in the RTC regarding Table 6 in Ecology Order DE11NWP-001. Therefore, the Petitioner has failed to demonstrate that Ecology did not comply with the CAA, 40 C.F.R. part 70, or Ecology's approved title V program when it issued the Final Renewal 3 Permit.

Relevant Legal Background

40 C.F.R. Part 70 and Ecology's approved title V program require that the permitting authority include in the public notice announcing the public comment period on a draft title V permit, among other things, the name, address, and telephone number of a person from whom interested persons may obtain additional information, including "copies of the permit draft, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority that are relevant to the permitting decision." 40 C.F.R. § 70.7(h)(2); *see* W.A.C. 173-401-800(2)(d)(5).

When a title V petition seeks an objection based on the unavailability of information during the public comment period in violation of title V's public participation requirements, a petitioner must demonstrate that the unavailability deprived the public of the opportunity to meaningfully participate during the permitting process.[34] *See generally In the Matter of Orange Recycling and*

[34] Where a petitioner claims that a permit is not in compliance with an unambiguous, express procedural requirement of 40 C.F.R. part 70 (e.g., failure to publish public notice as required by 40 C.F.R. § 70.7(h)(l)), the EPA will analyze that argument on its own terms without regard to whether that procedural flaw resulted in a denial

Ethanol Production Facility, Pencor-Masada Oxynol, LLC, Petition No. 11-2000-07, Order on Petition No. II-2000-07 (May 2, 2001) (applying the concepts of meaningful public participation and logical outgrowth to title V); *cf.*, *e.g.*, *In the Matter of Murphy Oil USA, Inc., Meraux Refinery*, Petition No. 2500-00001-V5, Order on Petition No. VI-2011-02 (Sept. 21, 2011) (discussing a response to significant comments as "an inherent component of any meaningful notice and opportunity for comment" (citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977))). To guide this analysis under title V, the EPA generally looks to whether the petitioner has demonstrated "that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content." *See in the Matter of Sirmos Division of Bromante Corp.*, Petition No. II-2002-03, Order on Petition No. II-2002-03, at 6 (May 24, 2004) (*Sirmos Order*). Without such a showing, it may be difficult to conclude that the ability to comment on the information would have been meaningful. In implementing the requirements for public participation under title V, the EPA is mindful that the part 70 regulations were promulgated in light of the statute's pursuit of "[a]dequate, streamlined, and reasonable procedures . . . for public notice, including offering an opportunity for public comment and a hearing." CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6). Where a permitting authority provides an explanation for its decision not to make something available during the public comment period, the petitioner bears the burden of demonstrating that the permitting authority's explanation is unreasonable. *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, Order on Petition No. IV-2010-4, at 9 (June 22, 2012) (*Cash Creek Order*).

Analysis of the availability of information during the public comment period is related to the regulatory standard under 40 C.F.R.§ 70.5(c) governing information that may not be omitted from a permit application. Specifically, under 40 C.F.R. § 70.5(c), a permit application may not omit information "needed to determine the applicability of, or to impose, any applicable requirement." So an EPA objection to a proposed permit based on a permit application deficiency may be accompanied by an EPA objection based on a resulting flaw in the public participation process because, in some instances, the unavailability during the public comment period of information needed to determine the applicability of or to impose an applicable requirement also may result in a deficiency in the permit's content. *See in the Matter of Louisiana Pacific Corporation*, Petition No. V-2006-3, Order on Petition No. V-2006-3, at 4–7 (Nov. 5, 2007); *In the Matter of WE Energies Oak Creek Power Plant*, Order on Petition, at 24–27 (June 12, 2009); *In the Matter of Alliant Energy, WPL Edgewater Generating Station*, Order on Petition No. V-2009-02 (Aug. 17, 2010).

Ecology's Response to Petitioner's Comment

In response to the Petitioner's comments about EU 1371 and EU 1384, Ecology stated the following:

> Your comment also indicates completed notice of construction (NOC) applications were not submitted for EUs 1371 and 1384. The permittee, USDOE, submitted an application to the Washington Department of Health (DOH) for both

of a meaningful opportunity to participate. *See Sierra Club v. Johnson*, 436 F.3d 1269 (11th Cir. 2006) (holding that when the unambiguous requirement to require a mailing list is violated, the EPA must object even if the procedural flaw resulted in no harm to the Petitioner's opportunity to participate).

> EU 1371 and EU 1384 under letter 13-ECD-0068. This letter was provided to the public in the supporting materials at the start of the public comment period. DOH requested additional information in letter AIR 13-822. USDOE communicated the additional information requested in letter AIR 13-822 orally and DOH used the information to mark up the requirements for EUs 1371 and 1384 in NOC 899, which was then sent to the permittee.
>
> Revised Code of Washington (RCW) 70.98.080(1)(a) does not require DOH to require a licensee to submit additional information in writing following submittal of a written application for modification. The word "may" used in the start of the sentence suggests that DOH has some discretion in deciding whether or not to require further written statements. Additionally, Washington Administrative Code (WAC) 246-247-060(1)(b) supports this interpretation because the rule does not expressly require written follow-up information.
>
> . . .
>
> The written application submitted to DOH was provided to the public during the public comment period. The regulations do not require the licensee to submit additional information in writing after a written application has been received. Finally, no additional records were discovered in subsequent searches. Therefore, Ecology has verified that all relevant material supporting the changes to EUs 1371 and 1384 was provided to the public at the start of the public comment period.

RTC at I-10-6.

In response to the Petitioner's comments about Table 6 in Ecology Order DE11NWP-001, Ecology stated the following:

> The records requested in the comment are calculations that were performed on a whiteboard during a meeting between Ecology staff and the permittee, USDOE, discussing the operation change in exhauster flow rate. The calculation written on the whiteboard was a transitory record that falls within the "Brainstorming and Collaborating" category (Disposition Authority Number GS 50006) under the State Government General Records Retention Schedule. Notably, the retention schedule specifically calls out "notes written on whiteboards" as being part of that category. As a transitory record, that was to be retained until no longer needed for agency business and then destroyed. Accordingly, Ecology staff erased the whiteboard at the end of the meeting. Ecology and the permittee, USDOE, were in agreement with the change calculated on the whiteboard, and, therefore, Ecology did not see a need for an additional request. Therefore, Ecology has provided the public with all records that are deemed significant and relevant in the permitting process.
>
> Additionally, the changes made to Table 6 of DE11NWP-001 Revision 4 did not result in an increase in emissions or an authorization of a future increase in

emissions. The changes were driven by the permittee's, USDOE, operational need to decrease the maximum 241-AP exhauster flow rate from 3,000 standard cubic feet per minute (scfm) to 1,750 scfm. The change in ammonia concentration at the specified flow rate from 100 parts per million (ppm) to 175 ppm retains the same mass release rate in grams per second with the decreased ventilation rate. This is shown by the calculations below.

mass release rate = [(ammonia concentration in ppm x molecular weight of ammonia) / (molar volume at standard temperature and pressure)] x (ventilation rate)
(1) 100 ppm ammonia at 3,000 scfm ventilation rate
[((100 parts / 1,000,000 parts) x 17.031 g/mol)/(24.45 L/mol)] x [3,000 scfm x (28.32 L/scf) x (1 min / 60 sec)] = 0.10 g/sec ammonia release rate

(2) 175 ppm ammonia at 1,750 scfm ventilation rate
[((175 parts / 1,000,000 parts) x 17.031 g/mol)/(24.45 L/mol)] x [1,750 scfm x (28.32 L/scf) x (1 min / 60 sec)] = 0.10 g/sec ammonia release rate

Furthermore, the maximum allowable ammonia reading in ppm during solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or Waste Feed Delivery operations listed in Table 6 is at 91% of the permitted ammonia emission limit. This is shown by the following conversion of the ammonia emission limit from pounds per 24 hours to grams per second and comparing the mass release rate during the above operations to the emission limit.

(21.1 lbs/24-hrs) x (453.6 g/lb) x (1 hr/ 3600 sec) = 0.11 g/sec ammonia
[(0.10 g/sec) / (0.11 g/sec)] x 100 = 91%

The changes to Table 6 did not result in an emissions increase and, therefore, would not result in changes to the monitoring requirements. The permittee, USDOE, is required to monitor the ventilation rates and the emissions of ammonia during the activities described above. This requirement is detailed in several conditions listed under discharge point 1.4.32 and in approval order DE11NWP-001 Revision 4. The public was able review the appropriateness of monitoring requirements regarding the conditions from approval order DE11NWP-001 Revision 4 with the records that were provided to support the draft AOP.

Id. at I-10-1.

EPA's Analysis

With regard to the Petitioner's claim that the public was deprived of information because Ecology failed to provide "application materials" for EU 1371, authorized by NOC 899, and EU 1384, authorized by NOC 908, the Petitioner has not demonstrated a flaw in the title V permit.

First, the Petitioner has not demonstrated that NOC 899 and NOC 908 were applicable requirements at the time of permit issuance. While NOC 899 and NOC 908 did apply to Hanford at one point, the Final Renewal 3 Permit itself explains that NOCs 899 and 908 were "replaced" on July 27, 2017 with NOCs 1254 and 1255, respectively.[35] *See* Final Renewal 3 Permit, Attachment 2 at 776, 778; *see also id.* at 49–55 (list of all NOCs applicable to the source does not include NOC 899 and NOC 908). The Petitioner has not explained why any information related to NOC 899 or NOC 908 might be relevant to the current permitting decision (that is, the Final Renewal 3 Permit). Because these NOCs have been superseded and are no longer applicable requirements for the purposes of title V, questions relating to those NOCs are beyond the scope of the current permit proceeding. *See in the Matter of Waupaca Foundry, Inc. Plant 1*, Order on Petition No. V-2015-02, at 8 (July 14, 2016); c*f. In the Matter of Noranda Alumina*, Order on Petition No. VI-2011-04, at 22 (December 14, 2012) (denying a petition where the claim dealt with a previously applicable requirement); *EVRAZ Order* at 23 (May 31, 2012) (denying a title V petition issue where the claim relied on conditions that were no longer applicable requirements).

Even if NOC 899 and NOC 908 were applicable requirements—which as shown above, they are not—the Petitioner has not demonstrated that the information was relevant to the permitting decisions or even attempted to demonstrate how that information could relate to a flaw in the Final Renewal 3 Permit. Although, the Petitioner cites to *Sierra Club v. Johnson*, 436 F.3d at 1284, and claims that the information provided orally "was certainly used in the permitting process," the Petitioner has not demonstrated that this information was relevant to the permit decision. Ecology specifically explained that "all relevant material supporting the changes to EUs 1371 and 1384 was provided to the public at the start of the public comment period," and the Petitioner has not demonstrated otherwise. Further, the Petitioner has not identified what possible information would be missing from the "application" or even attempted to demonstrate how the lack of that information has resulted in a flaw in the Final Renewal 3 Permit. *See Sirmos Order* at 6–13.

To the extent the Petitioner is claiming that he cannot identify how 40 C.F.R. part 61, Subpart H applies, the Petitioner has not attempted to provide any demonstration as to how the availability of additional written materials related to EU 1371 and EU 1384 might affect the applicability or compliance obligations of 40 C.F.R. part 61, Subpart H. Attachment 2 already explains that 40 C.F.R. § 60.93(b)(4)(i) was applicable to EU 1371 and EU 1384 and the Petitioner has provided no explanation as to how subpart H might apply differently to these units. Because the Petitioner fails to provide any analysis of 40 C.F.R. part 61, subpart H, or explain why information explained in oral communications could possibly change the applicability of this subpart, the Petitioner has failed to demonstrate how the lack of an official application form could have resulted in a flaw in the Final Renewal 3 Permit. *See Sirmos Order* at 6–13; *Motiva Order* at 33–

[35] The EPA notes that as of January 29, 2019, EU 1371 and EU 1384, and the corresponding NOCs 1254 and 1255, have been closed and are also no longer applicable requirements. *See* Letter from John Martel, Manager of Radioactive Air Emissions Section, Washington Department of Health, to Brian Vance, Manager, United States Department of Energy (January 29, 2019). Therefore, not only were NOC 899 and 908 not applicable requirements at the time of issuance for the Final Renewal 3 Permit that was the subject of the petition, but the units about which the Petitioner has raised concerns in Claim 4 are now closed.

With regard to the Petitioner's claim that Ecology did not provide the public with all information used in the permitting process related to the changes to Table 6 in Ecology Order DE11NWP-001, the Petitioner has not addressed the entirety of the state's response to comments and has not demonstrated a flaw in the Final Renewal 3 Permit. In the RTC, Ecology provided a detailed explanation of why Table 6 was modified at the request of the permittee and provided calculations to show that the changes resulted in the same ammonia release rate. RTC at I-10-1. The Petitioner does not acknowledge or address these calculations in any part of the 2019 Petition and insists that Ecology has violated 40 C.F.R. § 70.2(h)(2) because it did not record the information on the white board. Even if the Petitioner was correct that 40 C.F.R. § 70.2(h)(2) requires all information of this type to be recorded and provided to the public, the Petitioner has not acknowledged that Ecology appears to have provided that information in the RTC. *See id.* Even if there was an early flaw in the public participation process, it is not clear that such flaw is fatal. To the extent Ecology did not initially publicize the calculations which supported the permit revision, Ecology provided the information to the public in the RTC. The Petitioner has ignored that information and has made no attempt to demonstrate that there is a flaw in the Final Renewal 3 Permit now that those calculations are available. Further, the Petitioner has not demonstrated that the initial lack of availability of the calculations Ecology provided in the RTC resulted in the Petitioner not being able to meaningful participate in the public process. For instance, the Petitioner has not claimed that these calculations or the conclusions from them are incorrect or even suspect, nor demonstrated that the calculations not being available earlier negated the Petitioner's opportunity to comment on them. Therefore, the Petitioner has not met his demonstration burden under CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2), because the Petitioner has failed to address the state's response to comments.[36]

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

V. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2), and 40 C.F.R. § 70.8(d), I hereby deny the 2019 Petition as described above.

Dated: FEB 1 9 2020

Andrew R. Wheeler
Administrator

[36] *See supra* n. 5 and accompanying text.