BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NOS. VIII-2016-4 & VIII-2020-10
PACIFICORP ENERGY HUNTER POWER PLANT EMERY COUNTY, UTAH	)	ORDER RESPONDING TO PETITIONS REQUESTING OBJECTION TO THE ISSUANCE OF TITLE V OPERATING PERMITS
PERMIT NOS. 1500101002 & 1500101004	)	
ISSUED BY THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF AIR QUALITY	)	

ORDER DENYING PETITIONS FOR OBJECTION TO PERMITS AND REOPENING PERMIT FOR CAUSE

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) has received a petition dated April 11, 2016 (the 2016 Petition) and a petition dated October 20, 2020 (the 2020 Petition) (collectively the Petitions) from Sierra Club (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The 2016 Petition requests that the EPA object to operating permit no. 1500101002 (the 2016 Permit) and the 2020 Petition requests that the EPA object to operating permit no. 1500101004 (the 2020 Permit) (collectively, the Permits), which were issued by the Utah Department of Environmental Quality, Division of Air Quality (UDAQ) to PacifiCorp Energy for the Hunter Power Plant (PacifiCorp-Hunter or the facility) in Castle Dale, Emery County, Utah. The Permits were proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Utah Admin. Code R307-415. *See also* 40 C.F.R. part 70 (title V implementing regulations). Operating permits such as these are also referred to as title V permits or part 70 permits.

Based on a review of the Petitions and other relevant materials, including the Permits, the permit records, and relevant statutory and regulatory authorities, and as explained further below, the EPA denies the Petitions requesting that the EPA Administrator object to the Permits. However, by this Order, the EPA directs UDAQ to reopen the 2020 Permit for cause.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to 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 state of Utah submitted a title V

program governing the issuance of operating permits on April 14, 1994. The EPA granted full approval of Utah's title V operating permit program in 1995. 60 Fed. Reg. 30192 (June 8, 1995). This program, which became effective on July 10, 1995, is currently codified in Utah Admin. Code R307-415.[1]

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), 503, 504(a), 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate testing, 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, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate testing, monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a), 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 each proposed title V operating permit 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).

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

[1] The Utah operating permit program regulations that were approved by the EPA were originally codified in Utah Admin. Code R307-15. These regulations were subsequently re-numbered to R307-415. The Petitions refer to the relevant provisions of the Utah Administrative Code as the Utah Air Conservation Regulations or Utah Air Conservation Rules (UACR). Both the Utah Administrative Code and UACR section numbers and content are identical.

[2] If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the 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); *see also* 40 C.F.R. 70.12(a)(2)(v).

In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[3] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[4] 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)).[5] 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.[6] Certain aspects of the petitioner's demonstration burden are discussed below. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule. *See* 81 FR 57822, 57829–31 (August 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

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

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to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id*.

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

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

[5] *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)).

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

is whether a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").[7] 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 (January 15, 2013).[8] Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).[9]

Another factor the EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. Petitioners are required to address the permitting authority's final decision and final reasoning (including the state's response to comments) where these documents were available during the timeframe for filing the petition. 40 C.F.R. § 70.12(a)(2)(vi); *see MacClarence*, 596 F.3d at 1132–33.[10] Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment. *Id*.

The information that the EPA considers in making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the

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[7] *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*).

[8] *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).

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

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

administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the 'statement of basis'); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered when making a determination whether to grant or deny the petition. *Id*.

C. New Source Review

The major New Source Review (NSR) program is comprised of two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and for other pollutants regulated under the CAA. CAA §§ 160–169, 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. CAA §§ 171–193, 42 U.S.C. §§ 7501–7515. The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA's federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA's regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

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

D. Reopening for Cause

"If the Administrator finds that cause exists" he may order the permitting authority to 'reopen' a title V permit. CAA § 505(e), 42 U.S.C. § 7661d(e); 40 C.F.R. § 70.7(g). The Administrator can

find cause to reopen a title V permit, *inter alia*, if there is a "material mistake" or "inaccurate statements," or if reopening is necessary to "assure compliance with applicable requirements." 40 C.F.R. § 70.7(f)(1)(iii)–(iv). If the Administrator orders the reopening of a title V permit, the permitting authority must respond within 90 days, but the Administrator can, under certain circumstances, extend the time for a response by an additional 90 days. CAA § 505(e), 42 U.S.C. § 7661d(e); 40 C.F.R. § 70.7(g)(2). In responding, the permitting authority must follow the same procedures as for the initial permit issuance, but only those parts of the permit that cause the Administrator to reopen the permit shall be affected. 40 C.F.R. § 70.7(f)(2).

III. BACKGROUND

A. The PacifiCorp Hunter Facility

PacifiCorp Energy is the majority owner and sole operator of the Hunter Power Plant, located in Castle Dale, Emery County, Utah. The Hunter Power Plant is comprised of three coal-fired electric utility steam generating units (designated as Units 1, 2 and 3), with a total gross capacity of 1,455 megawatts (MW). Units 1 and 2 are rated at 480 MW each and feature dry-bottom, tangentially fired boilers. Unit 3 is rated at 495 MW and features a dry-bottom, wall-fired boiler. All three units are currently equipped with low nitrogen oxide (NO_x) burners/overfire air (for NO_x control), a wet flue gas desulfurization system (or scrubber) with no bypass (for sulfur dioxide, or SO_2 control), and a baghouse (for particulate matter, or PM control). The facility is a major stationary source of air pollution.

B. Permitting History

UDAQ issued an initial title V permit to the PacifiCorp-Hunter facility in 1998. Following various permit actions, including several permit amendments and modifications and a renewal permit action in 2005 that was not completed, UDAQ released a draft renewal title V permit on September 15, 2015. After a public comment period that closed on November 13, 2015, UDAQ submitted a proposed title V permit, including a memorandum containing UDAQ's Response to Public Comments (2016 Permit RTC), to the EPA on January 11, 2016. The EPA's 45-day review period concluded on February 25, 2016. The EPA did not object to the proposed permit. UDAQ finalized the 2016 Permit (No. 1500101002) on March 3, 2016.

On April 11, 2016, the Petitioner filed a title V petition challenging the 2016 Permit. The EPA denied the 2016 Petition. *In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII-2016-4 (October 16, 2017) (*PacifiCorp-Hunter Order*). The Petitioner sought judicial review of a portion of the *PacifiCorp-Hunter Order*—specifically, the EPA's response to Claim A of the 2016 Petition. The EPA's response to Claim A interpreted the EPA's title V regulations as not requiring a permitting authority, including the EPA, to examine the merits of certain title I permitting actions in the title V permitting context under specific circumstances. Accordingly, the EPA declined to examine the merits of the Petitioner's claim that, instead of a minor NSR permit, a PSD permit was required for certain construction undertaken between 1997 and 1999 and that therefore the Hunter title V permit lacked appropriate PSD permitting requirements. On July 2, 2020, the United States Court of Appeals for the Tenth Circuit issued a decision vacating and remanding the EPA's *PacifiCorp-Hunter Order*. *Sierra Club v. EPA*, 964

F.3d 882 (10th Cir. 2020). The court held that the plain language of the EPA's title V regulations at 40 C.F.R. § 70.2 requires compliance with all requirements of a state's implementation plan, and Utah's implementation plan broadly requires compliance with major NSR requirements, including PSD requirements. *Id.* at 885–86, 891–96. On October 16, 2020, the Tenth Circuit denied petitions for panel rehearing and rehearing *en banc* filed by the state of Utah on behalf of UDAQ and by PacifiCorp. On October 27, 2020, the Tenth Circuit issued the mandate, and its July 2, 2020, judgment took effect. This Order responds to the Tenth Circuit's decision and replaces the vacated portion of the EPA's 2017 *PacifiCorp-Hunter Order*.[11]

On April 17, 2020, while litigation concerning the 2016 Permit was ongoing, PacifiCorp timely filed with UDAQ an application to renew its title V permit for the Hunter Power Plant. On June 3, 2020, UDAQ published notice of this permit renewal, subject to a public comment period that ran until July 3, 2020. No public comments were submitted. On July 7, 2020, Utah transmitted a proposed title V permit to the EPA for review. The EPA's 45-day review period concluded on August 21, 2020, during which time the EPA did not object to the proposed permit. UDAQ finalized the 2020 Permit (No. 1500101004) on September 4, 2020.

On October 15, 2020, the Petitioner submitted to the EPA a Supplemental Notice to the 2016 Petition (the 2020 Supplemental Notice) asserting that issuance of the 2020 Permit did not resolve or moot any of the issues raised in the 2016 Petition. Additionally, on October 20, 2020, the Petitioner filed the 2020 Petition challenging the 2020 Permit. In addition to responding to the 2016 Petition (on remand from the Tenth Circuit), this Order separately responds to the 2020 Petition.

C. Timeliness of Petitions

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). With regard to the 2016 Petition, the EPA's 45-day review period expired on February 25, 2016. Thus, any petition seeking the EPA's objection to the 2016 Permit was due on or before April 25, 2016. The 2016 Petition was dated and received on April 11, 2016, and, therefore, was timely filed. With regard to the 2020 Petition, the EPA's 45-day review period expired on August 21, 2020. Thus, any petition seeking the EPA's objection to the 2020 Permit was due on or before October 20, 2020. The 2020 Petition was dated and received on October 20, 2020, and, therefore, was timely filed.

[11] The 2016 Petition contained five separate claims: Claims A, B, C, D, and E. The EPA's 2017 *PacifiCorp-Hunter Order* denied all five claims. The Petitioner's challenge to that Order, and the Tenth Circuit's subsequent decision, only concerned Claim A (the Petitioner waived its right to challenge Claims B through E). Therefore, the EPA's present Order only addresses Claim A from the 2016 Petition. To the extent that the Tenth Circuit's decision also invalidated portions of the EPA's response to Claim E (concerning UDAQ's response to public comments related to Claim A), this Order also responds to that portion of Claim E.

IV. DETERMINATION ON CLAIM RAISED BY THE PETITIONER

A. Petitioner's Claim:

As discussed above, of the five claims initially raised in the 2016 Petition, only Claim A is addressed in this Order. The 2020 Petition "raises the same issue, based on the same facts, as raised in Claim A of Sierra Club's 2016 petition." 2020 Petition at 3.[12] The issues raised in Claim A of the 2016 Petition and the entirety of the 2020 Petition are, therefore, summarized together in this section.

In the 2016 and 2020 Petitions, the Petitioner claims that the 2016 and 2020 Permits are deficient because they do not include PSD permitting requirements—specifically, BACT as well as terms and conditions necessary to adequately protect NAAQS and PSD increments—that the Petitioner asserts are "applicable requirements." 2016 Petition at 9, 16; 2020 Petition at 3–5, 41–54. The Petitioner claims that these PSD requirements are applicable because they were triggered by changes to the facility between 1997 and 1999 involving boiler and turbine upgrades at all three PacifiCorp-Hunter units, which the Petitioner contends should have been considered "major modifications" subject to PSD. 2016 Petition at 9, 16; 2020 Petition at 10. The Petitioner also asserts that the Permits are deficient because they each lack a compliance schedule to ensure that PacifiCorp-Hunter is brought into compliance with the allegedly applicable PSD requirements. 2016 Petition at 9; 2020 Petition at 4, 42.

The Petitioner claims that in applying for an Approval Order (i.e., an NSR permit) authorizing the 1997–1999 boiler and turbine modifications, PacifiCorp requested and accepted emission limits restricting its potential to emit to the "PSD baseline emission inventory" in order to avoid triggering PSD requirements. 2016 Petition at 10; 2020 Petition at 5. The Petitioner claims that these limitations were insufficient to prevent these modifications from triggering PSD for two primary reasons.[13]

First, the Petitioner claims that the limits did not prevent the projects from resulting in a significant increase in emissions because the limits relied on incorrect baseline emission values. 2016 Petition at 10; 2020 Petition at 5, 8. The Petitioner asserts that, at the time the projects at issue were undertaken, the Utah SIP regulations for determining whether a project constitutes a major modification were based on the same applicability test as the EPA's 1980 PSD regulations. 2016 Petition at 10; 2020 Petition at 10.[14] The Petitioner claims that these rules required a comparison of pre-project actual emissions to post-project potential emissions. *Id*. (citing definitions of "major modification," "net emissions increase," and "actual emissions" contained in UACR R307-1-1 (1995)). The Petitioner asserts that, instead of determining applicability by comparing pre-project actual emissions to post-project potential emissions,

[12] The primary difference between the 2016 Petition and 2020 Petition—beyond the different permits they challenge—is that while the 2016 Petition incorporated by reference various details contained in Sierra Club's 2015 public comments, the 2020 Petition contains these details within the body of the Petition. *See* 40 C.F.R. § 70.12(2); 2020 Petition at 3 n.7.

[13] The Petitioner also claims that a limited exception within the PSD rules for projects that can be classified as routine maintenance, repair, and replacement was not applicable. 2016 Petition at 11; 2020 Petition at 12–16.

[14] The Petitioner claims that although the EPA revised its PSD applicability regulations in 1992, the EPA did not approve those changes into the Utah SIP until 2004. 2016 Petition at 11; 2020 Petition at 10.

UDAQ compared the "PSD baseline emissions inventory" to post-project potential emissions. 2016 Petition at 11; 2020 Petition at 8, 16–17.[15] The Petitioner asserts the "PSD baseline emissions inventory" values were similar to "allowable" emissions, rather than actual emissions. *Id*.[16] Moreover, the Petitioner claims that the PSD baseline emissions inventory was much higher than the facility's actual emissions during the pre-project baseline period. 2016 Petition at 11–12; 2020 Petition at 20.

The Petitioner presents a summary of the Petitioner's own calculations (based on U.S. Energy Information Administration data and the EPA's AP-42 emission factors) estimating the actual baseline emission values that the Petitioner claims should have been used instead of the "PSD baseline emissions inventory." *See* 2016 Petition at 11–13; 2020 Petition at 16–22. Based on these estimated actual baseline emission values and PacifiCorp's projected post-project potential emissions, the Petitioner claims that the modifications should have been projected to result in significant emission increases of SO_2, NO_x, PM, and other pollutants at each PacifiCorp-Hunter unit. 2016 Petition at 12; 2020 Petition at 22–25. Moreover, the Petitioner claims that there were no creditable, contemporaneous decreases at the units, such that the 1997–1999 projects should have been projected to result in a significant net emissions increase of SO_2, NO_x, PM, and other pollutants, triggering PSD. 2016 Petition at 14; 2020 Petition at 25–29.

Second, the Petitioner asserts that the emission limits taken by PacifiCorp in 1997 to avoid major NSR became ineffective because they were relaxed by a 1998 title V permitting action, which included exemptions from these limits during startup, shutdown, and malfunction periods. 2016 Petition at 15; 2020 Petition at 37–41. As a result of this alleged relaxation, the Petitioner asserts that the 1997–1999 projects should have been assessed and permitted as though construction had not yet commenced. *Id*.

Additionally, in the 2020 Petition, the Petitioner raises other arguments related to whether the 1997–1999 projects should have triggered PSD.[17] The Petitioner challenges the validity of the post-project potential emissions used by PacifiCorp and Utah, claiming that these estimates were based on certain assumptions that were not contained as enforceable limitations on potential to emit. 2020 Petition at 29–30. The Petitioner also asserts that, even if it were appropriate to use an allowable emissions baseline, the NO_x "PSD baseline emission inventory" for Unit 2 was higher than the allowable NO_x emissions for that unit because the baseline did not account for an emission limit applicable to the unit. 2020 Petition at 35–36. The Petitioner also claims that the 1997–1999 projects resulted in an actual post-project emissions increase, notwithstanding the

[15] In the 2016 Petition, the Petitioner claims that the EPA has recognized that UDAQ had been applying the same type of faulty PSD applicability analyses in other permitting actions. 2016 Petition at 14. Specifically, the Petitioner claims that in a permitting action for the Deseret Power Electric Cooperative's Bonanza Plant, the EPA highlighted that UDAQ's evaluation of a project "failed to use actual pre-project emissions as the baseline for determining the amount of increase." *Id*. at 14–15 (citations omitted).

[16] The Petitioner claims that it was inappropriate for UDAQ to rely on allowable emissions because the "EPA only allows the use of an allowable emission baseline when data is not available to determine pre-project emissions and when the reviewing authority has reason to believe the source is emitting at or near its allowable emissions." 2020 Petition at 22; *see id*. at 11.

[17] These arguments were not directly raised in the 2016 Petition, but were contained in the public comments associated with the 2016 permit action, which the 2016 Petition incorporated by reference. 2016 Petition at 3 n.3.

Petitioner's insistence that the relevant applicability test was based on a projection of post-change potential emissions. 2020 Petition at 31–35.

Within Claim A of the 2016 Petition, the Petitioner additionally asserts:

> Despite the extensive comments provided by Sierra Club to Utah on the draft Title V permit for Hunter regarding these issues, and UDAQ's obligation to respond to substantive comments, UDAQ unlawfully claimed that "any concerns regarding previous permits should have been raised during the public comments period" for the prior permit and thus UDAQ provided no response to these comments.

2016 Petition at 15–16.[18]

B. EPA Response to 2016 Petition:

For the following reasons, the EPA denies the 2016 Petition.

The issuance of the 2020 Permit rendered the 2016 Permit ineffective, so the Petitioner's claim with respect to the 2016 Permit is moot.

Congress designed title V permits to be finite, with a term "not to exceed 5 years." CAA § 502(b)(5)(B); *see* 40 C.F.R. §§ 70.4(b)(3)(iii), 70.6(a)(2). Congress also designed title V permits to be renewed. *See, e.g.*, CAA § 502(b)(5)(C); 40 C.F.R. § 70.7(c). However, whether renewed or not, all title V permits must expire and cannot not live on indefinitely. For the Act's expiration and renewal provisions to function together, the issuance of a renewal permit cannot stop a prior permit from expiring. Thus, a renewal permit is most appropriately considered a new permit, legally distinct from its predecessor, rather than an extension or continuation of a prior permit. Therefore, when a title V permit is renewed, the prior permit is superseded and replaced and ceases to be effective.

The EPA's and UDAQ's regulations support this position. In the limited situations where a permit is allowed to remain effective beyond its planned expiration date, the EPA's regulations provide that the permit to be renewed expires or ceases to have any effect as soon as the new permit is ultimately issued. *See* 40 C.F.R. § 70.4(b)(10) (where a complete and timely application for a renewal permit has been filed, "(i) The permit shall not expire *until the renewal permit has been issued* or denied . . . or (ii) All the terms and conditions of the permit . . . shall remain in effect *until the renewal permit has been issued* or denied." (emphasis added)); *see also* § 70.5(a)(1)(iii). UDAQ's EPA-approved part 70 regulations contain similar requirements. *See* Utah Admin. Code R307-415-6a(2) (5-year permit term), R307-515-7c(2) ("Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted . . . ."), R307-515-7c(3) ("If a timely and complete renewal application is

[18] Claim E of the 2016 Petition further addressed UDAQ's alleged failure to respond to comments. The EPA's response to Claim E in the 2017 *PacifiCorp-Hunter Order* was not at issue in the Tenth Circuit's review of that Order and is therefore not revisited in this Order. However, to the extent that the Tenth Circuit's decision also invalidated portions of the EPA's response to Claim E (concerning UDAQ's response to public comments related to Claim A), this Order also responds to that portion of Claim E. The 2020 Petition does not contain a similar claim.

submitted consistent with R307-415-7b and R307-415-5a(1)(c) and the director fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect *until renewal* or denial." (emphasis added)).

In sum, and regardless of the terminology used, whenever a title V permit expires or is superseded and replaced by a renewal permit, the outcome is the same: the prior permit is no longer the relevant, operative permit for purposes of CAA title V. Here, the 2020 Permit wholly replaced and superseded the 2016 Permit, which is no longer effective.[19]

It would not be appropriate to respond to the substance of the 2016 Petition because it relates to a permit that is no longer effective. The Act requires that a petitioner "demonstrate[] to the [EPA] Administrator that *the permit is* not in compliance with the requirements" of the Act. CAA § 505(b)(2) (emphasis added). However, when "the permit" subject to the Petition is no longer the operative title V permit for the source, a petitioner cannot demonstrate (nor could the EPA determine) that such a permit "is" not in compliance with the CAA. Instead, the most a petitioner could demonstrate is that the prior permit *was* not in compliance with the Act *when* it was operative. Such an academic exercise would not be a worthwhile use of limited agency resources. That is, determining whether an expired or superseded permit satisfies title V of the Act (*e.g.*, whether it contains all "applicable requirements") would have no practical relevance. Similarly, an EPA objection could have no effect on such an inoperative permit. A permit that already is expired and/or superseded cannot be further "terminated" or "revoked." CAA § 505(b)(3); 40 C.F.R. § 70.8(d). Moreover, a permit that is expired and/or superseded cannot itself be "modified" or "revised to meet the objection." CAA §§ 505(b)(3), 505(c); 40 C.F.R. § 70.8(d). Rather, as discussed below, any necessary revisions should be made to the source's current, operative permit. Accordingly, given that the relief requested by the 2016 Petition—an EPA objection to the 2016 Permit followed by a revision of the 2016 Permit or permit record to resolve the objection—is no longer available, the 2016 Petition is denied as moot.[20]

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[19] That the 2020 Permit stands alone and is legally distinct from the 2016 permit is also apparent from the fact that the 2020 Permit was assigned a different permit number (1500101004) than the 2016 Permit (1500101002). Had the 2020 Permit not been issued, the 2016 Permit would have expired on March 3, 2021. *See* 2016 Permit, Conditions I.D.1, I.D.4. However, in light of the principles discussed above, the issuance of the 2020 Permit effectively hastened the expiration of the 2016 Permit, as the 2020 Permit wholly replaced and superseded the 2016 Permit.

[20] *See In the Matter of Meraux Refinery*, Order on Petition No. VI-2012-04 16 (May 29, 2015) ("Even if the 2012 Petition had demonstrated that the 2009 Permit was not in compliance with the Act, it is not clear that an objection by the Agency would have any legal or practical effect because the 2009 Permit has been wholly superseded by the 2014 Permit, which was a title V renewal permit, and, therefore, the 2009 permit is no longer in effect."); *id*. at 18 "[E]ven if the EPA had determined that the Petitioner had met its demonstration burden in the 2012 Petition (which it has not), granting the relief that the Petitioner request would be to issue an objection under CAA section 505(b)(2) to a permit that has been superseded and is no longer in effect. It is unclear what, if any, legal or practical consequence such an objection would have."); *see also In the Matter of Duke Energy Indiana Edwardsport Generating Station*, Order on Petition at 9 (December 13, 2011) (*Edwardsport Order*) ("Based on the actions taken by IDEM [to withdraw a proposed permit and issue a superseding renewal permit], the petition . . . is denied as moot as the previous proposed permit and TSD subject to the petition are no longer before the EPA."); *cf. In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel*, Order on Petition Nos. VI-2010-05, VI-2011-06, & VI-2012-07, at 12 (Jan. 30, 2014) ("Even if Petitioners' claims on these issues were correct, they are now moot. The requested relief would no longer be appropriate.").

Although any challenges to the 2016 Permit are now moot, the public had ample opportunity to raise any persistent concerns in the 2020 Permit renewal proceeding.[21] Subject to some limitations not relevant here, when a title V permit is renewed, all aspects of the permit may generally be reviewed, commented on, and objected to, as if the permit were issued anew. *See* 40 C.F.R. § 70.7(c)(1)(i) ("Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance."); *see also* CAA § 502(b)(5)(C).[22] Thus, if the public believes that a defect in a previously issued permit persists in a renewal permit, it may generally raise those concerns following the appropriate title V avenues (*e.g.*, through public comments and the EPA petition processes *on the renewal permit*). Here, the Petitioner argues in its 2020 Supplemental Notice that the alleged deficiencies with the 2016 Permit have not been substantively resolved by the issuance of the 2020 Permit. Even were the EPA to accept this as true, the appropriate context to raise these claims would have been the 2020 Permit action. Specifically, as discussed further below, the Petitioner could have—and should have—raised its concerns during the public comment period on the 2020 Permit, followed, if necessary, by state court review or a petition seeking an EPA objection to the 2020 Permit.

C. EPA Response to 2020 Petition:

For the following reasons, the EPA denies the 2020 Petition.

The claims in the 2020 Petition were not raised during the public comment period for the 2020 Permit. The Petitioner has not demonstrated that it was impracticable to raise its concerns at that time, and the grounds for requesting EPA's objection did not arise after the comment period. CAA § 505(b)(2); 40 C.F.R. §§ 70.8(d), 70.12(a)(2)(v).

A fundamental threshold requirement of petitions to the EPA to object to the issuance of a permit under section 505(b) of the CAA is that all petition claims "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." CAA § 505(b)(2). The only limited exception is where "the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or [where] the grounds for such objection arose after such period." *Id*.

Here, the Petitioner concedes that it did not submit any comments on the draft 2020 Permit. 2020 Petition at 2. However, the Petitioner argues:

[21] *See Edwardsport Order* at 9 (After denying a petition on a withdrawn and superseded permit as moot, "The EPA notes that the EPA and the public (including the Petitioner) will have an opportunity to comment on the revised draft permit and revised TSD. The EPA will then review any resubmitted proposed permit and revised TSD during a 45 day review period. . . . If the EPA does not object to the resubmitted proposed permit, the Petitioner will also have an opportunity to petition the EPA to object to the resubmitted proposed permit.").

[22] *See also In the Matter of Wisconsin Public Service Corporation – Weston Generating Station*, Order on Petition No. V-2006-4 at 6 (December 19, 2007) ("Sources are also required to renew the permit at least every five years, and that process also provides the public with an opportunity to review, comment on, and object to all aspects of the permit.").

> Because Sierra Club's legal challenge to EPA's denial of its 2016 petition was still pending at the time that Utah took public comment on the 2020 draft Title V renewal permit—and because Utah was actively participating in the litigation and defending EPA's order—there was no reason for Sierra Club to repeat the same comments to Utah in the 2020 permit renewal proceeding. But the Tenth Circuit's October 16, 2020 denial of the petitions for rehearing changed the legal landscape. Now, the Tenth Circuit's decision is final, and upon the Court's issuance of its mandate EPA must reconsider its prior decision denying Sierra Club's 2016 petition and upholding Utah's refusal to consider Sierra Club's demonstration that PSD requirements apply to the Hunter plant. Because the Tenth Circuit's denial of petitions for rehearing filed by Utah and PacifiCorp did not occur until October 16 (four days prior to this petition, and well after the close of the comment period on the draft permit), the grounds for EPA's objection "arose after" the public comment period on the 2020 renewal permit. Thus Sierra Club is excused from the general requirement in 40 C.F.R. § 70.8(d) that a petitioner raise its objection in comments on the draft permit (and, in any event, Sierra Club already raised this exact issue in its comments to UDAQ on the draft 2015 renewal permit).

Id.

The EPA disagrees that the asserted grounds for the EPA's objection arose after the public comment period on the 2020 Permit. Here, the "grounds for objection"—or, to use the Petitioner's words, the alleged "permit deficiency" forming the basis for the requested EPA objection—is that the 2020 Permit "fails to include PSD requirements that became applicable when PacifiCorp modified Units 1, 2, and 3 between 1997 and 1999." *Id*. at 3. These alleged deficiencies appear to have existed since the source received its initial title V permit in 1998, and have persisted through each subsequent permitting action, including when drafts of the 2016 and 2020 Permits were released for public comment. The alleged deficiencies providing grounds for objection not only existed and were apparent during the comment period for the 2020 Permit, but they were also well-understood by the Petitioner at that time, as evidenced by the Petitioner's own arguments in earlier proceedings before UDAQ and the EPA.

The Petitioner's argument that the grounds for objection arose after the end of the comment period is based on the mistaken notion that the Tenth Circuit's denial of petitions for rehearing "changed the legal landscape" in a relevant way. This argument fails by the Petitioner's own reasoning. Beginning with its 2015 public comments and continuing through its submittal of the 2020 Petition, the Petitioner has consistently argued that the law of the land requires UDAQ and the EPA to consider whether the omission of PSD requirements constituted a flaw in the PacifiCorp-Hunter title V permit. This was the express premise of its challenge to the 2017 *PacifiCorp-Hunter Order*, which it initiated *prior to* the comment period for the 2020 Permit. Throughout the 2020 public comment period, the Petitioner continued to view the lack of PSD requirements in the 2020 Permit as a flaw warranting an EPA objection, and the Petitioner continued to believe that UDAQ and the EPA must consider any arguments the Petitioner actually made, as evidenced by its challenge to the denial of the 2016 Petition. The Tenth Circuit's ultimate conclusion that UDAQ (in issuing title V permits) and the EPA (through its review of UDAQ's title V permits) must ensure compliance with major NSR requirements did

not "change the legal landscape" for the Petitioner; rather, it may be said to have *preserved* the legal landscape that the Petitioner had long argued was in effect.

Moreover, the Petitioner's focus on the date that the Tenth Circuit denied petitions for rehearing (October 16, 2020) is not appropriate. The Tenth Circuit's July 2, 2020 decision—which, while not yet mandated and effective—clearly announced the purported "changes" to the "legal landscape" on which the Petitioner now relies. This was *within* the public comment period on the 2020 Permit, which did not end until July 3, 2020. Although the timing was admittedly close, it was not impracticable (and the Petitioner does not claim that it was) for the Petitioner to submit comments incorporating its 2015 comments to UDAQ within a day if it wished to preserve its right to challenge these issues through a subsequent EPA petition after receiving the Tenth Circuit's decision.[23]

Regarding the Petitioner's final argument on this issue, the fact that UDAQ was aware of the Petitioner's concerns, or that the Petitioner raised these issues in its 2015 comments on the 2016 Permit, does not excuse the Petitioner's failure to raise these comments on the 2020 Permit. Absent the exceptions discussed above, petition claims must be "raised during the public comment period provided by the permitting agency" for the permit on which an objection is sought. CAA § 505(b)(2).[24] UDAQ provided such an opportunity here, but the Petitioner did not avail itself. Thus, the Petitioner did not preserve its right to challenge the 2020 Permit. The purpose of requiring a petitioner to submit comments through the state title V permitting process—before raising them in a petition to the EPA—is to allow the state the first opportunity to respond or to fix any identified problems.[25] By failing to do so, the Petitioner has deprived UDAQ of this opportunity and is instead trying to have the EPA object to the 2020 Permit without knowing how the state would have responded.

In summary, the deficiencies alleged in the 2020 Petition were present and apparent during the public comment period for the 2020 Permit. Moreover, under the Petitioner's own view, these alleged deficiencies provided grounds for an EPA objection at that time—prior to the Tenth Circuit's decision, denial of petitions for rehearing, or mandate. The Tenth Circuit's decision did not otherwise alter the relevant legal landscape from the Petitioner's perspective that existed during the 2020 public comment period. In any event, the court's decision was released *during* the public comment period. UDAQ's awareness of the Petitioner's 2015 comments is not relevant to whether the Petitioner satisfied the threshold CAA requirement to raise its claims during the public comment period for the 2020 Permit. CAA § 505(b)(2); 40 C.F.R. §§ 70.8(d), 70.12(a)(2)(v).

[23] As the Petitioner admits and the 2020 Petition evinces, its claims in the 2020 Petition are identical to those submitted in its 2015 public comments.

[24] *See In the Matter of Bullseye Glass Co.*, Order on Petition No. X-2020-7 at 5 (August 18, 2020) ("[I]t is not enough that the Petitioner may have communicated this issue publicly, or directly to Oregon DEQ outside of the current title V permitting process; petition claims must be raised during the comment period *for the relevant permit action* so that the state has an opportunity to respond on the record to any comments before the permit is issued." (emphasis added)).

[25] *See supra* note 24.

V. REOPENING OF 2020 PERMIT FOR CAUSE

Notwithstanding the EPA's denial of both the 2016 and 2020 Petitions for the reasons described above, the EPA acknowledges the Tenth Circuit's decision regarding the EPA's disposition of the 2016 Petition. *Sierra Club v. EPA*, 964 F.3d 882 (10th Cir. 2020). In light of this decision, the EPA hereby provides notice under CAA § 505(e) that the Agency finds cause exists for UDAQ to reopen the 2020 Permit to consider whether PSD requirements were applicable to the 1997–1999 projects at PacifiCorp-Hunter and should be included in the source's title V permit.

In issuing the 2016 Permit to PacifiCorp, UDAQ expressly declined to consider Sierra Club's 2015 public comments asserting that the Hunter title V permit should include additional PSD-related applicable requirements associated with the facility's 1997–1999 modifications. 2016 Permit RTC at 2–3. UDAQ followed the same course in issuing the 2020 Permit, which similarly contains no PSD-related applicable requirements associated with those projects, nor any record explaining UDAQ's decision that such requirements were not applicable. In its 2017 *PacifiCorp-Hunter Order*, the EPA agreed with and supported UDAQ's decision to not evaluate the merits of these PSD-related issues in the title V permitting context. The EPA reasoned that Utah's issuance of a minor NSR permit to PacifiCorp established the NSR-related "applicable requirements" relevant to those 1997–1999 projects, such that further review of NSR-related "applicable requirements" was not warranted in the title V context. *PacifiCorp-Hunter Order* at 8–21. However, the Tenth Circuit rejected the EPA's reasoning as inconsistent with the EPA's regulations. *Sierra Club*, 964 F.3d 964 F.3d at 897. According to the Tenth Circuit, the EPA's regulations require that title V permits ensure compliance with all "applicable requirements," which the court interpreted to include all requirements in the Utah SIP, including those related to major NSR. *Id*. at 885–86, 890–91. The EPA interprets the Tenth Circuit's decision to mean that permitting authorities within the Tenth Circuit's jurisdiction must consider—and address public comments relating to—whether there are major NSR requirements, as opposed to solely minor NSR requirements, that are the "applicable requirements" in the course of issuing title V permits.[26]

In light of the Tenth Circuit's decision, the EPA finds that UDAQ erred in declining to consider Sierra Club's PSD-related comments to be relevant to the PacifiCorp-Hunter title V permit, and more generally in declining to evaluate whether PSD-related applicable requirements should be included in the 2016 and 2020 Permits. Because the record supporting the 2020 Permit—like that of the 2016 Permit—contains no justification for UDAQ's decision to omit PSD-related applicable requirements for the 1997–1999 projects, the EPA cannot determine whether the 2020 Permit ensures compliance with all applicable requirements. Therefore, the EPA finds that cause exists to reopen the 2020 Permit. 40 C.F.R. §§ 70.7(g), 70.7(f)(1)(iii)–(iv). This Order serves as written notice to Utah and PacifiCorp pursuant to 40 C.F.R. § 70.7(g)(1).

[26] The EPA acknowledges that *Sierra Club* governs here. At the same time, the EPA continues to believe that the interpretation of the CAA reflected in the Fifth Circuit's decision in *Environmental Integrity Project v. EPA*, 969 F.3d 529 (5th Cir. 2020), is correct. The EPA thus intends, where supported by the facts of individual permits, to continue to apply the reasoning of *In re Big River Steel, LLC*, Order on Petition VI-2013-10 (Oct. 31, 2017), when issuing title V permits and reviewing petitions on permits for sources in states outside of the Tenth Circuit.

The EPA directs UDAQ to reopen the 2020 Permit to evaluate whether the 1997–1999 projects at the PacifiCorp-Hunter facility should have triggered PSD under the EPA-approved SIP rules applicable at that time, and, consequently, to determine whether any PSD-related "applicable requirements" must be included in the facility title V permit. In so doing, UDAQ must consider and address the arguments presented in Sierra Club's 2015 comments (summarized above with respect to the 2016 and 2020 Petitions). If UDAQ determines that the projects at issue did not trigger PSD, it must reopen and revise the permit record associated with the 2020 Permit to document the basis for its decision, in consideration of Sierra Club's 2015 public comments. If, on the other hand, UDAQ determines that the projects at issue should have triggered PSD, it must reopen and revise the 2020 Permit to include a compliance schedule associated with obtaining a PSD permit and eventually incorporating any such requirements into the source's title V permit. 40 C.F.R. § 70.7(f)(2), (g)(2), (h).

VI. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2) and 40 C.F.R. §§ 70.8(d) and 70.7(g), I hereby deny the 2016 and 2020 Petitions, but direct UDAQ to reopen the 2020 Permit as described above.

Dated: 1/13/2021

Andrew R. Wheeler
Administrator