Title V/Clean Air Act: U.S. Environmental Protection Agency Denies Objection to a Cameron Parish, Louisiana Liquid Natural Gas Liquefaction Facility Permit



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The Administrator of the United States Environmental Protection Agency ("EPA") issued a January 30th Order denying a Petition objecting to the issuance of a Title V Operating Permit ("Permit") for Commonwealth LNG, LLC, ("Commonwealth"). See Petition No. VI-2023-7.

The Petition was submitted by Healthy Gulf and Sierra Club (collectively, "Petitioners").

The Federal Clean Air Act Title V program includes a provision that allows the EPA Administrator to object to a Title V Permit issued by a delegated state. In other words, Congress provided EPA a Clean Air Act oversight role by mandating that every Title V Permit be subject to a 45-day EPA review period before the Title V Permit is finalized.

The EPA Administrator can object to a Title V Permit at two points.

An Objection may be made during the 45-day review period and in response to a public petition within 60 days after the end of the 45-day review period. Further, even if EPA fails to object to a proposed Title V Permit, a right to petition the agency to reconsider its failure to object to the Permit is potentially available. However, only those persons who have submitted comments to the draft permit during the applicable public comment period have a right to petition.

The right to petition EPA rises at the close of the agency's 45-day review period.

Commonwealth proposed to construct and operate a new Liquid Natural Gas ("LNG") liquefication and export facility at the mouth of the Gulf of Mexico in Cameron Parish, Louisiana. The facility (when operational) will consist of six Natural Gas Liquification trains, and appurtenance facilities.

Each train is stated to have a designed capacity of 65.1 billion cubic feet of natural gas per year.

The equipment at the facility will include:

- Refrigeration turbines
- Generator turbines
- Flares
- Thermal oxidizers
- Fire pump engines

- Storage tanks
- Heater
- Emergency fire engine

The facility is classified as a PSD major source for the following air pollutants:

- Particulate matter
- Sulfur dioxide
- Nitrogen oxide
- Carbon monoxide
- Volatile organic compounds
- Greenhouse gas emissions

Commonwealth is stated to have submitted an application for both a PSD and an initial Title V Permit in April 2021. In February 2023, Louisiana Department of Environmental Quality ("LDEQ") submitted the proposed permit, along with its responses to public comment to EPA for its 45-day review. EPA did not object to the proposed permit.

LDEQ issued the PSD Permit and Initial Title V Permit for Commonwealth on March 28, 2023.

The Petitioners submitted a rejection to the Title V Permit on May 24, 2023.

The Petitioners raised the following objections:

- Claim II: Petitioners' claims that the Title V Permit fails to include monitoring sufficient to ensure Commonwealth complies with its emission limits.

EPA denies the Petitioners request for an objection on this claim.

EPA states that any arguments or claims that a Petitioner wishes the agency to consider in support of an issue must be contained within the body of the Petition, or if reference is made to an attached document, the body of the Petition must provide a specific citation to the referenced information, along with the description of that information supports the claim. Petitioners are stated to have made a brief reference to their comments and expert report which are deemed insufficient to incorporate the material into the body of the Petition. However, regardless, even if sufficient, EPA states that neither the public comments nor the report contains details relevant to the issues alluded to in the Petition or related to SO2, NO2, Thermal Oxidizers, or Opacity from flares or other combustion units. Further, the Order states that they do not point to any specific Permit terms or conditions; nor do they contain an explanation of how any term or condition in the Permit is not adequate to comply with the Part 70 requirements governing monitoring.

- Claims I, III, IV: the Petitioners' Claims related to PSD determinations

EPA denies the Petitioners' request for an objection on Claims I, III, and IV.

Each of these Claims is deemed by EPA to involve the agency considering challengers to PSD permitting decisions under Title I of the Clean Air Act. The Big River Steel Order and a number of subsequent Orders are noted to have addressed this question. EPA has previously concluded that the Title V permitting process is not the appropriate forum to review preconstruction permitting issues. This is stated to be the case even when PSD conditions based on Title I requirements were developed at the same time as the Title V Permit. EPA's position is stated to be summarized as follows:

…where a permitting authority authorizes the construction of a particular facility by issuing a NSR Permit that was subject to public notice and the opportunity for public comment and judicial review, the terms and conditions of that NSR Permit define the "applicable requirements" of the SIP for purposes of Title V permitting and are not subject to review at the time of incorporation into the source's Title V Permit.

A copy of the Order can be downloaded here.