

Title V/Clean Air Act: Center for Biological Diversity Notice of Intent to Sue U.S. Environmental Protection Agency Addressing Colorado Natural Gas Processing Plant



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The Center for Biological Diversity (“CBD”) sent an August 7th document to the United States Environmental Protection Agency (“EPA”) styled:

Notice of Intent to Sue Under the Clean Air Act for Failure to Issue or Deny a Title V Permit After Colorado Failed to Respond to Objection. (“NOI”).

The NOI addresses the Platteville Natural Gas Processing Plant (“Plant”) in Colorado. CBD alleges that EPA has failed to issue or deny a Clean Air Act Title V operating permit for the plant. The permittee is stated to be DCP Operating Company LP.

Title V of the Clean Air Act requires certain stationary sources of air pollution to obtain Operating Permits. States or other governmental entities that administer Title V do so through Adopting Implementation Plans. These plans are submitted to and approved by EPA. The intent of a Title V permit is to organize in a single document all the requirements that apply to the permit holder.

42 U.S.C. § 7661 requires that states submit each proposed Title V permit to EPA for review. Sections 505(b)(1) of the Clean Air Act requires that EPA object to the issuance of a proposed title permit in writing within 45 days of receipt of the proposed permit (and all necessary supporting documentation) if the agency determines that it was not in compliance with the applicable requirements of the Clean Air Act.

If EPA does not object to a permit, §505(b)(2) provides that any person may petition the EPA administrator within 60 days of the expiration of the 45-day review period to object to the permit.

CBD states in the NOI, in part:

... EPA objected to the issuance of this Title V permit on the basis that the permit failed to comply with the Clean Air Act or properly limit air pollution to protect human health and welfare. The State of Colorado’s permitting authority failed to submit a permit revised to meet the objection within 90 days of the objection, yet EPA has not issued or denied the permit as required by Section 505(c) of the Clean Air Act, 42 U.S.C. § 7661d(c).

The plant is described as being located as being in the Denver Metro/North Front Range ozone non-attainment area. The nine-county region is stated to have violated federal health limits on ground-level ozone pollution for nearly two decades.

CBD argues that EPA has failed to perform the non-discretionary duty with respect to the referenced Title V permit.

Further, CBD states:

... We intend to bring a lawsuit under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), against EPA for its failure to perform the non-discretionary duty set forth at 42 U.S.C. § 7661d(c) with respect to the aforementioned Title V permit. In the alternative, we also intend to bring a lawsuit under Section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a), against EPA for its unreasonable delay in carrying out the mandatory duty required by 42 U.S.C. § 7661d(c) with respect to the Title V permit.

A copy of the NOI can be downloaded [here](#).