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Title V/Clean Air Act: U.S. Environmental Protection Agency Order Addressing Petition for Objection Related to Adams County, Colorado Petroleum Terminal

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The United States Environmental Protection Agency ("EPA") addressed in a May 19th Order a Petition for Objection to a Title V Operating Permit for the Phillips 66 Pipeline LLC ("Phillips"), Denver Terminal ("Terminal") filed by the Center for Biological Diversity ("CBD"). See Petition VIII-2025-34.

The Order is styled:

ORDER DENYING A PETITION FOR OBJECTION TO A TITLE V OPERATING PERMIT ("Order").

Phillips is stated to operate a petroleum marketing and storage terminal in Adams County, Colorado.

Title V of the Clean Air Act requires certain stationary sources of air pollution to obtain Operating Permits. States that administer Title V do so through adopted implementation plans. These plans are submitted to and approved by EPA.

The intent of a Title V Permit is to organize into a single document all of 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. Section 505(b)(1) of the Clean Air Act requires that EPA object to the issuance of a proposed Title V Permit in writing within 45 days of the receipt of the proposed Permit (and all necessary supporting information) if the agency determines it is not in compliance with the applicable requirements of the Clean Air Act.

If EPA does not object to a Permit, Section 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.

The Phillips Terminal is stated to receive gasoline, jet fuel, and diesel products from a pipeline which are then stored and distributed to tank trucks. Emission units at the Terminal are stated to include:

- Storage tanks
- Loading rack
- Vapor combustion unit used to control volatile organic compounds and hazardous air pollutants

The Colorado Department of Public Health and Environment ("CDPHE") initially issued a Title V Permit for the Terminal in 1999, which was subsequently reviewed in 2023. On October 3, 2024, Phillips is stated to

have applied for a minor modification of the Title V Permit. CDPHE is stated to have submitted a proposed permit to the EPA on June 5, 2025, for the 45-day review. EPA did not object to the proposed permit.

CBD argues that:

... The Division Improperly Approved the Modification of the Denver Terminal Title V Permit as a Minor Modification.

CBD's Petition further argues in part:

- Phillips 66 applied for a title V permit modification to convert a fixed roof gasoline storage tank to an internal floating roof tank and to remove said tank from the VCU control system.
- CDPHE processed and ultimately approved the modification as a minor modification.
- Under the EPA's title V regulations and Colorado's approved title V permitting program, a title V permit may be modified using minor permit modification procedures only for permit modifications that, among other criteria, do not violate any applicable requirement.
- While the modification may not have increased emissions, it did change applicable emission control requirements as set forth in a Construction Permit.
- This modification must occur pursuant to CDPHE's procedures for either a construction permit modification pursuant to Air Quality Control Commission Regulation No. 3, or a combined construction permit/Title V permit modification pursuant to AQCC Regulation No. 3.
- EPA has held that unless and until Title I permit terms are changed through the appropriate title I process, they remain "applicable requirements" for Title V purposes.

EPA denies CBD's request for an objection on this claim responding in part:

- Because Colorado's unique State Implementation Plan provisions allow for the modification of underlying applicable requirements from New Source Review permits through a title V permit action, CBD has failed to demonstrate that the Permit does not assure compliance with all applicable requirements or that CDPHE has failed to comply with its own federally enforceable laws to make this change in the Permit.
- The EPA Administrator may not, in the context of reviewing a potential objection to a title V permit, ignore duly-approved SIP provisions.
- The definition of applicable requirement in the SIP-approved portion of Colorado's regulations provides the mechanism for CDPHE to use the Title V process to modify underlying NSR limits.
- Colorado's regulations that the EPA has approved as part of the state's SIP allow for the modification of underlying terms or conditions from NSR permits through a title V permit action, as provided in the definition of "applicable requirement" previously quoted in this Order.
- In light of this provision, a change that modifies an applicable requirement, by definition, does not violate the applicable requirement.

A copy of the Order can be found [here](#).