BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	PETITION NO. IX-2022-1
	)	
SALT RIVER PROJECT	)	ORDER RESPONDING TO
CORONADO GENERATING STATION	)	PETITION REQUESTING
APACHE COUNTY, ARIZONA	)	OBJECTION TO THE ISSUANCE OF
PERMIT NO. 89460	)	TITLE V OPERATING PERMIT
	)	
ISSUED BY THE ARIZONA DEPARTMENT	)	
OF ENVIRONMENTAL QUALITY	)	
	)	

ORDER GRANTING IN PART AND DENYING IN PART A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition on January 10, 2022 (the Petition) from Sierra Club (the Petitioner), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to operating permit No. 89460 (the Permit) issued by the Arizona Department of Environmental Quality (ADEQ) to the Salt River Project, Coronado Generating Station (Coronado or the facility) in Apache County, Arizona. The operating permit was issued pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Title 18, Chapter 2, Article 3 of the Arizona Administrative Code. *See also* 40 Code of Federal Regulations (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 Petition and other relevant materials, including the Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further below, the EPA grants in part and denies in part the Petition requesting that the EPA Administrator object to the 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 ADEQ's title V operating permit program in 1996, 61 Fed. Reg. 55910 (October 30, 1996), and the EPA granted full approval of ADEQ's title V program in 2001. 66 Fed. Reg. 63175

(December 5, 2001). This program, which became effective on November 30, 2001, is codified in Title 18, Chapter 2, Article 3 of the Arizona Administrative Code (A.A.C.).

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 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 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) 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. 42 U.S.C. § 7661d(a). 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. 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. 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.[1] *Id.*

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). 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).

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

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. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.[3] 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)).[4] 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.[5] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule. *See* 81 Fed. Reg. 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 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

[2] *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).
[3] *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.
[4] *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)).
[5] *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

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 (January 15, 2013).[7] 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).[8]

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.[9] 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 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

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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); *Georgia Power Plants Order* at 10.

[9] *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).

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.*

If the EPA grants a title V petition, a permitting authority may address the EPA's objection by, among other things, providing the EPA with a revised permit. *See, e.g.*, 40 C.F.R. § 70.7(g)(4); *see generally* 81 Fed. Reg. 57822, 57842 (August 24, 2016) (describing post-petition procedures); *Nucor II Order* at 14–15 (same). In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record. For example, when the EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing an additional rationale to support its permitting decision.

When the permitting authority revises a permit or permit record in order to resolve an EPA objection, it must go through the appropriate procedures for that revision. The permitting authority should determine whether its response is a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V program. If the permitting authority determines that the modification is a significant modification, then the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the state's corresponding regulations.

In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, and regardless of the procedures used to make such revision, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA § 505(b) and 40 C.F.R. § 70.8(c) and (d). *See Nucor II Order* at 14. As such, it would be subject to the EPA's 45-day review per CAA § 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity for the public to petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) if the EPA does not object during its 45-day review period.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that the EPA identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to the EPA's objection. As described in various title V petition orders, the scope of the EPA's review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action. *See In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (September 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (December 19, 2007).

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. 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. 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.

The EPA has approved Arizona's PSD, NNSR, and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.120 (identifying EPA-approved regulations in the Arizona SIP). Arizona's major and minor NSR provisions, as incorporated into Arizona's EPA-approved SIP, are contained in portions of Arizona Administrative Code Title 18, Chapter 2.

III. BACKGROUND

A. The Coronado Facility

The Coronado facility, owned by Salt River Project, is located in Apache County, six miles northeast of St. Johns, Arizona off of U.S. Highway 191. The Coronado Generating Station consists of two coal-fired electric utility steam generating units. The two units have a combined electrical output capacity of 912 gross megawatts. Electrostatic precipitators and wet flue gas desulfurization systems are operated to control particulate matter emissions and sulfur dioxide emissions, respectively. Low-NO_x Burners and Overfire Air are used to control nitrogen oxide (NO_x) emissions on both Unit 1 and Unit 2. Selective Catalytic Reduction (SCR) on Unit 2 provides additional control for NO_x emissions. The facility is a major source under title V for particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide, NO_x, sulfur dioxide, volatile organic compounds, hazardous air pollutants (HAPs), and the individual HAPs of lead, hydrochloric acid, and hydrofluoric acid.

The EPA conducted an analysis using EPA's EJScreen[10] to assess key demographic and environmental indicators within a five-kilometer radius of the Coronado facility. This analysis showed a total population of approximately 11 residents within a five-kilometer radius of the facility, of which approximately 25 percent are people of color and 39 percent are low income. In addition, the EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 12 environmental indicators. All 12 EJ Indices are at or below the 50th percentile.

B. Permitting History

ADEQ issued Coronado's initial title V permit in 1999. Prior to the current permit, the previous title V permit was renewed on November 29, 2016 (Permit No. 64169). On December 14, 2016, ADEQ issued a combined significant revision to the title V permit and an NSR permit authorization for construction of an SCR on Unit 1 (2016 Significant Revision or Permit No. 63088). In May 2021, Coronado submitted an application for a renewal of its title V permit. On September 28, 2021, ADEQ published notice of the draft title V renewal permit, along with a Technical Support Document (TSD) or statement of basis, with a 30-day public comment period that ran until October 27, 2021. On November 9, 2021, ADEQ transmitted a proposed permit (the Proposed Permit), along with its response to public comments (RTC), to the EPA. The EPA's 45-day review period ended on December 27, 2021, during which time the EPA did not object to the Proposed Permit. On December 1, 2021, ADEQ issued a final permit (the Final Permit or Permit No. 89460) to Coronado.

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). The EPA's 45-day review period expired on December 27, 2021. Thus, any petition seeking the EPA's objection to the Proposed Permit was due on or before February 25, 2022. The Petition was received on January 10, 2022, and, therefore, was timely filed.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONER

Claim 1: The Petitioner Claims That "The Administrator Must Object to the [Coronado] Permit Because Retaining the SCR Split Option ('Operating Strategy 1' ('OS-1')) Is Not in Compliance with the Requirements of Permit #64169, Permit #89460, or the SIP."

Petitioner's Claim: The Petitioner claims that the title V permit terms allowing the installation of an SCR on Unit 1 by December 31, 2025, violate both the SIP at A.A.C. R18-2-402-J and the NSR permit terms in Permit No. 64169. Petition at 4–6. The Petitioner asserts ADEQ authorized the construction of the SCR on unit 1 on December 12, 2016, and that permit modification

[10] EJScreen is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; see *https://www.epa.gov/ejscreen/what-ejscreen*.

contained the requirement to commence construction within 18 months, which Coronado has not done. *Id.* at 4.

For support, the Petitioner identifies Permit Condition C.4, Attachment E, of Permits No. 64169 (as amended by Permit No. 63088) and No. 89460, which states:

> Authority to construct the SCR system on Unit 1 shall terminate if the Permittee does not commence construction within 18 months after the date of issuance of this proposed final Class I Permit or if, during construction, the Permittee suspends work for more than 18 months.

Id. The Petitioner also identifies Permit Condition A.1, Attachment E of Permit No. 89460, which states: "Operating Strategy-1 (OS-1): Installation and operation of SCR on Unit 1 no later than December 31, 2025." *Id*.

The Petitioner contends the NSR authorization to construct and Permit Condition C.4 of Attachment E required Coronado to commence construction on the Unit 1 SCR by June 12, 2018, or for Arizona to issue a timely extension. *Id.* at 5. Further, the Petitioner states, "There is no evidence in the administrative record for [Permit No. 89460] that a timely extension of this construction deadline was issued by ADEQ prior to June 12, 2018." *Id.* Therefore, the Petitioner concludes that Permit Condition A.1 is not in compliance with the requirements of the SIP at A.A.C. R18-2-402(J) or the NSR authorization to construct in Permit No. 64169.

EPA's Response: For the following reasons, the EPA grants the Petitioner's request for an objection on this claim.

The EPA finds that the permit record is inadequate for EPA to determine if Permit Conditions A.1 and C.4 of Attachment E are appropriately included in the title V permit as applicable requirements. While ADEQ provided a very detailed response regarding the Petitioner's comments related to Claim 2 and the SCR Split Project, the title V permit, TSD, and RTC do not provide any explanation of whether and when extensions were granted to Coronado for construction of the SCR on Unit 1. *See generally* Permit No. 89460; TSD; RTC. Further, the permit record does not explain whether the extensions were granted to Coronado consistent with the SIP at A.A.C. R18-2-402(J).

In addition, while reviewing the title V permit and the permit conditions raised in the Petition, the EPA was unable to determine from the title V permit the origin of and authority for many of the permit conditions in Attachment E. Permit Conditions A.1 and C.4 of Attachment E only cite to A.A.C. R18-2-306.A.2, which states:

> A. Each permit issued by the Director shall include the following elements:
> …
> 2. Enforceable emission limitations and standards, including operational requirements and limitations that ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted under R18-2-306.01.

This provision is part of ADEQ's EPA-approved title V program and is consistent with 40 C.F.R. 70.6(a)(1), which defines what terms must be in a title V permit. While A.A.C. R18-2-306.A.2 defines what requirements must be in a title V permit, it does not also, as required, identify the origin of and authority for each permit condition as required by part 70 and ADEQ's EPA-approved title V program.[11] Because the permit record, including the RTC, does not explain whether and when extensions were granted to Coronado for Permit Condition C.4 of Attachment E and does not correctly identify the origin of and authority for these permit terms, the EPA grants the Petition.[12]

Direction to ADEQ: ADEQ must amend the Permit and permit record to explain and include the extension granted to Coronado, if applicable, for the construction of the SCR on Unit 1 and how those extensions were consistent with the SIP at A.A.C. R18-2-402(J). Further, ADEQ should amend the Permit to specify the actual origin and authority for the permit condition as required by 40 C.F.R. § 70.6(a)(1)(i); A.A.C. R18-2-306.A.2.a. As explained previously, 40 C.F.R. § 70.6(a)(1) and A.A.C. R18-2-306.A.2 are not the origin of an applicable requirement, but rather the title V requirement to include those terms in the title V permit. Therefore, the title V permit should cite to the original permit action, the SIP, or other underlying applicable requirement(s) for the authority for each permit term in the title V permit.[13]

Claim 2: The Petitioner Claims That "In the Alternative to Claim 1, the Administrator Must Object to the [Coronado] Permit #89460 Because It Fails to Impose Permitting Requirements for the 'SCR Split' Operating Strategy and Thus Is Not in Compliance with the Clean Air Act and/or the SIP."

Petitioner's Claim: The Petitioner claims that Coronado's proposal in 2020 at the Salt River Project 2035 Advisory Group Briefing to route the flue gas from Unit 1 to the Unit 2 SCR (SCR Split Project) is a major modification under NSR and requires a PSD permit. Petition at 7–9 (citing Salt River Project 2035 Advisory Group Briefing, at 21 (July 29, 2020)). The Petitioner also generally claims that "ADEQ decided as part of this permit action that [Coronado] could use a split SCR to meet the permit and SIP obligation to install an SCR system at [Coronado] Unit 1, and thus that [Coronado] would be able to meet existing permit obligations." *Id.* at 15. Claim 2 includes four distinct subclaims.

In Claim 2.a, the Petitioner states, "There is no support in the administrative record for ADEQ's finding that 'the SCR may currently have excess capacity' to implement the Split SCR Project

[11] 40 C.F.R. § 70.6(a)(1)(i); A.A.C R18-2-306.A.2.a ("The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.").
[12] *See* 40 C.F.R. § 70.8(a)(1) (requiring states to provide a response to all significant comments); 40 C.F.R. § 70.7(a)(5) (requiring the permit to contain the origin of and authority for each term and condition); *In the Matter of UOP LLC, UOP Mobile Plant*, Order on Petition No. IV-2021-6 at 13–14 (April 27, 2022).
[13] For example, the EPA notes that all of Attachment E was incorporated into the SIP as part of Arizona's Regional Haze Plan in 2017. *See* 40 C.F.R. 52.120(d); 82 Fed. Reg. 46903 (October 10, 2017). The title V permit should be revised to correctly cite to the SIP as the authority for these provisions and reference the original NSR permit action that established some of these requirements.

Operating Strategy." *Id.* at 9. Further, the Petitioner asserts that the permit record does not support ADEQ's finding "as mandated by 40 C.F.R. § 70.12(a)(2)." *Id.* at 10.

In Claim 2.b, the Petitioner states, "Emissions would increase as a result of implementation of the Split SCR Project." *Id*. The Petitioner claims that the Unit 2 SCR does not have capacity for the flue gas from both units and asserts that emissions will increase for NO_x, PM_{10}, $PM_{2.5}$, and sulfuric acid (H_2SO_4). *Id.* In brief, the Petitioner contends that the additional flue gas will cause increases in H_2SO_4, PM_{10}, and $PM_{2.5}$ due to catalytic oxidation and ammonia slip. *Id.* at 11–12. Further, the Petitioner claims that NO_x emissions will increase due to the increased flue gas flow. *Id.* at 12–13. The Petitioner concludes that ADEQ never conducted or required Coronado to conduct an emissions analysis to support its finding that emissions would not increase. *Id.* at 14.

In Claim 2.c, the Petitioner states, "Implementation of the Split SCR Project would result in the air pollution control equipment being operated in a manner inconsistent with technological limitations, manufacturer's specifications, and good engineering practices." *Id.* at 14. The Petitioner asserts that the title V permit requires Coronado to "operate the SCR in a manner consistent with technological limitations, manufacturer's specifications, and good engineering and maintenance practices for minimizing emissions to the extent practicable." *Id.* at 14 (quoting Permit No. 89460, Attachment E, Permit Condition E.1). The Petitioner then provides additional information to explain why the Split SCR Project will be inconsistent with technological limitations, manufacturer's specifications, and good engineering practices. *Id.* at 15–16.

In Claim 2.d, the Petitioner states, "There is no support in the administrative record for ADEQ's finding that "ADEQ does not believe the 'Split SCR Project' is a modification" under A.A.C. R18-2-101(80)." *Id.* at 16. The Petitioner claims that ADEQ admits to not receiving a modification application from Coronado and has not received any information on whether an increase in emissions may be associated with the SCR Split Project. *Id.* at 17. Therefore, the Petitioner contends that "ADEQ's finding that it 'does not believe the Split SCR Project is a modification' is arbitrary and capricious." *Id.* at 18. The Petitioner also claims that ADEQ did not respond to public comments alleging that the Split SCR Project would be a "modification during the 5-year permit term." *Id.* at 18.

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

As acknowledged by the Petitioner, explained in the RTC, and based on the EPA's current understanding, the SCR Split Project has not yet occurred. Further, as ADEQ stated, Coronado has not yet notified ADEQ or applied for a NSR permit or title V permit modification to implement the SCR Split Project. *See* RTC at 6. If and when Coronado submits an application for the SCR Split Project rather than building a new SCR, which was the only project addressed

in the application for Permit No. 64169 and 63088, ADEQ will have to evaluate whether the SCR Split Project will require authorization by a new preconstruction permit.[14]

As noted by ADEQ, Coronado has not yet applied for the SCR Split Project, and therefore, the title V could not have addressed the SCR Split Project. Further, ADEQ is correct that the title V permit already includes the requirement for the source to submit an application for a permit modification or amendment if the source were to pursue the SCR Split Project. *See* RTC at 6; Final Permit, Permit No. 89460, Permit Condition XV, Attachment A. While ADEQ stated that it did not believe the Split SCR Project would result in a major modification or an emission increases, the EPA expects ADEQ to follow its approved SIP and title V permitting requirements if and when it receives an application for the Split SCR Project.[15] As explained by ADEQ, it is possible that after receiving that application, assuming the current NSR authorization has not expired, ADEQ could determine that the current permit conditions, including emissions limits and monitoring, are sufficient to authorize the SCR Split Project. In the alternative, ADEQ could determine that additional permit terms and construction authorizations are necessary. However, because Coronado has not yet applied for the SCR Split Project, there is no action for ADEQ to take at this time. If Coronado decides to pursue this option and applies for the Split SCR Project, the authorization of that project would be an NSR issue, not a title V issue.[16]

For these reasons, the Petitioner has not demonstrated a flaw with the current title V permit. Specifically, the Petitioner has not demonstrated that the title V permit does not comply with an applicable requirement because an NSR permit authorization does not yet exist as Coronado has not submitted an application for an NSR permit and/or title V permit modification authorizing the Split SCR Project. To the extent the Petitioner is claiming that the title V permit must include an NSR authorization for the future Split SCR Project because it is a known future applicable requirement similar to a new NESHAP standard, an NSR permit authorization does not yet exist to be incorporated into the title V permit. Therefore, there is nothing for the title V permit to

[14] As the Petitioner observes, ADEQ indicated in response to comments that the potential SCR Split Project would not be a modification under NSR and would not result in emissions increases. *See* RTC at 6–7. Further, the Petitioner claims that the record lacks information to support this determination. Petition at 18. The EPA agrees that the permit record does not contain support for this determination. The EPA notes that ADEQ also admitted that it has not received an application or other submission from Coronado to pursue the SCR Split Option. Without such an application or submission, the EPA believes the current record does not provide enough information for ADEQ to determine whether the SCR Split Project would or would not be a modification because ADEQ lacks the requisite information to evaluate the project. Once Coronado applies for the SCR Split Project, the EPA expects ADEQ to evaluate the project under the SIP-approved NSR program and establish additional requirements as necessary.

[15] The EPA expects ADEQ to process any NSR and title V permit action(s) in accordance with the state's approved NSR program at Arizona Administrative Code Title 18, Chapter 2 and approved title V program at Title 18, Chapter 2, Article 3. In addition, if Coronado were to implement the SCR Split Project without an NSR permit and/or changes to its title V permit and that practice was determined to be inconsistent with ADEQ's approved SIP and title V program, the EPA could pursue an enforcement action under CAA § 113 or § 167, or the public could pursue a citizen enforcement action under CAA § 304.

[16] The current title V permit terms have no bearing on whether additional preconstruction permitting actions may be necessary to authorize any such future rebuild and operation of the unit. *See* 42 U.S.C. § 7661a(a) ("Nothing in [title V] shall be construed to alter the applicable requirements of [the CAA] that a permit be obtained before construction or modification."); *In the Matter of AK Steel Dearborn Works*, Order on Petition No. V-2016-16 at 14–15 (January 15, 2021) (*AK Steel Order*).

include as an applicable requirement at this time and the Petitioner has not demonstrated a flaw in the Permit under Claim 2.[17]

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 grant in part and deny in part the Petition as described above.

Dated: JUN 14 2022

Michael S. Regan
Administrator

[17] *AK Steel Order* at 14–15.