BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Petition No. IX-2024-7

In the Matter of

Salt River Project Agricultural Improvement and Power District
Coolidge Generating Station

Permit No. V20676.R02

Issued by the Pinal County Air Quality Control District

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

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated May 13, 2024 (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. V20676.R02 (the Permit) issued by the Pinal County Air Quality Control District (PCAQCD) to the Salt River Project Agricultural Improvement and Power District (SRP), Coolidge Generating Station (Coolidge) in Pinal County, Arizona. The Permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and Chapter 3 of the PCAQCD Code of Regulations (PCAQCD Code). *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known 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 in Section IV of this Order, the EPA grants in part and denies in part the Petition and objects to the issuance of the Permit. Specifically, the EPA grants Claim 5 and denies the rest of the claims.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state[1] 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. Pinal County submitted a title V program governing the

[1] In this context, the word "state" is used to indicate any non-Federal permitting authority, including a local agency. *See* 40 C.F.R. § 70.2 (definition of "state").

issuance of operating permits in 1993, followed by several amendments. After granting interim approval of Pinal County's title V operating permit program in 1996, the EPA granted full approval of the program in 2001. 66 Fed. Reg. 63166 (December 5, 2001). This program, which became effective on November 30, 2001, is codified in portions of Chapters 1, 3, 7, 8, and 9 and Appendix B to the PCAQCD Code.

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. 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. 40 C.F.R. § 70.1(b); 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. 32250, 32251 (July 21, 1992). 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.[2] *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

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

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).

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).[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 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

[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.

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 (Jan. 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 contained in the permit record. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.[10] This includes a requirement that petitioners 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). 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 determining 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

[7] *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (Sept. 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 (Apr. 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (Jan. 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (Mar. 15, 2005).

[9] *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (Feb. 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 (Dec. 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); *Georgia Power Plants Order* at 9–13 (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).

during the agency's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition. *Id*.

If the EPA grants a title V petition and objects to the issuance of a permit, a permitting authority may address the EPA's objection by, among other things, providing the EPA with a revised permit. 42 U.S.C. § 7661d(b)(3), (c); 40 C.F.R. § 70.8(d); *see id*. § 70.7(g)(4); 70.8(c)(4); *see generally* 81 Fed. Reg. at 57842 (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. If a final permit has been issued prior to the EPA's objection, the permitting authority should determine whether its response to the EPA's objection requires 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 revision 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 (Sept. 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (Dec. 19, 2007).

C. New Source Review

The major New Source Review (NSR) program encompasses 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.

Under Arizona's EPA-approved SIP, the Arizona Department of Environmental Quality (ADEQ) is the permitting authority for major stationary sources under parts C and D of title I of the Act, including major sources located in Pinal County. *See* 40 C.F.R. § 52.152(c)(162)(ii)(A)(3). ADEQ's SIP-approved NSR program rules are contained in portions of Arizona Administrative Code (A.A.C.) Title 18, Chapter 2. Similar to how the EPA delegates permitting responsibilities under the PSD program to states that lack SIP-approved programs, the ADEQ has delegated its NSR major stationary source permitting responsibilities to PCAQCD. PCAQCD has primary responsibility for NSR permitting of minor sources in Pinal County, Arizona. PCAQCD's SIP-approved NSR program rules are contained in portions of PCAQCD Code Ch. 3.

Where the EPA has approved a state or local agency's title I permitting program (whether PSD, NNSR, or minor NSR), NSR permits issued following public notice and the opportunity for public comment and judicial review establish the NSR-related "applicable requirements" for the purposes of title V. As with "applicable requirements" established through other CAA authorities, the terms and conditions of those permits should be incorporated into a source's title V permit without a further round of substantive review as part of the title V process. The EPA has explained and reiterated this interpretation in numerous orders. *See, e.g.*, *In the Matter of Big River Steel, LLC*, Order on Petition No. VI-2013-10 at 8–20 (October 31, 2017) (*Big River Steel Order*). The EPA also recently proposed rule revisions to more clearly reflect this approach, and that proposed rulemaking explains at length the legal and policy underpinnings of this approach. S*ee Clarifying the Scope of "Applicable Requirements" Under State Operating Permit Programs and the Federal Operating Permit Program*, 89 Fed. Reg. 1150, 1160–84 (January 9, 2024) ("proposed Applicable Requirements Rule")). Accordingly, the EPA will generally not consider the merits of a permitting authority's NSR permitting decisions in a petition to

object to a source's title V permit. *See Big River Steel Order* at 8–9, 14–20.[11] Rather, any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

III. BACKGROUND

A. The SRP Coolidge Facility

SRP operates a peaking power generating station located south of the City of Coolidge in Pinal County, Arizona. The existing facility consists of 12 natural gas-fired simple cycle turbines, rated at 576 megawatts total, as well as a diesel fuel-fired fire suppression water pump. The current permit action involves a project to construct an additional 12 natural gas-fired simple cycle turbines, rated at 594 megawatts total, along with six wet surface air coolers (WSACs). This project is referred to as the "Expansion Project."

The SRP Coolidge facility is a major source of multiple pollutants for purposes of title V. Pollutants addressed in this Order include particulate matter with a diameter of 10 microns or less (PM_{10}), particulate matter with a diameter of 2.5 microns or less ($PM_{2.5}$), nitrogen oxides (NO_x), volatile organic compounds (VOC), carbon monoxide (CO), and sulfur dioxide (SO_2). As discussed further in Section IV of this Order, PCAQCD initially permitted the facility as a minor source for NSR purposes, subject to minor NSR requirements but not PSD or NNSR requirements. In the present permit action, PCAQCD permitted the Expansion Project under minor NSR. After the Expansion Project, the SRP Coolidge facility will be a major stationary source under the PSD and NNSR programs. The facility is also subject to various New Source Performance Standards (NSPS) and SIP requirements.

B. Permitting History

SRP first obtained a title V permit for the Coolidge facility in 2009, which was last renewed in 2019. On August 27, 2021, SRP applied for a combined title I preconstruction permit and a modification to the facility's title V operating permit[12] to authorize an earlier planned version of the Expansion Project. On August 10, 2023, SRP submitted a revised permit application seeking to authorize the current version of the Expansion Project. PCAQCD first published notice of a draft permit on October 14, 2023, subject

[11] However, as the EPA noted in the *Big River Steel Order*, there may be circumstances that "warrant a different approach." *Big River Steel Order* at 11 n.20. The preamble to the proposed Applicable Requirements Rule includes a summary of the different fact patterns in which EPA has (or has not) applied this approach. *See* 89 Fed. Reg. at 1163–64, 1165–70. Additionally, even in situations where this approach applies, the EPA does view monitoring, recordkeeping, and reporting to be part of the title V permitting process and will therefore continue to review whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in a preconstruction permit. *See, e.g.*, *In the Matter of South Louisiana Methanol, LP*, Order on Petition Nos. VI-2016-24 and VI - 2017-14 at 10–11 (May 29, 2018) (*South Louisiana Methanol Order*); *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20. Moreover, as the EPA has explained, "[A] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the 'applicable requirement' remains the terms and conditions of the issued preconstruction permit and they should be included in the source's title V permit." *Big River Steel Order* at 19.

[12] In Arizona, including in Pinal County, title I preconstruction permits and title V operating permits are typically issued in a single "unitary" permit document, called a "Class I permit." *See* A.A.C. R18-2-302.

to a public comment period that ran until November 15, 2023. The draft permit was accompanied by a technical support document. On January 30, 2024, PCAQCD submitted a proposed permit, along with its responses to public comments (RTC, included as Petition Ex. 9), to the EPA for its 45-day review. The EPA's 45-day review period of the proposed title V permit ended on March 15, 2024, during which time the EPA did not object to the proposed title V permit. On March 26, 2024, PCAQCD issued a final permit for the SRP Coolidge facility, accompanied by a final version of the technical support document (TSD, included as Petition Ex. 4).

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. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on March 15, 2024. Thus, any petition seeking the EPA's objection to the Permit was due on or before May 14, 2024. The Petition was dated and received May 13, 2024. Therefore, the EPA finds that the Petitioner timely filed the Petition.

D. Environmental Justice

The EPA used EJScreen[13] to review key demographic and environmental indicators within a five-kilometer radius of the SRP Coolidge facility. This review showed a total population of approximately 1473 residents within a five-kilometer radius of the facility, of which approximately 47 percent are people of color and 42 percent are low income. In addition, the EPA reviewed the EJScreen Environmental Justice Indexes, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indexes for the five-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Arizona.

EJ Index	Percentile in State
Particulate Matter 2.5	62
Ozone	68
Nitrogen Dioxide	19
Diesel Particulate Matter	41
Toxic Releases to Air	32
Traffic Proximity	18
Lead Paint	74
Superfund Proximity	0
RMP Facility Proximity	0
Hazardous Waste Proximity	68
Underground Storage Tanks	31
Wastewater Discharge	43
Drinking Water Non-Compliance	90

[13] 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*. The following information is based on an August 12, 2024, report using EJScreen version 2.3.

IV. EPA DETERMINATIONS ON PETITION CLAIMS

The Petition includes 6 enumerated claims, identified in the Petition as Petition Claims 1 through 6. Prior to Claim 1, the Petition includes a section titled "Legal Background and Initial Argument." Within this section, the Petitioner "requests that EPA object to the Final Permit and related documentation issued by PCAQCD because it fails to clearly identify which regulatory program PCAQCD is applying to its permitting decision." Petition at 7. More specifically, the Petitioner alleges that "PCAQCD has a legal obligation to identify in its permitting documentation whether it is permitting the Expansion Project as a major source, minor source (true minor source), or synthetic minor source." *Id*. at 6. This allegation, along with the Petitioner's request for an objection on this issue, appear most closely related to the issues addressed in Claim 1. Thus, to the extent this "Initial Argument" could be considered a claim requesting the EPA's objection, the EPA will respond to it along with the rest of Claim 1.

A. Claim 1: The Petitioner Claims That "The Administrator Must Object to the Final Permit Because PCAQCD Failed to Require NNSR and PSD Review of the Existing Facility and the Expansion Project."

Petition Claim: The Petitioner claims that "the existing facility and the Expansion Project are subject to NNSR and PSD review." Petition at 7; *see id*. at 7–20.

The Petitioner acknowledges PCAQCD's statement that, because the "permit proposed to establish enforceable emissions limits for all new equipment at levels below the 'major source' threshold, the proposed Coolidge expansion is not regulated under PSD and/or NNSR." *Id*. at 9 (quoting RTC at 11). The Petitioner challenges PCAQCD's conclusion.

The Petitioner discusses the new emission limitations on the newly authorized equipment as well as the Permit's previously established emission limitations on the existing equipment. *Id*. at 10. The Petitioner observes that each set of emission limits was established "barely below the applicable NNSR/PSD thresholds," such that the total permitted emissions from the entire facility are now almost twice as high as the relevant PSD and NNSR major source thresholds. *Id*.[14] Considering total facility-wide emissions, the Petitioner concludes that "the Final Permit allows emissions to exceed major source thresholds thus triggering NNSR/PSD review." *Id*. at 9.[15]

The Petitioner suggests "that SRP and PCAQCD are attempting to utilize a practice known as 'one-time-doubling' to circumvent major source PSD permitting." *Id*. at 12. The Petitioner acknowledges PCAQCD's explanation that:

[14] More specifically, the Petitioner compares: the total facility-wide emission limits on NOx, VOC, and CO (494.5 tons per year) to the PSD threshold of 250 tons per year; the total facility-wide emission limits on PM_{10} (139.8 tons per year) to the now-relevant NNSR threshold of 70 tons per year; and the SO_2 limit on the existing equipment (245 tons per year) plus the current potential SO_2 emissions from the new equipment (11.7 tons per year) to the PSD threshold of 250 tons per year. Petition at 10–11.

[15] Put another way, the Petitioner concludes that "Pinal County erred in concluding that the existing facility and Expansion Project do not exceed major source emission thresholds triggering PSD/NNSR review." Petition at 11.

> Since the existing Coolidge Generating Station equipment was regulated as a "minor source", the PSD/NNSR requirements would only apply if the [potential to emit, or PTE] from the proposed modification itself met the applicable emissions threshold for a "major source". In other words, the "major modification" requirements under PSD/NNSR would not be applicable to an existing minor source; i.e., a "major modification" cannot occur at an existing minor emissions source.

Id. at 7 (quoting RTC at 10).

The Petitioner argues that this practice "allows for true minor sources to become major sources without undergoing PSD review," since the definition of "major modification" under the PSD rules only includes certain physical or operational changes at an existing major source. *Id*. at 12 (citing 40 C.F.R. § 52.21(b)(2)(i)).

The Petitioner claims that such an increase in emissions, which Petitioner calls "one-time-doubling," is not permitted here because it only applies to true minor sources, not to synthetic minor sources like the existing SRP Coolidge facility. *Id*.; *see id*. at 8. The Petitioner's argument that this "one-time-doubling" is not available for synthetic minor sources is based on the language in paragraph (r)(4) of the EPA's federal PSD regulation, which the Petitioner calls the "source obligation rule." *Id*. at 13. The Petitioner observes that this paragraph of the EPA's regulation states:

> At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Id. (quoting 40 C.F.R. § 52.21(r)(4)).[16] The Petitioner discusses various statements from the EPA and ADEQ regarding this requirement. *See id*. at 14–15.

Here, the Petitioner claims that PCAQCD was wrong to conclude that the "permit does not provide for a relaxation of the current Coolidge permit limits." *Id*. at 11 (quoting RTC at 11). Instead, the Petitioner argues the following:

> Here, the 'source', 'facility', and 'project' in question is the construction and operation of the entire Coolidge facility, for which the 245 ton/year facility-wide synthetic minor source emission limits were established in the previous permit. As EPA has explained in the foregoing guidance, relaxation of these limits subjects facilities like SRP's Coolidge Generating Station to PSD review.

Id. at 16. The Petitioner elaborates, arguing that "the fact that SRP is also simultaneously undertaking a physical modification of the facility, in addition to relaxing synthetic minor limits, does not impact

[16] The Petitioner also notes that both the previous permit and the current Permit include terms mirroring this regulation. Petition at 14, 19.

applicability of the Source Obligation Rule." *Id*. at 16 (citing Petition Ex. 14, a letter from EPA Region 4 to North Carolina).

The Petitioner also addresses PCAQCD's conclusion that the Expansion Project does not involve a "sham permit" designed to circumvent the PSD and NNSR regulations, and more specifically its determination that "the proposed Coolidge modification would be a separate project that would not be part of the original Coolidge Generating Station[, . . .] based on the time lag between the original permitting (Coolidge began operations in 2011) and the timing for the Expansion Project (2021 permit application)." *Id*. at 17 (quoting RTC at 11). The Petitioner disagrees for various reasons, including: both existing and new equipment are included in a single permit; the entire facility is known by a single name; all equipment is located on the same property; the new equipment is nearly identical to the existing equipment; and the new and existing equipment would share infrastructure, including some new infrastructure (three of the six new WSACs would serve the existing turbines). *Id*. at 17–18. The Petitioner also contests PCAQCD's reliance on the ten-year separation between the two projects, since the source obligation rule applies at any time a synthetic minor permit is relaxed. *Id*. at 18–19. The Petitioner concludes that "the Expansion Project and the original Coolidge plant are a single integrated facility, not two separate projects." *Id*. at 19.

In sum, the Petitioner claims that the Permit "is unlawful because it fails to undertake PSD/NNSR review," which warrants an EPA objection. *Id*. The Petitioner also provides various suggestions for how to revise the Permit to address these issues. *See id*. at 19–20.

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

Claim I challenges PCAQCD's determination that minor NSR requirements, as opposed to major NSR requirements, are the applicable requirements of the SIP that apply to the construction of the Expansion Project. This claim raises the question of whether challenges to permit conditions based on NSR preconstruction permitting authority under title I of the CAA should be considered by the EPA in addressing a petition to object to a title V operating permit under CAA § 505(b)(2).

As noted in Section II.C of this Order, the EPA's position on this issue can be summarized as follows: where a permitting authority authorizes construction by issuing a title I 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. As with "applicable requirements" established through other CAA authorities, the terms and conditions of the NSR permit should be included in a source's title V permit without a further round of substantive review as part of the title V process. This interpretation is explained more fully in the proposed Applicable Requirements Rule, 89 Fed. Reg. at 1160–84, the *Big River Steel Order*, and many subsequent orders (the most relevant of which are addressed in the following paragraphs).

Determining how the EPA's interpretation of "applicable requirements" applies to an individual permit action is a case-specific decision. In many situations, the EPA has declined to review NSR decisions through the title V permitting process, including when responding to title V petitions. However, in

other situations involving materially different procedural or factual postures, the EPA has addressed the merits of title V petition claims involving certain NSR issues.[17]

The relevant circumstances here closely resemble those the EPA considered in the *Waelz*,[18] *Riverview*,[19] *Yuhuang II*,[20] and *Big River Steel Order*s. In each of those cases, the title I-based NSR preconstruction authorizations and permit terms were developed at the same time as the title V permit terms, and all of the resulting requirements were included in the same permit document. After a review of the structure and text of the CAA and the EPA's regulations in part 70, and in light of the circumstances presented in those orders, the EPA concluded that the title V petition process was not the appropriate forum to review the respective petitioners' NSR-related claims. The EPA recently summarized the reasons for those decisions as follows in the proposed Applicable Requirements Rule:

> As explained in detail in several petition orders, even where NSR and title V permit authorizations are contained within one permit document, such a permit action actually reflects two legally distinct permit actions by the state: (i) a preconstruction permit issued under the EPA-approved title I SIP regulations governing NSR, and (ii) an operating permit under EPA-approved part 70 regulations governing title V. Again, NSR permits and title V permits are based on differing statutory and regulatory schemes, and although the two programs feature similarities, they also feature important substantive and procedural differences. A permitting authority's decision to increase administrative efficiency by issuing a single permit document to satisfy the legal requirements of two distinct permitting programs does not alter the applicability of requirements associated with each respective program. For example, substantive requirements unique to NSR would not be applied to establish or evaluate non-NSR-based title V permit terms. Likewise, procedural requirements unique to title V (including the EPA's objection authority and public petition opportunity, among other things) would not be extended to review substantive elements of the permit action unique to the NSR permitting process. The EPA's objection authority, and the public's ability to petition EPA to object, are confined by the CAA to title V permits. *See* 42 U.S.C. 7661d(b). Combining the procedures by which a permitting authority issues NSR and title V permits does not alter this basic principle.

[17] For example, the EPA has reviewed questions about whether a title V permit includes and assures compliance with NSR-related requirements of the SIP in situations where no title I NSR preconstruction permit was issued. One notable example is the *SRP Desert Basin Order*. *In the Matter of Salt River Project Agricultural Improvement and Power District, Desert Basin Generating Station*, Order on Petition No. IX-2022-3 (July 28, 2022). There, the permit at issue restricted emissions to a level that exempted the source from both major NSR and minor NSR requirements. *Id*. at 12 n.20. Thus, the EPA concluded that the permit was exclusively a title V permit, and that no title I permit had been issued that would have established the NSR-based applicable requirements of the SIP. *Id*. Accordingly, the EPA found it proper to use the title V petition response process to review whether the title V permit contained all NSR-related applicable requirements of the SIP. *Id*. For additional examples and discussion about the EPA's treatment of these situations, see 89 Fed. Reg. at 1169 n.102 and accompanying text. Importantly, each of those examples are distinguishable from the SRP Coolidge Permit because here, the facility *did* receive a title I-based minor NSR preconstruction authorization for the Expansion Project, and that title I authorization established the NSR-related applicable requirements of the SIP.

[18] *In the Matter of Waelz Sustainable Products, LLC,* Order on Petition No. V-2021-10 (March 14, 2023).

[19] *In the Matter of Riverview Energy Corp.,* Order on Petition No. V-2019-10 (March 26, 2020).

[20] *In the Matter of Yuhuang Chemical Inc. Methanol Plant,* Order on Petition Nos. VI-2017-5 & VI-2017-13 (April 2, 2018).

89 Fed. Reg. at 1167 (citing *Waelz Order* at 13–15; *Riverview Order* at 24–28; *Yuhuang II Order* at 7–8; *Big River Steel Order* at 11–12).[21]

Having considered the Permit at issue, the EPA finds that the same logic and legal principles articulated in *Waelz*, *Riverview*, *Yuhuang II*, and *Big River Steel* apply to the combined minor NSR and title V permit issued by PCAQCD to the SRP Coolidge facility. A title V petition is not the appropriate forum for reviewing the merits of the Petitioner's NSR-related claims, notwithstanding PCAQCD's decision to issue a single permit document that contains both NSR- and title V-based requirements.

Notably, the EPA's conclusion here is consistent with the EPA-approved regulations in the Arizona SIP that PCAQCD relied on in this permit action. These regulations provide that combined ("unitary") Class I permits in Arizona (like the Permit issued to SRP Coolidge) include two legally distinct components: (i) an NSR preconstruction authorization based on title I of the CAA that takes effect *before* the EPA reviews the permit, and (ii) an operating permit authorization under title V of the CAA that takes effect *after* the EPA reviews the permit. *See* A.A.C. R18-2-101.115; R18-2-302.G; R18-2-334.B; R18-2-402.C. Specifically, the Arizona SIP provisions addressing minor NSR provide: "No person shall begin actual construction of a new stationary source, or minor NSR modification, subject to this Section without first obtaining a . . . proposed final permit revision from the Director in accordance with R18-2-304." A.A.C. R18-2-334.B; *see* R18-2-402.C (same, for major NSR). The SIP further explains: "'Proposed final permit' means the version of a Class I permit or Class I permit revision that the Department proposes to issue and forwards to the Administrator for review in compliance with R18-2-307(A). *A proposed final permit constitutes a final and enforceable authorization to begin actual construction of, but not to operate, a new Class I source or a modification to a Class I source*." A.A.C. R18-2-101.115 (emphasis added); *see also* A.A.C. R18-2-302.G (similar text). Thus, in the case of a unitary Class I permit, the SIP provides that the title I-based NSR part of the permit—the authorization to construct—is effective at the time the "proposed final permit"[22] is sent to EPA for review. By contrast, the title V part of the permit—the authorization to operate—is not effective until after EPA reviews the proposed final permit and the permitting authority subsequently issues the final permit. *See* A.A.C. R18-2-101.55 ("'Final permit' means the version of a permit issued by the Department after completion of all review required by this Chapter."); *see* A.A.C. R18-2-307 (requirements for EPA review, among other things). Allowing the NSR portion of a combined permit to become effective before the EPA's review makes

[21] The Petitioner neither acknowledges these previous title V orders nor offers any argument to rebut or challenge the legal principles articulated therein. Similarly, the Petitioner does not attempt to explain why the reasoning in those orders should not be applied to the SRP Coolidge Permit. In other words, the Petitioner does not offer any reason or argument as to why the EPA should review the Petitioner's challenges to PCAQCD's NSR permitting decisions in this title V petition proceeding, despite the well-established precedent that it is not appropriate to do so. The Petitioner's silence on this topic in its Petition is surprising. The Petitioner (Sierra Club) has been a named petitioner on at least eight other title V petitions raising NSR issues in the past eight years, to which the EPA responded by applying the same framework as outlined in this section. *See, e.g.*, *Yuhuang II Order*; *In the Matter of ExxonMobil Corp., Baytown Olefins Plant,* Order on Petition No. VI-2016-12 (Mar. 1, 2018) (*ExxonMobil Baytown Olefins Order*); *In the Matter of PacifiCorp Energy, Hunter Power Plant,* Order on Petition No. VIII-2016-4 (Oct. 16, 2017) (*PacifiCorp-Hunter I Order*). Sierra Club has also litigated two cases involving this precise EPA framework in federal circuit courts in recent years. *See Env't Integrity Project* v. *EPA,* 960 F.3d 529 (5th Cir. 2020) (upholding the *ExxonMobil Baytown Olefins Order*); *Sierra Club* v. *EPA,* 964 F.3d 882 (10th Cir. 2020) (vacating in part the *PacifiCorp-Hunter I Order*). More recently, Sierra Club (alongside other environmental organizations) submitted public comments on the EPA's January 2024 proposed Applicable Requirements Rule addressing this framework. *See* EPA Docket ID No. EPA-HQ-OAR-2023-0401-0038, available at *https://regulations.gov*.

[22] The "proposed final permit" in the Arizona regulations is analogous to the "proposed permit" as defined in the EPA's regulations. *See* 40 C.F.R. § 70.2.

sense, as the EPA's authority to review and object to proposed permits is unique to title V. *See* 42 U.S.C. § 7661d(b).

The facts here indicate that the SRP Coolidge Permit was just such a dual-purpose permit, with legally distinct title I and title V components. Notably, the Permit includes a section titled "Authority to Construct." Permit at 6 (Condition 4). As relevant here, the Permit clearly lists the legal authority for this section as "A.A.C. R18-2-334 (for 2023 Project)." *Id*. The cited regulation is the portion of the Arizona SIP that addresses minor NSR, based on title I of the CAA. Thus, PCAQCD identifies the portion of the Permit authorizing construction of the Expansion Project as a minor NSR authorization. Similarly, the Permit includes Reasonably Available Control Technology requirements for the new emission units that are based on these minor NSR rules. *See* Permit at 8 (Condition 4.E; citing A.A.C. R18-2-334(C)(1)(b)). The permit record is also reasonably clear that the authorization of construction for the Expansion Project involved a minor NSR (but not major NSR) authorization and minor NSR requirements. *See, e.g.*, TSD at 2, 4.

The Permit's title I (minor NSR) authorization established the NSR-related "applicable requirements" of the SIP that applied to the construction of the Expansion Project. As with applicable requirements established under other CAA authorities, the validity of those underlying requirements should not be revisited through the procedural tools that are unique to title V, including the present title V petition response. To the extent the public wished to challenge those NSR-related decisions, it had other available avenues to do so. For example, the minor NSR authorization in the Permit was subject to legal challenge through the Pinal County administrative appeal process, followed by an appeal in state court. *See* A.R.S. § 49-480.02; A.R.S. § 49-482. Or, the public could pursue enforcement if it believes the facility has violated requirements of the SIP. 42 U.S.C. § 7604(a)(1), (a)(3).

In summary, in issuing a permit under the EPA-approved title I SIP regulations governing NSR, PCAQCD established the NSR-related "applicable requirements" of the SIP for the Expansion Project. The fact that the PCAQCD did this within a combined NSR and title V permit does not alter this principle. Rather, given that the NSR-based applicable requirements associated with the Expansion Project are included verbatim in the facility's title V permit (by virtue of the single permit document), it is clear that the title V permit faithfully incorporates those applicable requirements. Thus, the Petitioner has failed to demonstrate that the title V permit is "not in compliance with the applicable requirements," and the EPA denies Claim 1. 42 U.S.C. § 7661d(b)(2).

Alternatively, even if it were appropriate for the EPA to consider the merits of the Petitioner's challenges to PCAQCD's NSR permitting decisions in the present title V petition Order, the Petitioner has not demonstrated a basis for the EPA to object to the Permit.[23] The Petitioner is incorrect about the types of actions that trigger major NSR (PSD or NNSR) requirements.

[23] In situations where NSR issues are properly raised in a title V petition, the EPA applies the following framework: "Where a petitioner's request that the Administrator object to the issuance of a title V permit is based in whole, or in part, on a permitting authority's alleged failure to comply with the requirements of its approved [NSR] program (as with other allegations of inconsistency with the Act), the burden is on the petitioner to demonstrate to the Administrator that the permitting decision was not in compliance with the requirements of the Act, including the requirements of the SIP. . . . As the permitting authority for [the state's] SIP-approved [NSR] program, [the state agency] has substantial discretion in issuing [NSR] permits. Given this discretion, in reviewing a [NSR] permitting decision in the title V petition context, the EPA generally will not substitute its own judgment for that of [the state]. Rather, consistent with the decision in *Alaska Dep't of*

The CAA requires the owner or operator of a source to obtain a PSD permit prior to the construction of a major stationary source, and construction is defined to include modifications. *See* 42 U.S.C. §§ 7475(a)(1), 7479(2)(C). Similarly, the CAA requires an owner or operator to obtain an NNSR permit in order to construct a new or modified major stationary source. 42 U.S.C. §§ 7502(b)(5), 7503. Under regulations implementing these requirements in Arizona, a PSD and/or NNSR permit is required to construct a new major stationary source or to make a "major modification" to an existing major stationary source. A.A.C. R18-2-402(B)–(D); *see also* 40 C.F.R. §§ 51.166(a)(7) (EPA regulations identifying required content for PSD programs in SIPs), 51.165(a)(2) (EPA regulations identifying required content for NNSR programs in SIPs). Construction of a new major stationary source can occur either when a wholly new stationary source is built, or when an existing stationary source that is not yet major makes a physical change that would constitute a major stationary source by itself. A.A.C. R18-2-401(13)(c); *see also* 40 C.F.R. §§ 51.166(b)(1)(i)(*c*), 51.165(a)(1)(iv)(A)(*3*). Notably, a major modification, by definition, can only occur at an existing major stationary source. A.A.C. R18-2-101(74), R18-2-402(B); *see also* 40 C.F.R. 40 C.F.R. §§ 51.166(b)(2)(i), (a)(7)(ii), 51.165(a)(1)(v)(A).

The Petitioner does not allege that the source was an existing major stationary source or that the project constitutes a major modification to an existing major stationary source. Instead, the Petitioner alleges that the source is an existing synthetic minor NSR source and that the project and permit action trigger PSD and NNSR by making the source a major stationary source. The Petitioner is incorrect that the modification at issue here is subject to major NSR because the total emissions from existing and new equipment at the SRP Coolidge facility will exceed the major source threshold. *See* Petition at 9, 11. The Petitioner offers no statutory or regulatory support for this position. Again, major NSR is triggered by either the construction of a new *major* stationary source or a major modification to an existing *major* stationary source. Major NSR is *not* triggered by a modification of an existing *minor* stationary source, whether true or synthetic, that causes the facility's total emissions to exceed the major source thresholds (unless the modification would constitute a major stationary source by itself).[24]

As relevant here, the major NSR applicability framework can be summarized as follows: When a brand-new facility is constructed with emissions below the relevant major source thresholds, such construction of a new minor source does not trigger PSD or NNSR. Subsequent changes to an existing *minor* source would not trigger PSD or NNSR unless the increases from the changes themselves exceed the relevant major source thresholds.

As the Petitioner acknowledges, this framework is based on the definition of "major modification," which can only occur at an existing major stationary source. *See* Petition at 12 n.45; A.A.C. R18-2-

Envt'l Conservation v. EPA, 540 U.S. 461 (2004), in reviewing a petition to object to a title V permit raising concerns regarding a state's [NSR] permitting decision, the EPA generally will look to see whether the petitioner has shown that the state did not comply with its SIP-approved regulations governing [NSR] permitting, or whether the state's exercise of discretion under such regulations was unreasonable or arbitrary." *In the Matter of Appleton Coated, LLC*, Order on Petition Nos. V-2013-12 & V-2013-15 at 5 (October 14, 2016) (*Appleton Order*) (citations omitted); *see* 89 Fed. Reg. at 1162.

[24] If changes at a then-minor source do not require a PSD or NNSR permit at the time of the change, but contribute to the source as whole having the potential to emit above major source thresholds (when pre-existing emissions are combined with an increase), then the source will be classified as a major source from that point forward, and *subsequent* changes at the source may qualify as a major modification of a major source. *See* RTC at 11.

101(74), R18-2-402(B); *see also* 40 C.F.R. §§ 51.166(b)(2)(i), (a)(7)(ii), 51.165(a)(1)(v)(A).[25] The Petitioner is incorrect that this framework only applies to true minor sources, not synthetic minor sources (*i.e.*, sources that have accepted enforceable limitations on PTE to restrict their emissions below the major source thresholds). *See* Petition at 12.[26] A minor source is not a major stationary source, regardless of whether it is a true minor source due to its natural, unrestricted physical or operational design or a synthetic minor source due to enforceable restrictions. *See* A.A.C. R18-2-101(110) (definition of potential to emit); *see also* 40 C.F.R. §§ 51.166(b)(4), 51.165(a)(1)(3).

The language that the Petitioner labels the "source obligation rule" does not affect the aforementioned regulations that apply in the circumstances present here. This source obligation rule establishes an additional, separate type of major NSR trigger; it applies independently from the rules that require a major NSR permit for the construction of a new major stationary source or a major modification to an existing major stationary source.

Moreover, the version of this source obligation rule in the Arizona SIP is not applicable here. The relevant regulations provide:

> At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

A.A.C. R18-2-406(N) (SIP rule governing PSD); R18-2-403(C) (same text in SIP rule governing NNSR); *see also* 40 C.F.R. §§ 51.166(r)(2), 51.165(a)(5)(ii).[27]

This rule is not applicable here because PCAQCD did not relax any enforceable limitations that previously applied to the source. *See* RTC at 11. NSR permits are issued to authorize specific construction activities, one project at a time. When SRP Coolidge first received a permit to construct its original 12 turbines and emergency engine in 2009, it accepted limitations restricting potential emissions from those emission units. Those limits, which continue to apply to those existing units, were not relaxed in any way during the present permit action. Compare Petition Ex. 5 at 6–7 (Conditions 4.B.1, 4.C.1 of a prior permit) with Permit at 7, 9 (Conditions 4.C.1, 5.C). The fact that SRP Coolidge now plans to construct additional emission units, subject to new limitations that restrict potential emissions from those new units, is not relevant under this rule, because the addition of this new equipment does not involve any relaxation to the limitations that apply to the existing equipment.

[25] The Petitioner cites 40 C.F.R. § 52.21(b)(2)(i), which is the analogous EPA regulation that governs in situations where the EPA is the PSD permitting authority.

[26] The Petitioner's introductory argument that "PCAQCD has a legal obligation to identify in its permitting documentation whether it is permitting the Expansion Project as a major source, minor source (true minor source), or synthetic minor source," Petition at 6, does not demonstrate grounds for the EPA to object here. PCAQCD identified the regulatory program that it is applying to the Expansion Project. The Permit and permit record explain that the Expansion Project is subject to minor NSR requirements, and PCAQCD explains that this is based on the synthetic minor limits reflected in the Permit. *See* Permit at 6, 8 (Conditions 4, 4.E); TSD at 2; RTC at 9, 10–11.

[27] The Petitioner cites 40 C.F.R. § 52.21(r)(4), which is the analogous EPA regulation that governs in situations where the EPA is the PSD permitting authority.

The Petitioner's arguments about "sham permitting" are similarly misguided. This part of the Petitioner's claim appears to conflate the rules that dictate the scope of pollutant-emitting activities that constitute a single stationary source with the principles that guide the scope of activities that constitute a single construction project at a stationary source. It is undisputed that all the equipment at SRP Coolidge is included in the same Permit, carries the same name, is located on the same property, and shares infrastructure. However, these undisputed facts simply reflect the undisputed conclusion that all of the units are part of a single stationary source. Importantly, as previously explained, NSR permitting requirements do not necessarily apply to the total emissions of an entire stationary source. Instead, NSR requirements apply to specific construction activities at the stationary source. Regarding "sham permitting" or "circumvention," the Petitioner has not demonstrated nor provided any evidence that SRP Coolidge intended to circumvent major NSR permitting requirements upon initial construction of the source by accepting synthetic minor limitations that it intended to relax soon thereafter, such that emissions from the new source would exceed the major stationary source thresholds. *See* 54 Fed. Reg. 27274, 27281 (June 28, 1989). The time period between construction projects is a highly relevant factor in any determination of intent to evade major NSR permitting requirements. Here, PCAQCD's reliance on the more than 10-year separation between the initial construction of the SRP Coolidge facility and the current Expansion Project is reasonable and consistent with the EPA's guidance on the subject. Put simply, the facility's initial construction and its subsequent expansion more than 10 years later are reasonably considered to be two separate construction activities. The first construction activity was permitted as a new synthetic minor source. The present construction activity was permitted as a minor modification to that existing minor source. The Petitioner has not presented a factual or legal basis to question that decision by PCAQCD.

Overall, none of the Petitioner's arguments in Claim 1 demonstrate that the facility is subject to PSD or NNSR requirements. Thus, even if these issues were properly considered in the present title V petition Order, they would present no basis for the EPA's objection.

B. Claim 2: The Petitioner Claims That "The Air Modeling Analysis Relies on Improper Background Concentrations to Find Compliance with the 24-hour PM_{10} NAAQS."

Petition Claim: The Petitioner claims that the "Permit is illegal, because it ignores evidence that the Expansion Project will cause or contribute to an interference with the [24-hour] PM_{10} NAAQS." Petition at 21; *see id*. at 20–31.

The Petitioner states that "is unlawful to grant a permit if ambient air quality modeling demonstrates that a project would interfere with attainment or maintenance of the NAAQS." *Id*. at 31 (citing A.A.C. R18-2-334(F), PCAQCD Reg. § 3-1-070). More specifically, the Petitioner observes that A.A.C. R18-2-334(F) provides:

> The Director shall deny an application for a Class I permit or permit revision or a Class II permit or permit revision subject to this Section, if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with attainment or maintenance of a national ambient air quality standard.

Id. (quoting A.A.C. R18-2-334(F)).

Here, the Petitioner argues that the "EPA must object to the Final Permit because air modeling shows that the Expansion Project would result in a violation of the NAAQS." *Id*. This allegation is based largely on the Petitioner's discussion of comprehensive air dispersion modeling prepared by SRP in 2021 to support an earlier, different version of the Expansion Project. *See id*. at 20–31. That modeling considered the emissions increases from that proposed project, as well as existing background concentrations of PM_{10}. *See, e.g.*, *id*. at 20–21.

The Petitioner acknowledges PCAQCD's statement that:

> The modeling relies upon dispersion modeling completed in 2021 by SRP. The 2021 modeling was reviewed by ARS and a copy of the review report is attached. ARS found that the 2021 modeling demonstrated compliance with the applicable NAAQS. Please note that the 2021 SRP modeling was based on adding 16 new turbines and 7 WSACs while the final proposal was only 12 turbines and 6 WSACs. . . . Based on the 2021 modeling, the PM-10 impacts were slightly higher than the applicable significant impact limit (SIL), e.g., 5.62 vs. 5.0 micrograms per cubic meter. However, if the 2021 modeling is adjusted for the change in the project (12 turbines vs. 16 turbines), the revised PM10 concentration would be less than the SIL, e.g., 5.62 x (12/16) = 4.2 micrograms per cubic meter. This adjustment is accurate as the PM-10 emissions were mostly from the turbines and the WSAC emissions did not contribute to the modeled PM-10 concentrations. Because the PM-10 impacts for the final project would be less than the SIL, the discussion of background PM-10 becomes moot. If the modeled PM-10 impacts are less than the SIL, the modeling demonstrates PM-10 compliance and a full-scale cumulative modeling analysis including a background PM-10 concentrations is not required.

Id. at 20–21 (quoting RTC at 14).

According to the Petitioner, "Regardless of whether the Applicant was legally required to submit NAAQS compliance modeling for this permit application, the Applicant chose to do so, and that information is before the County and EPA. . . . The County had a responsibility to base its decision on the information before it. Pinal County and EPA cannot ignore the evidence before them that the Expansion Project would cause or contribute to interference with the NAAQS." *Id*. at 30–31; *see id*. at 21.

The Petitioner alleges two key problems with the comprehensive modeling provided by SRP in 2021: "it failed to incorporate continuous monitoring data and certified ambient concentrations of PM_{10} for the three-year period preceding the permit application from the closest Eleven Mile Corner PM_{10} monitoring site." *Id*. at 20; *see id*. at 21, 31.

First, the Petitioner argues that, under the EPA's Ambient Air Monitoring Guidelines, data used to meet NSR requirements "must have been collected in the 3-year period preceding the permit application." *Id*. at 22 (quoting Petition Ex. 16, an excerpt from a 1987 EPA guidance document). The Petitioner asserts that the modeling associated with SRP's 2021 permit application, which was also relied on in the facility's updated 2023 permit application, used background PM_{10} data from 2017–2019. *Id*. (citing

Petition Ex. 7, SRP Modeling Report). The Petitioner asserts that the "EPA must object to the County's failure to require data for the most recent three years." *Id*.

Second, the Petitioner argues that PCAQCD should have considered background PM_{10} concentrations measured from a different ambient monitoring site (the Eleven Mile Corner monitor) than the one used in SRP's 2021 Modeling Report (the Coolidge monitor). *Id*. at 23. The Petitioner presents various reasons for why the Eleven Mile Corner monitor should have been used for background concentrations, including: it is closer to the SRP Coolidge facility; it provides more continuous monitoring data; and it has more recent certified data. *Id*. at 23–25, 27–28.[28] The Petitioner posits that SRP chose to use the Coolidge monitor because the Eleven Mile Corner monitor measured considerably higher background PM_{10} concentrations than the Coolidge monitor. *Id*. at 26–27.

The Petitioner claims: "In sum, there is no justification whatsoever to choose background data from the Coolidge monitoring site over data from the Eleven Mile Corner monitor." *Id*. at 29. The Petitioner further contends: "When appropriate background monitoring data is used, the Expansion Project would result in substantial exceedances of the PM_{10} NAAQS." *Id*. at 20, 21; *see id*. at 29–30. Using background information from the Eleven Mile Corner monitor from 2018–2020 and maximum hourly emission rates for each combustion turbine, the Petitioner "prepared a simplified analysis of modeled ambient air concentrations," which showed an exceedance of the 1987 24-hour PM_{10} NAAQS. *Id*. at 29–30.

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

Similar to Claim 1, Claim 2 questions whether PCAQCD correctly applied and satisfied certain NSR-related requirements of the SIP in issuing the Permit and authorizing the construction of the Expansion Project. Those title I-based NSR requirements are not subject to further review through this title V petition proceeding. The Permit includes the NSR-related applicable requirements of the SIP that PCAQCD determined were applicable through its EPA-approved title I permitting process. Thus, the Petitioner has failed to demonstrate that the title V permit is "not in compliance with the applicable requirements," and the EPA denies Claim 2. 42 U.S.C. § 7661d(b)(2).

Alternatively, even if it were appropriate for the EPA to consider the merits of the Petitioner's challenges to PCAQCD's NSR permitting decisions in the present title V petition Order, the Petitioner has not demonstrated a basis for the EPA to object to the Permit. The Petitioner fails to demonstrate that PCAQCD did not comply with the EPA-approved SIP regulations that the Petitioner cites governing NAAQS assessments in NSR permitting.

The Petitioner observes that the Arizona SIP provides: "The Director shall deny an application for a Class I permit or permit revision or a Class II permit or permit revision subject to this Section, if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with attainment or maintenance of a national ambient air quality standard." A.A.C. R18-2-

[28] The Petitioner also argues that SRP cherry-picked among data from two different monitors at the Coolidge location, and the Petitioner challenges various other aspects of SRP's justification for using the Coolidge monitor, including discussion of population growth in the area nearby the Coolidge monitor. *See* Petition at 27–29.

334(F).[29] The key to this provision—which the Petitioner does not acknowledge or evaluate—is the discussion of "an assessment conducted pursuant to subsection (C)(2)." That subsection of the Arizona SIP provides:

> The Director shall not issue a proposed final Class I permit or permit revision or a Class II permit or permit revision subject to this Section to a person proposing to construct a new source or make a minor NSR modification unless the source or modification meets one of the following conditions for each regulated minor NSR pollutant subject to this Section:
> ***
> 2. An ambient air quality assessment demonstrates that emissions from the source or minor NSR modification will not interfere with attainment or maintenance of a national ambient air quality standard in any area.
> ***
> b. The requirements of this subsection shall be satisfied, if the results of the screening or more refined model conducted pursuant to subsection (B)(2)(a) demonstrate either of the following:
> ***
> ii. Emissions from the source or minor modification will have an ambient impact below the significance levels as defined in R18-2-401.

A.A.C. R18-2-334(C).[30] The relevant significance level under this rule is 5 micrograms per cubic meter of PM_{10}. A.A.C. R18-2-401(27).

In summary, the rule the Petitioner cites expressly allows PCAQCD to conclude that a minor NSR modification will not interfere with the NAAQS when a screening model shows that the modification will not increase ambient concentrations of PM_{10} by an amount equal to or greater than the significance level of 5 micrograms per cubic meter of PM_{10}. Under the terms of this regulation, and in the situation described below, no further comprehensive modeling is required to demonstrate that a minor NSR modification will not interfere with attainment or maintenance of the NAAQS.

Here, PCAQCD's RTC states that the emissions impacts from the Expansion Project would be 4.2 micrograms per cubic meter (*i.e.*, less than the significance level of 5 micrograms per cubic meter). RTC at 14. Thus, PCAQCD determined that the Expansion Project would not have significant enough emissions to interfere with the PM_{10} NAAQS. *Id*. PCAQCD explained that it was therefore not necessary to evaluate a "full-scale cumulative modeling analysis including a background PM-10 concentration" in order to make this determination, and accordingly that "the discussion of background PM-10 becomes moot." *Id*.

[29] The Petitioner also cites PCAQCD Reg. § 3-1-070, which provides generally that PCAQCD shall deny a permit revision if a facility would be expected to emit air pollution in violation of other provisions of the PCAQCD regulations, the Arizona Revised Statutes, or the Arizona SIP. *See* Petition at 31. As relevant to the allegations in this Claim, this regulation does not appear to establish any requirements beyond those in the Arizona SIP provision discussed in the text.

[30] See also A.A.C. R18-2-334(C)(2)(a), which indicates that a more refined model "may" be used to satisfy this requirement "[i]f the results of the screening model indicate that the source or minor NSR modification will interfere with attainment or maintenance of a national ambient air quality standard."

The Petitioner does not acknowledge that A.A.C. R18-2-334 allows PCAQCD to issue a minor NSR permit based on a determination that a project's emissions increase will have an impact below the significance level in this rule.[31] The Petitioner also does not directly address PCAQCD's explanation that the Expansion Project's impact would have an impact below the significance level for PM_{10} in the state rule. Thus, the Petitioner has failed to demonstrate that PCAQCD's decision was inconsistent with the applicable requirement that it alleges was not satisfied.

Overall, none of the Petitioner's arguments in Claim 2 demonstrate that PCAQCD's NAAQS assessment was inconsistent with the SIP or was otherwise unreasonable or arbitrary. *Appleton Order* at 5. Thus, even if these issues were properly considered in the present title V petition Order, they would present no basis for the EPA's objection.

C. Claim 3: The Petitioner Claims That "The Federally Enforceable Provisions are Not Enforceable Because of the Failure to Include Operational Limits."

Petition Claim: The Petitioner argues that the Permit does not contain enforceable permit conditions to limit the PTE of the expansion project because it contains emission limits but no operational limits. *See* Petition at 32–37.

The Petitioner observes that the Permit contains federally enforceable emission limits on various pollutants from the 12 new combustion turbines and six new WSACs. *Id*. at 34 (citing Permit Condition 5.D). Further, the Petitioner acknowledges that these emission limits apply on a rolling 12-month basis and include emissions from normal operation and startups and shutdowns. *Id*. Notwithstanding these limits, the Petitioner argues that "the Final Permit does not contain enforceable permit conditions for the combustion turbines and control equipment." *Id*. More specifically, the Petitioner observes that the "Permit contains neither an operational limit on the number of hours for normal operation per unit per 12-month rolling period nor a limit on the number of startups and shutdowns allowed per unit per 12-month rolling period." *Id*. at 36.

To support its argument that the Permit must include operational limits, the Petitioner addresses PCAQCD's rules for creating federally enforceable limits on a source's potential to emit. The Petitioner recites the following from PCAQCD Reg. § 3-1-084:

> A permit may, for the purpose of creating federally enforceable conditions that limit the potential emissions of a source, designate as a "federally enforceable provision" ("FEP Limit") <u>any emission limit in conjunction with a production limit and/or operational limit</u> expressed in the permit. A FEP Limit must be permanent, quantifiable and enforceable as

[31] To the extent the Petitioner's arguments might be taken as an implicit challenge to the validity of the SIP provision, such a challenge to the terms of an EPA-approved SIP would not be appropriately raised in this title V permit proceeding. *See, e.g., In the Matter of Piedmont Green Power,* Order on Petition Number IV-2015-2 at 28–29 (December 13, 2016) (*Piedmont Green Power Order*); *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants,* Order on Petition No. VIII–00–1 at 23–24 (November 16, 2000). In addition, the EPA notes that this provision is not a part of the EPA-approved major source PSD program in Arizona, and this screening model approach is not described in the state PSD program provisions that require major sources to demonstrate that proposed construction will not cause or contribute to a violation of the NAAQS. *See* A.A.C. R18-2-406, R18-2-407, R18-2-409, R18-2-410. The EPA's denial of Petitioner's claim 2 is based on PCAQCD's application of the minor NSR SIP provision cited by the Petitioner and not any regulations or EPA guidance regarding implementation of the PSD program.

> a practical matter, and shall be at least as stringent as otherwise applicable limitations and requirements under either the SIP or pertinent provision of the Clean Air Act (1990), and shall not operate to relieve any other legal restriction on emissions."

Id. at 33 (quoting PCAQCD Reg. § 3-1-084) (emphasis in Petition). The Petitioner concludes that this regulation "requires both an emission limit and an operational or production limit to create an FEP limit." *Id*. at 36. [32]

The Petitioner also argues: "Failure to impose the operational limits requested makes the FEPs unenforceable and unenforceable as a practical matter." *Id*. at 36–37. Put another way, the Petitioner suggests that operational limits are necessary "to ensure the validity of the specified ton per 12-month FEP emission limits for the Expansion Project." *Id*. at 36. The Petitioner asserts that because emissions during startups and shutdowns are higher than during normal operations, those emissions contribute significantly to the ability of the facility to comply with its emission limits. *Id*. at 36.[33]

The Petitioner acknowledges PCAQCD's rationale for not including these limits but does not further discuss the County's rationale. *Id*. at 32 (citing RTC at 12).

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

As an initial matter, the nature of the Petitioner's claim—that is, the alleged flaw in the Permit—is not clear. The Petitioner several times alleges that the Permit's existing emission limits, called "FEP limits" are "unenforceable or unenforceable as a practical matter." Petition at 37; *see id*. at 32, 34. However, this Petition claim does not identify any reason why the Permit's emission limits are not themselves enforceable as either a legal or practical matter.[34] Overall, the Petitioner's arguments seem only loosely (if at all) related to the enforceability of the Permit's existing emission limits.

Instead, most of this Petition claim focuses on the alleged need for additional limits on operations or production that would complement or supplement the Permit's existing emission limits. Notably, the FEP limits at issue were imposed and accepted for the stated purpose of restricting the applicability of

[32] In addition to PCAQCD Reg. § 3-1-084, the Petitioner also cites A.A.C. R18-2-306.01(A), which defines "enforceable as a practical matter" to mean that "specific means to assess compliance with an emissions limitation, control, or other requirement are provided for in the permit in a manner that allows compliance to be readily determined by an inspection of records and reports." Petition at 33 (quoting A.A.C. R18-2-306.01(A)). The Petitioner also cites a 1995 EPA guidance document, which states: "In general, practical enforceability for a source-specific permit term means that the provision must specify (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, annually); and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting." *Id*. (quoting Petition Ex. 20).

[33] The Petitioner also reproduces explanations from SRP's permit application, in which the facility explained various assumptions underlying its emission estimates, including assumptions about annual hours of normal operation and the number of shutdowns. *See id*. at 34–36 (citing Petition Ex. 8).

[34] The Petitioner suggests that emissions during startups and shutdowns "contribute significantly to the ability of the facility to comply with the tons per 12-month FEP limits." Petition at 36. This may be true, but this can be accounted for by properly quantifying emissions from those events and ensuring that such emissions count towards the facility's demonstration of compliance with the emission limits. The Petitioner offers no challenges within this claim to that methodology; nor does the Petitioner offer any other factual reason why the emission limits themselves are not enforceable.

major NSR requirements. *See* Permit at 7 (Condition 4.C, "Operational Limitations to Avoid PSD Applicability; Emission Caps," referencing limits contained in Condition 5.D), 9 (Condition 5.D)). Thus, the Petitioner's central argument seems to be that for PTE limits to be effective at restricting the applicability of major NSR, those limits must take the form of both emission limits and operating limits. To the extent this claim challenges the validity or effectiveness of the limits in the context of determining whether the Expansion Project triggered major NSR, that issue is not subject to further review through this title V petition proceeding, for the reasons discussed in the EPA's response to Claim 1. *See Yuhuang II Order* at 7–8.

Even if it were appropriate for the EPA to consider the merits of the Petitioner's challenges to PCAQCD's NSR permitting decisions in the present title V petition Order, or to the extent that this claim could be interpreted to implicate title V (as opposed to NSR) requirements,[35] the Petitioner has not demonstrated any basis for the EPA's objection. Specifically, the Petitioner does not demonstrate that any applicable requirement would require the Permit to include production or operating limits in this situation.

The EPA has previously explained—in responding to more detailed arguments raised by the same Petitioner in prior petitions—that the EPA does not interpret the federal regulations to require production and/or operating limits in all situations where a facility wishes to restrict its PTE. *SRP Desert Basin Order* at 13–14 (citing numerous other EPA decisions and statements regarding this issue); *see also In the Matter of Salt River Project Agricultural Improvement & Power District, Agua Fria Generating Station,* Order on Petition No. IX-2022-4 at 12–13 (July 28, 2022) (*SRP Agua Fria I Order*). The EPA further explained that this is a case-by-case, fact-specific inquiry. *SRP Desert Basin Order* at 14; *SRP Agua Fria I Order* at 13. Here, PCAQCD explained why it considered emission limits sufficient to effectively also limit the source's operations, such that additional, explicit limits on specific operating parameters were not necessary. *See* RTC at 12. The Petitioner offers no substantive rebuttal to that explanation. 40 C.F.R. § 70.12(a)(2)(vi).[36]

The Petitioner cites various regulatory provisions unique to Pinal County or Arizona that, in the Petitioner's view, require both emission limits and operating limits when using a FEP limit to restrict PTE. First, the Petitioner relies on PCAQCD Reg. § 3-1-084. The Petitioner has not demonstrated that this regulation requires both emission limits and production or operating limits. The EPA addressed the same issue in the *SRP Desert Basin Order*. There, in response to extensive arguments from the same Petitioner regarding its interpretation of PCAQCD Reg. § 3-1-084, the EPA granted a petition claim on the basis that PCAQCD's permit record did not sufficiently address whether this regulation required both emission limits and production or operating limits. *See SRP Desert Basin Order* at 16. Although the EPA granted that petition claim, the EPA reserved judgment and did not agree with the Petitioner's interpretation, instead relying on PCAQCD to explain its interpretation of this unique SIP provision. *Id*. at 16 n.32. In response to that order, PCAQCD updated the Desert Basin permit record to explain its

[35] As the EPA has explained, certain questions about whether a limit (including a limit taken to avoid major NSR applicability) is enforceable may be subject to review through title V. *See* 89 FR at 1170; *Yuhuang II Order* at 8.
[36] *See supra* note 10 and accompanying text.

legal interpretation that PCAQCD Reg. § 3-1-084 does *not* require both emission limits and production or operating limits.[37]

Here, the Petition includes a single-sentence allegation that "PCAQCD Regulation § 3-1-084 requires both an emission limit and an operational or production limit to create an FEP limit." Petition at 36. But as the extensive proceedings involving the same issue in the *SRP Desert Basin Order* show, the issue is not so simple. The Petitioner's general, conclusory allegation—presented without any analysis—is insufficient to demonstrate that PCAQCD Reg. § 3-1-084 requires both emission limits and production or operating limits.[38]

The Petitioner also cites A.A.C. R18-2-306.01, without providing any explanation of why that authority supports the Petitioner's argument. The EPA has previously explained that this authority undermines, rather than supports, the Petitioner's request for operating limits. *See SRP Desert Basin Order* at 14 ("This regulation does not require the use of production or operating limits to restrict PTE, and instead expressly acknowledges that properly supported emission limitations could be used for this purpose."). The Petitioner also cites a 1995 EPA guidance document, but that document says nothing to support the Petitioner's suggestion that operating limits are necessary.

Overall, to the extent this claim raises issues that are properly considered by the EPA in this title V petition proceeding, it presents no basis for the EPA's objection. Therefore, the EPA denies Claim 3.

D. Claim 4: The Petitioner Claims That "The Federally Enforceable Provisions are Not Enforceable Because of the Failure to Impose Short-Term Emission Limits."

Petition Claim: The Petitioner claims that the Permit lacks enforceable short-term limits to ensure compliance with short-term NAAQS. *See* Petition at 37–40.

The Petitioner recounts that, in public comments, it alleged that "the Federally Enforceable Provision emission limits in the Final Permit were not enforceable, or not enforceable as a practical matter, because Pinal County failed to impose short-term emission limits (in pounds per hour per pollutant) to ensure compliance with the relevant short-term NAAQS." *Id*. at 37.

The Petitioner notes that, in response, PCAQCD referred to short-term emission limits in NSPS subparts KKKK and TTTT. The Petitioner asserts that the limits in these NSPS regulations "do not establish enforceable short-term emission rates to ensure compliance with the relevant NAAQS" for various reasons. *Id*. Specifically, the Petitioner claims that the NSPS limits:

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[37] *See* PCAQCD, Responsiveness Summary For: Salt River Project Agricultural Improvement and Power District (SRP) Desert Basin Generating Station at 2–3 (February 24, 2023) ("The language relied upon by the Petitioner in paragraph 1 of PCAQCD Code §3-1-084 is permissive 'A permit may …designate as a "federally enforceable provision" ("FEP Limit") an emission limit in conjunction with a production and/or operational limit expressed in the permit.' The balance of the Code §3-1-084 uses mandatory language to delineate requirements for a FEP Limit i.e. §3-1-084(4) 'Every FEP shall:'. The mandated requirements for a FEP Limit as set forth in the rule do not include production or operational limits. Further, there is no indication in the rulemaking record for PCAQCD Code §3-1-084 that PCAQCD was attempting to do anything other than comply with the federal requirements for establishing federally enforceable limits. As stated by EPA in its Order 'In general, the EPA does not interpret the federal regulations to require production and/or operating limits in all situations.' . . . PCAQCD Code §3-1-084 . . . does not require the imposition of operational and/or production limits.").

[38] *See supra* notes 7 and 8 and accompanying text.

> a) do not address all emission sources that were modeled for determining compliance with short-term NAAQS; b) do not address all pollutants that were modeled for determining compliance with short-term NAAQS; c) do not correlate with modeled emissions at various load scenarios; d) are not established on an hourly basis as modeled; and, e) are considerably higher than modeled emission rates.

Id. at 37–38; *see id*. at 38–40 (elaborating on these arguments).

The Petitioner concludes that "the provisions of the Final Permit are not enforceable, nor enforceable as a practical matter, to ensure compliance with short-term NAAQS." *Id*. at 40.

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

Similar to Claim 3, Claim 4 is unclear regarding the nature of the alleged flaw in the Permit. The Petitioner several times suggests that the Permit's FEP emission limits are not enforceable or are not enforceable as a practical matter. Petition at 37, 40. However, this Petition claim does not identify any reason why the Permit's emission limits are not themselves enforceable as either a legal or practical matter. Overall, the Petitioner's arguments seem only loosely (if at all) related to the enforceability of the Permit's existing emission limits.

The Petitioner repeatedly indicates that its real concern is not that any specific existing permit terms are themselves unenforceable, but rather that the Permit *lacks* enforceable terms that would "ensure compliance with the relevant short-term NAAQS." *Id*. at 37; *see id*. at 38, 39, 40. In discussing this concept, the Petitioner repeatedly refers to the short-term emission rates used in the modeling provided to demonstrate that the Expansion Project would not interfere with the NAAQS. *See id*. at 37, 38, 39, 40. Thus, it appears that the Petitioner's primary concern is that the Permit does not include enforceable short-term emission limits reflecting the same short-term emission rates used in the modeling associated with the minor NSR SIP requirements discussed in Claim 2.

To the extent that this claim reflects an implicit challenge to the validity of the NSR modeling (such as a suggestion that NSR modeling must be based only on values reflected in binding, enforceable emission limits), that issue is not subject to further review through this title V petition proceeding, for the reasons discussed in the EPA's response to Claims 1 and 2.

Even if it were appropriate for the EPA to consider the merits of the Petitioner's challenges to PCAQCD's NSR permitting decisions in the present title V petition Order, or to the extent that this claim could be interpreted to implicate title V (as opposed to NSR) requirements,[39] the Petitioner has not demonstrated any basis for the EPA's objection. Specifically, the Petitioner does not identify any applicable requirement that would require the Permit to include the requested short-term emission limits in this situation. 40 C.F.R. § 70.12(a)(2)(ii).

The Petitioner several times refers to the need for short-term emission limits to "ensure compliance with the . . . NAAQS." *E.g.*, Petition at 37. However, as the EPA has explained on many occasions, the

[39] *See supra* note 35.

NAAQS are not themselves "applicable requirements" with which a source must directly comply, because the NAAQS do not apply directly to sources.[40] That is, the promulgation of a NAAQS does not, in and of itself, automatically result in emission limits or other control measures that a source must follow. Instead, the NAAQS create an obligation on states to develop SIPs (and on EPA to promulgate FIPs, as necessary) that contain requirements necessary to achieve and maintain the NAAQS. 42 U.S.C. 7410(a)(1), (c)(1). The specific measures contained in each state's EPA-approved SIP to achieve the NAAQS are the applicable requirements with which sources must comply. 40 C.F.R. § 70.2 (definition of "applicable requirement"). For purposes of title V permitting, this means that a state does not have any general obligation to establish emission limitations or other standards within a title V permit in order to protect (or "ensure compliance with") the NAAQS. Whether such requirements are necessary is largely dependent on the relevant terms of the SIP. Here, again, the Petitioner does not identify any SIP provision or other legal authority that would mandate such limits in this case.[41]

Given that the Petitioner has not demonstrated that the Permit must include short-term limits for any purpose relevant to the NAAQS, the Petitioner's arguments regarding why the Permit's short-term NSPS limits "do not ensure compliance" with the NAAQS are not relevant. Therefore, the EPA denies Claim 4.

E. Claim 5: The Petitioner Claims That "The Combined PM_{10} Emission Limits for the WSACs and Combustion Turbines Specified are Not Enforceable or Not Enforceable as a Practical Matter."

The Petitioner claims that PM_{10} emission limits on the new turbines and WSACs are not enforceable as a practical matter because they lack sufficient monitoring and recordkeeping of total dissolved solids (TDS) and other provisions related to emissions from the WSACs. *See* Petition at 40–44. This Petition claim includes four distinct arguments.

Method of Determining TDS

First, Petitioner references prior public comments that "requested that the Final Permit state the method for determining TDS and/or require that any subsequently submitted plan [specifying the procedures for determining TDS] be subject to public notice and comment." *Id*. at 41. The Petitioner states that the Permit still does "not specify the methods to determine TDS in the re-circulated water . . . ." *Id*. at 42. The Petitioner acknowledges that, instead, PCAQCD added a permit term in response to

[40] *See* 40 C.F.R. § 70.2 (defining "applicable requirement" to include the NAAQS "but only as it would apply to temporary sources"); 89 Fed. Reg. at 1158–59 (summarizing the EPA's longstanding views on this issue); 57 Fed. Reg. at 32276 ("Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source. In its final rule, EPA clarifies that the NAAQS and the increment and visibility requirements under part C of title I of the Act are applicable requirements for temporary sources only."); 56 Fed. Reg. at 21732–33 ("The EPA does not interpret compliance with the NAAQS to be an 'applicable requirement' of the Act."). The EPA has applied and explained this principle in numerous title V petition orders. *See, e.g.*, *In the Matter of Lucid Energy Delaware, LLC, Frac Cat Compressor Station and Big Lizard Compressor Station*, Order on Petition Nos. VI-2022-5 & VI-2022-11 at 13 (*Lucid Order*).

[41] Typically (as is the case here), requirements governing a new or modified source's impact on the NAAQS are embodied within the NSR part of the SIP, and thus implemented through the NSR permitting process. Here, the SIP provisions cited by the Petitioner governing NAAQS assessments for minor NSR permits (discussed in the EPA's response to Claim 2) do not specifically require that such assessments be based on enforceable short-term permit limits. *See* A.A.C. R18-2-334(C), PCAQCD Reg. § 3-1-070. There may be other situations where short-term emission limits may be necessary or required by an applicable requirement, but the Petitioner does not identify any such requirement.

public comments, which now requires: "If any change to the test methods and procedures specified in this permit condition are approved, the Permittee shall submit an application to revise the permit to reflect the approved alternate test methods." *Id*. at 42 (quoting Permit Condition 6.E.7.n.ii); *see id*. at 41 (citing RTC at 12–13). The Petitioner claims that this permit term is deficient because the "Permit does not specify that any subsequently submitted plan for determining TDS and PM emissions from the combined WSACs and combustion turbines will be subject to public notice and comment." *Id*. at 42 (citing *SRP Agua Fria I Order* at 14); *see also id*. at 41 n.107.

Frequency of TDS Monitoring

Second, the Petitioner observes that the Permit requires quarterly measurements of conductivity or TDS in the WSAC recirculation water. Petition at 42 (citing Permit Condition 6.E.7.n.ii). The Petitioner asserts that this is not frequent enough. *Id*. Specifically, the Petitioner claims that quarterly sampling is not frequent enough because "TDS content in the re-circulating water can be highly variable depending on the cycles of concentration." *Id*. The Petitioner also asserts that "permits for similar sources typically require daily or at least monthly measurements, sometimes as a combination of TDS and conductivity measurements." *Id*. The Petitioner cites an example of another facility's permit, which requires daily monitoring of the conductivity, and monthly monitoring of TDS, from cooling tower water. *Id*. at 42–43 n.112 (citing Petition Ex. 21).

Values of Parameters Used to Calculate PM Emissions

Third, the Petitioner observes that the equation for calculating PM emissions from the WSACs does not specify the values of certain parameters. *See* Petition at 43. The Petitioner identifies the values of these parameters as stated in SRP's permit application: a maximum circulating water flow rate per WSAC of 10,600 gallons per minute; a maximum TDS in circulating water of 5,000 parts per million; a design drift loss rate for the drift eliminators of 0.0005%; particle size multipliers for PM_{10} and $PM_{2.5}$ (0.3 and 0.001 respectively); and maximum annual hours of operation for each WSAC of 1,800 hours per year. *Id*. at 41, 43. The Petitioner claims that PCAQCD ignored the request in public comments to incorporate these assumptions into enforceable permit conditions. *Id*. at 43. According to the Petitioner, "Absent specification of these parameters in the permit, the combined emission limits for the WSACs and combustion turbines specified in Condition 5.D are not enforceable, or not enforceable as a practical matter, because the equation in Condition 6.E.7.n. can not be accurately calculated." *Id*.

Inspection of WSAC Drift Eliminators

Fourth, the Petitioner asserts that the Permit must require periodic inspection of the WSACs. Petition at 43. The Petitioner argues that PCAQCD's response on this issue—that the Permit already requires "that equipment be operated and maintained in good working order (See Condition 9.B.2) . . ."—is inadequate. *Id*. at 43. Specifically, the Petitioner claims that inspection requirements are necessary to ensure that drift eliminators are able to continue operating at the specified design rate, as drift eliminators degrade with age and composition of circulating water. *Id*. The Petitioner argues that degradation of drift eliminators can have significant impacts on PM emissions, noting that if the drift eliminators degraded to a drift loss rate of 0.005%, this would result in 2.1 tons per year of PM_{10}, compared to the 0.21 tons per year specified in the application. *Id*. The Petitioner also asserts that

requirements for annual periodic inspection and replacement of drift eliminators is typically incorporated into permits. *Id*. at 43–44.

EPA Response: For the following reasons, the EPA grants this Petition claim and objects to the issuance of the Permit.

Method of Determining TDS

As PCAQCD acknowledges, "The TDS concentrations of the recirculated water in the WSAC equipment is needed for the compliance emission calculations for PM-10 and PM-2.5 emissions." RTC at 12. However, as the Petitioner observes, the Permit does not specify the method used to determine TDS concentrations. Instead, the Permit suggests that this information will be included in a plan submitted by the facility. *See* Permit at 27 (Condition 6.E.7.n.ii) ("Once per quarter, the Permittee shall measure conductivity (as surrogate for TDS) or TDS for recirculation water for WSAC1 through WSAC6 pursuant to a plan submitted to the District by the permittee."). The Permit and permit record indicate that this plan will be approved by PCAQCD, and potentially incorporated into the Permit, but defers that to a future date. *See id*. ("If any changes to the plan specified in this permit condition are approved, the Permittee shall submit an application to revise the permit to reflect the approved alternate plan."); RTC at 13 ("The draft permit has been amended to reflect that a permit application [must] be submitted to revise the permit to reflect the conductivity/TDS monitoring methods that end up being approved by PCAQCD. If the source chooses to measure conductivity, a valid methodology to convert the conductivity measurement to TDS will be required as part of the plan."). The problem is that neither the method for determining TDS, nor the plan that would elucidate such a method, are currently contained in the Permit. Thus, the Permit does not currently "set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c); *see* 40 C.F.R. § 70.6(a)(3)(i)(B); *In the Matter of Mountain Coal Co., LLC, West Elk Mine*, Order on Petition No. VIII-2024-3 at 37 (May 24, 2024). Therefore, the EPA grants this part of Claim 5 and objects to the Permit.[42]

Frequency of TDS Monitoring

The Permit requires quarterly sampling of TDS. Permit at 27 (Condition 6.E.7.n.ii). Public comments squarely raised concerns about the quarterly sampling frequency. *See* Petition Ex. 3 at 30–31. This was

[42] The EPA also observes that, due to this omission from the Permit, the public has not had an opportunity to review and comment on the method used to determine TDS. That said, the EPA does not necessarily agree with the Petitioner's assertion that the Permit itself must specify that any future revisions to the Permit will entail public notice and comment. The Petitioner twice cites the *SRP Agua Fria I Order* (without explanation), but that order does not support the Petitioner's argument. In the *SRP Agua Fria I Order* (and similar orders), the EPA indicated that it would be problematic if alternative testing or monitoring requirements were approved entirely off-permit and the title V permit was never revised to reflect the approved alternatives. *SRP Agua Fria I Order* at 18–19. Here, however, the Permit clearly indicates that it will be revised to reflect changes to the plan, so the issue discussed in *Agua Fria I* is not an issue here. The *Agua Fria I Order* did not indicate that a title V permit must specify the precise procedure used to make such a permit revision. That is a forward-looking procedural question that will depend on whether the changes at issue qualify as a minor permit modification or a significant permit modification, following the criteria in the relevant EPA-approved part 70 rules. As the EPA has explained: "[T]itle V permits are not required to include specific conditions that describe all aspects of how a title V program will be implemented or how the permitting process will transpire in future permitting actions. These implementation-focused requirements are contained in the relevant EPA and state regulations, and do not necessarily need to be included in individual permits." *Lucid Order* at 10.

a significant comment, as it questioned whether the Permit contains sufficient monitoring to assure compliance with the PM emission limit, and thus whether the limit is enforceable as a practical matter. PCAQCD did not respond to this significant comment, as required by 40 C.F.R. § 70.7(h)(6). *See* RTC at 12–13. Additionally, nothing else in the permit record explains why quarterly sampling is sufficiently frequent. Thus, the record is inadequate for the EPA to determine whether the permit contains sufficient monitoring. 40 C.F.R. § 70.8(c)(3)(ii). Therefore, the EPA grants this part of Claim 5 and objects to the Permit.

Values of Parameters Used to Calculate PM Emissions

The Permit specifies the following:

> The Permittee shall calculate the quantity of monthly emissions for WSAC1 through WSAC6 each by using the following equation:
> E = k * Q * 60 [min/hour] * 8.345 [lb H2O/gallon] * [CTDS/106] * DL*t
>
> Where:
> E = Particulate matter emissions, pounds per month
> Q = Circulating water flow rate, gallons per minute
> CTDS = Circulating water total dissolved solids, ppm
> DL = Drift loss, %
> k = Particle size multiplier for PM10 and PM2.5
> t = hours of operation, hours per month

Permit at 28 (Condition 6.E.7.n.iii). However, as the Petitioner correctly states, the Permit does not specify the values of the parameters used in this equation. Public comments squarely raised this concern. *See* Petition Ex. 3 at 31. This was a significant comment, as it questioned whether the Permit's compliance assurance provisions are specific enough to be enforceable. PCAQCD did not respond to this significant comment, as required by 40 C.F.R. § 70.7(h)(6). *See* RTC at 12–13.

Additionally, the EPA agrees with the Petitioner that the Permit's failure to specify these values (or the means by which such values will be determined) renders the Permit deficient. Some of these values might be based on measured values (*e.g.*, circulating water flow rate, TDS concentration, hours of operation), others might be conservatively based on maximum design values (*e.g.*, circulating water flow rate, hours of operation), and others will presumably be based on constants that should be identified somewhere (*e.g.*, drift loss rate, particle size multipliers). Because the Permit does not identify these values or their sources, but instead leaves such decisions to the discretion of the permittee, the Permit does not sufficiently "set forth" the means by which SRP Coolidge will demonstrate compliance. 42 U.S.C. § 7661c(c). *See, e.g.*, *In the Matter of Sandy Creek Services, LLC, Sandy Creek Energy Station*, Order on Petition No. III-2018-1 at 12–13 (June 30, 2021). For this reason, as well as PCAQCD's failure to address public comments raising this issue, the EPA grants this part of Claim 5 and objects to the Permit.

Inspection of WSAC Drift Eliminators

Each of the WSACs is equipped with a drift eliminator that controls PM emissions. In addressing concerns regarding the degradation of the drift eliminators, PCAQCD stated: "The permit already requires that equipment be operated and maintained in good working order (See Condition 9.B.2) which should cover the operation and maintenance of the drift eliminators." RTC at 13. Permit Condition 9.B.2 is a general permit term that states: "All equipment, facilities, and systems used to achieve compliance with the terms and conditions of this permit shall at all times be maintained and operated in good working order." Permit at 35.

This permit term does not impose any specific obligations for the facility to periodically inspect the drift eliminators at any particular frequency. PCAQCD has not explained why periodic inspections are not necessary. Overall, the EPA cannot tell from the limited record whether this general permit term is sufficient to ensure that the drift eliminators continue to achieve their designed control efficiency. Thus, the EPA grants this part of Claim 5 and objects to the Permit. 40 C.F.R. § 70.8(c)(3)(ii).

Direction to PCAQCD: PCAQCD must revise the Permit and permit record in order to ensure that the provisions associated with the WSACs are sufficient to assure compliance with the PM_{10} limit at issue in this claim.

First, PCAQCD must revise the Permit to specify (or incorporate a plan that specifies) the method used to determine TDS in the recirculating water.

Second, PCAQCD must address public comments questioning the quarterly frequency of TDS sampling. PCAQCD must, at minimum, provide a justification for why this frequency is sufficient. PCAQCD may wish to consider various factors identified by the EPA, including the variability of emissions from these units, and the likelihood that emissions from the WSACs could cause a violation of the PM_{10} limit at issue. *See In the Matter of CITGO Refining and Chemicals Co., L.P., West Plant*, Order on Petition No. VI-2007-01 at 7–8 (May 28, 2009) (*CITGO Order*).

Third, PCAQCD must revise the Permit to specify the values of the parameters used in the equation to calculate emissions from the WSACs, or to specify the means by which such values may be obtained. To the extent PCAQCD wishes to incorporate by reference the values contained, for example, in the permittee's permit application, it should consider the EPA's guidance on incorporation by reference. *See, e.g.*, White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, 36–41 (March 5, 1996).

Fourth, PCAQCD must, at minimum, revise the permit record to better support its decision not to require periodic inspections of the WSAC drift eliminators, in light of the factors from the EPA's *CITGO Order* or other relevant considerations. Or, PCAQCD may decide to revise the Permit to include such an explicit requirement for periodic inspections. If so, PCAQCD should provide an explanation for the chosen inspection frequency.

F. Claim 6: The Petitioner Claims That "Pinal County Failed to Require Modeling of Secondary Impacts Due to Emissions of the PM2.5 Precursors NO_x and SO_2."

Petition Claim: The Petitioner claims that ambient air quality modeling was deficient because it did not include $PM_{2.5}$ precursors, and because it did not use the most recent background data. *See* Petition at 44–47. This Petition claim involves two distinct issues.

First, the Petitioner addresses secondary $PM_{2.5}$ (that is, $PM_{2.5}$ formed from the precursors NO_x and SO_2). The Petitioner alleges that "SRP modeled primary impacts due to direct $PM_{2.5}$ emissions from the facility but declined to model secondary impacts due to emissions of the $PM_{2.5}$ precursors NO_x and SO_2." *Id*. at 44. The Petitioner bases this allegation on a statement from SRP's 2021 Modeling Report, where the company stated, among other things, "Secondary $PM_{2.5}$ impacts were not assessed since precursor NO_2 and SO_2 emissions are less than the SER." *Id*. at 45 (quoting Petition Ex. 9 at 5-5). The Petitioner contests the reasoning provided by SRP for not assessing secondary $PM_{2.5}$ impacts; the Petitioner's arguments are based on draft and final guidance documents provided by the EPA. *See id*. at 45–46. The Petitioner concludes: "In sum, SRP's modeling for determining whether the emissions from the facility will interfere with attainment or maintenance of the $PM_{2.5}$ NAAQS is significantly flawed and its conclusions are not supported. PCAQCD must require SRP to revise its ambient air quality modeling to account for secondary impacts from $PM_{2.5}$ precursor emissions at the facility using the two-tiered demonstration approach outlined in EPA's 2017 Guidelines." *Id*. at 46–47.

Second, the Petitioner claims the following:

> Further, as discussed above, the 2021 Coolidge modeling study relies on monitoring data from 2017-2019 (for PM_{10}) and 2018-2020 (for all other pollutants); these three-year periods are not the most recent monitoring data available, as claimed, and do not correspond to the most recent three-year period preceding the 2023 permit application as required by EPA's Ambient Monitoring Guidelines for New Source Review preconstruction modeling. The applicable three-year period for this permit application is 2020-2022 and that period must be used for the background data for all modeled pollutant concentrations, including NO_2, $PM_{2.5}$, PM_{10}, and CO.

Id. at 47. The Petitioner requests the EPA's objection "because SRP did not use data from the most recent three-year period preceding the application date." *Id*.

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

Similar to Claims 1 and 2, Claim 6 questions whether PCAQCD correctly applied and satisfied certain NSR-related requirements of the SIP in issuing the Permit and authorizing the construction of the Expansion Project. Those title I-based NSR requirements are not subject to further review through this title V petition proceeding. The Permit includes the NSR-related applicable requirements of the SIP that PCAQCD determined were applicable through its EPA-approved title I permitting process. Thus, the Petitioner has failed to demonstrate that the title V permit is "not in compliance with the applicable requirements," and the EPA denies Claim 6. 42 U.S.C. § 7661d(b)(2).

Alternatively, even if it were appropriate for the EPA to consider the merits of the Petitioner's challenges to PCAQCD's NSR permitting decisions in the present title V petition Order, the Petitioner has not demonstrated a basis for the EPA to object to the Permit. The Petitioner fails to demonstrate that PCAQCD did not comply with the EPA-approved SIP regulations governing NAAQS assessments in NSR permitting.

As an initial matter, the Petitioner does not identify any SIP requirements within this claim that PCAQCD failed to satisfy in issuing the Permit. 40 C.F.R. § 70.12(a)(2)(ii).

Regarding the modeling of secondary $PM_{2.5}$ formation, the Petitioner is simply incorrect that the facility did not assess the impacts of secondary $PM_{2.5}$. In response to comments that were nearly identical to the present Petition claim, PCAQCD's RTC clearly states: "Secondary PM-2.5 impacts were included in the 2021 modeling study (See SRP 2021 modeling report)." RTC at 14. The Petition does not acknowledge or provide any rebuttal to this response. 40 C.F.R. § 70.12(a)(2)(vi).[43] PCAQCD's response appears to be correct. Near the end of SRP's 2021 Modeling Report, the facility includes a page summarizing its analysis of secondary $PM_{2.5}$ precursors. *See* Petition Ex. 7 at PDF page 44.[44] This analysis showed that emissions of $PM_{2.5}$ precursors from the Expansion Project were expected to contribute 0.003 micrograms of $PM_{2.5}$ per cubic meter over a 24-hour period, and 0.0003 micrograms per cubic meter annually. *Id*.[45] These values are several orders of magnitude lower than the relevant $PM_{2.5}$ NAAQS. Accordingly, the Petitioner has not demonstrated that any aspect of SRP's or PCAQCD's consideration of $PM_{2.5}$ precursors failed to satisfy any (unidentified) requirements of the SIP.

Regarding the background data associated with the facility's modeling, the Petitioner's general, conclusory arguments are insufficient to demonstrate that SRP's or PCAQCD's consideration of background concentrations failed to satisfy any (unidentified) requirements of the SIP. The Petition includes virtually no citations to any regulatory requirements, nor any analysis, within this short, one-paragraph claim.[46] The Petitioner does not identify any binding legal authority that would require the use of a specific time period of background data for purposes of the relevant minor NSR SIP NAAQS demonstrations.

Nor has the Petitioner provided any factual analysis of why different background data should have been used with respect to any particular pollutant here. The Petition includes a vague reference to discussions elsewhere in the Petition, which the EPA presumes is a reference to the Petitioner's

[43] *See supra* note 10 and accompanying text.

[44] The EPA appreciates some of the Petitioner's confusion on this point, as SRP's 2021 Modeling Report elsewhere indicated that the facility did *not* model the impact of $PM_{2.5}$ precursors. *See* Petition Ex. 7 at 5-5. That part of the Modeling Report appears to have been in error; the modeling report ultimately *did* include an analysis of $PM_{2.5}$ precursors, and PCAQCD's RTC correctly explained that the analysis was included in the modeling report.

[45] This analysis was based on Modeled Emission Rates for Precursors (MERPs), a tool that EPA encourages in certain contexts. *See* 40 C.F.R. part 51, Appx W, § 5.4.2.a; 82 Fed. Reg. 5182, 5193 (January 17, 2017); Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier 1 Demonstration Tool for Ozone and PM2.5 under the PSD Permitting Program, EPA-454/R19-003 (Apr. 2019), available at *https://www.epa.gov/sites/default/files/2019-05/documents/merps2019.pdf*; Guidance for Ozone and Fine Particulate Matter Permit Modeling (July 29, 2022), available at *https://www.epa.gov/system/files/documents/2022-08/2022%20Guidance%20O3%20and%20Fine%20PM%20Modeling.pdf*.

[46] *See supra* notes 7 and 8 and accompanying text. The closest thing to a citation in this part of Claim 6 is a general reference to a 1987 EPA guidance document (which was more directly cited and discussed in Petition Claim 2). *See* Petition at 47, 22; Petition Ex. 16. That guidance document is not legally binding.

discussion of background data in Claim 2. *See* Petition at 47, 22. However, as explained in the EPA's response to Claim 2, the permit record documents PCAQCD's position that impacts from PM_{10} emissions would be below the relevant significance levels. *See* RTC at 14. Because PCAQCD concluded that impacts were below the relevant significance levels, PCAQCD concluded that the results of more comprehensive modeling (including considerations of background concentrations) were not needed to make the required demonstration for PM_{10}. The Petitioner offers no substantive rebuttal to this position. 40 C.F.R. § 70.12(a)(2)(vi).[47] The same logic holds for CO, the impacts of which PCAQCD similarly indicated were below the significance level. *See* TSD at 5. With respect to NO_2 and $PM_{2.5}$, the Petitioner briefly acknowledges PCAQCD's statement that: "The NO2 and PM-2.5 background concentrations used in the 2021 Coolidge modeling study were the same as the background concentrations used by PCAQCD in current modeling studies. *The background concentrations are based on the most recent monitoring data available*." Petition at 44 (quoting RTC at 14) (emphasis added). The Petitioner does not substantively address or attempt to rebut PCAQCD's position, and the Petitioner provides no further information within either Claim 6 or Claim 2 regarding the availability of more recent background data for NO_2 or $PM_{2.5}$. 40 C.F.R. § 70.12(a)(2)(vi).[48]

In summary, none of the Petitioner's arguments in Claim 6 demonstrate that PCAQCD's NAAQS assessment was inconsistent with the SIP or was otherwise unreasonable or arbitrary. *Appleton Order* at 5. Thus, even if these issues were properly considered in the present title V petition Order, they would present no basis for the EPA's objection.

V. CONCLUSION

For the reasons set forth in this Order 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 and object to the issuance of the Permit as described in this Order.

Dated: September 11, 2024

Michael S. Regan
Administrator

[47] *See supra* note 10 and accompanying text.
[48] *See supra* notes 7, 8, and 10 and accompanying text.