IN RE MPLX

CAA Appeal No. 20-01

ORDER DENYING REVIEW

Decided September 2, 2020

Syllabus

In April 2020, the U.S. Environmental Protection Agency Region 8 ("Region") renewed a Clean Air Act Title V operating permit ("Permit") authorizing MPLX to continue operating its Wonsits Valley natural gas compressor station ("Facility") located in Indian country within the boundaries of the Uintah and Ouray Reservation in Utah. MPLX timely filed a petition for review ("Petition") with the Environmental Appeals Board ("Board") challenging the Permit's application of National Emissions Standards for Hazardous Air Pollutants ("NESHAP") requirements to a backup combustor at the Facility, referred to as Unit C-2.

During processing, MPLX uses a glycol dehydrator to separate water from commercially viable natural gas. The glycol dehydrator employs a flare and a backup combustor (referred to in the Permit as emissions units FL-1 and C-2 respectively) as emissions control devices. In July 2012, MPLX's predecessor entered into a Consent Decree that resolved claims concerning five facilities (including the Wonsits Valley facility at issue here). The Claims were brought by the United States on behalf of EPA against MPLX's predecessor under the Clean Air Act for civil penalties and injunctive relief for violations relating to a natural gas production operation in Indian country within the Uintah Basin, including the failure to comply with NESHAP requirements under 40 C.F.R. part 63, subpart HH.

On appeal, MPLX asserts that the Region's inclusion of Permit conditions requiring that the backup combustor (Unit C-2) comply with requirements applicable to emissions control devices pursuant to 40 C.F.R. part 63, subpart HH, was clearly erroneous because these permit conditions violate certain provisions of the Consent Decree. According to MPLX, the language of the Consent Decree establishes the flare (Unit FL-1) as the only control device subject to the part 63 requirements.

Held: MPLX has failed to meet its burden of establishing that the Region's permit determination was clearly erroneous. The Board concludes that subpart HH does not exclude the backup combustor (Unit C-2) from compliance with the NESHAP provisions

applicable to oil and natural gas production facilities under 40 C.F.R. part 63. Further, the language of the Consent Decree does not, as MPLX asserts, exclude the backup combustor from compliance with subpart HH. The requirement in the renewed Title V Permit that the backup combustor comply with the regulatory requirements at part 63, subpart HH is consistent with the language in the applicable regulatory text. The Board also concludes that MPLX's arguments based on the language in the Consent Decree fail to establish clear error by the Region. The Board further finds that provisions in the Consent Decree do not prohibit the Region from revising and updating permit conditions in accordance with applicable law. The Board, therefore, denies review.

Before Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

Opinion of the Board by Judge Stein:

I. *STATEMENT OF THE CASE*

In April 2020, the U.S. Environmental Protection Agency ("EPA" or "Agency") Region 8 ("Region") renewed a Clean Air Act Title V operating permit ("2020 Permit") authorizing MPLX[1] to continue operating its Wonsits Valley natural gas compressor station ("Facility") located in Indian country within the boundaries of the Uintah and Ouray Reservation in Utah.[2] MPLX timely filed a petition for review ("Petition") with the Environmental Appeals Board ("Board") challenging the 2020 Permit's application of National Emissions Standards for Hazardous Air Pollutants ("NESHAP") requirements to a backup combustor at the Facility, referred to as Unit C-2. MPLX Petition for Review of a Clean Air Act Part 71 Permit to Operate (May 13, 2020) ("Pet."). The Region filed a response to the Petition on June 15, 2020.[3] *See* U.S. EPA Region 8 Response to Petition for Review (June 15, 2020) ("Resp. Br."). MPLX filed a reply to the Region's response

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[1] The facility operator has been described in the filings as both MPLX and MPLX LP. For simplicity, we will refer to the operator as MPLX.

[2] Because the Facility is located in Indian country and the Ute Indian Tribe has not obtained approval to administer its own Title V program, the Region issued MPLX's Permit. *See* 40 C.F.R. § 71.4(b).

[3] The Region filed a certified index to the administrative record ("A.R."). *See* United States Environmental Protection Agency, Administrative Record Index (June 15, 2020). The Index includes multiple documents, each identified with a number. This decision will cite these documents using the A.R. number assigned by the Region along with the title of the document.

on July 14, 2020. *See* MPLX Reply to EPA Region 8's Response to Petition for Review (July 14, 2020) ("MPLX Reply"). With permission of the Board, the Region filed a surreply on July 31, 2020. *See* EPA Region 8 Surreply (July 31, 2020) ("Surreply Br.").

For the reasons that follow, the Board concludes that MPLX has failed to carry its burden of demonstrating that the Region clearly erred in applying NESHAP requirements to Unit C-2 in the 2020 Permit. The Board, therefore, denies the Petition.

II. *LEGAL BACKGROUND*

Under the Clean Air Act ("CAA" or "Act"), major sources of air pollutants, and certain other regulated sources, must obtain and comply with a Title V permit.[4] Title V permits compile existing substantive requirements under the Act, referred to as "applicable requirements." *See* CAA § 504(a), 42 U.S.C. § 7661c(a). The Title V permit program "incorporates and ensures compliance with substantive emissions limitations established under other provisions of the Act * * * but [] does not independently establish its own emission standards." *In re Veolia ES Tech. Sols. L.L.C.*, 18 E.A.D. 194, 196 (EAB 2020); *see also In re Peabody W. Coal Co.*, 12 E.A.D. 22, 27 (EAB 2005). Part 71 defines "applicable requirement" to encompass most standards under the Act, including emission standards for hazardous air pollutants. *See* 40 C.F.R. § 71.2.

Title V permits must incorporate as applicable requirements emission standards for major sources of hazardous air pollutants that EPA establishes pursuant to section 112(d) of the Act, 42 U.S.C. § 7412(d). *See* CAA § 504 (a), 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 71.2, .6(a)(1). The relevant emission standards at issue here include the NESHAP for oil and natural gas production facilities codified at 40 C.F.R. part 63, subpart HH. The subpart HH regulations, among other things, set testing, performance, and monitoring requirements for emissions control devices at glycol dehydration units that are major sources of hazardous air pollutants. *See* 40 C.F.R. § 63.764.

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[4] For purposes of Title V, "major source" means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is a major source under CAA § 112 of the Act (the hazardous air pollutant provisions), a major stationary source as defined in CAA § 302 of the Act (the CAA general definitions), or a major stationary source under part D of title I of the Act (the criteria air pollutant provisions). CAA § 501(2), 42 U.S.C. § 7661(2); 40 C.F.R. § 71.2.

III. *PROCEDURAL AND FACTUAL BACKGROUND*

A. *The Facility*

The Facility is a natural gas compression station that gathers natural gas from the surrounding well sites via a low-pressure gas collection system, processes the gas to pipeline quality standards, and routes the gas offsite for transportation and sale. *See* Andeavor Field Servs., L.L.C., *Federal Operating Permit Renewal Application for Wonsits Valley Compressor Station* 2 (Apr. 11, 2018) (A.R. 1.1) ("Renewal Application"); Region 8, U.S. EPA, *Statement of Basis for Draft Permit No. V-UO-000005-2018,* at 2 (Dec. 9, 2019) (A.R. 1.4) ("Statement of Basis"). During processing, the natural gas is compressed and dehydrated to remove water vapor to a concentration specified by a sales contract. Statement of Basis at 2. MPLX uses a glycol dehydrator (referred to in the 2020 Permit as emissions unit D-1) to separate water from commercially viable natural gas and, in that process, it produces as a byproduct volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs"). *See id.* at 2-4; Renewal Application at 2-4. As detailed in the Facility's permit renewal application, the glycol dehydrator employs a flare and backup combustor (referred to in the 2020 Permit as emissions units FL-1 and C-2 respectively) as emissions control devices. *See* Statement of Basis at 2-4, tbls. 1-2; Renewal Application at 3 & figs. 2-3 (process flow diagram).

B. *2012 Consent Decree and Prior Permit*

In July 2012, MPLX's predecessor—QEP Field Services ("QEPFS")— entered into a Consent Decree that resolved claims concerning five facilities (including the Wonsits Valley facility at issue here) brought against it by the United States on behalf of EPA under the CAA. *See United States v. Ute Indian Tribe of the Uintah & Ouray Reservation,* Civ. Act. No. 2:08-CV-00167-TS-PMW (entered July 3, 2012) (A.R. 3.1 app. A) ("2012 Consent Decree"); Statement of Basis at 10. The United States sought civil penalties and injunctive relief for violations relating to a natural gas production operation in Indian country within the Uintah Basin, including the failure to comply with NESHAP requirements under part 63, subpart HH. 2012 Consent Decree at 1-3.

As relevant to the Facility, paragraph 15 of the 2012 Consent Decree required QEPFS to install and operate a flare connected to the existing dehydrator at the Facility "pursuant to the requirements of 40 C.F.R. § 63.765(b)(1)(i)" to comply with subpart HH. 2012 Consent Decree ¶ 15. Paragraph 17 of the 2012 Consent Decree provided an emissions reduction requirement for the required flare as well as any backup combustor and established a 140-hour limitation for "[t]he time period during which the glycol dehydrator is operated without either (1) a flare with the pilot flame on or (2) the back-up combustor with its pilot flame on." *Id.* ¶ 17.

The 2012 Consent Decree also "deemed" the requirements of paragraphs 15 and 17 "'applicable requirements' under Part 71 and Title V." *Id.* ¶ 24.

The 2012 Consent Decree then set forth a timeline for QEPFS to obtain Part 71 permits for various facilities. The 2012 Consent Decree provided that QEPFS "shall submit updated Part 71 permit applications for [various facilities, including the Facility at issue here] that reflect current operations" within 180 days of the decree's effective date. *Id*. ¶ 24. In the 2012 Consent Decree, EPA agreed to propose as part of a Title V permit "specific emission limits, operating parameters, monitoring requirements, and recordkeeping requirements set forth in Paragraphs" 15 and 17, among others. *Id*. QEPFS could contest any permit conditions inconsistent with the 2012 Consent Decree. *Id*.

The 2012 Consent Decree explicitly stated that it is not a permit under federal law and that QEPFS is responsible for "achieving and maintaining complete compliance with all applicable" federal laws and regulations. *Id*. ¶ 70. Further, the 2012 Consent Decree specified that compliance with its terms is not a substitute for compliance with requirements set forth in federal permits or applicable regulations. *Id.* Although most of the conditions in the 2012 Consent Decree expired upon the consent decree's termination in June 2014, as relevant here, the requirements of paragraph 17 were expressly preserved. *Id.* ¶ 81 ("Termination of this Consent Decree will end the Parties' obligations under this Decree * * * with the exception of the obligations referenced in paragraphs 17, 19, 20, and 23, which shall expressly survive termination of this Decree."). Finally, the 2012 Consent Decree specified that, upon termination of the Decree, where a Title V permit has issued containing the applicable requirements in paragraph 17, among others, EPA "shall enforce such applicable requirements through the Title V permits and the Act."[5] *Id.* ¶ 82.

Following entry of the 2012 Consent Decree, EPA issued the Facility an initial Title V permit in September 2013, incorporating "all applicable provisions" of the 2012 Consent Decree, including paragraphs 15 and 17. *See* Region 8, U.S. EPA, *Air Pollution Control Permit to Operate No. V-UO-000005-2000.00,* conds. V.A., B.1, B.3 (Sept. 10, 2013) ("2013 Permit").[6] The 2013 Permit included general conditions for subpart HH compliance that required "each control device" for the glycol

[5] Paragraph 83 addressed enforceability where, upon termination of the 2012 Consent Decree, no permit had issued, or a permit had been issued and expired.

[6] The 2013 Permit was not included in the Region's certified index to the administrative record filed with the Board on June 15, 2020. However, the Permit was included as Exhibit 2 to MPLX's Reply.

dehydrator to comply with the applicable requirements of subpart HH. 2013 Permit conds. II.B-C. The 2013 Permit also incorporated paragraphs 15 and 17 in full. *Id.* cond. V.B.

C. *Permit Renewal Application*

In April 2018, MPLX applied for a renewed Part 71 operating permit. The permit renewal application identified the dehydrator (Unit D-1) as a major source of HAP emissions subject to control requirements under 40 C.F.R. § 63.765. Renewal Application at 8. MPLX identified Unit FL-1 as the emissions control device for Unit D-1, with Unit C-2 serving as a backup. *Id*. at 3; *see also* Email from Thomas Gibbons, MPLX, to Lohitaksha Rao, Region 8, U.S. EPA (Jan. 13, 2020) (attaching *Wonsits Valley Compressor Station (Uintah County, Utah) Public Comments on Draft Part 71 Permit V-UO-000005-2018.00* ¶ 3 (A.R. 2.1) (Jan. 13, 2020)) ("MPLX Comments").

The Region issued a Draft Permit for the Facility in December 2019. *See* Region 8, U.S. EPA, *Draft Title V Permit V-UO-000005-2018.00* (Dec. 9, 2019) (A.R. 1.3) ("Draft Permit"). In the Draft Permit, the Region listed Units FL-1 and C-2 as control devices for Unit D-1. The Draft Permit explicitly identified both Units FL-1 and C-2 as emissions control devices subject to compliance with the requirements of 40 C.F.R. part 63, subpart HH. *See id.* cond. III.D.3. The Draft Permit also retained the requirements of paragraph 17 of the 2012 Consent Decree, including the 140-hour downtime limit provision. *See id.* cond. V.B; 2012 Consent Decree ¶ 17.

In its comments on the Draft Permit, MPLX asserted that Unit C-2 should be designated in the permit as a backup combustor and that, as a backup, the unit was not subject to the requirements of part 63, subpart HH. According to MPLX, Unit C-2 "is not a Subpart HH control device" and a "backup control device is not required by Subpart HH." MPLX Comments ¶¶ 6-11. MPLX also requested that the Region clarify the timeframe for the 140-hour downtime limit as being "per calendar year." *Id.* ¶ 15.

D. *2020 Renewal Permit*

The Region issued the Facility's final renewed permit on April 13, 2020, along with a response to comments on the Draft Permit. *See* Region 8, U.S. EPA, *Air Pollution Control Permit to Operate* (Apr. 13, 2020) (A.R. 3.1) ("2020 Permit"); Region 8. U.S. EPA, *Responses to Comments on the Draft Air Quality Operating Permit* (Apr. 13, 2020) (A.R. 3.2) ("RTC"). The 2020 Permit designates Unit C-2 as the backup combustor for Unit D-1 subject to compliance with part 63, subpart HH. *See* RTC at 2; 2020 Permit cond. I.B, tbl. 2. The Region explained that subpart HH "does not provide exemptions for 'backup' combustors." RTC at 2. The Region pointed out that subpart HH explicitly allows facilities to utilize "a combination of control devices" in complying with emissions requirements and mandates that all such

devices are subject to subpart HH requirements. *Id.* (citing 40 C.F.R. § 63.765(b)(1)(i)-(ii)).

With regard to MPLX's comments concerning the 140-hour downtime provision, the Region agreed to clarify that the 140-hour downtime timeframe was "per calendar year." *Id.* at 5. The Region also added a footnote clarifying that under 40 C.F.R. part 63, at all times when the glycol dehydrator (Unit D-1) is operational, emissions must be routed to one of the two combustors (Units Fl-1 or C-2). 2020 Permit cond. V.B, n.2. The Region stated in its response to comments that this requirement was necessary because "part 63 does not permit *any* operation of the glycol dehydrator (D-1) without the use of a control device." RTC at 5. The Region further stated that the effect of the 140-hour provision was to limit the time the backup combustor may have its pilot light off. *Id.*

E. *Petition for Review*

On appeal, MPLX asserts that the Region's inclusion of permit condition III.A, subjecting the backup combustor (Unit C-2) to regulation under 40 C.F.R. part 63, subpart HH, was clearly erroneous. Pet. at 2. MPLX argues that, under the terms of the 2012 Consent Decree, the backup combustor is not subject to compliance with subpart HH, and the Region erred by including such a requirement. *Id.* at 3-4. For the same reason, MPLX objects to the 2020 Permit's clarifying language regarding the 140-hour downtime limit. *Id.* at 4-5. In particular, MPLX argues that because, in its view, the language of the 2012 Consent Decree does not require that the backup combustor comply with part 63, the additional clarifying language should be removed. *Id*. at 5.

IV. *STANDARD OF REVIEW*

The Board's review of this federal Title V permit is governed by part 71, which assigns to MPLX the burden of demonstrating that review is warranted. *See* 40 C.F.R. § 71.11(*l*)(1). Ordinarily, the Board will deny a petition for review and thus not remand the permit unless the underlying permit decision either is based on a clearly erroneous finding of fact or conclusion of law or involves an exercise of discretion that warrants review. *Id.; accord Veolia*, 18 E.A.D. at 206; *Peabody*, 12 E.A.D. at 32-34 & n.26 (applying part 124 standard of review in context of appeal under part 71); *see also* Consolidated Permit Regulations, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980) (preamble to rulemaking that revised procedures for Board's review of permit appeals under 40 C.F.R. part 124, which parallel part 71 procedures). In general, the Board exercises its power to review permit appeals "only sparingly" and adheres to the view that "most permit conditions should be finally determined at the [permit issuer's] level." 45 Fed. Reg. at 33,412.

In considering a petition for review, the Board evaluates whether MPLX has met threshold procedural requirements, including, among other things, whether an issue has been preserved for Board review. *See* 40 C.F.R. § 124.19(a)(2)-(4); *see also In re Penneco Envtl. Sols., L.L.C.*, 17 E.A.D. 604, 617-18 (EAB 2018); *In re Seneca Res. Corp.*, 16 E.A.D. 411, 412 (EAB 2014). A petitioner satisfies the issue preservation requirement by demonstrating that the issues and arguments it raises on appeal were raised previously, either during the public comment period on the draft permit or during a public hearing. *See In re Gen. Elec. Co.,* 17 E.A.D. 434, 445 (EAB 2018).

When evaluating a challenged permit decision for clear error, the Board examines the administrative record that serves as the basis for the permit to determine whether the permit issuer exercised "considered judgment" in issuing the permit.[7] *See In re Evoqua Water Techs. L.L.C.*, 17 E.A.D. 795, 799 (EAB 2019); *Gen. Elec.*, 17 E.A.D. at 559-69. "The permit issuer must articulate with reasonable clarity the reasons supporting its conclusion and the significance of the crucial facts it relied upon when reaching its conclusion." *Gen. Elec.,* 17 E.A.D. at 560; *see also In re Ash Grove Cement Co.*, 7 E.A.D. 387, 417 (EAB 1997). The record as a whole must demonstrate that the permit issuer "duly considered the issues raised in the comments" and ultimately adopted an approach that "is rational in light of all information in the record." *In re Gov't of D.C. Mun. Sep. Storm Sewer Sys.*, 10 E.A.D. 323, 342 (EAB 2002); *accord In re W. Bay Expl. Co.*, 17 E.A.D. 204, 222-23, 225 (EAB 2016); *In re NE Hub Partners, LP*, 7 E.A.D. 561, 567-68 (EAB 1998), *pet. for review denied sub nom. Penn Fuel Gas, Inc. v. EPA*, 185 F.3d 862 (3d Cir. 1999).

V. *ANALYSIS*

The principal issue for Board review is whether MPLX has met its burden of establishing that the Region clearly erred when it determined that Unit C-2 must

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[7] In its response brief, the Region states that the "clearly erroneous" standard requires that the Board accept a Region's factual findings "unless the Board is *definitely* and *firmly convinced* that *a mistake has been made*" and that a Region's decision "will only be reversed if it is implausible in light of all the evidence." Resp. Br. at 8 (citing Board's articulation of clear error standard in *Gen. Elec.,* 17 E.A.D. at 446) (emphasis added). However, as the Board recently stated in *Veolia*, 18 E.A.D. at 207 n.12, "neither *General Electric* nor the Board's long-applied considered judgment standard stands for the proposition asserted by the Region."

comply with requirements for dehydrator emissions control devices under 40 C.F.R. part 63, subpart HH. MPLX contends that since a backup control device is not required under Subpart HH, Unit C-2 is exempt from compliance with subpart HH. Pet. at 3. In support of this assertion, MPLX cites the language of paragraphs 15 and 17 of the 2012 Consent Decree. Paragraph 15 required the installation of a flare to comply with subpart HH. MPLX maintains that these two paragraphs designate the flare (Unit FL-1) as the sole emissions control device subject to part 63, subpart HH. *Id*. at 3-4. According to MPLX, the 2020 Permit condition requiring that the backup combustor also comply with subpart HH misconstrues the 2012 Consent Decree and should therefore be removed. *Id*. at 4-5. For the following reasons, the Petition is denied.

A. *MPLX Has Failed to Establish That the Region Clearly Erred by Including a Permit Condition Requiring That Unit C-2 Comply with Part 63 Subpart HH*

1. *Part 63 Subpart HH Applies to the Backup Combustor*

The subpart HH regulations set requirements for emissions control devices at glycol dehydration units. Under section 63.765(b), glycol dehydrators must comply with the requirements for closed-vent systems and the control devices used in those systems. *See* 40 C.F.R. § 63.765(b)(1)(i)-(ii). All gas, vapors, and fumes from materials in an emissions unit must be routed to a control device, which must meet the control device requirements in section 63.771(d). *Id.* § 63.771(c). Compliance can be satisfied through the use of "a control device or combination of control devices" operated pursuant to sections 63.771(c), (d). *Id*. § 63.765(b)(1)(i).

As stated above, the Region determined that the applicable regulatory language in part 63, subpart HH, applies to Unit C-2 and incorporated this requirement into the 2020 Permit. *See* 2020 Permit cond. III.A; RTC at 2-3. According to the Region, subpart HH requires process vents associated with the dehydrator "to be connected to a control device or combination of control devices through a closed-vent system." RTC at 2. In its response to comments, the Region explained that, even if subpart HH provides for "a combination of control devices," all such devices are "explicitly subject to [part 63, subpart HH]." *Id.*; *see also* Resp. Br. at 11 ("[S]ubpart HH requires compliance by *any* control device receiving emissions from [Unit D-1].").

In the Region's view, Unit C-2 is "undeniably" a control device. Resp. Br. at 10; RTC at 2. The Region states that both Units FL-1 and C-2 are connected to the process vents associated with the dehydrator and do not control emissions from any other unit at the Facility. RTC at 2; *see also* Resp. Br. at 10-11. The combination of Units FL-1 and C-2 as emissions control devices allows Unit D-1

to "operate with fewer interruptions and less downtime than if there were only one control device." RTC at 2. Since subpart HH provides for "a combination of control devices," the Region determined that MPLX may use multiple control devices, including a backup combustor, to satisfy compliance. *Id.*; *see also* Resp. Br. at 10. Given that Unit C-2's sole function is to receive and process emissions from Unit D-1, the Region determined that Unit C-2 must comply with subpart HH. RTC at 2; *see* also Resp. Br. at 11. As the Region explained, "[t]he term 'backup' does not allow the operations at a facility to avoid applicable federal regulations." RTC at 2.

While MPLX states that Unit C-2 is not a "control device" under 40 C.F.R. part 63, subpart HH, *see* Pet. at 2, MPLX provides no support for this assertion in the regulatory text of subpart HH, nor does it provide any regulatory or other analysis rebutting the Region's determination. Rather, as discussed below, MPLX asserts that, pursuant to the language of the 2012 Consent Decree, the subpart HH requirements do not apply to Unit C-2.

The plain text of subpart HH does not contain any specific provisions relating to units characterized as backup control devices, nor does it provide that only an emissions unit's primary control device must comply with subpart HH. As the Region correctly states, "Subpart HH requires compliance by *any* control device receiving emissions from [a glycol dehydrator]." Resp. Br. at 11. A "control device" is "*any* equipment used for recovering or oxidizing HAP or volatile organic compound (VOC) vapors." 40 C.F.R. § 63.761 (emphasis added). Because Unit C-2 receives and processes emissions from Unit D-1, the Region determined that Unit C-2 is a subpart HH control device and must adhere to the requirements of subpart HH. This determination is consistent with the text of applicable regulatory language. Moreover, the Petition does not address the language of part 63 or even explain how the Region's interpretation of the regulation is incorrect. Under these circumstances, MPLX fails to satisfy its burden of establishing that the Region's determination was clearly erroneous.

2. *MPLX Has Failed to Establish Clear Error in the Region's Determination That the 2012 Consent Decree Did Not Exempt the Backup Combustor from Subpart HH Compliance*

As a threshold matter, and as discussed above, the 2012 Consent Decree was not, and is not, a permit; as contemplated by the 2012 Consent Decree, MPLX's predecessor sought and obtained a Title V permit for the Facility in 2013. In 2019, MPLX applied for a renewal of the 2013 Permit, and in 2020, the Region issued MPLX a Title V permit renewal. MPLX sought and obtained renewal of its Title V permit pursuant to 40 C.F.R. part 71, not pursuant to the 2012 Consent Decree.

And MPLX's ability to seek review of the 2020 permitting decision before the Board is pursuant to 40 C.F.R. § 71.11(*l*). Although the 2012 Consent Decree specifies certain paragraphs that survive its termination, and some of the provisions in these paragraphs were incorporated into the 2020 Permit, this does not fundamentally alter the fact that it is the permit that is pending for review by the Board, and the process leading to this petition for review concerned a Title V permit renewal pursuant to 40 C.F.R. part 71. Nor does the survival of these paragraphs mean that the permit renewal proceedings will not result in updated or revised permit conditions.

The 2012 Consent Decree provisions do not somehow prohibit the Region from processing MPLX's permit renewal application and imposing permit terms and conditions in accordance with applicable law. Indeed, the Region is obligated to follow the Title V permit renewal process set forth in the 40 C.F.R. part 71 regulations, including the public notice and comments provisions set forth in these regulations. And, as set forth in the previous part, MPLX has failed to carry its burden, set forth in the regulations and Board precedent, of establishing that the Region's conclusion that Unit C-2 is subject to the regulatory requirements of Subpart HH was clearly erroneous. In any event, as explained next, we conclude that MPLX's arguments based on the 2012 Consent Decree fail to establish clear error by the Region.

MPLX asserts that the language in paragraphs 15 and 17 of the 2012 Consent Decree exempts Unit C-2 from the part 63, subpart HH requirements otherwise applicable to glycol dehydrator emissions control devices. Pet. at 1-4. Although this argument was not raised in comments on the Draft Permit, the Region cited the language in the 2012 Consent Decree in its response to MPLX's comments on the application of subpart HH to Unit C-2. RTC at 2-3. MPLX argues that the Region's interpretation of the applicable 2012 Consent Decree language was erroneous. Under these circumstances, we find it appropriate to address the merits of MPLX's argument.

a. *Paragraph 15*

In relevant part, paragraph 15 required installation and operation of "flares connected to the existing dehydrators" to comply with the control device requirements of part 63, subpart HH. 2012 Consent Decree ¶ 15. MPLX argues that, since paragraph 15 "does not even mention the [back-up] combustor" and "refers solely to use of the flare [(Unit FL-1)]," the 2012 Consent Decree designated the flare as the only control device subject to subpart HH. Pet. at 3; MPLX Reply

at 12. In MPLX's view, "[i]f EPA had intended Unit C-2 to be a Subpart HH control device, it would have been so stated in the Consent Decree."[8] Pet. at 2.

The Region argues that nothing in the 2012 Consent Decree indicates EPA intended to "identify all applicable regulatory requirements, or to identify all control devices subject to subpart HH." Resp. Br. at 12. While the Region does not dispute that paragraph 15 specifically references flares, the Region points out that paragraph 15 also states that dehydrators at the Facility "are subject to 'major source' standards under 40 C.F.R. Part 63, Subpart HH." *Id*. at 12-13 (quoting 2012 Consent Decree). Though paragraph 15 requires installation of a flare to comply with subpart HH, the Region claims that MPLX's argument as to paragraph 15 confuses necessity with sufficiency. *See* Surreply Br. at 5. The Region argues that because the part 63 requirements apply to any emissions control device associated with a glycol dehydrator, including a backup combustor, both the flare and the backup combustor must comply with subpart HH. *Id.* Thus, paragraph 15 does not exempt Unit C-2 from compliance. Finally, the Region points out that paragraph 15 did not survive the 2014 termination of the 2012 Consent Decree and is no longer in effect. Resp. Br. at 13 n.56; 2012 Consent Decree ¶ 81.

We agree with the Region that MPLX's reading of paragraph 15 is not supported by the record. Although paragraph 15 may have required the installation of a flare as a means of compliance with subpart HH, nothing in the language of that paragraph suggests that other emissions control devices associated with the dehydration process are exempt from compliance. Indeed, paragraph 70 of the 2012 Consent Decree makes clear that compliance with the Consent Decree does not excuse the facility from compliance with all applicable federal requirements. *See* 2012 Consent Decree ¶ 70 (stating that "[d]efendant is responsible for achieving and maintaining complete compliance with all applicable federal" laws and regulations); *see also In re Gen. Elec.,* 17 E.A.D. 434, 487 (EAB 2018) (rejecting argument that consent decree created private law constraining the Region's exercise of its statutory and regulatory authority in a permit proceeding).

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[8] In its reply brief, MPLX asserts that paragraph 15 remains in effect because it is incorporated by reference in paragraph 17. *See* MPLX Reply at 21; *see also S*urreply Br. at 6. MPLX provides no support for this assertion, nor does the language of paragraph 17 support this assertion. Even if paragraph 17 does incorporate paragraph 15 by reference, the plain language of paragraph 15 does not support MPLX's claims.

And, as discussed above, the Region's determination that the backup combustor is subject to the part 63, subpart HH requirements is based on the regulatory language itself. The Petition does not address the language of part 63 or even explain how the Region's interpretation of the regulation is incorrect. Under these circumstances, MPLX has failed to meet its burden of establishing clear error.

b. *Paragraph 17*

Paragraph 17 states, in relevant part:

> During periods of time when the pilot flame at the flares is off, QEPFS shall re-light the pilot flame or route emissions from the dehydrator process vent stream to a back-up combustor as expeditiously as practicable. The back-up combustors shall achieve a 95% by weight or greater reduction of VOC emissions from the dehydrator process vent stream when in use, determined by the pilot flame on the combustor being on when in use. The time period during which the glycol dehydrator is operated without either (1) a flare with the pilot flame on or (2) the back-up combustor with its pilot flame on shall not exceed 140 hours at the Wonsits Valley Facility and 500 hours at the Island Facility. Nothing in this Paragraph shall affect QEPFS's obligation to meet applicable requirements of 40 C.F.R. Part 63.

2020 Permit cond. V.B.1.(b); 2012 Consent Decree ¶ 17.b.

MPLX claims that the 140-hour downtime limitation provision in paragraph 17.b supports its argument that subpart HH does not apply to the back-up combustor. Pet. at 3. MPLX reads that provision as allowing the glycol dehydrator to be operated while Units FL-1 and C-2 are offline due to pilot light malfunction for no more than 140-hours annually. *Id.*; MPLX Reply at 23-24. MPLX argues that since subpart HH expressly prohibits operating a glycol dehydrator without an operative control device, such a limit on downtime hours "would not have been necessary" if Unit C-2 were a subpart HH control device. Pet. at 3. MPLX further states that the inclusion of the downtime limitation is unremarkable since, at the time the 2012 Consent Decree was established, subpart HH exempted sources from compliance with its emissions standards during periods of startup, shutdown, and malfunction (SSM). [9] MPLX Reply at 27. To the extent EPA clarified the effect

[9] In October 2012, after the 2012 Consent Decree went into effect, EPA eliminated the SSM compliance exemption in amendments to subpart HH. *See* New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants

of the 140-hour provision, MPLX argues such clarifying language is unnecessary because "the 140-hour limitation * * * has nothing whatsoever to do with 40 CFR 63 nor applicability of [Unit C-2]." Pet. at 5. Lastly, MPLX disputes EPA's reliance on the concluding sentence of paragraph 17.b. MPLX Reply at 17-18. MPLX contends that the "applicable requirements of Part 63" refer only to control efficiency and flare-specific requirements and, therefore, cannot be interpreted as applying to the backup combustor. *Id*. at 23.

In its response, the Region disagrees with MPLX's interpretation of the 140-hour downtime provision. The Region interprets this provision as prohibiting both units from being off-line at the same time. RTC at 5. In particular, the Region states that "the process stream must be routed to the FL-1 control device during any downtime for [Unit] C-2. If [Unit] FL-1 is also nonoperational, then [the dehydrator] D-1 must be shut in. No uncontrolled emissions at any time may be intentionally vented to the atmosphere." [10] *Id*. Moreover, the Region asserts that

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Reviews, 77 Fed. Reg. 49,490, 49,507, 49,569-70 (Aug. 16, 2012). The revision also eliminated the only express reference in subpart HH to the use of back-up control devices to satisfy compliance. *See* 40 C.F.R. § 63.762(c) (effective until Oct. 15, 2012). To the extent MPLX argues the downtime limitation provision was intended to preserve the SSM compliance exemption, EPA's elimination of the exemption places MPLX's reading of the provision in conflict with the current applicable law. *See* Surreply Br. at 3-4. As we noted above, the 2012 Consent Decree explicitly states that the facility is responsible for "achieving and maintaining complete compliance with all applicable" federal laws and regulation. 2012 Consent Decree ¶ 70.

[10] Although the Region's rationale for its interpretation of the 140-hour provision appears to have shifted from the response to comments to its response brief, *compare* RTC at 5 *with* Resp. Br. at 14-16, nothing in the Petition or in the record before us establishes that the Region's interpretation is clearly erroneous. As stated above, the 2012 Consent Decree requires that the Facility maintain compliance with applicable federal law and regulation. 2012 Consent Decree ¶ 70. The Title V permit renewal process under 40 C.F.R. part 71 is not a static one. In the process of renewing a Title V permit, the permit issuer may include permit conditions it deems necessary to comply with federal law and, where appropriate, to update and revise permit conditions. The record indicates that the Region's interpretation is consistent with the 40 C.F.R. part 63, subpart HH regulatory language and MPLX has not met its burden of establishing that the Region's determination was clearly erroneous.

We note further that in a 2019 Notice of Violation, the Region alleged that MPLX violated the 2013 Permit and 40 C.F.R. §§ 63.764(j) and 63.773(d)(6)(v)(A) by venting

MPLX ignores the final sentence of paragraph 17.b, which states that "[n]othing in this paragraph shall affect [the permittee's] obligation to meet applicable requirements of 40 C.F.R. Part 63." Resp. Br. at 14-16. Because the part 63, subpart HH requirements apply to the emissions units at issue, the Region argues that the language of paragraph 17.b. does not, as MPLX suggests, support an exemption for the backup combustor. *Id.*

We agree with the Region that paragraph 17.b does not exempt the backup combustor from compliance with part 63, subpart HH. The 2020 Permit makes explicit that both Unit Fl-1 and Unit C-2 must comply with subpart HH. Such a requirement is consistent with MPLX's obligation under paragraph 17.b to "meet applicable requirements of 40 C.F.R. part 63" as well as its obligation under paragraph 70 to "maintain *complete* compliance" with applicable federal law and regulation.[11] 2012 Consent Decree ¶¶ 17.b, 70 (emphasis added); *see* Surreply Br.

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emissions from the dehydrator at times when both the flare and the backup combustor were offline for fifty-five hours between 2015 and 2019. *See* U.S. EPA Region 8 Notice of Violation, Docket No. CAA-08-2020-0002 (Nov. 22, 2019) ¶¶ 58-64 ("2019 NOV"). The contents of the 2019 NOV indicate that the Region notified MPLX that the Region interpreted the 2013 Permit as requiring that Unit C-2 comply with subpart HH, even as a backup combustor. *Id.* ¶ 52.

[11] MPLX argues that in interpreting consent agreements, courts have rejected the use of a "stray sentence to override express provisions that came before." MPLX Reply at 18-20 (*citing Segar v. Mukasey*, 508 F.3d 16 (D.C. Cir. 2007) and *Sierra Club v. Meiburg*, 296 F.3d 1021 (11th Cir. 2002)). However, this is not a case where the Region relies on a "stray sentence" to override otherwise clear provisions of a consent decree. As stated above, contrary to MPLX's assertion, the language of the 2012 Consent Decree does not support MPLX's assertion that Unit FL-1 was designated as the "sole subpart HH control device." Further, rather than a "stray sentence," paragraph 17.b. strikes us as an expression of the parties' intent that the part 63, subpart HH requirements apply to all emissions control devices, including Unit C-2. This interpretation is consistent with the subpart HH regulatory text as well as MPLX's obligation under paragraph 17.b. to "meet applicable requirements of 40 C.F.R. part 63" and under paragraph 70 to "maintain[] *complete* compliance" with the applicable requirements under federal law and regulation. 2012 Consent Decree ¶¶ 17.b, 70 (emphasis added); *see* Surreply Br. at 4-5.

And even without the "stray sentence" in the 2012 Consent Decree, as discussed above, MPLX sought and obtained renewal of its Title V permit pursuant to 40 C.F.R. part 71. The 2012 Consent Decree provisions do not somehow prohibit the Region from processing MPLX's permit renewal application and imposing permit terms and conditions in accordance with applicable law.

at 4-5. Under these circumstances, we conclude that MPLX has failed to establish that the Region's determination was clearly erroneous.[12]

3. *MPLX's Argument Regarding the 2013 Permit Was Not Preserved for Review.*

MPLX argues that the 2013 Permit exempted Unit C-2 from compliance with subpart HH. Specifically, MPLX alleges that "the original Permit *** is explicit in designating the flare, Unit FL-1, as the sole subpart HH control device."[13] Pet. at 4.

Because this argument was not raised during the comment period, it was not preserved for review by the Board. As the Board has previously stated, a Petitioner

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[12] As stated above, MPLX submitted its Reply Brief in July 2020. However, except for the few points we have already addressed in this order, the Reply brief consists largely of new arguments and issues not raised in the Petition. In particular, MPLX asserts Unit C-2 is regulated under the 2012 Consent Decree rather than subpart HH, that EPA is limited to the "four corners" of the 2012 Consent Decree when construing its effect on the conditions in the 2020 Permit, that paragraphs 15 and 17 must be read in the context of paragraph 16, and that EPA impermissibly modified the 2012 Consent Decree by including the footnote clarifying the effect of the downtime limitation provision in paragraph 17.b. Since these arguments appear for the first time in a Reply brief, the Board will not consider them. *See* 40 C.F.R. § 124.19(c)(2) (barring inclusion of new issues or arguments in reply briefs); *see, e.g.*, *In re City of Taunton Dept. of Pub. Works*, 17 E.A.D 105, 183 (EAB 2016), *aff'd* 895 F.3d 120 (1st Cir. 2018), *cert. denied* 139 S. Ct. 1240 (2019); *In re Dominion Energy Brayton Point, L.L.C.,* 12 E.A.D. 490, 595 (EAB 2006) (holding that new arguments raised in reply brief are equivalent to late-filed appeals). A reply brief is not an opportunity to file a more comprehensive petition. In any event, none of the arguments in the reply brief convince us that the Region's determination was clearly erroneous.

[13] Although we need not reach the merits of this issue because it was not preserved for review, it is not clear from the record before us that the premise of MPLX's assertion is correct. Table 2 of the 2013 Permit identifies the backup combustor as a control device for the glycol dehydrator. 2013 Permit cond. I.B., tbl. 2. Further, the permit provides that the requirements of 40 C.F.R. part 63, subpart HH apply to the dehydrator "identified as D-1 in Table 2 of this permit." *Id*. cond II.A. The 2019 Notice of Violation, mentioned in note 10 above, also reflects an interpretation of the 2013 Permit as requiring that all emissions control devices from the dehydrator, including the backup combustor, comply with part 63, subpart HH. 2019 NOV at ¶¶ 58-64. Thus, it is not clear that the 2013 Permit designated the flare as the sole subpart HH control device as MPLX maintains.

must demonstrate that the issues and arguments it raises on appeal were raised previously, either during the public comment period on the draft permit or during a public hearing. *See Gen. Elec. Co.,* 17 E.A.D. 434, 445 (EAB 2018). Although MPLX asserts that it raises this argument to contextualize its disagreement with the Region's response to comments, the issue was reasonably ascertainable but was not raised during the public comment period. We deny review on this issue. *See In re City of Taunton Dep't of Pub. Works*, 17 E.A.D. 105, 110, 177-79 (EAB 2016), *aff'd* 895 F.3d 120 (1st Cir. 2018), *cert. denied* 139 S. Ct. 1240 (2019).

B. *Review is Denied on MPLX's Remaining Arguments*

MPLX's arguments concerning 2020 Permit conditions III.D.3, III.E.3, III.E.4, and III.F.2 depend on the assertion that Unit C-2 is exempt from the requirements of 40 C.F.R. part 63, subpart HH. Pet. at 4. Because the Board concludes that Unit C-2 is subject to these requirements, we deny review on those remaining challenged 2020 Permit conditions.

VI. *CONCLUSION*

For the reasons stated above, the Board denies MPLX's Petition.

So ordered.