BEFORE THE ENVIRONMENTAL APPEALS BOARD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re: MPLX Permit No. V-UO-000005-2018.00	CAA Appeal No. 20-01

EPA Region 8's Response to Petition for Review

Table of Contents

Table of Authorities

CASES

STATUTES

REGULATIONS AND PREAMBLES

Table of Exhibits

1. Wonsits Valley Compressor Station Revised Part 71 Federal Operating Permit Renewal Application, Operating Permit No. V-UO-000005-2000.00 (Apr. 11, 2018).
2. Air Pollution Control Permit to Operate, Title V Operating Permit Program at 40 CFR Part 71 (Renewal), Permit No. V-UO-000005-2018.00 (May 13, 2020).
3. Uinta Basin Intended Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document (TSD), EPA (Dec. 20, 2017), https://www.epa.gov/sites/production/files/2018-01/documents/ut_120d_tsd.pdf.
4. Part 71 Operating Permit, Title V, Permit #V-U0-000005-2000.00, QEP Field Services Company (QEPFS), Wonsits Valley Compressor Station (Sep. 5, 2013).
5. Consent Decree signed and entered in *U.S. v. Questar Gas Management Co.*, Case No. 2:08-CV-00167-TS-PMV (D. Utah July 3, 2012).
6. Response to Comments: Final Part 71 Operating Permit, Permit #V-UO-000005-2018.00, MPLX, Wonsits Valley Compressor Station (Apr. 13, 2020).
7. Docket information from regulations.gov, Andeavor Wonsits Valley Draft TV Permit V-UO-000005-2018.00, docket ID EPA-R08-OAR-2018-0349-0005.
8. MPLX/Andeavor Public Comments on Draft Part 71 Permit V-UO-000005-2018.00 (Jan. 13, 2020).

Introduction

Under regulations governing Clean Air Act (CAA) Title V federal operating permit programs, Region 8 of the U.S. Environmental Protection Agency (EPA) issued a renewed operating permit to the Wonsits Valley Compressor Station operated by petitioner MPLX. National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements apply to the station, including its glycol dehydration unit, which employs a flare and combustor as emissions control devices.

A Title V permit must include all federally applicable requirements, and therefore the renewed operating permit issued by Region 8 identified the NESHAP requirements applicable to the flare and combustor. Petitioner MPLX, however, contends that the combustor is not subject to these federal regulations controlling hazardous air pollutant (HAP) emissions, because it is labeled and operates as a "backup" to the flare. In addition, MPLX argues that a 2012 consent decree and the previous version of the MPLX operating permit establish that the combustor is not subject to NESHAP requirements. As explained below, MPLX's arguments lack merit.

This petition does not raise a merely academic argument about the description of applicable requirements. MPLX uses the dehydrator to separate water from commercially valuable gas, in the process producing air pollutants that are hazardous to human health. Addressing exactly this situation, EPA's NESHAP regulations require that the gaseous emissions vented from the dehydrator must be routed to a control device that meets regulatory standards, which for a combustor would include testing, performance, and monitoring. But MPLX seeks to avoid these requirements at its convenience by using a "backup" control device that MPLX claims is not subject to the NESHAP requirements. The exclusion from coverage by subpart HH

that MPLX asserts would allow it to pass hazardous air pollutant emissions through a "control" device subject to no requirements whatsoever, in an area that already fails to meet air quality standards. There is, however, no basis for the exclusion that MPLX seeks.

The Region's Title V permit decision for the Wonsits Valley facility is fully supported by the record, including a detailed Response to Comments document (RTC). Petitioner MPLX has failed to meet its burden of demonstrating a clearly erroneous finding of fact or conclusion of law warranting review of Region 8's decision. Accordingly, the Environmental Appeals Board should deny review in this matter.

Factual and Procedural Background

The facility. The Wonsits Valley Compressor Station is in Uintah County, Utah, on Indian country within the Uintah & Ouray Reservation.[1] The facility gathers natural gas, natural gas condensate, and produced water from surrounding well sites, separates the natural gas from the condensate and produced water, and compresses and removes water vapor from the natural gas.[2] The facility's dehydration unit uses a triethylene glycol-based process to remove the water vapor, and to address the resulting emissions employs two emission control devices, a flare (FL-1) and a "backup" enclosed combustor (C-2).[3] The pollutants addressed by these devices include multiple HAPs that are volatile organic compounds, as well as nitrogen oxides.[4] After this

[1] Ex. 1 at 2 (*i.e.*, 6th page of PDF file); Ex. 2 at cover page (*i.e.*, 1st page of PDF file) and 1 (*i.e.*, 6th page of PDF file).
[2] Ex. 1 at 2; Ex. 2 at 1.
[3] Ex. 1 at 2 and Figure 2-3 (*i.e,* unnumbered 17th page of PDF file); Ex. 2 at 1-2; *see* 40 C.F.R. § 63.761 (defining "control device").
[4] *See* CAA section 112(b)(1), 42 U.S.C. § 7412(b)(1) (listing HAPs); Ex. 1 at C.2 Dehy Backup Combustor (*i.e.*, unnumbered 127th page of PDF file).

processing, the dehydrated natural gas is routed to a pipeline, while the condensate and produced water are routed off site by separate pipelines.[5] At issue in this appeal are the requirements applicable to the combustor, unit C-2.

The regulations at issue. The National Emission Standards For Hazardous Air Pollutants from Oil and Natural Gas Production Facilities regulations at 40 C.F.R. part 63, subpart HH, limit HAP emissions from several parts of facilities that process, upgrade, or store hydrocarbon liquids and natural gas.[6] Among the covered units are large glycol dehydrators, such as unit D-1, that are major sources of HAPs.[7] Under these regulations, these dehydrators must comply with control requirements for glycol dehydration process vents.[8] All gas, vapors, and fumes from materials in an emission unit (such as glycol dehydrator D-1 at the Wonsits Valley facility) must be routed to a control device, and any such control device must meet regulatory standards for design, performance, and operation.[9] A "combination of control devices" is also appropriate under 40 C.F.R. § 63.765(b)(1). If that is the case, *each* control device must comply with the requirements of 40 C.F.R. § 63.771(c), which requires that all gas, vapors, and fumes from materials in an emission unit (here, the glycol dehydrator) be routed to a control device that meets the requirements of 40 C.F.R. § 63.771(d).

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[5] Ex. 1 at 2; Ex. 2 at 1.
[6] *See* Final rule, National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and National Emission Standards for Hazardous Air Pollutants: Natural Gas Transmission and Storage, 64 Fed. Reg. 32610, 32613 (June 17, 1999).
[7] 40 C.F.R. § 63.760(a)(1), (b)(1).
[8] 40 C.F.R. §§ 63.764(c)(1)(i), 63.765. Process vents are, in essence, the points of discharge for HAPs generated during dehydration. *See* 40 C.F.R. § 63.761 (defining glycol dehydration unit process vent, glycol dehydration unit reboiler vent, and gas-condensate-glycol (GCG) separator); Ex. 2 at 2 (describing flow of vapors to control devices).
[9] 40 C.F.R. §§ 63.765, 63.771(c), 63.771(d).

Title V in Indian country. In Indian country, such as the location of the Wonsits Valley station, the federal operating permit program under 40 C.F.R. part 71 applies, unless the agency has approved another entity to implement an operating program for the area under 40 C.F.R. part 70.[10] Under the federal Title V program, covered major sources of air pollutants must submit Title V permit applications directly to the appropriate EPA Regional office for approval, and those applications must provide for compliance with all applicable requirements.[11]

Air quality in the Uinta Basin. The EPA recently designated portions of the Uinta Basin as a Marginal nonattainment area for the 2015 ozone National Ambient Air Quality Standard (NAAQS).[12] The Uinta Basin is a winter ozone area, where violating ozone concentrations are dependent on seasonal stagnant conditions associated with strong temperature inversions, and on the bowl-like topography of the basin.[13] Uintah County has not been designated nonattainment for any other NAAQS pollutant.[14] Volatile organic compounds (including organic HAPs) and nitrogen oxides, which are among the pollutants produced by dehydrator D-1 and at times routed through combustor C-2, are precursor chemicals to ozone.[15]

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[10] 40 C.F.R. § 71.4(b).
[11] *In re Peabody Western Coal Co.*, 12 E.A.D. 22, 29 (EAB 2005) (citing 40 C.F.R. §§ 71.3(e)(3), 71.1(b), 71.6(a)(1)); *see also* 40 C.F.R. § 71.2 (defining "major source" for part 71 purposes).
[12] Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 Fed. Reg. 25776, 25837–38 (June 4, 2018). On October 1, 2015, the EPA promulgated revised primary and secondary ozone NAAQS, strengthening both standards to a level of 0.070 parts per million (ppm). *See* National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292 (Oct. 26, 2015). Under section 107(d) of the CAA, 42 U.S.C. § 7407(d), whenever the EPA establishes a new or revised NAAQS, the EPA must promulgate designations for all areas of the country for that NAAQS. *See* Proposed Rule, Amendments to Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector, 83 Fed. Reg. 20775, 20783 (May 18, 2018) (describing CAA section 107(d) designation process).
[13] Ex. 3 at 29, 42.
[14] 40 C.F.R. § 81.345.
[15] *See* Ex. 1 at C.2 Dehy Backup Combustor (unnumbered 127th page of file) (listing pollutants handled by C-2); 83 Fed. Reg. at 25777 (identifying ozone precursors).

The permit and the consent decree. On April 13, 2020, Region 8 issued a renewed Clean Air Act Title V operating permit (#V-UO-000005-2018.00) to MPLX (operator) and Andeavor Field Services, LLC (owner), for the Wonsits Valley Compressor Station.[16] Andeavor was formerly known as QEP Field Services, LLC, and before that as Questar Gas Management Company.[17] In 2012 the Region entered into a consent decree with QEP to resolve an enforcement action for violations of CAA Prevention of Significant Deterioration and Title V permit requirements, and for violations of the NESHAP regulations, including those at 40 C.F.R. Part 63, Subpart HH (oil and natural gas facilities).[18] The Wonsits Valley station was one of five facilities covered by the consent decree. The consent decree was terminated in 2014, but by its terms, some paragraphs survive termination.[19]

In accordance with part 71 requirements, the draft permit was subject to a 30-day public comment period.[20] MPLX's submission was the only set of comments that Region 8 received on the proposed permit.[21] As relevant to this petition, the comments stated:

> [*Commenting on the draft permit Statement of Basis*]
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> The description that states "The affected unit is the dehydration unit D-1 and control devices C-2 and FL-1 operating at the facility" is incorrect. Flare FL-1 is the only Subpart HH control device; a backup control device is not required by

[16] Ex. 2. MPLX, the facility's operator, brings this petition on behalf of Andeavor. Ex. 2 at 1; Pet. at 1. Petitioner's full name is MPLX LP, but in the Petition and correspondence with the EPA it has identified itself as just "MPLX." *See* https://ir.mplx.com/CorporateProfile/sec-filings/sec-filings-details/default.aspx?FilingId=13966721 (accessed June 12, 2020).
[17] The original operating permit (V-UO-000005-2000.00) for the Wonsits Valley Compressor Station was issued to QEP Field Services on September 10, 2013. *See generally* Ex. 4.
[18] *See generally* Ex. 5.
[19] Ex. 5 at 34-35 (¶¶ 79, 81).
[20] The Agency solicited and accepted comments on this action through the public online docket at https://www.regulations.gov/docket?D=EPA-R08-OAR-2018-0349. *See* Ex. 7 (public docket cover page for draft permit, including comment period dates).
[21] *See* Ex. 8 (MPLX comment); Andeavor Field Services, LLC - Wonsits Valley Compressor Station, Docket ID: EPA-R08-OAR-2018-0349 at https://www.regulations.gov/docket?D=EPA-R08-OAR-2018-0349 ("All Comments" view).

> Subpart HH and C-2 is incorrectly described as a Subpart HH control device. Moreover, the information provided in the Part 71 permit renewal application did not describe C-2 as a Subpart HH control device.
>
> …
>
> [*Commenting on draft permit Condition III.A*.]
>
> Please delete reference to backup combustor C-2 in Section III since it is not a Subpart HH control device.[22]

After careful consideration of MPLX's comments on the draft permit, Region 8 issued and publicly distributed the final permit on April 13, 2020, along with a response to each comment.[23] In particular, with respect to the MPLX comments germane to this matter, the response to comments explained in detail the basis for Region 8's conclusion that subpart HH applies to the enclosed combustor, unit C-2.[24]

The MPLX appeal to the Board. In its petition, MPLX challenges several conditions of the Title V permit. The linchpin of its appeal is the contention that EPA inappropriately included combustor C-2 in permit condition III.A., as a device subject to 40 C.F.R. 63, subpart HH.[25] MPLX makes three arguments to support this assertion: (1) as a "backup" device, the combustor is not subject to subpart HH; (2) it was not identified as a subpart HH device in the consent decree; and (3) it was not identified as a subpart HH device in the original version of the operating permit.[26]

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[22] Ex. 8 at 2. Other comments either repeated parts of the above, or concerned matters not brought before the Board in MPLX's petition.
[23] *See generally* Ex. 2; Ex. 6; Andeavor Field Services, LLC - Wonsits Valley Compressor Station, Docket ID: EPA-R08-OAR-2018-0349 at https://www.regulations.gov/docket?D=EPA-R08-OAR-2018-0349.
[24] Ex. 6 at 2-3.
[25] Pet. at 2.
[26] Pet. at 2-4.

The remaining elements of the MPLX appeal depend on its challenge to permit condition III.A. Specifically, based on its argument as to condition III.A. that combustor C-2 is not a subpart HH control device, MPLX requests that unit C-2 be deleted from several other permit conditions (III.D.3, III.E.3, III.E.4, and III.F.2) that apply to subpart HH control devices.[27] MPLX further requests that language in condition V.B.1.(a) referring to the applicability of part 63 to the device be deleted.[28]

As explained below, MPLX's primary argument fails: the combustor is subject to federal hazardous air pollutant regulations. Therefore, MPLX's secondary arguments fail as well.

Scope and Standard of Review

The petition seeks review of Region 8's issuance of an operating permit under 40 C.F.R. part 71. Under 40 C.F.R. § 71.11(l)(1), any person who commented on the draft permit "may petition the Environmental Appeals Board to review any condition of the permit decision." The petition must include "a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period," unless doing so was impracticable or the grounds for objection arose later, and must show that the challenged conditions are based on either "(i) [a] finding of fact or conclusion of law which is clearly erroneous; or (ii) [a]n exercise of discretion or an important policy consideration" that the Board should review.[29]

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[27] Pet. at 2-4.
[28] Pet. at 4-5.
[29] 40 C.F.R. § 71.11(l)(1).

The Board grants review "only sparingly," and "most permit conditions should be finally determined at the Regional level."[30] In reviewing challenges to part 71 permits, the Board applies the standard of review for permits issued under 40 C.F.R. part 124, and looks to cases construing part 124 as precedent.[31] Under these procedures, a petitioner seeking to challenge a permit must first establish that threshold procedural requirements have been satisfied, including timeliness, standing, and issue preservation.[32] To establish that it has preserved an issue for appeal, a petitioner must show that it raised the issue "with reasonable specificity" during the comment period.[33]

In addition to satisfying the threshold requirements, the petition must identify the contested permit conditions or other specific challenges, and must "clearly set forth, with legal and factual support, petitioner's contentions for why the permit decision should be reviewed."[34] The petitioner must explain why the permitting authority's response to those objections is clearly erroneous or otherwise warrants review.[35] Under the "clearly erroneous" standard, the Board must accept Region 8's findings of fact unless the Board is definitely and firmly convinced that a mistake has been made. In other words, it is not enough that the Board may have weighed the

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[30] Consolidated Permit Regulations, 45 Fed. Reg. 33290, 33412 (May 19, 1980).
[31] *See, e.g., Peabody Western Coal,* 12 E.A.D. at 22, 32-33 n.26 (discussing and applying part 124 standard of review to part 71 proceeding); *In re Peabody Western Coal Co.*, 15 E.A.D. 757, 767 n.11 (EAB 2013) (explaining that Board applies part 124 permit appeal cases as precedent for part 71 cases).
[32] *In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006).
[33] *Indeck-Elwood*, 13 E.A.D. at 143.
[34] 40 C.F.R. § 124.19(a)(4)(i); *see In re Archer Daniels Midland Co.*, 17 E.A.D. 380, 382-83 (EAB 2017) (part 124 proceeding) ("Petitioner's failure to specifically identify the Region's response to comments and to explain why the Region's response was clearly erroneous or otherwise warrants review is, alone, grounds for denying the petition for review on this issue."); *see also* 40 C.F.R. 71.11(l)(1) (requiring, among other things, that petition include statement of statement of reasons supporting review).
[35] *Indeck-Elwood,* 13 E.A.D. at 143; *see In re Guam Waterworks Auth.*, 15 E.A.D. 437, 444 (EAB 2011) ("to show clear error, the petitioner must specifically state its objections to the permit and explain why the permit issuer's previous response to those objections is clearlyerroneous, an abuse of discretion, or otherwise warrants review").

evidence and reached a different conclusion; Region 8's decision will only be reversed if it is implausible in light of all the evidence.[36] The Board does not find clear error simply because the petitioner presents a difference of opinion or alternative theory regarding a technical matter.[37] On matters that are fundamentally technical or scientific in nature, the Board typically defers to a permit issuer's technical expertise and experience, so long as the permit issuer adequately explains its rationale and supports its reasoning in the administrative record.[38]

Here, MPLX requests that the Board review several conditions of the permit issued by the Region. Nowhere does MPLX contend that the Region's decision involved an "exercise of discretion or an important policy consideration" and the Petition makes no claim of abuse of discretion. It does assert that the Permit contains "inappropriate" conditions, and that the Region reached "incorrect" conclusions. Accordingly, the relevant question, if the Board determines that MPLX has satisfied the threshold requirements, is whether MPLX has demonstrated that the conditions it challenges were based on a "finding of fact or conclusion of law which is clearly erroneous."[39]

Argument

MPLX asserts that in the permit the Region "inappropriately" identified the combustor, unit C-2, as subject to the hazardous air pollutant requirements of 40 C.F.R. part 63, subpart

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[36] *See In re General Electric Company*, 17 E.A.D. 434, 446 (EAB 2018) (stating that in evaluating a permit decision for clear error, the Board examines the administrative record to determine whether the permit issuer exercised "considered judgment" in rendering its decision).
[37] *In re Evoqua Water Technologies LLC*, 17 E.A.D. 795, 815 (EAB 2019) ("[Petitioner] fails to address the Region's specific response to [a] comment…much less explain why the Region's response is clearly erroneous or otherwise warrants review."). 12 E.A.D. 490
[38] *See In re Dominion Energy Brayton Point, L.L.C.*, 12 E.A.D. 490, 510, 561-62 (EAB 2006) (discussing deference accorded to Region's technical decisions).
[39] 40 C.F.R. § 71.11(l)(1)(i).

HH.[40] But, as explained below, MPLX fails to identify a satisfactory rationale under which the Board could conclude that the combustor is not subject to these requirements. MPLX does not meet its burden of showing clear error with any aspect of the Region's permitting decision.

1. The combustor is subject to hazardous air pollutant regulations.

As the Region explained in responding to the MPLX comment, the Wonsits Valley facility's glycol dehydrator (unit D-1) is subject to EPA's National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities at 40 C.F.R. part 63, Subpart HH.[41] The Subpart HH regulations, among other things, set requirements for emissions control devices at glycol dehydration units that are major sources of HAPs. In particular, the Wonsits Valley facility's glycol dehydrator (unit D-1) must comply with 40 C.F.R. § 63.765(b), which requires compliance with requirements for closed-vent systems and for the control devices (including combinations of control devices) used in those systems.[42] The closed vent system provision at § 63.771(c) requires that all gas, vapors, and fumes from materials in an emission unit (here, glycol dehydrator D-1) must be routed to a control device, which must meet the control device requirements in § 63.771(d).

The backup combustor, unit C-2, is undeniably a control device at the Wonsits Valley facility's glycol dehydrator (unit D-1).[43] It is installed at the facility, and "[o]verhead vapors from the BTEX condenser and flash gas from the flash tank" at dehydrator D-1 are routed to

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[40] Pet. at 2.
[41] Ex. 6 at 2.
[42] 40 C.F.R. § 63.765(b) (requiring large glycol dehydration units to comply with 40 C.F.R. §§ 63.771(c), (d)).
[43] *See* 40 C.F.R. § 63.761 (defining "control device"); *see also, e.g.,* Ex. 1 at 2 (referring to unit C-2 as an "emissions control device").

combustor C-2.[44] Petitioner MPLX protests that the combustor is a backup control device, and that subpart HH does not require a backup control device.[45] This argument misses the point entirely: it is irrelevant whether unit C-2 is a backup control device, as Subpart HH requires compliance by *any* control device receiving emissions from glycol dehydrator D-1.[46] And, as detailed in the facility's permit renewal application, combustor C-2 receives and processes emissions from glycol dehydrator D-1; that is, in fact, the *only* function described for combustor C-2.[47] Accordingly, combustor C-2 must comply with the subpart HH regulations for control devices. As federally applicable requirements, these were correctly included in the Title V permit. Petitioner MPLX's remaining assertions to the contrary are not persuasive, as explained below.

2. The consent decree does not exempt MPLX from hazardous air pollutant regulations.

The 2012 consent decree does not exempt combustor C-2 or the facility as a whole from NESHAP requirements at subpart HH. As to the consent decree, the Petition's primary argument is that "EPA established Unit FL-1 as the sole Subpart HH control device in the Consent

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[44] *See* Ex. 1 at 2 (description), Figure 2-3 (process flow diagram), C-2 Dehy Backup Combustor (*i.e.*, unnumbered 127th page of PDF file) (including hours of actual operation for unit C-2 and estimated emissions from sources of processed D-1 emissions).

[45] Pet. at 2. Although it is not persuasive, this is the only argument that Petitioner preserved by raising during the comment period. In its entirety, the MPLX comment concerning condition III.A. reads:

> Please delete reference to backup combustor C-2 in Section III since it is not a Subpart HH control device. Flare FL-1 is the only Subpart HH control device; a backup control device is not required by Subpart HH.

Petitioner's failure to preserve error as to other arguments is discussed below.

[46] 40 C.F.R. §§ 63.765(b)(1), 63.771(c)(1).

[47] *See* Ex. 1 at Figure 2-3 (process flow diagram), C.2 Dehy Backup Combustor (*i.e.*, unnumbered 127th page of PDF file) (including hours of actual operation for unit C-2 and estimated emissions from sources of processed D-1 emissions).

Decree," and that "[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."[48] But the fact that the consent decree does not specify that the combustor is subject to subpart HH does not somehow remove the combustor from the scope of subpart HH. There is no language in the consent decree stating that it is intended to identify all applicable regulatory requirements, or to identify all control devices subject to subpart HH. To the contrary, in the paragraph discussing the combustor, the consent decree states that "[n]othing in this Paragraph shall affect [the permittee's] obligation to meet applicable requirements of 40 C.F.R. Part 63," which includes subpart HH.[49] As this passage makes explicit, the consent decree does not exempt the Wonsits Valley facility from its obligation to comply with the subpart HH regulations. And, as explained above in section 1, combustor C-2 is a control device that is used to receive and process emissions from glycol dehydrator D-2.[50] The combustor is, therefore, subject to subpart HH.

The Petition also asserts that EPA's response to comments mischaracterized two paragraphs of the consent decree.[51] First, MPLX claims that the Region incorrectly asserted that under paragraph 15, subpart HH applies to the combustor.[52] The Region does not dispute that paragraph 15 specifically refers to flares. But paragraph 15 also states that "[t]he dehydrators located at the Wonsits Valley and Island Facilities are subject to 'major source' standards under

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[48] Pet. at 2.
[49] Ex. 5 at 9 (¶ 17.b). Even without the part 63-specific reservation in paragraph 17, other language in the decree would make clear that the Consent Decree does not override federal law: the permittee remains "responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits…." Ex. 5 at 30-31 (¶ 70).
[50] *See* Ex. 1 at Figure 2-3 (process flow diagram), C.2 Dehy Backup Combustor (*i.e.*, unnumbered 127th page of file) (including hours of actual operation for unit C-2 and estimated emissions from sources of processed D-1 emissions).
[51] Pet. at 3.
[52] Pet. at 3.

40 C.F.R. Part 63, Subpart HH"[53] – which include the requirements for control devices receiving any vapors from a glycol dehydrator. MPLX's own submissions, of course, establish that combustor C-2 receives vapors from glycol dehydrator D-1.[54] As explained in part 1, on that basis the combustor is subject to subpart HH. Seeking to avoid these regulations, MPLX asserts that the "backup" function of the combustor renders subpart HH inapplicable to it. But as discussed above, that argument has no legal foundation. And even if MPLX had a valid argument concerning the meaning of paragraph 15 of the consent decree, the argument would be irrelevant, because paragraph 15 did not survive the 2014 termination of the consent decree and has not been in effect since then.[55] Therefore, anything that paragraph 15 may have independently established or required did not persist beyond the 2014 termination.[56]

Second, it is MPLX, not EPA, that mischaracterizes paragraph 17.b. MPLX asserts that paragraph 17.b. allows "simultaneous downtime" of both the flare and backup combustor for up to 140 hours.[57] In doing so, MPLX selectively ignores the important final sentence of the paragraph. It is true that paragraph 17.b says that "[t]he time period during which the glycol

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[53] Ex. 5 at 8 (¶ 15).
[54] *See* Ex. 1 at 2 (description), Figure 2-3 (process flow diagram), C.2 Dehy Backup Combustor (*i.e.*, unnumbered 127th page of file) (including hours of actual operation for unit C-2 and estimated emissions from sources of processed D-1 emissions).
[55] Ex. 5 at 34 (¶ 79); Ex. 2 at 11 (¶ V.A.).
[56] The Region 8 response to comments referred to paragraph 15, but as an illustration of a separately existing requirement ("further, as stipulated in…") rather than a citation to the source of an authority. Ex. 6 at 3. Region 8 acknowledges that the response to comments should have noted the termination of paragraph 15, but it remains the case the Region did not cite paragraph 15 as the *basis* for subpart HH's applicability. Rather, the justification for applying subpart HH to the combustor, in both the permit and the response to comments, is subpart HH itself, and neither the draft nor the final renewal permit listed paragraph 15 as an applicable requirement of the permit. On the other hand, to the extent MPLX relies on paragraph 15 to support its claim that "EPA established Unit FL-1 as the sole Subpart HH control device in the Consent Decree," that claim fails, among other reasons because paragraph 15 is no longer in effect.
[57] Pet. at 3.

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." But, as already discussed, in the very next sentence the paragraph concludes that "[n]othing in this Paragraph shall affect [the permittee's] obligation to meet applicable requirements of 40 C.F.R. Part 63." Because, as described above in section 1, subpart HH of part 63 contains requirements applicable to combustor C-2, those requirements are not affected by paragraph 17.b.[58] Accordingly, as is explicitly reserved in the consent decree, the facility – including the combustor – must satisfy the requirements of 40 C.F.R. part 63, subpart HH.

MPLX reads the prohibitory 140-hours language of paragraph 17.b. as an authorization to allow the facility to operate for up to 140 hours with the flare and the combustor *both* deactivated. MPLX argues that "[i]f the backup combustor were a Subpart HH control device, as is erroneously characterized in the RTC, EPA would not have instituted a limit on downtime hours; it would not have been necessary provided that the dehydrator were controlled by one or the other device.[59] Accepting MPLX's framing of this sentence raises a superficially reasonable question: how could the facility take advantage of this 140-hour opportunity to emit without controls, if subpart HH (which requires that emissions be routed through one or more functioning control devices) also applies?

The answer is that it is quite common, and virtually inevitable, for consent decrees to address one set of regulatory requirements, or to resolve overlapping regulatory requirements, without attempting to provide a comprehensive recapitulation or distillation of all regulations

[58] Pet. at 3.
[59] Pet. at 3.

applicable to a facility. This particular consent decree involved violations of multiple different CAA provisions at the Wonsits Valley facility, including New Source Review (NSR) permitting as well as NESHAP issues. Resolving an NSR violation may involve different requirements than are at issue in connection with NESHAPs. In this case, it is the concluding sentence of paragraph 17.b that clearly shows that the preceding parts of the paragraph concern requirements outside of part 63, but that *the EPA was not agreeing to exempt any unit from compliance with NESHAP requirements*.[60] And the facility faces no compliance dilemma. If there are two overlapping requirements, as is often the case in an area as complex as CAA permitting, the facility must simply comply with the stricter of those requirements. This concept is implicitly recognized in the part 71 regulations: "If more than one monitoring or testing requirement applies, the permit *may* specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining."[61]

The consent decree cannot and does not allow a 140-hour exemption from 40 CFR part 63 requirements, because it explicitly provides – in the very same paragraph that Petitioner seeks to rely on – that 40 C.F.R. part 63 still applies. Paragraph 17 of the consent decree therefore does

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[60] The fact that paragraph 17.b. addressed NSR requirements is illustrated by the statement in paragraph 25 that "[t]he emission limits and control requirements set forth in Paragraphs 15, 16, 17, 22, and 23 of this Consent Decree are 'federally enforceable' and 'legally enforceable' for purposes of calculating the potential to emit of hazardous air pollutants, VOCs, NOx, and CO emissions at the Coyote Wash, Chapita, Wonsits Valley, and Island Facilities under the Clean Air Act and any implementing regulations, including PSD/NSR applicability." Ex. 5 at 14 (¶25). Thus, the parties' intent in paragraph 17 (and elsewhere) was that any restrictions imposed – such as the 140 hour limit – would be federally enforceable for purposes of calculating the potential to emit, which is relevant for permit thresholds under the PSD/NSR program. And as stated in the final sentence of paragraph 17.b, these provisions do not override the separately applicable requirements of 40 C.F.R. part 63.

[61] 40 C.F.R. § 71.6(a)(3)(A) (emphasis added).

not exempt combustor C-2 from the regulatory requirements for control devices handling fumes from the dehydrator.

3. MPLX's argument concerning the original permit is untimely.

MPLX's petition raises an argument concerning the facility's original Title V permit, which was issued to QEP Field Services in 2013 after the execution of the consent decree that resolved the enforcement action.[62] As a threshold matter, this argument fails because MPLX did not raise it during the comment period. The regulations are unambiguous on this point: "All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period."[63] But the original permit is not mentioned in the MPLX comments in any pertinent context. Because MPLX did not raise any original permit issue in its comments, thereby failing to comply with 40 C.F.R. § 71.11(g), the Petition also fails to satisfy the related threshold requirement that a petition include "a demonstration that any issues raised were raised during the public comment period."[64] This failure alone is grounds for denying review of the original permit issue.[65]

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[62] Pet. at 4 (citing Conditions V.B.1.(b) and V.B.1.(c) of the original permit, Ex. 4).
[63] 40 C.F.R. § 71.11(g).
[64] 40 C.F.R. § 71.11(l)(1). The petition states that "MPLX provided public comment to EPA on the draft permit by letter dated January 13, 2020," but does not include a demonstration that issues in the petition were raised in comments.
[65] *In re City of Palmdale*, 15 E.A.D. 700, 705 (EAB 2012). MPLX's comments also did not raise any issue concerning the consent decree, which as discussed in section 2 MPLX now argues renders combustor C-2 exempt from subpart HH. And as to the consent decree, MPLX likewise failed to comply with the § 71.11 requirement to

A petitioner cannot comply with this requirement merely by pointing to a general discussion of a related topic.[66] Rather, "[t]he Board frequently has emphasized that, to preserve an issue for review, comments made during the comment period must be sufficiently specific," and has "often denied review of issues raised on appeal that the commenter did not raise with the requisite specificity during the public comment period."[67] Under this standard, it is clear that MPLX's comments — which assert that subpart HH does not apply to the combustor, but do not identify any concern related to the original permit — fall far short of raising any issue related to the original permit. Unquestionably, MPLX had the opportunity to comment on any alleged exclusion from subpart HH conferred by the original permit: the facility it operates has been subject to the original permit since 2013. But MPLX did not do so, and raises the original permit issue for the first time in its petition for review.

The requirement that a petitioner raise an issue during the public comment period in order to preserve it for review "is not an arbitrary hurdle placed in the path of potential petitioners," but instead "serves an important function related to the efficiency and integrity of the overall administrative permitting scheme."[68] The rule's purpose is "to ensure that the permitting authority first has the opportunity to address permit objections and to give some finality to the permitting process."[69] Because MPLX did not raise any original permit question in its

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provide a demonstration either that it raised the issue during the comment period, or that it was impracticable to do so, or that the grounds for the review arose after the period. Nonetheless, Region 8 acknowledges that it introduced the consent decree as potentially relevant to this matter in the response to comments.

[66] *See In re ConocoPhillips Co.*, 13 E.A.D. 768, 801 (EAB 2008) (denying review where petitioners stated that they had "express[ed] extensive concern with greenhouse gas emissions" related to the project, but did not identify any comment "that expressly raises the issue of whether a BACT limit was required for greenhouse gases").

[67] *In re City of Attleboro, MA Wastewater Treatment Plant*, 14 E.A.D. 398, 406 (EAB 2009) (internal citations omitted).

[68] *In re City of Marlborough*, 12 E.A.D. 235, 244 n.13 (EAB 2005).

[69] *City of Marlborough*, 12 E.A.D. at 244 n.13.

comments, the Region had no chance to respond to the argument in finalizing the permit, and the issue is not part of the record for the Region's decision. Therefore, because the Petition fails to provide the required demonstration that the original permit issue was raised during the public comment period, the Board should deny review of MPLX's argument related to this document.

4. MPLX's untimely argument concerning the original permit also fails as a substantive matter.

As discussed above, MPLX's petition raises an untimely argument concerning the facility's original Title V permit, in particular that in two paragraphs the original permit designates the flare (FL-1) "as the sole Subpart HH control device."[70] The failure to preserve error is sufficient grounds for denial of the petition as to the argument based on the original permit. But even if it were not, MPLX's claim is incorrect. In the phrase "the sole Subpart HH control device," the word "sole" is MPLX's invention. To support this assertion, MPLX cites Section V.B.1 of the permit, which restates the requirements of paragraph 15 of the consent decree. Although MPLX does not explain this point, it is apparently relying on the statement in paragraph 15 that the facility must "install and operate a flare … to comply with the control device requirements of 40 CFR Part 63, Subpart HH." In the first place, this reliance is misplaced, because it is entirely reasonable to read paragraph 15 as providing that the dehydrator must be equipped with a flare, and that the flare is a device subject to subpart HH, but not as establishing that no other device can be used to control dehydrator emissions, much less exempting any such device from complying with subpart HH.[71] That is, paragraph 15 nowhere

[70] Pet. at 4 (citing Conditions V.B.1.(b) and V.B.1.(c) of the original permit, Ex. 4).
[71] *See* Ex. 4 at 8-11 (*i.e.*, 19th-22nd pages of PDF file); Ex. 5 at 8-9 (¶¶ 15, 17).

purports to list all applicable requirements, or to identify all subpart HH control devices, for dehydrators. This reading is especially reasonable in light of paragraph 17, which identifies the combustor as another control device for the dehydrator and emphasizes that nothing in the paragraph "shall affect the Permittee's obligation to meet the applicable requirements of 40 CFR Part 63."[72]

But in any case, MPLX's reliance on paragraph 15 of the consent decree, as incorporated into the original permit, is unfounded because as discussed above this paragraph did not survive the 2014 termination of the consent decree.[73] Anything that paragraph 15 may have independently established or required did not persist beyond the 2014 termination. On the other hand, paragraph 17 *did* survive termination, and remains in effect as reflected in the final renewal permit. And it is paragraph 17 – which discusses the flare and the combustor – that explicitly notes that nothing in it affects the permittee's obligations under part 63.

5. The petition's remaining contentions fail along with its subpart HH argument.

All remaining components of the petition depend on MPLX's challenge to permit condition III.A. Specifically, based on its argument as to condition III.A. that the combustor is not a subpart HH control device, MPLX requests that this unit be deleted from several other permit conditions (III.D.3, III.E.3, III.E.4, and III.F.2) that apply solely to subpart HH devices.[74] MPLX also requests that language in condition V.B.1.(a) referring to the applicability of part 63

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[72]Ex. 5 at 9 (¶17).
[73] Ex. 5 at 34 (¶ 79); Ex. 2 at 11 (¶ V.A.) (listing the consent decree requirements that survived termination and are therefore incorporated into the permit).
[74] Pet. at 2-4.

to the device be deleted.[75] MPLX offers no independent grounds in support of any of these requests, and none of them can survive a finding that the Region appropriately decided that subpart HH applies to combustor C-2. Therefore, because of the failure of its primary claim concerning the applicability of subpart HH to the combustor, MPLX has failed to show that the Region committed clear error with respect to any of these subsidiary contentions.

Conclusion

Seeking to avoid legal requirements for control devices at oil and gas facilities, petitioner MPLX invents a distinction without any basis in the regulations, the consent decree, or the permit. Because the EPA hazardous air pollutant regulations for oil and gas facilities do not require a "backup" combustor, MPLX argues, a backup combustor is not subject to the regulations. But MPLX cannot evade Subpart HH requirements by labeling a control device a "backup." The regulations cover *all* control devices employed at the dehydrator, without any exception for those that function in a backup capacity.

MPLX's other arguments fail as well. MPLX claims that because the consent decree and the original version of the operating permit did not specifically provide that the backup combustor is covered under the regulations, the renewed operating permit cannot include this requirement. As a threshold matter, MPLX is barred from raising this argument here with respect to the original operating permit, because no argument related to the original permit was mentioned in MPLX's comment. And in any event, MPLX's arguments as to the original operating permit and the consent decree lack merit. The consent decree explicitly provides that it

[75] Pet. at 4-5.

does not alter any applicable part 63 requirements, so it is impossible that the consent decree somehow overrides part 63. Likewise, the purpose of a Title V permit, whether original or a renewal, is to assemble applicable federal requirements. If a requirement applies, it is not somehow rendered inapplicable by a prior Title V permit. And part 63, subpart HH clearly applies here.

Therefore, EPA Region 8 did not commit error or abuse its discretion in issuing the permit. The Petition for Review should be denied and the Region's permitting action should be sustained.

Date: June 15, 2020

Respectfully submitted,

MICHAEL BOYDSTON

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Statement of Compliance with Word Count Limitation

I certify that this Response to Petition for Review submitted by EPA Region 8, exclusive of the Table of Contents, the Table of Authorities, the list of Exhibits attached to this Response, those Exhibits, this Statement of Compliance, and the attached Certificate of Service, contains 6718 words, as calculated using Microsoft Word.

MICHAEL BOYDSTON

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Michael Boydston

Certificate of Service

I certify that on this date I electronically filed **EPA Region 8's Response to Petition for Review** in the Matter of MPLX, CAA Appeal No. 20-01, with the Clerk of the Board, and served it on the petitioner by email to these persons:

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Mr. Vining has informed me in writing that he is legal counsel for MPLX in this matter, and that MPLX consents to service by email at either of the addresses above.

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