

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF	)	
Kerr-McGee Gathering LLC/Anadarko	)	PETITION TO OBJECT TO
Petroleum, Frederick Natural Gas	)	ISSUANCE OF A STATE
Compressor Station	)	TITLE V OPERATING
	)	PERMIT
Permit Number: 95OPWE035	)	
	)	Petition Number: VIII-2010-
Issued by the Colorado Department of	)	
Public Health and Environment, Air	)	
Pollution Control Division	)	
_____	)	

**PETITION FOR OBJECTION**

Pursuant to Section 505(b)(2) of the Clean Air Act, 40 C.F.R. § 70.8(d), and applicable state regulations, WildEarth Guardians hereby petitions the Administrator of the U.S. Environmental Protection Agency (hereafter “Administrator” or “EPA”) to object to the July 14, 2010 Response of the Colorado Department of Public Health and Environment, Air Pollution Control Division (hereafter “Division”) to the October 8, 2009 Order by the Administrator objecting to the issuance of the renewed Title V Permit for Anadarko Petroleum Corporation’s (hereafter “Anadarko’s”) Frederick Compressor Station, Permit Number 95OPWE035 (hereafter “Title V Permit”), which was issued on January 1, 2007.<sup>1</sup> The Title V Permit, the Technical Review Document for the Title V Permit, and the Division’s Response to Objection are attached hereto. *See* Ex. 1, Kerr-McGee Gathering LLC, Frederick Compressor Station Title V Permit, Permit Number 95OPWE035 (January 1, 2007); Ex. 2, Technical Review Document (“TRD”) for Renewal of Operating Permit 95OPWE035 (January 1, 2007) and Technical Review Document Addendum (April 28, 2008); Ex. 3, Division Response to October 8, 2009 Objection by the Administrator (July 14, 2010).

In her objection, the Administrator found that the Division “failed to adequately support its determination of the source for PSD [Prevention of Significant Deterioration] and title V purposes.” *See* Ex. 4, *In the Matter of Kerr-McGee/Anadarko Petroleum Corporation, Frederick Compressor Station*, Petition VIII-2008-02 (Order on Petition) (October 8, 2009); *see also* 74 Fed. Reg. 56610-56611 (Nov. 2, 2009) (notice of objection). In particular, the Division failed to appropriately assess whether oil and gas wells and other pollutant emitting activities connected with the Frederick Compressor Station should be aggregated together as a single stationary

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<sup>1</sup> The permittee for the Frederick Compressor station is Kerr-McGee Gathering, LLC, which is a wholly owned subsidiary of Anadarko Petroleum., as is Kerr-McGee Oil and Gas Onshore LP. This Petition refers to Anadarko Petroleum throughout, but for the purposes of the arguments set forth herein, Kerr-McGee Gathering, LLC, Kerr-McGee Oil and Gas Onshore LP, and Anadarko Petroleum to be under the control of the same entity or entities under common control. *See also* Ex. 3 at 3 (Division noting same “control of the same entity, or entities under common control” relationship among Anadarko and its Kerr-McGee subsidiaries).

source for PSD and Title V permitting purposes, to ensure compliance with applicable Clean Air Act. *See* 42 U.S.C. § 7661c(a) (“Each permit issued under this title shall...assure compliance with applicable requirements of this [Clean Air] Act.”).

The Division’s response now claims to fully address the Administrator’s objection and settle the issue of whether aggregation is appropriate. Unfortunately, the Division’s analysis continues to be far from legally adequate. Worse, it appears devoid of objectivity. It appears as if the Division simply does not want to aggregate oil and gas operations under the Clean Air Act. The Division asserts, for example, that it “does not believe that there would be a significant benefit to the environment from any aggregation of wells with the Frederick Compressors Station.” Exh. 3 at 41. Yet, as will be explained in this petition, both PSD and Title V requirements indicate that significant environmental benefits result from accurate source determinations, including through increased transparency, federal land manager oversight, and greater protection of ambient air quality standards. Rather than independently assess to what degree aggregation may be appropriate, the Division instead seems to have concocted an analysis to serve a predetermined, and legally unjustified, position. Such biased source determinations are inherently at odds with the duties of the Division under the Clean Air Act.

### STATEMENT OF RESERVATIONS

This Petition is filed to preserve WildEarth Guardians’ rights and with a reservation of all rights that it has and may assert. In a letter dated October 18, 2010, the EPA indicated that WildEarth Guardians has an opportunity to petition the Administrator to object to the issuance of the Division’s July 14, 2010 Response to Objection. *See* Exh. 5, Letter from Callie A. Videtch, EPA Region 8, to Jeremy Nichols, WildEarth Guardians, In re: Opportunity to Petition on Colorado’s Response to EPA’s October 8, 2009 Anadarko Frederick Administrative Order (Oct. 18, 2010). However, EPA’s position is only tenable if the authority and obligation to issue the operating permit for the facility has not already passed to EPA, which is what the law provides:

1. Under the Clean Air Act, the EPA must issue or deny a Title V permit if the permitting authority has not submitted a permit revised to meet an objection within 90 days. *See*, 42 U.S.C. § 7661d(c). The law states:

If the permitting authority fails within 90 days after the date of an objection under [42 U.S.C. § 7661d(b)] to submit a permit revised to meet the objection, the Administrator ***shall issue or deny*** the permit in accordance with the requirements of [Title V].

*Id.* (emphasis added). In this case, there is no dispute that the Division submitted its response to the Administrator’s objection more than 90 days after the date of the objection. Thus, Act clearly requires the Administrator to issue or deny the Title V permit and the Division has lost all authority to administer the current permit.<sup>2</sup> The EPA

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<sup>2</sup> The Division may reissue the Title V permit in accordance with 40 C.F.R. § 70, *et seq.*, but such a state-issued permit could only replace any EPA-issued Title V permit upon expiration and only if EPA determines that such a state-issued permit has resolved the Administrator’s October 8, 2009 objection.

itself seems to have conceded this. In a February 16, 2010 letter to Anadarko Petroleum, the EPA stated that it was “initiating the Part 71 title V permitting process for Anadarko Petroleum’s Frederick facility.” See Exh. 6, Letter from Callie A. Videtich, EPA Region 8, to Korby Bracken, Anadarko Petroleum, In re: Application for Federal Clean Air Act Title V Operating Permit for the Frederick Compressor Station (Feb. 16, 2010). The Division’s post hoc document at issue is therefore legally irrelevant because the Division no longer has permitting authority.

2. Under the Clean Air Act, the EPA must issue or deny a Title V permit if the permitting authority has not submitted a permit revised to meet an objection within 90 days. See 42 U.S.C. § 7661d(c). The law states:

If the permitting authority fails within 90 days after the date of an objection under [42 U.S.C. § 7661d(b)] to **submit a permit revised to meet the objection**, the Administrator shall issue or deny the permit in accordance with the requirements of [Title V].

*Id.* (emphasis added). Therefore, in response to the Administrator’s October 8, 2009 objection, the Division was required to issue a Title V permit that was revised to meet the objection. The Division did not issue a Title V permit, but rather issued a unilateral post hoc “response,” which purports to rationalize its previously-made January 1, 2007 permitting decision based on a new record and new reasoning. This defies the plain language of the Clean Air Act as well as the public process. Even if a permit revision may not be warranted, the Division must still reopen the permit, solicit public input, and reissue the Title V Permit in accordance with 40 C.F.R. § 70.7(f). As the regulation states, a reopening shall be required if “EPA determines...that inaccurate statements were made in establishing the emission standards or other terms and conditions of the permit.” 40 C.F.R. § 707(f)(iii). The Administrator found that the Division failed to provide information and analysis to support its permitting decision. Thus, a permit reopening was required to remedy this deficiency. WildEarth Guardians therefore does not concede that the Division has “submit[ted] a permit revised to meet the objection” in accordance with the Clean Air Act. To this end, it further appears as if WildEarth Guardians’ right to file a Title V Petition is statutorily disallowed.

Moreover, the Clean Air Act provides for a Title V petition after the conclusion of the EPA’s 45-day review period, which in turn is triggered by EPA’s receipt of a “proposed permit under subsection (a)(1).” See 42 U.S.C. §§ 7661e(b)(1) and (2). A proposed permit is defined as “the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with [40 C.F.R.] Sec. 70.8.” 40 C.F.R. § 70.2. In this case, the Division has not submitted a “proposed permit” to the Administrator triggering both the EPA’s 45-day review period, and therefore the 60-day period within which a Title V petition can be filed. Indeed, the Division issued the Title V Permit for the Frederick Compressor Station on January 1, 2007 and has not since proposed to issue a new permit. This confirms the fact that EPA’s process here is not countenanced by the Act. Instead, EPA was required to take over the permitting process itself.

Therefore, in filing this Petition, WildEarth Guardians does not waive its rights to challenge the EPA's failure to issue or deny the Title V Permit for the Frederick Compressor Station, does not waive its rights to argue that the Division failed to submit a permit revised to meet the Administrator's objection, and does not waive its rights to argue that a Title V Petition is not the appropriate avenue under the Clean Air Act to address the deficiencies in the Division's response. WildEarth Guardians is only filing this Title V Petition to preserve its rights in the face of conflicting guidance from EPA.

Ultimately, regardless of the process used, we hope that EPA timely and fully resolves the numerous errors that have occurred in permitting the Frederick Compressor Station. To this end, the Administrator must address the ongoing deficiencies plaguing the Title V Permit for the Frederick Compressor Station. For the sake of ensuring adequate and reasonable protection of air quality and public health, consistent administration of the Clean Air Act, and accountability among States and industry, the Administrator must, at a minimum, object to the issuance of the Title V Permit for the Frederick Compressor Station in accordance with section 505(b)(2) of the Clean Air Act.

## INTRODUCTION

### I. The Frederick Compressor Station

The Frederick Compressor Station collects and processes natural gas and liquid condensate produced from wells in the Wattenberg natural gas field. The Wattenberg field is a large natural gas and oil producing region north of Denver located primarily in Weld County, Colorado. According to the Division, "there are approximately 24,000 wells scattered over 2,000 square miles in the Wattenberg Field that are owned and operated by numerous oil and gas companies." Exh. 3 at 25. The Frederick Station is one of seven natural gas compressor stations owned and operated by Anadarko Petroleum Corporation in the Wattenberg field. *See* Exh. 7, "Wattenberg gathering system," Anadarko Petroleum, website available at <http://www.anadarko.com/Midstream/Pages/Wattenberg.aspx#overview> (last visited Nov. 2, 2010).

Anadarko operates nearly 4,000 active oil and gas wells in the Wattenberg field. *See* Exh. 2, TRD Addendum at 8 and 12. The company produces 62% of total natural gas throughput in the Wattenberg field. *See* Exh. 7. However, 40% of Anadarko's well production is liquid condensate. *See* Exh. 8, Jaffe, M., "Anadarko plans 450 new Wattenberg wells this year," *Denver Post* (March 3, 2010). Liquid condensate is described as, "a liquid that comes from oil that is almost like gasoline and does not need near as much refinement as crude oil." *See* Exh. 9, Jackson, B., "Weld County on verge of another oil boom," *Greeley Tribune* (March 22, 2010). There are signs that liquid condensate production is significantly expanding in the Wattenberg field. *Id.*

The Frederick Compressor Station consists of three large natural gas-fired reciprocating internal combustion engines, two of which are 4,670 horsepower in size, a natural gas dehydrator

capable of processing 80 million cubic feet of natural gas per day, five 225 barrel condensate tanks, one 200 barrel condensate tank, one 300 barrel condensate tank, and leaking equipment. *See* Exh. 2 at 1. The primary pollutants of concern from the Frederick Compressor Station include volatile organic compounds (“VOCs”), nitrogen oxides (“NOx”), carbon monoxide (“CO”), and hazardous air pollutants (“HAPs”). The most recent TRD reports the facility has the potential to release 933,880 pounds of NOx, 412,400 pounds of VOCs, 496,600 pounds of CO and over 50,000 pounds of HAPs on an annual basis. *Id.* at 3. The amount of NOx released is equivalent to the amount released by over 24,000 cars each driven 12,500 miles a year. *See* [www.epa.gov/otaq/consumer/f00013.htm](http://www.epa.gov/otaq/consumer/f00013.htm) (last visited Nov. 2, 2010) (according to the EPA, an average vehicle emits 38.2 pounds of NOx per year). Among the HAPs released by the Frederick Compressor Station are formaldehyde and benzene. The National Cancer Institute identifies formaldehyde and benzene as known carcinogens, with benzene known to cause leukemia. *See* <http://www.cancer.gov/cancertopics/factsheet/Risk/formaldehyde> (last visited Nov. 2, 2010) and <http://www.cancer.gov/cancertopics/factsheet/Benzene> (last visited Nov. 2, 2010).

VOC and NOx pollution from the Frederick Compressor Station is of particular concern because these pollutants react with sunlight to form ozone, the key ingredient of smog. The Denver metro area, including most of Weld County, is currently in violation of National Ambient Air Quality Standards (“NAAQS”) for ozone. *See* <http://www.cdphe.state.co.us/ap/ozone.html> (last visited Nov. 2, 2010); *see also* 40 C.F.R. § 81.306 (listing Denver Metro/North Front Range region as nonattainment for the 8-hour ozone NAAQS). Ozone, which forms when NOx and VOCs react with sunlight, is the key ingredient of smog and a major health threat. *See* <http://www.epa.gov/glo/health.html> (last visited Nov. 2, 2010). According to the Title V Permit, the facility is a major source of air pollution because it has the potential to release more than 250 tons of NOx. *See* Exh. 1 at 5. Any modification of the facility that leads to a significant increase in NOx, VOCs, and/or CO may result in the application of PSD review requirements under 40 C.F.R. § 51.166 and the Colorado State Implementation Plan (“SIP”) and/or nonattainment New Source Review (“NSR”) requirements under 40 C.F.R. § 51.165 and the Colorado SIP. These permitting requirements impose strict compliance with best available pollution control requirements and protection of the NAAQS.

## **II. Oil and Gas Development and Aggregation**

Aggregation of oil and gas emissions units is critical to the protection of clean air, particularly in the American West. Oil and gas operations, including exploration, production, and processing operations, consist of many pieces of equipment and practices that release a number of air pollutants known to be harmful to public health and welfare. Ensuring that pollutant emitting activities associated with oil and gas operations are aggregated together, where appropriate, is necessary to ensure that required pollution controls are installed and to ensure greater accountability to protecting health and welfare-based air quality standards.

The impacts of oil and gas development on air quality are by no means insignificant. For example, a recent study on the impacts of oil and gas development on ozone levels in the American West found that expanded oil and gas drilling in the West is taking a worrisome toll that threatens to worsen. The study reported that:

***[A]lthough not exhaustive, [this study] does indicate a clear potential for oil and gas development to negatively affect regional O3 concentrations in the western United States, including several treasured national parks and wilderness areas in the Four Corners region.*** It is likely that accelerated energy development in this part of the country will worsen the existing problem.

Exh. 10, Rodriguez, M.A., et al., “Regional Impacts of Oil and Gas Development on Ozone Formation in the Western United States,” *Journal of the Air and Waste Management Association*, Vol. 59, 1111-1118 (September 2009) at 1118, *available at* [http://www.wrapair.org/forums/amc/meetings/091111\\_Nox/Rodriguez\\_et\\_al\\_OandG\\_Impacts\\_JAWMA9\\_09.pdf](http://www.wrapair.org/forums/amc/meetings/091111_Nox/Rodriguez_et_al_OandG_Impacts_JAWMA9_09.pdf) (last visited Nov. 2, 2010).

In addition, there are a number of other instances of deteriorating air quality tied to oil and gas development, including in:

- In Wyoming, the state has issued unprecedented ozone health advisories in rural areas such as Sublette County, an area that has been intensively drilled in the last several years. *See e.g.* Gearino, J., “DEQ issues ozone alert for Pinedale,” *Casper Star Tribune* (Feb. 3, 2009), *available at* [http://trib.com/news/state-and-regional/article\\_b2cd508c-5173-5a3c-bf63-a05e82dd10cd.html](http://trib.com/news/state-and-regional/article_b2cd508c-5173-5a3c-bf63-a05e82dd10cd.html) (last visited Nov. 2, 2010). The high ozone levels in western Wyoming tied to oil and gas development prompted the Governor to recommend that portions of Sublette County and the surrounding region be designated as nonattainment of the 2008 ozone NAAQS. *See* Letter from Dave Freudenthal, Governor of Wyoming, to Carol Rushin, Acting EPA Region 8 Administrator, in re: Wyoming 8-hour Ozone Designation Recommendation (March 12, 2009), *available at* <http://deq.state.wy.us/out/downloads/Rushin%20Ozone.pdf> (last visited Nov. 2, 2010).
- In northeastern Utah, unprecedented ozone levels in the Uintah Basin of Utah were recorded this year, and the Bureau of Land Management has identified the multitude of oil and gas wells in the region as the primary cause of the ozone pollution. *See*, Streater, S., “Air Quality Concerns May Dictate Uintah Basin’s Natural Gas Drilling Future,” *New York Times* (Oct. 1, 2010), *available at* <http://www.nytimes.com/gwire/2010/10/01/01greenwire-air-quality-concerns-may-dictate-uintah-basins-30342.html> (last visited Nov. 2, 2010).
- In Colorado, the Division has found that NOx and VOC emissions from the oil and gas sector in Colorado are greater than the NOx and VOC emissions from all of the motor vehicles in the state combined. *See* Exh. 11, Division, “Oil and Gas Exploration and Production Emissions Sources,” Presentation to Colorado Air Quality Control Commission (May 15, 2008) at 2–4.
- Similarly, EPA Region 6 Administrator Al Armendariz has noted that emissions of NOx and VOCs from oil and gas sources in the Dallas-Fort Worth metropolitan area are greater than total NOx and VOC emissions from motor vehicles. *See* Armendariz, A., “Emissions from Natural Gas Production in the Barnett Shale Area and Opportunities for Cost-effective Improvements” (2009) at 1, *available at*

[http://www.edf.org/documents/9235\\_Barnett\\_Shale\\_Report.pdf](http://www.edf.org/documents/9235_Barnett_Shale_Report.pdf) (last visited Nov. 2, 2010).

These far-reaching impacts have escaped many of the provisions of the Clean Air Act designed to protect and improve air quality and public health. This has occurred in many cases because the oil and gas industry has classified most of its operations as minor sources for Prevention of Significant Deterioration (“PSD”) and nonattainment purposes.

The distinction between major sources and minor sources is not arbitrary. It is a fundamental component of the Clean Air Act’s regulatory structure. The Clean Air Act clearly specifies the quantity of pollutants that a source must emit before it will pass the major source thresholds under various sections of the Clean Air Act. *See e.g.* 42 U.S.C. §§ 7602(j) (a source that emits 100 tons/year is major unless provided otherwise in specific sections) and 7479(1) (a source is major under the PSD program if it emits 100 tons/year for certain types of stationary sources, or 250 tons/year for all other sources). However, despite the Clean Air Act’s clarity on what is “major,” the determination of what constitutes the “source” for assessment of these major source thresholds is clearly subject to debate.

The multitude of pollutant emitting activities in natural gas development (e.g., wells, storage tanks, and compressor stations) often do not meet the major source thresholds when considered individually. However, when a given company’s wells, storage tanks, and compressor stations—which are all connected and interdependent—are considered collectively, the emissions can exceed major source thresholds, and thus, would be subject to regulation in the same manner as all other major stationary sources under the Clean Air Act.

When oil and gas wells, storage tanks, and compressor stations are aggregated as a major source, several important provisions of the Clean Air Act apply, providing air quality benefits above and beyond what normally apply. For example, major sources under the PSD program may only be issued a permit if they apply the best available control technology for each pollutant subject to regulation under the Clean Air Act, and the operator must demonstrate that the source's emissions will not cause or contribute to air pollution in excess of the allowable PSD increment for any pollutant. *See* 42 U.S.C. § 7475(a). The PSD provisions also require federal land managers to consider whether a proposed major source will have an adverse impact on visibility and other air quality related values on federal lands, and impose an “affirmative responsibility” on the land managers to protect those air quality related values. *Id.* § 7475(d)(2)(B).

In addition, in areas that are in nonattainment of any NAAQS, the Clean Air Act imposes additional requirements on major sources to ensure the eventual attainment of the NAAQS. *See* 42 U.S.C. §§ 7502(c)(5), 7503(a) (general nonattainment provisions); *see also id.* §§ 7511–7511f (ozone nonattainment areas). A new or modified major source in a nonattainment area must generally apply the lowest achievable emission rate technology and offset its emissions by obtaining equivalent or greater emissions reductions from other sources in the nonattainment area. *Id.* § 7503(a)(2) & (c)(1).

Similarly, under Title V, when pollutant emitting activities are appropriately aggregated,

sources are subject to enhanced monitoring, recordkeeping, reporting requirements, among other provisions, to ensure greater transparency of operations and more consistent compliance. *See e.g.* 42 U.S.C. § 7661c(c) (Title V permits must contain “inspection, entry monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions”). This added transparency further aids citizens in understanding the air quality impacts of stationary sources of air pollution and in ensuring accountability to air pollution limits.

The purpose of aggregation therefore is simple: to ensure that actual major sources of air pollution are regulated as such to ensure full and adequate protection of air quality, public health, and welfare.

### **III. Petitioner**

Petitioner WildEarth Guardians is a Santa Fe, New Mexico-based nonprofit membership group dedicating to protecting and restoring the American West. WildEarth Guardians has an office in Denver and members throughout Colorado. In 2008, WildEarth Guardians merged with the organization, Rocky Mountain Clean Air Action, a Denver-based nonprofit corporation dedicated to protecting clean air for healthy children and healthy communities. WildEarth Guardians has remained as the surviving corporation.

Rocky Mountain Clean Air Action previously submitted comments on the Frederick Compressor Station Title V Permit on September 14, 2006 and again on March 24, 2008. *See* In both comment letters, Rocky Mountain Clean Air Action squarely targeted the failure of the Division to appropriately aggregate the Frederick Compressor Station together with connected pollutant emitting activities in accordance with the Clean Air Act. Rocky Mountain Clean Air Action also submitted two prior petitions to object pursuant to Title V of the Clean Air Act, both challenging the failure of the Division to aggregate: one on December 29, 2006 and one on August 14, 2008. Both petitions were granted by the Administrator.<sup>3</sup>

WildEarth Guardians now challenges the Division’s continuing failure to ensure the Frederick Compressor Station is properly permitted under the Clean Air Act. This Petition follows on the heels of a comment letter on the Division’s July 14, 2010 Response to Objection submitted on behalf of WildEarth Guardians and a number of other organizations by Earthjustice on October 7, 2010. *See* Exh. 12, Letter from Earthjustice to Callie Videtich, Director, EPA Region 8 Air Program in re: Oil and Gas Aggregation – Comments on CDPHE’s July 14, 2010 Response Regarding the Title V Operating Permit for Kerr-McGee’s Frederick Compressor Station (Oct. 7, 2010).

To the extent the EPA may somehow believe this petition is not based on comments raised with reasonable specificity during the public comment period, WildEarth Guardians requests the Administrator also consider this a petition to reopen the Title V Permit for the

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<sup>3</sup> For an overview of the history of the Frederick Compressor Station Title V Permit and challenges from Rocky Mountain Clean Air Action, *see* Exh. 4 at 2.



Frederick Compressor Station in accordance with 40 C.F.R. § 70.7(f).<sup>4</sup> A permit reopening and revision is mandated in this case because of one or both of the following reasons:

1. Material mistakes or inaccurate statements were made in establishing the terms and conditions in the permit. *See* 40 C.F.R. § 70.7(f)(1)(iii). As will be discussed in more detail, the terms and conditions in the Title V Permit for the Frederick Compressor Station were based on material mistakes and inaccuracies, namely that the source was not accurately defined by the Division; and
2. The permit fails to assure compliance with the applicable requirements. *See* 40 C.F.R. § 70.7(f)(1)(iv). As will be discussed in more detail, the Title V Permit for the Frederick Compressor Station fails to assure compliance with several applicable requirements.

**GROUNDS FOR OBJECTION:  
THE TITLE V PERMIT STILL FAILS TO ENSURE COMPLIANCE WITH  
PSD AND TITLE V REQUIREMENTS**

For the third time, Petitioner requests the EPA object to the issuance of Permit Number 95OPWE035 for the Frederick Compressor Station and/or find reopening for cause, as well as object to the Division’s July 14, 2010 Response to Objection, over the ongoing failure of the Division to ensure the Title V Permit assures the Frederick Compressor Station will comply with PSD and Title V requirements under the Clean Air Act.

In this case, the Division continues to fail to make an accurate source determination for the Frederick Compressor Station. Notably, the Division continues to fail to appropriately assess whether adjacent pollutant emitting activities, namely the oil and gas wells and associated equipment that feed the Frederick Compressor Station, should be aggregated together as a single source. *An accurate source determination is an absolute prerequisite to an adequate demonstration that a Title V permit assures compliance with PSD and Title V requirements.*

**I. Introduction**

A Title V Permit is required to include emission limitations and standards that assure compliance with all applicable requirements at the time of permit issuance. *See* 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(1). Applicable requirements include, among other things, requirements under Title V of the Clean Air Act, PSD requirements set forth under Title I of the Clean Air Act, regulations at 40 C.F.R. § 51.166, and the Colorado SIP at Air Quality Control Commission (“AQCC”) Regulation Number 3. *See* 40 C.F.R. § 70.2 (definition of applicable

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<sup>4</sup> To the extent the Administrator may not believe citizens can petition for reopening for cause under 40 C.F.R. § 70.7(f), Petitioner also hereby petitions to reopen for cause in accordance with 40 C.F.R. § 70.7(f) pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e) (stating that any person has the “right to petition for the issuance...of a rule”) and 5 U.S.C. § 555(b) (“an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function”).

requirements). PSD requirements apply to the construction of major stationary sources and/or major modifications of major stationary sources of air pollution in areas designated as attainment. *See* 42 U.S.C. § 7475; 40 C.F.R. § 51.166(a)(7); AQCC Regulation No. 3. Title V requirements apply to the operation of major sources. *See* 42 U.S.C. § 7661a(a) (requiring major source to operate with Title V permit and in compliance with all Title V requirements); *see also* 40 C.F.R. § 70.1(b).

PSD regulations at 40 C.F.R. § 51.166(b)(5) define a stationary source as, “any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.” *See also* AQCC Regulation No. 3, Part A, Section I.B.41. These regulations further define “building, structure, facility, or installation” as “all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)[.]” 40 C.F.R. § 51.166(b)(6); *see also* AQCC Regulation No. 3, Part A, Section I.B.41. These definitions are echoed in EPA’s Title V regulations. *See* 40 C.F.R. § 70.2 (providing definition of “major source” and “stationary source”).

Thus, a permitting authority must apply a three-part test to determine whether multiple pollutant emitting activities should be aggregated for PSD and Title V purposes in order to ensure accurate source determinations:

- (1) whether the sources belong to the same industrial grouping,
- (2) whether the sources are located on one or more contiguous or adjacent properties, and
- (3) whether the sources are under the control of the same person.

40 C.F.R. § 51.166(b)(6); *see also*, Exh. 13, Memo from Gina McCarthy, EPA Assistant Administrator for Air and Radiation to Regional Administrators, “Withdrawal of Source Determinations for Oil and Gas Industries” (September 22, 2009) (hereafter “McCarthy Memo”). Thus, if multiple pollutant emitting activities meet this three-part test, then they are collectively considered to be a “building, structure, facility, or installation,” and thus one “stationary source” for PSD and Title V purposes.

Two of the factors in the three-part aggregation test—common control and industrial grouping—are often not disputed when considering oil and gas activities. The Division itself noted that the industrial grouping factor for oil and gas activities is “relatively straightforward” because wells, storage tanks, and compressor stations all share the same two-digit Standard Industrial Classification (“SIC”) code. *See* Exh. 3 at 34.

In addition, aggregation of oil and gas sources is appropriate when the emissions units are under the control of the same company, which is a common occurrence. *See e.g.* Exh. 3 at 35–36 (finding common control because various entities of Anadarko Petroleum Corporation control wells, storage tanks and pipelines connected to the Frederick Compressor Station).

The third factor—whether the emissions units are located on contiguous or adjacent properties—is commonly the disputed factor in the oil and gas context and indeed is the crux of the Division’s argument against aggregating pollutant emitting activities with the Frederick Compressor Station. Contrary to the Division’s assertions otherwise, however, oil and gas

sources often are contiguous or adjacent and indeed this appears to be borne out in the context of the Frederick Compressor Station. In applying this factor, EPA often focuses on whether the two activities are interdependent. In the case of the Frederick Compressor Station, there is a multitude of support for a finding that the oil and gas well and associated equipment that feed the compressor station are interrelated, and therefore meet the contiguous or adjacent factor.

That aggregation of oil and gas operations under PSD, as well as Title V, may be appropriate is not inconsistent with the history of the PSD program. In *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979), the court described how the Clean Air Act defines the terms “source” and “stationary source.” The court held that the term “stationary source” for PSD purposes, although not explicitly defined in the sections on PSD, should be defined as “any building, structure, facility, or installation which emits or may emit any air pollutant,” which is how “stationary source” is defined in other sections of the Act. *See id.* at 395–96.

In light of the statutory definition, the court directed EPA to revise its regulation defining “source” for the PSD program. *Alabama Power Co. v. Costle*, 636 F.2d 323, 396-397 (D.C. Cir. 1979). In doing so the court cautioned that EPA should not aggregate sources unless they fit within the statutory terms “structure,” “building,” “facility,” or “installation.” *Id.* at 397. However, the court noted the breadth of the term “facility or installation” and concluded that Congress “clearly intended” to “allow an entire plant **or other appropriate grouping of industrial activity**” to be treated as a single major source for PSD purposes. *Id.* (emphasis added).

Following the D.C. Circuit’s decision, EPA in 1980 promulgated a new regulatory definition of “stationary source” for PSD purposes as “any building, structure, facility, or installation” that emits a regulated pollutant, a definition that continues in effect in the present PSD regulations. EPA further established the three-part aggregation test, discussed above, to determine when multiple individual activities should be aggregated as a single major source, a test that also continues in effect in today’s PSD regulations. *See* Exh. 13. The Preamble to the new regulations discussed the policy considerations for aggregation identified by the D.C. Circuit in *Alabama Power*:

In EPA’s view, the December opinion of the court in *Alabama Power* sets the following boundaries on the definition for PSD purposes of the component terms of “source”: (1) it must carry out reasonably the purposes of PSD; (2) it must approximate a common sense notion of “plant”; and (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of “building,” “structure,” “facility,” or “installation.”

45 Fed. Reg. 52676, 52694–95 (Aug. 7, 1980).

In the context of oil and gas development, sources under common control, connected by pipelines, and operating interdependently readily fit within the ordinary meaning of “facility” or “installation.”

Moreover, in appropriate cases, aggregated oil and gas sources also fit the “common

sense notion of a plant.” First, the “common sense notion of a plant” has always extended beyond just a single factory building. In *Alabama Power*, the D.C. Circuit noted that under the PSD program Congress “clearly intended” that not just plants comprising a single building, but also “*other appropriate grouping[s] of industrial activity*,” should be aggregated if they fit within the statutory terms “facility” or “installation.” *Alabama Power Co. v. Costle*, 636 F.2d 323, 397 (D.C. Cir. 1979) (emphasis added).

Second, in considering the common sense notion of a “plant,” the preamble explicitly suggests that an “oil field” could be aggregated. In addressing the “plant” definition, EPA focused largely on whether activities shared a common SIC code, in order to avoid “group[ing] activities that ordinarily would be considered separate.” See 45 Fed. Reg. 52676, 52695. As an example of separate activities, the Preamble pointed to “a uranium mill and an oil field.” *Id.* This choice of example, however, suggests that the component units in an oil field—to the extent they share a single SIC code—could be treated as a single stationary source. It would have made little sense for the Preamble to discuss aggregating an oil field with another activity if the component parts of the oil field could not themselves be aggregated as a single stationary source.

Third, in adopting the regulatory definition of stationary source, EPA expressly rejected a *per se* rule against aggregating multiple facilities that are connected by a pipeline or a similar connection. EPA said that it “would not treat all of the pumping stations along a multistate pipeline as one ‘source.’” 45 Fed. Reg. 52676, 52695. At the same time, the agency was “unable to say precisely at this point how far apart activities must be in order to be treated separately.” *Id.*

In short, the definition of stationary source has always been understood to cover facilities or installations that extend beyond a single factory building. Oil and gas development may often fit within the ordinary meaning of facility or installation, and a common sense notion of “plant,” when the different emissions units are operated as an integrated production process.

## **II. The Division’s Arguments that Aggregation is Inappropriate are Still Unsupported and Contrary to Regulation and EPA Guidance**

As noted, the Division has not attempted to argue that the Frederick Compressor Station and the oil and gas well and associated equipment that are connected with the compressor station are not pollutant emitting activities that belong to the same major industrial grouping or that, at least with regards to pollutant emitting activities owned by Anadarko and/or its subsidiaries, that there does not exist ownership and/or common control. Rather, the Division rejected the concept of aggregation on the basis of its assertion that the Frederick Compressor Station and the oil and gas wells and associated equipment that are connected with the compressor station are not contiguous or adjacent. The Division’s conclusions are, however, both counter to prior EPA guidance regarding source determinations and, importantly, counter to the common sense notion of plant embodied by EPA’s definition of a “stationary source” under its PSD and Title V regulations. The Administrator must object.

In its Response to Objection, the Division goes to great lengths to characterize aggregation of oil and gas sources as impractical. It repeatedly describes the oil and gas industry

as “unique,” “complex” and “fundamentally different” from other industries. *See e.g.* Exh. 3 at 4–8, 15, 23–24, 33, 39, 40. This argument does not hold up under scrutiny, signaling that the Division’s Response to Objection is fundamentally flawed.

For example, the Division points out that wells in the Wattenberg Field “are owned and operated by numerous oil and gas companies,” and that the field covers approximately 2,000 square miles. *See* Exh. 3 at 25. However, the issue facing the Division is not whether every well in the entire region must be aggregated with every other well in that region. Rather, the question is much narrower and more manageable: whether some group of wells and equipment under the control of the same company should be aggregated in appropriate circumstances. In this case, the question is simply whether the oil and gas wells that feed the Frederick Compressor Station and that are owned by Anadarko should be aggregated together as a single source.

Moreover, the Division bases its conclusions mostly on the fact that oil and gas sources may be located some distance apart from one another. *See* Exh. 3 at 25. But EPA Region 8 has repeatedly noted that the distance between sources is not a determinative factor. *See e.g.* Exh. 14, Letter from Richard R. Long, Director, Region 8 Air Program to Lynn R. Menlove, Manager, Utah Div. of Air Quality, New Source Review Section, at 1–2 (Aug. 8, 1997) (“Distance between the operations is not nearly as important in determining if the operations are part of the same source as the possible support that one operation provides for another”). As the McCarthy Memo states, although “in some cases, ‘proximity’ may serve as an overwhelming factor in a permitting authority’s source determination[,] such a conclusion can only be justified through reasoned decision making after examining whether other factors are relevant to the analysis.” Exh. 13 at 2.

Analyzed on an appropriate scale, aggregation is entirely manageable. For example, EPA has repeatedly stated that activities separated by one mile or more can meet the contiguous or adjacent factor. Even using a conservative one-mile radius for the aggregation analysis would have a major impact on the proper scope of the Frederick Compressor Station Title V Permit. The Division acknowledges at the end of its response that there are **11 pairs of condensate and water storage tanks owned by Anadarko located within one mile of the Frederick Compressor Station**. *See* Exh. 3 at 40. While not mentioned by the Division, a map attached to a response from Anadarko Petroleum shows that there are also at least **68 Anadarko wells located within a mile of the compressor station**. *See* Exh. 15, Letter from Korby Bracken, Manager Air Quality, Kerr-McGee Gathering LLC to Roland Hea, Permitting Section Supervisor, Colorado Department of Public Health and Environment, Air Pollution Control Division, in re: Kerr-McGee Gathering LLC Frederick Compressor Station—Request for Information Colorado Operating Permit No. 95OPWE035 (Feb. 4, 2010). While the map shows 68 Anadarko wells within one mile of the compressor station, the actual number of wells is almost certainly greater. Anadarko’s map is presented at such a small scale that it omits much of the area outside a ½ mile radius from the compressor station. *See id.*

The Division, however, offers no rational or reasonable analysis of why these dozens of emissions units in close proximity to the Frederick Compressor Station should not be aggregated with the compressor station as part of a single source. The Division suggests that, due to a lack of exclusive interdependence, a finding of adjacency, and therefore aggregation, is not

appropriate. However, as will be explained further, such a standard is exceptionally restrictive, inconsistent with past EPA permitting guidance, and frustrates the concept of “common sense notion of plant.”

### **1. EPA’s Prior Aggregation Determinations Overwhelmingly Demonstrate that Oil & Gas Sources, and Other Similar Sources, can be Aggregated.**

The Division discusses many prior aggregation determinations by EPA Headquarters, EPA regional offices, and the Environmental Appeals Board. *See e.g.* Exh. 3 at 16-21. Several of these prior determinations concluded that aggregation was appropriate for oil and gas sources. Others concluded that aggregation was appropriate for sources in other industries that involved operations separated by long distances but connected by pipelines or similar links. Overall, these determinations demonstrate that aggregation of oil and gas sources, and other similar sources, is appropriate in a much broader array of circumstances than the Division claims. While the McCarthy Memo and other EPA guidance on the matter correctly cautions that these prior determinations are highly fact-specific, EPA has found aggregation to be appropriate in most cases where it addressed the issue.

Despite the Division’s implied attempt to distinguish them, the past determinations by EPA demonstrate that the three-part aggregation test is commonly met for oil and gas, and other similar sources, a fact that continues to undermine the reasonableness of the Division’s analysis.<sup>5</sup> For example, EPA has found aggregation to be appropriate in the following circumstances:

1. Oil and gas tank batteries and associated emitting units (e.g., wells, pumps, line heaters, dehydration equipment, combustion equipment, tanks), in an oil and gas field with a twelve mile radius. *See* Exh. 16, Letter from Richard R. Long, Dir., Region 8 Air and Radiation Program, to Lee Ann Elsom, Environmental Coordinator, Citation Oil & Gas Corp. (Dec. 9, 1999).
2. Pipeline compressor stations and associated emitting units (e.g., compressor engines, wells, pumps, dehydrators, storage and transmission tanks, etc.). *See* Exh. 17, Letter from Richard R. Long, Dir., Region 8 Air and Radiation Program, to Jack Vaughn, EnerVest San Juan Operating Co. (July 8, 1999).
3. Natural gas gathering system (e.g., wells) and transmission system (e.g., distribution pipelines), on contiguous properties. *See* Exh. 18, Letter from William B. Hathaway, Director, Region 6 Air, Pesticides, and Toxics Division, to Allen Eli Bell, Executive Director, Texas Air Control Board (Nov. 3, 1986).

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<sup>5</sup> The Division also cites to the Ninth Circuit’s recent decision in *MacClarence v. EPA*, 596 F.3d 1123 (9th Cir. 2010), to suggest that its rationale is supported by the Ninth Circuit. *See* Exh. 3 at 27-29. This is not an accurate description of *MacClarence*. In *MacClarence*, both Alaska and EPA Region 10 agreed that a hub-and-spoke model of aggregation for oil and gas sources was appropriate, but rejected calls to aggregate the entire field. *See MacClarence*, 596 F.3d 1123, 1128-1129 (9th Cir. 2010). Even the Division notes this. *See* Exh. 3 at 29. The Ninth Circuit upheld that decision while taking no position on the agencies’ requirement of hub-and-spoke aggregation, or aggregation in general. *Id.* at 1129. If anything, *MacClarence* actually supports the conclusion that aggregation of oil and gas sources is appropriate in certain cases.

4. Sour gas wells and a sour gas processing plant connected by pipelines. *See* Exh. 19, Letter from Cheryl Newton, Director, Air and Radiation Division, EPA Region 5 to Scott Huber, Summit Petroleum Corporation (Oct. 18, 2010).
5. Pump station and salt processing plant 21.5 miles apart, connected by a dedicated channel. *See* Exh. 14.
6. Mine and processing plant, thirty-five to forty miles apart and connected by a forty-four mile pipeline. *See* Exh. 20, Letter from Richard R. Long, Director, Region 8 Air and Radiation Program, to Dennis Myers, Construction Permit Unit Leader, Colorado Department of Public Health and Environment (April 20, 1999).
7. Offshore oil and gas platform and onshore production facility 2.8 miles apart, connected by pipelines. *See* Exh. 21, Letter from Douglas E. Hardesty, Manager, Region 10 Federal and Delegated Air Programs, to John Kuterbach, Chief, Alaska Department of Environmental Conservation (Aug. 21, 2001).
8. Two nearby plants producing coated metal castings. *See* Exh. 22, Letter from Joan Cabreza, Permits Team Leader, Region 10 Office of Air Quality, to Andy Ginsberg, Manager, Oregon Department of Environmental Quality (Aug. 7, 1997).
9. Two sections of an oil refinery, 1.8 miles apart and connected by twenty pipelines. *See* Exh. 23, Memorandum from Edward E. Reich, Director, Division of Stationary Source Enforcement, to Clyde B. Eller, Director, Region 9 Enforcement Division (May 16, 1980).
10. Brewery and landfarm where brewery disposed of waste water, six miles apart and connected by a pipeline. *See* Exh. 24, Memorandum from Robert G. Kellam, Acting Director, OAQPS, to Richard R. Long, Director, Region 8 Air Program (Aug. 27, 1996).
11. Two General Motors facilities one mile apart, connected by a railroad line. *See* Exh. 25, Memorandum from Steve Rothblatt, Chief, Region 5 Air Programs Branch, to Edward E. Reich, Director, Stationary Source Enforcement Division (June 8, 1981).

To be certain, EPA has found aggregation to be inappropriate in certain situations, for example in the following circumstances:

1. Two unconnected drilling ships. *See In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357 (E.A.B. 2007).<sup>6</sup>
2. Two bulk gasoline terminals 0.9 miles apart, not connected by any pipelines. *See* Exh.

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<sup>6</sup> However, the EAB in this case did remand the EPA's permitting decision on the basis that Region 10 "did not provide an adequate analysis and record support for its conclusion that each OCS [outer-continental shelf] source separated by more than 500 meters is a separate stationary source." *In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357, 358 (E.A.B. 2007).

26, Letter from Winston A. Smith, Dir., Region 4 Air, Pesticides and Toxics Management Division, to Randy C. Poole, Air Hygienist II, Mecklenburg County Department of Environmental Protection (May 19, 1999).

However, in these circumstances, it was clear that the pivotal factor was whether the pollutant emitting activities were connected, such as with pipelines. In the case of the Frederick Compressor Station it is undisputed that the facility is connected via pipelines to other pollutant emitting activities.

Importantly however, these EPA determinations demonstrate that the distance between sources is not necessarily a determinative factor. Units that are miles apart commonly fit within the ordinary meaning of “facility” and “installation” for aggregation if the sources are integrated and physically connected. EPA Region 8 explained in one case that “whether two facilities are ‘adjacent’ is based on the ‘common sense’ notion of a source and the functional inter-relationship of the facilities, and is not simply a matter of the physical distance between two facilities.” Exh. 20 at 1. Similarly, Region 8 advised the Utah Department of Environmental Quality that “[d]istance between the operations is not nearly as important in determining if the operations are part of the same source as the possible support that one operation provides for another.” Exh. 14 at 1-2. Thus, where a pump station and a production operation are connected by a 21.5 mile channel, “the distance between the operations is not an overriding factor that would prevent them from being considered a single source.” *Id.* at 2.

Some of these determinations by EPA are particularly instructive in this case. In 1998, EPA Region 8 provided guidance to the Utah Division of Air Quality on what Utah should consider in its aggregation analysis. Utah sought EPA’s guidance and recommendation on whether two Utility Trailer facilities located approximately one mile apart should be aggregated. *See* Exh. 27, Letter from Richard R. Long, Director, Region 8 Air Program, to Lynn Menlove, Manager, New Source Review Section, Utah Division of Air Quality (May 21, 1998). Region 8 did not make a recommendation either way on aggregation of the two facilities, but provided general guidance to the State regarding how it should make the determination.

Region 8 stated that when a permitting authority assesses the contiguous or adjacent factor, it should examine whether the sources are close enough to one another for them to be operated as a single source. Exh. 27 at 2. Region 8 then identified four factors to be considered in determining whether the distance between activities is small enough to allow operation as a single source. While they are relevant, EPA noted that not all of the four factors are required to be present to satisfy the contiguous or adjacent requirement:

1. Will materials be routinely transferred between the facilities? Supporting evidence for this could include a physical link or transportation link between the facilities, such as a pipeline, railway, special-purpose or public road, channel or conduit.
2. Will managers or other workers frequently shuttle back and forth to be involved actively in both facilities? Besides production line staff, this might include maintenance and repair crews, or security or administrative personnel.



3. Will the production process itself be split in any way between the facilities, i.e., will one facility produce an intermediate product that requires further processing at the other facility, with associated air pollutant emissions? . . .
4. Was the location of the new facility chosen primarily because of its proximity to the existing facility, to enable the operation of the two facilities to be integrated? In other words, if the two facilities were sited much further apart, would that significantly affect the degree to which they may be dependent on each other?

*Id.* Other EPA regional offices have applied these Region 8 guidance questions when making aggregation determinations. *See, e.g.*, Exh. 21 at 5-6.

Although the Division did not even address these four factors in its response to the Administrator's Objection, all four guidance questions strongly indicate that aggregation of oil and gas operations, including the Frederick Compressor Station and the oil and gas wells and associated equipment that feed the compressor station, is appropriate. First, by the very nature of their operations, natural gas is routinely transferred between wells, condensate tanks, and compressor stations. The sources are all connected by pipelines. Indeed, it is not disputed by the Division that oil and gas wells owned by Anadarko are connected via pipelines to the Frederick Compressor Station.

Second, oil and gas employees, such as maintenance and repair staff, frequently shuttle back and forth as they monitor and work on a company's wells, condensate tanks, and compressor stations in a given oil and gas field.<sup>7</sup> Indeed, there does not appear to be any dispute that employees of Anadarko Petroleum and/or its subsidiaries maintain and operate in common the Frederick Compressor Station and the oil and gas wells and associated equipment connected with the compressor station.

Third, the process of producing natural gas is split between the various emissions units. Natural gas produced from wells is typically mixed with other gases, liquids, and hydrocarbon liquids; all of which is then sent to nearby separators, compressors, and other facilities for further processing. Ultimately, the natural gas is sent to compressor stations, such as the Frederick Compressor Station, for further processing and distribution. The fact that the process of producing natural gas is split between the various emission units does not appear to be in contest.

Fourth, in many cases a compressor station or other facility is located specifically to service a particular well field. Although the site of the Frederick Compressor Station is not addressed by the Division, it would be absurd to believe the facility was not sited in order to more effectively service and process the natural gas produced by wells in the Wattenberg natural gas field, including wells owned or under control by Anadarko.

In sum, despite the distance between some individual units, an oil and gas company's wells, condensate tanks, compressor stations, and other pollutant emitting sources within a particular project or field are often operated as one source or one facility (consistent with a common sense notion of "installation" or "plant"). From extraction to processing to distribution,

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<sup>7</sup> In this case, the reference to employees includes employees of Anadarko Petroleum and/or its subsidiaries.

the various sources are all engaged in the common enterprise of producing pipeline quality natural gas for sale—or as the Ninth Circuit has described, the sources represent “a continuum of oil and gas refining activities, from drilling to sale.” *MacClarence v. EPA*, 596 F.3d 1123, 1125 (9th Cir. 2010). The Division provides no information or analysis suggesting that the relationship between the Frederick Compressor Station and the oil and gas wells and associated equipment connected with the compressor station is otherwise.

Although citing prior EPA guidance on this matter, the Division makes no effort to apply this guidance in the context of the Frederick Compressor Station, or to explain how such guidance is not relevant for assessing the adjacency and/or contiguousness of the Frederick Compressor Station with other pollutant emitting activities. Instead, the Division seems to have rested its entire determination on an arbitrary assertion that the Frederick Compressor Station is not “exclusively” dependent on the oil and gas wells and other pollutant emitting activities connected to the compressor station, and vice-a-versa. As will be explained in the next section of this Petition, this “exclusively” dependent argument is not supported by prior EPA guidance and is counter to the requirements of PSD and Title V regulations. Regardless, the Administrator must object to the Frederick Compressor Station Title V Permit and the Division’s Response to Objection to the extent it fails to appropriately apply EPA guidance in justifying its source determination under PSD and Title V.

**2. EPA’s prior aggregation determinations, as well as PSD and Title V Regulations do not require complete an exclusive interdependence between sources for aggregation.**

The Division’s argument against aggregation is heavily, if not entirely, hitched to its beliefs regarding the degree of interdependence required for aggregation of oil and gas activities. The Division characterizes prior EPA aggregation determinations as demanding a “high level of connectedness and interdependence between two activities for EPA to consider them adjacent.” Exh. 3 at 21. In particular, the Division asserts that two sources must completely and exclusively rely on each other for aggregation to be appropriate:

[I]t appears that interdependence requires that the two activities rely on each other—not just that one activity relies on the other activity. In addition, reliance means that one activity cannot operate or occur without the other. If the activities operate independently or the activities do not act solely as a support operation for each other, the activities are generally not considered adjacent for source determination purposes.

Exh. 3 at 21. The Division also states:

[A] determination of interdependence requires that the two activities rely upon each other exclusively, i.e., one activity cannot operate without the other. The case-by-case determinations indicate that if activities operate independently and one activity does not act solely as a support operation for the other, the activities should not be deemed contiguous or adjacent.

*Id.* at 36–37.

The Division’s complete and exclusive interdependence theory underlies virtually its entire analysis of the Frederick Compressor Station. In particular, the Division relies on this theory to argue that aggregation is improper because in some circumstances—such as maintenance and repair shut-downs at a compressor station—a specific well might not *always* send gas to the closest compressor station. *See e.g.* Exh. 3 at 37 (stating that Kerr- McGee wells do not depend on the Frederick Compressor Station because “[s]hould the Frederick Station be shut down for maintenance, equipment replacement or other reasons, gas can flow to other compressor stations with available capacity based upon system pressures”). The Division states that because Anadarko’s wells and associated sources “are not *solely dependent*” on the Frederick Compressor Station, and likewise the Frederick Compressor Station “is not *solely dependent*” on particular Anadarko wells, the various Anadarko pollutant emitting activities are not interdependent. *Id.* at 38 (emphases added).

EPA has not taken the interdependence concept that far.<sup>8</sup> EPA applies a more sensible approach that does not require complete and exclusive interdependence. For example, the 1980 Preamble noted that a boiler providing process steam for two different sources should be aggregated with whichever source is the *primary recipient* of the boiler’s output. 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980). This would result in aggregation of the boiler with another source despite the fact that the boiler also provides process steam to a separate source.

A number of EPA’s prior determinations reinforce this approach. For example, EPA Region 10 found that two metal casting plants should be aggregated, where both plants produced castings and one plant then sent its castings to the main plant for coating and packaging. *See* Exh. 22. Thus, the main plant was not solely dependent on the other plant, since the main plant would produce, coat, and package castings regardless of the operations at the other plant. Region 10 found that these two sources should be aggregated, even though there was not complete and exclusive interdependence between them. Region 10 expressly determined that aggregating the two plants would approximate the common sense notion of “plant,” as the production of both plants comprised and supported the primary activity of the company: producing coated metal castings. *See id.* at 2.

Moreover, EPA has issued determinations aggregating a number of oil and gas sources without mentioning the Division’s “complete and exclusive interdependence” standard. *See e.g.*, Exh. 16, 17, 18. If complete and exclusive interdependence were required, one would expect the prior EPA determinations to have mentioned how exceptional their findings were. They did not.

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<sup>8</sup> In an isolated decision that appears heavily influenced by industry, EPA Region 8 seems to have recently relied on the “exclusively dependent” standard to reject aggregating connected oil and gas wells with BP’s Florida River Compression Facility in the San Juan Basin of southwestern Colorado. *See* Letter from Callie Videtich, EPA Region 8 Air Program Director to John D. Lowe, Deputy Florida Operations Manager, BP America Production Company, in re: BP America Production Company Florida River Compression Facility Title V Permit—Renewal #1, #V-SU-0022-05.00 (Oct. 18, 2010). This decision, which is curiously and extremely anomalous and inconsistent among EPA’s source determination guidance, suffers from the same flaws as identified in this Petition. Furthermore, it appears as if EPA erroneously perceived that it was asked to aggregate every single well in the San Juan Basin with BP’s Florida River Compression Facility. The EPA’s erroneous views and its permitting decision will be challenged before the Environmental Appeals Board.

Rather than a complete and exclusive interdependence test, prior EPA determinations focus more broadly on whether one source *regularly* supports the operation of the other, thus approximating a common sense notion of “plant.” As noted above, Region 8 has identified four factors for determining whether activities are contiguous or adjacent. In that analysis, which the Division failed to address in its Response to Objection, EPA looked to whether activities occurred “routinely,” or “frequently” enough to conclude that they are operated in effect as a single source. *See* Exh. 27 at 13–14.

Other EPA determinations are similar: they focus on whether two operations are functionally interdependent under normal operations, and whether one produces an intermediate product for the other. They do not require that both sources *solely and exclusively* support each other under all operating conditions. *See e.g.* Exh. 22 at 2 (explaining that one key factor in aggregating sources is whether one source supports “the *primary* product or activity of a company or operation” at another source) (emphasis added); Exh. 20 at 1; *see also*, Exh. 17 (aggregating each natural gas pipeline compressor station with its associated wells, storage tanks, etc.).

The policy goals underlying the three-part aggregation test also do not require complete and exclusive interdependence. Where an energy company routinely transfers natural gas from a set of wells to a particular compressor station that the company constructed to service those wells, the operation fits within the ordinary meaning of “installation” and “plant.” Moreover, the wells produce an intermediate product that is processed into pipeline-quality natural gas. These compressor stations, wells and other equipment continue to fit the ordinary meaning of an “installation” or “plant,” even if the company may direct gas from the wells elsewhere when the compressor station is temporarily closed for maintenance or other reasons. The Division does not address this fact in its analysis, a fatal flaw.

The flaws in the Division’s complete and exclusive interdependence requirement can also be seen by considering a paradigmatic “plant” that consists of two adjacent buildings separated by only a public road. If the two plant buildings operate several different emissions units, all responsible for different phases of producing the plant’s end product, it is indisputable that the emissions units should be aggregated, as the court in *Alabama Power* noted. *See* 636 F.2d at 397 (stating that “Congress clearly envisioned that entire plants could be considered to be single ‘sources,’” because the statute itself states that entire plants, such as iron and steel mill plants, would be a single source).

Different emissions units in that plant, however, may not meet the Division’s complete and exclusive interdependence theory. For example, an emissions unit in one building may produce an intermediate product that is transferred to the other building for subsequent steps in the production process. If the intermediate unit will be shut down for maintenance or repairs, the company will commonly obtain the intermediate product elsewhere to ensure that the production process is not interrupted. Under the Division’s reasoning, however, such reasonable operational measures would prevent the aggregation of the intermediate source with plant’s sources, as there would be a *chance* that some sources in the plant *might* rely on outside sources or products at certain times. Clearly, these contingency measures do not prevent this hypothetical plant from approximating the common sense notion of a “plant” and passing the three-part aggregation test.

The disconnect between EPA's regular support analysis, and the complete and exclusive interdependence theory, highlights a major gap in the Division's argument: it never identifies the frequency of the maintenance and repair shut-downs on which it relies. Nor does it identify how much gas flows to the Frederick Compressor Station from particular wells under regular operations.

This omission is significant because it appears that under regular operations, the production of numerous Anadarko wells flows to the Frederick Compressor Station. Indeed, Anadarko forthrightly discloses that 40% of the gas processed by the Frederick Compressor Station comes from Anadarko wells (*see* Exh. 15 at 9), indicating that there is a substantial interdependence, if not a high level of interdependency, between the compressor station and the Anadarko wells that provide 40% of the supply of natural gas for the compressor station.<sup>9</sup> This is bolstered by the fact that Kerr-McGee Gathering, a subsidiary of Anadarko, has entered into Gas Gathering Agreements with Kerr-McGee Oil and Gas Onshore, also a subsidiary of Anadarko. *Id.* at 4-5. Furthermore, based on Anadarko's response to the Division, it appears as if the very wells producing this gas can be identified. As the company states:

Because of hydraulics the wells tied to the gathering system near the Frederick Compressor Station will preferentially flow to that station. Theoretically, if a well was located exactly in the middle of two stations on the system, flow from that well would split equally between the stations, assuming that pipe length, pipe diameter, and gathering pressures are equal.

*Id.* Thus, it appears not only possible to quantify the amount of gas flowing to the Frederick Compressor Station from Anadarko's wells, but possible to identify the wells producing this gas. In this case, it appears that an assessment of well location in relation to the Frederick Compressor Station and other compressor stations can reveal which Anadarko wells feed the Frederick Compressor Station on a regular basis. An assessment of pipe length, diameter, and gathering pressure could lead to a more precise identification of such wells. Regardless, it is possible for the Division to assess how much gas flows to the Frederick Compressor Station from Anadarko's wells for purposes of identifying which wells regularly support the operations of the Frederick Compressor Station, and therefore also depend on the compressor station.

Perhaps most troubling is the logical extension of the Division's complete and exclusive interdependence arguments. Indeed, the Division seems to be making an argument that the Frederick Compressor Station could operate even if natural gas wells are not feeding the facility and conversely, that the natural gas wells could somehow operate without being connected to a compressor station. The Division states that, "a determination of interdependence requires that the two activities rely upon each other exclusively; i.e., one activity cannot operate or occur without the other." Exh. 3 at 36. Based on this logic, the Division seems to be making an argument that the Anadarko wells that provide 40% of the Frederick Compressor Station's

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<sup>9</sup> There is likely to be interdependence with other wells that feed the Frederick Compressor Station that are under common control, rather than ownership, by Anadarko. Unfortunately, the Division did not assess whether a common control relationship exists between the Frederick Compressor Station and third-party wells feeding the compressor station.

natural gas could operate independently. Yet this is absurd. A natural gas well cannot produce unless it is connected to a compressor station.<sup>10</sup> Furthermore, the Frederick Compressor Station clearly depends on the natural gas produced from wells in the vicinity, including the 40% of its input produced by Anadarko wells, otherwise it would not operate. Although the Division may argue the nature of interdependency between the Frederick Compressor Station and oil and gas wells in the vicinity, *fundamentally, a relationship of interdependence exists*. Simply because the Division made no reasonable effort to discern the bounds of this interdependency to ensure an accurate source determination is no grounds for upholding the Title V Permit and the Response to Objection. The Division's failure to perform the analysis necessary to ascertain the nature of interdependence does not support a finding that no interdependency whatsoever exists, as the Division claims, particularly when the facts in this case indicate some level of interdependency clearly exists.

In sum, aggregating oil and gas sources does not require that the sources be *completely and exclusively* interdependent. Instead, EPA guidance on the matter, as well as the common sense notion of plant embodied by the EPA's PSD regulations, demonstrates that oil and gas sources should be aggregated if they *regularly* support one another in the production of pipeline quality oil and gas. The Division's reliance on a standard of "complete and exclusive interdependence" is unsupported and the Administrator must object to the Title V Permit and the Response to Objection over its failure to accurately determine the permitted source.

**3. The prohibition on aggregation of oil & gas sources in Clean Air Act section 112 demonstrates Congress's intent that oil & gas sources be aggregated, where appropriate, for PSD and Title V purposes.**

The Division finally claims that it is "significant" that § 112 of the Clean Air Act, which addresses hazardous air pollutants, prohibits the aggregation of oil and gas sources to determine whether a source is a major source for HAPs. *See* Exh. 3 at 23. The Clean Air Act at Section 112(n)(4)(A) states that "emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units," regardless of whether they are contiguous or under common control, in a determination of whether the oil and gas units are major sources for HAP purposes under § 112.

Section 112(n)(4)(A) is indeed significant, but for the opposite reason suggested by the Division. It demonstrates that Congress was aware of the issue of aggregating oil and gas sources and it determined that aggregation was only inappropriate for purposes of regulating stationary sources of HAPs. As the U.S. Supreme Court has explained, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Dean v. United States*, 129 S. Ct. 1849, 1854 (2009) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006) ("A familiar principle of statutory construction . . . is that a negative inference may be drawn

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<sup>10</sup> And importantly, cannot send gas to a compressor station without entering into a Gas Gathering Agreement. *See* Exh. 15 at 3-4.

from the exclusion of language from one statutory provision that is included in other provisions of the same statute.”). By expressly prohibiting the aggregation of oil and gas sources for HAP purposes only, Congress demonstrated its intention that oil and gas sources should be aggregated, where appropriate, under other provisions of the Clean Air Act. Thus, the Division’s reference to Section 112 is inapposite to its position. The Administrator must object to the Frederick Compressor Station Title V Permit and the Division’s Response to Objection to the extent it relies on Section 112 of the Clean Air Act to justify its source determination under PSD and Title V.

## CONCLUSION

In its response, the Division states that “EPA should allow a reasonable amount of discretion to the Division in making [the adjacency] determination and similar determinations.” Exh. 3 at 15. The Division’s misinterpretation of the applicable three-part aggregation test, however, cannot be justified as an exercise of agency discretion. The Division’s approach violates the Clean Air Act by allowing major stationary sources to escape numerous pollution control and permitting requirements under PSD and Title V.

Congress vested EPA with an “expansive surveillance role” and “explicit and sweeping authority to enforce Clean Air Act ‘requirements’” to ensure that states meet all PSD requirements. *See Alaska Dep’t of Environmental Conservation v. EPA*, 540 U.S. 461, 486, 490 (2004). While the Division has some flexibility in carrying out the administration of its delegated programs, it cannot violate the Clean Air Act. *See e.g.* 42 U.S.C. § 7410(a).

The Division’s response conflicts with EPA’s long-standing interpretation of the Clean Air Act and its implementing regulations. Indeed, EPA objected to the Frederick Compressor Title V Permit in the first place because the failure to adequately analyze aggregation was inconsistent with the Clean Air Act. The Division’s current response, while longer, is no more adequate than its earlier efforts and the Administrator must object.

For the aforementioned reasons, WildEarth Guardians requests, for the third time, that the Administrator object to the Title V Permit issued by the Division for Anadarko Petroleum Corporation’s Frederick Compressor Station, as well as the Division’s Response to Objection. As thoroughly explained, the Title V Permit fails to assure compliance with PSD and Title V Permit requirements because it is not based on an accurate source determination. The Division continues to fail to appropriately assess whether adjacent pollutant emitting activities, namely the oil and gas wells and associated equipment that feed the Frederick Compressor Station, should be aggregated together as a single source. The Administrator thus has a nondiscretionary duty to issue an objection to the Title V Permit within 60 days in accordance with section 505(b)(2) of the Clean Air Act.

Respectfully submitted this 3<sup>rd</sup> day of November 2010

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## TABLE OF EXHIBITS

1. Kerr-McGee Gathering LLC, Frederick Compressor Station Title V Permit, Permit Number 95OPWE035 (January 1, 2007).
2. Technical Review Document for Renewal of Operating Permit 95OPWE035 (January 1, 2007) and Technical Review Document Addendum (April 28, 2008).
3. Division Response to October 8, 2009 Objection by the Administrator (July 14, 2010), without exhibits.
4. *In the Matter of Kerr-McGee/Anadarko Petroleum Corporation, Frederick Compressor Station*, Petition VIII-2008-02 (Order on Petition) (October 8, 2009).
5. Letter from Callie A. Videtich, EPA Region 8, to Jeremy Nichols, WildEarth Guardians, In re: Opportunity to Petition on Colorado's Response to EPA's October 8, 2009 Anadarko Frederick Administrative Order (Oct. 18, 2010).
6. Letter from Callie A. Videtich, EPA Region 8, to Korby Bracken, Anadarko Petroleum, In re: Application for Federal Clean Air Act Title V Operating Permit for the Frederick Compressor Station (Feb. 16, 2010).
7. "Wattenberg gathering system," Anadarko Petroleum, website available at <http://www.anadarko.com/Midstream/Pages/Wattenberg.aspx#overview> (last visited Nov. 2, 2010).
8. Jaffe, M., "Anadarko plans 450 new Wattenberg wells this year," *Denver Post* (March 3, 2010).
9. Jackson, B., "Weld County on verge of another oil boom," *Greeley Tribune* (March 22, 2010).
10. Rodriguez, M.A., et al., "Regional Impacts of Oil and Gas Development on Ozone Formation in the Western United States," *Journal of the Air and Waste Management Association*, Vol. 59, 1111-1118 (September 2009) at 1118, available at [http://www.wrapair.org/forums/amc/meetings/091111\\_Nox/Rodriguez\\_et\\_al\\_OandG\\_Impacts\\_JAWMA9\\_09.pdf](http://www.wrapair.org/forums/amc/meetings/091111_Nox/Rodriguez_et_al_OandG_Impacts_JAWMA9_09.pdf) (last visited Nov. 2, 2010).
11. Division, "Oil and Gas Exploration and Production Emissions Sources," Presentation to Colorado Air Quality Control Commission (May 15, 2008).
12. Letter from Earthjustice to Callie Videtich, Director, EPA Region 8 Air Program in re: Oil and Gas Aggregation – Comments on CDPHE's July 14, 2010 Response Regarding the Title V Operating Permit for Kerr-McGee's Frederick Compressor Station (Oct. 7, 2010).

13. Memo from Gina McCarthy, EPA Assistant Administrator for Air and Radiation to Regional Administrators, “Withdrawal of Source Determinations for Oil and Gas Industries” (September 22, 2009).
14. Letter from Richard R. Long, Director, Region 8 Air Program to Lynn R. Menlove, Manager, Utah Div. of Air Quality, New Source Review Section, at 1–2 (Aug. 8, 1997).
15. Letter from Korby Bracken, Manager Air Quality, Kerr-McGee Gathering LLC to Roland Hea, Permitting Section Supervisor, Colorado Department of Public Health and Environment, Air Pollution Control Division, in re: Kerr-McGee Gathering LLC Frederick Compressor Station—Request for Information Colorado Operating Permit No. 95OPWE035 (Feb. 4, 2010).
16. Letter from Richard R. Long, Dir., Region 8 Air and Radiation Program, to Lee Ann Elsom, Environmental Coordinator, Citation Oil & Gas Corp. (Dec. 9, 1999).
17. Letter from Richard R. Long, Dir., Region 8 Air and Radiation Program, to Jack Vaughn, EnerVest San Juan Operating Co. (July 8, 1999).
18. Letter from William B. Hathaway, Director, Region 6 Air, Pesticides, and Toxics Division, to Allen Eli Bell, Executive Director, Texas Air Control Board (Nov. 3, 1986).
19. Letter from Cheryl Newton, Director, Air and Radiation Division, EPA Region 5 to Scott Huber, Summit Petroleum Corporation (Oct. 18, 2010).
20. Letter from Richard R. Long, Director, Region 8 Air and Radiation Program, to Dennis Myers, Construction Permit Unit Leader, Colorado Department of Public Health and Environment (April 20, 1999).
21. Letter from Douglas E. Hardesty, Manager, Region 10 Federal and Delegated Air Programs, to John Kuterbach, Chief, Alaska Department of Environmental Conservation (Aug. 21, 2001).
22. Letter from Joan Cabreza, Permits Team Leader, Region 10 Office of Air Quality, to Andy Ginsberg, Manager, Oregon Department of Environmental Quality (Aug. 7, 1997).
23. Memorandum from Edward E. Reich, Director, Division of Stationary Source Enforcement, to Clyde B. Eller, Director, Region 9 Enforcement Division (May 16, 1980).
24. Memorandum from Robert G. Kellam, Acting Director, OAQPS, to Richard R. Long, Director, Region 8 Air Program (Aug. 27, 1996).

25. Memorandum from Steve Rothblatt, Chief, Region 5 Air Programs Branch, to Edward E. Reich, Director, Stationary Source Enforcement Division (June 8, 1981).
26. Letter from Winston A. Smith, Dir., Region 4 Air, Pesticides and Toxics Management Division, to Randy C. Poole, Air Hygienist II, Mecklenburg County Department of Environmental Protection (May 19, 1999).
27. Letter from Richard R. Long, Director, Region 8 Air Program, to Lynn Menlove, Manager, New Source Review Section, Utah Division of Air Quality (May 21, 1998).