

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

IN THE MATTER OF)	
)	
Clean Air Act Title V Permit (Renewal))	
)	
Issued to DCP Operating Company, LP)	
for the Platteville Natural Gas Processing)	Title V Permit No. 02OPWE252
Plant)	
)	
Issued by the Air Pollution Control Division)	
of the Colorado Department of Public Health)	
and Environment)	
)	

**Petition to Object to Colorado Title V Permit No. 02OPWE252
for the Platteville Natural Gas Processing Plant**

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2. Troutman Pepper Hamilton Sanders LLP as Special Assistant Attorneys General for the State of Colorado, *Public Report of Independent Investigation of Alleged Non-Enforcement of National Ambient Air Quality Standards by the Colorado Department of Public Health and Environment* (Sept. 22, 2021).
3. EPA, *EPA Region 8 Review of EPA's Office of Inspector General Hotline Complaint No. 2021-0188* (July 2022).
4. Center for Biological Diversity, *Comments on Draft Title V Operating Permit No. 02OPWE252 for DCP Operating Company, LP – Platteville Natural Gas Processing Plant – Weld County* (May 3, 2023).
5. Division, *Stack Tests for Enclosed Combustion Devices* (Jan. 2022).
6. EPA, *EPA Region 8, Wyoming Department of Environmental Quality, Measuring Enclosed Combustion Device Emissions Using Portable Analyzers* (May 14, 2020).
7. Email from Christopher LaPlante, CDPHE, to Jennifer Mattox, CDPHE, et al., *Fwd: Measuring Enclosed Combustion Device Emissions Using Portable Analyzers – Results Phase 1* (June 8, 2020).
8. Dr. Ranajit Sahu, *Technical Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30*.
9. EPA, *Parameters for Properly Designed and Operated Flares, Report for Flare Review Panel* (Apr. 2012).
10. Division, *Technical Review Document for Operating Permit 170PJA401: SandRidge Exploration and Production – Bighorn Pad* (Jan. 1, 2020).
11. Division, *Compliance Advisory Case Nos. 2022-104 – 2022-108* (Aug 3, 2022).
12. Letter from Operating Permit Unit, Division, to Ryan Maher, Center for Biological Diversity, *Response to Comments on Draft Renewal Operating Permit* (June 6, 2023).
13. EPA, *EPA Region 8 – Title V Operating Permit Public Petition Deadlines* (accessed Sept. 12, 2023).
14. Division, *Operating Permit DCP Operating Company, LP, Platteville Natural Gas Processing Plant* (Aug. 1, 2023).

15. Division, *Technical Review Document for Renewal of Operating Permit 02OPWE252* (Aug. 1, 2023).
16. Division, *Facility and Project Information Submittal Form for Modeling Requirements Determination, Form APCD-114* (Feb. 21, 2023).
17. Division, *Interim Colorado Modeling Guideline for Air Quality Permits* (Oct. 2021).
18. Declaration of Chris Colclasure, DC Circuit Case No. 21-1263 (Feb. 4, 2022).
19. Mountain Coal Company, LLC, *West Elk Mine: Permit No. 09GUI382 APENS and Permit Modification Request* (Jan. 16, 2020).
20. EPA, *Response to Comments for the Federal Register Notice on Air Plan Approval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, Dkt. No. EPA-R08-OAR-2022-0632* (Apr. 25, 2023).

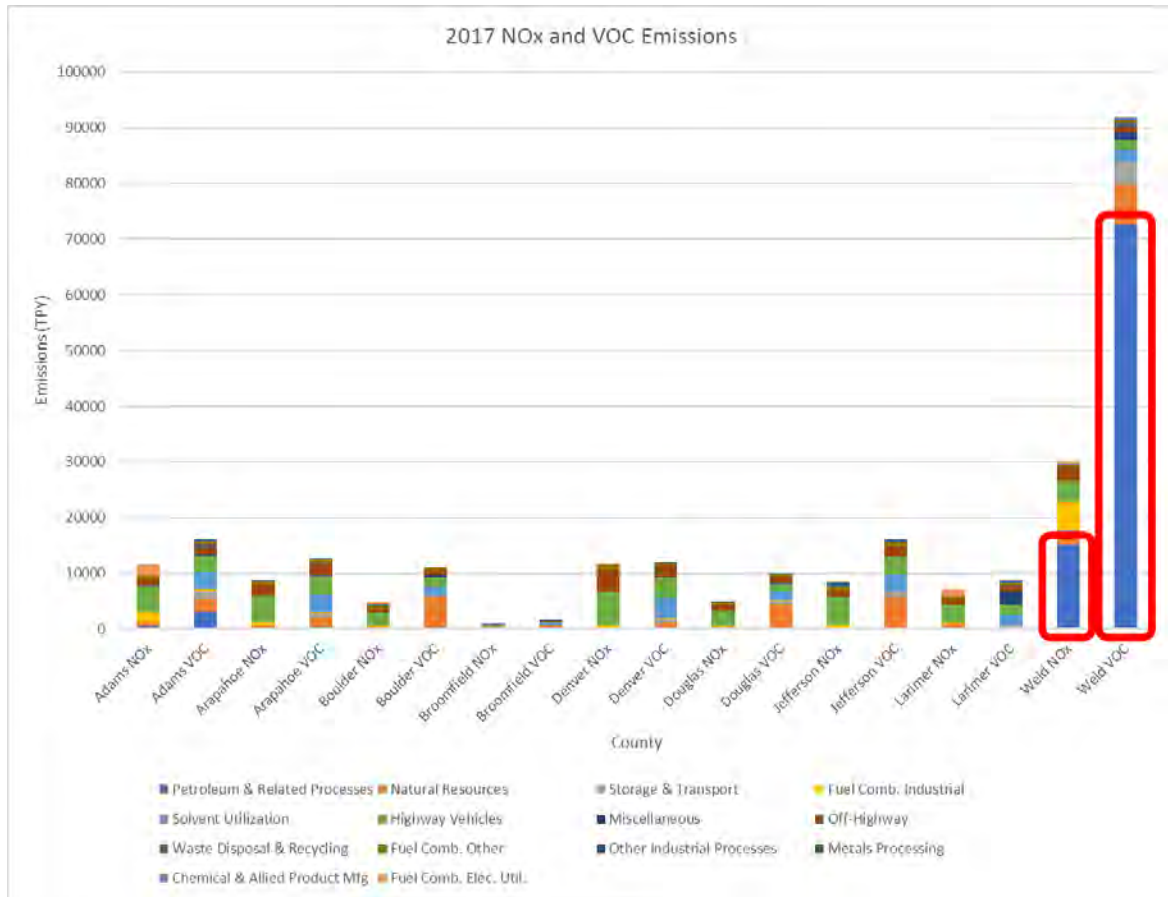
INTRODUCTION

Pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Center for Biological Diversity (“Center”) respectfully petitions the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to object to renewal Title V Permit No. 02OPWE252 (“Permit”) issued by the Air Pollution Control Division (“Division”) of the Colorado Department of Public Health and Environment (“CDPHE”) for the Platteville Natural Gas Processing Plant (“Platteville Plant” or “Facility”).

The Platteville Plant extracts liquids from field-produced fossil gas and compresses the treated gas for transmission via pipeline. The Facility releases large amounts of volatile organic compounds (“VOC”) and nitrogen oxides (“NO_x”) emissions, which can harm human health and are also precursors to ground-level ozone and particulate matter less than 2.5 microns in diameter. The Facility is a major source for carbon monoxide and emits other pollutants that harm public health and welfare in several ways, including causing premature mortality. The Facility also releases a variety of hazardous air pollutants.

The Facility is located in Weld County, Colorado, which is part of the Denver Metro/North Front Range ozone nonattainment area. This area, home to over three-and-a-half million people as well as spectacular natural areas like Rocky Mountain National Park, has been in violation of EPA’s national ambient air quality standards (“NAAQS”) for over a decade and a half. In other words, there are high school students who have lived their whole lives suffering from ozone levels above EPA’s health- and welfare-based standards. Oil and gas industry facilities in Weld County, including the Facility at issue in this petition, are the reason the Denver Metro/North Front Range area is a severe nonattainment area for the 2008 ozone

NAAQS and a moderate, but soon to be serious, nonattainment area for the 2015 ozone NAAQS. Data from EPA’s 2017 National Emission Inventory, shown below, makes this very clear.



The Division has issued thousands and thousands of air pollution permits for sources of ozone precursor emissions over the past 15 years in the Denver Metro/North Front Range ozone nonattainment area. All of them have been minor source permits. See Declaration of Chris Colclasure, DC Circuit Case No. 21-1263, at 3 (Feb. 4, 2022) (an attorney for the oil and gas industry, and former Planning and Policy Program Manager with the Division, confirming: “The Division has never issued a nonattainment NSR permit to a major source of VOCs or NOx in the Denver Metro/North Front Range ozone nonattainment area since it was established in 2007,”

and stating “I confirmed this fact with Division permitting staff on February 3, 2022.”). In other words, the Division has not issued any major nonattainment new source review permits, which, among other important protections, would have to include emission offsets. The minor source permits the Division issues do not require emission offsets. If the Division keeps permitting more and more pollution in the Denver Metro/North Front Range nonattainment area, the area is not going to come into attainment with the ozone NAAQS.

The Division’s minor source permits’ emission limits, to the extent they exist, are not enforceable as a practical matter. Nor does the Division have a rational basis to determine that the pollution authorized by the minor source permits does not cause or contribute to a violation of a national ambient air quality standard, in particular the 2010 1-hour NO_x NAAQS.

The EPA Inspector General has found that EPA is not providing sufficient oversight of states’, including Colorado’s, minor source permitting programs. *See* US EPA Inspector General, *Improving Air Quality: EPA Should Conduct More Oversight of Synthetic Minor-Source Permitting to Assure Permits Adhere to EPA Guidance*, Report No. 21-P-0175 (July 8, 2021) (attached as Exhibit 1). This Title V petition provides EPA with an opportunity to live up to the commitments it made to the Inspector General’s office to increase its oversight of synthetic minor source permitting, because this proposed Title V permit incorporates conditions from synthetic minor construction permits.

Colorado also retained special assistant attorneys general to investigate the Division’s implementation of the NAAQS protection provisions of the minor source permitting program. *See* Troutman Pepper Hamilton Sanders LLP, *Public Report of Independent Investigation of Alleged Non-enforcement of National Ambient Air Quality Standards by the Colorado Department of Public Health and Environment* (Sept. 22, 2021) (hereinafter “Troutman Report”)

(attached as Exhibit 2). Unfortunately, Colorado’s investigators, Troutman Pepper Hamilton Sanders, is a large law firm which represents polluters, including polluters who hold minor source permits. However, even a law firm representing minor source permit holders could not miss the glaring flaws in Colorado’s implementation of its minor source permitting program. The Troutman Report found “CDPHE’s decision to rely solely on EPA’s permitting threshold for existing major sources in determining whether to model minor sources left CDPHE without a well-supported policy for ensuring minor source permits would not exceed a NAAQS” and “CDPHE issued permits with unaddressed modeled NAAQS exceedances.” Ex. 2 at 2, 32-33.

PROCEDURAL BACKGROUND

The Center submitted timely comments¹ on the draft permit during the public comment period, which closed on May 3, 2023. The Division responded to public comments² and issued the proposed Permit. The Division forwarded the proposed Permit to EPA for its 45-day review period, which ended without EPA objecting. The Public Interest Groups submit this petition within 60 days of the close of EPA’s 45-day review period—September 19, 2023³—as required by 42 U.S.C. § 7661d(b)(2).

PETITIONER

Petitioner Center for Biological Diversity (“the Center”) is a nonprofit, 501(c)(3) conservation organization. The Center’s mission is to ensure the preservation, protection, and

¹ Petitioner Center’s comments on the draft permit is attached as Exhibit 4.

² The Division’s response to the Center’s comments is attached as Exhibit 12.

³ EPA, *EPA Region 8 – Title V Operating Permit Public Petition Deadlines*, at 2 (accessed Sept. 12, 2023), https://www.epa.gov/sites/default/files/2020-08/documents/title_v_operating_permit_public_petition_deadlines_-_region_8.pdf (Ex. 13).

restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us. The Center has more than 89,000 members, including over 3,100 members in Colorado.

GENERAL TITLE V PERMITTING REQUIREMENTS

The Clean Air Act prohibits qualifying stationary sources of air pollution from operating without, or in violation of, a valid Title V permit, which must include conditions sufficient to “assure compliance” with all applicable Clean Air Act requirements. 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). “Applicable requirements” include all standards, emissions limits, and requirements of the Clean Air Act. 40 C.F.R. § 70.2. Congress intended for Title V to “substantially strengthen enforcement of the Clean Air Act” by “clarify[ing] and mak[ing] more readily enforceable a source’s pollution control requirements.” S. Rep. No. 101-228, at 347, 348 (1990), *as reprinted in* A Legislative History of the Clean Air Act Amendments of 1990, at 8687, 8688 (1993). As EPA explained when promulgating its Title V regulations, a Title V permit should “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1).

Under the Clean Air Act, “any person” may petition EPA to object to a proposed permit “within 60 days after the expiration of [EPA’s] 45-day review period.” 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8. Each objection in the petition must have been “raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” 40 C.F.R. § 70.8(d). Any objection included in the petition “must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements [of 40 C.F.R. Part 70].” 40 C.F.R. § 70.12(a)(2).

Upon receipt of a petition, EPA “*shall* issue an objection within [60 days] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b)(2) (emphasis added); *see also* 40 C.F.R. § 70.8(c) (“The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.”). When deciding whether a petitioner has met this demonstration requirement, EPA will evaluate the entirety of the permit record, including the statement of basis and response to comments. *See* Order Responding to Petition Requesting Objection to the Issuance of Title V Operating Permit, *In re Valero Refining-Texas, L.P.*, Petition No. VI-2021-8, 2022 EPA CAA Title V LEXIS 15, at *10–11 (June 30, 2022).

GROUNDINGS FOR OBJECTION

For the reasons set forth below, the Permit fails to comport with the Clean Air Act. All of the issues discussed below were raised in comments on the draft permit.

I. The Permit unjustifiably assumes a control efficiency of 95 percent for control devices, without proper testing, monitoring, and reporting to assure compliance with Section II, Conditions 3.1.1.2 and 5.1.1.2, and despite evidence to the contrary.

Title V permits must include testing, monitoring, reporting, and recordkeeping requirements sufficient to assure that the permitted source complies with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1); 5 C.C.R. § 1001-5, Part C, V.C.1, V.C.5, & V.C.16.a. Procedures for determining compliance must be “sufficiently reliable” for determining compliance. 42 U.S.C. § 7661c(b); *see also* 40 C.F.R. § 70.6(a)(3). A Title V permit must also contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit[.]” 40 C.F.R. § 70.6(a)(3)(i)(B); *see also* 40 C.F.R. § 70.6(c)(1). Where a Title V permit fails to require sufficient monitoring to assure compliance, the permit cannot provide the information necessary to determine whether a source is in compliance and is therefore unenforceable as a practical matter, contrary to Title V of the Clean Air Act. *See* 42 U.S.C. § 7661c(a) (stating that Title V permits shall include “enforceable emission limitations and standards”).

As discussed on pages 1 through 3 of the Center’s comments on the Platteville Plant’s draft permit, Ex. 4 at 1-3, the Permit does not comply with these requirements, that is, it lacks testing, monitoring, reporting, and recordkeeping sufficient to assure compliance because Section II, Condition 3.1.1.2, on page 61 of Ex. 14, simply assumes that the enclosed combustion device serving the ethylene glycol dehydration unit (AIRS ID 009) achieves 95% control

efficiency without any enforceable testing or monitoring as well as recordkeeping and reporting of the control efficiency. Section II, Condition 3.1.1.2 is meant to achieve compliance with the monthly and annual VOC mass emission limits in Section II, Condition 3.1. However, Section II, Condition 3.1.1.2 is also an independently enforceable emission limit of 95% VOC control efficiency for the enclosed combustion device. *See* Ex. 14 at 2, Section I, Condition 1.4 (“**All** conditions in the permit are enforceable by ... citizens”) (emphasis added).

Likewise, Section II, Condition 5.1.1.2, on page 83 of Ex. 14, simply assumes that the facility flare (AIRS ID 024) that controls facility-wide process emissions, achieves 95% control efficiency without any enforceable testing or monitoring as well as recordkeeping and reporting of the control efficiency. Section II, Condition 5.1.1.2 is meant to achieve compliance with the monthly and annual VOC mass emission limits in Section II, Condition 5.1. However, Section II, Condition 5.1.1.2 is also an independently enforceable emission limit of 95% VOC control efficiency for the enclosed combustion device. *See* Ex. 14 at 2, Section I, Condition 1.4.

The Permit cannot presume that control devices will operate with a control efficiency of 95 percent without any testing, monitoring, recordkeeping and reporting of control efficiency throughout the lifetime of the device. *See* 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1); 57 Fed. Reg. 32,250, 32,251 (July 21, 1992) (Title V permits should “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.”); *see, e.g.,* Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, 2012 EPA CAA Title V LEXIS 5, at *51–56 (June 22, 2012); Colorado Regulation No. 3, Part C, Section V.C.5.b. In incorporating these defective conditions into the Permit, the Division was well aware that enclosed combustion devices, or ECDs, at oil and gas

production facilities can have actual control efficiencies of less than 95 percent. For instance, direct measurement of enclosed combustion devices showed that at Bonanza Creek’s Wetco Farms A-4 well pad (“Wetco Farms”), ECD-1 Load-out had a control efficiency of 68.61 percent, while ECD-1 had a control efficiency of 76.50 percent. *See* Division, *Stack Tests for Enclosed Combustion Devices* (Jan. 2022) (Ex. 5).⁴ ECD-2 at this oil and gas well pad had an actual control efficiency of 90.73 percent and the control efficiency for ECD-2 Load-out was 92.17 percent. *See id.*

The problem also extends to different companies using different makes and models of enclosed combustion devices. For example, the enclosed combustion device at another well pad, PDC Energy’s Troudt 18-27 Pad SE (“Troudt”), had a control efficiency of 93.04 percent when tested. *See id.* Thus, the Division’s own empirical evidence rebuts its presumed 95% control efficiency.

Even if the Division had argued that the Wetco Farms and Troudt flares failed to achieve 95% control because they were not being operated properly, rather than the flares being defective or damaged,⁵ these violations of the 95% control efficiency requirement were found by direct testing. Thus, the monitoring and reporting requirements the Division relies upon to show

⁴ The Division created Ex. 5 which is a summary of the results of enclosed combustion device test results and provided it to the Center for Biological Diversity in response to a request under the Colorado Open Records Act. It is worth noting, although certainly not necessary for proving the point, that as far as the Center is aware, all of these tests were performed when the enclosed combustion devices were new or almost new, which likely biased the results to higher control efficiencies because the devices had not yet endured the “wear and tear” from Colorado’s extreme weather.

⁵ The Division did not make this argument in its response to comments, but it has made this argument in other contexts when the Center presented these stack tests as evidence of flares failing to achieve 95% control.

compliance failed to reveal the violations, and it took testing to reveal the flares were not being operated properly.

Further, EPA Region 8 and the Wyoming Department of Environmental Quality (“Wyoming DEQ”) produced a report based on results from a large study of ECD combustion efficiency. EPA and Wyoming DEQ found:

The “as found” ECDs were observed to be operating over a wide range of combustion efficiencies ranging from below 20% to above 99%. Further optimization testing was conducted on each ECD where the ECD’s operational setup modified by opening and closing air inlet dampers, adjusting heat load and restricting burner availability. Optimization testing revealed that depending on the operational setup, ECD combustion efficiency can be affected by as little as 2% to more than 80%. This observation emphasizes the value of site-specific “spot checking” of ECDs because test conditions/operational setup can dramatically affect individual ECD performance.

EPA, Region 8, Wyoming DEQ, *Measuring Enclosed Combustion Device Emissions Using Portable Analyzers*, at 9 (May 14, 2020) (Ex. 6).

The Division was fully aware of this, including the fact that some control equipment destroys less than 20 percent of VOCs, when developing the Permit. *See* Email from Christopher LaPlante, CDPHE, to Jennifer Mattox, CDPHE, et al., *Fwd: Measuring Enclosed Combustion Device Emissions Using Portable Analyzers – Results Phase 1*, at 1–2 (June 8, 2020) (Ex. 7). Yet the Division still relied on simple assumptions to presume compliance. In fact, the very nature of these control devices, with their lack of control over key parameters like temperature and residence time, and the variable composition of the gas being combusted, means that assumptions about control efficiency are invalid. *See, e.g.*, Dr. Ranajit Sahu, *Technical Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30*, at 2–5 (Ex. 8). However, the Permit still contains the assumption that control devices will operate with a control

efficiency of 95 percent throughout their lifetime, under all conditions, without including any testing and monitoring of the control efficiency to assure compliance with that assumption.

It is true that Section II, Condition 3.1.1.2 of the Permit requires compliance with Conditions 3.9, 3.11.1.1, and 3.11.2.1,⁶ and Section II, Condition 5.1.1.2 of the Permit requires compliance with Section II, Conditions 5.7 and 5.8, in order to presume that the flares have achieved 95% control efficiency. Ex. 14 at 61, 83. However, as explained in more detail below, none of these Conditions are enforceable requirements for monitoring or testing the control efficiency of the ECD serving the dehydration unit, or the facility flare. They do not produce any quantitative data of what percentage control efficiency the flare is working at. Thus, Section II, Conditions 3.1.1.2 and 5.1.1.2 in the Permit lack monitoring, testing, recordkeeping, and reporting to assure compliance.

Section II, Condition 3.9.1 requires that the ECD serving AIRS ID 009 is not relevant to the issue of compliance by the ECD because it addresses the closed loop system recycling flash gas emissions, which are allegedly closed loop and control 100% of the emissions, and thus these emissions are not routed to the ECD. Ex. 14 at 68.

Section II, Condition 3.9.2 requires a daily inspection of the ECD to ensure that the valves for the piping from the dehydration unit still vent to the ECD are open. Ex. 14 at 69. However, ensuring that valves are open does not have bearing on whether the ECD is operating with a 95% destruction efficiency, it simply indicates that gas from the dehydration unit is reaching the ECD. This requirement could be met even if the ECD did not have a pilot light,

⁶ Although the Permit does not specify, we assume Section II, Condition 3.1.1.2 is referring to Section II, Conditions 3.9, 3.11.1.1 and 3.11.2.1 as opposed to another section of the Permit. We apply the same assumption to Section II, Condition 5.1.1.2's reference to Conditions 5.7 and 5.8.

with zero combustion taking place, and accordingly does not assure compliance with the 95% control efficiency requirement.

Section II, Condition 3.9.3—and Condition 5.7.2 for the facility flare (AIRS ID 024) set forth an operations and maintenance (“O&M”) requirement for the pilot light to be present at all times. Ex. 14 at 69, 87; *see also* Ex. 14 at 170, App. G(II)(b) (Compliance Assurance Monitoring Plan – EG Dehydration Unit). But the presence of the pilot light does not tell us anything about the control efficiency other than that it is not zero percent. As these conditions themselves acknowledge, without a pilot light there is no combustion in the ECD and thus the control efficiency in the ECD is zero. *Id.* But knowing that the control efficiency is not zero provides no information, much less assurance, about whether the control efficiency is more than zero but less than 95%. As detailed above, the Division and EPA have test results for ECDs showing a control efficiency of more than zero, indicating the pilot light was present, but less than 95%. *See e.g.* Exs. 5 and 6.

The same issues are inherent to Section II, Condition 5.7.1, which requires quarterly verification of flare operation using an infrared camera. Ex. 14 at 87. Verification of combustion via an infrared camera does not tell us anything about the control efficiency other than that it is not zero percent. Knowing that the control efficiency is not zero provides no information, and certainly not an assurance, about whether the control efficiency is more than zero but less than 95%. As explained above, the Division and EPA have test results for ECDs that show a control efficiency of more than zero, where flare operation would presumably be verified, but less than 95%. *See e.g.* Exs. 5 and 6.

Section II, Conditions 3.9.4 and 5.7.4 require monitoring for the presence of “smoke,” an undefined term, and in certain circumstances, opacity. Ex. 14 at 69, 87. This is, **in theory**,

qualitative monitoring for VOC control efficiency. We say in theory because the smoke and opacity could have absolutely nothing to do with the VOC control efficiency. For example, the smoke and opacity could be caused by the combustion temperature in the ECDs causing thermal and/or fuel bound nitrogen being converted into PM_{2.5} like nitrates. Nitrogen (N₂) is in the ambient air and nitrates are not VOCs. Thus, the detection of “smoke” or opacity can be totally unrelated to VOC control efficiency and there is no reason to believe that addressing them would increase VOC control efficiency or guarantee a specific level of control efficiency, that is 95% or above. *See* Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, 2012 EPA CAA Title V LEXIS 5, at *54–55 (June 22, 2012) (monitoring for other pollutants does not assure compliance with a VOC control efficiency). Rather, the exact opposite could happen. The operator could change the combustion temperature or residence time to address nitrate, that is PM_{2.5} unrelated to VOC, formation which could have the unintended, and **undetected**, consequence of decreasing VOC control efficiency. *See e.g.* Ex. 8 at 2 (changes in temperature change control efficiency).

Importantly, there is no evidence that the ECDs covered by Section II, Conditions 3.1.1.2 and 5.1.1.2, or ECDs in general, cannot have control efficiencies of VOCs below 95% while producing no smoke and no or low opacity. Thus, Section II, Conditions 3.9.4 and 5.7.4 do not assure compliance with the quantitative 95% control efficiency requirement for VOCs in Section II, Condition 3.1.1.2 and 5.1.1.2, respectively.

Section II, Condition 3.11.1.1 also does not provide testing, monitoring, recordkeeping, and reporting to assure continuous compliance with the 95% control efficiency presumption in Section II, Condition 3.1.1.2. Ex. 14 at 70. This Condition simply incorporates by reference Colorado Regulation No. 7 (“Regulation 7”), Part D, Section I.C. 5 C.C.R. § 1001-9, Part D,

Section I.C.⁷ Note that the Permit does not subject the facility flare (AIRS ID 024) to the requirements of Regulation 7, Part D, Section I.C.

To begin with, Section II, Condition 3.11.1 in the Permit provides that Section II, Condition 3.11.1.1 in the Permit can change at any time if the Colorado Air Quality Control Commission changes Regulation 7, without public notice and comments, EPA 45-day review, or an opportunity for the public to object to the change. *Id.* It is not possible for EPA to determine that an unknown change to these conditions in the future would assure compliance with Section II, Condition 3.1.1.2. This, by itself, is a fatal flaw in relying on these conditions to assure compliance.

If EPA were to look beyond this fatal flaw, which it should not, these conditions apply Section II, Conditions 8.1.1 and 8.1.2 of the Permit to Section II, Condition 3.1.1.2. Ex. 14 at 70. As with the conditions explained above, these conditions do not assure compliance with the quantitative limit in Section II, Condition 3.1.1.2.

Specifically, the first part of Section II, Condition 8.1.1 for the Permit requires that the ECD be operated and maintained consistent with manufacturer specifications and the undefined “good engineering and maintenance practices.” Ex. 14 at 97. There is no evidence, nor could any evidence be produced, that operating and maintenance pursuant to the undefined and vague “good engineering and maintenance practices” results in continuous compliance with the 95%

⁷ As discussed further below in Section IV of this petition, this citation is now meaningless because Colorado’s Air Quality Control Commission (“AQCC”) revised Regulation 7, so that it no longer even contains a Part D. The Permit contains a multitude of citations to nowhere. The AQCC adopted these changes on April 20, 2023, and they became effective on June 14, 2023. The Permit was issued subsequently on August 1, 2023, *see* Ex. 14, so at the very least the Permit should be reopened to ensure that the incorporation of Colorado’s regulatory requirements by reference are corrected. Accordingly, in the discussion that follows, the Center is referencing the regulatory requirements that it believes the Division intended to incorporate by reference with the defective citations.

VOC control efficiency. Rather, the record shows that other ECDs performed below that threshold, and there is no evidence that they were not complying with this general provision, which would apply to them. In any event, this requirement is obviously not enough to assure compliance with the 95% control efficiency conditions.

As to the manufacturer specifications are not in the permit record and thus did not go through notice and comment. EPA cannot rely on something that it and the public do not know the content of. It would be literally and legally arbitrary for EPA to determine that unknown maintenance practices and schedules, and unknown manufacturer's specifications, assure 95% VOC control efficiency. *See In the Matter of WE Energies Oak Creek Power Plant*, Permit No. 241007690-P10, 2009 EPA CAA Title V LEXIS 17, at *60-67 (June 12, 2009) (granting petition to object because the title V permit did not include various pollution-control plans, and nor did the public notice for the permit comment period, where the plans "define permit terms" and the permit relies upon the plans "to assure compliance with applicable requirements."); *see also In the Matter of Delaware City Refining Company, LLC*, Petition No. III-2022-10, 2023 EPA CAA Title V LEXIS 8, *69-70 (July 5, 2023).

Second, specifications or maintenance practices and schedules, even if perfect, which of course they would not be, in reality would be designed to maintain the status quo. But as the Permit lacks enforceable requirements for initial testing to determining if the ECD is achieving 95% control efficiency, maintaining the status quo could mean maintaining a control efficiency that was initially below 95%.

Furthermore, there is no evidence that operating and maintenance according to these specifications will result in continuous compliance with Section II, Condition 3.1.1.2. Rather, the evidence is the opposite. *See e.g.* Ex. 5. And as noted above, EPA has previously held that

the fact that a flare was designed to be able to achieve a certain control efficiency does not assure that it will achieve that control efficiency continuously under all conditions. Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, 2012 EPA CAA Title V LEXIS 5, at *53 (June 22, 2012). There are a lot of variables which determine control efficiency, including residence time, temperature, and turbulence in the ECD as well as the mix of individual VOCs which make up the VOCs entering the ECD. *See* Ex. 8 at 2-3. Some of these variables, like residence time, are inherently uncontrollable in an ECD. *Id.* at 3. Thus, periodic testing like stack testing is the only way to assure compliance. *Id.* at 5.⁸

The second part of Section II, Condition 8.1.1 requires that the air pollution control equipment be adequately designed and sized to achieve the control efficiency rates required “by this Section I”. Ex. 14 at 97. To begin with, it is not clear what this reference to Section I is referring to be, but it is clearly not referring to Section II, Condition 3.1.1.2 of the Permit, so it is not adequate to assure compliance with that permit condition. Furthermore, this condition lacks recordkeeping and reporting to allow EPA, the Division, and the public to determine if the air pollution control equipment, in particular the ECD which serves AIRS Point 009, was actually adequately designed and sized to achieve 95% control efficiency. And finally, EPA has already held that design and sizing does not assure compliance with a flare’s VOC control efficiency. Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, 2012 EPA CAA Title V LEXIS 5, at *53 (June 22, 2012).

⁸ Due to the nature of ECDs, it would actually take CEMS to assure continuous compliance. *Id.* at 5. However, EPA need not agree to object to Section II, Condition 3.1.1.2 as it lacks testing of any sort.

Section II, Condition 8.1.2, fails to assure compliance for all the reasons discussed above. Namely, the vague terms of “minimize emissions” to the “maximum extent practicable” do not assure 95% control efficiency. Also, the conditions lack recordkeeping and reporting to inform the Division, EPA, and public of whether the design, operation, and maintenance actually do minimize emissions of VOCs to the maximum extent practicable. And finally, design and maintenance do not assure 95% control efficiency. Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, 2012 EPA CAA Title V LEXIS 5, at *53 (June 22, 2012).

We next turn to Section II, Conditions 3.11.2.1 and 5.8. These conditions inherently fail to assure the public and EPA of compliance with Section II, Conditions 3.1.1.2 and 5.1.1.2, respectively, because they are “state-only enforceable.” Ex. 14 at 2, 73, 88. EPA has granted a petition to objection where “The Permit requires non-federally enforceable monitoring to show compliance with a federally enforceable condition prohibiting the combustion of routinely-released gases in a flare.” *In the Matter of Chevron Products Company*, Petition No. IX-2004-08, 2005 EPA CAA Title V LEXIS 6, at *81-82, 88 (Mar. 15, 2005) (also stating, “EPA also agrees with Petitioner that federally enforceable monitoring is necessary to assure compliance with the federally enforceable requirements of Condition 18656.”) (emphasis added); *see also In the Matter of Conoco Phillips Co.*, Petition No. IX-2004-09, 2005 EPA CAA Title V LEXIS 8, at *51 (Mar. 15, 2005). Because the public and EPA cannot assure that the permittee complies with the requirements in these conditions, the permit conditions cannot assure the public and

EPA that these conditions will assure compliance with Section II, Conditions 3.1.1.2 and 5.1.1.2.⁹

EPA recently denied a Title V petition submitted by the Center because EPA said it will not evaluate a state-only enforceable permit term unless “it impairs the effectiveness or enforceability of the federally enforceable title V permit conditions[.]” Order Granting in Part and Denying in Part Petitions for Objection to a Title V Operating Permit, *In the Matter of Terra Energy Partners, Rocky Mountain LLC, Parachute Water Management Facility*, Petition Nos. VIII-2022-16 & VIII-2022-17 at 12 (June 14, 2023) (hereinafter, “TEP Order”); *see also, e.g., In the Matter of Cargill, Inc.*, Petition No. VII-2022-9, 2023 EPA CAA Title V LEXIS 2, at *77 (Feb. 16, 2023) (“State-only terms are not subject to the requirements of Title V and hence are not . . . evaluated by EPA unless those terms are drafted in a way that might impair the effectiveness of the permit or hinder a permitting authority's ability to implement or enforce the permit.”). No one is claiming that Section II, Conditions 3.11.2.1 and 5.8 impair the enforceability of Section II, Conditions 3.1.1.2 or 5.1.1.2. Thus, consistent with the TEP Order and EPA’s position in prior orders, EPA should not credit these state-only enforceable provisions.

Even if EPA were to explicitly hold that Section II, Conditions 3.11.2.1 and 5.8 must be evaluated to determine if the permit contains monitoring, testing, recordkeeping, reporting to assure compliance with Section II, Conditions 3.1.1.2 and 5.1.1.2, as explained below, EPA will

⁹ Colorado could fix this problem by submitting Reg. 7, Part D, Sections II.B.2.g and h to EPA to be part of the Colorado SIP. The Center explicitly asked the Division and the Colorado Air Quality Control Commission to do that in the rule-making proceeding that created these parts of Reg. 7. The Division and the Colorado Air Quality Control Commission explicitly refused this request. Colorado has renumbered Reg. 7 such that the cite would now be Reg. 7, Part B, Sections II.B.2.g and h.

still have to hold that that they do not. Section II, Condition 3.11.2.1 and 5.8 apply Condition 8.4 to the dehydration unit (AIRS ID 009) and the facility flare (AIRS ID 024), respectively. Ex. 14 at 73, 88.

Section II, Condition 8.4 is clearly marked “State-Only Enforceable.” Ex. 14 at 99; *see also* Ex. 14 at 2 (Section I, Condition 1.4—listing Section II, Condition 8.4 under “State-only enforceable conditions”). Thus, as explained above, these conditions cannot assure compliance for EPA and the public because EPA and the public cannot enforce these conditions to assure that the facilities comply with them.

Even if we ignore the fact that these are state-only enforceable conditions, they still do not assure compliance with Section II, Conditions 3.1.1.2 and 5.1.1.2. Section II, Conditions 8.4.1, 8.4.2, and 8.4.3 in the Permit create vague requirements for design, operation, auto-igniters, and maintenance discussed above and do not assure compliance for the reasons explained above. See Ex. 14 at 99-100; *see also Supra* at 15 - 21.

Section II, Condition 8.4.4 requires that the combustion device be “enclosed.” But having the combustion device be enclosed does not assure 95% control efficiency of VOCs. The empirical evidence shows that not to be the case. Ex. 5 and 6. The purpose of enclosing the combustion device is really to avoid radiation from the flare to the surrounding area, as well as to provide some noise reduction. Ex. 8 at n.6. While it does possibly reduce cross-winds, that does not guarantee a minimum residence time, which is what is needed to assure a certain control efficiency. *Id.*

Section II, Condition 8.4.4 also requires no visible emissions during normal operations. As explained above, a prohibition on visible emissions does not assure a 95% VOC control efficiency. *See Supra* at 16 - 17. Furthermore, this requirement only applies during the

undefined “normal operations.” But monitoring must be sufficient to assure continuous compliance, not just during normal operations, which, regardless, is not a defined state of operation.

Finally, this condition requires that an observer can, by means of visual observation from the outside of the ECD, or by other means approved by the Division, determine whether the ECD is operating “properly.” This provision fails because the Division can approve an unknown method without a change to the Title V permit and thus without notice and a comment period, without EPA’s 45-day review period, and without the opportunity for the public to petition EPA for an objection. EPA and the public cannot know if this unknown method the Division can approve, with unlimited discretion, will assure compliance. *See* TEP Order at *46-47 (granting petition for objection with respect to an improper permit condition that allows the Division to approve alternative emissions estimation methods “entirely outside of the permitting process . . .”). In any event, all an observer can determine by looking at the ECD is whether there is combustion. As explained above, this does not assure that 95% of VOCs are being controlled. *See Supra* at 16 - 17. Section II, Condition 8.4.6 requires certain maintenance and visual inspections. Ex. 14 at 100. As explained above, this does not assure 95% VOC control efficiency. *See Supra* at 15 - 21.

Section II, Condition 8.4.6.2(g) addresses flow meters for ECDs. Ex. 14 at 101. All that is required if a flow meter is installed is the weekly maximum and minimum flow rate. Continuously recording flow is optional. Section II, Conditions 8.4.6.2(g) (owner or operator **may** use automation to continuously record flow) Ex. 14 at 101. One would need continuous flow data to determine continuous compliance if flow data actually could determine control efficiency, which it cannot by itself.

Fundamentally, even if there was a flow meter continuously recording the flow, that does not tell one what the VOC control efficiency is. As explained above, control efficiency is determined by temperature, residence time, and turbulence. *See Supra* at 14 - 15. Flow meters do not provide any data on any of these variables. Furthermore, flow measures all VOCs, but as explained above, individual VOCs are controlled at different rates under the same operating conditions in an ECD. *See Supra* at 20. Just measuring flow ignores that fact that the composition of individual VOCs at the inlet to an ECD varies over time. *See generally* Mountain Coal Company, LLC, *West Elk Mine: Permit No. 09GUI382 APENS and Permit Modification Request*, at 3, 5–7 (Jan. 16, 2020) (discussing a 61-day hydrocarbon event, and a prior event, in which VOC emissions increased substantially) (Ex. 19).

Finally, a flow meter, by itself, does nothing. The Permit does not set limits on the flow in an attempt to assure 95% control efficiency.

Section II, Condition 8.4.8 does at first glance appear to require performance testing of the ECD serving AIRS 009 and the facility flare (AIRS ID 024). Ex. 14 at 101–104. However, a review of the language of these conditions establishes that they do not assure compliance with Section II, Conditions 3.1.1.2 or 5.1.1.2.

Section II, Condition 8.4.8.1(a) requires that the performance test must be conducted in accordance with a Division-approved test protocol. Ex. 14 at 102. These conditions do not require that the performance test be performed pursuant to a specific performance specification or performance specifications. EPA and the public will not have an opportunity to comment on the Division-approved test protocol and object to or otherwise challenge Division-approved test protocol. Because the test method that will actually be used is not part of the record for this permitting action, which the public and EPA did not have access to during this permitting

process, EPA cannot find that these undefined conditions assure compliance. *See, e.g., In the Matter of Blanchard Refining Co., Galveston Bay Refinery, Galveston, Texas*, Petition No. VI-2017-7, 2021 EPA CAA Title V LEXIS 8, at *88–91 (Aug. 9, 2021) (granting request for objection because “the title V permit does not assure compliance with the 99.9 percent VOC collection efficiency requirement in Special Condition 8.B of Flexible Permit No. 47256/PSDTX402M3 because the permit does not effectively incorporate the relevant test protocol.”) (emphasis added).

Section II, Condition 8.4.8.1(c) arbitrarily states that a source has to use the results of any failed performance test for “the calendar year of a failing performance test.” Ex. 14 at 102. In other words, if a source fails a performance test on January 2nd, the source can still assume it had a control efficiency of 95% on December 31st even though there is absolutely no evidence to support this assumption.

Similarly, Section II, Condition 8.4.8.1(d) and (e) arbitrarily authorize continued violations of the control efficiency requirement for up to 120 days. *Id.* The Division has no authority to pre-authorize violations of Title V permits. In any event, these conditions are the exact opposite of assuring EPA and the public that the source is complying with the applicable requirements in the Title V permit.

Section II, Condition 8.4.8.1(f) allows certain ECDs to not be performance tested at all. Ex. 14 at 103. The fact that one particular unit of a particular model was tested under certain ambient conditions with a certain mix of VOCs does not assure that the ECD for AIRS ID 009 or the facility flare will continuously achieve a 95% VOC control efficiency. For example, the mix of VOCs during the test pursuant to 40 C.F.R. § 60.5413a(d) will certainly be different than the mix of VOCs the Platteville Plant produces, and there is no basis to assume that the performance

of the ECDs will be the same on the different VOC mixes. And that is just one example of the differences between the one test pursuant to 40 C.F.R. § 60.5413a(d) and the conditions the Platteville Plant will experience.

Section II, Condition 8.4.8.2(a) allows the Division to approve any testing schedule that the Division wants. Ex. 14 at 103. Thus, because the permit does not set a testing frequency, EPA and the public cannot be assured that the performance testing will be frequent enough to assure compliance.

Accordingly, EPA must object to the Platteville Plant's permit because there must be testing, monitoring, and reporting to verify that control devices are achieving the required control efficiency. This must include, at a bare minimum, a federally enforceable requirement for stack testing pursuant to a specific test methodology, like a performance specification, which should be required no less frequently than semi-annually, consistent with the Bighorn Pad Title V permit. *See* Ex. 10, Division, *Technical Review Document for Operating Permit 170PJA401: SandRidge Exploration and Production — Bighorn Pad*, at 10 (Jan. 1, 2020) (“Semi-annual stack testing is required by the Division to ensure appropriate emission control efficiency.”) (hereinafter “Bighorn Permit”).

In its response to comments, the Division says that the Bighorn Permit is not a relevant comparison because the permittee was requesting a presumed control efficiency of 98.5%, which is more than 95%, and one of the Division's memos says that in those cases performance testing must be required. Ex. 12 at 4. But the Division offers no evidence for this distinction between 95% control and 98.5% control, or the requirements necessary to achieve these levels of control. Rather, the evidence before the Division shows ECDs operate down to 20% or less control

efficiency. *See* Ex. 6. Thus, the distinction between 95% control and 98.5% control is literally and legally arbitrary.

The Permit must also include continuous emissions monitoring and associated recordkeeping and reporting. If EPA does not conclude that continuous emissions monitoring systems are necessary, despite their technological feasibility, as they are used by stack testing companies during stack tests, then EPA must object to the Permit based on the lack of parametric monitoring for the control devices. The parametric monitoring should, at a minimum, set maximum and minimum requirements for both flow, temperature, residence time, and turbulence, with the acceptable parameters being based on the most recent stack tests.

In its response to the Center's comments on this issue, the Division outlines the actions the permittee must perform for the presumption of 95 percent control efficiency to apply, including operating the control device consistent with manufacturer specifications and operating an auto-igniter. Ex. 12 at 3-4. These are the same requirements that applied to the control devices at the Wetco Farms and Troudt well pads discussed above, which were functioning with less than 95 percent control efficiency. *See* 5 C.C.R. 1001-9, Part B, Section II.B.¹⁰ Thus, these requirements do not assure compliance with the Permit's terms. Additionally, these requirements do not assure compliance for the reasons discussed above. *See Supra* at 15 - 17, 18 - 21.

Further, there are several factors that affect flare control efficiency that the Permit does not account for. Control efficiency is affected by variables like weather, altitude, damage during shipping, the way the equipment is installed, improper construction of the particular device,

¹⁰ Colorado renumbered Regulation 7 so that the current cite is 5 C.C.R. 1001-9, Pt. B §§ I.C.1, II.B.2.

variabilities in the fuel and waste streams, and different temperatures needed for different VOCs. See e.g. Ex. 8 at 2–5; see also Ex. 9 EPA, *Parameters for Properly Designed and Operated Flares, Report for Flare Review Panel* (Apr. 2012). VOC control efficiency is also controlled by residence time and temperature. Ex. 8 at 2–3. A flare does not necessarily ensure consistency for these two parameters and thus cannot deliver a consistent control efficiency. *Id.* No quantitative assumptions can rationally be made about the impacts these many variables in total have on the mass emissions and control efficiency from a flare, nor do opacity or visible emissions testing provide information about VOC emissions. *Id.* at 5; *Supra* at 17 - 18. Variables in the field, like altitude, weather, and precipitation, may differ from the initial testing conditions the manufacturer relied upon, such that actual control efficiency can deviate from the manufacturer’s specifications. Only testing will provide the data needed to ensure compliance. *Id.*

In its response to comments, the Division references Section II, Conditions 3.9, 3.11.1.1, and 3.11.2.1 as the conditions which must be met to presume 95% control efficiency for the ECD serving the dehydration unit, and Section II, Conditions 5.7 and 5.8 as the conditions which must be met to presume 95% control efficiency for the facility flare. Ex. 12 at 3.

As explained above, Section II, Conditions 3.9, 3.11.1.1, and 5.7 do not assure compliance with the qualitative requirement of 95% VOC control efficiency. See *Supra* at 15 - 21. The same goes for Section II, Condition 8.4 which is incorporated by reference into Section II, Conditions 3.11.2.1 and Section II, Condition 5.8. See *Supra* at 21 - 28. Furthermore, the Division fails to even mention in its response to comments that Section II, Conditions 3.11.2.1 and 5.8 are State-Only Enforceable provisions, much less explain how provisions which EPA and the public cannot enforce can nevertheless provide testing, monitoring, recordkeeping, and

reporting which are to assure EPA and the public that the Platteville Plant is complying with Section II, Condition 3.1.1.2 and 5.1.1.2.

The Division declares by fiat that the requirements of operating the control device consistent with manufacturer specifications, following individually developed maintenance practices, operating with no visible emissions, performing visual observations to confirm the control device is operating properly, and installing and operating an auto-igniter are parametric monitoring used to determine if the ECD is meeting the requirement to achieve 95% control efficiency. Ex. 12 at 4. The Division offers no evidence in general to connect these operating and maintenance requirements and 95% control efficiency, much less to explain the specific situations where ECDs were complying with these requirements and tested below 95% VOC control efficiency.

The Division also asserts that its testing of control devices showed that, on average, the devices had control efficiencies of 95 percent or more. Ex. 12 at 4. The Division, however, concedes that not each ECD achieved 95 percent and that five stack tests revealed control efficiencies below 95 percent. *Id.* Pursuant to the Clean Air Act, the standard is not that the monitoring and testing requirements of the permit *may* result in compliance with the permit's terms and conditions. Nor is it good enough that all devices across all sources average out to 95 percent as that is not the applicable requirement. Rather, the permit conditions require that the ECD for the dehydration unit (AIRS ID 009) and the facility flare (AIRS ID 024) achieve 95 percent control efficiency, and the testing, monitoring, and reporting must assure that. The monitoring and testing requirements must *assure* compliance with the Permit's specific terms in all cases, 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1) & (3)(i)(B), (c)(1), and the Division

acknowledges that the current approach in the Permit does not always assure compliance with a 95 percent control efficiency.

Thus, EPA must object to the Permit because it does not contain monitoring, testing, recordkeeping, and reporting sufficient to assure compliance with Section II, Conditions 3.1.1.2 and 5.1.1.2 and thus does not comply with 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1) & (3)(i)(B), (c)(1).

II. The Permit does not ensure that the construction permits incorporated into the Title V permit will not permit violations of the National Ambient Air Quality Standards.

EPA must object to the Permit because the Division failed to determine whether the construction permits incorporated into the Title V permit will interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). The Center raised this issue at pages 6 through 10 of our comments. Ex. 4 at 6-10.

A. All of the requirements in Colorado’s State Implementation Plan are applicable requirements for a Title V permit, including compliance with the NAAQS.

Ensuring compliance with the NAAQS is an applicable requirement for a Title V permit which incorporates conditions from minor source construction permits because the definition of “applicable requirement” includes *all* requirements of the state implementation plan. *See* 40 C.F.R. § 70.2 (defining “applicable requirement” as “[a]ny standard or other requirement provided for in the applicable implementation plan approved . . . by EPA”); *see also* 5 C.C.R. § 1001-5, Part A, I.B.9 (substantively the same definition). The Tenth Circuit has consistently recognized that the term “any” means “all” in plain language. *See, e.g., United States v.*

McGinty, 610 F.3d 1242, 1246 (stating that “any” is a powerful and broad word, and it does not mean some or all but few, but instead it means “all”); *see also United States v. Hernandez*, 655 F.3d 1193, 1196 (10th Cir. 2011); *Kelley v. City of Albuquerque*, 542 F.3d 802, 814 (10th Cir. 2008). Because the term “applicable requirement” includes “any standard or other requirement provided for in the applicable implementation plan,” it includes all standards or other requirements in the applicable implementation plan, including both major and minor construction permit requirements. *See Permit*, Section I, Condition 1.3; Ex. 14 at 1-2.

The Tenth Circuit Court of Appeals has accepted this plain language reading of the Title V regulations. While considering a petition to object to a Title V permit that hinged on the meaning of the term “applicable requirement,” the Tenth Circuit held that “[t]he regulatory definition of this term unambiguously refers to **all** requirements in a state’s implementation plan, such as Utah’s requirements for major [New Source Review].” *Sierra Club v. EPA*, 964 F.3d 882, 890–91 (10th Cir. 2020) (emphasis added). The Tenth Circuit rejected EPA’s approach of not considering whether minor modifications complied with the preconstruction permitting requirements in the state’s SIP. While the case centered on the question of whether modifications that were treated as “minor” should have triggered stricter “major” New Source Review requirements, the Tenth Circuit presented those requirements as one example of the types of requirements in a SIP that are applicable requirements. *Sierra Club*, 964 F.3d at 891. It used broader language inclusive of the situation presented here.

While EPA, at the national level, continues to abide by the narrow interpretation of “applicable requirement” rejected by the Tenth Circuit, EPA’s regulations regarding regional consistency provide that the decision of the Tenth Circuit must control EPA’s review of this Permit. 40 C.F.R. § 56.3(d); *see Nat’l Env’t Dev. Association’s Clean Air Project v. EPA*, 891

F.3d 1041 (D.C. Cir. 2018). Accordingly, for purposes of review of a Title V permit in Colorado, the term “applicable requirement” includes all requirements of Colorado’s SIP including the prohibition on minor sources being issued permits which authorize violations of a NAAQS.

B. Compliance with the NAAQS is a requirement of Colorado’s State Implementation Plan, and is therefore an applicable requirement for the Permit.

The Division is only allowed to issue a construction permit if the source or activity will meet any applicable ambient air quality standard. C.R.S. § 25-7-114.5(7)(a)(III); 5 C.C.R. §§ 1001-5, Part B, III.D.1; F.1; *see also* 42 U.S.C. § 7410(a)(2)(C). More specifically, the Clean Air Act’s central purpose is to protect public health and welfare. 42 U.S.C. § 7401(b)(1). A key driver for achieving the Act’s public health goal is the requirement that all areas in the country comply with primary (health-based) and secondary (public welfare-based) national ambient air quality standards (NAAQS), which reflect the maximum permissible levels of common pollutants in the ambient air. *Id.* §§ 7401, 7409.

Compliance with the NAAQS is at the core of the Clean Air Act’s preconstruction permitting program for both major and minor sources of air pollution. Section 110(a)(2)(C) provides that state minor source programs must “include ... regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved.” Thus, EPA cannot approve a state’s minor source program if that program “would interfere with any applicable requirement concerning attainment” of NAAQS.

EPA’s minor source permitting regulations, set forth in 40 C.F.R. §§ 51.160–51.164, require that the state minor source program must enable the permitting agency to reject any permit application if it will interfere with attainment:

Each plan must set forth legally enforceable procedures that enable the state or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in . . .

...

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

[and]

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

...

(2) It will interfere with the attainment or maintenance of a national standard.

40 C.F.R. § 51.160(a)-(b) (emphasis added).

The Colorado Air Pollution Prevention and Control Act states that the Division shall grant a permit application if, among other requirements, “[f]or construction permits, the source or activity will meet any applicable ambient air quality standards and all applicable regulations.”

C.R.S. § 25-7-114.5(7)(a)(III). The Colorado regulations in the Colorado SIP further provide that the Division shall grant the permit if, among other requirements,

c. The proposed source or activity will not cause an exceedance of any National Ambient Air Quality Standards;

d. The source or activity will meet any applicable ambient air quality standards and all applicable regulations;

5 CCR § 1001-5, Part B, III.D.1.

Additionally, if the source cannot comply with these provisions, the Division shall deny the permit:

If the Division determines that a source cannot comply with the provisions of Part B, Section III.D., of this regulation, the Division shall issue its written denial of the permit application stating the reasons for such denial.

5 CCR § 1001-5, Part B, III.F.1.

C. The Troutman Report and the EPA Report demonstrate that the Division’s permitting program does not ensure compliance with the NAAQS.

The concerns raised herein are far from theoretical. There are two reports that speak specifically to this issue of assuring compliance with the NAAQS that evaluate and discuss at length the Division’s flawed procedures and practices, or lack thereof. The first is a report prepared by Troutman Pepper Hamilton Sanders LLP, as Special Assistant Attorneys General for the State of Colorado, entitled, *Public Report of Independent Investigation of Alleged Non-Enforcement of National Ambient Air Quality Standards by the Colorado Department of Public Health and Environment*, dated September 22, 2021 [hereinafter, “Troutman Report”] (Ex. 2). Second is a report by the U.S. Environmental Protection Agency (“EPA”) entitled *EPA Region 8 Review of EPA’s Office of Inspector General Hotline Complaint No. 2021-0188*, dated July 2022 [hereinafter, “EPA Report”] (Ex. 3).

Both the Troutman Report and the EPA Report resulted from a whistleblower complaint three of the Division’s employees filed with the EPA Office of Inspector General in March 2021. Ex. 2 at 1, 21–23; Ex. 3 at 3, 5–6. The employees—members of the Division’s Modeling and

Emissions Inventory Unit—requested that EPA review the Division’s failure to have a rational basis for determining NAAQS compliance in permitting actions. *Id.*

The Troutman Report’s “Legal Analysis” concluded that “the law does impose a mandatory obligation: [the Division] must determine whether the construction or modification of minor sources will interfere with attainment of the NAAQS and prevent exceedances of the NAAQS,” and this requirement is “made clear” in the Clean Air Act, EPA’s regulations, and Colorado’s law and regulations. Ex. 2 at 25–26. The strength of this conclusion is quite remarkable considering that Troutman is a law firm that represents polluters and the Division’s approach was so blatantly illegal that even a polluter law firm could only find the Division’s approach illegal. While the Division does not need to necessarily model emissions from minor sources, the Division “must still satisfy its duty to ensure compliance with the NAAQS in some other way.” *Id.* at 26. However, the Troutman Report did not identify any other rational way, other than modeling, to determine compliance with the NAAQS. Indeed, there is no other rational way that does not ignore important aspects of the problem of determining ambient impacts from a stationary source before it commences construction.

The Troutman Report goes on to state that “for more than ten years,” the Division “had two directly conflicting policies—the Modeling Guideline and PS Memo 10-01—leading to internal and external confusion and, ultimately, a failure of [the Division] to satisfy its duty to ensure compliance with the NAAQS.” *Id.* These conclusions and the discussion supporting them, reached by independent investigators serving as “Special Assistant Attorneys General,” *id.* at 1, demonstrate that the Division policies and procedures in place at the time it issued the underlying construction permits inadequately protected the NAAQS and were contrary to law. This information directly supports the Center’s assertions with respect to this defect of the Permit

discussed herein. The majority of the construction permits whose conditions are incorporated into this Title V permit were issued based upon the faulty assumptions in the Division's PS Memo 10-01, which not only resulted in the Division foregoing modeling to assess NAAQS compliance for minor sources that could result in NAAQS violations, but also failed to provide for another method of assessing NAAQS compliance. *Id.* at 27–31. These practices resulted in the Division issuing permits with unaddressed modeled NAAQS exceedances, and at least permits with deficient analysis insufficient to assure compliance with the NAAQS. *Id.* at 33–34.

The EPA Report identifies the same problems and sheds further light on the impropriety of the Division policies regarding determining NAAQS compliance. Ex. 3 at 8–18, 27–28. EPA determined that the Division's approach to assessing minor sources' NAAQS compliance, premised on PS Memo 10-01, allowed predicted NAAQS violations to go unaddressed and resulted in improper permitting of minor sources that could violate the NAAQS. *Id.* at 27–28. Further, EPA concluded that the Division “repeatedly failed to include any record supporting the required demonstration that construction authorized in Minor [] permit actions would not cause NAAQS violations,” *id.* at 27, indicating that the administrative records at issue are insufficient and will not demonstrate that minor sources will comply with the NAAQS.

The Troutman and EPA Reports show that the Division policies that resulted in the requirements in the construction permits which are incorporated into the Permit was contrary to law, such that EPA must object because the Permit does not assure compliance with the applicable requirement of assuring compliance with the NAAQS for the source covered by the construction permits.

D. EPA must object to the Permit because the Division failed to adequately assess whether the Facility will cause or contribute to a violation of the NAAQS.

The Division did not adequately assess whether the pollution authorized by the Permit will cause or contribute to a violation of the NAAQS. *See Sierra Club v. EPA*, 972 F.3d 290, 298 (3rd Cir. 2020) (“[T]he agency cannot reach whatever conclusion it likes and then defend it with vague allusions to its own expertise; instead, the agency must support its conclusion with demonstrable reasoning based on the facts in the record. When it fails to do so, an agency action is arbitrary and capricious.”); *see also Bd. of Cnty. Comm’rs of Park Cnty. v. Water Quality Control Comm’n of State of Colo.*, 809 P.2d 1107, 1110 (Colo. App. 1991). Thus, the Division should conduct modeling to assure compliance with the NAAQS and determine if additional emission limits are needed to that end. Accordingly, EPA must object to the Permit because the Division has not guaranteed that the Permit has all the conditions necessary to assure compliance with the NAAQS.

The Permit contains applicable requirements from the following federally enforceable construction permits: 01WE0422, 01WE0423, 01WE0424, 01WE0425, 01WE0426, 01WE0427, 01WE0428, 01WE0429, 01WE0430, 01WE0432, and 07WE0993. *See* Ex. 14 at 2. However, the TRD provides no basis for determining that the applicable requirements discussed above—prohibiting issuance of minor source permits if they permit sources to cause or contribute to a violation of a NAAQS—has been met for all of these construction permits, and the draft Title V permit does not contain any enforceable emission limits to assure that these sources will not cause or contribute to NAAQS violations. Aside from the modification to Construction Permit No. 01WE0430 and the engine limits, the TRD does not reference any analysis because the Division and the permittee did not conduct any. Without any analysis to demonstrate that the

applicable requirements prohibiting permitting of NAAQS violations are met with the current permit conditions, the record does not establish that the Permit includes all applicable requirements and conditions to assure compliance with those applicable requirements and EPA must object.

The TRD does state that “[a]s part of the prior permitting action for this source, the Division made a determination this source will not cause an exceedance of any National Ambient Air Quality Standards (“NAAQ”)” Ex. 15 at 31. The Division does not elaborate on how it made this determination for each of the construction permits in the TRD, the Permit, or elsewhere, and there is no other trace of substantial evidence supporting the conclusion that the Permit assures compliance with the applicable requirement in the construction permits that the NAAQS must not be violated. EPA’s reliance on unsupported conclusions would be arbitrary. *See Sierra Club*, 972 F.3d at 298.

The Division also asserted in its response to comments that it does not need to ensure that the applicable requirement of ensuring protection of the NAAQS for the entire facility, just for modifications that are approved in the specific Title V permitting action at issue, including the modification of Construction Permit No. 01WE0430. Ex. 12 at 9. The Division relies on the preamble to the currently applicable Title V permit requirements, which was published nearly 20 years before the Tenth Circuit rejected EPA’s exclusion of NAAQS compliance from the category of applicable requirements, *Sierra Club v. EPA*, 964 F.3d at 890–91, and well before the Troutman Report and EPA recognized the Division’s failure to assure NAAQS compliance in minor source permitting. Ex. 2 at 25–26; Ex. 3 at 8–18, 27–28. Now that the 10th Circuit has rejected EPA’s position that EPA can simply assume that construction permits incorporated into Title V permits comply with all SIP permitting requirements, EPA must determine if the 11

construction permits being incorporated into this Title V permit comply with all of the SIP requirements for construction permits, including the requirement that the construction permits do not permit NAAQS violations. EPA must object because there is absolute no evidence that that is the case. In other words, without an adequate analysis to demonstrate that the applicable requirements prohibiting permitting of NAAQS violations are met with the current permit conditions, EPA must object to the Permit.

The Division admits that its “review of nearby sources shows high potential nearby impacts associated with the location of the facility (Weld County) within the ozone nonattainment area identified for the 2008 ozone standard and within the ozone nonattainment area identified for the 2015 ozone standard” and that “existing nearby impacts are significant,” while also acknowledging that “the dehydration unit exist temperature and exit velocity are unknown.” Ex. 16 at 5. The Division does not explain how it got to the conclusion that no modeling was necessary from the fact that existing nearby impacts are significant, or otherwise support its conclusory statement that the construction permits will protect the NAAQS.

Additionally, the six engines, the dehydration unit, and the other emission units do not have short-term NO_x emission limits. *See* Section II, Table 1, at 16, 21 (emissions limitations for AIRS ID 001, 005, and 014, which only place the limit of 12.98 tons of NO_x per *year* on the engines); Section II, Table 1, at 17 (emissions limit of 30.82 tons per year for AIRS ID 002, 003, and 004); Section II, Table 1, at 18-19 (emissions limit of 25.69 tons per year for AIRS ID 006 and 007); Section II, Table 1, at 20 (emissions limit of 27.12 tons per year for AIRS ID 008); Section II, Table 2, at 50 (emissions limit of 6.44 tons per year for AIRS ID 010); Section II, Table 3, at 60 (emissions limit of 1.4 tons per year for the dehydration unit, AIRS ID 009); Section II, Table 4, at 76 (no NO_x emission limit for AIRS ID 011); and Section II, Table 5, at

82 (emissions limit of 1.8 tons per year for the facility flare, AIRS ID 024). For emission units with only annual emission limits, there is no rational basis to assume that the hourly emissions will be no higher than the annual emission limit divided by 8760 hours per year. Rather, the modeling must be based on the highest short-term NO_x emission rate that these emissions units can have, including emissions during startup or shutdown. If the NSCR and/or AFRC is not capable of operating all the time, which is normally the case because of limitations on what temperature they can operate at, then the NAAQS compliance demonstration must be based on emissions without these control devices operating. For emission units with no NO_x limit, the emission rates must be based on reasonable worst case short-term NO_x emission rates.

Recall that the form of the NAAQS is such that violations of the NAAQS are determined by a very small percentage of operating time. For example, the 8th highest daily maximum hour is controlling. The other 8752 hours per year are not determinative. Thus, even very infrequent operating scenarios can cause NAAQS violations. If these scenarios are not prohibited by the Permit, they must be considered in determining if the permit conditions permit NAAQS violations. For example, many combustion turbine permits and even some coal burning power plant permits limit the number of startups an emission unit can have per year and also the number of hours an emission unit can operate without its emissions control device. Because the Permit contains no such limits, the NAAQS compliance demonstration must be based on the reasonable worst-case emissions, which could be cold startups with no control devices operating.

III. The Permit denies the public access to monitoring, testing, and recordkeeping information needed to assure compliance with the applicable requirements.

The Permit requires the permittee to maintain certain records necessary to determine compliance, but the permittee is only required to make the records available to the Division

“upon request.” See Section II, Conditions 1.1.1; 1.2.1; 1.3; 1.4; 1.5; 1.10.1.5(i); 2.3; 2.4; 2.5; 2.7.7; 3.1.3; 3.2.3; 3.3.1.1; 3.3.1.2; 3.3.2; 3.4; 3.5.1; 3.5.2; 3.6; 3.7; 3.9; 3.11.1.5; 4.2; 5.3.1; 5.4; 5.7; 7.1.2; and 7.1.3. This practice bars the public from obtaining this information in the vast majority of cases in which the Division does not request the information. The Center raised this issue in its comments, *see* Ex. 4 at 10-11.

EPA recognizes that a primary purpose of a Title V permit is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. at 32,251; *see also* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). It was on these grounds that EPA recently disapproved of these types of reporting rules in Colorado’s 2008 ozone NAAQS serious State Implementation Plan submittal. 88 Fed. Reg. 29,827 (May 9, 2023). In so doing, EPA stated:

Specifically, these rules do not include sufficient reporting requirements to ensure that citizens will be able to enforce the SIP requirements, as is necessary under the CAA and EPA regulations. That is, the regulations in Table 2 require facilities to maintain records necessary to establish compliance with these rules for a certain period of time and to make them available to the state on request. But if there is no requirement for these records to be submitted to the state absent a request, then unless the state requests the compliance records and then makes them publicly available, no parties other than the state or the EPA under its CAA section 114 authority will have practical access to the basic information necessary to determine compliance by the regulated entities under these rules. This undermines citizens' ability to participate in the enforcement of the SIP as allowed by CAA section 304. As EPA has repeatedly stated, to be enforceable, a CAA SIP rule must be legally and practically enforceable. We find that a requirement to provide records to the state only on request, without any required periodic reporting to the state, is inconsistent with CAA and regulatory requirements for enforceability. Therefore, due to the lack of adequate reporting requirements (or some equivalent means of ensuring enforceability), the EPA is simultaneously finalizing a limited approval and disapproval of these rules, as authorized under sections 110(k)(3) and (4) and 301(a).

Id. at 29,828; *see also* EPA, Response to Comments for the Federal Register Notice on Air Plan Approval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, at 46–50, Dkt. No. EPA-R08-OAR-2022-0632 (Apr. 25, 2023) (Ex. 20).

The ability of the public to determine whether a source is meeting many of the requirements of its permit is thwarted without access to the compliance records required in the conditions listed above, that the Permit exempts the permittee from reporting to the Division.

The Division knows that it is possible to give the public access to this critical information. For example, Section IV, Condition 24.e requires the permittee to make information available to the public upon the public's request. Ex. 14 at 138. The Division could apply the same requirement to all of the records required to be generated pursuant to the Permit.

The Center and its counsel have real world experience that demonstrates the need for the public to have access to records. For example, the Center was working on enforcement for a Title V permit for a facility in another state. The Title V permit required the source to maintain a log of required daily visible inspections and make those records available upon request of the state agency. However, that particular facility was subject to open records act requests. Thus, the Center obtained the records under the open records act. Upon obtaining the records, the Center was able to determine that the records showed that the source had recorded that it had conducted the visible inspection at the exact same minute every day of the year. However, some of the claimed times for visible inspections at this outdoor facility occurred after dark. The Center also noticed that the nature of how the log was filed out strongly indicated that the source had not filled out the log on a daily basis, but rather had backfilled the log at a later date.

The Division often states that it has too few inspectors. If the Division is interested in ensuring compliance with Title V permits and meeting goals that finally bring the Denver Metro/North Front Range area into attainment with the ozone NAAQS, it would seem the obvious choice to enable the public to assist in enforcement by ensuring that the public has access to all of the records sources are required to generate pursuant to Title V permits. EPA and the public recognize the crucial need for reformed reporting requirements.

IV. EPA must object to the Permit because it incorporates by reference Colorado regulatory provisions that do not exist.

On April 20, 2023, the Colorado Air Quality Control Commission reorganized Regulation 7—5 C.C.R. § 1001-9.¹¹ This means that there is no longer a Part D in Regulation 7, but the Permit continues to cite to Part D and may otherwise fail to account for the changes to Regulation 7 adopted in April. *See* Section I, Conditions 1.4; Section II, Conditions 3.11.1.2, 3.11.1.3(a) & (b), 3.11.1.4, 3.11.1.5, 3.11.1.6, 3.11.1.7, 3.11.2 (including 3.11.2.1), 4.4, 5.8, 8.1, 8.2, 8.3, and 8.4, among other conditions.

The reorganization and elimination of Part D became effective on June 14, 2023, and the Permit was issued subsequently on August 1, 2023. The Center did not have an opportunity to raise this issue during the public comment period because the comment period ended on May 3, 2023, but the changes to Regulation 7 did not become effective until June 14, 2023.

¹¹ *See* Colorado Air Quality Control Commission, *Air Quality Control Commission Regulations* (accessed September 12, 2023) (click link for “Regulation Number 7”, see pages 300 and 321), <https://cdphe.colorado.gov/aqcc-regulations>. It also appears that further changes to Regulation 7 were adopted on July 20, 2023, and will become effective on September 14, 2023. We are also concerned about the validity of the Permit’s regulatory cites after these changes take effect.

EPA recognizes that a primary purpose of a Title V permit is to “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. at 32,251; *see also* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). EPA, the public, and the permittee, perhaps even the Division, will not be able to identify the applicable requirements and associated monitoring, reporting, or recordkeeping requirements that are incorporated by reference where the incorporation relies on invalid, outdated citations to Colorado’s regulations.

CONCLUSION

EPA must object to Title V Permit No. 02OPWE252 for the DCP Operating Company, LP’s Platteville Natural Gas Processing Plant for the reasons discussed above. As this petition demonstrates, the proposed Permit fails to assure compliance with applicable requirements under Title V of the Clean Air Act. The Permit lacks the monitoring, testing, reporting, and recordkeeping requirements necessary to assure compliance with its terms and conditions, or to enable detection and enforcement of permit violations. The Permit also fails to assure compliance with the NAAQS. Further, the Permit does not provide the public with access to air pollution information to which they are entitled under the Clean Air Act, and also contains meaningless citations to sections of Colorado’s Regulation 7 that do not exist. Accordingly, the Center respectfully requests that the Administrator object to the Permit and require the Division to revise and reissue the Permit in a manner that complies with the requirements of the Clean Air Act.

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Respectfully submitted,

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