BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
	)	
Clean Air Act Title V Permit	)	
(Reopened Renewal)	)	
	)	
Issued to DCP Operating Company, LP	)	Title V Permit No. 02OPWE252
for the Platteville Natural Gas Processing	)	
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

TABLE OF CONTENTS

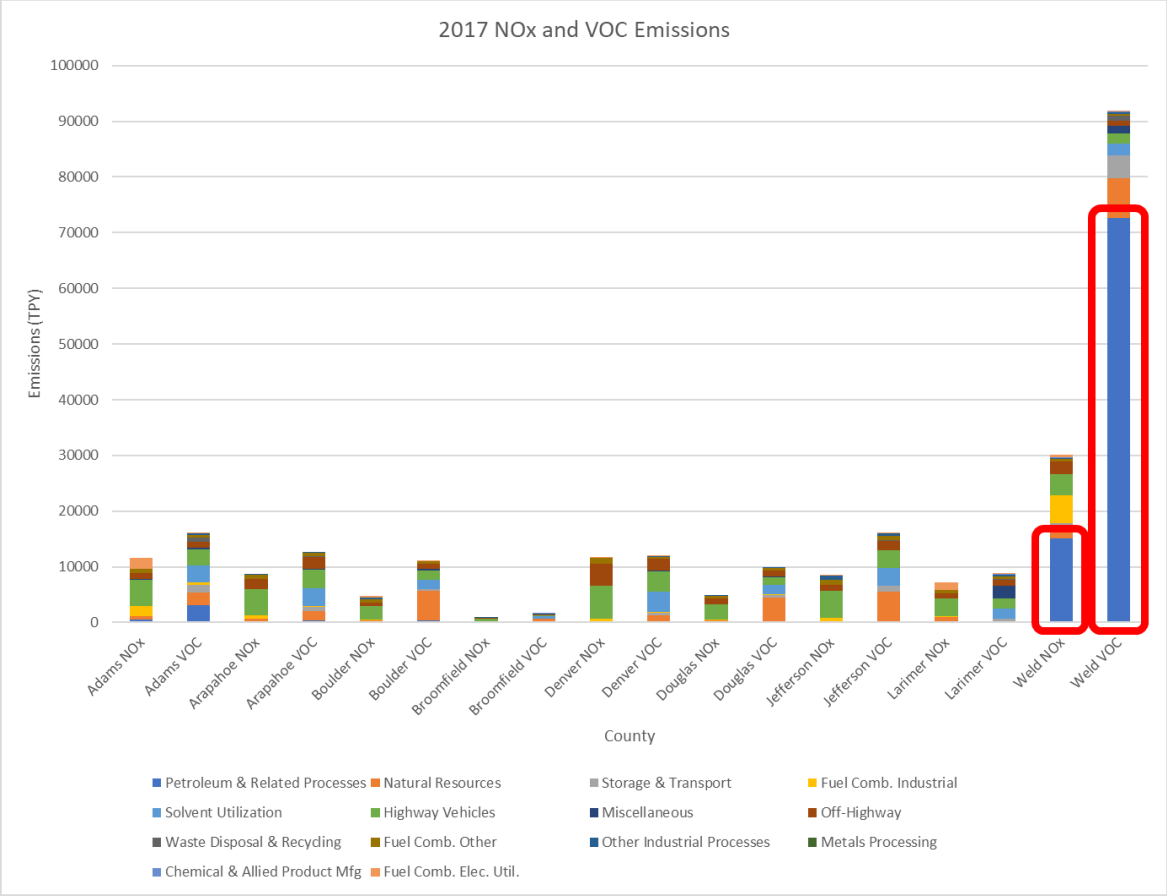
INTRODUCTION

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 reopened renewal Title V Permit No. 02OPWE252 ("permit" or "Proposed 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, owned and operated by DCP Operating Company, LP ("DCP Operating"), 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 ("NOx") 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) (Exhibit 14) (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.

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) (Exhibit 23). 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") (Exhibit 24). 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. 24 at 2, 32-33.

This is the second Petition to Object the Center has submitted with respect to this renewal. EPA granted in part and denied in part the prior September 19, 2023 Petition to Object. As the Division's public notice for this reopened permit notes: "The Division is reopening the permit to address the order issued by EPA in response to Petition VIII-2023-14." *See* Division, *Notice of A Proposed Reopening of a Title V Operating Permit Warranting Public Comment* (August 16, 2024) (Exhibit 25); *see also In the Matter of DCP Operating Company LP, Platteville Natural Gas Processing Plant*, Petition No. VIII-2023-14, 2024 EPA CAA Title V LEXIS 6 (Apr. 2, 2024) (Exhibit 13) [hereinafter "Platteville Order"].[1]

EPA objected to the prior version of the permit on the basis that the monitoring requirements applicable to the Platteville Plant's combustion devices[2] necessary to ensure that flares were operating with 95% control efficiency were not adequately supported, and thus were not federally enforceable or enforceable as a practical matter, along with the emissions limits the

[1] *Also available at* https://www.epa.gov/system/files/documents/2024-04/dcp-plattevilleorder-04-02-2024.pdf.

[2] Specifically, the enclosed combustion device ("ECD") that controls pollution from the Custom Ethylene Glycol Dehydration Unit, AIRS 009, (the Leed Fabrication Standard Dual Stage 60" High Efficiency Combustor, SN: 80430). *See* Proposed Permit at 15 ("Summary of Emissions Units").

flares were meant to protect. *See* Platteville Order at 11–12. Despite the Division's revisions in the proposed permit at issue, the proposed permit's emission limits, and the requirements that apply to the flare, are still not enforceable as a practical matter. Thus, EPA must object to the proposed permit.

PROCEDURAL BACKGROUND

The Division first issued a Title V permit to DCP Operating for the Platteville Plant in 2007. On April 26, 2017, DCP Operating applied for an additional Title V renewal. The Division first proposed to renew the permit on April 3, 2023. The Division submitted the proposed permit to EPA for review on June 6, 2023, despite the Center's timely comments identifying several issues with the permit. EPA did not object to the proposed permit during its 45-day review period, so the Center timely petitioned EPA to object to the permit in a September 19, 2023 Petition to Object. In response, EPA issued the Platteville Order, signed by the Administrator on April 2, 2024, granting in part and denying in part the Center's petition.

As a result of the Platteville Order, the Division reopened the renewal permit and posted the new draft permit for public comment on August 16, 2024. The Center submitted timely comments[3] on the draft permit on September 13, 2024. The Division responded to public comments[4] and, on October 30, 2024, submitted the proposed permit to EPA for its 45-day review period, which ended without EPA objecting. The Center submits this petition within 60

[3] The Center's comments on the draft permit are attached as Exhibit 26.
[4] The Division's response to the Center's comments is attached as Exhibit 27.

days of the close of EPA's 45-day review period—on February 18, 2025 [5]—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 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

[5] EPA, *EPA Region 8 – Title V Operating Permit Public Petition Deadlines*, at 2 (accessed Feb. 9, 2025), https://www.epa.gov/sites/default/files/2020-08/documents/title_v_operating_permit_public_petition_deadlines_-_region_8.pdf (Ex. 28). While Region 8's public petition deadlines database lists February 17, 2025, as the deadline, this was a federal holiday, such that the deadline expires at the end of the next day that is not a Saturday, Sunday, or legal holiday. *See* Fed. R. Civ. P. 6.

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).

GROUNDS 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 the Center's comments on the permit.

The Proposed 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 despite evidence to the contrary.

I. The new performance testing requirement applicable to the enclosed combustion device serving the ethylene glycol dehydration unit (AIRS ID 009) is inadequate to assure compliance with the 95% control requirement and, regardless, requires testing that is far too infrequent to ensure compliance with a continuous control efficiency requirement—Section II, Conditions 3.1.1.2—and the monthly and annual VOC emissions limits the 95% control requirement the permit is dependent on to achieve, Section II, Conditions 3.1.

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 4 through 7 of the Center's comments on the Platteville Plant's draft permit, Ex. 26 at 4–7, the permit does not comply with these requirements, that is, it still lacks testing, monitoring, reporting, and recordkeeping sufficient to assure compliance because Section II, Condition 3.1.1.2, on page 61 of the Proposed Permit, simply assumes that the enclosed combustion device serving the ethylene glycol dehydration unit (AIRS ID 009) achieves 95% control efficiency without adequate 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* Permit at 2, Section I, Condition 1.4 ("**All** conditions in the permit are enforceable by … citizens") (emphasis added).

In order for a limit to be enforceable as a practical matter, a proposed permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit. *See, e.g., In the Matter of Hu Honua Bioenergy Facility, Pepeekeo,*

HI, Order on Petition No. IX-2011-1, at 10 (Feb. 7, 2014). This requires that any proposed emission limits "be accompanied by terms and conditions that require a source to effectively constrain its operations so as to not exceed the relevant emissions threshold… whether by restricting emissions directly or through restricting specific operating parameters," and supported by monitoring, recordkeeping, and reporting requirements "sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action." *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Order on Petition No. II-2001-05, at 7 (Apr. 8, 2002).

"In all cases, the rationale for the selected monitoring requirements must be clear and documented in the permit record." *In the Matter of CITGO Refining and Chemicals Company, L.P.*, Order on Petition No. VI-2007-01 at 7-8 (May 28, 2009) (granting petition because permitting authority "did not articulate a rationale for its conclusions that the monitoring requirements… are sufficient to assure compliance") [hereinafter, "CITGO Order"]; *see also* 40 C.F.R. § 70 .7(a)(5). Further, "permitting authorities have a responsibility to respond to significant comments." CITGO Order at 7.

In general, the EPA has described five factors that should be relied upon in determining appropriate monitoring under Title V, including:

> (1) The variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.

CITGO Order at 7-8 (May 28, 2009). Moreover, the "rationale for the selected monitoring requirements must be clear and documented in the permit record." 40 C.F.R. § 70.7(a)(5); *In the*

Matter of United States Steel, Granite City Works, Order on Petition No. V-2009-03 at 7-8, 2011 EPA CAA Title V LEXIS 2 (January 31, 2011) (*US Steel I Order*)).

To address EPA's objection in the Platteville Order, the Division only took the action of adding Section II, Condition 3.9.5. This condition requires an initial performance test within 180 days of the permit reissuance, and a follow-up test only once every five years thereafter. *Id*. While this limited performance testing is an improvement over an utter lack of testing, this infrequent and unsupported testing requirement does not satisfy the requirements of EPA's Platteville Order and the Clean Air Act.

The performance testing requirement of Section II, Condition 3.9.5, Permit at 70, fails to address the objection in the Platteville Order with respect to the ECD serving the dehydration unit, AIRS ID 009, or otherwise assure compliance with the continuous control efficiency requirement—Section II, Conditions 3.1.1.2—and the monthly and annual VOC emissions limits the 95% control requirement the permit is dependent on to achieve, Section II, Conditions 3.1. Further, 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* Permit, Section I, Condition 1.4 ("**All conditions** in the permit are enforceable by . . . citizens") (emphasis added).

As an initial matter, Section II, Condition 3.9.5, requires that the performance test must be conducted in accordance with a Division-approved test protocol and "the most recent version of the APCD Compliance Test Manual." Permit at 70. This condition does 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, the Division cannot issue the permit as drafted, because 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% 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).

Even if this were not a fatal flaw to the performance testing condition, which it is, the five-year frequency of the performance testing requirement is far too infrequent to assure compliance with the continuous control efficiency requirement—Section II, Conditions 3.1.1.2—and the monthly and annual VOC emissions limits the 95% control requirement the permit is dependent on to achieve, Section II, Conditions 3.1.

If there is some periodic monitoring, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.F.R § 70.6(c)(1). Stack testing alone, even on a more frequent basis, is insufficient to ensure continuous compliance with emission limits—either annual limits or rate-based limits that must apply at all times. Even annual stack tests capture (at most) only a snapshot of emissions over a brief period of three hours out of a year. As EPA has noted, the extent of monitoring necessary is a case and context-specific determination, and "the more variable or less well-understood the emissions the less likely that a single stack test will reflect the operating conditions (and emissions) between stack tests, and the greater the need for more frequent stack testing or parametric monitoring between stack tests." *In the Matter of BP*

Products North America, order on Petition No. V-2021-9, at 20 (Mar. 4, 2022) ("BP Order"). Further, EPA has already rejected the parametric monitoring requirements that apply to the ECD for the dehydration unit. Platteville Order at 11–12.

The Division has plainly failed to demonstrate that a requirement to stack test the dehydration unit ECD once every five years is sufficient to assure compliance with the monthly and annual limits at Section II, Condition 3.1, which in the permit are explicitly dependent on the ECD achieving 95% control efficiency. Nor does the Division demonstrate how a five-year testing requirement assures compliance with the continuous 95% control efficiency requirement—Section II, Conditions 3.1.1.2—which is an independently enforceable emission limit of 95% VOC control efficiency for the enclosed combustion device. *See* Permit, Section I, Condition 1.4 ("**All conditions** in the permit are enforceable by . . . citizens") (emphasis added). The record does not contain a sufficient "rationale for the selected monitoring requirements" that is "clear and documented in the permit record." CITGO Order at 7–8. Projecting the results of tests that occur only once every five years "up to the monthly or annual averaging time by multiplying the test results by the allowable number of operating hours or the throughput limitations for that averaging time" does not remedy the problem of large temporal gaps created by testing only once every five years. Permit at 70.

Further the permit does not contain a clear reporting and recordkeeping requirement applicable to the performance testing requirements of Condition 3.9.5, and thus is not practically enforceable by the Division, nor federally and practically enforceable by the public and EPA.

In order to make the VOC, NOx and HAPs limits enforceable as a practical matter, the permit must require continuous emission monitoring systems (CEMs) of the mass inlet and outlet VOCs and HAPs for the flare as well as outlet NOx. Exhibit 8, Dr. Ranajit Sahu, Technical

Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30, at 5. There are several reasons for this, discussed below. To the extent the Division is not willing to require CEMS, then at a minimum the Division must require semi-annual stack testing to ensure appropriate emission control efficiency. This is especially true given that there are numerous examples of flares not achieving required control efficiency requirements, as discussed in the section below.

The Division fails to justify its testing requirement at Condition 3.9.5 under the CITGO factors. The Division's reliance on the 2016 CTG and 40 C.F.R Part 63, Subpart HH, is misplaced because in addition to the five-year testing requirement, the CTG for storage tanks and the MACT is accompanied by a host of additional parametric monitoring requirements that EPA has supported with technical analyses, unlike the Division's parametric monitoring requirements. Response to Comments at 5.

Further, the Division claims violations of the requirements are not of concern, Response to Comments at 5–6, but promptly writes off the fact that DCP Operating Company, LP, *itself* recently reported deviations from the 95% control efficiency requirement during first half of 2024. Exhibit 19. According to the report, these deviations occurred from January 31 to April 15, 2024. *Id*. The cause was "draining of liquids in related closed vent system." Nothing in the report states the pilot light was out, which undercuts the Division's reliance on pilot light monitoring to ensure compliance with the flare control efficiency requirement. In any case, this underscores that flare combustion efficiency is influenced not just by the pilot light, but also apparently "draining of liquids," which is not a clearly articulated or monitored process condition, as well as other factors.

Add-on controls are not being used to ensure the 95% control efficiency requirement that applies to the ECD is met, because the ECD is the add-on control. The continuous 95% control efficiency requirement—Section II, Conditions 3.1.1.2—is an independently enforceable emission limit of 95% VOC control efficiency for the enclosed combustion device. *See* Permit, Section I, Condition 1.4 ("**All conditions** in the permit are enforceable by . . . citizens") (emphasis added). Thus, the Division's justification on page 6 of its Response to Comments misses the mark.

Finally, as discussed below, the additional parametric monitoring requirements the Division relies on have already been rejected by EPA as unsupported in the Platteville Order, and are not supported in the reopened permit. The deficiencies in these parametric requirements are not somehow remedied by simply tacking on a far-too-infrequent testing requirement.

II. Given the excessive, five-year lapse between performance tests, the permit still predominantly relies on insufficient parametric monitoring requirements and unjustifiably assumes a control efficiency of 95 percent for control devices, without proper testing, monitoring, and reporting to assure compliance with Section II, Condition 3.1.1.2, despite evidence to the contrary.

The factors and requirements described in the preceding section that should be relied upon in determining appropriate monitoring under Title V apply to the following concerns as well. The Center's comments raise this concern in detail. Ex. 26 at 7–23.

Given the far-too-irregular and unsupported testing requirement, the Division still relies on inadequate parametric monitoring requirements that EPA already concluded were unsupported in granting the petition to object in part, *see* Platteville Order at 11–13. While a five-year performance testing requirement may, in specific circumstances that do not apply here, prove adequate, that testing requirement must be combined with adequate operation and

maintenance requirements, and a CAM plan, to assure compliance with the relevant limits. *See In the Matter of Public Service Co.*, Order on Petition No. VIII-2010-XX, at 28–31 (Sept. 29,2011) (stating "we conclude that viewed as a whole, this three-pronged approach…is adequate to assure compliance with the applicable PM limit" [three-pronged approach including performance testing, operation and maintenance, and a CAM plan]). The Division simply relies on the testing requirements to remedy the deficiencies identified in the Platteville Order, without actually providing justification for the parametric monitoring requirements.

Thus, the justification and support for the permit's parametric monitoring requirements is still missing. *See, e.g.*, Platteville Order at 12 ("CDPHE does not explain *how* the permit conditions assure compliance, but merely asserts that they do. CDPHE also does not address the specific variables that the Petitioner alleges determine VOC control efficiency—residence time, temperature, and turbulence—and whether the monitoring may be related to these parameters, or why it does not need to be, if CDPHE believes it does not." (citing *In the Matter of Inter Power Ahlcon Partners LP, Colver Power Plant,* Order on Petition No. III-2020-13 at 7–11 (June 7, 2022) (granting a petition where the permitting authority did not establish appropriate ranges for parametric monitoring)). Tacking on an infrequent testing requirement does not cure the defects in the permit's parametric monitoring that EPA objected to originally in the Platteville Order. The testing requirement is what the Division relies on to somehow justify the same parametric monitoring requirements EPA already rejected, Response to Comments at 9–12, but the testing requirement does not supply any new support for the deficient parametric requirements. Nor does the CAM plan, which simply reasserts the pilot light requirements that EPA already rejected in the Platteville Order, as discussed below.

The permit does not comply with the Title V requirements enumerated above, that is, it still lacks testing, monitoring, reporting, and recordkeeping sufficient to assure compliance because Section II, Condition 3.1.1.2, on page 61 of the permit, 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* Permit, Section I, Condition 1.4 ("**All conditions** in the permit are enforceable by . . . citizens") (emphasis added).

The permit cannot presume that control devices will operate with a control efficiency of 95% without adequate 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.

The permit claims to be a synthetic minor permit with respect to VOCs and NOx, or to set pollution or process limits on equipment and processes, in reliance on flare combustion efficiency of 95%, that allow the Platteville Plant to claim synthetic minor status. The permit is

invalid as a synthetic minor permit because the permit must be enforceable as a federal or practical matter.

In order to make the VOC, NOx and HAPs limits enforceable as a practical matter, the permit must require continuous emission monitoring systems (CEMs) for the mass inlet and outlet VOCs and HAPs for the flare as well as outlet NOx. Exhibit 8 at 5. There are several reasons for this, discussed below. To the extent the Division is not willing to require CEMS, then at a minimum the Division must require semi-annual stack testing to ensure appropriate emission control efficiency. This is especially true given that there are numerous examples of flares not achieving required control efficiency requirements.

For instance, direct measurement of flares showed that a Bonanza Creek Energy facility in Weld County, the Wetco Farms A-4 well pad, ECD-1 Load-out had a control efficiency of 68.61%, while ECD-1 had a control efficiency of 76.50%. See Exhibit 1, Division, *Stack Tests for Enclosed Combustion Devices* (Jan. 2022).[6] ECD-2 at this oil and gas well pad had an actual control efficiency of 90.73% and the control efficiency for ECD-2 Load-out was 92.17%. *Id*. The problem also extends to different companies using different makes and models of flares. For example, the flare at another well pad, PDC Energy's Troudt 18-27 Pad SE had a control efficiency of 93.04% when tested. *Id*. Thus, the Division's own empirical evidence rebuts its presumed 95% control efficiency.

[6] The Division created Exhibit 1, 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.

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, these violations of the 95% control efficiency requirement were only found by direct testing. Thus, the monitoring and reporting requirements the Division relies upon to show compliance failed to reveal the violations, and it took testing to reveal the flares were not being operated properly.

The oil and gas industry itself has reported numerous instances of flares failing to achieve a 95% control efficiency in Colorado. For example:

- Rocky Mountain Midstream reported a VOC destruction efficiency of 69.6% when conducting compliance testing for a flare controlling dehydrator emissions at the company's Latham Compressor Station in June 2020. *See* Exhibit 2, Division, "Stack Test Memo: Latham Compressor Station" (Oct. 19, 2020) at 2.
- Wexpro reported a VOC destruction efficiency of 67% when conducting compliance testing for an enclosed combustion device controlling condensate tank emissions at the company's Powder Wash Pad 4 in August 2023. *See* Exhibit 3, "Form 2, Notification of Failed ECD Performance Test, Wexpro Powder Wash Pad 4."
- Laramie Energy reported a VOC destruction efficiency of 60.89% when conducting compliance testing for an enclosed combustion device controlling condensate tank emissions at the company's East Plateau Compressor Station in October 2023. *See* Exhibit 4, "Form 2, Notification of Failed ECD Performance Test, Laramie Energy East Plateau Compressor Station."

- Wexpro reported a VOC destruction efficiency of 67% when conducting compliance testing for an enclosed combustion device controlling dehydrator emissions at the company's East Hiawatha Compressor Station in August 2023. *See* Exhibit 5, "Form 2, Notification of Failed ECD Performance Test, Wexpro East Hiawatha Compressor Station."
- Kerr-McGee Oil and Gas reported a VOC destruction efficiency of 93.27% when conducting compliance testing for an enclosed combustion device controlling produced water tank emissions at the company's Blue Chip 6-22HZ facility in November 2023. *See* Exhibit 6, "Form 2, Notification of Failed ECD Performance Test, Kerr-McGee Oil and Gas Blue Chip 6-22HZ."

Notably, the failure of these *enclosed* flares to achieve a 95% control efficiency occurred even as combustion was occurring, meaning a pilot light was present. Five-year testing without adequate parametric monitoring will not assure compliance with the monthly and annual VOC limits the ECD is meant to achieve, nor the continuous 95% control efficiency requirement that applies to the ECD when it is in operation.

Further, EPA Region 8 and the Wyoming Department of Environmental Quality ("Wyoming DEQ") produced a report based on results from a large study of enclosed combustion device combustion efficiency that confirmed further failures. 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.

Exhibit 7, U.S. EPA, Region 8, Wyoming DEQ, Measuring Enclosed Combustion Device Emissions Using Portable Analyzers, at 9 (May 14, 2020). The Division was fully aware of this report in developing the permit. *See* Exhibit 17.

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* Exhibit 8 at 2–5. Control efficiency is affected by variables like weather, altitude, damage during shipping, the way the equipment is installed, improper construction of the particular device, variabilities in the fuel and waste streams, and different temperatures needed for different VOCs. *See e.g.* Exhibit 8 at 2–5; *see also* Exhibit 9, EPA, Parameters for Properly Designed and Operated Flares, Report for Flare Review Panel (Apr. 2012); Exhibit 20, EPA, Cost Control Manual, Chapter 1: Flares, at 1-1 (Apr. 2019).[7] VOC control efficiency is also controlled by residence time and temperature. Exhibit 8 at 2–3. A flare does not necessarily ensure consistency for these two parameters and thus cannot deliver a consistent control efficiency. No quantitative assumptions can rationally be made about the impacts these many variables in total have on the mass emissions from a flare. 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 (which the permit does not even require).

[7] *Available at* https://www.epa.gov/sites/default/files/201908/documents/flarescostmanual chapter7thedition_august2019vff.pdf.

In spite of this, the permit still contains the assumption that control devices will operate with a control efficiency of 95% throughout the lifetime of the flare, under all conditions, without including adequate testing and monitoring to assure compliance with that assumption.

The Division's awareness over the need to ensure adequate and regular (i.e., more frequently than every five years) testing and monitoring of flares is reflected in its own policies, regulations, and in other permits issued in Colorado. For example, in a Title V permit for an oil and gas production facility in Jackson County, Colorado, the Division required semiannual testing of a flare to assure compliance with an applicable 98% control efficiency requirement. In Title V Permit No. 17OPJA401 issued for the Bighorn 0780 S17 CTB Facility, the Division required:

> On a semi-annual basis, a source compliance test shall be conducted on the TCI 4800 control device to measure the emission rate of Volatile Organic Compounds (VOC) in order to demonstrate the enclosed combustor achieves a minimum destruction efficiency of 98% for VOC, and to monitor compliance with the annual emission limits[.]

Exhibit 10, Air Pollution Control Division Colorado Operating Permit, D90 Energy, LLC—Bighorn 0780 S17 CTB Facility, Permit No. 17OPJA401 (Jan. 1, 2020) at Section II, Condition 2.8.

Similarly, the Division has adopted a policy requiring at least annual testing of flares whenever a permittee requests a control efficiency greater than 95%. See Exhibit 11, Division, "Oil and Gas Industry Enclosed Combustion Device Overall Control Efficiency Greater than 95%," Permitting Section Memo 20-02 (Feb. 4, 2020) at 4-5. It is not clear why, in light of this policy, the Division is not requiring periodic monitoring and testing of the flare at the permitted

facilities and for permitted equipment and processes. There is no support for an arbitrary testing cutoff at 95% control efficiency.

Furthermore, in 2021, the Division proposed and the AQCC adopted rules requiring testing of flares throughout the state, which were promulgated as state-only enforceable rules at AQCC Regulation No. 7, Part B, Section II.B.2.h. See Exhibit 15, AQCC Regulation No. 7 at 46–51. As the AQCC noted in its Statement of Basis for the adopted rules:

> Historically, the Commission has assumed that enclosed combustion devices were achieving at least 95% control efficiency for hydrocarbons. However, the Commission determined that it was appropriate to promulgate regulatory requirements that will additionally ensure that enclosed combustion devices in the state are, in fact, operating at and achieving 95% control efficiency for hydrocarbons emitted[.]

Although it is questionable whether the adopted state-only enforceable rules ensure sufficiently frequent testing, the Division has nevertheless taken the position that testing is necessary to ensure that flares are operating effectively.

Unfortunately, to the extent that testing is actually required separately from Condition 3.9.5, it may only be via state-only enforceable requirements (which does not appear to be the case, *see* Preliminary Analysis at 2). These state-only requirements cannot serve to assure compliance with applicable federally enforceable requirements, which is what is required for synthetic minor source permits. Regulation 3, Part A, I.A, I.B.43, I.B.51.

Furthermore, EPA has issued three crucial, pertinent decisions that rejected, in total, six of the Division's Title V operating permits on the basis that the permits did not ensure that flares were working at 95% efficiency, including the prior iteration of the Platteville renewal permit. *See* Exhibit 13, Platteville Order; Exhibit 12, *In the Matter of Bonanza Creek Operating Company, LLC*, Petition No. VIII-2023-11, 2024 EPA CAA Title V LEXIS 5 (Jan. 30, 2024)

[hereinafter "Bonanza Creek Order"]; Exhibit 21, *In the Matter of HighPoint Operating Corporation, Anschutz Equus Farms 4-62-28*, Petition No. VIII-2024-6 (July 31, 2024) [hereinafter "HighPoint Order"].[8] These permits effectively contained the same monitoring, reporting, and recordkeeping requirements as the permit. *See, e.g.*, Exhibit 22, HighPoint Operating Corporation, Anschutz Equus Farms 4-62-28 NWNW [Draft] Operating Permit, Permit No. 20OPWE423.

The Center challenged these permits when they were in front of EPA, on the same basis as discussed in these comments: the permit requirements failed to ensure that flares are operating at 95% efficiency. Like the permit, these permits required no actual testing or monitoring of flare control efficiency and inappropriately relied on qualitative parametric monitoring that does not actually demonstrate compliance with the quantitative control efficiency requirement.

In the Bonanza Creek, Platteville and Highpoint Orders, the EPA found no support for the Division's claim that the six permits "'set forth' the necessary monitoring requirements to ensure compliance with the requirements for ECDs to achieve 95% [volatile organic compound] control efficiency[.]" Bonanza Creek Order at 13; Platteville Order at 11. EPA stated:

> The Petitioners provide a detailed, condition-by-condition refutation of these monitoring requirements, explaining each case how, in their opinion, the monitoring is unrelated to achieving a specific control efficiency . . . The Petitioners persuasively argue that these monitoring requirements may ensure the ECDs are not malfunctioning, and that combustion is actually occurring. See id. Therefore, they may also ensure that the ECDs maintain a certain, initial control efficiency. It is unclear, however, how the monitoring requirements ensure that the ECDs continually achieve the specific 95% control efficiency required in the Permits.

[8] *Available at* https://www.epa.gov/system/files/documents/2024-02/bonanza-creek-title-v-petition-order.pdf, and https://www.epa.gov/system/files/documents/2024-08/highpoint-equus-farms-order_07-31-2024.pdf. The initial DCP Platteville draft Title V permit that EPA rejected is also included as Exhibit 16.

Bonanza Creek Order at 14; Platteville Order at 11; *see also* HighPoint Order at 10–11.

Addressing the Division's counterpoints in its response to comments, EPA went on to state:

> CDPHE does not explain how the permit conditions ensure compliance, but merely asserts that they do. CDPHE also does not address the specific variables that the Petitioners allege determine [volatile organic compound] control efficiency—residence time, temperature, and turbulence—and whether the monitoring may be related to these parameters, or why it does not need to be, if CDPHE believes it does not.

Bonanza Creek Order at 14; Platteville Order at 12; *see also* HighPoint Order at 10–11.

EPA rejected the same arguments the Division rehashes in its response to these comments. In so doing, EPA stated that "CDPHE does not explain why 95% control efficiency is the threshold for additional performance testing." *Id.* EPA also rejected the idea that because the performance testing data referenced above may indicate flares "often" meet 95 control efficiency that this satisfies the requirement that permits contain enforceable conditions that ensure compliance with 95% control efficiency. *Id*.

EPA rejected the permits and sent them back to the Division with instructions to correct the permits or to revise the permit records to justify its deficient monitoring, reporting, and recordkeeping requirements for flares. EPA rejected the Division's explanations for why these requirements were sufficient.

Again, the Division's awareness over the need to ensure adequate testing and monitoring of flares is reflected in its own policies, regulations, and in other permits issued in Colorado, including in its response to the Platteville Order. Performance testing, or any other method of assuring flare performance, must be federally enforceable and, therefore, part of Colorado's

EPA-approved state implementation plan, rather than state-only enforceable, for the permit to serve as a synthetic minor (or true minor for HAPs) source permit. Further, a five-year testing period is far too infrequent to assure flare performance and compliance with applicable requirements, including the synthetic minor limits in the permit.

The permit, and thus the permitted source's claimed synthetic minor status, is based on the assumption that flares will destroy 95% of the VOCs and HAPs intended to be destroyed, and that 100% of these pollutants will be captured and sent to the flare. But there is no testing, monitoring, or reporting to ensure that flares are achieving this 95% destruction and removal efficiency day in and day out over the lifetime of this facility, or that 100% of the pollutants are being captured and sent to the flare.

There is no support for not including testing with adequate frequency and monitoring, as well as associated recordkeeping and reporting requirements, to assure compliance with the applicable 95% control efficiency requirement for the flares utilized pursuant to the permit. The permit's current design, maintenance, and monitoring requirements that apply to the flares do not ensure that the flares will operate with 95% control efficiency, especially not at all times. There is not a rational connection between these requirements and 95% control. And, again, as explained above, the parametric monitoring requirements are still the predominant means by which the permit is meant to ensure 95% control, because the five-year performance testing requirement is far too infrequent to ensure compliance with a continuous control efficiency requirement—Section II, Conditions 3.1.1.2, nor the monthly and annual VOC emissions limits the 95% control requirement the permit is dependent on to achieve, Section II, Conditions 3.1.

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,[9] in order to presume that the ECD will achieve 95% control efficiency. Permit at 61. 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. They do not produce any quantitative data of what percentage control efficiency the flare is working at. And, as explained above and in the preceding section, testing once every five years is far too infrequent to ensure compliance with a continuous control efficiency requirement, nor the monthly and annual VOC emissions limits the 95% control requirement the permit is dependent on to achieve. Thus, Section II, Condition 3.1.1.2 in the permit still relies on the parametric monitoring requirements EPA has already rejected and 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. Permit 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. Permit 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, with

[9] 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.

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

Section II, Condition 3.9.3 sets forth an operations and maintenance ("O&M") requirement for the pilot light to be present at all times. Permit at 69; *see also* Permit at 171, 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.*, Exhibits 1–7.

Crucially, DCP Operating Company, LP, *itself* recently reported deviations from the 95% control efficiency requirement during first half of 2024. Exhibit 19. According to the report, these deviations occurred from January 31 to April 15, 2024. *Id*. The cause was "draining of liquids in related closed vent system." Nothing in the report states the pilot light was out, which undercuts the Division's reliance on pilot light monitoring to ensure compliance with the flare control efficiency requirement. In any case, this underscores that flare combustion efficiency is influenced not just by the pilot light, but also apparently "draining of liquids," which is not a clearly articulated or monitored process condition, as well as other factors.

Section II, Condition 3.9.4 requires monitoring for the presence of "smoke," an undefined term, and in certain circumstances, opacity. Permit at 69. 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 PM2.5 like nitrates. Nitrogen (N_2) 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 PM2.5 unrelated to VOC, formation which could have the unintended, and **undetected,** consequence of decreasing VOC control efficiency. *See e.g.* Exhibit 8 at 2 (changes in temperature change control efficiency).

Importantly, there is no evidence that the ECD covered by Section II, Conditions 3.1.1.2, 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.

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. Permit at 71. This Condition simply incorporates by reference Colorado Regulation No. 7 ("Regulation 7"), Part D, Section I.C, presumably 5 C.C.R. § 1001-9, Part D, Section I.C. However, Regulation 7, Part D, does not exist. There are no subparts to

Regulation 7 beyond a Part C, which only sets forth the statements of basis for the requirements of Regulation 7, as well as specific statutory authority and purpose.

Presuming that the Division intends to incorporate by reference Part B requirements, rather than Part D requirements—which is by no means ascertainable from the permit itself and must be clarified and subject to a new public comment period—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 the Division, EPA, or the public 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 the Division were to justify this fatal flaw, which it cannot, these conditions apply Section II, Conditions 8.1.1 and 8.1.2 of the permit to Section II, Condition 3.1.1.2. Permit at 71. 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." Permit at 98. 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% VOC control efficiency. Rather, the exhibits show 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.* Exhibits 1–7. 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* Exhibit 8 at 2–3. Some of these variables, like residence time, are inherently uncontrollable in an ECD. *Id*. at 3. Thus, CEMS or, at least, periodic testing like stack testing is the only way to assure compliance, but, as explained in the preceding section, stack testing must be semi-annual to assure compliance with a continuous control efficiency requirement (Section II, Condition 3.1.1.2), and with the monthly and annual VOC emissions limits that depend on the control efficiency requirement (Section II, Condition 3.1). *Id*. at 5.

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." Permit at 98. 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).

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, Condition 3.11.2.1. These conditions inherently fail to assure the public and EPA of compliance with Section II, Conditions 3.1.1.2, because they are "state-only enforceable." Permit at 2, 73–74, 89. 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, Condition 3.1.1.2.[10]

[10] Colorado could fix this problem by submitting what are presumably regulatory provisions Reg. 7, Part B, Sections II.B.2.g and h to EPA to be part of the Colorado State Implementation Plan. The Center explicitly asked the Division and the Colorado Air Quality Control Commission to

EPA has 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, Condition 3.11.2.1 impairs the enforceability of Section II, Condition 3.1.1.2. Thus, consistent with the TEP Order and EPA's position in prior orders, EPA should not credit these state-only enforceable provisions.

Even if the Division were to establish that Section II, Condition 3.11.2.1 must be evaluated to determine if the permit contains monitoring, testing, recordkeeping, reporting to assure compliance with Section II, Conditions 3.1.1.2, as explained below, EPA will still have to object to the proposed permit and hold that that they do not. Section II, Condition 3.11.2.1 applies Condition 8.4 to the dehydration unit (AIRS ID 009). Permit at 74.

Section II, Condition 8.4 is clearly marked "State-Only Enforceable." Permit at 100; *see also* Permit 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

---

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.

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, Condition 3.1.1.2. 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* Permit at 100–101; *see also supra* at 29–35.

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. Exhibits 1–7. 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. Exhibit 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 30–35. 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." Permit at 101. 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 29–35. Section II, Condition 8.4.6 requires certain maintenance and visual inspections. Permit at 101. As explained above, this does not assure 95% VOC control efficiency. *See supra* at 29–37.

Section II, Condition 8.4.6.2(g) addresses flow meters for ECDs. Permit 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), Permit at 102. 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 23–25. 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. 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. 09GU1382 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) (Exhibit 18).

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 separately require performance testing of the ECD serving AIRS 009 (separate from Section II, Condition 3.9.5). Permit at 102–105. However, a review of the language of these conditions establishes that they do not assure compliance with Section II, Condition 3.1.1.2. Further, EPA already rejected this defective and superficial performance testing requirement as a method of assuring compliance and the practical and federally enforceability of the flare requirements and associated emissions limits. Platteville Order at 11–12.

Section II, Condition 8.4.8.1(a) requires that the performance test must be conducted in accordance with a Division-approved test protocol. Permit at 103. 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, the Division cannot issue the permit as drafted, because 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% 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." Permit at 103. 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 oppositive 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. Permit 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 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. Permit at 104. Thus, because the permit does not set a testing frequency outside of Condition 3.9.5, EPA and the public cannot be assured that the performance testing will be frequent enough to assure compliance.

Finally, the Division cannot rely on the CAM plan to argue that it has three-pronged approach to assuring compliance with the VOC limits and the 95% control efficiency requirement. *See In the Matter of Public Service Co.*, Order on Petition No. VIII-2010-XX, at 28–31 (Sept. 29,2011) (stating "we conclude that viewed as a whole, this three-pronged approach…is adequate to assure compliance with the applicable PM limit" [three-pronged approach including performance testing, operation and maintenance, and a CAM plan]). The CAM plan simply repeats the pilot light requirement that is not sufficient by itself to assure compliance with a 95% control efficiency, as discussed above. EPA already rejected the unsupported parametric monitoring approach of relying on a pilot light requirement to assure compliance in the Platteville Order, because this was a feature of the prior Platteville permit that EPA concluded was not justified, *see, e.g.,* at 11–13. Thus, the renewed permit has a far-too-infrequent and unjustified testing requirement; parametric monitoring requirements that still go unjustified, contrary to the requirements of the Platteville Order; and a CAM plan that does not add additional substantive monitoring requirements that could assure compliance.

Accordingly, the Division must revise the permit because there must be testing, monitoring, and reporting to verify that control devices are achieving the require 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 Exhibit 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.").

The Division may argue 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. 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* Exhibit 7. Thus, the distinction between 95% control and 98.5% control is literally and legally arbitrary. EPA itself recognized this in the Platteville Order—but the Division has yet to provide a sufficient explanation for this arbitrary distinction.

Thus, in order to make the VOC, NOx, and HAPs limit enforceable as a practical matter, the permit must require continuous emission monitoring systems (CEMs) of the mass inlet and outlet VOCs and HAPs for the flare as well as outlet NOx. Exhibit 8 at 5. To the extent the Division is not willing to require CEMS, then at a minimum the Division must require semi-annual stack testing to ensure appropriate emission control efficiency. Otherwise, the permit will fail to contain monitoring, testing, recordkeeping, and reporting sufficient to assure compliance with Section II, Condition 3.1.1.2, and the emissions limits the 95% control requirement is meant to meet, and thus will not comply with 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1) & (3)(i)(B), (c)(1).

CONCLUSION

EPA must object to reopened 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 still lacks the testing, monitoring, reporting, and recordkeeping requirements necessary to assure compliance with its terms and conditions, or to enable detection and enforcement of permit violations. Accordingly, the Center respectfully requests that the Administrator object to the Proposed Permit and require the Division to revise and reissue the permit in a manner that complies with the requirements of the Clean Air Act.

DATED: February 18, 2025

Respectfully submitted,

/s/ *Ryan Maher*

_____

Ryan Maher
Staff Attorney
Environmental Health Program
Center for Biological Diversity
1411 K St. NW, Ste. 1300
Washington, DC 20005
781-325-6303
rmaher@biologicaldiversity.org

Counsel for Petitioner Center for Biological Diversity

cc:

Michael Ogletree
Director
Colorado Air Pollution Control Division

cdphe_apcd_airpermitcomments@state.co.us

DCP Operating Company, LP
6900 E. Layton Ave., Suite 900
Denver, CO 80237