

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
Kerr-McGee Gathering, LLC,	)	
Frederick Compressor Station	)	
	)	ORDER RESPONDING TO
	)	PETITIONERS' REQUEST THAT
Permit Number: 95OPWE035	)	THE ADMINISTRATOR OBJECT
	)	TO ISSUANCE OF A
	)	STATE OPERATING PERMIT
Issued by the Colorado Department of	)	
Public Health and Environment, Air	)	
Pollution Control Division	)	
	)	Petition Number: VIII-2007-__
	)	
	)	

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ORDER GRANTING PETITION FOR OBJECTION TO PERMIT

The United States Environmental Protection Agency ("EPA") received a petition dated January 3, 2007, from Rocky Mountain Clean Air Action (RMCAA) or ("Petitioner") requesting that EPA object, pursuant to section 505(b)(2) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7661d, to the issuance of a state operating permit to Kerr-McGee Gathering LLC ("Kerr-McGee") to operate the Frederick Natural Gas Compressor Station ("Frederick Station"), located at 3988 Weld Country Road 19, Frederick, Weld County, Colorado.

Frederick Station is a Natural Gas Gathering and Compression facility as defined under Standard Industrial Classification 1311. Gas is compressed to specification for transmission to sales pipelines using three internal combustion engines to power compressor units. Other activities conducted on site include dehydration of the gas through contact with triethylene glycol, and gravity separation of condensates. The dehydrator is equipped with a thermal oxidizer unit to control volatile organic compound (VOC) emissions. Emissions from the tanks located onsite are controlled with an air-assist vertical flare. Fugitive VOC emissions also result from equipment leaks.

The Colorado Department of Public Health and Environment, Air Pollution Control Division ("CDPHE" or "Colorado"), issued the Frederick Station operating permit on January 1, 2007, pursuant to title V of the Act, the federal implementing regulations at 40 CFR part 70, and the Colorado State implementing regulations at Regulation No. 3 part C.

The petition alleges that the Frederick Station permit does not comply with 40 CFR part 70 in that: (I) the title V permit failed to assure compliance with PSD requirements because CDPHE failed to consider whether emissions from adjacent and interrelated pollutant emitting activities triggered PSD review, specifically Kerr-McGee owned natural gas wells that supply natural gas to the Frederick Station; (II) in light of CDPHE's failure to consider PSD compliance, it is likely that the title V permit must include a compliance schedule; (III) CDPHE failed to respond to significant comments submitted by the Petitioner during the title V public comment period; and (IV) CDPHE failed to consider adjacent and interrelated pollutant emitting activities in defining the "source" subject to title V. Petitioner has requested that EPA object to the issuance of the Frederick Station permit pursuant to section 505(b) (2) of the Act.

EPA has reviewed these allegations pursuant to the standards set forth by section 505(b)(2) of the Act, which provides that a petition may be based only on objections to the permit that were raised with reasonable specificity during the comment period provided by the permitting agency and places the burden on the Petitioner to "demonstrate to the Administrator that the permit is not in compliance" with the requirements of the Act. See also 40 CFR § 70.8(c)(1) and (d); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002).

In reviewing the various allegations made in the petition filed by the Petitioner, EPA considered information in the title V permit record including: the petition; Colorado's August 8, 2006 notice of the proposed Frederick Station title V operating permit, published in the *Farmer & Miner*; the proposed title V operating permit for Frederick Station that was the subject of the August 8, 2006 notice, labeled "Pending"; the Petitioner's September 14, 2006 comments on the August 07, 2006 title V draft permit; CDPHE's October 11, 2006 response to Petitioner's September 14, 2006 comments; Colorado's operating permit for Frederick Station, dated January 1, 2007; and Colorado's technical review document for the Frederick Station operating permit, dated "November 2005 & August 2006".

Based on a review of all the information before me, I grant the Petitioner's request for an objection to the Kerr-McGee Gathering LLC Frederick Station title V permit for the reasons set forth in this Order.

### **STATUTORY AND REGULATORY FRAMEWORK**

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted interim approval to the title V operating permit program submitted by the State of Colorado effective February 23, 1995. 60 Fed. Reg. 4563 (January 24, 1995); 40 CFR part 70, Appendix A. See also 61 Fed. Reg. 56367 (October 31, 1996) (revising interim approval). Effective October 16, 2000, EPA granted full approval to Colorado's title V operating permit program. 65 Fed. Reg. 49919 (August 16, 2000). Major stationary

sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a).

The title V operating permit program does not generally impose new substantive air quality control requirements. However, title V permits must include existing air quality control requirements (which are referred to as “applicable requirements”) and must contain monitoring, record keeping, reporting, and other conditions to assure compliance by sources with existing applicable emission control requirements. *See* 57 Fed. Reg. at 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, states, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are applied appropriately to facility emission units and that such emissions units comply with these requirements.

Under section 505(a) of the Act and 40 CFR § 70.8(a), States are required to submit all proposed title V operating permits to EPA for review. Section 505(b)(1) of the Act authorizes EPA to object if a title V permit contains provisions not in compliance with applicable requirements, including the requirements of the applicable SIP. *See also* 40 CFR § 70.8(c)(1).

Section 505(b)(2) of the Act states that if the EPA does not object to a permit, any member of the public may petition the EPA to take such action, and the petition shall be based only on issues that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to do so or unless the grounds for objection arose after the close of the comment period. *See also* 40 CFR § 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

Petitioner commented during the public comment period, raising concerns with the draft operating permit.

### **ISSUES RAISED BY PETITIONERS**

#### **I. Petitioner’s Claim I.C. “In the Alternative, the Division Failed to Respond to Significant Comments on this Issue”**

Petitioner’s third claim alleges that the CDPHE failed to respond to Petitioners’ significant comments on the draft permit concerning the CDPHE’s determination of what constitutes the source for PSD and title V purposes. In comments on the draft permit, the petitioner raised the same substantive issues that are raised in this petition: (I) The title V permit failed to assure compliance with PSD requirements because CDPHE failed to

consider whether emissions from adjacent and interrelated pollutant emitting activities triggered PSD review; (II) in light of CDPHE's failure to consider PSD compliance, it is likely that the title V permit must include a compliance schedule to bring the facility in compliance with PSD; and (III) CDPHE failed to consider adjacent and interrelated pollutant emitting activities in defining the "source" subject to title V. According to Petitioner, the CDPHE failed to respond substantively to any part of Petitioner's September 14, 2006 comment letter. The CDPHE provided the following response to Petitioner's comment:

"The Division will address the issue of Oil and Gas facilities source aggregation upon further action relating to this interpretation, for example, by the U.S. EPA. Until that time, the Division will issue permits in a manner consistent with how it has historically made single source determinations for oil and gas operations, which in this case would be to consider the listed facilities as separate sources for both Title V and PSD purposes. We will reevaluate this determination if warranted in the future."

The Petitioner alleges that this was not responsive to their comments, noting "[t]he EPA has held that 'It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments.' *See, In the Matter of Onyx Environmental Services*, Petition V-2005-1 (February 1, 2006)"

I find that the response by the CDPHE does not adequately respond to Petitioner's comments concerning source aggregation of additional emission units owned by Kerr-McGee in the vicinity of the emission units permitted under the title V permit issued to Kerr-McGee for the Frederick Station. The comments raised by Petitioner are significant. As the petition points out, these comments raise issues as to whether there are deficiencies in the title V permit. As the permitting authority, CDPHE has a responsibility to respond to significant comments. *Home Box Office v. FCC*, 567 F. 2d. 9. 35 (D.C. Cir. 1977). Reliance on past practice without an explanation of the basis for that practice is not an adequate response.

For these reasons, I grant the petition on this issue. *See* CAA § 505(b)(2); 40 CFR § 70.8(d) and direct CDPHE to address Petitioner's comments contained within Petitioner's *September 14, 2006, Comments on Draft Frederick Compressor Station Title V Permit*.

#### Remainder of Petitioner's Claims

Petitioner's remaining claims mirror its comments on the draft permit discussed above alleging that CDPHE's failed to assure compliance with PSD and title V and that a compliance schedule may be required.

Petitioner also states that that it does not have access to complete information concerning Kerr-McGee's natural gas wells and states that "we have not been granted access to specific information that explicitly shows which of Kerr-McGee's producing natural gas wells supply natural gas to the Frederick station." See Petition at 9. The petition goes on to describe documents that show wells in close proximity to the Frederick Station and alleges that "[t]he best information we have available to us shows that there are hundreds of wells in close proximity to the Frederick Station, and that most, if not all, of these wells, or pollutant emitting activities, are interrelated with the Frederick Station in that they support operations of the compressor station." In essence, Petitioner claims that the draft permit record does not contain information that may be required to support CDPHE's determination of the source for the Frederick Station permit.

As stated above, CDPHE failed to adequately respond to Petitioner's initial comments, which raised the PSD and title V source definition issues and the compliance schedule issue. In addition, as petitioner points out, the permit record may not contain information necessary to evaluate the PSD and Title V source definition issue. For this reason, I grant the petition on these issues and direct CDPHE to respond to petitioner's comments and, as necessary, supplement the permit record and make appropriate changes to the permit. In so doing, I am not concluding that the "source" must be defined to include any of the Kerr-McGee wells – only that the present permit record does not provide the public with a sufficient explanation for CDPHE's approach to defining the source.

### CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, Petitioner's petition is granted.

Dated: FEB -7 2008

  
Stephen L. Johnson  
Administrator