BEFORE THE ADMINISTRATOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Title V)	
Operating Permit)	
)	
Issued by the)	
)	
Colorado Department of Public Health)	Permit Number 03OPWE254
and Environment, Air Pollution Control)	
Division)	
)	
to)	
)	
Denver Regional Landfill South)	
to operate a municipal solid waste landfill)	
in Weld County, Colorado)	

PETITION FOR OBJECTION TO ISSUANCE OF OPERATING PERMIT FOR DENVER REGIONAL LANDFILL SOUTH

Pursuant to Section 505(b)(2) of the Clean Air Act ("CAA") and 40 CFR § 70.8(d) and the applicable federal and state regulations, Rocky Mountain Clean Air Action and Jeremy Nichols hereby petition the Administrator of the U.S. Environmental Protection Agency ("EPA") to object to the Title V operating permit (hereafter "Title V Permit") issued by the Colorado Department of Public Health and Environment, Air Pollution Control Division ("Division") for Denver Regional Landfill South to operate a municipal solid waste landfill (hereafter "DRLS"), Permit Number 03OPWE254.¹

The Division submitted the proposed Title V permit for EPA review on December 28, 2005. The EPA's 45 day review period ended on February 11, 2006. Based on Petitioners' conversations with Region 8 EPA staff, the EPA did not object to the issuance of the Title V

¹ This permit and the accompanying Technical Review Document are attached as Exhibits 1 and 2, respectively.

Permit for DRLS. This petition is thus timely filed within 60 days following the conclusion of EPA's review period and failure to raise objections.

Petitioner Jeremy Nichols is a resident of Denver, Colorado, an avid bicycle rider, outdoor enthusiast, and father who is deeply concerned about air quality in the Front Range region and its effects to the health and welfare of people, plants, and animals. Petitioner Rocky Mountain Clean Air Action is a newly founded, Denver, Colorado based citizens group dedicated to protecting clean air in Colorado and the surrounding Rocky Mountain region for the health and sustainability of local communities. On July 29, 2005 and December 9, 2005, Petitioners submitted concerns over the Division's proposal to renew the Title V permit for DRLS.²

This petition is based on objections to the permit raised with reasonable specificity during the public comment period. To the extent the EPA may somehow believe this petition is not based on comments raised with reasonable specificity during the public comment period,

Petitioner requests the Administrator also consider this a petition to reopen the DRLS Title V permit in accordance with 40 CFR § 70.7(f).³ A permit reopening and revision is mandated in this case because of one or both of the following reasons:

1. Material mistakes or inaccurate statements were made in establishing the terms and conditions in the permit. See, 40 CFR § 70.7(f)(1)(iii). As will be discussed in more detail, the Title V permit for DRLS suffers from material mistakes that render several

² These comments are attached to this Petition as Exhibits 3 and 4.

³ To the extent the Administrator may not believe citizens can petition for reopening for cause under 40 CFR § 70.7(f), Petitioner also hereby petitions to reopen for cause in accordance with 40 CFR § 70.7(f) pursuant to 5 USC § 555(b).

terms and conditions meaningless, ambiguous, unenforceable as a practical matter, in violation of applicable requirements, etc.; and

2. The permit fails to assure compliance with the applicable requirements. See, 40 CFR § 70.7(f)(1)(iv). As will be discussed in more detail, the Title V permit for DRLS fails to assure compliance with several applicable requirements.

Petitioners request the EPA object to the issuance of Permit Number 03OPWE254 for DRLS and/or find reopening for cause for the reasons set forth below.

I. THE STATE OF COLORADO DID NOT RESPOND TO SIGNIFICANT COMMENTS

The EPA has noted 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) at 7. Unfortunately, despite this general principle, the Division failed to respond to significant comments presented by the Petitioners. In particular, the Division entirely failed to respond to any portion of Petitioners' December 9, 2005 comment letter. In response to Petitioners' comments, the Division merely responded in a one page letter that, "After reviewing your comments, we have determined that none are specific to either Condition 1.7 or 1.10 of the draft permit. Therefore, although we will include a copy of your comments in the permit file, we will not be responding to your comments in writing." As will be explained in more detail, the failure to respond to significant comments was illegal and

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⁴ The Division's December 28, 2005 one page response letter is attached as Exhibit 5.

may have resulted in one or more deficiencies in the Title V Permit for DRLS and the EPA must object to its issuance.

A. The Division Ignored Proper Procedure Under the Colorado SIP

The Division claims it was not required to respond to Petitioner's December 9, 2005 comments because "the Division was only accepting comments related to the permit conditions that had changed, i.e. comments related to Section II, Conditions 1.7 and 1.10." However, under procedures in the Colorado State Implementation Plan ("SIP"), the Division was not allowed to limit public comment only to specific permit sections and/or conditions.

Indeed, the Public Participation Requirements in the Colorado SIP at Regulation 3, Part C, VI do not allow the state of Colorado to limit public comment only to specific permit sections and/or conditions. Under the Public Participation Requirements, which apply to permit proceedings, including initial permit issuance, significant modifications, and re-openings and renewals, the Division is required to, among other things, "receive and consider public comments for thirty days" after notice is published in a local newspaper. Regulation 3, Part C, VI.B.8.

Additionally, if the Division posts notice of a permit proceedings on its website, the Division is required to, among other things, solicit "comments concerning the ability of the proposed activity to comply with applicable requirements," comments "on the air quality impacts of the source or modification," comments on "alternatives to the source or modification," comments "on the control technology required," and comments "on any other appropriate air quality considerations." Regulation 3, Part C, VI.B.11—VI.B-15. Nothing in the Public Participation Requirements of the Colorado SIP allow the Division to limit the scope, focus, and/or nature of public comment for any and all applicable permit proceedings.

In the case of the DRLS Title V Permit, Public Participation Requirements clearly applied to the permit proceeding. According to the TRD and Title V Permit for DRLS, the issuance of the Title V Permit was an initial permit issuance. In accordance with Regulation 3, Part C, VI .B, the Division published notice of the proceeding in a local newspaper and posted notice on its website. However, while these notices requested public comment in accordance with Regulation 3, Part C, VI.B.1—VI.B.15, both notices also included the phrase "However, the Division will only be accepting comments related to Section II, Conditions 1.7 and 1.10 of the draft permit." The inclusion of this phrase is not allowed by Regulation 3, Part C, VI of the Colorado SIP and the Division's subsequent failure to respond to the Petitioners' December 9, 2005 significant comments thereby violates the applicable requirements.

As a practical matter, the Division cannot reasonably adhere to the requirements of Regulation 3, Part C, VI and simultaneously limit public comment as it did in the case of the DRLS Title V Permit. The Division stated clearly in the public notice posted on its website in accordance with the Regulation 3, Part C, VI.B.11—VI.B.15 that:

Any interested person may submit written comments to the Division concerning 1) the sufficiency of the preliminary analysis, 2) whether the permit application should be approved or denied, 3) the ability of the proposed activity to comply with applicable requirements, 4) the air quality impacts of, alternatives to, and control technology required on the source or modification, and 5) any other appropriate air quality considerations.

To then state that "The Division will only be accepting comments related to Section II, Conditions 1.7 and 1.10 of the draft permit" renders not only Public Participation Requirements at Regulation 3, Part C, VI.B.11—VI.B.15 in the Colorado SIP meaningless, but renders the public notice meaningless. The Division must not only adhere to the Colorado SIP, but also give

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⁵ The notices published in the local newspaper and on the Division's website are attached as Exhibits 6 and 7, respectively.

meaning to all its provisions in accordance with the CAA. The failure to do so renders the issuance of the Title V Permit for DRLS in violation of the applicable requirements.

Also as a practical matter, if the Division was allowed to utilize procedures and/or standards for public notice and participation not set forth in the Public Participation Requirements of the Colorado SIP, then the Division could conceivably be allowed to ignore its SIP entirely. Such a consequence is, however, plainly contrary to the CAA. The Administrator must therefore object to the Title V Permit for DRLS due to the fact that the Division utilized procedures and/or standards for public notice and participation not set forth in the Public Participation Requirements of the Colorado SIP.

B. The Failure to Respond to Significant Comments, in Violation of the Colorado SIP, Likely Resulted in One or More Deficiencies in the Title V Permit

The EPA has ruled that the failure of a permitting agency to respond to significant comments that may result in one or more deficiencies in a Title V permit is grounds for objection. See, In the Matter of Onyx Environmental Services, Petition V-2005-1 (February 1, 2006) at 7. The failure of the Division to respond to the significant concerns of the Petitioners did, in fact, result in one or more deficiencies in the Title V Permit. Petitioners raised specific and significant concerns over the ability of the Title V Permit to ensure compliance with New Source Performance Standards ("NSPS") for municipal solid waste landfills, to ensure compliance with startup, shutdown, and malfunction plan requirements under the general provisions of the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), and to ensure compliance with National Ambient Air Quality Standards ("NAAQS") and Prevention of Significant Deterioration ("PSD") increments. The Title V Permit continues to suffer from the deficiencies described in Petitioners' comments. As will be explained in more detail in this

petition, the failure of the Division to respond to these significant comments clearly resulted in one or deficiencies in the Title V Permit. The Administrator must therefore object to the issuance of the Title V Permit for DRLS.

II. THE PERMIT FAILS TO ENSURE COMPLIANCE WITH NEW SOURCE PERFORMANCE STANDARDS FOR MUNICIPAL SOLID WASTE LANDFILLS

Denver Regional Landfill South must comply with the requirements of Subpart WWW of the NSPS. See, 40 CFR § 60.750 et seq. Unfortunately, the Title V Permit for DRLS fails to ensure compliance with NSPS and the Administrator must therefore object to the Title V Permit.

A. The Title V Permit Fails to Ensure Compliance with Collection System Requirements

Denver Regional Landfill South must install a collection and control system to ensure adequate control of landfill emissions. 40 CFR § 60.752(b)(2). As the Title V Permit states at Section II, Condition 1.5.3, the Denver Regional Landfill South "shall comply with § 60.752 (b)(2)(ii), which requires the installation of a collection and control system that effectively captures the gas generated within the landfill." Title V Permit at 6. Unfortunately, the Title V Permit fails to ensure compliance with these requirements.

To begin with, 40 CFR § 60.752(b)(2)(i) requires DRLS to "Submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year."

While it is unclear whether DRLS has submitted a collection and control system design plan to the Administrator of the EPA, the Title V Permit does not even require compliance with this applicable requirement. Indeed, the Title V Permit seems to plainly violate this requirement, only requiring that "The [collection and control] system design must be approved by the Division[.]" Title V Permit at 6. This is entirely contradictory to the applicable requirement. As 40 CFR § 60.752(b)(2)(i)(i) states, only the EPA Administrator—not the Division—can approve

collection and control systems for municipal solid waste landfills subject to the requirements of Subpart WWW. 40 CFR § 60.752(b)(2)(i)(D).

If DRLS has not sought approval of its collection and control system from the EPA in accordance with the applicable requirements, then it is currently in violation of an applicable requirement. The Title V Permit must therefore include a schedule containing a sequence of actions with milestones, leading to compliance with the applicable requirement. 42 USC § 7661b(b)(1) and 40 CFR § 70.5(c)(8)(iii)(C).⁶

Even if the collection and control system has been approved by the EPA Administrator, the Title V Permit fails to ensure compliance with applicable requirements related to such systems. Indeed, while non-methane organic compound emission rates are equal to or greater than 50 megagrams per year, nowhere does the Title V Permit require DRLS to install and maintain an active collection and control system according to the specifications at 40 CFR § 60.759 and/or ensure DRLS complies with alternative specifications approved by the EPA Administrator. While the Title V Permit does not even explicitly require compliance with 40 CFR § 60.759, the Title V Permit also fails to contain monitoring, recordkeeping, and reporting requirements set forth at 40 CFR § 70.6 to ensure that, among other things, Denver Regional Landfill South:

Sites active collection wells, horizontal collectors, surface collectors, or other extraction devices at sufficient density throughout all gas producing areas (40 CFR § 60.759(a));

Certifies collection devices within the interior and along the perimeter areas to ensure comprehensive control of surface gas emissions by a professional engineer (40 CFR § 60.759(a)(1));

therefore include a schedule containing a sequence of actions with milestones, leading to compliance with the applicable requirement. 42 USC \S 7661b(b)(1) and 40 CFR \S 70.5(c)(8)(iii)(C).

⁶ Similarly, 40 CFR § 60.757(a) requires DRLS to "submit an initial design capacity report to the [EPA] Administrator." If DRLS has not submitted for approval an initial design capacity report in accordance with the applicable requirements, then it is currently in violation of an applicable requirement. The Title V Permit must

Ensures the density of gas collection devices addresses landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior (40 CFR § 60.759(a)(2));

Controls all gas producing areas (40 CFR § 60.759(a)(3));

Uses the proper equipment and procedures to construct gas collection devices (40 CFR § 60.759(b)); and

Conveys landfill gas to a control system in compliance with 40 CFR § 60.752(b)(2)(iii) (40 CFR § 60.759(c)).

Because the Title V Permit fails to explicitly require compliance with 40 CFR § 60.759 and fails to include any monitoring, recordkeeping, and reporting requirements related to this applicable requirement, the Title V Permit fails ensure compliance with applicable requirements and is unenforceable as a practical matter in relation to ensuring gas collection systems are installed, maintained, and operated in accordance with the required specifications. ⁷

The Title V Permit al so fails to include monitoring to ensure compliance with other parts of Subpart WWW, in violation of 40 CFR § 70.6(c)(1). Indeed, while the Title V Permit requires DRLS to comply with 40 CFR § 60.753 at Section II, Condition 1.5.7.1, the permit fails to provide any monitoring to ensure proper use of exemptions set forth at 40 CFR § 60.753. Regulations at 40 CFR § 60.753(b) state that DRLS shall:

Operate the collection system with negative pressure at each wellhead except under the following conditions:

A fire or increased well temperature[;] Use of a geomembrane or synthetic cover[;] or A decommissioned well[.]

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⁷ If the DRLS is currently not in compliance with 40 CFR § 60.759, then it is currently in violation of an applicable requirement. The Title V permit must therefore include a schedule containing a sequence of actions with milestones, leading to compliance with the applicable requirement. 42 USC § 7661b(b)(1) and 40 CFR § 70.5(c)(8)(iii)(C).

Of concern is that, while the Title V Permit requires DRLS to monitor pressure and ensure negative pressure at each wellhead, the applicable requirements clearly provide exceptions. In order to ensure these exceptions are properly invoked and/or utilized, and to ensure compliance with the applicable requirements at 40 CFR § 60.753(b), the Title V Permit must contain monitoring requirements to ensure that DRLS monitors for fires and/or increased well temperatures, whether it uses a geomembrane or synthetic cover, or whether or not a decommissioned well is responsible for positive pressures. The failure of the Title V Permit to include monitoring requirements that ensure compliance with the applicable requirements as required by 40 CFR 70.6(c)(1) clearly indicates the Administrator must object to the Title V Permit issued to DRLS.

B. The Title V Permit Fails to Ensure Compliance with NSPS Flaring Standards for Municipal Solid Waste Landfills

The Title V Permit fails to ensure the temperature monitoring device on the flare is calibrated, maintained, and operated properly to ensure continuous compliance with volatile organic compound ("VOC") and hazardous air pollutant ("HAP") reduction requirements.

Indeed, the Title V Permit is entirely vague in terms of how the temperature monitoring device is to be calibrated, maintained, and operated. The Title V Permit states at Section II, Condition 1.5.6 only that the temperature monitoring device shall be calibrated, maintained, and operated "according to manufacturer's specifications." Title V Permit at 6. Yet "manufacturer's specifications" are not defined, specifically explained, referenced, and/or otherwise set forth in sufficient detail to ensure compliance, rendering not only Section II Condition 1.5.6, but also Section II, Condition 1.4, in the Title V Permit unenforceable as a practical matter. It is unclear, based on the Title V Permit, what the manufacturer's specifications specifically require of DRLS and whether they are even comprehensive and actually do ensure proper calibration,

maintenance, and operation of the temperature monitoring device. Compounding this problem is that the Title V Permit contains no monitoring requirements to ensure that the temperature monitoring device is, in fact, calibrated, maintained, and operated in accordance with manufacturer's specifications, in violation of 40 CFR § 70.6(c)(1). Without monitoring, Section II, Conditions 1.5.6 and 1.4 are further unenforceable as a practical matter.

The Title V Permit also contains no monitoring requirements to ensure the enclosed flare is properly operated and maintained to ensure it does not fall into disrepair, malfunction, and/or improper operation and fail to adequately control VOC and HAP emissions in accordance with Section II, Condition 1.4. Regulations clearly require Title V Permits to contain monitoring requirements that ensure compliance with terms and conditions of the Permit. 40 CFR § 70.6(c)(1). As a practical matter, the failure of the Title V Permit to require any monitoring requirements related to the operation and maintenance of the flare means the Title V Permit fails to ensure compliance with applicable requirements and renders Section II, Condition 1.4 unenforceable as a practical matter.

C. The Title V Permit Fails to Require Sufficient Temperature Monitoring
While Subpart WWW requires continuous temperature monitoring, the Title V Permit for
DRLS only requires daily temperature readings. This is clearly contradictory to the applicable
requirements. The NSPS at 40 CFR § 60.756(b) explicitly require the use of a temperature
monitoring device "equipped with a continuous recorder." Thus, while the regulation may not
explicitly state that continuous temperature monitoring is required, it clearly implies that
temperatures shall be monitored on a continuous basis. Indeed, it would render regulations at 40
CFR § 60.756(b) meaningless if continuous temperature monitoring and recording was not the
intent of the NSPS.

Furthermore, daily monitoring of temperatures is insufficient periodic monitoring under 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1). While Section II, Condition 1.4 requires the temperature of the flare to be at least 1220 degrees Fahrenheit **at all times**, the Title V Permit only requires one temperature reading a day. One temperature reading a day fails to ensure compliance with temperature standards, which apply at all times, and fails to provide data that is representative of the source's compliance with the continuous temperature limit. Because monitoring is only required on a daily basis, the permit fails to ensure compliance with the applicable requirements and renders Section II, Condition 1.4 unenforceable as a practical matter. The Title V Permit for DRLS must require continuous monitoring of temperature to ensure compliance with NSPS temperature limits and Section II, Condition 1.4 and to ensure sufficient periodic monitoring.

III. THE PERMIT FAILS TO ENSURE COMPLIANCE WITH STARTUP, SHUTDOWN, AND MALFUNCTION PLAN REQUIREMENTS IN RELATION TO THE CONTROL OF HAZARDOUS AIR POLLUTANTS

Permit Section II, Conditions 1.8.1 requires DRL S to comply with the general provisions of the NESHAP at 40 CFR § 63.6(e)(3) with regards to the operation of DRLS. General provisions at 40 CFR § 63.6(e)(3)(i) requires DRL S to "develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program for corrective action for malfunctioning process and air pollution control equipment[.]" The purpose of a startup, shutdown, and malfunction plan is to:

Ensure that, at all times, the owner or operator operates and maintains each affected source, including associated air pollution control equipment, in a manner which satisfies the general duty to minimize emissions established by paragraph (e)(1)(i) of this section;

Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants;

Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

40 CFR § 63.6(e)(3)(i)(A)-(C).

Unfortunately, although the Title V Permit broadly requires compliance with 40 CFR § 63.6(e)(3), nothing in the permit actually ensures compliance with this section through reporting and/or monitoring requirements and nothing in the permit indicates that DRLS will fully and adequately comply with 40 CFR § 63.6(e)(3) during the operation of the landfill.

Of particular concern is that it is unclear whether a startup, shutdown, and malfunction plan has even been developed by DRL S. The compliance date for the landfill was August 16, 2004, which has already passed, indicating that DRLS must have a startup, shutdown, and malfunction plan in place. Applicable requirements at 40 CFR § 70.5(c)(8)(iii)(C) require that, if a facility is in violation of an applicable requirement at the time of permit issuance, the Title V Permit must include a schedule containing a sequence of actions with milestones, leading to compliance with any applicable requirement. If DRLS does not have a startup, shutdown, and malfunction plan for its landfill, then the operator is currently in violation of an applicable requirement and the Administrator must object to the issuance of the Title V Permit due to the failure to include a compliance schedule.

If a startup, shutdown, and malfunction plan does exist for DRLS, then the Title V Permit still fails to ensure compliance with the requirements at 40 CFR § 63.6(e)(3). For one thing, it is unclear whether the startup, shutdown, and malfunction plan is adequate to meet the purposes set

forth at 40 CFR § 63.6(e)(3)(A)-(C) as well as the applicable requirements set forth at 40 CFR § 63.6(e)(1)(i). Indeed, a startup, shutdown, and malfunction plan that is inadequate must be revised if it is does not address a startup, shutdown, or malfunction event that has occurred, fails to provide for the operation of the source during a startup, shutdown, or malfunction in a manner consistent with the general duty to minimize emissions established by 40 CFR § 63.6(e)(1)(i), does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable, and/or or includes an event that does not meet the definition of startup, shutdown, or malfunction listed at 40 CFR § 63.2.

Unfortunately, the startup, shutdown, and malfunction plan has not been incorporated into the Title V Permit and has not been made available to the public to ensure the plan meets the requirements of 40 CFR § 63.6(e)(1)(i) and 40 CFR § 63.6(e)(3)(A)-(C) and/or to ensure it is properly revised if it fails to meet these requirements. The Title V Permit cannot simply incorporate the general startup, shutdown, and malfunction plan requirements of 40 CFR § 63.6(e)(3) without ensuring the details of those requirements are, in fact, met. Furthermore, the Division and DRLS cannot possibly certify compliance with the applicable requirements at 40 CFR § 63.6(e) unless an adequate startup, shutdown, and malfunction plan truly exists. Indeed, 40 CFR § 63.6(e)(3)(ix) specifically states that "The title V permit for an affected source must require that the owner or operator adopt a startup, shutdown, and malfunction plan which conforms to the provisions of this part[.]" Clearly the Title V Permit fails to ensure compliance with the provisions of 40 CFR § 63.6(e)(3).

Compounding the situation is that the Title V Permit does not even require DRLS to submit and/or report its startup, shutdown, and malfunction plan to the Division and/or the EPA. At a basic level, such a monitoring and/or reporting requirement is necessary to ensure the

applicable requirements are met and to ensure compliance with the terms and conditions of the Title V Permit in accordance with 40 CFR § 70.6(c)(1). Although the Division may believe there exists no specific regulatory requirement for DRLS to submit and/or report its startup, shutdown, and malfunction plan to the Division, the EPA, and/or citizens, this position is plainly erroneous. Permits are required to contain "compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." 40 CFR 70.6(c)(1). If the operator is not required to submit and/or report its startup, shutdown, and malfunction plan, then the Division, the EPA, and citizens cannot possibly ensure it meets the requirements and/or purposes set forth at 40 CFR § 63.6(e)(1) and (3) in accordance with the applicable requirements at 40 CFR 70.6. It would further be impossible to ensure DRLS complies with the NESHAP requirements at 40 CFR § 63, Subpart AAAA, as required by Section II, Condition 1.8 of the Title V Permit.

Also, as a practical matter, the failure of the Title V Permit to ensure the adoption of an adequate startup, shutdown, and malfunction plan, whether through incorporation of an adequate startup, shutdown, and malfunction plan and/or strict monitoring, reporting and/or submittal requirements, renders Section II, Conditions 1.8 and the underlying applicable requirements of the NESHAP at 40 CFR § 63, Subpart AAAA unenforceable as a practical matter. If nothing in the Title V Permit ensures the preparation of, adoption of, and conformance with an adequate startup, shutdown, and malfunction plan, then there is no way for the Division, EPA, or citizens to enforce these Conditions and/or their underlying authorities. This is of particular concern because if DRLS is currently operating without an adequate startup, shutdown, and malfunction plan, the source may be inappropriately utilizing startup, shutdown, and malfunction exceptions to avoid compliance with applicable HAP limits and/or standards.

IV. THE DIVISION'S CONCLUSIONS REGARDING COMPLIANCE WITH NAAQS AND PSD ARE ERRONEOUS

The Title V Permit for DRLS incorporates Colorado Common Provisions Regulation Part II, Subpart E relating to upset conditions and breakdowns at Section IV, Condition 3(d). This regulation states that:

Upset conditions, as defined, shall not be deemed to be in violation of these regulations provided that the Air Pollution Control Division is notified as soon as possible, but no later than two (2) hours after the start of the next working day, followed by written notice to the Division explaining the cause of the occurrence and that proper action has been or is being taken to correct the conditions causing and said violation and to prevent such excess emission in the future.

As it clear, by incorporating this Regulation, the Title V Permit gives DRLS an exemption with regards to all emission limits, indicating that the DRLS is allowed to exceed the emission limits set forth in the Title V Permit. While this condition renders the emission limits set forth in Section II unenforceable as a practical matter, it also means that emission limits within the Title V Permit are fluid at best and do not serve to justify the Division's finding that emissions from DRLS will not exceed PSD increments and/or ambient air quality standards.

Although the upset conditions provision is found in the Colorado SIP, it is clearly contrary to the requirements of the CAA and has been determined to be illegal by the EPA.

While the EPA has not required a SIP revision, Rocky Mountain Clean Air Action has petitioned the Administrator of the EPA to require such a revision and is currently awaiting a response.

In the meantime, if the state of Colorado is going to administer its Title V program under its current SIP, then it must administer the program according to the requirements of the CAA, which requires, among other things, that Title V permits ensure compliance with the applicable requirements. If a Title V permit cannot ensure compliance with the applicable requirements, the

state cannot issue such a permit and the Administrator must object to its issuance. In the case of the Title V Permit for DRLS, because the upset conditions provision allows an exemption to NAAQS and PSD increments, the Title V Permit fails to ensure compliance with these applicable requirements. The Administrator must therefore object to the issuance of the Title V Permit.

CONCLUSION

For the aforementioned reasons, Petitioners request the Administrator object to the operating permit issued by the Division for Denver Regional Landfill South. As thoroughly explained, not only did the Division fail to follow proper procedures in issuing the Title V Permit, the Title V Permit also fails to comply with the requirements of the CAA, as well as other applicable requirements. The Administrator thus has a nondiscretionary duty to issue an objection to the Title V Permit within 60 days in accordance with Section 505(b)(2) of the CAA.

Dated this	day of March, 2006.	
		Respectfully Submitted,
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cc: EPA, Region 8 Colorado Air Pollution Control Division Denver Regional Landfill South

EXHIBITS TO PETITION

- 1. Denver Regional Landfill South Title V Permit
- 2. Technical Review Document for Denver Regional Landfill South Title V Permit
- 3. July 29, 2005 Comments on Denver Regional Landfill South Title V Permit
- 4. December 9, 2005 Comments on Denver Regional Landfill South Title V Permit
- 5. December 28, 2005 Air Pollution Control Division Response to Comments
- 6. November 9, 2005 Public Notice Published in the *Farmer and Miner*
- 7. November 9, 2005 Public Notice Published on the Air Pollution Control Division Website