BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF Williams Four Corners, LLC, Simms Mesa Central Delivery Point Permit Number: P026R2 Issued by the New Mexico Environment Department, Air Quality Bureau	)	PETITION TO OBJECT TO ISSUANCE OF A STATE TITLE V OPERATING PERMIT Petition Number: VI-2010-

Pursuant to Section 505(b)(2) of the Clean Air Act and 40 CFR § 70.8(d), WildEarth Guardians and San Juan Citizens Alliance (hereafter "Petitioners") hereby petition the Administrator of the U.S. Environmental Protection Agency ("EPA") to object to the New Mexico Environment Department, Air Quality Bureau's (hereafter "NMED") proposed issuance of the Title V operating permit (hereafter "Title V Permit") for Williams Four Corners, LLC to operate the Sims Mesa Central Delivery Point in Rio Arriba County, New Mexico. *See* Exhibit 1, Williams Four Corners, LLC, Sims Mesa Central Delivery Point Title V Permit, Permit Number P026R2 (March 19, 2010).

INTRODUCTION

The Sims Mesa Central Delivery Point is a natural gas processing plant and compressor station located in northwestern Rio Arriba County. According to the Statement of Basis for the Title V Permit:

> The Sims Mesa CDP [Central Delivery Point] compresses and dehydrates pipeline quality natural gas for pipeline transmission using natural gas-fired reciprocating engines. Natural gas is received from independent producers and is metered as it enters the facility. The natural gas stream typically contains produced water, which is separated from the gas stream via an inlet separator. The natural gas is then compressed for pipeline transmission using compressors driven by natural gas-fired reciprocating internal combustion engines. The gas stream is then routed to triethylene glycol (TEG) dehydrators which further dehydrates the gas stream. The TEG solution comes into contact with the natural gas and removes the water and some hydrocarbons. The rich TEG solution is regenerated by boiling off the water and hydrocarbons and reclaiming the glycol. The resulting produced water is stored in above ground storage tanks.

See Exhibit 2, Williams Four Corners, LLC, Sims Mesa Central Delivery Point, Statement of Basis, Title V Operating Permit Renewal (March 18, 2010).

Together, these operations have the potential to emit 194.8 tons of nitrogen oxides ("NO_x"), 356.8 tons of carbon monoxide, 171.6 tons of volatile organic compounds ("VOCs"), and 39.6 tons of hazardous air pollutants, including 2.8 tons of benzene (a known carcinogen) and 22 tons of formaldehyde. *See* Exhibit 1 at 3.

According to EPA Region 6, NMED submitted the proposed Title V Permit for EPA review on December 30, 2009. The EPA's 45 day review period therefore ended on February 13, 2010. Based on Petitioner's conversations with Region 6 EPA staff, the EPA did not object to the issuance of the Title V Permit. This petition is thus timely filed within 60 days following the conclusion of EPA's review period and failure to raise objections.

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 Title V Permit in accordance with 40 CFR § 70.7(f).[1] 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 suffers from material mistakes 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 fails to assure compliance with several applicable requirements.

PETITIONERS

WildEarth Guardians is a Santa Fe, New Mexico-based nonprofit membership group dedicating to protecting and restoring the American West. WildEarth Guardians has an office in Santa Fe and more than 1,200 members throughout New Mexico. Through its Climate and Energy Program, WildEarth Guardians advocates for cleaner energy, cleaner air, and more responsible use and development of fossil fuels.

San Juan Citizens Alliance is a nonprofit organization based in Durango, Colorado with offices in Farmington, New Mexico, that has over 500 members in the Four Corners region. San Juan Citizens Alliance is actively involved in energy development oversight, advocating for

[1] 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).

cleaner air and better stewardship of natural systems. San Juan Citizens Alliance promotes reduced energy consumption, energy efficiency, and clean, renewable energy to improve community health and prosperity.

On December 18, 2009, WildEarth Guardians and San Juan Citizens Alliance submitted detailed comments regarding NMED's proposal to renew the Title V Permit for the Sims Mesa Central Delivery Point. *See* Exhibit 3, WildEarth Guardians and San Juan Citizens Comments on Draft Title V Permit (December 30, 2009). The objections raised in this petition were raised with reasonable specificity in comments on the draft Title V Permit.

Petitioners request the EPA object to the issuance of Permit Number P026R2 and/or find reopening for cause for the reasons set forth below.

GROUNDS FOR OBJECTION

I. THE TITLE V PERMIT FAILS TO ENSURE COMPLIANCE WITH PSD REQUIREMENTS

A Title V Permit is required to include emission limitations and standards that assure compliance with all applicable requirements at the time of permit issuance. *See* 42 USC § 7661c(a); 40 CFR § 70.6(a)(1). Applicable requirements include, among other things, New Source Review requirements, particularly Prevention of Significant Deterioration requirements set forth under Title I of the Clean Air Act, regulations at 40 CFR § 51.166, and the New Mexico SIP at NMAC 20.2.74. *See* 40 CFR § 70.2. If a source will not be in compliance with an applicable requirement, including PSD, at the time of permit issuance, the applicant must disclose the violation and provide a narrative showing how it will come into compliance, and the permit must include a compliance schedule for bringing the source into compliance. *See* 42 USC § 7661b(b); 40 CFR § 70.6(b)(3).

The Clean Air Act prevents significant deterioration of air quality to protect human health and welfare, and air quality in class I areas. *See* 42 USC § 7470. Prevention of significant deterioration requirements apply to the construction of major sources and/or major modifications of major sources of air pollution in areas designated as attainment. *See* 42 USC § 7475; 40 CFR § 51.166(a)(7). In the case of the Sims Mesa Central Delivery Point, the Title V permit fails to assure compliance with PSD requirements under the Clean Air Act.

In this case, NMED did not appropriately assess the stationary source that is being permitted under the Title V permit, and therefore has failed to ensure the Title V permit includes all applicable PSD requirements and failed to ensure compliance with PSD. Importantly, NMED failed to consider emissions from all adjacent and interrelated pollutant emitting activities, namely the natural gas wells and associated equipment that supply natural gas to the Sims Central Delivery Point.

Prevention of Significant Deterioration regulations at 40 CFR § 51.166(b)(5) define a stationary source as, "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant." Regulations at 40 CFR § 51.166(b)(6) further define "building,

structure, facility, or installation" as "all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)[.]" The regulations further state, "Pollutant emitting activities are considered part of the same industrial grouping if they belong to the same 'Major Group' (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual[.]" *See also*, 40 CFR § 52.21(b)(6) and NMAC 20.2.74.7(L).

In this case, NMED failed to consider and address pollutant emitting activities, including the natural gas wells and associated equipment currently owned and operated by Williams Four Corners, LLC, or under common control by Williams, that supply the Sims Mesa Central Delivery Point with natural gas, that should be aggregated with the Sims Mesa Central Delivery Point as a single source. This failure demonstrates that NMED failed to assure the Title V Permit meets all applicable requirements under PSD.[2]

In comments on the draft Title V Permit, Petitioners stated:

> In ensuring compliance with PSD, we urge NMED to carefully adhere to recent guidance issued by the EPA. On September 22, 2009, Assistant EPA Administrator for Air and Radiation Gina McCarthy issued a memorandum reversing a 2007 guidance memorandum issued by former Assistant EPA Administrator, William Wehrum, stating:
>
> > Permitting authorities should…rely foremost on the three regulatory criteria for identifying emissions activities that belong to the same "building," "structure," "facility," or "installation." These are (1) whether the activities are under the control of the same person (or person under common control); (2) whether the activities are located on one or more contiguous or adjacent properties; and (3) whether the activities belong to the same industrial grouping. 40 C.F.R. 52.21(b)(6).
>
> *See* Memo from Gina McCarthy, Assistant Administrator, to Regional Administrators, "Withdrawal of Source Determinations for Oil and Gas Industries" (September 22, 2009). Subsequently, on October 8, 2009, EPA Administrator Lisa Jackson granted a Title V petition objecting to the issuance of Title V permit by the State of Colorado on the basis that Colorado failed "to provide an adequate basis in the permit for its determination of the source for PSD and title V purposes" in permitting the Frederick natural gas compressor station in Weld County, CO. *See In re: Kerr-McGee/Anadarko Petroleum Corporation Frederick Compressor Station*, Petition No. VIII-2008-02 (Order on Petition) (October 8, 2009). Administrator Jackson held that Colorado had failed to address emissions from interrelated natural gas wells and other pollutant emitting activities related to the Frederick compressor station and ordered the state to "conduct a source determination analysis" based on the McCarthy memo.

[2] Correspondingly, NMED's failure to appropriately aggregate indicates a failure to ensure compliance with Title V Permitting requirements given that the definition of "stationary source" under Title V permitting regulations is the same as under PSD regulations. *See* 40 CFR § 70.2.

Exhibit 3 at 2-3. Petitioners commented that, "In order to conduct a thorough analysis in accordance with the McCarthy memo," NMED must conduct a "detailed evaluation of the facility and related system operations," including:

- An evaluation of system maps for oil and gas operations, which shows all emission sources owned or operated by individual companies in producing oil and gas fields;

- A determination as to whether and to what extent the various pollution emitting activities are contiguous or adjacent to, and under common control with, permitted or proposed to be permitted facilities;

- An assessment of flow diagrams that show movement of oil and gas from the well sites to processing facilities so that states may determine the nature of the sources' emissions and determine the interdependency of operations; and

- An analysis of business information regarding the nature of control of operations to determine whether various pollution emitting activity should be considered under common control for purposes of making the source determination.

See id. at 3. Petitioners finally commented, "NMED should closely follow EPA's guidance on this matter to assure the Title V permit for the Sims Mesa Central Delivery Point ensures complies with PSD and other applicable requirements." *Id*. at 4.

In response to comments, NMED did not argue that EPA's guidance on this issue, including the September 22, 2009 Memo from Assistant Administrator Gina McCarthy and the October 8, 2009 Objection from the Administrator, was invalid, or that the guidance should for any reason not be followed. *See* Exhibit 4, NMED Response to Petitioners' Comments (March 19, 2010). Despite this, NMED still failed to appropriately assess whether other pollutant emitting activities, namely upstream natural gas wells that supply the Central Delivery Point and their associated equipment, should be aggregated together with the Sims Mesa Central Delivery Point as a single source under PSD. Specifically, NMED's asserted that aggregation was not required under PSD was based on the claim that Williams Four Corners, LLC does not exert control over the natural gas wells that supply the Sims Mesa Central Delivery Point, which NMED asserts are owned and operated by Devon Energy, and their associated equipment.[3] Therefore, NMED asserts, no common control exists between the Sims Mesa Central Delivery Point and any contiguous or adjacent pollutant emitting activities. This assertion however, is baseless.

To begin with, it is not even clear that NMED requested, obtained, and reviewed information that is necessary to reach such a conclusion. In *Kerr-McGee/Anadarko Petroleum Corporation Frederick Compressor Station*, the Administrator made clear that information, such as system maps showing emissions sources, flow diagrams, and business information regarding

[3] NMED did not assert that aggregation is not appropriate in other regards. NMED explicitly agreed that both the Sims Mesa Central Delivery Point and upstream natural gas production operations belonged to the same major industrial code. *See* Exhibit 4 at 3. NMED did not "reach a final determination regarding the adjacency criterion[.]" *Id*.

the nature of control, was requisite to making a sound PSD source determination for a natural gas compressor station. *See In re: Kerr-McGee/Anadarko Petroleum Corporation Frederick Compressor Station*, Petition No. VIII-2008-02 (Order on Petition) (October 8, 2009) at 8. Despite Petitioners' urging that NMED request, obtain, and review such information, it does not appear that NMED did so. NMED neither cites nor references any system maps showing emissions sources, flow diagrams, or business information regarding the nature of control that would provide a sound basis for its determination.

Indeed, in this case, it appears that NMED relied on two sources of information: a February 26, 2010 letter and a March 10, 2010 e-mail from Williams Four Corners. Not surprisingly, both Williams Four Corners' letter and e-mail assert that no control is exercised "over any equipment owned or operated by any natural gas producer upstream of the Sims Mesa CDP facility." Exhibit 4 at 3. It is unclear whether this correspondence was even from a responsible official with Williams Four Corners, LLC, but nevertheless, it indicates that NMED relied on nothing more than dubious company correspondence to support its conclusion. A source determination cannot be upheld on such a flimsy analysis.

NMED cites EPA 1999 guidance *re: Oscar Mayer* as the primary source of guidance for relying on Williams Four Corners' conclusions. In this guidance memo, the EPA stated that a common control determination "must focus on who has the power to manage the pollutant-emitting activities at issue, including the power to make or veto decisions to implement major emission-control measures or to influence production levels or compliance with environmental regulations." Letter from Robert B. Miller, Chief, Permits and Grants Section, EPA Region 5, to William Baumann, Chief, Combustion and Forest Products Section, Wisconsin Department of Natural Resources, *in re*: *Oscar Mayor Foods facility* (August 25, 1999); *available online at* http://www.epa.gov/region07/air/nsr/nsrmemos/oscar.pdf. Although this guidance is relevant, it does not support NMED's findings. Indeed, NMED overlooks the fact that underlying guidance demonstrates a control relationship inherently, or at least nearly inherently, exists between the Sims Mesa Central Delivery Point and Devon Energy's upstream natural gas production operations due to the indirect natural control that exists among these operations.

The EPA has spoken to the issue of indirect control in the context of operations at a military base. In a 1996 memo, which was also primarily cited for EPA's position in its 1999 Oscar Mayer letter, the agency stated that indirect control exists "when the goods or services provided by collocated, contract-for-service entity are integral to or contribute to the output provided by a separately 'owned or operated' activity with which it operates or supports." *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, *in re: Major Source Determinations for Military Installations under the Air Toxics*, New Source Review, and Title V Operating Permit Programs of the Clean Air At (Act) (August 2, 1996) at 10; *available online at* http://www.epa.gov/region07/air/nsr/nsrmemos/dodguid.pdf. In cases of indirect control resulting from contract-for-service relationship, the EPA's guidance was crystal clear that such activities "must be included as part of the source with which they operate or support." *Id*. at 11.

Although largely speaking to collocated operations, the EPA's 1996 guidance is entirely relevant here. In this case, although Williams may not exert direct control over the upstream

natural gas producers due to the fact that the company does not own or directly operate the operations, the product of upstream natural gas wells is both "integral to" and "contributes to" the output provided by the separately owned Sims Mesa Central Delivery Point. In this case, a contract-for-service arrangement clearly exist between Williams Four Corners and upstream producers. This fact is affirmed by NMED and Williams. As Williams states, "Natural gas producers contract with WFC [Williams Four Corners] to transport natural gas from the well head to downstream customers." Exhibit 4 at 3. More to the point, this is not a "typical landlord/tenant or lessor/lessee arrangement," as EPA noted would otherwise support a separate source determination. *See* Seitz Memo at 10. Thus, a relationship of common control does indeed exist.

The interaction between the Sims Mesa CDP and upstream natural gas wells owned and operated by Devon Energy bolsters a finding that a relationship of common control exists. For one thing, it appears clear that Williams relies 100% on Devon Energy's upstream natural gas wells for the operation of the Sims Mesa Central Delivery Point. As NMED discloses no other producer supplies the Sims Mesa Central Delivery Point. This is significant because according to data from the New Mexico Oil Conservation Division ("OCD"), the many active natural gas wells near the Sims Mesa Central Delivery Point are owned or operated by other companies. In fact, within Township 30N, Range 7W, Section 22, where the Sims Mesa Central Delivery Point is located, data from the OCD shows that all wells are operated by Burlington Resources. *See* Exhibit 5, OCD Oil and Gas Well Data Spreadsheet.[4] Correspondingly, it appears clear that Devon Energy is likely to similarly rely on Williams to process all or most its gas, although admittedly NMED has not provided information or analysis to fully ascertain Devon Energy's reliance on the Sims Mesa Central Delivery Point. In this case, the activity of upstream producers appears to entirely supports the activities of Williams Four Corners and vice-a-versa.

Furthermore, Williams itself admits that it exerts direct control over some of the operations at upstream natural gas wells. As disclosed in NMED's response to comments, Williams Four Corners states that, "During periods of emergency, failure or scheduled major maintenance, WFC [Williams Four Corners] can request that producers curtail operations on a short term basis." Exhibit 4 at 3. It is not clear what "short term" means and it is unclear whether the terms "periods of emergency, failure or scheduled major maintenance" actually appear in any contract between Williams Four Corners and upstream producers, but nevertheless, this statement demonstrates that Williams exerts direct control over the production activities at upstream operations. Williams may assert that such direct control is "very limited," yet the standard for determining common control does not rest solely on whether or not there is 100% direct control over adjacent pollutant emitting activities.

[4] The Township, Range, and Section location of the Sims Mesa Central Delivery Point was determined by converting the latitude and longitude location data provided by NMED using the online conversion tool at http://www.earthpoint.us/townships.aspx. The spreadsheet in Exhibit 5 is only intended to illustrate the proximity of wells to the Sims Mesa Central Delivery Point, the names of the operators of those wells, and the API number of those wells for verification purposes. This spreadsheet was prepared by utilizing OCD's online mapping tool at http://mapserve.nmt.edu/Website/NMOG/viewer.htm. Oil and gas well data was taken directly from this site and pasted into an Excel spreadsheet. For ease of interpretation, extraneous data such as field name, formation name, depth, elevation, spud date, etc., were removed.

With regards to other considerations, it would be highly unusual if Williams did not exert control over relevant aspects of the performance of Devon Energy's operations through the terms of its contracts. Indeed, to ensure safe, reliable, and consistent operations at the Sims Mesa Central Delivery Point, Williams would have to exert some control over the production of upstream natural gas, including both the quality and quantity. Conversely, Devon Energy must be assured a standard of performance by Williams to ensure that its natural gas will be processed and transported to customers. Although Williams may be "contractually obligated to accept the gas volumes that non-WFC producers deliver onto its system," it is incredibly doubtful that such contractual obligation does not exist without terms and conditions imposed by Williams and agreed upon by Devon Energy to ensure a meaningful level of common control. To this end, it appears clear that even under the EPA's guidance in *Oscar Mayer*, a determination that common control exists is not only appropriate, but compelled.

NMED appears to be operating under the assumption that common control is not established unless a company has full and total control over any contiguous or adjacent pollutant emitting activities. This is not supported by EPA's prior guidance in *re: Oscar Mayer*. NMED asserts that Williams "does not have the power to routinely manage the activities of Devon Energy's wells" (Exhibit 4 at 4), yet a determination of common control clearly does not hinge upon "routine management." If a "routine management" standard was applicable, then it would render the definition of "building, structure, facility, or installation" set forth at 40 CFR § 52.21(b)(6) and NMAC 20.2.74.7(L) meaningless. Furthermore, although NMED asserts that, "none of the individual well owner/operators can influence the activities at the compressor station" (Exhibit 4 at 4), this is simply unsupported.

The Administrator must therefore object to the issuance of the Title V Permit on the basis that NMED failed to appropriately assess whether common control exists between the Sims Mesa Central Delivery Point and upstream natural gas production operations and their associated equipment.

II. THE TITLE V PERMIT FAILS TO REQUIRE PROMPT REPORTING OF DEVIATIONS

Condition 5.1.2 of the Title V Permit requires reporting of permit deviations only once every six months. This does not constitute prompt reporting of permit deviations, as required by the Clean Air Act, 42 USC 7661b(b)(2), and Title V regulations, 40 CFR § 70.6(a)(3)(iii)(B).

Prompt reporting is typically defined "in relation to the degree and type of deviation likely to occur and the applicable requirements." 40 CFR § 70.6(a)(3)(iii)(B). In explaining the meaning of "prompt," the House Report for the CAA Amendments of 1990 stated that "the permittee would presumably be required to report that violation without delay." H.F. Rep. No. 101-490, pt. 1, at 348 (1990). In commenting on other proposed state operating permit programs, the EPA has explained:

> In general, the EPA believes that 'prompt' should be defined as requiring reporting within two to ten days for deviations that may result in emissions increases. Two to ten

day is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems.

Clean Air Act Proposed Interim Approval of Operating Permits Program: State of New York, 61 Fed. Reg. 39617-39602 (July 30,1996). Most recently, the second circuit court of appeals held that "prompt" for purposes of prompt reporting of permit deviations must at least be less than every six months depending upon the source's compliance history and public health risk. *NYPIRG v. Johnson*, 427 F.3d 172 (2nd Cir. 2005). Clearly, reporting permit deviations only once every six months, as the Title V Permit requires, does not constitute prompt reporting.

Currently, Condition 5.1.2 only requires semiannual reporting of deviations—or once every six months, regardless of the nature of the deviation. Clearly this does not constitute prompt reporting in accordance with 42 USC 7661b(b)(2) and 40 CFR § 70.6(a)(3)(iii)(B).

In response to comments, NMED asserts that reporting requirements are satisfied at Condition 7.2 of the Title V Permit. *See* Exhibit 4 at 4. However, Condition 7.2 only relates to "Emergencies," as defined by Condition 7.1. The specific reporting requirements at Condition 7.1 only state that in the event of an emergency "where emission limitations were exceeded," a notice shall be provided to NMED within 2 days. *See* Exhibit 1 at 18. Prompt reporting requirements apply in the case of all permit deviations, not simply those resulting from "Emergencies." Furthermore, given that prompt is defined "in relation to the degree and type of deviation likely to occur and the applicable requirements" (*see* 40 CFR § 70.6(a)(3)(iii)(B), it is unclear how a blanket two day notification requirement, as required by Condition 7.2, suffices to ensure prompt reporting "in relation to the degree and type of deviation likely to occur and the applicable requirements."

To its credit, NMED did add Condition 5.1.5 to the Title V Permit in response to Petitioners' comments on this issue. However, Condition 5.1.5 still fails to ensure compliance with prompt reporting requirements. Condition 5.1.5 requires that "reports of excess emissions" be submitted in accordance NMAC 20.2.7.110.A, which requires initial reporting "no later than the end of the next regular business day after the time of discovery of an excess emission." This reporting requirement however, fails to assure that all permit deviations, such as deviations from monitoring requirements, performance standards, etc. are reported promptly to NMED. The Clean Air Act is clear that all permit deviations, not simply excess emissions, must be reported promptly. *See* 42 USC 7661b(b)(2). Finally, as with Condition 7.2, it is unclear how the reporting requirement of "no later than the end of the next regular business day after the time of discovery," as required by NMAC 20.2.7.110.A, suffices to ensure prompt reporting "in relation to the degree and type of deviation likely to occur and the applicable requirements" in accordance with 40 CFR § 70.6(a)(3)(iii)(B).

The Administrator must object to the issuance of the Title V Permit on the basis that it fails to ensure prompt reporting of permit deviations in accordance with 42 USC 7661b(b)(2), and 40 CFR § 70.6(a)(3)(iii)(B).

III. THE TITLE V PERMIT FAILS TO REQUIRE SUFFICIENT PERIODIC MONITORING

Permitting authorities must ensure that a Title V Permit contain monitoring that assures compliance with the terms and conditions of the permit. *See* 42 USC § 7661c(c) and 40 CFR § 70.6(c)(1). Although as a basic matter, Title V Permits must require sufficient periodic monitoring when the underlying applicable requirements do not require monitoring (*see* 40 CFR § 70.6(a)(3)(i)(B)), the D.C. Circuit Court of Appeals has firmly held that even when the underlying applicable requirements require monitoring, permitting authorities must supplement this monitoring if it is inadequate to ensure compliance with the terms and conditions of the permit. As the D.C. Circuit recently explained:

> [40 CFR § 70.6(c)(1)] serves as a gap-filler….In other words, § 70.6(c)(1) ensures that all Title V permits include monitoring requirements "sufficient to assure compliance with the terms and conditions of the permit," even when § 70.6(a)(3)(i)(A) and § 70.6(a)(3)(i)(B) are not applicable. This reading provides precisely what we have concluded the Act requires: a permitting authority may supplement an inadequate monitoring requirement so that the requirement will "assure compliance with the permit terms and conditions."

See Sierra Club v. EPA, 536 F.3d 673, 680 (D.C. Cir. 2008). In other words, "a monitoring requirement insufficient 'to assure compliance' with emission limits has no place in a permit[.]" *Id*. at 677.

In this case, the Title V Permit fails to contain monitoring requirements that ensure compliance with underlying NO_x, carbon monoxide, and VOC emission limits. In some cases, the Title V Permit altogether lacks monitoring requirements and in other cases, fails to require monitoring that is sufficiently frequent and/or of sufficient quality necessary to ensure compliance with applicable emission limits.

A. The Title V Permit Fails to Require Sufficient Monitoring to Assure the Compressor Engines Comply with NO_x and Carbon Monoxide Limits

Condition s3.4.2 and 3.4.2.2 of the Title V Permit requires only once-per-year portable analyzer monitoring for units 1-6 and 11-14, the compressor engines. *See* Exhibit 1 at 10 and 11. As Petitioners stated in their comments, "This monitoring is too infrequent to ensure compliance with NO_x and carbon monoxide emissions limits." Exhibit 3 at 6. Indeed, the Title V Permit limits NO_x and carbon monoxide emissions on an hourly basis. For example, Condition 3.2 limits NO_x emissions from all the compressor engines to no more than 4.5 pounds per hour. *See* Exhibit 1 at 7. Monitoring only once annually for the engines units cannot possibly ensure continuous compliance with these hourly emission limits, and it is questionable whether once-per-monitoring can ensure continuous compliance with the annual emission limits.

Also of concern is that it appears the Title V Permit allows for even less frequent monitoring. Condition 3.4.1.3.2 allows the source to avoid monitoring for NO_x and carbon monoxide altogether if a unit has been operated for less than 25% of a monitoring period. *See* Exhibit 1 at 8. This Condition is wholly inappropriate and as a practical matter would allow the operator to violate hourly emission limits in the permit for up to three months, which is 25% of

the annual monitoring period. Even if an engine operates for less than three months, it could still exceed hourly NO_x and carbon monoxide limits, demonstrating that this Condition fails to ensure adequate monitoring.

Although Condition 3.4.1.3.2 states that monitoring must be required after two successive periods without monitoring, at most this means that a emission unit consistently operating less than 25% of the monitoring period monitor once every three years. Again, this is not sufficient monitoring under Title V. Furthermore, this requirement does not even apply if a source operates less than 10% of any monitoring period. 10% of a monitoring period works out to be 36.5 days. In essence, this requirement allows Williams Four Corners to avoid monitoring altogether so long as it only operates its engines 36.5 days annually. This hardly serves to ensure compliance with hourly NO_x and carbon monoxide emission limits.

Title V monitoring requirements state that monitoring shall provide reliable data from the relevant time period that is representative of the source's compliance with the provisions of the permit in order to assure compliance. *See* 40 CFR § 70.6(a)(3)(i)(B) and 40 CFR § 70.6(c)(1). In this case, once-per-year portable analyzer monitoring, which can be altogether ignored, does not assure compliance with the annual and hourly NO_x and carbon monoxide limits. The Administrator must therefore object to the issuance of the Title V Permit.

B. The Title V Permit Fails to Require VOC Monitoring from the Engines

The Title V Permit fails to require sufficient monitoring because it fails to require any monitoring whatsoever of VOC emissions from the compressor engines, or Units 1-6 and 11-14. Instead, the Title V Permit asserts, with no support, that, "Test results that demonstrate compliance with the NO_x and CO [carbon monoxide] emission limits shall also be considered to demonstrate compliance with the VOC emission limits." Exhibit 1 at 11. This statement is unsupported. Neither the Statement of Basis nor the Title V Permit provide any information or analysis supporting NMED's claim that compliance with NO_x and carbon monoxide limits automatically indicates compliance with VOC emission limits.

In response to comments, NMED actually admits that there is no rationale for relying on NO_x and CO monitoring to demonstrate compliance with VOC limits, stating, "The rationale for this statement – 'Test results that demonstrate compliance with the NO_x and CO emission limits shall also be considered to demonstrate compliance with the VOC emission limits' - will be provided in the engine monitoring protocols." Exhibit 4 at 7. It is impossible to understand how NMED can assert that the Title V Permit provides for sufficient periodic monitoring to assure compliance when the rationale has yet to be provided.

Despite the fact that no "rationale" has yet been provided, NMED asserts in its response to comments that it still believes that relying on NO_x and CO monitoring is sufficient to demonstrate compliance with VOC limits. This assertion lacks any support whatsoever. For example, NMED states that it "relies on NO_x and CO monitoring to demonstrate compliance with VOC limits" because "portable analyzers do not speciate VOC compounds, and the cost of a separate EPA method test is significant." Exhibit 4 at 7. Simply because NMED believes one method of monitoring is inadequate and that another method may be costly does not absolve the

agency from ensuring the Title V Permit contains sufficient periodic monitoring to assure compliance with applicable limits. NMED also asserts its belief that VOC limits will be met based on the manufacturer's specification of "the expected NO_x, CO, and VOC emissions for a unit operating properly." *Id*. Although manufacturer's specifications are relevant information, such specifications alone do not represent sufficient periodic monitoring, nor do they ensure that the hourly and annual VOC limits applicable to the compressor engines in the Title V Permit will be continuously met. NMED finally asserts that, "if an engine test demonstrates that NO_x and CO concentrations fall within the emission limits, then VOC also falls within the emission limits" (*id*.), yet this gets back to the crux of Petitioners' concerns: there is simply no information or analysis supporting this conclusion. In fact, the only substantive pieces of information that NMED seems to be able to point to are "basic principles of combustion chemistry." *Id*. Basic principles of combustion chemistry, whatever NMED may believe them to be, do not support the assertion that compliance with NO_x and carbon monoxide limits automatically assures compliance with VOC limits at Units 1-6 and 11-14 at the Sims Mesa Central Delivery Point. The Administrator must therefore object to the issuance of the Title V Permit.

IV. CONDITION 6.1.1 IS CONTRARY TO APPLICABLE REQUIREMENTS

Condition 6.1.1 states that "For sources that have submitted air dispersion modeling that demonstrated compliance with federal ambient air quality standards, compliance with the terms and conditions of this permit regarding source emissions and operation shall be deemed in compliance with federal ambient air quality standards specified at 40 CFR 50 NAAQS." Exhibit 1 at 17. This Condition implies that compliance with the Title V Permit automatically means that the National Ambient Air Quality Standards ("NAAQS") will be protected.

This Condition is contrary to the Clean Air Act. NMED cannot automatically conclude that compliance with a Title V Permit assures compliance with the NAAQS. The agency must first prepare an analysis and assessment of emissions to make such a finding, and even then must do so on a source-by-source basis, both individually and cumulatively. *See e.g*., 40 CFR § 51.160. Furthermore, because the NAAQS are revised every five years (*see* 42 USC § 7409(d)(1)), it is further inappropriate given that permit terms and conditions rarely are revised, and at least are not required to be revised as the NAAQS are revised.

This Condition is particularly problematic in light of the fact that the construction permits issued for the Sims Mesa Central Delivery Point were issued prior to the promulgation of several NAAQS. For example, the Statement of Basis indicates that the initial New Source Review ("NSR") permit for the facility was in 1991. This predates the 1997 8-hour ozone NAAQS (*see* 40 CFR § 50.10), the 1997 annual and 24-hour $PM_{2.5}$ NAAQS (*see* 40 CFR § 50.7), the 2006 annual and 24-hour $PM_{2.5}$ NAAQS (*see* 40 CFR § 50.13), the 2008 8-hour ozone NAAQS (*see* 40 CFR § 50.15), and the 2010 annual and hourly nitrogen dioxide NAAQS (*see* 75 Fed. Reg. 6474-6537 (February 9, 2010)).

The Title V Permit cannot include a provision that automatically concludes operation of the Sims Mesa Central Delivery Point will protect any and all NAAQS specified at 40 CFR § 50. The Administrator must therefore object to the issuance of the Title V Permit.

CONCLUSION

For the reasons stated above, Petitioner requests the Administrator object to the Title V Permit issued by the Division for the Cherokee coal-fired power plant. The Administrator has a nondiscretionary duty to issue an objection to the Title V Permit within 60 days in accordance with Section 505(b)(2) of the Clean Air Act.

Respectfully submitted this 14th day of April 2010

_____

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
1536 Wynkoop, Suite 301
Denver, CO 80202
(303) 573-4898 x 1303
jnichols@wildearthguardians.org

and

Mike Eisenfeld
New Mexico Energy Coordinator
San Juan Citizens Alliance
Farmington, NM
(505) 360-8994
meisenfeld@frontier.net

cc: Mary Uhl
Air Quality Bureau Chief
New Mexico Environment Department
1301 Siler Road Building B
Santa Fe, NM 87507

Williams Four Corners, LLC
PO Box 2400
Tulsa, OK74101

Al Armendariz
Regional Administrator
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

TABLE OF EXHIBITS

1. Williams Four Corners, LLC, Sims Mesa Central Delivery Point Title V Permit, Permit Number P026R2 (March 19, 2010).
2. Williams Four Corners, LLC, Sims Mesa Central Delivery Point, Statement of Basis, Title V Operating Permit Renewal (March 18, 2010).
3. WildEarth Guardians and San Juan Citizens Comments on Draft Title V Permit (December 30, 2009).
4. NMED Response to Petitioners' Comments (March 19, 2010).
5. OCD Oil and Gas Well Data Spreadsheet.