UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

KERR-MCGEE CORPORATION,

Defendant.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought against Kerr-McGee Corporation pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b), for civil penalties and permanent injunctive relief regarding violations of the CAA's program to control the emission of hazardous air pollutants as set forth in Section 112 of the CAA, 42 U.S.C. § 7412, and the regulations promulgated thereunder; the CAA's program for the Prevention of Significant Deterioration ("PSD") of Air Quality as set forth at Part C, Title 1 of the CAA, 42 U.S.C. §§ 7470-7479, and the regulations promulgated thereunder; and the federally enforceable State Implementation Plan ("SIP") in the State of Colorado approved by EPA under Section 110 of the CAA, 42 U.S.C. § 7410, and the federal and State regulations promulgated thereunder.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. 1391(b) & (c) because a substantial part of the violations at issue occurred in this judicial district and because Defendant is located in and doing business in this judicial district.

NOTICE TO STATES

4. Notice of the commencement of this action has been given to the State of Utah and the State of Colorado as required under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

DEFENDANT

5. Defendant Kerr-McGee is a Delaware corporation headquartered in Oklahoma City, Oklahoma, and is doing business in, and licensed to do business in the State of Utah and the State of Colorado both directly and through various wholly-owned subsidiaries including: Kerr-McGee Oil and Gas Onshore LP, Westport Field Services LLC, Kerr-McGee Rocky Mountain Corporation, and Kerr-McGee (Nevada) LLC ("Kerr-McGee").

6. Kerr-McGee is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

7. For purposes of this Complaint, Kerr-McGee at all times material to this Complaint an owner and/or operator, or the corporate successor of a prior owner and/or operator, of the Cottonwood Facility, the Ouray Facility, and the Bridge Facility in Utah, and the Hudson Station, Dougan Station, Frederick Station, Fort Lupton Station, and Platteville Station in Colorado, as described below.

DESCRIPTION OF THE FACILITIES

Utah Facilities

8. The Cottonwood Wash Compressor Station ("Cottonwood Facility"), the Ouray Compressor Station ("Ouray Facility"), and the Kerr-McGee Bridge Station Compressor Station ("Bridge Facility") are all compressor stations that dehydrate and compress natural gas for transportation through a gas pipeline.

9. Emissions sources at the Cottonwood Facility include four Caterpillar G3516 LE natural gas powered engines, each with a horsepower rating at 1340, that are used to compress natural gas and designated as ENG1, ENG2, ENG4, and ENG-West, and a glycol dehydrator. All four engines were installed after December 19, 2002. On or about October 13, 2003 a 60 MMscfd tri-ethylene glycol ("TEG") dehydrator was installed to dehydrate wet gas at the Cottonwood Facility, and which was operated at the Cottonwood Facility until it was replaced on or about May 9, 2005.

10. Emission sources at the Ouray Facility include four Caterpillar G3516 LE natural gas powered engines, each with a horsepower rating at 1340, that are used to compress natural gas and designated as ENG1, ENG2, ENG3, and ENG1B, and a glycol dehydrator. All four engines were installed after December 19, 2002. In January 2000, a 30 MMscfd TEG dehydrator was installed to dehydrate wet gas at the Ouray Facility, and which was operated until it was replaced on or about June 28, 2005.

11. Emissions sources at the Bridge Facility include four Caterpillar 3516LE natural gas powered engines, each with a horsepower rating of 1340, that are used to compress natural gas, plus a "low-emission" glycol dehydrator. All four engines were installed after December 19, 2002. Operations at the Bridge Facility began on or about August 21, 2005.

12. The Cottonwood Facility, Ouray Facility, and Bridge Facility are located in Uintah County, Utah, within the exterior boundaries of the Uintah and Ouray Indian Reservation.

Colorado Facilities

13. The Hudson Compressor Station ("Hudson Station"), Dougan Compressor Station ("Dougan Station"), Frederick Compressor Station ("Frederick Station"), Fort Lupton Compressor Station ("Fort Lupton Station"), and Platteville Compressor Station ("Plateville Station"), are all compressor stations that compress natural gas for transportation through a gas pipeline.

14. The Hudson Station is a major source subject to the terms and conditions of Operating Permit No. 950PWE065. Equipment at this facility includes four Clark two-cycle lean burn reciprocating internal combustion engines ("Hudson Engines"). The Hudson Engines are manufacturer design rated at 3000 horsepower, and have been operating at the Hudson Station since before June 1, 2004.

15. The Dougan Station is a major source subject to the terms and conditions of Operating Permit No. 950PWE033. Equipment at this facility includes a Cooper Bessemer two-cycle lean burn reciprocating internal combustion engine ("Dougan Engine"). The Dougan Engine is manufacturer design rated at 4760 horsepower, and has been operating at the Dougan Station since before June 1, 2004.

16. The Frederick Station is a major source subject to the terms and conditions of Operating Permit No. 950PWE035. Equipment at this facility includes two Cooper Bessemer two-cycle lean burn reciprocating internal combustion engines ("Frederick Engines"). The Frederick Engines are manufacturer design rated at 4760 horsepower, and have been operating at the Frederick Station since before June 1, 2004.

17. The Fort Lupton Station is a major source subject to the terms and conditions of Operating Permit No. 950PWE013. Equipment at this facility includes four Fairbanks-Morse two-cycle lean burn reciprocating internal combustion engines ("Fort Lupton Engines"). Three of the Fort Lupton Engines are manufacturer design rated at 2166 horsepower, and the forth is

rated at 1859 horse power. The Fort Lupton Engines have been operating at the Fort Lupton Station since before June 1, 2004.

18. Equipment at the Platteville Station include an amine gas treatement system ("Amine Unit") which consists of: one PBP Fabrications, Inc., amin gas treatment system Serial No. 2284, consisting of a regeneration boiler with a design rate of 15.0 BTU/hr, and a flash tank equipped with a Q.B. Johnson Thermal Oxidizer Serial No. 43902 for control of flash emissions of volatile organic compounds ("VOCs").

19. The Hudson Station, Dougan Station, Frederick Station, Fort Lupton Station Station, and Platteville Station, are all located in the 8 Hour Ozone Control Area in the Denver-Julesburg Basin ("D-J Basin") in Weld County, Colorado.

STATUTORY AND REGULATORY BACKGROUND

20. As set forth in Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1), the CAA establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare.

PSD Program

21. As set forth in Section 161 of the CAA, 42 U.S.C. § 7471, and the regulations promulgated thereunder, Part C of the CAA is designed to prevent the significant deterioration of air quality where air quality meets or exceeds federal National Ambient Air Quality Standards ("NAAQS") in areas designated as "attainment" or "unclassifiable."

22. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQs.

23. Section 107 of the CAA, 42 U.S.C. § 7407(d), requires each state to designate those areas within its boundaries where the air quality is better or worse than NAAQs for each

criteria pollutant, of where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQs for a particular pollutant is classified as an "attainment" area; one that does not is classified as a "nonattainment" area."

24. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), provides that no "major emitting facility" on which construction began after August 7, 1977, may be constructed in attainment or unclassifiable areas unless a permit is issued pursuant to the preconstruction review provisions in the CAA. In addition, Section 165(a)(4) of the CAA, 42 U.S.C. § 7475(a)(4), provides that "the proposed facility [must be] subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility." EPA's regulations implementing the CAA as set forth in 40 C.F.R. § 52.21(i) similarly impose such restrictions on any "major stationary source," or any "major modification" of a stationary source.

25. A "major emitting source" is defined by Section 169(1) of the CAA, 42 U.S.C. § 7479(1), and a "major stationary source" is defined by 40 C.F.R. § 52.21(b)(1)(i)(b), *inter alia*, as any stationary source which emits or has the potential to emit 250 tons per year of any pollutant subject to regulation under the CAA. Pursuant to 40 C.F.R. § 52.21(b)(1)(i)(c), a "major stationary source" is also defined to include "[a]ny physical change that would occur at a stationary source not otherwise qualifying under [§52.21(b)(1)], as a major stationary source, if the changes would constitute a major stationary source by itself." Volatile organic compounds ("VOCs") are regulated pollutants under the CAA.

Utah SIP

26. In approving the State of Utah's State Implementation Plan ("SIP") for the implementation of the CAA and the attainment and maintenance of NAAQS, as set forth in 40 C.F.R. § 52.2346, EPA ruled that:

> (a) The Utah plan, as submitted, is approved as meeting the requirements of Part C, Title I, of the Clean Air Act, except that it does not apply to sources proposing to construct on Indian Reservations.
>
> (b) Regulation for Prevention of Significant Deterioration of Air Quality. The provisions of § 52.21 (b) through (v) are hereby incorporated by reference and made a part of the Utah State Implementation Plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

27. In promulgating the rule approving the Utah SIP referred to in the preceding paragraph, as set forth in 47 F.R. 6428 (February 12, 1982), EPA stated that:

> As explained in the proposed approval, there is one major difference between the State and Federal programs. That difference is that the State's regulation does not necessarily apply on Indian Reservations. Therefore, EPA approves the State regulation and removes the federal regulation except as it applies on Indian Reservations.

Colorado SIP

28. The State of Colorado's Air Quality Control Commission ("AQCC") promulgated a SIP pursuant to the Colorado Air Pollution Prevention and Control Act ("Colorado Act"), CRS Title 25, Art. 7, Part 2, for the implementation of the CAA and the attainment and maintenance of NAAQs. The Colorado SIP was approved by EPA as set forth in 40 C.F.R. § 52.323, on October 5, 1979 . 44 F.R. 57410.

29. A portion of Colorado's D-J Basin is currently in an area subject to an Early Action Compact ("EAC") between EPA and the State of Colorado for the 8 hour ozone NAAQs because of high ozone levels in 2001-2003 in the Denver metropolitan area ("8 Hour Ozone Control Area"). This area would otherwise be designated as a non-attainment area for the 8 hour ozone NAAQs, but the nonattainment designation effective date has been deferred by EPA due to the existence of the EAC. 69 F.R. 23857-23951. 40 C.F.R. § 81.306.

30. EPA extended the deferment twice, until July 1, 2007, because the State of Colorado has been meeting milestones in the EAC plan, including further control of VOCs from oil and gas production and distribution operations. 71 FR 69022-69028. Recently EPA proposed to further extend Colorado's deferred non-attainment designation for the 8 Hour Ozone

Control Area to April 15, 2008 because of the State of Colorado's further progress on VOC regulatory controls on oil and gas exploration and production operations in the D-J Basin. 72 F.R. 9285-9286.

31. The Colorado AQCC subsequently adopted regulations specific to oil and gas operations which were incorporated into the Colorado SIP. AQCC's Regulation No. 7, §§ XII , XVI (5 Colo Code Regs. § 1001-9 XII and XVI), were incorporated into the Colorado SIP on September 19, 2005 and approved by EPA on August 19, 2005. 70 FR 48652-48654

National Emission Standards For Hazardous Air Pollutants

32. Section 112 of the CAA, 42 U.S.C. § 7412, establishes a program for controlling emissions of hazardous air pollutants ("HAPs") using the maximum degree of emission reduction known as the "National Emission Standards for Hazardous Air Pollutants" or "NESHAPs." HAPs, also known as air toxics, are listed in Section 112(b) of the CAA, 42 U.S.C. § 7412(b), and include the following five that are typically contained in emissions from oil and natural gas facilities and natural gas transmission and storage facilities: benzene, toluene, ethyl benzene, xylenes, and hexane. HAPs are pollutants which are known or suspected to cause cancer or other serious health effets such as birth defects or reproductive effects in humans.

Subpart HH Regulations

33. Pursuant to the authority under Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator of EPA promulgated regulations establishing NESHAPs for Oil and Natural Gas Production Facilities. These "Maximum Achievable Control Technology ("MACT")" regulations for Oil and Natural Gas Production Facilities are codified at 40 C.F.R. Part 63, Subpart HH. The effective date of Subpart HH was June 17, 1999.

34. The Subpart HH regulations apply to specified affected sources located at oil and natural gas production facilities that (a) are "major sources" of HAPs, and (b) either process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer, or natural gas prior

to the point at which natural gas enters the "natural gas transmission and storage source category or is delivered to a final end user." 40 C.F.R. § 63.760(a). Natural gas is deemed to enter the "natural gas and storage source category" after leaving a natural gas processing plant if there is one, and if there is not one, after the point of custody transfer. 40 C.F.R. § 63.760(a)(3).

35. A "major source" of HAPs means "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year of more of any hazardous pollutant to 25 tons per year or more of any combination of hazardous air pollutants." Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1). *See also* 40 C.F.R. § 63.2.

36. An "affected source," for purposes of the NESHAP regulations set forth at 40 C.F.R. Part 63, means the "stationary source, the group of stationary sources, or the portion of the stationary source that is regulated by a relevant standard or other requirement established pursuant to [Section 112 of the CAA]. Each relevant standard will define the 'affected source' for the purposes of that standard . . . ." 40 C.F.R. § 63.2.

37. Affected sources under Subpart HH are defined at 40 C.F.R. § 63.760(b)(1) - (4) to include glycol dehydration units, storage vessels with the potential for flash emissions, the group of all ancillary equipment (except compressors) intended to operate in volatile hazardous air pollutant service which are located at natural gas processing plants, and compressors intended to operate in volatile hazardous air pollutant service which are located at natural gas processing plants.

38. The construction of any new, or the reconstruction of any existing, "major source" of HAPs is subject to a pre-construction approval process. Section 112(i)(1) of the CAA provides that "[a]fter the effective date of any emission standard, limitation, or regulation under subsection (d), (f), or (h) of this section, no person may construct any new major source subject to such emission standard, regulation, or limitation unless the Administrator . . . determines that

such source, if properly constructed, reconstructed, and operated, will comply with the standard, regulation, or limitation." 42 U.S.C. § 7412(i)(1). *See also* 40 C.F.R. § 63.5(d)(1). 40 C.F.R. 63.5(b)(3) further provides that: "[a]fter the effective date of any relevant standard promulgated by the Administrator under this part . . . no person may construct a new major affected source . . . subject to such standard . . . without obtaining written approval, in advance, from the administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section."

39. Pursuant to 40 C.F.R. § 63.760(f)(2) the owner or operator of an affected source, the construction or reconstruction of which commenced on or after February 6, 1998, shall achieve compliance with the provisions of 40 C.F.R. Part 63, Subpart HH immediately upon initial start up or June 17, 1999, whichever is later. 40 C.F.R. § 63.760(f)(1) specifies when compliance with the provisions of 40 C.F.R. Part 63, Subpart HH must be achieved with for an affected source or area source, the construction or reconstruction of which commenced before February 6, 1998.

Subpart ZZZZ

40. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations, codified at 40 C.F.R. Part 63, Subpart ZZZZ, establishing NESHAPs for stationary reciprocating internal combustion engines ("RICE") at major sources of HAP emissions. 40 C.F.R. §§ 63.6584 & 63.6585. The effective date of Subpart ZZZZ was August 16, 2004.

41. Affected sources are defined at 40 C.F.R. Part § 63.6590 to include any existing, new, or reconstructed stationary RICE with a site-rating of more than 500 brake horsepower and located at a major source of HAP emissions. A "major source" of HAP emissions includes, with respect to oil and gas production facilities, a "surface site" that emits or that the potential to emit any single HAP at a rate of 10 tons or more per year, or any combination of HAPs at a rate of 25 tons or more per year. 40 C.F.R. § 63.6585(b).

42. The owner or operator of a new or reconstructed stationary RICE (defined by 40 C.F.R. § 63.6590(a)(2) & (3)) that is started up before August 16, 2004 must comply with the applicable emissions limitations and operating limitations set forth at 40 C.F.R. Part 63, Subpart ZZZZ, by no later than August 16, 2004. 40 C.F.R. § 63.6595(a)(2). For a new or reconstructed stationary RICE that is started up after August 16, 2004, the owner or operator must comply with the applicable emissions limitation and operating limitations set forth at 40 C.F.R. Part 63, Subpart ZZZZ, upon startup. 40 C.F.R. § 63.6595(a)(3).

FIRST CLAIM FOR RELIEF
(Violations of PSD Requirements – Cottonwood Facility)

43. Paragraphs 1 through 42 are realleged and incorporated by reference.

44. With the addition of the 60 MMscfd TEG dehydrator on or about October 13, 2003, the Cottonwood Facility became a "major emitting source" as defined by Section 169(1) of the CAA, 42 U.S.C. 7479(1), and a "major stationary source" as defined by 40 C.F.R. § 52.21(b)(1)(i)(b).

45. The addition of the TEG dehydrator was made without the prior issuance of a PSD permit by EPA in violation of Section 165(a)(4) of the CAA, 42 U.S.C. § 7475(a)(4), and 40 C.F.R. § 52.21(i).

46. Pursuant to 40 C.F.R. §§ 52.21(r) and 52.23, construction and operation of a major stationary source without a PSD permit is subject to enforcement under Section 113 of the CAA, 42 U.S.C. § 7413.

47. Kerr-McGee is liable for civil penalties and permanent injunctive relief on account of the construction and/or operation of a major stationary source without a PSD permit pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SECOND CLAIM FOR RELIEF
(Violations of PSD Requirements – Ouray Facility)

48. Paragraphs 1 through 42 are realleged and incorporated by reference.

49. With the addition of the 30 MMscfd TEG dehydrator in January 2000, the Ouray Facility became a "major emitting source" as defined by Section 169(1) of the CAA, 42 U.S.C. 7479(1), and a "major stationary source" as defined by 40 C.F.R. § 52.21(b)(1)(i)(b).

50. The addition of the TEG dehydrator was made without the issuance of a PSD permit by EPA in violation of Section 165(a)(4) of the CAA, 42 U.S.C. § 7475(a)(4), and 40 C.F.R. § 52.21(i).

51. Pursuant to 40 C.F.R. §§ 52.21(r) and 52.23, construction and operation of a major stationary source without a PSD permit is subject to enforcement under Section 113 of the CAA, 42 U.S.C. § 7413.

52. Kerr-McGee is liable for civil penalties and permanent injunctive relief on account of the construction and operation of a major stationary source without a PSD permit pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

THIRD CLAIM FOR RELIEF
(Violations of NESHAP Subpart A and HH Requirements – Cottonwood Facility)

53. Paragraphs 1 through 42 are realleged and incorporated by reference.

54. The addition of the 60 MMscfd TEG dehydrator on or about October 13, 2003 at the Cottonwood Facility constituted the construction of a new "affected source" as defined in 40 C.F.R. § 63.760(b)(1), and a "major source" of HAPs within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. §§ 63.2 and 63.761, triggering the applicability of Subparts A and HH of EPA's 40 C.F.R. Part 63 regulations.

55. Pursuant to Section 112(i)(1) of the CAA, 42 U.S.C. § 7412(i)(1), and 40 C.F.R.

§§ 63.5(b)(3) & 63.5(d), the owner or operator of the Cottonwood Facility was required to comply with a preconstruction approval process before installing the TEG dehydrator. Such an application for approval of the construction of the TEG dehydrator at the Cottonwood Facility was not submitted, and the TEG dehydrator was operated without EPA's approval.

56. EPA was not provided an initial notice of the applicability of the EPA's NESHAP regulations to the Cottonwood Facility within 15 days after the date of startup of the TEG dehydrator as required by 40 C.F.R. § 63.9(b)(5) and (d). Such notification was due October 28, 2003. EPA was first notified that the Cottonwood was subject to the Subpart HH regulations in an application for a Title V permit dated December 14, 2004.

57. Pursuant to 40 C.F.R. §§ 63.6(e)(3) and 63.762(d), a Startup, Shutdown, and Malfunction ("S/S/M") plan must be prepared for an affected source by the applicable compliance date, which for sources, the construction or reconstruction of which commenced on or after February 6, 1998, is the date of the initial start-up of the affected source. A S/S/M plan was not prepared for the TEG dehydrator at the Cottonwood Facility before its initial start-up, on or about October 13, 2003. Nor was a S/S/M plan ever prepared, upon information and belief, for the TEG dehydrator before it was replaced on or about May 9, 2005.

58. Kerr-McGee failed to install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters for the flare from the TEG dehydrator at the Cottonwood Facility in violation of 40 C.F.R. § 63.7773(d)(3)(i)(C).

59. Kerr-McGee failed to record the times and durations of all periods during which the pilot flame, for the flare from the TEG dehydrator at the Cottonwood Facility, was absent at Cottonwood Facility in violation of 40 C.F.R. § 63.774(b)(4)(ii)(A).

60. Kerr-McGee failed to submit a timely Notification of Compliance Status Report for the Cottonwood Facility in violation of 40 C.F.R. §§ 63.9(h) and 63.775(d).

61. Kerr-McGee failed to submit a timely Periodic Report for the Cottonwood Facility in violation of 40 C.F.R. § 63.775(e).

62. Kerr-McGee is liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and HH requirements pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

FOURTH CLAIM FOR RELIEF
(Violations of NESHAP Subpart A and HH Requirements – Ouray Facility)

63. Paragraphs 1 through 42 are realleged and incorporated by reference.

64. The addition of the TEG dehydrator at Ouray Facility in January 2000 constituted the construction of a new "affected source" as defined in 40 C.F.R. Part 63, Subpart HH, § 63.760(b)(1), and a "major source" of HAPs within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. §§ 63.2 and 63.761, triggering the applicability of Subparts A and HH of EPA's 40 C.F.R. Part 63 regulations.

65. Pursuant to 40 C.F.R. §§ 63.6(e)(3) and 63.762(d), a S/S/M plan must be prepared for an affected source by the applicable compliance date, which for sources, the construction or reconstruction of which commenced on or after February 6, 1998, is the date of the initial start-up of the affected source. A S/S/M plan was not prepared for the TEG dehydrator at the Ouray Facility before its initial start-up, in January 2000. Nor was a S/S/M plan ever prepared, upon information and belief, for the TEG dehydrator before it was replaced on or about June 28, 2005.

66. Kerr-McGee failed to submit a Periodic Report on a semi-annual basis, for the years 2003 and 2004, in violation of 40 C.F.R. § 63.775(e).

67. Kerr-McGee is liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and HH requirements pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

FIFTH CLAIM FOR RELIEF
(Violations of NESHAP Requirements for Stationary Reciprocating Internal Combustion Engines – Cottonwood Facility)

68. Paragraphs 1 through 42 are realleged and incorporated by reference.

69. The installation of ENG1, ENG2, and ENG-WEST, each being a stationary RICE rated at 1340 hp, at the Cottonwood Facility after December 19, 2002, constituted the addition of "new" and "affected sources" as these terms are defined at 40 C.F.R. § 63.6590(a)(1) & (2).

70. At the time ENG1, ENG2, and ENG-WEST were installed, the Cottonwood Facility was a major source of HAPs as defined by 40 C.F.R. § 63.6585(b).

71. The Subpart ZZZZ regulations provide that an owner or operator that starts up a new stationary RICE before August 16, 2004 must comply with emission and operating limitations in 40 C.F.R. § 63.6600(b) by no later than August 16, 2004 (the "compliance date"). 40 C.F.R. § 63.6595(a)(2). These provisions were violated as follows:

a. ENG1 was installed on or about October 13, 2003 and operated without oxidation catalyst controls to meet the requirements of 40 C.F.R. § 63.6600(b) until on or about January 31, 2005;

b. ENG2 was installed on or about June 28, 2004 and operated without oxidation catalyst controls to meet the requirements of 40 C.F.R. § 63.6600(b) until on or about January 31, 2005; and

c. ENG-WEST was installed on or about January 24, 2004 and operated without oxidation catalyst controls to meet the requirements of 40 C.F.R. § 63.6600(b) until on or about January 31, 2005.

72. Pursuant to 40 C.F.R. § 63.6(e)(3), the owner or operator must prepare a S/S/M plan for any affected source by the applicable compliance date, which for ENG1, ENG2, and ENG-WEST was August 16, 2004 (the "compliance date"). These provisions were violated as

follows:

a. Kerr-McGee did not prepare a S/S/M plan for ENG1 until February, 2005;

b. Kerr-McGee did not prepare a S/S/M plan for ENG2 until February, 2005; and

c. Kerr-McGee did not prepare a S/S/M plan for ENG-West until February, 2005.

73. The Subpart ZZZZ regulations require that the owner or operator that provide EPA at least 60 days advance notice of an intention to conduct a performance test or other compliance demonstration required by 40 C.F.R. § 63.7(b)(1). *See* 40 C.F.R. § 63.6645(e). This provision was violated as follows:

a. Kerr-McGee failed to submit a Notification of Performance Test to EPA 60 days before performing a performance test for ENG1 on March 29, 2005;

b. Kerr-McGee failed to submit a Notification of Performance Test to EPA 60 days before performing a performance test for ENG2 on March 29, 2005; and

c. Kerr-McGee failed to submit a Notification of Performance Test to EPA 60 days before performing a performance test for ENG-WEST on March 29, 2005.

74. The Subpart ZZZZ regulations require the owner or operator to conduct an initial performance test or compliance demonstration within 180 days after the compliance date, which for ENG1, ENG2, and ENG-WEST was February 12, 2005. *See* 40 C.F.R. § 63.6610(a). This provision was violated as follows:

a. Kerr-McGee did not conduct the initial performance test for ENG1 until March 29, 2005;

b. Kerr-McGee did not conduct the initial performance test for ENG2 until March 29, 2005; and

c. Kerr-McGee did not conduct the initial performance test for ENG-WEST until March 29, 2005.

75. Kerr-McGree is liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and ZZZZ regulations pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SIXTH CLAIM FOR RELIEF
(Violations of NESHAP Requirements for Stationary Reciprocating Internal Combustion Engines – Ouray Facility)

76. Paragraphs 1 through 42 are realleged and incorporated by reference.

77. The installation of ENG3, a stationary RICE rated at 1340 hp, at the Ouray Facility on or about June 28, 2004 constituted the addition of a "new" and "affected source" as these terms are defined at 40 C.F.R. § 63.6590(a)(1) & (2).

78. At the time ENG3 was installed, the Ouray Facility was a major source of HAPs as defined by 40 C.F.R. § 63.6585(b).

79. The Subpart ZZZZ regulations provide that an owner or operator that starts up a new stationary RICE before August 16, 2004 must comply with emission and operating limitations in 40 C.F.R. § 63.6600(b) by no later than August 16, 2004 (the "compliance date"). 40 C.F.R. § 63.6595(a)(2). Kerr-McGee failed to install oxidation catalyst controls on ENG3 to meet the requirements of 40 C.F.R. § 63.6600(b) until on or about January 31, 2005.

80. Pursuant to 40 C.F.R. § 63.6(e)(3), the owner or operator must prepare a S/S/M plan for any affected source by the applicable compliance date. Kerr-McGee failed to prepare a S/S/M plan for ENG3 until February, 2005.

81. The Subpart ZZZZ regulations require the owner or operator to provide EPA at least 60 days advance notice of an intention to conduct a performance test or other compliance demonstration required by 40 C.F.R. § 63.7(b)(1). *See* 40 C.F.R. § 63.6645(e). Kerr-McGee violated this provision by failing to submit a Notification of Performance Test to EPA 60 days before performing a performance test for ENG3 on March 29, 2005.

82. Pursuant to 40 C.F.R. § 63.6650(b)(2), the owner or operator must submit its first Compliance Report by the first calendar half year after the applicable compliance date, which for ENG3 for the half year ending December 31, 2004, was the Compliance Report due no later than January 31, 2005. Kerr-McGee failed to submit a first Compliance Report to EPA by January 31, 2005.

83. The Subpart ZZZZ regulations require the owner or operator to conduct an initial performance test or compliance demonstration within 180 days after the compliance date, which for ENG3 was February 12, 2005. *See* 40 C.F.R. § 63.6610(a). Kerr-McGee violated this provision by not conducting an initial performance test on ENG3 until March 29, 2005.

84. Kerr-McGree is liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and ZZZZ regulations pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SEVENTH CLAIM FOR RELIEF
(Violations of NESHAP Requirements for Stationary Reciprocating Internal Combustion Engines – Bridge Facility)

85. Paragraphs 1 through 42 are realleged and incorporated by reference.

86. On or about July 27, 2005, EPA was provided a pre-construction permit notice and initial notification of the installation of four Caterpillar natural gas powered engines, each rated at 1340 hp, at the Bridge Facility.

87. The installation of the engines constituted the addition of a "new" and "affected source" as these terms are defined at 40 C.F.R. § 63.6590(a)(1) & (2).

88. With the installation of all four engines the Bridge Facility became a major source of HAPs as defined by 40 C.F.R. § 63.6585(b).

89. Kerr-McGee started up two of the engines and commenced operations at the Bridge Facility on or about August 21, 2005.

90. Pursuant to 40 C.F.R. § 63.6595(a)(3), Kerr-McGee was required to comply with all applicable emission limitations and operating limitations of the Supbart ZZZZ regulations upon the startup of each engine.

91. The owner or operator of an affected source must, among other things, be able to "demonstrate continuous compliance with each emission limitation and operating limitation . . . ." 40 C.F.R. § 63.6640(a).

92. EPA inspectors conducted an inspection of the Bridge Facility on September 14, 2005. At that time Kerr-McGee was unable to demonstrate compliance with applicable emission and operation limitations because the Bridge Station did not have monitoring equipment installed as required by 40 C.F.R. § 63.6640(a), Table 6. Similarly, Kerr-McGee failed to have records of such monitoring as required by 40 C.F.R. § 63.6655(d).

93. 40 C.F.R. § 63.4(c) provides that "[t]he owner or operator must not use fragmentation or phasing of reconstruction activities to avoid becoming subject to new source requirements." Kerr-McGee violated this provision by phasing the startup of the engines in order to delay compliance with the Subpart ZZZZ regulations.

94. Kerr-McGee is liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and ZZZZ regulations pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

EIGHTH CLAIM FOR RELIEF
(Violations of Regulation 7 for Failure to Install Oxidatoin Catalysts on Reciprocating Internal Combustion Engines In the D-J Basin)

95. Paragraphs 1 through 42 are realleged and incorporated by reference.

96. Pursuant to Regulation No. 7, Section XVI, lean burn reciprocating internal combustion engines with a manufacturer's design rate greater than 500 horsepower operating in the 8 Hour Ozone Control Area prior to June 1, 2004, are required to install oxidation catalysts

prior to May 1, 2005, unless the engine qualifies for one of the exemptions described in Regulation No. 7, Section XVI.C.

97. AQCC Regulation No. 7, Section XVI.C.4. provides that lean burn RICE operating in the 8 Hour Ozone Control Area prior to June 1, 2004, which would otherwise be required to install oxidation catalysts, are exempt from this requirement to the extent that the owner or operator can demonstrate that the technology cannot be installed at a cost of less than $5,000 per ton of VOC emission reduction. The regulation further provides that:

> In order to qualify for such exemption, the owner or operator must submit an application making such a demonstration, together with all supporting documents, to the Division by May 1, 2005.

99. At all times relevant to this complaint, the D-J Basin facilities were subject to the requirements in Regulation 7, § XVI.., specifically the requirements for installation of oxidation catalysts in the RICE units.

100. To date, Kerr-McGee has not installed oxidation catalysts on any of the Frederick, Ft. Lupton, Hudson, or Dougan Engines in violation of Regulation 7, Section XVI.

NINTH CLAIM FOR RELIEF
(Permit Violations – Platteville Station)

101. Paragraphs 1 through 42 are realleged and incorporated by reference.

102. As of February 17, 2004, the Amine Unit at the Platteville Station was subject to Permit No. 02WE0126, Initial Approval, Modification 1 ("Permit No. 02WE0126 IA Mod. 1," issued to Kerr McGee January 2, 2003). The Amine Unit is now subject to the conditions set forth in Construction Permit No. 02WE0126, Final Approval ("Permit No. 02WE0126").

103. Kerr-McGee exceeded the applicable VOC emission limits for the Amine Unit from its start-up on October 4, 2002 through April 12, 2006.

104. Kerr-McGee exceeded the applicable HAP emission limits for the Amine Unit

from its start-up on October 4, 2002 through April 12, 2006.

105. Kerr-McGee operated Platteville Station without a Title V Operating Permit from start-up of the Amine unit on October 4, 2002 through April 12, 2006.

106. Kerr-McGee exceeded the applicable NO_x emission limit for the Amine Unit during July 2003.

107. Kerr-McGee has exceeded the VOC emission limit for equipment leaks at Platteville Station since November 2004.

TENTH CLAIM FOR RELIEF
(Permit Violations – Fort Lupton Station)

108. Paragraphs 1 through 42 are realleged and incorporated by reference.

109. Pursuant to Condition 6.1 of Permit No. 95OPWE013, VOC emissions from equipment leaks at the Ft. Lupton Station shall not exceed 30.8 tons per year. In addition, Condition 2 of Permit No. 00WE0583 limits VOC emissions from equipment leaks associated with the NGL extraction unit to 46.4 tons per year as determined on a rolling 12 month basis. Kerr McGee is required to calculate equipment leak VOC emissions using the emission factors set forth in Condition 6.1 of Permit No. 95OPWE013 and Note 2 of Permit No. 00WE0583.

110. Kerr-McGee exceeded the VOC emission limits set forth in Condition 6.1 of Operating Permit No. 95OPWE013 and Condition 2 of Construction Permit No. 00WE0583, since at least the installation of the NGL extraction unit in May of 2001.

ELEVENTH CLAIM FOR RELIEF
(Violations of Regulation 7 – Condensate Storage Tanks)

111. Paragraphs 1 through 42 are realleged and incorporated by reference.

112. Kerr-McGee owns and operates numerous condensate storage tanks located in the 8-Hour Ozone Control Area ("Condensate Tanks"). The Condensate Tanks are subject to the

requirements of AQCC Regulation No. 7, Section XII.

113. Pursuant to AQCC Regulation No. 7, Section XII, owners of atmospheric condensate storage tanks located in the 8-Hour Ozone Control Area are required to employ air pollution control equipment to reduce VOC emissions from atmospheric condensate storage tanks if the system wide total VOC emissions are greater than 30 tons per year.

114. Owners and operators of subject systems were required to use air pollution control equipment to reduce actual uncontrolled emissions by 37.5% on a daily basis during the period from May 1, 2005 through September 30, 2005 ("2005 Ozone Season"). See AQCC Regulation No. 7, Section XII.A.2.a. Owners and operators of subject systems were required to use air pollution control equipment to reduce actual uncontrolled emissions by 47.5% on a daily basis during the period from May 1, 2006 through September 30, 2006 ("2006 Ozone Season"). See AQCC Regulation No. 7, Section XII.A.2.b.

115. Based on records that Kerr-McGee provided to the State of Colorado, Kerr-McGee failed to achieve a 37.5% reduction of VOC emissions for 9 days during the period from May 1, 2005, through September 30, 2005, in violation of AQCC Regulation No. 7, Section XII.A.2.a.

116. In order to verify compliance with the percentage reduction requirements set forth in AQCC Regulation No. 7, Section XII.A.2., owners and operators of subject condensate tank systems are required to maintain a daily spreadsheet tracking VOC reductions from condensate tanks during the period from May 1 through September 30 of each year. See AQCC Regulation No. 7, Section XII.A.4.

117. Pursuant to AQCC Regulation No. 7, Section XII.A.4.e., the spreadsheet shall note any shut down of air pollution control equipment and shall account for such shutdown in the daily emission reduction totals.

118. Pursuant to AQCC Regulation No. 7, Section XII, D.2.c., a flare must be enclosed and designed so that an observer can by visual inspection or other approved methods conveniently determine if the enclosed flare is operating correctly.

119. During the 2006 Ozone Season, Mr. Phil Brewer of the Weld County Department of Public Health, a duly delegated representative of CDPHE, conducted numerous inspections of the Condensate Tanks. During the course of his inspections, Mr. Brewer identified a number of instances where the air pollution control equipment for particular tanks were not functioning.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court enter judgment against each of the Defendants:

A. For each violation of the Clean Air Act, and the regulations promulgated thereunder, a civil penalty pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, up to $27,500 per day per violation for violations occurring on or after January 30, 1997 through March 15, 2004; and up to $32,500 per day for each violation that occurs after March 15, 2004;

B. Permanently enjoining Defendant from continuing to violate the Clean Air Act, and the regulations promulgated thereunder; and

C. For such other relief as this Court deems just and proper.

Respectfully submitted,

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