



February 23, 2023

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Michael Regan
Administrator
Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**Re: Notice of Intent to File Suit under the Clean Air Act, Failure to Issue or Deny
Title V Permits After Issuing an Objection**

Dear Administrator Regan:

WildEarth Guardians hereby notifies you that it intends to sue the United States Environmental Protection Agency (“EPA”) over your failure to issue or deny two Clean Air Act Title V Operating Permits (hereafter “Title V permits”) issued to Lucid Energy Delaware, LLC (hereafter “Lucid”) for the operation of the Frac Cat and Big Lizard Compressor Stations within 90 days after issuing an objection pursuant to section 505(b) of the Clean Air Act. We intend to bring a suit sixty days from the date of this letter, or shortly thereafter, under Section 304 of the federal Clean Air Act, 42 U.S.C. § 7604, against you for your failure to perform a non-discretionary duty set forth at 42 U.S.C. § 7661d(c). The suit will seek injunctive and declaratory relief, the cost of litigation, and other relief as may be necessary.

WildEarth Guardians is a New Mexico-based nonprofit organization with offices in Santa Fe, Denver, Missoula, Boise, Portland, Seattle, and Tucson. WildEarth Guardians is dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West, and has members throughout the region who are harmed by the failure of the Administrator to issue or deny the Title V permits.

On November 16, 2022, the EPA granted in part petitions to object to the New Mexico Environment Department Air Quality Bureau’s issuance of initial Title V permits for Lucid to operate the Frac Cat and Big Lizard Compressor Stations, located in Lea County, New Mexico. The ruling came in response to two Title V petitions filed by WildEarth Guardians pursuant to Section 505(b)(2) of the Clean Air Act. The Administrator issued a single objection addressing

petitions to object to both facilities' Title V permits, finding the Air Quality Bureau failed to demonstrate that operation of the compressor stations would protect national ambient air quality standards for ozone and failed to provide for adequate monitoring of venting emissions. *See In the Matter of Lucid Energy Delaware, LLC Frac Cat Compressor Station, Lucid Energy Delaware, LLC Big Lizard Compressor Station, Petitions VI-2022-5 and VI-2022-11 (Nov. 16, 2022) (hereafter "Lucid ruling"), available online at https://www.epa.gov/system/files/documents/2022-11/Lucid%20Energy%20Delaware%20Order_11-16-22.pdf.* Since that time however, NMED has not submitted a permit revised to meet the Administrator's objection.

Under the Clean Air Act, the EPA must issue or deny a Title V permit if the permitting authority has not submitted a permit revised to meet an objection within 90 days. *See*, 42 U.S.C. § 7661d(c). The law states:

If the permitting authority fails within 90 days after the date of an objection under [42 U.S.C. § 7661d(b)] to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of [Title V].

EPA regulations governing objections to Title V permits further require that:

[T]he Administrator will deny, terminate, revise, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a [federally issued] permit when:

(1) A permitting authority with an approved . . . operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to [42 U.S.C. § 7661d(b)] and [40 C.F.R. § 70.8(c) and (d)].

40 C.F.R. § 71.4(e).

Pursuant to the Clean Air Act, the New Mexico Environment Department's Air Quality Bureau was required to issue a permit revised to meet the EPA's November 16, 2022 objection by February 14, 2023. As of the date of this letter, the Air Quality Bureau has yet to submit a revised permit that resolves the Administrator's objection. Thus, EPA has a nondiscretionary duty to issue or deny the Title V permits for the Frac Cat and Big Lizard Compressor Stations. EPA has neither issued nor denied the Title V permits by this date and/or by the date of this letter. Therefore EPA is in violation of a nondiscretionary duty set forth at 42 U.S.C. § 7661d(c).

Under the Clean Air Act, the Administrator must now issue or deny the Title V permits for the Frac Cat and Big Lizard Compressor Stations in accordance with 42 U.S.C. § 7661d(c) and 40 C.F.R. § 71.4(e). If EPA decides to issue the Title V permits, it must do so in accordance with the procedures set forth under 40 C.F.R. § 71. Under 40 C.F.R. § 71.4(l)(2), the Air Quality Bureau may thereafter issue Title V permits in accordance with 40 C.F.R. § 70, but such state-

issued permits will only replace any EPA-issued Title V permit upon expiration and only if EPA determines that such a state-issued permit has resolved the Administrator's November 16, 2022 objection.

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person giving the notice is:

WildEarth Guardians
301 N. Guadalupe, Ste. 201
Santa Fe, NM 87501

For purposes of discussing this matter, please contact us at the information below. Thank you.

Sincerely,



Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
(303) 437-7663
jnichols@wildearthguardians.org

cc: Earthea Nance, Regional Administrator, EPA Region 6