

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
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)
Anadarko Uintah Midstream, LLC,)
)
)
Archie Bench Compressor Station,)
Permit No. SMNSR-UO-000817-2016.001)
)
)
Bitter Creek Compressor Station)
Permit No. SMNSR-UO-000818-2016.001)
)
)
East Bench Compressor Station,)
Permit No. SMNSR-UO-000824-2016.001)
)
)
North Compressor Station,)
Permit No. SMNSR-UO-000071-2016.001)
)
)
North East Compressor Station,)
Permit No. SMNSR-UO-001874-2016.001)
)
)
Sage Grouse Compressor Station,)
Permit No. SMNSR-UO-001875-2016.001)
)

**PETITION FOR REVIEW
SIX CLEAN AIR ACT PART 49 MINOR SOURCE PERMITS**

INTRODUCTION

On June 7, 2018, U.S. Environmental Protection Agency (“EPA”) Region 8 issued six virtually identical synthetic minor source new source review permits (“SMNSR”) establishing federally enforceable emission limits for six natural gas compression facilities operated by Anadarko Uintah Midstream, LLC, a subsidiary of Anadarko Petroleum, pursuant to the Clean Air Act and regulations at 40 C.F.R. § 49.151-164. The six facilities are located in Uintah County, Utah within the Uintah and Ouray Indian Reservation of northeast Utah. The facilities include the Archie Bench Compressor Station, Bitter Creek Compressor Station, East Bench Compressor Station, North Compressor Station, North East Compressor Station, and the Sage Grouse Compressor Station (hereafter referred to as the “Anadarko facilities”).

Unfortunately, in issuing the six permits to Anadarko, the agency failed to fully comply with its permitting duties. Namely, the EPA failed to ensure that issuance of the permits would sufficiently protect air quality in the Uinta Basin of northeast Utah, which was recently designated a nonattainment area due to ongoing violations of National Ambient Air Quality Standards (“NAAQS”) for ground-level ozone. *See* 83 Fed. Reg. 25,776 (June 4, 2018).

Therefore, pursuant to 40 C.F.R. § 49.159(d), WildEarth Guardians petitions the Environmental Appeals Board (“EAB”) to review EPA Region 8’s issuance of the six SMNSR permits for the Anadarko facilities. Guardians requests the EAB review EPA Region 8’s permitting action on the basis that the permits are based on findings of facts and/or conclusions of law that are clearly erroneous.

Specifically, EPA Region 8 inappropriately concluded that issuance of the permits for the Anadarko facilities did not constitute permitting actions warranting air quality scrutiny pursuant to 40 C.F.R. § 49.154(d).

Below, we detail the basis for seeking review. We request the EAB grant this petition for review and remand the permits. Most importantly, we request the EAB ensure the six Anadarko facilities operate in full compliance with the Clean Air Act.

LEGAL BACKGROUND

In 2011, the EPA promulgated New Source Review regulations governing the permitting of minor stationary sources of air pollution located within Indian country (a.k.a., Tribal lands). *See* 76 Fed. Reg. 38,748 (July 1, 2011). These Tribal Minor New Source Review (hereafter “Tribal MNSR”) rules were promulgated under 40 C.F.R. §§ 49.151-49.165. The Tribal MNSR rules provided for the permitting of a variety of minor sources of air pollution, including new minor sources, modifications of existing minor sources, new and modified synthetic minor sources, and existing synthetic minor sources. 40 C.F.R. § 49.153(a).

Under the Tribal MNSR rules, synthetic minor sources are defined as sources of air pollution that “otherwise [have] the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in [40 C.F.R.] § 49.167, § 52.21 or § 71.2 [,] but that ha[ve] taken a restriction so that [their] potential to emit is less than such amounts for major sources.” 40 C.F.R. § 49.152(d). With regards to synthetic minor source permitting for existing sources of air pollution, the Tribal MNSR rules generally provide for three avenues of permitting.¹ One relates to the permitting of existing major sources as synthetic minor sources. *See* 40 C.F.R. § 49.153(a)(3)(i). The second relates to the permitting of existing synthetic minor sources as synthetic minor sources where the sources have been subject to operating permits issued under 40 C.F.R. § 71 that have imposed restrictions on emissions. *See* 40 C.F.R.

¹ The rules actually provide four avenues for permitting of existing sources as synthetic minors, but one relates to the permitting of sources subject to Federal Implementation Plans promulgated for Tribal lands in Idaho, Oregon, and Washington. *See* 40 C.F.R. § 49.153(a)(3)(iii). This avenue for permitting has no relevance here.

§ 49.153(a)(3)(iv). The third relates to the permitting of existing synthetic minor sources as synthetic minor sources where the sources have been required to restrict emissions pursuant to other “mechanism[s].” *See* 40 C.F.R. § 49.153(a)(3)(v).

For existing synthetic minor sources of air pollution established by “other mechanisms,” the EPA’s Tribal MNSR rules set forth strict provisions for becoming permitted as a synthetic minor source of air pollution. Among them, sources must “submit an application for a synthetic minor source permit [] by September 4, 2012[.]” 40 C.F.R. § 49.158(c)(3). If a source fails to submit an application by September 4, 2012, it “will become subject to all requirements for major sources.” 40 C.F.R. § 49.158(c)(4)(iii).

For an existing major source of air pollution to become a synthetic minor source, the source must submit an application in accordance with 40 C.F.R. § 49.154, which applies to the permitting of any “synthetic minor source,” although applicants are not required to comply with the requirements of 40 C.F.R. §§ 49.154(a)(2) and 49.154(b). 40 C.F.R. §§ 49.154 and 49.158. Where the permitting authority “has reason to be concerned that the construction of [any] minor source or modification would cause or contribute to a [National Ambient Air Quality Standard] [] violation,” the authority “may require” that an air quality impact assessment (“AQIA”) be prepared as part of the application process. 40 C.F.R. § 49.154(d)(1). The term “construction” is defined to mean “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.” 40 C.F.R. § 52.21(b)(8).²

Final permits issued under the Tribal MNSR are subject to appeal before the EAB. *See* 40 C.F.R. § 49.159(d). Within 30 days of a final permit decision, “any person who filed

² The definitions under 40 C.F.R. § 52.21 apply to the Tribal MNSR rules. *See* 40 C.F.R. § 49.152(b).

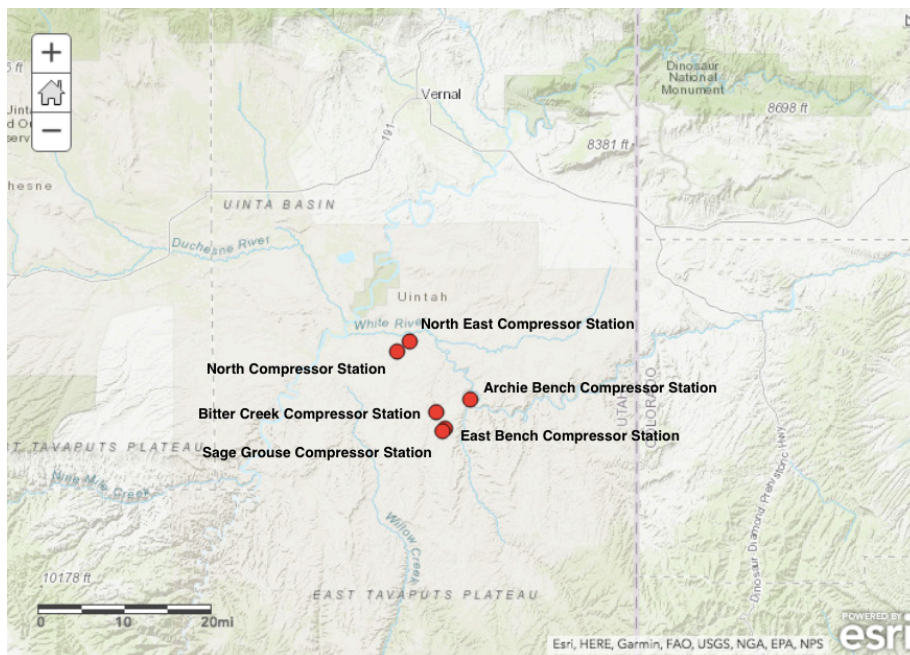
comments on the draft permit [] may petition the [Environmental Appeals] Board to review any condition of the permit decision.” 40 C.F.R. § 49.159(d)(2). Petitions for review must include a statement of reasons, a demonstration that any issues raised were raised during the public comment period, and, “when appropriate, a showing that the condition in question is based on [a] finding of fact or conclusion of law that is clearly erroneous[.]” *Id.* at (d)(3); *see also In re Salt River Project Agricultural Improvement and Power District – Navajo Generating Station*, 17 E.A.D. 312, 314-316 (EAB 2016) (setting forth standard of review under 40 C.F.R. § 49.159).

FACTUAL BACKGROUND

The Archie Bench Compressor Station, Bitter Creek Compressor Station, East Bench Compressor Station, North Compressor Station, North East Compressor Station, and the Sage Grouse Compressor Station are located in Uintah County, which is located in the Uinta Basin of northeastern Utah. The facilities are located approximately 30-40 miles south of the town of Vernal. *See* Maps below.



Above, general location of Anadarko compressor stations in Northeast Utah and below, location of facilities in relation to Vernal, Utah.



A large portion of the Uinta Basin region was recently designated a nonattainment area due to violations of the ground-level ozone NAAQS. *See* 83 Fed. Reg. 25,776, 25,837 (June 4, 2018). To protect public health, the current NAAQS (adopted in 2015) limit concentrations of ozone in the ambient air to no more than 0.070 parts per million (“ppm”). This standard is violated whenever the three-year average of the fourth highest annual 8-hour concentration at a monitoring site exceeds 0.070 ppm. However, whenever the NAAQS are exceeded, there is cause for health concern.

Unlike urban areas, the Uinta Basin’s ozone pollution has been fueled by oil and natural gas production facilities, which are the most significant source of the ozone precursor pollutants volatile organic compounds (“VOCs”), nitrogen oxides (“NOx”), and carbon monoxide (“CO”) in the region. *See* Exhibit 1, Utah State University, “Fact Sheet: Air Quality in the Uintah Basin” (June 2017), available online at <https://binghamresearch.usu.edu/files/2-pagehandoutUBairquality.pdf> (last accessed July 2, 2018). This development has pushed the region’s ozone pollution to extreme highs, posing serious health risks. In 2017, six monitoring sites in Duchesne and Uintah Counties, Utah, which comprise the Uinta Basin, recorded exceedances of the 2015 eight-hour ozone NAAQS. One monitoring site in Uintah County recorded concentrations as high as 0.111 ppm. *See* Table below. By comparison, according to EPA’s AirData website (<https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>), the maximum 8-hour ozone concentrations reported in Los Angeles, California in 2017 were 0.114 ppm. Put another way, the Uinta Basin’s ozone pollution is as bad as heavily populated urban areas.

**Ozone monitoring data from Uinta Basin monitors for 2017.
Data from EPA's AirData website.**

Monitor Site Name	Monitor Site ID	1st Max. 8-hour Ozone Concentration (ppm)	4th Max. 8-hour Ozone Concentration (ppm)	Total Number of Exceedances
Roosevelt	490130002	0.086	0.078	8
Myton	490137011	0.088	0.081	8
Dinosaur Nat'l Monument	490471002	0.077	0.074	6
Redwash	490472002	0.084	0.076	5
Ouray	490472003	0.111	0.103	11
Whiterocks	490477022	0.076	0.07	1

The six Anadarko facilities collect produced natural gas from surrounding wells and compress the gas for transmission and processing purposes. The facilities are all very similar, generally consisting of reciprocating internal combustion compressor engines fueled by field gas, pneumatic controllers, heaters, and tanks. *See e.g.* Technical Support Document for Archie Bench Compressor Station, Proposed Permit No. SMNSR-UO-000817-2016.001 at 3. Their primary emissions include ozone precursors, including nitrogen oxides, carbon monoxide, and volatile organic compounds. The facilities also release large amounts of carbon dioxide and hazardous air pollutants such as benzene, acetaldehyde, and acrolein.

On November 8, 2016, Anadarko submitted applications for SMNSR permits for all six compressor stations. The facilities were previously constructed and not permitted. According to EPA and Anadarko, the primary purpose for obtaining SMNSR permits for the six facilities was “to incorporate required and requested enforceable emission limits and operational restrictions from a March 27, 2008, federal Consent Decree (CD) [] (Civil Action No. 07-CV-01034-EWN-KMT),” but also to incorporate additional limits requested by Anadarko as part of its November 8, 2016 applications. *See e.g.* Technical Support Document for Sage Grouse Compressor Station, Proposed Permit No. SMNSR-UO-001875-2016.001 at 3.

As part of its applications, Anadarko provided information regarding uncontrolled and controlled emissions at the six facilities. All facilities have the potential to emit more than 100 tons per year of carbon monoxide, or CO, the major source threshold for Title V permitting under the Clean Air Act. However, when factoring in the emission controls and limits Anadarko requested to be incorporated into SMNSR permits, the facilities would emit less than major source thresholds. See Table below.

Uncontrolled and controlled emissions at the Anadarko facilities. This information was submitted by Anadarko as Appendix E to its six applications submitted in 2016.

Facility	Uncontrolled VOCs	Controlled VOCs	Uncontrolled CO	Controlled CO	Uncontrolled Hazardous Air Pollutants	Controlled Hazardous Air Pollutants
Archie Bench Compressor Station	23.7	20.5	330.1	23.2	14.7	6.1
Bitter Creek Compressor Station	25.6	23.5	220.2	15.6	10.9	5.2
East Bench Compressor Station	13.6	11.5	220.1	15.5	9.5	3.8
North Compressor Station	25.5	21.6	346.7	24.4	17.4	7
North East Compressor Station	10.6	8.4	220.1	15.5	9	3.3
Sage Grouse Compressor Station	26.9	22.8	354.4	24.9	18	6.7

EPA Region 8 drafted Anadarko’s requested permits and provided notice and a 30-day opportunity for public comment starting on January 8, 2018. On February 7, 2018, WildEarth Guardians submitted a comment letter expressing concerns over EPA’s proposal to issue all six SMNSR permits for the Anadarko facilities.

In its proposal, EPA Region 8 asserted there was no need to require the applicant to prepare an AQIA for any proposed SMNSR permit. The agency asserted that approving new SMNSR permits for the Anadarko facilities would “not authorize the construction of any new emission sources, or emissions increases from existing units,” and therefore determined an AQIA

was not required. *See e.g.* Wortman, E., EPA Region 8, “Uintah and Ouray Indian Reservation, Sage Grouse Compressor Station; Anadarko Uintah Midstream, LLC., Environmental Justice,” Memo to File (Dec. 29, 2017).

WildEarth Guardians’ comment letter conveyed concerns over the EPA’s failure to require the applicant to prepare an AQIA given that the facilities were located in a soon-to-be designated ozone nonattainment area and given that the SMNSR permits would, for the first time, establish federally enforceable limits on emissions. Nevertheless, EPA Region 8 rejected Guardians’ concerns and on June 7, 2018, issued the SMNSR permits for the Anadarko facilities, including: Archie Bench Compressor Station, Permit No. SMNSR-UO-000817-2016.001; Bitter Creek Compressor Station, Permit No. SMNSR-UO-000818-2016.001; East Bench Compressor Station, Permit No. SMNSR-UO-000824-2016.001; North Compressor Station, Permit No. SMNSR-UO-000071-2016.001; North East Compressor Station, Permit No. SMNSR-UO-001874-2016.001; and Sage Grouse Compressor Station, Permit No. SMNSR-UO-001875-2016.001.³

In responding to WildEarth Guardians’ comments and issuing the permits, EPA Region 8 continued to assert that its permitting action had no effect on the emissions of the Anadarko facilities. The agency claimed there was no “reason to be concerned” that its permitting action would cause or contribute to violations of ground-level ozone NAAQS. *See* Mathews-Morales, M., “Anadarko Uintah Midstream, LLC, Final Minor New Source Review Permits and Response to Comments for Multiple Facilities” (June 7, 2018) at Response to Comments p. 3 (hereafter

³ These permitting actions were also docketed by EPA Region 8 as EPA-R08-OAR-2018-0310 (Archie Bench Compressor Station), EPA-R08-OAR-2018-0311 (Bitter Creek Compressor Station), EPA-R08-OAR-2018-0324 (East Bench Compressor Station), EPA-R08-OAR-2018-0328 (North Compressor Station), EPA-R08-OAR-2018-0329 (North East Compressor Station), and EPA-R08-OAR-2018-0331 (Sage Grouse Compressor Station).

referred to as the “Response to Comments”). The basis for this claim was the agency’s belief that its permitting actions would not change emission levels and that its actions were not authorizing “construction.” *Id.* at 3-5.

WildEarth Guardians believes EPA Region 8’s response is based on a finding of fact or conclusion of law that is clearly erroneous. This appeal now follows.

THRESHOLD REQUIREMENTS

As an initial matter, this Petition for Review is timely filed in accordance with 40 C.F.R. § 49.159(d)(2). WildEarth Guardians received notice via e-mail on June 7, 2018 of EPA Region 8’s permitting actions for the six Anadarko facilities. *See* Exhibit 2, E-mail from Eric Wortman to WildEarth Guardians (June 7, 2018). This Petition is therefore filed within 30-days of EPA’s final permit decision.

Guardians further satisfies the threshold requirements for filing a petition for review under 40 C.F.R. § 49.159(d)(2). Regulations provide that, “any person who filed comments on the draft permit or participated in the public hearing may petition the [Environmental Appeals] Board to review any condition of the permit decision.” 40 C.F.R. § 49.159(d)(2). In this case, WildEarth Guardians submitted comments on the draft permits for the six Anadarko facilities on February 7, 2018. Thus, WildEarth Guardians has the right to file this appeal.

Furthermore, the issues raised in this Petition were raised by Guardians during the public comment period and therefore were preserved for review. This Petition presents a single question for resolution by the EAB, namely whether EPA Region 8 violated the Tribal MNSR rules by inappropriately concluding that issuance of the six permits did not constitute permitting actions warranting air quality scrutiny pursuant to 40 C.F.R. § 49.154(d). Thus, the EAB has jurisdiction to fully review this Petition and issue a decision accordingly.

STATEMENT OF REASONS

WildEarth Guardians challenges EPA Region 8's permitting decisions over the agency's assertion that there was no reason to be concerned that permitting the six Anadarko facilities would cause or contribute to violations of the NAAQS for ground-level ozone and therefore no reason to require that an air quality impacts analysis be prepared in accordance with 40 C.F.R. § 49.154(d).

Here, there is no question the requirements of 40 C.F.R. § 49.154(d) are applicable to the Anadarko facilities. In EPA Region 8's response to WildEarth Guardians comments, the agency acknowledged the requirements were applicable, but responded they would not be applied. *See* Response to Comments at 3-5. The rationale cited by EPA Region 8 for not applying 40 C.F.R. § 49.154(d) was that the agency asserted its permitting action would not cause new construction, and therefore, there was "no reason to be concerned" over air quality impacts.

The primary argument advanced by EPA Region 8 in its response to comments was the Anadarko facilities were subject to a federal Consent Decree that, according to the agency, rendered the facilities existing synthetic minor sources prior to the adoption of the 2011 Tribal MNSR rules. *See* Response to Comments at 3 and 5. Based on this logic, the agency reasoned that because emissions were previously limited, its permitting actions would have no effect on emissions.

However, under EPA's own rules, the federal Consent Decree that may have applied to the Anadarko facilities could not be relied upon to conclude that the sources were synthetic minors as of the June 7, 2018 permit issuance.

According to the Tribal MNSR rules, for an existing synthetic minor source established by means other than a Federal Implementation Plan or a Part 71 Operating Permit to be permitted

as a synthetic minor source, an application was required to be submitted “by September 4, 2012.” 40 C.F.R. § 49.158(c)(3). Where an existing synthetic minor source established by means other than a Federal Implementation Plan or a Part 71 Operating Permit fails to submit an application by September 4, 2012, the source is “no longer considered a synthetic minor source[.]” *Id.* at § 49.158(c)(4)(iii).

EPA Region 8 asserted the Consent Decree that applied to the Anadarko facilities established the facilities as existing synthetic minor sources of air pollution. However, for the Anadarko facilities to have been permitted as existing synthetic minor sources of air pollution under the Tribal MNSR rules, applications for permits would have had to have been submitted by September 4, 2012. Anadarko submitted applications on November 8, 2016. Accordingly, the Anadarko facilities could not have been existing synthetic minor sources of air pollution.

In its response to WildEarth Guardians comments, the EPA does even mention the application requirements of 40 C.F.R. § 49.158(c)(3). Instead, the agency simply asserts the Consent Decree was “enforceable as a practical matter” and therefore appropriate to rely upon in determining the Anadarko facilities were existing synthetic minor sources. Response to Comments at 4. Assuming for a moment that EPA could ignore the fact that Anadarko failed to submit applications by September 4, 2012 and could rely on the Consent Decree to conclude the Anadarko facilities were existing synthetic minor sources, the agency’s assertion that the Consent Decree is “enforceable as a practical matter” is suspect. For one, the assertion is not based on any actual assessment of whether the standards in the Consent Decree comport with the definition of “enforceable as a practical matter” under 40 C.F.R. § 49.152. For another, the Consent Decree does not appear to actually limit emissions at the Anadarko facilities to below major source thresholds. While the Decree sets forth a “93%” destruction requirement for CO

emissions from certain new compressor engines (*see* Consent Decree at ¶ 50), nothing in the Decree actually sets forth emission limits or standards to ensure that the Anadarko facilities' overall potential to emit would be constrained to below major source thresholds. Regardless, given Anadarko's untimely permit applications, EPA Region 8 was not allowed to rely on the Consent Decree in the first place, regardless of its effect.

Nevertheless, EPA Region 8 asserts that emissions before and after permitting would not change. In support of this claim, EPA Region 8 confusingly attempted to assert that the Anadarko facilities are "true minor sources." Response to Comments at 3. This response is specious, at best. If the Anadarko facilities are "true minor" sources, then they are not subject to any synthetic minor permitting requirements under the Tribal MNSR rules. What's more, EPA Region 8's assertions appear to be undermined by the fact that all Anadarko facilities have the potential to emit CO above major source thresholds. The truth appears to be that all the Anadarko facilities would be major sources in the absence of a SMNSR permit.

EPA Region 8 also asserted that its permitting actions would not cause any new construction. Construction is defined as "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions." 40 C.F.R. § 52.21(b)(8). Given that the Anadarko facilities are not existing synthetic minor sources, EPA Region 8's permitting action has the affect of approving a change in the method of operation that would result in a change in emissions. The EPA's action would have the effect of establishing enforceable emission limits for the first time ever from the Anadarko facilities, effectively altering the method of operation of the facilities in order to reduce (i.e., change) emissions. Thus, its

permitting actions are causing construction and therefore must be guided by the requirements of 40 C.F.R. § 49.154(d).

In the Technical Support Documents prepared for the Anadarko facilities' permits, the EPA appears to believe that construction only occurs when emissions increase. For instance, in the Technical Support Document for the Bitter Creek compressor station, the agency states, "The emissions at this existing facility *will not be increasing*["] Technical Support Document for Bitter Creek Compressor Station, Proposed Permit No. SMNSR-UO-000818-2016.001 at 9 (emphasis added). However, "construction" does not occur only when there are emission increases. As the EPA's definitions make clear, "construction" occurs whenever a physical change or change in the method of operation causes a "change" in emissions. 40 C.F.R. § 52.21(b)(8). Whether or not the EPA's permitting decisions for the Anadarko facilities led to increases in emissions is an important consideration, but not determinative as to whether construction was occurring. The question here is, did EPA's permitting actions "change" emissions? In this case, it is clear they did change emissions by setting, for the first time, federally enforceable limits to keep emissions reduced and below potential to emit levels. Thus, construction occurred as a result of EPA's permit issuances.

Finally, EPA Region 8's claim that there was no "reason to be concerned" that permitting the Anadarko facilities would cause or contribute to violations of the ozone NAAQS was not based on any assessment of the actual air quality conditions in the Uinta Basin. Although the agency acknowledged the region's nonattainment designation in response to WildEarth Guardians' comments, the agency asserted there was no "reason to be concerned" on the basis of its claim that its permitting actions would not change emissions at the Anadarko facilities. While this is not true, even presuming it to be the case, EPA cannot overlook the fact that its permitting

actions have the effect of condoning emission sources that were created in an attainment area and now are being permitted in a nonattainment area. In other words, the fact that a region has been designated nonattainment should compel the EPA to assess the air quality impacts of emissions at existing sources via its permitting actions. The agency failed to do so here. In fact, the sordid state of the Uinta Basin's air quality did not even factor into the agency's consideration of whether there was "reason to be concerned" that the Anadarko facilities would cause or contribute to violations of the NAAQS. This is contrary to the agency's Tribal MNSR rules.

CONCLUSION

WildEarth Guardians understands and appreciates what EPA Region 8 attempted with its six permitting actions. Anticipating the expiration of a federal Consent Decree, the agency is genuinely attempting to transfer Decree requirements into SMNSR permits. However, the agency cannot forego adhering to its permitting regulations in the process and overlook the severity of air quality in the Uinta Basin of Utah. We request the EAB review EPA Region 8's permitting actions given that they are based on findings of fact and conclusions of law that are clearly erroneous. We request the EAB grant this petition and remand the permits accordingly.

Respectfully submitted this 7th day of July 2018



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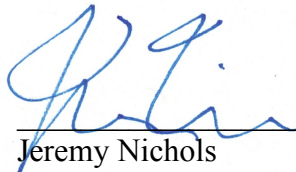
CERTIFICATE OF SERVICE

I certify that on July 7, 2018, I served this Petition for Review electronically via the Environmental Appeals Board's eFiling system. This Petition will also be served by priority U.S. mail within one business day to:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
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