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

In re:	)	
	)	
Anadarko Uintah Midstream, LLC	)	
	)	
Archie Bench Compressor Station	)	
Permit No. SMNSR-UO-000817-2016.001	)	
	)	
Bitter Creek Compressor Station	)	
Permit No. SMNSR-UO-000818-2016.01	)	
	)	NSR Appeal No. 18-01
East Bench Compressor Station	)	
Permit No. SMNSR-UO-000824-2016.01	)	
	)	
North Compressor Station	)	
Permit No. SMNSR-UO-000071-2016.01	)	
	)	
North East Compressor Station	)	
Permit No. SMNSR-UO-001874-2016.01	)	
	)	
Sage Grouse Compressor Station	)	
Permit No. SMNSR-UO-001875-2016.01	)	
	)	

RESPONSE OF ANADARKO UINTAH MIDSTREAM, LLC

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INTRODUCTION

Anadarko Uintah Midstream, LLC ("AUM"), a subsidiary of WGR Asset Holding Company LLC, wholly owned by Anadarko Petroleum Corporation, submits this response to the Petition filed by WildEarth Guardians ("Petitioner") appealing six New Source Review synthetic minor source permits ("NSRSM") issued by U.S. Environmental Protection Agency ("EPA" or the "Agency") Region VIII for six natural gas compression facilities located in the Uintah County, Utah within the Uintah and Ouray Indian Reservation ("Compression Stations"). The Compression Stations are subject to a federal Consent Decree entered on March 26, 2008. *United States v. Kerr-McGee Corp.*, Civ. Action No. 07–CV–01034–EWN–KMT, 2008 U.S. Dist. LEXIS 24494, at *37 (D. Colo.) (granting motion to enter Consent Decree) ("Consent Decree").

AUM respectfully requests that the Environmental Appeals Board ("EAB" or the "Board") deny review. Petitioner has not properly preserved the issues and arguments raised in this Petition and has not otherwise met their burden of proof that EPA issued the permits based on erroneous conclusion of law or finding of facts. Petitioner's comments in the permitting proceeding amounted to conclusory statements to which EPA adequately responded. Further, the arguments Petitioner now seeks to present for the first time in these proceedings lack merit. For all of these reasons the Petition should be dismissed.

STATEMENT OF THE CASE

AUM is the owner and the operator of the six Compressor Stations for which Petitioner brings this review proceeding. All six Compressor Stations are subject to the Consent Decree, and have been so for years. Notably the Consent Decree pertinent to Petitioner's challenge, arouse out of a self-disclosure to EPA following a merger in 2004. Consent Decree at 2. The Consent Decree required a number of stringent emission control requirements applicable to AUM operations in the

Uinta Basin including: retrofitting reciprocating internal combustion engines (RICE) with oxidation catalysts at minor sources (which occurred at five of the six Compressor Stations: the Archie Bench, East Bench, North, North East and Sage Grouse compressor stations, (Consent Decree at § IV.D., ¶¶ 40–48)); high-bleed pneumatic controllers be retrofitted with low-bleed pneumatic controllers at the Archie Bench, East Bench, North, and North East stations (Consent Decree at § IV.E., ¶¶ 58–60); only low-emission dehydrators and (unless technically infeasible) low-bleed pneumatic controllers be installed at all new facilities; and that any new RICE rated at or above 500 horsepower at any facility in the Uinta Basin be lean-burn or achieve comparable emission reductions, and be equipped with catalyst controls (Consent Decree at § IV.A., ¶¶ 9–11; § IV.D., ¶¶ 49–57;§ IV.E., ¶¶ 63–65). These requirements are federally enforceable under the Consent Decree and such requirements may be incorporated into permits. Consent Decree at § VI, ¶ 74; § XXV, ¶¶ 167–69.[1] In November of 2016, AUM submitted applications for synthetic minor source permits for the six Compressor Stations with the sole purpose to recognize and memorialize those Consent Decree federally-enforceable emission-limiting requirements as *permit conditions*.

Concerned with the recent change in designation of the National Ambient Air Quality Standards ("NAAQS") for ground-level ozone, Petitioner believes EPA's review during permitting process failed to ensure sufficient protection of air quality in the Uinta Basin. Pet. at 2; 83 Fed. Reg. 25,776 (June 4, 2018).[2] Petitioners claim that EPA failed to fulfill its permitting

[1] The Consent Decree also acknowledges that two substantial actions were being undertake to reduce impacts to air quality in the Uinta Basin by: (1) an extensive effort to use electric power for natural gas compression needs to avoid emissions produced by natural gas-fired engines, and (2) implementation of "green completion" practices and procedures for completing new wells inclusive of preventing or minimizing flaring and venting of natural gas. Consent Decree at 3-4.
[2] In an August 1, 2018 status report, EPA informed the United State Court of Appeals for the District of Columbia Circuit that it intends to implement a new approach to review NAAQS, and as part of the review, consider background ozone, assessments of the relative contribution of natural and anthropogenic ozone to design values which are used to determine whether areas are

duties, Yet, Petitioner is simply dissatisfied with the response EPA provided in its Response to Comment. Petitioner asserted that applicable EPA regulations required an air quality impact analysis (AQIA) before EPA could issue the permits. Petitioner Comment Letter at 2-3. Petitioner argued that the Compressor Stations emissions would contribute to violations of the ozone and NO_2 NAAQS and they could not be considered by EPA as "existing" facilities for purposes of permitting. Id. at 2–3. However, the remedy that Petitioner would seek here – remanding the permitting decision for reconsideration and additional processing - does not provide any added environmental protection since there are no emissions increases that will arise from the permit issuances.

STANDARD OF REVIEW

Generally, only issues and reasonably available arguments raised with reasonable specificity and clarity during the comment period are preserved for appeal. 40 C.F.R. § 49.159(d)(3). As with the Prevention of Significant Deterioration ("PSD") appeal process, the Board's power to review Tribal Minor NSR permits should be only sparingly exercised with most permit conditions being finally decided by the permitting authority. *Prairie State*, 13 E.A.D. at 10 (quoting the preamble to the Part 124 regulations at 45 Fed. Reg. 33,290, 33,412 (May 19, 1980)); *see also Revisions to Procedural Rules Applicable in Permit Appeals*, 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013).[3] "In reviewing an exercise of discretion by the permitting authority, the Board

attaining the NAAQS. EPA intends on revisiting the question of when background concentrations interfere with attainment of the NAAQS and how to consider potential interference with attainment. Murray Energy Corporation v. United States Environmental Protection Agency, Case No. 15-1385.

[3] The Board's PSD appeal procedures and decisions are relevant and informative as EPA made clear the reviews should be similar when it delegated Tribal Minor NSR permit review authority for sources located in Indian Country to the Board. 76 Fed. Reg. 38,748, 38,766 (Jul. 1, 2011) ("review of minor NSR permits will be similar to review of major PSD permits"); 71 Fed. Reg.

applies an abuse of discretion standard." *In re Pio Pico Energy Center*, PSD Appeal Nos. 12-04 through 12-06, slip op. at 10 (EAB Aug. 2, 2013) (citations omitted). "The Board will uphold a permitting authority's reasonable exercise of discretion if that decision is cogently explained and supported in the record." *Id.*

Moreover, the Board will "accord broad deference to permitting authorities with respect to issues requiring the exercise of technical judgment and expertise." *Prairie State*, 13 E.A.D. at 72; *Pio Pico*, slip op. at 10; *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 403 (EAB 1997); *In re Envotech, L.P.*, 6 E.A.D. 260, 284 (EAB 1996) ("absent compelling circumstances, the Board will defer to a Region's determination of issues that depend heavily upon the Region's technical expertise and experience").

Petitioner also cannot simply repeat comments but must demonstrate that the permitting agency's response to those comments is deficient. *See, e.g., Pio Pico*, slip op. at 10; *In re Knauf Fiber Glass, GmbH*, 9 E.A.D. 1, 5 (EAB 2000) ("Petitions for review may not simply repeat objections made during the comment period; instead they must demonstrate why the permitting authority's response to those objections warrants review."); *In re Newmont Nevada Energy Investment, LLC, TA Power Plant*, 12 E.A.D. 429, 486-88 (EAB 2005) 8 (denying review where, in objecting to the adequacy of visible emission testing requirements, the petitioner failed to cite any legal authority to support its positions, or provide any plausible basis in fact or law to question the permitting agency's treatment in its response to comments); *In re Hadson Power*, 4 E.A.D. 258, 294-95 (EAB 1992) (denying review where petitioners merely reiterated comments on draft permit).

48,696, 48,717 (Aug. 21, 2006) ("review process for the minor NSR program parallels the process for PSD permits").

ARGUMENT

I. Petitioner Has Mischaracterized Certain Key Facts

Petitioner's characterization of the emissions implications and federal enforceability of emissions limitations is misleading. First, the permitting action of the EPA does not change the actual emissions at the six Compressor Stations. The issuance of the permits does not permit any addition actual emissions in the Basin. Second, Petitioners mischaracterizes the permits as "for the first time, establish federally enforceable limits on emissions." Pet. At 10. This is incorrect. The Consent Order specifically imposes the exact emissions limits for which AUM is seeing to incorporate as permit terms in the permits. Paragraph 74 of the Consent Decree, which referneces and incorporates the emission limits found elsewhere in the Consent Decree specifically states such emissions limitations are considered federally enforceable. Consent Decree at 28.

Third, Petitioner use a table on page 9 of the Petition to portray facilities that could significantly impact air quality. To clarify the table on page 9, the uncontrolled data is a requirement of the permit application process. However, they by no means represented existing emissions or even potential to emit (PTE) at the Compressor Stations should the permits not have been issued, because the Compressor Stations are already subject to stringent emission limitations as set forth in the Consent Decree.

Forth, contrary to Petitioner's contentions, absent the permits, the Compressor Stations would not be major sources. Pet. At 14. The Consent Decree plainly establishes standards and emission limitations including Section VI. LIMITS ON POTENTIAL TO EMIT with federally enforceable control requirements. Consent Decree at 28, ¶ 74-79. The Consent Decree imposes emission-control requirements that limit emissions by establishing requirements for low-emission dehydrators, low-bleed pneumatic controllers, and reciprocating internal combustion engines. Consent Decree at §

IV.A., ¶¶ 9–11; § IV.D., ¶¶ 49–57; § IV.E., ¶¶ 63–65. These requirements reduced emissions of carbon monoxide below major source levels. VOC and HAP emissions were also dramatically reduced from the Compressor Stations. The Consent Decree need not set a numeric value to reduce emissions and control emissions from a source to below major source thresholds.

II. Petitioner Fails to Demonstrate How EPA's Response to Petitioner's Comment Was Inadequate.

The Board should deny review of this petition because Petitioner fails to meet his burden to show that EPA's response to his comments was clearly erroneous or an abuse of discretion. 40 C.F.R. § 49.159(d)(3); *see also In re Desert Rock Energy Co., LLC*, 14 E.A.D. 484, 519-20 (EAB 2009) ("As a preliminary procedural matter, the Board requires that a petitioner describe each objection it is raising and explain why the permit issuer's response to the petitioner's comments during the comment period is clearly erroneous or otherwise warrants consideration (e.g., is an abuse of discretion."). Absent such showing, the Petition must be denied.

Petitioner commented on February 7, 2018 that EPA should require the applicant to prepare an AQIA given that the Compressor Stations were be in a soon-to-be ozone nonattainment area, and because "for the first time, establish federally enforceable limits on emissions." Pet. At 10. The EPA responded that the permitting action would not permit increased emissions or authorize construction of new emissions sources. EPA Response at 3. As explained above, Petitioner is incorrect that these permits establish federal enforceability for the first time. The control requirements AUM sough in the permit applications, as permit terms, have been federally enforceable for nearly 10 years under the Consent Decree.

Petitioner argues that EPA's response to comments explaining that there would be no change in emission prior to or after issuance of the permit was inadequate and instead claims that

the "truth appears" to be that the Compressor Stations would be major sources. Pet. at 14. The facts do not support Petitioner's claims, nor does Petitioner provide any persuasive arguments as to why the EPA's response is erroneous as to air quality impacts or otherwise an abuse of its discretion.

III. Petitioner Asks the Board To Address Issues and Arguments That Were Not Preserved for Review and That Are Unsupported.

The Board should deny review of the Petition because it raises issues that were not presented during the public comment period. To gain review, Petitioner must show that "any issues being raised were raised during the public comment period . . . to the extent required" by the regulations. 40 C.F.R. § 49.159(d)(3). The regulations require that public comments "must raise *any reasonably ascertainable issue with supporting arguments* by the close of the public comment period (including any public hearing)." 40 C.F.R. § 49.157(c)(1) (emphasis added). Failing to raise issues during the public comment period precludes them from being presented before the Board. *See, e.g.*, *In re Christian Cty. Generation, LLC*, 13 E.A.D. 449, 457 (EAB 2008) ("In applying [40 C.F.R. § 124.13 and § 124.19(a)], the Board has routinely denied review where the issue was reasonably ascertainable but was not raised during the comment period on the draft permit.") (internal citation and quotations marks omitted). Requiring that all reasonably ascertainable issues and supporting arguments be raised during the comment period "is not an arbitrary hurdle . . . rather, it serves an important function related to the efficiency and integrity of the overall administrative scheme." *Prairie State*, 13 E.A.D. at 59 (quoting *In re BP Cherry Point*, 12 E.A.D. 209, 219 (EAB 2005)). As the Board has previously stated, the "'effective, efficient and predictable administration of the permitting process demands that the permit issuer be given the opportunity to address potential problems. This is nearly identical to the requirement in 40 C.F.R.

§ 124.13 that a person dissatisfied with any permit condition "must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10." with draft permits before they become final.'" *In Re Pio Pico Energy Ctr.*, slip op. at 36 (quoting *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 250 (EAB 1999) in discussion of requirements of 40 C.F.R. §§ 124.13, 124.17(a)(2)). Here, Petitioner seeks to raise for the first time issues or supporting arguments that were reasonably ascertainable during the comment period. He offers no explanation or justification as to why they could not have been raised during the comment period. Therefore, the Board must deny review of these new issues and arguments, which lack any support in the record. Specifically, the Board must disregard Petitioner's arguments not raised during the comment period including but not limited to, the assertion that Compressor Stations must be treated as major sources because AUM did not submit applications for synthetic minor permits by September 4, 2012, and that they were required to do so under 40 C.F.R. § 49.158(c)(3). Pet. at 12–13. AUM adopts and incorporates the arguments EPA sets forth in its Response filed this day of August 6, 2018.

CONCLUSION

AUM respectfully requests that the Board deny the Petition for Review.

Respectfully submitted,

ANADARKO UINTAH MIDSTREAM, LLC

Dated: August 6, 2018

By: /s/ Julia A. Jones
Julia A. Jones
Senior Counsel

STATEMENT OF COMPLIANCE

I hereby certify that the foregoing RESPONSE OF ANADARKO UINTAH MIDSTREAM, LLC complies with the requirements of 40 C.F.R. § 124.19(d) and the Board's Scheduling Order. The word count is 3,168 using the word count function in Microsoft Word.

Date: August 6, 2018 /s/ Julia A. Jones

CERTIFICATE OF SERVICE

I certify that the foregoing NOTICE OF APPEARANCE in the Matter of Anadarko Uintah Midstream, LLC: Archie Bench Compressor Station, Bitter Creek Compressor Station, East Bench Compressor Station, North Compressor Station, North East Compressor Station, and Sage Grouse Compressor Station, NSR Appeal No. 18-01, were sent to the following parties via electronic mail:

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