

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

| | | |
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| In re: |) | |
| |) | |
| Anadarko Uintah Midstream, LLC, |) | Appeal No. NSR 18-01 |
| |) | |
| 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 |) | |

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STATEMENT OF COMPLIANCE WITH WORD COUNT LIMITATION

This Reply Brief is less than 15 pages and therefore complies with the Environmental Appeals Board's limitation on the length of reply briefs set forth under 40 C.F.R. § 124.19(d)(3).

I. INTRODUCTION

The foregoing reply brief is submitted in response to the argument advanced by both the U.S. Environmental Protection Agency (“EPA”) and Anadarko Uintah Midstream, LLC (“Anadarko”) in their respective August 6, 2018 Responses that WildEarth Guardians failed to preserve for review the argument that the Anadarko facilities at issue in this appeal were not existing synthetic minor sources pursuant to 40 C.F.R. § 49.158(c). This brief is filed in accordance with the EAB’s guidance that appeals filed pursuant to 40 C.F.R. § 49.159 generally adhere to the provisions of 40 C.F.R. § 124.19. *In re Salt River Project Agric. Improvement & Power Dist. — Navajo Generating Station*, 17 E.A.D. 312, 314-315 (EAB 2016).

II. WILDEARTH GUARDIANS PRESERVED FOR REVIEW THE ISSUE OF WHETHER THE ANADARKO FACILITIES ARE EXISTING SYNTHETIC MINOR SOURCES FOR PURPOSES OF DETERMINING WHETHER AN AIR QUALITY IMPACTS ANALYSIS WAS APPROPRIATE

In its July 7, 2018 Petition for Review, WildEarth Guardians challenged EPA’s permitting actions based on a singular issue: whether the agency erred in concluding that there was no “reason to be concerned” that permitting the Anadarko facilities would cause or contribute to a violation of National Ambient Air Quality Standards (“NAAQS”) for ground-level ozone and therefore violated 40 C.F.R. § 49.154(d)(1). In support of its argument, WildEarth Guardians pointed to the fact that the EPA erred in concluding that the Anadarko facilities were existing synthetic minor sources pursuant to 40 C.F.R. § 49.158(c)(3).

Both EPA and Anadarko assert that WildEarth Guardians failed to preserve for review any argument that the Anadarko facilities were not existing synthetic minor sources pursuant to 40 C.F.R. § 49.158(c)(3). *See* EPA Response at 11-14; Anadarko Response at 7-8. However, Guardians’ Petition for Review is not about whether the Anadarko facilities were appropriately

permitted as existing synthetic minor sources. Rather, Guardians' Petition for Review is about whether the EPA erred in determining an air quality impacts analysis was necessary in permitting the facilities.

On this latter and key matter, Guardians' comments clearly articulated concerns that the EPA had misconstrued the nature of its permitting actions. While the Agency asserted that its permitting actions would have no effect on emissions, Guardians commented that this was incorrect, stating:

EPA is simply incorrect that its permitting actions will have no impact on emissions. The proposed permits will impose enforceable emission limitations that will make the Andarko facilities synthetic minor sources of air pollution. In doing so, the permits will ensure that emissions remain below certain rates, effectively limiting the sources' potential to emit. Although the EPA asserts that no "construction" will be authorized, construction will, in fact, occur. 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. § 51.166(b)(8). Here, the permits will ensure Anadarko facilities are operated in such a manner and under such enforceable emissions limitations that there will result in a change in potential emissions. There is simply no support for EPA's claim that the permits are *pro forma* and have no practical impact on air quality at the end of the day.

WildEarth Guardians' Comments at 3. As was made clear in EPA's Response to Comments, the basis for the Agency's argument that its permitting actions would have no impact on emissions was rooted, in part, to the Agency's assumption that the Anadarko facilities were existing synthetic minor sources. *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. 4 (hereafter referred to as the "Response to Comments")*. Guardians' Petition for Review simply addresses the EPA's Response to Comments and the Agency's more fully articulated arguments for concluding that there was no "reason to be

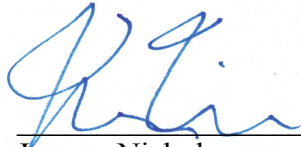
concerned” that permitting the Anadarko facilities would cause or contribute to violations of NAAQS.

If WildEarth Guardians’ Petition for Review was directly and explicitly challenging EPA’s permitting action for violating 40 C.F.R. § 49.158(c)(3), then it could be argued that such a claim was not preserved for review. WildEarth Guardians’ comments did not explicitly raise this specific argument. However, WildEarth Guardians’ Petition for Review is not about whether EPA’s permitting actions violated 40 C.F.R. § 49.158(c)(3). Rather, the Petition for Review is about whether EPA’s permitting actions violated 40 C.F.R. § 49.154(d)(1).

In support of its Petition for Review, WildEarth Guardians necessarily highlighted how the EPA misconstrued the real-life impacts of its permitting actions. Specifically, WildEarth Guardians highlighted how the EPA misconstrued the definition of “construction” and erroneously characterized the Anadarko facilities as existing synthetic minor sources. Necessarily, these arguments required pointing out that EPA’s conclusions that the Anadarko facilities were existing synthetic minor sources were erroneous based on the plain language of 40 C.F.R. § 49.158(c)(3). Such an argument was preserved for review by virtue of WildEarth Guardians commenting that EPA was “incorrect” that its permitting action would have no effect on emissions, among other things.

There is no “preservation” issue involved in WildEarth Guardians’ Petition for Review. WildEarth Guardians commented that the EPA had misconstrued the nature of its permitting actions and the Petition for Review responds to the Agency’s Response to Comments regarding this issue. Accordingly, WildEarth Guardians requests the EAB reject the arguments advanced by EPA and Anadarko that issues were not preserved for review.

Respectfully submitted this 16th day of August 2018



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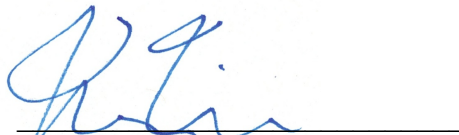
CERTIFICATE OF SERVICE

I certify that on August 16, 2018, I served this Motion for Leave electronically via the Environmental Appeals Board's eFiling system. This Motion was also served by e-mail to the following:

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