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

In re:	)
BP America Production Company, Florida River Compression Facility,	)
Permit No. V-SU-0022-05.00	)

PETITION FOR REVIEW

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INTRODUCTION

Pursuant to 40 C.F.R. § 71.11(l), WildEarth Guardians hereby petitions the Environmental Appeals Board ("EAB") to review the October 18, 2010 decision by Region 8 of the U.S. Environmental Protection Agency ("EPA") to issue a renewed federal operating permit pursuant to Title V of the Clean Air Act and 40 C.F.R. § 71 (hereafter "Title V Permit") for BP America Production Company (hereafter "BP") to operate the Florida River Compression Facility. The Title V Permit and associated Statement of Basis are attached to this petition. *See* Exhibit 1, Permit Number V-SU-0022-05.00, Air Pollution Control Title V Permit to Operate, BP America Production Company Florida River Compression Facility (Oct. 18, 2010); Exhibit 2, Statement of Basis for Title V Permit No. V-SU-0022-05.00 (Oct. 18, 2010).

Petitioner requests that the EAB review two issues of material relevance to the adequacy of the conditions of the Title V Permit:

1. Whether EPA Region 8 erred in not reopening the public comment period for the Title V Permit in response to substantial new questions concerning the permit raised during the public comment period; and

2. Whether EPA Region 8 failed to appropriately define the major source subject to permitting such that the Title V Permit assures compliance with Prevention of Significant Deterioration and Title V Permitting requirements.

FACTUAL AND STATUTORY BACKGROUND

The Title V Permit authorizes BP to operate the Florida River Compression Facility, which is located in La Plata County in southwestern Colorado within the exterior boundaries of the Southern Ute Indian Reservation. *See* Exh. 2 at 1. The facility processes natural gas produced and delivered via pipelines from coal-bed methane wells in the Northern San Juan Basin, a gas producing region in southwestern Colorado. *See* Exh. 3, Response to Comments on the Florida River Compression Facility's March 28, 2008 Draft Title V Permit to Operate (Oct.

18, 2010) at 6. The Florida River Compression Facility removes carbon dioxide ("CO_2") and water from natural gas piped into the facility, and compresses it for delivery into interstate pipelines. *See* Exh. 2 at 2.

The facility consists of natural gas-fired turbines, amine units to remove CO_2, a flare, a dozen diesel-fired electric generation units, and a number of "insignificant emission units." *See* Exh. 2 at 4-5. The facility has the potential to emit 282.07 tons/year of nitrogen oxides ("NO_x"), 181.94 tons of carbon monoxide, 30.27 tons of volatile organic compounds ("VOCs"), 7.95 tons of particulate matter ("PM"), 24.23 tons of sulfur dioxide ("SO_2"), and 4.14 tons of hazardous air pollutants. *See id.* at 6. The facility is an existing major source under Prevention of Significant Deterioration ("PSD"), although it has never been required to receive a PSD permit to construct. *See id.* at 10. According to the EPA, "significant emission increases due to modifications at the facility could trigger PSD permitting requirements." *Id*

An initial Title V Permit was issued for the Florida River Compression Facility on June 5, 2001. *See* Exh. 2 at 3. On December 1, 2005, the EPA received an application for a Title V Permit renewal from BP. *See id.* The application was deemed complete on January 19, 2006. *See id.* EPA finally issued a draft Title V Permit for public comment on March 28, 2008, more than two years after deeming BP's application to be complete. *See* Exh. 3 at 1. Both Petitioner and BP submitted comments on the draft Title V Permit during the public comment period. *See id.*

Petitioner's comments focused on one issue: whether EPA appropriately defined the source subject to permitting in order to ensure compliance with PSD and Title V permitting requirements under the Clean Air Act. Petitioner specifically questioned whether EPA was required to aggregate other pollutant emitting activities, including interrelated oil and gas wells

and potentially other compression facilities, together with the Florida River Compression Facility as a single source.

A Title V Permit must assure compliance with applicable requirements under the Clean Air Act. *See* 42 U.S.C. § 7661c(a); *see also* 40 C.F.R. § 71.7(a)(iv) (a permit may only be issued if "[t]he conditions of the permit provide for compliance with all applicable requirements and the requirements of this part"). Applicable requirements include, among other things, PSD and Title V requirements under the Clean Air Act as they apply to a source required to have a Title V Permit under 40 C.F.R. § 71. *See* 40 C.F.R. § 71.2 (definition of applicable requirement). An accurate source determination, therefore, is an absolute prerequisite to adequately demonstrating that a Title V permit assures compliance with PSD and Title V requirements.

In this case, PSD regulations at 40 C.F.R. § 51.21(b)(5) define a stationary source as, "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant." These regulations further define "building, structure, facility, or installation" as "all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)[.]" 40 C.F.R. § 52.21(b)(6). These definitions are echoed in EPA's Title V regulations. *See* 40 C.F.R. § 71.2 (providing definition of "major source" and "stationary source").

Thus, EPA must apply a three-part test to determine whether multiple pollutant emitting activities should be aggregated together for PSD and Title V purposes in order to ensure accurate source determinations:

1. Whether the sources belong to the same industrial grouping;
2. Whether the sources are located on one or more contiguous or adjacent properties; and
3. Whether the sources are under the control of the same person.

40 C.F.R. § 51.21(b)(6). These three factors apply equally in the context of oil and gas operations. *See* Exh. 4, Memo from Gina McCarthy, EPA Assistant Administrator for Air and Radiation to Regional Administrators, *Withdrawal of Source Determinations for Oil and Gas Industries* (September 22, 2009) (hereafter "McCarthy Memo"). If multiple pollutant emitting activities meet this three-part test, then they are collectively considered to be a "building, structure, facility, or installation" and must be aggregated together as one "stationary source" for PSD and Title V purposes, even in the context of oil and gas operations.

Prior to Petitioner's comments, the issue of aggregation received no attention from the EPA. The Agency proposed the draft Title V Permit without assessing whether other pollutant emitting activities should or should not be aggregated together with the Florida River Compression Facility in accordance with the definitions of "major source" and "stationary source" under both PSD and Title V. EPA simply presumed that its source determination was accurate.

EPA's presumption was erroneous. Indeed, in response to Petitioner's comments, EPA undertook the source determination analysis that it had failed to complete in the first place. In doing so, EPA requested from BP additional comments, which were submitted on December 17, 2009, December 21, 2009, and February 17, 2010. *See* Exh. 5, Letter from Julie Best to Claudia Young Smith, Environmental Scientists, Air and Radiation Program, U.S. EPA Region 8, in re: BP America Production Company Florida River Compression Facility proposed Air Pollution Control Title V Permit to Operate Number V-SU-0022-05.00 (Dec. 17, 2009); Exh. 6, Letter from Rebecca Tanory to Claudia Young Smith, Environmental Scientists, Air and Radiation Program, U.S. EPA Region 8, in re: BP America Production Company Florida River Compression Facility proposed Air Pollution Control Title V Permit to Operate Number V-SU-

0022-05.00 Clarification of December 17, 2009 Flow Description and Proximity Map (Dec. 21, 2009); Exh. 7, Letter from Charles Kaiser to Claudia Young Smith, Environmental Scientists, Air and Radiation Program, U.S. EPA Region 8, in re: Supplemental Comments on Florida River Plant Renewal Title V Operating Permit (Feb. 17, 2010).

Together with its new source determination analysis, which relied heavily on BP's additional comments, EPA issued the Title V Permit on October 18, 2010. *See* Exh. 1. Although finding that the coalbed methane wells that feed the Florida River Compression Facility, and potentially other compression facilities, belonged to the same industrial grouping and are under the control of the same person (or persons under common control), ultimately EPA asserted that any aggregation of pollutant emitting activities was inappropriate because of a lack of adjacency. Exh. 3 at 13. This finding relied on a novel claim that adjacency was not established due to a lack of "exclusive or dedicated interrelatedness." *Id.*

Although EPA has held on numerous occasions that pollutant emitting activities should be considered adjacent based on their interrelatedness (*see e.g.*, *infra*. Exh. 8 at Exhibit 9), in this case, EPA took the relationship between interdependency and adjacency to an absurdly extreme end. Although finding that the Florida River Compression Facility is indeed dependent on nearby coalbed methane wells, and likely other compression facilities, to provide natural gas to support its operations, the EPA rejected aggregation because these same wells and compression facilities "can also supply gas to other non-BP facilities[.]" Exh. 3 at 9.

This source determination defies prior EPA determinations that indicate "exclusive or dedicated interrelatedness" is not a determinative factor in assessing whether and to what extent pollutant emitting activities associated with oil and gas operations should be considered adjacent. Most significantly however, is that this position undermines EPA's duty to aggregate based on

the "common sense notion of a plant[,] [t]hat is, pollutant emitting activities that comprise or support the primary product or activity of a company or operation must be considered part of the same stationary source." *See infra.* Exh. 8 at Exhibit 15 at 2; *see also* 45 Fed. Reg. 52676, 52694–95 (Aug. 7, 1980) (EPA permitting decisions must "approximate a common sense notion of 'plant'").

THRESHOLD REQUIREMENTS

WildEarth Guardians satisfies the threshold requirements for filing a petition for review under 40 C.F.R. § 71.11(h). Regulations provide that, "[A]ny 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. § 71.11(l). In this case, Rocky Mountain Clean Air Action, an organization that formally merged with WildEarth Guardians in 2008, with WildEarth Guardians remaining the surviving organization, submitted comments on the draft Title V Permit on May 19, 2008. *See* Exh. 8, Comments from Rocky Mountain Clean Air Action, Draft Title V Operating Permit for Florida River Compression Facility (May 19, 2008). WildEarth Guardians assumed all rights, liabilities, and responsibilities of Rocky Mountain Clean Air Act as a result of the merger. *See* Exh. 9, Plan of Merger and Unanimous Consent to Merge (2008). Thus, WildEarth Guardians has the right to file this appeal.

Furthermore, the issues raised in this appeal were raised by Petitioner during the public comment period and therefore were preserved for review. The issues raised in this appeal were in fact the sole issues raised in Petitioner's comments. To the extent that Petitioner argues that EPA did not follow proper procedures in responding to substantial new questions raised in Petitioner's comments, the grounds for this argument arose after the public comment period.

ARGUMENT

As Petitioners demonstrate below, the decision to issue the Title V Permit was based on a "finding of fact or conclusion of law which is clearly erroneous" and/or was "an exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review." 40 C.F.R. §§ 71.11(l)(1)(i) and (ii).

I. EPA Region 8 Should Have Reopened the Public Comment Period in Light of "Substantial New Questions" Concerning the Permit

Although Petitioner submitted comments that raised "substantial new questions" concerning the Title V Permit, the EPA issued the Title V Permit without reopening the public comment period, contrary to 40 C.F.R. § 71.11(h).

In comments on the draft Title V Permit, Petitioner raised significant concerns over the adequacy of EPA's source determination and accordingly, over whether the Title V Permit assured compliance with applicable requirements in accordance with 40 C.F.R. § 71. These comments pointed out a fundamental flaw in EPA's proposed permitting decision, namely that the Agency had failed to appropriately define the source subject to permitting. ***These comments clearly raised substantial new questions over the adequacy of the permit.*** Indeed, these comments prompted EPA to solicit and obtain voluminous new information, ***including requesting supplemental comments from BP***, from the permittee and to concoct a brand new source determination analysis—all without allowing for any further public comment.

EPA's regulations regarding the reopening of public comment provide that, "[i]f any data, information, or arguments submitted during the public comment period ***appear to raise substantial new questions*** concerning a permit," the EPA may under take one or more of three

actions. 40 C.F.R. § 71.11(h)(5) (emphasis added). These three actions include "[p]repar[ing] a new draft permit," "[p]repar[ing] a revised statement of basis, and reopen[ing] the comment period," or "[r]eopen[ing] or extend[ing] the comment period to give interested persons an opportunity to comment on the information or arguments submitted." *Id.* at §§ 71.11(h)(5)(i)-(iii). Although the EAB has held that a determination of whether a public comment period should be reopened "is generally left to the sound discretion of the permit issuer," this discretion is not without bounds. *See In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 146-147 (EAB 2006). The EAB is empowered to "determine whether reopening the public comment period is warranted in a given circumstance." *Id.* at 147.

Although prior EAB rulings on reopening the public comment period have involved circumstances where permitting authorities added new conditions to a permit subsequent to a public comment period (*see e.g. Indeck-Elwood*, *In re Amoco*, 4 E.A.D. 954, 981 (EAB 1993), *In re Matter of GSX Services of S. Carolina, Inc.*, 4 E.A.D. 451, 467 (1992)), the requirements of 40 C.F.R. § 71.11(h)(5) clearly contemplate that reopenings may be warranted even where no changes to a permit are made.[1] Indeed, in response to "substantial new questions," it may only be necessary to "[p]repare a revised statement of basis" or simply to "[r]eopen or extend the comment period[.]" 40 C.F.R. §§ 71.11(h)(5)(ii) and (iii). Whether or not changes are made to a permit, the overlying intent of reopening is to ensure that interested persons have an opportunity to comment on substantial new questions that have significant bearing both on the EPA's permitting decision and on the public.

[1] To this end, the regulation at issue in prior EAB rulings on this issue, namely 40 C.F.R. § 124.14(b), also contemplates reopenings of the public comment period where no changes to a permit are made. In fact, 40 C.F.R. § 124.14(b) is echoed almost verbatim by 40 C.F.R. § 71.11(h)(5).

In this case, the circumstances argue that reopening of the public comment period was warranted prior to permit issuance for one or both of two reasons: Either (1) Because the EPA, in requesting and subsequently relying upon supplemental comments from BP in response to Petitioner's comments, essentially reopened the public comment period on a *de facto* basis, yet failed to formally reopen the public comment period in accordance with 40 C.F.R. § 71.11(h); or (2) Because Petitioner's comments clearly raised substantial new questions that would rise to the level of requiring a public comment reopening, as evidenced by EPA's subsequent efforts to gather significant additional new information from the permittee and to ultimately present a source determination analysis and rationale for issuing the permit that was entirely unlike anything presented to the public during the comment period for the draft Title V Permit. In either or both cases, EPA's failure to reopen the public comment period was an inappropriate exercise of discretion, and must be reviewed by the EAB.

With regards to the *de facto* reopening, it is clear that EPA solicited additional comments from BP in response to Petitioner's comments, and that it subsequently relied heavily on those comments to justify its permitting decision. Despite its actions to request and rely upon comments from BP, the EPA never officially reopened the public comment period in accordance with 40 C.F.R. § 71.11(h).

That EPA requested and BP submitted comments is supported on a number of grounds. To begin with, BP's February 17, 2010 submission is entitled, "***Supplemental Comments*** of BP American Production Company Regarding The Pending Renewal Title V Operating Permit for Its Florida River Plant" (emphasis added), indicating that additional comments were submitted. *See* Exh. 7 at cover letter and title page. Although EPA is allowed to request additional information from a permittee that may be "necessary to evaluate or take final action" on a Title

V Permit application (*see* 40 C.F.R. § 71.5(a)(2)), BP's Supplemental Comments do not entirely represent information necessary to evaluate or take final action on a Title V Permit. The Supplemental Comments express numerous opinions, including policy positions and legal arguments that, while relevant to this matter, do not represent information that was necessary for EPA to evaluate or take final action on the Title V Permit. Notably, in the introduction to the supplemental comments, BP states:

> BP American Production Company submits this memorandum and the attached materials in (i) support of the U.S. Environmental Protection Agency ("EPA") Region VIII's pending issuance of a renewal Title V operating permit for BP's Florida River Plant ("Florida River" or the "Plant") and (ii) opposition to Rocky Mountain Clean Air Action, n/k/a WildEarth Guardians ("WEG"), comments urging EPA to aggregate hundreds or thousands of BP-operated wells across the Northern San Juan Basin ("NSJB") and BP's Wolf Point compressor station in the renewal permit for Florida River.

Exh. 7 at 1. Clearly, BP's Supplemental Comments are just that: comments expressing the company's position on the EPA's proposed permitting decision, as well as BP's position regarding Petitioner's comments.[2]

There are other examples showing that BP's Supplemental Comments are, in fact, comments, and do not present information that was necessary for EPA to evaluate or take action on the final Title V Permit. For example:

- BP presents "Facts" that, while certainly disclosing some facts, is colored by rhetoric. *See* Exh. 7 at 4-14. For instance, BP asserts that prior EPA and/or State of Colorado permitting decisions affirmatively determined that aggregation was not necessary because, as the company claims, these agencies had a "thorough understanding of the nature and purpose of BP's operation of the sources permitting at the [Florida River]

[2] Similarly, BP's December 17, 2009 submission to EPA also appears to present opinions regarding the company's position on the EPA's proposed permitting decision and Petitioner's comments. *See* Exh. Xx at Attachment A.

Plant, as well as sources separate from the Plant but also operated by BP." *Id.* at 6. BP is in no position to accurately articulate EPA's and/or the State of Colorado's state of mind during prior permitting decisions.

- BP presents a legal analysis stating the company's position regarding aggregation of pollutant emitting activities that is simply an expression of opinion and argument, exactly the type of information that is typically submitted during public comment periods. *See* Exh. 7 at 15-29;
- BP presents a one-page comment letter from the Southern Ute Indian Tribal Council dated January 13, 2010, which expresses support for BP's positions regarding both the EPA's permitting proposal and Petitioner's comments. *See* Exh. 7 at Exhibit A; and
- BP presents an affidavit from Gordon Reid Smith, dated February 17, 2010, that states an opinion regarding the company's position on the aggregation of pollutant emitting activities and the company's perception of the implication of prior EPA's decisions. *See* Exh. 7 at Exhibit C.

Overall, BP's Supplemental Comments are more of an attempt to influence the EPA, rather than inform the Agency. Such comments can only be submitted during public comment periods.[3]

More importantly is that EPA explicitly relied on BP's Supplemental Comments, and in fact explicitly references portions of BP's Supplemental Comments throughout its Response to Comments. *See e.g.*, Exh. 3 at 6 ("BP information included as part of the record for this determination"). ***In fact, EPA's Response to Petitioner's Comments relies almost entirely on***

[3] 40 C.F.R. § 71.11(g) requires "[a]ll persons, including applicants" to "submit all reasonably ascertainable arguments supporting their position by the close of the public comment period." BP's comments represent arguments supporting their position. Thus, either they should have been rejected by EPA because they were submitted outside the public comment period, or EPA was obligated to reopen the public comment period before properly receiving and considering such comments.

information submitted by BP subsequent to the public comment period.[4] However, and as will be explained further in this Petition, EPA's Response to Comments appears heavily influenced by the rhetoric of BP's comments. For example, EPA asserts that WildEarth Guardians requested that every single oil and gas well in southwestern Colorado be aggregated together with the Florida River Compression Facility, an assertion first posited by BP. *See* Exh. 3 at 9 ("WEG asserts that Florida River Compression Facility, Wolf Point Compressor Station, ***and all the wells in the NSJB field*** are "adjacent" and "interrelated" to one another, and thus must be considered a single source under both PSD and title V." (emphasis added); *compare* Exh. 7 at 15 ("WEG asserts that ***BP's wells in La Plata County*** should be aggregated with Florida River..." (emphasis added)). However, Petitioner did not request that every single oil and gas well in the North San Juan Basin oil and gas field be aggregated with the Florida River Compressor Station.[5]

To the extent that BP's Supplemental Comments may have provided some information that was necessary for EPA to evaluate and take action on the Title V Permit, it does not appear that EPA is simply allowed to request and subsequently rely upon such additional information in justifying its permitting decision without reopening the public comment period. If such additional information was so critical to justifying the EPA's final permitting decision, then this

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[4] The only other information relied upon by EPA appears to be guidance memos from the Agency and regulatory language. Thus, the factual underpinning of EPA's Response to Comments seems firmly hitched to BP's subsequent comment submissions.

[5] To the extent EPA takes issue with the nature of Petitioner's requests regarding aggregation of interrelated pollutant emitting activities, Petitioner's submit that there was extremely limited information provided by both EPA and the permittee with which to prepare and present detailed comments on the matter. EPA and BP appear to take issue with the fact that Petitioner was not intimately familiar with the nature of the relationship between the Florida River Compression Facility and the other pollutant emitting activities. Petitioner cannot be faulted for providing the best comments it could in light of the extremely limited information provided by EPA and the permittee.

signals the draft Title V Permit and the basis for proposing the draft Title V Permit were, at the time of the public comment period, substantially, if not wholly, unjustified. EPA cannot remedy a substantial lack of justification for issuing a Title V Permit by simply padding the record and issuing a final permit. Although the Agency is allowed to request additional information from the permittee in accordance with 40 C.F.R. § 71.5(a)(2), once such a request is made to remedy a deficiency in the permit and/or the rationale for issuing the permit, then the Agency is conceding that public comments in this case did raise "substantial new questions."

And this gets to the heart of the matter. Regardless of whether BP's Supplemental Comments or any other submission of information subsequent to the public comment period indicate that EPA reopened the public comment period on a *de facto* basis, yet failed to adhere to reopening procedures under 40 C.F.R. § 71.11(h), the fact remains that Petitioner's comments did raise "substantial new questions" and that the EPA was unjustified in failing to reopen the public comment period in response.

This is not merely an abstract dispute over proper procedure. Because EPA did not reopen the public comment period, Petitioner, as well as other members of the public, were denied the opportunity to comment on EPA's newly articulated rationale and analysis supporting its source determination, as well as all the underlying information submitted by the permittee subsequent to the public comment period. At the time of the public comment period, no such rationale, information, or analysis was presented, or even hinted upon by EPA. The issues of aggregation, adjacency, interrelatedness, and the adequacy of the source determination were only addressed after the public comment period. Although the Title V Permit may not have changed, the EPA's rationale for issuing the permit was revised. And the revision was material to the final decision. Indeed, an accurate source determination is an absolute prerequisite to a valid Title V

Permit. Yet WildEarth Guardians, as well as other members of the public, had no opportunity to comment on this revised rationale, or the analysis supporting the rationale.

Certainly EPA is not required to reopen the public comment period every time it modifies its basis for proposing to issue a Title V Permit. However, whenever its basis is so revised as to provide a new justification altogether, including a new analysis, which was not articulated or presented at all prior to or during the public comment period and which is material to the adequacy of the Title V Permitting decision, EPA has a duty to exercise its discretion to reopen the comment period.[6] This is especially true when the revised rationale and analysis directly results from "substantial new questions" raised in public comments.

The circumstances here compel the EAB find that a public comment reopening is warranted, and that the EPA's decision to issue the Title V Permit is contrary to 40 C.F.R. § 71.11(h). Although a determination as to whether reopening is appropriate is typically left to the sound discretion of the EPA, that discretion cannot come at the expense of a sound permitting decision. In this case, not only is it apparent that EPA inappropriately solicited, received, and considered comments from BP without adhering to the reopening procedures set forth at 40 C.F.R. § 71.11(h), but it is apparent that Petitioner's comments did raise "substantial new

[6] It is informative that EPA's regulations regarding Title V Permit reopenings at 40 C.F.R. § 71.7(f) embody the same principle. These regulations provide that, whenever EPA determines that a Title V Permit "contains material mistakes or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit," a Title V Permit shall be reopened. *See* 40 C.F.R. § 71.7(f)(1)(ii). A Title V Permit reopening "shall follow the same procedures as apply to initial permit issuance[.]" *Id.* at § 71.7(f)(2). In the case of the Florida River Compression Facility Title V Permit, it does appear that EPA impliedly, if not expressly, determined that the draft Title V Permit was either based on "material mistakes" or "inaccurate statements." As the Agency's reopening regulations contemplate, public comment is necessary to properly address such mistakes or inaccurate statements.

questions" that rose to the level of requiring a public comment reopening in order to properly address the ramifications of these questions.

II. The Title V Permit Fails to Assure Compliance with PSD and Title V Permitting Requirements

Petitioner's argument is a straightforward challenge to EPA's source determination. In this case, EPA failed to appropriately assess whether pollutant emitting activities interrelated with the Florida River Compression Facility should be aggregated together with the Compression Facility as a single stationary source, in accordance with the factors set forth under 40 C.F.R. § 52.21(b)(5) and (6), as well as the definitions of "major source" and "stationary source" under 40 C.F.R. § 71.2. In other words, EPA failed to appropriately define the source subject to permitting, and therefore failed to ensure that the Title V Permit assures compliance with EPA's PSD and Title V regulations in accordance with 40 C.F.R. § 71.1(a). *See also* 40 C.F.R. § 71.6(a)(1).

EPA's source determination did not dispute that there exist pollutant emitting activities, including the coalbed methane wells that feed the Florida River Compression Facility and potentially other compression facilities, which belong to the same industrial grouping and are under common control by BP. *See* Exh. 3 at 13. Instead, EPA's determination hinged upon a finding that these pollutant emitting activities pollutant emitting activities are not adjacent to the Compression Facility. Thus, EPA refused to aggregate these pollutant emitting activities with the Florida River Compression Facility as a single source, as appropriate. As will be explained, this finding is unsupported.

A. Background

That aggregation of pollutant emitting activities associated with oil and gas operations

under PSD and Title V may be appropriate is not inconsistent with the history of the PSD program. In *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979), the court described how the Clean Air Act defines the terms "source" and "stationary source." The court held that the term "stationary source" for PSD purposes, although not explicitly defined in the sections on PSD, should be defined as "any building, structure, facility, or installation which emits or may emit any air pollutant," which is how "stationary source" is defined in other sections of the Act. *See id.* at 395–96.

In light of the statutory definition, the court directed EPA to revise its regulation defining "source" for the PSD program. *Alabama Power Co. v. Costle*, 636 F.2d 323, 396-397 (D.C. Cir. 1979). In doing so the court cautioned that EPA should not aggregate sources unless they fit within the statutory terms "structure," "building," "facility," or "installation." *Id.* at 397. However, the court noted the breadth of the term "facility or installation" and concluded that Congress "clearly intended" to "allow an entire plant ***or other appropriate grouping of industrial activity***" to be treated as a single major source for PSD purposes. *Id.* (emphasis added).

Following the D.C. Circuit's decision, EPA in 1980 promulgated a new regulatory definition of "stationary source" for PSD purposes as "any building, structure, facility, or installation" that emits a regulated pollutant, a definition that continues in effect in the present PSD regulations. EPA further established the three-part aggregation test, discussed above, to determine when multiple individual activities should be aggregated as a single major source, a test that also continues in effect in today's PSD regulations. The Preamble to the new regulations discussed the policy considerations for aggregation identified by the D.C. Circuit in *Alabama Power*:

> In EPA's view, the December opinion of the court in *Alabama Power* sets the following boundaries on the definition for PSD purposes of the component terms of "source": (1) it must carry out reasonably the purposes of PSD; (2) it must approximate a common sense notion of "plant"; and (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation."

45 Fed. Reg. 52676, 52694–95.

In the context of oil and gas operations, sources under common control, connected by pipelines, and operating interdependently readily fit within the ordinary meaning of "facility" or "installation."

Moreover, in appropriate cases, aggregated oil and gas sources also fit the "common sense notion of a plant." First, the "common sense notion of a plant" has always extended beyond just a single factory building. In *Alabama Power*, the D.C. Circuit noted that under the PSD program Congress "clearly intended" that not just plants comprising a single building, but also "***other appropriate grouping[s] of industrial activity***," should be aggregated if they fit within the statutory terms "facility" or "installation." *Alabama Power Co. v. Costle*, 636 F.2d 323, 397 (D.C. Cir. 1979) (emphasis added).

Second, in considering the common sense notion of a "plant," the preamble explicitly suggests that an "oil field" could be aggregated. In addressing the "plant" definition, EPA focused largely on whether activities shared a common SIC code, in order to avoid "group[ing] activities that ordinarily would be considered separate." *See* 45 Fed. Reg. 52676, 52695. As an example of separate activities, the Preamble pointed to "a uranium mill and an oil field." *Id.* This choice of example, however, suggests that the component units in an oil field—to the extent they share a single SIC code—could be treated as a single stationary source. It would have made little sense for the Preamble to discuss aggregating an oil field with another activity if the component parts of the oil field could not themselves be aggregated as a single stationary source.

Third, while EPA expressly rejected a *per se* rule against aggregating multiple facilities that are connected by a multistate pipeline or a similar connection in adopting the regulatory definition of stationary source, this was not complete bar to appropriate aggregation of oil and gas pollutant emitting activities. EPA said that it "would not treat all of the pumping stations along a multistate pipeline as one 'source.'" 45 Fed. Reg. 52676, 52695. At the same time, the agency was "unable to say precisely at this point how far apart activities must be in order to be treated separately." *Id.*

To these ends, a number of prior EPA permitting determinations have concluded that aggregation is appropriate for oil and gas sources. Others have concluded that aggregation was appropriate for sources in other industries that involved operations separated by long distances but connected by pipelines or similar links. While case-specific, overall, these determinations demonstrate that aggregation of oil and gas sources, and other similar sources, can be appropriate in a broad array of circumstances. For example, EPA has found aggregation to be appropriate in the following circumstances:

1. Oil and gas tank batteries and associated emitting units (e.g., wells, pumps, line heaters, dehydration equipment, combustion equipment, tanks), in an oil and gas field with a twelve mile radius. *See* Exh. 8 at Exhibit 17 (Letter from Richard R. Long, Dir., Region 8 Air and Radiation Program, to Lee Ann Elsom, Environmental Coordinator, Citation Oil & Gas Corp. (Dec. 9, 1999)).

2. Pipeline compressor stations and associated emitting units (e.g., compressor engines, wells, pumps, dehydrators, storage and transmission tanks, etc.). *See* Exh. 8 at Exhibit 8 (Letter from Richard R. Long, Dir., Region 8 Air and Radiation Program, to Jack Vaughn, EnerVest San Juan Operating Co. (July 8, 1999)).

3. Natural gas gathering system (e.g., wells) and transmission system (e.g., distribution pipelines), on contiguous properties. *See* Exh. 8 at Exhibit 13 (Letter from William B. Hathaway, Director, Region 6 Air, Pesticides, and Toxics Division, to Allen Eli Bell, Executive Director, Texas Air Control Board (Nov. 3, 1986)).

4. Sour gas wells and a sour gas processing plant connected by pipelines. *See* Exh. 10, Letter from Cheryl Newton, Director, Air and Radiation Division, EPA Region 5 to Scott

Huber, Summit Petroleum Corporation (Oct. 18, 2010).

5. Pump station and salt processing plant 21.5 miles apart, connected by a dedicated channel. *See* Exh. 8 at Exhibit 5.

6. Mine and processing plant, thirty-five to forty miles apart and connected by a forty-four mile pipeline. *See* Exh. 8 at Exhibit 11 (Letter from Richard R. Long, Director, Region 8 Air and Radiation Program, to Dennis Myers, Construction Permit Unit Leader, Colorado Department of Public Health and Environment (April 20, 1999)).

7. Offshore oil and gas platform and onshore production facility 2.8 miles apart, connected by pipelines. *See* Exh. at 11, Letter from Douglas E. Hardesty, Manager, Region 10 Federal and Delegated Air Programs, to John Kuterbach, Chief, Alaska Department of Environmental Conservation (Aug. 21, 2001).

8. Two nearby plants producing coated metal castings. *See* Exh. 8 at Exhibit 15 (Letter from Joan Cabreza, Permits Team Leader, Region 10 Office of Air Quality, to Andy Ginsberg, Manager, Oregon Department of Environmental Quality (Aug. 7, 1997)).

9. Two sections of an oil refinery, 1.8 miles apart and connected by twenty pipelines. *See* Exh. 8 at Exhibit 12 (Memorandum from Edward E. Reich, Director, Division of Stationary Source Enforcement, to Clyde B. Eller, Director, Region 9 Enforcement Division (May 16, 1980)).

10. Brewery and landfarm where brewery disposed of waste water, six miles apart and connected by a pipeline. *See* Exh. 8 at Exhibit 14 (Memorandum from Robert G. Kellam, Acting Director, OAQPS, to Richard R. Long, Director, Region 8 Air Program (Aug. 27, 1996)).

11. Two General Motors facilities one mile apart, connected by a railroad line. *See* Exh. 8 at Exhibit 12 (Memorandum from Steve Rothblatt, Chief, Region 5 Air Programs Branch, to Edward E. Reich, Director, Stationary Source Enforcement Division (June 8, 1981)).

To be certain, EPA has found aggregation to be inappropriate in certain situations, for example in the following circumstances:

1. Two unconnected drilling ships. *See In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357 (E.A.B. 2007).[7]

2. Two bulk gasoline terminals 0.9 miles apart, not connected by any pipelines. *See* Exh.

[7] However, the EAB in this case did remand the EPA's permitting decision on the basis that Region 10 "did not provide an adequate analysis and record support for its conclusion that each OCS [outer-continental shelf] source separated by more than 500 meters is a separate stationary source." *In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357, 358 (E.A.B. 2007).

12, Letter from Winston A. Smith, Dir., Region 4 Air, Pesticides and Toxics Management Division, to Randy C. Poole, Air Hygienist II, Mecklenburg County Department of Environmental Protection (May 19, 1999).

However, in these circumstances, it was clear that the pivotal factor was whether the pollutant emitting activities were connected, such as with pipelines.

Importantly, these prior EPA determinations provide insight with regards to the contiguous and adjacent prong of the definition of stationary source under PSD and Title V. Notably, these prior determinations demonstrate that the distance between sources is not necessarily a determinative factor for assessing contiguousness or adjacency, but rather interrelationship. Units that are miles apart commonly fit within the ordinary meaning of "facility" and "installation" for aggregation if the sources are integrated and physically connected. EPA Region 8 explained in one case that "whether two facilities are 'adjacent' is based on the 'common sense' notion of a source and the functional inter-relationship of the facilities, and is not simply a matter of the physical distance between two facilities." Exh. 8 at Exhibit 11 at 1. Similarly, Region 8 advised the Utah Department of Environmental Quality that "[d]istance between the operations is not nearly as important in determining if the operations are part of the same source as the possible support that one operation provides for another." Exh. 8 at Exhibit 9 at 1-2. Thus, where a pump station and a production operation are connected by a 21.5 mile channel, "the distance between the operations is not an overriding factor that would prevent them from being considered a single source." *Id.* at 2.

Some of these determinations by EPA are particularly instructive. In 1998, EPA Region 8 provided guidance to the Utah Division of Air Quality on what Utah should consider in its aggregation analysis. Utah sought EPA's guidance and recommendation on whether two Utility Trailer facilities located approximately one mile apart should be aggregated. *See* Exh. 8 at

Exhibit 5 (Letter from Richard R. Long, Director, Region 8 Air Program, to Lynn Menlove, Manager, New Source Review Section, Utah Division of Air Quality (May 21, 1998)). Region 8 did not make a recommendation either way on aggregation of the two facilities, but provided general guidance to the State regarding how it should make the determination.

Region 8 stated that when a permitting authority assesses the contiguous or adjacent factor, it should examine whether the sources are close enough to one another for them to be operated as a single source. Exh. 8 at Exhibit 5 at 2. Region 8 then identified four factors to be considered in determining whether the distance between activities is small enough to allow operation as a single source. While they are relevant, EPA noted that not all of the four factors are required to be present to satisfy the contiguous or adjacent requirement:

1. Will materials be routinely transferred between the facilities? Supporting evidence for this could include a physical link or transportation link between the facilities, such as a pipeline, railway, special-purpose or public road, channel or conduit.

2. Will managers or other workers frequently shuttle back and forth to be involved actively in both facilities? Besides production line staff, this might include maintenance and repair crews, or security or administrative personnel.

3. Will the production process itself be split in any way between the facilities, i.e., will one facility produce an intermediate product that requires further processing at the other facility, with associated air pollutant emissions? . . .

4. Was the location of the new facility chosen primarily because of its proximity to the existing facility, to enable the operation of the two facilities to be integrated? In other words, if the two facilities were sited much further apart, would that significantly affect the degree to which they may be dependent on each other?

Id. Other EPA regional offices have applied these Region 8 guidance questions when making aggregation determinations. *See, e.g.*, Exh. 12 at 5-6.

In this case, EPA clearly recognized that it could be necessary to aggregate the Florida River Compression Facility together with interrelated pollutant emitting activities, including

coalbed methane wells and other compression facilities. The EPA did not rely on "distance," but rather recognized that adjacency could exist where the Florida River Compression Facility and other pollutant emitting activities were interrelated. *See* Exh. 3 at 10 ("In examining whether two stationary sources that are not actually touching (i.e., non-contiguous) should be considered 'adjacent,' the determination ahs been made on a case-by-case basis, considering the extent to which two sources are functionally interrelated."). Unfortunately, EPA's assessment of interrelatedness fell short of justifying a finding that there is no adjacency between the Florida River Compression Facility and other pollutant emitting activities.

B. EPA's prior aggregation determinations, as well as PSD and Title V Regulations do not require complete an exclusive interdependence between sources for aggregation.

The EPA does not dispute that the Florida River Compression Facility could not operate without being piped natural gas from nearby coalbed methane wells. The EPA also does not dispute that nearby coalbed methane wells could not operate without the ability to pipe natural gas to processing facilities. What EPA does dispute is the level of interrelatedness required to support a determination of adjacency in this case.

Despite the fact that an inherent interrelationship exists between the Florida River Compression Facility and the coalbed methane wells that feed the compressor station (and likely other compression facilities), the EPA twisted the concept of interrelationship to ultimately reject a finding that the Florida River Compression Facility is adjacent to any other pollutant emitting activities. Indeed, the EPA's argument against aggregation is heavily, if not entirely, hitched to its beliefs regarding the degree of interdependence required for aggregation of oil and gas activities. In particular, the EPA asserts that two pollutant emitting activities must completely and exclusively rely on each other for aggregation to be appropriate. The EPA phrases this

concept in several ways—"dedicated interrelatedness" (Exh. 3 at 11 and 13), "exclusive dependency" (*Id.* at 11), "exclusive or dedicated interrelatedness" (*Id.* at 13), and "unique interdependence" (*Id.* at 13)—but the point is simple: EPA believes that the only time a finding of adjacency would be appropriate from an interrelatedness standpoint is where there exists complete and exclusive interdependence.

The EPA's complete and exclusive interdependence theory underlies its entire analysis of the Florida River Compression Facility. In particular, the EPA relies on this theory to argue that aggregation is improper because in some circumstances, wells that feed the Florida River Compression Facility ***can*** supply gas to other processing facilities. *See e.g.* Exh. 3 at 9 (stating "while gas from [BP's] Wolf Point [compressor station] and the various wells *can* supply gas to Florida River, they can also supply gas to other non-BP facilities in the field and thus do not have the type of dedicated interrelatedness that was determinative in other EPA statements on this issue"). The EPA asserts that "Florida River can continue to operate regardless of whether Wolf Point or one, two, three, four, or all of the BP operated well sites were to shut down—and vice-a-versa" (Exh. 3 at 13), and thus, the various BP pollutant emitting activities are not interdependent.

EPA has not previously taken the interdependence concept this far. In the past, EPA has applied a more sensible approach that does not require complete and exclusive interdependence. For example, the 1980 Preamble noted that a boiler providing process steam for two different sources should be aggregated with whichever source is the ***primary recipient*** of the boiler's output. 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980). This would result in aggregation of the boiler with another source despite the fact that the boiler also provides process steam to a separate source.

A number of EPA's prior determinations reinforce this approach, a fact that EPA refused to acknowledge in its Response to Comments, even though Petitioner presented the agency with the relevant guidance. For example, EPA Region 10 found that two metal casting plants should be aggregated, where both plants produced castings and one plant then sent its castings to the main plant for coating and packaging. *See* Exh. 8 at Exhibit 15. Thus, the main plant was not solely dependent on the other plant, since the main plant would produce, coat, and package castings regardless of the operations at the other plant. Region 10 found that these two sources should be aggregated, even though there was not complete and exclusive interdependence between them. Region 10 expressly determined that aggregating the two plants would approximate the common sense notion of "plant," as the production of both plants comprised and supported the primary activity of the company: producing coated metal castings. *See id.* at 2.

Moreover, EPA has issued determinations aggregating a number of oil and gas sources without mentioning any "exclusive or dedicated interrelatedness" standard. *See e.g.*, Exh. 8 at Exhibits 8, 13 and 17. If complete and exclusive interdependence were required, and was such a critical factor in an assessment of adjacency, one would expect the prior EPA determinations to have mentioned how exceptional their findings were. They did not, even in the context of oil and gas operations.

Rather than a complete and exclusive interdependence test, prior EPA determinations focus more broadly on whether one source ***regularly*** supports the operation of the other, thus approximating a common sense notion of "plant." As noted above, Region 8 has identified four factors for determining whether activities are contiguous or adjacent. In that analysis, which the EPA did not even address in permitting the Florida River Compression Facility, Region 8 looked to whether activities occurred "routinely," or "frequently" enough to conclude that they are

operated in effect as a single source. *See* Exh. 8 at Exhibit 5 at 13–14.

Other EPA determinations have been similar: they focus on whether two operations are functionally interdependent under normal operations, and whether one produces an intermediate product for the other. They do not require that both sources ***solely and exclusively*** support each other under all operating conditions. *See e.g.* Exh. 8 at Exhibit 15 at 2 (explaining that one key factor in aggregating sources is whether one source supports "the ***primary*** product or activity of a company or operation" at another source) (emphasis added); Exh. 8 at Exhibit 11 at 1; *see also*, Exh. 8 at Exhibit 8 (aggregating each natural gas pipeline compressor station with its associated wells, storage tanks, etc.).

Furthermore, the policy goals underlying the three-part aggregation test also do not require complete and exclusive interdependence. Where an energy company routinely transfers natural gas from a set of wells that are intended to supply a particular processing facility, the operation fits within the ordinary meaning of "installation" and "plant." Moreover, the wells produce an intermediate product that is processed into pipeline-quality natural gas. These compression facilities, wells and other equipment continue to fit the ordinary meaning of an "installation" or "plant," even if the company may direct gas from the wells elsewhere when the compressor station is temporarily closed for maintenance or other reasons. The EPA does not address this fact in its analysis, a fatal flaw.

The flaws in the EPA's complete and exclusive interdependence requirement can also be seen by considering a paradigmatic "plant" that consists of two adjacent buildings separated by only a public road. If the two plant buildings operate several different emissions units, all responsible for different phases of producing the plant's end product, it is indisputable that the emissions units should be aggregated, as the court in *Alabama Power* noted. *See* 636 F.2d at 397

(stating that "Congress clearly envisioned that entire plants could be considered to be single 'sources,'" because the statute itself states that entire plants, such as iron and steel mill plants, would be a single source).

Different emissions units in that plant, however, may not meet the EPA's complete and exclusive interdependence theory. For example, an emissions unit in one building may produce an intermediate product that is transferred to the other building for subsequent steps in the production process. If the intermediate unit will be shut down for maintenance or repairs, the company will commonly obtain the intermediate product elsewhere to ensure that the production process is not interrupted. Under the EPA's reasoning, however, such reasonable operational measures would prevent the aggregation of the intermediate source with plant's sources, as there would be a ***chance*** that some sources in the plant ***might*** rely on outside sources or products at certain times. Clearly, these contingency measures do not prevent this hypothetical plant from approximating the common sense notion of a "plant" and passing the three-part aggregation test.

The disconnect between the regular support analysis, and the complete and exclusive interdependence theory, highlights a major gap in the EPA's argument: it never analyzes how much gas actually flows to the Florida Compression Facility from particular wells under regular operations.

This omission is significant because it appears that under regular operations, the production of numerous BP wells flows to the Florida River Compression Facility. Indeed, BP forthrightly discloses that 63% of the gas processed by the Florida River Compression Facility comes from "BP-operated production" (*see* Exh. 7 at 11), indicating that there is a substantial interdependence, if not a high level of interdependency, between the facility and the BP wells

that provide 63% of the supply of natural gas for the compressor station.[8] Furthermore, based on BP 's Supplemental Comments to the EPA, it appears as if an assessment of pressure could lead to the identification of the very wells producing this gas. BP explains that the movement of gas within its pipelines "may also be a function of the gas pressure at any particular point in time." Exh. 7 at 12. Thus, although BP asserts that the flow of gas in the Northern San Juan Basin is "dynamic," it appears not only possible to quantify the amount of gas flowing to the Florida River Compression Facility from BP's wells, but possible to identify the wells producing this gas.

Although the EPA may argue the nature of interdependency between the Florida River Compression Facility and BP's wells in the vicinity, ***fundamentally, a relationship of interdependence exists.*** Simply because the EPA made no reasonable effort to discern the bounds of this interdependency, such as an assessment of normal gas pressures that could be used to identify the wells are most likely to provide gas to the Florida River Compression Facility, to ensure an accurate source determination is no grounds for upholding the Title V Permit. The EPA's failure to perform the analysis necessary to ascertain the nature of interdependence does not support a finding that no interdependency whatsoever exists, as the Division claims, particularly when the facts in this case indicate some level of interdependency clearly exists.

It is instructive to see how EPA has tackled the issue of interrelatedness in the context of support facilities. Under PSD and Title V, pollutant emitting activities must be aggregated together where they are adjacent or contiguous, under common control, and belong to the same

[8] There is likely to be interdependence with other wells that feed the Florida River Compression Facility that are under common control, rather than ownership, by BP. Unfortunately, the EPA did not assess whether a common control relationship exists between the Florida River Compression Facility and third-party wells feeding the compressor station.

industrial grouping. *See* 40 C.F.R. § 52.21(b)(6). When determining whether pollutant emitting activities belong to the same industrial grouping, EPA normally relies on Standard Industrial Classification ("SIC") code. However, situations have arisen where a primary pollutant emitting activity belongs to a different SIC code than the pollutant emitting activities that supports the operations of the primary activity. In these cases, EPA has generally made clear that, where an activity provides 50% or more of its output (in terms of material and/or services) to a primary activity, it "expects permitting authorities to conclude that a support facility exists, and expects these activities to be aggregated with the primary activity," regardless of SIC code. Exh. 13, Preamble to Revised Part 51 and Part 70 at 28, Draft (Feb. 18, 1998)[9]; *see also*, Exh. 14, Memorandum from John S. Seitz, Office of Air Quality Planning and Standards, *Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permits Programs of the Clean Air Act* (Aug. 2, 1996) (stating "a support facility usually would be aggregated with the primary activity to which it contributes 50 per cent or more of its output."). As expressed in EPA's PSD regulations, the intent here is to ensure that activities that "convey, store, or otherwise assist in the production of the principal product" are appropriately grouped together. *See* 45 Fed. Reg. 52695 (Aug. 7, 1980).

Although it appears that in this case a support facility relationship exists with regards to certain wells, and potentially other compression facilities, that feed the Florida River Compression Facility, EPA ultimately refused to address this issue in the context of its adjacency determination. *See* Exh. 3 at 8-9 (stating, "...there is no reason to analyze whether there is a support facility relationship between these various emission points."). While it is true that EPA's

[9] We understand this Draft Preamble contains a disclaimer from the EPA that it "does not represent final agency positions." We cite this Draft Preamble only as illustrative of a reasonable and informative interpretation of EPA's Title V and PSD regulations that relates to the matter of EPA's source determination for the Florida River Compression Facility.

views regarding support facilities have typically presumed a finding of adjacency or contiguousness, EPA has also stated that, "In practice, the three factors comprising the major source definition (adjacency/contiguity, common control, and SIC code/support) are sometimes interrelated and cannot always be evaluated in sequential fashion." Exh. 13 at 29. In other words, there is nothing to indicate that the support facility principle—i.e., where a secondary pollutant emitting activity dedicates 50% of its output, whether in terms of materials and/or services, it should be aggregated together with the primary activity as a single source—cannot equally, or at least substantively, inform an assessment of adjacency or contiguousness from the standpoint of interrelatedness. To this end, there is no merit to EPA's assertion that the support facility principle has no relevance in the context of the Florida River Compression Facility.

In sum, aggregating oil and gas sources does not require that the sources be meet the "exclusive dependency" test as EPA suggests. Instead, EPA's prior guidance on the matter, as well as the common sense notion of plant embodied by the EPA's PSD regulations, demonstrates that oil and gas sources should be aggregated if they ***regularly*** support one another in the production of pipeline quality gas. The EPA's reliance on a standard of "exclusive or dedicated interrelatedness" is, therefore, unsupported. The Title V Permit therefore fails to ensure compliance with applicable requirements and cannot be allowed to stand.

CONCLUSION

The Title V Permit for the Florida River Compression Facility suffers from procedural and substantive flaws. Petitioner requests the EAB review whether the EPA erred in not reopening the public comment period for the Title V Permit in response to substantial new questions concerning the permit raised during the public comment period and review whether the Agency failed to appropriately define the major source subject to permitting such that the Title V

Permit assures compliance with Prevention of Significant Deterioration and Title V Permitting requirements. Petitioner further requests that the EAB either remand the Title V Permit to address the aforementioned deficiencies and/or vacate the issuance of the Title V Permit.

Respectfully submitted this 17th day of November 2010

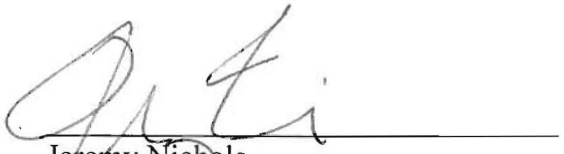

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TABLE OF EXHIBITS

1. Permit Number V-SU-0022-05.00, Air Pollution Control Title V Permit to Operate, BP America Production Company Florida River Compression Facility (Oct. 18, 2010);

2. Statement of Basis for Title V Permit No. V-SU-0022-05.00 (Oct. 18, 2010).

3. Response to Comments on the Florida River Compression Facility's March 28, 2008 Draft Title V Permit to Operate (Oct. 18, 2010).

4. Memo from Gina McCarthy, EPA Assistant Administrator for Air and Radiation to Regional Administrators, *Withdrawal of Source Determinations for Oil and Gas Industries* (September 22, 2009).

5. Letter from Julie Best to Claudia Young Smith, Environmental Scientists, Air and Radiation Program, U.S. EPA Region 8, in re: BP America Production Company Florida River Compression Facility proposed Air Pollution Control Title V Permit to Operate Number V-SU-0022-05.00 (Dec. 17, 2009).

6. Letter from Rebecca Tanory to Claudia Young Smith, Environmental Scientists, Air and Radiation Program, U.S. EPA Region 8, in re: BP America Production Company Florida River Compression Facility proposed Air Pollution Control Title V Permit to Operate Number V-SU-0022-05.00 Clarification of December 17, 2009 Flow Description and Proximity Map (Dec. 21, 2009).

7. Letter from Charles Kaiser to Claudia Young Smith, Environmental Scientists, Air and Radiation Program, U.S. EPA Region 8, in re: Supplemental Comments on Florida River Plant Renewal Title V Operating Permit (Feb. 17, 2010).

8. Comments from Rocky Mountain Clean Air Action, Draft Title V Operating Permit for Florida River Compression Facility (May 19, 2008).

9. Plan of Merger and Unanimous Consent to Merge (2008).

10. Letter from Cheryl Newton, Director, Air and Radiation Division, EPA Region 5 to Scott Huber, Summit Petroleum Corporation (Oct. 18, 2010).

11. Letter from Douglas E. Hardesty, Manager, Region 10 Federal and Delegated Air Programs, to John Kuterbach, Chief, Alaska Department of Environmental Conservation (Aug. 21, 2001).

12. Letter from Winston A. Smith, Dir., Region 4 Air, Pesticides and Toxics Management Division, to Randy C. Poole, Air Hygienist II, Mecklenburg County Department of Environmental Protection (May 19, 1999).

13. Preamble to Revised Part 51 and Part 70 at 28, Draft (Feb. 18, 1998).

14. Memorandum from John S. Seitz, Office of Air Quality Planning and Standards, *Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permits Programs of the Clean Air Act* (Aug. 2, 1996).

CERTIFICATE OF SERVICE

I certify that on November 17, 2010, I served this Petition for Review by overnight delivery upon:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

I also certify that on November 17, 2010, I served this Petition for Review by certified mail, return receipt requested, upon:

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