ROCKY MOUNTAIN
CLEAN AIR ACTION
Clean Air For Healthy Children and Healthy Communities

BY HAND DELIVERY

May 19, 2008

Claudia Smith
U.S. EPA Region 8
Air Program (8P-AR)
1595 Wynkoop Street
Denver, CO 80202

Re: Draft Title V Operating Permit for Florida River Compression Facility

Dear Ms. Smith:

Rocky Mountain Clean Air Action hereby submits the following comments in response to the U.S. Environmental Protection Agency's ("EPA's") proposal to issue a Title V federal operating permit (hereafter "Title V permit") to BP America Production Company (hereafter "BP") for the operation of the Florida River Compression Facility. *See*, Draft Title V Permit No. V-SU-0022-05.00.

Rocky Mountain Clean Air Action is a Denver, Colorado-based, nonprofit membership group dedicated to protecting clean air in Colorado and the surrounding Rocky Mountain region for the health and sustainability of local communities. For the foregoing reasons, the EPA cannot issue the proposed Title V permit as proposed because it fails to ensure compliance with Prevention of Significant Deterioration ("PSD") and Title V requirements under the Clean Air Act ("CAA").

I. The Draft Title V Permit Fails to Ensure Compliance with Title V and PSD Requirements

A Title V Permit is required to include emission limitations and standards that assure compliance with all applicable requirements at the time of permit issuance. 42 USC § 7661c(a); 40 CFR § 71.6(a)(1). Applicable requirements include, among other things, PSD requirements set forth under Title I of the CAA and regulations at 40 CFR § 52.21. 40 CFR § 71.2. If a source will not be in compliance with an applicable requirement, including PSD, at the time of permit issuance, the applicant must disclose the violation and provide a narrative showing how it

will come into compliance, and the permit must include a compliance schedule for bringing the source into compliance. 42 USC § 7661b(b); 40 CFR §§ 71.6(c)(3) and 71.5(c)(8).

The CAA prevents significant deterioration of air quality to protect human health and welfare and air quality in class I areas. 42 USC § 7470. Prevention of significant deterioration requirements apply to the construction of major sources and/or major modifications of major sources of air pollution in areas designated as attainment. 42 USC § 7475 and 40 CFR § 52.21(a)(2). In the case of BP's Florida River Compression Facility, the proposed Title V permit fails to assure compliance with PSD requirements under the CAA. Furthermore, the Title V permit fails to include compliance schedules to bring the sources into compliance with PSD requirements. As will be explained in more detail below, the EPA cannot issue the proposed permits as currently written.

A. The EPA Must Consider Emissions form Adjacent and Interrelated Pollutant Emitting Activities, including BP America's Coalbed Methane Wells and the Wolf Point Compressor Station to Assure PSD Compliance

The Florida River Compression Facility is currently a major source of air pollution due the fact that the facility has the potential to emit 250 tons/year or more of NOx. *See*, Statement of Basis for Draft Permit No. V-SU-0022-05.00 (hereafter "Statement of Basis") at 12. According to the Statement of Basis, "While this combined facility has never been required to receive a PSD permit to construct, significant emission increases due to modifications at the facility could trigger the PSD permitting requirements." *Id.* While the EPA claims that PSD review requirements have not yet been triggered for the Florida River Compression Facility, this claim is baseless as **the EPA has not considered emissions from all interrelated pollutant emitting activities, namely BP's coalbed methane wells and the Wolf Point Compressor Station.**

Prevention of Significant Deterioration regulations at 40 CFR § 52.21(b)(5) define a stationary source as, "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant." Regulations at 40 CFR § 52.21(b)(6) 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)[.]" The regulations further state, "Pollutant emitting activities are considered part of the same industrial grouping if they belong to the same 'Major Group' (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual[.]"

The Florida River Compression Facility processes coalbed methane gas from BP's wells and the Wolf Point Compressor Station. *See*, Statement of Basis at 2. Before issuing the Title V permit for the Florida River Compression Facility, the EPA must consider and address pollutant emitting activities from these pollutant emitting activities which, as will be explained further, constitute adjacent and interrelated pollutant emitting activities under control by BP.

1. BP's Coalbed Methane Wells

BP is the largest coalbed methane producer in La Plata County in southwestern Colorado. As a recent Durango Herald new article reported "The lion's share of coal-bed methane gas production in La Plata County comes from one company: BP." *See*, Greenhill, J., "BP accounts for 55% of coal-bed gas production," *Durango Herald* (February 23, 2003), attached as **Exhibit 1**. Information from the Colorado Oil and Gas Conservation Commission ("COGCC") shows that BP owns and operates over 1,000 producing wells just in La Plata County. *See*, spreadsheet listing all of BP producing wells in La Plata County, attached as **Exhibit 2**. BP's coalbed methane wells are all pollutant emitting activities related to the production of coalbed methane in La Plata County. In fact, BP's coalbed methane wells appear to serve as support facilities to larger processing plants, such as the Florida River Compression Facility.

Indeed, information from the EPA, the Colorado Air Pollution Control Division, and other sources shows that activities related to coalbed methane wells release significant amounts of air pollution, particularly from compressor engines. *See*, Table 1. A recent report prepared for the Western Governors' Association shows that NOx and VOC emissions related to coalbed methane wells are released primarily from four main pollutant emitting activities at coalbed methane wells: 1) Compressor engines; 2) Heaters; 3) Dehydration; 4) Completion, flaring, and venting. *See*, Russell, J. and A. Pollack, "Oil and Gas Emission Inventories for the Western States," Final Report prepared for Western Governor's Association (December 27, 2005), attached as **Exhibit 3**. Compressor engines in coalbed methane producing regions, such as the San Juan Basin, are of particular concern in relation to NOx emissions. A more recent report prepared for the Western Governor's Association stated:

> In virgin or newly developed fields and basins the field pressures are sufficiently high that far fewer wellhead compressors are required to generate this [field] pressure than in mature fields and basins. The only exception to this general rule are basins with significant coal-bed methane (CBM) wells, which often have low gas pressures and require more wellhead compression; although even in these CBM fields and basins the usage of wellhead compression is generally no more than 5% of total wells.

See, Bar-Ilan, A., R. Friesen, A. Pollack, and A. Hoats, "WRAP Area Source Emissions Inventory Projections and Control Strategy Evaluation, Phase II," Final Report Prepared for Western Governor's Association (September 2007), attached as **Exhibit 4**. Given the sheer number of wells operated and owned by BP, NOx and VOC emissions from the company's producing coalbed methane wells that supply the Florida River Compression Facility are most likely significant. Indeed, if 5% of total wells require wellhead compressors, then this would mean that over 50 compressor engines are associated with BP's more than 1,000 wells in La Plata County in southwestern Colorado.

Table 1. Sources of Air Pollution at Natural Gas Wells (see, Exhibit 3).

Pollutant Emitting Activity	Pollutants Released
Compressor engines	NOx
Heaters	NOx
Dehydration	NOx, VOCs
Completion, flaring, venting	NOx, VOCs

Not only are BP's producing coalbed methane wells pollutant emitting activities, but together with the Florida River Compression Facility, they are connected pollutant emitting activities under PSD and thus, a single source. As noted, BP operates more than 1,000 coalbed methane wells in La Plata County, all or some of which have a functional interrelationship with the Florida River Compression Facility. As the Statement of Basis for the Title V permit states, "The Florida River Compression Facility processes coal bed methane gas in order ot reduce CO_2 and water content to within pipeline specifications and compresses this gas for delivery into interstate pipelines." Statement of Basis at 2. Some or all of BP's coalbed methane wells clearly provide coalbed methane gas to the Florida River Compression Facility. Thus the facility depends upon the operations of these wells for its function. Similarly, all or some of the coalbed methane wells owned and operated by BP depend upon the Florida River Compression Facility for their operations. Without the existence of the Florida River Compression Facility, all or some of BP's coalbed methane wells would cease to operate as there would be no means of compressing, processing, and transporting natural gas to market pipelines.

Although information has not been presented by BP or by the EPA showing which of BP's producing natural gas wells supply coalbed methane gas to the Florida River Compression Facility, the available information from the COGCC shows that are dozens, perhaps hundreds, or more than a thousand, coalbed methane wells that are likely to supply the Florida River Compression Facility. As already explained, BP owns and operates over 1,000 producing coalbed methane wells located in La Plata County, which is where the Florida River Compression Facility is also located. According to data from the COGCC, a number of these wells are located not more than a mile away from the Florida River Compression Facility. At least four coalbed methane wells are located in Section 25 of Township 34 N, Range 9 West. *See*, Exhibit 2 at 83.[1] A number of others are located within two miles of the Florida River Compression Facility, including four wells in Section 24, T34N, R9W, six wells in Section 23, T34N, R9W, five wells in Section 26, T34N, R9W, four wells in Section 36, T34N, R9W, among many others. *See*, Exhibit 2 at 81-84. The best information we have available to us shows that there are hundreds, if not more than 1,000, coalbed methane wells in close proximity to the Florida River Compression Facility, and that most, if not all, of these wells, or pollutant emitting activities, are interrelated with the Florida River Compression Facility n in that they support operations of the Compression Facility.

Additionally, BP's natural gas wells are part of the same major industrial grouping as the Florida River Compression Facility. According to the Standard Industrial Classification Manual, producing natural gas wells fall under Major Group 13, or "Oil and Gas Extraction."[2] The draft Title V permit for the Florida River Compression Facility identifies the facility as falling under SIC "1311." Draft Title V permit at 7.

Finally, BP's natural gas wells are considered adjacent for PSD purposes. These pollutant emitting activities are located entirely within La Plata County, Colorado. Although the EPA has noted that the distance associated with "adjacent" "must be considered on a case-by-

[1] These coalbed methane wells have API identification numbers of 05-067-08728, 05-067-07421, 05-067-06816, and 05-067-08377.

[2] *See*, http://www.osha.gov/oshstats/sicser.html.

case basis," the agency has noted that two pollutant emitting activities that are interdependent operations under common control can be considered adjacent when they are upwards of 20 miles apart or even greater. *See*, Memo from Richard R. Long, Region VIII Dir., Air and Radiation Program to Lynn Menlove, Manager, New Source Review Section, Utah Division of Air Quality (May 21, 1998), attached as **Exhibit 5**. EPA noted that in relation to two interdependent facilities in Utah 21.5 miles apart that, "the lengthy distance between the facilities 'is not an overriding factor that would prevent them from being considered a single source.'" *Id.* at 2. The fact that BP's producing coalbed methane wells are all located primarily within La Plata County strongly indicates these pollutant emitting activities are adjacent to the Florida River Compression Facility for PSD purposes. At the least, the best available information shows that there are many wells less than 21.5 miles away from the Florida River Compression Facility.

Together with the Florida River Compression Facility, the coalbed methane wells that supply the Facility with natural gas comprise a single source under PSD. The natural gas wells are pollutant emitting activities, are adjacent to the Florida River Compression Facility, are interrelated with the Florida River Compression Facility, belong to the same major industrial grouping, and are under common control or ownership by BP. Under the CAA, the Florida River Compression Facility and the coalbed methane wells that supply the Facility must be aggregated together and considered a single source to assure compliance with PSD in order for the Title V permit to be legally valid.

2. *BP's Wolf Point Compressor Station*

In addition to BP's producing coalbed methane wells, BP's Wolf Point Compressor Station also must be considered a single source under PSD to ensure compliance with Title V and PSD requirements.

According to the draft Title V permit for the Wolf Point Compressor Station, the Compressor Station directly provides coalbed methane gas to the Florida River Compression Facility. The draft Title V permit states:

> Upon entering the compressor station, the gas first passes through an inlet separator vessel to remove any free liquids in the gas stream by gravity. The gas then passes to a filter vessel, which serves to filter out any solids such as coal dust in the gas. The gas is then compressed and finally passes through an outlet coalescer vessel which removes any entrained droplets of lubricating oil before being metered and sent to the BP Florida River Compressor Facility for further processing.

Draft Title V Permit for the Wolf Point Compressor Station, Permit Number V-SU-0034-07.00, attached as **Exhibit 6**. Thus, it appears that there is no question that the Wolf Point Compressor Station is interrelated and adjacent to the Florida River Compression Facility. Indeed, the Wolf Point Compressor Station directly supports operations at the Florida River Compression Facility, providing pretreated coalbed methane gas for further processing.

There is also no question that the Wolf Point Compressor Station is a pollutant emitting activity. As the Draft Statement of Basis for the Draft Wolf Point Compressor Station Title V permit discloses, the facility has a potential to emit 83.26 tons of NOx, 180.14 tons of carbon

monoxide, 54.45 tons of VOCs, among other pollutants, on an annual basis. *See*, Draft Statement of Basis for Permit No. V-SU-0034-07.00, attached as **Exhibit 7**.

Additionally, the Wolf Point Compressor Station is a part of the same major industrial grouping as the Florida River Compression Facility. According to the Draft Title V permit for the Wolf Point Compressor Station, the facility falls under Standard Industrial Classification Code "1311." Exhibit 6 at 1. The Wolf Point Compressor Station therefore has the same SIC code as the Florida River Compression Facility.

Together with the Florida River Compression Facility, the Wolf Point Compressor Station, which supplies the Florida River Compression Facility with natural gas, comprise a single source under PSD. The Wolf Point Compressor Station is a pollutant emitting activity, it is adjacent to the Florida River Compression Facility, is clearly interrelated with the Florida River Compression Facility, belongs to the same major industrial grouping, and is under common control or ownership by BP. Under the CAA, the Florida River Compression Facility and the Wolf Point Compressor Station must be aggregated together and considered a single source to assure compliance with PSD in order for the Title V permit to be legally valid.

B. The EPA Must Consider Emissions form Adjacent and Interrelated Pollutant Emitting Activities, including BP America's Coalbed Methane Wells and the Wolf Point Compressor Station to Assure Title V Compliance

The failure of the EPA to consider and address emissions from interrelated and adjacent BP coalbed methane wells and the Wolf Point Compressor Station, which all supply coalbed methane gas to the Florida River Compression Facility, further renders the draft Title V permit to be in violation of Title V regulations at 40 CFR § 71.

Title V regulations at 40 CFR § 71 explicitly require all adjacent pollutant emitting activities under common control and belonging to a single major industrial grouping be considered as a single source for Title V permitting purposes. In fact, the definition of a "major source" under 40 CFR § 71.2 mirrors the definition of a "major source" found at 40 CFR § 52.21.

In relation to oil and gas developments, such as the Florida River Compression Facility and the coalbed methane wells and compressor stations that supply the Facility, the EPA has explicitly stated that oil and gas pollutant emitting activities cannot be piecemealed in relation to Title V permitting of major sources. In its proposed interim approval of the state of Oklahoma's operating permit program, the EPA stated, "Nonaggregation of oil and gas units is provided only for the emission of hazardous air pollutants in the Federal rule. 40 CFR 70.2 requires **all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping to be considered as the same source.**" 60 Fed. Reg. 13088-13095 (emphasis added).

The EPA itself has held that natural gas compressor stations and their associated wells must be considered together as a single source for Title V purposes. In a 1999 memo, the EPA stated:

In the Code of Federal Regulations at 40 CFR 71.2 the definition of "major source" states, in part:

> 'Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping.....'

We interpret this to mean that each compressor station with its associated emitting units (e.g. compressor engines, wells, pumps, dehydrators, storage and transmission tanks, etc...) comprises a 'group of stationary sources' and would be considered a single source for purposes of determining Title V applicability.

Letter from Richard R. Long, Region VIII Director, Air and Radiation Program, to Jack Vaughn, EnerVest San Juan Operating Co. (July 8, 1999), attached as **Exhibit 8**. The EPA's position is clearly applicable in the case of the Florida River Compression Facility, meaning the EPA is required to issue a Title V permit for the Compression Facility together with BP's coalbed methane wells and the Wolf Point Compressor Station as a single source to ensure compliance with 40 CFR § 71.6.

II. The EPA Cannot Rely on the 2007 Wehrum Memo When Permitting the Florida River Compression Facility

We understand the EPA may be inclined to rely on a flawed policy guidance memo issued by former political appointee and EPA Assistant Administrator, William L. Wehrum (hereafter "Wehrum memo") when permitting the Florida River Compression Facility. This memo claims to provide guidance for determining if and how to aggregate pollutant emitting activities related to oil and gas operations under New Source Review ("NSR") and Title V permitting programs. We respectfully submit that this guidance memo inappropriately subverts the plain language of federal NSR and Title V regulations and that it would be inappropriate for the EPA to rely on this memo. What's more, the memo was illegally promulgated without prior rulemaking, in violation of the Administrative Procedures Act ("APA").

1. The Wehrum Memo is Substanively Flawed

Indeed, the Wehrum memo suffers from two major flaws. To begin with, it inappropriately conflates Section 112 of the Clean Air Act, which addresses the regulation of hazardous air pollutants, with the NSR and Title V permitting programs, which are set forth under Sections 160, et seq., and 501, et seq., of the Clean Air Act, respectively. Section 112(n)(4)(A) contains a specific provision that prohibits aggregating interrelated oil and gas facilities when assessing whether a facility is a major source of hazardous air pollutants. In his memo, Wehrum advises permitting authorities, such as the EPA, to "look to the Section 112 approach of segregating" oil and gas operations under the NSR and Title V permitting programs. Wehrum Memo at 4. While Wehrum's advice is well and good for decisions made under

Section 112, it is ill-advice for permitting authorities carrying out the NSR and Title V permitting programs.

Secondly, the Wehrum memo defies nearly three decades of EPA policy and guidance making clear that the determination of whether to aggregate pollutant emitting activities is largely dependent upon the "common sense" notion of a source. This "notion," first enumerated by the EPA in its 1980 regulations implementing the Prevention of Significant Deterioration ("PSD") program (42 Fed. Reg. 52695), means that two or more facilities with a functional interrelationship, such as a support facility to a larger plant or factory, should be considered together a single source of air pollution for NSR and Title V permitting purposes—irrespective of the distance between the facilities.

The Wehrum memo implicitly rejects this long-held means of assessing whether or not to aggregate pollutant emitting activities under NSR and Title V. Indeed, Wehrum does not even address whether two or more oil and gas operations may have a functional interrelationship, but rather simply asserts that the concept of "proximity," or the "physical distance between two activities," should be the sole factor in determining whether to aggregate. Wehrum goes on to assert that permitting authorities should only aggregate two or more oil and gas operations "if they are physically adjacent, or if they are separated by no more than a short distance (e.g. across a highway, separated by a city block or some similar distance)." Wehrum Memo at 4.

While the EPA has recognized that distance between two or more facilities may be a factor in determining whether or not to aggregate pollutant emitting activities, the agency has never taken the position that distance should be the sole determining factor. For example, in response to a request for guidance from the State of Utah, EPA Region 8 stated:

> [A]ny evaluation of what is "adjacent" must relate to the guiding principle of a common sense notion of "source." (The phrase "common sense notion" appears on page 52695 of the August 7, 1980 PSD preamble, with regard to how to define "source.") Hence, a determination of "adjacent" should include an evaluation of whether the distance between two facilities is sufficiently small that it enables them to operate as a single "source."

Exhibit 5 at 2.[3] The EPA has long held that "the distance associated with 'adjacent' must be considered on a case-by-case basis." *Id.* at 1.[4] This was firmly noted in the preamble to the

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[3] *See also*:

Letter from Richard R. Long, Region VIII Director, Air Program, to Lynn R. Menlove, Manager, New Source Review Section, Division of Air Quality, Utah Department of Environmental Quality (August 8, 1997) (stating, "To our general knowledge, previous determinations, which have been made by EPA and states, have always determined that activities which support the primary activities of a source are considered to be part of the sources to which they provide support. Distance 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."), attached as **Exhibit 9**.

Letter from Richard R. Long, Region VIII Director, Air and Radiation Program, to Jeffrey L. Ingerson, Senior Environmental Specialist, Questar Gas Management Company (August 7, 1998) (stating, "Distance between 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."), attached as **Exhibit 10**.

agency's 1980 PSD regulations, which state that "EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations." 42 Fed. Reg. 52676.

Despite the EPA's long held position, the Wehrum memo not only asserts that permitting authorities should only assess distance in determining whether to aggregate oil and gas operations as single sources, but clearly directs permitting authorities to reject considering adjacency on a "case-by-case" basis in relation to oil and gas operations. Indeed, the Wehrum memo specifically directs permitting authorities to consider "adjacency" of oil and gas operations only in relation to proximity. Amazingly, the Wehrum memo does exactly what EPA has long held it could not do: say "precisely" how far apart activities must be in order to be treated as separate sources under NSR.

Letter from Richard R. Long, Region VIII Director, Air and Radiation Program, to Dennis Myers, Construction Permit Unit Leader, Stationary Sources Program, Air Pollution Control Division, Colorado Department of Public Health and Environment (April 20, 1999) (stating, "whether two facilities are 'adjacent' is based on the 'common sense' notion of a sources and the functional interrelationship of the facilities, and is not simply a matter of the physical distance between two facilities."), attached as **Exhibit 11**.

[4] *See also*:

Memo from Steven Rothblatt, Region V Chief, Air Programs Branch to Edward E. Reich, Director, Stationary Source Enforcement Division (June 8, 1981) (stating that EPA adjacency determinations are based on a case-by-case basis), attached as **Exhibit 12**.

Memo from William B. Hathaway, Region VI Director, Air, Pesticides and Toxics Division to Allen Eli Bell, Executive Director, Texas Air Control Board (November 3, 1986) (stating "For cases where sources are not located on contiguous or adjacent properties, EPA cannot say precisely how far apart the activities must be in order to be treated separately. EPA can only answer that question through case-by-case determinations[.]", attached as **Exhibit 13**.

Memo from Robert G. Kellam, OAQPS Acting Director, Information Transfer and Program Integration to Richard R. Long, Region VIII Director, Air Program (August 27, 1996) (stating "Whether facilities are contiguous or adjacent is determined on a case-by-case basis, based on the relationship between the facilities."), attached as **Exhibit 14**.

Letter from Joan Cabreza, Region X Permits Team Leader, Office of Air Quality to Andy Ginsberg, Manager, Program Operations Section, Air Quality Division, Oregon Department of Environmental Quality (August 7, 1997) (stating, "The guiding principle behind this guidance is the common sense notion of plant. That 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."), attached as **Exhibit 15**.

Letter from Steven C. Riva, Region II Chief, Permitting Section, Air Programs Branch to John T. Higgins, Director, Bureau of Application Review and Permitting, Division of Air Resources, New York State Department of Environmental Conservation (October 11, 2000) (stating "there is no bright line, numerical standard for determining how far apart activities may be and still be considered 'contiguous' or 'adjacent.' As explained in the preamble to the August 7, 1980 PSD rules, such a decision must be made on a case-by-case basis."), attached as **Exhibit 16**.

It is true that the EPA is free to change its policy positions, but the agency must at least articulate a rationale, particularly when, as in this case, the policy represents a 180 degree shift in position. In the case of the Wehrum memo, the only reason given for rejecting nearly 30 years of consistent EPA policy is "the diverse nature of oil and gas activities." Wehrum Memo at 3. The only piece of information that the Wehrum memo cites to support this rationale is the fact that Section 112 of the Clean Air Act prohibits aggregating interrelated oil and gas facilities when assessing whether a facility is a major source of hazardous air pollutants. Once again, it is inappropriate to assume that since Congress clearly specified exemptions under Section 112 that Congress intended similar exemptions to apply under other programs of the Clean Air Act. Furthermore, it is inappropriate to assume that since Congress recognized the oil and gas industry was unique in the context of Section 112 hazardous air pollutant regulation requirements, Congress similarly recognized the oil and gas industry was unique in the context of NSR and Title V regulatory requirements.

Notwithstanding the claimed "diverse" nature of oil and gas activities, it has never prevented the EPA from determining that oil and gas operations should be aggregated under the NSR and Title V permitting programs, notwithstanding the fact that such operations were not in close proximity to each other. For example, in a 1999 memo, the EPA concluded that:

> [E]ach compressor station with its associated emitting units (e.g. compressor engines, wells, pumps, dehydrators, storage and transmission tanks, etc…) comprises a 'group of stationary sources' and would be considered a single source for purposes of determining Title V applicability.

Exhibit 8.[5] In these situations, the EPA has made clear that, while distance is a consideration, the interrelatedness of pollutant emitting activities is key to determining whether to aggregate oil and gas operations. As the EPA has further directed, natural gas compressor stations and their associated emitting units, including wells, should be aggregated as a single source.[6]

Notably, the EPA has issued these directives related to the aggregation of oil and gas operations under the NSR and Title V permitting programs notwithstanding the claimed "diverse" nature of the activities. Why is this? Because the statutory provisions of the Clean Air Act make clear that under the NSR and Title V permitting apply equally to all industry sectors and make no exceptions for oil and gas.[7]

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[5] *See also*:

Letter from Richard R. Long, Region VIII Director, Air and Radiation Program to Lee Ann Elsom, Environmental Coordinator, Citation Oil and Gas Corporation (December 9, 1999), attached as **Exhibit 17**.

[6] Although the referenced EPA memos address permitting under Title V of the Clean Air Act, the direction is equally applicable to NSR permitting requirements given that the definition of "major source" under both Title V and NSR regulations are exactly the same.

[7] Under the Clean Air Act, the definition of "major stationary source" includes "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant" except as otherwise "expressly provided" by the Act. Because the Clean Air Act does not expressly provide an exemption to oil and gas operations under Title V and NSR permitting requirements, regulations addressing both Title V and NSR permitting requirements must apply to oil and gas operations as equally as any other industrial sector.

At the least, the EPA has made clear that it is incumbent upon permitting authorities to understand the full nature of oil and gas operations and their potentially interrelated pollutant emitting activities before issuing Title V and/or NSR permits. In a 2004 letter to the Colorado Air Pollution Control Division related to permitting of a natural gas processing plant, the EPA recommended that:

> [A]n analysis of how natural gas is transported to and from the Rifle [natural gas processing] Station should be conducted. The role the Rifle Station plays in the final product of any natural gas facility or facilities providing this compression should be established. Once this information is obtained, a factual and legal analysis should be conducted to determine if the Rifle Station is operating independently, or whether it should be considered a single stationary source with other pollutant emitting activities.

Letter from Callie A. Videtich, Region VIII Leader, Air Technical Assistance Unit, to Roland Hea, Unit Leader, Construction Permit Program, Air Pollution Control Division, Department of Public Health and Environment (October 18, 2004), attached as **Exhibit 18**. The EPA continued, "[W]e recommend that the Division completely analyze whether the Rifle [natural gas processing] Station is truly operating independently as a single stationary source before establishing synthetic minor limits for the Title V program." *Id.*

Accordingly, as the EPA moves to analyze whether or not to aggregate interrelated pollutant emitting activities with the Florida River Compression Facility, the agency must engage in a thorough and in-depth assessment that does not simply rely on the Wehrum memo, but addresses the extent to which the Florida River compression Facility is operating independently. The EPA must conduct a factual and legal analysis that assesses whether coalbed methane wells and the Wolf Point Compressor Station are connected to the Florida River Compression Facility by pipelines are interrelated pollutant emitting activities that should be aggregated with the Compression Facility as a single source.

2. The Wehrum Memo is Procedurally Flawed

Procedurally, the Wehrum memo is flawed because it has not followed proper rulemaking procedures in accordance with the APA, 5 USC § 553. As noted earlier in these comments, the Wehrum memo is substantive in nature in that it changes nearly 30 years of established EPA policy. Furthermore, although the Wehrum memo claims to provide only "guidance," to permitting authorities, the guidance is in fact substantive direction that permitting authorities are now forced to adhere by. The memo is much more than a general statement of policy, but rather establishes a new regulatory definition that dramatically changes the administration of NSR and Title V permitting programs. Finally, the memo itself is substantive in nature in that it does not provide clarification with regards to an existing statutory or regulatory definition, but rather provides a new definition of what constitutes a major source under NSR and Title V.

Before the Wehrum memo can have any semblance of validity, it must be subject to public notice and comment requirements under 5 USC § 553. The EPA therefore cannot rely on the memo to respond to our comments unless and until it has been subject to proper rulemaking procedures under the APA.

Thank you for the opportunity to comment. Please keep us apprised of any future actions related to the Draft Title V permit for BP's Florida River Compression Facility. Thank you.

Sincerely,

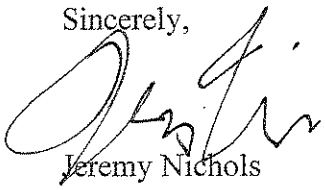

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TABLE OF EXHIBITS

1. Greenhill, J., "BP accounts for 55% of coal-bed gas production," *Durango Herald* (February 23, 2003);

2. Spreadsheet listing all of BP producing wells in La Plata County;

3. Russell, J. and A. Pollack, "Oil and Gas Emission Inventories for the Western States," Final Report prepared for Western Governor's Association (December 27, 2005);

4. Bar-Ilan, A., R. Friesen, A. Pollack, and A. Hoats, "WRAP Area Source Emissions Inventory Projections and Control Strategy Evaluation, Phase II," Final Report Prepared for Western Governor's Association (September 2007);

5. Memo from Richard R. Long, Region VIII Dir., Air and Radiation Program to Lynn Menlove, Manager, New Source Review Section, Utah Division of Air Quality (May 21, 1998);

6. Draft Title V Permit for the Wolf Point Compressor Station, Permit Number V-SU-0034-07.00;

7. Draft Statement of Basis for Permit No. V-SU-0034-07.00;

8. Letter from Richard R. Long, Region VIII Director, Air and Radiation Program, to Jack Vaughn, EnerVest San Juan Operating Co. (July 8, 1999);

9. Letter from Richard R. Long, Region VIII Director, Air Program, to Lynn R. Menlove, Manager, New Source Review Section, Division of Air Quality, Utah Department of Environmental Quality (August 8, 1997);

10. Letter from Richard R. Long, Region VIII Director, Air and Radiation Program, to Jeffrey L. Ingerson, Senior Environmental Specialist, Questar Gas Management Company (August 7, 1998);

11. Letter from Richard R. Long, Region VIII Director, Air and Radiation Program, to Dennis Myers, Construction Permit Unit Leader, Stationary Sources Program, Air Pollution Control Division, Colorado Department of Public Health and Environment (April 20, 1999);

12. Memo from Steven Rothblatt, Region V Chief, Air Programs Branch to Edward E. Reich, Director, Stationary Source Enforcement Division (June 8, 1981);

13. Memo from William B. Hathaway, Region VI Director, Air, Pesticides and Toxics Division to Allen Eli Bell, Executive Director, Texas Air Control Board (November 3, 1986);

14. Memo from Robert G. Kellam, OAQPS Acting Director, Information Transfer and Program Integration to Richard R. Long, Region VIII Director, Air Program (August 27, 1996);

15. Letter from Joan Cabreza, Region X Permits Team Leader, Office of Air Quality to Andy Ginsberg, Manager, Program Operations Section, Air Quality Division, Oregon Department of Environmental Quality (August 7, 1997);

16. Letter from Steven C. Riva, Region II Chief, Permitting Section, Air Programs Branch to John T. Higgins, Director, Bureau of Application Review and Permitting, Division of Air Resources, New York State Department of Environmental Conservation (October 11, 2000);

17. Letter from Richard R. Long, Region VIII Director, Air and Radiation Program to Lee Ann Elsom, Environmental Coordinator, Citation Oil and Gas Corporation (December 9, 1999);

18. Letter from Callie A. Videtich, Region VIII Leader, Air Technical Assistance Unit, to Roland Hea, Unit Leader, Construction Permit Program, Air Pollution Control Division, Department of Public Health and Environment (October 18, 2004).

EXHIBIT 1

Greenhill, J., "BP accounts for 55% of coal-bed gas production," *Durango Herald* (February 23, 2003).

THE DURANGO HERALD

BP accounts for 55% of coal-bed gas production

February 23, 2003

By Jim Greenhill
Herald Staff Writer

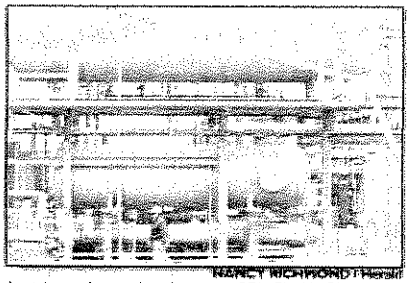
NANCY RICHMOND / Herald

Craig Mersem, BP production foreman, at the Sossoman Gas Unit No. 1, Brook Jones, a BP lift specialist, suggested student involvement in decorating the gas well next to Bayfield High School. Art students held a contest to decorate the well to reflect school spirit.

The lion's share of coal-bed methane gas production in La Plata County comes from one company: BP.

Although BP controls only about 900 of the county's 2,200 producing gas wells, the company accounts for 55 percent of the county's coal-bed methane gas production, with the Southern Ute Indian Tribe's Red Willow a distant second, according to BP statistics.

The company also is the largest net gas producer in the San Juan Basin, which covers both La Plata County gas fields and those across the border in San Juan County, N.M.

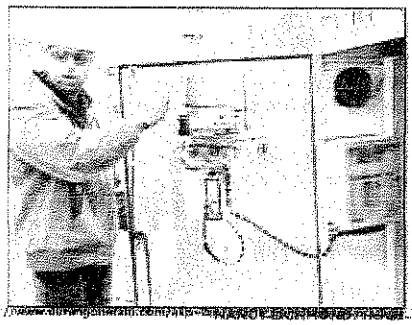


NANCY RICHMOND / Herald

A worker walks past equipment at BP's Florida River Facility, where coal-bed methane gas from La Plata County wells gets its final cleaning and is delivered to customers through one of three natural pipelines.

"Our production in La Plata County right here in this office amounts to 20 percent of BP's North American hydrocarbon production, so it's a significant business," said Jeff Spitler, Durango operations manager.

The company has been in the San Juan Basin since the 1940s, when it was called Amoco. A series of mergers and acquisitions resulted in the company now known as BP America Production Co. The company's San Juan Basin interests include the old Amoco, Tenneco and Vastar operations.

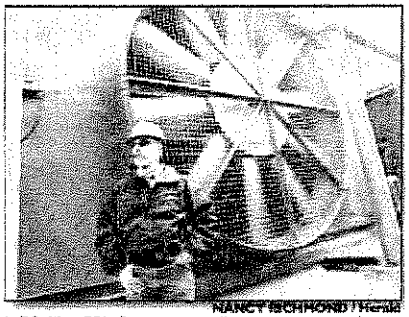


BP's San Juan Performance Unit employs 125 people in Durango, 100 in Farmington and 80 supporting employees in the parent company's Houston, Texas, office. The company operates 3,175 gas wells across the San Juan Basin and owns an interest in an additional 2,250 wells operated by other producers. BP works with 40 owners who have working interests in San Juan Basin gas wells and 30,000 royalty owners.

The 125 Durango employees share a $7.3 million payroll, and the company provides work for

NANCY RICHMOND / Herald

Dave Knibbs, BP water team leader, shows equipment at the company's Los Pinos Disposal Facility that enables BP to monitor its operations from one location in southeast La Plata County. If they need to, operators can shut down any of the company's equipment in La Plata County with the click of a mouse.



NANCY RICHMOND / Herald

Jeff Spitler, BP's Durango operations manager, stands near the cooling fan for one of the four gas-fired compressors at the Dry Creek Compressor Station. The V12 engines produce 1,200 horsepower each, and are used to increase gas pipeline pressure from 50 pounds to 350 pounds and remove some water from gas piped in from about 100 surrounding wells.

payroll, and the company provides work for between 100 and 300 contract employees, depending on what operations it is conducting.

"We produce about 675 million cubic feet of gas a day (in La Plata County)," Spitler said. "Our daily gas production exceeds the fuel consumption of the state of South Carolina."

BP is two years into a program to drill infill gas wells allowed when the Colorado Oil and Gas Conservation Commission said gas wells in designated areas of La Plata County could be drilled every 160 acres instead of every 320 acres. The company expects to drill 380 new wells in a five or six year period; it has completed 130 so far.

What BP gets from a well is a mixture of coal-bed methane gas and water. The mixture is separated at the well head, and the water is either piped or trucked to reinjection sites where BP pumps it back into the ground 7,000 to 8,000 feet below the surface.

"We're required to inject (produced water)," said David Knibbs, BP water team leader. An exception was made in the Missionary Ridge Fire, when BP was given a permit that allowed it to donate produced water for firefighting efforts.

Gas produced from a well is sent by pipeline to a compressor station, such as the one at Dry Creek, near Bayfield, where gas is gathered from some 100 wells, more water removed and pipeline pressure raised from 50 pounds to 350 pounds by heavily soundproofed massive gas-fired compressors.

From a compressor station, the gas is piped to BP's Florida River Facility in southeast La Plata County.

The Florida River plant removes even more water and carbon dioxide and increases pipeline pressure to up to 800 pounds per square inch. The gas is delivered to buyers through the El Paso Natural Gas, Northwest or TransWestern pipelines. Most of it goes to power California electrical generating plants, not for local use.

BP and other gas producing companies are not always popular with coal-bed methane production opponents.

But company representatives say BP puts a high priority on the environment and has been making strides in improving gas production techniques.

One example: The Everett Jones No. 1 and No. 2 wells in the Meadows subdivision on Florida Mesa.

Instead of drilling a second well on a new well pad, BP used directional drilling – drilling at an angle instead of straight down – to enable the company to add a new well at an existing pad.

The company also made the well equipment low profile, painted equipment in so-called camouflage colors – Sherwin Williams calls the colors BP environmental green and BP environmental brown – and runs the equipment with quiet electric engines.

The well pad is surrounded with a berm and trees to further reduce the visual impact.

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