EXHIBIT 1

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF Anadarko Petroleum Corporation, Frederick Compressor Station Permit Number: 95OPWE035 Issued by the Colorado Department of Public Health and Environment, Air Pollution Control Division	ORDER RESPONDING TO PETITIONERS' REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF A STATE OPERATING PERMIT Petition Number: VIII-2010-4

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

INTRODUCTION

The United States Environmental Protection Agency ("EPA") received a petition on November 5, 2010, from Wild Earth Guardians ("WEG" or "Petitioner"). In its petition, WEG requests that EPA object, pursuant to section 505(b)(2) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7661d, to the July 14, 2010, response of the Colorado Department of Public Health and Environment, Air Pollution Control Division (CDPHE) to the October 8, 2009 Order by EPA objecting to the issuance of the renewed title V permit for Anadarko Petroleum Corporation's (Anadarko's) Frederick Compressor Station, Permit Number 95OPWE035 issued on January 1, 2007.[1]

Specifically, WEG objects that CDPHE's response failed to appropriately assess whether oil and gas wells and other pollutant emitting activities connected with the Frederick Compressor Station should be aggregated together as a single stationary source for PSD and title V permitting purposes, to ensure compliance with applicable CAA requirements. WEG alleges that CDPHE's failure to aggregate the Frederick Compressor

[1] As is explained further in the Background section of this Order, WEG's November 5th petition is the third petition filed by WEG or a predecessor organization concerning the title V permit for Anadarko's Frederick Compressor Station (petition III). The first petition was filed on December 29, 2006 (petition I) and the second petition was filed on August 14, 2009 (petition II). EPA responded to those petitions on February 7, 2008, and October 8, 2009, respectively.

EXHIBIT 1

Station with other oil and gas wells and associated equipment that are connected with the compressor station is still unsupported and contrary to regulation and EPA guidance. WEG also alleges that CDPHE's analysis contained in its July 14, 2010, response is not legally adequate and is devoid of objectivity.

EPA has reviewed the allegations in petition III pursuant to the standards set forth by section 505(b)(2) of the Act, which provides that a petition generally may be based only on objections to the permit that were raised with reasonable specificity during the comment period provided by the permitting agency and places the burden on Petitioner to "demonstrate to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of Part 70. *See also* 40 CFR § 70.8(c)(1) and (d); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002).

In reviewing the various allegations made in the petition, EPA considered, among other things: Petition III, including exhibits; EPA's October 8, 2009 Order granting petition II; CDPHE's July 14, 2010, response to the October 8, 2009 Order; supplemental information provided by CDPHE in a letter dated December 27, 2010; and the information reviewed in responding to petition I and petition II.

Based on a review of all the information before me, I deny Petitioner's request that EPA object to the CDPHE's response of July 14, 2010, concerning the Frederick Compressor Station title V permit, for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted interim approval to the title V operating permit program submitted by the state of Colorado effective February 23, 1995. 60 Fed. Reg. 4563 (Jan. 24, 1995); 40 CFR part 70, Appendix A. *See also* 61 Fed. Reg. 56367 (Oct. 31, 1996) (revising interim approval). Effective October 16, 2000, EPA granted full approval to Colorado's title V operating permit program. 65 Fed. Reg. 49919 (Aug. 16, 2000).

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act, including requirements of the applicable State Implementation Plan (SIP). *See* CAA §§ 502(a) and 504(a)., 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with applicable requirements. *See* 57 Fed. Reg. 32250, 32251 (July 21, 1992) (EPA final action promulgating part 70 rule).

One purpose of the title V program is to "enable the source, states, EPA and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the title V operating permits program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under section 505(a), 42 U.S.C. § 7661d(a), of the CAA and the relevant implementing regulations (40 C.F.R. § 70.8(a)), states are required to submit each proposed title V operating permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit, if it is determined not to be in compliance with applicable requirements or the requirements under title V. 40 C.F.R. § 70.8(c).

If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act provides that any person may petition the Administrator, within 60 days of expiration of EPA's 45-day review period, to object to the permit. 42 U.S.C. § 7661d(b)(2), *see also* 40 C.F.R. § 70.8(d). The petition must "be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).

In response to such a petition, the CAA requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the CAA. 42 U.S.C. § 7661d(b)(2). *See also* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group (NYPIRG) v. Whitman*, 321 F.3d 316,333 n. 11 (2nd Cir. 2003).

Under section 505(b)(2), the burden is on the petitioner to make the required demonstration to EPA. *Sierra Club v. Johnson*, 541 F.3d. 1257, 1266-1267 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677-678 (7th Cir. 2008); *Sierra Club v. EPA*, 557 F.3d 401, 406 (6th Cir. 2009) (discussing the burden of proof in title V petitions); *see also NYPIRG*, 321 F.3d at 333 n. 11.

BACKGROUND

The Facility

The Frederick Compressor Station is a Natural Gas Gathering and Compression facility as defined under Standard Industrial Classification (SIC) 1311. Gas is compressed to specification for transmission to sales pipelines using three internal combustion engines to power compressor units. Other activities conducted on site

include dehydration of the gas through contact with triethylene glycol, and gravity separation of condensates. The dehydrator is equipped with a thermal oxidizer unit to control volatile organic compound (VOC) emissions. Emissions from the tanks located onsite are controlled with an air-assist vertical flare. Fugitive VOC emissions also result from equipment leaks.

The Permit

On January 1, 2007, CDPHE renewed the Frederick Compressor Station operating permit pursuant to title V of the Act, the federal implementing regulations at 40 CFR Part 70, and the Colorado State implementing regulations at Regulation No. 3 part C. Petitioner commented during the public comment period, raising concerns with the draft operating permit. At the time of permit renewal, the Frederick Compressor Station was owned by Kerr-McGee Gathering, LLC. Kerr-McGee Gathering, LLC is now a wholly-owned subsidiary of Anadarko.[2]

On January 3, 2007, WEG filed its first petition (petition I) objecting to the renewal. Petition I alleged that the Frederick Compressor Station permit does not comply with 40 CFR part 70 in that: (1) the title V permit failed to assure compliance with Prevention of Significant Deterioration ("PSD") requirements because CDPHE failed to consider whether emissions from adjacent and interrelated pollutant emitting activities triggered PSD review, specifically Anadarko owned natural gas wells that supply natural gas to the Frederick Compressor Station; (2) in light of CDPHE's failure to consider PSD compliance, it is likely that the title V permit must include a compliance schedule; (3) CDPHE failed to respond to significant comments submitted by Petitioner during the title V public comment period; and (4) CDPHE failed to consider adjacent and interrelated pollutant emitting activities in defining the "source" subject to title V.

On February 7, 2008, EPA issued an Order granting petition I. EPA determined that CDPHE had failed to adequately respond to comments from WEG regarding the need to aggregate potentially connected sources of air pollution as a single source of air pollution. EPA directed CDPHE to respond to Petitioner's comments and, as necessary, supplement the permit record and make appropriate changes to the permit.

On April 29, 2008, CDPHE submitted the Technical Review Document (TRD) Addendum as its full response to EPA's February 7, 2008 Order. On August 1, 2008, EPA Region 8 informed WEG by letter of WEG's additional opportunity to petition in light of the TRD Addendum. WEG did so on August 14, 2008.

The August 14, 2008 petition (petition II) alleged that CDPHE's response to the February 7, 2008 Order – the TRD Addendum, together with CPDHE's determination that "no changes to the [title V] permit" are warranted – was inconsistent with the CAA.

[2] Kerr-McGee Gathering is one of several "midstream" companies operating in the Wattenburg Field. Midstream companies receive gas from wells, but do not control operation of the wells. See pages 3, 29-30 of CDPHE's July 14, 2010, response.

Petitioner argued that the permit continued to fail to ensure compliance with all applicable requirements, including PSD, title V permitting requirements, and the Colorado SIP. Petitioner requested that EPA object, pursuant to section 505(b)(2) of the Act, to the renewal of Anadarko's Frederick Compressor Station permit.

On October 8, 2009, EPA issued an Order granting petition II. EPA determined that CDPHE had failed to provide an adequate basis in the permit record for its determination of the source for PSD and title V purposes. CDPHE was required to supplement the permit record and, as necessary, make appropriate changes to the permit. It was recommended that CDPHE conduct a source determination analysis based on the three regulatory criteria laid out in PSD rules under the definition of "[b]uilding, structure, facility or installation" and ordered that CDPHE "establish a more thorough permit record" and "make any appropriate changes to the permit." While the Order recommended various factors that CDPHE could evaluate when assessing various emission sources in the Wattenberg gas field, it also recognized that CDPHE had the authority to request different or additional information in determining whether the various pollution emitting activities are contiguous or adjacent to, and under common control with, the Frederick Compressor Station.

On July 14, 2010, CDPHE submitted its response to EPA's October 8, 2009, Order, determining that after consideration of "all the facts, relevant applicability determinations, legal precedent, regulations and the [permitting] record...it is not appropriate to aggregate [the] Frederick Station with other emission sources in the Wattenberg Field." (Petitioner Exhibit 3 at 42). EPA advised Petitioner, in a letter dated October 18, 2010, that there was an opportunity to petition EPA to object to the July 14, 2010, response of CDPHE. Petitioner filed this petition on November 5, 2010.

ISSUES RAISED BY PETITIONER

Petitioner argues that CDPHE's position in its July 14, 2010, response, that aggregation is inappropriate, is unsupported and contrary to regulation and EPA guidance. Petitioner supports its position on the basis that: (1) EPA's prior aggregation determinations overwhelmingly demonstrate that oil and gas sources, and other similar sources, can be aggregated; (2) the pivotal factor in prior source determinations was whether the pollutant emitting activities were physically connected, such as with a pipeline or not, and that EPA's prior aggregation determinations, as well as PSD and title V regulations, do not require complete and exclusive interdependence between sources for aggregation; and (3) the prohibition on aggregation of oil and gas sources in CAA section 112 demonstrates Congress's intent that oil and gas sources be aggregated, where appropriate, for PSD and title V purposes. Discussion of each of these three points follows below.

I. The Title V Permit Fails to Apply Prior EPA Aggregation Statements

Petitioner's claim: Petitioner argues that the Administrator must object to the Frederick Compressor Station title V permit and CDPHE's response to the extent it fails to appropriately apply EPA guidance in justifying its source determination under PSD and title V. Petitioner cites several examples of prior agency statements where oil and gas sources were aggregated and a few where EPA found aggregation to be inappropriate. In particular, Petitioner asserts that CDPHE made no effort to apply prior EPA guidance in assessing the adjacency and/or contiguousness of the Frederick Compressor Stations with other pollutant emitting activities. Petition at 18.

The examples cited by Petitioner as prior statements regarding aggregation have been included by Petitioner as Exhibits 14, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25. These exhibits consist of the following:

Exhibit 14: Great Salt Lake Minerals (processing plant and brine pump station)
Exhibit 16: Citation Oil & Gas Corporation/Walker Hollow Unit (oil field)
Exhibit 17: EnerVest San Juan Operating Company (coal bed methane gathering compression stations)[3]
Exhibit 18: Valero Transmission Company (gas processing plant and gas transmission station)
Exhibit 19: Summit Petroleum Corporation/Mount Pleasant (gas field)
Exhibit 20: American Soda (commercial mine and soda ash processing plant)
Exhibit 21: Forest Oil/Kustatan Oil Production Facility and Osprey Oil Platform
Exhibit 22: ESCO Corporation/Main Plant metal casting & coating & Plant 3 metal casting
Exhibit 23: Shell Oil Company/Wilmington Refinery Complex; Wilmington & Dominguez Sections
Exhibit 24: Anheuser-Busch Brewery and Nutri-Turf Farm
Exhibit 25: General Motors Corporation/Fisher Body Paint & Oldsmobile Plant

EPA's response: Petitioner mischaracterizes some of these prior agency statements as "determinations," Petition at 14, since several of the exhibits referenced in the petition are actually recommendation letters from EPA to states, which provide EPA's assessment of how the specific facts in a particular permitting action could be evaluated in light of the regulatory criteria for the source determination, but leave the state permitting authority with the discretion to make the final source determination. Exhibits 14, 17, 20, 22 and 25. Additionally, while some of the prior agency statements relied upon by Petitioner were determinations (Exhibits 16, 18, 19, 21, 23 and 24), applicability determinations are made on a case-by-case basis and, therefore, reliance on

[3]The discussion of the concept of a "source" in the EnerVest San Juan Operating Company Letter (Petitioner's Exhibit 17) was not a "source" determination. It was intended to be a demonstration of the extent to which EPA would evaluate pollutant emitting activities for inclusion into the gas gathering compressor stations identified by the company. No detailed source analysis was performed and no source determination was made.

prior determinations alone does not provide an adequate justification for determining the source in a later permitting process with different facts.

Stationary source determinations are made on a case-by-case basis considering the foundational concepts provided in the CAA and EPA and state implementing regulations. The current regulatory definition of stationary source for purposes of major New Source Review (NSR) applicability was promulgated in 1980.[4] In its June 1979 opinion in *Alabama Power*, the D.C. Circuit Court of Appeals rejected the definition of a source in our 1978 regulations.[5] As we noted in the preamble to our 1980 final rules:

> ...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 a "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."[6]

We used these guiding principles from the Court's opinion, including the common sense notion of a plant, to develop the three regulatory criteria for determining when permitting authorities should consider two or more pollutant-emitting activities to be a single stationary source for purposes of the major NSR programs. A stationary source is any building, structure, facility, or installation, which emits, or may emit a regulated NSR pollutant. 40 C.F.R. §§ 51.165(a)(1)(i), 52.21(b)(5). A building, structure, facility, or installation is all of the pollutant-emitting activities which belong to the same industrial grouping (i.e., have the same primary two-digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control).[7]

To be considered a stationary source for purposes of major NSR, the pollutant emitting activities must meet all three of the regulatory criteria. These same criteria were later adopted into the definition of stationary source in 40 CFR 70.2 for purposes of determining when two or more pollutant-emitting activities are considered a stationary source for purposes of the title V permitting program, and EPA was clear that the

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[4] 45 FR 52676 (August 7, 1980).

[5] *Alabama Power Company v. Costle*, 636 F.2d 323 (D.C. Circuit 1980) Hereafter referred to as *Alabama Power*.

[6] 45 FR 52694-5 (August 7, 1980).

[7] A building, structure, facility, or installation means 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) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial group if they belong to the same Major Group (i.e., which have the same primary two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing office stock numbers 4101-0065 and 003-005-00176-0, respectively. See 40 CFR 51.165(a)(1)(ii), 51.166(b)(6), 52.21(b)(6), and Section II.A.2 of Appendix S of 40 CFR Part 51.

language and application of the title V definition was to be consistent with the NSR definition contained in section 52.21. *See* 61 Fed. Reg. 34202, 34210 (July 1, 1996).

Guidance on source aggregation determinations under PSD and title V is provided in the September 22, 2009, Memorandum from Gina McCarthy, Assistant Administrator, Office of Air and Radiation, titled, *Withdrawal of Source Determination for Oil and Gas Industries (McCarthy Memo)*; available at:

http://www.epa.gov/region7/air/nsr/nsrmemos/oilgaswithdrawal.pdf).

For purposes of determining applicability of the PSD, nonattainment area NSR, and title V programs of the CAA, the McCarthy Memo states that permitting authorities should rely foremost on the three regulatory criteria for identifying emissions activities that belong to the same "building," "structure," "facility," or "installation." As stated above, these criteria are: whether the activities belong to the same industrial grouping (i.e., have the same primary two-digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). [*See* 40 C.F.R. §§ 70.2, 71.2, 63.2, 51.165(a)(1)(i)-(ii), 51.166(b)((5)-(6), and 52.21 (b)(6).]

The McCarthy Memo emphasized that whether to aggregate sources for purposes of PSD, NSR, and title V applicability is a case-by-case determination that represents highly fact-specific decisions. While recognizing that EPA has issued many source determinations in its own permitting actions and provided source determination guidance to other permitting authorities that might be informative in future permitting actions, the McCarthy Memo clearly stated that "no single determination can serve as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances." *Id.* at 2. Therefore, while the prior agency statements and determinations related to oil and gas activities and other similar sources may be instructive, they are not determinative in resolving the source determination issue for the Frederick Compressor Station, particularly where a state with independent permitting authority is making the determination and the prior agency statements had, as we discuss below, substantially different fact-specific circumstances than the Frederick Compressor Station determination.

Pertinent, fact-specific information for the Frederick Compressor Station determination was provided by CDPHE in its July 14, 2010, response to EPA's October 2009 petition Order. For example, the response provides the following information:

1. The Frederick Compressor Station, the oil and gas exploration and production wells, and associated equipment are considered to belong to the same industrial grouping; i.e., the same primary two-digit SIC code (Petitioner Exhibit 3 at 34);

2. Because Kerr-McGee Gathering and Kerr-McGee Oil & Gas Onshore (KMOGO)[8] are both wholly-owned subsidiaries of Anadarko, CDPHE considers that for purposes of this analysis, the oil and gas exploration and production facilities owned or controlled by KMOGO that are connected via pipeline to the Frederick Station are controlled by, or are entities under common control with, the same entity, Anadarko (Petitioner Exhibit 3 at 35);

   Conversely, pollutant-emitting sources, such as wells, condensate tanks or glycol dehydrators at the well head, that are owned and operated by a third party, are not considered by CDPHE to be under the common control of Kerr-McGee Gathering, and CDPHE has determined that it is not appropriate to consider them for possible inclusion in the Frederick Station, even if they would otherwise meet the other two parts of the test (i.e., the same two-digit SIC code and the contiguous or adjacent criteria) (Petitioner Exhibit 3 at 35);

3. The CDPHE emission point tracking database indicates that there is a network of approximately 24,000 wells with a "spider web" (Petitioner Exhibit 3 at 26) of gas gathering lines operated by many oil and gas exploration and production companies, condensate tanks, glycol dehydrators and gas gathering compressor stations operated by many gas gathering companies scattered over 2,000 square miles in the Wattenberg Field (Petitioner Exhibit 3 at 25, 26, 29, 37, 39);

4. The spacing and density of wells in the Wattenberg Field is regulated by the Colorado Oil and Gas Conservation Commission. Well locations can also be controlled by land agreements, access issues, geologic formations, terrain, and, in some situations, by federal or state land management agencies (Petitioner Exhibit 3 at 40);

5. The locations of wells surrounding the Frederick Station and their associated pollutant-emitting equipment are not chosen primarily because of their proximity to the station. The nearby wells and their associated pollutant-emitting equipment are not necessarily dependent on this station, nor is the Frederick Station dependent on certain nearby wells. (Petitioner Exhibit 3 at 39, 40) CDPHE also considered proximity of emission points as "*another* important factor" in a larger contiguous/adjacent analysis. Petitioner Exhibit 3 at 39 (emphasis added);

6. Information received by CDPHE from the companies operating in the Wattenberg Field[9] demonstrates that:

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[8] KMOGO operates certain oil and gas wells and associated emission sources in the Wattenberg Field such as storage tanks and dehydrators. See footnote 3 on page 3 of CDPHE's July 14, 2010, response.
[9] *See* footnote 23 on page 25 of CDPHE's July 14, 2010, response, listing the information received by the CDPHE.

a. Ownership and operations of the oil and gas exploration and production wells, gas gathering compressor stations, and various interstitial and ancillary operations are dispersed among at least fifty different oil and gas exploration and production companies and several midstream companies (Petitioner Exhibit 3 at 29);

b. Multiple streams of oil and gas produced by oil and gas exploration and production wells are sent to multiple gas gathering compressor stations owned and/or operated by Kerr McGee and other companies (Petitioner Exhibit 3 at 25, 33);

c. Kerr McGee Gathering accepts the gas provided by the oil and gas production companies under contractual agreements, but does not control or affect the operations of the wells that are subjects of the contract (Petitioner Exhibit 3 at 25);

d. It is the decision of the oil and gas production companies regarding how and when they operate their wells, such as a decision to shut-in a well because of market conditions. Kerr McGee Gathering cannot override that decision (Petitioner Exhibit 3 at 25, 26);

e. Neither the Frederick Compressor Station nor Kerr-McGee Gathering has operational control over these wells and their associated pollutant-emitting equipment, neither those owned/operated by KMOGO, nor those owned/operated by third parties. However, while Kerr-McGee Gathering may not exert operational control over KMOGO wells/equipment, they are controlled by the same corporate entity (i.e., Anadarko) for business purposes. (Petitioner Exhibit 3 at 37);

f. The gas gathering system's pressures, as a whole, determine how collected gas moves through the system's network of pipes and compressor stations, not contractual or other arrangements. Kerr-McGee Gathering's gas gathering agreements do not specify that collected gas will be moved through any specific compression station, including the Frederick Compressor Station. (Petitioner Exhibit 3 at 27, 37);

g. Once gas from a particular well is metered and flows into the gathering lines of a gas gathering company, that gas becomes commingled with other gas flowing through lines from wells operated by separate companies (Petitioner Exhibit 3 at 26);

h. The ownership, contractual, engineering, and operating realities of the Wattenberg Field support few, if any, instances of interdependence

among oil and gas exploration and production wells and gas gathering compressor stations (Petitioner Exhibit 3 at 39);

i. Should the Frederick Compressor Station be shut down for maintenance, equipment replacement, or other reasons, gas can flow to other gas gathering compressor stations with available capacity, based upon system pressures (Petitioner Exhibit 3 at 37); and

j. Gathering systems, including the portion of Kerr-McGee Gathering's system connected to the Frederick Compressor Station, are complex and subject to many variables that impact the gathering system dynamics. There are common changes to the gathering system dynamics on a day to day basis. There is no guarantee that gas collected from any KMOGO well will pass through the Frederick Station on any particular day (or portion of a day) (Petitioner Exhibit 3 at 38, 39).

Upon evaluation of each of the arguments made in the petition (including examination of the prior agency statements contained in the exhibits to that petition), all of the information and analysis provided by CDPHE in its July 14, 2010, response (Petitioner Exhibit 3), and other information in the record, EPA finds that Petitioner has not met its burden of demonstrating that the permit is not "in compliance with" the applicable requirements of the Act or the requirements of Part 70. Petitioner has not demonstrated that CPDHE incorrectly applied the three relevant regulatory criteria in determining whether to aggregate pollutant emitting activities into a single stationary source for purposes of PSD and title V applicability. The record shows that CPDHE determined that the Frederick Compressor Station and the other emission sources in the Wattenberg Field were under common control and in the same primary two-digit SIC code, but were not contiguous or adjacent. As explained below, CDPHE determined that Frederick Compressor Station and the other emission sources did not have a unique or dedicated interdependent relationship and were not proximate and therefore were not contiguous or adjacent, and Petitioner has not demonstrated that CDPHE's determination was fundamentally flawed or contrary to the relevant regulations, including the Colorado SIP.

The prior agency statements cited by Petitioner at Exhibits 14, 19, 20, 21, 22, 23, and 25 all involved pollutant-emitting activities with a common two-digit SIC code and under common control. Therefore, similar to the CDPHE determination, a "contiguous or adjacent" analysis was essential to the determination of whether the pollutant-emitting activities should be aggregated. As explained above, while these letters *may* be informative in later source determinations, they are not determinative of the source decision for this permitting action, especially given that CDPHE is exercising its independent permitting authority with regard to the Frederick Compressor Station. In addition, in these prior agency statements cited, the facts indicate a unique or dedicated relationship with no interference from other owners or operators, which resulted in a

conclusion in each case that the pollutant emitting activities were contiguous or adjacent. As discussed below, these circumstances are substantially different from Frederick Compressor Station.

- In the Forest Oil/ Kustatan Oil Production Facility and Osprey Oil Platform determination (Petitioner Exhibit 21), both pollutant-emitting activities were owned and operated by Forest Oil, and while Alaska's SIP does not require a common SIC code for source determinations (Petitioner Exhibit 21 at 4), both operations shared a primary SIC code. EPA examined the high degree of interrelatedness of the two pollutant-emitting activities and concluded that they should be considered adjacent. The pollutant emitting activities thus met all three regulatory criteria for source aggregation. In determining whether the activities were adjacent, Region 10 concluded that the platform and production unit operate as one facility as each is "exclusively dependent" upon the other.[10] The Osprey Oil Platform relied upon the Kustatan Oil Production Facility to process all of the platform's produced oil into marketable oil and gas, while separating and treating the produced water. Once treated, the produced water is piped back to the Osprey Oil Platform and re-injected into the formation off-shore. Further, Kustatan provides power generation to Osprey.

  These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control. Instead, multiple owner/operators control the movement of gas, and Kerr-McGee Gathering's gas gathering agreements do not specify that collected gas will be moved through any specific compression station, including the Frederick Compressor Station, and the gas from the wells (including KMOGO's wells) can flow to any number of locations other than Frederick Compressor Station (Petitioner Exhibit 3 at 25, 27, 29, 37, 38, 39).

- Similarly, in the aggregation determination for a gas sweetening plant and related gas wells operated by Summit Petroleum Company near Rosebush, Michigan (Petitioner Exhibit 19), the facts specific to that analysis indicated that all the operations in the gas field were owned or operated by Summit Petroleum Company and all the sour gas produced from wells in the field flowed to one gas sweetening plant through an integrated pipeline collection system. There was no evidence that any of the gas from the wells could flow to sweetening plants owned or operated by other entities. Thus, EPA concluded that the pollutant-emitting activities were adjacent, given their interdependent nature. As the activities also shared a common SIC code and were under common control, they met all three regulatory criteria for source

[10] Forest Oil Kustatan Facility and Osprey Platform Construction Permitting Applicability Determination, Memorandum from Douglas E Hardesty to Robert R. Robichaud, August 21, 2001, pg. 5.

aggregation. These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control, as explained above.

- The ESCO Corporation's Main Metal Casting and Coating Plant and its Plant 3 Metal Casting operations (Petitioner Exhibit 22) were under common control and had the same primary two-digit SIC code. EPA analysis of the facts indicated that these two pollutant emitting activities could be found to be adjacent because Plant 3 was entirely dependent on facilities at the main Plant for production of the company's finished product. All of the castings produced by the foundries at both the Main Plant and Plant 3 are coated at the coating facility located at the Main Plant. Furthermore, all final production, packaging, shipping, etc. of the finished product is done at the Main Plant. These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control, as explained above.

- Shell Oil Company's Wilmington Refinery Complex (Petitioner Exhibit 23) is divided into a Wilmington Section and a Dominguez Section. The Wilmington Section and the Dominguez section were under common control and had the same primary two-digit SIC code. The two sections were considered by EPA to be adjacent since they functioned together as one refinery. They were separated by 1.8 miles, but were connected by a network of pipelines used to transport intermediary products from one site to the other. The two sections thus had a dedicated relationship to each other. These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control, as explained above.

- General Motors Corporation's Fisher Auto Body Plant and Oldsmobile Plant (Petitioner Exhibit 25) were recommended by EPA to be considered under common control, in the same primary two-digit SIC code, and adjacent, due to their unique relationship. The two step assembly processes, while being a mile apart, were connected by a special railroad spur for transport between facilities, similar to a two step body/frame operation under one roof connected by a conveyor for transport of the bodies. The two plants were the only facilities served by the railroad spur. These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control, as explained above.

- The American Soda/Commercial Mine and Soda Ash Processing Plant (discussed in Petitioner Exhibit 20) were recommended by EPA to be considered in the same primary two-digit SIC code, under common control, and adjacent. It was recommended that the mine and ash processing plant be considered adjacent because "the two will clearly be functionally interdependent, as evidenced by the dedicated slurry pipeline and the spent brine return pipeline which will connect the two facilities." (Petitioner Exhibit 20 at 1.) These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control, as explained above.

- The Great Salt Lake Minerals processing plant and pump station (Petitioner Exhibit 14) were recommended by EPA to be considered in the same primary two-digit SIC code, under common control, and adjacent. It was recommended that the processing plant and pump station be considered adjacent because of the "unique relationship between the pump station and the salt processing plant and the dedicated channel (21.5 miles) between the two that supplies the pre-concentrated brine." (Petitioner Exhibit 14 at 2.) These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control, as explained above.

- The Anheuser-Busch Brewery determination (Petitioner Exhibit 24) concerned a brewery and landfarm that were under common control and were considered to be adjacent, based on the interrelatedness of the two sites.[11] The brewery wastewater stream, containing hydrocarbons, was piped to the landfarm and disposed of by land application. The brewery and landfarm were determined to be adjacent because the "landfarm is an integral part of the brewery operations" and "brewery operation is dependent on landfarm operations." These fact-specific circumstances are substantially different from the Frederick Compressor Station determination, where there is no dedicated relationship between Frederick Compressor Station and other activities under common control, as explained above.

In each of these Exhibits (14, 19-25) that Petitioner cites, sources were considered contiguous or adjacent where a unique or dedicated relationship existed between the two pollutant emitting activities[12]. On the contrary, the Wattenberg Field has a "spider web"

[11] The Anheuser-Busch Brewery determination also included an analysis finding that the landfarm was a support facility for the brewery. EPA determined that the landfarm's purpose was to support the production of the primary product (beer). Thus, EPA concluded that they should be considered to share the same major SIC code. *See also* discussion of Valero Transmission Company (Petitioner Exhibit 18) below.

of gas gathering lines operated by many oil and gas exploration and production companies, as well as condensate tanks, glycol dehydrators and gas gathering compressor stations operated by many gas gathering companies.[13] As described by CDPHE in its July 14, 2010, response (Petitioner Exhibit 3), ownership and operations of the oil and gas exploration and production wells, gas gathering compressor stations, and various interstitial and ancillary operations are dispersed among at least fifty different oil and gas exploration and production companies and several midstream companies.[14] The ownership, contractual, engineering, and operating realities of the Wattenberg Field support few, if any, instances of unique and dedicated relationships among oil and gas exploration and production wells and gas gathering compressor stations.[15]

Petitioner also relies on the Valero Transmission Company analysis (Petitioner Exhibit 18), which involved pollutant-emitting activities that were both under common control and located on contiguous property but did not share a common two-digit SIC code. Therefore, the Valero determination focused only on whether the Transmission Company was considered to be a support facility to the Gathering Company, and thus treated as if they were under the same SIC code. It did not address interrelatedness of the activities as it related to the contiguous or adjacent element of the source determination. Moreover, in the support facility analysis, it is not clear which specific pollutant emitting activities were included in the analysis, whether multiple gas streams from other owner/operators were sent to the Transmission Station, and whether there was a unique and dedicated relationship between the Transmission Company and the Gathering Company. Accordingly, the Valero determination is irrelevant to the source decision for this permitting action, since CDPHE is exercising its independent permitting authority with regard to determining whether the Frederick Compressor Station is adjacent to other activities in the Wattenberg Field under common control.

Petitioner cites Exhibit 27 (Utility Trailer letter) as an example of EPA determinations concerning whether two sources are contiguous or adjacent. As Petitioner notes, EPA did not make a final applicability determination in this letter. Instead, EPA maintained that the distance associated with "adjacent" must be considered on a case-by-case basis and suggested a list of questions that the state could consider in making that determination. However, nothing in the letter suggests that these questions are either

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[12] Petitioner also relies on the Walker Hollow Unit (Petitioner Exhibit 16) and EnerVest San Juan Operating Company (Petitioner Exhibit 17) letters, but it is not clear how informative (if at all) these letters are to this action. The letters contain no detailed analysis of the relevant regulatory criteria for the source determination as applied to the specific facts of the emission points under review. Instead the letters simply make conclusory statements regarding groups of emission points that "would be considered a single stationary source" and then discuss information necessary to determine whether they were *major* stationary sources for permitting purposes. Given the lack of detailed analysis of the source determination, these letters cannot serve as an adequate justification for how CHPHE should treat the source determination for the Frederick Compressor Station, nor are the letters a basis for concluding that CDPHE's determination is unsupported and contrary to regulation and EPA guidance.

[13] Petitioner's Exhibit 3, Page 26.

[14] Petitioner's Exhibit 3, Page 29.

[15] Petitioner's Exhibit 3, Page 39.

required or determinative of the source aggregation issue, especially in the context of a different industry. Thus, this letter comports with the McCarthy memo in that source determinations are made on a case-by-case basis, considering the specific facts of the situation.

After review of Petitioner's arguments and CDPHE's response to the petition II Order, it is my determination that Petitioner has not met its burden of demonstrating that the permit "is not in compliance" with the applicable requirements of the Act or the requirements of Part 70. While Petitioner argues that an objection is necessary because the CDPHE determination "fails to appropriately apply EPA guidance in justifying its source determination" for the Frederick Compressor Station, Petitioner's citation of prior agency statements, in which EPA suggested that aggregation of various pollutant-emitting activities may be appropriate for source determinations in different permitting actions, does not demonstrate that CDPHE's determination otherwise in this permitting action is fundamentally flawed or contrary to the relevant regulations, including the Colorado SIP. Therefore, I deny Petitioner's request to object to the permit on this basis.

II. EPA's Prior Statements and Regulations Do Not Require Complete and Exclusive Interdependence Between Sources for Aggregation.

Petitioner's claim: Petitioner argues that CDPHE "rested its determination on an arbitrary assertion that the Frederick Compressor Station is not "exclusively" dependent on the oil and gas wells and other pollutant-emitting activities connected to the compressor station, and vice-a-versa." Petitioner asserts that this type of interdependence analysis is not supported by prior EPA guidance and is counter to the requirements of PSD and title V regulations. Petitioner further claims that EPA guidance, as well as the common sense notion of plant embodied in EPA's regulations, demonstrates that oil and gas sources should be aggregated if they regularly support one another in the production of pipeline quality oil and gas. Petition at 22. Petitioner cites Exhibits 16, 17, 18, 22, and 27 as examples of prior determinations where sources were aggregated without relying on whether oil and gas sources were completely and exclusively interdependent. Petition at 19-20. Petitioner also rejects reliance on complete and exclusive interdependence by claiming that 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. Petition at 19.

EPA's response: Petitioner's claims regarding "support facilities" in the context of determining whether two points are contiguous or adjacent confuses two of the three regulatory criteria for determining whether pollutant emitting activities should be aggregated. As explained in the 1980 preamble to the NSR rules, a support facility analysis is only relevant under the SIC-code determination. EPA explained that when two activities have different SIC codes, a support facility analysis may be conducted to determine whether the activities should be treated as having the same industrial grouping.

The preamble clarifies that "support facilities" that "convey, store, or otherwise assist in the production of the principal product or group of products produced or distributed, or services rendered" should be considered under one source classification, even when the support facility has a different primary two-digit SIC code. Thus one source classification encompasses both primary and support facilities, even when the latter includes units with a different primary two digit SIC code. See 45 FR 52696. In making a determination of whether two activities share the same industrial grouping, the 1980 preamble explains that a boiler that provides process steam for two different sources should be aggregated with whichever source is the primary recipient of the boiler's output. See 45 FR 52695.

While EPA's prior recommendations and determinations involving support facilities are instructive, CDPHE has already determined that the Frederick Compressor Station and the surrounding Wattenberg gas and oil field pollutant-emitting activities share the same primary two-digit SIC code. Therefore, there is no reason to analyze whether there is a support facility relationship between Frederick Compressor Station and the surrounding activities.

Petitioner cites Exhibits 16, 17, 18, 22 and 27 as examples where sources were aggregated without relying on whether they were completely and exclusively interdependent.[16] Each of these Exhibits concerned the second regulatory criterion, whether sources are contiguous or adjacent. However, none of these examples demonstrate that CDPHE applied an improper standard. In the Citation Oil and Gas determination cited by Petitioner (Petitioner Exhibit 16), there was no evidence that any of the oil from the wells could flow to tank batteries owned by other companies. With regard to Exhibit 22, EPA's analysis noted the "dependent" nature of one pollutant emitting activity on the other. In addition, as Petitioner notes, EPA did not make a final applicability determination in the letter constituting Exhibit 27. Instead, EPA advised that the State should evaluate whether the facilities could be operated independently of each other, and that the State's source determination must be made on a case-by-case basis.

Moreover, as discussed in Section I of this Order, there are many instances in which EPA applied the relevant regulations and considered pollutant emitting activities to be contiguous or adjacent where a dedicated relationship existed between the two pollutant emitting activities under common control. For example, in the Summit Petroleum determination cited by Petitioner (Petitioner Exhibit 19), it was found that all the sour gas produced from wells in the field flows to the one gas sweetening plant owned by Summit Petroleum through a pipeline collection system. In Summit, there was no evidence that any of the gas from the wells could flow to sweetening plants owned by other companies. Similar findings were made in the aggregation determinations for the Forest Oil/Kustatan Production operations (Petitioner Exhibit 21), the Shell Oil Company

[16] For the reasons we cite in Footnote 12, it is not clear how informative (if at all) the letters in Exhibit 16 or 17 are to this action. For the reasons we discuss in Section I of this Order, the letter in Exhibit 18 is irrelevant to the source decision for this permitting action.

Refinery Complex (Petitioner Exhibit 23), and the General Motors Corporation Fisher Auto Body and Oldsmobile operations (Petitioner Exhibit 25).

Finally, Petitioner references two examples, Shell Offshore, Inc. (OCS Appeal Nos. 07-01 and 07-02, September 14, 2007) and Williams Energy Ventures (at Petitioner's Exhibit 26) that resulted in separate source determinations, asserting that these sources were determined to be separate because there was no pipeline connection and suggesting that the existence of a pipeline connection would have been pivotal. In both of these determinations, the pollutant-emitting activities were in the same primary two-digit SIC code and under common control. Thus, the aggregation determination turned on whether the sources were considered contiguous or adjacent. However, Petitioner's argument regarding the importance of a pipeline connection is flawed, for the following reasons.

First, the Shell Offshore, Inc. determination was never finalized by the Agency, and EPA's source determination was in fact remanded to the Agency in the decision cited by Petitioner. See Petition at 15. Accordingly, it is not clear what (if any) relevance that determination should have on future permitting actions. Moreover, an examination of the permitting record demonstrates that the determination was based on a number of factors, especially the vast area separating the drilling ships and lack of dependence in the operation of the two ships, as well as the lack of a physical connection between them. See 13 E.A.D. 357, 368 (EAB 2007) (describing the factors the EPA region considered in making the source determination). Therefore, the separate source determination in this case did not pivot on the lack of a pipeline connection.

Second, the Williams Energy Ventures Bulk Gasoline Terminals were determined to be separate sources based on consideration of a number of factors, including the recognition that each terminal could be operated independently. Again, this separate source determination did not pivot on the lack of a pipeline connection.

Furthermore, CDPHE addressed the specific facts in this matter and concluded that the activities being evaluated are not adjacent. As noted by CDPHE in its July 14, 2010, response (Petitioner Exhibit 3), the process of producing natural gas in the Wattenberg field is split among the various facilities. Wells produce, separators separate, and compressor stations gather and compress the gas. However, CDPHE also determined that no one compressor station or well in the Wattenberg field receives or provides products or intermediate products exclusively to the other. In other words, they do not have a unique or dedicated relationship to each other. CDPHE concluded that gas production companies have the ability to send, and do send, produced gas to a number of different compressor stations. In addition, the flow dynamics change often, in some cases on a daily basis, which influences how gas is sent. Some of these compressor stations are owned and operated by the same or a related entity, while others are not owned or operated by the same or a related entity. CDPHE determined that specific compressor stations, like the Frederick Compressor Station, are not addressed or identified individually in gathering contracts. This gives the gathering company flexibility to allow

the gas from a particular well to flow to a different compressor station connected to the gathering system as conditions warrant. For instance, if the Frederick Compressor Station is not operating because of maintenance, repair, or new equipment installation, the gas from a well that normally could flow to the Frederick Station would instead flow to another compressor station.[17]

Petitioner also generally claims that CDPHE improperly relied on the fact that oil and gas sources may be located some distance apart from one another in finding they are not adjacent, and instead argues that EPA guidance has noted that "distance between sources is not determinative." Petition at 13. However, the petition acknowledges that EPA guidance has indicated that proximity of sources may be considered in source determinations. *See id.* at 13 (citing McCarthy Memo statements noting that proximity may be considered as part of a "reasoned decision making" which includes other factors relevant to the analysis).

In this case, CDPHE did not use distance as *the* determinative factor in its source determination, but rather CDPHE considered proximity of emission points as "*another* important factor" in a larger contiguous/adjacent analysis. Petitioner Exhibit 3 at 39 (emphasis added); *compare with* Petitioner Exhibit 3 at 35-39 (discussing the complex legal, engineering, and operational relationships between the various points in the field in finding they were not adjacent). In particular, CDPHE noted that other states have considered emission points within a quarter mile to be adjacent and stated that "[t]his distance is consistent with a practical meaning of the term adjacent." Petitioner Exhibit 3 at 39-40. CDPHE then noted that there are no commonly-controlled pollutant-emitting activities within a quarter mile of the Frederick station. Petitioner Exhibit 3 at 40. Furthermore, CDPHE concluded that the lack of proximity "between the Frederick Station and the wells/pollutant emitting-equipment strains the common sense notion of a plant." *Id.* Petitioner has not demonstrated that CDPHE's analysis was flawed for including proximity as one factor in contiguous or adjacent, nor that the particular consideration of proximity was inappropriate or incomplete. *See* Petition at 13 (discussing the number of wells within a mile of the Frederick Station without any discussion of the quarter mile analysis completed by CDPHE).

After review of Petitioner's arguments and CDPHE's response to the petition II Order, it is my determination that Petitioner has not met its burden of demonstrating that the permit "is not in compliance" with the applicable requirements of the Act or the requirements of Part 70. Petitioner does not demonstrate that the manner in which CDPHE considered and weighed interdependence (as well as proximity) is fundamentally

[17] Petitioner's Exhibit 3 at 25, 26, 27, 29, 33, 35, 37, 39. See, also, pages 8 through 10 of this document for further detailed reference. We also note that Petitioner asserts (*see* Petition at 19) that CDPHE's analysis is flawed because gas from particular wells may only flow to other compressor stations during specific events (such as maintenance and repair shutdowns). However, that fact is still evidence that the wells and the Frederick Compressor Station do not have an exclusive interdependence with one another and does not negate CDPHE's finding that they are separate stationary sources.

flawed or contrary to the relevant regulations, including the Colorado SIP. Therefore, I deny Petitioner's request to object to the permit on the basis of this issue.

III. The State Inappropriately Cites to Section 112 of the Clean Air Act to Support Its Determination.

Petitioner's claim: Petitioner argues that CDPHE improperly relies on the significance of section 112(n)(4)(A) of the CAA – which addresses hazardous air pollutants (HAPs) and prohibits the aggregation of oil and gas sources to determine whether a source is a major source for HAPs – and says the Administrator "must object to the Frederick Compressor Station Title V Permit and [CDPHE's] Response to Objection to the extent it [*sic*] relies on Section 112 of the Clean Air Act to justify its source determination under PSD and Title V." Petition at 23.

EPA's response: CDPHE only discusses CAA section 112 in the general background on the three-part stationary source regulatory test. See Exhibit 3 at page 23. Petitioner has not identified any discussion of section 112 beyond that contained in CDPHE's general background, *see* Petition at 22-23, and EPA could identify no citation to, or reliance on, section 112 in the CDPHE's application of the source determination requirement to the Frederick Station, *see* Exhibit 3 at 30-42. Accordingly, I deny Petitioner's request to object to the permit on this basis.

IV. Petitioner's comment on reservation of rights.

WEG's Petition for Objection includes a section entitled, "Reservation of Rights" (ROR), in which WEG explains that the petition is filed to preserve WEG's rights in light of EPA's determination that WEG has an opportunity to petition the Administrator to object to the issuance of the Division's July 14, 2010, Response to Objection. *See* Exhibit 5 to WEG's Petition, Letter from Callie A. Videtich, EPA Region 8, to Jeremy Nichols, WildEarth Guardians, In re: Opportunity to Petition on Colorado's Response to EPA's October 8, 2009 Anadarko Frederick Administrative Order (Oct. 18, 2010). WEG's ROR further states:

> In filing this Petition, WildEarth Guardians does not waive its rights to challenge the EPA's failure to issue or deny the Title V Permit for the Frederick Compressor Station, does not waive its rights to argue that the Division failed to submit a permit revised to meet the Administrator's objection, and does not waive its rights to argue that a Title V Petition is not the appropriate avenue under the Clean Air Act to address the deficiencies in the Division's response. WildEarth Guardians is only filing this Title V Petition to preserve its rights in the face of conflicting guidance from EPA.

The ROR presents the argument that 42 U.S.C. § 7661d(c) requires EPA to issue or deny a title V permit because CDPHE did not "submit a permit revised to meet the

objection" and that CDPHE did not issue a "proposed permit" triggering EPA's 45-day review period and the 60-day petition period.

The ROR also presents WEG's view that because CDPHE did not respond to EPA's petition within 90 days, pursuant to 42 U.S.C. § 7661d(c), the authority and obligation to issue the operating permit for the Kerr-McGee facility has passed to EPA and that CDPHE has lost all authority to administer the current permit. WEG asserts that CDPHE's late response to EPA's Order is irrelevant because CDPHE no longer has permitting authority.

Despite the arguments presented in the ROR, the remainder of the petition makes clear that the basis for WEG's request that EPA object to the permit is CDPHE's failure to make an accurate source determination and is unrelated to the issues that are raised in the ROR. (See, e.g., page 9 of the petition, section entitled, "Grounds for Objection: The Title V Permit Still Fails to Ensure Compliance with PSD and Title V Requirements," in which WEG introduces the basis for the petition as follows: "In this case, the Division continues to fail to make an accurate source determination for the Frederick Compressor Station. Notably, the Division continues to fail to appropriately assess whether adjacent pollutant emitting activities, namely the oil and gas wells and associated equipment that feed the Frederick Compressor Station, should be aggregated together as a single source.")

Therefore, this response addresses the source determination issues raised by WEG because these issues, and not the issues raised in the ROR, are the basis for WEG's petition to object. Further, a response to the arguments raised in the ROR is not required because the ROR merely serves to put EPA on notice that certain rights have not been waived. EPA does not agree with the arguments presented in WEG's ROR and reserves its rights to present arguments in opposition if relevant in any proceeding.[18]

CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act, I deny Petitioner's requests for an objection to the issuance of Anadarko's Frederick Compressor Station title V permit.

Dated: 2/2/11

Lisa P. Jackson
Administrator

[18] EPA notes that some of the issues raised in the ROR have also been raised in a complaint filed by WEG against EPA in WildEarth Guardians v. Jackson, 1:10-cv-01680 (D. CO.). That case has been stayed until February 2, 2011.

EXHIBIT 2

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF Kerr-McGee Gathering LLC/Anadarko Petroleum, Frederick Natural Gas Compressor Station Permit Number: 95OPWE035 Issued by the Colorado Department of Public Health and Environment, Air Pollution Control Division	)	PETITION TO OBJECT TO ISSUANCE OF A STATE TITLE V OPERATING PERMIT Petition Number: VIII-2010-

PETITON FOR OBJECTION

Pursuant to Section 505(b)(2) of the Clean Air Act, 40 C.F.R. § 70.8(d), and applicable state regulations, WildEarth Guardians hereby petitions the Administrator of the U.S. Environmental Protection Agency (hereafter "Administrator" or "EPA") to object to the July 14, 2010 Response of the Colorado Department of Public Health and Environment, Air Pollution Control Division (hereafter "Division") to the October 8, 2009 Order by the Administrator objecting to the issuance of the renewed Title V Permit for Anadarko Petroleum Corporation's (hereafter "Anadarko's") Frederick Compressor Station, Permit Number 95OPWE035 (hereafter "Title V Permit"), which was issued on January 1, 2007.[1] The Title V Permit, the Technical Review Document for the Title V Permit, and the Division's Response to Objection are attached hereto. *See* Exh. 1, Kerr-McGee Gathering LLC, Frederick Compressor Station Title V Permit, Permit Number 95OPWE035 (January 1, 2007); Exh. 2, Technical Review Document ("TRD") for Renewal of Operating Permit 95OPWE035 (January 1, 2007) and Technical Review Document Addendum (April 28, 2008); Exh. 3, Division Response to October 8, 2009 Objection by the Administrator (July 14, 2010).

In her objection, the Administrator found that the Division "failed to adequately support its determination of the source for PSD [Prevention of Significant Deterioration] and title V purposes." *See* Ex. 4, *In the Matter of Kerr-McGee/Anadarko Petroleum Corporation, Frederick Compressor Station*, Petition VIII-2008-02 (Order on Petition) (October 8, 2009); *see also* 74 Fed. Reg. 56610-56611 (Nov. 2, 2009) (notice of objection). In particular, the Division failed to appropriately assess whether oil and gas wells and other pollutant emitting activities connected with the Frederick Compressor Station should be aggregated together as a single stationary

[1] The permittee for the Frederick Compressor station is Kerr-McGee Gathering, LLC, which is a wholly owned subsidiary of Anadarko Petroleum., as is Kerr-McGee Oil and Gas Onshore LP. This Petition refers to Anadarko Petroleum throughout, but for the purposes of the arguments set forth herein, Kerr-McGee Gathering, LLC, Kerr-McGee Oil and Gas Onshore LP, and Anadarko Petroleum to be under the control of the same entity or entities under common control. *See also* Exh. 3 at 3 (Division noting same "control of the same entity, or entities under common control" relationship among Anadarko and its Kerr-McGee subsidiaries).

EXHIBIT 2

source for PSD and Title V permitting purposes, to ensure compliance with applicable Clean Air Act. *See* 42 U.S.C. § 7661c(a) ("Each permit issued under this title shall...assure compliance with applicable requirements of this [Clean Air] Act.").

The Division's response now claims to fully address the Administrator's objection and settle the issue of whether aggregation is appropriate. Unfortunately, the Division's analysis continues to be far from legally adequate. Worse, it appears devoid of objectivity. It appears as if the Division simply does not want to aggregate oil and gas operations under the Clean Air Act. The Division asserts, for example, that it "does not believe that there would be a significant benefit to the environment from any aggregation of wells with the Frederick Compressors Station." Exh. 3 at 41. Yet, as will be explained in this petition, both PSD and Title V requirements indicate that significant environmental benefits result from accurate source determinations, including through increased transparency, federal land manager oversight, and greater protection of ambient air quality standards. Rather than independently assess to what degree aggregation may be appropriate, the Division instead seems to have concocted an analysis to serve a predetermined, and legally unjustified, position. Such biased source determinations are inherently at odds with the duties of the Division under the Clean Air Act.

STATEMENT OF RESERVATIONS

This Petition is filed to preserve WildEarth Guardians' rights and with a reservation of all rights that it has and may assert. In a letter dated October 18, 2010, the EPA indicated that WildEarth Guardians has an opportunity to petition the Administrator to object to the issuance of the Division's July 14, 2010 Response to Objection. *See* Exh. 5, Letter from Callie A. Videtch, EPA Region 8, to Jeremy Nichols, WildEarth Guardians, In re: Opportunity to Petition on Colorado's Response to EPA's October 8, 2009 Anadarko Frederick Administrative Order (Oct. 18, 2010). However, EPA's position is only tenable if the authority and obligation to issue the operating permit for the facility has not already passed to EPA, which is what the law provides:

1. Under the Clean Air Act, the EPA must issue or deny a Title V permit if the permitting authority has not submitted a permit revised to meet an objection within 90 days. *See*, 42 U.S.C. § 7661d(c). The law states:

> If the permitting authority fails within 90 days after the date of an objection under [42 U.S.C. § 7661d(b)] to submit a permit revised to meet the objection, the Administrator ***shall issue or deny*** the permit in accordance with the requirements of [Title V].

Id. (emphasis added). In this case, there is no dispute that the Division submitted its response to the Administrator's objection more than 90 days after the date of the objection. Thus, Act clearly requires the Administrator to issue or deny the Title V permit and the Division has lost all authority to administer the current permit.[2] The EPA

[2] The Division may reissue the Title V permit in accordance with 40 C.F.R. § 70, *et seq.*, but such a state-issued permit could only replace any EPA-issued Title V permit upon expiration and only if EPA determines that such a state-issued permit has resolved the Administrator's October 8, 2009 objection.

appropriate. However, as will be explained further, such a standard is exceptionally restrictive, inconsistent with past EPA permitting guidance, and frustrates the concept of "common sense notion of plant."

1. EPA's Prior Aggregation Determinations Overwhelmingly Demonstrate that Oil & Gas Sources, and Other Similar Sources, can be Aggregated.

The Division discusses many prior aggregation determinations by EPA Headquarters, EPA regional offices, and the Environmental Appeals Board. *See e.g.* Exh. 3 at 16-21. Several of these prior determinations concluded that aggregation was appropriate for oil and gas sources. Others concluded that aggregation was appropriate for sources in other industries that involved operations separated by long distances but connected by pipelines or similar links. Overall, these determinations demonstrate that aggregation of oil and gas sources, and other similar sources, is appropriate in a much broader array of circumstances than the Division claims. While the McCarthy Memo and other EPA guidance on the matter correctly cautions that these prior determinations are highly fact-specific, EPA has found aggregation to be appropriate in most cases where it addressed the issue.

Despite the Division's implied attempt to distinguish them, the past determinations by EPA demonstrate that the three-part aggregation test is commonly met for oil and gas, and other similar sources, a fact that continues to undermine the reasonableness of the Division's analysis.[5] 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. 16, 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. 17, 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. 18, 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).

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[5] The Division also cites to the Ninth Circuit's recent decision in *MacClarence v. EPA*, 596 F.3d 1123 (9th Cir. 2010), to suggest that its rationale is supported by the Ninth Circuit. *See* Exh. 3 at 27-29. This is not an accurate description of *MacClarence*. In *MacClarence*, both Alaska and EPA Region 10 agreed that a hub-and-spoke model of aggregation for oil and gas sources was appropriate, but rejected calls to aggregate the entire field. *See MacClarence*, 596 F.3d 1123, 1128-1129 (9th Cir. 2010). Even the Division notes this. *See* Exh. 3 at 29. The Ninth Circuit upheld that decision while taking no position on the agencies' requirement of hub-and-spoke aggregation, or aggregation in general. *Id.* at 1129. If anything, *MacClarence* actually supports the conclusion that aggregation of oil and gas sources is appropriate in certain cases.

4. Sour gas wells and a sour gas processing plant connected by pipelines. *See* Exh. 19, 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. 14.

6. Mine and processing plant, thirty-five to forty miles apart and connected by a forty-four mile pipeline. *See* Exh. 20, 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. 21, 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. 22, 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. 23, 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. 24, 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. 25, 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).[6]

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

[6] 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).

26, 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. In the case of the Frederick Compressor Station it is undisputed that the facility is connected via pipelines to other pollutant emitting activities.

Importantly however, these EPA determinations demonstrate that the distance between sources is not necessarily a determinative factor. 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. 20 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. 14 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 this case. 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. 27, 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. 27 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. 21 at 5-6.

Although the Division did not even address these four factors in its response to the Administrator's Objection, all four guidance questions strongly indicate that aggregation of oil and gas operations, including the Frederick Compressor Station and the oil and gas wells and associated equipment that feed the compressor station, is appropriate. First, by the very nature of their operations, natural gas is routinely transferred between wells, condensate tanks, and compressor stations. The sources are all connected by pipelines. Indeed, it is not disputed by the Division that oil and gas wells owned by Anadarko are connected via pipelines to the Frederick Compressor Station.

Second, oil and gas employees, such as maintenance and repair staff, frequently shuttle back and forth as they monitor and work on a company's wells, condensate tanks, and compressor stations in a given oil and gas field.[7] Indeed, there does not appear to be any dispute that employees of Anadarko Petroleum and/or its subsidiaries maintain and operate in common the Frederick Compressor Station and the oil and gas wells and associated equipment connected with the compressor station.

Third, the process of producing natural gas is split between the various emissions units. Natural gas produced from wells is typically mixed with other gases, liquids, and hydrocarbon liquids; all of which is then sent to nearby separators, compressors, and other facilities for further processing. Ultimately, the natural gas is sent to compressor stations, such as the Frederick Compressor Station, for further processing and distribution. The fact that the process of producing natural gas is split between the various emission units does not appear to be in contest.

Fourth, in many cases a compressor station or other facility is located specifically to service a particular well field. Although the site of the Frederick Compressor Station is not addressed by the Division, it would be absurd to believe the facility was not sited in order to more effectively service and process the natural gas produced by wells in the Wattenberg natural gas field, including wells owned or under control by Anadarko.

In sum, despite the distance between some individual units, an oil and gas company's wells, condensate tanks, compressor stations, and other pollutant emitting sources within a particular project or field are often operated as one source or one facility (consistent with a common sense notion of "installation" or "plant"). From extraction to processing to distribution,

[7] In this case, the reference to employees includes employees of Anadarko Petroleum and/or its subsidiaries.

Respectfully submitted this 3rd day of November 2010

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