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

In re:	)	
	)	
BP America Production Company	)	Appeal No. CAA 10-04
Florida River Compression Facility	)	
	)	
Permit No. V-SV-0022-05.00	)	

BP AMERICA PRODUCTION COMPANY'S RESPONSE TO WILDEARTH GUARDIANS' PETITION FOR REVIEW

Jeffrey Conrad
BP AMERICA INC.
501 Westlake Park Blvd.
Houston, Texas 77079-2607
Telephone: 281-366-1859

Charles L. Kaiser
John R. Jacus
Charles A. Breer
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202
Telephone: (303) 892-9400
Facsimile: (303) 893-1379

Attorneys for BP America Production Company

TABLE OF CONTENTS

TABLE OF CONTENTS
(Continued)

BP America Production Company ("BP") respectfully submits its Response to WildEarth Guardians' ("WEG") Petition for Review of the United States Environmental Protection Agency ("EPA") Region 8's renewal Title V permit for BP's Florida River Compression Facility ("Florida River" or "Plant").

INTRODUCTION

WEG has petitioned the Board to review Region 8's renewal of BP's Florida River Title V permit on grounds that Region 8 failed to (i) re-open the comment period and (ii) aggregate the Florida River plant and more than a thousand BP-operated wells across La Plata County ("BP's La Plata County wells") for air permitting purposes. The Board should deny WEG's petition for review for several reasons. First, Region 8 had no obligation to re-open the comment period. EPA regulations expressly allow the permit issuer to include additional information in the administrative record to respond to comments; Region 8 properly included materials in the administrative record responding to WEG's comments; and the Region based its permit decision on the materials contained in the administrative record as it must. WEG does not contest the scope of the administrative record and fails to show Region 8 abused its discretion in not re-opening the comment period. Second, aggregating the Florida River plant and BP-operated wells across La Plata County would be contrary to applicable legal requirements because (i) Florida River and the wells WEG seeks to aggregate are not located on "contiguous or adjacent properties," (ii) a compressor facility and gas wells spread across hundreds of square miles do not meet "the common sense notion of a plant," (iii) aggregating the facilities for permitting purposes would not further the purposes of the Prevention of Significant Deterioration ("PSD") program, (iv) it would be arbitrary and capricious for the agency to now depart from its longstanding source determination practice for Florida River, and (v) EPA Administrator

Jackson's February 4, 2011 Order ("Jackson Order") (Exhibit 1) considered and rejected the identical claims WEG makes with respect to Florida River in WEG's separate petition seeking to aggregate Anadarko Petroleum Corporation's Frederick compressor station, oil and gas wells, and other oil and gas facilities in Colorado's Wattenberg field.[1] Third, WEG fails to address the facts on which Region 8's source determination was based or to otherwise satisfy its burden of proving Region 8's Response to Comments was wrong.

FACTS

A. Florida River Facility.

The Florida River facility is located on the Southern Ute Indian Reservation in La Plata County, Colorado.[2] Florida River compresses gas to sufficient pressure to meet interstate pipeline standards. The State of Colorado's Air Pollution Control Division first issued a permit in 1987 to Amoco Production Company (predecessor to BP) for construction of Florida River as a true minor source for PSD program purposes. By 1991, the facility handled 60 MMSCFD of gas at the tailgate of the Plant. Between 1992 and 1998, the Plant added a number of pieces of equipment and increased the volume of gas being handled to 200 MMSCFD, but was still a PSD minor source, as well as a minor source for Title V purposes. El Paso Natural Gas ("EPNG") contemporaneously constructed its own Florida River compression facility on ground leased from Amoco at Florida River using two stationary gas-fired turbines. The El Paso Florida turbines were permitted by the State of Colorado, first as a minor source for both Title V and

[1] WEG merely copied block quotes of its arguments in the Anadarko petition and then inserted those same arguments in the Florida River petition now before the Board. Exhibit 2 (Portions of WEG Anadarko petition). WEG has not tied any of those arguments in the Anadarko petition to the uncontested facts present here.

[2] The Southern Ute Indian Tribe, which will soon assume jurisdiction for permitting Title V facilities on Reservation lands, "specifically concurs with BP's position that emissions of the Florida Facility are properly not aggregated with emissions from other BP facilities and wells on the Reservation because the Florida Facility is not contiguous with or adjacent to those other sources and they do not together constitute a plant, facility or installation." EPA-FL-0033 (Exhibit A) (January 13, 2010 Letter from Tribal Chairman Box to Region 8).

PSD purposes, and later as a Title V major source and PSD minor source. Modifications to each of the facilities (Amoco and EPNG) were also permitted by Colorado.

Region 8 has on many occasions considered whether Florida River should be aggregated with other facilities for air permitting purposes. BP met with Region 8 in September 2000 to discuss oil and gas operations in the context of aggregation. EPA-FL-0033 (Exhibit C). At that meeting, BP provided Region 8 with detailed information regarding oil and gas facilities, the flow of gas, and other information on Florida River and oil and gas operations generally in the Northern San Juan Basin. Id. (and attached slide of gas operations). Region 8 did not seek to aggregate Florida River with other facilities at that time and has continued to routinely permit and inspect Florida River as a single stationary source for compliance with the Clean Air Act ("CAA") over the past decade. Region 8 did aggregate Florida River with another facility on one occasion and BP agreed with that decision. When BP purchased EPNG's Florida River facility, EPA and BP agreed that the EPNG turbines should be aggregated with Florida River as one major source under both the PSD and Title V rules. EPA-FL-0033 (Exhibit D) (February 28, 2001 BP Letter to EPA). That conclusion was appropriate because the facilities were on contiguous or adjacent properties, belonged to the same industrial grouping, BP owned and controlled both sources, and the facilities were collectively part of a single plant.

Other than the decision to aggregate the former EPNG turbines with Florida River, neither Region 8 nor Colorado sought to aggregate Florida River with any other facilities for CAA permitting purposes. That is informative because (i) the same aggregation standard has been in place for more than thirty years and (ii) those permitting and inspection efforts conducted by state and federal regulators were founded upon a thorough understanding of the nature and purpose of the various emission sources.

B. The Surface And Mineral Estates Are Divided.

The surface and mineral estates in the Northern San Juan Basin are highly fractured and owned by a mix of entities, including the Southern Utes, many federal agencies, State and local governments, and private parties.[3] The pattern of surface and mineral ownership on the Southern Ute Indian Reservation near Florida River is complex. BP has over 60 surface use agreements, pipeline agreements, and rights-of-way just in the area near Florida River. The mingled surface agreements are shown on a map at EPA-FL-0033 (Exhibit I). It is virtually impossible to move anywhere on the surface without going through the boundary lines established by multiple agreements. Id. There are also multiple oil and gas leases near Florida River. EPA-FL-0033 (Exhibit J) (map showing the boundaries of area oil and gas leases); EPA-FL-0033 (Exhibit K) (representative leases). Those representative leases were executed more than a half-century ago, decades before Florida River was constructed. The oil and gas leases, like the surface use agreements, create a maze of boundary lines. EPA-FL-0033 (Exhibit J).

C. BP-Operated Wells Are Geographically And Functionally Diverse.

The Northern San Juan Basin gas field is approximately 20 miles (north to south) by 30 miles (east to west) and contains thousands of wells operated by BP and dozens of other companies. EPA-FL-0036, Response to Comments ("RTC") at 7 and n.11; San Juan Citizens Alliance v. Salazar, 2009 WL 824410 at *2 (D. Colo. 2009) ("more than 2,000 wells" within just the Southern Ute Indian Reservation). BP-operated wells are spread across a vast area. Some BP wells are located up to 18 miles distant from the Florida River facility while other wells are

[3] The divided ownership of those properties is not surprising given conflicting United States land policies toward Native Americans and patents to homesteaders under the 1909 and 1910 Coal Lands Acts which reserved some minerals but not others. Amoco Production Company v. Southern Ute Indian Tribe, 526 U.S. 865, 869-870 (1999) (recounting history of homesteading on the Southern Ute Reservation and holding that coal reserved to the United States did not include the gas estate).

located within sight of Florida River. RTC at 7. Most of the wells in the field, particularly to the north, are coalbed methane wells drilled into the Fruitland coal formation by BP and many other oil and gas companies over the past 25 years. EPA-FL-0033 (Exhibit H) (map shows coalbed methane wells in green). BP also has many wells located in conventional (non-coal) formations to the south. Id. (conventional wells in red). The gas composition among wells varies. Conventional gas typically has liquids which must be removed. Coalbed methane does not contain liquids. There are significant differences in well equipment. Some BP-operated wells are electrified; that is, any wellhead compressors or lift equipment runs on electricity while other wells use gas-fired compressor engines and lift equipment. Wells in some areas have wellhead compressors whereas in other areas they do not.

The location of gas wells must conform to the spacing area established by the relevant jurisdictional authority.[4] The spacing unit reflects the area one well can efficiently drain. Early coalbed methane wells in the NSJB area were spaced on the basis of two wells per 320 acre spacing unit, or 160 acres. However, the COGCC concluded in a series of orders that technological advances and geological data showed that 80-acre spacing was necessary to maximize recovery and minimize waste for coalbed methane wells drilled in the Fruitland coal seam. See, e.g., COGCC Order Nos. 112-180 and 112-190, EPA-FL-0033 (Exhibit M). Those spacing orders additionally limit where wells can be drilled within the spacing unit, e.g., wells must be drilled no closer to a unit boundary than 660 feet, and wells must be drilled from a single

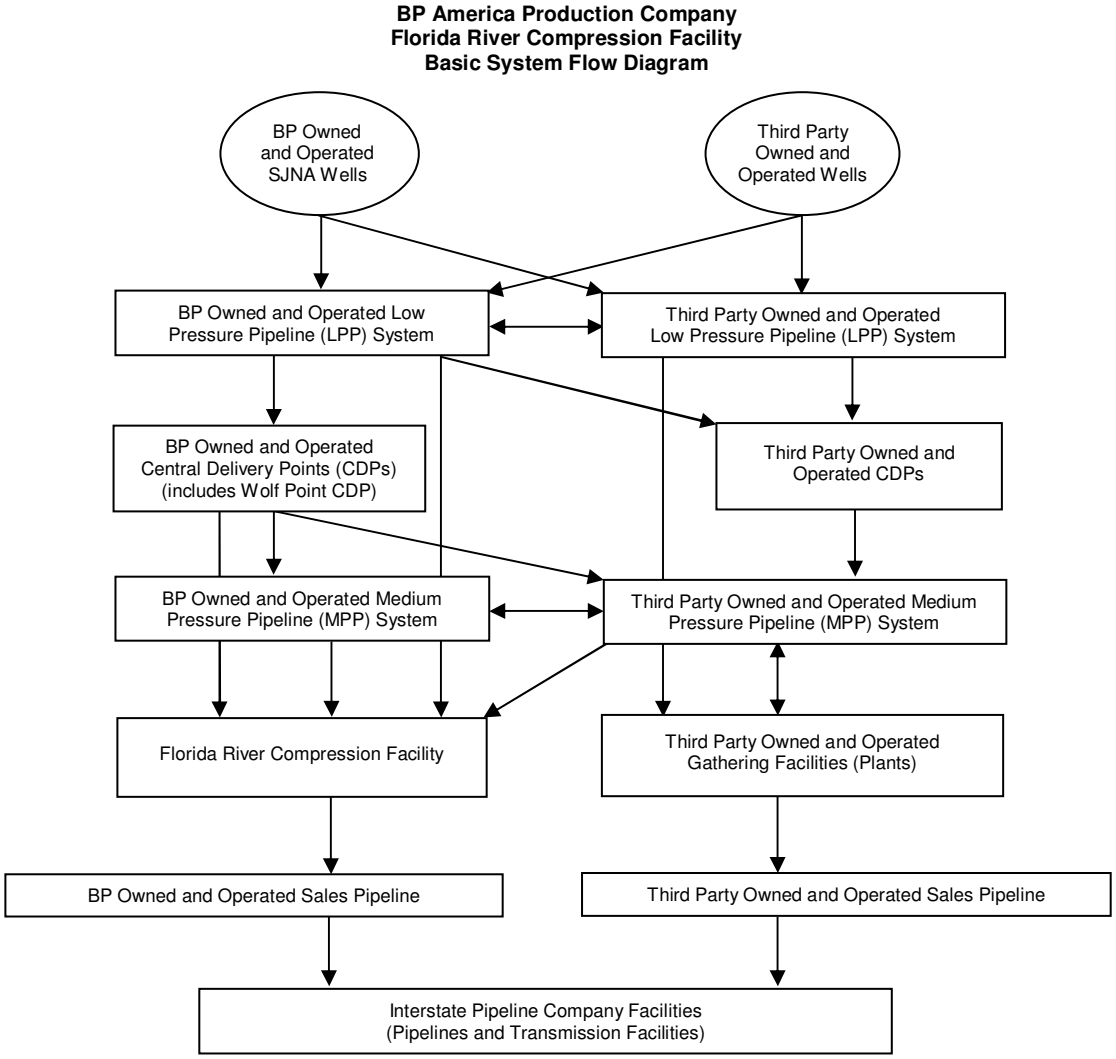
[4] Spacing in the NSJB area is complicated. The Colorado Oil and Gas Conservation Commission ("COGCC") determines proper spacing on fee and state lands; the Bureau of Land Management ("BLM") has authority to determine spacing on federal lands; and the Southern Ute Tribe has substantial authority over spacing on Tribal lands. Through a memorandum of understanding between the Tribe, the Bureau of Indian Affairs ("BIA"), and BLM, and a separate memorandum of understanding between BLM and COGCC, the various authorities allow COGCC to make initial spacing determinations which the Tribe, BIA, and BLM may then accept or not for lands within their respective jurisdiction. EPA-FL-0033 (Exhibit L).

pad. A memorandum of understanding BP entered into with La Plata County further limits potential well locations and requires the use of existing infrastructure to reduce surface impacts. EPA-FL-0033 (Exhibit N). BP also has its own internal factors for locating wells and will choose those locations with optimal geology, engineering, topography, access, power, and surface owner compatibility.

BP-operated wells were drilled at various times over the past 25 years. Several of the wells closest to Florida River were drilled in the mid-1980s, before Florida River was even built, including the Federal Land Bank GU C#1 (1985), Federal Land Bank GU B#1 (1986), and Piccoli Ranches #1 (1987). EPA-FL-0033 (Exhibit O) (map). The selection of those well locations was driven in part by surface owner preferences, as well as spacing orders. EPA-FL-0033 (Exhibit P) (internal memorandum on Piccoli Ranches #1 asking for "the district's best effort to accommodate the surface owner's wishes in locating the roads and location"). In contrast, other wells located within sight of Florida River were drilled slightly more than a year ago (more than 20 years after Florida River was constructed), including the Federal Land Bank GU B#3, Federal Land Bank GU B#4, and Jefferies GU A#3. The newest wells are (i) based on COGCC 80-acre spacing orders, (ii) directionally drilled from a single pad, and (iii) electrified consistent with BP's La Plata County MOU. BP chose the drilling location for the three newest wells due to problems with other locations which included "difficult terrain," "the proximity of residences and property lines," and the "proximity of BP offices and pipelines." EPA-FL-0033 (Exhibit Q) (BP letter to COGCC dated November 4, 2008). BP's well locations are not related to Florida River or any other facility.

D. The Gas Flow Is Dynamic And Variable.

The flow of gas in the NSJB field is a dynamic and variable process. Gas can be gathered on several gathering lines, including those of BP, Red Cedar Gathering Company (a joint venture between the Southern Ute Indian Tribe and Kinder Morgan) ("Red Cedar"), and Williams Four Corners LLC ("Williams"), and can flow to any number of facilities, including Florida River, Wolf Point, and several other compressor stations and plants owned by BP, Red Cedar, or Williams. BP's gas flow diagram relied on by Region 8 showing the complex movement of gas is reproduced below.



RTC at 12. BP and Red Cedar have significant flexibility in determining where and how gas flows. There are dozens of points across the field where BP-gathered gas can be either offloaded to other companies' pipelines and compressors or BP may accept gas from non-BP-operated wells and systems. EPA-FL-0039 (redacted representative agreements). BP has agreements with other third-party oil and gas gathering companies to accept BP's gas and for BP to accept third-party gas. EPA-FL-0040 (redacted copy of BP's standard agreement for gathering third-party gas). BP has agreements with Red Cedar to gather, compress, and treat gas from BP operated wells. EPA-FL-0041 (redacted copy of one of those agreements). BP and Williams are also "parties to a natural gas gathering and processing agreement" which, among other things, includes an "interconnection between BP's and Williams' gathering systems." EPA-FL-0033 (Exhibit W) (January 22, 2010 Letter from Williams).

Gas which flows to Florida River can flow to Red Cedar and other third parties if Florida River is off line. Likewise, if the Wolf Point compressor shuts down, then gas that normally would flow to Wolf Point can flow to Williams or to Red Cedar. Supra at 7 (gas flow chart); EPA-FL-0033 (Exhibit W) (Williams Letter). Conversely, if Red Cedar or another third party's facility shuts down, then that gas can flow to Florida River. EPA-FL-0041 (Red Cedar/BP Agreement). Whether gas flows to a BP facility or to a third-party facility may also be a function of the gas pressure at any particular point in time. The facility to which the gas flows will change based on increases or decreases in gas pressure as new wells are drilled and older wells are reworked, go into decline, etc. Gas produced from BP-operated wells in the Wolf Point area, for example, moves back and forth between Wolf Point and Bondad (owned by Red Cedar)

based on pressures. In each instance where "BP gas"[5] is transferred to third parties or BP receives third-party gas, the gatherer takes custody of and assumes liability for the gas while in the gatherer's possession, the gas is measured by the gatherer, and the shipper verifies those volumes with its own check meter. EPA-FL-0040 (BP Standard Agreement).

E. BP Staffing.

BP has separate personnel and equipment devoted to (i) locating, drilling, producing, and maintaining BP-operated gas wells and (ii) operation and maintenance of Florida River and other non-well facilities. BP's Plant personnel (team leaders and operators) are responsible for the Plant operations, but not for well production activities, and are officed at the Plant. A separate well production team leader and his "pumpers" are responsible for the operation of wells. In the NSJB, this is the Northwest Production Team Leader. He is officed at the BP Operations Center with personnel on the well production team. BP's wells do not share pollution control equipment or other equipment with Florida River. Equipment and materials for BP-operated wells are not stored at Florida River (other than some bulk storage of methanol and gasoline). The only tie between these distinct and separate groups is that they report to the same ultimate operations manager for purposes of business efficiency and accountability.

F. WEG's Position Before Region 8.

Region 8 and/or Colorado have on many occasions issued and amended CAA permits for the Florida River facility. Supra at 2-3. Most of those permitting decisions were available for public comment and noticed in the Federal Register or Colorado Register. Despite numerous

[5] "BP gas" refers to gas from BP-operated wells, regardless of BP's ownership of the gas, if any, apart from its operator status. BP's interest in wells is often divided with other entities. The Southern Ute Indian Tribe owns a substantial interest in many BP-operated wells as a result of a 1999 agreement between BP and the Southern Ute Indian Tribe to form Resolution Partners LLP, a limited partnership in which the Tribe acquired a 32% interest in many BP wells located on the Reservation. The Tribe's interest in Resolution Partners LLP is in addition to the royalty interest it owns in those lands where the Tribe holds beneficial title to the gas.

opportunities to comment, WEG never previously claimed that Florida River should be aggregated with other facilities. WEG's May 2008 comments on the draft Florida River Title V permit claimed for the first time that "EPA has not considered emissions from all interrelated pollutant emitting activities, namely BP's coalbed methane wells and the Wolf Point Compressor Station." EPA-FL-0022 (WEG comments at 2). WEG asserted that BP "operates more than 1000 coalbed methane wells in La Plata County" and those wells should be aggregated with Florida River because (i) "[t]he 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" and (ii) BP's wells "have a functional interrelationship with the Florida River Compression Facility" -- that is, without Florida River, BP's "wells would cease to operate as there would be no means of compressing, processing, and transporting natural gas to market pipelines." Id. at 4, 5.[6]

G. Region 8's Response To Comments And Permit.

Region 8's Response to Comments exhaustively addresses WEG's comments. RTC at 4-14. Region 8 rejected WEG's request to aggregate Florida River and other facilities because, among other reasons, the (i) fact that many BP wells are located across La Plata County does not mean they are "adjacent," RTC at 12; (ii) location of BP's wells is determined by a host of complex factors such as spacing, geology, engineering, topography, surface owner compatibility, not proximity or any other relationship to Florida River, id. at 12-13; (iii) wells were drilled before and after Florida River was constructed, id. at 12; (iv) "dynamic," "complex and diverse gas movement among the facilities," id. at 11, 13; and (v) "lack of unique interdependence

[6] In its comments before Region 8, WEG claimed that Florida River should be aggregated with BP's La Plata County wells and the Wolf Point compressor station. WEG does not separately discuss Wolf Point in its Petition before the Board. Accordingly, BP has not separately addressed aggregating the Wolf Point compressor with Florida River and BP's La Plata County wells.

among the facilities," id. at 13. The terms of Region 8's final Florida River Title V Permit to Operate are virtually the same as the terms contained in the draft permit.

H. WEG's Appeal To The Board.

WEG raises two claims on appeal. WEG makes the procedural claim that Region 8 was required to re-open the comment period because WEG raised substantial new questions over the adequacy of the permit as evidenced by Region 8's decision to include additional materials in the record provided by BP. Petition at 9-17. WEG acknowledges that the decision to re-open the comment period or not is a discretionary decision and that Region 8 made no changes to the Florida River renewal permit. Id. at 10, 15, 16. Nevertheless, WEG claims that Region 8 should have re-opened the comment period to allow WEG the opportunity to further comment on EPA's rationale in its Response to Comments and the materials BP submitted. Id. at 15. WEG's substantive claim is that Region 8 was required to aggregate Florida River and BP's La Plata County wells because (i) of prior EPA "determination" letters," id. at 20-24; (ii) Florida River and BP's La Plata County wells are connected by pipelines, id. at 22; (iii) Region 8 should have used WEG's own "support facility" standard which apparently would require aggregation if at least 50% of any gas stream from one facility goes to another facility, id. at 29-31; and (iv) Region 8 improperly relied on an entirely new "exclusive interrelatedness" standard, id. at 24-29.

ARGUMENT

I. REGION 8 DID NOT ABUSE ITS DISCRETION BY NOT RE-OPENING THE COMMENT PERIOD.

A. Region 8 Based Its Decision On Documents Properly Included In The Record.

Region 8 is required to "base final permit decisions on the administrative record." 40 C.F.R. 71.11(k). WEG does not argue that any materials relied on by Region 8 are not properly part of the administrative record. Caribe General Electric Products, Inc., 8 E.A.D. 696, 705 fn.

19 (EAB 2000) (similar situation where the petitioner did "not argue that the information is improperly in the administrative record"). WEG claims, however, that "it does not appear" that Region 8 can rely on additional information in justifying a permit decision "without reopening the public comment period." Pet. at 14.

To the contrary, the regulations expressly permit Region 8 to include in the administrative record documents responding to comments. "If new points are raised or new material supplied during the public comment period, the permitting authority may document its response to those matters by adding new materials to the administrative record." 40 C.F.R. 71.11(j)(2); see also 40 C.F.R. 71.11(k) (defining record to include "[t]he response to comments and any new materials placed in the record"). "As we have explained on numerous occasions, the administrative rules contemplate that the Region may add new materials to the record in response to public comment." Dominion Energy Brayton Point, L.L.C., 13 E.A.D. 407, 418 n.11 (EAB 2007) (citations omitted).[7]

B. Region 8 Properly Did Not Re-Open The Comment Period Based On Substantial New Questions.

The permit issuer, in its discretion, "may" re-open the comment period when "comments raise substantial new questions." 71.11(h)(5); 124.14(b).[8] NE Hub Partners, 7 E.A.D. 561, 585

[7] EPA's regulations formalize a fundamental administrative law principle. E.g., Vt. Yankee Nuclear Power v. N.R.D.C., 435 U.S. 519, 554-555 (1978) ("Administrative consideration of evidence … always creates a gap between the time the record is closed and the time the administrative decision is promulgated. … If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening."); 45 Fed. Reg. 33412 (May 19, 1990) (EPA recognized that the contrary rule now sought by WEG would result in an "endless cycle").

[8] The administrative record requirements of 40 C.F.R. part 71, including 40 C.F.R. 71.11, track those of 40 C.F.R. 124.17(b). 61 Fed. Reg. 34202, 34225 (July 1, 1996) ("Today's promulgated section 71.11 is based closely on the provisions of 40 CFR part 124."). The case law arises more frequently in the context of permits under part 124 than part 71. The Board has previously recognized that it is appropriate to rely on the standards of part 124 for disputes arising under part 71. E.g., Peabody Western Coal Company, No. 10-01, Slip. Op. at 9; 2010 WL 3258142 at 3,4 (EAB August 13, 2010) ("Given the close similarities between the part 71 and 124 permit appeals processes, and

(EAB 1998), petition for review denied, 185 F.3d 862 (3rd Cir. 1999) ("The critical elements of this regulatory provision are that new questions must be 'substantial' and the Regional Administrator 'may' take action."); Dominion Energy Brayton Point, 12 E.A.D. 490, 695 (EAB 2006). EAB will "review a region's decision not to reopen the comment period under an abuse of discretion standard and afford the region substantial deference." Dominion Energy, 13 E.A.D. at 416.

WEG claims that it "clearly raised substantial new questions" because Region 8 obtained additional information from BP and then relied on that information. Petition at 9. However, new information does not mean that there are substantial new questions or that EPA is required to re-open the comment period. City of Attleboro, MA Wastewater Treatment Plant, No. 08-08, Slip. Op. at 86-87 n.125; 2009 WL 2985479 at 31 and n.125 (EAB 2009) ("The regulations governing the permitting process do not call for a new comment period simply because the Region adds materials to the administrative record during its review of comments on the draft permit."); Prairie State Generating Company, 13 E.A.D. 1, 49 (EAB 2006), petition for review denied, 499 F.3d 653 (7th Cir. 2007) (the "regulations authorize the permit issuer to add new information to the record in response to comments received, but those rules do not require the permit issuer to invite public comment on such new information added to the record after the close of public comment").[9]

Nor does WEG rely on those factors the Board typically considers when determining if there is a substantial new question. That analysis often looks to whether (i) permit conditions

---

considering all the arguments filed to date, the Board will treat these part 124 criteria as applicable, by analogy, to part 71.").

[9] For the same reasons, the fact that EPA considers additional information after the close of the public comment period does not, as WEG alleges, result in a "de-facto" re-opening of the comment period as claimed by WEG. Petition at 11.

have changed, Dominion Energy, 13 E.A.D. at 416 n.10; (ii) new permit conditions were developed, id.; (iii) the record adequately explains the agency's reasoning such that a dissatisfied party can develop a permit appeal, id.; (iv) the petitioner identifies information which it would submit into the record if it were re-opened to establish grounds for changing the permit terms, Prairie Station Generating, 13 E.A.D. at 50 ("Petitioners have not identified on appeal any information that they would submit into the record, if it were reopened, to establish grounds for changing the Permit's terms."); and (v) the significance of adding delay to the permit proceedings, Dominion Energy, 13 E.A.D. at 416 n.10.

WEG does not rely on those factors because they show there is no substantial new question. The draft and final Florida River permit terms are virtually the same; no new permit conditions were developed; WEG has a sufficient record to pursue its aggregation claim because Region 8's Response to Comments explained the agency's rationale in detail; WEG has not identified any information that it would submit if the comment period were re-opened; and WEG has already stated it is opposed to additional delay, see WEG Partial Opposition to Extension of Time, EAB Docket #5. In short, there is no substantial new question.

WEG does argue Region 8's decision to not re-open the comment period improperly denied WEG the opportunity to comment on new information. Petition at 15 (WEG and "other members of the public, were denied the opportunity to comment on EPA's newly articulated rationale and analysis supporting its source determination, as well as all the underlying information submitted by the permittee."). WEG has not been denied the opportunity to challenge Region 8's rationale. WEG's proper remedy is to appeal the permit issuance, which it has done. E.g., Dominion Energy, 13 E.A.D. at 416-417 ("We recognize that this is the first time that [Petitioner] has had the opportunity to comment on the Region's rationale. … We have

previously observed, however, that the appellate review process affords petitioners the opportunity to question the validity of material added to the administrative record by a region in response to public comments."); Caribe, 8 E.A.D. at 705 n.19 (same); City of Attleboro, No. 08-08, Slip Op. at 86; 2009 WL 2985479 at 30 (same). It is particularly difficult for WEG to complain that Region 8 should re-open the comment period to allow comment on additional information in the record since that additional information supplementing the record is in response to WEG's own comments. E.g., Caribe, 8 E.A.D. at 705 n.19 ("[Petitioner] cannot reasonably protest that it has been prejudiced or surprised by the arrival of this information in the later stages of this proceeding. As plainly contemplated by the applicable regulations, the Region has merely included in the administrative record information in response to points that [Petitioner] itself raised during its comments on the draft permit.").[10] Accordingly, WEG's procedural claim fails.

II. THE FACTS DO NOT SUPPORT AGGREGATING FLORIDA RIVER AND BP-OPERATED WELLS ACROSS LA PLATA COUNTY.

A. EPA's Legal Standard For Aggregating Activities.

EPA consistently holds that determining whether sources should be aggregated for air permitting purposes is a highly fact specific, case-by-case determination. E.g., RTC at 5 ("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") (citing Memorandum of EPA

[10] Nor does the fact that BP as the permittee provided information to EPA support re-opening the comment period. Environmental Disposal Systems, No. 07-03, Slip Op. at 42-43; 2008 WL 2842943 at 17 (July 18, 2008) ("Information does not necessarily give rise to a substantial new question simply because the information is supplied by a permittee"); NE Hub Partners, 7 E.A.B. at 586 ("[T]he standard for reopening the public comment period turns on whether a substantial new question has arisen and not the genesis of information that may be added to the record. Information does not necessarily give rise to a substantial new question simply because the information is supplied by a permittee."). Moreover, EPA can request additional information from the permit applicant after the permit is submitted, 40 C.F.R. 71.5(a)(2), and has discretion to consider comments submitted after the comment period closes, e.g., Prairie State Generating, 13 E.A.D. at 69 n.72 ("We have also noted that permit issuers have the discretion to consider comments submitted after the close of the comment period.").

Assistant Administrator Gina McCarthy dated September 22, 2009 ("McCarthy Memo")), EPA-FL-0027; Jackson Order at 8 (same). EPA applies a three part-test in determining whether to aggregate. EPA looks to whether the pollutant emitting activities (i) are located on one or more contiguous or adjacent properties, (ii) belong to the same industrial grouping, and (iii) are under the control of the same person or persons. See, e.g., 40 C.F.R. 51.166(b)(5),(6); 40 C.F.R. 52.21(b)(5),(6); 40 C.F.R. 71.2.[11]

Pursuant to Alabama Power, EPA must also consider whether the activities (i) approximate the common sense notion of a plant, (ii) would fit within the ordinary meaning of a building, structure, facility or installation, and (iii) would carry out reasonably the purposes of PSD. Alabama Power Company v. Costle, 636 F.2d 323 (D.C. Cir. 1980); 45 Fed. Reg. 52676, 52694-95 (Aug. 7, 1980) (preamble to EPA regulations implementing Alabama Power standard). EPA has confirmed many times that "[p]ermitting authorities should rely foremost on the three regulatory criteria for identifying emissions activities that belong to the same 'building,' 'structure,' 'facility,' or 'installation.'" RTC at 5; McCarthy Memo at 2; Jackson Order at 8.

B. Region 8 Properly Did Not Aggregate The Florida River Plant And BP-Operated Wells Because They Are Not On Contiguous Or Adjacent Properties.

1. Florida River and BP's La Plata County wells are not "adjacent."[12]

Region 8 rejected WEG's "adjacency" claim because WEG failed to take several "important spatial, temporal, and regulatory attributes into account." RTC at 13. Those attributes included the following:

[11] There is no dispute that Florida River and BP-operated wells have the same SIC code and are under the control of the same person.

[12] The wells could not be "contiguous" because "contiguous" generally means "touching" and none of the BP-operated wells have surface sites actually touching the boundary of Florida River. E.g., RTC at 7 ("While some of these wells are close to Florida River, they are not physically contiguous with it.").

The geographic area at issue shows the facilities are not "adjacent." The term "adjacent" is not defined in EPA's PSD regulations and therefore should be given its plain meaning. The common dictionary definition of "adjacent" is "near or close; next to or contiguous." See Random House College Dictionary 17 (rev. ed. 1988). Region 8 properly found that "contrary to WEG's assertions, the fact that many of BP's NSJB wells are located in La Plata County does not mean they are 'adjacent.' La Plata County covers 1,692 square miles, or nearly 1.1 million acres." RTC at 12. BP's wells are dispersed widely across the Northern San Juan Basin consistent with applicable spacing orders and related agreements, with some wells located a significant distance (up to 18 miles) from Florida River. Id. at 7. "All BP owned and operated wells that happen to be co-located within such a large area cannot reasonably be said to be 'adjacent' to one another simply because they are located in the same county." Id. at 12.

Jurisdictional spacing requirements and other well location factors show the facilities are not "adjacent." Region 8 properly determined that "the placement of oil and gas well sites, compressor stations, and gas plants in this area is driven by several complex factors, including the spacing area established by relevant jurisdictional authorities," such as the Colorado Oil and Gas Commission, Bureau of Land Management, the Southern Ute Indian Tribe, and a memorandum of agreement between La Plata County and BP. RTC at 12-13. Well spacing requirements are unrelated to the location of Florida River or any other facility. Rather, they are used to ensure companies optimally drain the gas resource. Supra at 5-6. Nor are other factors BP relies upon in determining the location of wells related to Florida River, such as BP's assessment of the optimal geology, engineering, topography, access, power, and surface owner compatibility. RTC at 12; supra at 6. Given that the proximity to Florida River is a function of jurisdictional spacing, surface owner preferences, and other factors, rather than distance from (or

relationship to) Florida River, it is not surprising that many wells pre-date the Plant, while others were drilled more than two decades after the Plant was built. Id.

The variable gas flow shows that the facilities are not "adjacent." Region 8 found "a lack of 'adjacency' is also evidenced by the fact that the oil and gas production process in the NSJB is split among different facilities" with "dozens of points across the field where BP-gathered gas can be offloaded to other companies' pipelines, compressors, or gas plants or where BP may accept gas from non-BP-operated wells and systems." RTC at 11. Florida River and "BP's numerous well sites within the NSJB are not adjacent" "[t]aking into consideration the complex and diverse gas movement among the facilities" and the lack of integrated operations. Id. at 13.

2. Florida River and BP's wells are not located on adjacent "properties."

EPA's standard requires that stationary sources not only be "adjacent," but be located on "adjacent properties." E.g., 40 C.F.R. 51.166(b)(6); 40 C.F.R. 52.21(b)(6); 40 C.F.R. 71.2. WEG has not and cannot establish that fact. BP-operated wells are (i) located on surface lands owned by scores of different public and private landowners and (ii) drilled into mineral estates leased by BP from a vast number of different mineral owners. Supra at 4. Maps of surface use agreements and oil and gas leases on lands near Florida River collectively show dozens of different surface use and oil and gas lease agreements. EPA-FL-0033 (Exhibits I and J). For the 600 square mile NSJB field or the more expansive nearly 1700 square miles of La Plata County which WEG uses to define "adjacent," there is an exponential increase in the numbers of surface and mineral estate owners and agreements covering the many properties that separate wells and compressor facilities in this typical wide open western landscape. Those intervening, separately-owned estates render it impossible to interpret the many individual, widely dispersed wells

located on small operating pads as being located on "adjacent properties" within the plain meaning of that phrase.

C. The Facilities Do Not Satisfy The Common Sense Notion Of A Plant.

Even if WEG could successfully show that Florida River and BP-operated wells satisfy the three-part aggregation standard, WEG must additionally show that aggregating those facilities meets the "common sense notion of a plant." 45 Fed. Reg. at 52694-695. Florida River and BP's La Plata County wells do not meet the common sense notion of a plant within the oil and gas industry. BP's Florida River, Red Cedar's Arkansas Loop, and Williams' Milagro -- all located in the San Juan Basin -- are frequently referred to as stand-alone "plants" by their respective operators and by regulatory agencies.[13] That is the common sense notion of those facilities.[14] Individual wells or groups of wells which may flow to any of those plants are not referred to as "plants" and are not referred to as an integral part of those three plants, i.e., that is not the "common sense notion" among knowledgeable professionals in the industry or the agencies which regulate the industry.

Wells which flow to Florida River or other plants in the area are routinely bought and sold, yet those purchases and sales of wells have no bearing on Florida River, again indicating they are not part of the same plant. Indeed, just looking at the wells closest to Florida River shows they are not part of the same plant. Three of the ten closest wells were drilled before Florida River was even built. Supra at 6. Wells drilled before Florida River was built are not part of the same plant. The ten closest wells rely on different fuel sources (four are electrified

[13] See, e.g., Williams Production Co., MMS-02-0007 (2004) (Minerals Management Service (now Office of Natural Resources Revenue) referring to "Milagro Plant").

[14] An agreement between BP and Red Cedar confirms that common sense notion of a plant. The agreement defines "plant" to mean "one or more of the amine-treating plants that Red Cedar owns, operates, or has contractual rights to deliver gas to be treated for the removal of CO_2, and that are used by Red Cedar to provide services to Producer under this Agreement." EPA-FL-0041.

while six are natural gas-fired). It would be odd for the same plant to use different fuel sources. And, the locations of those wells were dictated by spacing orders, the preference of surface landowners, topography, and other conflicting surface uses, not any relationship to Florida River. Supra at 5-6. Nor, tellingly, does BP treat wells that it operates and Florida River as a single plant. There are completely separate groups of BP employees responsible for (i) drilling and well maintenance and operation and (ii) Florida River operations. The only tie between Florida River and the wells is that there is a connecting pipeline which, depending on the location of the wells and the flow of the gas, may or may not be owned by BP. Supra at 7-9.

The complex and dynamic gas processes in a large, mature gas play such as the Northern San Juan Basin further underscore that these facilities do not fit within the common sense notion of a plant. It would strain the "common sense notion" beyond the breaking point to conclude that wells and compressor stations in a mature field with its complicated gas flows and diverse ownership and operational interests constitute a single "plant."

D. Aggregating The Facilities Would Not Reasonably Fulfill The Purposes Of PSD.

According to both EPA and the court in Alabama Power, the determination of a source that involves aggregation "must carry out reasonably the purposes of PSD." 42 Fed. Reg. at 52694-95. The primary purpose of the PSD program is to address major new sources of air pollutants in nonattainment areas in order to maintain air quality within applicable increments. The program is not focused upon long pre-existing sources that have been duly permitted and inspected such as Florida River. Aggregating Florida River and BP-operated wells would not "carry out reasonably the purposes of PSD" because there would be no appreciable environmental benefit, and trying to treat these long-established and properly permitted sources as if they were new major sources triggering PSD requirements creates far more problems than it

could possibly solve. The sources WEG seeks to aggregate are already subject to numerous federal, state, and local requirements which effectively control their emissions of air pollutants, in furtherance of the CAA. These include NSPS and NESHAP program standards, as well as state-only requirements adopted very recently under Colorado AQCC Regulations 3 and 7. Those pre-existing control requirements very likely meet or exceed the BACT controls that would be required if these widely dispersed and disparate sources were aggregated for PSD and Title V purposes, so the benefits of such aggregation would be negligible at best.

WEG-style aggregation in this circumstance would cause significant practical problems as well. Permit issuance and administration for EPA would become far more burdensome and complex. Colorado accurately points out that "to require such a detailed and complex aggregation analysis on every oil and gas permitting decision would require permit engineers to analyze every possible natural gas flow permutation potentially connected to the source being permitted as well as to other ancillary operating equipment, no matter how tangential and contingent that pipeline connection might be, while simultaneously requiring that attorneys working with the permitting representatives similarly analyze commercial, royalty and gathering contracts to determine how natural gas is owned and controlled." Colorado Response to WEG Anardarko Petition. By the time the permitting authority issued a permit for the aggregated wells and compressor station, the conditions would often already be different from the conditions that existed when the permit application was submitted because new wells are constantly being drilled, companies are often recompleting or reworking existing wells or making equipment changes, and wells are often sold. Such a permitting scheme could even have adverse environmental impacts because it would discourage discrete facility upgrades, and it would discourage investment in this type of energy production due to the significant additional delays

and uncertainties in project permitting that it would cause. Aggregating sources as WEG advocates would not "reasonably carry out the purposes of PSD."

E. Region 8 Has Not Aggregated The Facilities For Decades Using The Same Standard.

The aggregation standard has remained the same for the past 30 years. Based on the same standard in place today neither Region 8 nor Colorado has ever sought to aggregate Florida River with BP-operated La Plata County wells. That longstanding consistent interpretation is entitled to deference and any departure at this point would be arbitrary and capricious. Dominion Energy Brayton Point, LLC, 12 E.A.D. at 610 (agency's "departure from prior norms must be explained") (quoting Puerto Rico Sun Oil Co. v. U.S. EPA, 8 F.3d 73, 78 (1st Cir. 1993)).

III. WEG'S PETITION FAILS.

A. Standard Of Review.

"It is clear from the history of the applicable regulatory language that the Administrator intended for the Board to exercise its broad powers of review 'only sparingly,' and that 'most permit conditions should be finally determined at the Regional level." Peabody Western Coal Company, 12 E.A.D. 22, 33 (EAB 2005). "[T]he Board will grant petitions for review only if it appears from the petition that the permitting authority's decision involved a clearly erroneous finding of fact or conclusion of law, or that the decision involves an important policy consideration which the Board, in its discretion, should review." Id. at 32. "[T]he burden of demonstrating that review is warranted rests squarely with the petitioner." Id. at 33.

B. WEG Has Failed To Meet Its Burden Of Proof Because WEG Does Not Contest The Facts.

To carry its burden of proof, WEG "must address the permit issuer's responses to relevant comments." Peabody Western Coal, 12 E.A.D. at 33. Review will not be granted when the Petitioner fails to address the Region's response to comments. Id. at 46 n.58; Michigan Dept. of Environ. Quality v. U.S. E.P.A., 318 F.3d 705, 707, 708 (6th Cir. 2003); City of Pittsfield, Massachusetts, No. 08-19, Slip Op. at 6, 2009 WL 582577 at 3-4 (EAB March 4, 2009) ("petitioner must provide specific and substantiated reasons justifying review") (collecting cases). WEG ignores Region 8's analysis of the facts in the Response to Comments.

Determining whether to aggregate facilities is a highly fact-specific determination which must rely "foremost" on the three regulatory criteria, including the contiguous or adjacent nature of the properties. RTC at 5. Consistent with that standard, Region 8 determined that Florida River and "BP's numerous well sites within the NSJB are not adjacent" "considering the facts specific to this permitting scenario." Id. at 13-14. Region 8 found the facilities were not adjacent based on many facts, including the vast size of the area; the placement of wells, compressors, and other equipment is not related; and the flow of gas is dynamic and variable. RTC at 12.

WEG recognizes that source aggregation analyses are case specific factual determinations, Petition at 20, but neither contests the accuracy of the facts relied upon by Region 8 nor challenges the Region's analysis of those facts in its Response to Comments.[15] On

[15] WEG takes some issue with Region 8's description of the scope of the wells Petitioner seeks to aggregate. Petition at 14 ("Petitioner did not request that every single oil and gas well in the North San Juan Basin oil and gas field be aggregated with the Florida River Compressor Station."). Before Region 8, WEG argued that (i) "BP operates more than 1,000 coalbed methane wells in La Plata County, all or some of which have a functional relationship with the Florida River Compression Facility" and (ii) "[t]he fact that BP's producing coalbed methane wells are all located primarily in La Plata County strongly indicates these pollutant emitting activities are adjacent to

appeal, WEG offers only generalities without any discussion of how aggregation is or is not appropriate given these particular facts. That is insufficient as a matter of law. The Board should deny review based on WEG's failure to satisfy its burden of proof.[16]

C. WEG's Interpretive Letter Claims Fail.

Without ever addressing the application of the facts at issue here, WEG claims that various regional EPA office interpretive letters support aggregating Florida River and BP-operated wells. Those claims fail.

WEG mischaracterizes the import of prior EPA regional letters. WEG's petition to the Board for Florida River relies on the identical EPA regional office letters that WEG relied on in objecting to Anardarko's Frederick compressor station which was the subject of the Jackson Order. Compare WEG Anadarko Petition for Objection at 14-17 (Exhibit 2) to WEG Florida River Petition at 20-24. WEG merely copied its Anadarko petition in arguing that prior EPA letters regarding aggregation are "determinations" which show Florida River must be aggregated. Many of the cited letters are not "determinations" but are merely recommendations to the state permitting agency which then has the discretion to make the final source determination. Jackson Order at 6. Several other letters cited by WEG are not relevant, id. at 15 n.12, 17 n. 16, and, in all events, "reliance on prior determinations alone does not provide an adequate justification for determining the source in a later permitting process with different facts" such as Florida River, id. at 6-7. WEG cannot simply cite EPA regional letters and then expect the Board to distill the facts itself and conclude that aggregation is appropriate. City of Pittsfield, Massachusetts v. U.S.

---

the Florida River Compression Facility for PSD purposes." EPA-FL-0022 at 4, 5. Whether WEG couches its source aggregation claim in terms of BP-operated wells across La Plata County or across the Northern San Juan Basin, the result is the same. Wells spread across those vast areas are not adjacent.

[16] WEG also fails to meet its burden of proof because it fails to show how (i) the sources meet the common sense notion of a plant or (ii) aggregating the sources would carry out reasonably the purposes of PSD.

EPA, 614 F.3d 7, 12 (1st Cir. 2010) ("We have long warned litigators that it is not the obligation of federal courts to 'ferret out and articulate the record evidence considered material to each legal theory advanced on appeal … [n]or have we been presented with a reason why a similar responsibility should fall to the EAB.") (citations omitted). WEG must, but fails, to show that any of those letters support aggregation with respect to these particular facts.

WEG's reliance on connecting pipelines does not support aggregation. WEG claims that, based on prior EPA letters, a "pivotal factor" in determining if facilities should be aggregated is whether the activities are connected by a pipeline. Petition at 22. The fact that a pipeline connects two separate oil and gas facilities or emission sources does not suggest that the two facilities should be aggregated as one source. A pipeline connection may be significant in other industries, but not in the oil and gas industry. Virtually all oil and gas facilities across the entire western United States are connected by pipelines and would, under WEG's theory, be a single source. That was clearly not the intent of the source aggregation rules. E.g., 45 Fed. Reg. at 52695 ("EPA … now confirms that it does not intend 'source' to encompass activities that would be many miles apart along a long-line operation. For instance, EPA would not treat all of the pumping stations along a multistate pipeline as one 'source.'"). Administrator Jackson considered and rejected the identical "pipeline" claim. Id. at 18.

WEG's reliance on the "utility trailer" letter does not support aggregation. WEG quotes four factors cited in a 1998 regional office letter to the Utah Division of Air Quality as "particularly instructive" for aggregating Florida River with BP's wells. Petition at 22-24 (e.g., is the new facility chosen because of its proximity to the existing facility, would materials be routinely transferred between facilities, are workers actively involved in both facilities, and will the production process be split between facilities). WEG's claim is unsupported and wrong.

First, WEG never explains how any of the factors cited in the letter are "particularly instructive" to the facts at issue here. Id. Second, the facilities at issue here would not be aggregated even under the "utility trailer" standard because, among other things, different BP personnel are responsible for the various facilities, there is no intermediate product, the locations of the facilities are not related, and the flow of gas is dynamic. Third, Administrator Jackson recently rejected WEG's identical reliance on the utility trailer letter to support aggregating a compressor station and various wells because (i) "EPA did not make a final applicability determination in [the utility trailer letter]" and "nothing in the letter suggests that these questions are either required or determinative of the source aggregation issue, especially in the context of a different industry" -- namely the oil and gas industry. Jackson Order at 15-16.

WEG's reliance on a "support facility standard" does not support aggregation. WEG claims that facilities should be aggregated if one facility "supports" another by providing 50% or more of its output, apparently regardless of distance.[17] Petition at 30. Administrator Jackson and Region 8 both determined that there is no reason to analyze whether there is a support facility relationship when, as here, all facilities have the same SIC code. Jackson Order at 16-17; RTC at 8-9. WEG concedes as much. Petition at 30 (Region 8's analysis "is true"). In any event, WEG's hypothetical 50% standard is not now an element of the source aggregation rule and could not be made an element of the rule absent a new rulemaking.

D. WEG's Exclusive Interdependence Claim Is Not Relevant Because The Undisputed Facts, Separate And Independent Of Interrelatedness, Show The Facilities Should Not Be Aggregated.

WEG claims that Region 8 improperly relied for the first time on a standard which requires a dedicated pipeline or "exclusive interdependence" between oil and gas facilities before

[17] WEG's assertion makes no sense because neither facility would be a primary facility at 50%.

they will be considered adjacent. Petition at 24-29. According to WEG, prior EPA letters show exclusive interdependence is not required and the standard should be some lesser level of interdependence or interrelatedness. Id. Region 8, the McCarthy Memo, and the Jackson Order all recognize that the standard for determining whether sources should be aggregated is a highly factual, case-by-case analysis which must rely "foremost" on the three regulatory criteria. RTC at 5; McCarthy Memo at 2; Jackson Order at 8. Because agencies are necessarily bound by their own regulations, there can be no doubt that the agency must determine whether under the facts at hand the facilities are located on "contiguous or adjacent properties." The facts relied upon here by Region 8 show that the Florida River and BP's wells are not located on "contiguous or adjacent properties" and WEG does not challenge that factual analysis. That is dispositive of this appeal.

BP recognizes that several prior EPA regional letters have recommended or found that aggregation is appropriate when there is exclusive interdependence between two facilities, e.g., Jackson Order 12-14 (describing letters), and Region 8 relied on some of those letters, RTC at 11. BP questions whether interrelatedness is a factor to be considered in determining adjacency given that it was not included in the regulations or in the 1980 preamble, and the agency expressed its unwillingness to engage in "fine-grained analyses" when making source determinations. 45 Fed. Reg. at 52695. However, the extent to which interrelatedness is or is not a factor to consider when determining adjacency is not relevant in this case. That is because Florida River is not adjacent to BP's La Plata County wells regardless of whether (i) "interrelatedness" is a factor which the agency should not consider at all, (ii) the test is exclusive interrelatedness, or (iii) adjacency can be based on some lesser degree of interrelatedness. Many facts showing the lack of adjacency between Florida River and BP's La Plata County wells --

such as that the facilities are spread across a geographical area hundreds of square miles in size and are located on fractured surface and mineral estates -- have nothing to do with interrelatedness or interdependence. Those facts are separate and independent grounds for showing the facilities are not located on "adjacent properties." It may be necessary to ultimately resolve the precise extent to which interrelatedness is or is not a dispositive consideration in making source aggregation determinations, but there is no reason to resolve the issue in this case because (i) Florida River and BP's La Plata County wells are not adjacent regardless of interrelatedness and (ii) WEG never challenges the facts in this case.

CONCLUSION

For the foregoing reasons, BP respectfully requests the Board to deny WEG's petition.

BP AMERICA INC.

/s/ Jeffrey C. Conrad
Jeffrey C. Conrad
501 Westlake Park Blvd.
Houston, Texas 77079-2607
Telephone: 281-366-1859
jeffrey.conrad@bp.com

DAVIS GRAHAM & STUBBS LLP

/s/ Charles L. Kaiser
Charles L. Kaiser
John R. Jacus
Charles A. Breer
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202
Telephone: (303) 892-9400
Facsimile: (303) 893-1379
chuck.kaiser@dgslaw.com
john.jacus@dgslaw.com
charlie.breer@dgslaw.com

Attorneys for BP America Production Company

CERTIFICATE OF SERVICE

I certify that on the 24th day of February, 2011, I caused a copy of BP AMERICA PRODUCTION COMPANY'S RESPONSE TO WILDEARTH GUARDIANS' PETITION FOR REVIEW to be filed and served as indicated below:

E-File (CDX)

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

Electronic and U.S. Mail

Jeremy Nichols
Climate and Energy Program Director
Wildearth Guardians
1536 Wynkoop, Suite 301
Denver, CO 80202
jnichols@wildearthguardians.org

Kristi Smith
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection
1200 Pennsylvania Ave., N.W. (MC-2344A)
Washington, DC 20460
smith.kristi@epa.gov

Sara Laumann
Steve Odendahl
Office of Regional Counsel, Region 8
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-2466
laumann.sara@epa.gov
odendahl.steve@epamail.epa.gov

/s/ Linda D. Ridding-Meyer
Linda D. Ridding-Meyer