



Peter RC

June 2, 2010

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Failure to Take Action on Clean Air Act Title V Permit Within 18 Months

Dear Administrator Jackson:

RECEIVED
U.S. EPA Region 8
RA's Office

JUN 4 2010

Pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), WildEarth Guardians hereby provides notice of its intent to file suit against you and the U.S. Environmental Protection Agency ("EPA") after 60 days for your failure to perform a nondiscretionary duty set forth under Title V of the Clean Air Act. Specifically, we intend to file suit over your failure to issue or deny a Title V Permit administered by the EPA under 40 C.F.R. § 71 within 18 months after receipt of a complete application, as required by Section 503(c) of the Clean Air Act, 42 U.S.C. 7661b(c), and 40 C.F.R. § 71.7(a)(2).

On January 19, 2006, the EPA determined that BP had submitted a complete application for a Part 71 Title V Operating Permit for the company's Florida River Compression Facility (Draft Title V Permit No. V-SU-0022-05.00), located on the Southern Ute Indian Reservation. In early 2008, the EPA solicited public comment on the Draft Title V Permit. On May 19, 2008, Rocky Mountain Clean Air Action, an organization that on September 15, 2008 officially merged with WildEarth Guardians, submitted comments on the Draft Title V Permit. These comments identified the failure of the Draft Title V Permit to assure compliance with Title V permitting requirements, as well as requirements under the Clean Air Act's Prevention of Significant Deterioration ("PSD") program. In accordance with Section 503(c) of the Clean Air Act, 42 U.S.C. 7661b(c), and 40 C.F.R. § 71.7(a)(2), the EPA was required to take action on the draft Title V Permit on or around June 19, 2007. As of the date of this letter, the EPA has yet to take action on the Draft Title V Permit, more than four years after receiving a complete application.

The failure of the EPA to take action on the Draft Title V Permit harms WildEarth Guardians, its members, and its interests. WildEarth Guardians is a nonprofit environmental organization dedicated to protecting and restoring the wildlife, wild places, and wild rivers of the American West. Through its Climate and Energy Program, WildEarth Guardians works to advance clean energy by holding the fossil fuel industry accountable to environmental safeguards, particularly under the Clean Air Act.

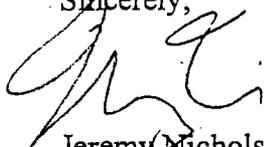
In the case of BP's Florida River Compression Facility, WildEarth Guardians has a vested interest in ensuring the facility is operated in accordance with Clean Air Act requirements. The May 19, 2008 comments submitted by Rocky Mountain Clean Air Action identified deficiencies in the Draft Title V Permit, notably in that the Draft Title V Permit failed to address emissions from interrelated sources of air pollution connected with the Florida River Compression Facility in accordance with PSD requirements. PSD requires, among other things, that best available pollution controls be utilized to keep harmful air emissions in check. *See* 40 C.F.R. § 52.21(j)(2).

The failure of the EPA to issue or deny the Draft Title V Permit within 18 months after receiving a complete application means that the agency has failed and is continuing to fail to ensure that the Florida River Compression Facility is meeting all applicable requirements under the Clean Air Act. Put simply, the Florida River Compression Facility is currently operating under a Title V Permit that does not assure compliance with PSD requirements under the Clean Air Act. Thus, the facility is most likely emitting pollutants in levels that are not allowed under the Clean Air Act. The EPA's delay in taking action on the Title V Permit is largely responsible for this situation.

The Clean Air Act, at 42 U.S.C. § 7661b(c), provides that a permitting authority shall "issue or deny" a Title V Permit "within 18 months after the date of receipt" of an application for a Title V Permit. *See also* 40 C.F.R. § 71.7(a)(2). This is a nondiscretionary duty under the Clean Air Act. The EPA has not issued or denied the BP Florida River Compression Facility Title V Permit within 18 months, thus has failed to perform a nondiscretionary duty.

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the persons giving the notice are WildEarth Guardians, 312 Montezuma Ave., Santa Fe, New Mexico 87501. If you wish to discuss this matter, please contact me at the information below.

Sincerely,



Jeremy Nichols
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cc: James Martin, Regional Administrator, U.S. Environmental Protection Agency, Region 8