

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF)	Petition Number: VIII-2022-
Terra Energy Partners,)	
Rocky Mountain LLC,)	PETITION TO OBJECT TO
Parachute Water Management Facility)	ISSUANCE OF AN INITIAL
)	TITLE V OPERATING PERMIT
Permit Number: 09OPGA330)	
)	
Issued by the Colorado Department of)	
Public Health and Environment,)	
Air Pollution Control Division,)	
_____)	

PETITION TO OBJECT TO ISSUANCE OF TITLE V PERMIT

Pursuant to Section 505(b)(2) of the Clean Air Act and 40 CFR § 70.8(d), WildEarth Guardians (hereafter “Guardians”) petitions the Administrator of the U.S. Environmental Protection Agency (“EPA”) to object to the issuance of the initial Title V operating permit (hereafter “Title V Permit”) issued by the Colorado Department of Public Health and Environment’s Air Pollution Control Division (“Division”) for Terra Energy Partners, Rocky Mountain LLC (hereafter “TEP”) to operate the Parachute Water Management Facility (hereafter “Parachute Waste Facility”).¹ The Parachute Waste Facility is a large oil and gas waste processing facility located in Garfield County, Colorado. The Division approved an initial Title V permit for the facility on October 1, 2022. *See* Exhibit 1, TEP, Parachute Water Management Facility Title V Permit, Permit Number 09OPGA330 (July 29, 2022) (“Final Permit”).

WildEarth Guardians petitions the Administrator to object on the basis that the Permit:

1. Fails to assure that TEP complies with applicable Prevention of Significant Deterioration (“PSD”) permitting and related requirements under the Colorado State Implementation Plan (“SIP”). The Division incorrectly classified emissions from the largest unit at the Parachute Waste Facility as fugitive, thereby allowing TEP to operate out of compliance with applicable requirements under the Clean Air Act.

Pursuant to 40 C.F.R. § 70.8(c)(1), the Administrator must object over the failure of the Title V Permit to assure compliance with applicable requirements.

INTRODUCTION

The Parachute Waste Facility is an oil and gas production wastewater treatment plant. The facility collects wastewater from nearby oil and gas production operations, contains the waste in large ponds and tanks for processing, and disposes of and recycles waste. *See* Exhibit 2,

¹ The use of the words “Administrator” and “EPA” are used interchangeably in this petition.

Technical Review Document for Operating Permit 09OPGA330 at 1-3. Operation of the facility releases large amounts of volatile organic compound (“VOC”) emissions, which pose risks to public health and also react with sunlight to form ground-level ozone, as well as hazardous air pollutants (“HAPs”).



Satellite view of the Parachute Waste Facility located in Garfield County.

Under the Title V Permit approved by the Division, TEP is authorized to release hundreds of tons of VOCs and hazardous air pollutants every year as a result of evaporation, primarily from a large holding pond identified as unit HPS-013. *See* Table below.

**Total Permitted Annual Emissions, in tons/year,
from the Parachute Waste Facility, Exhibit 2 at 5 and 58.**

VOCs	761.1
Methanol	207.6
Xylene	95.5
n-Hexane	6.5
Toluene	118.1
Benzene	45.5

Critically, permitted VOC emissions would be above the PSD major source permitting threshold of 250 tons/year for the facility. Under PSD permitting requirements in the Colorado SIP, major sources must utilize best available control technology, conduct modeling to assess ambient air quality impacts, protect visibility in Class I areas, and otherwise comply with more stringent air pollution oversight requirements. *See* Colorado SIP at Air Quality Control Commission (“AQCC”) Regulation No. 3, Part D. However, the Division concluded that because emissions are “fugitive” in nature, that they do not count toward the Parachute Waste

Facility's major source status under PSD. WildEarth Guardians petitions the EPA to object on the basis that this conclusion is erroneous and not supported.

Guardians submitted substantive written comments on the draft Title V Permit for the Parachute Waste Facility on April 30, 2022. *See* Exhibit 3, WildEarth Guardians Comments on Draft Title V Permit for Parachute Water Management Facility (April 30, 2022). The Colorado Air Quality Control Commission also held a public hearing on June 9, 2022, during which Guardians provided verbal comments. The Division responded to Guardians' comments on August 8, 2022. *See* Exhibit 4, Division Response to Comments (Aug. 8, 2022).

The Division submitted the proposed Title V Permit for EPA review on August 9, 2022. The EPA's 45-day review period concluded on September 23, 2022. During this 45-day review period, the EPA did not object to the issuance of the Title V Permit. Since that time, the Division issued the final Title V Permit, dated October 1, 2022. According to the EPA's spreadsheet of Title V petition deadlines for Region 8, this petition is thus timely filed within 60 days of the conclusion of EPA's 45-day review period, or by November 23, 2022. *See* Exhibit 5, EPA Region 8, Title V Operating Permit Public Petition Deadlines (last posted Nov. 14, 2022).

This petition is based on objections to the permit raised with reasonable specificity during the public comment period. To the extent the EPA may somehow believe this petition is not based on comments raised with reasonable specificity during the public comment period, Guardians requests the Administrator also consider this a petition to reopen the Title V Permit for the Parachute Waste Facility in accordance with 40 CFR § 70.7(f).² A permit reopening and revision is mandated in this case because of one or both of the following reasons:

1. Material mistakes or inaccurate statements were made in establishing the terms and conditions in the permit. *See* 40 CFR § 70.7(f)(1)(iii). As will be discussed in more detail, the Title V Permit for the Parachute Waste Facility suffers from material mistakes in violation of applicable requirements, etc.; and
2. The permit fails to assure compliance with the applicable requirements. *See*, 40 CFR § 70.7(f)(1)(iv). As will be discussed in more detail, the Title V Permit for the Parachute Waste Facility fails to assure compliance with several applicable requirements.

PETITIONER

Petitioner WildEarth Guardians is a Santa Fe, New Mexico-based nonprofit membership organization dedicated to protecting and restoring the health of the American West. On behalf of its members, Guardians works to confront harmful air pollution, defend clean air, and ensure polluters are paying the true cost of their operations. Guardians works to ensure the oil and gas industry complies with state and federal clean air laws and regulations, to safeguard public health

² To the extent the Administrator may not believe citizens can petition for reopening for cause under 40 CFR § 70.7(f), Guardians also hereby petitions to reopen for cause in accordance with 40 CFR § 70.7(f) and pursuant to 5 USC § 555(b) (a person may appear before a federal agency to present issues and the agency must conclude a matter presented to it).

and safety from unchecked oil and gas extraction, and to advance a just and equitable transition away from fossil fuels to protect the climate and communities.

Petitioner requests the EPA object to the issuance of Permit Number 09OPGA330 for the Parachute Waste Facility and/or find reopening for cause for the reasons set forth below.

GROUND FOR OBJECTION

I. The Final Permit Fails to Assure Compliance with Applicable PSD and Related Requirements in the Colorado State Implementation Plan

The Title V Permit issued by the Division fails to ensure that TEP operates the Parachute Waste Facility in compliance with PSD requirements in the Colorado SIP. At issue is the Division's determination that all emissions from Unit HPS-013 are fugitive in nature, and therefore do not count toward the source's major source status under PSD. All indications are that these emissions are not fugitive in nature and that the Parachute Waste Facility is actually a major source under PSD and subject to applicable PSD and related requirements in the Colorado SIP. Guardians raised this issue with reasonable specificity on pages 2-5 of its written comments, as well as raised the issue verbally during the June 9, 2022 public comment hearing held by the Colorado Air Quality Control Commission.

Under the Clean Air Act, major stationary sources of air pollution located in areas attaining the national ambient air quality standards are subject to PSD permitting. 42 U.S.C. § 7475; *see also* 40 C.F.R. § 51.166 (setting forth all requirements for PSD permitting program). A major source for PSD purposes is generally any facility that has the potential to emit 250 tons/year or more of any air pollutant, although for certain source categories the major source threshold is 100 tons/year. 42 U.S.C. § 7479(1); *see also* 40 C.F.R. § 51.166(b)(1)(i).

For purposes of calculating a facility's potential to emit under PSD, fugitive emissions are generally excluded. 40 C.F.R. § 51.166(b)(1)(iii). Under Clean Air Act PSD regulations, fugitive emissions are defined as, "those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening." 40 C.F.R. § 51.166(b)(20).

The Colorado SIP approved by the EPA incorporates all the provisions of the Clean Air Act's PSD program, including the provisions of 40 C.F.R. § 51.166 as promulgated by the EPA. Colorado's PSD program is set forth at Colorado AQCC Regulation Number 3, Part D. *See* 5 CCR 1001-5, Part D. Fugitive emissions are defined under the Colorado SIP at Colorado AQCC Common Provisions Regulation, Section I. *See* 5 CCR 1001-2, Section I. As with the Clean Air Act's PSD regulations, the Colorado SIP defines fugitive emissions as "emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening." AQCC Common Provisions Regulation at Section I.G (defining "fugitive emissions").

Applicable requirements under Title V include, "[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the [Clean Air] Act that implements the relevant requirements of the

[Clean Air] Act[.]” 40 C.F.R. § 70.2 (defining “applicable requirement”). Accordingly, the PSD requirements set forth in the Colorado SIP, including the definition of fugitive emissions, are applicable under Title V.

At issue here is that the Title V Permit approved by the Division incorrectly categorizes emissions from HPS-013 as fugitive, contrary to PSD requirements under the Clean Air Act and the SIP, and therefore fails to assure compliance with applicable requirements.

Emission point HPS-013 consists of four produced water/flowback storage ponds, including the North Pond, South Pond, Pond 2, and Pond 3. Exhibit 1 at 45. The ponds hold and process oil and gas wastewater. In the process, these ponds evaporate and release large amounts of VOCs and HAPs.

The Division claims that the emissions from HPS0-013 are fugitive under the Colorado SIP and Clean Air Act. Under the Colorado SIP and PSD requirements, fugitive emissions do not count toward a source’s major source status under PSD. According to the Division, because emissions from HPS-013 are considered fugitive, the Parachute Waste Facility is not and has never been a major source of VOCs under the Clean Air Act’s PSD program and/or subject to PSD permitting. *See e.g.* Exhibit 2 at 6 (asserting that PSD is not an “applicable requirement” due to the fugitive nature of emissions from HPS-013). Unfortunately, the Division is mistaken.

As Guardians explained in its comments, “whether the facilities’ emissions are fugitive depends upon a determination of whether these emissions can reasonably be collected and passed through a stack, chimney, vent, or other functionally equivalent opening.” Exhibit 3 at 3. Citing EPA guidance on the subject, Guardians explained:

When assessing whether emissions can reasonably be collected, EPA has consistently held that a determination of “reasonableness” should be construed “broadly.” Exhibit 1, U.S. EPA, “Classification of emissions from landfills for NSR applicability purposes,” Memo from John S. Seitz to Regional Air Division Directors (Oct. 21, 1994) at 2; *see also* Exhibit 2, U.S. EPA, “Interpretation of the definition of fugitive emissions in Parts 70 and 2,” Memo from Thomas C. Curran to Judith Katz (Feb. 10, 1999) at 2. EPA has further generally held that where emission collection technology is in use by other sources within the same source category or by a similar pollutant emitting activity, there is a presumption that collection is reasonable. *Id.*

Exhibit 3 at 3 and Exhibits 1 and 2 to Exhibit 3.

With regards to the Parachute Waste Facility, Guardians provided detailed information demonstrating that technology is in use by other sources within the same source category or by a similar pollutant emitting activity demonstrating a presumption that collection of emissions from HPS-013 is reasonable. *See* Exhibit 3 at 3-4. Highlighting the use, availability, and technological feasibility of a “floating cover and gas collection system,” Guardians disclosed numerous specific examples confirming that similar pollutant emitting activities utilize floating covers and gas collection systems to control emissions from waste ponds. *Id.* Finally, Guardians highlighted the fact that TEP utilizes covers for other ponds at the Parachute Waste Facility,

noting that Unit PD1-003, which consists of Pond 1, utilizes a membrane cover to capture and gather VOCs and utilizes an enclosed combustor to reduce VOC emissions. *See* Exhibit 2 at 7. Because of this, the Division actually classified emissions from PD1-003 as “point,” or non-fugitive. *See* Exhibit 1 at 8.³

In response to WildEarth Guardians’ comments, the Division offers various reasons for maintaining its position that emissions from HPS-013 are fugitive. However, the Division does not actually deny that emissions from the Unit can “reasonably pass through a stack, chimney, vent or other functionally equivalent opening.” In fact, the Division did not even respond directly to the specific and detailed information provided by Guardians in its comments.⁴ Instead, the Division offers unsupported excuses for dodging the issue.

While the Division acknowledges in its response to comments that a determination of whether emissions from Unit HPS-013 are fugitive requires an “evaluat[ion] [] on a case-by-case basis including technical considerations as well as cost” the Division did not actually conduct or present such a case-by-case evaluation including technical considerations and costs. Instead, the Division simply asserts:

Because this Holding Pond System was determined to be a fugitive emissions source under the original construction permit, the system is not being modified with the permit action, and there are no new federal or state standards that require covers for oil and gas wastewater ponds, the draft Title V Operating Permit correctly identifies the Holding Pond System as a fugitive emissions source[.]

Exhibit 4 at 4. This rationale does not comport with applicable requirements under the Clean Air Act.

The fact that emissions from HPS-013 were determined to be fugitive under the original construction permit issued in 2011, that the system is not being modified with the Title V permitting action, and that there are no new federal or state standards that require covers for oil and gas wastewater ponds have no bearing on whether emissions from HPS-013 are properly considered fugitive. Under the Colorado SIP fugitive emissions are defined as, “emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.” Accordingly, an assessment of whether emissions from HPS-013 are fugitive must be based on an actual assessment of whether emissions from HPS-013 could reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Here, the Division did not conduct such an assessment.

To the Division’s point regarding issuance of the original construction permit for the Parachute Waste Facility, the fact that emissions may have originally been permitted as fugitive does not mean that emissions will never be capable of reasonably passing through a stack,

³ Note the Division confirms that even if the cover is removed from Unit PD1-003, emissions will still be classified as “point” or non-fugitive.

⁴ Notably, the Division did not directly respond to any of the detailed exhibits and weblinks provided by Guardians in its comments demonstrating the feasibility, availability, and use of floating cover and gas collection systems for waste ponds both within and outside of the oil and gas sector.

chimney, vent, or other functionally equivalent opening. A determination today that emissions from HSP-013 are no longer fugitive would simply require the facility to be classified as a major source under PSD and would not negate or otherwise retroactively undo any past permitting.

With regards to the Division's claim that "the system is not being modified," the definition of fugitive emissions in the Colorado SIP is not dependent upon whether there is a modification of a stationary source. This is an inappropriate criteria for determining whether emissions can reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Finally, with regards to the Division's claim that "there are no new federal or state standards that require covers for oil and gas wastewater ponds," this excuse again defies the plain definition of fugitive emissions under the Colorado SIP. Whether there are other state or federal standards in place has no bearing on whether emissions can reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. As the Division itself notes, TEP utilizes a cover and gas collection system for controlling emissions from Unit PD1-003 at the Parachute Waste Facility, apparently without the existence of any "new federal or state standards."

In its comments, Guardians explained that because emissions from HPS-013 are non-fugitive, the Parachute Waste Facility is currently a major source under PSD and TEP is currently operating out of compliance with the Clean Air Act. To ensure compliance with applicable requirements, Guardians commented that the Division must write the permit in such a way as to bring TEP into compliance, which could include either a compliance schedule, consistent with 40 C.F.R. § 70.5(c)(8)(iii)(C), to bring the facility into compliance with PSD or require TEP to limit facility-wide VOC emissions to below PSD major source levels.

In response to this comment, the Division maintained its position that it "correctly identified which emitting units are point and fugitive[.]" Exhibit 4 at 6. The Division asserted, "the PSD analysis provided in the TRD and permit are correct and unchanged. The facility is a minor source for PSD." *Id.* As explained earlier, the Division did not correctly identify which emitting units are or are not fugitive and did not correctly assess the PSD status, including PSD compliance status, of the Parachute Waste Facility.

The Title V Permit for the Parachute Waste Facility fails to assure compliance with applicable requirements and therefore fails to comply with 40 C.F.R. §§ 70.6(a)(1) and 70.7(a)(1)(iv). Accordingly, pursuant to 40 C.F.R. § 70.8(c)(1), the Administrator must object to the issuance of the permit on the basis that:

1. The Division improperly classified emissions from HPS-013 as fugitive, contrary to applicable requirements in the Colorado SIP. The Division did not actually assess whether emissions could reasonably pass through a stack, chimney, vent, or other functionally equivalent opening; relied on improper criteria to claim emissions are fugitive; and did not address specific technical information presented in comments; and

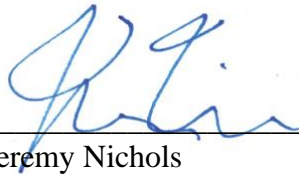
2. The Division improperly classified the Parachute Waste Facility as a non-major source under applicable PSD requirements set forth in the Colorado SIP. The Division's improper classification means that it failed to properly identify applicable requirements, failed to properly assess the compliance status of the facility, and failed to include a schedule of compliance, as needed, in the Title V Permit, or to otherwise ensure that the permit included terms and conditions to ensure compliance.

The EPA must object and direct the Division to properly characterize emissions from Unit HPS-013 as fugitive and to assess compliance and revise the Title V Permit accordingly to assure compliance with all applicable requirements.

CONCLUSION

For the foregoing reasons, the EPA must object to Colorado's issuance of the Final Title V Permit authorizing Terra Energy Partners, Rocky Mountain LLC to operate the Parachute Water Management Facility. As demonstrated above, the Title V Permit fails to assure compliance with applicable requirements under the Clean Air Act and the Colorado SIP. Accordingly, the Administrator has a nondiscretionary duty to issue an objection to the Title V Permit within 60 days in accordance with Section 505(b)(2) of the Clean Air Act. 42 U.S.C. § 7661d(b)(2).

Submitted this 22nd day of November 2022



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Pursuant to 40 C.F.R. § 70.8(d), copies of this petition have been concurrently transmitted to the following:

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TABLE OF EXHIBITS

1. TEP, Parachute Water Management Facility Title V Permit, Permit Number 09OPGA330 (July 29, 2022).
2. Technical Review Document for Operating Permit 09OPGA330.
3. WildEarth Guardians Comments on Draft Title V Permit for Parachute Water Management Facility (April 30, 2022).
4. Division Response to Comments (Aug. 8, 2022).
5. EPA, EPA Region 8 Title V Operating Permit Public Petition Deadlines (last posted Nov. 14, 2022).