

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

IN THE MATTER OF)	
)	
Clean Air Act Title V Permit (Initial))	
)	
Issued to Terra Energy Partners, Rocky Mountain LLC for the Parachute Water Management Facility)	Title V Permit No. 09OPGA330
)	
Issued by the Air Pollution Control Division of the Colorado Department of Public Health and Environment)	
)	
_____)	

Petition to Object to Colorado Title V Permit No. 09OPGA330 for the Parachute Water Management Facility

Pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Center for Biological Diversity and Grand Valley Citizens Alliance (collectively, “Public Interest Groups” or “Petitioners”) respectfully petition the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to object to the initial Title V Permit No. 09OPGA330 (“Permit”) issued by the Air Pollution Control Division (“Division”) of the Colorado Department of Public Health and Environment (“CDPHE”) for Terra Energy Partners, Rocky Mountain LLC’s Parachute Water Management Facility (“Parachute Facility”).

The Parachute Facility is an oil and gas production wastewater treatment plant. The facility collects wastewater from nearby oil and gas production operations, retains waste in large ponds and tanks for processing, and disposes of waste. The Parachute Facility releases large amounts of volatile organic compound (“VOC”) emissions, which can harm human health and

are also precursors to ground-level ozone and particulate matter less than 2.5 microns in diameter. The facility emits other pollutants that harm public health and welfare in several ways, including causing premature mortality. The Parachute Facility also releases a variety of hazardous air pollutants.

The Public Interest Groups submitted timely comments¹ on the draft permit during the public comment period, which closed on April 30, 2022. The Division responded to public comments² and issued the proposed Permit. The Division forwarded the proposed Permit to EPA for its 45-day review period, which ended on September 23, 2022, without EPA objecting. The Public Interest Groups submit this petition within 60 days of the close of EPA’s 45-day review period—November 23, 2022³—as required by 42 U.S.C. § 7661d(b)(2).

PETITIONERS

Petitioner Center for Biological Diversity (“the Center”) is a nonprofit, 501(c)(3) conservation organization. The Center’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us. The Center has more than 89,000 members, including over 3,100 members in Colorado.

¹ Petitioner Center for Biological Diversity’s May 2, 2022 comments on the draft permit are attached as Exhibit 1.

² The Division’s August 8, 2022 response to the Center for Biological Diversity’s comments are attached as Exh. 2.

³ EPA, *EPA Region 8 – Title V Operating Permit Public Petition Deadlines*, at 2 (accessed Nov. 10, 2022), https://www.epa.gov/sites/default/files/2020-08/documents/title_v_operating_permit_public_petition_deadlines_-_region_8.pdf (Exh. 3).

Petitioner Grand Valley Citizens Alliance (“GVCA”) was founded in 1997 to empower and mobilize Garfield County residents impacted by oil and gas development, when companies could drill and frack multiple wells only 150 feet from homes. With the help of Western Colorado Alliance organizers, GVCA members have responded to industry’s increased political influence on local, state, and federal oil and gas legislation by sponsoring public information meetings, going to Denver to lobby the Colorado Oil and Gas Conservation Commission, and promoting “best drilling management practices” that would help protect health, safety, and air and water quality. GVCA’s members were involved in the passage of Senate Bill 19-181 and subsequent rulemakings to change Colorado Oil and Gas Conservation Commission regulations and other state and federal oil and gas and conservation regulations to better protect public health and the environment.

GENERAL TITLE V PERMITTING REQUIREMENTS

The Clean Air Act prohibits qualifying stationary sources of air pollution from operating without or in violation of a valid Title V permit, which must include conditions sufficient to “assure compliance” with all applicable Clean Air Act requirements. 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). “Applicable requirements” include all standards, emissions limits, and requirements of the Clean Air Act. 40 C.F.R. § 70.2. Congress intended for Title V to “substantially strengthen enforcement of the Clean Air Act” by “clarify[ing] and mak[ing] more readily enforceable a source’s pollution control requirements.” S. Rep. No. 101-228, at 347, 348 (1990), *as reprinted in* A Legislative History of the Clean Air Act Amendments of 1990, at 8687, 8688 (1993). As EPA explained when promulgating its Title V regulations, a Title V permit should “enable the source, States, EPA, and the public to understand better the

requirements to which the source is subject, and whether the source is meeting those requirements.” Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1).

Under the Clean Air Act, “any person” may petition EPA to object to a proposed permit “within 60 days after the expiration of [EPA’s] 45-day review period.” 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8. Each objection in the petition must have been “raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” 40 C.F.R. § 70.8(d). Any objection included in the petition “must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements [of 40 C.F.R. Part 70].” 40 C.F.R. § 70.12(a)(2).

Upon receipt of a petition, EPA “*shall* issue an objection within [60 days] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b)(2) (emphasis added); *see also* 40 C.F.R. § 70.8(c) (“The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.”). When deciding whether a petitioner has met this demonstration requirement, EPA will evaluate the entirety of the permit record, including the statement of basis and response to comments. *See* Order Responding to Petition Requesting Objection to the Issuance of Title V Operating Permit, *In re Valero Refining-*

Texas, L.P., Petition No. VI-2021-8, 2022 EPA CAA Title V LEXIS 15, at *10–11 (June 30, 2022).

GROUNDS FOR OBJECTION

For the reasons set forth below, the Permit fails to comport with the Clean Air Act. The Public Interest Groups raised all of the issues discussed below in their comments on the draft permit.

I. The Permit unjustifiably assumes a control efficiency of 95 percent for control devices, without proper testing, monitoring, and reporting to ensure this, and despite evidence to the contrary.

Title V permits must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure that the permitted source complies with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). Procedures for determining compliance must be “sufficiently reliable” for determining compliance. 42 U.S.C. § 7661c(b); *see also* 40 C.F.R. § 70.6(a)(3). A Title V permit must also contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit[.]” 40 C.F.R. § 70.6(a)(3)(i)(B); *see also* 40 C.F.R. § 70.6(c)(1). Where a Title V permit fails to require sufficient monitoring to assure compliance, the permit cannot provide the information necessary to determine whether a source is in compliance and is therefore unenforceable as a practical matter, contrary to Title V of the Clean Air Act. *See* 42 U.S.C. § 7661c(a) (stating that Title V permits shall include “enforceable emission limitations and standards”).

As discussed on pages 2 and 3 of the Center’s comments on the draft permit, Exh. 1, the Permit does not comply with these requirements because Conditions 20.2.2, 20.2.3, and 20.2.5 in Section II of the Permit simply assume that control devices that control emissions from the

Parachute Facility’s storage tanks—Enclosed Flares F-610 and F-620—will achieve a control efficiency of 95 percent, without testing, monitoring, and reporting to ensure that this control efficiency is actually achieved on a continuous basis. *See* CDPHE, Final Operating Permit, Parachute Water Management Facility, Terra Energy Partners, Rocky Mountain LLC, Permit No. 09OPGA330, at 65–66 (Oct. 1, 2022) [hereinafter “Permit”].⁴ This is also true of the enclosed combustor for the five condensate sales tanks at the Parachute Facility—Enclosed Flare F-600. Section II, Condition 1.1.1.3; Permit at 10.

The Permit cannot presume that control devices will operate with a control efficiency of 95 percent without any testing, measurement, and reporting of control efficiency throughout the lifetime of the device. *See* 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1); 57 Fed. Reg. 32,250, 32,251 (July 21, 1992); *see, e.g.*, Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, 2012 EPA CAA Title V LEXIS 5, at *52–56 (June 22, 2012). In incorporating these defective conditions into the Permit, the Division was well aware that combustion control devices for storage tanks can have actual control efficiencies of less than 95 percent. For instance, direct measurement of control devices, specifically enclosed combustion devices (“ECDs”), showed that Bonanza Creek’s Wetco Farms A-4 (“Wetco Farms”) ECD-1 Load-out had a control efficiency of 68.61 percent, while ECD-1 had a control efficiency of 76.50 percent. *See* Division, *Stack Tests for Enclosed Combustion Devices* (Jan. 2022) (Exh. 4).⁵ ECD-2 at this oil and gas well pad had a control efficiency of 90.73 percent and the control efficiency for ECD-2 Load-out was 92.17 percent. *See id.* An ECD at another well pad, Troudt 18-27 Pad SE

⁴ Available at <https://drive.google.com/drive/folders/16ZlacK4wF50CPCO2i-2HfN38jfXqvbMk>.

⁵ The Division created Exh. 4 and provided it to the Center for Biological Diversity in response to a request under the Colorado Open Records Act.

(“Troutt”), had a control efficiency of 93.04 percent. *See id.* The Division’s own empirical evidence rebuts its presumed control efficiency.

Further, EPA Region 8 and the Wyoming Department of Environmental Quality produced a report based on results from a large study of ECD combustion efficiency. EPA and Wyoming DEQ found:

The “as found” ECDs were observed to be operating over a wide range of combustion efficiencies ranging from below 20% to above 99%. Further optimization testing was conducted on each ECD where the ECD’s operational setup modified by opening and closing air inlet dampers, adjusting heat load and restricting burner availability. Optimization testing revealed that depending on the operational setup, ECD combustion efficiency can be affected by as little as 2% to more than 80%. This observation emphasizes the value of site-specific “spot checking” of ECDs because test conditions/operational setup can dramatically affect individual ECD performance.

EPA, Region 8, Wyoming Department of Environmental Quality, *Measuring Enclosed Combustion Device Emissions Using Portable Analyzers*, at 9 (May 14, 2020) (Exh. 5).

The Division was fully aware of this, including the fact that some control equipment destroys less than 20 percent of VOCs, when developing the Permit, yet still relied on simple assumptions to presume compliance. *See* Email from Christopher LaPlante, CDPHE, to Jennifer Mattox, CDPHE, et al., *Fwd: Measuring Enclosed Combustion Device Emissions Using Portable Analyzers – Results Phase 1*, at 1–2 (June 8, 2020) (Exh. 6). In fact, the very nature of these control devices, with their lack of control over key parameters like temperature and residence time, and the variable composition of the gas being combusted, means that assumptions about control efficiency are invalid. *See, e.g.,* Dr. Ranajit Sahu, *Technical Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30*, at 2–5 (Exh. 7). However, the Permit still contains the assumption that control devices will operate with a control

efficiency of 95 percent throughout their lifetime, under all conditions, without including any measures to assure compliance with that assumption.

Accordingly, EPA must object to the Permit because there must be testing, monitoring, and reporting to verify that control devices are achieving this efficiency. This must include stack testing, which should be required no less frequently than semi-annually, consistent with the Bighorn Pad Title V permit. *See* Division, *Technical Review Document for Operating Permit 170PJA401: SandRidge Exploration and Production — Bighorn Pad*, at 10 (Jan. 1, 2020) (“Semi-annual stack testing is required by the Division to ensure appropriate emission control efficiency.”) (Exh. 8). This must also include continuous emissions monitoring and associated recordkeeping and reporting. If EPA does not conclude that continuous emissions monitoring systems are necessary, despite their technological feasibility, as they are used by stack testing companies during stack tests, then EPA must object to the Permit based on the lack of parametric monitoring for the control devices. The parametric monitoring should, at a minimum, set maximum and minimum requirements for both flow and temperature, with the acceptable parameters being based on the most recent stack tests.

In its response to the Public Interest Groups’ comments on this issue, the Division outlines the actions the permittee must perform for the presumption of 95 percent control efficiency to apply, including operating the control device consistent with manufacturer specifications and operating an auto-igniter. Exh. 2 at 3–4.⁶ These are the same requirements that applied to the control devices at the Wetco Farms and Troudt well pads discussed above,

⁶ This is problematic, in part because, as discussed below in Section IV of this petition, Condition 20.1.4 of Section II of the Permit contains an invalid term that allows the Division to approve any other means of determining whether control devices are operating properly, without limitations. Permit at 64.

which were functioning with less than 95 percent control efficiency. *See* 5 C.C.R. 1001-5, Pt. D § II.B. Thus, these requirements do not assure compliance with the Permit's terms.

Further, there are several factors that affect flare control efficiency that the Permit does not account for. Control efficiency is affected by variables like weather, altitude, damage during shipping, the way the equipment is installed, improper construction of the particular device, wear and tear over time, variabilities in the fuel and waste streams, and different temperatures needed for different VOCs. Exh. 7 at 2–5; *see also* EPA, *Parameters for Properly Designed and Operated Flares, Report for Flare Review Panel* (Apr. 2012) (Exh. 9). Further, VOC control efficiency is controlled by residence time and temperature. Exh. 7 at 2–3. A flare does not ensure consistency for these two parameters and thus cannot deliver a consistent control efficiency. *Id.* No quantitative assumptions can rationally be made about the impacts these many variables in total have on the mass emissions from a flare, nor do opacity or visible emissions testing provide information about VOC emissions, *id.* at 5. Variables in the field, like altitude, weather, and precipitation, may differ from the initial testing conditions the manufacturer relied upon, such that actual control efficiency can deviate from the manufacturer's specifications. Only testing will provide the data needed to ensure compliance. *Id.*

The Division also asserts that its testing of control devices showed that, on average, the devices had control efficiencies of 95 percent or more. Exh. 2 at 4. The Division, however, concedes that this is not always the case and that five stack tests revealed control efficiencies below 95 percent. *Id.* Pursuant to the Clean Air Act, the standard is not that the monitoring and testing requirements of the Permit *may* result in compliance with the Permit's terms and conditions. Nor is it good enough that all devices across all sources average out to 95 percent. Rather, the permit conditions require that each device at this facility achieve 95 percent control

efficiency and the testing, monitoring, and reporting must assure that. The monitoring and testing requirements must *assure* compliance with the Permit's terms in all cases, 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1), and the Division acknowledges that the current approach in the Permit does not always assure compliance with a 95 percent control efficiency.

II. The Permit improperly presumes compliance with visible emissions and opacity requirements applicable to the control devices.

The Center raised similar problems with presumed compliance without adequate testing, monitoring, recordkeeping, and reporting requirements with regards to Section II, Conditions 5.1.1, 19.3, and 20.2.9.3. Exh. 1 at 3. Permit Conditions 5.1.1 and 19.3 specify visible emissions from the flare shall not exceed 30 percent opacity for a period or periods aggregating more than 6 minutes in any 60 consecutive minutes. Permit at 28, 62. Condition 20.2.9.3 requires the permittee to confirm, within 24 hours of venting storage tanks, that venting was effectively stopped. *Id.* at 69. The Permit does not include the necessary testing, monitoring, recordkeeping, and reporting requirements to ensure that these Permit conditions are met, and compliance cannot be “presumed.”

In the Division's response to the Center's comments, Exh. 2 at page 5, the Division simply states that the monitoring requirements it included in the Permit are “a direct copy of Colorado Regulation No. 7, Part D, Section II.C.2.a.(iii)” However, the Division does not explain why those monitoring requirements are sufficient to assure compliance with the visibility and opacity requirements in the Permit. It is well-established that the monitoring requirements in a state's regulations are not necessarily sufficient to assure compliance with a Title V permit's standards. *See, e.g., Sierra Club v. EPA*, 536 F.3d 673, 675–76, 678–79 (D.C. Cir. 2008). Simply relying on requirements in state regulations does not suffice to demonstrate that the Permit's current monitoring requirements assure compliance with its requirements. Further, as

discussed in detail in the section that follows, only requiring the permittee to provide records of this monitoring to the Division upon request deprives the public and EPA of the ability to assure compliance with these requirements.

III. The Permit denies the public and EPA access to monitoring, testing, and recordkeeping information needed to assure compliance with the applicable requirements.

As discussed on page 1 of the Center's comments, Exh. 1, Section II, Condition 19.6 of the Permit requires the permittee to monitor hours of operations for the enclosed flares monthly and to record them in a log, but the permittee is only required to make the log available to the Division "upon request." Permit at 63. This information is crucial to calculating emissions, pursuant to the requirements of the Permit. *Id.* Similarly, Section II, Conditions 1.1.2, 1.2, 1.3, 2.1.1.2, 2.2, 3.1, 3.2.3, 3.3, 3.7, 4.1, 4.2.3, 4.3, 4.5.2, 4.7.1, 4.9, 5.2.1, 5.2.2.1, 5.2.2.2, 5.2.2.3, 6.1, 6.2, 6.3, 7.1.2, 7.2, 7.3, 8.1.2, 8.2, 8.4.4, 9.1.2, 9.4.4, 10.1.2, 10.2, 10.4, 11.1.2, 11.2, 12.1.2, 12.2, 12.4, 13.1, 13.2.3, 13.3, 13.5.2, 13.7.1, 13.9, 14.1, 14.2, 14.3, 14.4, 15.1.3, 15.2, 15.3, 15.4, 15.5, 15.6.3, 16.1, 16.2, 16.3, 17.1.2, 17.2, 17.4, 18.1.2, 18.2, 18.4, 19.1, 19.2, 19.4, 20.2.10, 20.2.11.5, Appendix A, 4, Appendix H, Appendix J, 3, and Appendix K, II and III, require the recording of information but do not require the permittee to report to the Division except upon request. This practice bars EPA and the public from obtaining this information in the vast majority of cases in which the Division does not request the information.

EPA recognized that a primary purpose of a Title V permit is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32,251; *see also* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). The ability of the public and EPA to determine whether a source is meeting the requirements of its permit is severely impaired without access to the kinds of basic information, like flare operating hours, that the Permit exempts the permittee

from reporting to the Division. The Division does not dispute this in its response to the Center's comments, Exh. 2 at 1–2, and merely elaborates upon the on-site retention requirements in the Permit instead of explaining how these permit terms meet the requirements that apply to Title V permits. This response is inadequate for the reasons stated above and in our comments.

IV. The Permit includes an invalid “director’s discretion” provision that allows the Division to approve any alternative means of ensuring control devices are operating properly.

This issue was raised on page 2 of the Center's comments on the Permit, Exh. 1.

Condition 20.1.4 of Section II states:

If a combustion device is used to control emissions of VOCs and other hydrocarbons, it must be enclosed, have no visible emissions during normal operation, and be designed so that an observer can, by means of visual observation from the outside of the enclosed combustion device, **or by other means approved by the Division**, determine whether it is operating properly (Colorado Regulation No. 7, Part D, Section II.B.2.b.)

Permit at 64 (emphasis added).

The option of allowing the permittee to assure proper operation of the Parachute Facility's combustion devices “by other means approved by the Division” is too broad and vague to assure compliance with the Permit's terms and conditions. *See* Order Granting in Part and Denying in Part a Petition for Objection to Permit, *In the Matter of Salt River Project Ag. Improvement & Power Dist. Agua Fria Generating Station*, Petition No. IX-2022-4, 2022 EPA CAA Title V LEXIS 8, at *52–54 (July 28, 2022). There are no testing, monitoring, or reporting requirements that apply to ensure that whatever “other means” the Division may approve will guarantee proper operation of the devices and achievement of a 95 percent control efficiency. Nor can the public or EPA determine if this unknown means approved by the Division renders this provision enforceable. It is also not clear whether the Permit will be amended to include the alternative method approved by the Division, or how the public and EPA might otherwise be

informed of such an alternative. *See id.* The term “or by other means approved by the Division” must be removed from Condition 20.1.4 in Section II.

The Division responds to this concern by describing alternative means of ensuring proper operation of combustion devices that it has approved in the past. Exh. 2 at 2. It also states that it would evaluate whether any alternative method would provide a similar demonstration of proper operations. *Id.* The Permit term, however, neither requires the Division to use a previously approved method or to assess whether its alternative provides a similar demonstration of proper operations. Further, there is no evidence in the record that its previously assessed methods are sufficient to determine whether the devices are operating properly. This director’s discretion provision is too broad and vague to ensure that this condition is enforceable and assures compliance with the Permit’s terms.

V. The Permit improperly allows the use of an emissions model that is no longer available.

As identified on page 3 of the Center’s comments, Exh. 1, Condition 1.1.1 in Section II of the Permit allows the permittee to use the American Petroleum Institute’s E&P Tanks, Version 3.0 program to determine whether the Parachute Facility’s tank battery is complying with the VOC emissions limits that apply to the tanks. Permit at 10. This condition must be revised because this program is no longer available. *See* Exh. 10 (“After December 31, 2018, American Petroleum Institute will discontinue the sale of E&P Tanks v3.0, and no new licenses for the software will be issued.”). The Division concedes that this product is off the market and “can longer be purchased” in its response to the Center’s comments. Exh. 2 at 5. Without access to the program, the public cannot determine compliance with the VOC emissions limits. The public and EPA must be able to assure compliance and being denied the ability to obtain the software used to determine compliance defeats this.

Further, Condition 1.1.1 allows the permittee to request an alternative method for determining compliance with the tank battery's VOC emission limits. Permit at 10. As explained above in the preceding section, this unlimited discretionary provision deprives the ability of the public and EPA to evaluate and provide feedback on the method that the permittee will actually use to determine compliance with the Permit's requirements. While Division approval is required, as the Division points out in its response to the Center's comments, Exh. 2 at 5, the public and EPA still do not have an opportunity to evaluate any alternative methods, and the Permit itself includes no limitations on the adequacy of any alternative methods of determining compliance.

VI. The Permit improperly excuses monitoring of storage tanks and associated equipment that is unsafe, difficult, or inaccessible to monitor.

As the Center discussed in its comments, Exh. 1 at 4, Condition 20.2.7 in Section II of the Permit improperly provides that “[m]onitoring is not required for storage tanks or associated equipment that are unsafe, difficult, or inaccessible to monitor” Permit at 67. Similarly, Condition 20.2.8 states that, “[i]f storage tanks or associated equipment is unsafe, difficult, or inaccessible to monitor, the owner or operator is not required to monitor such equipment until it becomes feasible to do so.” *Id.* at 68. These exceptions to monitoring of the storage tanks do not comply with the Clean Air Act and EPA's regulations because Title V permits must include monitoring requirements that assure compliance with the permit's requirements at all times, not just when it is convenient for the polluting facility. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). The pollutants emitted by the Parachute Facility can harm human health and welfare whenever they are emitted and wherever they are emitted from. Furthermore, these criteria, especially “difficult,” are subjective and thus not enforceable. Moreover, there is no requirement for the permittee to document the decision to forgo monitoring and report the reason for the decision.

In its response to the Center's comments, the Division discusses a set of federal regulations that do not apply here, 40 C.F.R. Pt. 60, Subpt. OOOOa, pointing to the option of an alternate monitoring schedule for equipment that is unsafe, difficult, or inaccessible to monitor. Exh. 2 at 7. The Division does not explain how the Permit's exemption of monitoring requirements in Condition 20.2.7 and its overly vague alternative of monitoring "when feasible" in Condition 20.2.8 in any way resemble the option to abide by an alternate monitoring schedule for this equipment. In the former condition, monitoring is exempted entirely, and in the latter, there are no limitations on feasibility or what the permittee must do to demonstrate feasibility of monitoring or lack thereof, such that it effectively exempts this equipment entirely from monitoring. There is no requirement to provide for an alternate monitoring schedule. The provisions in Conditions 20.2.7 and 20.2.8 that excuse monitoring must be removed from the Permit. This is consistent with Section IV, Condition 4.b, because if the source cannot monitor for safety or some other reason, it can always halt or reduce permitted activity until it is again able to monitor.

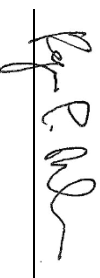
CONCLUSION

EPA must object to Title V Permit No. 09OPGA330 for the Parachute Facility for the reasons discussed above. As this petition demonstrates, the proposed Permit fails to assure compliance with applicable requirements under Title V of the Clean Air Act and the Colorado State Implementation Plan. The proposed Permit also lacks the monitoring, testing, reporting, and recordkeeping requirements necessary to assure compliance with its terms and conditions, or to enable detection and enforcement of permit deviations. Accordingly, the Public Interest Groups respectfully request that the Administrator object to the Permit and require the Division

to revise and reissue the Permit in a manner that complies with the requirements of the Clean Air Act and the Colorado State Implementation Plan.

DATED: November 23, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ryan E. Maher', written over a horizontal line.

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LIST OF EXHIBITS

1. Center for Biological Diversity, *Comments on Draft Permit for the Parachute Water Management Facility* (Apr. 29, 2022).
2. Letter from Carissa Money, Operating Permit Unit, Division, to Robert Ukeiley, Center for Biological Diversity, *Response to Comments on Draft Initial Operating Permit* (Aug. 8, 2022).
3. EPA, *EPA Region 8 – Title V Operating Permit Public Petition Deadlines* (accessed Nov. 10, 2022).
4. Division, *Stack Tests for Enclosed Combustion Devices* (Jan. 2022).
5. EPA, Region 8, Wyoming Department of Environmental Quality, *Measuring Enclosed Combustion Device Emissions Using Portable Analyzers* (May 14, 2020).
6. Email from Christopher LaPlante, CDPHE, to Jennifer Mattox, CDPHE, et al., *Fwd: Measuring Enclosed Combustion Device Emissions Using Portable Analyzers – Results Phase 1* (June 8, 2020).
7. Dr. Ranajit Sahu, *Technical Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30*.
8. Division, *Technical Review Document for Operating Permit 170PJA401: SandRidge Exploration and Production – Bighorn Pad* (Jan. 1, 2020).
9. EPA, *Parameters for Properly Designed and Operated Flares, Report for Flare Review Panel* (Apr. 2012).
10. Message from the American Petroleum Institute’s www.eptanks.com regarding E&P TANKS, Version 3.0 (Apr. 29, 2022).