INTRODUCTION

1. Plaintiff WildEarth Guardians ("Guardians"), a non-profit conservation organization, brings this suit to compel the Defendants, the Colorado Department of Public Health and Environment, and the Air Pollution Control Division ("Division"), to comply with their mandatory duty to take final action on the air pollution Operating Permit application submitted by Summit Midstream Niobrara, LLC ("Summit"), for its Hereford Ranch Processing Plant ("Hereford Plant") located near Grover, Colorado as required by the Colorado Air Pollution Prevention and Control Act ("Colorado Air Act").

2. The Hereford Plant is classified as a Major Source of air pollution under the federal Clean Air Act ("CAA") and Colorado Air Act. As such, it is required to obtain (and thereafter maintain) a Title V Major Source Operating Permit.

3. Air pollution Operating Permits are required by the federal CAA. The U.S. Environmental Protection Agency ("EPA") delegated authority to the Division to issue these

PLAINTIFF WildEarth Guardians, through counsel, submits the following Complaint:
permits under the Colorado Air Act. Operating Permits incorporate all legally required air pollution control standards into a single comprehensive and clear document to ensure compliance with all enforceable requirements and restrictions. Owners of sources with Operating Permits must submit a compliance certification each year, and the Division must renew these permits every five years. The Division must deny the permit if it cannot ensure a source operates in compliance with applicable requirements. Each Operating Permit that is issued is subject to public comment and offers the public an opportunity for a hearing before the Colorado Air Quality Control Commission (“Commission”).

3. On or about October 1, 2015, Summit submitted an initial application to the Division for a Title V Major Source Operating Permit for its Hereford Plant.

4. Pursuant to the Colorado Air Act, the Division was required to grant or deny Summit’s permit application within eighteen months of receipt of a completed permit application. C.R.S. § 25-7-114.5(4). See also 42 U.S.C. § 7661b(c); 40 CFR Part 70.7(a)(2).

5. Although more than six years have passed since Defendants received a completed application from Summit, Defendants have not yet acted to grant or deny the application.

6. For at least six years Summit’s Hereford Plant has been a Major Source of numerous criteria and hazardous air pollutants in the state of Colorado operating without a validly authorized Title V Major Source Operating Permit.

7. Pursuant to the Colorado Air Act, the Defendants’ failure to grant or deny a permit application is final permit action for purposes of obtaining judicial review to require that Defendants take action on such applications “without additional delay.” C.R.S. § 25-7-114.5(7)(b). Defendants must take timely action on this operating permit application to ensure adequate protection of air quality and public health in Colorado and to provide for public participation in and scrutiny of the regulation of air pollution from Summit’s Hereford Plant.

PARTIES

8. Plaintiff WILDEARTH GUARDIANS (“Guardians”) is a non-profit conservation organization, with an office in Wheat Ridge, Colorado. Guardians is dedicated to protecting and restoring wildlife, wild rivers, wild places, and health in the American West. Guardians and its members work to reduce harmful air pollution in order to safeguard public health, welfare, and the environment. Guardians has more than 200,000 members and supporters, many of whom live, work, or recreate in Colorado. Guardians brings this action on its own behalf and on behalf of its adversely affected members.

9. Guardians’ members live, work, bike, recreate, and conduct educational, research, advocacy, and other activities in and around northern Weld County, Colorado in areas where air pollution from the Hereford Ranch Processing Plant harms these activities. Guardians’ members have concrete plans to continue living in these areas and engaging in these activities.
The Defendants’ failure to act on the operating permit applications at issue causes Guardians and its members continuing concern about exposure to harmful air pollution and denies them the opportunity to engage in the administrative process set forth in the Colorado Air Pollution Prevention and Control Act. Guardians’ and its members’ interests have been, are being, and will continue to be irreparably harmed by the Defendants’ failure to act.

10. The violations alleged in this Complaint have injured and continue to injure the interests of Guardians and its members. This injury is traceable to the Defendants’ failure to act, which is considered final agency action under the Colorado Air Pollution Prevention and Control Act. Granting the requested relief would redress these injuries by compelling the Defendants to take final action as required by the Colorado Air Pollution Prevention and Control Act.

11. DEFENDANT COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT is the Colorado regulatory Department with jurisdiction and authority to implement the Colorado Air Act, C.R.S. § 25-7-101, et. seq. The Colorado Department of Public Health and Environment’s mission is to protect and preserve the health and environment of the people of Colorado.

12. DEFENDANT AIR POLLUTION CONTROL DIVISION is an agency within the Department of Public Health and Environment that administers the State air quality programs. The Division has the jurisdiction, authority, and duty to grant or deny applications for operating permits under the Colorado Air Act. See C.R.S. § 25-7-114.4(2).

JURISDICTION AND VENUE

13. This Court has jurisdiction under C.R.S. § 24-4-106 (State Administrative Procedure Act (“State APA”)), C.R.S. § 25-7-120 (judicial review provision of the Colorado Air Pollution Prevention and Control Act), C.R.S. § 25-7-114.5(7)(b) (providing judicial review for failure to act on permit applications), C.R.C.P. Rule 106(a)(2), and as a Court of general jurisdiction under the Colorado Constitution.

14. Venue is proper pursuant to C.R.S. § 25-7-120(3), because the air pollution source affected by the Defendants’ inaction is located in this district.

LEGAL BACKGROUND

15. Colorado’s statutory and regulatory requirements regarding the permitting of sources of air pollution derive from the federal Clean Air Act, 42 U.S.C. § 7401 et seq.

16. The Clean Air Act aims “to protect and enhance the quality of the Nation’s air resources.” 42 U.S.C. § 7401(b)(1). To help meet this goal, the 1990 amendments to the Clean Air Act created the Title V permit program – an operating permit program that applies to all major sources of air pollution. See Clean Air Act Amendments of 1990, Pub.L. No. 101-549, §§ 501–507, 104 Stat. 2399, 2635–48 (codified at 42 U.S.C. §§ 7661–7661f (2000)) (“The intent of Title V is to consolidate into a single document (the operating permit) all of the clean air
requirements applicable to a particular source of air pollution.

17. Title V operating permits are legally enforceable documents that permitting authorities grant to air pollution sources after the source has begun to operate. A Title V permit is federally enforceable and includes, in a single document, all Clean Air Act requirements for a source. Title V permits apply to “major sources” of air pollution and ensure that these sources adequately monitor their pollution and operate in compliance with the Clean Air Act and applicable state requirements. 42 U.S.C. § 7661c(c). Major Sources of air pollution are prohibited from discharging air pollutants unless they have a valid Title V operating permit. Id. § 7661a(a).

18. When a state permitting authority issues Title V permits, the terms of those permits must contain all air quality requirements that apply to the source of pollution, as well as conditions sufficient to assure the source's compliance with those requirements. 42 U.S.C. § 7661c(a). To that end, each permit must include a "schedule of compliance." Id. If a source is out of compliance when the permit is issued, the permit must also include “a schedule of remedial measures, including an enforceable sequence of actions . . . leading to compliance,” 40 C.F.R. § 70.5(c)(8)(iii). See also 42 U.S.C. § 7661(3); 40 C.F.R. § 70.6(c), (c)(3).

19. The goal of the Title V program is “[i]ncreased source accountability and better enforcement.” Operating Permit Program, 57 Fed.Reg. at 32,250, 32,251 (July 21, 1992). Title V does not generally impose new substantive air quality control requirements. Id.; Sierra Club v. Ga. Power Co., 443 F.3d 1346, 1348 (11th Cir. 2006); Sierra Club v. Johnson, 436 F.3d 1269, 1272 (11th Cir. 2006). “Instead, in order to ensure compliance with existing requirements, Title V requires permits to contain monitoring, record keeping, reporting, and other conditions.” Sierra Club v. Johnson, 436 F.3d at 1272.

20. Major source operators must submit applications for Title V operating permits within 12 months of becoming subject to such permitting requirements. 42 U.S.C. § 7661b(c). Each Title V permit must be renewed every five years, subject to the same requirements as initial permitting. 57 Fed. Reg. at 32,257; 42 U.S.C. § 7661a(b)(5)(B). Once a source has submitted a complete application it is granted a “shield” to operate its facility under the expired Title V permit until the permitting authority takes final action on the permit application. 40 C.F.R. § 70.7(b).

21. The Clean Air Act provides that the Administrator of the EPA may approve state programs to administer the Title V permitting program with respect to sources within their borders. 42 U.S.C. § 7661a(d). EPA granted full approval to Colorado’s administration of its Title V operating permit program in 2000. 65 Fed. Reg. 49,919 (August 16, 2000). Therefore, Defendants are responsible for issuing Title V permits in Colorado. To this end, with regards to Title V permitting, the requirements of the Clean Air Act and its implementing regulations have been incorporated into the Colorado Air Act. C.R.S. § 25-7-114, et seq. This program is codified at 5 CCR § 1001-5, Regulation No. 3, Part C.

22. To ensure that permit applications are processed in a timely manner, the Clean Air
Act requires that the state permitting authority act to issue or deny permit applications within eighteen months of receiving a completed application. 42 U.S.C. § 7661b(c); 40 CFR Part 70.7(a)(2) (directing air permitting agencies to “take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application.”).

23. Accordingly, the Colorado Air Act requires the Division to grant or deny applications for renewable operating permits within eighteen months after receipt of the completed permit application. C.R.S. § 25-7-114.5(4). The Division must deny a permit application if a source cannot meet applicable clean air laws and regulations. C.R.S. § 25-7-114.5(7)(a)(III.5).

24. The Clean Air Act also provides that a state air pollution operating permit program must provide for judicial review in state court over the failure of a permitting authority to timely act on a permit application or permit renewal application. 42 U.S.C. § 7661a(b)(7). To this end, the “[f]ailure of the [D]ivision or [C]ommission, as the case may be, to grant or deny a permit application or permit renewal application” within the eighteen months prescribed by the statute “shall be treated as a final permit action for purposes of obtaining judicial review in the district court in which the source is located, to require that action be taken on such application by the commission or division, as appropriate, without additional delay.” C.R.S. § 25-7-114.5(7)(b).

FACTUAL BACKGROUND

25. The Summit Midstream Niobrara, LLC – Hereford Ranch Processing Plant is located in northern Weld County northwest of Grover, Colorado.

26. The Hereford Plant is a natural gas processing plant. Natural gas enters the facility from field wells via three inlets (2 high pressure and 1 low pressure). The gas is processed to remove water and particulates, cooled, and processed to remove CO₂. The gas exits the facility via a sales line. One engine powers overhead compression of residue gas into the pipeline. One facility flare is used for emergency blowdowns and maintenance activities. The Plant has numerous individually identified emissions sources.

27. The Hereford Plant is a Major Source, Title V facility currently operating on its initial construction permit, 10WE2188. Summit had until October 1, 2015, to submit a Title V application. See Air Pollution Control Division, Field Inspection Report for AIRS ID 123-8761 (July 26, 2021), available at https://oitco.hylandcloud.com/CDPHERMPublicAccess/index.html. The Title V application was received by the Division on or about October 1, 2015.

28. Defendant Air Pollution Control Division (“APCD”) gave Summit’s Hereford Plant a Title V Permit application ID of 15OPWE393.

29. The Hereford Plant currently operates as a Major emissions source for Volatile Organic Compounds (“VOCs”) and Carbon Monoxide (“CO”). The facility is also a source of a
number of other pollutants known to be harmful to human health and welfare, including hazardous air pollutants, nitrogen oxides, and particulate matter.

30. The Defendants have allowed and continue to allow the Hereford Plant to emit air pollution under its construction permit and have never taken final action on its application for an operating permit.

31. The Hereford Plant is not operating under an up-to-date, legally adequate, and effective Title V permit. Among other requirements, a Title V permit must include emission limitations and standards, monitoring, and reporting to ensure a source of pollution operates in compliance with applicable requirements under the Clean Air Act. See generally 40 C.F.R. § 70.6.

**FIRST CLAIM FOR RELIEF**

Failure to Approve or Deny the Title V Application for the Summit Midstream Hereford Ranch Processing Plant

32. Plaintiff incorporates the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.

33. The Division has failed to take final action to issue or deny Summit Midstream Niobrara, LLC’s Title V Major Source Operating Permit application for its Hereford Ranch Processing Plant, Permit No. 15OPWE393, within 18 months after receiving an application in accordance with C.R.S. § 25-7-114.5(4), thereby violating the Colorado Air Act.

34. The Division’s failure to grant or deny a Title V Operating Permit for Summit’s Hereford Ranch Processing Plant within the 18 months prescribed by statute is final permit action subject to this Court’s review. See C.R.S. § 25-7-114.5(7)(b). This Court must therefore require that the Defendants grant or deny this permit application “without additional delay.” *Id.*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Order the Division and/or the Commission to act on the Title V permit application for Summit Midstream’s Hereford Ranch Processing Plant, Operating Permit No. 15OPWE393, submitted by Summit on or about October 1, 2015, by issuing or denying the permit, within 90 days and after adhering to a process that provides for robust public involvement and meaningful consideration of public input;

B. Award Plaintiff reasonable costs of litigation, including attorneys’ fees; and
C. Grant such other relief as the Court deems appropriate or necessary.

Respectfully submitted April 28, 2022,

/s/ Katherine Merlin  
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