



December 2, 2021

Andy Gruel  
Colorado Department of Public Health and Environment  
Air Pollution Control Division  
4300 Cherry Creek Dr. South  
Denver, CO 80246

**Re: Comments on proposed air permits for TEP Rocky Mountain, LLC's NE Ryan Gulch Water Recycling Pit (Permit 18RB1183) and Clough Production Facility (Permit 19GA0861)**

Dear Mr. Gruel:

WildEarth Guardians submits the following comments in response to the Air Pollution Control Division's (Division's) proposal to approve two air pollution permits for TEP Rocky Mountain, LLC to modify two oil and gas wastewater processing facilities: the NE Ryan Gulch Water Recycling Pit, located in Rio Blanco County, and the Clough Production Facility, located in Garfield County. The proposed permits have been assigned numbers 18RB1183 (NE Ryan Gulch) and 19GA0861 (Cloud Production Facility). These comments are submitted within 30 days of the Division providing notice on its public notice website at <https://cdphe.colorado.gov/apens-and-air-permits/air-permit-public-notices>.

We object to the Division's plans to approve the permits as proposed. The Division is proposing to permit the facilities as minor sources under the Clean Air Act and Colorado State Implementation Plan (SIP). However, emissions of air pollutants from both facilities would exceed major source thresholds under the Clean Air Act's Prevention of Significant Deterioration (PSD) program. TEP Rocky Mountain claims that these emissions are all "fugitive," and therefore do not count toward the facilities' major source status. However, the emissions in question are not fugitive according to the definition of fugitive emissions under the Colorado SIP and federal regulations implementing the PSD program and Title V operating permit program.

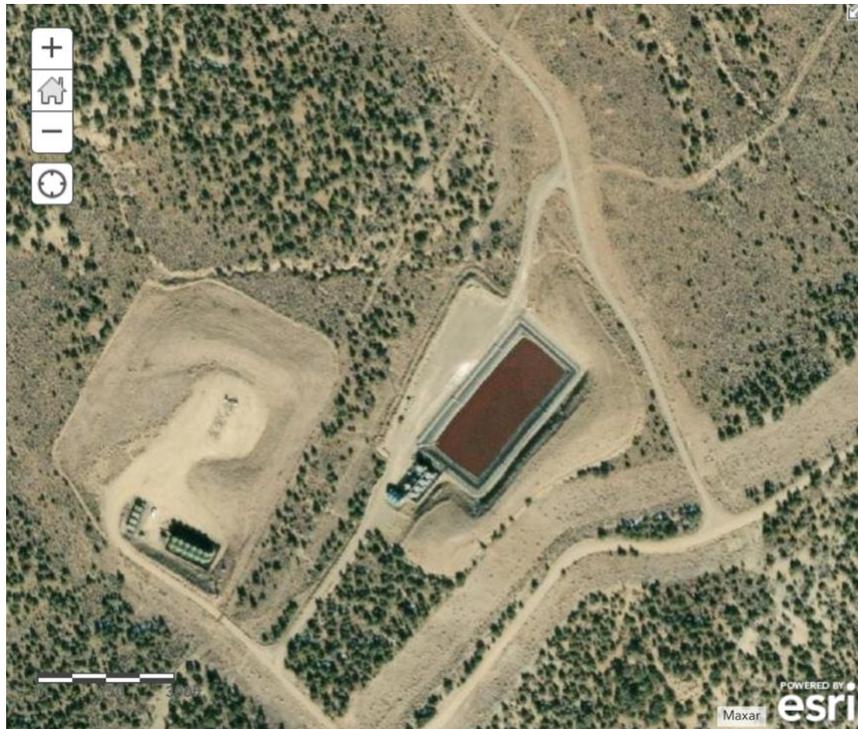
We submit these comments in response to both of TEP Rocky Mountain's proposed permits. Both permits are being circulated for public comment at the same time. Furthermore, the facilities are in many ways identical in nature and operation, and pose the same factual and legal questions related to the issue of fugitive emissions. Accordingly, these comments are directed toward both proposed permits.

## **The Facilities at Issue**

Both the NE Ryan Gulch Water Recycling Pit and Clough Production Facility are oil and gas production wastewater treatment facilities. Each facility collects wastewater from nearby oil and gas production operations and contains the water in a large pond to be evaporated. The process of disposing of this wastewater 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.



**Satellite view of the Clough Production Facility located in Garfield County.**



**Satellite view of the NE Ryan Gulch Water Recycling Pit in Rio Blanco County.**

Under both permits proposed by the Division, TEP Rocky Mountain would be authorized to release hundreds of tons of VOCs every year as a result of evaporation. See Table below.

**Total Permitted Annual VOC Emissions in Tons/Year  
from the TEP Rocky Mountain Facilities**

Clough Production Facility	449.1
NE Ryan Gulch Water Recycling Pit	320.2

Critically, permitted VOC emissions would be above the Title V operating permit major source threshold of 100 tons/year and the PSD major source permitting threshold of 250 tons/year for both facilities. 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 Air Quality Control Commission (AQCC) Regulation No. 3, Part D. Under Title V, sources must obtain and comply with a comprehensive operating permit. See AQCC Regulation No. 3, Part C.

**Fugitive Emissions**

TEP Rocky Mountain claims that all permitted VOC emissions from the facilities will be “fugitive” under the Colorado SIP and Clean Air Act. Fugitive emissions are defined under the Colorado SIP 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”).<sup>1</sup> Under the Colorado SIP and PSD requirements, fugitive emissions do not count toward a source’s major source status under PSD. According to TEP, given that all emissions are fugitive, the Clough Production Facility and NE Ryan Gulch Water Recycling Pit are not major sources of VOCs under the Clean Air Act’s PSD program or the Act’s Title V permitting program.<sup>2</sup>

Unfortunately, TEP is incorrect that VOC emissions from Clough Production Facility and NE Ryan Gulch Water Recycling Pit are fugitive emissions. At issue is the fact that emissions from both the Clough Production Facility and NE Ryan Gulch Water Recycling Pit could reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

In this case, TEP is not actually collecting emissions from the Clough Production Facility and NE Ryan Gulch Water Recycling Pit. Rather, the company is simply allowing emissions to freely evaporate from the facilities’ ponds. Accordingly, whether the facilities’ emissions are fugitive depends upon a determination of whether emissions can reasonably be collected and passed through a stack, chimney, vent, or other functionally equivalent opening.

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.*

Here, emissions from TEP’s wastewater ponds can reasonably be collected with the use of a floating cover and gas collection system. Such systems are widely used by various industries, including the oil and gas industry, and provided by various vendors, among them:

- Industrial and Environmental Concepts, Inc. (<https://www.ieccovers.com>) provides custom floating covers for ponds that can be applied for “[a]ny type of gas collection” in myriad industrial settings, including in the oil and gas production setting. The company specifically designs and fabricates “gas collection covers” for industrial purposes. The company bills itself as a “leader in the industrial cover market” and specializes in cover applications for the “petroleum and gas” industry, among others. Excerpts from the company’s website highlighting the availability and use of floating gas collection covers are attached to these comments as Exhibit 3.

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<sup>1</sup> This definition is echoed in federal rules implementing the PSD program at 40 C.F.R. § 51.166(b)(20) and 40 C.F.R. § 52.21(b)(20), as well as in federal rules implementing the Title V permitting program at 40 C.F.R. § 70.2.

<sup>2</sup> Both the Clough Production Facility and NE Ryan Gulch Water Recycling Pit are subject to Title V permitting due to emissions of methanol, a hazardous air pollutant. However, neither facility is subject to Title V due to emissions of VOCs.

- Lange Containment Systems, LLC (<http://langecontainment.com>), a company based in Colorado, also provides floating covers for ponds that can be used for the “collection of gas emissions.” Lange identifies myriad applications for floating covers, including for “oil and gas applications (FRAC ponds, produced water ponds, recycled water ponds).” The company’s “Floating Cover Information” brochure provides more details on its service and even presents a picture of a floating cover installation at a large oil and gas wastewater pond facility on page 6. Excerpts from Lange Containment Systems’ website and its “Floating Cover Information” brochure are attached as Exhibit 4.

Additionally, there are many companies that provide floating covers and gas collection systems for anaerobic lagoons at wastewater treatment facilities, including Fabtech (<https://www.fabtech.com.au/products/gas-collection-cover>), Evoqua (<https://www.evoqua.com/en/evoqua/products--services/covers--liners/covers/biogas-collection-covers/>), Layfield Environmental Containment (<https://www.layfieldgroup.com/biogascovers.aspx>), and others. Although anaerobic lagoons are different than TEP’s wastewater ponds in that they are not processing oil and gas waste, they are a similar pollutant emitting activity—namely, they are ponds that release air pollutants.

Given the use and availability of floating covers and gas collection systems for oil and gas wastewater ponds, as well as ponds similar to TEP’s, there is a presumption that collection of gas from the Clough Production Facility and NE Ryan Gulch Water Recycling Pit is reasonable. Thus, there is a presumption that emissions from the Clough Production Facility and NE Ryan Gulch Water Recycling Pit are not fugitive.

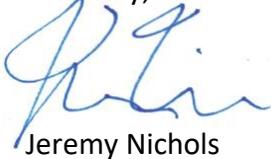
Although TEP may claim that the cost of floating covers and gas collection systems argues against considering its emissions to be non-fugitive, the EPA has cautioned that cost considerations should not “be given any more weight than other factors.” Exhibit 2 at 3. This is especially true given that a determination that emissions from the Clough Production Facility and NE Ryan Gulch Water Recycling Pit are non-fugitive would not necessarily require TEP to install floating covers and gas collection systems. Rather, it would simply require TEP to either take steps to limit the facilities’ potential to emit or to employ other control strategies to comply with applicable permitting requirements.

## **Conclusion**

Given that emissions from the Clough Production Facility and NE Ryan Gulch Water Recycling Pit are not fugitive, the Division cannot approve TEP’s permit applications. The Division must either deny the applications or require TEP to submit an application for a PSD permit or synthetic minor permit to limit emissions below major source thresholds. Given that emissions from the facilities could reasonably be collected and passed through a stack, chimney, vent, or other functionally equivalent opening, TEP cannot be allowed to claim that

emissions from the Clough Production Facility and NE Ryan Gulch Water Recycling Pit are fugitive.

Sincerely,



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