



March 1, 2019

Harrison Slaughter
Colorado Air Pollution Control Division
4300 Cherry Creek Drive South, APCD-SS-B1
Denver, CO 80246

Re: Comments on Proposed Air Permit, PDC Energy Wiedeman Federal 22 Sec HZ Oil and Gas Production Facility

Dear Mr. Slaughter:

WildEarth Guardians submits the following comments on the Air Pollution Control Division's proposed approval of a synthetic minor construction permit for PDC Energy's Wiedeman Federal 22 Sec HZ oil and gas production facility in Weld County, Colorado. The Division published notice of the proposed permit on February 7, 2019.

We object to the Division's proposal and we call on the Division to order PDC Energy to cease operation of its Wiedeman facility. The Division has no authority to approve a synthetic minor permit for a source of air pollution that has already constructed and that is subject to nonattainment new source review ("NSR") requirements under the Colorado State Implementation Plan ("SIP"). The Wiedeman facility is a major source of volatile organic compound ("VOC") emissions that has already been constructed and is currently operating. The Division cannot now permit the facility as a synthetic minor for NSR purposes. We are also concerned that the Division has concluded the source is a synthetic minor for hazardous air pollutant emissions when in fact it is not. Under the Colorado SIP and applicable Clean Air Act requirements, PDC Energy is not allowed to operate its facility unless and until it comes into compliance with applicable nonattainment NSR and hazardous air pollutant control requirements.

Background

Under the Colorado SIP and the Clean Air Act, any stationary source in an ozone nonattainment area that emits or has the potential to emit 100 tons per year or more of VOCs must obtain a nonattainment NSR permit prior to construction. *See* Air Quality Control Commission ("AQCC") Regulation No. 3, Part D; *see also* 42 U.S.C. § 7503; 40 C.F.R. § 51.165. The potential to emit of a stationary source of air pollution is defined in the Colorado SIP as "The maximum capacity of a stationary source to emit a pollutant under its physical and operational design." AQCC Common Provisions Regulation, Section I.G. Although emission controls can be considered to be part of a source's "operational design," they can only be

considered part of a source's design "if the limitation or the effect it would have on emissions is state enforceable *and federally enforceable*." *Id.* (emphasis added).

Nonattainment NSR is a stringent permitting process that ultimately assures the most rigorous oversight and control of pollution from stationary sources in nonattainment areas. Among other things, the Colorado SIP requires new major stationary sources to achieve "the lowest achievable emission rate," certify compliance at "all other existing major stationary sources owned, operated, or controlled by the applicant," achieve emission offsets, include an analysis of alternative sites, sizes, production processes, and environmental control techniques, and demonstrate that emissions will not adversely impact visibility in Class I areas. AQCC Regulation No. 3, Part D, Section V.A.

Finally, under Section 112 of the Clean Air Act, no major source of hazardous air pollutants may be constructed unless the EPA or the State determines that maximum achievable control technology ("MACT") emission limits will be met. *See* 42 U.S.C. § 7412(g)(2)(B), 40 C.F.R. § 63.5(b)(3)(i). A major source of hazardous air pollutants is a source that emits "10 tons per year or more" of any single hazardous air pollutant or "25 tons per year or more of any combination of hazardous air pollutants." 42 U.S.C. § 7412(a)(1), 40 C.F.R. § 63.2. Oil and natural gas production facilities that are major sources of hazardous air pollutants must comply with MACT requirements set forth at 40 C.F.R. § 63.760-63.777 (referred to as "Subpart HH").

PDC Energy's Wiedeman Facility is a Major Source Subject to Nonattainment NSR

The Wiedeman oil and gas production facility is a major source of VOC emissions. According to the Division's preliminary analysis and the company's application, the facility has the potential to emit more than 1,000 tons of VOCs annually. Furthermore, the facility is located in the Denver Metro-North Front Range ozone nonattainment area.

The Wiedeman facility was constructed in 2018. According to the company's application, the facility, which includes 10 oil and gas wells, began production on May 4, 2018. Data from the Colorado Oil and Gas Conservation Commission indicates that thousands of barrels of oil have been produced since May 2018. According to PDC's application and its proposed permit, the facility is expected to produce more than 300,000 barrels of oil. Based on PDC's own VOC emission factors reported in its Annual Pollutant Emission Notices ("APENs"), the source actually emitted more than 100 tons of VOCs in 2018 based on its reported production.

Given this, the Wiedeman facility is subject to nonattainment NSR requirements pursuant to the Colorado SIP. The Division therefore has no authority to permit the source as a synthetic minor. The time for PDC Energy to apply for and obtain synthetic minor status was prior to the construction of the Wiedeman facility, not after construction and certainly not after operating as a major source for nine months.

That the Division has no authority to permit the Wiedeman facility as a synthetic minor is underscored by the fact that PDC Energy has already constructed the facility and put it into

operation. Given that the facility is not subject to any federally enforceable limits on VOC emissions, the source is major pursuant to the Colorado SIP and the Clean Air Act. The Division cannot now, after a major source has been constructed and has been operating for nearly a year, determine the source is a synthetic minor and permit it as such.

The Division may claim the source has controlled emissions. While there is no way to verify this claim, it is irrelevant. Since the construction and the beginning of operation of the Wiedeman facility, PDC Energy has not been subject to any federally enforceable limits on VOC emissions. This is underscored by the fact that PDC has submitted a permit application seeking synthetic minor status. This means even the company has acknowledged it is currently a major source. PDC has even submitted certified APENs disclosing that uncontrolled emissions (i.e., emissions resulting from the facility's "operational design") just from its condensate tanks are more than 900 tons of VOCs annually.

Also of concern is that the Division is not ensuring the PDC facility achieves a level of offsets consistent with nonattainment NSR requirements for moderate ozone nonattainment areas. Under the SIP, a new source must secure VOC offsets at a ratio of 1.15 to 1. Regulation No. 3, Part D, Section V.A.3.a(i)(b). Under the Division's proposed permit, 46.9 tons of VOCs would be permitted annually, requiring an offset of 53.94 tons of VOCs. This underscores the inappropriateness of approving a synthetic minor permit rather than requiring the source to comply with nonattainment NSR.

While the source may have been subject to some state-only emission requirements upon the commencement of operation, state-only requirements do not serve to establish federally enforceable limits. The facility is a major source based on its potential to emit and any attempt to claim otherwise is contrary to the SIP.

Accordingly, the Division is not permitted to approve the proposed synthetic minor permit. PDC Energy must submit an application for a nonattainment NSR permit and the Division must review and take action on the application in accordance with the SIP. Among other NSR requirements, the Division must ensure PDC is meeting lowest achievable emission rates, offsetting emissions, certifying compliance, and protecting visibility in Class I areas.

PDC Energy's Wiedeman Facility is a Major Source of Hazardous Air Pollutants

The Wiedeman oil and gas production facility is also a major source of hazardous air pollutants and therefore cannot be permitted as a synthetic minor. According to the Division's own preliminary analysis and PDC Energy's permit application, the facility has the potential to emit more than 38 tons of hazardous air pollutants. The Division cannot now issue a permit that allows PDC to avoid complying with applicable MACT requirements.

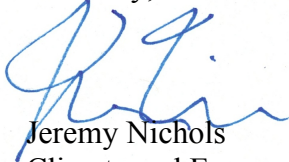
If the Division is to issue a permit to PDC Energy for the Wiedeman facility, it must assure compliance with MACT standards under Section 112 of the Clean Air Act. In the meantime, the Division must order PDC Energy to cease operations of its major source of

hazardous air pollutants unless and until the company comes into compliance with MACT standards.

If the Division continues to permit the Wiedeman Federal 22 Sec HZ facility as a synthetic minor source of VOCs for nonattainment NSR purposes, as well as synthetic minor for hazardous air pollutants, it will underscore that the State of Colorado is categorically failing to comply with its SIP with regards to the regulation of oil and gas production facilities. Furthermore, the issuance of a sham synthetic minor permit will not eliminate the need for PDC Energy to obtain a nonattainment NSR permit and comply with applicable MACT requirements under the Clean Air Act. The Division's issuance of a permit will not shield PDC from liability under the Clean Air Act and the potential for federal and/or citizen enforcement action.

Thank you for the opportunity to comment.

Sincerely,



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cc: Monica Morales, Air Program Director, EPA Region 8