



May 10, 2019

Andy Gruel  
Colorado Air Pollution Control Division  
4300 Cherry Creek Drive South, APCD-SS-B1  
Denver, CO 80246  
[Cdphe.commentsapcd@state.co.us](mailto:Cdphe.commentsapcd@state.co.us)

**Re: Comments on Proposed Air Permit, ConocoPhillips, Bear Oil and Gas Production Facility**

Dear Mr. Gruel:

WildEarth Guardians submits the following comments on the Air Pollution Control Division's proposed approval of synthetic minor construction permit for ConocoPhillips Company's Bear 3-65 22-23 3AH-3BH-3CH-3DH oil and gas production facility in Adams County, Colorado. The Division posted notice of the proposed permit on April 11, 2019 and indicates comments are due May 10, 2019.

We object to the Division's proposal and we call on the Division to order ConocoPhillips to cease operation of its Bear 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 Bear facility is a major source of volatile organic compound ("VOC") emissions that has already been constructed and is currently operating. The Division cannot continue to permit the facility as a synthetic minor for NSR purposes

Under the Colorado SIP and applicable Clean Air Act requirements, ConocoPhillips is not allowed to operate its facility unless and until it comes into compliance with applicable nonattainment NSR 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 major source threshold is triggered not just where a new source of air pollution is constructed. Even where an existing source of air pollution is modified, where the modification would trigger major source thresholds (i.e., lead to a potential to emit of greater than 100

tons/year), the source must obtain a nonattainment NSR permit prior to construction. *See* AQCC Regulation No. 3, Part D, Section II.A.24.c.

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).

The definition of “federally enforceable” under the Colorado SIP means “all limitations and conditions which are enforceable by the U.S. EPA Administrator[.]” AQCC Common Provisions Regulation, Section I.G (defining “Federally Enforceable”). Thus, limitations and conditions that are enforceable only by the State of Colorado, such as limitations and conditions in state regulations, are not “federally enforceable” pursuant to the Colorado SIP.

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.

### **ConocoPhillips’ Bear Facility is a Major Source Subject to Nonattainment NSR**

The Bear 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 1,800 tons of VOCs annually. Furthermore, the facility is located in the Denver Metro-North Front Range ozone nonattainment area.

The four new wells and equipment at the Bear facility were constructed and put into operation in 2018. According to data from the Colorado Oil and Gas Conservation Commission, the facility began construction before May 30, 2018. According to the company’s application for its air permit, the facility, which includes eleven new oil and gas wells, began production on November 11, 2018. Data from the Colorado Oil and Gas Conservation Commission indicates that tens of thousands of barrels of oil and tens of thousands of cubic feet of natural gas have been produced since November 11, 2018. Based on the company’s own VOC emission factors reported in its Annual Pollutant Emission Notices (“APENs”), it appears the source actually emitted more than 100 tons of VOCs in 2018 based on its reported production and based on a lack of federally enforceable limits establishing any control requirements related to production.

Given this, the Bear 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 ConocoPhillips to apply for and obtain synthetic minor status was prior to the construction of the Bear facility, not after construction and certainly not after operating as a major source for many months.

That the Division has no authority to permit the Bear facility as a synthetic minor is underscored by the fact that ConocoPhillips has already constructed the new wells and put the facility into operation. Given that these wells and their associated emission points, namely venting from the separators and emissions from tanks, are 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 many months, determine the source is a synthetic minor and permit it as such.

The Division may claim the source has controlled emissions since beginning construction and operation. While there is no way to verify this claim, it is irrelevant. Since the construction and the beginning of operation of the new wells at the Bear facility, ConocoPhillips has not been subject to any federally enforceable limits on VOC emissions in relation to separator venting, condensate tanks, and the operation of its new wells and associated production. This is underscored by the fact that ConocoPhillips has submitted a permit application seeking synthetic minor status. This means even the company acknowledges it is currently a major source that would otherwise be subject to nonattainment NSR. ConocoPhillips has even submitted certified APENs disclosing that uncontrolled emissions (i.e., emissions resulting from the facility's "operational design") just from separator venting are more than 1,000 tons of VOCs annually.

Also of concern is that the Division is not ensuring the Bear facility achieves a level of offsets consistent with nonattainment NSR requirements for moderate ozone nonattainment areas. Under the SIP, a new source in the Denver Metro-North Front Range ozone nonattainment area 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, 73.98 tons of VOCs would be permitted annually, requiring an offset of 85.08 tons of VOCs. This underscores the inappropriateness of approving a synthetic minor permit rather than requiring the source to comply with nonattainment NSR.

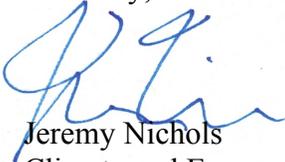
While the source may have been subject to some state-only emission requirements upon the commencement of operation, state-only requirements do not serve to establish federally enforceable limits, as they are not enforceable by the EPA. The facility is a major source based on its potential to emit and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

Accordingly, the Division is not permitted to approve the proposed synthetic minor permit. ConocoPhillips 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 ConocoPhillips is meeting lowest achievable emission rates, offsetting emissions, certifying compliance, and protecting visibility in Class I areas.

If the Division continues to permit the Bear oil and gas production facility as a synthetic minor source of VOCs for nonattainment NSR purposes, 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 ConocoPhillips to obtain a nonattainment NSR permit under the Clean Air Act. The Division's issuance of a permit will not shield ConocoPhillips 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,



Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
2590 Walnut St.  
Denver, CO 80205  
(303) 437-7663  
[jnichols@wildearthguardians.org](mailto:jnichols@wildearthguardians.org)

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