



November 18, 2021

By Certified Mail
Return Receipt Requested

Vicki Hollub
President and CEO
Occidental Petroleum Corporation
5 Greenway Plaza, Suite 110
Houston, TX 77046

Eugene Batchelder
Chairman of the Board of Directors
Occidental Petroleum Corporation
5 Greenway Plaza, Suite 110
Houston, TX 77046

Re: Notice of Intent to File Suit Over Clean Air Act Violations at Occidental's Turkey Track CTB and Gas Sales Compression Facility Located in Eddy County, New Mexico

Dear Ms. Hollub and Mr. Batchelder:

Pursuant to the Clean Air Act, 42 U.S.C. § 7604(b)(1), this letter serves as notice that WildEarth Guardians intends to sue Occidental Petroleum Corporation (hereafter referred to as "OXY") in federal court to enforce ongoing violations of the Clean Air Act at the company's Turkey Track Central Tank Battery and Gas Sales Compression facility located in Eddy County, New Mexico (hereafter referred to as the "Turkey Track facility").

The Turkey Track facility processes oil and gas produced from a nearby system of dozens, if not hundreds, of oil and gas wells. The facility handles over 3.8 million barrels of oil and 14.6 billion cubic feet of natural gas annually. Major points of air pollution at the facility include several large natural gas compressor engines, dozens of oil and produced water tanks, flares, and other equipment. The Turkey Track facility is operated by OXY USA WTP Limited Partnership, a subsidiary of OXY.

At issue is the fact that OXY began construction of the Turkey Track facility without first obtaining the proper major source permit to pollute. Further, upon commencing operation of the facility, OXY has regularly violated its allowable emission limits. For years, the facility has released thousands of pounds and hundreds of tons of excess air pollution, including harmful carbon monoxide ("CO"), nitrogen oxide ("NOx"), and volatile organic compound ("VOC") emissions. These excess emissions are in large part the result of illegal and wasteful gas flaring. Between October 2019 and the present, OXY has consistently violated both hourly and annual emission limits due to unacceptable flaring events. Based on OXY's own excess emissions reporting, between 2019 and 2021, the company violated hourly emission limits for flaring at the Turkey Track facility at least 1,700 times. Additionally, based on OXY's own excess emissions

reporting, the company has violated annual emission limits for CO, NOx, and VOCs, which are calculated on a rolling 12-month basis, every month for at least the last two years, if not longer.

These violations indicate the facility certainly no longer qualifies for coverage under a general permit. They further indicate that the facility may have had actual emission in excess of major source thresholds, thereby requiring OXY to obtain a major source permit under Title V of the Clean Air Act and/or the Clean Air Act’s Prevention of Significant Deterioration (“PSD”) program. For every day the Turkey Track facility operates under an improper air pollution permit, OXY is in violation of the Clean Air Act.

Under the Clean Air Act, citizens are entitled to bring suit against any person violating emission standards or limitations, as well as any person who fails to obtain proper permits prior to constructing a source of pollution. Citizens can seek to enjoin violations of the Clean Air Act, seek civil penalties for such violations, and secure other relief. WildEarth Guardians intends to bring suit to enjoin violations of the Clean Air Act at OXY’s Turkey Track facility, seek civil penalties for such violations, and secure other relief that may be necessary and appropriate.

Under the Clean Air Act, penalties of up to \$99,681 per day per violation may be assessed to deter future violations. *See* 84 Fed. Reg. 2,056, 2,059 (Feb. 6, 2019). **We estimate that OXY faces nearly \$170 million in penalties just due to ongoing violations of hourly emission limits at the Turkey Track facility. Further, given OXY’s failure to operate under proper Clean Air Act permits every day since construction of the facility began, the company could face an additional \$182 million in penalties.**

If we cannot resolve these violations with OXY within 60 days, we intend to file suit in federal court to enforce the Clean Air Act, compel compliance, and secure appropriate penalties. Below, we detail the situation at hand.

I. Factual Background

A. The Turkey Track Facility

The Turkey Track facility is located in Eddy County, New Mexico approximately 30 miles northeast of the town of Carlsbad. This region is part of the Permian Basin, a massive oil and gas producing region spanning southeast New Mexico and west Texas. The New Mexico Environment Department has assigned the facility IDEA No. 37954 and Aerometric Information Retrieval System, or AIRS, ID 350151736. The facility is located in Section 8 of Township 19S, Range 29E and is sited on lands owned and managed by the State of New Mexico. The precise coordinates of the facility are as follows:

Facility	Latitude	Longitude
Turkey Track CTB and Gas Sales Compression	32.682039	-104.095775

A summary of the Turkey Track facility by the New Mexico Environment Department is attached as **Exhibit 1** to this Notice of Intent. Below is a map showing the general location of the facility in relation to the town of Carlsbad in southeast New Mexico.



**Location of Turkey Track facility in Eddy County
in southeast New Mexico's Permian Basin.¹**

According to OXY's most recent air pollution permit application submitted on May 21, 2019, the facility processes liquids (i.e., oil) and gas from produced from wells in the vicinity. Liquid is separated from gas and dumped into tanks on site and hauled off site by truck, while gas is compressed and put into a sales pipeline. Vapor recovery equipment captures gases from tanks and other sources of emissions and then routes the pollution to a vapor combustion unit. The facility consists of eleven 1,000 barrel oil tanks, four 1,340 horsepower natural gas-fired compressor engines, ten 1,000 barrel produced water tanks, vapor recovery and vapor combustion units, and emergency flares.²

According to OXY's May 21, 2019 permit application, the Turkey Track facility has the potential to emit large amounts of harmful and toxic air pollution, including CO, NOx, VOCs, and hazardous air pollutants such as benzene, toluene, ethylbenzene, xylene, n-hexane, and formaldehyde. This permit application is attached to this Notice of Intent as **Exhibit 2**.

¹ Map prepared by inputting coordinate data from the New Mexico Environment Department into the online mapping platform, ArcGIS.com.

² One barrel of oil equals 42 gallons. See <https://www.energy.gov/eere/vehicles/fact-676-may-23-2011-us-refiners-produce-about-19-gallons-gasoline-barrel-oil>.

Harmful air emissions from the Turkey Track facility.

Pollutant	Potential to Emit (tons/year)
Carbon monoxide	295
Nitrogen oxide	38.2
Volatile organic compounds	5,466
Benzene	1.83
Toluene	1.71
Ethylbenzene	1.64
Xylene	1.66
n-Hexane	2.14
Formaldehyde	6.45

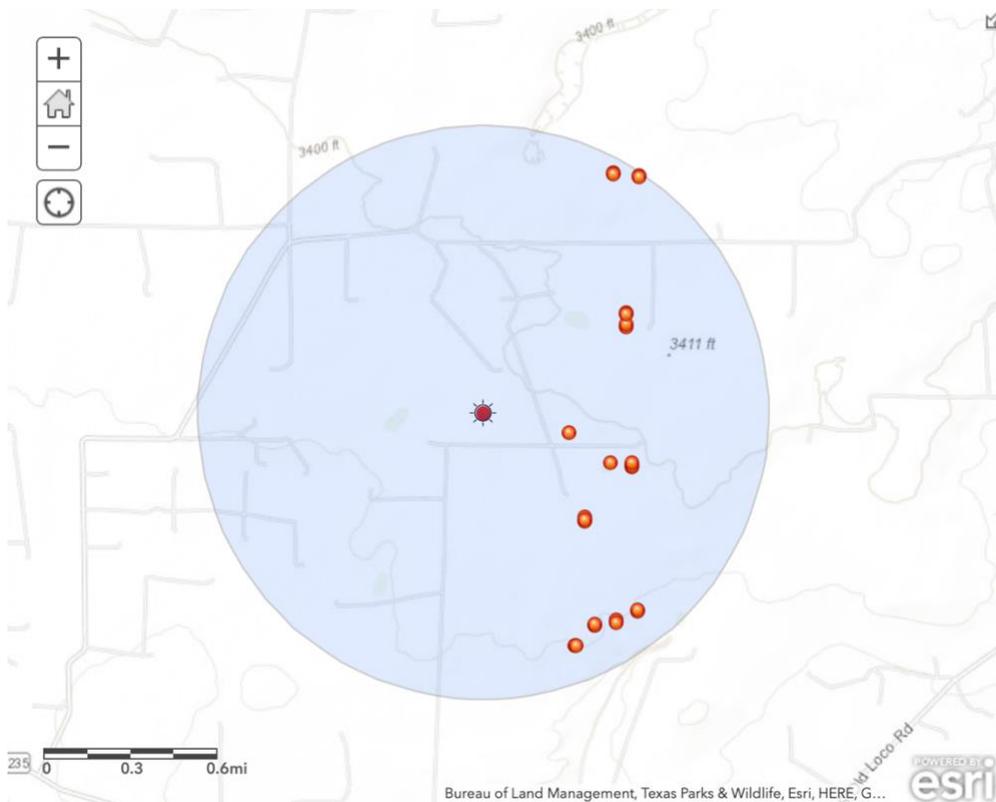
B. Permitting History

OXY first applied to the New Mexico Environment Department’s Air Quality Bureau for a permit to construct and operate the Turkey Track facility on May 31, 2017. This 2017 application is attached to this Notice of Intent as **Exhibit 3**. This permit application was assigned number 7376. At the time, OXY applied for coverage under a general permit, a streamlined permitting process meant to facilitate fast processing and construction of stationary sources of air pollution. OXY applied for coverage under the New Mexico Environment Department’s General Construction Permit (“GCP”) 4.³ A copy of GCP-4 is attached to this Notice of Intent as **Exhibit 4**. The New Mexico Environment Department approved OXY’s application for coverage under GCP-4 on June 12, 2017. A copy of the Department’s approval is attached to this Notice of Intent as **Exhibit 5**.

While OXY received approval to construct the Turkey Track facility on June 12, 2017, there is evidence that OXY began construction of the facility prior to this date.

According to data from the New Mexico Oil Conservation Division, there are at least 24 producing oil and gas wells in the vicinity that appear to be part of the Turkey Track facility and, upon information and belief, provide oil and gas to the Turkey Track facility. These wells are all operated by OXY USA WTP Limited Partnership, the owner of the Turkey Track facility, they all produce state-owned minerals, and are all named “Turkey Track.” A spreadsheet identifying these wells and their respective details, including well names and API numbers, is attached to this Notice of Intent as **Exhibit 6**. The map below shows the location of these wells, which are all located within one mile northeast, east, and southeast of the facility.

³ This GCP was initially approved by the Environment Department on October 20, 2003 and superseded by the approval of a new GCP on April 27, 2018.



Location of Turkey Track facility (red dot) and the 24 producing oil and gas wells (orange dots) named “Turkey Track” and operated by OXY USA WTP Limited Partnership. All are within one mile of facility (blue shaded buffer).⁴

Of these 24 wells, OXY received permits to drill 13 from the New Mexico Oil Conservation Division prior to the company submitting its May 31, 2017 construction permit application to the New Mexico Environment Department.⁵ Of these 13 wells, OXY began drilling (i.e., spudded) three wells prior to the Department’s approval of coverage under GCP-4 for the Turkey Track facility. These wells include Turkey Track 9 10 State #021H (spudded June 6, 2017), Turkey Track 9 10 State #022H (spudded June 9, 2017), and Turkey Track 9 10 State #032H (spudded June 11, 2017). According to the New Mexico Oil Conservation Division, these wells remain active and in production.

On October 18, 2018, OXY registered for coverage under a new general permit. This application is attached to this Notice of Intent as **Exhibit 7**. This application was assigned number 7376M1. Called the General Construction Permit for oil and gas facilities, or GCP-Oil and Gas, this new general permit was adopted by the New Mexico Environment Department’s Air Quality Bureau in April 2018 and updated the provisions of GCP-4. A copy of GCP-Oil and Gas is attached to this Notice of Intent as **Exhibit 8**. The Department approved OXY’s

⁴ Map prepared by inputting coordinate data from the New Mexico Environment Department into the online mapping platform, ArcGIS.com and utilizing a publicly available GIS shapefile from the New Mexico Oil Conservation Division.

⁵ Drilling permits issued by the New Mexico Oil Conservation Division only regulate drilling activity, not air pollution. The Oil Conservation Division has no authority to regulate air quality pursuant to the New Mexico SIP.

application for the Turkey Track facility to be covered under GCP-Oil and Gas on November 15, 2018. The Department’s approval is attached to this Notice of Intent as **Exhibit 9**.

On February 14, 2019, OXY registered to modify the Turkey Track facility and maintain coverage under GCP-Oil and Gas. This application is attached to this Notice of Intent as **Exhibit 10**. This application was assigned number 7376M2. OXY sought approval from the New Mexico Environment Department to increase emissions at the Turkey Track facility while maintaining general permit coverage. The Department approved OXY’s application on March 21, 2019. The Department’s approval is attached to this Notice of Intent as **Exhibit 11**.

On May 21, 2019, OXY again registered to modify the Turkey Track facility’s and maintain coverage under GCP-Oil and Gas. As indicated earlier, this application is attached to this Notice of Intent as **Exhibit 2**. This application was assigned number 7376M3. OXY sought approval from the New Mexico Environment Department to increase emissions and add VOC control systems at the Turkey Track facility while maintaining general permit coverage. The Department approved OXY’s application on June 17, 2019. The Department’s approval is attached to this Notice of Intent as **Exhibit 12**.

The Turkey Track facility continues to operate under the New Mexico Environment Department’s GCP-Oil and Gas and OXY’s May 21, 2019 application.

C. Emissions History

To qualify for initial coverage under GCP-4, OXY had to demonstrate that potential emissions at the Turkey Track facility would remain below key thresholds. Notably, maximum potential emissions of NOx, CO, and VOCs had to remain below 95 tons per year. GCP-4 Condition III.⁶ Furthermore, while GCP-4 imposed maximum allowable emission limits for facilities, it also required applicants to comply with “[t]he hourly and annual emission limits listed in the Siting Registration Application.” GCP-4 Condition V.2.

Under its initial 7376 application to construct under GCP-4, OXY listed the following hourly and annual allowable emission rates for NOx, CO, and VOCs at the Turkey Track facility:

Turkey Track Emission Limits Under 2017 GCP-4 Application, Permit No. 7376⁷

Nitrogen Oxides		Carbon Monoxide		Volatile Organic Compounds	
<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>
8	34.9	15.3	66.9	14.1	61.7

⁶ The 95 ton/year threshold provided that emissions would not trigger more stringent and rigorous permitting requirements required under the Clean Air Act.

⁷ Under all of OXY’s permit registrations, the annual allowable emission limits are based on a 12-month rolling average. Thus, starting with the first 12 months of operation, after every month, a new 12-month average is calculated to assess compliance.

These emission limits applied to the Turkey Track facility from June 12, 2017 to November 15, 2018.

When OXY registered for coverage under GCP-Oil and Gas as part of 7376M1, the company sought to increase its allowable emission limits. Similar to GCP-4, GCP-Oil and Gas limited maximum allowable emissions of NO_x, CO, and VOCs to no more than 95 tons per year and also required applicants to comply with the hourly and annual emission limits established in companies' general permit registration forms. GCP-Oil and Gas Condition A106(A). OXY listed the following hourly and annual allowable emission rates for NO_x, CO, and VOCs at the Turkey Track facility:

**Turkey Track Emission Limits Under 2018 GCP-Oil and Gas Registration,
Permit No. 7376M1**

Nitrogen Oxides		Carbon Monoxide		Volatile Organic Compounds	
<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>
10.7	44.8	21.8	85.1	228	79.6

These emission limits applied to the Turkey Track facility from November 16, 2018 to March 21, 2019.

When OXY applied for its 7376M2 modification for coverage under GCP-Oil and Gas, the company sought to further adjust its allowable emission limits. OXY listed the following hourly and annual allowable emission rates for NO_x, CO, and VOCs at the Turkey Track facility:

**Turkey Track Emission Limits Under February 2019 GCP-Oil and Gas Registration,
Permit No. 7376M2**

Nitrogen Oxides		Carbon Monoxide		Volatile Organic Compounds	
<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>
11.1	46.7	22.2	87	228	79.7

These emission limits applied to the Turkey Track facility from March 22, 2019 to June 17, 2019.

When OXY applied for its 7376M3 modification for coverage under GCP-Oil and Gas, the company sought to largely increase its allowable emission limits. OXY listed the following hourly and annual allowable emission rates for NO_x, CO, and VOCs at the Turkey Track facility:

**Turkey Track Emission Limits Under May 2019 GCP-Oil and Gas Application,
Permit No. 7376M3**

Nitrogen Oxides		Carbon Monoxide		Volatile Organic Compounds	
<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>
12.6	46.3	29.6	87.9	1557	93.5

These emission limits have applied to the Turkey Track facility since June 18, 2019.

Although OXY’s permits have imposed limits on NOx, CO, and VOC emissions, these limits are based on the operation of pollution control systems. If pollution control systems were not in place, maximum emissions would generally be greater than permitted limits. Under OXY’s application for permit 7673M3, the company reports the following maximum uncontrolled emission rates from the Turkey Track facility:

**Maximum Uncontrolled Emission Rates for Turkey Track Facility Disclosed Under May
2019 GCP-Oil and Gas Application for 7376M3**

Nitrogen Oxides		Carbon Monoxide		Volatile Organic Compounds	
<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>
10.8	38.2	74.6	285	2883	5466

Since constructing and beginning operation of the Turkey Track facility in 2017, OXY has reported numerous instances of emissions exceeding allowable limits set forth in its general permit applications. These excess emissions have largely, if not entirely, involved excess flaring from one of the facility’s two emergency flares. Under OXY’s current general permit registration, a single emergency flare, identified as Unit FL-1, at the Turkey Track facility is limited to the following hourly and annual allowable rates:

**Turkey Track Emission Limits for Emergency Flare, Unit FL-1,
Under May 2019 GCP-Oil and Gas Application for 7376M3**

Nitrogen Oxides		Carbon Monoxide		Volatile Organic Compounds	
<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>	<i>Pounds/hour</i>	<i>Tons/year</i>
0.009	0.041	0.043	0.187	0.033	0.147

According to data submitted by OXY to the New Mexico Environment Department, OXY has regularly reported excess emissions from Unit FL-1 at the Turkey Track facility since constructing and beginning operations. Since October 2019, OXY has reported more than 1,800 instances of exceeding hourly limits on NOx, CO, and VOCs at Unit FL-1. Further, every month since at least October 2019, OXY has continuously exceeded annual limits on NOx, CO, and VOCs at Unit FL-1. Since October 1, 2019, OXY has reported around five excess emission events per month on average. Based on reports to the New Mexico Environment Department, these excess emission events appear tied to recurring circumstances where OXY has been unable to compress and send gas to downstream pipelines and processing facilities. Rather than shut down the Turkey Track facility and/or pause oil and gas production at its wells, OXY simply

flared gas and continued to produce oil. Lists of excess emission events reported by OXY to the New Mexico Environment Department since January 1, 2019 are attached to this Notice of Intent as **Exhibits 13 and 14**.⁸

Notable recent excess emission events from Unit FL-1 include:

- A seven hour excess emission event that started on April 21, 2021 where gas could not be compressed due to wells “surging” more gas than compressor engines could handle. Rather than pause production, OXY flared gas, reporting an hourly NOx emission rate of more than 12 pounds per hour, an hourly CO rate of more than 25 pounds per hour, and a VOC emission rate of more than 18 pounds per hour.
- A six hour excess emission event that started on October 6, 2020 where gas could not be compressed due to a downstream processor temporarily being able to process compressed gas from the Turkey Track facility. Rather than pause operations, OXY flared gas, reporting an hourly NOx emission rate of more than 75 pounds per hour, an hourly CO rate of more than 149 pounds per hour, and a VOC emission rate of more than 113 pounds per hour.
- A four hour excess emission event that started on April 3, 2020 where OXY reported an equipment malfunction due to sales gas compressors being down. Again, in response to this malfunction, OXY flared gas, reporting an hourly NOx emission rate of more than 40 pounds per hour, an hourly CO rate of more than 81 pounds per hour, and an hourly VOC rate of more than 61 pounds per hour.
- A seven minute excess emission event that started on December 14, 2019 where gas could not be compressed due to a malfunction. Rather than pause production, OXY flared gas, reporting an hourly NOx emission rate of more than 557 pounds per hour, an hourly CO rate of more than 1,113 pounds per hour, and a VOC emission rate of more than 1,038 lbs/hour.
- A 19 hour excess emission event that started on November 30, 2019 where gas could not be compressed also due to wells “surging” more gas than compressor engines could handle. Rather than pause production, OXY flared gas, reporting an hourly NOx emission rate of more than 17 pounds per hour, an hourly CO rate of more than 35 pounds per hour, and a VOC emission rate of more than 26 pounds per hour.

Based on OXY’s reported excess emissions, since constructing and beginning operation of the Turkey Track facility, the company has regularly exceeded hourly and annual limits on NOx, CO, and VOCs from Unit FL-1, regularly exceeded facility-wide hourly limits on NOx, CO, and VOCs, and very likely exceeded facility-wide annual limits on NOx, CO, and VOC

⁸ Excess emission data was obtained from the New Mexico Environment Department through Inspection of Public Records Act requests and via the Department’s excess emission reports posted at <https://www-archive.env.nm.gov/air-quality/excess-emissions-reporting/>.

emissions. The Turkey Track facility continues to operate and OXY continues to report excess emissions.

II. Legal Background

A. Air Pollution Permitting in New Mexico

Pursuant to the Clean Air Act, the New Mexico Environment Department has promulgated air quality regulations that have been approved and incorporated into a state implementation plan (“SIP”).⁹ This U.S. Environmental Protection Agency (“EPA”)-approved SIP forms the foundation of air quality protection in New Mexico.¹⁰ The SIP ensures that sources of pollution do not jeopardize compliance with health-based air quality standards. *See* 42 U.S.C. § 7410(a)(1) (requiring SIPs to provide for the “implementation, maintenance, and enforcement” of ambient air quality standards).

According to the New Mexico SIP, construction or modification of stationary sources of air pollution may not begin prior to obtaining a permit. Under the “construction permitting” provisions of the New Mexico Environment Department’s regulations, “applications for permits shall be filed prior to the commencement of the construction, modification, or installation [and] [r]egardless of the anticipated commencement date, no construction, modification, or installation shall begin prior to issuance of the permit.” 20.2.72.200(E) NMAC. Once approved, a construction permit sets forth terms and conditions under which a stationary source of air pollution must operate and comply with. *See* 20.2.72.210(D) NMAC (stating that any “term or condition” imposed by a permit is “enforceable”).

In addition to the New Mexico SIP’s regular construction permitting requirements, certain “major” stationary sources of air pollution must obtain more stringent permits to construct and operate. Specifically, any source that has the potential to emit more than 250 tons per year of any pollutant subject to regulation under the Clean Air Act must obtain a Prevention of Significant Deterioration (“PSD”) permit pursuant to 20.2.74 NMAC prior to commencing construction. *See* 20.2.74.300 NMAC (“Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of this part shall be subject to enforcement action.”). Among other things, PSD permits require the utilization of “best available control technology” and ambient air quality modeling and monitoring.

Under New Mexico’s PSD rules and SIP, a source’s potential to emit is defined as, “the maximum capacity of a stationary source to emit under its physical and operational design.” 20.2.74.7(AO) NMAC. The rules further state that, “Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or

⁹ New Mexico’s air quality regulations are set forth at 20.2 New Mexico Administrative Code (“NMAC”).

¹⁰ The EPA has promulgated approval of the New Mexico SIP at 40 C.F.R. § 52.1620-1640.

processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable.” *Id.* The term “federally enforceable” means “all limitations and conditions which are enforceable by the [U.S. EPA] administrator” and include “requirements within any applicable state implementation plan.” 20.2.74.7(W) NMAC.

Title V Clean Air Act further requires that any stationary source with the potential to emit more than 100 tons per year of any pollutant subject to regulation to obtain and operate in accordance with an operating permit. *See* 42 U.S.C. § 7661-7661f. Specifically, once a stationary source of air pollution becomes subject to operating permit requirements by virtue of being permitted as a major source, that source must submit an application for a Title V permit within 12 months. *See* 40 C.F.R. § 70.5(a)(1)(i). Among other things, Title V operating permits impose stringent monitoring, recordkeeping, reporting, and compliance requirements. *See* 40 C.F.R. § 70.6. Operating permits are meant to reduce violations and improve enforcement. A source subject to Title V may not lawfully operate without a valid operating permit. 42 U.S.C. § 7611a(a). Pursuant to Title V of the Clean Air Act, New Mexico promulgated an operating permit program that the EPA ultimately approved. *See* 20.2.70 NMAC.¹¹

Under New Mexico’s operating permit program, the definition of “potential to emit” is identical to the definition governing PSD permitting in the state. 20.2.70.7(AA) NMAC. As with PSD permits, where pollution controls or other limits are utilized, the assessment of potential to emit under Title V must be based on “federally enforceable” limits. *Id.* The definition of “federally enforceable” is identical to the definition under New Mexico’s PSD rules. 20.2.70.7(K) NMAC.

B. The Turkey Track Facility Permits

The New Mexico Environment Department approved general construction permits for oil and gas facilities pursuant to its SIP. *See* 20.2.72.220 (setting forth provisions for the development and approval of “general permits”). Consistent with the SIP, the Department approved GCP-4 and subsequently GCP-Oil and Gas.

In accordance with the SIP, OXY registered for and obtained coverage under GCP-4 and subsequently under GCP-Oil and Gas. Consistent with the New Mexico SIP, these general permits contain “terms and conditions” that apply to all sources subject to general permit coverage. 20.2.72.220(A)(2)(c) NMAC. Among other things, the terms and conditions are meant to ensure protection of health-based ambient air quality standards. *Id.* The SIP also prohibits commencement of construction of sources prior to Environment Department approval of any general permit registrations and provides that a source “shall be subject to enforcement action for construction without a permit if [] [i]t is determined after construction commences that a source does not qualify for coverage under the general construction permit.” 20.2.72.220(C)(6) NMAC.

¹¹ EPA approved of New Mexico’s Title V operating permit program in 1996. *See* 61 Fed. Reg. 60,032 (Nov. 26, 1996).

Under its general permits, OXY has been and continues to be subject to numerous terms and conditions to keep air pollution in check at the Turkey Track facility. Among the various terms and conditions in GCP-Oil and Gas, OXY must comply with the following requirements:

- Meet all applicable federally enforceable requirements under the SIP. GCP-Oil and Gas Condition A103(A);
- Comply with the hourly and annual limits set forth in its registration forms, which “shall be the allowable emission limits,” as well as comply with all process parameters represented in the registration forms under GCP-Oil and Gas. GCP-Oil and Gas Condition A106(A) and (C).
- Limit emissions of NO_x, CO, and VOCs to no more than 95 tons/year for each pollutant in order to qualify for coverage under GCP-Oil and Gas. GCP-Oil and Gas Condition A106(A) and (B).
- Submit reports of excess emissions in accordance with 20.2.7.110(A) NMAC. Pursuant to 20.2.7 NMAC, the term “[e]xcess emission means the emission of an air contaminant, including a fugitive emission, in excess of the quantity, rate, opacity or concentration specified by an air quality regulation or permit condition.” 20.2.7.7(D) NMAC. Excess emissions are considered “violation[s]” and are “subject to [] enforcement action.” 20.2.7.109 NMAC.

C. The Clean Air Act’s Citizen Suit Provision

Under the Clean Air Act, any person may file suit against any other person alleged to “have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of...an emission standard or limitation under this Act,” as well as against any person who constructs “any new or modified major emitting facility” without a required PSD permit. 42 U.S.C. § 7604(a)(1) and (3).

The phrase “emission standard or limitation” is broadly defined under the Clean Air Act and includes, but is not limited to, any “emission limitation, standard or performance or emission standard,” “any condition or a requirement under part C of title I [of the Clean Air Act] (relating to significant deterioration of air quality),” and “any other standard, limitation, or schedule established under [] any applicable state implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operation.” 42 U.S.C. §§ 7604(f)(1), (3), and (4).

No citizen suit may be filed under the Clean Air Act prior to giving 60-days notice to the alleged violator. 42 U.S.C. § 7604(b)(1)(A). In addition, no suit may be filed “if the EPA Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or State[.]” 42 U.S.C. § 7604(b)(1)(B).

III. Notice of Intent to File Suit Over OXY’s Clean Air Act Violations at the Turkey Track Facility

Pursuant to the Clean Air Act's citizen suit provision, WildEarth Guardians intends to file suit against OXY over thousands of Clean Air Act violations at the Turkey Track facility, many of which are ongoing. In accordance with the Clean Air Act, we hereby put OXY on notice of our intent to sue over the following violations.

A. Failure to Obtain a PSD Permit Prior to Beginning Construction and Operation of the Turkey Track Facility, Violation of the New Mexico SIP at 20.2.74 NMAC

According to records with the New Mexico Oil Conservation Division, OXY began drilling oil and gas wells that feed the Turkey Track facility prior to receiving approval from the New Mexico Environment Department to construct the facility. These wells are part of the Turkey Track facility because they are operated by OXY, they are interconnected and proximal with the facility, they are located on contiguous state-owned properties, and they share a common industrial classification. *See* 20.2.74.7.L NMAC (defining "Building, structure, facility or installation").

Under the New Mexico SIP, "actual construction" begins upon the "initiation of physical onsite construction activities on an emissions unit which are of a permanent nature." 20.2.74.7.J NMAC. Here, when OXY began drilling the wells that provide oil and gas to the Turkey Track facility, the company initiated physical onsite construction activities, namely well drilling and related construction activities, of a permanent nature.

When OXY began actual construction of the Turkey Track facility, it had no approved air pollution permit in place, in violation of the New Mexico SIP provisions at 20.2.74.200.C and 20.2.74.300.A NMAC. Moreover, due to a lack of an approved permit, the facility was not subject to federally enforceable emissions limits that would count toward its potential to emit in accordance with the New Mexico SIP. *See* 20.2.74.7.AO NMAC (defining "Potential to emit"). This means OXY could not account for any pollution controls in calculating the facility's potential to emit and applying for appropriate permit coverage under the SIP.

As OXY disclosed in its most recent application for general permit coverage, the maximum uncontrolled CO and VOC emissions from the Turkey Track facility are far greater than 250 tons per year each. This means that when OXY first applied for coverage under GCP-4 in 2017, the Turkey Track facility's potential to emit was greater than 250 tons per year due to a lack of federally enforceable limits. This means the facility was subject to major source PSD permitting under the New Mexico SIP. Thus, OXY was ineligible for coverage under GCP-4, and the Department's approval of OXY's general permit registration does not shield OXY from liability for its unlawful construction and operation of the Turkey Track facility.

Accordingly, OXY was required to apply for and obtain a PSD permit pursuant to the SIP at 20.2.74 NMAC. OXY's failure to obtain a PSD permit prior to beginning construction was in violation of 20.2.74.200.C and 20.2.74.300.A NMAC. Given this, the Turkey Track facility was illegally constructed and continues to illegally operate without the PSD permit required by the New Mexico SIP.

OXY's violations started the day the company began actual construction of the Turkey Track facility and continue today. Under the Clean Air Act, every day the company engaged in construction and every day the company has engaged in operation of the facility without a PSD permit is a violation of an emission standard or limitation, including the provisions of the New Mexico SIP.

B. Failure to Obtain a Title V Permit Upon Beginning Operation of the Turkey Track Facility, Violation of 20.2.70 and 40 C.F.R. § 70

When OXY began construction of the Turkey Track facility in 2017, the stationary source's potential to emit exceeded 100 tons per year. This means that upon commencement of construction, the facility became subject to New Mexico's federally approved operating permit program and Title V of the Clean Air Act. This means that, pursuant to 40 C.F.R. § 70.5(a)(1)(i), OXY was obligated to apply for a Title V permit within 12 months of commencing construction.

Despite the applicability of Title V permitting requirements, OXY has never applied for or otherwise obtained an operating permit in accordance with 20.2.70 NMAC. Every day that OXY has operated and continues to operate the Turkey Track facility without a legally valid Title V permit is a violation of an emission standard or limitation under the Clean Air Act.

C. Failure to Comply with Hourly and Annual Emission Limits, Violation of General Permit

Although OXY was required to obtain PSD and Title V permits for the Turkey Track facility, the construction and operation of the facility has been subject to general permit coverage since June 2017. According to OXY's own excess emission reports, the company has violated applicable general permits thousands of times and continues to report ongoing violations.

Records obtained so far from the New Mexico Environment Department's Air Quality Bureau indicate that between October 1, 2019 and the present, OXY has reported 1,799 violations of hourly emission limits for Unit FL-1 and reported violations of annual limits for Unit FL-1 every month since October 2019 for a total of 66 additional violations. These violations include exceedances of the allowable hourly and annual NO_x, CO, and VOC limits represented in OXY's May 21, 2019 application to modify coverage under GCP-Oil and Gas. In total, Unit FL-1 has violated applicable emission limits more than 1,865 times. Upon information and belief, a number of violations of hourly and annual NO_x, CO, and VOC limits at Unit FL-1 have likely gone unrecorded and/or unreported. Below is a table showing our count of NO_x, CO, and VOC emission limit violations for Unit FL-1.

**Emission Limit Violations for Unit FL-1
Between October 1, 2019 and the Present**

Pollutant	Number of Violations of Hourly Limit	Number of Violations of Annual Limits
NO _x	610	22
CO	594	22
VOC	595	22

Based on the excess emissions reported at Unit FL-1, the Turkey Track facility also violated allowable facility-wide limits for at least CO and NO_x emissions between October 1 and the present. Based on reports from OXY, facility-wide hourly limits for CO were violated 114 times and facility-wide hourly limits for NO_x were violated 210 times.

In total, OXY’s reported excess emissions indicate at least 2,189 violations of applicable limits. These repeated excess emissions are not exempt from enforcement or compliance oversight. OXY reported these excess emissions pursuant to the New Mexico SIP at 20.2.7 NMAC and are therefore considered “violation[s]” “subject to [] enforcement action.” 20.2.7.109. These violations are ongoing.

Based on OXY’s reported excess emissions from Unit FL-1, it also appears that the company has violated process parameters for the emission unit. Under OXY’s May 21, 2019 application to modify coverage under GCP-Oil and Gas, the flare was limited to no more than 1.01 MMscf/year of fuel usage and was required to achieve a 98% control efficiency for VOCs. The reported violations indicate OXY exceeded its fuel usage limit and achieved less than a 98% control efficiency for VOCs.

Based on OXY’s reported excess emissions, we also have reason to believe the company has also violated annual facility-wide limits for CO, NO_x, and VOCs at the Turkey Track facility. Considering OXY’s reported excess emissions combined with emissions reported during normal operating conditions, emissions of CO, NO_x, and VOCs from the Turkey Track facility likely exceeded the allowable limits set forth in the company’s May 21, 2019 application to modify coverage under GCP-Oil and Gas.

If at any point, OXY’s annual emissions exceeded 95 tons per year of NO_x, CO, or VOCs, then the company would be in violation of Condition A106(A) of GCP-Oil and Gas and would no longer qualify for coverage under the general permit. This would mean OXY would be subject to further enforcement action for construction without a permit. *See* 20.2.72.220(C)(6) NMAC. The company would also face potential enforcement action over its failure to obtain and operate in compliance with a PSD permit and a Title V operating permit.

We intend to file suit over OXY’s reported emission limit violations and any related permit violations that we may discover upon further investigation. Based on the company’s repeated violations, we have a reasonable basis to believe OXY’s NO_x, CO, and VOC emission limit violations are more extensive than reported. We reserve the right to enforce over any and all violations of NO_x, CO, and VOC emissions and any additional permit violations resulting from these emission violations.

IV. Conclusion

Based on aforementioned ongoing violations at the Turkey Track facility, WildEarth Guardians intends to sue OXY in federal court to enjoin violations, seek civil penalties, and secure any additional relief that may be appropriate and necessary. We intend to file suit over the violations listed in this letter. We also intend to file suit over any additional violations occurring subsequent to the date of this Notice of Intent and any additional related violations discovered as a result of enforcement.

We will file suit if we cannot achieve a resolution beforehand that addresses OXY's ongoing noncompliance and failure to operate the Turkey Track facility in accordance with the Clean Air Act.

WildEarth Guardians is not barred from suing to enforce the aforementioned violations. Under 42 U.S.C. § 7604(a)(1) of the Clean Air Act, citizen suits are barred only where a state "has commenced and is diligently prosecuting a civil action in a court [] of a state." 42 U.S.C. § 7604(b)(1)(B). No action has been filed in state court by the State of New Mexico regarding the aforementioned violations. Thus, no diligent prosecution is occurring.

If you have questions or would like to discuss this matter further, please contact me via e-mail or over the phone. Thank you.

Sincerely,



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