

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	Case No. 22-cv-797
v.)	
)	
OXY USA INC. and)	COMPLAINT FOR
OXY USA WTP LP)	DECLARATORY AND
)	INJUNCTIVE RELIEF
)	
Defendant.)	
)	

INTRODUCTION

1. This is a citizen enforcement suit brought by a non-profit organization, WildEarth Guardians, on behalf of its members, against Defendants OXY USA Inc. and OXY USA WTP LP (collectively, “OXY”) for violating the Clean Air Act at their Turkey Track Central Tank Battery and Gas Sales Compression facility located in Eddy County, New Mexico (Turkey Track Facility). Since beginning operations at the Turkey Track Facility, Defendants have routinely emitted air pollutants, including volatile organic compounds (VOCs), nitrogen oxides (NO_x), and carbon monoxide (CO), in excess of the limits of the Turkey Track Facility’s air pollution permits.

2. The Turkey Track Facility and its emissions of air pollutants in excess of its permit limits contribute to a reduction in air quality in the Greater Carlsbad region. In particular, Turkey Track Facility emits pollutants, including VOCs, NO_x and CO, that contribute to the formation of ground-level ozone. Ozone at ground level is a harmful pollutant because of its effects on people and the environment, and is the main ingredient in smog.

3. The ambient air throughout the Greater Carlsbad region, including but not limited to Lea and Eddy Counties, is currently within 95% or more of the federal, health-based standard for ozone pollution. In Eddy County, where the Turkey Track Facility is located, the U.S. Environmental Protection Agency (EPA) monitoring data shows ambient air quality to be significantly in exceedance of the federal, health-based limit for ozone, based on the calculated “design value” based on 2019, 2020, and 2021 monitoring data. The New Mexico Environment Department (NMED) has publicly acknowledged that the air quality monitors in the region have shown air pollution levels in exceedance of federal, health-based standards in recent years.

4. Ozone is a “secondary pollutant” formed by a series of photochemical reactions between VOCs and NO_x in the presence of sunlight. While ozone is not directly emitted, emissions of its precursor pollutants, including VOCs, NO_x, and CO, contribute to ozone formation and increases in monitored ambient ozone pollution levels. It is well-established that the oil and gas industry is a significant contributor of ozone precursor emissions in southeastern New Mexico. NMED has acknowledged that the oil and gas industry represents the largest, New Mexico-based anthropogenic source contributing to the ozone pollution problem in the Greater Carlsbad region.

5. Exposure to elevated ozone pollution levels causes serious health impacts, particularly for the elderly, children, people with asthma and other respiratory problems, and those who are active outdoors. For example, the EPA has identified serious respiratory and cardiovascular impacts as significant human health impacts resulting from ozone exposure. Even short-term ozone exposure has been shown to decrease lung function, cause respiratory inflammation, exacerbate asthma and allergies, increase emergency room visits and hospitalizations, and even lead to death. Long-term, chronic exposure to ozone pollution results

in significant public health impacts, including increased rates of asthma and cardiopulmonary illness, hospitalizations, and premature death.

6. In light of the significant public health risks linked to ozone pollution, EPA strengthened the ozone standard in 2015, lowering the 8-hour ozone standard from 75 parts per billion (ppb) to 70 ppb. EPA determined that this stricter standard was “requisite” to protect human health and welfare. Compliance with the 2015 ozone standard is determined based on a “design value,” calculated from monitored ozone levels as the three-year average of the annual fourth-highest daily 8-hour reading. Hence, non-compliance with the federal ozone standard indicates a chronic problem with serious public health implications for an affected region.

7. Clinical studies have observed ozone-related health effects in healthy individuals, even at exposure levels well-below the current federal 70 ppb standard, and EPA has acknowledged that ozone pollution levels below federal standards can also cause serious health concerns, with exposures to ozone concentrations as low as 60 ppb causing “lung function decrements and airway inflammation” even in healthy individuals. Hence, the EPA Administrator “becomes increasingly concerned about the potential for adverse effects at 60 ppb [ozone] as the number of exposures increases,” and the agency has noted that “potentially adverse effects [] can occur following repeated exposures at or above 60 ppb.” When the ozone standards were last revised in 2015, the independent Clean Air Scientific Advisory Committee, established pursuant to Clean Air Section 109, 42 U.S.C. § 7409(d)(2), found that the scientific evidence supported setting the standard in a range 60 ppb to 70 ppb, but also provided “policy advice” recommending that EPA set the level below 70 ppb, stating that a standard level of 70 ppb “may not meet the statutory requirement to protect public health with an adequate margin of safety.”

8. By emitting ozone precursor pollutants in an area already suffering from high ozone pollution levels, the Turkey Track Facility's excess emissions contribute to the region's ozone problem, negatively impacting WildEarth Guardians' members and the broader community.

PARTIES

I. PLAINTIFF

9. Plaintiff WildEarth Guardians is a non-profit membership organization headquartered in Santa Fe, New Mexico. WildEarth Guardians has approximately 196,000 members and supporters in the United States, many of whom live in New Mexico and others who regularly recreate, visit, or work in New Mexico and the areas affected by the Turkey Track Facility. WildEarth Guardians' mission is to bring people, science, and the law together in defense of the American West's air quality, rivers, forests, deserts, grasslands, and the delicate web of life to which we are inextricably linked. WildEarth Guardians, its staff, and members work to protect and enhance the quality of air through New Mexico and the United States as a whole.

10. WildEarth Guardians is a "person" within the meaning of the Clean Air Act's citizen suit provision. 42 U.S.C. §§ 7604(a); 7602(e).

11. To fulfill its mission, goals, and purposes, WildEarth Guardians has worked, and continues to work, to protect air quality in the Greater Carlsbad Region of southeastern New Mexico, where the Turkey Track Facility is located and the complained-of emissions are occurring. For example, WildEarth Guardians has previously challenged federal oil and gas leasing decisions and the issuance of air pollution permits for other facilities in the area, petitioned EPA to designate the Greater Carlsbad Region as "non-attainment" for the National

Ambient Air Quality Standards for ozone, and advocated for more stringent ozone pollution regulations at the state level. The interests that WildEarth Guardians seeks to protect through this lawsuit are germane to its mission, goals, and purposes. Individual members are not needed to pursue WildEarth Guardians' claims under the Clean Air Act or secure requested remedies.

12. WildEarth Guardians' members live, work, and recreate throughout the Greater Carlsbad Region in areas adversely impacted by the Turkey Track Facility's VOC, NO_x, and CO emissions. For example, members regularly use and enjoy the wildlands, wildlife habitat, rivers, streams, and healthy environment on public and private lands in the area, including areas adversely affected by emissions from the Turkey Track Facility, for hiking, fishing, hunting, camping, spelunking, photographing scenery and wildlife, wildlife viewing, stargazing, aesthetic enjoyment, spiritual contemplation, and engaging in vocational, scientific, and recreational activities. The affected lands impacted by the region's ozone pollution problem, to which emissions from the Turkey Track Facility contribute, include, but are not limited to, Carlsbad Caverns National Park, the Guadalupe Mountains, the Pecos River, the Rio Peñasco, and the Black River, all areas which Guardians' members regularly use and enjoy.

13. Ozone pollution is the primary ingredient in "smog," which impairs visibility, is an aesthetic problem, detracts from recreational activities, and impacts public health. Smog in areas affected by the Turkey Track Facility's air pollution has impacted WildEarth Guardians' members by impairing visibility, reducing members' enjoyment of the aesthetics of the Greater Carlsbad Region, detracting from Guardians' members' recreational activities, and threatening Guardians' members' health and well-being.

14. Ozone pollution also adversely affects wildlife and vegetation. Guardians' members view and enjoy wildlife and have an interest in viewing and enjoying vegetation in

areas affected by the Turkey Track Facility's pollution. The Turkey Track Facility's air pollution reduces members' ability to see and enjoy wildlife in the affected areas.

15. Carbon monoxide (CO) is an air pollutant formed by incomplete combustion of carbon-containing fuels and by photochemical reactions in the atmosphere. Flaring of gas at oil and gas development and processing sites releases carbon monoxide to the atmosphere.

16. In addition to CO's contribution to ozone pollution, short-term exposure to elevated levels of carbon monoxide pollution has been causally linked by EPA to cardiovascular morbidity, central nervous system effects, negative birth outcomes and developmental effects, respiratory morbidity, and mortality.

17. Peer-reviewed scientific studies have observed higher concentrations of carbon monoxide as far as 3 km from oil and gas facilities.

18. WildEarth Guardians' members breathe the polluted air of the Greater Carlsbad Region at home, at work, on roads and highways, and during outdoor pursuits and other activities. Exposure to ozone and carbon monoxide pollution causes Guardians' members to experience, and/or be concerned that they will experience: shortness of breath when recreating outdoors; exacerbation of asthma and allergy symptoms; unsightly smog that diminishes the aesthetic enjoyment of special places such as Carlsbad Caverns National Park and the Guadalupe Mountains; and negative impacts their enjoyment of their daily lives. By decreasing the visibility of the night sky, ozone pollution further impacts the ability of Guardians' members to enjoy stargazing.

19. Given their reasonable concerns about physical exertion on high ozone days, Guardians' members suffer from a reduced enjoyment of life when they are forced to avoid activities such as traveling, walking, running, hiking, and biking due to high ozone pollution

levels. Excess emissions from the Turkey Track Facility in violation of the Clean Air Act contribute to these adverse effects.

20. Emissions from the Turkey Track Facility, including the excess emissions of VOCs, NO_x, and CO at issue here, contribute to the regional ozone pollution problem adversely affecting Guardians' members. Defendants' air pollution detracts from Guardians' members use and enjoyment of recreational areas in the Greater Carlsbad region, exposes members to higher levels of air pollutants than they otherwise would be, and makes Guardians' members concerned for their health.

21. The health, environment and aesthetic interests of Guardians and its members have been, are being, and unless this Court grants the relief requested herein, will continue to be adversely affected by OXY's alleged repeated violations of the Clean Air Act.

22. A favorable decision and the requested relief, including declaratory and injunctive relief and imposing civil penalties, will redress these injuries to Guardians' members. If the Turkey Track Facility complied with its permit limits, emissions would be reduced, Guardians' members' concern for their health would be lessened and Guardians' members' enjoyment and use of the area would be enhanced. The requested relief will allow members to breath air free of the Turkey Track Facility's unpermitted and harmful air emissions, allow them to view natural scenery and wildlife less impaired by the Turkey Track Facility's emissions, and protect the region's natural ecology that members enjoy from the Turkey Track Facility and its pollution impacts.

II. DEFENDANTS

23. Defendant OXY USA Inc. owns and operates the Turkey Track Facility. OXY USA Inc. obtained and holds the current air pollution permit for the Turkey Track Facility, GCP

Oil and Gas Permit No. 7376-M3. OXY USA Inc. is a Delaware corporation doing business in New Mexico.

24. Defendant OXY USA WTP LP constructed the Turkey Track Facility and operated it for some period prior to October 2018. OXY USA WTP LP is a Delaware limited partnership doing business in New Mexico.

JURISDICTION AND VENUE

25. This Court has jurisdiction over this action under 42 U.S.C. § 7604(a)(1) & (a)(3) (Clean Air Act citizen suit provision) and 28 U.S.C. § 1331 (federal question).

26. On November 18, 2021, Plaintiff sent a letter (the “Notice Letter”) by certified mail, return receipt requested, to OXY. The Notice Letter stated Plaintiff’s intent to sue OXY for Clean Air Act violations at the Turkey Track Facility, including the violations alleged herein. OXY received the Notice Letter on November 20, 2021.

27. On November 18, 2021, Plaintiff sent a copy of the Notice Letter by certified mail, return receipt requested, to the following: Michael Regan, Administrator of the U.S. Environmental Protection Agency (EPA); David Gray, then-Acting Regional Administrator for EPA Region 6; Governor of New Mexico Michelle Lujan Grisham; James Kenney, Secretary of the New Mexico Environment Department (NMED); and Corporation Process Company, the registered agent for OXY USA Inc. and OXY USA WTP LP. All of the persons and entities named in this paragraph received a copy of the Notice Letter no later than November 24, 2021.

28. On February 10, 2022, Plaintiff sent a second letter (the “Supplemental Notice Letter”) by certified mail, return receipt requested, to OXY. OXY received a copy of the Supplemental Notice Letter no later than February 19, 2021. Along with the Supplemental Notice Letter, Plaintiff attached the Notice Letter and its accompanying exhibits for the

addressees not originally served with the Notice Letter. The Supplemental Notice clarified Plaintiff's intent to sue OXY USA Inc. and OXY USA WTP LP for the violations alleged herein.

29. On November February 10, 2022, Plaintiff sent a copy of the Supplemental Notice Letter by certified mail, return receipt requested, to Michael Regan, Administrator of the U.S. Environmental Protection Agency (EPA); Dr. Earthea Nance, Regional Administrator for EPA Region 6; Governor of New Mexico Michelle Lujan Grisham; James Kenney, NMED; and Corporation Process Company, the registered agent for OXY USA Inc. and OXY USA WTP LP. All of the persons and entities named in this paragraph received a copy of the Supplemental Notice Letter no later than February 15, 2022.

30. The Notice Letter and Supplemental Notice Letter satisfies the pre-suit notice requirements of the Clean Air Act, as set forth in 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.2, 54.3, to the extent one is required. More than sixty days have passed since the Notice Letter and Supplemental Notice Letters were mailed to and received by the recipients listed in paragraphs 3 through 6 above.

31. As of the date of the filing of this Complaint, neither EPA nor the State of New Mexico has commenced and is diligently prosecuting a civil action in federal or state court to enforce the Clean Air Act violations that Plaintiffs is alleging. Neither EPA nor the State of New Mexico has taken regulatory action sufficient to remedy OXY's violations. OXY's violations of the Clean Air Act have been repeated.

32. At or around the time this Complaint was filed, Plaintiff served a copy of it on the U.S. Attorney General and the Administrator of EPA, pursuant to 42 U.S.C. § 7604(c).

33. The relief requested is authorized by 28 U.S.C. §§ 2201(a), 2202, and 42 U.S.C. §§ 7604(a), (d), (g).

34. Venue is proper in the District Court for the District of New Mexico pursuant to 42 U.S.C § 7604(c) and 28 U.S.C. § 1331. Plaintiff is headquartered and has members in New Mexico. The Turkey Track Facility is located in New Mexico, and the complained-of emissions are occurring in New Mexico.

LEGAL BACKGROUND

I. THE CLEAN AIR ACT

35. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of the population.” 42 U.S.C. § 7401(b)(1). The Clean Air Act sets out a regulatory scheme designed to prevent and control air pollution.

36. Under Title I of the Clean Air Act, EPA promulgated National Ambient Air Quality Standards (NAAQS), which define the level of air quality necessary to protect the public health and welfare for certain “criteria pollutants,” specifically sulfur dioxide, nitrogen oxides, particulate matter, carbon monoxide, lead, and ozone. 42 U.S.C. § 7609(a)-(b); 40 C.F.R. pt. 50.

37. Ground-level ozone, the primary component of what is commonly referred to as “smog,” is one criteria pollutant regulated under the Clean Air Act, for which the ambient air standard is (0.070 parts per million (ppm) [or 80 parts per billion (ppb)], daily maximum 8-hour average.” 40 C.F.R. § 50.15(a).

38. Ozone pollution is created when emissions of ozone precursor pollutants, which include VOCs, NO_x, and CO, react in the presence of sunlight. *See* 40 C.F.R. § 51.21(b)(50)(i)(b)(1) (“volatile organic compounds and nitrogen oxides are precursors to ozone”); EPA, *The Role of Ozone Precursors in Tropospheric Ozone Formation and Control*, A report to Congress 2-1 (1993) (“Carbon monoxide also plays a role in ozone formation.”).

39. Upon promulgation or revision of a NAAQS, EPA determines whether air quality is better or worse than the NAAQS for each criteria pollutant within specified areas of each state. 42 U.S.C. § 7407(b) & (d). An area that meets the NAAQS for a particular criteria pollutant is known as an “attainment” area, 42 U.S.C § 7407(d)(1)(A)(ii), and one that exceeds the NAAQS is a “nonattainment” area, 42 U.S.C. § 7407(d)(1)(A)(i).

40. The Clean Air Act provides for state implementation of minimum federal requirements through EPA-approved plans, known as State Implementation Plans (SIPs). 42 U.S.C. § 7410(a). SIPs provide for implementation, maintenance, and enforcement of the NAAQS in each state. All SIP provisions approved by EPA become federal law and are enforceable in federal courts. 42 U.S.C. § 7604(f)(4).

41. New Mexico’s air quality regulations are set forth at 20.2 New Mexico Administrative Code (NMAC). The EPA has promulgated approval of the New Mexico SIP at 40 C.F.R. § 52.1620-40.

42. The Clean Air Act includes a New Source Review (NSR) permitting program, which requires new and modified stationary sources emitting certain amounts of air pollution to install modern pollution control equipment before they are constructed. Under the New Mexico SIP provisions implementing the NSR construction permitting program, 20.2.72 NMAC, 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] regardless of the anticipated commencement date, no construction, modification, or installation shall begin prior to issuance of the permit.” 20.2.72.200(e) NMAC.

43. New Mexico’s SIP provides for the issuance of “general construction permits” covering “numerous similar sources.” 20.2.72.220 NMAC. Such general construction permits must contain sufficient terms and conditions to ensure that all sources registered under the general construction permit will meet all applicable requirements of the federal Clean Air Act, New Mexico Air Quality Control Act, and NMED’s air quality regulations. 20.2.72.220(A)(2)(c) NMAC.

44. Under the terms of New Mexico’s General Construction Permit – Oil & Gas (GCP-O&G), facilities are only eligible for registration under the GCP-O&G where annual emission rates of NO_x, VOCs, and CO do not exceed 95 tons per year (tpy).

45. Facilities with annual emission rates of any regulated air pollutants, including NO_x, VOCs, and CO, in excess of 95 tpy are ineligible for registration under the GCP-O&G and must instead obtain an individual NSR permit prior to commencement of construction. 20.2.72.200.E NMAC.

46. Under 20.2.72.220.C(6)(b), “[s]ources shall be subject to enforcement action for construction without a permit if: ... [it] is determined after construction commences that a source does not qualify for coverage under the general construction permit.”

47. Facilities registered for air permit coverage under the GCP-O&G must “operate as specified in the Registration Form.” Further, “[t]he emission limits specified in the Registration Form are federally enforceable, and shall become the terms and conditions of [the Facility’s] Permit.”

48. Under Title V of the Clean Air Act, operating permits are required for all major stationary sources. 42 U.S.C. § 7661a(a). A Title V major source is “any stationary source” that emits or has the potential to emit one hundred tpy of VOCs. 42 U.S.C. § 7661(2), citing 42

U.S.C. § 7602(j); 5 C.C.R. § 1001-5:3A(I)(B)(25)(b). Title V permits consolidate all “enforceable emission limitations and standards, a schedule of compliance, ...a requirement that the permittee submit to the permitting authority...the results of any required monitoring,” including those found in a PSD permit. 42 U.S.C. § 7661c(a).

49. Each state must develop and submit to EPA for approval a Title V operating permit program that conforms to certain minimum elements established by EPA regulations. 42 U.S.C. § 7661a(d)(1); 40 C.F.R. § 70.1. EPA approved New Mexico’s Title V operating permitting program on November 26, 1996. 61 Fed. Reg. 60,032 (Nov. 26, 1996). The state’s program is set forth in the New Mexico Administrative Code at Title 20, Chapter 2, Part 70. 20.2.70 NMAC.

50. Under New Mexico’s Title V program, “[o]perating permits must be obtained from the [New Mexico Environment] Department for ... any major source.” A “major source” includes “a major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation.” 20.2.70.7.R(2). NO_x, VOCs, and CO are all pollutants subject to regulation. 20.2.70.7.C, .AL NMAC.

II. CLEAN AIR ACT CITIZEN SUIT ENFORCEMENT

51. Under 42 U.S.C. § 7604(a), any person may file suit in federal district court against any “person” who “constructs any new or modified major emitting facility without a permit required under Part C of subchapter I (related to significant determination of air quality)... or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such standard or limitation.”

52. An “emission standard or limitation” is defined to include any “emission limitation, standard of performance, or emission standard” under the Clean Air Act, as well as any EPA-approved standard of performance or emissions limitation under the SIP and any permit term or condition. 42 U.S.C. § 7604(f). Violations of NSR construction permit conditions, including general construction permits issued under an EPA-approved SIP, are subject to a citizen enforcement action under 42 U.S.C. § 7604(a)(1). Courts have jurisdiction to provide injunctive relief, impose “appropriate civil penalties,” order supplemental environmental projects, and award plaintiffs their litigation costs, including attorney and expert fees. 42 U.S.C. § 7604(a), (g)(2); § 7413(b) & (e); § 7604(d). *See* 40 C.F.R. § 19.4 (regulation adjusting for inflation statutory penalty amount to \$109,024 per violation per day).

53. To enforce some Clean Air Act violations, a citizen-plaintiff must provide the written notice of the violations at least sixty days before a lawsuit is filed to the alleged violator, EPA Administrator, and relevant state agency and Governor. 42 U.S.C. § 7604(b)(1)(A); 40 C.F.R. § 54.2. A citizen is further barred from bringing suit if EPA or the state has commenced a lawsuit and is diligently prosecuting the case in court. 42 U.S.C. § 7604(b)(1)(B).

FACTUAL BACKGROUND

I. THE TURKEY TRACK FACILITY

54. The Turkey Track Facility, located in Eddy County, New Mexico, processes oil and gas produced from a nearby system of dozens of oil and gas wells, handling over 3.8 million barrels of oil and 14.6 billion cubic feet of natural gas annually. The Turkey Track Facility includes 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. 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.

II. PERMITTING HISTORY AT THE TURKEY TRACK FACILITY

55. OXY first applied to NMED's Air Quality Bureau for a permit to construct and operate the Turkey Track Facility on May 31, 2017. This 2017 permit application to register for coverage under General Construction Permit (GCP) 4, was assigned number 7376. NMED approved OXY's application for coverage under GCP-4 on June 12, 2017.

56. In April 2018, NMED replaced the GCP-4 with a new general construction permit for oil and gas facilities, GCP-O&G. On October 18, 2018, OXY applied to register the Turkey Track Facility under the new GCP-O&G. NMED approved OXY's application for coverage under GCP-O&G on November 15, 2018, which was assigned Permit No. 7376-M1.

57. On February 14, 2019, OXY applied to modify its GCP-O&G registration for the Turkey Track Facility to increase allowable emissions from the Facility. On March 21, 2019, NMED approved OXY's application, which was assigned Permit No. 7376-M2.

58. On May 21, 2019, OXY again applied to modify its GCP-O&G registration for the Turkey Track Facility to increase allowable emissions from the Facility and add VOC control systems. On June 17, 2019, NMED approved OXY's application, which was assigned Permit No. 7376-M3. The Turkey Track Facility continues to operate under Permit No. 7376-M3, which incorporates the terms and conditions of the GCP-O&G and OXY's May 21, 2019 application, including emission limits and equipment, as "federally enforceable" permit conditions.

III. PERMIT LIMITS AT THE TURKEY TRACK FACILITY

59. Under Permit No. 7376-M3, effective at the Turkey Track Facility since June 17, 2019, OXY has operated subject to the specified equipment and emission limits included in the

GCP-O&G and its May 21, 2019 application. These include hourly and annual emission limits for individual pieces of equipment, as well as facility-wide hourly and annual emission limits for a variety of regulated air pollutants.

60. The GCP-O&G provides that: “[t]he Facility shall operate as specified in the Registration Form. The emission limits and equipment specified in the Registration Form are federally enforceable, and shall become the terms and conditions of the Permit.”

61. Flaring natural gas results in air emissions of NO_x, VOCs, and CO. Each of the Turkey Track Facility’s emergency flares, designated as FL-1 and FL-2, are subject to the following federally enforceable emission limits: NO_x: 0.009 lb/hr, 0.041 ton/yr; VOCs: 0.033 lb/hr; 0.147 ton/yr; CO: 0.043 lb/hr; 0.187 ton/yr.

62. Excluding fugitive emissions, the Turkey Track Facility is subject to the following federally enforceable facility-wide emission limits: NO_x: 12.6 lb/hr; 46.3 ton/yr; VOCs: 1,557 lb/hr; 93.5 ton/yr; CO: 29.6 lb/hr; 87.9 ton/yr.

63. Under the GCP-O&G, compliance with the annual emission limits for Permit No. 7376-M3 is determined based on a monthly rolling 12-month total basis.

64. “Malfunction flaring is not authorized” under Permit No. 7376-M3, and such flaring events are required to be reported as “excess emissions” under 20.2.7 NMAC. Under 20.2.7.7.D, “‘Excess 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.” Under 20.2.7.109 NMAC, “[t]he emission of an air contaminant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action.”

IV. FLARING EVENTS AT THE TURKEY TRACK FACILITY

65. Since October 2019, OXY has reported at least 245 separate “excess emissions” events due to flaring from Unit FL-1 at the Turkey Track Facility. Each of these individual events resulted in exceedances of the separate hourly emission limits for NO_x, VOCs, and CO under Permit No. 7376-M3.

66. For example, a seven-hour excess emission event 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 NO_x 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.

67. Similarly, OXY reported more than three hours of excess emission events which started on February 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 NO_x emission rate of more than 77 pounds per hour, an hourly CO rate of more than 155 pounds per hour, and a VOC emission rate of more than 116 pounds per hour.

68. Another six-hour excess emission event 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 NO_x 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.

69. Between November 12, 2019 through January 2, 2020, OXY reported at least one excess emissions event due to unauthorized flaring at Unit FL-1 every single day for 52 days straight, aside from a single exception, December 19, 2020.

70. Based on OXY's self-reported excess emissions data provided to NMED, OXY has exceeded its hourly emissions limits for NO_x at Unit FL-1 under Permit No. 7376-M3 at least 619 times since October 6, 2019.

71. Based on OXY's self-reported excess emissions data provided to NMED, OXY has exceeded its hourly emissions limits for CO at Unit FL-1 under Permit No. 7376-M3 at least 619 times since October 6, 2019.

72. Based on OXY's self-reported excess emissions data provided to NMED, OXY has exceeded its hourly emissions limits for VOCs at Unit FL-1 under Permit No. 7376-M3 at least 619 times since October 6, 2019.

73. Based on OXY's self-reported excess emissions data provided to NMED, OXY has exceeded its facility-wide hourly emissions limits for CO under Permit No. 7376-M3 at least 446 times since October 6, 2019.

74. Based on OXY's self-reported excess emissions data provided to NMED, OXY has exceeded its facility-wide hourly emissions limits for NO_x under Permit No. 7376-M3 at least 476 times since October 6, 2019.

75. Based on OXY's self-reported excess emissions data provided to NMED, OXY has exceeded its hourly emissions limits under Permit No. 7376-M3 at least 2,779 times since October 6, 2019.

76. Information detailing OXY's self-reported violations of its hourly emissions limits is attached as Exhibit A.

77. On information and belief, OXY continues to experience excess emission events at the Turkey Track Facility associated with unauthorized flaring at Unit FL-1. Each of these

events exceeds the separate hourly emissions limits for NO_x, CO, and VOCs at Unit FL-1, and many of these events also violate the facility-wide hourly emissions limits for NO_x and CO.

V. EXCEEDANCES OF ANNUAL PERMIT LIMITS AT THE TURKEY TRACK FACILITY

78. Unit FL-1 at the Turkey Track Facility's is subject to the following federally enforceable annual emission limits: NO_x: 0.041 ton/yr; VOCs: 0.147 ton/yr; CO: 0.187 ton/yr.

79. Since 2019, annual emissions of NO_x from Unit FL-1 at the Turkey Track Facility, based on a 12-month rolling average, have repeatedly exceeded 0.041 tpy, Unit FL-1's annual emissions limit under Permit No. 7376-M3.

80. Since 2019, annual emissions of VOCs from Unit FL-1 at the Turkey Track Facility, based on a 12-month rolling average, have repeatedly exceeded 0.147 tpy, Unit FL-1's annual emissions limit under Permit No. 7376-M3.

81. Since 2019, annual emissions of CO from Unit FL-1 at the Turkey Track Facility, based on a 12-month rolling average, have repeatedly exceeded 0.187 tpy, Unit FL-1's annual emissions limit under Permit No. 7376-M3.

82. Excluding fugitive emissions, the Turkey Track Facility is subject to the following federally enforceable annual facility-wide emission limits: NO_x: 46.3 ton/yr; VOCs: 93.5 ton/yr; CO: 87.9 ton/yr.

83. Since 2019, the Turkey Track Facility's annual emissions of NO_x, based on a 12-month rolling average, have repeatedly exceeded 46.3 tpy, the annual emissions limit under Permit No. 7376-M3.

84. Since 2019, the Turkey Track Facility's annual emissions of VOCs, based on a 12-month rolling average, have repeatedly exceeded 93.5 tpy, the annual emissions limit under Permit No. 7376-M3.

85. Since 2019, the Turkey Track Facility's annual emissions of CO, based on a 12-month rolling average, have repeatedly exceeded 87.9 tpy, the annual emissions limit under Permit No. 7376-M3.

VI. EXCEEDANCES OF GCP-O&G 95 TPY THRESHOLD

86. Since 2019, annual emissions of CO and VOCs (excluding fugitive emissions), based on a 12-month rolling average, have repeatedly exceeded 95 tpy.

VII. EXCEEDANCES OF 100 TPY TITLE V THRESHOLD

87. Since 2019, annual emissions of CO and VOCs (excluding fugitive emissions), based on a 12-month rolling average, have repeatedly exceeded 100 tpy.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violations of Hourly Emissions Limits of Permit No. 7376-M3)

88. Plaintiff realleges and incorporates all preceding paragraphs as set forth herein.

89. Under Permit No. 7376-M3, effective at the Turkey Track Facility since June 17, 2019, OXY has operated subject to the specified equipment and emission limits included in the GCP-O&G and OXY's May 21, 2019 application. These include hourly emission limits for individual pieces of equipment, as well as facility-wide hourly emission limits for a variety of regulated air pollutants, including NOx, VOCs, and CO.

90. The GCP-O&G provides that: "[t]he Facility shall operate as specified in the Registration Form. The emission limits and equipment specified in the Registration Form are federally enforceable, and shall become the terms and conditions of the Permit."

91. Each of the Turkey Track Facility's emergency flares, designated as FL-1 and FL-2, are subject to the following federally enforceable hourly emission limits under Permit No. 7376-M3: NO_x: 0.009 lb/hr; VOCs: 0.033 lb/hr; CO: 0.043 lb/hr.

92. Since 2019, OXY's emissions of NO_x from Unit FL-1 associated with unauthorized malfunction flaring events have exceeded the hourly limits for NO_x at least 619 times.

93. Since 2019, OXY's emissions of VOCs from Unit FL-1 associated with unauthorized malfunction flaring events have exceeded the hourly limits for VOCs at least 619 times.

94. Since 2019, OXY's emissions of CO from Unit FL-1 associated with unauthorized malfunction flaring events have exceeded the hourly limits for CO at least 619 times.

95. Excluding fugitive emissions, the Turkey Track Facility is subject to the following federally enforceable facility-wide hourly emission limits under Permit No. 7376-M3: NO_x: 12.6 lb/hr; VOCs: 1,557 lb/hr; CO: 29.6 lb/hr.

96. Since 2019, OXY's emissions of NO_x from the Turkey Track Facility have exceeded the hourly facility-wide limits for NO_x emissions at least 476 times.

97. Since 2019, OXY's emissions of CO from the Turkey Track Facility have exceeded the hourly facility-wide limits for CO emissions at least 446 times.

98. Each exceedance of the hourly emissions limits under Permit No. 7376-M3 constitutes a violation of an "emission standard or limitation" enforceable under the Clean Air Act.

SECOND CLAIM FOR RELIEF

(Violations of Annual Emissions Limits of Permit No. 7376-M3)

99. Plaintiff realleges and incorporates all preceding paragraphs as set forth herein.

100. Under Permit No. 7376-M3, effective at the Turkey Track Facility since June 17, 2019, OXY has operated subject to the specified equipment and emission limits included in the GCP-O&G and OXY's May 21, 2019 application. These include hourly emission limits for individual pieces of equipment, as well as facility-wide annual emission limits for a variety of regulated air pollutants, including NO_x, VOCs, and CO.

101. The GCP-O&G provides that: “[t]he Facility shall operate as specified in the Registration Form. The emission limits and equipment specified in the Registration Form are federally enforceable, and shall become the terms and conditions of the Permit.”

102. Each of the Turkey Track Facility's emergency flares, designated as FL-1 and FL-2, are subject to the following federally enforceable annual emission limits: NO_x: 0.041 ton/yr; VOCs: 0.147 ton/yr; CO: 0.187 ton/yr.

103. Excluding fugitive emissions, the Turkey Track Facility is subject to the following federally enforceable facility-wide emission limits: NO_x: 46.3 ton/yr; VOCs: 93.5 ton/yr; CO: 87.9 ton/yr.

104. Under the GCP-O&G, compliance with the annual emission limits for Permit No. 7376-M3 is determined based on a monthly rolling 12-month total basis.

105. Since 2019, emissions from the Turkey Track Facility have repeatedly exceeded the annual emission limits for NO_x, VOCs, and CO.

106. Each exceedance of the annual emissions limits under Permit No. 7376-M3 constitutes a violation of an “emission standard or limitation” enforceable under the Clean Air Act.

THIRD CLAIM FOR RELIEF

(Operating the Turkey Track Facility without an Individual NSR Permit)

107. Plaintiff realleges and incorporates all preceding paragraphs as set forth herein.

108. Under the terms of the GCP-O&G, facilities are only eligible for registration under the GCP-O&G where annual emission rates of NO_x, VOCs, and CO do not exceed 95 tpy.

109. Facilities with annual emission rates of any regulated air pollutants, including NO_x, VOCs, and CO, in excess of 95 tpy are ineligible for registration under the GCP-O&G and must instead obtain an individual NSR permit prior to commencement of construction.

20.2.72.200.E NMAC.

110. Under 20.2.72.220.C(6)(b), “[s]ources shall be subject to enforcement action for construction without a permit if: ... [it] is determined after construction commences that a source does not qualify for coverage under the general construction permit,” where the source has registered under a general construction permit, including the GCP-O&G.

111. Since 2019, annual emissions of CO and VOCs (excluding fugitive emissions), based on a 12-month rolling average, have repeatedly exceeded 95 tpy.

112. Based on its actual emissions, the Turkey Track Facility was and is ineligible to register for coverage under the GCP-O&G.

113. OXY constructed and modified the Turkey Track Facility without having obtained the required individual NSR permit and to date has not obtained an individual NSR permit for the Turkey Track Facility. OXY did not construct or modify the Turkey Track Facility in compliance with the terms and conditions that would be imposed by an individual NSR construction permit.

114. Each and every day OXY constructed or modified the Turkey Track Facility without a required individual NSR permit is a separate and distinct day of violation of the Clean Air Act and New Mexico's EPA-approved air quality regulations. Unless restrained and penalized by an order of this Court, these and similar violations will be repeated as OXY continues to modify the Turkey Track Facility.

115. These violations are enforceable under the Clean Air Act citizen suit provision, as a suit "against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I (relating to significant deterioration of air quality)." 42 U.S.C. § 7604(a)(3).

116. These violations are further enforceable under the Clean Air Act citizen suit provision, as a suit against any person "who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter," 42 U.S.C § 7604(a)(1), where "emission standard or limitation" is defined, in part, as any "standard, limitation, or schedule established ...under any applicable State implementation plan approved by the Administrator." 42 U.S.C. § 7604(f)(4).

FOURTH CLAIM FOR RELIEF

(Operating the Turkey Track Facility Without a Title V Permit)

117. Plaintiff realleges and incorporates all preceding paragraphs as set forth herein.

118. Under New Mexico's Title V program, "[o]perating permits must be obtained from the [New Mexico Environment] Department for ... any major source." A "major source" includes "a major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation." 20.2.70.7.R(2). NOx, VOCs, and CO are all pollutants subject to regulation. 20.2.70.7.C, .AL NMAC.

119. The Turkey Track Facility was and is a major source for the purpose of the Title V permitting requirement. In 2019, the Turkey Track Facility emitted over 100 tpy of VOCs and CO.

120. OXY has never obtained a Title V permit for the Turkey Track Facility. OXY is operating the Turkey Track Facility and continues to operate the Turkey Track Facility without having obtained a Title V permit. OXY is not operating the Turkey Track Facility in compliance with the terms and conditions that would be imposed by a Title V operating permit.

121. Each and every day OXY has operated the Turkey Track Facility as a major source without a Title V permit is a separate and distinct violation of the Clean Air Act and New Mexico's EPA-approved air quality regulations. Unless restrained and penalized by an order of this Court, these and similar violations will be repeated. These repeated violations are enforceable under the Clean Air Act citizen suit provision, as "emission standard or limitation" is defined, in part, as "any requirement to obtain a permit as a condition of operations." 42 U.S.C. § 7604(f)(4).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

A. Declare OXY USA Inc. and OXY USA WTP LP have violated and are violating the Clean Air Act, New Mexico's SIP and air quality regulations, and the emissions limitations of Permit No. 7376-M3;

B. Declare OXY USA Inc. and OXY USA WTP LP were required by the Clean Air Act, and New Mexico's SIP and air quality regulations to secure an individual NSR construction permit and obtain a Title V operating permit before constructing and operating the Turkey Track Facility;

C. Enjoin OXY USA Inc. and OXY USA WTP LP from constructing and operating so long as the Turkey Track Facility is not in compliance with the Clean Air Act;

D. Order OXY USA Inc. and OXY USA WTP LP to apply for and obtain an individual NSR construction permit and Title V operating permit;

E. Assess civil penalties against OXY USA Inc. and OXY USA WTP LP, as authorized by the Clean Air Act, 42 U.S.C. § 7604(a) and based on 42 U.S.C. § 7413 and 40 C.F.R. § 19.4;

F. Order \$100,000 of the civil penalties assessed against OXY USA Inc. and OXY USA WTP LP to be used for beneficial mitigation projects to enhance public health and the environment in areas where Plaintiff's members live, work, and recreate and that are adversely impacted by OXY USA Inc.'s and OXY USA WTP LP's emissions, construction, and operations, as authorized by 42 U.S.C. § 7604(g)(2) and as is consistent with the purposes of the Clean Air Act;

G. Order OXY USA Inc., and OXY USA WTP LP to pay Plaintiff's costs, including reasonable attorneys' fees and expert witness fees, 42 U.S.C. § 7604(d);

H. Retain jurisdiction of this action to ensure compliance with the Court's order; and

I. Provide such other relief as the court deems just and proper.

Respectfully submitted on this 25th day of October, 2022,

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