

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF	)	
	)	
Clean Air Act Title V Permit (Initial)	)	
	)	
Issued to HighPoint Operating Corporation, for the Anschutz Equus Farms 4-62-28 NWNW Oil and Gas Production Facility	)	Title V Permit No. 200PWE423
	)	
Issued by the Air Pollution Control Division of the Colorado Department of Public Health and Environment	)	
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**Petition to Object to Colorado Title V Permit No. 200PWE423 for HighPoint Operating Corporation’s Anschutz Equus Farms 4-62-28 NWNW Oil and Gas Production Facility**

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Pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Center for Biological Diversity (“Center”) petitions the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to object to the issuance of the initial Title V Permit (“Title V Permit”) issued by the Colorado Department of Public Health and Environment’s Air Pollution Control Division (“Division”) authorizing HighPoint Operating Corporation (“HighPoint”) to operate the Anschutz Equus Farms 4-62-28 NWNW oil and gas production facility in Weld County, Colorado (“facility” or “Equus Farms facility”), Permit No. 200PWE423.

Petitioners request the EPA object on the basis that the Title V Permit fails to assure compliance with Title V requirements under the Clean Air Act and fails to assure compliance with applicable Air Quality Control Commission (“AQCC”) regulations in the Colorado State Implementation Plan (“SIP”).

The Division’s final Title V Permit, which was issued on February 8, 2024, and the associated final Technical Review Document (“TRD”), are attached as Exhibits 1 and 2, respectively.

**THE EQUUS FARMS OIL AND GAS PRODUCTION FACILITY**

The Anschutz Equus Farms 4-62-28 NWNW facility is an oil and gas extraction, production, and processing facility. The facility collects and separates oil, gas, and wastewater

produced from several wells, dumps liquids into several onsite storage tanks for eventual truck loading, and compresses and pipes gas to nearby processing facilities.

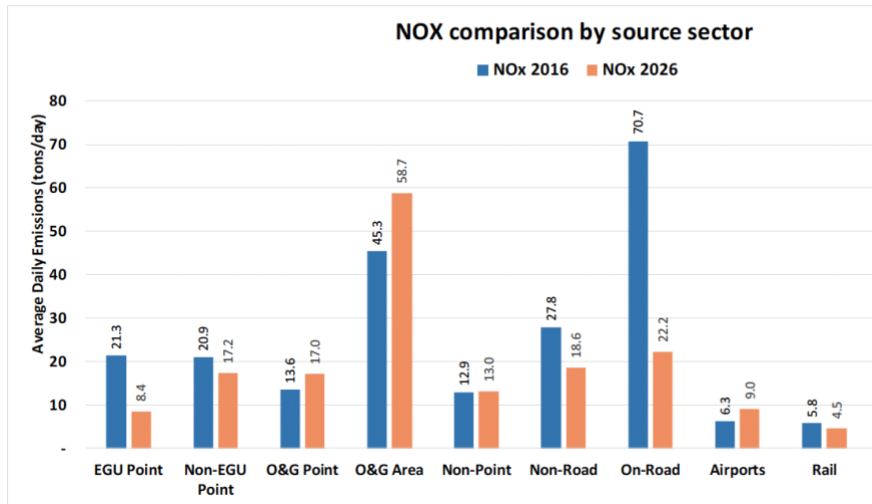
The facility releases large amounts of volatile organic compound (“VOC”), nitrogen oxides (“NO<sub>x</sub>”), and carbon monoxide (“CO”) emissions, which can harm human health and are also precursors to ground-level ozone and particulate matter less than 2.5 microns in diameter (“PM<sub>2.5</sub>”). The facility emits other pollutants that harm public health and welfare in several ways, including causing premature mortality. The facility also release a variety of hazardous air pollutants (“HAPs”), including benzene, a known carcinogen.

The Equus Farms facility is located in Weld County, Colorado, which is part of the Denver Metro/North Front Range ozone nonattainment area. Ozone is a toxic gas formed when precursor gases, primarily VOCs, NO<sub>x</sub>, and CO react with sunlight. Even at very low concentrations, ozone is a potent respiratory irritant and can trigger asthma attacks, worsen lung disease, and even lead to premature death. Because of this, the EPA has established national ambient air quality standards (“NAAQS”) to limit ozone in the air to protect public health and welfare, and over the years has strengthened the NAAQS in response to growing scientific understanding of the harms caused by ozone. *See* 40 C.F.R. § 50.10 (ozone NAAQS adopted in 1997); 40 C.F.R. § 50.15 (ozone NAAQS adopted in 2008); 40 C.F.R. § 50.19 (ozone NAAQS adopted in 2015). The current NAAQS, adopted in 2015, limits ozone concentrations to no more than 0.070 parts per million over an eight-hour period, meaning that among one million molecules of air, if only 0.070, or 0.000007%, are ozone, there is cause for concern. This reflects the extreme dangers of ozone.

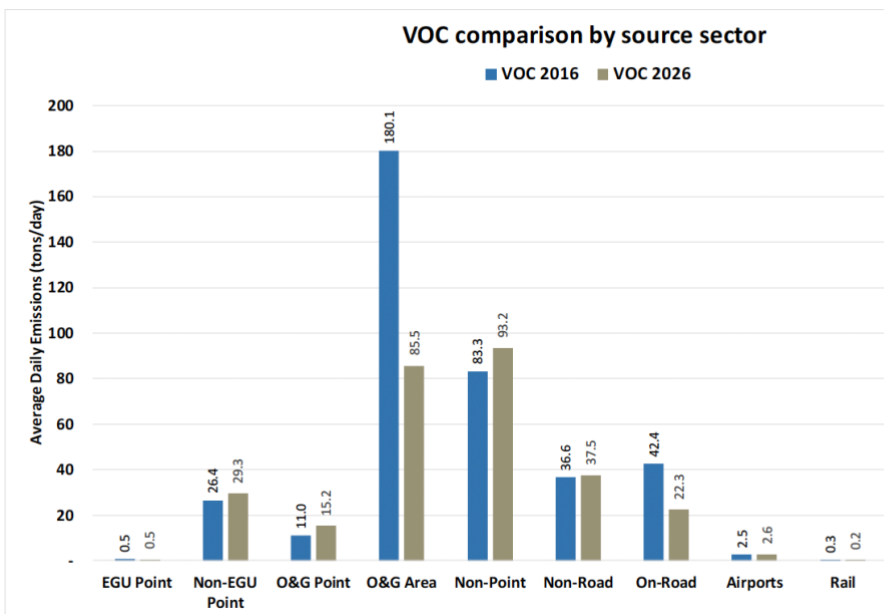
The Denver Metro-North Front Range region, which includes the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld, is home to over four million people as well as spectacular natural areas like Rocky Mountain National Park. The region has been in violation of EPA’s national ambient air quality standards (“NAAQS”) for ozone for over a decade and a half. In other words, there are high school students who have lived their whole lives suffering from ozone levels above EPA’s health- and welfare-based standards.

Oil and gas production facilities in Weld County, including the Equus Farms facility, are the primary reason the Denver Metro/North Front Range region is a severe nonattainment area for the 2008 ozone NAAQS and a moderate, but soon to be serious nonattainment area for the 2015 ozone NAAQS. Unchecked VOC and NO<sub>x</sub> emissions are the primary culprit. Recent modeling prepared for the State of Colorado comparing 2016 and 2026 emissions in the Denver Metro/North Front Range region confirms. The report shows the oil and gas sector (including oil and gas point and area source emissions) has been one of the largest sources NO<sub>x</sub> and will be the largest by 2026 and been the largest source of VOCs and will continue to be the largest by 2026. *See* State of Colorado, “2026 Attainment Demonstration Modeling, TSD-009, Supporting the Denver Metro/North Front Range Severe State Implementation Plan for the 2008 8-Hour Ozone National Ambient Air Quality Standard,” Report prepared by Ramboll for the Regional Air

Quality Council (Oct. 2023) (“2023 Ozone Attainment Demonstration Report”), available at <https://raqc.egnyte.com/dl/OjvsS8qsk4> (last accessed March 30, 2024); *see also* Figures below.<sup>1</sup>



*Above, 2016 and 2026 NO<sub>x</sub> emissions by sector in the Denver Metro/North Front Range region. Below, 2016 and 2026 VOC emissions by sector in the region. Oil and gas sector emissions include “O&G Point” and “O&G Area.” See Figures 2-2 and 2-3 in 2023 Ozone Attainment Demonstration Report.*



<sup>1</sup> Although Colorado regulators claim the 2008 ozone NAAQS will be attained by 2026, quantitative modeling prepared for the state indicates ozone levels will remain above the NAAQS. Using a qualitative “weight of the evidence analysis,” however, regulators claim the modeling data is inaccurate. Regulators have said the same thing for over a decade while violations of the ozone NAAQS have persisted in the Denver Metro/North Front Range region. A refusal to heed quantitative modeling data is another primary reason the region has continually failed to attain the NAAQS.

The Division has issued thousands upon thousands of air pollution permits for sources of ozone precursor emissions over the past 15 years in the Denver Metro/North Front Range ozone nonattainment area. All of them have been minor source permits. In other words, the Division has not issued any major nonattainment new source review permits, which, among other important protections, would have to include emission offsets. The minor source permits the Division issues do not require emission offsets. If the Division keeps adding more and more pollution to the Denver Metro/North Front Range nonattainment area, the area is not going to come into attainment with the ozone NAAQS.

The Division's minor source permits' emission limits, to the extent they exist, are not enforceable as a practical matter. Nor does the Division have a rational basis to determine that the pollution authorized by the minor source permits does not cause or contribute to a violation of a national ambient air quality standard, in particular the 2010 1-hour NO<sub>x</sub> NAAQS, which is based on concentrations of nitrogen dioxide, or NO<sub>2</sub>. The EPA Inspector General has found that EPA is not providing sufficient oversight of states', including Colorado's, minor source permitting programs. *See* Exhibit 3, U.S. EPA Inspector General, "Improving Air Quality: EPA Should Conduct More Oversight of Synthetic Minor-Source Permitting to Assure Permits Adhere to EPA Guidance," Report No. 21-P-0175 (July 8, 2021). EPA must correct that deficiency by seizing opportunities that petitions like this present.

Colorado also retained special assistant attorneys general to investigate the Division's implementation of the NAAQS protection provisions of the minor source permitting program. *See* Exhibit 4, Troutman Pepper Hamilton Sanders LLP, "Public Report of Independent Investigation of Alleged Non-enforcement of National Ambient Air Quality Standards by the Colorado Department of Public Health and Environment" (Sept. 22, 2021) (hereafter "Troutman Report"). Unfortunately, Colorado's investigators, Troutman Pepper Hamilton Sanders, is a large law firm which represents polluters, including polluters who hold minor source permits. However, even a law firm representing minor source permit holders could not miss the obvious. The Troutman Report found "CDPHE's decision to rely solely on EPA's permitting threshold for existing major sources in determining whether to model minor sources left CDPHE without a well-supported policy for ensuring minor source permits would not exceed a NAAQS" and "CDPHE issued permits with unaddressed modeled NAAQS exceedances." Troutman Report, at 2, 32-33.

## **PROCEDURAL BACKGROUND**

The Center submitted comments on the draft Equus Farms Title V Permit on August 16, 2023. *See* Exhibit 5, Center for Biological Diversity Comments on Draft Title V Permit (Aug. 16, 2023). The Division responded to the Center's comments on December 18, 2023. *See* Exhibit 6, Colorado Air Pollution Control Division, "Response to Comments on Draft Operating Permit" (Dec. 18, 2023). The proposed permit was thereafter submitted to EPA for the agency's 45-day review, which ended on February 1, 2024. EPA did not object to the proposed permit. According to EPA, the 60-day deadline for the submission of a petition to object over the Title V Permit is April 1, 2024. *See* Exhibit 7, EPA, "EPA Region 8 Title V Operating Permit Public Petition Deadlines," website available at <https://www.epa.gov/sites/default/files/2020->

[08/documents/title v operating permit public petition deadlines - region 8.pdf](#) (last accessed April 1, 2024).

Pursuant to 42 U.S.C. § 7661d(b)(2), this petition is now timely submitted within 60 days following a lack of objection from the EPA.

## **PETITIONER**

Petitioner Center for Biological Diversity is a nonprofit, 501(c)(3) conservation organization. The Center’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us. The Center has more than 89,000 members, including over 3,100 members in Colorado.

## **GENERAL TITLE V PERMITTING REQUIREMENTS**

The Clean Air Act prohibits qualifying stationary sources of air pollution from operating without or in violation of a valid Title V permit, which must include conditions sufficient to “assure compliance” with all applicable Clean Air Act requirements. 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). “Applicable requirements” include all standards, emissions limits, and requirements of the Clean Air Act. 40 C.F.R. § 70.2. Congress intended for Title V to “substantially strengthen enforcement of the Clean Air Act” by “clarify[ing] and mak[ing] more readily enforceable a source’s pollution control requirements.” S. Rep. No. 101-228, at 347, 348 (1990), *as reprinted in* A Legislative History of the Clean Air Act Amendments of 1990, at 8687, 8688 (1993). As EPA explained when promulgating its Title V regulations, a Title V permit should “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1).

Under the Clean Air Act, “any person” may petition EPA to object to a proposed permit “within 60 days after the expiration of [EPA’s] 45-day review period.” 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8. Each objection in the petition must have been “raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” 40 C.F.R. § 70.8(d). Any objection included in the petition “must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements [of 40 C.F.R. Part 70].” 40 C.F.R. § 70.12(a)(2).

Upon receipt of a petition, EPA “shall issue an objection within [60 days] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b)(2) (emphasis added); *see also* 40 C.F.R. § 70.8(c) (“The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.”). When deciding whether a petitioner has met this demonstration requirement, EPA will evaluate the entirety of the permit record, including the statement of basis and response to comments. *See In re Valero Refining-Texas, L.P.*, Order on Petition No. VI-2021-8 \*June 30, 2022) at 10–11 (“2022 Valero Order”).

## GROUND FOR OBJECTION

For the reasons set forth below, the Title V Permit fails to comply with applicable requirements under the Clean Air Act, including the requirements of Colorado’s SIP, and requirements under Title V. All of the issues discussed below were raised in comments on the draft Title V Permit for the Equus Farms facility.

### **I. The Title V Permit unjustifiably assumes a control efficiency of 95% for control devices, without proper testing, monitoring, recordkeeping, and reporting to ensure compliance and enforceability**

Title V permits must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure that the permitted source complies with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1); *see also* AQCC Regulation No. 3, Part C, Section V.C.16.a. Procedures for determining compliance must be “sufficiently reliable” for determining compliance. 42 U.S.C. § 7661c(b); *see also* 40 C.F.R. § 70.6(a)(3). A Title V permit must also contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit[.]” 40 C.F.R. § 70.6(a)(3)(i)(B); *see also* 40 C.F.R. § 70.6(c)(1). Where a Title V permit fails to require sufficient monitoring to assure compliance, the permit cannot provide the information necessary to determine whether a source is in compliance and is therefore unenforceable as a practical matter, contrary to Title V of the Clean Air Act. *See* 42 U.S.C. § 7661c(a) (stating that Title V permits shall include “enforceable emission limitations and standards”).

Here, the Title V Permit fails to require adequate testing, monitoring, recordkeeping, and reporting related to the operation of enclosed combustion devices at the Equus Farms facility to assure that they reduce emissions by 95% at all times and ensure compliance with applicable requirements. This is a major omission. The Equus Farms facility has the potential to annually emit more than 970 tons of VOCs. If the enclosed combustion devices are not effective, actual VOC emissions could easily trigger major source permitting thresholds under nonattainment new source review permitting requirements in the Colorado SIP, which are currently set at 25 tons per year due to the Denver Metro/North Front Range region being a severe ozone nonattainment area. *See* AQCC Regulation No. 3, Part D, Section II.A.25.b.(iii).

In addition, the permitting record fails to contain a sufficient “statement that sets forth the legal and factual basis for the draft permit conditions” justifying the inadequate testing, monitoring, reporting, and recordkeeping requirements. 40 C.F.R. § 70.7(a)(5); *see also* 2022 Valero Order at 62 (granting petition to object where “the permit record, including [] statement of basis and [response to comments], does not contain sufficient information to conclude that there is adequate monitoring to assure compliance with relevant emission limits”).

In a virtually identical situation, the EPA has objected to Title V permits that fail to require adequate testing, monitoring, recordkeeping, and reporting related to the operation of enclosed combustion devices and assumed control efficiencies at oil and gas production facilities. *See In the Matter of Bonanza Creek Operating Company, LLC*, Order Petition No. VIII-2023-11 (Jan. 30, 2024) (hereafter “Bonanza Creek Order”).

**A. The Title V Permit lacks adequate testing and monitoring, and associated recordkeeping and reporting requirements, to ensure enclosed combustion devices effectively control emissions and that HighPoint complies with applicable limits**

The Center raised this issue specifically on pages 2-10 of its comments.

The Title V Permit relies on the operation of enclosed combustion devices, also known as enclosed flares, to ensure effective control of VOC and HAPs emissions and to assure compliance with applicable requirements. Unfortunately, the Title V Permit does not require any testing and monitoring, as well associated recordkeeping and reporting, to assure compliance with these applicable requirements and requirements under Title V.

As the Title V Permit notes, enclosed combustion devices are utilized to control emissions from the following emission units:

- Unit PW, four 400-barrel fixed roof atmospheric produced water storage vessels;
- Unit COMP, four 400-barrel fixed roof atmospheric compression condensate storage vessels;
- Unit COND, thirteen 400-barrel fixed room atmospheric production condensate storage vessels;
- Unit Hydrocarbon Loadout—Compression Condensate Tanks; and
- Unit Hydrocarbon Loadout—Production Condensate Tanks.

Title V Permit at Section I, Condition 6.1. The underlying construction permits for these units all presume that the operation of the enclosed combustion devices will achieve at least a 95% control efficiency. In other words the permits presume that the flares will reduce emissions by at least 95%. However, the Title V Permit does not set forth any provisions actually assuring that the flares reduce emissions by at least 95% on a continuous basis. Thus, the Title V Permit fails to ensure compliance with the 95% control efficiency requirements, but also fails to ensure compliance with the emissions limits that depend on this control efficiency being met.

The Title V Permit cannot presume that the enclosed combustion devices will operate with a control efficiency of 95% without testing and monitoring, as well as associated recordkeeping and reporting, of control efficiency throughout the lifetime of the device. *See* 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1); 57 Fed. Reg. 32,250, 32,251 (July 21, 1992) (Title V permits should “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.”); *see also*, Bonanza Creek Order; Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Cash Creek Generation, LLC*, Petition No. IV-2010-4, 2012 EPA CAA Title V LEXIS 5, at \*51–56 (June 22, 2012) (“Cash Creek Order”); AQCC Regulation No. 3, Part C, Section V.C.5.b. Below we detail the specific Title V Permit conditions and explain how they lack sufficient testing and monitoring, and associated recordkeeping and reporting, and why the EPA Administrator must object:

### **1. Section II, Condition 2**

Condition 2 sets forth emission limits for the four 400-barrel produced water storage vessels, limiting VOCs to no more than 0.7 tons per year and HAPs to 8 tons per year of any individual HAP and 20 tons per year of total HAPs. Compliance with these limits is based on the assumption that an enclosed flare will reduce uncontrolled emissions by at least 95%. Unfortunately, the Title V Permit does not require any testing and monitoring, as well as associated recordkeeping and reporting to assure compliance with and the enforceability of the 95% control efficiency at all times. In addition, the permitting record fails to contain a sufficient “statement that sets forth the legal and factual basis for the draft permit conditions” justifying the inadequate compliance-assurance requirements. 40 C.F.R. § 70.7(a)(5); *see also* 2022 Valero Order at 62.

Condition 2.1 requires HighPoint to comply with Condition 6 of Construction Permit No. 18WE0230, which was issued September 17, 2019. Condition 6 of Permit No. 18WE0230 establishes the applicable VOC and HAPs limits.

Condition 2.2 requires HighPoint to “monitor compliance with the emission and process calculation methods as listed in Condition 7 and the Notes to Permit Holder of Construction Permit 18WE0230[.]”. Condition 7 of Permit No. 18WE0230 states that HighPoint must use the emission factors in the “Notes to Permit Holder” section. Paragraph 5 of the “Notes to Permit Holder” section sets forth uncontrolled emission factors for VOCs, benzene, and n-hexane, noting that “controlled emissions factors [] are based on a control efficiency of 95%.” Neither Condition 7 nor the “Notes to Permit Holder” section of Permit No. 18WE0230 require any testing or monitoring to assure the control efficiency of 95% is achieved at all times. In fact, Permit No. 18WE0230 does not even require any periodic testing to assure the emission factors for VOCs, benzene, and n-hexane are updated and remain accurate.

Condition 2.3 requires HighPoint to comply with operational limits specified in Conditions 8 and 9 of Permit No. 18WE0230. Condition 8 requires HighPoint to control emissions from the produced water tanks with an enclosed flare, but does not otherwise require the flare to achieve any specific control efficiency. Condition 9 of Permit No. 18WE0230 limits produced water throughput and does not address flare operation.



Condition 2.4 requires HighPoint to follow the monitoring, recordkeeping, reporting, and testing requirements of Conditions 17 and 19 of Permit No. 18WE0230. Condition 17 requires HighPoint to follow the most recent operating and maintenance plan “in order to demonstrate compliance on an ongoing basis with the requirements of this permit.” The operation and maintenance plan, however, does not set forth any testing and monitoring to ensure the enclosed flare achieves a 95% control efficiency at all times. Although the plan requires monitoring of certain operational parameters for the enclosed flare, including daily visual monitoring of pilot light and daily visible emissions observations, it does not require actual testing or monitoring of emissions to assure a 95% control efficiency. The presence of the pilot light only indicates that combustion is occurring, but not that combustion is occurring at a 95% control efficiency. Furthermore, there is no evidence that the enclosed flare cannot have control efficiencies below 95% while producing no smoke and no or low opacity. There is no information demonstrating a correlation between the qualitative presence of visible emissions and any quantitative control efficiency. Condition 19 of Permit No. 18WE0230 actually states that HighPoint is not required to conduct periodic testing at all, confirming that no testing of flare control efficiency is required.

Condition 2.5 requires HighPoint to comply with “the state and federal regulatory requirements of Conditions 10 through 16 and 20 of Colorado Construction Permit 18WE0230[.]” Conditions 10 and 11 of Permit No. 18WE0230 do not apply to the enclosed flare. Condition 12 states that the Equus Farms facility is “subject to Regulation Number 7, Section XII.” However, Regulation Number 7, Section XII, which we presume is a reference to AQCC Regulation No. 7, Section XII, no longer exists as a regulation. Although Condition 12 states that HighPoint must “[c]omply with the recordkeeping, monitoring, reporting and emission control requirements for condensate storage tanks,” it is not clear what these requirements are and they do not serve to assure adequate testing, monitoring, recordkeeping, and reporting for the enclosed flare. Condition 13 states that the Equus Farms facility is subject to Regulation Number 7, Section XII.G.” Again, the entirety of AQCC Regulation No. 7, Section XII no longer exists. Similarly, Condition 14 of Permit No. 18WE0230 states that the enclosed flare is “subject to Regulation Number 7, Section XVII.B.2,” but AQCC Regulation No. 7, Section XVII no longer exists in state regulation. Although Condition 14 requires the enclosed flare to operate with no visible emissions, to operate “properly,” and to operate with an auto-ignitor, it does not require testing or monitoring to verify that operating the flare according to these operational standards assures compliance with the 95% control efficiency. Condition 15 of Permit No. 18WE0230 actually sets forth the 95% control efficiency requirement, but does not require testing, monitoring, recordkeeping, and reporting that assures compliance. While the Condition requires inspections, the Permit requires inspections that follow the requirements of AQCC Regulation No. 7, Section XVII.C.1.d, which no longer exists as a regulatory provision. Finally, Condition 16 requires HighPoint to comply with “Storage Tank Emission Management System requirements of Regulation Number 7, Section XVII.C.2,” but AQCC Regulation No. 7, Section XVII no longer exists.

Condition 2.6 of the Title V Permit requires HighPoint to generally comply with various requirements of AQCC Regulation No. 7, Part B.<sup>2</sup> While the Title V Permit does not set forth

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<sup>2</sup> Condition 2.6 is also overall vague and unenforceable and does not appear to set forth all applicable requirements in AQCC Regulation No. 7. The Condition states that HighPoint “must comply with the applicable provisions of the

the specific requirements applicable to Equus Farms, instead broadly stating in Conditions 2.6.1-2.6.6 that HighPoint must comply with entire Sections of AQCC Regulation No. 7, Part B (even portions of the Sections that do not appear applicable, including several provisions identified as “State Only” enforceable), the cited regulatory provisions also do not provide for testing and monitoring of the enclosed combustion device.

Condition 2.6.1 requires compliance with AQCC Regulation No. 7, Part B, Section I.C, which sets forth only general requirements relating to the operation of an enclosed flare. While Regulation No. 7, Part B, Section I.C.1.c does set forth the 95% control efficiency requirement, it does not require any testing or monitoring.

Condition 2.6.2 requires compliance with AQCC Regulation No. 7, Part B, Section I.D, which sets forth requirements related to the control of emissions from storage tanks. While Regulation No. 7, Part B, Section I.D.3.a.(i) and (ii) require that VOC emissions from storage tanks be reduced by at least 95% using air pollution control equipment, Section I.D does not otherwise set forth testing or monitoring requirements for enclosed combustion devices to verify compliance with the 95% control efficiency requirement.

Condition 2.6.3 requires compliance with AQCC Regulation No. 7, Part B, Section I.E, which actually sets forth some testing requirements related to the control of emissions from storage tanks. However, while Regulation No. 7, Part B, Section I.E.3.a does require performance testing of control devices at storage tanks, it only applies to “[e]ach storage vessel that has the potential for VOC emissions equal to or greater than six (6) tons per year (controlled actual emissions).” Given that the “controlled actual emissions” of VOCs from the produced water tanks would only be as high as 0.7 tons per year based on the Title V Permit, this Section is not applicable and does not assure that the enclosed flare is tested to assure compliance with the 95% control efficiency requirement.<sup>3</sup> While other provisions of Section I.E require weekly qualitative monitoring of operational parameters, including presence of pilot light, proper functioning of auto-ignitor, open valves, presence of smoke, and audio, visual, olfactory inspections of tanks (*see* Regulation No. 7, Part B, Section I.E.2.c.(i)-(ix)), the Section does not specifically require testing or monitoring to ensure that the enclosed flare complies with the quantitative 95% control efficiency requirement.

Condition 2.6.4 requires compliance with AQCC Regulation No. 7, Part B, Section I.F, which sets forth recordkeeping and reporting requirements related to the control of emissions from storage tanks. While Regulation No. 7, Part B, Section I.F.2.b.(vi) requires HighPoint to maintain records regarding “[t]he control efficiency of each unit of air pollution control equipment,” Section I.F.2 does not otherwise require monitoring or testing to verify any recorded

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most recent version of the State of Colorado Regulations,” but then states that the regulations that must be met include, “but [are] not limited to,” six sections of AQCC Regulation No. 7, Part B. By including the phrase “but not limited to,” the Title V Permit implies there are additional applicable requirements other than those stated in the Permit, but it is not clear whether this is the case or what other applicable requirements may exist. As such, inclusion of the phrase “but not limited to” renders Condition 2.6 unenforceable and contrary to Title V requirements.

<sup>3</sup> The Division notes in the TRD that all storage vessels at the Equus Farms facility have legally and practically enforceable limits of VOC emissions less than six tons per year per storage vessel. *See* Exhibit 2, TRD at 7.

control efficiency. Similarly, while Regulation No. 7, Part B, Section I.F.3.c.(i)(C) requires reporting of “[t]he control efficiency for the air pollution control equipment for each storage tank,” Section I.F.3 does not otherwise require monitoring or testing to verify any reported control efficiency.

Conditions 2.6.5 and 2.6.6 of the Title V Permit require compliance with provisions of Regulation No. 7, Part B, Section II, but are designated as “State Only,” which the Title V Permit indicates are state-only enforceable and therefore not federally enforceable. State-only enforceable permit terms cannot be relied upon to assure compliance with federally enforceable applicable requirements. *See* Bonanza Creek Order at 14.

## **2. Section II, Condition 3**

Condition 3 sets forth emission limits for the four 400-barrel compression condensate storage vessels, limiting VOCs to no more than 6.8 tons per year and HAPs to 8 tons per year of any individual HAP and 20 tons per year of total HAPs. Compliance with these limits is based on the assumption that an enclosed flare will reduce uncontrolled emissions by at least 95%. Unfortunately, the Title V Permit does not require any testing and monitoring, as well as associated recordkeeping and reporting, to assure compliance with and the enforceability of the 95% control efficiency at all times. Nor does the permitting record contain a sufficient statement that sets forth the legal and factual basis for the inadequate permit conditions.

Condition 3.1 requires HighPoint to comply with Condition 6 of Construction Permit No. 18WE0231, which was issued September 17, 2019. Condition 6 of Permit No. 18WE0231 establishes the applicable VOC and HAPs limits.

Condition 3.2 requires HighPoint to “monitor compliance with the emission and process calculation methods as listed in Condition 7 and the Notes to Permit Holder of Construction Permit 18WE0231[.]”. Condition 7 of Permit No. 18WE0231 states that HighPoint must use the emission factors in the “Notes to Permit Holder” section. Paragraph 5 of the “Notes to Permit Holder” section sets forth uncontrolled emission factors for VOCs, benzene, toluene, and n-hexane, noting that “controlled emissions factors [] are based on a control efficiency of 95%.” Neither Condition 7 nor the “Notes to Permit Holder” section of Permit No. 18WE0231 require any testing, monitoring, recordkeeping, and reporting to assure the control efficiency of 95% is achieved at all times. In fact, Permit No. 18WE0231 does not even require any periodic testing to assure the emission factors for VOCs, benzene, toluene, and n-hexane are updated and remain accurate.

Condition 3.3 requires HighPoint to comply with operational limits specified in Conditions 8 and 9 of Permit No. 18WE0231. Condition 8 requires HighPoint to control emissions from the compression condensate tanks with an enclosed flare, but does not otherwise require the flare to achieve any specific control efficiency. Condition 9 of Permit No. 18WE0231 limits condensate throughput and does not address flare operation.

Condition 3.4 requires HighPoint to follow the monitoring, recordkeeping, reporting, and testing requirements of Conditions 17 and 19 of Permit No. 18WE0231. Condition 17 requires

HighPoint to follow the most recent operating and maintenance plan “in order to demonstrate compliance on an ongoing basis with the requirements of this permit.” The operation and maintenance plan, however, does not set forth any testing, monitoring, recordkeeping, and reporting requirements that ensure the enclosed flare achieves a 95% control efficiency at all times. Although the plan requires monitoring of certain operational parameters for the enclosed flare, including daily visual monitoring of pilot light and daily visible emissions observations, it does not require actual testing or monitoring of emissions to assure a 95% control efficiency. The presence of the pilot light only indicates that combustion is occurring, not that combustion is occurring at a 95% control efficiency. Furthermore, there is no evidence that the enclosed flare cannot have control efficiencies below 95% while producing no smoke and no or low opacity. There is simply no information demonstrating a correlation between the qualitative presence of visible emissions and any quantitative control efficiency. Condition 19 of Permit No. 18WE0231 actually states that HighPoint is not required to conduct periodic testing at all, confirming that no testing of flare control efficiency is required.

Condition 3.5 requires HighPoint to comply with “the state and federal regulatory requirements of Conditions 10 through 16 and 20 of Colorado Construction Permit 18WE0231[.]” Conditions 10 and 11 of Permit No. 18WE0231 do not apply to the enclosed flare. Condition 12 states that the Equus Farms facility is “subject to Regulation Number 7, Section XII.” However, Regulation Number 7, Section XII, which we presume is a reference to AQCC Regulation No. 7, Section XII, no longer exists as a regulation. Although Condition 12 states that HighPoint must “[c]omply with the recordkeeping, monitoring, reporting and emission control requirements for condensate storage tanks,” it is not clear what these requirements are and they do not serve to assure adequate testing, monitoring, recordkeeping, and reporting for the enclosed flare. Condition 13 states that the Equus Farms facility is subject to Regulation Number 7, Section XII.G.” Again, the entirety of AQCC Regulation No. 7, Section XII no longer exists. Similarly, Condition 14 of Permit No. 18WE0231 states that the enclosed flare is “subject to Regulation Number 7, Section XVII.B.2,” but AQCC Regulation No. 7, Section XVII no longer exists in state regulation. Although Condition 14 requires the enclosed flare to operate with no visible emissions, to operate “properly,” and to operate with an auto-ignitor, it does not require testing or monitoring to verify that operating the flare according to these operational standards assures compliance with the 95% control efficiency. Condition 15 of Permit No. 18WE0231 actually sets forth the 95% control efficiency requirement, but does not require testing, monitoring, recordkeeping, and reporting to assure compliance. While the Condition requires inspections, the Permit requires inspections that follow the requirements of AQCC Regulation No. 7, Section XVII.C.1.d, which no longer exists as a regulatory provision. Finally, Condition 16 requires HighPoint to comply with “Storage Tank Emission Management System requirements of Regulation Number 7, Section XVII.C.2,” but AQCC Regulation No. 7, Section XVII no longer exists.

Condition 3.6 of the Title V Permit requires HighPoint to generally comply with various requirements of AQCC Regulation No. 7, Part B. While the Title V Permit does not set forth the specific requirements applicable to Equus Farms, instead broadly stating in Conditions 3.6.1-3.6.6 that HighPoint must comply with entire Sections of AQCC Regulation No. 7, Part B (even portions of the Sections that do not appear applicable, including several provisions identified as

“State Only” enforceable), the cited regulatory provisions also do not provide for testing and monitoring of the enclosed combustion device<sup>4</sup>.

Condition 3.6.1 requires compliance with AQCC Regulation No. 7, Part B, Section I.C, which sets forth only general requirements relating to the operation of an enclosed flare. While Regulation No. 7, Part B, Section I.C.1.c does set forth the 95% control efficiency requirement, it does not require any testing or monitoring.

Condition 3.6.2 requires compliance with AQCC Regulation No. 7, Part B, Section I.D, which sets forth requirements related to the control of emissions from storage tanks. While Regulation No. 7, Part B, Section I.D.3.a.(i) and (ii) requires that VOC emissions from storage tanks be reduced by at least 95% using air pollution control equipment, Section I.D does not otherwise set forth testing or monitoring requirements for enclosed combustion devices to verify compliance with the 95% control efficiency requirement.

Condition 3.6.3 requires compliance with AQCC Regulation No. 7, Part B, Section I.E, which actually sets forth some testing requirements related to the control of emissions from storage tanks. However, while Regulation No. 7, Part B, Section I.E.3.a does require performance testing of control devices at storage tanks, it only applies to “[e]ach storage vessel that has the potential for VOC emissions equal to or greater than six (6) tons per year (controlled actual emissions).” The Division notes in the TRD that all storage vessels at the Equus Farms facility have legally and practically enforceable limits of VOC emissions less than six tons per year per storage vessel. *See* Exhibit 2, TRD at 7. Thus, this Section is not applicable and does not assure that the enclosed flare is tested to assure compliance with the 95% control efficiency requirement. While other provisions of Section I.E require weekly qualitative monitoring of operational parameters, including presence of pilot light, proper functioning of auto-ignitor, open valves, presence of smoke, and audio, visual, olfactory inspections of tanks (*see* Regulation No. 7, Part B, Section I.E.2.c.(i)-(ix)), the Section does not specifically require testing or monitoring to ensure that the enclosed flare complies with the quantitative 95% control efficiency requirement.

Condition 3.6.4 requires compliance with AQCC Regulation No. 7, Part B, Section I.F, which sets forth recordkeeping and reporting requirements related to the control of emissions from storage tanks. While Regulation No. 7, Part B, Section I.F.2.b.(vi) requires HighPoint to maintain records regarding “[t]he control efficiency of each unit of air pollution control equipment,” Section I.F.2 does not otherwise require monitoring or testing to verify any recorded control efficiency. Similarly, while Regulation No. 7, Part B, Section I.F.3.c.(i)(C) requires reporting of “[t]he control efficiency for the air pollution control equipment for each storage

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<sup>4</sup> Condition 3.6 is also overall vague and unenforceable and does not appear to set forth all applicable requirements in AQCC Regulation No. 7. The Condition states that HighPoint “must comply with the applicable provisions of the most recent version of the State of Colorado Regulations,” but then states that the regulations that must be met include, “but [are] not limited to,” six sections of AQCC Regulation No. 7, Part B. In including the phrase “but not limited to,” the Title V Permit implies there are additional applicable requirements other than those stated in the Permit, but it is not clear whether this is the case or what other applicable requirements may exist. As such, inclusion of the phrase “but not limited to” renders Condition 3.6 unenforceable and contrary to Title V requirements.

tank,” Section I.F.3 does not otherwise require monitoring or testing to verify any reported control efficiency.

Conditions 3.6.5 and 3.6.6 of the Title V Permit require compliance with provisions of Regulation No. 7, Part B, Section II, but are designated as “State Only,” which the Title V Permit indicates are state-only enforceable and therefore not federally enforceable. State-only enforceable permit terms cannot be relied upon to assure compliance with federally enforceable applicable requirements. *See Bonanza Creek Order at 14.*

### **3. Section II, Condition 4**

Condition 4 sets forth emission limits for the 13 400-barrel production condensate storage vessels, limiting VOCs to no more than 32.4 tons per year and HAPs to 8 tons per year of any individual HAP and 20 tons per year of total HAPs. Compliance with these limits is based on the assumption that an enclosed flare will reduce uncontrolled emissions by at least 95%. Unfortunately, the Title V Permit does not require any testing and monitoring, as well as associated recordkeeping and reporting, to assure the compliance with and the enforceability of the 95% control efficiency at all times. Further, the permitting record does not contain a sufficient statement that sets forth the legal and factual basis for the permit conditions.

Condition 4.1 requires HighPoint to comply with Condition 6 of Construction Permit No. 18WE0232, which was issued September 17, 2019. Condition 6 of Permit No. 18WE0232 establishes the applicable VOC and HAPs limits.

Condition 4.2 requires HighPoint to “monitor compliance with the emission and process calculation methods as listed in Condition 7 and the Notes to Permit Holder of Construction Permit 18WE0232[.]”. Condition 7 of Permit No. 18WE0232 states that HighPoint must use the emission factors in the “Notes to Permit Holder” section. Paragraph 5 of the “Notes to Permit Holder” section sets forth uncontrolled emission factors for VOCs, benzene, toluene, and n-hexane, noting that “controlled emissions factors [] are based on a control efficiency of 95%.” Neither Condition 7 nor the “Notes to Permit Holder” section of Permit No. 18WE0232 require any testing, monitoring, recordkeeping, and reporting to assure the control efficiency of 95% is achieved at all times. In fact, Permit No. 18WE0232 does not even require any periodic testing to assure the emission factors for VOCs, benzene, toluene, and n-hexane are updated and remain accurate.

Condition 4.3 requires HighPoint to comply with operational limits specified in Conditions 8 and 9 of Permit No. 18WE0231. Condition 8 requires HighPoint to control emissions from the production condensate tanks with an enclosed flare, but does not otherwise require the flare to achieve any specific control efficiency. Condition 9 of Permit No. 18WE0232 limits condensate throughput and does not address flare operation.

Condition 4.4 requires HighPoint to follow the monitoring, recordkeeping, reporting, and testing requirements of Conditions 17 and 19 of Permit No. 18WE0232. Condition 17 requires HighPoint to follow the most recent operating and maintenance plan “in order to demonstrate compliance on an ongoing basis with the requirements of this permit.” The operation and

maintenance plan, however, does not set forth any testing, monitoring, recordkeeping, and reporting requirements to ensure the enclosed flare achieves a 95% control efficiency at all times. Although the plan requires monitoring of certain operational parameters for the enclosed flare, including daily visual monitoring of pilot light and daily visible emissions observations, it does not require actual testing or monitoring of emissions to assure a 95% control efficiency. The presence of the pilot light only indicates that combustion is occurring, but not that combustion is occurring at a 95% control efficiency. Furthermore, there is no evidence that the enclosed flare cannot have control efficiencies below 95% while producing no smoke and no or low opacity. There is no information or analysis demonstrating a correlation between the qualitative presence of visible emissions and any quantitative control efficiency. Condition 19 of Permit No. 18WE0232 actually states that HighPoint is not required to conduct periodic testing at all, confirming that no testing of flare control efficiency is required.

Condition 4.5 requires HighPoint to comply with “the state and federal regulatory requirements of Conditions 10 through 16 and 20 of Colorado Construction Permit 18WE0232[.]” Conditions 10 and 11 of Permit No. 18WE0232 do not apply to the enclosed flare. Condition 12 states that the Equus Farms facility is “subject to Regulation Number 7, Section XII.” However, Regulation Number 7, Section XII, which we presume is a reference to AQCC Regulation No. 7, Section XII, no longer exists as a regulation. Although Condition 12 states that HighPoint must “[c]omply with the recordkeeping, monitoring, reporting and emission control requirements for condensate storage tanks,” it is not clear what these requirements and they do not serve to assure adequate testing, monitoring, recordkeeping, and reporting for the enclosed flare. Condition 13 states that the Equus Farms facility is subject to Regulation Number 7, Section XII.G.” Again, the entirety of AQCC Regulation No. 7, Section XII no longer exists. Similarly, Condition 14 of Permit No. 18WE0232 states that the enclosed flare is “subject to Regulation Number 7, Section XVII.B.2,” but AQCC Regulation No. 7, Section XVII no longer exists in state regulation. Although Condition 14 requires the enclosed flare to operate with no visible emissions, to operate “properly,” and to operate with an auto-ignitor, it does not require testing or monitoring to verify that operating the flare according to these operational standards assures compliance with the 95% control efficiency. Condition 15 of Permit No. 18WE0232 actually sets forth the 95% control efficiency requirement, but does not require testing, monitoring, recordkeeping, and reporting to assure compliance. While the Condition requires inspections, the Permit requires inspections that follow the requirements of AQCC Regulation No. 7, Section XVII.C.1.d, which no longer exists as a regulatory provision. Finally, Condition 16 requires HighPoint to comply with “Storage Tank Emission Management System requirements of Regulation Number 7, Section XVII.C.2,” but AQCC Regulation No. 7, Section XVII no longer exists.

Condition 4.6 of the Title V Permit requires HighPoint to generally comply with various requirements of AQCC Regulation No. 7, Part B. While the Title V Permit does not set forth the specific requirements applicable to Equus Farms, instead broadly stating in Conditions 4.6.1-4.6.6 that HighPoint must comply with entire Sections of AQCC Regulation No. 7, Part B (even portions of the Sections that do not appear applicable, including several provisions identified as

“State Only” enforceable), the cited regulatory provisions also do not provide for testing and monitoring of the enclosed combustion device.<sup>5</sup>

Condition 4.6.1 requires compliance with AQCC Regulation No. 7, Part B, Section I.C, which sets forth only general requirements relating to the operation of an enclosed flare. While Regulation No. 7, Part B, Section I.C.1.c does set forth the 95% control efficiency requirement, it does not require any testing or monitoring.

Condition 4.6.2 requires compliance with AQCC Regulation No. 7, Part B, Section I.D, which sets forth requirements related to the control of emissions from storage tanks. While Regulation No. 7, Part B, Section I.D.3.a.(i) and (ii) require that VOC emissions from storage tanks be reduced by at least 95% using air pollution control equipment, Section I.D does not otherwise set forth testing or monitoring requirements for enclosed combustion devices to verify compliance with the 95% control efficiency requirement.

Condition 4.6.3 requires compliance with AQCC Regulation No. 7, Part B, Section I.E, which actually sets forth some monitoring requirements related to the control of emissions from storage tanks. However, while Regulation No. 7, Part B, Section I.E.3.a does require performance testing of control devices at storage tanks, it only applies to “[e]ach storage vessel that has the potential for VOC emissions equal to or greater than six (6) tons per year (controlled actual emissions).” The Division notes in the TRD that all storage vessels at the Equus Farms facility have legally and practically enforceable limits of VOC emissions less than six tons per year per storage vessel. *See* Exhibit 2, TRD at 7. Thus, this Section is not applicable and does not assure that the enclosed flare is tested to assure compliance with the 95% control efficiency requirement. While other provisions of Section I.E require weekly qualitative monitoring of operational parameters, including presence of pilot light, proper functioning of auto-ignitor, open valves, presence of smoke, and audio, visual, olfactory inspections of tanks (*see* Regulation No. 7, Part B, Section I.E.2.c.(i)-(ix)), the Section does not specifically require testing or monitoring to ensure that the enclosed flare complies with the quantitative 95% control efficiency requirement.

Condition 4.6.4 requires compliance with AQCC Regulation No. 7, Part B, Section I.F, which sets forth recordkeeping and reporting requirements related to the control of emissions from storage tanks. While Regulation No. 7, Part B, Section I.F.2.b.(vi) requires HighPoint to maintain records regarding “[t]he control efficiency of each unit of air pollution control equipment,” Section I.F.2 does not otherwise require monitoring or testing to verify any recorded control efficiency. Similarly, while Regulation No. 7, Part B, Section I.F.3.c.(i)(C) requires reporting of “[t]he control efficiency for the air pollution control equipment for each storage

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<sup>5</sup> Condition 4.6 is also overall vague and unenforceable and does not appear to set forth all applicable requirements in AQCC Regulation No. 7. The Condition states that HighPoint “must comply with the applicable provisions of the most recent version of the State of Colorado Regulations,” but then states that the regulations that must be met include, “but [are] not limited to,” six sections of AQCC Regulation No. 7, Part B. In including the phrase “but not limited to,” the Title V Permit implies there are additional applicable requirements other than those stated in the Permit, but it is not clear whether this is the case or what other applicable requirements may exist. As such, inclusion of the phrase “but not limited to” renders Condition 4.6 unenforceable and contrary to Title V requirements.



tank,” Section I.F.3 does not otherwise require monitoring or testing to verify any reported control efficiency.

Conditions 4.6.5 and 4.6.6 of the Title V Permit require compliance with provisions of Regulation No. 7, Part B, Section II, but are designated as “State Only,” which the Title V Permit indicates are state-only enforceable and therefore not federally enforceable. State-only enforceable permit terms cannot be relied upon to assure compliance with federally enforceable applicable requirements. *See* Bonanza Creek Order at 14.

Condition 4.7 subjects the production condensate storage vessels to Compliance Assurance Monitoring (“CAM”) requirements set forth in Section II, Condition 7 and Appendix H of the Title V Permit. However, the CAM plan set forth in Appendix H and incorporated into Condition 7 only requires HighPoint to continuously monitor the presence of a pilot light and does not actually require testing or monitoring to verify compliance with the 95% control efficiency requirement. Although presence of a pilot light verifies that some degree of combustion is occurring, there is no information cited or presented that indicates the mere presence of a pilot light ensures a 95% or greater control efficiency.

#### **4. Section II, Condition 5**

Condition 5 sets forth emission limits for hydrocarbon loadout from the compression condensate tanks and loadout from the production condensate tanks. The Condition limits VOC emissions from compression condensate tank loadout to 0.4 tons per year and VOC emissions from production condensate loadout to 6.8 tons per year, as well as limits overall HAPs to 8 tons per year of any individual HAP and 20 tons per year of total HAPs. Compliance with these limits is based on the assumption that an enclosed flare will reduce uncontrolled emissions by at least 95%. Unfortunately, the Title V Permit does not require any testing and monitoring, as well as associated recordkeeping and reporting, to assure the compliance with and the enforceability of the 95% control efficiency at all times. Nor does the permitting record contain a sufficient statement that sets forth the legal and factual basis for the inadequate permit conditions.

Condition 5.1 requires HighPoint to comply with Condition 5 of Construction Permit Nos. 18WE0228 and 18WE0229, which were issued September 17, 2019. Condition 5 of Permit Nos. 18WE0228 and 18WE0229 establishes the applicable VOC and HAPs limits.

Condition 5.2 requires HighPoint to “monitor compliance with the emission and process calculation methods as listed in the Notes to Permit Holder of Construction Permits 18WE0228 and 18WE0229[.]”. Paragraph 5 of the “Notes to Permit Holder” section in Permits 18WE0228 and 18WE0229 sets forth uncontrolled emission factors for VOCs, benzene, and n-hexane, noting that “[c]ontrolled emissions factors are based on a flare efficiency of 95%[.]” The “Notes to Permit Holder” section of Permit Nos. 18WE0228 and 18WE0229 does not require any testing, monitoring, recordkeeping, and reporting to assure the control efficiency of 95% is achieved at all times. In fact, Permit Nos. 18WE0228 and 18WE0229 do not even require any periodic testing to assure the emission factors for VOCs, benzene, and n-hexane are updated and remain accurate.

Condition 5.3 requires HighPoint to comply with operational limits specified in Conditions 6 through 8 of Permit Nos. 18WE0228 and 18WE0229. Condition 6 of Permit Nos. 18WE0228 and 18WE0229 requires HighPoint to control emissions from truck loadout with an enclosed flare, but does not otherwise require the flare to achieve any specific control efficiency. Condition 7 of Permit Nos. 18WE0228 and 18WE0229 limits condensate throughput and does not address flare operation. Condition 8 of Permit Nos. 18WE0228 and 18WE0229 states that condensate loading shall be conducted by submerged fill and does not address flare operation.

Condition 5.4 requires HighPoint to follow the monitoring, recordkeeping, reporting, and testing requirements of Conditions 14 and 16 of Permit Nos. 18WE0228 and 18WE0229. Condition 14 requires HighPoint to follow the most recent operating and maintenance plan “in order to demonstrate compliance on an ongoing basis with the requirements of this permit.” The operation and maintenance plan, however, does not set forth any testing, monitoring, recordkeeping, and reporting requirements to ensure the enclosed flare achieves a 95% control efficiency at all times. Although the plan requires monitoring of certain operational parameters for the enclosed flare, including daily visual monitoring of pilot light and daily visible emissions observations, it does not require actual testing or monitoring of emissions to assure a 95% control efficiency. The presence of the pilot light only indicates that combustion is occurring, but not that combustion is occurring at a 95% control efficiency. Furthermore, there is no evidence that the enclosed flare cannot have control efficiencies below 95% while producing no smoke and no or low opacity. There is no information demonstrating a correlation between the qualitative presence of visible emissions and any quantitative control efficiency. Condition 16 of Permit Nos. 18WE0228 and 18WE0229 actually states that HighPoint is not required to conduct periodic testing at all, confirming that no testing of flare control efficiency is required.

Condition 5.5 requires HighPoint to comply with “the state and federal regulatory requirements of Conditions 9 through 13 and 17 of Colorado Construction Permits 18WE0228 and 18WE0229[.]” Condition 9 sets forth an opacity limit, but does not require testing or monitoring of the enclosed flare. Condition 10 sets forth an odor standard, but does not require testing or monitoring of the enclosed flare. Condition 11 requires HighPoint to control emissions with a flare to meet reasonably available control technology requirements, but does not set forth any testing or monitoring requirements. Conditions 12 and 13 requires HighPoint to minimize leakage of VOCs, but does not set forth standards applicable to the enclosed flare. Condition 17 relates to the filing of Air Pollutant Emission Notices and does not set forth standards applicable to the enclosed flare.

Condition 5.6 echoes Condition 11 in Permit Nos. 18WE0228 and 18WE0229. While this Condition requires the control of emissions using a flare, it does not set forth sufficient periodic monitoring or testing to assure the flare operates effectively and achieves at least a 95% control efficiency.

Conditions 5.7 and 5.8 echo Conditions 12 and 13 in Permit Nos. 18WE0228 and 18WE0229. These Conditions set forth operational requirements to minimize leakage of VOCs and do not directly relate to operation of the enclosed flare or set forth any testing or monitoring related to the operation of the flare.

Condition 5.9 of the Title V Permit requires HighPoint to generally comply with various requirements of AQCC Regulation No. 7, Part B. While the Title V Permit does not set forth the specific requirements applicable to Equus Farms, instead broadly stating in Conditions 5.9.1-5.9.3 that HighPoint must comply with entire Sections of AQCC Regulation No. 7, Part B (even portions of the Sections that do not appear applicable, including several provisions identified as “State Only” enforceable), the cited regulatory provisions also do not provide for testing and monitoring of the enclosed combustion device.<sup>6</sup>

Condition 5.9.1 requires compliance with AQCC Regulation No. 7, Part B, Section I.M, which sets forth only general requirements relating to the control of VOC emissions from unloading. While Regulation No. 7, Part B, Section I.M.1.d.(v) does set forth the 95% control efficiency requirement, it does not require any testing or monitoring.

Conditions 5.9.2 and 5.9.3 of the Title V Permit require compliance with provisions of Regulation No. 7, Part B, Section II, but are designated as “State Only,” which the Title V Permit indicates are state-only enforceable and therefore not federally enforceable. State-only enforceable permit terms cannot be relied upon to assure compliance with federally enforceable applicable requirements. *See* Bonanza Creek Order at 14.

**B. The Title V Permit lacks adequate testing and monitoring in spite of clear evidence that enclosed combustion devices can and do fail to meet the 95% control efficiency requirement**

In failing to assure adequate testing and monitoring, as well as associated recordkeeping and reporting, related to the operation of enclosed flares, the Division was well aware that enclosed combustion devices, or ECDs, at oil and gas production facilities frequently can and do have actual control efficiencies of less than 95%.

For instance, direct measurement of enclosed combustion devices showed that a Bonanza Creek Energy facility, the Wetco Farms A-4 well pad, ECD-1 Load-out had a control efficiency of 68.61%, while ECD-1 had a control efficiency of 76.50%. *See* Exhibit 8, Division, *Stack Tests for Enclosed Combustion Devices* (Jan. 2022).<sup>7</sup> ECD-2 at this oil and gas well pad had an actual control efficiency of 90.73% and the control efficiency for ECD-2 Load-out was 92.17%. *Id.* The problem also extends to different companies using different makes and models of

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<sup>6</sup> Condition 5.9 is also overall vague and unenforceable and does not appear to set forth all applicable requirements in AQCC Regulation No. 7. The Condition states that HighPoint “must comply with the applicable provisions of the most recent version of the State of Colorado Regulations,” but then states that the regulations that must be met include, “but [are] not limited to,” three sections of AQCC Regulation No. 7, Part B. In including the phrase “but not limited to,” the Title V Permit implies there are additional applicable requirements other than those stated in the Permit, but it is not clear whether this is the case or what other applicable requirements may exist. As such, inclusion of the phrase “but not limited to” renders Condition 5.9 unenforceable and contrary to Title V requirements.

<sup>7</sup> The Division created Exhibit 8, which is a summary of the results of enclosed combustion device test results and provided it to the Center for Biological Diversity in response to a request under the Colorado Open Records Act.

enclosed combustion devices. For example, the enclosed combustion device at another well pad, PDC Energy's Troudt 18-27 Pad SE had a control efficiency of 93.04% when tested. *Id.* Thus, the Division's own empirical evidence rebuts its presumed 95% control efficiency. The Center provided these examples to the Division in its comments. *See* Exhibit 5, Center Comments at 2-3.

The oil and gas industry itself has reported numerous instances of flares failing to achieve a 95% control efficiency in Colorado. For example:

- Rocky Mountain Midstream reported a VOC control efficiency of 69.6% when conducting compliance testing for an enclosed combustion device controlling dehydrator emissions at the company's Latham Compressor Station in June 2020. *See* Exhibit 9, Division, "Stack Test Memo: Latham Compressor Station" (Oct. 19, 2020) at 2.
- Wexpro reported a VOC control efficiency of 67% when conducting compliance testing for an enclosed combustion device controlling condensate tank emissions at the company's Powder Wash Pad 4 in August 2023. *See* Exhibit 10, "Form 2, Notification of Failed ECD Performance Test, Wexpro Powder Wash Pad 4."<sup>8</sup>
- Laramie Energy reported a VOC control efficiency of 60.89% when conducting compliance testing for an enclosed combustion device controlling condensate tank emissions at the company's East Plateau Compressor Station in October 2023. Exhibit 11, "Form 2, Notification of Failed ECD Performance Test, Laramie Energy East Plateau Compressor Station."
- Wexpro reported a VOC control efficiency of 67% when conducting compliance testing for an enclosed combustion device controlling dehydrator emissions at the company's East Hiawatha Compressor Station in August 2023. *See* Exhibit 12, "Form 2, Notification of Failed ECD Performance Test, Wexpro East Hiawatha Compressor Station."
- Kerr-McGee Oil and Gas reported a VOC control efficiency of 93.27% when conducting compliance testing for an enclosed combustion device controlling produced water tank emissions at the company's Blue Chip 6-22HZ facility in November 2023. *See* Exhibit 13, "Form 2, Notification of Failed ECD Performance Test, Kerr-McGee Oil and Gas Blue Chip 6-22HZ."

Notably, the failure of these enclosed flares to achieve a 95% control efficiency occurred even as combustion was occurring, meaning a pilot light was present. The Title V Permit indicates that the presence of a pilot light is a key indicator of flare performance (*see e.g.*, Compliance Assurance Monitoring Plan for Production Condensate Storage Tanks, Title V Permit at Appendix H), yet clearly the mere presence of a pilot light does not automatically equate to a

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<sup>8</sup> The "Notification of Failed Stack Test" forms were obtained from the Division through the Colorado Open Records Act.

95% control efficiency. These facilities were relying on monitoring parameters similar or identical to the faulty parameters the Division has included in the Title V Permit, yet it was only performance testing that eventually revealed flare control efficiency below 95%. The Division cannot continue to rely on the same set of compliance-assurance requirements that, ultimately, do not assure compliance.

Further, EPA Region 8 and the Wyoming Department of Environmental Quality (“Wyoming DEQ”) produced a report based on results from a large study of enclosed combustion device combustion efficiency. EPA and Wyoming DEQ found:

The “as found” ECDs were observed to be operating over a wide range of combustion efficiencies ranging from below 20% to above 99%. Further optimization testing was conducted on each ECD where the ECD’s operational setup modified by opening and closing air inlet dampers, adjusting heat load and restricting burner availability. Optimization testing revealed that depending on the operational setup, ECD combustion efficiency can be affected by as little as 2% to more than 80%. This observation emphasizes the value of site-specific “spot checking” of ECDs because test conditions/operational setup can dramatically affect individual ECD performance.

Exhibit 14, EPA, Region 8, Wyoming DEQ, *Measuring Enclosed Combustion Device Emissions Using Portable Analyzers*, at 9 (May 14, 2020).

The Division was fully aware of this, including the fact that some control equipment destroys less than 20% of VOCs, when developing the Title V Permit. *See* Exhibit 15, Email from Christopher LaPlante, CDPHE, to Jennifer Mattox, CDPHE, et al., *Fwd: Measuring Enclosed Combustion Device Emissions Using Portable Analyzers – Results Phase 1*, at 1–2 (June 8, 2020). In fact, the very nature of these control devices, with their lack of control over key parameters like temperature and residence time, and the variable composition of the gas being combusted, means that assumptions about control efficiency are invalid. *See* Exhibit 16 Dr. Ranajit Sahu, *Technical Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30*, at 2–5. However, the Title V Permit still contains the assumption that control devices will operate with a control efficiency of 95% throughout their lifetime, under all conditions, without including any testing and monitoring to assure compliance with that assumption.

The Division’s awareness over the need to ensure adequate testing and monitoring of enclosed combustion devices is reflected in its own policies, regulations, and in other Title V permits issued in Colorado. For example, in a Title V permit for an oil and gas production facility in Jackson County, Colorado, the Division required semiannual testing of an enclosed combustion device to assure compliance with an applicable control efficiency requirement. In Title V Permit No. 17OPJA401 issued for the Bighorn 0780 S17 CTB Facility, the Division required:

On a semi-annual basis, a source compliance test shall be conducted on the TCI 4800 control device to measure the emission rate of Volatile Organic Compounds (VOC) in order to demonstrate the enclosed combustor achieves a minimum destruction efficiency of 98% for VOC, and to monitor compliance with the annual emission limits[.]

Exhibit 17, Air Pollution Control Division Colorado Operating Permit, D90 Energy, LLC—Bighorn 0780 S17 CTB Facility, Permit No. 17OPJA401 (Jan. 1, 2020) at Section II, Condition 2.8.

Similarly, the Division has adopted a policy requiring at least annual testing of enclosed combustion devices whenever a permittee requests a control efficiency greater than 95%. *See* Exhibit 18, Division, “Oil and Gas Industry Enclosed Combustion Device Overall Control Efficiency Greater than 95%,” Permitting Section Memo 20-02 (Feb. 4, 2020) at 4-5. Although the Division takes the position that testing should only be required whenever a permittee requests a control efficiency greater than 95%, given well-documented failures of enclosed combustion devices to meet the baseline 95% control efficiency requirement, it is arbitrary and not supported to limit testing in this way. The Division itself appears to realize this. In 2021, the Division proposed and the AQCC adopted rules requiring testing of enclosed combustion devices throughout the state, which were promulgated as state-only enforceable rules at AQCC Regulation No. 7, Part B, Section II.B.2.h. *See* Exhibit 19, AQCC Regulation No. 7 at 46-51. As the AQCC noted in its Statement of Basis for the adopted rules:

Historically, the Commission has assumed that enclosed combustion devices were achieving at least 95% control efficiency for hydrocarbons. However, the Commission determined that it was appropriate to promulgate regulatory requirements that will additionally ensure that enclosed combustion devices in the state are, in fact, operating at and achieving 95% control efficiency for hydrocarbons emitted[.]

Exhibit 19 at 291. Although it is questionable whether the adopted state-only enforceable rules ensure sufficiently frequent testing, the State of Colorado has nevertheless taken the position that testing is necessary to ensure that enclosed combustion devices are operating effectively, even when subject to the 95% control efficiency requirement. Yet the record underlying the Title V Permit in this proceeding fails to explain why testing is not needed to assure compliance with its terms and applicable requirements.

Documented failures of enclosed combustion devices to meet a 95% control efficiency, coupled with the Division’s own permitting actions and policies, reinforces that the EPA must object over the failure of the Title V Permit to ensure any testing and monitoring of control efficiency for the enclosed flares at Equus Farms.

### **C. The Division’s response to comments did not resolve the issue**

In its response to the Center’s comments on this issue, the Division offers a number of unsupported excuses for not requiring testing and monitoring to verify compliance with the 95% control efficiency requirements applicable to the enclosed combustion devices.

The Division first asserts that, “the source submits manufacturer guarantees for the control devices’ efficiency through a series of tests conducted in a controlled environment and the source is responsible for ensuring that the control technologies meet all appropriate standards.” Exhibit 6, Response to Comments at .pdf p. 3-4. This response misses the point.

The point is that the manufacturer guarantees do not constitute sufficient periodic monitoring to assure that the enclosed combustion devices achieve at least a 95% control efficiency at all times. Although the manufacturer's guarantee may be based on "a series of tests conducted in a controlled environment," enclosed combustion devices operating in real life in an uncontrolled environment appear susceptible to conditions, such as weather, maintenance, etc., that interfere with their effectiveness. The reliance on manufacturer's guarantees alone is not sufficient to demonstrate compliance with Title V testing and monitoring requirements. *See* Cash Creek Order at 17-18.

The Division then asserts that parametric monitoring requirements assure compliance with the 95% control efficiency requirement. In support of this claim, the Division cites Construction Permits 18WE0228, 18WE0229, 18WE0230, 18WE231, and 18WE232, the operating and maintenance plans associated with these permits, and AQCC Regulation No. 7, Part B. *See* Exhibit 6, Response to Comments at .pdf p. 4. However, as explained earlier, the applicable permits, operating and maintenance plans, and requirements of AQCC Regulation No. 7 do not require any testing or monitoring of the enclosed combustion devices to verify compliance with the 95% control efficiency requirement. Further, to the extent these underlying requirements set forth parametric monitoring, there is no indication that compliance with the various qualitative parameters, including presence of a pilot light, the presence of an auto-ignitor, and visible emissions monitoring, assures compliance with the quantitative control efficiency requirement. The Division also asserts that the Title V Permit incorporates various provisions of AQCC Regulation No. 7 as "applicable requirements," including Regulation No. 7, Part B, Sections II.B. and II.C. However, as noted earlier, the incorporated provisions of Regulation No. 7, Part B do not assure adequate testing and monitoring of the control efficiency of the enclosed combustion devices. Further, Regulation No. 7, Part B, Sections II.B and II.C are identified as state-only enforceable in the Title V Permit, meaning they are not applicable requirements and cannot serve to assure compliance with applicable federally enforceable requirements.

The Division also responds to monitoring data submitted by the Center demonstrating that numerous enclosed combustion devices have failed to meet the 95% control efficiency requirement. *See* Exhibit 6, Response to Comments at .pdf p. 4. The Division asserts that the majority of tested devices met the 95% control efficiency requirement and that "the average control efficiency from all of the stack tests is 98.18%," thus supporting "the appropriate value of 95% control efficiency for the control device." The 95% control efficiency requirement applicable to enclosed combustion devices at the Equus Farms facility, however, is not based on an ambiguous average of overall stack tests performed among a random group of facilities. The 95% control efficiency requirement is solely applicable to the Equus Farms facility. Further, the Title V Permit is clear that HighPoint *must* comply, not *may* comply, and cannot avoid compliance with the 95% control efficiency requirement by pointing to testing done at other facilities. An ambiguous average does not "support" the assumption that the enclosed combustion devices will meet the 95% control efficiency applicable requirement at all times at the Equus Farms facility.

The Division responds that testing should not be required because HighPoint is not requesting a control efficiency greater than 95%. *See* Exhibit 6, Response to Comments at .pdf p. 4. However, as explained earlier, it is arbitrary that testing should only be required if a source

requests a control efficiency greater than 95% and not if a source only requests a 95% control efficiency. Particularly given that enclosed combustion devices routinely fail to meet the 95% control efficiency requirement in Colorado, it is arbitrary to limit testing as the Division has done. Further, in the face of this evidence, the Division fails to explain why performance testing is necessary to assure compliance with a 98% control efficiency requirement, but not a 95% control efficiency requirement. Based on the record before the Division and EPA, this distinction is arbitrary.

The Division claims that AQCC Regulation No. 7, Part B, Section II.B.2.h will require HighPoint to conduct performance tests to verify compliance with the 95% control efficiency requirement. *See* Exhibit 6, Response to Comments at .pdf p. 4. However, AQCC Regulation No. 7, Part B, Section II is identified as “State Only,” meaning it is state-only enforceable and not federally enforceable. *See* Exhibit 19 at 1. State-only enforceable permit terms cannot be relied upon to assure compliance with federally enforceable applicable requirements. *See* Bonanza Creek Order at 14; *see also* AQCC Regulation No. 3, Part A, Section I.A (synthetic minor sources must “obtain **federally enforceable** limitations to limit the source’s potential to emit” (emphasis added)), Section I.B.51 (defining “State-Only Condition” as one that, in part, “is not required to create a federally enforceable emissions limitation in order to create a synthetic minor source (as defined in Section I.A of this Part)”).

In spite of this, the Division claims that, “[t]he periodic performance testing requirements of [AQCC Regulation No. 7, Part B,] Section II.B.2.h. are designed to demonstrate that these devices are actually capable of achieving a 95% control efficiency on an ongoing basis.” *See* Exhibit 6, Response to Comments at .pdf p. 10. AQCC Regulation No. 7, Part B, Section II is identified as “State Only,” meaning it is state-only enforceable and not federally enforceable. *See* Exhibit 19 at 1. State-only enforceable permit terms cannot be relied upon to assure compliance with federally enforceable applicable requirements. *See* Bonanza Creek Order at 14.

Overall, the Division responds that:

[T]his facility’s enclosed combustion devices are subject to not one of these [AQCC Regulation No. 7] requirements, but rather to all of these requirements together, and when conducted in aggregate, the Division believes that these monitoring requirements provide reasonable assurance that the enclosed combustion devices are being operated as designed.”

Exhibit 6, Response to Comments at .pdf p. 10. There is simply no support for this claim. For one, HighPoint is not required to operate the enclosed combustion devices only “as designed,” but required to operate the devices to assure compliance with at least a 95% control efficiency requirement. Simply because applicable requirements may require HighPoint to operate the enclosed combustion devices “as designed” does not automatically mean that HighPoint will operate in compliance with the 95% control efficiency requirement. Second, in support of its claim, the Division cites numerous sections of AQCC Regulation No. 7 that are state-only and not federally enforceable. Finally, there is absolutely zero support for the Division’s claim that compliance with all monitoring requirements, “in aggregate,” will assure compliance with the 95% control efficiency requirement. Neither the Title V Permit nor the TRD demonstrate how



compliance with various federally enforceable monitoring requirements—and not state-only enforceable monitoring requirements—in the aggregate, will assure compliance. Indeed, as explained earlier, all federally enforceable monitoring requirements that do apply to the enclosed flares at the Equus Farms facility, both individually and in the aggregate, do not yield reliable data representative of the source’s compliance with the 95% control efficiency requirement.

**D. The Administrator must object**

A Title V permit must “set forth [] monitoring [] requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(b); *see also* 40 C.F.R. § 70.6(c)(1). To this end, a Title V permit must include “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.” 40 C.F.R. § 70.6(a)(3)(i)(A). In addition, the permitting record must contain a sufficient “statement that sets forth the legal and factual basis for the draft permit conditions” justifying the inadequate compliance-assurance requirements. 40 C.F.R. § 70.7(a)(5); *see also* Valero Order at 62.

In issuing the Title V Permit, the Division was required to include sufficient periodic testing and monitoring, as well as associated recordkeeping and reporting, to assure that enclosed combustion devices complied with the applicable 95% control efficiency requirement in order to assure compliance with applicable VOC and HAPs limits and to ensure federally enforceable and practically enforceable limits. The Title V Permit did not set forth such sufficient monitoring, testing, recordkeeping, and reporting. The Title V Permit requires no actual testing or monitoring of enclosed flare control efficiency and inappropriately relies on qualitative parametric monitoring that does not actually demonstrate compliance with the quantitative control efficiency requirement. Further, as acknowledged by the Division, the Title V Permit inappropriately relies on state-only enforceable requirements, rather than federally enforceable requirements, to assure compliance. The Division failed to respond to the Center’s comments with a statement that supports this unacceptable approach.

In a virtually identical situation for virtually identical oil and gas production facilities also located in the Denver Metro/North Front Range ozone nonattainment area, the EPA objected on virtually identical grounds. In the Bonanza Creek Order, the EPA found no support for the Division’s claim that four Title V permits for an oil and gas production facility “‘set forth’ the necessary monitoring requirements to assure compliance with the requirements for ECDs to achieve 95 percent VOC [applicable] control efficiency[.]”. Bonanza Creek Order at 13. Here, the EPA must also object over the Divisions’ ongoing failure to justify requiring no monitoring or testing of enclosed flare control efficiency to assure compliance with the applicable 95% control efficiency limit.

Accordingly, pursuant to 42 U.S.C. § 7661(b)(2) and 40 C.F.R. § 70.8(d), the Administrator has a nondiscretionary duty to object to the issuance of the Title V Permit for the Equus Farms facility. The Administrator must object over the failure of the Division to set forth sufficient periodic monitoring and testing, as well as associated recordkeeping and reporting, to ensure the enclosed flares are operated in compliance with the applicable 95% control efficiency requirement.

## **II. The Title V Permit fails to require monitoring and testing, as well as associated recordkeeping and reporting to assure compliance with applicable NO<sub>x</sub> and CO limits for the condensate tanks**

Title V permits must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure that the permitted source complies with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1); *see also* AQCC Regulation No. 3, Part C, Section V.C.16.a.

Here, the Title V Permit fails to require adequate testing, monitoring, recordkeeping, and reporting to ensure compliance with the applicable NO<sub>x</sub> and CO limits for the enclosed flares controlling emissions from the Equus Farms facility's condensate storage tanks. In addition, the permitting record fails to contain a sufficient "statement that sets forth the legal and factual basis for the draft permit conditions" justifying the inadequate testing, monitoring, reporting, and recordkeeping requirements. 40 C.F.R. § 70.7(a)(5); *see also* 2022 Valero Oder at 62 (granting petition to object where "the permit record, including [] statement of basis and [response to comments], does not contain sufficient information to conclude that there is adequate monitoring to assure compliance with relevant emission limits").

### **A. The Title V Permit lacks any monitoring requirements that assure compliance with and the enforceability of the applicable NO<sub>x</sub> and CO limits**

The Center raised this issue specifically on page 10 of its comments.

Section II, Conditions 3 and 4 require compliance with NO<sub>x</sub> and CO emission limits applicable to the enclosed combustion devices controlling emissions from the condensate storage tanks. Condition 3 requires compliance with a 1.8 ton per year limit on CO emissions in relation to the four 400-barrel tanks storing compression condensate, while Condition 4 requires compliance with a 1.1 ton per year limit on NO<sub>x</sub> and 5.1 ton per year limit on CO emissions in relation to the 13 400-barrel tanks storing production condensate. Unfortunately, the Title V Permit does not set forth any monitoring or testing that would assure compliance with these applicable limits.

To begin with, neither Condition 3 or 4 of the Title V Permit set forth any monitoring, testing, recordkeeping, or reporting requirement specific to emissions of NO<sub>x</sub> and CO. A Title V Permit must "set forth [] monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c). Instead, both Conditions variously cite to the underlying construction permits, in this case 18WE0231 and 18WE0232. Conditions 3.2 and 4.2 both require HighPoint to "monitor compliance with the emissions and process calculation methods as listed in Condition 7 and the Notes to Permit Holder of Construction Permit[s] 18WE0231 and 18WE0232[.]" Condition 7 of both construction permits states that emissions must be calculated using the emission factors in the "Notes to Permit Holder" section. Condition 5 of the "Notes to Permit Holder" section in both construction permits sets forth identical emissions factors for NO<sub>x</sub> and CO, "0.068 lb/MMBtu" and "0.310 lb/MMBtu," respectively. These Conditions do not assure sufficient testing and monitoring to assure compliance.

At the outset, according to Permits 18WE0231 and 18WE0232, both emission factors appear to be derived from EPA's AP-42 compendium of emission factors and not based on actual testing or monitoring of emissions from the Equus Farms facility. In general, EPA does not recommended reliance on AP-42 emission factors when establishing source-specific emission limits. See *In re Tesoro Refining and Marketing Co.*, Order on Petition No. IX-2005-6, at 32–33 (Mar. 15, 2005). Regardless, neither underlying Permits 18WE0231 and 18WE0232, nor the Title V Permit and TRD explain why reliance on AP-42 emission factors is appropriate for assuring compliance with the NO<sub>x</sub> and CO limits applicable to the Equus Farms facility.

However, the Title V Permit is primarily deficient because it does not assure any periodic verification or updating of the emission factors set forth in Permits 18WE0231 and 18WE0232. The “Notes to Permit Holder” section of both permits simply sets forth emission factors, but does not otherwise require subsequent testing or monitoring to verify the accuracy of the emission factors. Although Conditions 3.4 and 4.4 of the Title V Permit both require HighPoint to “follow the monitoring, recordkeeping, reporting, and testing requirements of Conditions 17 and 19 of Colorado Construction Permit[s] 18WE0231 and 18WE0232,” Conditions 17 and 19 do not require any testing or monitoring of NO<sub>x</sub> and CO emissions. Condition 17 of both permits requires HighPoint to “follow the most recent operating and maintenance (O&M) plan,” but the operating and maintenance plans referred to by both permits do not even mention NO<sub>x</sub> and CO emissions or otherwise provide for testing or monitoring to verify compliance with the applicable limits. Condition 19 of both Permits 18WE0231 and 18WE0232 states that periodic testing is not even a requirement.

A lack of any testing is conspicuous. In other permits for similar oil and gas production and processing facilities utilizing flares, the Division has at least required a one-time compliance test to verify compliance with applicable NO<sub>x</sub> and CO limits. For example, in a construction permit issued for a natural gas compressor station in Weld County, Colorado in 2019, the Division required a “source initial compliance test” to measure emissions of NO<sub>x</sub> and CO “using EPA approved methods.” Exhibit 20, Colorado Air Pollution Control Division, “Construction Permit 19WE0170, Issuance 1, Rocky Mountain Midstream, LLC, Latham Compressor Station” (May 28, 2019) at Condition 24. Although we adamantly disagree that one-time testing of flare emissions is sufficient to demonstrating ongoing compliance with applicable NO<sub>x</sub> and CO limits, the Division did not even impose this bare minimum testing requirement for the Equus Farms facility.

Compounding the failure of the Title V Permit to set forth sufficient monitoring of NO<sub>x</sub> and CO emissions, neither the Title V Permit nor Permits 18WE0231 and 18WE0232 appear to require monitoring of heat input for the flares controlling condensate storage tank emissions. As the “Notes to Permit Holder” section of Permits 18WE0231 and 18WE0232 indicates, the NO<sub>x</sub> and CO emission factors are based on heat input, measured as MMBtu. We can find no incorporation of or reference to any monitoring, testing, or recordkeeping requirements that would yield any data, let alone reliable data, regarding the heat content of the gas combusted by the flares and the subsequent heat input rate that is necessary to even calculate NO<sub>x</sub> and CO emissions in accordance with Permits 18WE0231 and 18WE0232.

The lack of any monitoring or testing of NO<sub>x</sub> and CO emissions is concerning in light of the variability of flare operations. As explained earlier in this Petition and in the Center's comments, flare efficiency and attendant emissions are dependent upon a number of variables, particularly for flares combusting in a non-steady state environment, such as outdoors on the open plains of Weld County, Colorado.

### **B. The Division's response to comments did not resolve this issue**

In response to comments, the Division acknowledged that, "while AP-42 may have certain deficiencies, in the absence of other robust, scientifically sound supporting documentation for source-specific emission factors, EPA's AP-42 is the best source for this type of information." Exhibit 6, Response to Comments at .pdf p. 12. This response is confusing, to say the least. The Division is aware of source-specific testing methodologies that would yield more robust, scientifically sound source-specific emission factors, as is evidenced by the agency's own permitting actions. *See e.g.*, Exhibit 20 at Condition 24. The Division is also aware that EPA's own Test Methods set forth scientifically sound testing procedures for measuring NO<sub>x</sub> and CO emissions. Method 10 sets forth procedures for determining carbon monoxide emissions from stationary sources and Method 7E sets forth procedures for determining nitrogen oxide emissions from stationary sources using an instrumental analyzer procedure. *See* 40 C.F.R. § 60, Appendix A-4. Both methods were used to measure CO and NO<sub>x</sub> emissions from an enclosed flare at the Latham Compressor Station, also located in Weld County. *See* Exhibit 9 at 2. In this case, while AP-42 may have been the best source of source-specific information when establishing initial emission factors to calculate potential emission rates for the Equus Farms facility, it is not the best source of source-specific information for which to assure sufficient periodic monitoring that ensures compliance with applicable NO<sub>x</sub> and CO limits now that the facility is operating.

The Division states that it will "disregard [AP-42] emission factors only when a better, well documented, and scientifically sound emission factor is available for specific source." Exhibit 6, Response to Comments at .pdf p. 12. Here, there are better, well documented, and scientifically sound emission factors available for the Equus Farms facility, ones that are based on source-specific testing and periodic monitoring. It is unclear why the Division feels that AP-42 emission factors are superior to actual testing and monitoring, which the agency already regularly requires at other oil and gas production and processing facilities operating in Colorado.

The Division states that "testing or further monitoring can be required on a case-by-case basis." Exhibit 6, Response to Comments at .pdf p. 13. However, under Title V, monitoring is not required only on a case-by-case basis, but rather must be set forth in a Title V permit to assure sufficient periodic monitoring that ensures compliance with applicable requirements. The vague and uncertain prospect of case-by-case testing or monitoring cannot suffice to demonstrate compliance with Title V.

Overall, the Division explains that the use of AP-42 emission factors "is sufficient to monitor compliance with the NO<sub>x</sub> and CO emission limitations." Exhibit 6, Response to Comments at .pdf p. 13. Given that testing methods do exist to determine better, well documented, and scientifically sound emission factors for NO<sub>x</sub> and CO emissions, it is clear that

relying solely upon the static emission factors in Permits 18WE0231 and 18WE0232 is not sufficient to assure compliance both with Title V monitoring requirements and with the applicable limits in the Title V Permit.

### **C. The Administrator must object**

A Title V permit must “set forth [] monitoring [] requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(b); *see also* 40 C.F.R. § 70.6(c)(1). To this end, a Title V permit must include “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.” 40 C.F.R. § 70.6(a)(3)(i)(A). In addition, the permitting record must contain a sufficient “statement that sets forth the legal and factual basis for the draft permit conditions” justifying the inadequate compliance-assurance requirements. 40 C.F.R. § 70.7(a)(5); *see also* 2022 Valero Order at 62.

In issuing the Title V Permit, the Division was required to include sufficient periodic testing and monitoring, as well as associated recordkeeping and reporting, to assure compliance with the NO<sub>x</sub> and CO limits set forth at Section II, Conditions 3 and 4 applicable to the enclosed flares controlling emissions from the condensate storage tanks. The Title V Permit requires no actual testing or monitoring of NO<sub>x</sub> and CO emissions. Instead, the Permit relies on unjustified emission factors that are not required to be updated or verified to assure that the emission calculations are representative of operations at the Equus Farms facility.

Accordingly, pursuant to 42 U.S.C. § 7661(b)(2) and 40 C.F.R. § 70.8(d), the Administrator has a nondiscretionary duty to object to the issuance of the Title V Permit for the Equus Farms facility. The Administrator must object over the failure of the Division to set forth sufficient periodic monitoring and testing, as well as associated recordkeeping and reporting, to ensure compliance with the NO<sub>x</sub> and CO limits applicable to the enclosed flares controlling emissions from the condensate storage tanks.

### **III. The Title V Permit fails to assure compliance with the Colorado SIPs requirement that a permitted facility will not cause or contribute to a violation of the NAAQS**

The EPA must object to the Title V Permit because the Division failed to determine whether the construction permits incorporated into the Title V permit will interfere with attainment or maintenance of the NAAQS. The Center raised this issue on pages 11 through 16 of its comments.

#### **A. All the requirements in the Colorado SIP are applicable under Title V, including compliance with the NAAQS**

It is critical to first emphasize that compliance with the NAAQS in according with the Colorado SIP is an applicable requirement under Title V.

Ensuring compliance with the NAAQS is an applicable requirement for a Title V permit which incorporates conditions from minor source construction permits because the definition of “applicable requirement” includes all requirements of the state implementation plan. *See* 40

C.F.R. § 70.2 (defining “applicable requirement” as “[a]ny standard or other requirement provided for in the applicable implementation plan approved . . . by EPA”); *see also* the Colorado SIP at AQCC Regulation No. 3, Part A, Section I.B.9 (substantively the same definition). The Tenth Circuit has consistently recognized that the term “any” means “all” in plain language. *See, e.g., United States v. McGinty*, 610 F.3d 1242, 1246 (stating that “any” is a powerful and broad word, and it does not mean some or all but few, but instead it means “all”); *see also United States v. Hernandez*, 655 F.3d 1193, 1196 (10th Cir. 2011); *Kelley v. City of Albuquerque*, 542 F.3d 802, 814 (10th Cir. 2008). Because the term “applicable requirement” includes “any standard or other requirement provided for in the applicable implementation plan,” it includes all standards or other requirements in the applicable implementation plan, including both major and minor construction permit requirements. *See* Exhibit 1, Title V Permit at Section I, Condition 1.3.

The Tenth Circuit Court of Appeals has accepted this plain language reading of the Title V regulations. While considering a petition to object to a Title V permit that hinged on the meaning of the term “applicable requirement,” the Tenth Circuit held that “[t]he regulatory definition of this term unambiguously refers to all requirements in a state’s implementation plan, such as Utah’s requirements for major [New Source Review].” *Sierra Club v. EPA*, 964 F.3d 882, 890–91 (10th Cir. 2020) (emphasis added). The Tenth Circuit rejected EPA’s approach of not considering whether minor modifications complied with the preconstruction permitting requirements in the state’s SIP. While the case centered on the question of whether modifications that were treated as “minor” should have triggered stricter “major” New Source Review requirements, the Tenth Circuit presented those requirements as one example of the types of requirements in a SIP that are applicable requirements. *Sierra Club*, 964 F.3d at 891. It used broader language inclusive of the situation presented here.

While EPA, at the national level, continues to abide by the narrow interpretation of “applicable requirement” rejected by the Tenth Circuit, EPA’s regulations regarding regional consistency provide that the decision of the Tenth Circuit must control EPA’s review of this Permit. 40 C.F.R. § 56.3(d); *see Nat’l Env’t Dev. Association’s Clean Air Project v. EPA*, 891 F.3d 1041 (D.C. Cir. 2018). Accordingly, for purposes of review of a Title V permit in Colorado, the term “applicable requirement” includes all requirements of Colorado’s SIP including the prohibition on minor sources being issued permits which authorize violations of a NAAQS.

### **B. Compliance with the NAAQS is a requirement of Colorado SIP and therefore an applicable requirement for the Title V Permit**

The Division is only allowed to issue a construction permit if the source or activity will meet any applicable ambient air quality standard. *See* C.R.S. § 25-7-114.5(7)(a)(III); AQCC Regulation No. 3, Part B, Sections II.D.1 and F.1; *see also* 42 U.S.C. § 7410(a)(2)(C). More specifically, the Clean Air Act’s central purpose is to protect public health and welfare. 42 U.S.C. § 7401(b)(1). A key driver for achieving the Act’s public health goal is the requirement that all areas in the country comply with primary (health-based) and secondary (public welfare-based) NAAQS, which reflect the maximum permissible levels of common pollutants in the ambient air. *Id.* §§ 7401, 7409.

Compliance with the NAAQS is at the core of the Clean Air Act’s preconstruction permitting program for both major and minor sources of air pollution. Section 110(a)(2)(C) of the Clean Air Act provides that state minor source programs must “include ... regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved.” Thus, EPA cannot approve a state’s minor source program if that program “would interfere with any applicable requirement concerning attainment” of NAAQS. EPA’s minor source permitting regulations, set forth in 40 C.F.R. §§ 51.160–51.164, require that the state minor source program must enable the permitting agency to reject any permit application if it will interfere with attainment:

Each plan must set forth legally enforceable procedures that enable the state or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in . . .

...

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

[and]

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

...

(2) It will interfere with the attainment or maintenance of a national standard.

40 C.F.R. § 51.160(a)-(b) (emphasis added).

The Colorado Air Pollution Prevention and Control Act states that the Division shall grant a permit application if, among other requirements, “[f]or construction permits, the source or activity will meet any applicable ambient air quality standards and all applicable regulations.” C.R.S. § 25-7-114.5(7)(a)(III). The Colorado SIP further provides that the Division shall grant the permit if, among other requirements:

c. The proposed source or activity will not cause an exceedance of any National Ambient Air Quality Standards;

d. The source or activity will meet any applicable ambient air quality standards and all applicable regulations;

AQCC Regulation No. 3, Part B, Section III.D.1.

Additionally, if the source cannot comply with these provisions, the Division shall deny the permit:

If the Division determines that a source cannot comply with the provisions of Part B, Section III.D., of this regulation, the Division shall issue its written denial of the permit application stating the reasons for such denial.

AQCC Regulation No. 3, Part B, Section III.F.1.

### **C. Reports demonstrate that permitting in Colorado does not ensure compliance with the NAAQS**

The concerns raised herein are far from theoretical. There are two reports that speak specifically to this issue of assuring compliance with the NAAQS that evaluate and discuss at length the Division's flawed procedures and practices, or lack thereof. The first is a report prepared by Troutman Pepper Hamilton Sanders LLP, as Special Assistant Attorneys General for the State of Colorado, entitled, "Public Report of Independent Investigation of Alleged Non-Enforcement of National Ambient Air Quality Standards by the Colorado Department of Public Health and Environment." Exhibit 4. Second is a report by the EPA entitled "EPA Region 8 Review of EPA's Office of Inspector General Hotline Complaint No. 2021-0188." Exhibit 3.

Both the Troutman Report and the EPA Report resulted from a whistleblower complaint three of the Division's employees filed with the EPA Office of Inspector General in March 2021. Exhibit 4 at 1, 21–23; Exhibit 3 at 3, 5–6. The employees—members of the Division's Modeling and Emissions Inventory Unit—requested that EPA review the Division's failure to have a rational basis for determining NAAQS compliance in permitting actions. *Id.*

The Troutman Report's "Legal Analysis" concluded that "the law does impose a mandatory obligation: [the Division] must determine whether the construction or modification of minor sources will interfere with attainment of the NAAQS and prevent exceedances of the NAAQS," and this requirement is "made clear" in the Clean Air Act, EPA's regulations, and Colorado's law and regulations. Exhibit 4 at 25–26. The strength of this conclusion is quite remarkable considering that Troutman is a law firm that represents polluters and the Division's approach was so blatantly illegal that even a polluter law firm could only find the Division's approach illegal. While the Division does not need to necessarily model emissions from minor sources, the Division "must still satisfy its duty to ensure compliance with the NAAQS in some other way." *Id.* at 26. However, the Troutman Report did not identify any other rational way, other than modeling, to determine compliance with the NAAQS. Indeed, there is no other rational way that does not ignore important aspects of the problem of determining ambient impacts from a stationary source before it commences construction.

The Troutman Report goes on to state that "for more than ten years," the Division "had two directly conflicting policies—the Modeling Guideline and PS Memo 10-01—leading to internal and external confusion and, ultimately, a failure of [the Division] to satisfy its duty to ensure compliance with the NAAQS." Exhibit 4 at 25-26. These conclusions and the discussion supporting them, reached by independent investigators serving as "Special Assistant Attorneys



General,” demonstrate that the Division policies and procedures in place at the time it issued the underlying construction permits inadequately protected the NAAQS and were contrary to law. This information directly supports the Center’s assertions with respect to this defect of the Title V Permit discussed herein. The majority of the construction permits whose conditions are incorporated into this Title V Permit were issued based upon the faulty assumptions in the Division’s PS Memo 10-01, which not only resulted in the Division foregoing modeling to assess NAAQS compliance for minor sources that could result in NAAQS violations, but also failed to provide for another method of assessing NAAQS compliance. Exhibit 4 at 27–31. These practices resulted in the Division issuing permits with deficient analysis insufficient to assure compliance with the NAAQS. Exhibit 4 at 33–34.

The EPA Report identifies the same problems and sheds further light on the impropriety of the Division policies regarding determining NAAQS compliance. Exhibit 3 at 8–18, 27–28. EPA determined that the Division’s approach to assessing minor sources’ NAAQS compliance, premised on PS Memo 10-01, allowed predicted NAAQS violations to go unaddressed and resulted in improper permitting of minor sources that could violate the NAAQS. Exhibit 3 at 27–28. Further, EPA concluded that the Division “repeatedly failed to include any record supporting the required demonstration that construction authorized in Minor [] permit actions would not cause NAAQS violations,” indicating that the administrative records at issue are insufficient and will not demonstrate that minor sources will comply with the NAAQS. *Id.*

The Troutman and EPA Reports show that the Division policies that resulted in the requirements in the construction permits which are incorporated into the Permit was contrary to law, such that EPA must object because the Title V Permit does not assure compliance with the applicable requirement of assuring compliance with the NAAQS for the source covered by the construction permits.

**D. It was improper to issue the Title V Permit without assuring the Equus Farms facility will not cause or contribute to a violation of the NAAQS**

The Division did not adequately assess whether the pollution authorized by the Equus Farms facility Title V Permit will cause or contribute to a violation of the NAAQS. *See Sierra Club v. EPA*, 972 F.3d 290, 298 (3rd Cir. 2020) (“[T]he agency cannot reach whatever conclusion it likes and then defend it with vague allusions to its own expertise; instead, the agency must support its conclusion with demonstrable reasoning based on the facts in the record. When it fails to do so, an agency action is arbitrary and capricious.”); see also *Bd. of Cnty. Comm’rs of Park Cnty. v. Water Quality Control Comm’n of State of Colo.*, 809 P.2d 1107, 1110 (Colo. App. 1991). Accordingly, EPA must object to the Permit because the Division has not guaranteed that the Title V Permit has all the conditions necessary to assure compliance with the NAAQS.

Section I, Condition 1.3 of the Title V Permit incorporates applicable requirements from the following federally enforceable construction permits: “18WE0232, 18WE0230, 18WE0231, 18WE0229, 18WE0228, , 18WE0233, 18WE0234, and 18WE0236.” However, the TRD provides no basis for determining that the applicable requirements discussed above— prohibiting issuance of minor source permits if they permit sources to cause or contribute to a violation of a

NAAQS—has been met for all of these construction permits, and the Title V Permit does not contain any enforceable emission limits to assure that these sources will not cause or contribute to NAAQS violations. Without any analysis to demonstrate that the applicable requirements prohibiting permitting of NAAQS violations are met with the current permit conditions, the record does not establish that the Title V Permit includes all applicable requirements and conditions to assure compliance with those applicable requirements and EPA must object.

In response to comments, the Division asserted it does not need to ensure that the applicable requirement of ensuring protection of the NAAQS because it is not authorizing a modification of the Equus Farms facility through the Title V Permit. *See Exhibit 6, Response to Comments at .pdf p. 13-14.* The Division asserts that because it is “not issuing a construction permit,” it is not required to address impacts to the NAAQS. *Id.* at 13. This response misses the mark. At issue is the failure of the Division to assure that issuance of the underlying construction permits protected the NAAQS in accordance with the Colorado SIP, which is an applicable requirement under Title V. The Title V Permit cannot now incorporate construction permits that were approved with no demonstration that the NAAQS would be protected. Unless and until the Division demonstrates that operation of the Equus Farms facility protects the NAAQS, the Title V Permit does not comply with the Colorado SIP, which is an applicable requirement.

The Division relies on the preamble to the currently applicable Title V permit requirements, which was published nearly 20 years before the Tenth Circuit rejected EPA’s exclusion of NAAQS compliance from the category of applicable requirements, *Sierra Club v. EPA*, 964 F.3d at 890–91, and well before the Troutman Report and EPA recognized the Division’s failure to assure NAAQS compliance in minor source permitting. Now that the 10th Circuit has rejected EPA’s position that EPA can simply assume that construction permits incorporated into Title V permits comply with all SIP permitting requirements, EPA must determine if the eight construction permits being incorporated into the Title V Permit comply with all of the SIP requirements for construction permits, including the requirement that the construction permits do not permit NAAQS violations. EPA must object because there is absolutely no evidence that that is the case. In other words, without an adequate analysis to demonstrate that the applicable requirements prohibiting permitting of NAAQS violations are met with the current permit conditions, EPA must object to the Permit.

It is particularly concerning that the Title V Permit approves operation of a number of sources of NO<sub>x</sub> emissions, yet does not establish short-term limits to assure protection of the short-term NO<sub>x</sub> NAAQS, which was adopted in 2010 and limits ambient concentrations of nitrogen dioxide (“NO<sub>2</sub>”) to no more than 100 parts per billion over a one-hour period. *See* 40 C.F.R. § 50.11(b). For the three 1680 horsepower engines operating at the Equus Farms facility, which were permitted in 2019 via permits 18WE0233, 18WE0234, and 18WE236, the Title V Permit only limits NO<sub>x</sub> emissions to 9.8 tons/year. *See* Title V Permit at Section II, Condition 1. The Title V Permit otherwise establishes no short-term operational limits or other requirements to ensure protection of the one-hour NO<sub>x</sub> NAAQS. Although Condition 14 of Permits 18WE0233, 18WE0234, and 18WE236 establishes gram/horsepower-hour limits on NO<sub>x</sub> emissions from the engines, these limits do not actually limit short-term emissions. For one, Permits 18WE0233, 18WE0234, and 18WE236 require no periodic monitoring to assure

compliance with these limits on an hourly basis. More importantly, Condition 14 in Permits 18WE0233, 18WE0234, and 18WE236 is designated as “state-only enforceable,” meaning it cannot be relied upon to assure compliance with federally enforceable applicable requirements.

#### **E. The Administrator must object**

Title V permits must assure compliance with applicable requirements, including the requirements of the applicable implementation plan. *See* 42 U.S.C. § 7661c(a).

Here, the Division has not demonstrated that the underlying construction permits for the Equus Farms facility were approved in accordance with the Colorado SIP. Neither the Title V Permit or TRD demonstrate that approval of the underlying construction permits was based on an assessment of impacts to the NAAQS and a determination that the NAAQS, in particular the one-hour NO<sub>x</sub> NAAQS, would be protected. Accordingly, the Title V Permit fails to assure compliance with the Colorado SIP.


Pursuant to 42 U.S.C. § 7661(b)(2) and 40 C.F.R. § 70.8(d), the Administrator has a nondiscretionary duty to object to the issuance of the Title V Permit for the Equus Farms facility. The Administrator must object over the failure of the Division to assure that the Title V Permit complies with the SIP and that operation of the Equus Farms facility protects the NAAQS.

### **CONCLUSION**

EPA must object to the Title V Permit No. 200PWE423 for HighPoint Operating Corporation’s Equus Farms 4-62-28 NWNW oil and gas production facility. As this petition demonstrates, the Title V Permit fails to assure compliance with applicable requirements under the Clean Air Act and applicable requirements under Title V. The Permit lacks the monitoring and testing, as well as associated reporting and recordkeeping requirements necessary to assure compliance with its terms and conditions, or to enable detection and enforcement of permit violations. The Permit also fails to assure compliance with the Colorado SIP’s requirement that construction permits do not cause exceedances of the NAAQS. Accordingly, the Center requests that the Administrator object to the Title V Permit and require the Division to revise and reissue the Permit in a manner that complies with the requirements of the Clean Air Act.

DATED: April 1, 2024

Respectfully submitted,



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Jeremy Nichols  
Senior Advocate  
Environmental Health Program  
Center for Biological Diversity  
1536 Wynkoop St., Ste. 421  
Denver, CO 80202  
303-437-7663  
[jnichols@biologicaldiversity.org](mailto:jnichols@biologicaldiversity.org)

Ryan Maher  
Staff Attorney  
Environmental Health Program  
Center for Biological Diversity  
1411 K St. NW, Ste. 1300  
Washington, DC 20005  
781-325-6303  
[rmaher@biologicaldiversity.org](mailto:rmaher@biologicaldiversity.org)

Pursuant to 40 C.F.R. § 70.8(d), copies of this petition are being concurrently transmitted to the following parties:

KC Becker, Regional Administrator  
EPA Region 8  
1595 Wynkoop  
Denver, CO 80202  
[Becker.kc@epa.gov](mailto:Becker.kc@epa.gov)

Michael Ogletree, Director  
Colorado Air Pollution Control Division  
4300 Cherry Creek Drive South  
Denver, CO 80246  
[Michael.ogletree@state.co.us](mailto:Michael.ogletree@state.co.us)

HighPoint Operating Corporation  
555 17<sup>th</sup> St., Ste. 3700  
Denver, CO 80202

## LIST OF EXHIBITS

1. Colorado Department of Public Health and Environment, HighPoint Operating Corporation Anschutz Equus Farms 4-62-28 NWNW Title V Permit, Permit No. 20OPWE423 (Feb. 8, 2024).
2. Technical Review Document for Permit No. 20OPWE423 (Feb. 8, 2024)
3. U.S. EPA Inspector General, “Improving Air Quality: EPA Should Conduct More Oversight of Synthetic Minor-Source Permitting to Assure Permits Adhere to EPA Guidance,” Report No. 21-P-0175 (July 8, 2021)
4. Troutman Pepper Hamilton Sanders LLP, “Public Report of Independent Investigation of Alleged Non-enforcement of National Ambient Air Quality Standards by the Colorado Department of Public Health and Environment” (Sept. 22, 2021)
5. Center for Biological Diversity Comments on Draft Title V Permit (Aug. 16, 2023)
6. Colorado Air Pollution Control Division, “Response to Comments on Draft Operating Permit” (Dec. 18, 2023)
7. EPA, “EPA Region 8 Title V Operating Permit Public Petition Deadlines,” website available at [https://www.epa.gov/sites/default/files/2020-08/documents/title\\_v\\_operating\\_permit\\_public\\_petition\\_deadlines\\_-\\_region\\_8.pdf](https://www.epa.gov/sites/default/files/2020-08/documents/title_v_operating_permit_public_petition_deadlines_-_region_8.pdf) (last accessed April 1, 2024).
8. Division, *Stack Tests for Enclosed Combustion Devices* (Jan. 2022)
9. Division, “Stack Test Memo: Latham Compressor Station” (Oct. 19, 2020)
10. “Form 2, Notification of Failed ECD Performance Test, Wexpro Powder Wash Pad 4”
11. “Form 2, Notification of Failed ECD Performance Test, Laramie Energy East Plateau Compressor Station”
12. “Form 2, Notification of Failed ECD Performance Test, Wexpro East Hiawatha Compressor Station”
13. “Form 2, Notification of Failed ECD Performance Test, Kerr-McGee Oil and Gas Blue Chip 6-22HZ”
14. EPA, Region 8, Wyoming DEQ, *Measuring Enclosed Combustion Device Emissions Using Portable Analyzers*, at 9 (May 14, 2020)

15. Email from Christopher LaPlante, CDPHE, to Jennifer Mattox, CDPHE, et al., *Fwd: Measuring Enclosed Combustion Device Emissions Using Portable Analyzers – Results Phase 1*, at 1–2 (June 8, 2020)
16. Dr. Ranajit Sahu, *Technical Comments on the Proposed CDPHE Permit No. 20AD0062 for Haugen #1-30*
17. Division, Colorado Operating Permit, D90 Energy, LLC—Bighorn 0780 S17 CTB Facility, Permit No. 17OPJA401 (Jan. 1, 2020)
18. Division, “Oil and Gas Industry Enclosed Combustion Device Overall Control Efficiency Greater than 95%,” Permitting Section Memo 20-02 (Feb. 4, 2020)
19. AQCC Regulation No. 7
20. Division, “Construction Permit 19WE0170, Issuance 1, Rocky Mountain Midstream, LLC, Latham Compressor Station” (May 28, 2019)