

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

**IN THE MATTER OF**

**DCP MIDSTREAM, LP – PLATTEVILLE GAS PROCESSING PLANT**

**Renewal of the Title V Operating Permit  
and Part 70 Operating Permit Modification  
for the facility located at 13675 Weld County  
Road 34, Platteville, Colorado**

**Permit No. 02OPWE252**

**Issued by the Colorado Department of Public Health  
and Environment.**

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**PETITION REQUESTING THE ADMINISTRATOR TO OBJECT TO THE RENEWAL  
OF THE TITLE V OPERATING PERMIT AND PART 70 OPERATING PERMIT  
MODIFICATION FOR PERMIT NO. 02OPWE252 ISSUED TO DCP MIDSTREAM,  
LP – PLATTEVILLE GAS PROCESSING PLANT**

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Pursuant to section 505(b) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7661(b)(2) and 40 C.F.R. § 70.8(d), the Rocky Mountain Environmental Labor Coalition (“RMELC” or “Petitioner”) petitions the Administrator of the United States Environmental Protection Agency (“EPA” or “the Agency”) to object to the renewal of the Title V Operating Permit No. 02OPWE252 and related Part 70 Operating Permit Modification issued effective May 1, 2013, by the Colorado Department of Public Health and Environmental Quality, Air Quality Control Division (“CDPHE” or “the Department”) to DCP Midstream, LP (“DCP Midstream”), for the DCP Midstream – Platteville Gas Processing Plant facility (“DCP Midstream Platteville Gas Processing Plant”) located at 13675 Weld County Road 34, Platteville, Colorado.

Petitioner asks the Administrator to object to the renewal of the Title V Operating Permit and Part 70 Operating Permit Modification for the DCP Midstream Platteville Gas Processing Plant (“DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit”) because the Permit Record reflects that CDPHE failed to conduct a proper source determination for the DCP Midstream Platteville Gas Processing Plant in accordance with applicable federal regulations and guidance. As such, the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit fails to assure compliance with the applicable requirements under the CAA as well as the Colorado State Implementation Plan (the “SIP”) including compliance with the Prevention of Significant Deterioration (“PSD”) requirements.

Petitioner RMELC is a non-profit organization dedicated to the protection of the environment and worker interests in the Rocky Mountain Region, and its individual members including its members who work, reside, and recreate in the Platteville area and will be directly affected by decisions of CDPHE and EPA with regard to renewal of the Title V Operating Permit and Part 70 Operating Permit Modification for the DCP Midstream Platteville Gas Processing Plant. RMELC seeks to ensure that all applicable emission standards and limitations have been properly applied in the DCP Midstream Platteville Gas Processing Plant Title V Permit Renewal to protect public health and the environment in Colorado and ensure permitting consistency throughout Colorado and the United States. The objections raised in this Petition were raised with reasonable specificity in the RMELC’s oral and written comments on the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit or the grounds for the objection arose after the close of the public comment period.

## LEGAL FRAMEWORK

“The Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document.... Such applicable requirements include the requirement to obtain preconstruction permits that comply with applicable new source review requirements.” *In re: Monroe Elec. Generating Plant*, Petition No. VI-1999-02 at 2 (EPA Adm’r 1999). The Administrator, therefore, must determine whether an emission unit has gone through the proper NSR or PSD permitting process, complies with the Colorado SIP, and whether the Title V permit contains accurate “applicable requirements.” 40 C.F.R. § 70.2; *In re: Chevron Prod. Co., Richmond, Cal.*, Petition No. IX-2004-08 at 11-12 n.13 (EPA Adm’r 2005). If the Administrator objects to the Permit, “the Administrator shall modify, terminate, or revoke” the Permit. 42 U.S.C. § 7661d(b)(3).

The CAA requires the Administrator to issue an objection if Petitioner demonstrates that a permit is not in compliance with the requirements of the CAA. 42 U.S.C. § 7661d(b)(2). *See also* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group (NYPIRG) v. Whitman*, 321 F.3d 316, 333 n. 11 (2d Cir. 2003). When specifically reviewing a petition to object to a Title V permit that raises concerns about a State’s PSD permitting decision, EPA looks to see whether the petitioner has shown that the state agency failed to comply with its SIP-approved regulations governing PSD permitting or that state agency’s exercise of discretion under such regulations was unreasonable or arbitrary. *In re: American Electric Power Service Corp., Fulton, Ark.*, Petition No. VI-2008-01 at 3 (EPA Adm’r 2009).

Pursuant to 40 C.F.R. § 70.8(d), Petitioner shall base its Petition “only on objections to the permit that were 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.”

In the instant matter, the permit application, RMELC’s oral and written comments, CDPHE’s responses to those comments and other documents in the public record comprise the Permit Record for EPA’s review and form the basis of this Petition. RMELC’s objections, as discussed in greater detail below, were raised specifically in oral or written comments submitted during the public comment period, further elaborate on objections raised by public commenters, or in certain circumstances are based on grounds for objection that arose after the close of the public comment period per section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).

The Administrator must grant or deny this Petition within sixty days after it is filed. *Id.* If the Administrator determines that the Permit does not comply with the requirements of the CAA, or fails to include any “applicable requirement,” he or she must object to issuance of the permit. 42 U.S.C. § 7661d(b); 40 C.F.R. § 70.8(c)(1) (“The Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part.”). “Applicable requirements” include, *inter alia*, any provision of the Colorado SIP, including PSD requirements, any term or condition of any preconstruction permit, any standard or requirement under CAA §§ 111, 112, 114(a)(3), or 504, acid rain program requirements. 40 C.F.R. § 70.2; *In re: Monroe Electric Generating Plant*, Petition No. VI-1999-02 at 2 (EPA Adm’r 1999).

In addition, the Administrator has grounds to object to a proposed permit based on procedural flaws pursuant to 40 C.F.R. § 70.8(c)(3) even where the Administrator has not determined applicable requirements or requirements of Part 70 have been violated:

Failure of the permitting authority to do any of the following also shall constitute grounds for an objection:(i) Comply with

paragraphs (a) [requiring the Permitting Authority to transmit the proposed permit, the permit application, and other information needed to effectively review the proposed permit] or (b) [requiring the Permitting Authority to give notice of the proposed permit to any affected state] of this section; (ii) Submit any information necessary to review adequately the proposed permit; or (iii) Process the permit under the procedures approved to meet § 70.7(h) of this part [governing public participation] except for minor permit modifications.

## **PROCEDURAL BACKGROUND**

The Public Record reflects that the previous Title V Permit for the DCP Midstream Platteville Gas Processing Plant was issued on June 1, 2007, with an expiration date of June 1, 2012. DCP Midstream submitted a renewal application and a request for modification of the Title V Permit for the DCP Midstream Platteville Gas Processing Plant on May 26, 2011.<sup>1</sup> Since a timely and complete renewal application was submitted, under Colorado Regulation No. 3, Part C, Section IV.C, all of the terms and conditions of the existing permit did not expire until the renewal operating permit was issued.

By Public Notice dated July 17, 2012, CDPHE issued the draft renewal permit, requested public comment on the proposed draft renewal permit, and provided the public thirty days to submit comments and/or request a public comment hearing before the Colorado Air Quality Control Commission (“AQCC”).<sup>2</sup> RMELC filed its initial written comments and request for a

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<sup>1</sup> DCP Technical Review Document for Renewal of Operating Permit No. 02OPWE252, (hereinafter “Technical Review Document”), at 1 attached as Exhibit 1. The DCP Midstream Platteville Gas Processing Plant Title V Operating Permit Renewal Application in the Permit Record is not currently available on the CDPHE website. For background and overview, the cover letter from Wesley Hill (DCP Midstream) to Matt Burgett (CDPHE) for the DCP Midstream – Platteville Gas Processing Plant Title V Operating Permit Renewal Application and Appendix A (May 26, 2011) (hereinafter “DCP Midstream Title V Permit Renewal Application”) are attached as Exhibit 2.

<sup>2</sup> Notice of a Proposed Renewal Title V Operating Permit Warranting Public Comment published in *The Greeley Tribune* (July 17, 2012) (hereinafter “July 2012 Public Notice”) attached as Exhibit 3.

public comment hearing on August 16, 2012.<sup>3</sup> CDPHE re-issued the public notice for a public comment hearing and public comments on September 3, 2012.<sup>4</sup>

Subsequently, CDPHE provided notice of the public comment hearing on the draft renewal permit on September 11, 2012, and scheduled the public comment hearing before the AQCC for November 8, 2012.<sup>5</sup> In preparation for the public comment hearing, RMELC filed a Colorado Open Records Act (“CORA”) request to inspect and copy public records relating to the DCP Midstream Title V Permit renewal application on October 22, 2012, including, *inter alia*, the complete set of application documents and correspondence between CDPHE and DCP Midstream and other parties relating to the renewal application.<sup>6</sup>

At the AQCC Public Comment Hearing on November 8, 2012, RMELC presented oral comments and hand-delivered written comments that also were transmitted electronically to CDPHE.<sup>7</sup> The AQCC orally extended the public comment period to December 7, 2012, at the public comment hearing to allow for additional public comments in response to certain procedural deficiencies raised by RMELC at the public comment hearing.<sup>8</sup>

Before the close of the extended public comment period, RMELC submitted additional supplemental written public comments to CDPHE and the AQCC on December 7, 2012.<sup>9</sup> On

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<sup>3</sup> Letter from Joseph M. Santarella Jr. (Counsel for RMELC) to Bailey Kai Smith (CDPHE Operating Permit Engineer) (August 16, 2012) (hereinafter “RMELC’s Initial Written Comments and Request for Hearing”) attached as Exhibit 4.

<sup>4</sup> Re-Issued Notice of a Proposed Renewal Title V Operating Permit Warranting Public Comment published in *The Greeley Tribune* (September 3, 2012) (hereinafter “Re-Issued Public Notice”) attached as Exhibit 5.

<sup>5</sup> Notice of Public Comment Hearing before the Colorado Air Quality Control Commission (September 11, 2012) (hereinafter “Public Comment Hearing Notice”) attached as Exhibit 6.

<sup>6</sup> Letter from Joseph M. Santarella Jr. (Counsel for RMELC) to Alexandra S. Haas (CDPHE Records Management Manager) (October 22, 2012) (hereinafter “October 2012 CORA Request”) attached as Exhibit 7.

<sup>7</sup> Letter from Joseph M. Santarella Jr. (counsel for RMELC) to Michael Silverstein (AQCC Administrator) (November 8, 2012) (hereinafter “RMELC Written Comments”) attached as Exhibit 8.

<sup>8</sup> See *infra* at 12.

<sup>9</sup> Letter from Joseph M. Santarella Jr. (Counsel for RMELC) to Michael Silverstein (AQCC Administrator) (December 7, 2012) (hereinafter “RMELC Supplemental Comments”) attached as Exhibit 9.

that same day, DCP Midstream submitted public comments to CDPHE and the AQCC<sup>10</sup> via e-mail correspondence.<sup>11</sup>

On March 6, 2012, CDPHE provided RMELC with the Department's written response to RMELC public comments.<sup>12</sup> On that same date, CDPHE notified EPA of the issuance of CDPHE's proposed Title V renewal permit for the DCP Midstream Platteville Gas Processing Plant.<sup>13</sup>

RMELC filed a subsequent CORA Request relating to the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit on March 26, 2013.<sup>14</sup> Through CDPHE's response to the RMELC's March 2013 CORA Request postmarked April 8, 2013, RMELC first learned that (i) CDPHE contacted DCP Midstream on November 9, 2012, requesting additional information "to address source determination concerns" based on comments received from RMELC,<sup>15</sup> and (ii) DCP Midstream submitted public comments relating to DCP Midstream Platteville Gas Processing Plant source determination matters on December 7, 2012.

### **THE PETITION IS TIMELY**

RMELC's Petition is timely since Petitioner is filing this Petition with EPA within 60 days following the end of EPA's 45-day review period as required by the CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2). EPA received CDPHE's proposed DCP Midstream Platteville Gas

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<sup>10</sup> Letter from Brian Taylor (DCP Midstream LP) to Bailey Kai Smith (CDPHE Operating Permit Engineer) (December 7, 2012) (hereinafter "DCP Public Comments on Draft Title V Permit") attached as Exhibit 10.

<sup>11</sup> E-mail Correspondence from Brian Taylor (DCP Midstream LP) to Bailey Kai Smith (CDPHE Operating Permit Engineer) (December 7, 2012) attached as Exhibit 11.

<sup>12</sup> Letter from Bailey Kai Smith (CDPHE Operating Permit Engineer) to Joseph M. Santerella (sic) Jr. and Susan J. Eckert (Counsel for RMELC) (March 6, 2012) (sic) (hereinafter "CDPHE Response to RMELC Comments") attached as Exhibit 12.

<sup>13</sup> E-mail from Bailey Kai Smith (CDPHE Operating Permit Engineer) to Donald Law (EPA Region VIII) (March 6, 2013) (hereinafter "EPA Notification of Proposed Permit") attached as Exhibit 13.

<sup>14</sup> Letter from Joseph M. Santarella Jr. (Counsel for RMELC) to Alexandra S. Haas (CDPHE Records Management Manager) (March 26, 2013) (hereinafter "March 2013 CORA Request") attached as Exhibit 14.

<sup>15</sup> E-mail from Bailey Kai Smith (CDPHE Operating Permit Engineer) to Brian Taylor (DCP Midstream, LP) (November 9, 2012) (hereinafter "CDPHE/DCP E-mail Correspondence/Informal Information Request") attached as Exhibit 15.

Processing Plant Title V Renewal Permit on March 6, 2013, with the 45-day review period closing on April 21, 2013. *See* Exhibit 13. The deadline to file a timely petition with the Administrator relating to the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit, therefore, is 60 days from April 21, 2013, or June 20, 2013.

## **INTRODUCTION**

The DCP Midstream Platteville Gas Processing Plant is a natural gas processing plant designed to extract natural gas liquids (“NGLs”) from field-produced natural gas and recompress the processed gas prior to transmission to the sales pipeline. According to the CDPHE Technical Review Document for the DCP Midstream Platteville Gas Processing Plant Title V Permit Renewal:

Field gas is first charged to a separator where liquids, such as water and condensate formed during transport to the plant, are separated from the gas stream. The liquids are stored in two pressurized condensate tanks until transported from the plant by truck. Any vapors from the gas stream discharged from the separator is compressed to approximately 900 psig and sent to the processing skid.

The gas stream fed to the processing skid is chilled by a propane refrigeration system to separate the natural gas liquids (NGL) from the gas stream. The NGL liquids are heated in a stabilizer vessel to remove the lighter hydrocarbons. The hydrocarbon vapors and the vapors from the inlet separator are compressed and sent to the NGL separator or to either the inlet or discharge gas lines. Moisture contained in the gas stream is absorbed by ethylene glycol. The moisture laden glycol is regenerated in a reboiler. The absorbed water volatilizes and is discharged to the atmosphere. The glycol solution is recirculated to remove additional moisture from the gas stream. Natural gas liquids are stored in three pressurized tanks, pending removal from the plant by pipeline. The compressed gas is transported off-site via truck or pipeline. During a plant turn-around or in case of emergency, the facility can be blown down to the flare.

The process uses six (6) compressors powered by 1680 HP natural gas fired reciprocating internal combustion (IC) engines. Two (2)



1400 HP natural gas fired IC engines are used for compressing propane for the refrigerant for the processing skid. One (1) 1478 HP natural gas fired IC engine is used for compression of stabilizer overheads.

The plant is located near Platteville in Weld County, Colorado. This facility is located in an Area classified as attainment for all pollutants except ozone. It is classified as nonattainment for ozone and is part of the 8-hr Ozone Control Area as defined in Regulation No. 7, Section II.A.1.<sup>16</sup>

According to the Technical Review Document, the primary pollutants of concern from the DCP Midstream Platteville Gas Processing Plant include volatile organic compounds or “VOCs,” nitrogen oxides (“NO<sub>x</sub>”), and carbon monoxide (“CO”). The Technical Review Document further states that uncontrolled hazardous air pollutants (“HAPs”) at the DCP Midstream Platteville Gas Processing Plant are below major source levels and the DCP Midstream Facility is considered a true minor source for HAPs. The Technical Review Document reports that the DCP Midstream Platteville Gas Processing Plant potential to emit (“PTE”) for NO<sub>x</sub> is 267.8 tons per year (“tpy”), VOCs is 152.8 tpy, CO is 267.2 tpy, and HAPs is 5.8 tpy.<sup>17</sup>

VOC and NO<sub>x</sub> pollution from the DCP Midstream Platteville Gas Processing Plant is of particular concern because these pollutants react with sunlight to form ozone, the key ingredient of smog. The Denver metro area, including most of Weld County, is currently in violation of National Ambient Air Quality Standards (“NAAQS”) for ozone.<sup>18</sup> According to the Technical Review Document, the DCP Midstream Platteville Gas Processing Plant is a major source of air pollution since the NO<sub>x</sub> PTE is greater than

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<sup>16</sup> Exhibit 1 at 1-2.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> See <http://www.colorado.gov/cs/Satellite/CDPHE-AP/CBON/1251594862560>.

250 tpy and is a non-attainment new source review (“NANSR”) major stationary source with a PTE greater than 100 tpy for VOCs and NO<sub>x</sub>.<sup>19</sup>

The Technical Review Document notes that future modifications at the DCP Midstream Platteville Gas Processing Plant resulting in a significant net emissions increase for VOCs or NO<sub>x</sub> or a modification which is major by itself may result in the application of the NANSR review requirements.<sup>20</sup> In addition, any modification of the facility that leads to a significant increase in NO<sub>x</sub>, VOCs and/or CO may result in the application of PSD review requirements under 40 C.F.R. § 51.166 and the Colorado SIP and/or NANSR requirements under 40 C.F.R. § 51.165 and the Colorado SIP.

Aggregating emissions from adjacent and interrelated DCP Midstream Gas Processing Plants and Compressor Stations as advocated by RMELC would result in the source being listed as a major source under other pollutants in the NSR permit process with permitting implications for the DCP Midstream Platteville Gas Processing Plant Expansion 2 Application dated October 25, 2012.<sup>21</sup>

As is set forth in detail below, the CAA, as well as the SIP, require the CDPHE to conduct a source determination in accordance with federal regulations and guidance to aggregate adjacent and interrelated natural gas processing facilities, compressor stations, and other related equipment with the DCP Midstream Platteville Gas Processing Plant as a single source.

RMELC’s Petition is based on objections to the DCP Midstream Platteville Gas Processing Plant

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<sup>19</sup> Exhibit 1 at 2.

<sup>20</sup> *Id.*

<sup>21</sup> See Letter from Wesley Hill (DCP Midstream) to CDPHE (Re: Application for Construction Permit DCP Midstream, LP - Platteville Natural Gas Processing Plant Platteville 2 Expansion Project Weld County, Colorado) (October 25, 2012) attached as Exhibit 16, a copy of which was provided to RMELC counsel by CDPHE after the close of the public comment period on May 10, 2013, on a CD per e-mail correspondence between Alexandra Haas (CPDHE-APCD Records Manager) and Joseph M. Santarella Jr. (RMELC Counsel) (May 9, 2013) attached as Exhibit 17.

Title V Renewal Permit related to the source determination issues that were raised with reasonable specificity during the public comment period before the CDPHE. RMELC submitted oral and written public comments on November 8, 2012, and additional supplemental written comments on December 7, 2012. Finally, RMELC provides further support for its objections based on documents that were generated after the close of the public comment period<sup>22</sup> or were not known or made available to RMELC until after the close of the public comment period.<sup>23</sup>

The Permit Record reflects that at the public comment hearing on November 8, 2012, RMELC presented evidence that the DCP Midstream Platteville Gas Processing Plant is part of a large network of seven DCP Midstream owned natural gas processing facilities and thirteen compressor stations located within a radius of twenty miles in Weld County.<sup>24</sup> As noted in RMELC's Supplemental Comments, the DCP Midstream compressor stations are located in close proximity to specific gas processing plants dedicated to transporting product throughout this interdependent operation.<sup>25</sup>

The Permit Record reflects that DCP Midstream, as a midstream operator, provides a gathering pipeline network for exploration and production operations customers who drill wells and produce natural gas from the Wattenberg natural gas field. As such, all of DCP Midstream facilities in Weld County collect, process, store and pipe natural gas from the same source – the Wattenberg Field. All of the products that DCP Midstream produces are then injected into the same system of interconnected natural gas and NGL pipelines. DCP Midstream is in the midst of creating a self-described “super system” in Weld County of a broad network of gathering and

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<sup>22</sup> Exhibit 12.

<sup>23</sup> Exhibits 10, 15 and 16.

<sup>24</sup> Exhibit 8 at 10-19.

<sup>25</sup> Exhibit 12 at 3.

processing facilities that afford significant optionality and flexibility enabling DCP Midstream to optimize its processing capacity for its customers.<sup>26</sup>

The Permit Record also reflects that RMELC presented evidence and raised arguments during the public comment period that CDPHE failed to meet all conditions for renewal of the DCP Midstream Platteville Gas Processing Plant Title V Operating Permit. First, RMELC raised many procedural deficiencies associated with the renewal of the DCP Midstream Title V Operating Permit for the Platteville Gas Processing Plant. Specifically, CDPHE failed to provide notice to the affected states about the renewal of the Title V Operating Permit in accordance with 40 C.F.R. § 70.8(b).<sup>27</sup> In addition, CDPHE failed to meet other public participation requirements for a public comment hearing including failure to post notice of the public comment hearing, the preliminary analysis, and the draft DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit on the CDPHE website.<sup>28</sup>

Moreover, within oral and written comments presented to CDPHE on November 9, 2012, RMELC specifically asserted that (i) CDPHE lacked sufficient information to determine whether the DCP Midstream Platteville Gas Processing Plant and the other DCP Midstream facilities in Weld County including the gas processing plants and compressor stations should be aggregated as a single source under the CAA, and (ii) CDPHE failed to conduct a proper single source determination utilizing the three-prong test under 40 C.F.R. § 52.21(b)(5) and (6).<sup>29</sup> RMELC established that (i) DCP Midstream's emission units – gas processing plants and compressor stations – in Weld County were under the control of the same person,<sup>30</sup> (ii) the gas processing

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<sup>26</sup> Exhibit 8 at 18-19.

<sup>27</sup> *Id.* at 2-3.

<sup>28</sup> *Id.* at 3-4.

<sup>29</sup> *Id.* at 4-8.

<sup>30</sup> CDPHE concedes in CDPHE's Response to RMELC Comments at 22 (Exhibit 12) that the DCP Midstream gas processing plants and compressor stations are under common control satisfying the first prong of the three factor test for source determinations:

facilities belong to the same industrial grouping and the DCP Midstream compressor stations support the operation of the DCP Midstream gas processing plants,<sup>31</sup> and (iii) DCP Midstream's emission units are located on one or more adjacent properties.<sup>32</sup> Specifically, RMELC submitted evidence demonstrating that the DCP Midstream emission units in Weld County serving the Wattenberg gas field are functionally interrelated and therefore the emissions from these DCP Midstream gas processing plants and compressor stations should be aggregated as a single source.<sup>33</sup> Finally, RMELC expressed concerns that the DCP Midstream Platteville Gas Processing Plant emissions were inadequately characterized and underestimated by DCP Midstream in its application and in CDPHE's draft permit and technical analysis.<sup>34</sup>

In RMELC's Supplemental Comments, RMELC presented alternative arguments in support of RMELC's assertion that the DCP Midstream Platteville Gas Processing Plant emissions should be aggregated with other DCP Midstream emission units in Weld County and that CDPHE's source determination lacked adequate factual basis and legal analysis. In the RMELC Supplemental Comments, RMELC asserted, in the alternative, that at a minimum the emissions from the functionally interdependent and tightly clustered DCP Midstream processing plants and their interrelated Weld County compressor stations should be aggregated as a single

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**[T]he Division acknowledges that the natural gas compressor stations and processing facilities wholly owned and operated by DCP are the only entities which satisfy the "common control" component of the three-part test.** (Emphasis supplied.).

<sup>31</sup> CDPHE also concedes in CDPHE's Response to RMELC Comments at 21 (Exhibit 12) that the DCP Midstream gas processing plants and compressor stations are in the single major industrial grouping:

Under the Regulation No. 3 definition, facilities that belong to the same major group (i.e., have the same initial two-digit code, "13") as described in the 1987 SIC Manual, are considered to belong to the same industrial grouping.

**Therefore, the first requirement of the three-part test for the Platteville Gas Processing Plant is met for any upstream compressor station, gas processing plant, or well operation.** (Emphasis supplied.).

<sup>32</sup> Exhibit 8 at 8-10.

<sup>33</sup> *Id.* at 13-20.

<sup>34</sup> *Id.* at 21-23.

source given that the DCP Midstream facilities are located near specific gas processing plants dedicated to transporting product into and out of the DCP Midstream gas processing plants thereby establishing functional interrelatedness.<sup>35</sup>

Finally, RMELC asserts that DCP Midstream's Public Comments on the Title V Permit provide further evidence that the DCP Midstream gas processing plants and compressor stations in Weld County are functionally interrelated:

In light of new horizontal drilling technologies being employed by producers in the D-J Basin , which is substantially increasing gas volumes generated as compared to traditional drilling methods, DCP's gathering systems are presently operating at or near capacity (i.e., around 450 million scf/d ). Since gas flows from high pressure to low pressure, high gathering line pressures preclude low pressure wells from producing. DCP is therefore continually seeking to maintain low gathering pressures so as to maximize production from both lower pressure and higher pressure wells. DCP manages this cyclic process by maintaining the operational capacity of its existing facilities (like Platteville) and by adding new gas gathering and processing capacity in a producing basin, which serves to lower pressures and allows all wells, including marginally producing wells, to continue to produce. As additional production comes on, pressures will, again, start to climb. As pressures climb, more marginal wells will again drop off and stronger wells will stay on, thus forcing DCP to take steps to optimize gas gathering pressure differentials. The cycle is inherent to the physical dynamics of natural gas production, gathering and processing and it is why gas collected by DCP from any given producer cannot be dedicated to any single, specific DCP facility and why any given DCP compressor station or gas plant can be operated without the dedicated, direct support of the other.<sup>36</sup>

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<sup>35</sup> Exhibit 12 at 2-6.

<sup>36</sup> Exhibit 10 at 3.

## GROUNDS FOR OBJECTION

### I. THE TITLE V PERMIT FAILS TO ENSURE COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS

A Title V Permit is required to include emission standards and limitations that assure compliance with all applicable requirements at the time of permit issuance. *See* 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(1). Applicable requirements include, *inter alia*, New Source Review or “NSR” requirements including PSD requirements set forth at Title I of the CAA, federal regulations set forth at 40 C.F.R. § 51.166, and the Colorado SIP at AQCC Regulation No. 3. *See* 40 C.F.R. § 70.2. If a source will not be in compliance with an applicable requirement, including PSD, at the time of permit issuance, the applicant must disclose the violation(s) and submit a compliance plan describing how the source comply with all applicable requirements with a compliance schedule for bringing the source into compliance. *See* 42 U.S.C. § 7661b(b); 40 C.F.R. § 70.6(b)(3).

PSD requirements apply to the construction of major sources and major modifications of major sources of air pollution in areas designated as attainment. *See* 42 U.S.C. § 7475; 40 C.F.R. § 51.166(a)(7). In the instant circumstance, the proposed DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit fails to assure compliance with PSD requirements under the CAA because CDPHE did not conduct an appropriate source determination. As a result, CDPHE failed to consider emissions from adjacent and interrelated pollutant emitting activities in accordance with applicable federal regulations and guidance. As such, the Permit Record reflects that CDPHE failed to provide an adequate basis for its source determination for the DCP Midstream Platteville Gas Processing Plant.

As was the case where EPA granted an objection to a Title V permit *In re: Kerr-McGee/Anadarko Petroleum Corporation*, Petition No. VIII-2008-2, (EPA Adm’r 2009)

(hereinafter “*Kerr-McGee/Anadarko Order 2*”),<sup>37</sup> the Permit Record does not supply the public with sufficient information to understand why, or why not, additional sources of emissions should or should not be included in the source determination for the DCP Midstream Platteville Gas Processing Plant. Accordingly, RMELC respectfully requests that EPA (i) object to DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit, (ii) direct CDPHE to establish a more thorough permit record with a source determination conducted in accordance with applicable federal regulations and guidance and make any appropriate changes to the permit based on proper aggregation of all adjacent and interrelated pollutant emitting activities owned and operated by DCP Midstream in Weld County.

#### **A. Permit Record is Insufficient**

The Permit Record reflects that at the time of the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit Public Hearing held on November 8, 2012, CDPHE had conducted a limited source determination analysis:

As you discuss, oil and gas operations in Colorado are rapidly expanding. This expansion creates a great burden on the Division’s permitting program and resources must be allocated efficiently to meet the increase in demand for permits. As such, the Division conducts a source determination analysis at the time of initial permitting of a facility, when new equipment is added to the facility, or on an as-needed bases, such as if the inspection of a source identifies equipment that may be improperly permitted. In the case of innocuous operating permit renewals in which no new equipment is being permitted, the Division does not typically consider it an appropriate time to conduct a lengthy and involved detailed analysis reevaluating previously, at times very recently, made Division determinations. Accordingly, **for the Platteville renewal the Division relied upon the previous determination made for the facility and a brief questionnaire, which was**

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<sup>37</sup> See also *In re: Williams Four Corners, LLC Sims Mesa CDP Compressor Station*, Petition No. VI-2011- (EPA Adm’r 2011) (“After a review of Petitioners’ claims, and the permit record, including NMED’s explanation of its common control decision in the RTC, I grant the Petitioners’ request for an objection, because NMED’s record, including the RTC, fails to provide an adequate basis and rationale for NMED’s determination of the source for title V purposes and PSD review.”).



**included in the public records provided to the commenter, requesting the source to identify equipment that may warrant further analysis.** (Emphasis supplied).<sup>38</sup>

As a threshold matter, CDPHE's Response to RMELC Comments does not cite to any legal authority granting Department dispensation from assuring that the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit include emission standards and limitations that assure compliance with all applicable requirements at the time of permit issuance based on increased demand for permits or for renewal permits. CAA Title V permit program requirements are not an unfunded mandate; rather, CDPHE has a fundamental obligation under CAA § 502(b)(3)(a)(i) to ensure that annual fees paid by permittees is "sufficient to cover all reasonable costs (direct and indirect) costs required to develop and administer the permit program requirements ... including the reasonable costs of ... reviewing and acting upon any application for such a permit." *See also* 40 C.F.R. § 70.9. In short, increased demand is not a proper justification for failing to conduct a proper source determination for a Title V permit under any circumstance and certainly was not appropriate during CDPHE's consideration of the DCP Midstream Platteville Gas Processing Plant Title V Operating Permit renewal application in the instant circumstance.

First of all, CDPHE does not appear to have cited to or made available to the public any prior source determinations conducted by CDPHE for the DCP Midstream Platteville Gas Processing Plant and therefore reliance on any prior source determination is misplaced since any such prior source determinations are not part of the Permit Record.

Second, contrary to CDPHE's asserted rationale quoted above, the DCP Midstream Platteville Gas Processing Plant Title V Operating Permit renewal application involved

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<sup>38</sup> Exhibit 12.

modifications in which new equipment was being permitted (i.e., new engine C-180 permitted under Colorado Construction Permit 07WE0993).<sup>39</sup>

Third, the prior source determination for the DCP Midstream Platteville Gas Processing Plant Title V Permit apparently was undertaken pursuant to the guidance document issued by Acting Assistant Administrator William Wehrum entitled “Source Determinations for Oil and Gas Industries” (January 12, 2007) that was withdrawn by EPA on September 22, 2009,<sup>40</sup> based on the timing of the issuance of the prior Title V Permit for the DCP Midstream Platteville Gas Processing Plant (June 1, 2007). *In re: Kerr-McGee Gathering, LLC Frederick Compressor Station*, Petition No. VIII-2007- (EPA Adm’r 2008) indicates that CDPHE, at the time of the Title V Permit for the DCP Midstream Platteville Gas Processing Plant was issued, had adopted and was applying the flawed Wehrum Memorandum approach – which sought to simplify the source determinations within the oil and gas industries and overemphasized proximity as a criteria –when conducting Wattenberg gas field source determinations.<sup>41</sup>

Finally, CDPHE’s source determination for the DCP Midstream Platteville Gas Processing Plant reliance on the applicant’s response to the CDPHE Oil & Gas Industry Stationary Source Determination – Information Request that CDPHE refers to as the “brief questionnaire”<sup>42</sup> is misplaced: (i) the CDPHE brief questionnaire inappropriately limited the inquiry to the pollutant emitting activities identified in question 2 that are “dependent upon” the primary stationary source being reported in order to maintain operations at the identified

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<sup>39</sup> Exhibit 1 at 5.

<sup>40</sup> Memorandum from Gina McCarthy (EPA Assistant Administrator, Office of Air and Radiation) to Regional Administrators) “Withdrawal of Source Determinations for Oil and Gas Industries” (September 22, 2009) (hereinafter “the McCarthy Memorandum”) (<http://www.epa.gov/region07/air/nsr/nsrmemos/oilgaswithdrawal.pdf>); see also <http://www.epa.gov/region7/air/nsr/nsrmemos/oilgas.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> CDPHE Oil & Gas Industry Stationary Source Determination – Information Request (DCP Midstream Platteville Gas Processing Plant) attached as Exhibit 18.

emissions source rather than inquiring about the functional interrelationship of the DCP Midstream emission units, and (ii) the CDPHE questionnaire inquires about potentially adjacent stationary sources without defining adjacency or making clear that application of a bright line test based solely on proximity is inappropriate.<sup>43</sup> As a result, DCP Midstream did not identify any potentially adjacent emission units despite the fact that DCP Midstream owns and operates seven gas processing plants and 13 compressor stations within Weld County all serving the Wattenberg gas field.<sup>44</sup>

Accordingly, the Department's limited source determination review which relied upon the prior source determination and the "brief questionnaire" completed by the applicant for the DCP Midstream Platteville Gas Processing Plant was inadequate as reflected by the Permit Record.

### **1. CDPHE Failed to Obtain Information Requested from DCP Midstream to Address Source Determination Concerns**

On November 9, 2012, the day after the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit Public Hearing when RMELC presented oral and written comments objecting that the draft Title V permit failed to include all applicable standards and limitations including, *inter alia*, PSD requirements due to the failure of CDPHE to aggregate emissions from

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<sup>43</sup> See, e.g., *In re: Williams Four Corners, LLC Sims Mesa CDP Compressor Station*, Petition No. VI-2011- (EPA Adm'r 2011):

In light of the statements relied upon in the RTC, I find that the present permit record does not supply EPA or the public with sufficient information to understand whether additional emissions sources should, or should not, be included in the stationary source in this permit. It appears that NMED relied on Williams' representations in the February 26 and March to communications in making its common control determination, but those representations included potentially conflicting information and raised additional questions that NMED did not address or resolve.

<sup>44</sup> See *infra* at 22, fn. 51. DCP Midstream's Public Comments on the Title V Permit at 3 reveals that no potentially adjacent emission units were identified by DCP Midstream in the brief questionnaire because DCP Midstream applied a bright line 3 mile radius test effectively excluding all DCP Midstream emission units from consideration as a single source solely based on proximity in contravention of EPA regulations and guidance.

adjacent and interrelated pollutant emitting activities owned and operated by DCP Midstream,<sup>45</sup> the CDPHE Permit Engineer requested additional information from DCP Midstream “to address source determination concerns” in response to RMELC comments.<sup>46</sup>

Apparently taking a cue from EPA’s recommendation set forth in in *Kerr-McGee/Anadarko Order 2* that identified information necessary to conduct a thorough source determination analysis of potentially adjacent and interrelated pollutant emitting activities owned and operated by a company in the Wattenberg gas field,<sup>47</sup> CDPHE specifically requested the following information from DCP Midstream:

- A map of all DCP assets in the Wattenberg field.
- An explanation of the operational relationship between the Platteville processing plant and other DCP facilities. Include discussion about all other DCP owned facilities, including compressor stations and processing plants, even ones you may feel are unrelated or irrelevant. Detail

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<sup>45</sup> Exhibit 8 at 4-8.

<sup>46</sup> Exhibit 15.

<sup>47</sup> See *McGee/Anadarko Order 2* at 8:

In order to do a thorough analysis, I recommend that CDPHE evaluate KerrMcGee's complete system map showing all emission sources owned or operated by the Company in the Wattenberg gas field (located primarily in Weld County, Colorado) and determine whether the various pollution emitting activities are contiguous or adjacent to, and under common control with, the Frederick Compressor Station.... I also recommend that CDPHE obtain from Kerr-McGeel Anadarko a flow diagram showing the movement of gas from the well sites to the various facilities in the Wattenberg field operated by both Kerr-McGee/Anadarko and other companies in the field, so that CDPHE may determine the nature of the sources' emissions and determine whether or not the process units associated with those emission sources are interdependent on the operation of the Frederick Compressor Station. Finally, I recommend that CDPHE obtain from Kerr-McGee/Anadarko business information regarding the nature of control of the Frederick Station and nearby wells between the Company and other companies in the field to determine whether various pollution emitting activity should be considered under common control for purposes of making the source determination.

pipelines, possible flow directions, by-pass valves, and tie-ins between the facilities or to other entities.

- A pipeline flow diagram, if available. An electronic copy would be ideal as well as a printed copy... preferably on a very large piece of paper.
- A brief explanation the contractual agreements between E&P companies and DCP. Detailed discussion is not warranted at this time.<sup>48</sup>

The Permit Record reflects that the only written communication from DCP Midstream after the CDPHE/DCP E-mail Correspondence/Informal Information Request was submitted to CDPHE were public comments<sup>49</sup> attached to e-mail correspondence dated December 7, 2012.<sup>50</sup> The DCP Midstream Public Comment on Draft Title V Permit, however, is an advocacy document arguing against aggregating DCP Midstream sources in Weld County rather than a factual response to the CDPHE/DCP Midstream E-mail Correspondence/Informal Information Request.

Consequently, the DCP Midstream Public Comment on Draft Title V Permit includes only a general discussion of the operational relationship between the Platteville Gas Processing Plant and other DCP facilities in Weld County. Moreover, conspicuously absent from the DCP Midstream Public Comment on Draft Title V Permit and the Permit Record is the factual information requested in the CDPHE/DCP Midstream E-mail Correspondence/Informal Information Request including (i) a map of all DCP assets in the Wattenberg field, (ii) specific

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<sup>48</sup> *Id.*

<sup>49</sup> Exhibit 10.

<sup>50</sup> Exhibit 11.

discussion about any other DCP owned facilities, including compressor stations and processing plants that detail pipelines, possible flow directions, by-pass valves, and tie-ins between the facilities or to other entities or (iii) a pipeline flow diagram.

Moreover, ignoring CDPHE's request that DCP Midstream "[i]nclude discussion about all other DCP owned facilities, including compressor stations and processing plants, even ones you may feel are unrelated or irrelevant," DCP Midstream excluded consideration of any other DCP Midstream facilities including compressor stations and other processing plants and unilaterally applied a *de facto* three mile radius as a specific physical distance limiting identification of any adjacent emission activities or sources<sup>51</sup> in direct contravention of the Memorandum from Gina McCarthy (EPA Assistant Administrator, Office of Air and Radiation) to Regional Administrators) "Withdrawal of Source Determinations for Oil and Gas Industries" (September 22, 2009) (hereinafter "the McCarthy Memorandum")<sup>52</sup> and other EPA guidance that reinforce the importance of conducting a case-by-case analysis that considers all three factors in making a source determination and rejects determinations made solely based on a bright line proximity test.

As stated in the McCarthy Memorandum at 2:

**[W]hether or not a permitting authority should aggregate two or more pollutant-emitting activities into a single major stationary source for purposes of NSR and Title V remains a case-by-case decision** in which permitting authorities retain the discretion to consider the factors relevant to the specific circumstances of the permitted activities. **After conducting the necessary analysis, it may be that, in some cases, "proximity" may serve as the overwhelming factor in a permitting authority's source determination decision. However, such a conclusion can only be justified through reasoned decision**

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<sup>51</sup> *Id.* at 6 ("DCP voluntarily chose to review the existence of commonly owned sources within a three (3) mile radius of Platteville, which is twelve (12) times further than the ¼ mile threshold").

<sup>52</sup> <http://www.epa.gov/region07/air/nsr/nsrmemos/oilgaswithdrawal.pdf>.

**making after examining whether other factors are relevant to the analysis.** (Emphasis supplied).

Notwithstanding the decision in *Summit Petroleum Corp. v. United States Environmental Protection Agency*, 690 F.3d 733 (6<sup>th</sup> Cir. 2012), the Memorandum from Stephen D. Page (EPA, Director of the Office of Air Quality Planning and Standards) to Regional Air Division Directors, Regions 1-10 (December 21, 2012)<sup>53</sup> reinforces that outside of the Sixth Circuit including the State of Colorado EPA's longstanding practice of considering interrelatedness in making source determinations as discussed in the McCarthy Memorandum is still in effect:

In permitting actions occurring outside of the 6<sup>th</sup> Circuit, the **EPA will continue to make source determinations on a case-by-case basis using the three factor test** in the NSR and title V regulations at 40 CFR 52.21(b)(6) and 71.2, respectively, **and consistent with more than three decades of EPA applicability determinations and guidance letters regarding application of those criteria, which have considered both proximity and interrelatedness in determining whether emission units are adjacent.** (Emphasis supplied).<sup>54</sup>

- 2. CDPHE reliance on DCP Midstream Public Comment on Draft Title V Permit where the applicant failed to provide requested factual information and unilaterally applied a specific physical distance beyond which emissions activities would be considered separate sources is arbitrary and capricious or otherwise not in accordance with the law**
  - a. CDPHE's failure to obtain factual information requested from DCP Midstream renders the Permit Record incomplete and CDPHE's issuance of DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit arbitrary and capricious or otherwise not in accordance with the law**

The Permit Record reflects that CDPHE apparently did not follow up the CDPHE/DCP Midstream E-mail Correspondence/Informal Information Request with a formal information request or obtain by other means the factual information requested from DCP Midstream relating

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<sup>53</sup> <http://epa.gov/nsr/documents/SummitDecision.pdf>.

<sup>54</sup> *Id.* at 1-2.

to gas processing plants and compressor stations serving the Wattenberg gas field prior to finalizing its source determination and responding to RMELC's written comments on March 6, 2013. Apparently, upon receipt of RMELC's comments, CDPHE concluded that certain information was necessary to "address source determination concerns" relating to the permitting of the DCP Midstream Platteville Gas Processing Plant but then CDPHE proceeded to make a final source determination for this source without obtaining or reviewing the factual information requested from DCP Midstream (and recommended by EPA in *Kerr-McGee/Anadarko Order 2*) despite CDPHE's clear authority to request this or any other information deemed relevant by CDPHE.<sup>55</sup> Under the circumstances, the Permit Record for the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit is incomplete and CDPHE's source determination for the DCP Midstream Platteville Gas Processing Plant is arbitrary and capricious or otherwise not in accordance with the law.

**b. Application of a specific physical distance beyond which emissions activities would be considered separate sources is inconsistent with federal regulations and guidance**

Moreover, CDPHE's reliance on DCP Midstream responses that rigidly applied a three mile radius as a bright line test in identifying potential adjacent and interrelated pollutant emitting activities owned and operated by DCP Midstream is inconsistent with federal regulations and guidance that reject proximity as a sole criteria and application of a specific physical distance beyond which emissions activities would be considered separate sources. The Agency's long-standing position regarding source determinations under PSD and Title V was recently articulated in the United States' Brief filed in *Summit Petroleum Corp. v. EPA* before

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<sup>55</sup> *Kerr-McGee/Anadarko Order 2* at 8 ("CDPHE has authority to require additional information from the applicant. See 5 CCR 1001-5 Reg. No.3, Part C, IV.B.1 ('Nothing herein precludes the Division from requesting further information about the source in order to process the permit application.')).



the Sixth Circuit in which EPA reinforces that application of a specific physical distance beyond which emissions activities would be considered separate sources is inconsistent with federal regulations and guidance:

As provided for by Title V and EPA's corresponding implementing regulation, EPA may conclude, based on the specific facts under consideration, that a group of stationary sources constitute the relevant "source" for Title V permitting purposes, and take into consideration emissions activities from that group of sources in determining whether that source is major. 40 C.F.R. § 71.2. EPA considers three regulatory criteria in analyzing whether a group of emissions activities constitute a single source for permitting purposes: (1) whether the activities are under the common control of the same person (or persons under common control); (2) whether the activities are located on one or more contiguous or adjacent properties; and (3) whether the activities belong to a single major industrial grouping. 3 40 C.F.R. § 71.2. The terms "common control," "contiguous," and "adjacent" are not defined within the regulation.

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The current regulatory definition of a "stationary source" applicable in the NSR and PSD programs was promulgated in 1980, following the D.C. Circuit's decision in *Alabama Power v. Costle*, 636 F.2d 323 (1979), which rejected EPA's prior definition of a stationary source. In the preamble to the 1980 final rules, EPA explained: the December opinion of the court in *Alabama Power* sets the following boundaries on the definition for PSD purposes of the component terms of "source": (1) it must carry out reasonably the purposes of PSD; (2) it must approximate a common sense notion of a "plant;" (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation." 45 Fed. Reg. 52,676, 52,694-95 (Aug. 7, 1980).

**Consistent with that understanding, EPA rejected the proposed definition that used the concepts of proximity and control as the sole criteria for aggregating pollutant-emitting activities**, concluding that the "definition would fail to approximate a common sense notion of 'plant,' since in a significant number of cases it would group activities that ordinarily would be regarded as separate." 45 Fed. Reg. at 52,695/1. To remedy that concern, EPA incorporated an additional criterion based on a Standard Industrial Classification (SIC) code in order to distinguish among activities on the basis of their functional

interrelationships. *Id.* The categorical groupings provided in the SIC code were considered narrow enough to distinguish separate sets of emissions activities into common sense groupings; at the same time the categories were broad enough to “minimize the likelihood of artificially dividing a set of activities that does constitute a ‘plant’ into more than one group.” *Id.* **EPA recognized that case-specific analysis would be necessary to determine whether certain pollutant emitting activities met the common sense notion of a plant. Accordingly, EPA expressly declined to adopt a specific physical distance beyond which emissions activities would be considered separate sources.** 45 Fed. Reg. at 52,695/3 (“**EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations.**”). Following promulgation of the 1980 rule, a substantial practice of interpreting the terms “common control,” “contiguous,” and “adjacent” developed through fact specific inquiry. See generally, EPA Region 7 Air Program “NSR Policy and Guidance Database” at <http://www.epa.gov/region7/air/nsr/nsrindex.htm> (listing, *inter alia*, source determinations and guidance letters).

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Although “contiguous” is clear in its meaning of actually touching, “adjacent” is subject to broader interpretation, including that of being nearby but “not touching.” **What is “adjacent” depends not only on physical distance, but on related issues arising from the type of nexus existing between facilities.** In ambiguous situations, the EPA prefers to make determinations of whether various industrial operations are part of the same source on a case-by-case basis based on implementation experience and common sense. For these reasons, the **EPA has chosen not to include a single, inflexible definition of “contiguous or adjacent property” (or “contiguous area”) in its regulations,** including these general provisions for part 63. 58 Fed. Reg. 42,760, 42,767/1 (Aug. 11, 1993).

**In sum, EPA has not established a specific distance or geographic limit to gauge whether properties are sufficiently “adjacent” to constitute a single source under Title V. Instead, EPA interprets the definition of major source under Title V, as it has consistently done in similar contexts under other CAA programs, to require the aggregation of “all emissions units under common control at the same plant site” and applies the three regulatory factors in light of the specific factual**

**circumstances to determine the scope of the source.** 61 Fed. Reg. at 34,206. (Emphasis supplied).<sup>56</sup>

Moreover, the three mile radius bright line test applied by DCP Midstream and apparently relied upon by CDPHE in making the source determination for the DCP Midstream Gas Processing Plant is less than the distances of certain oil and gas emission units and other operations where consideration of functional interrelatedness in the context of adjacency was undertaken on a case-by-case source determinations.<sup>57</sup> As such, the CDPHE source determination that relies upon DCP Midstream's *de facto* three mile radius as a bright line test that effectively excludes from consideration any other potentially interrelated emission units under the control of DCP Midstream in Weld County serving the Wattenberg gas field including the gas processing plants and compressor stations identified in RMELC's comments submitted to CDPHE during the public comment period is arbitrary and capricious or otherwise not in accordance with the law.

## CONCLUSION

To achieve the fundamental goal of CAA Title V that all sources subject to federal operating permit requirements have a permit to operate that assures compliance by the source with all applicable requirements (*see, e.g.*, CAA § 504(a) and 40 C.F.R. § 70.1(b)), EPA must ensure that permitting agencies turn square corners before issuing Title V permits including renewal permits. The Permit Record reflects that CDPHE failed to conduct a proper source determination in accordance with applicable federal regulations and guidance for the source prior

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<sup>56</sup> *Summit Petroleum Corp. v. EPA*, Brief for Respondents United States Environmental Protection Agency and Lisa Jackson, Administrator, On Petition for Review of Final Action of the United States Environmental Protection Agency (Consolidated Case Nos. 09-4348 & 10-4572) (May 31, 2011) at 4-10 (<http://www.epa.gov/ogc/briefs/09-4348.pdf>).

<sup>57</sup> *See id.* at 29-31 including references to the BP Permit J.A. 150 (distances between emission points vary from 3 to 9 miles at different oil production sites). In this context, EPA may reasonably interpret the phrase "located on one or more contiguous or adjacent properties" to encompass emissions activities separated by miles.

to issuance of the DCP Midstream Platteville Gas Processing Plant Title V Renewal Permit. As such, the Title V Renewal Permit issued by CDPHE fails to assure compliance by the source with all applicable requirements and the Permit Record does not supply the public with sufficient information to understand why, or why not, additional sources of emissions should or should not be included in the source determination for the DCP Midstream Platteville Gas Processing Plant. Accordingly, RMELC respectfully requests that Administrator (i) object to the issuance of the Title V permit for the DCP Midstream Platteville Gas Processing Plant, and (ii) direct CDPHE to establish and make available for public review and comment in accordance with 40 C.F.R. § 70.7(h) a more thorough permit record with a source determination conducted in accordance with applicable federal regulations and guidance and make any appropriate changes to the permit.

Dated this 20<sup>th</sup> day of June, 2013.

Respectfully submitted,

/s/

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## LIST OF EXHIBITS

1. Technical Review Document
2. DCP Midstream Title V Permit Renewal Application
3. July 2012 Public Notice
4. RMELC's Initial Written Comments and Request for Hearing
5. Re-Issued Public Notice
6. Public Comment Hearing Notice
7. October 2012 CORA Request
8. RMELC Written Comments
9. RMELC Supplemental Comments
10. DCP Midstream Public Comment on Draft Title V Permit
11. E-mail Correspondence from Brian Taylor (DCP Midstream LP) to Bailey Kai Smith (CDPHE Operating Permit Engineer) (December 7, 2012)
12. CDPHE Response to RMELC Comments
13. EPA Notification of Proposed Permit
14. March 2013 CORA Request
15. CDPHE/DCP Midstream E-mail Correspondence/Informal Information Request
16. Letter from Wesley Hill (DCP Midstream) to CDPHE (Re: Application for Construction Permit DCP Midstream, LP - Platteville Natural Gas Processing Plant Platteville 2 Expansion Project Weld County, Colorado) (October 25, 2012)
17. E-mail correspondence between Alexandra Haas (CPDHE-APCD Records Manager) and Joseph M. Santarella Jr. (RMELC Counsel) (May 9, 2013)
18. CDPHE Oil & Gas Industry Stationary Source Determination – Information Request (DCP Midstream Platteville Gas Processing Plant)