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U.S. EPA Region 8
RA's Office
OCT 21 2013

October 7, 2013

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Failure to Take Action on Clean Air Act Title V Permit for Deseret Generation & Transmission Cooperative's Bonanza Power Plant Within 18 Months

Dear Administrator McCarthy:

Pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), WildEarth Guardians hereby provides notice of its intent to file suit against you and the U.S. Environmental Protection Agency ("EPA") after 60 days for your failure to perform a nondiscretionary duty set forth under Title V of the Clean Air Act. Specifically, we intend to file suit over your failure to issue or deny a Title V Permit for Deseret Generating and Transmission Cooperative to operate the Bonanza Power Plant, a 500 megawatt coal-fired power plant located on the Uintah and Ouray Indian Reservation in eastern Utah, under 40 C.F.R. § 71 within 18 months after receipt of a complete application, as required by Section 503(c) of the Clean Air Act, 42 U.S.C. 7661b(c), and 40 C.F.R. § 71.7(a)(2).

Deseret Generation and Transmission Cooperative is currently operating the Bonanza Power Plant without a Title V Operating Permit. Although in 2002, the EPA prepared and circulated for public comment a draft Title V Permit for the facility, the EPA never took final action. On February 6, 2012, the EPA requested a new application from Deseret. In an April 11, 2012 letter to WildEarth Guardians, the Agency subsequently committed to taking final action on the Title V Permit within 18 months after the February 6, 2012 letter. *See* Attachment 1 to this letter. On April 5, 2012, the EPA received a new application from Deseret for a Title V Operating Permit for the Bonanza Power Plant.

In accordance with Section 503(c) of the Clean Air Act, 42 U.S.C. 7661b(c), and 40 C.F.R. § 71.7(a)(2), the EPA was required to take action on the draft Title V Permit no later than October 5, 2013 (although according to the Agency's prior stated commitment, that deadline

should have been August 6, 2013). As of the date of this letter, the EPA has yet to issue or deny a Title V Permit for the Bonanza Power Plant. Nearly 23 years after the passage of Title V of the Clean Air Act, the facility continues to operate without the required Operating Permit.

The failure of the EPA to take action on the Draft Title V Permit harms WildEarth Guardians, its members, and its interests. WildEarth Guardians is a nonprofit environmental organization dedicated to protecting and restoring the wildlife, wild places, and wild rivers of the American West. Through its Climate and Energy Program, WildEarth Guardians works to advance clean energy by holding the fossil fuel industry accountable to environmental safeguards, particularly under the Clean Air Act. In the case of the Bonanza Power Plant, WildEarth Guardians has a vested interest in ensuring the coal-fired power plant is operated in accordance with Clean Air Act requirements.

The EPA's delay in issuing or denying the Draft Title V Permit within 18 months after receiving an application means that the agency has failed and is continuing to fail to ensure that the Bonanza Power Plant is meeting all applicable requirements under the Clean Air Act. It appears that the coal-fired power plant is not even operating with a Title V Permit. There is simply no means to assure that the facility is operating in compliance. Thus, it is very likely that the facility is emitting pollutants in levels that are not allowed under the Clean Air Act. The EPA's delay in taking action on the Title V Permit is responsible for this situation.

We are particularly concerned because monitoring data indicates the Bonanza Power Plant is likely currently operating out of compliance with applicable requirements. Notably, the power plant's heat input rate has consistently exceeded and continues to consistently exceed the assumptions presented in the Prevention of Significant Deterioration ("PSD") permit application for the facility. Although the heat input rate assumed for purposes of PSD modeling and overall Clean Air Act compliance was presumed to be 4,578 million Btus ("mmBtus") per hour, the actual heat input rate over the last several years has often exceeded 5,000 mmBtus/hour. In turn, this has led to significant annual increases in nitrogen oxide ("NOx") emissions, likely triggering PSD requirements due to a major modification.

The issuance or denial of a Title V Permit would address these and other concerns over whether the Bonanza Power Plant is operating in compliance with the Clean Air Act. If the Bonanza Power Plant is currently out of compliance, then any issued Title V Permit would have to be written so as to ensure compliance. If a major modification occurred, the Permit would have to impose best available control technology ("BACT") requirements in accordance with PSD and ensure that other emissions are appropriately limited to as to ensure protection of the national ambient air quality standards and other air quality requirements. If the Permit could not assure compliance, then the EPA would have to deny it. Given that sources cannot legally operate without a Title V Permit, this would force the Bonanza Power Plant to shutdown.

The Clean Air Act, at 42 U.S.C. § 7661b(c), provides that a permitting authority shall "issue or deny" a Title V Permit "within 18 months after the date of receipt" of an application for a Title V Permit. *See also* 40 C.F.R. § 71.7(a)(2). This is a nondiscretionary duty under the Clean Air Act. The EPA has not issued or denied the Bonanza Title V Permit within 18 months. Thus, it has failed to perform a nondiscretionary duty.

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person giving the notice is WildEarth Guardians, 516 Alto St., Santa Fe, New Mexico 87501. If you wish to discuss this matter, please contact me at the information below.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
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Denver, CO 80202
(303) 437-7663
jnichols@wildearthguardians.org

cc: Shaun McGrath, EPA Region 8 Administrator