RESPONSE TO COMMENTS ON
DESERET BONANZA DRAFT TITLE V PERMIT

General Introduction

A 45-day public comment period on the draft title V permit for the Deseret Bonanza power plant (Bonanza) was held from May 1, 2014 to June 16, 2014, and a public hearing was held in Fort Duchesne, Utah on June 3, 2014. The EPA received comments from Deseret Power, Wild Earth Guardians (WEG), Sierra Club, Earthjustice (on behalf of National Parks Conservation Association), National Park Service (NPS), the Ute Indian Tribe, and various other groups and individuals. The EPA reviewed the comments received. Responses to those comments are presented below.

In the Statement of Basis (SOB) for the draft title V permit, EPA explained that we had made a preliminary determination that the federal Prevention of Significant Deterioration (PSD) permit issued to Deseret in 2001 failed to apply the PSD regulations correctly based on a faulty PSD applicability analysis, and that we were planning to address those PSD issues on a separate path. We explained that in the near future, we planned to initiate the first step of a PSD correction permit using the PSD permit process. We also proposed to include compliance schedule conditions in the draft title V permit, which would require Deseret to apply for incorporation of any new PSD terms into the title V permit once the PSD correction permit was complete. We received many comments regarding the proposed compliance schedule conditions in the draft title V permit, as well as the general approach of using the proposed PSD correction permit to address the PSD applicability issues identified in the SOB.

As will be explained more fully below in response to specific comments, based on a review of available information – including the title V permit package and public comments on the proposed permit, as well as relevant statutory and regulatory authorities and guidance – and the unique circumstances present in this matter, including the initiation of a PSD permitting action for this facility, EPA has determined that at this time it is not appropriate or equitable to include compliance provisions regarding the PSD correction permit in the final title V permit. In a separate PSD permitting action initiated today, EPA is addressing the PSD issues regarding the 2000 ruggedized rotor project at Bonanza. (Draft Air Pollution Control PSD Permit to Construct, PSD-UO-000004-2014.003, December 5, 2014, also referred to as the "draft PSD correction permit."). Should EPA determine additional PSD permit terms are necessary for the facility to come into compliance with PSD during the PSD permitting process, the title V permit would be reopened to include those permit terms. *See, e.g.*, 40 CFR 71.5(a)(1)(ii) & 71.7(f)(1)(i). Accordingly, the terms and conditions that were in section III.D. of the draft title V permit – which would have required Deseret to request an administrative permit amendment to revise the title V permit to incorporate the terms of the final and effective federal PSD correction permit for this facility – are not included in the final title V permit issued today. In addition, as explained below in response to particular comments, EPA will not be providing substantive responses to comments relating to our preliminary PSD applicability determination or other PSD issues regarding the ruggedized rotor project in this title V permitting action; instead, those issues will be addressed in the separate PSD proceeding initiated today. Commenters interested in the PSD issues regarding the ruggedized rotor project at Bonanza should review the proposed PSD

correction permit and related analysis provided in the separate PSD permitting action and submit comments on that action as appropriate. Draft Air Pollution Control PSD Permit to Construct, PSD-UO-000004-2014.003, December 5, 2014.

A. Comments on Specific Permit Conditions

1. The Proposed Compliance Schedule in the Draft Title V Permit [at condition III.D.1.] is either Without Authority (Deseret comment, pages 4-7) or Incomplete (WEG comment, pages 19-20; Sierra Club comment, pages 7-8)

Comment: Deseret explains its position on EPA's authority to include a compliance schedule in the title V permit by separately discussing each of the three subsections of 40 CFR 71.5(c)(8) and arguing that an obligation to submit a request for a permit amendment at the end of a planned future permit proceeding is not within the scope of EPA's authority here, and that EPA has not yet established PSD applicability for the ruggedized rotor project. Deseret asserts that it did everything it was required to do in applying for a pre-construction permit for the project. Deseret notes that there is no claim that Deseret violated any requirements of the 1998 state permit or the 2001 EPA permit. Since EPA purports to have issued the 2001 permit "in error," Deseret concludes that if there is any noncompliance with PSD, it is EPA's noncompliance, not Deseret's.

On the other hand, WEG said that EPA indicates that Deseret Power will be required to submit a PSD permit application, to bring Bonanza into compliance with the Clean Air Act (CAA). Sierra Club noted that the compliance schedule in the draft title V permit (at condition III.D.1) only requires Deseret to submit to EPA a request for an administrative permit amendment, to revise the title V permit to include the terms and conditions of a PSD correction permit. Both WEG and Sierra Club cite 40 CFR 71.5(c)(8)(iii)(C) as requiring a compliance schedule in the title V permit that includes "an enforceable sequence of actions with milestones, leading to compliance" and that must "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." They assert that since there is no deadline in the title V permit for Deseret to submit a PSD permit application (nor to obtain a PSD correction permit, nor to comply with the Best Available Control Technology (BACT) limits in the correction permit, nor to comply with any deadlines for doing any of these things), the compliance schedule lacks a critical milestone to ensure that Bonanza will ultimately be brought into compliance. The steps required must be sufficient to lead to compliance, not merely part way to compliance. WEG and Sierra Club also assert that the compliance schedule is not as stringent as a judicial consent decree or administrative order.

Response: As summarized above, commenters have raised a number of significant concerns regarding EPA's proposal to include a compliance schedule in this title V permit to require Deseret to incorporate the revised PSD terms and conditions that may arise in a separate and forthcoming PSD correction permit to address the PSD requirements that might have been triggered by the 2000 ruggedized rotor project.

As we explained in SOB for the draft title V permit:

> EPA *has preliminarily determined* that the federal PSD permit issued in 2001 failed to apply the PSD regulations correctly because EPA relied on a faulty analysis conducted by the state and did not conduct a complete, independent analysis of whether the ruggedized rotor project was subject to PSD review based on the regulations in place at that time and whether a revision of the emission limits in the 1981 federal PSD permit for Bonanza was appropriate. We now recognize our error and, as noted previously in this document, EPA is undertaking a separate error correction PSD permitting action today that will undergo its own public notice and comment period. However, as part of the current title V permitting action, EPA is proposing terms and conditions in the draft title V permit requiring Deseret to request an administrative permit amendment to revise the part 71 permit to incorporate the terms of the final and effective federal PSD correction permit for this facility, shortly after the PSD permit correction process is completed. *See* draft permit, section III.D. "Compliance Schedule and Progress [40 CFR 71.6(c)(3) and (4); 71.5(c)(8)(iii)]."

SOB at 36 (emphasis added).

While not making a final determination in this permitting action, we still believe that EPA made an error in the 2001 PSD permit by simply accepting the terms from a permit issued by the state of Utah, including the flawed applicability analysis underlying them, however, instead of conducting our own applicability analysis and including PSD requirements that may be necessary, we are proposing to address those potential corrections in a separate PSD permitting action that EPA initiated today. (Draft Air Pollution Control PSD Permit to Construct, PSD-UO-000004-2014.003, December 5, 2014.) In recognition of the ongoing nature of that separate PSD permitting action and the specific, unique circumstances of this case (*see* SOB for draft title V permit, at pages 2-4, 33-35), EPA has reconsidered its proposed course of action for the title V permit. As explained more fully below, EPA will not, in the final title V permit, be reconsidering the 2001 PSD permit or making a final determination regarding PSD applicability for the 2000 ruggedized rotor project, or including a compliance schedule regarding that project. Instead, EPA has decided to issue the final title V permit including the terms of the final federal PSD permit issued in 2001. If additional PSD permit terms are finalized for the facility during the separate and ongoing PSD permitting process for the error correction, the title V permit would be reopened to include those permit terms. *See* 40 CFR 71.5(a)(1)(ii) & 71.7(f)(1)(i) and final permit condition IV.K (Reopening for Cause).

At proposal, EPA explained that "the part 71 permit that EPA will issue to Deseret Bonanza must assure compliance with all applicable CAA requirements, including PSD requirements that apply to the facility," and the record for EPA's proposed permit included a preliminary determination that the Agency erred in incorporating the non-PSD terms for the ruggedized rotor project into the 2001 PSD permit. SOB at 48-49. However, as EPA explained at proposal, emission limits originating in a previously-issued PSD permit cannot be revised in a title V permit without first (or simultaneously) revising the

PSD permit under the applicable PSD regulations. *See* SOB at 27 (*citing* Letter from J. Seitz, EPA, to R. Hodanbosi and C. Lagges, STAPPA/ALAPCO (May 20, 1999), Enc. A at 4; Nucor Steel, at pages 15-16).

Given the specific, unique circumstances in this case, EPA is undertaking a PSD permitting action to revise the previously issued PSD permit in order to determine the appropriate applicable requirements that may be associated with the ruggedized rotor project. While title V requires that title V permits assure compliance with all applicable requirements, 40 CFR 71.6(a)(1) and 71.2, the Agency has not completed the separate, ongoing PSD permitting action regarding the ruggedized rotor project, where the agency will be proposing a PSD applicability determination and may create new PSD permit terms, which would be new applicable requirements for the purposes of the facility's title V permit. Since 2001, Deseret has been operating under the final PSD permit that EPA issued, which includes terms regarding the ruggedized rotor project,[1] and the terms of the 2001 PSD permit are included in the Final title V permit. *See* conditions II.A.6 and II.B.1 of the final title V permit. We also note that the final title V permit includes terms (at condition IV.K) that require the title V permit to be reopened to address any permitting requirements that might be finalized in the separate, ongoing PSD permitting action.

In recognition of the fact that the EPA has proposed but not yet completed the separate PSD permitting action to address the ruggedized rotor project and the other specific, unique facts of this case (as presented in the SOB for the draft title V permit (*see* pages 2-4, 33-35) and throughout this Response To Comments document), EPA will determine any revisions necessary to address the PSD issues raised by the ruggedized rotor project in the separate PSD permitting action announced today. This PSD permitting action will include notice and opportunity for public comment, as well as an opportunity for Environmental Advisory Board (EAB) review of the final PSD permit decision that EPA will issue. If we make a final determination of PSD applicability in that action, a revised PSD permit with revised emissions limits will be issued and thereafter the terms of the revised, final PSD permit must be included in an amended title V permit. *See* 40 CFR 71.5(a)(1)(ii) & 71.7(f)(1)(i) and final permit condition IV.K. In the meantime, the Final title V permit issued for this facility contains the emission limits contained in the PSD permit that applies to the facility at the time of permit issuance, i.e., the final federal PSD permit issued in 2001. 40 CFR 71.6(a)(1).

2. The Draft Title V Permit [at condition III.D.1.] Does not Address Violations of PSD Related to Significant Increases in SO_2, PM_{10}, and Other Emissions (WEG Comment, page 20)

[1]We also note that as part of the 2001 PSD permitting process, the public had an opportunity to comment on that proposed permit, including the inclusion of the ruggedized rotor project and our reliance on the existing state analysis, as well as an opportunity to file an administrative challenge to the final permit with the EPA Environmental Appeals Board (EAB). *See* Fact Sheet, Prevention of Significant Deterioration (PSD) Permit, PSD-UO-0001-00, September 12, 2000, at 3-4, included as Supporting Information document #09 for the draft title V permit. EPA provided a public comment period from September 19, 2000, to October 31, 2000. However, no public comments were received or EAB challenges filed regarding PSD applicability for the ruggedized rotor project.

Comment: The commenter asserts that the emissions following the upgrades made in the year 2000 at Bonanza increased significantly not only for NO_x, but also for other pollutants, including SO_2, PM_{10} and $PM_{2.5}$. The compliance schedule should require Deseret to submit a PSD permit application that addresses all pollutants for which significant increases occurred as a result of the 2000 ruggedized rotor project.

Response: The comments assert that a compliance schedule for past applicability of PSD to the ruggedized rotor project should require a PSD application by Deseret addressing all pollutants. However, the issue is moot since the final title V permit does not include a compliance schedule, as explained in response to comment A.1. No changes to the title V permit have been made as a result of this comment. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

3. The Draft Title V Permit Appears to Fail to Include Underlying PSD Permit Requirements (WEG comment, pages 29-30)

a. The Permit Appears to Inappropriately Provide for Exemptions to BACT Limits

Comment: The commenter says the draft title V permit appears to suggest that a number of emission limits established as BACT through PSD, including the opacity limit, NO_x limit, and particulate matter limits for the boiler, may be violated during startup, shutdown, and malfunction. For instance, the title V permit says that particulate matter, NO_x, SO_2, and opacity limits may be exceeded during startup, shutdown, and malfunction. Commenter cites condition II.A.2.(d)(i) at page 26 of the draft title V permit.

Response: EPA does not agree with the commenter's assertion. Permit condition II.A.2.(d)(i) does not apply to PSD BACT emission limits. The condition is in section II.A.2 of the draft title V permit, which incorporates the provisions of 40 CFR part 60, subpart Da, and applies only to the emission limits in subpart Da. The condition says, "The applicable PM emissions limit and opacity standard under §60.42Da, SO_2 emissions limit under §60.43Da, and NO_x emissions limit under §60.44Da, apply at all times except during periods of startup, shutdown, or malfunction." This exemption language is clearly applicable only to these limits. Provisions involving BACT emission limits from the federal PSD permit are incorporated into a separate section II.A.6 of the draft title V permit. Section II.A.6 does not contain any exemptions from PSD BACT emission limits. No changes to the title V permit have been made as a result of this comment.

b. The Permit Appears to Fail to Identify Applicable BACT Opacity Limits

Comment: The commenter states that the draft title V permit fails to make it clear that the opacity limits established as BACT in the 1981 PSD permit are, in fact, BACT limits. The commenter cites an opacity limit in the 1981 PSD permit of 20% over every six-minute period, except that during one six minute period per hour,

opacity cannot exceed 27%. The commenter notes that condition II.A.2.(a)(ii) of the draft title V permit cites this limit only as an New Source Performance Standards (NSPS) limit, not as a BACT limit. The commenter also cites an opacity limit in the 1981 PSD permit of 20% for fugitive emissions from "any portion of the operation." The commenter asserts that this limit for fugitive emissions is not incorporated into the draft title V permit.

Response: First, the commenter references an out-of-date version of the federal PSD permit. The draft title V permit cites the 2001 PSD permit, not the 1981 PSD permit, as the basis of authority for the PSD BACT conditions. The 1981 PSD permit has been replaced by the 2001 PSD permit. It is clear from the record of the 2001 permit action, including the Fact Sheet (included as Supporting Information document #09 for the draft title V permit), the "Introduction" section of the 2001 permit, and the overall content of the permit (included as Supporting Information document #10 for the draft title V permit), that EPA's objective was to issue an updated PSD permit to entirely replace the 1981 permit, not just issue a modification to it. The 2001 permit went through public comment period and no one questioned whether EPA has the authority to issue the 2001 permit as a replacement for the 1981 permit.

Second, the commenter appears to be unaware that the PSD BACT opacity limits are, in fact, included in the section of the draft title V permit that incorporates the BACT requirements from the 2001 PSD permit. These opacity limits appear in condition II.A.6.(a)(vi) for the main boiler stack, and in conditions II.B.1.(b) and (g) for fugitive emissions.

Nevertheless, EPA agrees with the commenter that the title V permit should not cross-reference NSPS for the PSD BACT opacity limit. Condition II.A.6.(a)(vi) of the draft title V permit says "Visible emissions from the main boiler stack shall not exceed the limits specified in 40 CFR 60.42a(b)…". Since PSD BACT applies at all times, the title V permit should not imply that the exemptions from opacity limits under NSPS at 40 CFR 60.48Da(a) might also apply to PSD BACT emission limits. EPA has therefore revised condition II.A.6.(a)(vi) to incorporate language from condition 24.D of the 2001 PSD permit, rather than cross-reference NSPS. The final permit language reads as follows:

> "The permittee's visible emissions from the affected facility (main boiler stack) must not exceed 20% opacity, as determined by continuous monitoring system (6-minute average), except for one six-minute period per hour of not more than 27% opacity, as determined by the continuous monitoring system. The permittee may use EPA Method 9 when the opacity continuous monitoring or backup system is not operating."

With regard to the opacity limit of 20% for fugitive emissions, EPA acknowledges that it can be clearer in the title V permit that it is a BACT limit. EPA has therefore revised the title line for condition II.B.1 to incorporate the title line from corresponding conditions 28 through 36 in the 2001 PSD permit, to read as follows:

"Requirements from federal PSD permit Issued February 2, 2001 - BACT for Roads and Fugitive Emissions."

4. The Title V Permit Must Address Greenhouse Gas (GHG) Emissions from Bonanza (WEG comment, pages 31-32)

Comment: The commenter expresses concern that, since the draft title V permit and SOB do not identify the potential to emit (PTE) for GHGs from Bonanza, the public and EPA will not be able to track whether potential physical changes or changes in the method of operation at the power plant have the potential to lead to significant emission increases, thereby triggering PSD permitting requirements. The commenter believes that under title V, the EPA is obligated to disclose this information, to include methane emissions from the Deserado Coal Mine. The commenter cites 40 CFR 71.5(c)(3)(i), which requires title V permit applications to include information on all emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The commenter requests that EPA disclose Bonanza's "actual PTE" for GHGs and consider setting limits on GHG emissions to ensure compliance with PSD requirements.

Response: EPA acknowledges that part 71 applications should, generally, contain specific emissions-related information, including information needed to determine major source status, to verify the applicability of part 71 or applicable requirements, to verify compliance with applicable requirements, and to compute a permit fee (as necessary). 40 CFR 71.5(c)(3)(i). In this case, Deseret already reports the actual Bonanza power plant GHG emission information to EPA annually, under the Mandatory GHG Reporting Rule (40 CFR 98.42(a)). As explained below, EPA has used that information to determine that the facility is meeting its part 71 requirements with regard to GHGs and has not determined that any additional GHG information is required. *See PSD and Title V Permitting Guidance for Greenhouse Gases*, EPA-457/B-11-001 (March 2011), at 54 ("For sources subject to the GHG reporting rule, the emissions description requirements in the title V rules will generally be satisfied by information provided under the reporting rule.").

Since the Mandatory GHG Reporting Rule is not currently included in the definition of applicable requirement in 40 CFR 71.2, the requirements from that rule do not need to be included in the title V permit. In addition, following the June 23, 2014 decision of the United States Supreme Court addressing the application of stationary source permitting requirements to GHG, *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency* (No. 12-1146), EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or title V permit. Accordingly, while is it is not clear what the commenter means by "actual PTE" for GHGs, there is no need to identify current actual or potential GHGs emissions at Bonanza in this title V permit in order to determine if there are future significant GHG emission increases that could trigger PSD permitting requirements.

Based on information reported under the Mandatory GHG Reporting Rule, EPA is providing below the actual emissions reported, in metric tons, after conversion of the CH_4 and N_2O into CO_2-equivalent, using the global warming potentials:

Deseret Bonanza Power Plant
Greenhouse Gas Actual Emissions
(metric tons, expressed as CO_2-equivalent)

Year	CO_2	CH_4	N_2O	Total GHG
2010	3,415,138	8,573	18,408	3,442,119
2011	3,158,233	8,057	17,300	3,183,590
2012	3,006,529	7,269	15,607	3,029,405

To convert to short tons (or just "tons"), multiply the figures above by 1.1023.

This information is available to the public at: http://ghgdata.epa.gov. EPA considers this information adequate in the context of this title V permit action to fulfill the intent of §§71.5(a)(2) and 71.5(c)(3)(i), with respect to GHGs.

With regard to inclusion of emissions from the Deserado Coal Mine, EPA does not agree with the commenter that methane emissions from the Deserado Coal Mine should be included, as EPA does not agree that Bonanza and the Deserado Coal Mine should be aggregated together as a single part 71 source. See response to comment F below.

With regard to the commenter's suggestion to consider setting limits on GHG emissions to ensure compliance with PSD requirements, it appears that the commenter is making this suggestion in the context of issuing a title V permit. EPA does not agree with the commenter's suggestion. As explained in the 1992 preamble to the final part 71 rules:

> … title V is primarily procedural, and is not generally intended to create any new substantive requirements. Nor are title V programs required to establish any sort of "cap" on emissions unless derived from a substantive requirement in another title of the Act. The title V permit is intended to record in a single document the substantive requirements derived from elsewhere in the Act. Therefore, in most cases the only emissions limits contained in the permit will be emissions limits that are imposed to comply with the substantive requirements of the Act (including SIP requirements). The permit itself will not impose any sort of independent "cap" on emissions except where requested by the source. This might occur, for example, in order to limit the source's PTE through a federally-enforceable mechanism for the purpose of lawfully avoiding substantive requirements of the other titles that would apply in the absence of a cap.

57 Fed. Reg. 32284 (July 21, 1992).

Since GHG emission limits are not contained in other Deseret CAA permits or regulations, and since Deseret has not requested such a limit, there are no limits to include in this final title V permit. In addition, EPA is not aware of – nor has the commenter identified – any actions by Deseret that would have required that such limits be established for this source.

Finally, as a general matter, EPA has concluded that 40 CFR part 71 does not require the PTE for any pollutants to be disclosed in the permit itself. EPA has therefore removed from section I.A of the permit the subsection titled "Potential to Emit." The information in that subsection was already included in the SOB for the draft title V permit.

5. The PSD Program, including BACT limits and Limits to Ensure Air Quality Protection, Are Applicable Requirements Triggered by the 2000 Ruggedized Rotor Major Modification and Must be Included in the Final Permit (Sierra Club comment, pages 2-6)

Comment: The commenter asserts that EPA's PSD applicability analysis for the ruggedized rotor project was incomplete and in some ways erroneous, and that a correct analysis would show the project was not only a major modification for NO_x, but also for SO_2 and particulate matter ($PM_{2.5}$ and PM_{10}). The commenter presents a critique of EPA's analysis and offers an alternate analysis which the commenter asserts would lead to the conclusion that the project caused significant emission increases not only for NO_x, but also for SO_2 and particulate matter. For SO_2 and particulate matter, the commenter used a comparison of pre-project actual emissions to post-project potential emissions to evaluate whether a significant emission increase occurred.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action. No changes to the title V permit have been made as a result of this comment. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

6. EPA's Compliance Monitoring Required by 40 CFR 71.6(c)(1) Should Include the Particulate Matter Continuous Emissions Monitoring System (PM CEMS) (Sierra Club comment, page 8)

Comment: The commenter states that EPA does not provide a basis for a finding that infrequent stack tests are sufficient to "assure compliance" with particulate matter permit limits at all times and during all operating conditions, as required by 40 CFR 71.6(c)(1). Since PM CEMS is already being required at condition II.A.6.(a)(viii)(B), it should also be used to satisfy §71.6(c)(1).

Response: EPA does not agree with the commenter's assertion. The commenter has not presented any evidence that EPA made such a finding. EPA is requiring PM CEMS under the Compliance Assurance Monitoring (CAM) rule (40 CFR part 64) on the basis

that PM CEMS is a necessary and appropriate component of assuring compliance with particulate matter permit limits, beyond just stack tests. As explained in the preamble to the 1997 CAM rule:

> … [the] CAM approach builds on the premise that if an emissions unit is proven to be capable of achieving compliance as documented by a compliance or performance test and is thereafter operated under the conditions anticipated and if the control equipment is properly operated and maintained, then there will be a reasonable assurance that the emission unit will remain in compliance. Thus a critical issue that the CAM approach must address is establishing appropriate objective indicators of whether a source is "properly operated and maintained".

62 *Fed. Reg. 54909, 54926* (October 22, 1997).

EPA views the requirement for PM CEMS, which was included under the CAM provisions in the draft title V permit, to be part of the monitoring requirements needed to reasonably assure continuous compliance with terms and conditions of the permit (in this case, the filterable particulate matter emission limits at the main boiler stack, under the federal PSD permit). §71.6(c)(1) cross-references §71.6(a)(3), which cross-references 40 CFR part 64 (the CAM rule). Condition II.A.6.(a)(viii) of the draft title V permit cites the CAM rule as the basis of authority for requiring PM CEMS and therefore addresses §71.6(c)(1). No changes to the title V permit have been made as a result of this comment.

7. The Draft Permit Conditions are Unclear, Ambiguous and Lack Practical Enforceability (Sierra Club comments, pages 9-10)

Comment #1: The commenter alleges that the draft title V permit is not sufficiently clear and specific to ensure that all applicable requirements are enforceable as a practical matter. The commenter quotes (without citation) EPA as stating:

> A permit is enforceable as a practical matter (or practically enforceable) if permit conditions establish a clear legal obligation for the source [and] allow compliance to be verified. Providing the source with clear information goes beyond identifying the applicable requirement. It is also important that permit conditions be unambiguous and do not contain language which may intentionally or unintentionally prevent enforcement.

The commenter then states, "An interested person should be able to understand from the permit how much pollution the plant is legally authorized to emit and how the source is monitored for compliance". According to the commenter, "not even a CAA expert can read [the] draft permit and understand what conditions and emission limits apply at [the facility]". The commenter states that the draft title V permit contains "numerous overlapping, and in some cases, inconsistent standards that govern the same pollutant". As an example, the commenter cites draft title V permit conditions II.A.2(a)(i) and II.A.6(a)(i). The commenter also identifies what the commenter believes to be flaws with regards to provisions incorporated from the Mercury and Air Toxics Standards (MATS),

as set out in subpart UUUUU to 40 CFR part 63. The commenter concludes that the draft permit must be revised so that the conditions are clear, specific, and unambiguous, and that EPA must review the entire permit to address similar issues.

Response #1: EPA disagrees with this broad comment on the basis that it not specific enough to adequately respond to it. The comment fails—even under its own assumptions—to identify any flaw in the draft title V permit.

EPA initially notes that the indented language quoted by the commenter (without citation) appears to be taken from draft guidelines provided by EPA Region 9 regarding practical enforceability. See "Guidelines: Practical Enforceability," U.S. Environmental Protection Agency, Region 9, at III-55 (Sept. 9, 1999) (draft, revision 1). However, even if the commenter did cite the guidelines, the comment fails to explain how they apply to this permit action and provide a basis for finding a flaw in the draft title V permit.

The commenter claims that the draft title V permit contains "many examples" of the alleged issues. However, the commenter identifies only two: the interplay of draft title V permit conditions II.A.2(a)(i) and II.A.6(a)(i), which are addressed in response A.7.1 below, and the MATS provisions, which are addressed in response A.7.2 below. With respect to any other supposedly flawed provisions, since the commenter has not identified them, EPA is unable to assess whether the comments regarding them have any merit. As the draft title V permit was available for the commenter's review, any supposed flaws in other provisions of the draft title V permit were reasonably ascertainable and the commenter was required to have identified them with specificity.

We turn to the cited draft title V permit conditions: II.A.2(a)(i) and II.A.6(a)(i), which address particulate matter emissions from the main boiler stack and set limits of 0.030 lb/MMBtu and 0.0297 lb/MMBtu, respectively. We note that the draft title V permit condition II.A.2(a)(i) appears on page 25 of the draft title V permit, where, consistent with 40 CFR 71.6(a)(1)(i), its legal basis is clearly identified as deriving from the NSPS regulations in 40 CFR part 60, subpart Da. In fact, the draft title V permit condition appears immediately after a heading identifying the applicable NSPS. Draft title V permit condition II.A.6(a)(i) appears on pages 60-61, immediately after a heading identifying the legal basis for this condition as deriving from the facility-specific federal PSD permit issued on February 2, 2001. In addition, the SOB on page 4 identifies (among others) these two separate sources of applicable requirements. Thus, the draft title V permit and the SOB clearly provide the source of the two provisions and make it clear that *both* conditions apply at the facility.

EPA also disagrees with the commenter's contention that the conditions are not enforceable as a practical matter. The commenter does not identify any language within the conditions that either is ambiguous, might unintentionally prevent enforcement, or fails to establish a clear legal obligation for Deseret (the standards set out in the Region 9 draft guidelines). The entire basis for the contention appears to be that there happen to be two provisions regarding emissions of the same pollutant (particulate matter) from the same emissions unit (main boiler stack), with emissions limits in the same form

(lb/MMBtu of heat input) that differ only in the numerical level (0.030 lb/MMBtu versus 0.0297 lb/MMBtu). As a practical matter, both provisions are independently enforceable. If particulate matter emissions from the main boiler stack exceed both limits, then that violates both provisions. On the other hand, Deseret can comply with both by complying with the slightly more stringent one. And in the event that emissions are in the small range between the two, then the more stringent one can be enforced.

It appears that the commenter may also be alleging that these particular provisions are "inconsistent". If by "inconsistent" the commenter is claiming that the provisions are logically or necessarily inconsistent, EPA disagrees. As explained above, Deseret can comply with both of them. If by "inconsistent" the commenter is again referencing the slight variation in the numerical levels, then EPA responds as above that the legal authority for these provisions is derived from different sources (one is from the federal NSPS regulations and the other from a facility-specific preconstruction permit requirement) and reflect separate applicable requirements. Each condition is consistent with the corresponding underlying applicable requirement.

Finally, to the extent that the commenter can be understood to argue that EPA was required to streamline these emission limitations, streamlining is at the discretion of the permitting authority (in this case, EPA) and only with the consent of the permit applicant. See White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program, Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, at 6-10 (Mar. 5, 1996, available on EPA website at: http://www.epa.gov/region07/air/title5/t5memos/wtppr-2.pdf). No changes to the title V permit have been made as a result of this comment.

Comment #2: The commenter states, "the purpose of [an] operating permit is to specify exactly which emission limits apply to a particular source". According to the commenter, the draft title V permit "does not fulfill this basic purpose," because it does not specify which MATS limits apply at Bonanza and how Deseret will monitor for compliance. The commenter views EPA as having the responsibility to determine in this permit how Deseret "intends to comply with the applicable emission limits in the MATS rule, 40 CFR [part] 63, subpart UUUUU". In particular, the commenter notes that the draft permit requires compliance with the emissions limits in Tables 2, 3, and 4 to subpart UUUUU, but does not identify the particular limits that will apply to Bonanza. The commenter also notes that the draft permit does not identify into which subcategory in Table 2 (for example, "coal-fired unit not low rank virgin coal") Bonanza falls. In addition, the commenter's concerns with practical enforceability (discussed above) appear to also apply to the incorporation of the MATS provisions.

Response #2: EPA disagrees with this comment. To show why the comment is erroneous, we must discuss in detail certain compliance dates and notifications under MATS, considerations not included in the comment, as well as EPA's policy regarding permits issued prior to the NESHAP compliance date.

Absent a specific requirement in the applicable NESHAP, a source is not required to have determined which of the available compliance approaches it will use to comply with the rule prior to the compliance date. When a permit is issued prior to the NESHAP compliance date, a source may not have yet determined the provisions that will describe NESHAP applicability beyond the subpart level. When a permit is issued prior to the MACT compliance date, the EPA believes that it is acceptable for the initial permit to describe MACT applicability at the subpart level, and for all other compliance requirements (including compliance options and parameter ranges) of the MACT that apply below the subpart level to be added at a later time. *See In re ConocoPhillips Company*, Order on Petition, Petition No. IX-2004-09 (March 15, 2005), at 24-25; see also *In re Chevron Products Company*, Order on Petition, Petition No. IX-2004-08 (March 15, 2005), at 39; Letter from John Seitz, EPA, to Robert Hodanbosi, STAPPA/ALAPCO (May 20, 1999), Enclosure B ("Hodanbosi Letter"). Another option that EPA has presented is for the initial permit to identify the MACT standards or requirements that apply at the section or subsection level, including anticipated compliance options, along with the information identified in the Initial Notification required by the General Provisions, see 40 CFR part 63, subpart A, or by the applicable subpart. Additional compliance information required in the Notice of Compliance Status (e.g., parameter values) would be added as a minor permit modification when the notice is submitted. *See* Hodanbosi Letter cited above.

First, for an existing EGU (such as that at Bonanza) that is an "affected source" (i.e. subject to MATS, see 40 CFR 63.9982), the compliance date is April 16, 2015. 40 CFR 63.9984(b). Affected sources that are existing EGUs do have an earlier requirement for an "Initial Notification" not later than 120 days after April 16, 2012. 40 CFR 63.10030(b). Once the affected source is required to conduct an initial compliance demonstration, the source must submit a "Notification of Compliance Status". *Id.* 63.10030(e). For an existing EGU, the initial compliance demonstration must take place within 180 days of April 16, 2015 (in other words, by October 13, 2015). *Id.* 63.9984(f). Each of these requirements are not only set forth in subpart UUUUU but are also reflected in the draft permit. Draft permit at conditions II.A.3(a), (a)(i), (a)(ii), (b)(ix).

The Initial Notification must contain (in relevant part):

- An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date; [and]

- A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted[.]

40 CFR 63.9(b)(2)(iii), (iv). On the other hand, the Notification of Compliance Status must contain (in relevant part):

- A description of the affected source(s) *including identification of which subcategory the source is in*, the design capacity of the source, *a description of the add-on controls used on the source*, …. and

- Identification of whether you plan to demonstrate compliance with each applicable emission limit through performance testing; fuel moisture analyses; performance testing with operating limits (e.g., use of PM CPMS); CEMS; or a sorbent trap monitoring system.

40 CFR 63.10030(e)(1), (3) (emphasis added).

In summary, MATS does not require at the *present* time that Deseret comply with specific MATS limits or provide the specific information that the commenter claims is required. Instead, MATS gives Deseret compliance options and *future* dates by which Deseret must in effect choose and provide the required information to demonstrate compliance. Nor does the commenter cite any source of independent authority or requirement for EPA to *at present* "determine how Deseret intends [in the future] to comply with the applicable emission limits".

With respect to practical enforceability, the commenter has not identified any particular language in the MATS-related draft permit provision that either is ambiguous, might unintentionally prevent enforcement, or fails to establish a clear legal obligation for Deseret (the standards set out in the Region 9 draft guidelines, which the commenter appears to assert applies here). What remains is the fact (as reflected in the draft permit) that MATS itself allows for alternative emission limits and compliance demonstrations. EPA disagrees that this creates an enforceability issue, as Deseret will inevitably be required to choose the limits and means of compliance demonstration. Finally, as to the commenter's "interested person" standard, EPA thinks that an "interested person" who carefully reads the draft permit and the relevant portions of part 63 could reasonably be expected to understand that the draft permit correctly reflects the future requirements of subpart UUUUU. No changes to the title V permit have been made as a result of this comment.

Comment #3: The commenter asserts, "none of the materials explain whether Bonanza will require additional controls in order to meet the MATS limits, and such changes may impact other control technologies".

Response #3: EPA disagrees with this comment to the extent it can be understood to claim some sort of deficiency in the draft permit, SOB, or public notice. The commenter has not identified any requirement (either in part 71, the MATS rule, or anywhere else) that the explanation of Deseret's plans for future MATS compliance be given in this part 71 permit proceeding. As explained above, Deseret will be required to identify the controls it will use in its Notification of Compliance Status. To the extent that the commenter is concerned with resulting changes in emissions, if in order to comply with MATS Deseret plans to make modifications to the facility that trigger new source review (either major or minor), then Deseret will be obliged to apply for the appropriate

construction permit, and this title V permit would be modified to include any changes from that permitting action (*see* CAA §502(b)(9); 40 CFR 71.7(f)(1)*;* Permit condition IV.K.1.a). No changes to the title V permit have been made as a result of this comment.

Comment #4: The commenter states that the draft permit is deficient because "it recites standards verbatim from the regulations without tailoring them to the facility".

Response #4: EPA disagrees with this comment. The identification of applicable requirements for a part 71 source necessarily limits requirements to those that apply to the particular source. The commenter has not identified any requirement in the CAA or part 71 that an otherwise applicable requirement be further "tailored" to the part 71 source. No changes to the title V permit have been made as a result of this comment.

Comment #5: The commenter states that the draft permit contains superfluous language that does not apply to Bonanza. As an example, the commenter cites draft permit condition II.A.3(a)(iii), which contains a clause referring to 40 CFR 63.10009. The condition is followed by an explanatory note that explains that Bonanza only has one EGU, and that therefore the emissions averaging alternative in §63.10009 is not available. The commenter states that EPA should delete the reference to §63.10009 and should delete all other "nonapplicable provisions" in the permit.

Response #5: We agree with the statement that the clause referring to 40 CFR 63.10009 should be deleted from the permit condition. That regulation allows for the use of emission averaging and does not apply to Deseret since Deseret only has one existing EGU. Therefore this regulation is not an applicable requirement for purposes of part 71 and should not be included in the permit. We have deleted the reference to 40 CFR 63.10009 in permit condition II.A.3(a)(iii). We have also deleted the portion of the explanatory note that explains why §63.10009 is not applicable, as there is already an explanatory note on page 45 of the draft permit which provides this explanation. With respect to other "nonapplicable" provisions, the commenter has not identified any nor are we aware of any other such provisions. As such provisions, if they exist, were reasonably ascertainable from the draft permit, the commenter could have identified them in this comment.

8. Requested Revisions to Conditions in the Draft Permit (Deseret comments, pages 22-26)

Section I.A: PTE

Comment: Deseret notes that page 9 of the draft title V permit, it is stated that the PTE for the overall plant is "based on an estimate by Deseret Power that approximately 99.5% of the coal is burned while the pollution control equipment is in service". Deseret says this should be 100% not 99.5%.

Response: The statement in the draft permit is based on page D-1 of Deseret's title V permit application, which says, "Potential to emit was based on approximately 99.5% of

the coal burned with the pollution control equipment in service. In 2011, approximately 66% of the oil burned in the boiler was burned with the pollution control equipment in service". Deseret does not explain why this statement in the permit application should now be considered incorrect. In any event, since the statement in the draft permit is informational only and is not a permit condition, nor used as a basis for any permit condition, EPA has deleted it from the permit to avoid confusion. Also, in response to related comment A.4 above, EPA has removed the "Potential to Emit" table from section I.A of the permit.

Section I.B: Facility Emission Points

Comment: Deseret requests a couple of minor wording corrections in the "Facility Information" section of the permit, which is informational only and is not a permit condition. One correction is to say the main boiler heat input capacity is "about 4,578 MMBtu/hr" rather than "4,578 MMBtu/hr". The other correction is to say the size of the auxiliary boiler is 168 MMBtu/hr rather than 184 MMBtu/hr.

Response: EPA has made the requested corrections.

Section II.A.3: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Steam Generating Units [40 CFR 63 Subpart UUUUU]

Comment: Deseret believes that no MACT subpart UUUUU requirement will impose mandatory obligations regarding Bonanza before April 16, 2015 and wants the title V permit to indicate this.

Response: EPA does not agree to the commenter's request. The draft title V permit already includes the detailed language from subpart UUUUU, including the April 16, 2015 deadline (*see* condition II.A.3.(a) on page 37), but also includes at least one other compliance deadline under UUUUU that is prior to that date. *See* condition II.A.3.(d)(i) on page 52 of the draft title V permit, which says, "As specified in §63.9(b)(2), if the permittee started up the affected source before April 16, 2012, the permittee must submit an Initial Notification not later than 120 days after April 16, 2012". The draft title V permit cites the MATS rule at 40 CFR 63.10030(b) as the basis of authority for this condition. No changes to the title V permit have been made as a result of this comment.

Section II.A.4: National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines [40 CFR 63 Subpart ZZZZ]

Comment: Deseret requests that the requirements of subpart ZZZZ pertaining to the 498-HP existing emergency diesel fire pump engine be deleted because the engine is being replaced with a new one that will be subject to NSPS subpart IIII. Subsequent to the issuance of the proposed permit, emails from Deseret to EPA dated August 12 and 18, 2014, explain that the existing engine was removed on April 21, 2014, and clarify what changes to the draft title V permit are requested. See below for status of the new engine.

Response: EPA has made the requested revision.

Section II.A.5: Standards of Performance for Stationary Compression Ignition Internal Combustion Engines [40 CFR 60 Subpart IIII]

Comment: As clarified by follow up email to EPA on August 12, 2014, Deseret has identified the permit conditions that need to be revised, and has suggested how to revise them, to account for applicability of NSPS subpart IIII to a new 525-horsepower emergency diesel fire pump engine that was installed in August of 2014 and is expected to be operational by around the end of August. A second follow-up email from Deseret to EPA dated August 18, 2014, describes the status of the replacement engine.

Response: EPA has made the requested revision.

Section II.A.6: Federal PSD Permit Issued February 2, 2001

Comment #1: Deseret requests that the particulate emission limit of 0.0297 lb/MMBtu of heat input in subsection (a)(i) of permit condition II.A.6, and the PM_{10} emission limit of 0.0286 lb/MMBtu of heat input in subsection (a)(ii) of the permit condition, be clarified to include only total filterable particulate matter.

Response #1: EPA cannot change the PSD permit condition without re-opening the PSD permit, but has added an Explanatory Note after the title V permit condition, to make a factual statement that the test methods specified (Method 5B and Method 201) only measure the filterable portion of particulate matter.

Comment #2: Deseret requests that the definition of excursion in the CAM provisions at subsection (a)(viii)(A) of permit condition II.A.6 be revised to read as follows, suggesting the addition of the underlined language: "An excursion shall be defined as any time that less than four of the 24 baghouse compartments are in service at any one time <u>while combustion is occurring within the boiler or while stack exit temperature remains significantly above ambient air temperature following shutdown of the unit</u>."

Response #2: EPA partially agrees to Deseret's request. EPA agrees to add "while combustion is occurring within the boiler," but does not agree to limit the definition of excursion to only those periods, as this would be inconsistent with applicable requirements. Under the CAM rule, an excursion is defined as "a departure from an indicator range established for monitoring under this part, consistent with any averaging period specified for averaging the results of the monitoring". 40 CFR 64.1. As explained under the definition of "Monitoring" in the CAM rule, the purpose of the monitoring is to "determine or otherwise assess compliance with emission limitations or standards". 40 CFR 64.1. Emissions might continue beyond periods when combustion is occurring within the boiler, if the induced draft (ID) fans are still running and the boiler is still exhausting through the baghouse. EPA therefore agrees to limit the definition of excursion to periods while combustion is occurring within the boiler <u>or while</u> the ID fans are in service (not limit it solely to periods while combustion is occurring).

EPA also does not agree with the request to include in the definition of excursion any statements about stack exit temperature, since Deseret has not proposed to monitor stack exit temperature, nor to define what is meant by "significantly above ambient air temperature". Therefore, EPA has revised the definition of excursion to read as follows: "An excursion shall be defined as any time that less than four of the 24 baghouse compartments are in service at any one time while combustion is occurring within the boiler or while the induced draft (ID) fans are in service".

Comment #3: Deseret states the language about PM CEMS in subsection (a)(viii)(B) of permit condition II.A.6 should not be read to imply any requirement for PM CEMS to be installed or maintained for any purpose beyond the express conditions in the title V permit.

Response #3: Since the commenter has not requested any changes to the language of the permit condition, EPA has not made any changes. However, to the extent the comment is requesting that the PM CEMS requirements be read only as requirements under part 71, we note that the emission limit in permit condition II.A.6.(a)(i) is taken from the existing federal PSD permit and remains applicable under that permit as well. No changes to the title V permit have been made as a result of this comment.

Section II.B: Fugitive Emission Sources

Comment #1: Deseret requests that subsection 1.(g) of permit condition II.B. be revised to require application of water or chemical treatment to unpaved areas only "during times of use and when it is reasonably applicable relative to weather conditions".

Response #1: The language in this permit condition comes verbatim from the EPA PSD permit. EPA cannot change the PSD permit condition without re-opening the PSD permit. No changes to the title V permit have been made as a result of this comment.

Comment #2: Deseret requests that the language requiring monthly Method 9 observations, in subsection 2.(c) of permit condition II.B., be revised to say "except for months when the monthly average outside temperature is below freezing (generally November through February)". Deseret asserts that it is not practical nor needed to perform a Method 9 during typical winter months for roads and storage piles.

Response #2: EPA does not agree to this request. Deseret has not presented any supporting evidence for the assertion that Method 9 observations are not practical nor needed during winter months. While the monthly average outside temperature might be below freezing during certain months, EPA expects there will still be days when the temperature will be well above freezing and the potential for significant opacity might still exist (especially if water spray controls for fugitive dust have been shut off for the winter). EPA notes that the NSPS subpart Y opacity limit is written to apply year-round, not just during non-winter months. EPA does not consider Method 9 readings once per month to be particularly burdensome on Deseret. The permit gives Deseret the discretion

to decide how many locations at coal processing, conveying and storage might warrant observation. No changes to the title V permit have been made as a result of this comment.

Comment #3: Deseret notes that subsection 1.(g) of permit condition II.B. says "The opacity must not exceed 20% during all times the areas are in use or the outside temperature is below freezing". Deseret interprets this condition to require that during the summer, opacity must not exceed 20% when the areas are in use.

Response #3: Since the commenter has not requested any changes to the permit condition, EPA has not made any change, but acknowledges the comment.

Attachment 1: Bonanza Plant Process Description

Comment: Deseret requests a number of minor factual corrections in the process description.

Response: EPA has made the requested corrections. EPA notes that Attachment 1, which contains the process description, is informational only and is not a permit condition.

B. Comments on SOB

Note: There is no part 71 requirement to issue a final SOB associated with the final title V permit action and we do not revise the SOB prepared for the proposed permit. Comments on the proposed permit are a part of the permit record and the necessary corrections are, therefore, documented in the permanent permit record.

1. PSD Applicability for Ruggedized Rotor Project

a. The Ruggedized Rotor Project Did Not Result in a Significant Emissions Increase (Deseret comments, pages 16-18)

Comment: Deseret asserts that the ruggedized rotor project did not result in an increase in Bonanza's annual NO_x emissions because installation of low-NO_x burners was part of the project. EPA's 2001 PSD permit action acknowledged this, as did the NPS in its 2002 comments to EPA.

Deseret asserts that, contrary to the EPA's narrative in the title V SOB, EPA did review the ruggedized rotor project during the 2001 permit proceeding and made an independent finding that the project did not trigger PSD.

Deseret asserts that emissions associated with increased demand on Bonanza that occurred after the ruggedized rotor project are clearly not attributable to that project.

Deseret notes that EPA has not proposed to make a finding of PSD applicability in this proceeding. Deseret believes that EPA's "preliminary determination" in the draft SOB that "the 2000 ruggedized rotor project should have undergone PSD review for

NO_x, including a BACT analysis," is wrong. Deseret cites its own preliminary analysis from 2005 and says that if EPA undertakes a PSD permit "revision" proceeding in the future, Deseret will submit a comprehensive analysis demonstrating two key points:

(1) The project did not trigger PSD requirements because it was affirmatively authorized by both Utah and EPA in PSD permits.

(2) The NO_x emission rate - both on a lb/MMBtu basis and at full capacity – decreased as a result of the contemporaneous installation of low-NO_x burners, and the project was not expected to, and did not, increase the unit's utilization. Any increase that did occur in the overall post-project emissions from Bonanza was caused by demand growth and not by the project.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

b. The Ruggedized Rotor Project Did Result in a Significant Emissions Increase (WEG comments, pages 7-20)

(i) As a Threshold Matter, Deseret Power Did Not Assess Emissions Increases Using Actual Pre-Construction Emissions (WEG comment, pages 7-9)

Comment: The commenter asserts that Deseret Power violated PSD requirements under 40 CFR 52.23 in failing to accurately assess pre-upgrade actual emissions. The commenter cites data submitted by Deseret to EPA's Air Markets Program Database, for 1995 through 1999, showing actual NO_x emissions between 5,231 and 7,377 tons per year (tpy). However, the commenter says it appears that Deseret represented its "actual" emissions rate to be 10,558 tpy, which seemed to represent its "PTE", as it was most likely based on Bonanza's maximum permitted NO_x emission rate of 0.55 lb/MMBtu, an assumed heat input rate of 4,381 MMBtu/hr, and an assumption that Bonanza was operated 8,760 hours per year (full time).

The commenter also states that Deseret claimed that after the 2000 ruggedized rotor project, emissions would be reduced to 10,029 tpy, due to the Deseret's claimed acceptance of a reduction in allowable NO_x emissions from 0.55 to 0.5 lb/MMBtu, thereby indicating a net decrease of more than 500 tpy. The commenter asserts that this claimed net decrease is erroneous.

The commenter cites the calculations for SO_2 as being similarly erroneous. The commenter asserts that actual pre-project emissions of SO_2 were far below the pre-project emissions represented by Deseret. The commenter says that Deseret

represented that pre-construction emissions of SO_2 were 1,929 tpy, yet data submitted by Deseret to EPA's Air Markets Program Database, for April 1997 through April 2000, showed actual SO_2 emissions between 1,219 and 1,380 tpy.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

(ii) NO_x Emissions – Actual Significant Net Increase Resulting From 2000 Ruggedized Rotor Project (WEG comment, pages 9-11)

Comment: The commenter notes that EPA has presented data on the actual significant net increase in NO_x emissions in the SOB for the draft title V permit, but wishes to provide EPA with additional information detailing this actual increase. The commenter relies on the version of PSD rules that were in effect at the time the project occurred. Those rules required the calculation of post-construction "actual emissions" to equal the "representative actual emissions, which are the average rate of projected emissions for a two-year period after a physical change". The commenter has relied on emissions data from EPA's Air Markets Program Database, for July 2000 through June 2002, to calculate a net emissions increase for NO_x of 1,124 tpy, representing the difference between actual pre-upgrade emissions for April 1998 through March 2000 and actual post-upgrade emissions for July 2000 through June 2002. The commenter asserts that Deseret's failure to apply for, obtain, and operate Bonanza consistent with a new federal PSD permit runs afoul of the CAA and PSD rules at 40 CFR 52.23.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in a separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

(iii) NO_x Emissions – Significant Net Emissions Increase Based on PTE (WEG comment, pages 11-12)

Comment: The commenter asserts that if an "actual to potential" test is used, there is no question that the physical changes at Bonanza in 2000 led to a significant increase in NO_x emissions, triggering PSD obligations. The commenter states that Deseret Power represented to the state of Utah and to EPA that the potential annual NO_x emissions at Bonanza after the 2000 ruggedized rotor project would be 10,029 tpy. However, the commenter finds it unclear whether this PTE estimate was based on any federally enforceable limits on

annual NO_x emissions and did not seem to be based on "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design". The commenter believes that figure would have actually been the 10,558 tpy of NO_x reported by Deseret as the pre-construction PTE.

The commenter presents a table of five different post-upgrade PTE scenarios for NO_x, calculated by the commenter based on various heat input scenarios which the commenter says were provided by Deseret. In all scenarios, the table indicates a significant net increase in NO_x emissions would occur based on an actual to potential test. The commenter notes that in one of the scenarios, the increase could be as high as 5,047 tpy.

The commenter does not indicate whether EPA should have used the "actual to potential" test instead of the "actual to actual" or "actual to representative actual" test to evaluate PSD applicability for NO_x.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in a separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

(iv) NO_x Emissions – Significant net Emissions Increase Based on Representative Actual Emissions (WEG comment, pages 12-14)

Comment: The commenter asserts that using an "actual to representative actual test," there is also no question that the physical changes at Bonanza in 2000 led to a significant net increase in NO_x emissions, triggering PSD obligations. The commenter states that Deseret never elected to use this test to demonstrate that PSD did not apply, and never submitted to EPA on an annual basis, for a period of five years from the date Bonanza resumed normal operations, information demonstrating that the upgrades did not result in an emissions increase. The commenter therefore concludes that the "actual to representative actual test" set forth in the 1999 PSD regulations is inapplicable with regard to the 2000 ruggedized rotor project, but says EPA relied on it in the draft SOB to conclude that PSD applies to Bonanza. The commenter believes that any reliance on an "actual to representative actual test" is mistaken.

Nevertheless, the commenter presents the various assumptions about operating rates that the commenter believes would be appropriate to calculate the post-construction representative actual emissions. Using these assumptions, the commenter calculates a net emissions increase of 365 tpy for NO_x, constituting a PSD major modification for NO_x.

The commenter adds that since the NO_x emissions were related to the 2000 upgrades and could not have been legally and physically accommodated during the baseline period, Deseret could not avail itself of any emission "exclusions" under 40 CFR 52.21(b)(33)(ii) (1999) under any "actual to representative actual" scenario.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in a separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

(v) SO_2 Emissions – Significant Net Emissions Increase Based on Actual to Potential Test (WEG comment, pages 14-15)

Comment: The commenter asserts that using an "actual to potential" test, the physical changes at Bonanza in 2000 also led to a significant increase in SO_2 emissions, triggering PSD obligations. The commenter asserts that since Deseret never elected to use the "actual to representative actual" emissions test, an "actual to potential" test must be used.

The commenter uses as a baseline the actual annual emission rate in the two years preceding the commencement of construction of the upgrades, which the commenter says was the baseline required by PSD rules in place at the time. The commenter cites 40 CFR 52.21(b)(21)(ii) (1999). The commenter finds that baseline SO_2 emissions between April 1998 and March 2000 were 1,234 tpy.

For determining the post-construction potential emissions, the commenter relies on 40 CFR 52.21(b)(4) (1999) to conclude that the emissions were 2,131 tpy, using 4,055 MMBtu/hr heat input, an annual SO_2 emission rate of 1.2 lb/MMBtu, and a 90% reduction requirement. The commenter adds that the post-construction potential emissions may be even higher, if an allowable heat input rate of 4,381 MMBtu/hr or 4,578 MMBtu/hr is used. The commenter also adds that Deseret represented to the state of Utah and to EPA that the potential annual SO_2 emission rate at Bonanza after the 2000 upgrades would be either 2,016 tpy or 1,968 tpy. (The commenter does not cite any document as the source of this information.)

The commenter presents a table of five different post-upgrade PTE scenarios for SO_2, calculated by the commenter based on three different heat input scenarios and two scenarios of post-construction emission figures which the commenter says were provided by Deseret. In all scenarios, the table indicates that a significant net increase in SO_2 emissions would occur based on an "actual to potential" test. The table indicates that in one of the scenarios, the increase could be as high as 1,171 tpy.

Finally, the commenter notes that Deseret disclosed in 1998 that the 2000 upgrades, or at least the ruggedized rotor replacement and associated HP/IP and LP turbine upgrades, would lead to an 86.28 tpy increase in SO_2. (The commenter does not cite any document as the source of this information. It apparently comes from WEG's Exhibit 9.)

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today.

(vi) PM_{10} Emissions – Significant Net Emissions Increase Based on Actual to Potential Test (WEG comment, pages 15-17)

Comment: The commenter asserts that using an "actual to potential" test, the physical changes at Bonanza in 2000 also led to a significant increase in PM_{10} emissions, triggering PSD obligations.

The commenter uses as a baseline the "data submitted by Deseret to the EPA". The commenter asserts that prior to the 2000 upgrades, Bonanza emitted at or around 244 tpy. (The commenter does not cite any document as the source of this information.)

For determining the post-construction potential emissions, the commenter relies on 40 CFR 52.21(b)(4) (1999) to conclude that the emissions were 508 tpy, using 4,055 MMBtu/hr heat input and a permitted PM_{10} emission allowable of 0.0286 lb/MMBtu. The commenter adds that the post-construction potential emissions may be even higher, if an allowable heat input rate of 4,381 MMBtu/hr or 4,678 MMBtu/hr [*sic*] is used. The commenter also adds that Deseret represented that its PTE following the changes would be either 925 tpy or 930 tpy. (The commenter does not cite any document as the source of this information.)

The commenter presents a table of five different post-upgrade PTE scenarios for PM_{10}, calculated by the commenter based on three different heat input scenarios and two scenarios of post-construction emission figures which the commenter says were provided by Deseret. In all scenarios, the table indicates that a significant net increase in PM_{10} emissions would occur based on an "actual to potential" test. The table indicates that in one of the scenarios, the increase could be as high as 686 tpy.

The commenter notes that Deseret disclosed in 1998 that the 2000 upgrades, or at least the ruggedized rotor replacement, would lead to a 17.92 ton per year increase in PM_{10}. (The commenter does not cite any document as the source of this information. It apparently comes from WEG's Exhibit 9.)

Finally, the commenter also asserts that the 2000 upgrades yielded a significant increase in $PM_{2.5}$ emissions. The commenter states that at the time of the upgrades, any increase in $PM_{2.5}$ would have been significant, in accordance with 40 CFR 52.21(b)(23)(ii) (1999).

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

(vii) The EPA Inappropriately Assesses PSD Compliance Status Based on an "Actual To Representative Actual Test" (WEG comment, page 20)

Comment: The commenter states that EPA assessed the PSD compliance status of Bonanza based on Deseret's assertion that an "actual to representative actual test" applies. (The commenter does not cite any document as the source of this assertion.) The commenter asserts that an "actual to representative actual test" does not apply to the 2000 upgrades, because Deseret did not elect to utilize this test and the company did not submit the required reports to EPA in the five years following the 2000 upgrades. The commenter concludes that EPA must utilize an "actual to potential" test.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

2. Proposed PSD Permit Correction

a. EPA's Assertion that the 2001 PSD Permit is in Need of Correction Appears Misplaced (WEG comment, pages 20-22)

Comment: The commenter expresses concern that EPA is characterizing Deseret's PSD violations as the result of a mistaken PSD permit. The commenter says issuance of a permit in 2001, after the 2000 upgrades, does not and cannot serve to absolve Deseret of its obligation to obtain a new PSD permit to ensure compliance with the CAA. Deseret's representation was erroneous that the 2000 upgrades would decrease NO_x emissions, and not significantly increase SO_2 and PM_{10} emissions.

The commenter notes that the 2001 PSD permit expressly states that it "does not release the permittee from any liability for compliance with other applicable federal

and tribal environmental law and regulations, including the CAA". It therefore does not absolve Deseret of any CAA liability with regards to this major modification.

The commenter concludes that whether the 2001 permit was correct or not, Deseret illegally undertook a major modification of Bonanza without applying for, obtaining and complying with a PSD permit. The commenter strongly urges EPA to make such a determination, rather than characterize the 2001 permit as in need of "correction".

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

C. Comments on Compliance History

1. Failure to Obtain PSD Permit Related to Major Modifications, Ongoing Violations Related Thereto (WEG comment, pages 3-6)

Comment: As an introduction to the separate, more detailed comments on PSD applicability in its comment letter (which are described in this Response to comments document, at comments B.1.b.(i) through (vii) and comment C.6.), the commenter cites the specific physical changes that occurred at Bonanza between 1998 and 2000 (which are the same as identified by EPA in the SOB for the draft title V permit):

- Installation of the ruggedized turbine rotor and other turbine upgrades and replacements;
- Replacement of three of the five coal pulverizers with higher output pulverizers, rebuilding the other two pulverizers, as well as other pulverizer upgrades;
- Replacement of the burner barrels and tips with larger barrels and tips; and
- Expansion of Bonanza's coal pile.

The commenter discusses the time frame in which these changes occurred, citing the commenter's Exhibits 4, 5 and 6, and asserts that the intent of the changes was to increase the generating capacity of Bonanza. The commenter also cites Exhibit 7 as underlying evidence. The commenter cites an increase in capacity of between 28 and 32 megawatts.

The commenter explains why these changes should not be viewed as routine maintenance, repair and replacement (although the commenter does not say anyone has attempted to claim that the changes should be viewed as such).

The commenter asserts that the position Deseret Power appears to have taken, that there were no potential significant net emission increases associated with the upgrades, was and continues to be wholly unsupported.

The commenter discusses whether PSD applicability should have been determined under the 1999 PSD rules in terms of an "actual to potential" emissions test or an "actual to representative actual annual" emissions test. The commenter concludes that Deseret should not be allowed to utilize the latter test. The commenter's more detailed comments on this matter are presented as separate comments and are addressed elsewhere in this Response to Comments.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

2. Failure to Comply with Duties that Were Applicable Upon Completing a Major Modification and that Remain Applicable Today (WEG comment, pages 17-19)

Comment: The commenter asserts that EPA does not fully acknowledge the failure of Deseret to meet the CAA PSD requirements that became applicable at the time of the major modification of Bonanza, and that Bonanza is operating in violation of those requirements. Specifically, the commenter cites:

- Control technology requirements at §52.21(j);
- Source impact analysis at §52.21(k);
- Air quality models at §52.21(l);
- Air quality analysis at §52.21(m);
- Source information at §52.21(n); and
- Additional impact analysis at §52.21(o).

The commenter views these violations as independent and discrete violations of the CAA that are ongoing. The commenter concludes that any title V permit and SOB must acknowledge these ongoing violations and ensure Bonanza is brought into full compliance with PSD as soon as possible.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA

invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

3. Violations and public health impact (Ute Tribe comment)

Comment: The Tribe says it has made known its concerns over tens of thousands of violations of the CAA by Bonanza. The Tribe is concerned that the power plant poses unacceptable public health impacts due to its air pollution, is disproportionately impacting Tribal members and tribal lands, and is inappropriately contributing to regional air quality problems that have the potential to adversely affect the economy of the Tribe.

Response: EPA recognizes that the Tribe has made known its concerns about Bonanza on previous occasions. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. The Tribe does not cite to any applicable requirements, nor do the part 71 regulations require that the agency evaluate issues during part 71 permitting that are outside the scope of that permitting process. EPA has, however, offered a response to the Tribe's concern about ozone levels in the Uinta Basin. This may be found at response G.3 below. EPA has also offered responses to the Tribe's more specific concerns about emissions from Bonanza. These may be found at responses C.6, C7, and C.9 below. No changes to the title V permit have been made as a result of this comment.

4. Compliance with tribal NSR rule (Ute Tribe comment)

Comment: Prior to issuing the permit, the EPA must ensure that Bonanza also complies with all applicable federal air permitting regimes and regulations for coal fired power plants. For example, Bonanza needs to comply with the Tribal NSR for Minor Sources (i.e., its fueling stations for its fleet) if it applies to any portion of the facility.

Response: It is unclear what the Tribe is referring to by "fueling stations for its fleet" in reference to Bonanza. The title V permit application from Deseret Power did not identify any so called activities as part of the facility operations. Additionally, the title V permit application did not identify the federal Minor New Source Review (MNSR) Permit Program as a requirement applicable to the facility. Based on our review of the information provided in the title V permit application and the language in 40 CFR part 49, we have determined that the MNSR Permit Program does not apply to Bonanza. This is explained below:

The federal MNSR Program in Indian country at 40 CFR part 49 (MNSR Permit Program) applies to all existing and new "true minor sources" and "synthetic minor sources," of regulated NSR air pollutants in Indian country and applies to new "minor modifications at major sources" of regulated NSR air pollutants in Indian country (all as defined at §49.152(d)). Bonanza is an existing major source and has not proposed or sought a minor modification or a synthetic minor NSR emission limit since August 30, 2011 when the MNSR rules were effective. Accordingly, it does not fit within any of the

categories of sources defined at §49.152(d) and the MNSR Permit Program does not apply. No changes to the title V permit have been made as a result of this comment.

5. Compliance with Mercury and Air Toxics Standards (MATS) rule (Ute Tribe comment)

Comment: Bonanza must be retrofitted if necessary to comply with the EPA's rule, known as MATS, for mercury and air toxics.

Response: Applicable requirements of the MATS rule (40 CFR part 63, subpart UUUUU) have been incorporated into the draft title V permit at condition II.A.3. Since the Tribe has not requested any changes to the permit condition, EPA has not made any changes, but acknowledges the comment.

6. Failed regulatory oversight (Ute Tribe comment)

Comment: The Tribe wishes to express our concern over what we see as failed regulatory oversight by EPA at Bonanza for well over a decade. There are numerous alleged violations of the CAA falling into three specific categories: (1) violations associated with modifications to Bonanza made in 2000 that failed to comply with the CAA's PSD program; (2) violations of Bonanza's existing PSD permit; and (3) violations of federal limitations on opacity contained in the NSPS.

Response: With regard to (1), the comment raises substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate, ongoing PSD action. With regard to (2), EPA is not sure what violations of the existing PSD permit are being alleged by the Tribe, therefore EPA is not able to respond. With regard to (3), EPA has addressed the issue of numerous incidents of high opacity over the years, through issuance of an Administrative Order.[2] Since the Tribe has not requested any changes to the permit, EPA has not made any changes, but acknowledges the comment.

7. The Title V Permit Does Not Address PSD Violations Related to Heat Input Rates (WEG comment, pages 22-26)

Comment: The commenter asserts that heat input rates represented by Deseret Power in PSD permit applications are enforceable, on the basis of language in 40 CFR 52.21(r), and on the basis of language in condition III(11) of the 1981 PSD permit that "The owner or operator shall abide by all presentations, statements of intent, and agreements contained in the application and in all additions, modifications, and corrections thereto, as presented for public inspection."
The commenter also asserts that since Bonanza has regularly exceeded the heat input rates represented by Deseret in the PSD permit applications, as evidenced by data in

[2] Consent Agreement and Administrative Order (CAFO), Docket No. CAA-08-2013-0011, issued by U.S. EPA to Deseret Generation and Transmission Cooperative on June 28, 2013. Included in the docket for the final Deseret title V permit.

EPA's Air Markets Program database, these exceedances should be treated as violations of the PSD permit. The commenter cites 4,055 MMBtu/hr in the application for the 1981 federal PSD permit, 4,381 MMBtu/hr in the application for a revised permit from the state of Utah in 1994, and 4,578 MMBtu/hr in the application for a revised permit from the state of Utah for the ruggedized rotor project (and which was carried over into the 2001 federal PSD permit). The commenter cites thousands of exceedances.

The commenter states that the title V permit must address these violations by establishing a clear and enforceable heat input limit to ensure that Bonanza operates in compliance.

The commenter also asserts that Deseret continues to be obligated to operate Bonanza consistent with the assumption of 4,055 MMBtu/hr heat input rate in the application for the 1981 PSD permit, because in the Fact Sheet for the 2001 permit, EPA expressly stated that the 1981 permit was only "modified" by the 2001 permit, but was not replaced. The commenter says the PSD rules state that a PSD permit "shall remain in effect" unless it expires under 40 CFR 52.21(s) or is rescinded in accordance with §52.21(w). Here, neither situation has occurred. Although EPA noted in the 2001 PSD permit that the "actual heat input generation is about 4,578 MMBTU/hr," this does not appear to have modified the 1981 PSD permit or the underlying assumptions made by Deseret Power in its application for the 1981 permit.

Response: First, EPA does not agree with the commenter's assertion that the 1981 PSD permit was not replaced by the 2001 PSD permit. As explained in response to comment A.3.b, it should be clear from the record of the 2001 permit action, including the Fact Sheet (included as Supporting Information document #9 for the draft title V permit), the "Introduction" section of the 2001 permit, and the overall content of the permit (included as Supporting Information document #10 for the draft title V permit), that EPA's objective was to issue an updated PSD permit to entirely replace the 1981 permit, not just issue a modification to it. The 2001 permit went through public comment period and no one questioned whether EPA has the authority to issue the 2001 permit as a replacement for the 1981 permit.

Second, EPA does not agree with the commenter's assertion that exceedance of the heat input rate of 4,578 MMBtu/hr necessarily constitutes a violation. There is no limit on heat input rate in the 2001 PSD permit (nor in the 1981 PSD permit, which the commenter asserts has not been replaced). The 2001 permit does include a General condition that "This permit is issued in reliance upon the accuracy and completeness of the information set forth in the application to the state of Utah and that provided to EPA," but the commenter has not explained how exceedance of 4,578 MMBtu/hr should be considered a violation of this permit condition.

Third, regarding the commenter's statement that the title V permit must address these violations by establishing a clear and enforceable heat input limit, EPA does not agree to do so. EPA does not have the authority to create such a limit when issuing a title V permit. As provided for in 40 CFR 71.6, title V permits incorporate existing applicable requirements and are generally not intended as a mechanism for creating new substantive

requirements. A more detailed explanation may be found in our response to comment A.4. No changes to the title V permit have been made as a result of this comment.

8. 2000 modifications resulted in actual, significant increases of air pollution (Ute Tribe comment)

Comment: The record is quite clear that the 2000 modifications resulted in actual, significant increases of air pollution that not only exceeded regulatory limits, but pose a real threat to human health and the environment. The Tribe cites NO_x increases of 365 to 1,124 tpy SO_2 increases of more than 1,171 tpy, and PM_{10} increases of more than 686 tpy.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today.

9. Exceedances of heat input rate limitations, NO_x emission limit, and opacity limits (Ute Tribe comment)

Comment: The Tribe comments that there have been 23,431 exceedances of the heat input rate limitation in the EPA PSD permit of 1981, as well as 315 exceedances of the NO_x emission limit in the permit between 2007 and 2012, as well as 540 exceedances of the 20% opacity limit and 431 exceedances of the 27% opacity limit at the main boiler stack.

Response: EPA recognizes the Tribe's concerns. However, with regard to heat input, EPA does not agree with the Tribe's assertion. There is no heat input rate limitation in the 1981 PSD permit, nor in the 2001 PSD permit that replaced it. Additionally, the Tribe has not indicated how it was determined that there were 23,431 exceedances. See response to related comment C.7 above for further discussion. With regard to NO_x, EPA is not able to respond to the assertion since the Tribe has not indicated how it was determined that there were 315 exceedances between 2007 and 2012.

With regard to opacity, EPA is not able to respond to the Tribe's assertion, since the Tribe has not indicated how it was determined that there were 540 exceedances of the 20% limit and 431 exceedances of the 27% limit. Also, the Tribe does not indicate during what period of time these opacity exceedances occurred. However, as explained in response to comment C.6 above, EPA has addressed the issue of numerous incidents of high opacity over the years, through issuance of an Administrative Order. Since the Tribe has not requested any changes to the permit, EPA has not made any changes, but acknowledges the comment.

D. Comments on Jurisdiction

1. *Comment*: Deseret asserts that when Utah issued an approval order for the ruggedized rotor project in 1998, uncertainty existed as to whether Bonanza site was in Indian

country. Therefore, according to Deseret, the principles stated in *Michigan v. EPA*, 268 F.3d 1075, 1088-89 (D.C. Cir. 2001) required that EPA make a determination as to whether it had jurisdiction to issue the permit, and to engage in notice and comment rulemaking on that determination. Instead, Deseret alleges, EPA did not object to the 1998 state permitting action, and did not determine that Bonanza is in Indian country until July 19, 1999 at the earliest. Citing the history of federal court litigation over the status of the Uintah and Ouray Reservation, Deseret argues that any such determination by EPA would have been premature before March 2000, when the federal district court dismissed the lawsuit that had raised boundary issues. Deseret argues that because it was not a party to this litigation, it is not precluded from re-arguing any issues decided there, and EPA cannot assert that Deseret is collaterally estopped from challenging its jurisdictional determination. Deseret seeks to reserve for future proceedings the underlying legal question of whether Congress diminished the Uintah and Ouray Reservation. Also, Deseret makes several ancillary arguments and assertions, which we have separately summarized and responded to below. (Deseret comment, pages 18–21)

Comment: EPA has jurisdiction over Bonanza because it is within the boundaries of an intact Indian reservation according to the Tenth Circuit's 1985 ruling. EPA asserted federal jurisdiction over Bonanza in 1997 by issuing an Acid Rain Program permit, and since that time has acted as the permitting authority for the facility. Utah has issued air permits to Bonanza, but the state has never had jurisdiction over the facility, and these permits are without legal force. (WEG comment, pages 1–2)

Response: The Bonanza power plant lies within the part of the Uintah and Ouray Indian Reservation that is generally referred to as the Uncompahgre portion of the Reservation. Deseret is correct that the status of the Uncompahgre portion of the Reservation has been addressed in a series of federal court cases. The Tenth Circuit Court of Appeals has held that the entire Uncompahgre portion of the Reservation remains intact and part of the Uintah and Ouray Reservation. *See Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah* (*Ute Indian Tribe V*), 114 F.3d 1513 (10th Cir. Utah 1997), *cert. denied*, 522 U.S. 1107 (Feb. 23, 1998). In its 1997 *Ute Indian Tribe V* decision, the Tenth Circuit was affirming that the Supreme Court's 1994 decision in *Hagen v. Utah* had not altered the Tenth Circuit's 1985 *Ute Indian Tribe III* holding that the Uncompahgre portion of the Reservation remained intact. *See Ute Indian Tribe V*, 114 F.3d at 1529 ("Because *Hagen* did not directly address our holding in *Ute Indian Tribe III* as it relates to…the Uncompahgre Reservation, we have no reason to depart from that part of our prior judgment."); *Ute Indian Tribe v. Utah*, 773 F.2d 1087, 1093–94 (*Ute Indian Tribe III*) (10th Cir. 1985) (en banc), *cert. denied*, 479 U.S. 994 (1986); *Hagen v. Utah*, 510 U.S. 399 (1994). Thus, since at least 1985, the federal courts have held that the land on which Bonanza is located is the Uncompahgre portion of the Reservation and, thus, Indian country. EPA takes no position here as to whether Deseret would be estopped in any judicial proceeding from arguing issues addressed in any part of the *Ute Indian Tribe* litigation. Any questions regarding what arguments Deseret may raise in a future separate proceeding are beyond the scope of this action. The Agency is, however, following and relying on the relevant federal court decisions in the referenced litigation, in which the state of Utah was a party.

The mere fact that parties have contended that the Uncompahgre portion of the Reservation was diminished does not alter its legal status. *Ute Indian Tribe III* was not determining or establishing a jurisdiction that had previously been absent; it was finding among other things that Congress had never diminished the Uncompahgre portion of the Reservation, which had been established more than a century earlier and therefore had been and remained an Indian reservation under federal law. EPA does not by its action or inaction confer Indian country status on an area or remove it; only Congress can do so. Thus, the date of any particular EPA action under the CAA is not pertinent to the Uncompahgre's status or to the Tenth Circuit precedent. In any case, EPA had issued an Acid Rain permit for the facility before the date of the state action cited by Deseret, thus asserting federal CAA permitting jurisdiction. The EPA-issued federal Phase II Acid Rain permit for the facility became effective on December 29, 1997.

Deseret is also incorrect in its claim that the *Michigan* decision required that EPA make a determination of Indian country status and that it employ a notice-and-comment process to do so. Under *Michigan* and its progeny, it is clear that EPA has CAA authority to regulate air sources on Indian reservations in the absence of an EPA-approved program for such areas. *Michigan*, 268 F.3d 1075 (D.C. Cir. 2001); *Oklahoma Department of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014). Here, the Tenth Circuit has decided the question about the Indian country status of the Uncompahgre portion of the Reservation. In its 1985 en banc decision in *Ute Indian Tribe III*, which was reaffirmed in 1997, the Tenth Circuit held that the Uncompahgre was not disestablished, but instead remains an intact part of an Indian reservation and is Indian country under federal law. *See Ute Indian Tribe III*, 773 F.2d at 1093; *Ute Indian Tribe V*, 114 F.3d at 1528–1531. In addition, the Supreme Court of Utah has accepted the Indian country status of the Uncompahgre,[3] and as a matter of state law Utah recognizes that the Uncompahgre is intact as held in *Ute V*.[4] There is no requirement for EPA to make any "determination" of land status to continue administering the CAA programs at issue with respect to Bonanza. Nor was EPA required to issue notice and take comment on its assessment of the applicable federal law. We note that EPA has in various notice-and-comment CAA rulemakings limited its approval of Utah's programs so that they do not apply on Indian reservations. *See* 40 CFR 52.2346(a); 47 Fed. Reg. 6427 (PSD program); 60 Fed. Reg. 30192, 30195 (operating permits program); 67 Fed. Reg. 58998, 58999 (NSPS delegation); 74 Fed. Reg. 1899, 1903 (Emission Inventory Reporting Requirements). In fact, the EPA action approving the state's PSD permitting program in 1982 specifically excluded approval of the state's PSD permitting program on Indian

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[3]*See State v. Reber*, 171 P.3d 406, 408–09 (Utah), *cert. denied*, 552 U.S. 990 (2007) ("it is undisputed that the crimes took place within the original boundaries of the Uncompahgre Reservation"; "Although the crimes in this case took place in Indian country, it is undisputed that the land on which the crimes took place is not owned by any Indian or Indian tribe.").

[4]*See* Utah Code Ann. § 59-10-103 (Revenue and Taxation, Individual Income Tax Act, Determination and Reporting of Tax Liability and Information):

> (z) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:
>
> (i) *Hagen v. Utah*, 510 U.S. 399 (1994); and
>
> (ii) *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997).

reservations such as the Uncompahgre, which encompasses Bonanza. As a result, the 1998 Approval Order action was beyond the scope of the state's federally approved permitting program under the CAA, regardless of whether EPA specifically objected to it. No changes to the title V permit have been made as a result of this comment.

2. *Comment*: EPA and the United States have never sought or obtained a court decision granting EPA permitting authority over the area encompassing Bonanza. No court has addressed the Supreme Court's *Hagen* decision in the context of a lawsuit commenced after the final mandate of *Ute III* involving facts specifically pertaining to Indian country jurisdiction within the Uncompahgre portion of the Reservation. (Deseret comment, page 20 line 95)

Comment: The court in *U.S.A. v. Questar Gas Mgmt. Co.* upheld the fact that EPA, not the state of Utah, is charged with authority to administer CAA programs on the Uintah-Ouray Reservation. (WEG comment, page 2)

Response: Under applicable Tenth Circuit case law on the status of the Uncompahgre portion of the Reservation, EPA had and continues to have the authority to issue federal permits on Reservation land. There is no requirement for any further judicial determination specifically finding that EPA has CAA permitting authority there. EPA notes, however, that such a determination does exist that specifically confirms EPA's regulatory authority on the Uncompahgre portion of the Reservation. *See* Memorandum Decision and Order Granting Plaintiff's Motion For Summary Judgment On EPA's Regulatory Authority And Defendant's Twenty-Fourth Affirmative Defense ("Summary Judgment Order"), *U.S. v. Questar Gas Management Co.*, 2011 U.S. Dist. LEXIS 51049, at *19 (D. Utah, May 11, 2011) (stating, as to several facilities within the Uncompahgre portion of the Reservation, "the Court finds that the EPA has the authority to regulate the facilities at issue here"). No changes to the title V permit have been made as a result of these comments.

3. *Comment*: It makes no difference for this permitting action whether, in retrospect, Bonanza was located on Indian country as of the date that the state of Utah issued the 1998 Approval Order and approved the project. The state action before that date was effective. (Deseret comment, page 19)

Response: There is no sense in which Bonanza was in Indian country only "in retrospect" in 1998. As described above, in 1997 the Tenth Circuit held in *Ute V* that its 1985 *Ute III* decision remained in effect as to the Indian country status of the Uncompahgre. No changes to the title V permit have been made as a result of this comment.

4. *Comment*: The reservation boundary issue remained *sub judice* before the Utah federal district court in *Ute Indian Tribe v. Utah* until March 2000 when the federal district court in Utah finally dismissed the lawsuit which had raised the boundary issues. (Deseret comment, pages 19–20)

Response: The fact that parts of the *Ute Indian Tribe* litigation were not dismissed until 2000 is irrelevant to EPA's permitting jurisdiction or to the status of the Reservation. The Supreme Court denied certiorari in *Ute Indian Tribe V* in February 1998, before the state issued its approval order. The continued pendency of the case in the district court did not alter the law of the Circuit. The district court had no authority to depart from the decisions of the Court of Appeals concerning the Uncompahgre portion of the Reservation, and it did not do so. The district court's stipulated order of dismissal cited by Deseret confirms that "[t]he basic issues in the case have been determined and the parties have agreed to accept the decision and not seek to further litigate the boundaries of the Reservation". Stipulated Order Vacating Preliminary Injunction and Dismissing the Suit With Prejudice, *Ute Indian Tribe v. Utah*, No. 2:75-cv-00408-BSJ (D. Utah Mar. 28, 2000), at 2–3. No changes to the title V permit have been made as a result of this comment.

5. *Comment:* In *Ute Indian Tribe V* the Tenth Circuit recognized an error in its own statutory interpretation in *Ute Indian Tribe III*. It was prevented from altering its earlier mandate only by virtue of the fact that no present case or controversy was presented to the Court in *Hagen* concerning the Uncompahgre. The Tenth Circuit presumably would now decide that the Uncompahgre has been diminished or disestablished. (Deseret comment, page 20 n.95)

Response: This comment relies on speculation. As discussed above, the Uncompahgre is an Indian reservation under Tenth Circuit precedent. No changes to the title V permit have been made as a result of this comment.

E. Comments on Legal Authority

1. EPA Cannot Seek to Revise the 2001 PSD Permit Based on a Purported "Error" That EPA "Discovered" More than a Decade After the Permit Became Final (Deseret comments, pages 7-18)

a. EPA Has No Authority to Revise the 2001 PSD Permit (Deseret comment, pages 7-12)

Comment: Deseret asserts that EPA has no authority to change the provisions of Deseret's pre-construction approval for the ruggedized rotor project in 2001 because Utah's permit was valid when it was issued.

Deseret asserts that the PSD permitting process is, at the most fundamental level, concerned with pre-construction review. Once construction is complete, any further PSD permit proceeding would be beyond EPA's authority, as the source would no longer need permission to construct something that has already been constructed. Deseret cites a July 15, 1988 EPA guidance memorandum, as well as 40 CFR 124.19, as well as several court cases, to support its assertion. Deseret also cites a five-year statute of limitations.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today.

b. Even if EPA Had Some Limited Authority to Revise a PSD Permit, the Due Process Clause and Fundamental Equity Concerns Preclude Its Exercise Here, Where the Project in Question was Completed Over a Decade Ago (Deseret comment, pages 12-16)

Comment: Deseret asserts that retroactively imposing costly regulatory requirements as a condition to a source's construction – where the construction was completed long ago – would be fundamentally inequitable and impermissible, as EPA itself and the Supreme Court have recognized. Deseret cites *Alaska DEC* as evidence that the Supreme Court recognizes that equity concerns bar EPA from altering a PSD permit in circumstances such as this.

Deseret also asserts that any revision to Bonanza's PSD permit well after construction has been completed would violate the Due Process clause of the U.S. Constitution, by subjecting Deseret to harsh economic consequences without fair notice that its conduct would trigger such requirements.

Deseret also asserts that the fundamental unfairness of assigning new and unexpected legal implications to past actions demonstrates why the CAA and its implementing regulations do not allow EPA to revise pre-construction permits once they are issued.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today.

c. There was no purported "error" to discover (Deseret comment, pages 16-18)

Comment: The ruggedized rotor project did not result in a significant emissions increase, therefore there is no purported "error" to discover.

Response: The comment raises substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today. EPA invites interested parties to submit comments concerning PSD applicability as part of the public process for the PSD permitting action.

F. ***Comments on Single Source Determination***

The Title V Permit Does Not Ensure That All Pollutant Emitting Activities Associated With Bonanza Are Permitted as a Single Source (WEG comment, pages 27-29)

Comment: The commenter expresses concern that the EPA is not proposing to ensure Bonanza is permitted together with the Deserado Coal Mine, which is located nearby in Colorado and is the sole source of fuel for Bonanza, as a single source of air pollution in accordance with PSD and title V permitting requirements. By failing to ensure the Deserado Mine is appropriately permitted together with Bonanza, the draft title V permit does not appear to ensure compliance with applicable requirements.

A title V permit is required to include emission limitations and standards that assure compliance with all applicable requirements at the time of permit issuance. *See* 42 U.S.C. § 7661c(a); 40 CFR 70.6(a)(1). Applicable requirements include PSD requirements set forth under Title I of the CAA, as well as regulations at 40 CFR 52.21. PSD regulations at 40 CFR 52.21(b)(5) define a stationary source as, "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant". These regulations further define "building, structure, facility, or installation" as "all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)[.]" 40 CFR 52.21(b)(6). These definitions are echoed in EPA's title V regulations. *See* 40 CFR 71.2 (providing definition of "major source" and "stationary source").

Thus, EPA must apply a three-part test to determine whether multiple pollutant emitting activities should be aggregated for PSD and title V purposes in order to ensure accurate source determinations:

(1) whether the activities belong to the same industrial grouping;
(2) whether the activities are located on one or more contiguous or adjacent properties; and
(3) whether the activities are owned or under the control of the same person.

40 CFR 52.21(b)(6). If multiple pollutant emitting activities meet this three-part test, then they must collectively be considered a "building, structure, facility, or installation," and thus one "stationary source" for PSD and title V permitting purposes. That source must be permitted appropriately under both PSD and title V to ensure compliance with the CAA.

In this case, the commenter expresses concern that the draft title V permit for Bonanza does not include all emissions from the nearby Deserado Coal Mine, which the draft SOB discloses supplies coal to Bonanza. *See* draft SOB at 2. The draft title V permit does not include pollutant emitting activities associated with the Deserado Coal Mine, nor does it indicate that the Coal Mine should be regulated together with Bonanza as a single source. This oversight is glaring, as it appears that under the three-part test under the CAA, inclusion of emissions from the Deserado Coal Mine is required to ensure Bonanza title V permit assures compliance with applicable requirements.

That inclusion of emissions from the Deserado Coal Mine is required under the CAA appears very evident. As a threshold matter, the Deserado Coal Mine is a pollutant emitting activity. The Coal Mine has received a number of air pollution permits from the state of Colorado, authorizing the release of particulate matter and other air pollutants. *See* Exhibit 12, Colorado Department of Public Health and Environment Air Pollution Permits.

Given that the Deserado Coal Mine is a pollutant emitting [source], the remaining questions to be answered are whether the mine and Bonanza belong to the same industrial grouping, whether they are contiguous or adjacent, and whether they are owned or under common control by the same entity. Here, the answer is affirmative on all counts.

As far as ownership is concerned, the Deserado Coal Mine is owned by Blue Mountain Energy, a subsidiary of Deseret Power Electric Cooperative. *See* http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=6491889 (last accessed June 14, 2014). Thus, both the Deserado Coal Mine and Bonanza are owned or under common control by the same entity.

With regards to industrial grouping, although it is true that the Deserado Coal Mine may have a different SIC code—in this case 1222—given the support role the mine plays in providing coal to Bonanza, it is appropriate to classify the mine within the grouping for coal-fired power plants—in this case SIC 4911. As the EPA has noted:

> [S]ources [are] to be classified according to [their] primary activity, which is determined by [their] principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code.

45 *Fed. Reg*. 52676 (Aug. 7, 1980).

Here, the Deserado Coal Mine produces coal for the principal purpose of generating electricity at Bonanza. Thus, in accordance with EPA guidance, the classification of Bonanza—SIC code 4911—would encompass the mine.

With regards to contiguousness or adjacency, it appears clear that the Deserado Coal Mine is contiguous or adjacent to Bonanza. Although several miles separate Bonanza and the mine, a dedicated electric rail line connects them, meaning they are functionally one operation. In this case, the mine serves as a support facility for the operation of Bonanza and therefore is an inherent part of the single source that is Bonanza. The fact that several miles separate the mine and Bonanza has no bearing on the fact that the operation is a single operation.

The EPA has addressed the permitting of similar sources under the CAA and has reached similar conclusions. For instance, in 1997 EPA Region 8 found a pump station in Utah should have been permitted together with a minerals processing plant as a single source, even though 21.5 miles separated the activities. The EPA found the pump station was connected to

the processing plant by a dedicated channel and served an explicit support role for the processing plant, meaning that distance was "not an overriding factor" that would prevent the activities from being permitted together as a single source. *See* Exhibit 13, Letter from Richard R. Long, EPA Region 8 Air and Radiation Program Director to Lynne Menlove, Manager, New Source Review Section, Division of Air Quality, Utah Department of Environmental Quality (Aug. 8, 1997).

EPA Region 8 similarly advised that a "determination of 'adjacent' should include an evaluation of whether the distance between two facilities is sufficiently small that it enables them to operate as a single 'source.'" *See* Exhibit 14, Letter from Richard R. Long, EPA Region 8 Air and Radiation Program Director, to Lynn Menlove, Manager, New Source Review Section, Division of Air Quality, Utah Department of Environmental Quality, "Response to Request for Guidance in Defining Adjacent with Respect to Source Aggregation" (May 21, 1998).

Here, the distance between the Deserado Coal Mine and Bonanza is sufficiently small that it enables them to operate as a single source. Indeed, the Deserado Mine was sited and developed solely to fuel Bonanza. The mine ships coal to Bonanza via a dedicated train line. It does not ship coal by any other means to any other power plant or other facility. Furthermore, Bonanza depends entirely on the Deserado Coal Mine, and no other source of coal, for its fuel. In this case, distance does not appear to be a factor that would prevent Bonanza and the mine from operating as a single source.

The pollutant emitting activities at the Deserado Coal Mine and Bonanza must therefore be aggregated together as a single source to ensure compliance with PSD and title V requirements under CAA.

Response: EPA does not agree with the commenter's assertion that Bonanza and the Deserado Coal Mine should be aggregated into a single source for permitting purposes. Regardless of whether these facilities may be considered to be under common control or part of the same SIC code, we do not agree that these two facilities can be considered adjacent. While the commenter relies heavily on the fact that the two facilities are interrelated, including their connection via a dedicated rail line, the comment fails to provide specific information relating to the distance between them. EPA has found information explaining that Bonanza and the mine are separated by approximately 35 miles of railroad line and more than 50 miles by public roads, and there don't appear to be any other Deseret-controlled emissions sources between them. *See* http://en.wikipedia.org/wiki/Deseret_Power_Railroad and http://utahrails.net/utahrails/deseret-western.php (railroad distance) (both sites last accessed on September 30, 2014); https://goo.gl/maps/UEBE7 (road distance) (last accessed on September 30, 2014). Regardless of how interrelated the two facilities may appear to be, we find that given the specific facts of this case, they are simply too far apart to be considered "adjacent," as explained more fully below.

The commenter relies on examples of other situations in which EPA advised the permitting authority to consider two facilities to be a single source for permitting. However, those recommendations were made by EPA after a case-by-case analysis of the facts, and neither of

them involved the types of sources or distances involved here. In fact, in the preamble to the 1980 PSD rules that first established the three criteria used in making source determinations, EPA addressed a scenario very similar to that of this permitting action and stated the facilities would not be considered a single source based on the distance separating them:

> One commenter asked, however, whether EPA would treat a surface coal mine and an electrical generator separated by 20 miles and linked by a railroad as one ”source,” if the mine, the generator, and the railroad were all under common control. EPA confirms that it would not. First, the mine and the generator would be too far apart….

45 *Fed. Reg*. 52676, 52695 (Aug. 7, 1980).

The EPA has made clear that it will apply the three same criteria used in the title V source definition in a manner consistent with the PSD context. *See* 61 *Fed. Reg*. 34202, 34210 (July 1, 1996). While each permitting action must be assessed on a case-by-case basis, we are not aware of any statement on EPA’s part that it has or will change the position stated in the preamble to the 1980 final rule with regard to this fact pattern.

The commenter relies on one past determination in which facilities approximately 21.5 miles apart were considered adjacent. *See* Letter from R. Long, EPA Region 8, to L. Menlove, Manager, New Source Review Section, Division of Air Quality, Utah Department of Environmental Quality (Aug. 8, 1997; “Menlove letter”), available at http://www.epa.gov/region07/air/title5/t5memos/util-at1.pdf. While the Menlove letter suggested to the state permitting authority that the two facilities in that case be considered one source for permitting purposes EPA acknowledged that the position was based on the “rather unique situation” “somewhat in conflict with” the statements contained in the 1980 preamble (which are copied above) and clearly stated that its assessment was “only provided as guidance, as it remains the state’s primary responsibility to make the final determination….” *Id.* at 2. We also note that in the current permitting situation, the nearest distance between the two Deseret-controlled emission sources is almost 50% greater than that presented in the Menlove letter, and the commenter has not presented (and EPA is not aware of) any other final source determination or suggested source determination suggesting that two similarly-situated emission sources should be aggregated. In addition, we note that other EPA single source determinations appear to involve sources located at lesser distances. *See, e.g.*, Letter from P. Blakley, EPA Region 5, to D. Sutton, Illinois EPA (March 14, 2006) (emission sources up to 8 miles apart are a single source), *available at http://www.epa.gov/Region7/air/nsr/nsrmemos/general2006.pdf;* Memo from R. Kellam, EPA OAQPS, to R. Long, EPA Region 8, *Analysis of the Applicability of Prevention of Significant Deterioration (PSD) to the Anheuser-Busch, Incorporated Brewery and Nutri-Turf, Incorporated Land farm at Fort Collins, Colorado* (Aug. 27, 1996) (emission sources 6 miles apart are a single source), available at http://www.epa.gov/region7/air/nsr/nsrmemos/abnt.pdf.

In sum, at the time the relevant regulatory test was promulgated, EPA assessed a similar fact pattern and stated that such facilities should not be considered one source, and EPA is not aware of (and the commenter has not presented) an instance in which the Agency changed its

position and found sources with a similar fact pattern to be a single source for permitting purposes. Accordingly, we find that given the specific facts of this case Bonanza and the Deserado Coal Mine are too far apart to be considered "adjacent" under the title V permitting regulations. Because we do not consider the facilities to be adjacent, we do not need to assess the other aspects of the comment regarding whether they are under common control or whether they should be considered under the same SIC code because of their support relationship. No changes to the title V permit have been made as a result of this comment.

G. Miscellaneous comments

1. Concern about NO_x and SO_2 emissions contributing to growing air pollution problems in the region (Ute Tribe comment)

Comment: Given that NO_x emissions can form ozone and both NO_x and SO_2 can form $PM_{2.5}$, there is increasing concern that emissions from Bonanza are fueling the region's growing air pollution problems.

Response: EPA is aware of the commenter's concern; however, the concern is outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. The commenter has not identified a specific concern with the proposed part 71 permit. This comment is generally related to the response to comment G.3 below. No changes to the title V permit have been made as a result of this comment.

2. General concern about quantity of total pollution emitted from Bonanza (Ute Tribe comment)

Comment: Bonanza emits more than 3.5 million tons of air pollution from a 600-foot smokestack.

Response: This comment is also outside the scope of this permit action. Also, the commenter does not indicate which particular pollutants are being referred to. As explained in response to comment A.4 above, based on actual emissions data in EPA's database on GHG emissions from large facilities, if CO_2 emissions are included, the total quantity of annual actual emissions of all pollutants combined from Bonanza are somewhere between 3.0 and 3.5 million tpy. From data presented in EPA's response to comment A.4 above, it can be seen that CO_2 accounts for the vast majority of the emissions. There are currently no applicable requirements to limit the CO_2 emissions from Bonanza. Applicable requirements to limit emissions of other pollutants from Bonanza are included in the title V permit. Since the commenter has not requested any changes to the draft title V permit, EPA has not made any changes.

3. Bonanza contributes to the ozone problem in the Uinta Basin (Ute Tribe comment)

Comment: The commenter is concerned that Bonanza may be a significant contributor to the ozone problem in the Uinta Basin. The commenter is concerned that continued operation of Bonanza will ultimately lead to a designation of nonattainment for the Uinta Basin.

Response: As explained elsewhere, Bonanza, as a major source, is required to obtain a CAA title V permit to operate in accordance with part 71 of title 40 of the CFR. This permit is required to operate regardless of the air quality of the area. The comment is outside the scope of the part 71 permitting process. Nevertheless, EPA offers the response below.

EPA assumes that this comment is referring to the National Ambient Air Quality Standards (NAAQS) for ozone. As explained in the SOB for the draft title V permit, Bonanza is located in Indian country on the Uintah and Ouray Indian Reservation, which is designated as either attainment/unclassifiable or "unclassifiable" for the national ambient air quality standards for all criteria pollutants. SOB at 8. Furthermore, EPA's promulgation of a NAAQS does not, in and of itself, result in an applicable requirement in the form of an emission limit for title V sources. Rather, the measures contained in the Federal Implementation Plan (or State Implementation Plan) to achieve the NAAQS are applicable requirements. *See* 40 CFR 71.2. The CAA provides that the EPA sets the NAAQS, and then the states, or EPA or the Tribe, determine how best to attain and maintain the NAAQS for the area. Thus, the promulgation of the ozone NAAQS did not, in and of itself, mandate that the title V permit include any particular provisions.

Regarding ozone levels in the area, the 2013 Uinta Basin Winter Ozone Study (UBOS) Final Report[5] indicated that it was unlikely that Bonanza emissions contributed significantly to the pollution observed at the surface during the strong temperature inversion events in the winter season.[6] While Bonanza does emit ozone causing pollutants (as listed in the PTE table in the SOB for the draft title V permit), as the Study explains, the Deseret plume of air pollution has a different chemical signature from the ground level ozone measured in the Uinta Basin during high ozone events in the winter season,[7] and the plume generated by Bonanza generally remains above the inversion layer during these high-ozone events because of Bonanza's stack height of 183 meters, and the buoyant rise of the plume above that stack.[8,9] Since the commenter did not request any changes to the draft title V permit, EPA has not made any changes.

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[5] Final Report. 2013 Uinta Basin Winter Ozone Study ("Uinta Basin Study"). Prepared for: Brock LeBaron, Utah Division of Air Quality, 1950 West 150 North, Salt Lake City, UT 84116. Edited by: Till Stoeckenius. ENVIRON International Corporation and Dennis McNally Alpine Geophysics. March, 2014. Available at: http://www.deq.utah.gov/locations/U/uintahbasin/docs/2014/03Mar/UBOS-2013-Final-Report/Title_Contents_UBOS_2013.pdf

[6] Uinta Basin Study at ES-2:

[7] Uinta Basin Study at page 4-26.

[8] Uinta Basin Study at page 4-21.

[9] Uinta Basin Study at page 5-28.

4. Studies show Bonanza does not contribute to ground level ozone (18 commenters)

Comment: Two commenters cited a study from the University of Utah concluding that Bonanza does not contribute significant amounts of NO_x to the polluted boundary layer during ozone episodes. The thermally buoyant plume from the 600 foot stack at Bonanza rises upward and penetrates the temperature inversion layer. Emissions from Bonanza are effectively isolated from the boundary layer in which the high ozone concentrations occur. Several studies show that Bonanza does not contribute to pollution during winter inversion months.

Nine commenters indicated there is no scientific basis for refusing to properly issue a title V operating permit. Bonanza was rated among the top 20 cleanest power plants in 2002. In 2013, a UBOS report was prepared by researchers and air quality managers at Utah State University, University of Utah, NOAA, ENVIRON, University of Colorado, Utah Department of Environmental Quality and EPA. The report stated that "The power plant plume does not appear to contribute any significant amount of nitrogen oxides or other contaminants to the polluted boundary layer during ozone episodes. Bonanza was one of the first plants in the nation to adopt Best Available Pollution Controls ahead of many other plants. Bonanza is a clean facility that is not creating air quality problems that would necessitate this action on the part of EPA.

One commenter indicated that Bonanza stack is well above the inversion layer. Emissions from Bonanza are not trapped at ground level, where we breathe. Most of the year our views are clear enough to see for miles and miles.

Seven commenters stated that the UBOS report has shown Bonanza's plume does not appear to contribute any significant problems.

Another commenter stated that emissions from Bonanza are decoupled from the wintertime surface-based inversion layer and do not contribute to photochemical reactions that produce ozone in the Uinta Basin. Ozone levels exceeding the NAAQS have been noted in the wintertime when snow cover allows strong temperature inversions to develop. These levels of ozone have not been noted in the absence of snow cover. Significant oil and gas activity occurs in the Uinta Basin. Based on the 2011 Utah Department of Air Quality (UDAQ) inventory, located on Table 9-2 of the UBOS report, oil and gas emissions of nitrogen oxides are about three times higher than the level of NO_x released by Bonanza. Emissions of NO_x and other pollutants from the oil and gas industry occur at ground level and can be trapped by inversions. By contrast, Bonanza's emissions are released from an elevated 600-foot tall stack.

The 2013 UBOS report demonstrated that emissions from Bonanza do not participate in photochemical reactions that lead to elevated ozone levels in the Uinta Basin. The report states that emissions from Bonanza do not contribute to elevated ground-level ozone levels found in periods of strong wintertime inversions in the Uinta Basin. Additional control of ozone precursor emissions at Bonanza (i.e. NO_x control) will not reduce ozone levels in the Uinta Basin.

Response: The UBOS study report is referenced and described in response to a previous comment G.3. As explained in that response, the emissions from Bonanza were observed to be injected above the inversion layer, and the UBOS report concluded that it was unlikely that Bonanza's emissions contributed to winter ozone episodes. No changes to the title V permit have been made as a result of these comments.

5. Natural gas as an alternative to coal (Ute Tribe and others)

Comment: Several commenters, including the Ute Tribe, support the use of natural gas as an alternative to coal, and the phase-out of old coal plants like Bonanza, in favor of natural gas fired plants. A cleaner source of electrical power like natural gas should be utilized. Natural gas is 70% cleaner than coal.

Response: This comment raises issues that are outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. The commenters do not cite to any applicable requirements, nor do the part 71 regulations require, that the agency evaluate alternative energy in this permitting action. Since the commenters did not request any changes to the draft title V permit, EPA has not made any changes.

6. Wind and solar power cannot replace power from coal-fired power plants (three commenters)

Comment: Three commenters stated that it is not feasible for solar and wind energy to replace the 200 to 300 gigawatts of electricity produced by cooperative coal-fired power plants. Coal-fired power plants are the best option and they run America. Restrictions on coal-fired power plants will result in brown-outs.

Response: This comment raises issues that are outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. The commenters have not provided specific information regarding what restrictions in the permit would contribute to brown-outs or otherwise affect reliability of power plants. In any event, there is no requirement in the part 71 regulations to consider such information. Since the commenters did not request any changes to the draft title V permit, EPA has not made any changes.

7. Support for EPA's position and related information request (NPS comment)

Comment: The commenter appreciates that this draft permit includes a proposal to address comments that the commenter submitted in 2002 on the original draft of the title V permit. The commenter agrees with and supports EPA's CAA Section 114 letter to Deseret of March 26, 2014 and asks that EPA make Deseret's 114 response available to the commenter as expeditiously as possible.

Response: EPA appreciates the support and will keep the NPS and other Federal Land Managers informed as we work through the separate, ongoing PSD action. No changes to the title V permit have been made as a result of this comment. Information from Deseret's 114 response that is determined not to be Confidential Business Information (CBI) will be made available after the Confidential Business Information (CBI) determinations have been completed. EPA did not rely on any of the information submitted in the 114 responses in this permitting action.

8. Regional haze and impact of Bonanza on national parks (Earthjustice comment)

Comment: The commenter says the 2000 ruggedized rotor project resulted in excess pollution that not only compromises air quality, but is responsible for poor visibility or "haze". The commenter cites particular concern in national parks including Arches, Canyonlands, and Capitol Reef. The commenter also cites respiratory problems. The commenter urges EPA to swiftly cure Bonanza's ongoing CAA violations by proposing a PSD permit for Bonanza without delay. The commenter cites NO_x emissions as a particular concern.

Response: The comments raise substantive issues regarding applicability of PSD to the ruggedized rotor project, which as explained in the General Introduction and response to comment A.1, will be addressed in the separate PSD action that EPA initiated today.

9. Require Compliance with CAA to protect air quality (nine commenters)

Comment: Several commenters stated that air pollution from Bonanza causes negative health effects. These commenters expressed concern that Bonanza contributes to ground level ozone concentrations in the Uinta Basin that is a major health concern. One commenter was concerned that continued operation of Bonanza will lead to non-attainment designation for the Uinta Basin. Bonanza contributes to regional air quality problems and has the potential to adversely affect the local economy and development of natural resources.

Bonanza should comply with the CAA. Air quality in the Uinta Basin should be protected and we should all work together to improve it. Three months out of the year, air quality in the Uinta Basin is the worst in the United States. Coal fired power plants like Bonanza should be subject to more stringent regulations to control air pollutants.

Another commenter stated that pollution and GHGs are adversely impacting Americans. Another commenter pointed out that healthcare cost from dirty air are in the billions of dollars. Another commenter asked, "Why do we have environmental protection laws if they are not enforced?" Another commenter indicated that Bonanza should not be exempt from CAA rules that apply to other power plants. The commenter suggested that if the operators of Bonanza cannot economically comply with the CAA, then their electricity production does not offset the harm it inflicts on human health and quality of life.

Response: EPA has reviewed these comments and understands the issues raised. Regarding Bonanza's impact on air quality in the Uinta Basin, see response to comment G.3 above. Regarding the comment about Bonanza being exempt from CAA rules that apply to other power plants, EPA is not aware of any such exemption and does not know what the commenters are referring to. Since the commenters did not request any changes to the draft title V permit, EPA has not made any changes.

10. Allow Bonanza to operate through end-of-life expectancy (two commenters)

Comment: A couple of commenters requested that EPA allow Bonanza and the Deserado Mine to operate through the remainder of their life expectancy. With planning, a natural gas power plant could come on-line when Bonanza has reached the end of its useful life. Energy from coal costs half what is does from natural gas. Allow the free market and competition to determine the best source of fuel for electricity generation.

Response: As explained elsewhere, as a major stationary source, Bonanza is subject to title V of the CAA, including the permitting requirements. The part 71 regulations do not contain requirements regarding life expectancy of a source, other plants, alternative fuels, or market considerations, and the commenters have failed to provide any supporting documentation regarding cost concerns or market impacts of title V permits or argue how these issues are related to the requirements of part 71. No changes to the title V permit have been made as a result of this comment.

11. Issue Title V Permit (39 commenters)

Comment: Many commenters described how Bonanza has been operating without a title V operating permit for years and requested that EPA issue the title V permit to ensure compliance with the CAA and emission limitations. Three commenters requested that the title V permit be issued to ensure that Bonanza and Deserado Mine remain open. Eight commenters were against any additions to the title V permit or emission limits that would cause extra costs to the coal mine or Bonanza.

Eleven commenters insisted that the permit be issued to Deseret under the same conditions for which it was applied, and that Bonanza not be required to submit to onerous and unreasonable new restrictions and controls that will eliminate the livelihoods and financial security of hundreds of good people. One commenter requested that EPA consider the families that will be affected by this permit action and consider a compromise.

One commenter insisted that the title V permit include the same controls and regulatory requirements included in the PSD permit approved some 15 years ago, and Bonanza not be required to submit to onerous and unreasonable new restrictions and controls.

Response: EPA is aware that some of the commenters request that the title V permit be issued with additional terms and conditions not currently included. EPA is also aware that other commenters request that EPA issue the permit as requested in the application from

Deseret, and not add additional requirements. None of the commenters were specific regarding these concerns. EPA considers it possible that commenters are concerned that EPA might issue a PSD correction permit at some later date and create new costs for Deseret Power. As explained in EPA's responses to other similar comments, there will be an opportunity for public comment on that topic, as part of the separate PSD action that EPA initiated today. No changes to the title V permit have been made as a result of these comments.

12. Don't Issue Title V Permit (32 commenters)

Comment: Many commenters stated that Bonanza has a permit issued in accordance with construction and operating procedures. Therefore, Bonanza should be allowed to continue to operate with the existing permit. Rescinding this permit would be a serious breach of contract and trust, as well as a legal matter. With the economic downturn, now is not a good time to issue a new permit. Two commenters asked that Bonanza be allowed to retire some of its debts and maintain operations.

Seventeen commenters suggested that Bonanza should be allowed to operate with its existing permits. A permit for Bonanza was issued almost 15 years ago. Undoing a 15 year old permit creates uncertainty in capital markets making financing plants very difficult. This action appears to be arbitrary and capricious and not based on evidence or problems. Bonanza is already meeting or exceeding EPA requirements on its own. Several commenters indicated that Bonanza is one of the cleanest coal-fired power plants in the United States. Colorado has the cleanest coal on the planet and the lowest carbon emissions. This is another incident of EPA's "war on coal".

One commenter protested the EPA's published rulemaking requiring a title V permit for Bonanza, asserting that EPA did not give the community and many others in Bonanza's service area the courtesy of a public hearing. The only one held on June 3, 2014 was over 375 miles away. The commenter requested that EPA not require Bonanza to comply with title V permit requirements.

Response: The commenters are not specific regarding which existing permit they are describing. However, since the only federal CAA permit currently in effect for Bonanza is the 2001 PSD permit, we assume the commenters are referring to that permit. We are not rescinding the 2001 PSD permit. Rather, the requirements from the 2001 PSD permit are included in the title V (part 71) operating permit. We are finalizing a title V operating permit, as required by the CAA. The suggestion from commenters that Bonanza be allowed to retire some of its debts did not include any specifics nor does EPA have specific authority in the part 71 regulations to address that comment. The comment is outside the scope of this part 71 permit action.

EPA disagrees that the proposed permit is arbitrary and capricious. EPA is acting in accordance with the CAA. EPA also disagrees that the proposed action lacks evidentiary basis. EPA is uncertain which aspect of the proposed permit the commenters claim is not based on evidence, and therefore cannot respond to the comment with specificity.

However, in addition to this response to comments document, EPA has provided thorough legal and technical support for all aspects of this proposed permit, which is publicly available on our dedicated webpage; http://www2.epa.gov/region8/draft-title-v-permit-operate-deseret-power-electric-cooperative-bonanza-power-plant.

Similarly, EPA is unable to respond to the general statements that "[t]he Deseret Bonanza Power Plant is already meeting or exceeding EPA requirements on its own," and that "additional requirements are unwarranted". Commenters did not provide any specifics. Regardless, EPA has provided a thorough justification for our final action on Bonanza title V permit.

As explained elsewhere, the public notice and comment process exceeded the part 71 requirements.[10] See response to comment G.26. EPA appreciates that it may be challenging to schedule a public hearing in a manner that is accessible and convenient to all interested parties, and for this reason allows comments to be submitted in several different formats, which was done here. No changes to the title V permit have been made as a result of these comments.

13. Bonanza provides clean energy (14 commenters)

Comment: Six commenters described how Bonanza provides reliable, clean and affordable electricity and over 300 jobs. The commenters requested that Bonanza not be burdened by unnecessary regulations that could result in the loss of jobs. Stricter regulations are not warranted.

Eight commenters indicated that Bonanza was rated as top 20 cleanest in 2002 with 100% scrubbed emissions, robust baghouse filtering, high efficiency turbine rotor, new low-emitting burners, and a 600 foot emissions stack. Another commenter indicated that emission control equipment collects 99.9 percent of air pollutants. Bonanza has demonstrated responsible environmental stewardship and additional requirements are unwarranted.

Response: EPA recognizes that Bonanza has taken steps to reduce its air pollution. We also recognize but take no position on the general statement that Bonanza has demonstrated responsible environmental stewardship. In any event, any proactive measures Bonanza may have taken do not preclude EPA's duty to act on title V permits in accordance with the requirements of 40 CFR part 71. We also note that a lack of a Title V permit does not constitute an exemption from any applicable CAA requirements. Bonanza still has to meet the requirements. The primary purpose of a Title V permit is to consolidate all the CAA requirements into one document, to promote better practical enforceability. The Title V permit is often described as an "empty vessel" which is filled with existing requirements. It is not intended for creating new requirements. No changes to the title V permit have been made as a result of these comments.

[10]Note, the title V permit is a permitting action and not a rulemaking action.

14. Action will drive electricity rates 40% higher (144 commenters)

Comment: Well over 100 commenters indicated that regulation of Bonanza could result in an electrical rate increase that retired people, people on a fixed income, young couples, people on energy assistance programs, tribal members, minority populations, and school teachers could not afford. Eighteen commenters indicated that they did not want to see an expected 40% electrical rate increase. Rate increases would have a significant impact in the area and impose an undue burden on economically sensitive populations and communities. Some commenters urged EPA not to impose high cost control systems. Other rate increases are anticipated from forthcoming GHG regulation.

Electrical rate increases may cause businesses to close, put people out of work, and homes may be lost.

Bonanza has not yet paid off the mortgage on recent upgrades. Another 15 years remains on the mortgage. If Bonanza were allowed to wait until the existing mortgage is paid, it could accommodate new capital infusion without disrupting rates.

One commenter explained that Bonanza has long-term fixed-price contracts with customers for a large portion of the 458 megawatts that Bonanza produces. The remaining 25% of the power is withheld for rate-paying member needs. Any increased operating costs would therefore be passed on to the rate-paying members having a leveraging impact of about four to one.

Some commenters expressed concern that requiring upgrades to Bonanza could result in shutting down the Deserado Coal Mine. The mine generates millions of dollars in taxes, some of which supports a local school district and college.

Response: These comments raise issues outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. The commenters do not cite to any applicable requirements, nor do the part 71 regulations require that the agency evaluate issues during part 71 permitting that are outside the scope of that permitting process. Further, neither the CAA nor the part 71 regulations that govern this action require EPA to consider the impact of title V permitting on capital infusion or disruption of electrical rates.

If commenters are concerned about the possibility of substantive costs arising from issuance of a PSD correction permit at some later time that might lead to an increase in electrical rates, as explained in the proposed PSD correction permit, there is a separate opportunity for public comment on that topic, as part of the separate PSD action that EPA initiated today. No changes to the title V permit have been made as a result of these comments.

15. Air quality is good (9 commenters)

Comment: One commenter asked what evidence is available that air quality-related problems exist from Bonanza. Another commenter indicated that the air quality in the Vernal area is better than many areas of Utah. Three commenters indicated that the environmental effects from Bonanza are very small. Any degradation of air quality is due to oil and gas activity and not from Bonanza. One commenter indicated that air quality is good in the Uinta Basin and the skies are blue. The air is not polluted like in Chicago, Washington DC, Denver and Houston. Three commenters requested that environmental improvement be slowly implemented over time to minimize impacts to the community.

Response: These comments are outside the scope of the part 71 permit action. Bonanza, as a major source, is required to obtain a CAA title V permit to operate in accordance with part 71 of title 40 of the CFR. This permit is required to operate regardless of the air quality of the area. *See also* response to comment G.3. No changes to the title V permit have been made as a result of these comments.

16. More study is necessary before making a decision (one commenter)

Comment: One commenter requested an environmental impact analysis and analysis of reliability and rate trade-offs before a decision is made. Rates and reliability significantly affect the health, safety, and welfare of residents. The EPA action is in conflict with the National Association of Counties 2014 Interim Policy.

Response: The EPA disagrees with this comment. An environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) is not required for this permitting action. While NEPA (42 U.S.C. §4332(C)) requires that the federal government perform an environmental assessment for every major federal action significantly affecting the quality of the human environment, a title V permit is an action under the CAA, and section 7(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)) exempts actions under the CAA from the requirements of NEPA. Specifically the provision reads, "no action taken under the CAA shall be deemed a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969". Therefore, a NEPA analysis is not required for this permit action.

Regarding the commenter's concerns about the potential health and safety effects that electricity rates and reliability can have on local residents, the EPA does not set electricity rates. Regardless, the commenter did not provide any supporting documentation regarding rates and reliability of Bonanza and its impacts on public health and safety for our consideration.

The commenter references a policy but did not provide that policy with the comments or provide information as to its relevancy to this part 71 permitting action. Thus, the EPA is not able to respond to whether the title V action is in conflict with the policy. No changes to the title V permit have been made as a result of this comment.

17. Wood burning stoves create more air pollution than the coal-fired power plant (7 commenters)

Comment: Seven commenters stated that electricity is a clean heat. To reduce heating costs, electrical users may turn to wood-burning stoves that emit more particulate matter into air than electricity generated from coal. This would cause a greater problem during winter months.

Response: This comment raises issues outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. This action does not address the emission of particulate matter from residential wood heaters, including wood-burning stoves. No changes to the title V permit have been made as a result of this comment.

18. Jobs will be lost, taxes would diminish, services would cease (35 commenters)

Comment: Thirty-five commenters indicated that jobs may be lost as a result of this action at Bonanza, the Deserado Mine, in the oil and gas industry and throughout Colorado, Nevada, Utah, and Wyoming. Electricity rate increases would cause many people to lose their jobs. The loss of 165 jobs at the Deserado Mine and the loss of 270 jobs at Bonanza would be devastating to the local community. If Bonanza shuts down, then the Deserado mine shuts down, as there is no railroad access or other means to ship coal elsewhere. The mine pays $12.8 million in taxes annually and has contributed more than $300K to the Rangely Hospital.

Response: These comments raise issues outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. The commenters do not indicate why they believe that issuance of a title V permit would cause both Bonanza and the Deserado Mine to close. Further, the title V permit is proposed to be issued only for Bonanza and does not include the Deserado Mine. The commenters also do not indicate why they believe issuance of the permit would increase electricity rates.

If commenters are concerned about the possibility of substantive costs arising from issuance of a PSD correction permit at some later time, there is a separate opportunity for public comment on that topic, as part of a separate PSD action that EPA initiated today. No changes to the title V permit have been made as a result of these comments.

19. Special interest group driving the decision (18 commenters)

Comment: Thirteen commenters suggested that the environmental group WEG is attempting to play a dominant role in the permit decision, despite the fact that WEG is not located in the area and did not attend the public hearing.

Some commenters expressed the opinion that the prospect of litigation from environmental groups is a greater factor than scientific analysis and monitoring. Five commenters expressed concern that environmental groups engage in litigation against the EPA to oppose responsible energy development.

Some commenters expressed the belief that WEG is being paid by the federal government to file lawsuits against the coal industry, which the commenters do not support.

Some commenters also expressed the belief that WEG's website contains incorrect information about Bonanza.

Response: EPA disagrees with the assertion that this permitting action is dominated by WEG. Commenters provide no basis for the assertion. As explained elsewhere in this action, this permitting action is required by the CAA and the part 71 implementing regulations. EPA received thousands of comments from a variety of different individuals, interest groups, industry, municipal governments, and others; and EPA has equally considered all of the comments and incorporated them into the final action where appropriate. As explained in the SOB in more detail, the Deseret title V permit application has been pending for some time. The part 71 regulations at 40 CFR 71.7(a)(2) require that EPA act on a permit application within 18 months after receiving a complete application. A Consent Decree, which was only entered by the court after the presiding judge considered whether it was fair, reasonable and in the public interest, requires that EPA issue a final title V permit decision for Bonanza on or before December 5, 2014.[11]

Regarding commenters' belief that an outside organization is being paid by the federal government to file lawsuits against the coal industry, the commenters provide no basis for their belief and we are not aware of such funding. Regarding commenters' belief that there is incorrect information on WEG's website, this is outside the scope of this permit action. EPA has solicited comments only on the part 71 permit action. Further, EPA has no control over WEG's website. No changes to the title V permit have been made as a result of these comments.

20. Should not retroactively fix the PSD permit (150 commenters)

Comment: Fifty-one commenters requested that EPA not go back to change a permit midway through the operating time frame of Bonanza. Bonanza is one of the cleanest operating coal-fired power plants in the United States. Bonanza has made long-term contracts and commitments based on an air permit issued about 15 years ago. This permit should not be changed at this time. Adding modernized pollution control equipment and new restrictions will create an unfair burden for rural electric cooperative owners. This modernization will cost Deseret $200 million and result in a 40% electrical rate increase.

[11] Doc. Nos. 14 and 17, *WildEarth Guardians v. McCarthy*, Civ. No. 13-cv-03457-JLK (D. Colo. 2013).

This would cause Bonanza and the Deserado Mine to close. Seven commenters indicated that upgrades will cost $2 million.

One commenter was opposed to changing the rules of PSD permitting after the fact. One commenter indicated that if Bonanza was forced to include additional emission controls the cost would be so high that Bonanza would have to close. This would put a tremendous burden on the families living in the basin. One commenter indicated that additional emissions controls are unnecessary.

Four commenters indicated that changes to Bonanza were allowed in the 2000 era and permits were granted. Seventeen commenters indicated that retroactive changes should not be allowed and the existing permit decision and structure should stand.

Seven commenters were opposed to modifications to the Bonanza PSD permit requiring substantial new technology through the issuance of a title V federal operating permit. When the PSD permit was issued about 15 years ago, no title V permit was required. The commenters understood that the permit would be valid for 30 years. At the time Bonanza went beyond what was required and was rated as one of the 20 cleanest in 2002. Changing the rules after the fact is wrong and hurts communities and employees.

If the permit is issued making Bonanza upgrade and requiring the mine to close, this will have a big effect throughout many communities.

One commenter indicated that Bonanza already has an approved PSD permit from EPA. Now EPA claims this permit is no longer valid and that changing the requirements is acceptable. EPA has a contract with Bonanza and needs to stand by it.

Two commenters stated that EPA cannot try to undo a permit issued almost 15 years ago due to a mistake. Since construction has been complete for over a decade Bonanza cannot undo the work authorized by EPA.

One commenter opposed the issuance of a title V permit and the retroactive nature of this proceeding. The commenter urged EPA to consider the efforts already undertaken by the power plant operators and the arrangements made in good faith to address air quality concerns form the time the PSD permit was issued.

One commenter asked us to reinstate the original permit with no further controls or restrictions.

Ninety-six commenters requested that the title V permit not be amended or modified.

Response: It appears that commenters may be concerned about the possibility that EPA might issue a PSD correction permit at some later date and create new costs for Deseret Power which could then lead to an increase in electrical rates. As explained in EPA's responses to other similar comments, there is a separate opportunity for public comment

on that topic, as part of a separate PSD action that EPA initiated today. No changes to the title V permit have been made as a result of these comments.

21. Overregulation

Comment: One commenter indicated that we are the only country in the history of the world to regulate ourselves to the point where we are destroying our country. Another commenter indicated that carbon dioxide emissions have been returned to 1991 levels as proposed by the Kyoto Protocol. Another commenter indicated that air quality in the area of Bonanza is good and does not need to be further regulated. Another commenter explained that extreme measures affect the entire nation. Five commenters requested that additional regulations or adverse permits not be imposed on coal power plants. One commenter requested that EPA think about how these regulations affect lower income families. One commenter was opposed to any changes. Another commenter indicated that the EPA has too much authority and power. Some of commenters suggested that the federal EPA should be ended or defunded.

Two commenters indicated that rescinding the title V permit and imposing severe new restrictions and emission controls as a condition to re-issue would result in significant damage with the possibility that Bonanza and Deserado Mine would close. This is unacceptable as the mine generates jobs, and millions in taxes.

One commenter indicated support for renewable and fossil fuel energy sources to produce enough energy for all the people.

Response: These comments raise issues outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. As explained elsewhere, the conditions in this permit are those required by the CAA and part 71 regulations. The commenters do not raise any deficiency or affirm any aspect of the action being taken through this permit decision, nor do the commenters provide any substantiation for the assertions made. As explained in EPA's responses to other similar comments, if commenters are concerned about the possibility of substantive costs arising from issuance of a PSD correction permit at some later time, there is a separate opportunity for public comment on that topic, as part of a separate PSD action that EPA initiated today.

We also note that since this will be the initial title V permit for Bonanza, there is no pre-existing title V permit to rescind. Regarding alternative forms of energy, see response to related comment G.5 above. The agency is not evaluating alternative energy in this situation. No changes to the title V permit have been made as a result of these comments.

22. Ensure Bonanza installs required pollution control equipment or is shut-down (2,188 commenters)

Comment: A total of 2,188 individuals sent comments through WEG via email supporting EPA's efforts to ensure that Bonanza complies with the CAA. They indicated

Bonanza has escaped accountability regarding clean air laws for too long. Efforts are supported to ensure the power plant installs required pollution controls. The power plant has largely escaped regulations for years, while other power plants in the region have made significant CAA upgrades. The owners of the power plant should shoulder the cost of controlling air pollution, if they continue to operate. Commenters support the proposed title V permit. However, the proposed permit should be written to ensure that the owners install legally required pollution controls as soon as possible. The EPA must establish a deadline for these controls. If the power plant cannot install the legally required controls as soon as possible, they must be shut down. There is no excuse for illegal operation of a coal-fired power plant. EPA must ensure that Bonanza cleans up or is shut down.

Response: EPA notes the concern expressed by commenters about ensuring that the power plant installs required pollution controls, and the commenters' support for issuance of the title V permit. To the extent the commenters are requesting that Deseret's underlying PSD permit be changed, EPA has already explained that we are undertaking a separate permitting process to propose a PSD correction permit.

23. EPA has not complied with regulations, requirements and policies (Garfield County Commissioner)

Comment: The commenter indicated that federal agencies are required to comply with established law, including the Regulatory Flexibility Act (RFA). The CAA requires federal agencies analyze and disclose impacts of federal actions to small communities. EPA has failed to comply with the CAA, complete the required analysis and disclose the results. If we are mistaken, please provide us with a record of the analysis and results as applied to communities, businesses and governmental entities.

Federal law requires that major federal actions be coordinated with local governments impacted by the decision and that it be consistent with local plans, programs and policies. Coordination has not occurred. We request government to government coordination prior to implementation of the new requirements.

We request verification that EPA has complied with the Data Quality Act. It appears this requirement is driven by political pressure exerted by selfish interest groups. Air quality decisions are detailed and highly technical. Compliance with the Data Quality Act is imperative.

These new requirements will require local power cooperatives to raise rates by an estimated 40%. The threat this represents to our local power cooperatives viability are deemed to be detrimental to the health, safety, and welfare of our residents. Our area experiences extreme variation in temperature from 50 degrees Fahrenheit below zero to 110 degrees Fahrenheit. Power for heating and cooling is essential for many of the elderly, the infirmed, and those on minimal fixed incomes. Implementation of these additional requirements and associated rate increase may directly threaten the lives of at risk individuals. We request a detailed and specific risk-benefit analysis to demonstrate how the added requirements justify placing the lives of sensitive individuals at risk.

On March 3, 2014, the National Association of Counties urged Congress and federal agencies to reevaluate restrictions on the mining, transportation and burning of coal. The Association asserted the EPA's Maximum Achievable Control Technology rules should receive additional study to determine the cost and benefit on electric utility operations, electricity reliability, and the economic and health impacts to communities, consumers and manufacturers. To completely ignore the request of such a large body of elected officials who are responsible for the health, safety and welfare of the public is irresponsible.

We officially inform the EPA that implementation of requirements for Bonanza constitutes a significant threat to the health, safety and welfare of our citizens. We also demand in the strongest terms possible that you place a 180 day minimum moratorium on any further implementation of applying standards to Bonanza. We request detailed documentation justifying the changes and impacts to our citizens.

Response: EPA agrees that federal agencies are required to comply with established law, including the RFA. However, EPA notes that the requirements of the RFA do not apply to all forms of federal agency action. As stated in the most current RFA Guidance (available at http://www.epa.gov/rfa/documents/Guidance-RegFlexAct.pdf);

> "the RFA requirement to prepare a regulatory flexibility analysis … applies only to:
>
> - proposed rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute, and
> - final rules promulgated under the notice-and-comment rulemaking requirements of the APA."[12]

The RFA Guidance further states that "rules that the Agency is **not required** by statute to propose before promulgating" are exempt from RFA requirements.[13] EPA's draft permitting action for Bonanza is not a rulemaking subject to the notice-and-comment requirements under the APA, nor is it a rule which EPA is required by statute to propose before promulgating. Therefore, the commenter's assertion that EPA failed to comply with the requirements of the RFA in this draft permitting action is irrelevant because EPA's compliance with the RFA is not required for this permitting action.

The commenter does not indicate which federal law requires such coordination and consistency with local plans, programs and policies. EPA is therefore unable to respond to this statement with specificity. However, assuming that the commenter is continuing to refer to the RFA, EPA reiterates that the draft permitting action for Bonanza is not required to comply with the RFA, or any specific analysis required by the RFA.

EPA verifies that we did comply with the Data Quality Act and meet federal standards for reliable data in the permitting analysis for Bonanza. In reviewing the emissions data

[12] RFA Guidance at 4.
[13] Id.

for Bonanza, we incorporated an appropriate level of quality assurance and control and internal peer review with sufficient rigor for the scope of the project. We used data provided by Deseret Power in conjunction with EPA's Air Markets Program Database (AMPD) in our analysis. The AMPD relies on CEMS and other approved EPA test methods. EPA's emissions monitoring requirements ensure that the emissions data collected is of a known, consistent, and high quality, and that the mass emissions data from source to source are collected in an equitable manner. Desert is required to adhere to the regulatory standards found in 40 CFR part 75, for CEMS including, but not limited to, initial certification and recertification reporting to EPA (40 CFR 75.63), quarterly reporting to EPA (40 CFR 75.64) and quality assurance, and quality control recordkeeping (40 CFR 75.59). Furthermore, the applicability criteria for various requirements discussed in the draft permit are based on broad design parameters or source category definitions which do not require consideration of detailed data elements. Finally, this proposed permit action is not associated with promulgation of any MACT standard. EPA therefore does not consider the National Association of Counties' urging to be relevant to this action. No changes to the title V permit have been made as a result of these comments.

24. Are comments being handled fairly? (one commenter)

Comment: One commenter, relying on a friend's description, asserted that the friend overheard two EPA employees and a member of the Ute Tribe at dinner during the public hearing making negative remarks about comments received from coalminers.

Response: This comment raises issues that are outside the scope of this permit action. The permitting decision that is being addressed in this situation is solely about the part 71 permit. Since the commenter does not request any changes to the draft title V permit, no changes have been made.

25. Find other ways to end the use of coal in power generation (one commenter)

Comment: One commenter indicated that it seems clear that challenging the power plant's ability to operate is a secondary approach by opponents to the expansion of the Deserado Mine. The Bureau of Land Management (BLM) NEPA analysis indicated that the mine expansion poses no significant impact and opponents to coal use in the United States should find other ways to end the use of coal in power generation.

Response: EPA does not agree that its draft title V permit action challenges Bonanza's ability to operate or challenge the expansion of the Deserado Mine. EPA has not considered any aspect of the Deserado Mine expansion in the draft Deseret title V permit, and as explained in response to comment F, the Mine is not part of Bonanza that is being permitted in this action. As explained elsewhere in this action, the CAA requires Deseret to apply for a title V permit for Bonanza and for EPA to apply the regulations and take action on that application. No changes to the title V permit have been made as a result of this comment.

26. Has EPA complied with Environmental Justice (EJ) principles? (one commenter)

Comment: One commenter requested detailed verification that EPA has complied with EJ principles. The commenter's concern was that citizens in rural Utah, impacted by this change, may qualify as a minority community based on religion, lifestyle, economic conditions, access to alternate services and other factors. And that a potential rate increase of 40% creates an unjustified burden for our residents and qualifies for (EJ) considerations.

Response: EJ is one of the Agency's highest priorities. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy of EJ and directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA defines EJ as providing fair treatment and meaningful participation in environmental decision making.

We believe that the process used with the title V permitting action provided opportunity for meaningful participation in environmental decision making. Specifically, the EPA fulfilled and exceeded CAA public notice requirements for title V permitting. The standard 30 day public comment period was extended to 45 days to allow more time for the community to comment. The public notice was published in four (4) newspapers (Ute Bulletin on April 25, 2014, Salt Lake Tribune on April 27, 2014, Uinta Basin Standard and Vernal Express on April 29, 2014) in advance of the start of the public notice period (May 1, 2014). The documents for the draft permit were made available locally at the Uintah County Clerk's Office and Ute Indian Tribe Energy and Minerals Department and were also available on the Internet on the EPA Region 8 website: http://www2.epa.gov/region8/air-permit-public-comment-opportunities.

A public hearing was held on June 3, 2014, from 1:00 p.m. to 4:00 p.m., and from 6:00 p.m. to 8:00 p.m., at the Ute Tribal Auditorium in Fort Duchesne, Utah approximately 35 miles northwest of Deseret. All comments (written or oral) received at the public hearing are being considered by the EPA in arriving at a final decision on the permit.

With respect to whether this permit could result in disproportionately high and adverse human health or environmental effects, we note that the title V permit does not impose any new emission control requirements on Deseret. Under the statutory and regulatory provisions, it serves to consolidate existing requirements into one legally enforceable document that includes all applicable federal regulations. Thus, an EJ assessment associated with issuing the draft title V permit was not conducted because the title V permit does not impose any new emission control requirements on Deseret. The title V permit does require continued compliance with existing requirements. No changes to the title V permit have been made as a result of this comment.