BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: Williams Four Corners, LLC Sims Mesa CDP Compressor Station Permit Number: P026R2 Issued by the New Mexico Environment Department Air Permit Bureau	ORDER RESPONDING TO PETITIONERS' REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF A STATE OPERATING PERMIT Petition Number: VI-2011-___

ORDER GRANTING PETITION FOR OBJECTION TO PERMIT

The United States Environmental Protection Agency ("EPA") received a Petition to Object to the Issuance of a State Title V Operating Permit ("Petition") on April 14, 2010, from WildEarth Guardians and San Juan Citizens Alliance (collectively "Petitioners"). The Petitioners request that EPA object, pursuant to section 505(b)(2) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7661d(b)(2), to the renewal, by the New Mexico Environment Department, Air Quality Bureau ("NMED") of the title V operating permit issued to Williams Four Corners, LLC ("Williams") for the Sims Mesa Central Delivery Point ("Sims Mesa CDP" or "Sims Mesa"), a natural gas gathering and compression plant located approximately 17 miles Northeast of Blanco, New Mexico in Rio Arriba County.

Specifically, the Petitioners claim that the Sims Mesa title V permit ("Permit" or "Sims Mesa permit"): (1) fails to ensure compliance with the Prevention of Significant Deterioration ("PSD") and title V requirements; (2) fails to require prompt reporting of deviations; (3) fails to require sufficient periodic monitoring; and (4) includes a condition that is contrary to applicable requirements.

Based on a review of the petition and other relevant materials, including the Permit and permit record, and relevant statutory and regulatory authorities, I grant the petition requesting that EPA object to the Permit.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each state to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted interim approval to the title V operating permit program submitted by the State of New Mexico, effective December 19, 1994. *See* 59 Fed. Reg. 59656 (November 18, 1994). Subsequently, EPA granted full approval of the New Mexico title V operating permit program, effective December 26, 1996, and approved a revision to the program in 2004. *See* 40 C.F.R. Part 70, Appendix A; *see also* 61 Fed. Reg. 60032, 60034 (November 26, 1996) and 69 Fed. Reg. 54244, 54247 (September 8, 2004). New Mexico State Implementation Plan ("SIP") revisions related to references from the Sims Mesa permit terms include approval of 20.2.7 NMAC - Excess Emissions. *See* 74 Fed. Reg. 46910 (September 14, 2009).

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act, including requirements of the applicable SIP. *See* CAA sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The Title V operating permits program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements"), but it does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with applicable reqnirements. *See* 57 Fed. Reg. 32250 (July 21, 1992) (EPA final action promulgating 40 C.F.R. Part 70).

One purpose of the Title V program is to "enable the source, states, EPA and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the Title V operating permits program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under CAA section 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit, if it is determined not to be in compliance with applicable requirements or requirements under 40 C.F.R. Part 70. 40 C.F.R. § 70.8(c).

If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act provides that any person may petition the Administrator, within 60 days of expiration of EPA's 45-day review period, to object to the permit. 42 U.S.C. § 7661d(b)(2) and 40 C.F.R. § 70.8(d).

The petition must "be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was

impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2).

In response to such a petition, the CAA requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the CAA. 42 U.S.C. § 7661d(b)(2). *See also* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n. 11 (2d Cir. 2003) ("*NYPIRG 2003*").

Under CAA section 505(b)(2), the burden is on the petitioner to make the required demonstration to EPA. *E.g., Sierra Club v. Johnson*, 541 F.M. 1257, 1266-67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677-78 (7th Cir. 2008); *Sierra Club v. EPA*, 557 F.3d 401, 406 (6th Cir. 2009) (discussing the burden of proof in title V petitions); *see also NYPIRG 2003*, 321 F.3d at 333 n. 11. In evaluating petitioners' claims, EPA considers, as appropriate, the adequacy of the permitting authority's rationale in the permitting record, including the response to comment.

BACKGROUND

I. The Facility

The Williams Sims Mesa CDP is a natural gas gathering and compression facility, as defined under Standard Industrial Classification 4922 - Natural Gas Transmission. Gas is compressed to specification for transmission to sales pipelines using natural gas fired internal combustion engines to power the compressor units. Other activities conducted onsite include dehydration of the gas through contact with triethylene glycol, and gravity separation of condensates. Four permitted triethylene dehydrators have built-in flash tanks and still vents, which are routed to the fuel system as a control method, primarily for control of volatile organic compound ("VOC") emissions and other criteria pollutants. Some fugitive VOC emissions also result from equipment leaks.

II. The Sims Mesa Title V Permit Renewal Action and Petition to Object

On July 23, 2008, Williams submitted an application to NMED for the renewal of the Sims Mesa title V operating permit - Permit Number P026R2. A copy of the draft permit for renewal was submitted for a 30-day public comment period beginning November 25, 2009. On December 18, 2009, Petitioners submitted comments to NMED on the draft permit for renewal, raising concerns with the draft Sims Mesa permit. NMED also submitted the proposed permit to EPA, and EPA did not object. NMED prepared a response to comments ("RTC"), dated March 19, 2010, and issued the renewed Sims Mesa permit on the same date. On April 14, 2010, Petitioners submitted an electronic copy of the Petition to EPA, requesting that EPA object to the renewal of the Sims Mesa permit.

The Petition claims that the Sims Mesa permit does not comply with 40 C.F.R. Part

70 in that: (1) the title V permit failed to assure compliance with PSD and title V requirements because NMED failed to consider whether emissions from adjacent and interrelated pollutant emitting activities triggered PSD review, specifically Devon Energy-owned natural gas wells that supply natural gas to the Sims Mesa CDP; (2) NMED failed to include prompt reporting for all deviations in the permit conditions; (3) NMED failed to require specific periodic monitoring for compliance with nitrogen oxides ("NOx") and carbon monoxide ("CO") limits, and any monitoring for compliance with VOC limits; and (4) the title V permit included a condition that is contrary to applicable requirements related to compliance with the NAAQS.

ISSUES RAISED BY PETITIONER

I. Source Definition for Purposes of PSD and Other Requirements

Petitioners' Claim: Petitioners claim that NMED failed to properly assess the stationary source that is being permitted under the Sims Mesa title V permit and therefore failed to assure that the permit includes all applicable PSD requirements, failed to ensure compliance with PSD, failed to ensure compliance with the title V permitting requirements, and failed to include a compliance schedule to bring the source into compliance with applicable requirements, including PSD. *See* Petition at 3-8. In particular, Petitioners allege that NMED failed to consider emissions from all adjacent and interrelated pollutant emitting activities, namely the natural gas wells and associated equipment that supply natural gas to the Sims Mesa CDP. The Petitioners claim that NMED's determination that there is no common control between the Sims Mesa CDP and any contiguous or adjacent polluting activities is haseless, arguing that NMED did not request, obtain, or review information that Petitioners believe is necessary for such an analysis and which they mentioned during the public comment period on the proposed permit, such as system maps showing emission sources, flow diagrams, and business information regarding the nature of control. Instead, Petitioners assert, NMED apparently relied on two pieces of company correspondence, and it is not clear whether this correspondence was from a responsible official. Thus, Petitioners argue that EPA must object to the Sims Mesa title V permit on the basis that NMED did not adequately support its analysis for its source determination and did not appropriately address PSD requirements and whether common control exists between the Sims Mesa CDP and the upstream wells and associated equipment.

Petitioners also challenge NMED's ultimate conclusion that Williams does not exert control over the natural gas wells that supply the CDP and which NMED believed were owned and operated by another company, Devon Energy. Petitioners assert that NMED overlooked relevant EPA guidance in making its common control determination. In particular, relying on guidance that pertains to military installations, Memorandum from John S. Seitz, Office of Air Quality Planning and Standards, *Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permits Programs of the Clean Air Act* (August 2, 1996), Petitioners argue that indirect natural control exists between the Sims Mesa CDP and the upstream natural gas production operations, since the product of the wells is "integral to" and "contributes to" the output provided by the separately owned Sims Mesa CDP,

and contract-for-service arrangements clearly exist between Williams and its upstream suppliers. *See* Petition at 6-7.[1]

Petitioners further contend that a finding of common control is compelled here. They assert that Devon Energy's upstream wells appear to entirely support the Sims Mesa CDP and likely rely on the Sims Mesa CDP to process all or most of their gas, although Petitioners provide no citations to the permit record for these assertions. Petitioners also argue that information provided in NMED's common control determination suggests that Williams exerts control over Devon Energy's operations. Petitioners claim that Williams admits it exerts direct control during "'periods of emergency, failure or scheduled major maintenance, [when Williams] can request that producers curtail operations on a short term basis.'" Petition at 7 (quoting RTC at 3). Petitioners argue that it would be highly unusual if Williams did not exert control over other relevant aspects of the performance of Devon Energy's operations through the terms of its contracts with Devon Energy. Because Williams admits that it has a contractual obligation to accept gas that upstream producers deliver, Petitioners assert that it is doubtful that such a term would exist without terms and conditions that ensured a meaningful level of common control. Petitioners further claim that NMED appears to incorrectly assume that common control requires full and total control over contiguous and adjacent activities, and that it hinges upon "routine management." *Id.* at 8. Petitioners contend that NMED's assertion that "'none of the individual well owner/operators can influence the activities at the compressor station'" is simply unsupported. *Id.* (quoting RTC at 4).

Petitioners thus conclude that NMED failed to appropriately assess whether common control exists between the Sims Mesa CDP and upstream natural gas production operations and their associated equipment.

EPA's Response: I grant this request for an objection to the extent described below. As explained in detail above, Petitioners argue that an objection to the Sims Mesa title V permit is required because NMED failed to appropriately assess whether common control exists between the Sims Mesa CDP and upstream natural gas production operations and associated equipment. Thus, Petitioners allege, NMED failed to ensure that the permit includes all applicable PSD requirements and failed to ensure compliance with the title V permitting requirements.

After a review of Petitioners' claims, and the permit record, including NMED's explanation of its common control decision in the RTC, I grant the Petitioners' request for an objection, because NMED's record, including the RTC, fails to provide an adequate basis and

[1] As noted above, Petitioners refer to a memorandum concerning military installations. *See* Petition at 6 (citing Memorandum from John S. Seitz, Office of Air Quality Planning and Standards, *Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permits Programs of the Clean Air Act* (August 2, 1996)). As stated on page 1 of that memorandum, its purpose is to provide guidance on "major source" determinations at military installations. The facilities and activities at issue in this case, of course, are not located at a military installation, and thus the memorandum is not directly applicable to the analysis at issue here. Nevertheless, there are some aspects of the 1996 memorandum that may be useful in making non-military source determinations, such as examination of the relationship between the various emission-producing activities under consideration. As explained later in this response, contracts and agreements can be relevant to the determination of whether common control exists at a site.

rationale for NMED's determination of the source for title V purposes and PSD review. *See In the Matter of Kerr-McGee/Anadarko Petroleum Corporation, Frederick Compressor Station*, Petition VIII-2008-02 at 5 (October 8, 2009) (granting petition to object where permitting authority's permit record failed to provide an adequate rationale for its determination of the source for PSD and title V purposes after receiving public comments on that point) (*"2009 Kerr-McGee/Anadarko Order"*).

Whether various emission units should be considered as a single source is informed by the regulatory definitions of "major source" and "stationary source." The title V regulations define "major source" to mean "any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping" and that are major sources as defined by certain provisions of the Clean Air Act. *See* 40 C.F.R. § 70.2; *see also* CAA section 501(2), 42 U.S.C. § 7661(2). EPA's PSD regulations define "stationary source" as "any building, structure, facility, or installation which emits or may emit a regulated [New Source Review] pollutant." 40 C.F.R. § 52.21(b)(5). The PSD regulations go on to 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 C.F.R. § 52.21(b)(6). In promulgating the title V major source definition found at 40 C.F.R. § 71.2, EPA indicated that the language and application of the title V definition was to be consistent with the PSD definition contained in section 52.21. *See* 61 Fed. Reg. 34202, 34210 (July 1, 1996).

Accordingly, for facilities to constitute a single stationary source under the PSD, nonattainment New Source Review, and the title V programs of the Clean Air Act, all three of the following criteria must be satisfied: (1) the facilities are located on one or more contiguous or adjacent properties; (2) they share the same two-digit (major group) SIC code; and (3) they are under common control. *See* 40 C.F.R. §§ 70.2, 71.2, 51.165(a)(1)(i) and (ii), 51.166(b)(5) and (6), and 52.21(b)(5) and (6).

In a recent memorandum, EPA provided further guidance for determining when permitting authorities should consider two or more pollutant-emitting activities in the oil and gas industries to be a single stationary source for purposes of the New Source Review ("NSR") program and the related major source definitions in the title V permitting program. *See* Memorandum from Gina McCarthy, Assistant Administrator, to Regional Administrators, *Withdrawal of Source Determination for Oil and Gas Industries* (September 22, 2009) ("McCarthy Memorandum"). The McCarthy Memorandum explained that:

> Permitting authorities should ... rely foremost on the three regulatory criteria for identifying emissions activities that belong to the same "building," "structure," "facility," or "installation." These are (1) whether the activities are under the control of the same person (or person under common control); (2) whether the activities are located on one or more contiguous or adjacent properties; and (3) whether the activities belong to the same industrial grouping. 40 C.F.R. 52.21(b)(6). In applying these criteria, permitting

authorities should also remain mindful of the explanation we provided in the 1980 preamble.[2] *See* 45 Fed. Reg. 52676, 52694-95 (August 7, 1980).

See McCarthy Memorandum at 2 (footnote supplied). The McCarthy Memorandum also explained that prior source determinations in EPA's own permitting actions and EPA's guidance to other permitting authorities making such determinations collectively provide illustrations of the "kind of reasoned decision-making that is necessary to justify adequately a permitting authority's source determination decision," while recognizing that these are highly fact-specific, case-by-case determinations such that "no single determination can serve as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances." *Id.*

NMED examined whether the Sims Mesa CDP was a single source in its RTC, responding to a comment by Petitioners. Citing the McCarthy Memorandum and the definition of stationary source at 20.2.70.7.Q NMAC, NMED structured its analysis around the three regulatory criteria and determined that: (1) the upstream wells and compressor station did have the same SIC code; (2) the wells were not contiguous with the compressor station (but NMED did not reach a final determination regarding adjacency given its conclusion on common control); and (3) Williams does not maintain common control of the compressor station and wells. *See* RTC at 2-4. NMED stated that all three criteria had to be met in order for a source or group of sources to be part of the same stationary source. *Id.* at 3.

In making this determination, NMED requested and considered additional information from Williams, submitted on February 26 and March 10, 2010, as well as considering information in the permit application. *Id.* NMED focused its common control analysis on "'who has the power to manage the pollutant-emitting activities of the facilities at issue, including the power to make or veto decisions to implement major emission-control measures or to influence production levels or compliance with environmental regulations.'" *Id.* (quoting an August 25, 1999 letter from Robert Miller, Chief of Region V Permits and Grants Section, to William Baumann, Chief, Combustion and Forest Products Section, Wisconsin Department of Natural Resources, regarding the Oscar Mayer Foods facility in Madison, Wisconsin ["Oscar Mayer Letter"]).[3] NMED stated that a different company, Devon Energy, owns and operates the

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[2] In the 1980 preamble, EPA explained that a PSD source "must approximate a common sense notion of 'plant'" and "must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of 'building,' 'structure,' 'facility,' or 'installation.'" 45 Fed. Reg. 52676, 52694-95 (August 7, 1980).

[3] NMED's common control analysis in the RTC references the Oscar Mayer letter. As an initial matter, the discussion of common control in the Oscar Mayer letter generally relies on the August 2, 1996, military installation memorandum discussed above, and thus may not be instructive for the same reasons as discussed above. *See* n. 2, *supra*. In addition, the second page of the Oscar Mayer letter discusses whether the various units under consideration should be considered to be in the same major industrial group based on the existence of a support facility relationship. As discussed in the letter, we analyze whether one facility acts as a support facility for another when entities at a site are initially determined to fall within different major industrial groups; thus, the support facility analysis as described in the Oscar Mayer letter is distinct from the analysis of whether facilities are under common control. Moreover, the factors cited in the support facility analysis of the Oscar Mayer letter were taken from draft preamble provisions that were never finalized. Accordingly, it may be more helpful to consider other guidance documents in responding to this Order.

upstream wells. *Id.* NMED then excerpted a few paragraphs from information submitted by Williams. According to the excerpted information, "'[n]atural gas producers contract with [Williams] to transport natural gas from the well head to downstream customers'" and Williams "'is contractually obligated to accept the gas volumes that non-[Williams] producers deliver onto its system.'" *Id.* (quoting Williams' February 26, 2010 letter to NMED). While Williams acknowledged that it "'can request that producers curtail operations on a short term basis'" during "'periods of emergency, failure, or scheduled major maintenance,'" Williams denied exercising "'control over any equipment owned or operated by any [upstream] natural gas producer,'" including over environmental compliance measures at the wells. *Id.* (quoting Williams' February 26, 2010 letter to NMED). Williams further stated that the "'contracts do not allow well owners/operators ... [to] influence or exercise any degree of control over the compressor station,'" including over environmental compliance measures at the compressor station. *Id.* at 4 (quoting Williams' March 10, 2010 email to NMED, alterations in original).

These representations led NMED to conclude that Williams' "statements indicate that there is no common control when measured against the Oscar Mayer determination." *Id.* at 4. NMED further explained that Williams did not have the power to "routinely manage" the activities of Devon Energy's wells, that "request" did not constitute "making decisions," and that none of the individual well owner/operators can influence the activities at the compressor station. *Id.*

In light of the statements relied upon in the RTC, I find that the present permit record does not supply EPA or the public with sufficient information to understand whether additional emissions sources should, or should not, be included in the stationary source in this permit. It appears that NMED relied on Williams' representations in the February 26 and March 10 communications in making its common control determination, but those representations included potentially conflicting information and raised additional questions that NMED did not address or resolve. For example, NMED quotes Williams' assertion in the February 26 letter that it is "contractually obligated to accept the gas volumes that non-[Williams] producers deliver onto its system." RTC at 3. But NMED also quotes Williams' March 3 email stating that the "contracts do not allow the well owners/operators ... [to] influence or exercise any degree of control over the compressor station." *Id.* at 4 (alterations in original). Aside from the material described above, no other aggregation analysis is included or referenced in the RTC. It thus appears that NMED relied on Williams' representations in making its common control determination, which included potentially conflicting information, but NMED did not obtain additional documentation from Williams cited in those representations in order to examine the potential conflict.

Further, without additional information, it is not clear how to reconcile Williams' representations that it is contractually obligated to accept any or all gas that is delivered and that a contractual provision allows Williams to request that producers curtail operations on a short-term basis during periods of emergency, failure, or scheduled major maintenance. These potentially conflicting statements should have prompted NMED to probe deeper into the relationship or interaction between Williams and the upstream wells by examining documents that describe or embody the relationship between Williams and the upstream wells, including the relevant contracts and agreements between them.

Importantly, my decision in this Order is not intended to suggest that a permitting authority may not consider an applicant's representations of facts in its permitting analyses and decisions when appropriate. Instead, I decide only that because the permitting record in this case shows that NMED relied on statements which contained potentially conflicting information about the nature of the control relationship, NMED could not reasonably rely primarily on those assertions in its common control decision without, at minimum, examining the relevant contracts and agreements.[4] *See* Letter from William A. Spratlin, Director, Air, RCRA, and Toxics Division, U.S. EPA Region 7, to Peter R. Hamlin, Chief, Air Quality Bureau, Iowa Dept. of Natural Resources, at 2 (September 18, 1995) ("Spratlin Letter") ("If after asking the obvious control questions the permit[ting] authority has any remaining doubts, it may be necessary to look at contracts, lease agreements, and other relevant information."); *see also* Letter from Ronald J. Borsellino, Acting Director, Division of Environmental Planning and Protection, U.S. EPA Region 2, to Scott Salisbury, President, Manchester Renewable Power Corp./LES and Lawrence C. Hesse, President, Ocean County Landfill Corp., at 1 (May 11, 2009) ("OCLC Letter") (noting that similar types of information were reviewed by EPA in making its common control determination).

Accordingly, for the reasons discussed above, I grant Petitioners' request for an objection in Claim I, and I direct NMED to establish a more thorough permit record as described in this section and to make any appropriate or necessary changes in the permit. If in the course of supplementing its record, NMED determines that Williams is indeed under common control with other pollutant-emitting activities, then it will also need to examine whether any of those activities are adjacent to the Sims Mesa CDP in order to complete its source determination. But if NMED reaffirms its decision that no other pollutant-emitting activities are under common control with Sims Mesa CDP, it would not need to complete the "contiguous or adjacent" component of its analysis. *See* Letter from Judith M. Katz, Region III, Director Air Protection Division, to Gary E. Graham, Environmental Engineer, Virginia Department of Environmental Quality, at 4 (May 1, 2002) (noting that EPA would not consider the two activities as one source after concluding that they were not under common control, without further analyzing industrial grouping).

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[4] To the extent that Petitioners argue that NMED was required by my 2009 decision in *Kerr-McGee/Anadarko Petroleum Corporation Frederick Compressor Station* to request, obtain, and review information "such as systems maps showing emissions sources, flow diagrams, and business information regarding the nature of control," Petition at 5-6, they fail to understand the nature of that Order. In an Order on a later title V petition relating to the same source, I emphasized that while the *2009 Kerr-McGee/Anadarko Order recommended* various information that might be useful in making the source determination in that case, it was only a recommendation and that the permitting authority "had the authority to request different or additional information in determining whether the various pollution emitting activities are contiguous or adjacent to, and under common control with [the source at issue]." *In the Matter of Anadarko Petroleum Corporation, Frederick Compressor Station*, Petition VIII-2010-4, at 5 (February 2, 2011) ("*2011 Kerr McGee/Anadarko Order*"). Moreover, these *Kerr McGee/Anadarko* Orders primarily concerned the "contiguous or adjacent" component of the source determination analysis, and not the common control analysis that is the focus of the analysis here. *See 2011 Kerr McGee/Anadarko Order* at 9 (noting that pollutant-emitting sources owned and operated by wholly owned subsidiaries of the same entity and connected via pipeline to the source at issue were considered under common control by the permitting authority); *see also In the Matter of Kerr-McGee Gathering, LLC, Frederick Compressor Station*, Petition VIII-2007-__, at 2 (February 7, 2008) (noting that in that matter petitioners alleged that the permitting authority failed to consider whether emissions from co-owned natural gas wells that supplied the compressor station triggered PSD review).

II. Prompt Reporting of Deviations

Petitioners' Claim: The Petitioners claim that the Sims Mesa permit fails to require prompt reporting of all permit deviations, in accordance with the CAA and EPA's part 70 regulations. Petition at 8-9. In particular, Petitioners allege that "Condition 5.1.2 of the Title V Permit requires reporting of permit deviations only once every six months," regardless of the nature of the deviation, which, according to the Petitioners, is not "prompt reporting of permit deviations, as required by the Clean Air Act, 42 USC 7661h(b)(2), and Title V regulations, 40 CFR § 70.6(a)(3)(iii)(B)." *Id.* at 8, 9. Citing 40 C.F.R. § 70.6(a)(3)(iii)(B), Petitioners state that prompt reporting is typically defined "in relation to the degree and type of deviation likely to occur and the applicable requirements." *Id.* at 8. Petitioners assert that in explaining the meaning of "prompt," the House Report for CAA Amendments of 1990 stated "'the permittee would presumably he required to report that violation without delay.'" *Id.* (quoting H.F. Rep. No. 101-490, pt. 1, at 348 (1990)).[5] Petitioners further assert that semiannual reporting of permit deviations does not constitute prompt reporting, arguing that in *New York Public Interest Group v. Johnson*, 427 F.3d 172 (2d Cir. 2005) ("*NYPIRG 2005*"), the court held that "prompt" for purposes of prompt reporting of permit deviations must be at least less than every six months depending on the source's compliance history and public health risk. *Id.* at 9.

Petitioners also challenge assertions NMED made in the RTC. In full, NMED's RTC on this point reads as follows:

> Section 7 addresses Emergencies, and Condition 7.2 specifies the time for submitting notice to NMED. These requirements are in addition to the semi-annual reporting requirements of Section 5. To clarify these requirements, NMED has added the following excess emissions reporting requirement: "5.[1].5 The permittee shall submit reports of excess emissions in accordance with 20.2.7.110.A NMAC." That regulation specifies the following:
>
> 20.2.7.110.A NMAC
> A. The owner or operator of a source having an excess emission shall report the following information to the department on forms provided by the department. The department may authorize the suhmittal of such reports in electronic format.
> (1) Initial report: the owner or operator shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission that includes all available information for each item in Subsection B of

[5] Petitioners state that "'[i]n general EPA believes that 'prompt' should be defined as requiring reporting within two to ten days for deviations that may result in emissions increases. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems.'" Petition at 8-9 (quoting Clean Air Act Proposed Interim Approval of Operating Permits Program: State of New York, 61 Fed. Reg. 39617-39602 [sic] (July 30, 1996)). As explained in *In the Matter of GCC Dacotah Cement Manufacturing Plant*, Petition VIII-2006-3 at 11, n. 5 (June 15, 2007): "To the extent Petitioners believe that EPA's position is currently that 'prompt reporting' should generally be defined as within 2-10 days, I note that, as reflected in the *NYPIRG* case and other title V orders, EPA's experience with the Title V program since 1996 has led EPA to the conclusion that such a limited time frame for reporting is not necessary for all deviations."

20.2.7.110 NMAC.

(2) Final report: the owner or operator shall file a final report that contains specific and detailed information for each item in Subsection B of 20.2.7.110 NMAC, no later than ten (10) days after the end of the excess emission.

RTC at 4. In response, Petitioners note that Condition 7.2 only applies to "Emergencies," as defined by Condition 7.1, and the specific reporting therein only states that "in the event of an emergency, 'where emission limitations were exceeded,' a notice shall be proved to NMED within 2 days." Petition at 9 (citing the Permit at 18). Petitioners claim that prompt reporting applies to "all permit deviations," not just those tied to emergencies, and that it is unclear how Condition 7.2's blanket two-day notification requirement is sufficient to ensure prompt reporting "'in relation to the degree and type of deviation likely to occur and the applicable requirements.'" *Id.* (quoting 40 C.F.R. § 70.6(a)(3)(iii)(B)).

In addition, Petitioners acknowledge that NMED added Condition 5.1.5 to the Sims Mesa title V permit in response to Petitioners' comments on this issue, but contend that Condition 5.1.5 still fails to ensure compliance with the prompt reporting requirements. Condition 5.1.5 requires that reports of excess emissions be submitted in accordance with 20.2.7.110.A NMAC, "which requires initial reporting 'no later than the end of the next regular business day after the time of discovery of an excess emission.'" *Id.* (quoting the language of 20.2.7.110.A NMAC). Petitioners claim this requirement fails to assure that all deviations, including deviations from "monitoring requirements, performance standards, etc." are promptly reported, and that it is unclear how this requirement suffices to ensure prompt reporting "'in relation to the degree and type of deviation likely to occur and the applicable requirements,' in accordance with 40 CFR § 70.6(a)(3)(iii)(B)." *Id.* Petitioners further claim the CAA is clear that all permit deviations, not just excess emissions, must be reported promptly. *Id.* Petitioners conclude that the Administrator must object to the issuance of the Sims Mesa permit on the basis that it "fails to ensure prompt reporting of permit deviations in accordance with 42 USC 7661b(b)(2), and 40 CFR § 70.6(a)(3)(iii)(B)." *Id.*

EPA's Response: I grant this request for an objection on the basis that the permit record does not adequately document or explain NMED's decisions regarding prompt reporting of permit deviations. Petitioners claim that the Sims Mesa title V permit does not provide for prompt reporting of all deviations in agreement with the regulations and the Act, specifically referencing Conditions 5.1.2, 5.1.5, and 7.2. CAA section 503(h)(2), 42 U.S.C. § 7661b(b)(2), provides that EPA's regulations must require permittees "to promptly report any deviations from permit requirements to the permitting authority." Part 70 provides that title V permits must require prompt reporting of deviations from permit requirements, and directs permitting authorities to "define 'prompt' in relation to the degree and type of deviation likely to occur and the applicable requirements." 40 C.F.R. § 70.6(a)(3)(iii)(B). Permitting authorities may specify prompt reporting requirements for each permit term on a case-by-case basis, or may adopt general reporting requirements by rule, or both. *See, e.g., In the Matter of Onyx Environmental Services*, Petition V-2005-1, at 15 (February 1, 2006) ("*Onyx Order*"). Condition 5.1.2 addresses deviation reporting by generally requiring semiannual reporting for "all deviations from permit requirements." Permit at 15. As indicated in NMED's RTC, in addition to the semiannual

reporting requirements of Section 5, the permit also specifies the time for submitting notice to NMED when emission limitations are exceeded due to an emergency (Condition 7.2). The RTC also notes that NMED added permit Condition 5.1.5 to clarify that the permittee must submit reports of excess emissions as required under 20.2.7.110A NMAC, a provision of the federally enforceable New Mexico SIP. While, as noted, NMED included permit conditions providing for deviation reporting of excess emissions under the SIP including due to emergencies and incorporated other deviation reporting requirements in Section 5 of the permit, the RTC does not explain NMED's decisions on what constitutes "prompt" reporting of permit deviations in relation to the degree and type of deviation likely to occur and the applicable requirements. *See, e.g., In the Matter of GCC Dacotah Cement Manufacturing Plant*, PetitionVIII-2006-3, at 11 (June 15, 2007) (granting where a permitting authority failed to adequately explain its prompt reporting decisions). For example, NMED does not explain why it believes semiannual reporting is "prompt" for some permit deviations but why another timeframe is justified for others; nor does the RTC expressly reference any such analysis that NMED might have provided elsewhere.

In response to Petitioners' point about *NYPIRG 2005*, I note that the *NYPIRG 2005* decision is not controlling in New Mexico. Moreover, although I am granting on Claim II of this Petition, EPA is not subscribing to Petitioners' view that, in light of *NYPIRG 2005*, prompt reporting must be less than every six months. Instead, as explained above, I am granting due to inadequacies in NMED's permitting record on prompt reporting of permit deviations.

Accordingly, I grant this claim based on the lack of justification in the permit record for NMED's decisions regarding reporting of permit deviations, in accordance with the requirements of 40 C.F.R. § 70.6(a)(3)(iii)(B). I direct NMED to consider whether the permit conditions for reporting of deviations are consistent with the requirements of 40 C.F.R. § 70.6(a)(3)(iii)(B) for all permit deviations and provide further explanation of its conclusions, in the Statement of Basis ("SoB") or elsewhere in the permitting record, or make appropriate changes to the permit to ensure prompt reporting consistent with the Act and implementing regulations.

III. Sufficiency of Periodic Monitoring

Petitioners begin by citing CAA section 504(c), 42 U.S.C. § 7661c(c), and the implementing regulations at 40 C.F.R. §§ 70.6(c)(1) and 70.6(a)(3)(i)(B), asserting that permitting authorities must ensure that a title V permit contain monitoring that assures compliance with the terms and conditions of the permit. Petition at 10. Specifically, Petitioners assert that the D.C. Circuit Court of Appeals has held that "even when the underlying applicable requirements require monitoring, permitting authorities must supplement this monitoring if it is inadequate to ensure compliance with the terms and conditions of the permit." *Id.* (citing *Sierra Club v. EPA*, 536 F.3d 673,680 (D.C. Cir. 2008)).

Petitioners allege that the Sims Mesa permit fails to contain monitoring requirements that ensure compliance with underlying NOx, CO, and VOC emission limits. Petitioners argue that in some cases, the Sims Mesa permit altogether lacks monitoring requirements and in other cases, fails to require monitoring that is sufficiently frequent and/or of sufficient quality necessary to ensure compliance with applicable emission limits. *Id.* The specific claims are discussed below.

Petitioners' Claim III.A.1 - Frequency of monitoring for NOx and CO emission limits.[6]

Petitioners state that Conditions 3.4.2 and 3.4.2.2 of the Sims Mesa permit require only once-per-year portable analyzer monitoring for units 1-6 and 11-14, the compressor engines. *Id.* Petitioners claim they commented on the proposed Sims Mesa permit stating that "[t]his monitoring is too infrequent to ensure compliance with NOx and carbon monoxide emissions limits." *Id.* Petitioners explain that the Sims Mesa permit limits NOx and CO emissions on an hourly basis, pointing out, as an example, that Condition 3.2 limits NOx emissions, from all the compressor engines, to "no more than 4.5 pounds per hour." *Id.* Petitioners argue that "monitoring only once annually for the engines units cannot possibly ensure continuous compliance with these hourly emission limits, and it is questionable whether once-per-[year]-monitoring can ensure continuous compliance with the annual emission limits." *Id.*

EPA's Response: I grant the Petitioners' request for an objection on this issue because NMED did not adequately respond to Petitioners' comment that the annual portable analyzer monitoring in Conditions 3.4.2 and 3.4.2.2 of the Permit[7] "is too infrequent to ensure compliance with NOx and carbon monoxide emissions limits. . . . Monitoring only once annually for the engines units cannot possibly ensure continuous compliance with these hourly emission limits." Comments on Draft Title V Permit for Williams Four Corners, LLC's Sims Mesa Central Delivery Point, Rio Arriba County, NM, Permit No. P026R2, at 6 (December 18, 2009). The RTC indicates that NMED is relying on proper operation and maintenance of the engines, as specified by the engine manufacturer, in addition to the annual monitoring requirement in the permit, to show that the existing engines maintain their uncontrolled NOx and CO emissions levels at the permitted limits. *See* RTC at 5. However, NMED's RTC does not explain what permit terms or conditions ensure "proper operation and maintenance of" the engines. NMED has an obligation to respond adequately to significant comments on the draft title V permit and to ensure that monitoring is adequate to assure compliance with the terms and conditions of the permit. Section 502(b)(6) of the Act, 42 U.S.C. § 7661a(b)(6), requires that all title V permit programs include adequate procedures for public notice regarding the issuance of title V operating permits, "including offering an opportunity for public comment." *See also,* 40 C.F.R.

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[6] I have divided what was Claim III.A in the Petition into Claim III.A.1 and Claim III.A.2 in this response for purposes of clarity.

[7] Condition 3.4.2 describes Unit Specific Monitoring Requirements in table form. For the compressor engines it lists NOx, CO and VOC as the parameters monitored to comply with the allowable lbs per hour and tons per year (TPY) limits in table 3.2, according to the monitoring requirement described as periodic annual emissions testing per Condition 3.4.2.2. Specifically, Condition 3.4.2.2. provides for:

> Periodic Emissions Test Monitoring (For Engines, Units 1-6 and 11-14): The permittee shall test using a portable analyzer subject to the requirements and limitations of section 3.4.1, General Monitoring Requirements. For periodic testing NOx and CO emissions tests shall be carried out as described below. Test results that demonstrate compliance with the NOx and CO emission limits shall be considered to demonstrate compliance with the VOC emission limits.
>
> (a) The monitoring period shall be annually.
>
> (b) Initial monitoring shall occur within the first monitoring period occurring after permit issuance.
>
> (c) All subsequent monitoring shall occur in each succeeding monitoring period. No two monitoring events shall occur closer together in time than 25% of a monitoring period.
>
> (d) Follow the portable analyzer requirements and test procedures in section 3.5.

§ 70.7(h). It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments. *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public."). *See also, In the Matter of Louisiana Pacific Corporation*, Petition V-2006-3, at 4-5 (November 5, 2007).

Under Title V, even when the underlying applicable requirement requires monitoring, permitting authorities must supplement this monitoring if it is inadequate to ensure compliance with the terms and conditions of the permit. As Petitioners note, *Sierra Club*, 536 F.3d at 678, makes it clear that CAA section 504(c) requires all title V permits to contain monitoring requirements to assure compliance with permit terms and conditions. EPA discussed the Part 70 periodic monitoring and sufficiency of monitoring requirements at length in two title V orders issued on May 28, 2009. *See In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition VI-2007-01 (May 28, 2009) ("*CITGO Order*"); *In the Matter of Premcor Refining Group, Inc.*, Petition VI-2007-2 (May 28, 2009) ("*Premcor Order*"). EPA's title V monitoring rules (40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1)) are designed to address the statutory requirement that "[e]ach permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions." CAA section 504(c), 42 U.S.C. § 7661c(c). As a general matter, permitting authorities must take three steps to satisfy the monitoring requirements in EPA's part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. *See CITGO Order* at 7; *Premcor Order* at 7. Second, if the applicable requirement contains no periodic monitoring, permitting authorities must add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B); *see CITGO Order* at 7; *Premcor Order* at 7. Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.F.R. § 70.6(c)(1). *E.g., CITGO Order* at 6-7; *In the Matter of Wheelabrator Baltimore, L.P.*, at 13 (April 14, 2010). Further, permitting authorities have a responsibility to respond to significant comments. *See, e.g., Onyx Order* at 7 ("It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments.") (citing *Home Box Office*, 567 F.2d at 35). This principle applies to significant comments on the adequacy of monitoring. *CITGO Order* at 7.

The determination of whether the monitoring is adequate in a particular circumstance generally will be made on a case-by-case basis considering site-specific factors. *See CITGO Order* at 7; *see also, In the Matter of United States Steel Corporation – Granite City Works*, Petition V-2009-3, at 7 (January 31, 2011) ("*US Steel Order*"). However, in many cases, monitoring from the applicable requirement will be sufficient to assure compliance with permit terms and conditions; consequently, EPA recommends the monitoring analysis should begin by assessing whether the monitoring required in the applicable requirement is sufficient. *See CITGO Order* at 7; *US Steel Order* at 7. Some factors that permitting authorities may consider in

determining appropriate monitoring are (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emissions unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.[8] *See CITGO Order* at 7-8. In addition, the rationale for the monitoring requirements selected by a permitting authority must be clear and documented in the permit record. *Id.* at 7 (citing 40 C.F.R. § 70.7(a)(5)).

In responding to Petitioners' comment questioning the frequency of the permit's compliance monitoring for the engines' NOx and CO limits, NMED stated that "[20.2].70.302.C (2) NMAC requires periodic monitoring, not continuous monitoring, sufficient to yield reliable data that are representative of the source's compliance with the permit." RTC at 5. As an example of periodic monitoring required by EPA, NMED's RTC presents the testing requirements for new or reconstructed engines greater than 500 hp under New Source Performance Standards ("NSPS") for Stationary Spark Ignition Internal Combustion Engines, Subpart JJJJ.[9] *Id.* The RTC does not elaborate on this point, but proceeds to state that NMED's "monitoring protocol for engines requires quarterly portable analyzer testing on engines with catalytic converters and annual testing on units without controls."[10] *Id.* The RTC then concludes that "[b]ecause the portable analyzer test is a short term test, it demonstrates compliance with the emission limits for that time period. Due to the steady state operation of these engines, NMED believes that the portable analyzer testing along with proper operation and maintenance of the units provides reasonable demonstration of compliance with annual and hourly NOx and CO emission limits." *Id.*

Although NMED states that it included NOx and CO monitoring in accordance with its monitoring protocols for engines, NMED's RTC does not adequately explain how the monitoring in the permit is sufficient, for example by considering factors that affect the frequency of monitoring such as those described above, including facility specific factors (e.g., fuel type, equipment age and condition, prior testing data, etc.). As explained, NMED is relying on the portable analyzer test results as a snap shot sampling of emissions to confirm annually whether the engines continue to meet their short term (i.e., hourly) limits. Between annual portable analyzer tests NMED relies on assumptions of steady state operation and "proper operation and

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[8] EPA has also advised that "[s]everal rules and guidelines may prove helpful to States in establishing monitoring for compliance assurance purposes in title V permits. Examples include the monitoring design criteria (appropriate data representativeness, frequency, and measures of quality assurance) outlined in the CAM rule, monitoring under several Maximum Achievable Control Technology ('MACT') standards (40 C.F.R. Part 63), and certain monitoring provided by acid rain rules (40 C.F.R. Parts 72-78)." *Premcor Order* at 8.

[9] *See, e.g.*, 40 C.F.R. §§ 60.4243(a)(1) and (b)(2)(ii); *see also*, 73 Fed. Reg. 3591 (January 18, 2008). According to the permit record, NSPS Subpart JJJJ does not apply to the two Waukesha 7042 GL 4-stroke lean burn engines currently operating at the Sims Mesa facility. *See* SoB at 5-6.

[10] The SoB at 8 references NMED's use of a Monitoring Protocol, dated April 2, 2009, for the engines. In addition, the SoB includes qualitative information regarding emissions from engine start-up and shutdown periods, but generally does not include information on required operation and maintenance procedures for the engines. *See* SoB at 3-4.

maintenance of the units" to provide a "reasonable" demonstration of compliance with annual NOx and CO emission limits. The RTC, however, does not clarify the permitting requirements that assure proper operation and maintenance of the units are satisfied, nor does it provide an explanation (or appropriate citation to the technical discussion) of such requirements, nor explain how those requirements, in conjunction with an annual emissions test, constitute monitoring that demonstrates compliance with a short term limit.

For the reasons given above, I grant the petition on this issue. NMED must provide an adequate response to the comment that the annual monitoring in the permit is not adequate for assuring compliance with the engines' CO and NOx limits. In responding to this Order, NMED should respond fully to Petitioners' comment concerning the frequency of the permit's monitoring for NOx and CO. In that regard, NMED should offer further explanation of why it believes that steady state operations and proper operation and maintenance of the units are valid assumptions here, in light of the permit's terms and conditions, or make appropriate changes to the permit to ensure it includes monitoring requirements consistent with the Act and implementing regulations.

Petitioners' Claim III.A.2 - Monitoring Exemptions. Petitioners additionally allege the title V Permit allows for even less frequent monitoring for the engines since Condition 3.4.1.3.2 "allows the source to avoid monitoring for NOx, and carbon monoxide altogether if a unit has been operated for less than 25% of a monitoring period." Petition at 10.[11] Petitioners believe this condition is "wholly inappropriate and as a practical matter would allow the operator to violate hourly emission limits in the permit for up to three months, which is 25% of the annual monitoring period." *Id.* at 10-11. Petitioners explain that even if an engine operates for less than three months, it could still exceed hourly NOx and carbon monoxide limits, which, according to Petitioners, demonstrates that this condition fails to ensure adequate monitoring. *Id.* at 11. Petitioners acknowledge that Condition 3.4.1.3.2 would require monitoring after two successive monitoring periods without monitoring, but, Petitioners assert that "at most this [Condition 3.4.1.3.2] means that an emission unit consistently operating less than 25% of the monitoring period monitor [sic] once every three years." *Id.* Petitioners claim this is not sufficient monitoring under title V and note that this requirement does not even apply if a source operates less than 10% of any annual monitoring period. *Id.* Petitioners state that in "essence, this [monitoring exemption] requirement allows [Williams] to avoid monitoring altogether so long as it only operates its engines 36.5 days annually." *Id.* Petitioners conclude that this monitoring requirement "hardly serves to ensure compliance with hourly NOx and carbon monoxide emission limits." *Id.*

Citing 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c)(i), Petitioners assert title V requires that monitoring shall provide reliable data from the relevant time period which is representative of the source's compliance with provisions of permit in order to ensure compliance. *Id.* Petitioners conclude that "once-per-year portable analyzer monitoring, which can be altogether ignored, does not assure compliance with the annual and hourly NOx and carbon monoxide limits." *Id.*

[11] Under permit Condition 3.4.2.2, the monitoring period is annually for Engines, Units 1-6 and 11-14. Permit at 11.

EPA's Response: I grant the Petitioners' request for an objection on the basis that NMED's permit record, including the SoB, does not adequately document the rationale for NMED's permitting decision supporting the monitoring exemptions contained in Condition 3.4.1.3.2. In response to Petitioners' comments regarding the monitoring exemptions under Condition 3.4.1.3.2, NMED provides the following justification for this condition:

> The intent of this exemption is to reduce the possibility that equipment that is not operating must be started up for the sole purpose of monitoring. For a permittee to invoke this exemption, it must be able to produce records of the hours of operation for the specified semi-annual reporting period. This requirement, which previously was not explicit, has been clarified at Condition 3.4.1.3 by stating: "However, to invoke monitoring exemptions at 3.4.1.3.2, hours of operation shall be monitored and recorded." (It should also be noted that if a unit qualifies for the exemption and operates less than 25% of the period, the unit will by default emit 75% less of the permitted emissions.)
>
> Per Condition 3.4.1.3.3 "A minimum of one of each type of monitoring activity shall be conducted during the five year term of this permit." Thus, regardless of the facility's operating frequency, a minimum of one of each type of monitoring activity shall be conducted during the five year period.

RTC at 6.

The permit exempts an engine from having to conduct the CO and NOx portable analyzer test based on the percentage of time that the engine has operated during an annual monitoring period. *See, e.g.*, Conditions 3.4.1.3. and 3.4.1.3.1–3.4.1.3.3. However, NMED has not adequately explained how the exemptions provided for in the monitoring provisions are consistent with the title V requirements. In particular, NMED's explanation in the RTC regarding the need for an exemption is not adequate because it does not provide NMED's engineering basis to support the decision that the frequency of portable analyzer monitoring, considering exemption periods, is sufficient to assure compliance with the annual and hourly NOx and CO permit limits. The rationale for the monitoring requirements selected by a permitting authority must be clear and documented in the SoB or elsewhere in the permit record. 40 C.F.R. § 70.7(a)(5). Accordingly, I grant Petitioners' objection on this issue because the permit lacks adequate justification in the record to explain NMED's decisions regarding the exemptions from compliance monitoring for the compressor engines. In addressing this objection, NMED must discuss the adequacy of the permit monitoring requirements in support of the permit's exemption for low operation periods, or make appropriate changes to the permit to ensure it includes monitoring requirements consistent with the Act and implementing regulations.

Petitioners' Claim III.B- VOC Monitoring. Petitioners first argue that the Sims Mesa permit fails to require "any monitoring whatsoever of VOC emissions from the compressor engines, or Units 1-6 and 11-14." Petition at 11. Second, Petitioners argue that the permit asserts, without support, that "[t]est results that demonstrate compliance with the NOx and CO ... emission limits shall also be considered to demonstrate compliance with the VOC emission limits." *Id.* Petitioners claim that neither the SoB nor the title V permit provide any information

or analysis supporting NMED's claim that compliance with NOx and CO limits automatically indicates compliance with VOC emission limits. *Id.*

Petitioners further allege that in the RTC, NMED admits that there is no rationale for relying on NOx and CO monitoring to demonstrate compliance with VOC limits, since NMED states that the rationale would be provided in the engine monitoring protocols. *Id.* Petitioners allege that it is "impossible to understand how NMED can assert that the [Sims Mesa] Permit provides for sufficient periodic monitoring to assure compliance when the rationale has yet to be provided." *Id.*

Petitioners go on to assert that NMED's RTC reflects an unsupported assertion that NOx and CO monitoring is sufficient to ensure compliance with VOC limits, and that NMED relies on NOx and CO monitoring to show compliance with VOC limits because "'portable analyzers do not speciate VOC compounds and the cost of a separate EPA method test is significant.'" *Id.* (quoting RTC at 7). Petitioners conclude that NMED's justification in the RTC does not absolve NMED from ensuring that the permit contains sufficient monitoring to assure compliance with applicable limits. *Id.* at 11-12.

Petitioners claim that NMED believes VOC limits will be met based on the manufacturer's specification of the expected NOx, CO, and VOC emissions for a properly operating unit. Petitioners concede that manufacturer's specifications are relevant information, but argue that such specifications alone are not sufficient periodic monitoring and do not ensure that the applicable hourly and annual VOC limits for the compressor engines will be continuously met. *Id.* at 12.

Petitioners conclude by noting the assertion in NMED's RTC that if an engine test shows that NOx and CO fall within the emission limits, then VOC also falls within the limits, but, according to Petitioners, NMED provides no information or analysis to support this conclusion except to point to "basic principles of combustion chemistry." *Id.* Petitioners dispute that "basic principles of combustion chemistry" support NMED's assertion that compliance with NOx and CO limits automatically ensures compliance with VOC limits at these units. *Id.*

EPA's Response: I grant this claim on the basis that the permit record fails to provide adequate technical information or explanation to support the surrogate monitoring provision in Condition 3.4.2.2 (which provides that monitoring that demonstrates compliance with NOx and CO emission limitations for the engines also demonstrates compliance with VOC emission limitations). As an initial matter, the VOC monitoring in the Sims Mesa permit is based on NOx and CO monitoring for the engines that is itself in question because it is based upon an inadequate record which does not include an adequate response to all the issues raised in the public comments. *See* EPA's Response to Claim III.A.1, *supra.* In addition, as previously mentioned, the rationale for the selected monitoring requirements must be clear and documented in the statement of basis or elsewhere in the permitting record. 40 C.F.R. § 70.7(a)(5); *see also, CITGO Order* at 7.

NMED's RTC discusses the factors NMED considered for its decision to use NOx and CO monitoring as a surrogate for VOC monitoring, such as cost and test issues. RTC at 7. However, EPA agrees with Petitioners that NMED's reasons for dismissing portable analyzers and "a separate EPA method test" does not adequately explain why NMED's chosen option of surrogacy monitoring is sufficient for title V purposes. Moreover, NMED's RTC explanation that "taking into account that the manufacturer tests the equipment and specifies the expected NOx, CO, and VOC emissions for a unit operating properly, as well as basic principles of combustion chemistry, if an engine test demonstrates that NOx and CO concentrations fall within the emission limits, then VOC also falls within the emission limits, and the engine is performing as represented in the application," RTC at 7, does not provide an adequate technical explanation to support NMED's assertion that annual NOx and CO levels are proper indicators of VOC levels for these engines. Accordingly, I grant the Petitioners' request for an objection on this issue. In responding to this Order, NMED must provide a clear rationale and technical basis to justify this surrogacy monitoring, or make appropriate changes to the permit to ensure it includes monitoring requirements consistent with the Act and implementing regulations.

In summary, the Petition sets out three instances in the Sims Mesa title V permit where the Petitioners claim NMED has failed to include sufficient monitoring to assure compliance and/or where NMED has failed to justify the required monitoring for the compressor engines. In responding to this Order, I direct NMED to ensure it has: (1) satisfied the monitoring requirements of 40 C.F.R. § 70.6(a)(3)(i)(A) and (B) and (c)(1); (2) provided a rationale for the monitoring requirements placed in the permit (*see* 40 C.F.R. § 70.7(a)(5)); and (3) responded to significant comments.

IV. Condition 6.1.1 and Applicable Requirements

Petitioners' Claim: Petitioners assert that permit Condition 6.1.1 is contrary to the Clean Air Act in that NMED cannot automatically conclude that compliance with a title V permit assures compliance with the National Ambient Air Quality Standards (NAAQS). Petition at 12. Petitioners state that Condition 6.1.1 of the Sims Mesa permit provides: "For sources that have submitted air dispersion modeling that demonstrated compliance with federal ambient air quality standards, compliance with the terms and conditions of this permit regarding source emissions and operation shall be deemed in compliance with federal ambient air quality standards specified at 40 CFR 50 NAAQS." *Id.* In order to make such a finding, the Petitioners argue that NMED must first prepare an analysis and assessment of emissions on a source-by-source basis, both individually and cumulatively. *Id.* Because the NAAQS are revised every five years, Petitioners believe that Condition 6.1.1 is inappropriate given that permit terms and conditions are rarely revised and are not required to be revised as the NAAQS are revised. *Id.* Petitioners note that the construction permits for the Sims Mesa CDP were issued in 1991, which predates the 1997 8-hour ozone NAAQS, the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, the 2006 annual and 24-hour $PM_{2.5}$ NAAQS, the 2008 8-hour ozone NAAQS, and the 2010 annual and hourly NO_2 NAAQS. *Id.* Therefore, Petitioners contend that the Sims Mesa title V permit cannot include a provision that automatically concludes operation of the source in compliance with the permit will protect any and all NAAQS specified at 40 C.F.R. Part 50. *Id.* at 13.

EPA's Response: I grant this claim on the basis that NMED failed to fully respond to Petitioners' comments relating to permit Condition 6.1.1. Appearing in the section titled "6.0 Compliance," of the Sims Mesa permit, Condition 6.1.1 states:

> For sources that have submitted air dispersion modeling that demonstrates compliance with federal ambient air quality standards, compliance with the terms and conditions of this permit regarding source emissions and operation shall be deemed to be compliance with federal ambient air quality standards specified at 40 CFR 50 NAAQS.

Permit at p.17.

During the public comment period, Petitioners submitted comments asserting, among other things, that Condition 6.1.1 was inappropriate and that NMED could not automatically conclude that compliance with a title V permit assures compliance with the NAAQS. *See* Comments on Draft Title V Permit for Williams Four Corners, LLC's Sims Mesa Central Delivery Point, Rio Arriba County, NM, Permit No. P026R2, at 8 (December 18, 2009). Rather, the public comments argued, NMED must first prepare an analysis and assessment of emissions on a source-by-source basis, both individually and cumulatively to make such a finding. *Id.* In its RTC addressing Condition 6.1.1, NMED discusses the NSR permitting requirements, stating that they require construction permit applicants to conduct air dispersion modeling to demonstrate that the source's proposed emissions will comply with applicable NAAQS. RTC at 9. The RTC continues by noting that after review and approval, NMED incorporates modeled emission rates that demonstrate compliance into the NSR permit, and the title V permit then incorporates the applicable requirements of the NSR permit together with additional monitoring, recordkeeping, and reporting as necessary to ensure compliance with the permit. *Id.* NMED also states Sims Mesa CDP submitted a permit renewal application and thus is "only required to certify compliance with the applicable requirements in its NSR permit" for this application. *Id.* In addition, the RTC states that under Condition 1.8 of the Sims Mesa permit, the permittee is required to comply with "all applicable requirements, including those requirements that become effective during the term of the permit." *Id.* Finally, in response to Petitioners' comment asserting that "the Title V Permit cites '40 CFR 50 NAAQS' as authority for this Condition," NMED states, "Condition 6.1.1 is an accurate statement. The reference to 40 CFR 50 NAAQS is not intended to be a citation." *Id.* However, the RTC does not address Petitioners' comment that Condition 6.1.1 was inappropriate because NMED could not automatically conclude that compliance with a title V permit assures compliance with the NAAQS.

Permitting authorities have a responsibility to respond to significant comments. *See, e.g., Onyx Order* at 7 ("It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments.") (citing *Home Box Office*, 567 F.2d at 35). This principle applies to significant comments on the appropriateness of a term or condition in a title V permit. *See CITGO Order* at 7. While NMED's RTC provides a detailed discussion of the process by which emission limitations from underlying SIP permits are carried forward into the source's title V permit, NMED failed to adequately respond to Petitioners' specific comment that Condition 6.1.1

was contrary to the Clean Air Act in that NMED cannot automatically provide that compliance with the terms and conditions of the title V permit shall be deemed compliance with the NAAQS. Because of NMED's failure to respond to this comment, I grant the petition on this issue. Furthermore, NMED's reference in the RTC to Condition 1.8 of the Sims Mesa permit (stating that the permittee is required to comply with all applicable requirements, including those requirements that become effective during the term of the permit) creates additional confusion as Condition 6.1.1 and Condition 1.8 could be read to conflict with one another, yet NMED does not explain the relationship between these two conditions.

In responding to this Order, NMED must fully respond to the Petitioners' comment. In so doing, I also suggest that NMED consider the basis for Condition 6.1.1 and clarify the purpose and scope of Condition 6.1.1, considering whether the term should be removed or revised for clarity, in accordance with the appropriate permit revision requirements. NMED may additionally wish to consider the relationship between Condition 6.1.1 and Condition 1.8, and as necessary, revise the permit to ensure that these terms will not conflict with one another.

CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Clean Air Act and 40 C.F.R. § 70.8(d), I hereby grant the petition from WildEarth Guardians and San Juan Citizens Alliance requesting that EPA object to the title V Permit issued to Williams Four Corners, LLC for the Sims Mesa Central Delivery Point natural gas gathering and compression plant.

Dated: 7/29/11

Lisa P. Jackson
Administrator