



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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DENVER, CO 80202
Phone 800-227-8917
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Ref: 8P-AR

OCT 18 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John D. Lowe, Deputy Florida Operations Manager
BP America Production Company
380 Airport Road
Durango, CO 81303

Re: BP America Production Company
Florida River Compression Facility
Title V Permit – Renewal #1
V-SU-0022-05.00

Dear Mr. Lowe:

Thank you for your May 19 and 21, 2008 e-mails concerning comments on the draft 40 CFR part 71 federal operating permit for BP America Production Company's (BP's) Florida River Compression Facility. The public comment period for this permit ended on May 19, 2008. Significant comments were also received from the Rocky Mountain Clean Air Action organization (now WildEarth Guardians) in Denver, Colorado.

EPA Region 8 has reviewed the comments received and has provided responses in Enclosure 1, "Response to Comments Document." Revisions have been made to the permit and the Statement of Basis based on the comments, as necessary.

Based on the information submitted in BP's part 71 application, the U.S. Environmental Protection Agency (EPA) hereby issues the title V operating permit for Florida River Compression Facility. Enclosed you will find the final title V operating permit and amended Statement of Basis for the facility. Please review each condition carefully and note any restrictions placed on this source. Procedures for appealing this permit can be found in 40 CFR 71.11(l). A petition to the Environmental Appeals Board (EAB) must be filed within 30 days of receipt of this final permit action.



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If you have any questions concerning the enclosed final permit or Statement of Basis, you may contact Kathleen Paser, of my staff, at (303) 312-6526.

Sincerely,

A handwritten signature in dark ink, appearing to read "Callie A. Videtich", with a large, looping flourish at the end.

Callie A. Videtich, Director
Air Program

Enclosure

w/ enclosure:

Julie Best, BP America Production Company, Environmental Coordinator
Rebecca Robert, BP America Production Company, Environmental Specialist
Brenda Jarrell, SUIT, Air Quality Program Manager

**Enclosure - Response to Comments on the Florida River Compression Facility's
March 28, 2008 Draft Title V Permit to Operate**

Comments from BP America Production Company

1. Statement of Basis, Page 1, Section 1.a – Facility Information: Location -

- a. Change “SE/4, SW/4” to “SE ¼, SW ¼.”

EPA Response: The requested change has been made.

2. Statement of Basis, Page 1, Section 1.b – Facility Information: Contacts –

- a. For Facility Contact, change “970-247-6913” to “970-375-7540.”
- b. For the Company Contact, change “501 Westlake Boulevard” to “501 Westlake Park Boulevard.”

EPA Response: The requested changes have been made.

3. Statement of Basis, Page 5, Section 1.e. – Facility Information – List of all units and emission generating activities, Table 1 –

- a. Change the serial number for T-1 from “0690-H” to the turbine package number “HC90781.” An administrative amendment will be submitted for this change.
- b. Change the serial number for T-1 from “0307-H” to the turbine package number “HC93D50.” An administrative amendment will be submitted for this change.

EPA Response: The requested changes have been made. Per telephone discussions with BP America Production Company, the original serial numbers were recorded in the application incorrectly and they are actually serial numbers of smaller engine components of the turbine packages. The new numbers are the correct numbers for the entire turbine package. This change does not result in any changes in equipment or emissions, but only changes in the serial identification. Therefore, EPA informed BP America Production Company that it is not necessary to submit administrative amendment requests for these changes.

4. Statement of Basis, Page 6, Section 1.e. – Facility Information – List of all units and emission generating activities, Table 2 –

- a. Change “1-Dehy #9 Flash Tank” to “1-Dehy #3 Flash Tank.”
- b. Change “1-238 gal Compressor Oil Drain and Sump” to “1-238 gal Compressor Lube Oil Drain and Sump.”
- c. Change “1-300 gal Diesel Tank” to “2-300 gal Diesel Tanks” (Note: An additional tank exists at the facility. PTE for this tank is less than 2 tpy of regulated pollutants and less than 0.5 tpy of HAPs. This change qualifies as an off permit change, and because emissions are insignificant, no written

notice is required to be submitted to EPA. BP will keep a record of the change that includes emission calculations. Since the tank is less than 75 cubic meters, NSPS Kb does not apply.

- d. Add 1-99 hp Emergency Diesel Generator to the Insignificant Emission Units. (Note: The PTE for this unit is less than 2 tpy of regulated pollutants and less than 0.5 tpy of HAPs. This change qualifies as an off permit change, and because emissions are insignificant, no written notice is required to be submitted to EPA. BP will keep a record of the change that includes emission calculations. Additionally, the engine (DMT Corporation, Model DMT-80C, Serial No. 89411-2), was manufactured in October 1989 and does not trigger NSPS IIII because it was constructed prior to July 11, 2005, manufactured prior to April 11, 2006.)

With respect to NESHAP ZZZZ applicability for the emergency diesel generator insignificant activity, the unit was constructed prior to June 12, 2006 and no reconstruction has occurred since this date. Since the site is an area source of HAPs, the unit is thus considered existing under 40 CFR 63 Subpart ZZZZ. Per 40 CFR 63.6590(b)(3), the engine does not have any requirements under this subpart or subpart A of Part 63. No initial notification is necessary.

EPA Response: Based on evaluation of the unit specific information provided, the requested changes have been made.

5. Statement of Basis, Page 10, Section 3 – Applicable Requirements –

- a. Under Streamlined Permit Condition, change “II.E.8” to “II.E.7.”
- b. Insert an applicability discussion of 40 CFR Part 60, Subpart Dc. This subpart is not applicable. A discussion of the non-applicability was provided in the additional information provided to EPA for the renewal application on January 16, 2006.
- c. Under 40 CFR Part 60, Subpart KKKK (*ibid.* – *typo, should be KKK*), change “The Florida River Compression Facility does not extract natural gas liquids” to “The Florida River Compression Facility does not extract or fractionate natural gas liquids.”
- d. Under 40 CFR Part 63, Subpart A, insert applicability to 40 CFR 63.10(b)(3) recordkeeping requirement for applicability determination.

EPA Response: The requested changes have been made.

6. Permit, Page 9, I.B. Table 1 – Source Emission Points –

- a. Change the serial number for T-1 from “0690-H” to the turbine package number “HC90781.” An administrative amendment will be submitted for this change.
- b. Change the serial number for T-1 from “0307-H” to the turbine package number “HC93D50.” An administrative amendment will be submitted for this change.

EPA Response: The requested changes have been made. Per telephone discussions with BP America Production Company, the original numbers were recorded in the application incorrectly and they are

actually numbers of smaller engine components of the turbine packages. The new numbers are the correct numbers for the entire turbine package. This change does not result in any changes in equipment or emissions, but only changes in the serial identification. Therefore, EPA informed BP America Production Company that it is not necessary to submit administrative amendment requests for these changes.

7. Permit, Page 10, Section I.B. Table 2 – Insignificant Emission Units –

- a. Change “1-300 gal Diesel Tank” to “2-300 gal Diesel Tanks” (Note: An additional tank exists at the facility. PTE for this tank is less than 2 tpy of regulated pollutants and less than 0.5 tpy of HAPs. This change qualifies as an off permit change, and because emissions are insignificant, no written notice is required to be submitted to EPA. BP will keep a record of the change that includes emission calculations. Since the tank is less than 75 cubic meters, NSPS Kb does not apply.
- b. Add 1-99 hp Emergency Diesel Generator to the Insignificant Emission Units. (Note: The PTE for this unit is less than 2 tpy of regulated pollutants and less than 0.5 tpy of HAPs. This change qualifies as an off permit change, and because emissions are insignificant, no written notice is required to be submitted to EPA. BP will keep a record of the change that includes emission calculations. Additionally, the engine (DMT Corporation, Model DMT-80C, Serial No. 89411-2), was manufactured in October 1989 and does not trigger NSPS IIII because it was constructed prior to July 11, 2005, manufactured prior to April 11, 2006.)

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EPA Response: Based on evaluation of the unit specific information provided, the requested changes have been made.

8. Permit, Page 11, Section II.A. Emission Standards and Limits –

- a. In Part 4(b)(ii), change “Conditions II.E.3, II.E.4, II.E.5(a) and (b), II.E.6(c), and II.E.8” to “Conditions II.E.2, II.E.3, II.E.4(a) and (b), II.E.5(c), and II.E.7”.

EPA Response: The requested changes have been made.

Comments from Wild Earth Guardians (WEG):¹

Comment I: “The Draft Title V Permit Fails to Ensure Compliance with Title V and PSD 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. 42 USC § 7661c(a); 40 CFR § 71.6(a)(1). Applicable requirements include, among other things, PSD requirements set forth under Title I of the CAA and regulations at 40 CFR §52.21. 40 CFR § 71.2. If a source will not be in compliance with an applicable requirement, including PSD at the time of permit issuance, the applicant must disclose the violation and provide a narrative showing how it will come into compliance, and the permit must include a compliance schedule for bringing the source into compliance. 42 USC § 7661b(b); 40 CFR §§ 71.6(c)(3) and 71.5(c)(8)...”

A. “The EPA Must Consider Emissions from Adjacent and Interrelated Pollutant Emitting Activities, including BP America’s Coalbed Methane Wells and the Wolf Point Compressor Station to Assure PSD Compliance...”

B. “The EPA Must Consider Emissions from Adjacent and Interrelated Pollutant Emitting Activities, including BP America’s Coalbed Methane Wells and the Wolf Point Compressor Station to Assure Title V Compliance...”

EPA Response to WEG’s Comment I:

The EPA Region 8 Air Program (Region 8), in consultation with the EPA Office of Air Quality Planning and Standards (OAQPS) and the EPA Office of General Counsel (OGC), and considering the Prevention of Significant Deterioration (PSD) rules at 40 CFR 52.21, the Title V Permit to Operate (Part 71) rules at 40 CFR Part 71, and past source determinations, has determined that the Florida River Compression Facility (Florida River), the Wolf Point Compressor Station (Wolf Point), and the numerous well sites² located within the Northern San Juan Basin (NSJB) and owned or operated by BP should not be aggregated together in defining the source to be permitted under PSD and Part 71 regulations. Please see EPA’s detailed discussion in Response to WEG’s Comment II below.

¹ Comments from Rocky Mountain Clean Air Action, *Draft Title V Operating Permit for Florida River Compression Facility* received by U.S. EPA Region 8 Air Program on May 19, 2008. Rocky Mountain Clean Air Action merged with Wild Earth Guardians (WEG), and thus these comments will be referred to hereinafter as the *WEG Comments*.

² No distinction is being made between those well sites with pollutant emitting activities and those without pollutant emitting activities.

Comment II: “The EPA Cannot Rely on the 2007 Wehrum Memo When Permitting the Florida River Compression Facility”

“We understand that EPA may be inclined to rely on a flawed policy guidance memo issued by former political appointee and EPA Assistant Administrator, William L. Wehrum (hereafter “Wehrum memo”) when permitting the Florida River Compression Facility. This memo claims to provide guidance for determining if and how to aggregate pollutant emitting activities related to oil and gas operations under New Source Review (“NSR”) and Title V permitting programs. We respectfully submit that this guidance memo inappropriately subverts the plain language of federal NSR and Title V regulations and that it would be inappropriate for the EPA to rely on this memo. What’s more, the memo was illegally promulgated without prior rulemaking, in violation of the Administrative Procedures Act (“APA”).”

1. *“The Wehrum Memo is Substantively Flawed...”*

2. *“The Wehrum Memo is Procedurally Flawed...”*

“...Accordingly, as the EPA moves to analyze whether or not to aggregate interrelated pollutant emitting activities with the Florida River Compression Facility the agency must engage in a thorough and in-depth assessment that does not simply rely on the Wehrum memo, but addresses the extent to which the Florida River compression Facility is operating independently. The EPA must conduct a factual and legal analysis that assesses whether coalbed methane wells and the Wolf Point compressor Station are connected to the Florida River compression Facility by pipelines are interrelated pollutant emitting activities that should be aggregated with the Compression Facility as a single source.”

EPA Response to WEG’s Comment II:

EPA has not relied on the Wehrum Memo³ in making this determination. The Wehrum Memo was withdrawn with a September 22, 2009, Memorandum from Gina McCarthy, Assistant Administrator, Office of Air and Radiation, titled, *Withdrawal of Source Determination for Oil and Gas Industries* (McCarthy Memo available at <http://www.epa.gov/region7/air/nsr/nsrmemos/oilgaswithdrawal.pdf>). For purposes of determining applicability of the PSD, nonattainment New Source Review (NSR), and title V programs of the Clean Air Act (CAA or the Act), the McCarthy Memo states 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. [See 40 C.F.R. Sections 70.2, 71.2, 63.2, 51.165(a)(1)(i) and(ii), and 51.166(b)(5) and (6); and 40 C.F.R. 52.21 (b)(6).] The McCarthy Memo emphasized that whether to aggregate sources for purposes of PSD, NSR, and title V applicability is a case-by-case determination that represents highly fact specific decisions, and that no single determination can serve

³ *Source Determinations for Oil and Gas Industries*, William Wehrum, Acting Assistant Administrator for Air (Jan. 12, 2007), EPA docket EPA-HQ-OAR-2007-0629.

as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances.

As explained in more detail below, when evaluating the extent of the source for this permit action, EPA relied on the PSD rules at 40 CFR 52.21, the Title V Permit to Operate (Part 71) rules at 40 CFR Part 71, the opinion of the court in the *Alabama Power* decision,⁴ and past determinations⁵ that provide insight into the nuances of interpreting the intent of the regulations. EPA also used information provided by BP, such as a map showing the NSJB well sites owned and operated by BP surrounding the Florida River Facility.⁶ BP also provided a description of the gas system and the gas movement from the well sites to various facilities in the NSJB field operated by both BP and other companies, and a detailed explanation of the interactions of the numerous operators in the NSJB that produce and process the coal bed methane gas from the field.

EPA conducted a factual and legal analysis in determining that BP's Florida River, Wolf Point, and well sites located in the NSJB are separate sources. Below is EPA's detailed analysis.

EPA Discussion

Stationary source determinations are made on a case-by-case basis considering the foundational concepts provided in the CAA and EPA's implementing regulations. The following analysis only applies to Florida River, Wolf Point, and well sites in the NSJB owned and operated by BP.

The scope of this source analysis includes the following components:

The Florida River Compression Facility (Florida River): Florida River was first permitted for construction in 1987 to process coal bed methane (CBM) gas produced in the NSJB by reducing the CO₂ and water content to within pipeline specifications.⁷ By 1991, Florida River handled 60 million standard cubic feet per day (mmscfd) of gas, and by 1998, that volume had been increased to 200 mmscfd. Florida River currently processes 380 mmscfd, with a plant capacity of 400 mmscfd.⁸

4 *Alabama Power Company v. Costle*, 636 F.2d 323 (D.C. Cir. 1980)

5 See, e.g., letter from Richard R. Long, Director of EPA Region 8 Air and Radiation Program, to Lynn R. Menlove, *EPA opinion of the source in regard to the Great Salt Lakes Minerals plant and a pump station* (August 8, 1997) [hereinafter *Great Salt Lakes Minerals*]; memo from Robert G. Kellam, EPA OAQPS, to Richard R. Long, Director of EPA Region 8 Air Program, *Analysis of the Applicability of Prevention of Significant Deterioration to the Anheuser-Busch, Incorporated Brewery and Nutri-turf, Incorporated Landfarm* (August 27, 1996) [hereinafter *Anheuser-Busch Nutri-turf*]; memo from Douglas E. Hardesty, Manager of EPA Region 10 Air Programs, to Robert R. Robichaud, Manager of EPA Region 10 NPDES Permits Unit, *Permitting of Forest Oil's Kustatan Production Facility and Osprey Platform Pursuant to the Alaska SIP* (August 21, 2001) [hereinafter *Forest Oil*]; Letter from Richard R. Long, Director of EPA Region 8 Air and Radiation Program, to Lynn R. Menlove, Utah Division of Air Quality, *Response to Request for Guidance in Defining Adjacent with Respect to Source Aggregation* (May 21, 1998) [hereinafter *Guidance in Defining Adjacent*].

6 BP information included as part of the record for this determination.

7 Natural gas received and transported by the major intrastate and interstate mainline transmission systems must meet the quality standards specified by pipeline companies in the "General Terms and Conditions (GTC)" section of their tariffs. These quality standards vary from pipeline to pipeline and are usually a function of a pipeline system's design, its downstream interconnecting pipelines, and its customer base.

8 See *Florida River Compression Facility Title V Renewal Application Permit No. V-SU-0022-00.04*, received by U.S. EPA Region 8 Air Program on December 1, 2005 [hereinafter *Florida River Application*] at 1; *Supplemental Comments on Florida River Plant Renewal Title V Operating Permit*, received by U.S. EPA Region 8 Air Program on February 18, 2010 [hereinafter *BP Supplemental*] at 4, 5.

The Wolf Point Compressor Station (Wolf Point): Wolf Point is a compressor station that first went on line in May of 2001. Wolf Point is a central delivery point (CDP)⁹ for coal bed methane gas produced by BP-operated and third party-operated well sites. Gas handled by Wolf Point is compressed and dehydrated, and then flows via BP-operated and third-party-operated medium-pressure pipelines to Florida River **OR** to other third-party-operated CDPs. Wolf Point is physically separate from Florida River. It is located approximately 4.5 miles away from Florida River and separated by rugged terrain.¹⁰

Well sites: The NSJB gas field is approximately 20 miles (north to south) by 30 miles (east to west) and contains thousands of well sites operated/controlled by several different companies.¹¹ As of the time of this permitting action, the BP-operated well sites are spread throughout the entire basin and range in distance from Florida River from as far away as 18 miles to within eyesight of the facility. While some of these wells are close to Florida River, they are not physically contiguous with it.¹²

Analysis

The federal PSD requirements apply to the construction of major stationary sources and major modifications at a major stationary source. See 40 CFR 52.21(i). The federal title V requirements apply, in part, to the operation of major sources (meaning any stationary source as defined in 40 CFR 71.2). See 40 CFR 71.3.

The PSD regulations define stationary source as, "any building, structure, facility, or installation which emits or may emit a regulated New Source Review pollutant" 40 CFR 52.21(b)(5). The part 71 regulations define stationary source as, "any building, structure, facility, or installation which emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." See 40 CFR 71.2. In promulgating the title V major source definition found at 40 CFR § 71.2, EPA was clear 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).

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

9 A CDP is a gathering point in the field to which the raw natural gas from a number of wells can flow. The gas from the CDP is then sent to other gathering points, a processing plant, or a treating facility in the field, or it can be sent directly to interstate or intrastate gas transportation pipelines.

10 See *BP Supplemental* at 12, 13, 14, Exhibit H [deleted "supra note" references from all footnotes as not required given the shortened cite and the numbers were not always matching up].

11 Companies include Big Run Production Company, BP America Production Company, Enervest Operating LLC, Red Mesa Holdings/O&G LLC, Chevron Midcontinent LP, Chevron USA Inc, Coleman Oil & Gas Inc, Conoco Phillips Company, Dugan Production Corp, Burlington Resources Oil & Gas LP, Elm Ridge Exploration Co LLC, Energen Resources, Corporation, Four Star Oil & Gas Company, Gosney & Sons Inc, Holcomb Oil & Gas Inc, Hubbs III, LLC, Huntington Energy LLC, Maralex Resources, Inc, Mcelvain Oil & Gas Properties, Merrion Oil & Gas Corp, Murchison Oil & Gas Inc, Pablo Operating Company, Petrogulf Corporation, San Marco Petroleum Inc, Samson Resources Company, SG Interests I Ltd, Red Willow Production Company, Synergy Operating LLC, Thompson Engineering & Production, Black Hills Exploration and Production Inc, Williams Production Company LLC, Williford Resources, LLC, Simmons, Inc, XTO Energy Inc. See the database at *Colorado Oil and Gas Conservation Commission (COGCC) website at <http://cogcc.state.co.us>* [hereinafter *COGCC*]; search on Production/Operators/Year Range 2010 to 2010/La Plata county.

12 See *BP Supplemental*, at 8, Exhibit H.

person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

40 CFR 52.21(b)(6); see also 40 CFR 71.2 (defining a title V "major source" to include "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 (or persons under common control)), belonging to a single major industrial grouping").

Florida River, Wolf Point, and some of the NSJB well sites are individually considered "stationary sources" to the extent that they contain equipment that emits regulated air pollutants. In order for Florida River, Wolf Point, and the emission-producing well sites to be considered one stationary source, the three elements of the "stationary source" definition would need to be satisfied: (1) they must be "under the control of the same person (or persons under common control);" (2) they must "belong to the same industrial grouping;" and (3) they must be "located on one or more contiguous or adjacent properties."

1. The activities belong to the same industrial grouping. EPA has determined that Florida River, Wolf Point, and the well sites belong to the same industrial grouping (i.e., they have the same SIC code).

WEG suggested in their comments to EPA Region 8 that EPA should aggregate Florida River with Wolf Point and numerous BP-operated wells across the NSJB as support facilities to Florida River since they are interrelated. According to WEG, "Some or all of BP's coalbed methane wells clearly provide coalbed methane gas to the Florida Compression Facility. Thus the facility depends upon the operations of these wells for its function. Similarly, all or some of the coalbed methane wells owned and operated by BP depend upon the Florida River Compression Facility for their operations. Without the existence of the Florida River Compression Facility, all or some of BP's coalbed methane wells would cease to operate as there would be no means of compressing, processing, and transporting natural gas to market pipelines."¹³ While WEG makes these allegations, they provide no support for them.

WEG refers to the terms "support facility" and "interrelated;" however, WEG does not evaluate how these terms are discussed in the 1980 PSD regulations preamble. The term "interrelated" arises from the discussion of "support facility." EPA's only reference to interrelationship in the preamble is specific to how SIC codes may be applied when considering sources with different major SIC codes, but that appear to have some form of functional interdependence. According to the 1980 preamble:

...EPA accepted the ... use of the SIC classification code for distinguishing between sets of activities on the basis of the functional interrelationships. While EPA sought to distinguish between activities on that basis, it also sought to maximize the predictability of aggregating activities and to minimize the difficulty of administering the definition. To have merely added function to the proposed definition would have reduced the predictability of aggregating activities under that definition dramatically, since any assessment of functional interrelationships would be highly subjective. 45 FR 52696.

¹³ WEG Comments at 4.

The preamble clarifies that "support facilities" that "convey, store, or otherwise assist in the production of the principal product or group of products produced or distributed, or services rendered" should be considered under one source classification, even when the support facility has a different two-digit SIC code. See 45 FR 52696. Thus one source classification encompasses both primary and support facilities, even when the latter includes units with a different two digit SIC code. While EPA's prior determinations involving support facilities are instructive, Florida River, Wolf Point, and the well sites already share a common SIC code. Therefore, there is no reason to analyze whether there is a support facility relationship between these various emissions points. While there is nothing in the 1980 preamble providing that a support facility analysis should override the separate requirement that sources be "contiguous or adjacent," to the extent that the WEG comments are suggesting that interrelatedness also be addressed as part of the "contiguous or adjacent" analysis, please see point 3 in the analysis below.

2. The activities are under the control of the same person (or person under common control).

EPA has determined that Florida River, Wolf Point, and the BP-operated well sites in the NSJB are under the common control of BP as of the time of this permitting action.

3. The activities are not contiguous and adjacent. While Florida River Compression Facility, Wolf Point Compressor Station, and NSJB wells are not contiguous, WEG asserts that Florida River Compression Facility, Wolf Point Compressor Station, and all the wells in the NSJB field are "adjacent" and "interrelated" to one another, and thus must be considered a single source under both PSD and title V.¹⁴ In so doing, WEG argues that two facts alone – the co-location of the various emission points within the NSJB field and the ability of those points to supply gas to the Florida River facility – are enough to make all of these various emission points a single source.¹⁵ However, WEG's argument is inconsistent with EPA's past statements interpreting the "contiguous and adjacent" part of the source definition. While it is true that EPA found that non-contiguous emissions points separated by significant distances can be "adjacent" (and thus a single source) based on their interrelatedness, such determinations were only made in circumstances in which those emission points had a unique or dedicated interdependent relationship with one another.¹⁶ That is not the case here. As explained below, while gas from Wolf Point and the various wells *can* supply gas to Florida River, they can also supply gas to other non-BP facilities in the field and thus do not have the type of dedicated interrelatedness that was determinative in other EPA statements on this issue.

¹⁴ WEG Comments at 5, 6, and 7.

¹⁵ WEG's Comments did not identify any specific wells that should be aggregated with Florida River or provide anything beyond general claims of adjacency and interrelatedness. See generally WEG Comments at 3-7.

¹⁶ See, e.g., *Great Salt Lakes Minerals* at 2 (finding a salt processing plant and pump station separated by more than 20 miles to be a contiguous and adjacent single source because of the "unique relationship" and a dedicated channel between the two facilities); *Anheuser-Busch Nutri-turf* at 3-4 (finding a brewery and land farm separated by 6 miles to be contiguous and adjacent based on the integrated relationship between them where the land farm was the only form of waste disposal for the brewery and there was a dedicated pipeline between them). The WEG Comments reference a 1999 letter to argue that EPA has established that compressor stations and their associated wells must be considered a single source (*see id.* at 6-7), but that letter actually found that there were five different title V sources, each consisting of single compressor and select wells and equipment. See Letter from Richard R. Long, Director of EPA Region 8 Air and Radiation Program, to Jack Vaughn, EnerVest San Juan Operating Co. (July 8, 1999), at 2. While that letter did not contain a detailed analysis of the various elements of the 3-part source determination, it did not aggregate a number of compressors and an entire field of wells as WEG is arguing must be done in this case.

In the initial promulgation of the 3-part major source definition, EPA explained that we could not “say precisely how far apart activities must be in order to be treated separately” and directed that such determinations be made on a case-by-case basis. 45 Fed. Reg. 52676, 52695 (August 7, 1980).¹⁷ Since that time, EPA has indicated that source determinations should be made on “case-by-case” and “highly fact-specific” basis, where “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” and where a fact-specific inquiry is necessary to establish whether emissions sources should be grouped together.¹⁸ As explained above, the McCarthy Memo recognized that while proximity of disparate emissions units is important, it is not necessarily the deciding factor in making an aggregation determination. In addition, other EPA guidance has noted that the while EPA had never established “a specific distance between pollutant emitting activities” for determining whether two facilities are adjacent, the analysis must be “determined on a case-by-case basis, based on the relationship between the facilities.”¹⁹

In examining whether two stationary sources that are not actually touching (i.e., non-contiguous) should be considered “adjacent,” the determination has been made on a case-by-case basis, considering the extent to which two sources are functionally interrelated. In fact, EPA has made case specific determinations to aggregate where facilities were many miles apart, but where the facts clearly showed they operated together as a “plant.” The August 21, 2001 determination made by EPA in defining a “source” for the Forest Oil Kustatan and Osprey Platform Construction Permitting is an example of where facilities some miles apart were aggregated into a single source.²⁰ Though the two sites in the Forest Oil determination were 2.8 miles apart, they belonged to the same industrial grouping, were under the control of the same person (or persons under common control), and were determined to be contiguous or adjacent through an analysis of the proposed operations. Therefore, making a determination of this nature – where distance between facilities seems to indicate that they would be separate sources but for their potential interaction – requires that “contiguous or adjacent” be evaluated simultaneously to determine if the operations should be considered one source.

In the 2001 Forest Oil determination, EPA Region 10 relied on guidance previously issued by EPA Region 8, with the assistance of EPA headquarters offices, regarding the definition of “adjacency” in

17 While this language is taken from the preamble to the final rule promulgating the major source definition for the NSR permitting program, EPA was clear that in promulgating the title V major source definition found at 40 CFR § 71.2, the language and application of the title V definition was to be consistent with the NSR program. See 61 Fed. Reg. 34202, 34210 (July 1, 1996).

18 See McCarthy Memo at 2; Inter-office Communication from Jim Geier, et al, to Stationary Sources Program Staff and Local Agencies, “Glycol Dehydration Units – permit issues,” January 4, 1995, at 2 (stating that EPA “will review oil and gas facilities under the operating permit rules to determine if a permit is needed for criteria pollutants. As is the case for construction permits, emissions units on the same or contiguous properties will be added together to determine if the source is major. Sources owned or controlled by the same company that are located on widely separated, non-contiguous property will need to be assessed on a case-by-case basis to determine if an operating permit is needed.”). See also guidance referenced in note 14, *supra*.

19 Memo from Robert G. Kellam, EPA OAQPS, to Richard R. Long, Director of EPA Region 8 Air Program (August 27, 1996), at 3. See also letter from Joan Cabreza, Permits Team Leader for EPA Region 10 Office of Air Quality, to Andy Ginsburg, Oregon Department of Environmental Quality (August 7, 1997) (stating that the “common sense notion of a plant” is the “guiding principle” in determining how “near” facilities need to be in order to be found “adjacent” and thus a single source, such that “pollutant emitting activities that comprise or support the primary product or activity of a company or operation must be considered part of the same stationary source”).

20 See *Forest Oil*.

source determinations for air quality construction permitting of oil and gas production units.²¹ Based on this guidance and the facts involved in Forest Oil, EPA concluded that the Forest Oil Kustatan Facility and Opsrey Platform were “exclusively dependent” on each other and determined that they should be considered “adjacent” under the applicable PSD regulations.²² Such a determination is consistent with EPA’s past statements regarding source determinations in other industries, which only aggregated various distant emissions points into a single source if there was a unique or dedicated interdependent relationship between them.²³ Based on analysis and guidance provided in the Forest Oil determination and other EPA guidance, Region 8 has reviewed the specific facts surrounding Florida River, Wolf Point and the well sites in the NSJB field, in order to determine the type of interrelatedness these facilities have with each other. Our case-by-case determination, as based on our analysis of the information provided by BP,²⁴ appears below.

At the outset, we note that Wolf Point and the BP-owned well sites do not exhibit the exclusive dependency found in Forest Oil or the dedicated interrelatedness that was determinative in other EPA source guidance in which distant facilities were aggregated into a single source. Regardless of the distance between the various emission points, the flow of gas in the NSJB field is complex and dynamic, with several different companies operating within the production and transportation system under various business agreements to ensure the continued flow of gas regardless of “issues” at any one facility, providing flexibility and reliability of the system. Specifically, for example, gas from the BP owned and operated well sites flows to low pressure pipeline systems (which can be owned and/or operated by either BP or third parties), to central points of delivery for compression (which can also be owned and/or operated by either BP or third parties), then to medium pressure pipeline systems (once again, which can be owned and/or operated by either BP or third parties) and then to the Florida Facility OR to third party owned and operated plants.²⁵

The lack of a uniquely integrated operation between the various emission points in this field, and thus a lack of “adjacency,” is also evidenced by the fact that the oil and gas production process in the NSJB is split among different facilities. There are dozens of points across the field where BP-gathered gas can be offloaded to other companies’ pipelines, compressors, or gas plants or where BP may accept gas from non-BP-operated wells and systems.²⁶ BP has agreements with other third party oil and gas gathering companies to accept, compress, and treat BP’s gas and vice versa.²⁷ In each instance where

21 See *Forest Oil* at 5 (citing the *Utility Trailer* guidance).

22 See *Forest Oil* at 5.

23 See note 14, *supra*; see also Letter from Steven C. Riva, Chief of EPA Region Air Permitting Section, to John T. Higgins, New York State Department of Environmental Conservation, *St. Lawrence Cement’s (SLC’s) Proposed Greenport Project and its Relationship with its Existing Catskill Facility Located 6 Miles Apart for the Purpose of New Source Review (NSR)/Prevention of Significant Deterioration of Air Quality (PSD) Applicability* (October 11, 2000) (finding two cement processing plants located 6 miles away and across the Hudson River were separate PSD sources because the “limited functional interrelationship between the two facilities does not outweigh the evidence that the two facilities do not meet the “common sense” notion of a single plant”).

24 See *Florida River Application*, *supra* note 6; *BP Supplemental*, *supra* note 6; *BP America Production Company Florida River Compression Facility proposed Air Pollution Control Title V Permit to Operate Number V-SU-0022-05.00*, December 17, 2009 [hereinafter *12/17/2009 Clarification*]; *Florida River Compression Facility Proposed Title V Permit No. V-SU-0022-05.00 Clarification of December 17, 2009 Flow Description and Proximity Map*, December 28, 2009 [hereinafter *12/28/2009 Clarification*].

25 See *12/17/2009 Clarification* at Appendix A.

26 Companies include Red Cedar Gathering Company, El Paso Natural Gas Company, Northwest Pipeline GP, Transwestern Pipeline Company, Williams Four Corners, LLC. See *12/17/2009 Clarification* at Appendix B.

27 See *BP Supplemental*, at Exhibits T, U, and V (Contain confidential business information).

“BP gas” is transferred to third parties or vice versa, the gatherer takes custody of and assumes liability for the gas while in the gatherer’s possession, the gas is measured by the gatherer, and the shipper verifies those volumes with its own check meter.²⁸ The following process flow diagram illustrating the flow of gas in the field demonstrates the lack of a unique connection between BP facilities.²⁹

BP America Production Company
Florida River Compression Facility
Basic System Flow Diagram



Moreover, contrary to WEG’s assertions, the fact that many of BP’s NSJB wells are located in La Plata County does not mean they are “adjacent.” La Plata County covers 1,692 square miles, or nearly 1.1 million acres. All BP owned and operated wells that happen to be co-located within such a large area cannot reasonably be said to be “adjacent” to one another simply because they are located in the same county. In this case, while the WEG comments make general statements about the interrelatedness of the various BP emission units, they do not identify anything in the record showing that the co-location in same field affects the degree to which the various emission points may be dependent on each other. In fact, the placement of oil and gas well sites, compressor stations, and gas plants in this area is driven by several complex factors, including the spacing area established by relevant jurisdictional authorities: the Colorado Oil and Gas Commission (COGCC); the Bureau of Land Management (BLM); and the Southern Ute Tribe. Factors such as company-specific assessments of optimal geology, engineering, topography, access, power, and surface owner compatibility also play a significant role. In addition, we note that the well sites located closest to Florida River were drilled/constructed at various times over the past 25 years – many well sites existed before Florida River was constructed and some were constructed after Florida River was constructed.³⁰ The locations of the older well sites were

28 See 12/17/2009 Clarification at Appendix B.

29 See BP Supplemental at Exhibits S.

30 See COGCC, search database on Facilities/Well/County Code 067, and select the highlighted text ‘well’ for date specific information.

driven in part by surface owner preferences and in part by local jurisdiction spacing orders. The locations of the newest well sites were based on COGCC 80-acre spacing orders (agreed to by the BLM and the Southern Ute Tribe), and other factors, including BP's La Plata County MOU, which requires new wells to use existing infrastructure in order to reduce surface disturbances.³¹

Accordingly, any assertion of "adjacency" based simply on the fact that Florida River, Wolf Point, and the various well sites are located in the same county or the same field fails to take these important spatial, temporal, and regulatory attributes into account.

While the entire NSJB gas field is highly integrated, the record shows that the individual well site operations, compression, and gas processing are conducted by completely separate and distinct equipment, such that gas metered at one well head can flow to several low-pressure gathering lines which may be owned or operated by BP or by other companies. Therefore, regardless of where the well site is located in relation to other emission points and regardless of who owns or operates those emission points, once the gas is pumped, it enters these intermediate pipelines, mixes with gas from several other companies, and is sent to various compressor stations and gas plants. Gas handled by Wolf Point is compressed and dehydrated, and then flows – via medium-pressure pipelines operated by BP or third parties – to Florida River or to other third-party-operated CDPs. Thus, Florida River can continue to operate regardless of whether Wolf Point or one, two, three, four, or all of the BP operated well sites were to shut down – and vice-versa.³² The nature of movement and mixture of the gas product pumped from the wells in this field means that no one well site (or compressor station) is more interrelated to or dependent on Florida River than any other well site, such that operations at Florida River do not have an exclusive or dedicated interrelatedness with Wolf Point or the BP operated well sites.

Taking into consideration the complex and diverse gas movement among the facilities, as well as the lack of unique interdependence among the facilities, EPA has determined that the Florida River Compression Facility, Wolf Point Compressor Station, and BP's numerous well sites within the NSJB are not adjacent.

Conclusion

Florida River, Wolf Point, and BP's NSJB well sites:

1. Belong to the same industrial grouping; and
2. Are under the control of the same person (or persons under common control); but
3. Are not located on one or more contiguous or adjacent properties.

Accordingly they do not meet the three regulatory criteria for identifying emissions activities that belong to the same "building," "structure," "facility," or "installation" under the PSD regulations and should not be considered a single source for the purposes of this title V permitting process. Consistent with the McCarthy Memo and EPA's other existing guidance on stationary source determinations, this decision has been made on a case-by-case basis considering the facts specific to this permitting

³¹ See *BP Supplemental* at 10.

³² See *BP Supplemental* at 11, 12.

scenario. Thus, neither the final determination nor the specific facts considered are binding on other source determinations for pollutant-emitting activities with different fact specific circumstances.