

EPA Grants Petition Objecting to Natural Gas Facility Air Permit Over Concerns Emissions Were Not Appropriately Aggregated

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On August 24, 2011, EPA published a notice granting a petition requesting that EPA object to the renewal of a Clean Air Act (“CAA”) Title V operating permit issued by the New Mexico Environment Department (“NMED”) to the Williams Sims Mesa Central Delivery Point (“CDP”), a natural gas gathering and compression facility located near Blanco, New Mexico. The petition was submitted by the WildEarth Guardians and San Juan Citizens Alliance (together, the “Alliance”) in April 2010 under provisions of the CAA that allow any person to request such an objection where the EPA has not objected on its own initiative and where any objections presented were originally raised during the period for public comment on the permit. The Alliance argued that NMED failed to confirm whether upstream natural gas operations and associated equipment were under “common control,” thus requiring other emissions sources (beyond those actually listed) to be included in the permit.

The Alliance’s argument essentially connects back to a relatively recent push by environmental groups to require natural gas facilities to aggregate emissions from nearby sources for CAA permitting purposes. Indeed, “common control” is one of three crucial tests employed by EPA to determine whether emissions should be aggregated. For permitting purposes, treating emissions from several units as a single source, could – and in the case of Williams Sims Mesa CDP and other natural gas facilities, likely would – set a facility’s emissions above the threshold for triggering Prevention of Significant Deterioration (“PSD”) permitting requirements. PSD requirements generally involve the installation of costly pollution control equipment. NMED has 90 days from July 29, 2011, the date of the actual order granting the objection, to revise and submit a proposed permit in response to the objection. If it fails to do so, EPA must issue or deny the permit in accordance with the requirements of the CAA. EPA’s objection is not subject to judicial review until EPA takes final action to issue or deny a permit under the CAA.

Environmental groups have not been as successful with similar permitting challenges. In October 2010, the Group Against Smog and Pollution (“GASP”) filed an appeal before the West Virginia Air Quality Board (“WV-AQB”), challenging two air permits issued to Appalachia Midstream Services for construction of two large natural gas compressor stations in West Virginia’s northern panhandle. The appeal challenged the West Virginia Department of Environmental Protection’s decision to permit each of the compressor stations as separate sources (rather than requiring that they be aggregated). On August 6, the WV-AQB upheld the permitting decision, stating that insufficient evidence had been presented by appellant to support the claim that the new compressor stations and/or the wells feeding them were in fact “contiguous or adjacent,” a crucial requirement for aggregation. Members of the oil and

gas industry hope that the WV-AQB's decision will ultimately be used as precedent in other similar challenges pending before EPA's Environmental Appeals Board and in the 10th Circuit.
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