

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. 1391(b) & (c) because the violations at issue occurred in this judicial district and because Defendants are located in and doing business in this judicial district.

NOTICE TO STATE

4. Notice of the commencement of this action has been given to the State of Utah as required under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

THE FACILITY

5. North Hill Creek Compressor Station is located southwest of Vernal, Utah, within the external boundaries of the Uintah and Ouray Indian Reservation, on “Indian country” lands as defined at 18 U.S.C. § 1151 in Uintah County. EPA administers the Act’s programs for the Prevention of Significant Deterioration (“PSD”), National Emission Standards for Hazardous Air Pollutants (“NESHAP”), and federal operating permits under Title V.

DEFENDANTS

6. Defendant Bill Barrett is a Delaware corporation authorized to do business in the State of Utah. Defendant Wind River is incorporated in and authorized to do business in the State of Utah.

7. Defendants are “persons” as defined in Section 302 (e) of the CAA, 42 U.S.C. § 7602(e).

DESCRIPTION OF THE FACILITY

8. For purposes of this Complaint, Defendants are owners and/or operators, of the North Hill Creek Compressor Station (“North Hill Creek or facility”). The North Hill Creek facility dehydrates and compresses natural gas for transportation through a gas pipeline.

9. Emissions sources at North Hill Creek include two 1680 horsepower Waukesha four stroke rich burn reciprocating internal combustion engines (“RICE”) that were installed in December of 2003. The RICE are used to compress natural gas. The facility also includes two glycol dehydrators installed in February of 2004, to dehydrate wet gas.

STATUTORY AND REGULATORY BACKGROUND

10. As set forth in Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1), the CAA establishes a regulatory scheme designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare.

PSD Program

11. As set forth in Section 161 of the CAA, 42 U.S.C. § 7471, and the regulations promulgated thereunder, Part C of the CAA is designed to prevent the significant deterioration of air quality where air quality meets or exceeds federal National Ambient Air Quality Standards (“NAAQS”) in areas designated as “attainment” or “unclassifiable.”

12. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS.

13. Section 107 of the CAA, 42 U.S.C. § 7407(d), requires each state to designate

those areas within its boundaries where the air quality is better or worse than NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an “attainment” area; one that does not is classified as a “nonattainment” area.”

14. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), provides that no “major emitting facility” on which construction began after August 7, 1977, may be constructed in attainment or unclassifiable areas unless a permit is issued pursuant to the preconstruction review provisions in the CAA. In addition, Section 165(a)(4) of the CAA, 42 U.S.C. § 7475(a)(4), provides that “the proposed facility [must be] subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility.”

EPA’s regulations implementing the CAA as set forth in 40 C.F.R. § 52.21(i) similarly impose such restrictions on any “major stationary source,” or any “major modification” of a stationary source.

15. A “major emitting source” is defined by Section 169(1) of the CAA, 42 U.S.C. § 7479(1), and a “major stationary source” is defined by 40 C.F.R. § 52.21(b)(1)(i)(b), *inter alia*, as any stationary source which emits or has the potential to emit 250 tons per year of any pollutant subject to regulation under the CAA. Pursuant to 40 C.F.R. § 52.21(b)(1)(i)(c), a “major stationary source” is also defined to include “[a]ny physical change that would occur at a stationary source not otherwise qualifying under [§52.21(b)(1)], as a major stationary source, if the changes would constitute a major stationary source by itself.” Nitrogen Oxides (“NOx”) are

regulated pollutants under the CAA.

Utah SIP

16. In approving the State of Utah's SIP for the implementation of the CAA and the attainment and maintenance of NAAQS, as set forth in 40 C.F.R. § 52.2346, EPA ruled that:

(a) The Utah plan, as submitted, is approved as meeting the requirements of Part C, Title I, of the Clean Air Act, except that it does not apply to sources proposing to construct on Indian Reservations.

(b) Regulation for Prevention of Significant Deterioration of Air Quality. The provisions of § 52.21 (b) through (v) are hereby incorporated by reference and made a part of the Utah State Implementation Plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

17. In promulgating the rule approving the Utah SIP referred to in the preceding paragraph, as set forth in 47 F.R. 6428 (February 12, 1982), EPA stated that:

As explained in the proposed approval, there is one major difference between the State and Federal programs. That difference is that the State's regulation does not necessarily apply on Indian Reservations. Therefore, EPA approves the State regulation and removes the federal regulation except as it applies on Indian Reservations.

National Emission Standards For Hazardous Air Pollutants

18. Section 112 of the CAA, 42 U.S.C. § 7412, establishes a program for controlling emissions of hazardous air pollutants ("HAPs") using the maximum degree of emission reduction known as the "National Emission Standards for Hazardous Air Pollutants" or "NESHAPs." HAPs, also known as air toxics, are listed in Section 112(b) of the CAA, 42 U.S.C. § 7412(b), and include the following five that are typically contained in emissions from oil and natural gas facilities and natural gas transmission and storage facilities: benzene, toluene, ethyl benzene, xylene, and hexane. HAPs are pollutants which are known or suspected to cause

cancer or other serious health effects such as birth defects or reproductive effects in humans.

Subpart HH Regulations

19. Pursuant to the authority under Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator of EPA promulgated regulations establishing NESHAPs for Oil and Natural Gas Production Facilities. These “Maximum Achievable Control Technology (“MACT”)” regulations for Oil and Natural Gas Production Facilities are codified at 40 C.F.R. Part 63, Subpart HH. The effective date of Subpart HH was June 17, 1999.

20. The Subpart HH regulations apply to specified affected sources located at oil and natural gas production facilities that (a) are “major sources” of HAPs, and (b) either process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer, or natural gas prior to the point at which natural gas enters the “natural gas transmission and storage source category or is delivered to a final end user.” 40 C.F.R. § 63.760(a). Natural gas is deemed to enter the “natural gas and storage source category” after leaving a natural gas processing plant if there is one, and if there is not one, after the point of custody transfer. 40 C.F.R. § 63.760(a)(3).

21. A “major source” of HAPs means “any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous pollutant to 25 tons per year or more of any combination of hazardous air pollutants.” Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1). *See also* 40 C.F.R. § 63.2.

22. An “affected source,” for purposes of the NESHAP regulations set forth at 40 C.F.R. Part 63, means the “stationary source, the group of stationary sources, or the portion of the

stationary source that is regulated by a relevant standard or other requirement established pursuant to [Section 112 of the CAA]. Each relevant standard will define the 'affected source' for the purposes of that standard" 40 C.F.R. § 63.2.

23. Affected sources under Subpart HH are defined at 40 C.F.R. § 63.760(b)(1) - (4) to include glycol dehydration units, storage vessels with the potential for flash emissions, the group of all ancillary equipment (except compressors) intended to operate in volatile hazardous air pollutant service which are located at natural gas processing plants, and compressors intended to operate in volatile hazardous air pollutant service which are located at natural gas processing plants.

24. The construction of any new, or the reconstruction of any existing, "major source" of HAPs is subject to a pre-construction approval process. Section 112(i)(1) of the CAA provides that "[a]fter the effective date of any emission standard, limitation, or regulation under subsection (d), (f), or (h) of this section, no person may construct any new major source subject to such emission standard, regulation, or limitation unless the Administrator . . . determines that such source, if properly constructed, reconstructed, and operated, will comply with the standard, regulation, or limitation." 42 U.S.C. § 7412(i)(1). *See also* 40 C.F.R. § 63.5(d)(1). 40 C.F.R. 63.5(b)(3) further provides that: "[a]fter the effective date of any relevant standard promulgated by the Administrator under this part . . . no person may construct a new major affected source . . . subject to such standard . . . without obtaining written approval, in advance, from the administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section."

25. Pursuant to 40 C.F.R. § 63.760(f)(2) the owner or operator of an affected source, the construction or reconstruction of which commenced on or after February 6, 1998, shall achieve compliance with the provisions of 40 C.F.R. Part 63, Subpart HH immediately upon initial start up or June 17, 1999, whichever is later. 40 C.F.R. § 63.760(f)(1) specifies the deadline for achieving compliance with the provisions of 40 C.F.R. Part 63, Subpart HH for an affected source or area source, which commenced construction or reconstruction before February 6, 1998.

Subpart ZZZZ

26. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations, codified at 40 C.F.R. Part 63, Subpart ZZZZ, establishing NESHAPs for stationary reciprocating internal combustion engines (“RICE”) at major sources of HAP emissions. 40 C.F.R. §§ 63.6584 & 63.6585. The effective date of Subpart ZZZZ was August 16, 2004.

27. Affected sources are defined at 40 C.F.R. Part § 63.6590 to include any existing, new, or reconstructed stationary RICE with a site-rating of more than 500 brake horsepower and located at a major source of HAP emissions. A “major source” of HAP emissions includes, with respect to oil and gas production facilities, a “surface site” that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year, or any combination of HAPs at a rate of 25 tons or more per year. 40 C.F.R. § 63.6585(b).

28. The owner or operator of a new or reconstructed stationary RICE (defined by 40 C.F.R. § 63.6590(a)(2) & (3)) that is started up before August 16, 2004 must comply with the applicable emissions limitations and operating limitations set forth at 40 C.F.R. Part 63, Subpart

ZZZZ, by no later than August 16, 2004. 40 C.F.R. § 63.6595(a)(2). For a new or reconstructed stationary RICE that is started up after August 16, 2004, the owner or operator must comply with the applicable emissions limitation and operating limitations set forth at 40 C.F.R. Part 63, Subpart ZZZZ, upon startup. 40 C.F.R. § 63.6595(a)(3).

FIRST CLAIM FOR RELIEF

(Violations of PSD Requirements)

29. Paragraphs 1 through 28 are realleged and incorporated by reference.

30. Prior to August 16, 2004, Defendants constructed two new RICE at the North Creek Facility. The RICE have the potential to emit 426 tons per year of NO_x, a regulated pollutant under the CAA. With the installation of the RICE, the North Creek Facility became a “major emitting source” as defined by Section 169(1) of the CAA, 42 U.S.C. 7479(1), and a “major stationary source” as defined by 40 C.F.R. § 52.21(b)(1)(i)(b).

31. The Defendants’ addition of the RICE was made without the prior application or issuance of a PSD permit in violation of Section 165(a)(4) of the CAA, 42 U.S.C. § 7475(a)(4), and 40 C.F.R. § 52.21(i).

32. Pursuant to 40 C.F.R. §§ 52.21(r) and 52.23, the Defendants’ construction and operation of a major stationary source without a PSD permit is subject to enforcement under Section 113 of the CAA, 42 U.S.C. § 7413.

33. The Defendants are liable for civil penalties and permanent injunctive relief pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) for construction and/or operation of

a major stationary source without a PSD permit.

SECOND CLAIM FOR RELIEF

(Violations of Title V)

34. Paragraphs 1-33 are realleged and incorporated by reference.

35. Pursuant to 40 C.F.R. § 71.9(h), the owner or operator of a major source must submit an annual report of its actual emissions for the preceding calendar year, a fee calculations and work sheet, and full payment of the annual fee each year.

36. Defendants failed to submit an annual report of North Hill Creek's actual emissions for calendar year 2005, a fee calculations and work sheet, and full payment of the annual fee, in violation of 40 C.F.R. § 71.9(h).

37. Defendants are liable for civil penalties and permanent injunctive relief on account of each Title V violation at the North Hill Creek, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

THIRD CLAIM FOR RELIEF

(Violations of NESHAP Subpart A and HH Requirements)

38. Paragraphs 1 through 37 are realleged and incorporated by reference.

39. The addition of two tri-ethylene ("TEG") dehydrators in February of 2004 at North Hill Creek constituted the construction of a new "affected source" as defined in 40 C.F.R. § 63.760(b)(1), and a "major source" of HAPs within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. §§ 63.2 and 63.761, triggering the applicability of Subparts A and HH of EPA's 40 C.F.R. Part 63 regulations.

40. Pursuant to Section 112(i)(1) of the CAA, 42 U.S.C. § 7412(i)(1), and 40 C.F.R. §§ 63.5(b)(3) & 63.5(d), the owner or operator of North Hill Creek was required to comply with a preconstruction approval process before installing the TEG dehydrators. Such an application for approval of the construction of the TEG dehydrators at North Hill Creek was not submitted, and therefore the TEG dehydrators were operated without EPA's approval.

41. Pursuant to 40 C.F.R. §§ 63.6(e)(3) and 63.762(d), a Startup, Shutdown, and Malfunction ("S/S/M") plan must be prepared for an affected source by the applicable compliance date, which for sources, the construction or reconstruction of which commenced on or after February 6, 1998, is the date of the initial start-up of the affected source. A S/S/M plan was not prepared for the TEG dehydrators at North Hill Creek before its initial start-up, in February, 2004.

42. Pursuant to 40 C.F.R. § 63.771(d)(ii), the owner or operator of an affected glycol dehydrator must operate a vapor recovery device (e.g., condenser) or other control device that is designed and operated to reduce the mass content of either total organic compounds or total HAP in the gases vented to the device by 95 percent by weight or greater as determined in accordance with the requirements of 40 C.F.R. § 63.772(e). The Part 71 Title V permit application for North Hill Creek estimates 95% removal of HAP by using the combination of a condenser and a flare. The May 11, 2006 EPA inspection revealed that the flare had not been installed. The condenser alone could not achieve 95% control. Defendants' failure to reduce total HAP emissions by at least 95% is a violation of 40 C.F.R. §63.771(d)(ii).

43. Defendants failed to install, calibrate, operate, and maintain a device equipped

with a continuous recorder to measure either the condenser outlet temperature or pilot flame temperature for the flare at North Hill Creek in violation of 40 C.F.R. § 63.773(d).

44. Defendants failed to record the times and durations of all periods during which the pilot flame, for the flare from the TEG dehydrator North Hill Creek, was absent in violation of 40 C.F.R. § 63.774(b)(4)(ii)(A).

45. Defendants failed to submit a timely Notification of Compliance Status Report for North Hill Creek in violation of 40 C.F.R. §§ 63.9(h) and 63.775(d).

46. Defendants failed to submit a timely Periodic Report for North Hill Creek in violation of 40 C.F.R. § 63.775(e).

47. Defendants are liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and HH requirements pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

FOURTH CLAIM FOR RELIEF
(Violations of NESHAP Subpart A and ZZZZ Requirements)

48. Paragraphs 1 through 48 are realleged and incorporated by reference.

49. The installation of the two engines, each being a stationary RICE rated at 1680 hp, at North Hill Creek after December 19, 2002, constituted the addition of “new” and “affected sources” as these terms are defined at 40 C.F.R. § 63.6590(a)(1) & (2).

50. The Subpart ZZZZ regulations provide that an owner or operator that starts up a new stationary RICE before August 16, 2004 must comply with emission and operating limitations in 40 C.F.R. § 63.6600(a) by no later than August 16, 2004 (the “compliance date”)

per 40 C.F.R. § 63.6595(a)(2). Defendants were violating these provisions by failing to meet the 76 percent reduction of formaldehyde emissions, failing to monitor the pressure drop across the catalyst, and failing to continuously monitor the inlet temperature to the catalyst.

51. Pursuant to 40 C.F.R. §63.6610(a), the owner or operator of an affected RICE must conduct initial performance testing by February 16, 2005. As of the May 11, 2006 EPA inspection, testing has not been conducted. Defendants' failure to conduct performance testing by February 16, 2005 for the two affected RICE at North Hill Creek is a violation of 40 C.F.R. §63.6610(a).

52. Pursuant to 40 C.F.R. §63.6615, the owner or operator of an affected RICE must conduct subsequent performance tests as specified in Table 3 of this subpart. The subsequent semi-annual tests for North Hill Creek were due on August 16, 2005, February 16, 2006 and August 16, 2006. These subsequent semi-annual tests were not conducted and are violations of 40 C.F.R. §63.6615.

53. Pursuant to 40 C.F.R. §63.6625(b), the owner or operator of an affected RICE must install, operate, and maintain a continuous parameter monitoring system ("CPMS") as specified in Table 5 of this subpart according to the requirements in 40 C.F.R. §63.8. Based on observations from the May 11, 2006 EPA inspection, a CPMS for temperature at the catalyst inlet had not been installed, operated, or maintained. Defendants' failure to install a continuous parameter monitoring system is a violation of 40 C.F.R. §63.6625(b).

54. Pursuant to 40 C.F.R. §63.6630(c), the owner or operator of an affected RICE must submit the Notification of Compliance Status containing the results of the initial

compliance demonstration as required by 40 C.F.R. §63.6645. A Notification of Compliance Status has not been submitted to EPA. Defendants' failure to submit a Notification of Compliance Status is a violation of 40 C.F.R. §63.6630(c).

55. Pursuant to 40 C.F.R. §63.6640(a), the owner or operator of an affected RICE must demonstrate continuous compliance with each emission limitation and operating limitation in Tables 1a, 1b, Table 2a and Table 2b of this subpart that apply according to the methods specified in Table 6 of the subpart. Continuous compliance with the temperature and pressure drop operating limitations has not been demonstrated. Defendants' failure to demonstrate continuous compliance is a violation of 40 C.F.R. §63.6640(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court enter judgment against both Defendants:

A. For each violation of the Clean Air Act, and the regulations promulgated thereunder, a civil penalty pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, up to \$27,500 per day per violation for violations occurring on or after January 30, 1997 through March 15, 2004; up to \$32,500 per day for each violation that occurs after March 15, 2004, and \$37,500 after January 12, 2009;

B. Permanently enjoining Defendants from continuing to violate the Clean Air Act, and the regulations promulgated thereunder; and

C. For such other relief as this Court deems just and proper.

Respectfully submitted,

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