

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

UNITED STATES OF AMERICA and
STATE OF COLORADO,

Plaintiffs,

v.

KERR-McGEE GATHERING LLC,

Defendant.

Case No. 1:20-cv-01931

COMPLAINT

Plaintiffs, the United States of America, by authority of the Attorney General of the United States, and the State of Colorado, by authority of the Attorney General of Colorado, and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and the Colorado Department of Public Health and Environment, Division of Administration (“CDPHE”), file this Complaint and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action against Defendant Kerr-McGee Gathering LLC pursuant to Section 113(b) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(b), and Sections 121 and 122 of the Colorado Air Pollution Prevention and Control Act (the “Colorado Act”), C.R.S. §§ 25-7-121 and 122, in connection with unlawful air emissions from three contiguous natural gas processing plants owned and operated by Defendant near Fort Lupton, Weld County, Colorado (the “Fort Lupton Complex”). The United States and CDPHE seek permanent injunctive relief

and civil penalties for Defendant's violations of Sections 111 and 112 of the Act, 42 U.S.C. §§ 7411 and 7412, and regulations promulgated under the Clean Air Act and the Colorado Act pertaining to leak detection and repair requirements for air pollutants emitted from onshore natural gas processing plants.

2. Defendant's failure to comply with leak detection and repair requirements has resulted in excess emissions of volatile organic compounds ("VOCs"), a precursor to ground-level ozone, often referred to as "smog." Exposure to ground-level ozone can cause lung function diminution, pulmonary inflammation, and other symptoms. Children, people with respiratory illness, the elderly, and those working or exercising outdoors have a higher risk of adverse health effects from ozone exposure.

3. VOCs form ground-level ozone by reacting with sources of oxygen molecules, *e.g.*, nitrogen oxides and carbon monoxide, in the atmosphere in the presence of sunlight. Ground-level ozone is one of six criteria pollutants for which the EPA has promulgated National Ambient Air Quality Standards ("NAAQS") due to its adverse effects on human health and the environment.

4. The Fort Lupton Complex is located in an area of Colorado where air quality is so degraded that it exceeds the relevant standards for ground-level ozone and thus is considered to be in "serious nonattainment" with the ozone NAAQS. Unlawful excess emissions of VOCs from Defendant's natural gas processing plants potentially contribute to this exceedance of the ozone NAAQS.

5. In addition, the Fort Lupton Complex is located approximately 60 miles from Rocky Mountain National Park, which has been designated as a Federal Class I area under

Section 169A of the Act. 42 U.S.C. § 7491(a)(1). Portions of Rocky Mountain National Park are located within the Denver Nonattainment Area. Excess ground-level ozone can result in haze that degrades visibility and causes other environmental problems within the confines of the Park and neighboring national forest areas.

6. The Fort Lupton Complex also emits benzene and other hazardous air pollutants (“HAPs”) listed under Section 112(b) of the Act. 42 U.S.C. § 7412(b). Regulation of HAPs is separate from VOC regulation under the Act because HAPs can cause cancer and other serious diseases.

JURISDICTION AND VENUE

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

8. This Court has supplemental jurisdiction over the state law claims asserted by Colorado pursuant to 28 U.S.C. § 1367.

9. Venue is proper in this judicial district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a), because the violations that constitute the basis of this complaint occurred in, and Defendant conducts business in, this judicial district.

AUTHORITY AND NOTICE

10. The United States has authority to bring this action on behalf of the Administrator of the EPA under 28 U.S.C. §§ 516, 519 and Section 305 of the Act, 42 U.S.C. § 7605.

11. Colorado has authority to bring this action on behalf of CDPHE under C.R.S. §§ 25-7-121 and 122.

12. Notice of the commencement of this action has been given to the appropriate air pollution control agency in the state of Colorado as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

DEFENDANT

13. Defendant is a Colorado limited liability company with its corporate headquarters in The Woodlands, Texas. It is a wholly owned subsidiary of Western Midstream Partners, LP, and its ultimate corporate parent is Occidental Petroleum Corporation.

14. Defendant is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Defendant owns and operates three contiguous onshore natural gas processing plants at the Fort Lupton Complex in Weld County, Colorado, known as the “Lancaster Plant,” the “Fort Lupton Plant,” and the “Platte Valley Plant.”

STATUTORY AND REGULATORY BACKGROUND

A. National Ambient Air Quality Standards for Ozone

16. Section 108 of the Act, 42 U.S.C. § 7408, directs the Administrator of the EPA to identify those air pollutants which “may reasonably be anticipated to endanger public health or welfare” and to issue air quality criteria for those pollutants based on “the latest scientific knowledge” about the effects of the pollutants on public health and the environment. The pollutants identified as such are called “criteria pollutants.”

17. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of the EPA to promulgate regulations establishing NAAQS for criteria pollutants. The primary NAAQS must be set at the level “requisite to protect the public health” with an adequate margin of safety,

and the secondary standard is intended to protect “the public welfare.” According to Section 302(h) of the Act, 42 U.S.C. § 7602(h), public welfare effects are “effects on soils, water, crops, vegetation” and other environmental impacts including, but not limited to, effects on animals, wildlife, property, and “effects on economic values.”

18. NAAQS are implemented within air quality control regions (or “areas”) throughout individual states. An area with an ambient air concentration that meets the NAAQS for a particular criteria pollutant is an “attainment” area. An area with ambient air concentrations that exceed the NAAQS is a “nonattainment” area. And an area that cannot be classified due to insufficient data is “unclassifiable.”

19. In 2008, the EPA established a primary and secondary NAAQS for ozone of 0.075 parts-per-million (“ppm”) (measured as an 8-hour average). 73 Fed. Reg. 16,436 (Mar. 27, 2008). In 2015, the EPA lowered the primary and secondary NAAQS for ozone to 0.070 ppm (measured as an 8-hour average). 80 Fed. Reg. 65,292 (Oct. 26, 2015).

20. The EPA designated the following counties in Colorado as being in nonattainment with the 2008 and 2015 ozone NAAQS: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and portions of Larimer and Weld Counties (“Denver Nonattainment Area”). *See* 77 Fed. Reg. 30,088 (May 21, 2012); 83 Fed. Reg. 25,792 (June 4, 2018).

21. Over three million people live in the Denver Nonattainment Area and are potentially affected by exposure to ground-level ozone.

22. The potential adverse effects on human health of ozone pollution are well known. Epidemiological studies reviewed by the EPA in setting the ozone NAAQS indicate that potential adverse effects on human health of short-term exposures to ground-level ozone include

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