UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-1552

UNITED STATES OF AMERICA, and
THE STATE OF COLORADO,

Plaintiffs,

v.

PDC ENERGY, INC.,

Defendant.

COMPLAINT

Plaintiffs, the United States of America, by authority of the Attorney General of the United States and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Colorado, on behalf of the Colorado Department of Public Health and Environment, Air Pollution Control Division ("CDPHE"), file this Complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action against PDC Energy, Inc. ("PDC" or "Defendant") 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.

2. Plaintiffs seek injunctive relief and civil penalties for violations of the Act, the

Colorado Act, Colorado's federally approved State Implementation Plan ("SIP"), and Colorado Air Quality Control Commission Regulation Number 7 ("Regulation 7"), for unlawful emissions of volatile organic compounds ("VOC") from storage tanks that are, or until recently were, part of PDC's oil and natural gas production system in the Denver-Julesburg Basin ("D-J Basin") located in Adams and Weld Counties, Colorado. Plaintiff CDPHE also seeks injunctive relief and civil penalties for violations of the Colorado Act and certain state-only requirements of Regulation 7, over which this Court has supplemental jurisdiction.

3. Most of PDC's storage tanks store hydrocarbon liquids known as "condensate" prior to sale. Condensate is separated from natural gas near the well-head in a device known as a "separator." The condensate is emptied in batches ("dumped") from the separator into storage tanks kept at or near atmospheric pressure. As the condensate is dumped into these tanks, the pressure drops and vapors, which include VOC and other pollutants, are released or "flashed" into a gaseous state. Additional vapors are released from the condensate due to liquid level changes and temperature fluctuations. PDC also has some tanks that store crude oil or produced water.

4. The storage tanks are grouped in "tank batteries," which PDC has certified to CDPHE as being controlled to meet the "system-wide" emission reduction requirements of Colorado's state implementation plan ("SIP"). The system-wide emission reduction requirements mandate at least a specific percentage reduction of all emissions across PDC's tank batteries with uncontrolled VOC emissions of at least 2 tons per year.

5. In order to meet the system-wide requirements, each of the condensate storage tanks that is the subject of this Complaint is required to control emissions through the use of air

pollution control equipment. Generally, to meet this requirement, PDC routes tank vapors by vent lines to emission control devices known as "combustors." Combustors are required to have a control efficiency of at least 95%.

6. PDC owns or operates approximately 600 tank batteries in the D-J Basin that PDC has certified as being controlled to comply with Regulation 7's system-wide VOC reduction requirements. At least at the 86 tank batteries listed on Appendix A (the "86 Tank Batteries"), and potentially at hundreds more, PDC has violated numerous requirements in Regulation 7 intended to address VOC emissions from storage tanks.

7. PDC's failure to comply with these requirements has resulted in significant excess VOC emissions, a precursor to ground-level ozone. PDC operates in an area where air quality does not meet the National Ambient Air Quality Standards ("NAAQS") for ground-level ozone. PDC's unlawful emissions contribute to this exceedance of the ozone NAAQS.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the claims arising under the Act pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

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

10. Venue is proper in this District under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations that are the basis of this Complaint occurred in this District, and the facilities at issue are operated by Defendant in this District.

NOTICES

11. In a May 2016 meeting and in subsequent discussions, Plaintiffs informed PDC of its noncompliance with the Act, the Colorado Act, and Regulation 7.

12. Notice has been given to PDC and the appropriate air pollution control agency in the State of Colorado as required by Section 113 of the Act, 42 U.S.C. § 7413.

DEFENDANT

13. PDC is a publicly-traded company engaged in domestic oil and natural gas production and exploration. PDC is incorporated in Delaware and maintains its principal executive offices in Denver, Colorado.

14. PDC has oil and natural gas production operations in the D-J Basin, primarily in the Wattenberg Field in Adams and Weld Counties, Colorado. In 2016, PDC's operations in the D-J Basin produced approximately 8.2 million barrels of oil and over 48.8 billion cubic feet of natural gas.

15. PDC is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

FACILITIES

16. PDC owns and operates hundreds of oil and natural gas production facilities in the D-J Basin.

17. These facilities produce a mixture of oil (both condensate and crude oil), natural gas, and water. This mixture flows up the well under pressure to the well-head at the surface and then to a device called a separator.

18. The purpose of a separator is to separate the effluent from the well into its constituent parts: oil, natural gas, and water (also known as "produced water").

19. The oil and produced water, once separated from the natural gas, are temporarily held under pressure in the separator until the liquids reach a set level, at which point valves open and the liquids flow into storage tanks kept at or near atmospheric pressure. This is commonly referred to as a "dump." During a dump, the oil flows to an oil tank, and the water flows to a produced water tank.

20. When pressurized oil is transferred from a separator to an atmospheric storage tank, the pressure of the oil drops. This causes some of the hydrocarbons in the oil, including VOC, to vaporize in a phenomenon known as "flashing." After flashing occurs, the oil continues to emit vapors due to liquid level changes and temperature fluctuations. These are known as "working" and "breathing" (also known as "standing") losses.

21. The tops of the storage tanks have openings called "thief hatches." Thief hatches are equipped with gaskets that are supposed to seal tight when closed.

22. Thief hatches serve two primary purposes. First, they provide access to the contents of the tank for taking samples and measuring the level of the tank (known as "gauging"). Second, they provide a means of (a) relieving pressure from the tank to prevent over-pressurization and (b) eliminating excessive vacuum to prevent tank collapse.

23. To prevent over-pressurization, thief hatches are designed to open (or vent) when the pressure inside the tank exceeds the pressure setting of the thief hatch. Thief hatches should not vent emissions during normal operations.

24. Thief hatches may also emit vapors to the atmosphere if thief hatch gaskets are worn or otherwise not properly maintained or if the thief hatch is not properly sealed.

25. In addition to thief hatches, the storage tanks may also be equipped with separate

pressure relief valves ("PRVs"), which are also designed to vent at set pressures to prevent over-pressurization. Like thief hatches, PRVs should not vent emissions during normal operations.

26. The storage tanks, vent lines from storage tanks to a combustor, and all connections, fittings, relief valves (including PRVs and thief hatches), combustors and any other appurtenance used to contain and collect vapors, and to transport or convey the vapors to the combustor, are referred to herein as a "Vapor Control System." PDC may use a single Vapor Control System to transmit vapors from more than one tank to more than one combustor.

27. The specific tank batteries that are the subject of the violations alleged in this Complaint are set forth in Appendix A, incorporated herein by reference.

STATUTORY AND REGULATORY BACKGROUND

28. As set forth in Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1), the purpose of the Clean Air Act is to protect and enhance the quality of the nation's air, so as to promote the public health and welfare and the productive capacity of its population.

A. National Ambient Air Quality Standards for Ozone

29. Section 108 of the Act, 42 U.S.C. § 7408, directs EPA to identify air pollutants that "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 their effects on public health and the environment. These pollutants are known as "criteria pollutants."

30. Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to establish NAAQS for criteria pollutants. The primary standard 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."

31. Ground-level ozone, commonly known as "smog," is one of six criteria pollutants for which EPA has promulgated national standards, due to its adverse effects on human health and the environment. Short-term exposures (1 to 3 hours) to ground-level ozone can cause acute health effects observed even at low concentrations, including temporary pulmonary inflammation. Long-term exposure (months to years) may cause permanent damage to lung tissue. Children and adults who are active outdoors are particularly susceptible to the adverse effects of exposure to ozone. *See* 73 Fed. Reg. 16,436 (Mar. 27, 2008).

32. Ozone is not emitted directly from sources of air pollution. Ozone is a photochemical oxidant, formed when certain chemicals react with oxygen in the presence of sunlight. These chemicals – VOC and nitrogen oxides ("NOx") – are called "ozone precursors." Sources that emit ozone precursors are regulated to reduce ground-level ozone. *See* 62 Fed. Reg. 38,856 (July 18, 1997).

33. In 2008, EPA established an ozone NAAQS of 0.075 ppm (measured as an 8-hour average). *See* 73 Fed. Reg. 16,436 (Mar. 27, 2008).

B. Colorado SIP

34. Pursuant to Section 107(a) of the Act, 42 U.S.C. § 7407(a), states are primarily responsible for ensuring attainment and maintenance of the NAAQS. States implement the NAAQS on a region-by-region basis, within air quality control regions (or "areas") throughout the state. An area with ambient air concentrations that meets the NAAQS for a particular 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."

35. EPA has designated the "Denver-Boulder-Greeley-Ft. Collins-Loveland Area" (the "Denver Nonattainment Area") as being in nonattainment with the ozone NAAQS. *See* 77 Fed. Reg. 30,088 (May 21, 2012).

36. In June 2016, EPA reclassified the Denver Nonattainment Area from "marginal" to the more severe nonattainment status of "moderate" for the ozone NAAQS. 81 Fed. Reg. 26,697 (May 4, 2016).

37. Pursuant to Section 110(a) of the Act, 42 U.S.C. § 7410(a), each state must adopt and submit to EPA for approval a plan that provides for the implementation, maintenance, and enforcement of the NAAQS for each criteria pollutant in each air quality control region within the state. This plan is known as a state implementation plan or "SIP." Section 110(a)(2)(A) of the Act, 42 U.S.C. § 7410(a)(2)(A), requires that each SIP include enforceable emissions limitations and other "control measures, means, or techniques" to ensure attainment of the NAAQS.

38. After enforceable state emission limitations are approved by EPA, these SIP provisions are federally enforceable under Sections 113(a) and (b) of the Act, 42 U.S.C. §§ 7413(a) and (b).

39. As required by Section 110(a) of the Act, 42 U.S.C. § 7410(a), Colorado has periodically adopted regulations to provide for the implementation, maintenance and enforcement of the ozone NAAQS.

40. Initially adopted by Colorado's Air Quality Control Commission ("AQCC") in the 1970s, Regulation 7, as subsequently amended, includes control measures to reduce VOC

emissions from condensate storage tanks. *See* Colo. Code Regs. 1001-9. The State of Colorado relies on Regulation 7 to attain the NAAQS for ozone.[1] *See* 40 C.F.R. § 52.320.

41. Among other things, Regulation 7, Sec. XII requires each owner or operator to select which of its condensate tanks to control in order to achieve a required, system-wide percentage VOC emissions reduction.

42. At all times relevant to this action, most of PDC's oil and natural gas production system in the D-J Basin, including all of the tank batteries that are specifically at issue in this action, have been located within the Denver Nonattainment Area. *See* 72 Fed. Reg. 53,952 (Sept. 21, 2007) and 77 Fed. Reg. 28,424 (May 14, 2012).

C. Applicable Provisions of the Colorado SIP

43. Regulation 7, Sec. XII applies to all oil and gas exploration and production operations "that collect, store, or handle condensate in the 8-hour Ozone Control Area," located upstream of a natural gas plant, and for which "the owner or operator filed, or was required to file, an APEN [Air Pollutant Emission Notice] pursuant to Regulation 3." *See* SIP-Approved Reg. 7, Sec. XII.A.1 (State-Approved Reg. 7, Sec. I.A.1.d).

44. Pursuant to SIP-Approved Regulation 7, the term "8-Hour Ozone Control Area" means Adams, Arapahoe, Boulder, Douglas, and Jefferson Counties; the Cities of Denver and Broomfield; and portions of Larimer and Weld Counties.

[1] Colorado Regulation 7 has been periodically revised. The latest version was approved by EPA on February 13, 2008, with an effective date of April 14, 2008. *See* 73 Fed. Reg. 8,194 (Feb. 13, 2008). Since then, Colorado has revised Regulation 7 several times. Not all of Colorado's revisions have been approved into the SIP by EPA. For clarity and completeness, where appropriate, the Complaint cites both versions, designated as "SIP-Approved Reg. 7" and "State-Approved Reg. 7."

45. SIP-Approved Regulation 7 sets deadlines and requirements for system-wide VOC emission reduction requirements for oil and gas operations. In meeting these requirements, emission reductions "shall not be required for each and every unit, but instead shall be based on overall reductions in uncontrolled actual emissions from all the atmospheric storage tanks associated with the affected operations for which the owner or operator filed, or was required to file, an APEN pursuant to Regulation 3." SIP-approved Reg. 7, Sec. XII.A.2 (State-Approved Reg. 7, Sec. XII.D).

46. As set forth in SIP-Approved Reg. 7, Sec. XII.A.2.c (State-Approved Reg. 7, Sec. XII.D.2.a), for the months of May 1 through September 30 of each year from 2007 through 2011, "such emissions shall be reduced by 75% from uncontrolled actual emissions on a weekly basis." As set forth in SIP-Approved Reg. 7, Sec. XII.A.2.d (State-Approved Reg. 7, Sec. XII.D.2.a), for the ozone season of each year beginning with 2012, "such emissions shall be reduced by 78% from uncontrolled actual emissions on a weekly basis." As set forth in SIP-Approved Reg. 7, Sec. XII.A.2.h (State-Approved Reg. 7, Sec. XII.D.2.a(vii)), beginning with the year 2008, and for each year thereafter, emissions during the non-ozone season (January 1 through April 30 and October 1 through December 31) "shall be reduced by 70% from uncontrolled actual emissions, calculated as an average of the emission reduction achieved during the seven months covered by the two periods."[2]

[2] The State of Colorado has amended these provisions requiring greater system-wide emission reductions. This amendment has not yet been approved by EPA so as to become part of the Colorado SIP and, therefore, is not federally enforceable. The current version of the State-approved Regulation 7, codified at 5 Colo. Code Regs. § 1001-9, is available at https://www.colorado.gov/pacific/sites/default/files/5-CCR-1001-9_1.pdf. For the summer ozone season, from May 1 through September 30, VOC emissions must now be reduced by 90% on a system-wide basis.

47. Each operator must designate which condensate storage tanks it has chosen to control in order to meet the system-wide emission reduction requirements. *See* SIP-Approved Reg. 7, Secs. XII.A.4. & XII.A.5 (State-Approved Reg. 7, Sec. XII.D).

48. Regulation 7, Sec. XII contains the following general requirements for affected condensate storage tanks:

a. "All air pollution control equipment required by this section XII shall be operated and maintained consistent with manufacturer specifications and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications on file." SIP-Approved Reg. 7, Sec. XII.D.2.a (State-Approved Reg. 7, Sec. XII.C.1.a).

b. "[A]ll such air pollution control equipment shall be adequately designed and sized to achieve the control efficiency rates required by this Section XII and to handle reasonably foreseeable fluctuations in emissions of volatile organic compounds. Fluctuations in emissions that occur when the separator dumps into the tank are reasonably foreseeable." *Id.*

c. "All condensate collection, storage, processing and handling operations, regardless of size, shall be designed, operated and maintained so as to minimize leakage of volatile organic compounds to the atmosphere to the maximum extent practicable." SIP-Approved Reg. 7, Sec. XII.D.2.b (State-Approved Reg. 7, Sec. XII.C.1.b).

These provisions became federally enforceable on April 14, 2008, when EPA's rule approving the provisions as part of the Colorado SIP took effect. *See* 73 Fed. Reg. 8,194 (Feb. 13, 2008).

D. Regulation 7: Applicable State-Only Provisions

49. In addition to the requirements in the SIP, Colorado has adopted other requirements in Regulation 7 that apply to oil and natural gas exploration and production activities.

50. Colorado has revised the system-wide control requirements to require a 90% reduction in VOC emissions across PDC's system of condensate tanks. This provision has not yet been approved into Colorado's SIP. Reg. 7, Sec. XII.D.2a.(x).

51. In February 2014, Colorado amended Regulation 7, Sec. XVII to provide for further control measures on oil and gas operations on a state-wide basis (i.e. not just in the Denver Nonattainment Area). These provisions are not enforceable by EPA because they are not part of the Colorado SIP.

52. Regulation 7, Sec. XVII.B.1.b provides that "[a]t all times, including periods of start-up and shutdown, the facility and air pollution control equipment must be maintained and operated in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether or not acceptable operation and maintenance procedures are being used will be based on information available to the Division, which may include, but is not limited to, monitoring results, opacity observations, review of operation and maintenance procedures, and inspection of the source."

53. Regulation 7, Sec. XVII.C.2.a provides that "[o]wners or operators of storage tanks must route all hydrocarbon emissions to air pollution control equipment, and must operate without venting hydrocarbon emissions from the thief hatch (or other access point to the tank) or pressure relief device during normal operation, unless venting is reasonably required for

maintenance, gauging, or safety of personnel and equipment. Compliance must be achieved in accordance with the schedule in Section XVII.C.2.b.(ii)."

54. Regulation 7, Sec. XVII.C.2.b provides, in relevant part, that "[o]wners or operators of storage tanks subject to the control requirements of Sections XII.D.2, XVII.C.1.a, or XVII.C.1.b must develop, certify, and implement a documented Storage Tank Emission Management System ("STEM") plan to identify, evaluate, and employ appropriate control technologies, monitoring practices, operational practices, and/or other strategies designed to meet the requirements set forth in Section XVII.C.2.a . . . ."

FACTUAL BACKGROUND

A. PDC's Oil and Natural Gas Operations

55. At all times relevant to this Complaint, PDC conducted oil and natural gas production operations in the 8-hour Ozone Control Area that are located upstream of a natural gas plant and for which PDC was required to file, and did file, Air Pollution Emission Notices ("APENs") pursuant to AQCC Regulation No. 3, 5 Code Colo. Regs. § 1001-5.

56. PDC filed APENs with CDPHE for each of the 86 Tank Batteries that are the subject of this action.

57. PDC has also filed APENs with CDPHE for hundreds of other tank batteries not specifically identified in Appendix A, but that are also subject to the requirements of Regulation 7 referenced in this Complaint.

B. Inspections and Follow-Up Investigation

58. Between September 2013 and April 2015 inspectors from CDPHE's Air Pollution Control Division conducted inspections of PDC tank batteries in the 8-hour Ozone Control Area.

Using an optical gas imaging infra-red camera ("IR camera"), CDPHE inspectors observed VOC emissions from 64 tank batteries.

59. In December 2015, CDPHE issued a Compliance Advisory to PDC, Case No. 2015-109 (the "2015 Compliance Advisory"). The 2015 Compliance Advisory identifies violations of Regulation 7 at 64 PDC tank batteries (all of which are included in the 86 Tank Batteries listed on Appendix A).

60. Following the issuance of the 2015 Compliance Advisory, CDPHE inspectors conducted additional inspections of PDC tank batteries in the 8-hour Ozone Control Area. Using an IR camera, CDPHE inspectors observed VOC emissions from several of the same tank batteries covered by the 2015 Compliance Advisory. CDPHE inspectors also observed VOC emissions from 14 other PDC tank batteries not covered by the 2015 Compliance Advisory.

61. In May 2017, CDPHE issued a Notice of Violation to PDC, Case No. 2017-015 (the "2017 NOV"). The 2017 NOV identifies violations of Regulation 7 at 14 PDC tank batteries (all of which are included in the 86 Tank Batteries listed on Appendix A).

62. Pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), in August 2015, EPA requested certain information from PDC about the Vapor Control Systems at a subset of the 86 Tank Batteries. Based on the response provided by PDC, EPA and CDPHE have concluded that:

a. PDC failed to conduct an engineering design analysis to ensure that its Vapor Control Systems were adequately sized to route all vapors to an emissions control device;

b. many of the Vapor Control Systems did not have sufficient capacity to route all vapors from the storage tanks to an emissions control device, causing vapors to be

emitted directly to the atmosphere from PRVs, thief hatches or other tank openings; and

c. PDC's operations and maintenance practices were inadequate to ensure that all storage tank vapors were routed to and incinerated by an emissions control device.

63. The 86 Tank Batteries identified in Appendix A include:

a. Tank batteries which, based on analysis of information provided by PDC, were not adequately designed to route all vapors to a control device; and/or

b. Tank batteries where CDPHE inspectors observed VOC emissions using an IR camera, including those tank batteries identified in the 2015 Compliance Advisory and the 2017 NOV.

64. At all times relevant to this Complaint, PDC has designated that VOC emissions from each of the 86 Tank Batteries were being controlled as part of PDC's D-J Basin system-wide control strategy to achieve the emission reductions required by SIP-Approved Reg. 7, Sec. XII.A.2 (State-Approved Reg. 7, Sec. XII.D.2).

65. Each of the 86 Tank Batteries are subject to the general requirements of Regulation 7 set forth at SIP-Approved Reg. 7, Secs. XII.A.2 & A.7 (State-Approved XII.D.2 and C.1.c), XII.D.2.a & b (State-Approved Reg. 7, Secs. XII.C.1.a & b), and XII.D.2.a(x), XVII.B.1.b, XVII.C.2.a, and XVII.C.2.b.

FIRST CLAIM FOR RELIEF

(Joint Claim by EPA and CDPHE for Violations of SIP-Approved Regulation 7)

66. Paragraphs 1 through 65 are re-alleged and incorporated herein by reference.

67. The allegations of this First Claim for Relief concern each of the 86 Tank

Batteries listed on Appendix A, and cover the period of time before PDC may have addressed the deficiencies described below after receiving EPA's request for information described in Paragraph 62 or the 2015 Compliance Advisory.

68. PDC failed to conduct an engineering design analysis to determine if the Vapor Control Systems at the 86 Tank Batteries have the capacity to route all condensate tank emissions, from the peak flow of flashing, working, and standing losses, to an emissions control device.

69. The Vapor Control Systems at some or all of the 86 Tank Batteries do not have sufficient capacity to convey all of the condensate tank vapors to the combustors.

70. The capacity of Vapor Control Systems can be reduced by, among other things, liquids condensing and accumulating in vent lines as vapors cool.

71. PDC failed to determine whether, when, or how often the Vapor Control Systems at some or all of the 86 Tank Batteries become obstructed by liquids build-up.

72. When the capacity of a Vapor Control System is exceeded, condensate vapors, including VOC, are emitted directly to the atmosphere through PRVs, thief hatches, or open or partially open vent lines.

73. PDC's operation and maintenance of Vapor Control Systems at some or all of the 86 Tank Batteries failed to minimize emissions to the maximum extent practicable due, among other things, to one or more of the following reasons:

a. Not promptly responding to emissions observations and taking appropriate corrective action to minimize the duration and quantity of emissions;

b. Not taking measures to minimize the occurrence or recurrence of preventable

emissions from Vapor Control Systems;

c. Not promptly cleaning oil stains on condensate storage tanks caused by vapors emanating from PRVs and thief hatches and indicative of tank vapor emissions so that frequency and timing of emissions could be assessed;

d. Not keeping and regularly reviewing maintenance records to track recurrent or systemic issues in order to implement proactive measures to replace or upgrade system components to prevent emissions from occurring; and

e. Not ensuring that all vent lines on Vapor Control Systems have an adequate slope to drain all liquids to adequately sized "drip pots," not evaluating the frequency of liquids buildup impairing the vapor carrying capacity of the vent lines and not establishing a site specific line blow-out maintenance schedule, and/or installing line pressure gauges to monitor obstructions in the vent lines and promptly clearing the lines when obstructed.

74. At the 86 Tank Batteries, PDC has violated, and is violating (subject to the temporal qualification of Paragraph 67), the requirements of SIP-Approved Reg. 7, Sec. XII.D.2. (State-Approved Reg. 7, Sec. XII.C.1) that:

a. "[a]ll air pollution control equipment … shall be operated and maintained consistent with manufacturer specifications and good engineering and maintenance practices. . . . In addition, all such air pollution control equipment shall be adequately designed and sized to achieve the control efficiency rates required by this Section XII and to handle reasonably foreseeable fluctuations of volatile organic compounds. Fluctuations in emissions that occur when the

separator dumps into the tank are reasonably foreseeable;" and

b. "[a]ll condensate collection, storage, processing and handling operations, regardless of size, shall be designed, operated, and maintained so as to minimize leakage of volatile organic compounds to the atmosphere to the maximum extent practicable."

75. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), PDC is liable for injunctive relief and civil penalties of up to $37,500 per day for each violation occurring between January 13, 2009 and November 2, 2015, and up to $95,284 per day for each violation occurring on or after November 3, 2015. *See* 40 C.F.R. § 19.4.

76. Pursuant to Sections 121 and 122 of the Colorado Act, PDC is liable for injunctive relief and civil penalties of up to $15,000 per day for each violation.

SECOND CLAIM FOR RELIEF
(State-Only Claim for Violations of Regulation 7)

77. Paragraphs 1 through 76 are re-alleged and incorporated herein by reference.

78. Between September 2013 and the date of filing this Complaint, on one or more occasions CDPHE inspectors observed hydrocarbon emissions from access points to storage tanks at 84 of the 86 Tank Batteries.

79. Despite being notified of these emissions observations, PDC has never made a demonstration to the Division that these emissions were not venting from an access point to the storage tank or that PDC operated its facilities in a manner consistent with good air pollution control practices for minimizing emissions. Further, PDC has not made a demonstration that it has developed, certified and implemented a STEM plan for its facilities that identifies, evaluates, and employs appropriate control technologies, monitoring practices, operational practices, and

other strategies designed to meet the requirements of Regulation 7, Sec. XVII.C.2.a.

80. As a result, at each of the 86 Tank Batteries, and potentially at all storage tanks owned or operated by PDC that are controlled to meet the requirements of Regulation 7, Secs. XII.D.2. or XVII.C., PDC has violated the requirement of Regulation 7, Sec. XVII.B.1.b to maintain and operate the facility and air pollution control equipment "in a manner consistent with good air pollution control practices for minimizing emissions." Further, PDC has violated the requirement of Regulation 7, Sec. XVII.C.2.a to "operate without venting hydrocarbon emissions from the thief hatch (or other access point to the tank) or pressure relief device during normal operation, unless venting is reasonably required for maintenance, gauging, or safety of personnel and equipment." PDC has also violated the requirement of Regulation 7, Sec. XVII.C.2.b. to develop, certify, and implement a STEM plan containing the strategies necessary to ensure compliance with Regulation 7, Sec. XVII.C.2.a.

81. PDC may also have violated the system-wide control requirement of Regulation 7, Sec. XII.D.2.a(x), by failing to capture and convey all tank vapors, including VOC, to an emissions control device, as described in this Complaint.

82. Pursuant to Sections 121 and 122 of the Colorado Act, PDC is liable for injunctive relief and civil penalties of up to $15,000 per day for each violation.

PRAYER FOR RELIEF

WHEREFORE, based on the above allegations, Plaintiffs request that this Court:

A. Permanently enjoin Defendant from further violating the Act, the Colorado SIP, and the regulations implementing the Act and Regulation 7, including both the provisions of the Colorado SIP and those state-only provisions cited in the Complaint;

B. Order Defendant to take appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Act, the Colorado SIP, and the regulations implementing the Act and Regulation 7, including both the provisions of the Colorado SIP and those state-only provisions cited in the Complaint;

C. Assess a civil penalty against Defendant for each violation of the applicable provisions of the Act, the Colorado SIP, and the regulations implementing the Act and the Colorado SIP, of up to $37,500 per day for each violation occurring between January 13, 2009 and November 2, 2015, and up to $95,284 per day for each violation occurring on or after November 3, 2015;

D. Assess a civil penalty against Defendant pursuant to the Colorado Act for each violation of the state-only provisions of Regulation 7, of up to $15,000 per day for each violation; and

E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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