

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**



IN THE MATTER OF: ) No: EIB 19-55  
THE PETITION FOR A HEARING OF )  
OXY USA WTP LIMITED PARTNERSHIP )  
ON THE TITLE V OPERATING PERMIT )  
P103-R3 MU FOR THE INDIAN BASIN GAS PLANT )

**THE AIR QUALITY BUREAU OF THE NEW MEXICO ENVIRONMENT  
DEPARTMENT’S MOTION TO DISMISS FOR UNTIMELINESS**

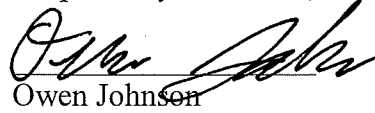
Although all petitions are initially docketed, any party may move to dismiss an untimely petition. 20.1.2.203 NMAC. An appeal petition is required to be submitted within 30 days from the date notice is given of a permitting action. 20.1.2.202 NMAC.

In the present case, the permitting action was finalized November 1, 2019, e-mailed to the applicant the same day and acknowledged to be received by the applicant on the same day (see Exhibit A: e-mail chain). Electronic service is accomplished when transmission is completed or upon acknowledgement by the recipient. 20.1.2.7(M) NMAC. According to the computation rules outlined in 20.1.2.111(A) NMAC, the deadline for an appeal petition was December 2, 2019. The appeal petition is dated almost a year earlier – November 26, 2018 – but, more importantly, was not received until December 12, 2019 (see Exhibit B), making it 10 days late.

In the alternative, if the timeframe is calculated based on traditional mail, the Bureau sent the permit via certified mail on November 4, 2019. In that scenario, the clock started ticking on November 8, 2019, and the petition was due December 9, 2019. Thus, its arrival remains several days late.

For the above stated reasons, the Bureau motions for the appeal to be dismissed. Because the motion is presumably opposed, concurrence was not sought.

Respectfully submitted,



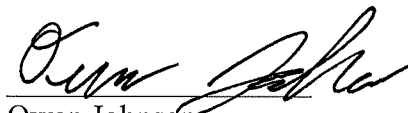
Owen Johnson

Office of General Counsel  
New Mexico Environment Department  
121 Tijeras Avenue NE, Ste 1000  
Albuquerque, NM 87102  
Phone: (505) 222-9508

### CERTIFICATE OF SERVICE

Pursuant to New Mexico Administrative Code Section 20.1.2.112(B), I hereby certify that the foregoing Motion has been sent by electronic mail this 8<sup>th</sup> day of January 2020.

J. Scott Janoe  
Baker Botts L.L.P.  
910 Louisiana Street  
Houston, Texas 77002  
[scott.janoe@bakerbotts.com](mailto:scott.janoe@bakerbotts.com)



Owen Johnson

Office of General Counsel  
New Mexico Environment Department  
121 Tijeras Avenue NE, Ste 1000  
Albuquerque, NM 87102  
Phone: (505) 222-9508

~~Johnson, Owen, NMENV~~

**From:** Serrano, Femi A <Femi\_Serrano@oxy.com>  
**Sent:** Tuesday, November 12, 2019 6:43 AM  
**To:** Kimbrell, Joseph, NMENV  
**Cc:** Morris, Allan, NMENV; Culhane, Myles P; Totman, Elizabeth  
**Subject:** [EXT] RE: Issued Title V Permit From the State of New Mexico - P103-R3, AI-197-OXY USA Indian Basin Gas Plant in Eddy County

Joe,

Thank you for providing Oxy with a copy of the IBGP's final Title V permit. I left a couple of voice messages on your office line and this email is to follow up on the communications. While Oxy is still evaluating its compliance options, we are concerned that we may not be able to comply with several of the new provisions included in the final draft within a reasonable time frame, if at all. Because these provisions were not included in the draft permit, Oxy did not have an opportunity to raise these concerns at an earlier date. Accordingly, Oxy now respectfully requests the opportunity to meet with NMED to discuss a workable solution to these concerns. Pending a final resolution, Oxy further asks that NMED reopen its permit proceedings to allow the permit to be revised and reissued in a manner that assures compliance with the applicable requirements, as is authorized under Section 20.2.70.405.A(1)(c) of the New Mexico Administrative Code. Oxy further believes a reopening of the permit is necessary to provide Oxy with an opportunity to submit its concerns to the permit's administrative record. Oxy looks forward to working with NMED on a resolution of this issue.

Regards,

Femi Serrano | Environmental Advisor Sr. | Office 713.366.5331 | Fax 713.985.1404 | [femi\\_serrano@oxy.com](mailto:femi_serrano@oxy.com)

I'm riding the 2019 MS-150! Click here to support my efforts to fight MS.

**TEAM OXY**  
 One Team One Spirit

**CONFIDENTIALITY:** This communication and any accompanying document(s) may be confidential, privileged or attorney work product and are intended for the sole use of the addressee(s). If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Any inadvertent disclosure is in no way intended to compromise or waive the attorney-client privilege or protection for attorney work product as to this communication or otherwise. If you received this communication in error, please contact the sender at the telephone number or e-mail address shown above and delete the message. Thank you.

**From:** Serrano, Femi A

**Sent:** Friday, November 01, 2019 2:57 PM

**To:** Kimbrell, Joseph, NMENV <joseph.kimbrell@state.nm.us>

**Cc:** Adam Erenstein (AErenstein@trinityconsultants.com) <AErenstein@trinityconsultants.com>; Morris, Allan, NMENV <Allan.Morris@state.nm.us>

**Subject:** RE: Issued Title V Permit From the State of New Mexico - P103-R3, AI-197-OXY USA Indian Basin Gas Plant in Eddy County

Joe,

Unfortunately a couple of hours is not enough time for Plant Operations to review and return comments on the newly added special conditions. Plant Operations have so far provided NMED with needed information in a timely manner provided the short turnaround schedules. I have forwarded the permit to Plant Operations for comments and expect to hear back either today or early next week. So although permit is issued, notwithstanding I will forward Plant Operations comments to NMED soon as I receive it.

Regards,

Femi Serrano | Environmental Advisor Sr. | Office 713.366.5331 | Fax 713.985.1404 | [femi\\_serrano@oxy.com](mailto:femi_serrano@oxy.com)

I'm riding the 2019 MS-150! Click here to support my efforts to fight MS.



**CONFIDENTIALITY:** This communication and any accompanying document(s) may be confidential, privileged or attorney work product and are intended for the sole use of the addressee(s). If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Any inadvertent disclosure is in no way intended to compromise or waive the attorney-client privilege or protection for attorney work product as to this communication or otherwise. If you received this communication in error, please contact the sender at the telephone number or e-mail address shown above and delete the message. Thank you.

**From:** Kimbrell, Joseph, NMENV <[joseph.kimbrell@state.nm.us](mailto:joseph.kimbrell@state.nm.us)>

**Sent:** Friday, November 01, 2019 11:31 AM

**To:** Serrano, Femi A <[Femi\\_Serrano@oxy.com](mailto:Femi_Serrano@oxy.com)>

**Cc:** Adam Erenstein ([AErenstein@trinityconsultants.com](mailto:AErenstein@trinityconsultants.com)) <[AErenstein@trinityconsultants.com](mailto:AErenstein@trinityconsultants.com)>; Morris, Allan, NMENV <[Allan.Morris@state.nm.us](mailto:Allan.Morris@state.nm.us)>

**Subject:** [EXTERNAL] RE: Issued Title V Permit From the State of New Mexico - P103-R3, AI-197-OXY USA Indian Basin Gas Plant in Eddy County

Femi,

Here are revised documents with the correct date of issuance in the word document and PDF. Sorry about that.

Joe

**From:** Kimbrell, Joseph, NMENV

**Sent:** Friday, November 1, 2019 10:09 AM

**To:** 'Serrano, Femi A' <[Femi\\_Serrano@oxy.com](mailto:Femi_Serrano@oxy.com)>

**Cc:** Adam Erenstein ([AErenstein@trinityconsultants.com](mailto:AErenstein@trinityconsultants.com)) <[AErenstein@trinityconsultants.com](mailto:AErenstein@trinityconsultants.com)>; Morris, Allan, NMENV <[Allan.Morris@state.nm.us](mailto:Allan.Morris@state.nm.us)>

**Subject:** Issued Title V Permit From the State of New Mexico - P103-R3, AI-197-OXY USA Indian Basin Gas Plant in Eddy County

Femi,

Please find attached the issued Title V permit and supporting documents.

I have included a mark up of the final in which my managers made last minute changes and I wanted you to see them. If you disagree with these changes then please follow the appeal process in the General Conditions.

Thanks,

Joe

If guidance or a determination is included in this email, it is intended to serve as general guidance and is in no way a formal statement of Department policy.

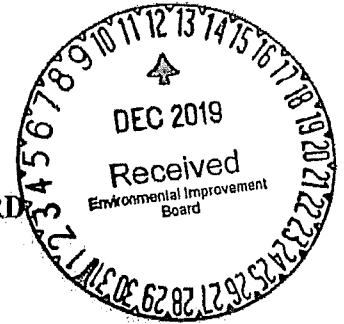
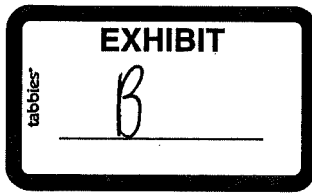
New information or changes to regulations may result in a different determination or guidance.

Link to our [Industry/Consultant Feedback Questionnaire](#)

Permitting Update: Please sign up for the Department's list serve to receive important announcements: [Subscribe to NMED Announcements](#).

Joseph W. Kimbrell

Air Quality Bureau - Air Permit Specialist, Advanced – Major Source Permits Section  
New Mexico Environment Department



STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF: )  
THE PETITION FOR A HEARING OF )  
OXY USA WTP LIMITED )  
PARTNERSHIP ON THE TITLE V )  
OPERATING PERMIT P103-R3 MU )  
FOR THE INDIAN BASIN GAS )  
PLANT )

No.:

**OXY USA WTP LIMITED'S PETITION FOR A HEARING ON THE INDIAN BASIN  
GAS PLANT'S TITLE V OPERATING PERMIT P103-R3 MY**

Pursuant to New Mexico Statutes Annotated § 74-2-7.H, New Mexico Administrative Code § 20.2.70.403.A, and General Condition B104 of Title V Operating Permit P103-R3 MU, OXY USA WTP Limited Partnership ("Oxy") hereby petitions the New Mexico Environmental Improvement Board for a hearing in connection with the New Mexico Air Quality Bureau's issuance of Title V Operating Permit P103-R3 MU (the "Final Permit") on November 1, 2019. Specifically, Oxy objects to Facility Specific Requirements A107.C, A206.C, and A206.D of the Final Permit. A copy of the Final Permit is appended as Attachment A.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Scott Janoe". The signature is written over a horizontal line.

J. Scott Janoe  
Texas Bar # 24012897  
Baker Botts L.L.P.  
910 Louisiana Street  
Houston, Texas 77002  
Phone: (713)  
Fax: (713)  
[scott.janoe@bakerbotts.com](mailto:scott.janoe@bakerbotts.com)

*Counsel for Petitioner OXY USA WTP Limited  
Partnership*

November 26, 2018