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**BEFORE THE EXECUTIVE DIRECTOR  
OF THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY**

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In the Matter of:

**PETROLEUM PROCESSING PLANT  
EMERY REFINING L.L.C Approval  
Order Dated June 21, 2013, Project No.  
N14627-0001  
DAQE-AN146270001-13**

**RECOMMENDED  
ORDER TO DISMISS**

Carol Clawson, Administrative Law Judge

July 14, 2014

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Emery Refining, L.L.C. (“Emery”) and the Utah Division of Air Quality (“DAQ”) jointly filed a Motion to Dismiss for Lack of Jurisdiction the Request for Agency Action filed by Petitioners Grand Canyon Trust, Living Rivers, Southern Utah Wilderness Alliance, and the Center for Biological Diversity (collectively “the Trust”). The Trust does not oppose the Motion to Dismiss. For that reason and as set forth below, it is recommended that the Executive Director dismiss the Request for Agency Action without prejudice.

**STATEMENT OF FACTS**

1. On June 21, 2013, the Director of the Utah Division of Air Quality (DAQ) issued an approval order (“AO”) for Emery Refining LLCs (“Emery”) petroleum processing plant (“plant” or “refinery”) near Green River, Utah.

2. On June 26, 2014, the Director of the DAQ signed and issued to Emery a modified approval order (“2014 AO”). This modified approval order entirely supersedes the prior June 21, 2013 Approval Order that is the subject of this permit review adjudication.

3. Petitioners agree that the 2013 Approval Order has been superseded

### **CONCLUSIONS OF LAW**

1. Pursuant to Utah Code Annotated Section 19-1-301, the Executive Director appointed the undersigned as Administrative Law Judge to conduct the adjudicative proceeding on the Request for Agency Action filed by the Trust with respect to the July 21, 2013 Approval Order.

2. An approval order is effective until it is superseded by a subsequent approval order, is otherwise terminated, is finally determined to be invalid, or is stayed in accordance with Utah Code Ann § 19-1-301.5(15).

3. The 2014 AO states that it supersedes the June 21, 2013 AO

4. Accordingly, this permit review adjudication is terminated and I have no jurisdiction over a review of either the 2013 or 2014 approval order.

### **RECOMMENDED ORDER**

For the reasons set forth above, I recommend that the Director dismiss without prejudice the adjudicative proceeding relating to the PETROLEUM PROCESSING PLANT EMERY REFINING L.L.C Approval Order Dated June 21, 2013.

## **NOTICE FOR OPPORTUNITY TO COMMENT**

Parties *may* file comments to this Recommended Decision with the Executive Director within ten business days of issuance of this Decision in accordance with the requirements of Rule 305-7-213(4). Comments shall not exceed 15 pages. A party may file a response to another party's comments, not to exceed five pages within five business days of the date of the service of the comments.

DATED THIS 14<sup>th</sup> day of July 2014.



CAROL CLAWSON  
Administrative Law Judge

## CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of July, 2014, a true and correct copy of the foregoing **PROPOSED ORDER TO DISMISS** was served by e-mail upon the following:

Anne Mariah Tapp for Grand Canyon Trust, *et. al.*, [atapp@grandcanyontrust.org](mailto:atapp@grandcanyontrust.org)

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Administrative Law Judge  
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