

# **Attachment D**

September 13, 2022

Cynthia J. Kaleri  
Section Supervisor, Air Permits Section  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270

**Re: Response to September 8, 2022 Letter Entitled “Part 71 Permit Renewal Status for Harvest Four Corners, LLC Los Mestenos Compressor Station Facility, Permit Number R6FOP-NM-04-R2.”**

Dear Ms. Kaleri:

On behalf of Harvest Four Corners, LLC (“Harvest”), we appreciate the time that you and your colleagues took this morning to discuss EPA’s September 8, 2022 correspondence raising questions regarding the completeness of the Part 71 permit renewal application for the Los Mestenos Compressor Facility (“Los Mestenos”) and asserting a new initial application is required. As discussed in the meeting, Harvest’s renewal application was both timely and complete and Harvest has worked cooperatively with EPA to respond within specified timeframes to multiple requests for information that extend well beyond the information required (and provided) in Harvest’s initial renewal application. Based upon these facts and a desire to work collaboratively with EPA, Harvest respectfully requests that EPA withdraw the September 8 correspondence, agree that the iterative process to provide the “supplemental information” necessary to process the application is ongoing, and continue to work with Harvest to develop the Los Mestenos Facility’s Part 71 renewal permit.

As long as a facility submits a “timely and complete” renewal application, EPA regulations provide a source with an application shield that extends the expiration date of the existing permit while the application is being processed. 40 C.F.R. § 71.7(b), (c)(3). A “timely” application for purposes of permit renewal “is one that is submitted at least 6 months but not more than 18 months prior to expiration of the part 70 or 71 permit.” 40 C.F.R. § 71.5(a)(1)(iii). As you acknowledged in your September 8 correspondence, Harvest timely submitted its renewal application on February 4, 2021, more than six months in advance of the August 8, 2022 permit expiration. Importantly, this renewal application was delayed because EPA rejected Harvest’s attempt to register as a minor source on grounds the Facility’s potential to emit no longer exceeds Title V thresholds, and EPA did not respond to Harvest’s January 28, 2022 request for a meeting to discuss the application.

In order to be deemed “complete” under the Part 71 regulations, the application must provide the information set forth at 40 C.F.R. § 71.5(c). *Id.* § 71.5(a)(2). The initial information provided under § 71.5(c), as reflected in the application forms,<sup>1</sup> “must be sufficient to evaluate the subject source and its application and to determine all applicable requirements” as well as the appropriate fees. *Id.* Here, EPA did not deem the application complete and requested additional “supplemental information” even though the 160-page permit application included all the initial information required by the Part 71 forms and regulations and was appropriately certified.

Submittal of a timely and complete application is not the end of the permitting process. Indeed, the regulations contemplate that “while processing an application that has been determined or deemed to be complete,” EPA may request additional information that “is necessary to evaluate or take final action on the application” and may “set a reasonable deadline for a response.” 40 C.F.R. § 71.5(a)(2). The application shield is intended to allow sources to engage with EPA in an iterative process to ensure that EPA has the information that it needs to issue a defensible Title V operating permit, even if that process extends beyond expiration of the original permit.

As the preamble to the final Part 71 regulations makes clear, EPA envisioned a permitting process that “will provide flexibility for sources to prepare simplified permit applications and for permitting authorities to find them complete.” 61 Fed. Reg. 34,202, 34,215 (July 1, 1996). Similarly, EPA’s Title V White Paper clarifies the standard for the completeness determination and emphasizes the iterative application process even after such a determination:

In any event, permitting authorities must award the application shield if the source submits a timely application which meets the criteria for completeness in § 70.5(c). Under this approach, if the source has supplied at least initial information in all the areas required by the permit application form and has certified it appropriately, the permitting authority generally has flexibility to judge the application to be complete enough to begin processing. Accordingly, there should normally be no need for an applicant to submit an application many days in advance in order to build in extra time for an iterative process before the relevant submittal deadline.<sup>2</sup>

The “initial information” is simply intended to start the process. As EPA acknowledges, “[t]he great majority of the detailed background information relied upon by the source to prepare the application need not be included in the application for it to be found complete.” The purpose of the application shield is to recognize that additional information may be required beyond the

<sup>1</sup> The regulations provide for a “standard application form” which shall include “the elements specified” in subsection (1) through (11) of subparagraph (c). 40 C.F.R. § 71.5(c).

<sup>2</sup> U.S. EPA, White Paper for Streamlined Development of Part 70 Permit Applications, at 20 (July 10, 1995)

permit expiration in order to develop a renewal permit, and during this period a facility working in good faith with EPA should not lose its operating permit.

Unfortunately, EPA’s review of Harvest’s renewal application has been at odds with the flexible and iterative process envisioned by the Title V rules and guidance, particularly for permit renewals. EPA asserted that because it needed additional information to process the application, the application was therefore incomplete. Treating a request for information of this nature as a basis for making an incompleteness determination turns the flexible Title V permitting process on its head. More importantly, this approach raises the specter of facilities losing the application shield when applicants are working collaboratively to provide EPA with requested information that may substantiate—but is not required to be included—in the initial permit application.

Here, the application itself met all requirements to be deemed complete. Neither EPA’s determination nor its requests for additional information cite which elements of Section 71.5(c) were missing from Harvest’s application or identify elements necessary to determine the applicable requirements. Indeed, the information that EPA requested on April 5, 2022 included as follows: (1) Process and flow diagrams; (2) a text description of current operations that delineates changes since the last permit renewal; (3) operating and emissions data collected in accordance with the existing Title V permit to substantiate changes in potential to emit; and (4) information on changes in modeling inputs. This information either is not specifically required by the application forms and the regulations or already was provided in the original application and EPA was requesting additional, substantiating information.

For example, EPA’s requests for additional emissions information go well beyond the detail necessary in 40 C.F.R. § 71.5(c)(3)(i). Section 71.5(c)(3)(i) simply requires an application to “describe all emissions of regulated air pollutants emitted from any emissions unit” and include “additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source and other information necessary to collect any permit fees owed.” EPA guidance makes clear that “[e]missions information for these purposes does not always need to be detailed or precise [and] . . . [i]nformation for applicability purposes need only be detailed enough to resolve any open questions about which requirements apply.”<sup>3</sup> Section 3 of Harvest’s renewal application (Emission Calculations and Document) addressed these details and provided documentation showing a reduction in total VOC emissions. To the extent that EPA is requesting substantiating information associated with these calculations, these requests reflect “additional information” that it has determined “is necessary to evaluate or take final action on that application” but do not address initial completeness of the application. *See* 40 C.F.R. § 71.5(a)(2).

Moreover, while Harvest responded to EPA’s requests for “supplemental information” to complete the application within nine days (on April 14, 2022), EPA did not respond to Harvest’s

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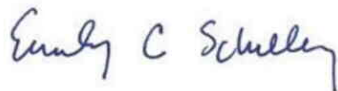
<sup>3</sup> *Id.* at 3.

inquiries regarding its submittal until May 27, 2022—a full six weeks after Harvest submitted its responses to EPA’s initial determination. And in that communication, EPA did not request any additional information from Harvest and noted that it had “no questions” but would set up a meeting at a future date to discuss the application. EPA did not request a meeting until July 1, 2022 and again, did not allege either in the meeting request or in the July 30, 2022 meeting that the information submitted by Harvest on April 14, 2022 was inadequate to address the initial allegations of incompleteness. Harvest timely responded to all subsequent requests for information, included most recently on August 17, 2022 and August 31, 2022. The Part 71 regulations are not intended to be a trap for facilities working collaboratively to process renewal applications.

Finally, Harvest wishes to note that EPA’s “Questions Remaining” included with its September 8 correspondence are new requests for additional information that follow up on Harvest’s timely responses to earlier questions. EPA also did not “set a reasonable deadline” for Harvest to respond as required by 40 C.F.R. § 71.5(a)(2). In a good faith attempt to address EPA’s concerns, however, Harvest will be providing responses shortly to the “Questions Remaining” included with the September 8 correspondence.

Based upon these facts and a desire to work collaboratively with EPA, Harvest respectfully requests EPA withdraw its September 8 correspondence, confirm that consistent with its May 27, 2022 correspondence the information provided on April 14, 2022 addressed EPA’s initial determination of incompleteness, and continue processing its renewal application. Given the urgency of this matter, we respectfully request a prompt response.

Sincerely,



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