



**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

\_\_\_\_\_) )  
In re: ) )  
Harvest Four Corners, LLC ) CAA Appeal No. 22-02  
CAA Permit No. R6FOP-NM-040R2 ) )  
\_\_\_\_\_) )

**ORDER REGARDING U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 6’S RESPONSE BRIEF**

On October 11, 2022, Harvest Four Corners, LLC (“Harvest”) petitioned the Environmental Appeals Board (“Board”) to review a Clean Air Act Title V permit decision by U.S. Environmental Protection Agency (“EPA”) Region 6 (“Region”). Harvest submitted an application for renewal of its Clean Air Act (“CAA”) Part 71 Federal Operating Permit for its Los Mestenos Compressor Station (“facility”) on February 4, 2022. By letter dated September 8, 2022, the Region informed Harvest that the Region would not re-issue the renewal of the facility’s Part 71 permit because Harvest had not submitted a timely and complete renewal application consistent with 40 C.F.R. §§ 71.7(b) and 71.7(c)(1)(ii). *See* Letter from Cynthia Kaleri, Section Supervisor, Region 6 Air Permits Section, U.S. EPA, to Oakley Hayes, Harvest Four Corners (Sept. 8, 2022) (“EPA Sept. 8 Letter”). The Petition states that the final permit decision came after the expiration of Harvest’s existing permit, which occurred on August 8, 2022, and terminated Harvest’s right to operate the facility. Harvest Four Corners Petition for Review 1 (Oct. 11, 2022) (“Pet.”); *see* EPA Sept. 8 Letter at 1 nn.1-2. Harvest, in its Petition for Review, contends that the Region’s decision is clearly erroneous and an abuse of discretion. Pet.

at 1. Harvest also states that the Board has grounds to review the final permit decision “as raising an important and adverse programmatic implementation issue or exercise of discretion by EPA” *Id.*

The Petition appears to present novel issues of national significance concerning the threshold for and consequences of a determination of incompleteness under Part 71. The Petition also appears to include issues of first impression for the Board. For these reasons, the Board has determined that the Region’s Response to Harvest’s Petition would materially assist the Board’s deliberations by addressing certain issues, in addition to others the Region plans to address, that are described below.

And under longstanding EPA procedures, the Agency’s Regional and Headquarters offices must coordinate with respect to their views on issues raised in permit appeals so that the positions presented to the Board consistently represent those of the Agency as a whole. *See* Memorandum from Ray Ludwiszewski, Acting Gen. Counsel, Office of Gen. Counsel, & Herbert H. Tate, Jr., Ass’t Adm’r, Office of Enforcement, U.S. EPA, to Reg’l Counsels, Assoc. Gen. Counsels, and Enforcement Counsels (Jan. 25, 1993) (attaching procedures for coordination of matters before the Environmental Appeals Board); *see also In re Evoqua Water Techs. L.L.C.*, RCRA Appeal No. 18-01, at 4 (Order for Further Briefing on Evoqua’s Motion for Stay of Permit Provisions Pending Board Review) (Dec. 14, 2018) (directing Region to confer with EPA’s Office of General Counsel to ensure that Region’s responses reflect Agency’s views); *In re Ariz. Pub. Serv. Co.*, PSD Appeal No. 16-01, at 1-2 (Order Requesting EPA’s Office of General Counsel, Office of Air and Radiation, and Region 9 to File a Joint Brief) (May 13, 2016).

Accordingly, the Board directs the Region to address the following issues in its Response to the Petition after consulting with the EPA Office of General Counsel and the EPA Office of Air and Radiation to ensure that the Region's positions in this proceeding reflect the Agency's coordinated views. The Region's Response should state that these consultations have occurred.

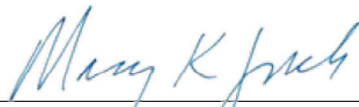
First, the Region should explain its legal authority to deny an application for a permit renewal based on its determination that the application is not complete. *See Pet.* at 29-30. Second, the Region should explain why Harvest's application does not suffice to constitute administrative completeness as described in the *White Paper for Streamlined Development of Part 70 Permit Applications*. *See Pet.* at 16-23; *see also* 61 Fed. Reg. 34,202, 34,215 (1996); Memorandum from Lydia Wegman, Deputy Dir., Office of Air Quality Planning & Standards, U.S. EPA, to U.S. EPA Regional Air Directors (July 10, 1995). Third, the Region should explain how the Part 71 provisions that instruct EPA to determine whether a permit application is complete "within 60 days of receipt," 40 C.F.R. § 71.5(a)(2), and to "promptly provide notice to the applicant of whether the application is complete," *id.* § 71.7(a)(4), apply to the sequence of events in this matter. *See Pet.* at 23-25. Finally, the Region should verify and

include in the Response the delegated authority for an EPA Region Section Chief to issue a final permit decision to deny a permit renewal.<sup>1</sup>

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: October 20, 2022

By:   
Mary Kay Lynch  
Environmental Appeals Judge

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<sup>1</sup> Nothing in this order should be interpreted as representing a judgment or determination by the Board on the issues raised in the case.

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing *Order Regarding U.S. Environmental Protection Agency Region 6's Response Brief* in the matter of Harvest Four Corners, LLC, CAA Appeal No. 22-02, were sent to the following persons in the manner indicated:

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Dated: Oct 20, 2022



Emilio Cortes  
Clerk of the Board