ATTACHMENT 1

Harvest Four Corners, LLC

COMMENTS ON:

HARVEST FOUR CORNERS, LLC
LOS MESTENIOS COMPRESSOR STATION
DRAFT TITLE V FEDERAL OPERATING PERMIT RENEWAL
PERMIT NUMBER: R6FOP-NM-04-R3-2023

SUBMITTED ELECTRONICALLY TO THE ENVIRONMENTAL PROTECTION AGENCY
DOCKET NO. EPA-R06-OAR-2023-0250

NOVEMBER 27, 2023

Harvest Four Corners, LLC ("Harvest") respectfully submits the following comments on the Environmental Protection Agency's ("EPA") draft Title V federal operating permit renewal (Permit No. R6FOP-NM-04-R3-2023) ("Draft Permit") for Harvest's Los Mestenios Compressor Station ("the Facility"). Specifically, Harvest has identified the following key issues with the Draft Permit:

1. EPA lacks authority to unilaterally impose new restrictions on the Facility's emissions;

2. The Draft Permit includes requirements that do not apply to the Facility;

3. The proposed reporting requirements are excessive and unnecessary; and

4. The Draft Permit includes typographical and other technical errors.

Based upon the issues detailed below, Harvest respectfully requests EPA make the requested revisions to the Draft Permit, including, but not limited to, removing the new substantive requirements as well as the related monitoring and recordkeeping requirements from the Draft Permit.

I. Introduction

A. Facility Background

The Facility is a natural gas compressor station located within the boundaries of the Jicarilla Apache Reservation in Rio Arriba County, New Mexico, approximately 24 miles northwest of Gavilan. The Facility accepts produced natural gas gathered from various wellheads from the surrounding gas field surrounding and compresses this gas for delivery to natural gas processing facilities. The Facility consists of a single 1200 HP natural gas-fired Solar Saturn combustion turbine used to drive a natural gas compressor, one 400-barrel condensate tank, a 400-barrel overflow condensate tank, and an emergency generator engine. The Facility was first issued a Title V permit by EPA in 2003. EPA issued the most recent Title V permit (Number R6FOP-NM-04-R2) for the Facility to Williams Four Corners, LLC on August 8, 2017, with an expiration date of August 8, 2022. Harvest acquired the Facility from Williams Four Corners LLC in 2018.

B. Permitting Renewal

On February 4, 2022, Harvest submitted its timely and complete Title V renewal application, more than six months in advance of the August 8, 2022 permit expiration.[1] The only

[1] Prior to submitting the renewal application, Harvest identified updates to the facility, such as the removal of an engine, that resulted in a substantially lower potential to emit than originally permitted. Based upon the reduction in the potential to emit, Harvest submitted a registration as a true minor source under the New Source Review Federal Implementation Plan on January 21, 2022. Based on EPA feedback that the Agency considered the Facility to still be a Title V facility, Harvest submitted the renewal application on February 4, 2022.

substantive changes from the 2017 Title V permit reflected in Harvest's renewal application were (1) a request to replace the existing compressor engine with an engine that had a smaller potential to emit of NOx; (2) addition of an emergency generator engine; and (3) changes to the inputs for, and modeling of, the condensate tank emissions. Harvest has since rescinded the request to replace the compressor engine and has requested to remove the compressor engine from the permit. Only the combustion turbine and the emergency engine have applicable requirements that would be reflected in a Title V permit.

On April 5, 2022, EPA deemed the application incomplete and requested "supplemental information." On April 14, 2022, nine days after receipt of the incompleteness determination and request for supplemental information, Harvest provided all requested information to EPA. EPA then took several months to respond before setting up a meeting at the end of July 2022 to discuss the application. In August 2022, EPA made two requests for additional information, to which Harvest promptly responded. Following this exchange, EPA issued a letter on September 8, 2022 informing Harvest that it would not re-issue the renewal.

Harvest objected to the denial and filed a petition to the Environmental Appeals Board ("EAB") appealing the EPA's decision.[2] After discussions between the parties, EPA issued a letter on October 31, 2022 rescinding its initial incompleteness determination as well as its letter dated September 8, 2022. The letter also confirmed that the Facility's application shield had been in place in accordance with 40 C.F.R. §§ 71.5(a)(2) and 71.7(b) since permit expiration on August 8, 2022. Because the October 31, 2022 letter rescinded the decisions that were the subject of the appeal, the parties jointly moved to dismiss the petition. EAB dismissed the appeal on November 3, 2022 and EPA continued processing the permit renewal application.

On August 30, 2023, EPA prepared its initial draft of the Part 71 renewal permit for the Facility and provided Harvest a brief one-week opportunity to review the permit and provide feedback. The Draft Permit included significant changes from the existing Title V permit, including new emissions limitations on the condensate storage tanks (6.3), truck loading (6.4), planned startup, shutdown, and maintenance ("SSM") activities (6.5), and equipment leaks (6.6). In response to the initial draft of the renewal permit, Harvest submitted a letter on September 6, 2023 to EPA noting that Title V of the Clean Air Act ("CAA") does not authorize EPA to impose new substantive requirements—specifically the emissions limitations —as Harvest's current Title V permit has no such emissions limitations and the equipment is not subject to any other applicable requirements under the CAA.

On September 29, 2023, EPA provided Harvest with a revised second draft of the permit, largely replacing the proposed emissions limitations with restrictions on the facility's potential to emit ("PTE"). In response, Harvest noted that the recent changes to the draft permit still did not address the legal deficiencies raised in its early comments and respectfully requested that EPA further revise the draft permit to address these concerns.

On October 4, 2023, EPA requested that Harvest provide "a detailed account of why Harvest sees the conditions identified in your letter of Sept 6 as exceeding the scope of EPA's

[2] Harvest Four Corners, LLC, Docket No. CAA 22-02.

authority." On October 13, 2023, Harvest provided EPA the requested detailed analysis demonstrating that the EPA is not authorized to place these new substantive requirements in Harvest's Title V permit. EPA did not provide a response to Harvest's October 13th letter.

On October 25, 2023, EPA issued the proposed Draft Permit with substantive requirements similar to the earlier draft permits except that EPA largely relabeled the restrictions on the facility's PTE as "work practices and operational requirements." EPA set forth its legal and factual basis for the permit conditions in a document entitled "Statement of Basis for Draft Part 71 Title V Permit, Los Mestenios Compressor Station Permit No. R6FOP-NM-04-R3-2023." In accordance with the notice of public comment, Harvest is now formally responding to the conditions in the Draft Permit.

II. EPA Lacks Authority Under Title V to Unilaterally Impose Substantive Restrictions on the Facility's Emissions

First, EPA lacks authority under Title V of the CAA to impose the new substantive requirements in Sections 6.3, 6.4, 6.5, and 6.6 of the Draft Permit. Harvest's current Title V permit does not include any applicable emissions limits on (or restrictions on the PTE from) the condensate storage tanks, truck loading, planned SSM activities, and equipment leaks. In addition, these units are not subject to any other applicable requirements. In different stages of the permitting renewal process, EPA has labeled the new restrictions in these sections as "emission limitations," "work practice and operation requirements," and other restrictions on PTE. Regardless of the chosen terminology, EPA is not permitted to impose the restrictions in these sections in a Title V permit because they are new substantive restrictions that are unrelated to any underlying applicable requirements under the CAA and have not been requested by Harvest. For this reason, Harvest respectfully requests that EPA remove these sections from the final Permit.

A. Title V is Procedural and Does Not Authorize EPA to Impose New Substantive Requirements

Under the CAA, Title V requires major sources of air pollutants to apply for and obtain an operating permit program. 42 U.S.C. §§ 7661a(a), 7661c(a); *see also In re Peabody Western Coal Co.*, 12 E.A.D. 22, 27 (E.P.A. February 18, 2005). The primary purpose of Title V is to "consolidat[e] into a single document all of a facility's obligations under the Act" and the Title V permit "must include all 'emissions limitations and standards' that apply to the source, as well as associated inspection, monitoring, and reporting requirements." *Util. Air Regulatory Group v. EPA*, 573 U.S. 302, 309, 323 (2014); *see also United States Sugar Corp. v. EPA*, 830 F.3d 579, 597 (D.C. Cir. 2016) ("Title V does no more than consolidate 'existing air pollution requirements into a single document, the Title V permit, to facilitate compliance monitoring' without imposing any new substantive requirements."). For this reason, "Title V *does not impose new obligations* rather, it consolidates pre-existing requirements into a single, comprehensive document. . . ." *Ohio Pub. Interest Research Grp., Inc.*, 386 F.3d 792, 794 (6th Cir. 2004) (emphasis added); *Util. Air Regulatory Group*, 573 U.S. at 309; *see also Sierra Club v. Ga. Power Co.*, 443 F.3d 1346, 1348-1349 (11th Cir. 2006) ("The Title V permit program generally does not impose new substantive air quality control requirements."). Similarly, EPA has long held that the Title V permitting program is "primarily procedural" and "not generally intended to

create any new substantive requirements." 57 Fed. Reg. 32,250, 32,384 (July 21, 1992); EPA, Whitepaper for Streamlined Development of Part 70 Permit Application (July 10, 1995) ("In general, this program was not intended by Congress to be the source of new substantive requirements.").

Title V creates a permit program that "incorporates and ensures compliance with the substantive emission limitations established under other provisions of the [CAA,]" but Title V "does not independently establish its own emission standards." *In re Peabody Western Coal Co.*, 12 E.AD. at 27. Under 40 C.F.R. § 71.1(b), "[a]ll sources subject to the operating permit requirements of title V and this part [71] shall have a permit to operate that assures compliance by the source with all applicable requirements." However, Title V's "applicable requirements" are limited to substantive emission limitations established under the other provisions of the CAA, such as "by state or federal implementation plans, preconstruction permits, the air toxics or acid rain programs, and other substantive CAA provisions." *See* 40 C.F.R. § 71.2; *In re Shell Offshore, Inc.*, 15 E.A.D. 536, 572 (E.P.A. March 30, 2012). For this reason, federal courts and the EAB have consistently held that Title V is "a procedural statute rather than a substantive statute," which serves to compile pre-existing requirements in a single permit. *See e.g., Envtl. Integrity Project v. United States EPA*, 969 F.3d 529, 543-545 (5th Cir. 2020); *In re Shell Offshore, Inc.*, 15 E.A.D. at 572 (citing Operating Permit Program, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992)).

Because Title V compiles existing requirements, "in most cases the only emissions limits contained in the permit will be emissions limits that are imposed to comply with the substantive requirements of the Act (including SIP requirements)." 57 Fed. Reg. at 32,384. For this reason, a Title V "permit itself will not impose any sort of independent 'cap' on emissions *except where requested by the source*." *Id.* (Emphasis added). When a source has not requested an independent "cap" or limit on its emissions, EPA is without authority to unilaterally impose one in a Title V permit.

B. EPA Exceeded its Authority Under the Title V Program

EPA exceeded its authority under the CAA here by imposing new substantive emissions requirements (and associated monitoring, recordkeeping, and reporting requirements) in the Title V permit that have no underlying applicable requirements and have not been requested by Harvest. Specifically, EPA has imposed a "cap" or limit on the emissions (that it has now labeled "Work Practices and Operational Requirements") that restricts the PTE from various emissions units (condensate storage tanks (6.3.1.1.), truck loading (6.4.1.1), planned SSM activities (6.5.2.2.), and equipment leaks (6.6.1.4)) from exceeding the amounts in Table 4. In the draft permits, EPA initially cited 40 C.F.R. § 71.6(a)(1) and has since added citations to Sections 71.6(a)(3), and 71.6(c)(1) for its authority to include new PTE limitations and other substantive requirements on condensate storage tanks, truck loading, SSM activities, and equipment leaks in Harvest's permit. However, these sections provide no such authority.

Section 71.6(a)(1) states that each Title V permit shall include:

> Emissions limitations and standards, including those operational requirements and limitations that *assure compliance with all*

> *applicable requirements at the time of permit issuance*. Such requirements and limitations may include ARMs identified by the source in its part 71 permit application as approved by the permitting authority, provided that no ARM shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this part or circumvent any applicable requirement that would apply as a result of implementing the ARM.

40 C.F.R. § 71.6(a)(1) (emphasis added). Similarly, Section 71.6(a)(3) allows EPA to place some monitoring and related recordkeeping provisions into a Title V permit. Section 71.6(a)(3)(i)(A) requires that each permit contain "[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements." However, "[w]here the applicable requirement does not require periodic testing," Section 70.6(a)(3)(i)(B) requires EPA to include "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.'" *See also Sierra Club v. EPA*, 536 F.3d 673, 675 (D.C. Cir. 2008).

However, EPA may include these provisions in a Title V permit **only** when they are "consistent with the applicable requirement," "required under applicable monitoring and testing requirements," and there are "applicable recordkeeping requirements." 40 C.F.R. § 70.6(a)(3)(i). Further, Section 71.6(c) only allows for additional "compliance certification, testing, monitoring, reporting, and recordkeeping requirements *sufficient to assure compliance with the terms and conditions of the permit*." (emphasis added); *see also* 42 U.S.C. § 7661c(c). While Section 71.6(c) allows EPA to impose monitoring and recordkeeping requirements in a Title V permit, the D.C. Circuit Court of Appeals in *Sierra Club v. EPA* ultimately held that this authority is limited to circumstances where a CAA monitoring requirement is insufficient to assure compliance with an underlying applicable requirement. *Sierra Club*, 536 F.3d at 674, 680 (citing 40 C.F.R. § 70.6(c) (providing almost identical language to 40 C.F.R. § 71.6(c)); 42 U.S.C. § 7661c(c)). Thus, while these provisions allow EPA to impose additional monitoring and recordkeeping in a Title V permit under some circumstances, this is limited to when the monitoring or recordkeeping is based on a pre-existing applicable requirement.

Contrary to the text of 40 C.F.R. § 71.6(a)(1), (a)(3), and (c)(3), the PTE limitations and other substantive requirements that EPA imposes on Harvest in Table 4 and sections 6.3, 6.4, 6.5, and 6.6 of the Draft Permit have no basis in the applicable requirements set forth in the CAA. The PTE emission limits for the condensate storage tanks, truck loading, planned SSM activities, and equipment leaks go beyond "assur[ing] compliance with all applicable requirements," as these are new emission limitations that are not required under other substantive provisions of the CAA. *See* 40 C.F.R. § 71.6(a)(1).

While EPA may impose additional monitoring or recordkeeping under 71.6(a)(1), (a)(3), or (c)(1), these monitoring or recordkeeping requirements must relate back to an existing applicable requirement under the CAA.[3] In both the Draft Permit and Statement of Basis, EPA

[3] Similarly, an "ARM," or "approved replicable methodology," is a permit term that "specif[ies] a protocol which is consistent with and implements an applicable requirement. . . ." 40 C.F.R. § 71. Accordingly, any ARM must also still be based on pre-existing applicable CAA requirements. Here, the PTE limitations and other requirements

fails to provide any citation to an existing applicable CAA requirement that justify these new requirements.[4] Thus, EPA does not have the authority to impose the additional PTE limitations and related monitoring and recordkeeping requirements included in the permit, as they are substantive requirements beyond what is required under the CAA.

Therefore, EPA exceeded its authority under the CAA by imposing new PTE limitations and other substantive requirements on the condensate storage tanks (6.3), truck loading (6.4), planned SSM activities (6.5), and equipment leaks (6.6) in the Draft Permit.

C. EPA May Not Unilaterally Impose Restrictions on the Facility's Potential to Emit in Lieu of Emissions Limitations

While EPA replaced the emissions limitations in the first draft of the permit with restrictions on the facility's PTE, EPA is similarly lacking in authority to impose restrictions on the Facility's PTE. The federal minor new source review program in Indian Country, rather than Part 71, is the appropriate program for restricting a facility's PTE in a CAA permit. 40 C.F.R. § 49.158.[5] Under this program, an operator may "obtain a synthetic minor source permit . . . to establish a synthetic minor source for purposes of the applicable PSD, nonattainment major NSR or Clean Air Act title V program and/or a synthetic minor HAP source for purposes of part 63 of the Act or the applicable Clean Air Act title V program." *Id.* However, this regulation only applies when an operator "wish[es] to obtain a synthetic minor source permit" and "submit[s] a permit application" with proposed emission limitations." *See* 40 C.F.R. § 49.158(b)(1); *see also* Operating Permit Program, 57 Fed. Reg. 32,250, 32,279 (July 21, 1992) ("Title V permits are an appropriate means by which a source can assume a *voluntary limit* on emissions for purposes of avoiding being subject to more stringent requirements. Section 70.6(b)(1) has been revised to clarify that such terms and conditions assumed *at the request of the permittee for purposes of limiting a source's potential to emit* will be federally enforceable." (emphasis added)).

EPA cannot impose PTE limitations in Harvest's Title V permit because Harvest did not "wish to obtain a synthetic minor source permit" or "submit a permit application" with proposed emission limitations. *See id; see also* 57 Fed. Reg. at 32,384 ("The [Title V operating] permit itself will not impose any sort of independent 'cap' on emissions except where requested by the source."). Because the PTE limitation policy only applies where the operator requests PTE

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proposed in Harvest's permit are not based on any pre-existing applicable requirements, and thus, are not permissible as "ARMs."

[4] Statement of Basis, at 26 ("The existing permit does not have monitoring, recordkeeping and reporting (MRR) for the following emission units identified in Table 6: Condensate Storage Tanks (T1 and T2), Truck Loading (L1), Equipment Leaks (F1), and Startup, Shutdown and Maintenance (SSM). Therefore, MMR requirements have been added to the title V renewal permit in Sections 6.3 through 6.6. These MMR's are to assure and verify compliance with the PTE presented in Table 6, pursuant to 40 CFR 71.6(c)(1).")

[5] In 1999, EPA implemented a guidance document titled, the "Potential to Emit (PTE) Transition Policy for Part 71 Implementation in Indian Country" ("Transition Policy"), which provided a process for operators of sources in Indian country to obtain synthetic minor permits by "obtain[ing] limits on their operations to avoid major source status under title V." John S. Seitz, Potential to Emit (PTE) Transition Policy for Part 71 Implementation in Indian Country 1-5 (EPA 1999). In 2011, EPA officially codified the Transition Policy into regulation, 40 C.F.R. § 49.158, and terminated the guidance document. 76 Fed. Reg. 38,748, 38,769 (July 1, 2011).

emission limits, EPA lacks authority to unilaterally impose PTE emission limitations in Harvest's Title V permit.

The EAB has allowed EPA to include additional PTE limits in Title V permits, but only when a permittee specifically requested that the EPA limit their PTE in order qualify as a "synthetic minor" source rather than a major source. *See In re Peabody Western Coal Co.*, 12 E.A.D. 22, 32 (E.P.A. February 18, 2005) (noting that permittee requested that EPA issue a PTE limit for its part 71 Permit to qualify as a synthetic minor source for purposes of PSD); *see also In re Shell Offshore, Inc.*, 15 E.A.D. 536, 551-52 (E.P.A. March 30, 2012) (noting that permittee requested PTE limitations from EPA to operate as a synthetic minor source when evaluating EPA's imposition of PTE limits on applicable PSD thresholds for NO[x], CO, SO[2], and GHGs). In those cases, EPA was allowed to establish PTE limits and related monitoring requirements to ensure compliance as a synthetic minor source. *See id.* However, as described above, EPA could only do so because the permittees requested to be treated as synthetic minor sources. Unlike in *Peabody* and *In re Shell Offshore*, Harvest did not request PTE limits to qualify as a synthetic minor source. Accordingly, EPA lacks the authority to unilaterally establish new PTE limits in Harvest's Title V permit.

III. The Draft Permit Includes CAA Requirements that Do Not Apply to the Facility

EPA's Draft Permit should also be revised because it contains requirements that do not apply to the Facility. EPA can only include requirements in a Title V permit that apply to the source. *See* 40 C.F.R. § 71.1 ("All sources subject to the operating permit requirements of title V and this part shall have a permit to operate that assures compliance by the source with all applicable requirements."); *see also* 40 C.F.R. § 71.2 (defining applicable requirements under Title V as a reference to other requirements the Permittee is subject to under the CAA). However, the Draft Permit includes CAA requirements that do not apply to the Facility. EPA should remove these inapplicable requirements from the final permit.

Section 4.9.5

First, EPA should remove Section 4.9.5 from the Draft Permit because the Facility is not subject to the requirements of the Acid Rain Program. Under Section 4.9.5 of the Draft Permit, "[t]he Permittee shall submit all submittals that are required by the Acid Rain Program, 40 CFR parts 72 through 78, according to instructions found at https://www.epa.gov/power-sector/business-center-forms if the facility becomes subject to this program. Please note that the CAMD Business System (CBS) is the preferred, convenient, instant, and paperless way to submit most forms for the Acid Rain Program." However, EPA acknowledges in Section 4.9.5 of the Draft Permit that the Facility is not subject to the requirements of the Acid Rain program and that this provision is only applicable "if the facility becomes subject to this program." As the Acid Rain Program does not currently apply to the Facility, Section 4.9.5 should be removed from the final permit.

Section 5.1.1

Second, EPA should remove Section 5.1.1 from the Draft Permit because Harvest's Facility is not subject to the requirements of the Stratospheric Ozone Protection Program under 40 C.F.R. Part 82. Under Section 5.1.1, EPA cites 40 C.F.R. Part 82 and 40 C.F.R. 71.2 to require that "[t]he Permittee shall comply with all applicable standards for recycling and emissions reduction pursuant to 40 C.F.R. Part 82, Subpart F, except as provided for motor vehicle air conditioners at 40 C.F.R. Part 82, Subpart B." 40 C.F.R. Part 82, Subpart F requires measures be undertaken for recycling and emissions reductions, and 40 C.F.R. § 71.2 is the definitions section for the regulations on Title V, Part 71 permits. However, Harvest is not subject to the requirements in 40 CFR Part 82, and the definitions section of Part 71 permits does not provide EPA the authority to implement these restrictions. Thus, Section 5.1.1 should be removed from the final permit.

Section 5.5

Third, EPA should remove Section 5.5 from the Draft Permit because the Facility is not subject to Prevention of Significant Deterioration ("PSD") requirements under 40 C.F.R. 52.21(r)(6). Under Section 5.5.1, EPA explains that PSD requirements apply "[w]here there is a reasonable possibility (as defined in 40 CFR 52.21(r)(6)(vi)) that a project (other than projects at a source with a plantwide applicability limitation (PAL)) that is not a part of a major modification may result in a significant emissions increase of any regulated NSR pollutant and the Permittee elects to use the method specified in 40 CFR 52.21(b)(41)(ii)(a) through (c) for calculating projected actual emissions." Sections 5.5.1 and 5.5.2 go on to require other recordkeeping, monitoring, and reporting requirements related to the PSD regulations under 40 C.F.R. § 52.21(r)(6). However, EPA regulations provide that "the provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a *major stationary source*." Because the Facility is not a major stationary source under the PSD program, this provision is not an applicable requirement, and EPA should remove the requirements in Section 5.5 from the final permit.

IV. The Draft Permit Includes Unnecessary and Excessive Reporting Requirements

The Draft Permit includes reporting requirements that are unnecessary and provide practical issues for implementation of the permit. EPA should remove or revise these reporting requirements in the final permit.

Sections 4.2.3 and 4.2.4

First, Harvest requests that EPA revise Sections 4.2.3 and 4.2.4 of the Draft Permit to allow Harvest to retain the flexibility to use any of the permissible payment options provided for under 40 C.F.R. § 71.9.

Under Section 4.2.3 of the Draft Permit, "[t]he fee payment shall be in United States currency and shall be paid as an electronic funds transfer payable to the order of the U.S. Environmental Protection Agency. [40 C.F.R. §71.9(k)(1)]." However, EPA regulations provide

that payment can "be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U.S. Environmental Protection Agency." 40 C.F.R. § 71.9(k)(1). While the regulation allows other payment methods beyond electronic funds, EPA's Draft Permit would restrict Harvest to a single method of payment. EPA provides no justification for this restriction. To remain consistent with the regulation and provide flexibility to Harvest in making these payments, Harvest requests that EPA revise Section 4.2.3 in the final permit to allow Harvest to utilize any of the payment methods provided for within the regulation, including payment by "money order, bank draft, certified check, corporate check, or electronic funds."

Similarly, under Section 4.2.4 of the Draft Permit, Harvest is required to submit the fee payment and fee filing forms electronically at www.pay.gov. However, as discussed above, 40 C.F.R. § 71.9(k)(1) allows payment by methods other than electronic payments. Similarly, Section 71.9(k)(2) provides that each remittance must be sent to the "Environmental Protection Agency to the address designated on the fee calculation work sheet or the invoice" but the regulation does not require that these payments and forms be sent electronically. Therefore, EPA should revise Section 4.2.4 to allow Harvest to utilize all the payment methods permitted under 40 C.F.R. section 71.9(k)(1).

Section 4.2.5

Second, EPA should remove the requirement in Section 4.2.5 from the Draft Permit that require Harvest to provide copies of forms and electronic payment confirmation through email to EPA Region 6 Permitting Division at R6AirPermitsTribal@epa.gov and ledoux.erica@epa.gov (Region 6 Tribal Air Permit Coordinator). These requirements are unnecessary since it is the Enforcement and Compliance Assurance Division's role to ensure ongoing compliance with permit requirements not the Permitting Division. Similarly, EPA should remove the requirement in Section 4.2.5 for Harvest to submit documentation directly to a single staff member. Requiring submissions to go to a specific EPA staff person could be problematic if that individual were ever to change positions or leave the EPA. Instead, EPA should revise Section 4.2.5 to require that submission of payment confirmation and copies of forms only go to the Region 6's Enforcement and Compliance Assurance Division.

Section 4.2.11

Third, EPA should clarify the requirement under Section 4.2.11 of the Draft Permit to fully comply with 40 C.F.R. § 71.9(j)(1) and (2). Instead of only requiring EPA to notify Harvest of any underpayment of fees, the permit should require that EPA also send Harvest an invoice of the fees. Under these regulations, EPA must "bill the applicant for the corrected fee or credit overpayments to the sources account" when a source has "completed the fee calculation work sheet incorrectly." 40 C.F.R. § 71.9(j)(1). However, these regulations also require permittees to "remit full payment *within 30 days of receipt of an invoice* from the permitting authority." 40 C.F.R. § 71.9(j)(1)-(2) (emphasis added). Thus, an invoice in addition to a notification by EPA is needed for Harvest to be required to remit the payments. Accordingly, Section 4.2.11 in the final permit should include the requirement of EPA to send an invoice to Harvest in addition to a notification.

Section 4.5.1

Fourth, EPA should revise the deadline for Harvest to submit the compliance certification in Section 4.5.1 of the Draft Permit. Under Section 4.5.1, "[a]ll reports shall be submitted to electronically to EPA by the 30th day following the end of the reporting period in accordance with Condition 4.9." However, under Harvest's existing Title V permit, Harvest was permitted to submit its compliance certification "annually within 45 days of the anniversary following the date of issuance of th[e] permit." Federal Clean Air Act Title V Operating Permit, Permit Number R6FOP-NM-04-R2, at 20 (issued August 8, 2017). However, EPA provides no explanation or reason for this change in its Statement of Basis. Thus, EPA should revise Section 4.5.1 to retain the annual 45-day reporting requirements for the compliance certification.

Sections 4.5.1.5, 4.9.2, 4.9.3, and 4.9.4

Fifth, EPA should revise its requirements regarding reporting through EPA's Compliance and Emission Reporting Data Interface ("CEDRI"). These requirements, particularly under Sections 4.5.1.5, 4.9.2, 4.9.3, and 4.9.4, present practical issues for implementation of the permit.

Under Section 4.5.1.5, EPA provides many citations for the requirements that Harvest must submit compliance forms via CEDRI, including Part 71 - 71.5 Title V Permit Application, 71.6(a)(3)(iii)(A), 71.6(a)(3)(iii)(B), 71.6(a)(13), and 71.6(c)(5)(iii). However, none of the cited regulations require that compliance forms be submitted via CEDRI. Similarly, Sections 4.9.2, 4.9.3, and 4.9.4 provide excessive reporting requirements that require Harvest to report records via CEDRI and to other groups. Under Section 4.9.2, EPA requires that "[a]ll reporting, document submittals, or notifications required by this permit (See Condition 4.5.1.5) shall be provided electronically to EPA through the WebFire database by [CEDRI]." Under Section 4.9.3, "the Permittee shall separately email permit applications, applications for permit amendments, notification of 502(b)(10) changes, compliance testing notifications, and other applicable time sensitive permit information." Section 4.9.4 also requires that Harvest submit courtesy copies of all records required by the permit to the Environmental Director of the Jicarilla Apache Nation.

These provisions impose excessive reporting requirements on Harvest that are not necessary to fulfill the requirements of the permit. EPA cites Sections 71.5(d), 71.6, and 71.9, which provide general reporting requirements by a Permittee; however, these regulations do not require that these documents be submitted electronically through CEDRI, to the EPA's Permitting team, to individual permitting staff, and other EPA divisions. The submission of these materials to four different groups is both excessive and unnecessary. Informing one group, particularly the Region 6's Enforcement and Compliance Assurance Division, would be the most efficient method of reporting, as this Division handles compliance issues and provides ongoing oversight during the permit's term. EPA's website for CEDRI also suggests that submission of reports via CEDRI is an option rather than a requirement.[6] Thus, Sections 4.9.2, 4.9.3, and 4.9.4

[6] For a detailed description of why CEDRI is an optional reporting tool rather than a requirement, see EPA, *Central Data Exchange: Frequently Asked Questions* (last visited Nov. 14, 2023), https://cdx.epa.gov/FAQ ("Regulated facilities should check with their EPA Region or local permitting authority to see if they are willing to use CEDRI

of the Draft Permit should be revised to require only electronic submission to the Region 6's Enforcement and Compliance Assurance Division.

Section 5.2.8

Sixth, EPA should revise the Draft Permit to remove the additional requirement for insignificant emission units under Section 5.2.8 to "keep records of the serial numbers for each emission unit listed in …. Table 3" and report a "change in serial number . . . in the report required by Condition 4.9 in Submission section." EPA cites 40 C.F.R. § 71.6(a)(3)(ii) in support of this provision. While Section 71.6(a)(3)(ii) requires a variety of recordkeeping requirements (*e.g.*, the details and evidence regarding sampling and analyses) and requires retention of records of these materials, the regulation does not require keeping records of or reporting changes to serial numbers of insignificant emission units. Thus, this provision should be removed in the final permit as an excessive reporting requirement, which is not supported by EPA's cited regulation.

Section 5.4.3.2.4

Finally, EPA should remove the requirement to notify EPA by telephone of any deviation under Section 5.4.3.2.4 of the Draft Permit. EPA cites 40 C.F.R. section 71.6(a)(3)(iii) in support of this requirement. However, the regulation only outlines a permittee's requirement to report deviations, as defined by the regulation, and other regular reports. The regulation does not specify the manner in which a permittee must report a deviation. Additionally, EPA's requirement to notify EPA by telephone is unnecessary and excessive—electronic submission of the deviation complies with the statute and provides Harvest with a reasonable manner to submit required reports of any deviations. Finally, Section 5.4.3.2.4 simply lists Region 6's main number but does not provide any instructions for which division or program office to contact. Thus, EPA should remove from the final permit the requirement to notify EPA by telephone of any deviation in Section 5.4.3.2.4.

V. Typographical and Other Technical Corrections in the Draft Permit

Finally, Harvest requests that EPA make the following changes in the final permit to resolve typographical and other technical errors:

- Revise the cover page to correct the Facility name to "Los Mestenios Compressor Station" rather than "Los Mestenios."
- Revise the Facility Contact section on page one of the permit to correct Harvest's phone number to "505-632-4421."

for these documents and to ensure that their approved title V program allows for submission of electronic documents in compliance with CROMERR. As long as the approved title V program allows for electronic submission, local permitting authorities can begin using CEDRI to receive these documents without any programmatic changes.").

- Revise the first sentence of the Process Description and Emission Unit Identification section on page three of the permit to correct Harvest's name to "Harvest Four Corners, LLC" rather than ""Harvest Four Corner, LLC."
- Remove the footnote on page four of the Draft Permit because the history of Harvest's correspondence with EPA on the T2 nameplate is neither relevant nor required.
- Remove the unnecessary language in Table 3, Column "Exemptions to Federal Requirements" on page five of the Draft Permit.
- Fix the typographical error in footnote ii. for "Notes for Table 4" on Page 6 of the Draft Permit to state "500 hours/yr" rather than "500 tons/yr."
- Fix the grammatical error on page seven of the permit in column "Comment," row three of Table 5 to change to "regarding" rather than "as it regards to."
- Change the citation in the last row and column of Table 5 that defines the emergency generator engine to 40 C.F.R. § 63.6675 and remove the list of the unnecessary citations, including "40 Part 63 Subpart ZZZZ, 40 CFR § 63.6603 (a) and Table 2d, , 40 CFR §63.6605(b), 40 CFR §63.6625(f), 40 CFR §63.6625(h), 40 CFR §63.6625(i), and 40 CFR §63.6625(j), 40 CFR 6640(a), 40 CFR 6640(f), and Table 6."
- Remove Section 5.2.10.8 because this provision repeats the requirements previously listed under Section 5.2.9.
- Fix typographical error on page 28 in the Draft Permit to "6.2.6" rather than "6.26."

VI. Conclusion

In conclusion, Harvest respectfully requests that EPA make the requested changes described above to Harvest's final permit. First, EPA should remove Sections 6.3, 6.4, 6.5, and 6.6 in the final permit because EPA lacks the authority to unilaterally impose substantive restrictions on the Facility that have no basis in CAA applicable requirements and have not been requested by Harvest. Second, EPA should revise Harvest's permit to remove inapplicable requirements listed in the Draft Permit. Third, EPA should remove the identified reporting requirements that go beyond what is required to ensure compliance with Harvest's permit. Finally, EPA should resolve the identified typographical and technical errors identified above.

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