

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

In the Matter of:)	
)	
HARVEST FOUR CORNERS, LLC)	
)	Appeal No.: CAA 24-09
Permittee)	
)	
Air Pollution Control Title V)	
Permit to Operate)	
Permit No. R6FOP-NM-04-R3-2023)	
)	

**EPA REGION 6 RESPONSE TO
THE HARVEST FOUR CORNERS, LLC
PETITION FOR REVIEW**

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EPA respectfully opposes the request for oral argument by the Petitioner in this permit appeal. The legal issues raised by this permit are well-settled. The Board has extensive jurisprudence and caselaw on the issues raised. In addition, issues raised on appeal are clearly articulated and an extensive administrative record is available for review. For these reasons and in the interest of judicial economy, the Board should deny the request for oral argument.

I. INTRODUCTION

The United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB” or “Board”) should deny the petition for review brought by Harvest Four Corners LLC. (“Petitioner”) of the Clean Air Act (“CAA” or “Act”) Title V permit issued by EPA Region 6 (“the Region” or “Region 6”) on June 28, 2024, to its Los Mestenios Compressor Station (“Facility”) operated by the Petitioner. The Region’s Title V permit decision for the Facility is fully supported by the record, including as detailed in the Response To Comments for R6FOP-NM-04-R3-2023 (“RTC”). Petitioner has failed to demonstrate a clearly erroneous finding of fact or conclusion of law warranting review of Region 6’s decision.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. FACILITY DESCRIPTION

Los Mestenios Compressor Station is an existing facility in Rio Arriba County, New Mexico currently operated by Petitioner and owned by parent company Hilcorp Energy Company. This Facility has operated since the late 1960’s. The location of the existing Facility is in a remote location of the northwestern quadrant of New Mexico, approximately 24 miles northwest of Gavilan, New Mexico and is located on the Jicarilla Apache Nation (JAN) Reservation. Los Mestenios accepts produced natural gas gathered from various wellheads from the gas field surrounding the Facility and compresses this gas for delivery to natural gas processing facilities. Once at the Facility, natural gas passes through the liquid receiver and then through the inlet suction scrubber. There are no emissions from these two process units. Their purpose is to separate liquids from the natural gas stream.

Liquids separated from the gas stream are sent to the Facility condensate tank (Unit T1) and can then overflow into the second condensate tank (Unit T2), if needed. Flash emissions will occur in

the first tank where the liquid is discharged and working and breathing emissions will occur from both tanks. All tank emissions are vented to the atmosphere, as there are currently no applicable requirements to control tank emissions at the Facility. Water is separated off the condensate and drained into the Facility's produced water tank (Unit T3). Liquids are removed from the Facility via truck. There are loadout emissions (Unit L1) associated with this action. During the winter months, a small tank heater (Unit 4) is used to prevent the liquids in the tanks from freezing. There is a small amount of combustion emissions associated with this heater unit.

The natural gas that passes through the inlet suction scrubber is compressed by the Solar Turbine (Unit 1) from approximately 95 psi to 210 psi (this is the primary purpose of the turbine). The turbine fires natural gas that is heated with a fuel gas heater during the winter months to prevent any condensibles from freezing. There is a small amount of combustion emissions associated with the fuel gas heater. Unit 1 does not have any emission controls and emits to the atmosphere. After compression, the gas passes through the Facility discharge cooler before exiting the Facility and being discharged to Harvest's Dogie Compressor Station. There are no emissions associated with the discharge cooler.

The Facility uses a pig launcher (Unit PL) and pig receiver (Unit PR) located within a quarter mile of the Facility. Pigs are launched in pipelines to clean out any buildups of liquid and other material in the pipe. During the transportation of natural gas through the gathering pipelines, the gas often experiences a temperature drop and pressure change that causes the hydrocarbons and other components to condense to a liquid phase (condensate). The condensate can accumulate at lower points in the gathering pipelines. To maintain gas flow and operational integrity of the gathering pipelines, operators mechanically push these condensates out of the lower elevations and down the pipeline by an operation called "pigging," which involves first inserting a device called a pig into a pig launcher upstream of the pipeline segment where condensates have accumulated. The gas flowing through the pipeline then pushes the pig through the pipeline, allowing the pig to sweep along the accumulated condensates. The pig is removed from the

pipeline segment when it is caught in a pig receiver. There are emissions when a pig is launched and when a pig is received. Emissions are dependent on the volume of the launcher/receiver. Multiple pigs can be caught in a receiver before it is opened and vents emissions to the atmosphere, so not every pig receiving event results in emissions. For the pigs that are received at the Facility, smaller diameter pigs are used in one pipeline and drop into a different larger pipeline. The pig used in this larger pipeline then pushes the smaller pigs into the Facility receiver. So multiple pigs are caught in the receiver simultaneously, resulting in the receiver only being opened once for multiple pigs. This common industry practice reduces emissions by limiting how many times the receiver is opened. Liquids from the pigging operations are sent to the condensate storage tanks (Units T1 and T2). Any flash emissions that might occur are accounted for in the condensate tank flash emission calculations for the Facility.

Other equipment at the Facility includes an emergency diesel powered generator engine (Unit 3), that provides electricity to the site if the Facility loses power, and an Ambitrol tank that contains Methanol which is injected into the natural gas stream to prevent pipeline freezes in the winter. Methanol works as an anti-freeze by joining with the natural gas and water vapor to lower the freezing point of the vapor. Equipment leaks (Unit F1) are a source of fugitives from valves, pump seals, compressor seals, pressure relief valves, connectors, and open-ended valves.

B. PROCEDURAL BACKGROUND

On February 4, 2022, the Petitioner submitted its 2022 Title V renewal application. (“2022 Renewal Application”). *See* 2024 Statement of Basis (“SOB”), SOB at 14. The Region issued a Title V permit to the Petitioner on June 28, 2024, Permit No. R6FOP-NM-04-R3-2023 (“2024 Permit”), Docket ID EPA-R6-OAR-2023-0250, pursuant to 40 C.F.R. Part 71. *See* SOB. The Facility is a Title V major source. *See* SOB at 3. The Facility was first issued a Title V permit by EPA in 2003 (“2003 Permit”). *See* SOB at 3. Prior to the 2024 Permit, EPA issued the previous Title V permit, Permit Number R6FOP-NM-04-R2 (“2017 Permit”), for the Facility to Williams

Four Corners, LLC (“Williams”) on August 8, 2017, with an expiration date of August 8, 2022.

See SOB at 12. Though the Facility’s 2017 Permit expired on August 8, 2022, the Facility’s application shield was established for the 2017 Permit in accordance with 40 C.F.R. §§ 71.5(a)(2) and 71.7(b). *See* SOB at 14. The Petitioner revised the 2022 Renewal Application on September 1, 2022 (“Revision 1”), and December 1, 2022 (“2022 Part 71 Appl Rev 2”). The revised applications included revised facility potential to emit (“PTE”) calculations, additional requested technical information, and changes to the proposed equipment modifications in the original renewal application. *See* SOB at 14. The 2024 Permit corrects certain flaws and updates information included in the 2017 Permit for the Facility and does so based on the application and supplemental information provided by the Petitioner regarding both current process unit operations and equipment, evident in the administrative record.

Under the 2017 Permit, the station was approved to operate a Solar Saturn T1200 natural gas fired turbine (Unit 1) and a Caterpillar G-399-TA 4 stroke rich burn (4SRB) reciprocating internal combustion engine (RICE) (Unit 2), both driving natural gas compressors. Also permitted were a 490-barrel (bbl) condensate storage tank (Unit T1) for which both flash and working/breathing losses are estimated, a 400-bbl condensate tank (Unit T2) with working/breathing losses only, fugitive emissions from valves, flanges, etc. (Unit F1), startup, shutdown, and maintenance emissions (Unit SSM), and miscellaneous insignificant emission sources.

Substantive changes incorporated into the 2024 Permit were based upon information drawn from the 2022 Renewal Application which includes changes such as, the capacity of the condensate storage tank being corrected from 490 bbl to 400 bbl and the rating of the tank heater (Unit 5) being corrected from 0.30 MMBtu/hr to 0.012 MMBtu/hr. In addition, the Petitioner states in the 2022 Renewal Application that Unit 2 is disconnected from the Facility’s process due to the unit no longer being operational and has been placed out of service. Also, in an application revision, the Petitioner indicated that they will not be installing the Waukesha L7042GL compressor

proposed in the original application as a replacement to Unit 2. Therefore, Unit 2 and associated emissions are not being authorized in the 2024 Permit. The existing title V permit has the Solar Saturn turbine serial number as SC-7895681. The Petitioner communicated that this is the serial number of the turbine's skid and provided the serial number of the actual turbine which is OHC18-S4468. The 2024 Permit indicates both the skid and the turbine's serial number.

III. STANDARD AND SCOPE OF REVIEW

The Petitioner is requesting that the Board order EPA to rescind its final permit decision because Title V of the CAA does not authorize EPA to impose new substantive requirements in the draft renewal permit—specifically emissions limitations—on the condensate storage tanks (6.3.1.), truck loading (6.4.1), planned startup, shutdown, and maintenance (6.5.1), and equipment leaks (6.6.1) because the 2017 Permit has no such emissions limitations and this equipment is not subject to any other applicable requirements. In reviewing challenges to part 71 permits, the Board applies the standard of review for permits issued under 40 C.F.R. Part 124, and looks to cases construing part 124 as precedent, *See, e.g., Peabody Western Coal*, 12 E.A.D. at 22, 32-33 n.26 (2005) (“*Peabody*”) (discussing and applying part 124 standard of review to part 71 proceeding). The petitioner must explain why the permitting authority's response to those objections is clearly erroneous or otherwise warrants review. *In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006). When evaluating a challenged permit decision for clear error, the Board examines the administrative record that serves as the basis for the permit to determine whether the permit issuer exercised “considered judgment.” *In re City of Keene*, 18 E.A.D. 720,724 (EAB 2022).

In applying the clear error standard of review, the Board evaluates the administrative record to determine whether the permit issuer exercised considered judgment in rendering its decision, and the Board considers the parties' arguments with respect to the administrative record as a whole, including factual findings, to determine whether the permit issuer provided a cogent explanation for its permitting decision. *See, e.g., In re Evoqua Water Techs. L.L.C.*, 17 E.A.D. 795, 839-41

(EAB 2019) (remanding permit, in part, where Region failed to explain why it had added substantive change to final permit); *In re General Electric Company*, 17 E.A.D. 434, 567-69 (EAB 2018) (remanding permit, in part, where “the Region did not reconcile seemingly inconsistent statements on the protectiveness of on-site disposal in the Statement of Basis and Response to Comments” and failed to explain why waiver of relevant regulatory requirements would be inappropriate). Here the Petitioner seeks the Board’s review of EPA’s issuance of the 2024 Permit based on the claim that EPA’s final agency action issuing the 2024 Permit for the Facility exceeds the agency’s authority by imposing new substantive emissions requirements in the 2024 Permit that are not based on applicable requirements and have not been requested by Petitioner. Therefore, Petitioner alleges that EPA is not permitted to impose the new PTE limitations and other substantive requirements on the condensate storage tanks (6.3.1.), truck loading (6.4.1), planned startup, shutdown, and maintenance (6.5.1), and equipment leaks (6.6.1) in the 2024 Permit. In reviewing an exercise of discretion by the permit issuer, the Board applies an abuse of discretion standard. *See In re City of Palmdale*, 15 E.A.D. 700, 704 (EAB 2012). The Board will uphold a permit issuer’s reasonable exercise of discretion if that decision is cogently explained and supported in the record. *See In re Ash Grove Cement Co.*, 7 E.A.D. 387, 397 (EAB 1997). A permit issuer must articulate with “reasonable clarity” the reasons supporting its conclusions and the significance of the crucial facts relied on in reaching those conclusions. *Id.* at 417.

The Board has found that “on matters that are fundamentally technical or scientific in nature, the Board typically defers to a permit issuer’s technical expertise and experience, as long as the permit issuer adequately explains its rationale and supports its reasoning in the administrative record. “The Board does not find clear error simply because the petitioner presents a difference of opinion or alternative theory.” *In re City of Keene*, 18 E.A.D. 720, 724 (EAB 2022).

Moreover, the burden of demonstrating that review is warranted rests squarely with the petitioner. 40 C.F.R. § 71.11(l)(1); *see also In re Peabody W. Coal Co.*, 12 E.A.D. 22, 27 (EAB

2005); *In re Wash. Aqueduct Water Supply Sys.*, 11 E.A.D. 565, 573 (EAB 2004). Additionally, when a petitioner seeks review of a permit based on issues that are fundamentally technical in nature, the Board assigns a particularly heavy burden to the petitioner. *In re Peabody W. Coal Co.*, 12 E.A.D. 22, 27 (EAB 2005). This demanding standard serves an important function within the framework of the Agency’s administrative process; it ensures that the locus of responsibility for important technical decision-making rests primarily with the permitting authority, which has the relevant specialized expertise and experience. *Id.*

Accordingly, if the Board determines that the Petitioner satisfies the threshold requirements, then Petitioner must demonstrate that the decision it challenges was based on a finding of fact or conclusion of law which is clearly erroneous. In addition, the Board will have to determine whether EPA followed the appropriate Part 71 rules in making its decision.

IV. ARGUMENT

The Petitioner has not met all the threshold requirements for challenging the permit decision before the Board. Specifically, the Petitioner has not met the threshold requirement to raise the issue of “EPA’s improper reliance on 1996 Minor NSR Permit.” Petition at 20. To challenge a permit decision before the board “for each issue raised that was not raised previously, the petition must explain why such issues were not required to be raised during the public comment period.” 40 CFR 124.19(a)(4)(ii). Petitioner claims that to “the extent that Harvest’s petition addresses EPA’s improper reliance on the 1996 Minor NSR Permit, it is because EPA did not put forth this justification in the Draft Permit or associated documents.” Petition at 20. That claim is incorrect. EPA issued Permit NM-791-M2 (“1996 Permit”) on September 24, 1996, in response to the expressed request of the permittee to establish federally enforceable emission limitations for the Facility. 2024 SOB at 18. EPA has consistently raised the 1996 Permit as the source of the applicable requirements that form the basis of this permit decision. *See* SOB at 18-20.

Several other documents in the administrative record reference the “1996 Minor NSR Permit” as the source of EPA’s reliance for incorporating applicable requirements for 2024 Permit. In laying

the foundation for its regulatory authority over the facility, EPA stated that the “Facility is currently an existing true NSR minor source and was originally constructed and commenced operations before August 30, 2011”. *Id.*

The 2003 Permit incorporates specific requirements that include emission limits and applicable requirements from the 1996 Permit. The 2003 Permit Statement of Basis explicitly stated that the “Los Mestenos Compressor Station is owned and operated by Williams Field Services. This is the initial TV permit for the facility. This source is subject to the provisions of EPA permit NM-791-M2 and is required to obtain a Clean Air Act Title V Permit to Operate in accordance with Part 71 of Title 40 of the Code of Federal Regulations.” *See* 2003 Permit Statement of Basis at 4.

Petitioner had the opportunity to review the Draft Permit, associated documents, and administrative record and therefore reasonably should have been able to raise this issue during the public comment period. There is no novelty regarding EPA’s so-called improper reliance on the 1996 Permit. The Board should therefore deny the petition to review all claims that purport to address EPA’s improper reliance on the 1996 Minor NSR Permit.

A The 2024 Permit does not impose new substantive limits on Facility’s that exceed EPA’s authority.

The Petitioner claims EPA’s 2024 Permit for the Facility exceeds the agency’s authority by imposing new substantive emissions requirements in the Title V permit that are not based on applicable requirements and have not been requested by the Petitioner. Petition at 22-23. The Petitioner also claims that in the 2024 Permit, EPA cites 40 C.F.R. § 71.6(c)(1) and (a)(3) for its authority to include monitoring, recordkeeping, and reporting requirements. 40 C.F.R. § 71.6(a)(1). The Petitioner also claims that new monitoring, recordkeeping, and reporting requirements are not, by themselves, underlying applicable requirements. Petition at 24.

The Petitioner also argues that 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.), truck loading (6.4.), planned SSM activities (6.5.), and equipment leaks (6.6.)) from exceeding the amounts in Table 4. *Id.*

The Board should deny these claims. The question of whether supplemental monitoring is required is quintessentially a technical question which must be left to the permitting authority. Additionally, the appropriate inquiry for the Board is whether the EPA adequately explained why the monitoring contained in the 2024 Permit is sufficient to assure compliance with the permit terms and conditions.

A Title V permit must require sufficient monitoring to assure compliance with its terms and conditions. CAA § 505(c), 42 U.S.C. § 7661c(c). Part 71 defines “applicable requirement” to encompass most standards under the Act. *See* 40 C.F.R. § 71.2.¹ A Title V permit must also “include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.” CAA § 504(a), 42 U.S.C. § 7661c(a). CAA 504(c) further states “each permit issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.” Title V “mandated that ‘[e]ach permit issued under [Title V] shall set forth ... monitoring ... requirements to assure compliance with the permit terms and conditions.’” *Sierra*

¹ [*Applicable requirement* means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates):

(*Applicable requirement*

means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates): 1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [part 52 of this chapter](#);

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;
insert regulatory language]

Title V can reasonably be read to require that “a permitting authority may supplement an inadequate monitoring requirement so that the requirement will ‘assure compliance with the permit terms and conditions.’” *Sierra Club* at 680. And where there are no monitoring requirements, or as in this case the emission standard lacks a periodic monitoring requirement altogether, the permitting authority must create one that assures compliance and include it in the permit.² *Sierra Club* at 675. Furthermore, “[a]n agency’s interpretation of its own regulations is controlling unless plainly erroneous or inconsistent with the regulations being interpreted.” *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158(2007).

To accomplish this task and determine which monitoring requirements are necessary, EPA must be guided by the Part 71 rules. *Sierra Club* at 675. A permitting authority’s obligation for establishing monitoring in a title V permit is a three-step process. *First*, the permitting authority must incorporate into the permit all monitoring requirements already contained in applicable requirements. 40 C.F.R. § 71.6(a)(3)(i)(A). *Second*, the permitting authority must add periodic monitoring requirements to the permit if the applicable requirements do not already require periodic monitoring. *Id.* § 71.6(a)(3)(i)(B). *Third*, the permitting authority must *supplement* the permit with additional monitoring requirements if the periodic monitoring requirements contained in applicable requirements are not sufficient to assure compliance. *Id.* § 71.6(c)(1). *See In re Citgo Refining and Chemicals Company L.P.*, Order on Petition No. VI-2007-01 at 6-7 (May 28, 2009) (“*Citgo*”). As the Administrator noted “[these] statutory obligations to ensure that each title V permit contains ‘enforceable emission limitations and standards’ supported by ‘monitoring . . . requirements to assure compliance with the permit terms and conditions,’ . . . apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit.” *See In the*

² As the D.C. Circuit Court stated “[t]here is no controversy over what the permitting authority should do in either of these scenarios.” *Sierra Club* at 675.

Matter of South Louisiana Methanol, LP, Order on Petition Nos. VI-2016-24 & VI-2017-14 at 10 (May 29, 2018) (citing 42 U.S.C. § 7661c(a) and (c)); *see also In the Matter of Yuhuang Chemical Inc. Methanol Plant*, Order on Petition Nos. VI-2017-5 & VI-2017-13 at 7-8 (April 2, 2018).

As the Petitioner acknowledges, “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.’” Petition at 23.

EPA issued the 1996 Permit on September 24, 1996, in response to a request of the permittee (Williams) to establish federally enforceable emission limitations for the Facility. SOB at 18. EPA deemed federally enforceable conditions as necessary to maintain this source at emission levels less than the 250 tons per year (“tpy”) Prevention of Significant Deterioration (“PSD”) Carbon Monoxide threshold level. Emission limits established in this permit were listed in the “Maximum Allowable Emission Rates”. *See* 1996 NSR Permit. The Special Conditions of this permit states that this “permit covers only those sources of emissions listed in the attached table entitled *Table 1 – Maximum Allowable Emission Rates* and those sources are limited to the **emission limits** and other conditions specified in that attached table.” *Id.*

In the 2003 Permit, this table was renamed as “*Potential to Emit in Tons/Year Williams Field Services Los Mestenos Compressor Station*.” The Facility’s PTE presented by Williams classifies this Facility as a Title V major source with a regulated air pollutants greater than the volatile organic compounds (“VOC”) threshold limit of 100 tpy. RTC at 63. Also in the 2003 Permit, the 1996 NSR Permit is listed under *Existing Federally Enforceable Permits*. Williams submitted this information in its initial Title V application and listed this preconstruction permit as one of its *Existing Federally Enforceable Permits*. *See* 2003 Title V Appl. This application also includes the PTE for each pollutant for Facility. These limits were incorporated by reference

into the 2003 Permit. Thus, the emission limits indicated in *Table 1 – Maximum Allowable Emission Rates* of the 1996 Permit, became applicable requirements in the 2003 Permit. *See* 2003 Permit.

The Petitioner further claimed that “Harvest’s 2017 Title V permit does not include any applicable emissions limits on (or restrictions on the PTE from) on condensate storage tanks, truck loading, planned SSM activities, and equipment leaks.” Petition at 22. This claim is factually incorrect and misleading. The 2017 Permit includes applicable emissions limits on the condensate storage tanks, planned SSM activities, and equipment leaks. These limits are found in Table 2 of the 2017 Permit. That table shows applicable emissions limits for T-1 and T-2 and SSM (labelled “MSS” in the Unit Id column). While with respect to truck loading there are no applicable limits in the 2017 Permit, that is because such limits were subsequently included in the 2024 Permit as a result of Harvest’s submission of a revised renewal application which first included truck loading activities. *See* Revision 2 at 35 of 355.

Petitioner’s claim that EPA lacks authority to include these monitoring, recordkeeping, and reporting (“MRR”) requirements because 2017 Permit does not include any applicable emissions limits is erroneous. The 2017 Permit does include applicable requirements for the condensate storage tanks, planned SSM activities, and equipment leaks. The truck loading limits were in the 2024 Permit because Harvest included truck loading activities in its renewal application. Therefore, EPA did not exceed its authority and for these reasons the Board should deny these claims.

Contrary to Petitioner’s claim, the Region has not imposed new PTE limits and other substantive requirements on condensate storage tanks in the 2024 Permit that exceed its authority. The 2024 Permit does not impose any conditions that require the installation of pollution control devices at the Facility that would lower PTE limits below major source thresholds under Title V. In general, PTE establishes a statutory basis for EPA’s ability to identify which sources qualify as

“major sources” subject to regulation under the Act. *See, e.g.*, CAA § 165(a), 42 U.S.C. § 7475(a) (requiring new source review (“NSR”) or PSD permits for any “major emitting facility on which construction is commenced after the date of the enactment of this part”); *In re Peabody W. Coal Co.*, 12 E.A.D. 30 (“*Peabody*”). Thus, PTE is a technical determination that “is jurisdictional in nature.” *Peabody* citing *Ala. Power Co. v. Costle*, 636 F.3d 323, 352 (D.C. Cir. 1979). PTE reflects the maximum capacity of a source to emit any given air pollutant, based on the source’s physical design and operational limitations. *Id.*; *see* 40 C.F.R. § 70.2.

The Petitioner claims that the 2024 Permit’s PTE emission limits for the condensate storage tanks, truck loading, maintenance, 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. Petition at 30.

The 2003 Permit established emissions limits based on emissions restrictions drawn from the 1996 preconstruction permit (also referred to in this Response as “1996 Permit”) originally issued for the Facility. The Facility’s uncontrolled emissions (i.e., emissions from units for which there are no pollution control devices present that are currently in use) are variable and inconsistent. The calculations for the Facility’s PTE that form the basis of emissions limits are found in the 2024 Permit and were based on representations made in the 2022 Part 71 Appl Rev 2 and supplemental documents submitted by Harvest as identified in the administrative record for this permit renewal action. For example, Harvest represented in the 2022 Part 71 Appl Rev 2 that the compression capability of the site is limited to the single Solar turbine and with the current facility configuration, it can compress approximately 20 MMscf/day. *See* Revision 2.

In addition, the current emission model used by Harvest presumed the worst-case emissions scenario of 22,141 bbls/yr. In the 2022 Part 71 Appl Rev 2, Harvest stated that the capacity of the Facility cannot be increased without construction that would need to be approved through the Tribal NSR permit program. *See* RTC at 41. EPA relied on the Facility PTE tables in the renewal

application submitted by Harvest (referenced in the SOB) to draft Section 6.3. This section simply requires “The Permittee **shall maintain** and operate T1 and T2, **as represented in the application**, such that the VOC and HAP PTE for each tank as shown in Table 4 will not be exceeded.” 2024 Permit (emphasis added). As discussed above, EPA issued the 1996 Permit, Permit No. NM-791-M2, on September 24, 1996, in response to the express request of the Permittee to establish federally enforceable emission limitations for the Facility. And the 1996 Permit was incorporated into the Facility’s 2003 initial Title V permit. The emission units and emission rates that are derived from the 1996 Permit are listed at Section 2, Table 4, titled “Regulated Emissions Units and Generating Activities” of the 2024 Permit. To the extent, these emission units and/or emission rates have changed in the 2024 Permit it is because Harvest represented in the 2022 Part 71 Appl Rev 2 that there were changes in emissions units located at the Facility, or changes in emissions from these emissions units and thus the need for new emissions limits in the 2024 Permit. *See* RTC at 40.

As explained in the SOB, new MRR requirements were added to the 2024 Permit because there were no prior MRRs for the emissions units identified in Sections 6.3 through 6.6 for condensate storage tanks (T1 and T2), truck loading (L1), equipment leaks (F1) and startup, shutdown and maintenance in the 2017 Permit. The only changes EPA added to the 2024 Permit were the addition of MRR requirements necessary to assure compliance with emission limits in the 2024 Permit. EPA addressed these MRR deficiencies by adding the following MRR sections for the identified emission units in the 2024 Permit: The condensate storage tanks (T1 and T2) in Section 6.3, truck loading (L1) in Section 6.4, planned startup, shutdown, and maintenance (SSM) activities in Section 6.5, and piping, valve and flanges equipment leaks (F1) in Section 6.6. The question as to what level of monitoring is necessary to assure compliance is a technical one and the Board should defer to the Region’s scientific and technical expertise. The issue, then, is whether EPA has the authority require new MRRs. EPA is not imposing new restrictions on the Facility’s emission rates in Section 6.3, 6.4, 6.5 and 6.6 of the 2024 Permit. *See* 1996 Permit

and 2003 Permit (Facility's initial title V permit) in the permit record. All title V permits must "set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions." CAA § 504(c); 42 U.S.C. § 7661c(c); *see* 40 C.F.R. § 70.6(c)(1). Section 504 of the CAA makes it clear that each title V permit must include "conditions as are necessary to assure compliance with applicable requirements of [the CAA], including the requirements of the applicable implementation plan" and "inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c). 40 C.F.R. § 70.6(a)(3) requires that each part 70 source have testing and MRR requirements sufficient to assure compliance with the terms and conditions of its permit.³

EPA has stated that "claims concerning whether a title V permit contains enforceable permit terms, supported by monitoring sufficient to assure compliance with an applicable requirement or permit term (such as an emission limit established in a PSD permit), are properly reviewed during title V permitting." *South Louisiana Methanol* at 10. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5). Both the statute and EPA's regulations expressly identify monitoring (and related information-gathering requirements) as a mechanism "to assure compliance" with underlying requirements. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(a)(3)(i)(A), (c)(3). Monitoring and related information-gathering requirements may provide the source with data on critical operating parameters, allowing the source to adjust its operations to ensure that it complies with permit limits. Or, in situations where monitoring and related information-gathering requirements reveal noncompliance, this should prompt a source to take corrective action, thereby avoiding similar noncompliance in the future. Finally, evidence obtained by monitoring and related information-gathering requirements may form the basis of enforcement actions that focus on bringing a source back into compliance and avoiding or preventing future noncompliance (as discussed

³ "In the part 71 proposal notice, EPA stated its view that it is appropriate to model part 71 procedures on those required by part 70, in order to promote national consistency between title V programs that are administered throughout the country." 61 FR 34202, 34203 (July 1, 1996).

further below).⁴ EPA’s Part 70 monitoring rules (40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1)) are designed to satisfy the statutory requirement that “[e]ach permit issued under [title V] shall set forth ... monitoring ... requirements to assure compliance with the permit terms and conditions.” CAA § 504(c).

The 2024 Permit references and relies on the calculation methodology submitted by Harvest, to assure compliance with the conditions of the 2024 Permit. The MRR requirements include monitoring to assure compliance and to monitor and record data that are inputs to the calculation methodology for accurate calculation of emissions. The emissions from the Facility are to be calculated from the recorded parameters in the permit and tracked to ensure that future changes to the source are compliant with federal CAA requirements.

For these reasons the Board should find that EPA did not impose substantive requirements that exceeded its authority.

B. The PTE limitations and other substantive requirements in the Draft Permit in Table 4 and sections 6.3, 6.4, 6.5, and 6.6 of the 2024 Permit are based on the submissions from Harvest and the applicable requirements set forth in the CAA.

The Petitioner claims EPA clearly erred by determining it had the legal authority to impose new monitoring, recordkeeping, and reporting requirements in the 2024 Permit that have no underlying applicable limits or standards. The Petitioner also claims that 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); Petition at 30. The Board should deny this claim. These sections are monitoring, recordkeeping and reporting requirements for the condensate tanks (T1 and T2), truck loading (L1), planned startup, shutdown and maintenance (SSM), and fugitives’ equipment leaks (F1), respectively.

The Petitioner incorrectly tries to reframe its challenge as to the inclusion of additional MRR requirements in the 2024 Permit as casting these terms as new emissions limits and draws attention away from its own submissions and requested changes made during successive renewal applications which led to the additional MRR requirements in the 2024 Permit.

1. *EPA had the authority to issue an authorization to construct and operate permit.*

Petitioner claims that in “its Response to Comments, EPA introduced a new justification for imposing enforceable limits on the Facility’s PTE, namely a 1996 Minor NSR Permit that contained enforceable limits on emissions and was incorporated into the Facility’s first Title V permit in 2003. EPA’s reliance on the 1996 Minor NSR Permit is misplaced and does not justify the new permit conditions.” Petition at 25. The Petitioner further claims that “EPA lacked the authority to issue the 1996 Minor NSR permit in the first place. The 1996 Minor NSR permit cites as authority the PSD program at 40 C.F.R. § 52.21, which was inapplicable to Los Mestenios as its PTE was below the 250 tpy major source PSD threshold. *See* 1996 Permit, at 9. The PSD rules did not and do not authorize EPA to issue preconstruction permits to true minor sources on tribal lands. *See* 40 C.F.R. § 52.21.” *Id.* (citing 1996 Permit at 9).

The 1996 Authorization to Operate Permit was incorrectly labelled as a minor NSR Permit over the years by EPA staff. This oversight by EPA permit writers does not nullify the effectiveness or character of the permit. The final agency action, i.e., the issuance of the final permit, did not purport to issue a minor NSR permit. Rather, the final agency action issued an Authorization to Construct and Operate Permit. Even though the 1996 Authorization to Construct and Operate Permit has been referred to as a minor NSR Permit, the EPA permit that was issued to Williams in 1996 was an ***authorization to construct and operate permit***, not a minor NSR permit. *See* Attachment, 1996 Authorization to Construct and Operate Permit. As stated in the permit’s cover letter, this permit was an authorization from EPA to operate the compressor station under the conditions stipulated. The authorization was issued “in accordance with the provisions of the

EPA cited these legal authorities because Williams indicated in its application for a permit from the State of New Mexico that one of the criteria pollutants (carbon monoxide) emitted by the Facility exceeded the applicable major source threshold of 250 tpy. *See* Original Permit Application to New Mexico at 4. In 1995, Gas Company of New Mexico forwarded to EPA the most recent permit issued by New Mexico Environment Department, a copy of turbine emission testing, and a copy of the permit application, that the Public Service Company of New Mexico had intended to submit to NMED to request emission increases.⁵ *See* RTC at 10. The total CO emission rate was 250.974 tpy in the application on page 4/18. *See* Original Permit Application to New Mexico. The emission rate of 250.974 tpy was greater than the major source threshold limit for PSD. *See* 40 CFR §52.21(b)(i) Definitions. The emissions calculation that are attached to this application starting on page 7/18, reference a basis of calculation using a 10% safety factor.⁶

The maximum allowable emission rates authorized in the 1996 Permit were less than what was submitted in the original permit application. *See* 1996 Permit at 9. A quick comparison calculation between both the 1996 Permit and the original New Mexico NSR application indicates a reduction of 5% in total CO emission rates from 250.1 to 239.5, a change attributable to a revision in the safety factor used by the company from 10% to 5%. This reduction in emissions was not due to pollution control device or conditions in the 1996 Permit that restricted the emissions. Thus, this reduction was accomplished administratively not through actual

⁵ The GCNM was the owner/operator of the Los Mestenos Compressor Station at the time.

⁶ Safety factors are applied for different reasons that include but not limited to:

- It is an uncertainty factor applied to emission calculations to account for the theoretical vs actual operations and the lack of operating data available on emission units.
- There are manufacturer guarantees that have built safety factors for units.
- In the case of stack testing, actual emission data is collected under certain conditions that the unit is expected to operate. The smaller the magnitude of the safety factor is determined by the amount of actual data collected and the representativeness of the data.
- Reasonable safety factors are applied to possibly account for increasing or fluctuating future business.

reductions. This Facility was a PSD source based on the original emission rates submitted in the application submitted by the company.

The 1996 Permit was issued as a de-facto minor source permit because there was no federal permitting mechanism for a minor source in Indian country. It was, nevertheless, a preconstruction permit (for Title V purposes) with applicable requirements that could be incorporated into a Title V Permit. The 1996 Permit authorized Williams Gas Processing – Blanco Inc. to install the following:

One 1200 horsepower Solar Saturn 1200 series (serial number SC-795681) natural gas fueled turbine, one 750 horsepower caterpillar G-399 series (serial number 49-C-284) reciprocating engine, one 0.3 MMBtu/hr fuel gas heater, and one 0.3 MMBtu/hr heater at their Los Mestenos Compressor Station.

The emission rates (i.e., emission limits) are represented in a table included in the permit entitled “Table 1 – Maximum Allowable Emission Rates”. *See* 1996 Permit at 9. This permit included testing provisions and MRR requirements for the above listed equipment only. The application submitted by Williams for the 1996 Permit represents that the emission rates were calculated at the maximum operating capacity, which represented the Facility’s PTE, with no pollution control devices. These emission rates were included as emission limits in the authorization. This information was included in the administrative record during the public notice and comment period for the Draft Permit of the 2024 Permit. Therefore, the assertion that “EPA introduced a new justification for imposing enforceable limits” is without merit.

The 2003 Permit incorporates specific requirements that include emission limits and applicable requirements from the 1996 authorization to construct and operate permit. The permitting history in the 2003 Permit Statement of Basis states “The Los Mestenos Compressor Station is owned and operated by Williams Field Services. This is the initial [Title V] permit for the facility. This source is subject to the provisions of EPA permit NM-791-M2 and is required to obtain a Clean

Air Act Title V Permit to Operate in accordance with Part 71 of Title 40 of the Code of Federal Regulations.” *See* 2003 Permit Statement of Basis at 4. The Board should therefore deny this claim.

2. *EPA did not cancel the 1996 Authorization to Construct and Operate Permit*

Petitioner claims that “EPA cannot rely on the 1996 Minor NSR Permit as justification for the emissions limitations in the Final Permit because EPA cancelled the 1996 Minor NSR Permit in 2009 as part of the Title V renewal and did not incorporate any enforceable limitations on PTE from that permit into subsequent operating permits.” Petition at 26. In support of this assertion Petitioner added that:

In 2009, EPA issued a Title V renewal permit to Williams Four Corners, LLC. As the Statement of Basis makes clear, EPA “[i]ncorporate[d] *all applicable requirements* from previous NSR permit, NM-791-M2, issued by EPA Region 6.” and “[i]nclude[d] language in public notice to permit to *cancel permit NM-791-M2* upon effective date of this Title V permit renewal.” EPA also noted that “[t]he construction permit for Williams Four Corners, LLC, Los Mestenos Compressor Station, Permit No. 791-M-1-Revision will be *superseded* by issuance of the Title V renewal of R6FOPP71-04 as R6NM-04-09R1” and “Certain non-applicable conditions that existed in Permit No. 791-M-1-Revision will not be carried over into the Title V renewal.”

Id. (citing 2009 Title V Permit Statement of Basis, at 2) (emphasis added).

The Supreme Court has said that a final agency action must satisfy two criteria: “First, the action must mark the consummation of the agency’s decision-making process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). There is no supporting documentation in the 2009 Title V final permit history or issuance, nor in the 2010 modification that confirms cancellation of the

1996 Permit. The EPA's statement cited by the Petitioner is interlocutory nature. It simply states EPA's intention in the public notice to permit to "cancel permit NM-791-M2" prospectively. However, that statement is not indicative of a final agency action.

There is nothing in the administrative record to show that EPA took a final agency action to cancel the 1996 Permit. For example, EPA never notified Williams of such a cancellation as would have been required. There is also no evidence of the purported cancellation of 1996 Permit in the subsequent permitting history of the Facility except in the 2009 Statement of Basis. There is no other evidence or documentation presented, beyond a solitary sentence, that the 1996 Permit was cancelled.

It is therefore unreasonable to conclude the 1996 Permit was cancelled based on a single statement in the 2009 Statement of Basis. The Board should deny this claim.

3. EPA has identified adequate authority for limiting the Facility's PTE and adding MRR Requirements to the 2024 Permit.

Petitioner claims "EPA has not identified any other source of authority for limiting the Facility's PTE. 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 Final Permit have no basis in the applicable requirements set forth in the CAA." Petition at 28. Petitioner also claims that "EPA clearly erred by determining it had the legal authority to impose new monitoring, recordkeeping, and reporting requirements in the Final Permit that have no underlying applicable limits or standards. 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." *Id.* at 30 (citing 40 C.F.R. § 71.6(a)(1)).

EPA did not impose new limits that were not requested on the Facility's PTE in the 2024 Permit. EPA added MRR requirements to the 2024 Permit. Harvest is correct, that the 1996 Permit does not include the emission units for which EPA added MRR requirements in the 2024 Permit

(specifically T1 and T2 condensate storage tanks, L1 truck loading, F1 equipment leaks and SSM (startup, shutdown and maintenance emissions units)). These emission units were added after the 1996 Permit was issued at the request of the company, however no MRRs were added at the time of the addition of the emission units to assure compliance. The underlying applicable limits incorporated into 2024 Permit by EPA were for the Facility's PTE as provided by the Facility's successive owner/operators in their Title V renewal permits. Where the applicable requirement contains no periodic monitoring, permitting authorities must add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B).

The 1996 Permit

On September 24, 1996, EPA issued the Facility, then owned by Williams, a preconstruction permit NM-791-M2 (1996 Permit). This permit was issued at the request of the Permittee to establish regulatory compliance.⁷

The Special Conditions of the 1996 Permit state, "This permit covers only those sources of emissions listed in the attached table entitled *Table 1 – Maximum Allowable Emission Rates* and those sources are limited to the emission limits and other conditions specified in that attached table." See 1996 Permit. The table shows that there were no pollution control devices for any of the emission units at the Facility. The emission calculation for each unit is based on uncontrolled emissions at maximum capacity. In other words, the 1996 Permit emission limits for each emission unit found in the permit table "Maximum Allowable Emission Rates" was based on the Potential to Emit (PTE). When a permit contains no limits on capacity utilization or hours of operation, the potential to emit calculation should assume operation at maximum design or achievable capacity (whichever is higher) and continuous operation (8760 hours per year). See "*Limiting Potential to Emit in NSR Permitting*" (June 13, 1989); Air Enforcement Division

⁷ See, "*March-1995_Permit_Status*" AR § 14 Doc No 8 (**March_1995_Permit_Status**)

Therefore, the Facility's emission limits are the same as its PTE. EPA developed the permit based on submissions made in the Original Permit Application to New Mexico. The 1996 Permit has the same emission limits represented as PTE that are in the Original Permit Application to New Mexico.

The 2003 Title V Permit

On October 5, 1999, Williams submitted an initial Part 71 permit application requesting a Part 71 Operating Permit. *See "Initial TV Application 2003"* ("2003 TV Appl."). This was for the initial Part 71 final permit that was issued on November 17, 2003. *See "Los Mestenos Final Permit 2003"* ("2003 Permit").

Before the 2003 Permit was issued, Williams submitted revisions on July 9, 2003, to the 2003 TV Appl. *See "Permittee Initial TV Comments"* ("2003 Permittee Comments"). In these revisions, Williams provided a clarification to the 2003 TV Appl. submitted in 1999. In that clarification, the Permittee stated that had they become aware of an undocumented source of emissions at the Facility. Specifically, the flash emissions from a 500-barrel condensate tank (TK-1). In addition to working and breathing losses, flash emissions were also occurring. The supporting documentation included application forms and emission calculations provided by the Permittee. A recalculated VOC PTE emission limitation of 222 tpy for TK-1 was submitted by the Williams to EPA. Williams submitted the thermodynamic model print out of the flash emission for the TK-1. Williams used the HYSIS thermodynamic model to calculate flash emissions stated on the print-out. The 2003 Permittee Comments also added the fugitives (F-1) as an emission unit and its emission limit. Since flash emissions were added to the already existing working and breathing losses of the TK-1 emission calculations, which was mainly VOC, the Total VOC PTE emission limit for the Facility was increased from 3 tpy that was permitted in the 1996 Permit (see above the Maximum Allowable Emissions table) to 228 tpy in

the 2003 Permit. In the 1996 Permit, the emission limits for the regulated emission units were listed in the “Maximum Allowable Emission Rates.” In the 2003 Permit, this table was renamed as “*Potential to Emit in Tons/Year Williams Field Services Los Mestenos Compressor Station.*” The Facility’s PTE presented by Williams in the 2003 TV Appl. classified the Facility as a Title V major source with regulated air pollutants greater than the threshold limit of 100 tpy, and the application included the PTE for each pollutant for Facility. Further, the 1996 Permit is listed under “*Existing Federally Enforceable Permits*” in the application, and the application cross-referenced information from the 1996 Permit.

The “Source Emission Point” table in 2003 Permit is based on information Williams submitted in 2003 TV Appl. The table indicates the Facility’s emission units do not have pollution control devices. There are no conditions in the 2003 Permit that restrict the emission rates from the maximum operating capacity of the emission units.

The 2003 Permit issued to Williams incorporated the 1996 Permit terms and conditions. The 2003 Permit specified under Specific Permit Requirements “...that for *applicable requirements* that will become effective during the term of the permit, the Permittee will meet such requirements. In Section G of the 2003 TV Appl. for Source-Wide PTE Restrictions and Generic Requirements, Williams indicated that there was “none”. Since Williams did not indicate PTE restrictions, the 2003 Permit did not have any restrictions.

Williams submitted further changes for the 2003 Permit that were not in the 1996 Permit. These changes included the addition of emission units, a condensate tank (TK-1) and fugitive emission (F-1), and the prospective emission rates for the added units. In addition, the 2003 permit added flash emissions from TK-1, which is predominantly VOC. The result was a significant increase in Total VOC PTE. These changes to the Facility’s process and the resulting permit emission changes did not result to the inclusion of additional MRR requirements for the additional

emission units necessary to monitor and assure compliance with the permitted emissions limits for the Facility.

The 2009 Title V Permit

In its May 18, 2008 application for the renewal of the Facility's Title V permit Harvest indicated that the existing Title V permit had no existing nor proposed PTE restrictions. See "*Williams Los Mestenos Title-V-Renewal Application-May 2008*" ("2009 Permit Appl"). On September 30, 2009, a renewal Part 71 permit entitled: "*Los Mestenos Final Permit 2009*" ("2009 Permit") was issued to the Permittee, with no PTE restrictions or limitations that compelled the Permittee to sample the condensate and have it analyzed on a periodic basis. That permit also had no requirements to compel the Permittee to use the most up-to-date analysis results with actual operating parameters, such as temperature, pressure, actual condensate storage tank throughput, as inputs to a thermodynamic model to calculate up-to-date flash emissions for the condensate tank. The 2009 Permit did not have any MRR requirements that required the permittee to use the thermodynamic model presented in the Permittee application throughout the 5-year term of the permit to calculate flash emissions to ensure consistent, replicable and reliable flash emission calculations. In the 2009 Permit, the Facility's total VOC PTE emission rate changed from the 228 tpy in from the 2003 Permit to 183 tpy in the 2009 Permit, with most VOC emissions emanating from the condensate storage tank.

The 2017 Title V Permit

On August 8, 2017, the 2017 Permit was issued to Williams. The 2017 Permit incorporated several changes that were the direct result of information provided by Williams in its application. These changes are found in Williams' 2017 permit application, titled "*williams_four_corners-los-mestenos-renewal-app-09112014*" (2017 Permit Appl). For example, in the Facility's PTE table in the 2017 Permit, the total VOC PTE emission limitation was changed from 183 tpy in the 2009 Permit to 108.9 tpy in the 2017 Permit with the majority of VOC emissions coming from the condensate storage tanks. The VOC PTE limitation for TK-1 in the 2009 Permit was

176.2 tpy compared to the VOC PTE limitation in the now T-1 (formerly TK-1) in the 2017 Permit of 86.2 tpy.

Other changes made at the Facility were reflected in the 2017 Permit. As mentioned above, the emission unit number formerly TK-1, was changed by Williams to emission unit number T-1. *See* application summary for the 2017 Permit Appl. Also, the floor of T-1 was replaced, which reduced the capacity of T1 from 500 bbl to 490 bbl. *See Id.* A 400 bbl condensate tank was added, named T-2, as an overflow tank for condensate tank T-1. *See Id.* With T1 and T2 operating in series, there was also a change in the emission calculations for the tanks. In addition, a thermodynamic model (VMGSym) was used to calculate flash emissions in the 2017 Permit for the Facility PTE rather than HYSIS (which was used for the 2009 Permit and the 2003 Permit). *See* 2017 Permit Appl. Furthermore, Williams added *existing* startup, shutdown, and malfunction emissions. These SSM or MSS emissions are presented in the Facility PTE table. *See* 2017 Permit. Also, Williams removed a 300 bbl condensate tank (T2) that was listed as insignificant emission activities. *See* the 2017 Permit Appl.

The 2017 Permit also did not include MRR requirements necessary for compliance assurance for the two condensate storage tanks, T-1 (formerly TK-1 in previous 2009 Final Permit) and T-2, as well as F-1 and MSS emissions. The 2017 Permit did not compel the permittee to use actual operating data as inputs to the calculation methodology to calculate emissions to assure compliance with the Facility's emission limits (PTE). Also, there was no MRR requirement in 2017 Permit requires the Permittee to select a thermodynamic model that is approved by the permitting authority to be used to calculate tank flash emissions. If an applicant chooses to use a less accurate method, there is a risk of underestimating emissions at a facility. The thermodynamic emission calculation models are designed to provide a more accurate calculation of emissions for specific process units using site-specific operating parameters, e.g., actual inlet gas temperature and pressure, results from an actual liquid sample analysis with a specified sampling requirement.

During November 2018, the Facility underwent a change in ownership from Williams to Harvest Four Corners, LLC (“Harvest”) during the 5-year term of the 2017 Permit. On January 21 and February 14, 2022, Harvest submitted a Change of Status (COS) and a Minor NSR Tribal Registration for an Existing Source, stating the Facility was no longer a Title V source. Harvest stated that the reason for the Facility dropping below the threshold for Title V major source was due to an engine replacement that emitted less NO_x, and flash emissions reductions due to both a change in the condensate composition from the two condensate tanks and improvements to the VMGSym model inputs.

EPA relies on the permit applications, emission calculations, and supplemental data and information provided by the Permittee to ensure that the permit conditions are representative of current facility operations when drafting a permit. The Facility was permitted as a Part 71 source in 2003 based on the Facility’s PTE for VOCs and CO being higher than the major source threshold of 100 tpy.

Harvest was unable to address EPA’s questions concerning the proposed decreases to the PTE for the Facility and its rationale for the employing thermodynamic model protocols due to a lack of data on past operations and emissions. This was the result of the absence of MRR requirements in the 2017 Permit. *See* 2024 Permit and Revision 2 at p 94 of 335. This failure has compelled the need for the requisite MRR requirements that have been added to the Final Permit. The addition of appropriate MRR requirements to the Final Title V renewal permit ensured practically enforceable permit provisions based upon current Facility operations for emission units existing at the Facility.

The final permit action did not impose new substantive emission requirements and associated MRR requirements as claimed by the Petitioner. This final permit action only implemented MRRs for emission units added, at the request of the Petitioner, starting with the issuance of the

1996 construction permit. Starting in 1996, the Permittee informed EPA, that the Facility's emissions units included a Solar Saturn Turbine and a Caterpillar Internal Combustion (IC) engine (Unit 1 and Unit 2). Consequently, the construction permit was issued with monitoring, recordkeeping, and reporting requirements (MRR) for these emission units. However, subsequent incremental additions of emission units and changes to the Facility's PTE occurred without the corresponding additions of MRRs for these added emission units and emission rates to assure compliance. EPA has not imposed on the Facility' PTE or PTE limitations not requested by the Permittee. The administrative record is replete with documentation provided by the Permittee via permit applications, emission calculations, and supplemental information that demonstrate the absence of MRR in the Facility's prior Title V permit. *See* Original Permit Application to New Mexico and 1996 Permit; 2003 TV Permit Appl; 2003 Permittee Comments; 2003 Permit; 2009 TV Permit Appl; 2009 Permit; 2017 TV Permit Appl; 2017 Permit. When the 1996 Permit was issued, the emission rates for the Facility emission units were calculated at maximum capacity with no restrictions at maximum operating utilization. These emission rates were established as the Facility's emission limits. These emission units and emission limits calculated at maximum capacity were incorporated into the 2003 Permit as applicable requirements. The calculated emission limits remain at maximum capacity, with no restrictions and at maximum operating utilization also known as PTE. This Facility's PTE is its emission limit. EPA has not limited PTE or imposed new PTE limitations for the purpose of creating a synthetic minor permit.

As stated in the SOB "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, EPA added MMR requirements to the title V renewal permit in Sections 6.3 through 6.6. These MMRs are to assure and verify compliance with the PTE presented in Table 6, pursuant to 40 CFR 71.6(c)(1). This applies similarly to situations where a

source is subject to a work practice standard. The permit should contain some means of assuring compliance with the work practice requirement. *See* SOB at 26.

EPA has described five factors permitting authorities may consider as a starting point in determining appropriate monitoring for a particular facility:

(1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities. *In the Matter of CITGO Refining and Chemicals Company, L.P.*, Order on Petition No. VI-2007-01 at 7-8 (May 28, 2009).

The MRR requirement that has been added for the truck loading and found in Section 6.4 of the 2024 Permit follows the calculation methodology provided by Harvest. *See* 2024 Permit and Revision 2 at p151 -157 of 335. The MRR in Section 6.4 requires data collection from an actual measurable operating parameter that is used as an input to the calculation methodology that Harvest submitted in its application. The MRR requirement for L1 requires Harvest to monitor truck loading to be consistent with protocols outlined in AP-42 Chapter 5.2, *Transportation and Marketing of Petroleum Liquids* for truck loading for VOC and HAP emissions.⁸ Also, to ensure that additional VOC emissions are not released to the environment, Harvest will visually inspect for any defects prior to hookup. Lines that are damaged shall be removed from service and loading should cease immediately upon detection of any liquid leaking from lines and connections. The Permittee shall operate and maintain a piping system designed for submerged

⁸ AP-42, *Compilation of Air Pollutant Emissions Factors from Stationary Sources*, has been published since 1972 as the primary compilation of EPA's emissions factor information. It contains emissions factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emissions factors have been developed and compiled from source test data, material balance studies, and engineering estimates. The latest emissions factors are available below on this website. *See*, <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources>

loading by either bottom loading or loading through a submerged fill pipe, as represented in the revised renewal permit application Revision 2. The Permittee shall calculate emissions using the emission factor equation from AP-42, Section 5.2, TANKS 4.09d for working and breathing losses, and the most recent condensate VOC analysis. The Permittee shall operate, maintain, and exclusively use a piping system designed for submerged loading by either bottom loading or loading through a submerged fill pipe, as represented in the revised renewal permit application. *See* Revision 2. The actual operating parameter used to measure condensate throughput will be the truck loading (L1) haul tickets. This calculation is to be done monthly for a rolling 12-month average to demonstrate compliance with the Facility's emission limit, which is the Facility's PTE, to assure no exceedances. This actual condensate throughput is another input into the VMGSym model used to calculate flash emissions for the condensate storage tanks.

The monitoring, recordkeeping and reporting requirements that have been added for the startup, shutdown, and planned maintenance events and found in Section 6.5 of this final permit action, which follows the calculation methodology provided by Harvest. *See* 2024 Permit and Revision 2. The MRR in Section 6.5 requires data to be collected from actual measured operating parameters that are used as inputs to Harvest's calculation methodology as indicated in the revised renewal application and as stated in the above description. The MRR requirement for the SSM requires Harvest to calculate the VOC and HAP emissions from the quantity of gas vented during each event, the composition of the inlet gas, and the number of events. The Permittee will monitor the number of planned SSM events and perform a Facility inlet gas analysis every calendar year. These actual operating parameters will be used to calculate VOC and HAP emissions to demonstrate compliance with no exceedance of the emission limit, which is the Facility's PTE.

The monitoring, recordkeeping and reporting requirements that have been added for the fugitive emissions (F1) from equipment leaks (valves, flanges, seals, etc) and found in Section 6.6 of the 2024 Permit follow the calculation methodology provided by Harvest in their revised renewal

application. *See* 2024 Permit and Revision 2. The MRR in Section 6.6 requires data to be collected from actual measured operating parameters that are used as inputs to Harvest's calculation methodology as stated in the above description and use the emission factors from the *1995 Protocol for Equipment Leak Emission Estimates* that is published by the EPA. The MRR requires the Permittee at the time of the next Part 71 renewal for this Facility when calculating the VOC PTE for fugitives (F1) to calculate using a recent actual component count from the Facility, and the worst-case gas composition provided by the annual extended gas analysis over the 5-year term of permit predicting the highest VOC emission rate. The total organic compound (TOC) emissions will be estimated using the component count and EPA emission factors. Then, the gas composition from the extended gas analysis (converted from mole fraction to weight percent) will be used to estimate the percentage of VOC and HAP in the TOC, as represented by the application. The MRR requires using the result of the annual extended analysis and the equipment count to demonstrate compliance with the fugitive emission limit on a periodic basis. If the equipment count should change at any time at the Facility from the information submitted in the revised renewal application the Permittee shall re-calculate the fugitive VOC PTE emissions. *See* Revision 2. This assures compliance with the VOC PTE in Table 4 of the 2024 Permit. In addition, MRR in this permit requires the Permittee to conduct the surveillance of the following equipment to ensure compliance with fugitives (F1) emission limit by the following methods:

- An extended gas analysis for VOC content of all equipment in the unit.
- A count of all equipment in the unit.
- An inspection of equipment in VOC service to detect leaks.
- If a leak is detected, the permittee shall place a visible tag on the leaking component until the component has been repaired.

- If any leaks are detected, the equipment shall be re-monitored no later than 30 days after discovery of the leak to demonstrate that it has been repaired.
- If the leak cannot be repaired within 30 days without a process unit shutdown, it may be designated “Repair delayed,” and shall be repaired before the end of the next process unit shutdown.
- An inspection of equipment in VOC service shall also be conducted within 15 days of any maintenance or repair that affects the equipment.

In conclusion, this Facility’s permitted emission units and emissions rates have varied and fluctuated throughout its permitting history. Without adequate monitoring, recordkeeping and reporting, there can be no assurance of compliance with the Facility’s emission limits, which is also the Facility’s PTE. The 2024 Permit corrected the flaws in the previous permits by incorporating the requisite MRRs necessary to meet EPA’s statutory obligations. The changes submitted in various Title V applications for the Facility account for the emissions limits in the 2024 Permit. The MRRs in the 2024 Permit are well within EPA’s authority. For these reasons the Board should deny Harvest’s claims.

V. CONCLUSION

The Region’s 2024 Permit decision did not impose a “cap” or limit on the emissions 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. The Region’s 2024 permit decision is *not* based on a clearly erroneous finding of fact or conclusion of law as alleged by Petitioner. 40 C.F.R. § 71.11(l)(1)(i). Rather, the basis for the 2024 Permit decision is clearly explained in both the SOB and the 2024 RTC. The 2024 Permit should not be vacated as requested by Petitioner—and no portion of the 2024 Permit should be remanded to Region 6. The 2024 Permit was properly issued by Region 6, is

more than adequately supported by the administrative record, and the EAB should deny the petition for review.

Date: August 26, 2024

Respectfully submitted,

/S/ William B. Puplampu

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STATEMENT OF COMPLIANCE WITH WORD COUNT LIMITATION

I hereby certify that this Response to Petition for Review submitted by EPA Region 6, exclusive of the Table of Contents, this Statement of Compliance, Table of Attachments, Response to Request for Oral Argument and the attached Certificate of Service, contains 11349 words, as calculated using Microsoft Word word-processing software.

/S/ William B. Puplampu

William B.Puplampu

CERTIFICATE OF SERVICE

I hereby certify that I caused an original of **EPA REGION 6'S RESPONSE TO PETITION FOR REVIEW** in the matter of Harvest Four Corners, LLC, EAB Appeal No. CAA 24-09, to be filed electronically to the Clerk of the Board and copies to be served by electronic mail upon the persons listed below.

Dated: August 26, 2024

/S/ William B. Puplampu

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