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

In re:	)
Harvest Four Corners, LLC	)
Permit No. R6FOP-NM-04-R3-2023	)

PETITION FOR REVIEW
ORAL ARGUMENT REQUESTED

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REQUEST FOR ORAL ARGUMENT

Petitioner Harvest Four Corners LLC respectfully requests that the Environmental Appeals Board hear oral argument in this permit appeal proceeding. This proceeding involves important issues related to the Environmental Protection Agency's authority to impose new substantive requirements on a facility through issuance of a federal operating permit, absent any underlying applicable Clean Air Act requirements. Oral argument would assist in the development of the issues and contribute to a fully informed decision.

INTRODUCTION

Pursuant to 40 C.F.R. § 71.11(l)(1) and 40 C.F.R. § 124.19(a), Harvest petitions the Environmental Appeals Board ("EAB" or "Board") for review of the Environmental Protection Agency's ("EPA") final issuance of the Part 71 Federal Operating Permit No. R6-FOP-NM-04-R3-2023 ("Final Permit") to Harvest Four Corners LLC ("Harvest" or "Petitioner") for the Los Mestenios Compressor Station Facility ("Los Mestenios" or the "Facility"), which is located on the Jicarilla Apache Reservation in Rio Arriba County, New Mexico. EPA's inclusion of new, enforceable emission limits, as well as associated monitoring, recordkeeping, and reporting ("MRR") requirements, in the Final Permit is clearly erroneous and an abuse of discretion. The issues presented for review also have implications extending far beyond this single facility. EPA's unlawful permitting approach sets a dangerous precedent that would allow EPA to use Title V—which EPA consistently has acknowledged is a procedural permitting statute—to impose substantive requirements on facilities without any underlying applicable requirement. Thus, this challenge is based on an "exercise of discretion or an important policy consideration that the [EAB] should, in its discretion, review." 40 C.F.R. § 124.19(a)(4)(i)(B).

Title V of the Clean Air Act ("CAA") requires EPA to consolidate all applicable requirements for a major source into a single, umbrella permit. Title V and its implementing regulations do not authorize EPA to impose new, substantive permit conditions untethered to preexisting requirements. EPA, however, has done just that here. Pursuant to Harvest's existing Part 71 permit (issued in 2017), only certain emissions from a single unit are subject to "enforceable limitations on PTE [potential to emit]."[1] For all other emissions, the potential to emit noted in the

[1] EPA defines "potential to emit" throughout the CAA regulations as "the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design." *See* 40 C.F.R. §§ 49.123, 49.152, 51.165(a)(1)(3), 51.166(b)(4), 52.21(b)(4), 52.40, 70.2. EPA's Part 71 regulations implementing Title V do not define potential to emit.

permit was expressly denoted as "unregulated" and "for informational purposes." But the Final Permit issued on June 28, 2024 includes new enforceable limits on the potential to emit from *all* of the Facility's emission units, as well as MRR requirements. EPA imposed these new requirements even though no underlying CAA provision, state implementation plan, or permits required them. EPA's reference to an inapplicable 1996 construction permit is improper and should be rejected.

Harvest respectfully requests that the Board vacate the Final Permit and remand to EPA for reissuance of a lawful permit.

FACTUAL AND STATUTORY BACKGROUND

I. Facility Background

Los Mestenios is an existing 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. Attachment 1 – Harvest Comment Letter, at 2. 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. *Id.* 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. *Id.*

The Facility was first issued a Title V permit by EPA in 2003. Attachment 1 – Harvest Comment Letter, at 2; Attachment 2 – 2003 Title V Permit. The Facility is subject to Title V because its potential to emit ("PTE") for certain regulated pollutants is above the 100 ton per year ("tpy") major source threshold for Title V. *See* 40 C.F.R. § 71.2. Because the Facility's PTE is below the 250 tpy major source Prevention of Significant Deterioration ("PSD") threshold for construction permitting, the Facility is classified as true minor source and is not subject to PSD permitting. *See* 42 U.S.C § 7475; 40 C.F.R. § 51.166(b)(1)(i).

The Facility's current Title V permit (Number R6FOP-NM-04-R2) was issued to Williams Four Corners, LLC on August 8, 2017. Attachment 3 – 2017 Title V Permit. The 2017 Title V Permit lists applicable requirements for the Facility, including two tables which address the Facility's PTE, Table 2 and 4. Table 2 shown below lists the PTE for each emissions unit at the Facility and notes which units are subject to applicable enforceable limits on PTE.

Table 2: Potential to Emit in Tons per Year (tpy) for Williams Four Corners LLC, Los Mestenios Compressor Station (See Table 4 for applicable enforceable limitations on PTE. (Only the unregulated PTE are for informational purposes)

Unit ID.	NOx	VOC	SO2	PM10	CO	Lead	HAP**
1, Solar Saturn 1200 Turbine, NGF	19.3[1]	0.4[1]	0.2	0.3	11.4[1]	Negl.	0.4
2, Caterpillar G-399-TA, NGF Engine	110.2	2.9	Negl.	0.6.	18.3	Negl.	0.3
3, T-1, Fixed roof storage tank	N/A	84.2	Negl.	Negl.	N/A	N/A	7.9
4, T-2, Fixed roof storage tank	N/A	2.0	N/A	N/A	N/A	N/A	0.4
5, F-1, FUGVOC	N/A	4.5	N/A	N/A	N/A	N/A	0.1
6, MSS	N/A	14.9	N/A	N/A	N/A	N/A	0.5
TOTALS tpy	129.5[2]	108.9[2]	0.2	0.9	29.7[2]	Negl.	9.6

** - mostly formaldehyde and n-Hexane
[1] Regulated emissions PTE (see Table 4)
[2] Source-wide PTE as combination of regulated and unregulated source PTEs

Importantly, Table 2 footnote 1 notes that only oxides of nitrogen ("NOx"), volatile organic compounds ("VOC"), and carbon monoxide ("CO") emissions from a single unit (the Solar Saturn 1200 turbine) have "regulated emissions PTE" and are subject to "enforceable limitations on PTE" as listed in Table 4. For all other emissions, the 2017 Permit notes that the PTE is "unregulated" and "for informational purposes." Table 4 shown below in Section 4 (Regulatory Requirements for Individual Emissions Units) addresses the maximum allowable emission rate for the Solar Saturn Turbine whose emissions limits are "based on" the requirement in Condition 4.2 which limits the fuel to "to sweet natural gas of pipeline quality containing a maximum of 0.25 grains of H1S per 100 cubic feet."

4.2 Fuel fired in the turbine, identified as Unit No. 1, and other combustion points at this source, including the IC engine, identified as Unit No. 2, is limited to sweet natural gas of pipeline quality containing a maximum of 0.25 grains of H_2S per 100 cubic feet. Emission limits for the turbine (Unit No. 1) are listed in Table 4 below, based on these requirements.

Table 4 – Maximum Allowable Emission Rates For Solar Saturn Turbine, Subject to 40 CFR Part 60, Subpart GG, Standards of Performance for Stationary Gas Turbines

Unit No.	Unit Name	Hours of Operation (hr/yr)	NOx	CO	VOCs
1	Solar Saturn 1200 Turbine 1200 hp	8760	4.4 lb/hr 19.3 tpy	2.6 lb/hr 11.4 tpy	0.1 lb/hr 0.4 tpy

No other units besides the Solar Saturn Turbine are listed in Table 4. The 2017 Title V permit also does not show the Facility as being subject to any preconstruction permits.

Harvest acquired the Facility from Williams Four Corners, LLC in 2018. On February 4, 2022, Harvest timely submitted its Title V renewal application. Attachment 4 – Harvest's February 4, 2022 Application. The Final Permit issued on June 28, 2024 is the subject of this appeal.

II. Applicable Statutes and Regulations

A. Title V of the Clean Air Act

Any facility with a PTE that exceeds major source thresholds must obtain a Title V operating permit. CAA §§ 501-502, 42 U.S.C. §§ 7661, 7661a. 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 operating 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 (2014) (citing CAA § 504(a), 42 U.S.C. § 7661c(a)).

Because Title V is "a vehicle for collecting diverse CAA requirements otherwise applicable to a source into one all-encompassing air permit," *In re Shell Offshore, Inc.,* 15 E.A.D. 536, 572 (EAB 2012), this Board has held that "Title V is a procedural rather than a substantive statute." *Id.* Title V therefore is "not generally intended to create any new substantive requirements." Operating Permit

Program, 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."). Courts, following EPA's lead, have opined that "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." *United States Sugar Corp. v. EPA*, 830 F.3d 579, 597 (D.C. Cir. 2016) (quoting *Sierra Club v. Leavitt*, 368 F.3d 1300, 1302 (11th Cir. 2004)); *see also Ohio Pub. Interest Research Grp., Inc. v. Whitman*, 386 F.3d 792, 794 (6th Cir. 2004) ("Title V does not impose new obligations; rather, it consolidates pre-existing requirements into a single, comprehensive document. . . ."); *Util. Air Regulatory Group*, 573 U.S. at 309; *see also Sierra Club v. Ga. Power Co.*, 443 F.3d 1346, 1348 (11th Cir. 2006) ("The Title V permit program generally does not impose new substantive air quality control requirements.").

B. Part 71 Federal Operating Permit Program

The federal Part 71 Title V operating permit program applies to all Title V facilities located in States or Indian country without an approved Title V program. 40 C.F.R. Part 71. Part 71 defines a major source under Title V as any stationary source "that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation" or "emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants." 40 C.F.R. § 71.2. Because the Facility is a major source located within the boundaries of the Jicarilla Apache Reservation and the tribe does not have an approved Title V program, the Facility is subject to Part 71 and EPA is the permitting authority. 40 C.F.R. §§ 71.3(a), 71.4(b).

Under Part 71, "[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." 40 C.F.R. § 71.1(b). To implement this Part 71 requires that each Title V permit must include "[e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. § 71.6(a)(1). Critically, 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 In re Shell Offshore, Inc.*, 15 E.A.D. at 572; 40 C.F.R. § 71.2 (defining applicable requirements).

Relatedly, 40 C.F.R. Section 71.6(a)(3) allows EPA to place some additional monitoring and related recordkeeping provisions into a Title V permit, but only as necessary to assure compliance with applicable requirements. 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 71.6(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 Sierra Club v. EPA*, 536 F.3d 673, 675 (D.C. Cir. 2008). Nevertheless, 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. § 71.6(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*." *Id.* § 76.1(c) (emphasis added); *see also* 42 U.S.C. § 7661c(c).

C. Part 49 Construction Permitting in Indian Country

On July 1, 2011, EPA issued a Final Rule establishing a preconstruction permitting program for "new or modified minor stationary sources, minor modifications at major sources, and new major sources or major modifications in nonattainment areas," as well as "a minor source permitting mechanism for major sources that wish to voluntarily limit emissions to become synthetic minor sources" within Indian Country. Review of New Sources and Modifications in Indian Country, 76 Fed. Reg. 38,748, 38,749 (July 1, 2011). Prior to the 2011 rule, EPA only had authority to issue PSD permits in Indian Country for major sources above the 250 tpy threshold. *Id.* at 38,753. But, "there [was] no Federal permitting mechanism for minor sources in Indian country." *Id.* at 38,749-50. Thus, the new rule was promulgated to fill a "regulatory gap." *Id.* at 38,750.

EPA's 2011 rulemaking resulted in promulgation of regulations at 40 C.F.R. §§ 49.151 through 49.165 (minor NSR program) and 40 C.F.R. §§ 49.166 through 49.175 (nonattainment major NSR program). *Id.* at 38,753. The minor NSR program in Indian country required existing sources that qualified as minor sources to register with EPA by March 1, 2013. 40 C.F.R. § 49.151(c)(1)(iii). Sources that commenced construction or modification between August 30, 2011 and September 2, 2014, were required to register within 90 days after the source began operations. *Id.* Sources that commenced construction or modification after September 2, 2014, were required to obtain a minor NSR permit.[2] *Id.*

III. Factual Background

A. Permitting History

The Facility was first issued a Title V permit by EPA in 2003. Since then, the Facility's Title V permit has gone through several renewals (2009 and 2017) and a modification (2010). On

[2] For minor sources in the oil and natural gas sector, the same registration requirements applied, except with October 3, 2016 substituted for September 2, 2014.

February 4, 2022, Harvest submitted its Title V renewal application. Attachment 4 – Harvest's February 4, 2022 Application. The subject of this appeal is the Final Permit issued from the 2022 renewal application.

1. *1996 Minor NSR Permit*

Prior to the 2003 Title V permit, the Facility was first permitted by the New Mexico Environment Department ("NMED") when the Facility was assumed to be located on state lands. Once it was determined that the Facility was within the boundaries of the Jicarilla Apache Reservation, EPA became the permitting authority. Because NMED did not have authority to issue the permits, any obligations thereunder did not have the force of law. *See* Review of New Sources and Modifications in Indian Country, 76 Fed. Reg. at 38,778 ("[S]tate and local governments lack authority under the CAA over air pollution sources and the owners or operators of air pollution sources throughout Indian country."); *see also Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 123-24 (1993) (explaining that states generally have "no role to play" within a tribe's territorial boundaries).

In 1996, EPA issued what is purported to be a minor NSR construction permit to a predecessor of Williams Four Corners, LLC, the Gas Company of New Mexico ("GCNM"), permit NM-791-M2 ("1996 Minor NSR Permit"). Attachment 5 – 1996 Minor NSR Permit. This permit was issued prior to EPA's implementation of the minor source permitting program in Indian Country, *see* Review of New Sources and Modifications in Indian Country, 76 Fed. Reg. at 38,748, and relied upon inapplicable major source preconstruction permitting regulations.[3] Attachment 5 – 1996 Minor NSR Permit, at 3 (issued in "accordance with the provisions of the Clean Air Act, as

[3] In Williams Gas Processing- Blanco, Inc's comments on the 2003 draft Title V permit, it questioned "the statutory authority in issuing this [1996] minor source permit." Attachment 13 – Response to Comments, at 16 (containing an excerpt of the comments made by Williams).

amended, 42 U.S.C. 7475 and 40 CFR 52.21, as amended August 7, 1980"). In addition, the 1996 Minor NSR Permit stated that "[t]his permit *covers only those sources of emissions listed in the attached table* entitled 'Table 1 – Maximum Allowable Emission Rate,' and those sources are limited to the emission limits and other conditions specified in that attached table." *Id.* at 4 (Special Condition 1) (emphasis added).

Table 1 - Maximum Allowable Emission Rates

Emission Point Number	Emission Point Number	Hours of Operation (hr/yr)	NO_x	CO	VOCs
1	Solar Saturn 1200 Turbine 1200 HP	8760	4.4 lb/hr 19.4 tpy	2.6 lb/hr 11.4 tpy	0.09 lb/hr 0.4 tpy
2	Caterpillar Model G-399-TA IC engine 750 HP	8760	14.4 lb/hr 63.1 tpy	52.2 lb/hr 228.0 tpy	0.6 lb/hr 2.6 tpy
3	Fuel Gas Heater 0.3 MMBtu/hr	8760	0.04 lb/hr 0.18 tpy	0.0084 lb/hr 0.04 tpy	0.0015 lb/hr 0.0067 tpy
4	Heater 0.3 MMBtu/hr	8760	0.04 lb/hr 0.18 tpy	0.0084 lb/hr 0.04 tpy	0.0015 lb/hr 0.0067
Total	-	-	18.9 lb/hr 82.9 tpy	54.8 lb/hr 239.5 tpy	0.7 lb/hr 3.0 tpy

VOCs = Volatile Organic Compounds
lb/hr = pound per hour
tpy = ton per year

Table 1 (shown above) lists maximum allowable emission rates for NO_x, CO, and VOCs for four units: the Solar Saturn Turbine, an engine, and two heaters. *Id.* at 9 (Table 1 - Maximum Allowable Emission Rates). As discussed later, this permit was cancelled by EPA in 2009.

2. *2003 Title V Permit*

In 2003, EPA issued the first Title V Permit to the Facility. Among other things, the permit incorporated by reference certain provisions of the 1996 Minor NSR Permit, including Special Condition 1, and provided a table ("Table 2: Potential to Emit in Tons per Year (tpy)") listing the PTE for each of the units at the facility. Attachment 2 – 2003 Title V Permit, at 4-6.

Table 2: Potential to Emit in Tons per Year (tpy) Williams Field Services, Los Mestenios Compressor Station							
Unit ID.	NOx	VOC	SO2	PM10	CO	Lead	HAP**
1, Solar Saturn 1200 Turbine, NGF	19.4	0.4	Neg.	Neg.	11.4	N/A	0.4
2, Caterpillar G-399-TA, NGF Engine	63.1	2.6	Neg.	Neg.	228.0	N/A	0.5
TK-1, Fixed roof storage tank	N/A	222	Neg.	Neg.	N/A	N/A	1.1
F-1, FUGVOC	N/A	3.2	N/A	N/A	N/A	N/A	0.1
TOTALS tpy	83	13	N/A	N/A	239	N/A	2

** - mostly formaldehyde and n-Hexane

Notably, the PTE table included two emissions units (a condensate storage tank (TK-1) and piping component fugitive emissions valves (F-1)) that were not included in the 1996 Minor NSR Permit. Additionally, the 2003 Title V Permit did not indicate that the PTE in Table 2 was enforceable and did not include any monitoring, recordkeeping, and reporting requirements applicable to either the condensate storage tank or the piping component fugitive emissions valves.

3. *2009 Title V Permit Renewal and 2010 Modification*

In September 2009, EPA issued a renewal of the Title V permit. As part of the renewal, EPA "incorporate[ed] all applicable requirements from previous [1996 Minor] NSR permit, NM-791-M2, issued by EPA Region 6" and "include[d] language in public notice to permit to cancel permit NM-791-M2 upon effective date of this Title V permit renewal." Attachment 6 – 2009 Title V Permit Statement of Basis, at 2. EPA also noted that the 1996 Minor NSR "Permit No. 791-M-1-Revision will be *superseded* by issuance of the Title V renewal of R6FOPP71-04 as R6NM-04-09R1" and "[c]ertain *non-applicable conditions* that existed in Permit No. 791-M-1-Revision will not be carried over into the Title V renewal." *Id.* at 18 (emphasis added). Importantly, the EPA made clear that

"the Potential to Emit provided in the permit as well as in this statement of basis **is for informational purposes only**, except where specifically noted as limited." *Id.* (emphasis added).

Table 2 of the 2009 Permit (reproduced below) lists the PTE. Attachment 7 – 2009 Title V Permit, at 2-3. As noted in the Statement of Basis, the permit made clear that the potential to emit was "unregulated" and "for informational purposes" unless specifically noted. *Id.*

Table 2: Potential to Emit in Tons per Year (tpy) for Williams Four Corners, LLC, Los Mestenios Compressor Station (See Table 4 for applicable enforceable limitations on PTE. (Only the unregulated PTE are for informational purposes only)

Unit ID.	NOx	VOC	SO2	PM10	CO	Lead	HAP**
1, Solar Saturn 1200 Turbine, NGF	19.3[1]	0.4[1]	Neg.	Neg.	11.4[1]	N/A	0.4
2, Caterpillar G-399-TA, NGF Engine	153	2.9	Neg.	Neg.	107	N/A	0.7
TK-1, Fixed roof storage tank	N/A	176.2	Neg.	Neg.	N/A	N/A	9.3
F-1, FUGVOC	N/A	3.5	N/A	N/A	N/A	N/A	0.7
TOTALS tpy	172.3[2]	183[2]	N/A	N/A	118.4[2]	N/A	11.1

** - mostly formaldehyde and n-Hexane
[1] Regulated emissions PTE (see Table 4)
[2] Source-wide PTE as combination of regulated and unregulated source PTEs

Specifically, Table 2 notes that only specific emissions from a single unit (the Solar Saturn 1200 turbine) are "regulated emissions PTE" and to "See Table 4 for applicable enforceable limitations on PTE." *Id.* The Solar Saturn 1200 Turbine is the only unit listed in Table 4. *Id.* at 9-10.

Afte EPA issued the permit in September 2009, Williams Four Corners, LLC filed a petition with EAB to review the permit's testing requirements. *See* EAB CAA Appeal No. 09-01. In 2010, EPA and Williams Four Corners, LLC agreed to modify the permit's testing language and the petition was withdrawn. *Id.* The modification did not address the Facility's PTE. EPA issued the modified Title V Permit on April 1, 2010. Attachment 15 – 2010 Title V Permit. Tables 2 and 4 in the 2010 Permit are the same as in the 2009 Permit. *Id.* at 3, 11.

4. *2017 Title V Permit*

EPA issued the most recent Title V permit (Number R6FOP-NM-04-R2) for the Los Mestenios facility to Williams Four Corners, LLC on August 8, 2017, with an expiration date of August 8, 2022. Attachment 3 – 2017 Title V Permit. Similar to the 2009 and 2010 Title V Permits, the 2017 permit included two tables (Table 2 and 4) addressing the facility's potential to emit. Notably, Table 2 in the 2017 permit included two additional units not previously included in the permit—emissions from a new roof storage tank (T-2) and maintenance, startup, and shutdown (MMS). *Id.* at 3. Table 2 (shown below) lists the potential to emit for each emissions unit at the Facility and notes which units are subject to applicable enforceable limits on PTE. *Id.*

Table 2: Potential to Emit in Tons per Year (tpy) for Williams Four Corners LLC, Los Mestenios Compressor Station (See Table 4 for applicable enforceable limitations on PTE. (Only the unregulated PTE are for informational purposes)

Unit ID.	NOx	VOC	SO2	PM10	CO	Lead	HAP**
1, Solar Saturn 1200 Turbine, NGF	19.3[1]	0.4[1]	0.2	0.3	11.4[1]	Negl.	0.4
2, Caterpillar G-399-TA, NGF Engine	110.2	2.9	Negl.	0.6.	18.3	Negl.	0.3
3, T-1, Fixed roof storage tank	N/A	84.2	Negl.	Negl.	N/A	N/A	7.9
4, T-2, Fixed roof storage tank	N/A	2.0	N/A	N/A	N/A	N/A	0.4
5, F-1, FUGVOC	N/A	4.5	N/A	N/A	N/A	N/A	0.1
6, MSS	N/A	14.9	N/A	N/A	N/A	N/A	0.5
TOTALS tpy	129.5[2]	108.9[2]	0.2	0.9	29.7[2]	Negl.	9.6

** - mostly formaldehyde and n-Hexane
[1] Regulated emissions PTE (see Table 4)
[2] Source-wide PTE as combination of regulated and unregulated source PTEs

As noted previously, only NOx, VOC, and CO emissions from a single unit (the Solar Saturn 1200 turbine) have "regulated emissions PTE" and are subject to "applicable enforceable limitations on PTE" appearing in Table 4. *Id.* The Solar Saturn 1200 Turbine is the only unit listed in Table 4. For all other emissions, the 2017 Permit notes that the potential to emit was "unregulated" and "for informational purposes." *Id.* The 2017 Title V permit also does not show the facility as being subject to any other permits.

5. *Current Permit Renewal*

On February 4, 2022, Harvest submitted its Title V renewal application. Attachment 4 – Harvest's February 4, 2022 Application. The only 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 similar PTE of NOx, (2) addition of an emergency generator engine, and (3) changes to the inputs for, and modeling of, the condensate tank emissions. *Id.* No modifications to existing equipment occurred between 2017 and 2022 and no pre-construction permits were issued. Harvest subsequently rescinded the request to replace the compressor engine and requested removal of the compressor engine from the permit.

During the permitting process, a dispute arose as to whether Harvest's 2022 Title V renewal application was complete, which was resolved on October 21, 2022, after Harvest filed a Petition for Review to the EAB and EPA rescinded the decisions that were the subject of the appeal. *See* EAB CAA Appeal No. 22-02.

On August 30, 2023, EPA prepared its initial draft of the Part 71 renewal permit (the "Draft Permit"). *See* Attachment 8 – August 30, 2023 Draft Part 71 Permit. The Draft Permit included significant changes from the existing Title V permit, including new emissions limitations on the condensate storage tanks, truck loading, planned startup, shutdown, and maintenance ("SSM") activities, and equipment leaks. *Id.* Harvest submitted a response to EPA on the Draft Permit, noting that Title V of the CAA does not authorize EPA to impose new substantive requirements—specifically emissions limitations—as Harvest's current Title V permit has no such emissions limitations and the equipment was not modified or otherwise not subject to any other applicable requirements under the CAA. Attachment 18 – September 6, 2023 Letter from Harvest to EPA; *see also* Attachment 3 – 2017 Title V Permit.

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 PTE. *See* Attachment 9 – September 30, 2023 Draft Part 71 Permit. In response, Harvest noted that changes to the Draft Permit still did not address the legal deficiencies previously raised by Harvest. Attachment 16 – October 3, 2023 Correspondence from Harvest to EPA. Subsequently, EPA requested that Harvest provide a detailed account as to why it believed the Draft Permit exceeded the scope of EPA's authority. Harvest timely provided EPA with its detailed analysis. Attachment 17 – October 13, 2023 Letter from Harvest to EPA.

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." *See* Attachment 10 – October 25, 2023 Draft Part 71 Permit, at 27, 29. In support of the new unit specific requirements in Section 6, EPA cited the monitoring, recordkeeping, and reporting requirements in 40 C.F.R. §§ 71.6(c)(1) and (a)(3). *Id.* at 29-36. Additionally, EPA set forth its factual basis for the permit conditions in its "Statement of Basis for Draft Part 71 Title V Permit, Los Mestenios Compressor Station Permit No. R6FOP-NM-04-R3-2023." Attachment 11 – Statement of Basis for Draft Part 71 Title V Permit. In regard to the new enforceable limits, EPA stated that "Harvest reported PTE in their Part 71 renewal permit application." and that "[t]he controlled emissions … are based on the legally and practicably enforceable requirements set forth in this draft renewal permit." *Id.* at 15. The Statement of Basis did not explain why the PTE for certain units was no longer "unregulated" and "for informational purposes."

Harvest submitted public comments on the Draft Permit on November 27, 2023. Harvest's comments addressed four key issues with the Draft Permit:

(1) EPA lacked authority to unilaterally impose new restrictions on the Facility's emissions;

(2) the Draft Permit included 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.

Attachment 1 – Harvest Comment Letter, at 2. Harvest requested that EPA revise the Draft Permit according to its comments. *Id.* EPA did not receive any other comments.

B. Final Title V Renewal Permit

On June 28, 2024, EPA issued the final Title V renewal permit ("Final Permit"). Attachment 12 – Final Permit. EPA did not make any substantive changes to the Draft Permit based on Harvest's comments—finalizing enforceable limits on the PTE of all the units, as well as associated MRR requirements for the condensate storage tanks, truck loading, planned SSM activities, and equipment leaks.

In a significant change from the 2017 Title V Permit—which only had "enforceable limitations on PTE" for NOx, VOC, and CO emissions from the Solar Saturn 1200 turbine—the Final Permit contains enforceable limits on the PTE of all of the Facility's units. Section 2 (Facility's Potential to Emit (PTE)) provides that that "[t]he Permittee shall operate all emissions units in accordance with the representations provided in the Title V permit application" and includes Table 4 which lists the "Facility PTE for Each Regulated Emission Unit." Attachment 12 – Final Permit. Notably, the Final Permit classifies all units as "regulated emission units" with enforceable limits on their PTE and will require Harvest to "calculate the total emissions in tons per year (tpy) for each pollutant listed in Table 4 for all emissions units at the Los Mestenios and report any amount above the values listed in Table 1 *as deviations of this permit.*" *Id.* at 6 (emphasis added).

The Final Permit also includes Section 6 (Emission Unit Specific Requirements), which lists the specific requirements for each emission unit, including enforceable emission limits as well as associated MRR requirements. *Id.* at 21-39. Specifically, EPA included emission unit specific enforceable requirements in Section 6 for 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)). For instance, Harvest "shall maintain and operate" the condensate storage tanks "as represented in the application, such that the VOC and HAP PTE for each tank as shown in Table 4 will not be exceeded." *Id.* at 31 (Condition 6.3.1.1). Similarly, Harvest is required to "demonstrate compliance with the VOC and HAP PTE for truck loading as summarized in Table 4 by operating truck loading operations such that the PTE emission rates are not exceeded." *Id.* at 33 (Condition 6.4.1.1). In addition, Section 6 includes detailed and specific monitoring, recordkeeping, and reporting requirements associated with the limits. *Id.* at 21-39.

EPA attempted to justify these new enforceable limits, as well as the associated MRR requirements, in two ways. First, EPA, for the first time, asserted that the Facility has had enforceable limits on its emissions since "an underlying NSR ... was incorporated into the initial Part 71 permit." Attachment 13 – Response to Comments, at 59. "When this Facility was initially permitted in 1996 with a minor NSR construction permit at the request of the Permittee, federally enforceable limits were established." *Id.* According to EPA, when it issued the first Title V Permit in 2003 to the Facility, that permit "incorporated by reference the emission units and emission limits from the 1996 NSR construction permit and identified the emission units and emission limits as applicable requirements." *Id.* Because "[t]hese emission units and emission limits calculated at maximum capacity [in the 1996 Minor NSR Permit] were incorporated into the 2003 Final Part 71 Permit as applicable requirements," EPA asserted that '[t]he calculated emission limits remain at maximum capacity, with no restrictions and at maximum operating utilization also known as PTE."

Id. at 63. For this reason, "[t]his Facility's PTE is its emission limit." *Id.* Therefore, "EPA disagrees with Harvest's comments that there were no underlying applicable requirements." *Id.* at 59. EPA's Response to Comments did not address its authority to issue the 1996 Minor NSR Permit, the fact that the 1996 Minor NSR Permit did not regulate any of the units for which EPA now purports to impose substantive requirements, or that EPA cancelled the 1996 Minor NSR permit in 2009. *Id.* Similarly, EPA did not explain why the PTE for certain units was no longer "unregulated" and "for informational purposes."

Second, EPA argued that because the emission limits are applicable requirements, it has an obligation to ensure the Title V permit has sufficient monitoring, recordkeeping and reporting requirements to assure compliance with all applicable requirements. EPA asserted "[t]he information contained in this [Response to Comments] shows that this final permit action is not 'imposing new substantive emission requirements and associated MRR requirements', as the commenter has asserted" and "is only implementing MRR for emission units that were added, at the request of the applicant, since the issuance of the 1996 construction permit." Attachment 13 – Response to Comments, at 62. "Since the current 2017 Part 71 permit does not assure compliance with the emission limits in the permit (due to the absence of MRRs)," EPA is addressing "these MRR deficiencies by adding the following MRR sections for the identified emission units currently operating at the Facility: 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." *Id.* at 64. In direct contravention of the CAA and Part 71, EPA explained that the "emissions from these emission units are a part of the Facility's PTE emissions limit, specifically the Facility's PTE at maximum design and operating conditions with no restrictions or controls." *Id.*

* * *

THRESHOLD PROCEDURAL REQUIREMENTS

In considering a petition filed under 40 C.F.R. § 124.19(a), the Board first evaluates whether the petitioner has met threshold procedural requirements such as timeliness, standing, issue preservation, and specificity. *See* 40 C.F.R. § 124.19; *In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006). Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. Part 124.

I. EPA's Final Permit Decision is Reviewable by the EAB

The Final Permit constitutes a "final permit decision" and is subject to appeal to the Board pursuant to 40 C.F.R. § 71.11(l)(1) and 40 C.F.R. § 124.19(a). For purposes of appeal, "a final permit decision means a final decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit." 40 C.F.R. § 71.11(i)(1). The Part 71 regulations grant the EAB authority to review petitions challenging federal Title V operating permit decisions issued by EPA. *Id.* § 71.11(l)(1).

II. Harvest's Petition for Review is Timely

Harvest timely appeals EPA's final permit decision under 40 C.F.R. § 71.11(i)(2)(ii) and 40 C.F.R. § 124.19(a)(3), which provides a 30-day window to file a petition for review. Harvest received the Final Permit on June 28, 2024 via electronic mail. Attachment 14 – EPA's June 28, 2024 Transmittal Letter. Thirty days from June 28, 2024, would be Sunday, July 28, 2024. Because Sunday, July 28, 2024, falls on a weekend, the deadline for filing of the petition for review is no later than Monday, July 29, 2024. *See* 40 C.F.R. § 71.11(m)(3) ("If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.").

III. Harvest Has Standing to Petition for Review

"Any person who filed comments on the draft permit . . . may file a petition for review as provided in this section." 40 C.F.R. § 124.19(a)(2). Harvest filed comments on the Draft Permit on

November 27, 2023. *See* Attachment 1 – Harvest Comment Letter. Thus, Harvest has standing to file this petition.

IV. The Issues Raised in this Petition Were Raised During the Public Comment Period

Finally, Harvest raises the same issues in this Petition as it did in its November 27, 2023 comment letter. Harvest's comments addressed four key objections to the Draft Permit, including the issues raised herein; namely, that EPA lacked the authority to impose new substantive limitations on the Facility's units, including limitations on emissions and associated monitoring, recordkeeping, and reporting requirements. *See* Attachment 1 – Harvest Comment Letter, at 4 ("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."); *id.* at 5 ("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.").

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. EPA raised this justification for the substantive limitations—namely, the incorporation of the 1996 Minor NSR Permit into the 2003 Title V Permit—for the first time in its Response to Comments document, issued simultaneously with the Final Permit. Attachment 13 – Response to Comments, at 59-64. Thus, Harvest could not have raised or commented on this issue. *See* 40 C.F.R. § 124.13 (commentors' duty to raise issues and arguments limited to "reasonably ascertainable issues" and "reasonably available arguments"); *In re Town of Ashland Wastewater Treatment Plant*, 2001 EPA App. LEXIS 28, at *6 (EAB 2001) ("[T]here is nothing in the regulations that constrains a petitioner's ability to raise issues [in its petition] that were not reasonably ascertainable during the comment period.").

ARGUMENT

EPA's final Title V permit decision imposing new, substantive conditions on the Facility's emissions units is clearly erroneous and an abuse of discretion, and EPA's justification for inclusion of these provisions is legally and factually infirm.

EPA does not have authority to use Title V permitting as a vehicle to create new, substantive requirements. Rather than applying Title V "as a vehicle for collecting diverse CAA requirements otherwise applicable to a source into one all-encompassing air permit," *In re Shell Offshore, Inc.*, 15 E.A.D. at 572, EPA is using Title V to impose emission limits and MRR requirements that are not tethered to any applicable requirement. EPA's decision raises serious concerns regarding the scope of EPA's Title V authority and sets precedent that raises important policy considerations that the Board should, in its discretion, review. *See* 40 C.F.R. § 124.19(a)(4)(i)(B).

First, contrary to EPA's newly asserted rationale in its Response to Comments, the 1996 Minor NSR Permit issued to Harvest's predecessor does not establish a predicate for imposition of substantive requirements because: (A) EPA lacked the authority to issue a minor source construction permit in Indian Country in 1996; (B) the 1996 Minor NSR Permit did not address any of the units for which EPA now purports to impose substantive requirements; and (C) EPA cancelled the 1996 Minor NSR Permit in 2009, rendering it ineffective and inapplicable.

Second, EPA cannot impose PTE limitations in Harvest's Title V permit because Title V is not the appropriate permitting program for establishing new enforcement limitations on a source's PTE and Harvest did not request that EPA impose such limits in the Title V permit.

Finally, EPA lacks the legal authority to impose the associated monitoring, recordkeeping, and reporting requirements in the Final Permit because the emissions limitations they are based on have no underlying applicable limits or standards.

For these reasons, Harvest respectfully requests that the Board determine that the Final Permit is clearly erroneous and abuse of discretion as it exceeds EPA's authority under Title V, and reverse and remand EPA's permitting decision with instructions to strike new substantive obligations that are not grounded in applicable requirements.

I. The Final Permit Includes Substantive Requirements that EPA Based on Clearly Erroneous Conclusions of Law

The Final Permit issued by EPA imposed new substantive requirements, including limitations on the each of the units' PTE, as well as associated MRR requirements. Specifically, EPA has imposed new enforceable limits on emissions from each of the units at the Facility in Table 4, as well as in the emission unit specific requirements (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)). These permit provisions are a significant departure from the 2017 Title V Permit and are not based upon, or associated with, any underlying applicable requirements. Because EPA lacked legal authority to impose the new substantive requirements and associated MRR requirements, EPA's Final Permit was based on clearly erroneous conclusions of law.

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

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. There have been no construction permits issued or new applicable federal standards promulgated since 2017. And yet the Final Permit includes enforceable emission limits on all equipment at the Facility and imposes new MRR obligations. EPA is treating Harvest's Title V permit not as an umbrella permit "consolidat[ing] 'existing air pollution requirements into a single document," *United States Sugar Corp.*, 830 F.3d at 597 (quoting *Sierra Club v. Leavitt*, 368 F.3d at 1302), but as a vehicle to impose new, substantive obligations. EPA's action runs contrary to its own

guidance and precedent from this Board, which provides that Title V "does not independently establish its own emission standards." *In re Peabody Western Coal Co.*, 12 E.A.D. 22, 27 (EAB 2005); *see also* Operating Permit Program, 57 Fed. Reg. at 32,251. This finding is in accord with numerous appellate courts. *See, e.g., Ohio Pub. Interest Research Grp., Inc.*, 386 F.3d at 794 ("Title V *does not impose new obligations* rather, it consolidates pre-existing requirements into a single, comprehensive document. . . ." (emphasis added)); *Sierra Club v. Ga. Power Co.*, 443 F.3d at 1348; *United States Sugar Corp.*, 830 F.3d at 597. EPA's decision to issue the Final Permit therefore exceeds its authority and should be reversed.

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*." (emphasis added). 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. at 572. EPA has no independent authority to unilaterally include emission limits in Title V permits and "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)." Operating Permit Program, 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 emissions limit, EPA is without authority to impose one.

Here, Harvest did not request any emissions limits or caps, it has not modified the facility in a manner that would trigger preconstruction permitting, and there are no other applicable requirements such as federal new source performance standards or hazardous air pollutant

standards. Yet EPA—for the first time ever—asserts in the Final Permit that all emissions units are regulated (Table 2) and imposes enforceable limits on the emissions from each of the units at the Facility (Table 4). *See* Attachment 12 – Final Permit, at 4-5 (Table 2), 6-7 (Table 4). Specifically, the Final Permit will require Harvest to "calculate the total emissions in tons per year (tpy) for each pollutant listed in Table 4 for all emissions units at the Los Mestenios and report any amount above the values listed in Table 1 as deviations of this permit." *Id.* at 6. To further enforce these limits, EPA included emission unit specific requirements in Section 6 for 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)). For instance, Harvest "shall maintain and operate" the condensate storage tanks "as represented in the application, such that the VOC and HAP PTE for each tank as shown in Table 4 will not be exceeded." *Id.* at 31 (Condition 6.3.1.1). Similarly, Harvest is required to "demonstrate compliance with the VOC and HAP PTE for truck loading as summarized in Table 4 by operating truck loading operations such that the PTE emission rates are not exceeded." *Id.* at 33 (Condition 6.4.1.1).

In support of these requirements, EPA cites its authority to include monitoring, recordkeeping, and reporting requirements in 40 C.F.R. §§ 71.6(c)(1) and (a)(3) to assure compliance with the terms of the permit. But new monitoring, recordkeeping, and reporting requirements are not, by themselves, underlying applicable requirements. *See* 40 C.F.R. § 71.2. These MRR provisions must be tied to underlying applicable requirements. *Id.* § 71.6(a)(3)(i) (describing that these provisions in a Title V permit may only be included when they are "consistent with the applicable requirement," "required under applicable monitoring and testing requirements," and there are "applicable recordkeeping requirements"); *see also id.* § 71.6(c) (only allowing for additional "compliance certification, testing, monitoring, reporting, and recordkeeping requirements *sufficient to assure compliance with the terms and conditions of the permit*." (emphasis added)). Because EPA may only

include "applicable requirements" in the Title V permit, EPA is without authority to impose the new emissions limitations on the each of the units' PTE, as well as associated MRR requirements.

B. The 1996 Minor Source NSR Permit Does Not Provide a Basis for EPA to Include Substantive Requirements in the Final Permit

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.

EPA asserts in the Response to Comments that "[w]hen this Facility was initially permitted in 1996 with a minor NSR construction permit . . ., federally enforceable limits were established" and "the 2003 initial Part 71 Final Permit issued to the Facility incorporated by reference the emission units and emission limits from the 1996 NSR construction permit[.]" Attachment 13 – Response to Comments, at 59. The 1996 Minor NSR permit regulated emissions from four units: the Solar Saturn Turbine, an engine, and two heaters. Attachment 5 – 1996 Minor NSR Permit, at 4. The emissions limits in the permit were equal to the Facility's PTE. In other words, the four units' emission were capped at their PTE, with no restrictions on capacity utilization or hours of operation. *See* Attachment 13 – Response to Comments, at 59.

For numerous reasons, the 1996 Minor NSR permit does not authorize EPA to impose new enforceable limitations on the unit's emissions. EPA did not have the authority to issue the 1996 Minor NSR permit in the first place, the permit was subsequently cancelled in 2009, and regardless, the NSR permit did not regulate any of the emissions units that EPA now attempts to regulate in the Final Permit.

1. *EPA Lacked Authority to Issue the 1996 Minor NSR Permit*

First, 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* Attachment 5 – 1996 Minor NSR 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.

In 1996, EPA did not have a program in place for issuance of the minor NSR permit. EPA did not establish rules for minor source NSR permitting on tribal lands until 2011, when it issued the 2011 Minor Source Rule, Review of New Sources and Modifications in Indian Country, 76 Fed. Reg. at 38, 748. The 2011 Minor Source Rule "establish[ed] a preconstruction permitting program for new or modified minor sources, minor modifications at major sources and new major sources or major modifications in nonattainment areas," as well as "a minor source permitting mechanism for major sources that wish to voluntarily limit emissions to become synthetic minor sources" within Indian Country. *Id.* at 38,749-50. "Prior to [that] action, there [was] no federal permitting mechanism for minor sources in Indian country." *Id.; see also In re Anadarko Uintah Midstream, LLC*, 17 E.A.D. 656, 660 (EAB 2018) ("No NSR permitting mechanism for [minor] sources in Indian country existed [prior to 2011].").

To address the "regulatory gap," Review of New Sources and Modifications in Indian Country, 76 Fed. Reg. at 38,753, EPA promulgated the regulations at 40 C.F.R. § 49.151 through § 49.165 (minor NSR program) and 40 C.F.R § 49.166 through § 49.175 (nonattainment major NSR program). *Id.* at 38,753. Had those provisions been in place in 1996, they would have applied to the Facility. However, at that time, EPA had no program in place for issuance of the 1996 Minor NSR permit and thus, EPA lacked authority to issue the permit.

2. *EPA Cancelled the 1996 Minor NSR Permit*

Second, 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.

In 2009, EPA issued a Title V renewal permit to Williams Four Corners, LLC. As the Statement of Basis makes clear, EPA "[i]ncorporate *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." Attachment 6 – 2009 Title V Permit Statement of Basis, at 2 (emphasis added). EPA also noted that "[t]he construction permit for Williams Four Corners, LLC, Los Mestenios 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.* at 18 (emphasis added).

Because EPA incorporated all applicable requirements into the 2009 Title V permit and cancelled the 1996 Minor NSR permit, the 1996 Minor NSR Permit is ineffective and no longer constitutes an "applicable requirement" to be incorporated into a Title V permit.

3. *The 1996 Minor NSR Permit Does Not Address the Regulated Units in the Final Permit*

Third, even if the 1996 permit were valid and had not been subsequently cancelled, it did not address any of the units EPA now purports to regulate. The 1996 Minor NSR 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." Attachment 5 – 1996 Minor NSR Permit, at 4. Table 1 lists the Solar Saturn Turbine, an engine, and two heaters, **but does not include the condensate storage tanks, truck loading, planned SSM activities, and equipment leaks**. *Id.* at 9.

While EPA is correct that the 2003 Title V Permit incorporated by reference the noted provisions of the New Source Review permit, the 2003 Title V Permit did not impose any

enforceable emissions limits on those units that were listed in 1996 Minor NSR Permit. *See* Attachment 2 – 2003 Title V Permit. As the later 2009 Title V Permit and Statement of Basis makes clear, "**the Potential to Emit provided in the permit as well as in this statement of basis is for informational purposes only**, except where specifically noted as limited." Attachment 6 – 2009 Title V Permit Statement of Basis, at 8 (emphasis added). In the 2009, 2010, and 2017 Title V permits only certain emissions (NO_X, VOC, and CO) from a single unit (the Solar Saturn 1200 turbine) were subject to "enforceable limitations on PTE." Thus, EPA does not have the authority to impose the additional PTE limitations and related MRR requirements on the other units in the Final Permit, as they are substantive requirements beyond what is required under the CAA.

C. EPA Has Not Identified Any Other Authority for Limiting PTE

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. While EPA asserts that the "Facility's PTE provided by the Permittee in the renewal application is what is in the final permit action in Table 4 with no alterations, restriction or controls," Attachment 13 – Response to Comments, at 63, Harvest supplied that PTE for informational and applicability purposes only. EPA cannot turn the Facility's PTE into enforceable emission limitations without some underlying justification in the CAA.[4]

EPA defines "potential to emit" throughout the CAA regulations as "the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design." *See* 40 C.F.R. §§ 49.123, 49.152, 51.165(a)(1)(iii), 51.166(b)(4), 52.21(b)(4), 52.40(b), 70.2; *see also*

[4] Although a source can request a cap on its emissions to qualify as a synthetic minor source, *see* 40 C.F.R. § 49.158, Harvest and EPA agree that that "was not the case for this Facility." Attachment 13 – Response to Comments, at 64.

Memorandum, April 14, 1998, "Potential to Emit (PTE) Guidance for Specific Source Categories." EPA's Part 71 regulations implementing Title V do not define potential to emit. Thus, a source's PTE is not itself an enforceable limit; instead, it is used to determine whether a source is classified as a major or minor source. *See* 40 C.F.R. § 49.152(d). An exception to this occurs when a source otherwise qualifying as a major source agrees to limit its PTE through federally enforceable limitations so that it may qualify as a synthetic minor source and avoid major source permitting. *See, e.g.*, *In re Peabody Western Coal Co.*, 12 E.A.D. at 32 (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). Because Los Mestenios has a PTE (i.e., operating at its maximum capacity) that is less than PSD major source thresholds, Harvest would have no need to request a limit on its PTE to qualify as a synthetic minor source.

Furthermore, the federal minor new source review program in Indian Country—and not Part 71—is the appropriate program for restricting a facility's PTE. 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 id.* § 49.158(b)(1); *see also* Operating Permit Program, 57 Fed. Reg. at

[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. Review of New Sources and Modifications in Indian Country, 76 Fed. Reg. at 38,769.

32,279 ("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)).

Harvest did not "wish to obtain a synthetic minor source permit" or "submit a permit application" with proposed emission limitations, *see* 40 C.F.R. § 49.158(b)(1), and therefore EPA cannot unilaterally create such limits. Operating Permit Program, 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."). Only when a permittee specifically requested that the EPA limit their PTE in order qualify as a "synthetic minor" source are such limits and associate monitoring requirements appropriate. *See In re Peabody Western Coal Co.*, 12 E.A.D. at 32 (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. at 551-52 (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). 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 and monitoring and reporting requirements in the Final Permit.

D. EPA Lacks the Authority to Impose MRR Requirements in the Title V Permit

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. *See* 40 C.F.R. § 71.6(a)(1).

As EPA acknowledges, the CAA "states that Title V permits must include monitoring requirements sufficient to assure compliance with *applicable emission limits and standards*." Attachment 13 – Response to Comments, at 60 (citing 42 U.S.C. § 7661c(c)) (emphasis added). While EPA may place some monitoring and related recordkeeping provisions into a Title V permit, EPA can only do so 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. § 71.6(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*." *Id.* § 76.1(c) (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. 536 F.3d at 680 (citing 40 C.F.R. § 70.6(c), which provides almost identical language to 40 C.F.R. § 71.6(c) and 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 ensuring compliance with a pre-existing applicable requirement. As discussed above, there are no legally enforceable "underlying applicable requirements" (including in the 1996 Minor NSR Permit) that form the basis for EPA's imposition of these MRR requirements in the Final Permit.

EPA also states that since the 1996 Minor NSR Permit was issued, "there has been subsequent additions of emission units and changes to the Facility's PTE without the corresponding

additions of MRR for these added emission units and emission rates to assure compliance." Attachment 13 – Response to Comments, at 64. But EPA ignores the fact that despite these units being added to the Facility after 1996, there are no applicable emission limits for these additional emission units. The 1996 Minor NSR Permit does not regulate these units, and EPA has not identified any other source of authority for limiting emissions from these units.

Therefore, EPA's imposition of new, substantive requirements in the Title V permit is based on clearly erroneous conclusions of law. The Board should reverse EPA's permitting decision and remand to EPA to issue a permit without the emissions limitations and MRR requirements.

CONCLUSION

Harvest respectfully requests that the Board find that EPA's imposition of substantive requirements (and associated MRR requirements) in the Title V permit was based on conclusions of law that are clearly erroneous as well as an abuse of discretion, and that this appeal implicates important policy considerations that the Board should, in its discretion, review. *See* 40 C.F.R. § 124.19. Harvest respectfully requests that the Board order EPA to rescind the Final Permit, and remand to EPA for issuance of a new Title V permit that does not contain the emissions limitations and associated MRR requirements. Specifically, Harvest requests that EPA:

- Revise "Table 1: Part 71 Permit History" in Section 1 to note that EPA cancelled the 1996 Minor NSR Permit as part of the 2009 permit renewal.
- Revise Table 2 in Section 1 to note that only the Solar Saturn Turbine and emergency generator are regulated emissions units.
- Revise Section 2 and Table 4 to note that only emissions of NO_X, VOC, and CO from the Solar Saturn Turbine have regulated emissions with enforceable limitations on their PTE. Clarify that for all other emissions units, the potential to emit was "unregulated" and "for informational purposes."

- Remove the Emission Unit Specific Requirements for 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.

Date: July 29, 2024

/s/ Emily C. Schilling

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STATEMENT OF COMPLIANCE WITH WORD LIMITATION

The Petition for Review is 9,630 words in length and complies with the word limitation of 14,000 words in 40 C.F.R. § 124.19(d)(3).

/s/ Emily C. Schilling

LIST OF ATTACHMENTS

Attachment 1 – Harvest Comment Letter, EPA-R6-OAR-2023-0250-0016

Attachment 2 – 2003 Title V Permit, EPA-R6-OAR-2023-0250-0010, Attachment 17

Attachment 3 – 2017 Title V Permit, EPA-R6-OAR-2023-0250-0010, Attachment 8

Attachment 4 – Harvest's February 4, 2022 Application, EPA-R6-OAR-2023-0250-0010, Attachment 5

Attachment 5 – 1996 Minor NSR Permit, EPA-R6-OAR-2023-0250-0010, Attachment 15

Attachment 6 – 2009 Title V Permit Statement of Basis, EPA-R6-OAR-2023-0250-0010, Attachment 3

Attachment 7 – 2009 Title V Permit, EPA-R6-OAR-2023-0250-0010, Attachment 16

Attachment 8 – August 30, 2023 Draft Part 71 Permit

Attachment 9 – September 30, 2023 Draft Part 71 Permit

Attachment 10 – October 25, 2023 Draft Part 71 Permit, EPA-R6-OAR-2023-0250-0002

Attachment 11 – Statement of Basis for Draft Part 71 Title V Permit, EPA-R6-OAR-2023-0250-0002, Attachment 1

Attachment 12 – Final Permit, EPA-R6-OAR-2023-0250-0019

Attachment 13 – Response to Comments, EPA-R6-OAR-2023-0250-0018, Attachment 1

Attachment 14 – EPA's June 28, 2024 Transmittal Letter, EPA-R6-OAR-2023-0250-0024

Attachment 15 – 2010 Title V Permit, EPA-R6-2023-0250-0010, Attachment 1

Attachment 16 – October 3, 2023 Correspondence from Harvest to EPA, EPA-R6-2023-0250-0009, Attachment 5

Attachment 17 – October 13, 2023 Letter from Harvest to EPA, EPA-R6-2023-0250-0009, Attachment 8

Attachment 18 – September 6, 2023 Letter from Harvest to EPA, EPA-R6-2023-0250-0009, Attachment 3

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Harvest Four Corners LLC's Petition for Review of Permit No. R6FOP-NM-04-R3-2023 were served by electronic filing, commercial delivery service, and electronic mail to the following persons, the 29th day of July, 2024:

Emilio Cortes
U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Via EAB eFiling System

Earthea Nance
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/s/ Aaron B. Tucker
Aaron B. Tucker

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