

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF)
)
Clean Air Act Title V Operating Permit)
Renewal)
)
Issued to Harvest Four Corners LLC for the) Title V Permit No. P030-R5
32-9 Central Delivery Point)
)
Issued by the New Mexico Environment)
Department, Air Quality Bureau)
)

**PETITION TO OBJECT TO CLEAN AIR ACT TITLE V OPERATING PERMIT
RENEWAL FOR HARVEST FOUR CORNERS LLC'S
32-9 CENTRAL DELIVERY POINT**

Pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Center for Biological Diversity (“Center” or “Petitioner”) petitions the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to object to the renewed Title V Operating Permit (“Title V Permit”), Permit Number P030-R5, issued by the New Mexico Environment Department, Air Quality Bureau (“NMED”) authorizing Harvest Four Corners LLC (“Harvest”) to operate the 32-9 Central Delivery Point (“32-9 CDP”) in San Juan County in northwestern New Mexico.¹

The Center for Biological Diversity petitions the Administrator to object because NMED failed to require sufficient periodic monitoring of air pollution and because the Title V Permit sets forth an affirmative defense that is contrary to applicable requirements.

THE 32-9 CENTRAL DELIVERY POINT

The 32-9 Central Delivery Point is an oil and gas processing facility located in northwestern New Mexico. The facility receives, dehydrates, and compresses gas for pipeline transmission, utilizing three large dehydrators to process gas and five large engines to compress and transmit gas. Sources of emissions at the facility include the engines and dehydrators, as well as produced water tanks, truck loading of liquids, and equipment gas leaks. The facility is a major source of nitrogen oxides (“NO_x”), a key ozone precursor pollutant, and a large of volatile

¹ Harvest Four Corners is an affiliate of Hilcorp, a large privately owned oil and gas company that was recently the subject of enforcement under the Clean Air Act by the EPA for extensive air quality violations at its operations in northwestern New Mexico. See <https://www.epa.gov/enforcement/hilcorp-energy-company-new-mexico-clean-air-act-stationary-source-settlement>.

organic compounds (“VOCs”), which are also ozone precursors and include a suite of toxic gases that are known to be directly harmful to public health and the environment.

PETITIONER

The Center for Biological Diversity is a nonprofit, 501(c)(3) conservation organization. The Center’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

PROCEDURAL BACKGROUND

NMED provided notice and a 30-day opportunity for public comment on the draft Title V Permit renewal and associated draft statement of basis (“SOB”) for the 32-9 CDP in April 2024. The Center submitted timely and significant comments on the draft Title V Permit renewal on May 24, 2024. *See* Exhibit 1, Center for Biological Diversity Comments on Draft Title V Permit Renewal for 32-9 CDP (May 24, 2024). NMED responded to the Center’s timely and significant comments on August 2, 2024. *See* Exhibit 2, New Mexico Air Quality NMED, “Response to Comments (RTC): On Draft-Proposed P030-R5 for 32-9 Central Delivery Point, Harvest Four Corners, San Juan County, NM” (Aug. 2, 2024).

NMED subsequently forwarded the proposed Title V Permit Renewal to EPA for its 45-day review period. This 45-day review period ended September 17, 2024. The EPA did not object to the issuance of the proposed Title V Permit renewal. NMED issued the final Title V Permit and final SOB on October 17, 2024. *See* Exhibit 3, Final Title V Permit (Oct. 17, 2024), and Exhibit 4, Final SOB (Oct. 17, 2024).

Pursuant to 42 U.S.C. § 7661d(b)(2), this petition is now timely submitted within 60 days following a lack of objection from the EPA during the agency’s 45-day review period.

GENERAL TITLE V PERMITTING REQUIREMENTS

The Clean Air Act prohibits qualifying stationary sources of air pollution from operating without or in violation of a valid Title V permit, which must include conditions sufficient to “assure compliance” with all applicable Clean Air Act requirements. 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). “Applicable requirements” include all standards, emissions limits, and requirements of the Clean Air Act, including all requirements in an applicable implementation plan. 40 C.F.R. § 70.2. Congress intended for Title V to “substantially strengthen enforcement of the Clean Air Act” by “clarify[ing] and mak[ing] more readily enforceable a source’s pollution control requirements.” S. Rep. No. 101-228, at 347, 348 (1990),

as reprinted in A Legislative History of the Clean Air Act Amendments of 1990, at 8687, 8688 (1993). As EPA explained when promulgating its Title V regulations, a permit should “enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(1), (c)(1).

Under the Clean Air Act, “any person” may petition EPA to object to a proposed permit “within 60 days after the expiration of [EPA’s] 45-day review period.” 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8. Each objection in the petition must have been “raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” 40 C.F.R. § 70.8(d). Any objection included in the petition “must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements [of 40 C.F.R. Part 70].” 40 C.F.R. § 70.12(a)(2).

Upon receipt of a petition, EPA “shall issue an objection within [60 days] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661d(b)(2) (emphasis added); *see also* 40 C.F.R. § 70.8(c) (“The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.”).

GROUNDINGS FOR OBJECTION

For the reasons set forth below, the Administrator must object to NMED’s issuance of the Title V Permit for the 32-9 CDP.

I. The Title V Permit Fails to Ensure Sufficient Periodic Monitoring of VOC Emissions During Startup, Shutdown, Maintenance, and Malfunctions

Condition A107 of the Title V Permit establishes an 11.2 tons per year VOC emission limit for venting gas during periods of startup, shutdown, and maintenance (“SSM”) and during malfunctions (hereafter, “SSM/M”). Unfortunately, the Title V Permit does not set forth sufficient periodic monitoring that assures compliance with this VOC limit at all times. Consequently, the Condition is not enforceable as a practical matter and contrary to Title V requirements that permits set forth monitoring sufficient to assure compliance.

Petitioner raised this objection with reasonable specificity on pages 1-3 of the technical comments submitted as part of its overall comment submission. *See* Exhibit 1.

It is first unclear what instances of venting are actually subject to Condition A107 of the

Title V Permit. Condition A107.A sets forth the applicable limit, describing the emissions as “Venting of Gas Due to SSM and Malfunction.” This appears to set forth an extremely broad description of the activities subject to the SSM/M limit, essentially including any and all venting at the 32-9 CDP that occurs as a result of startup, shutdown, maintenance, and malfunction. Given this, it is not possible to understand how the applicable limit applies and how Harvest will monitor and assure compliance.

In response to comments on this issue, NMED asserts, “The SSM/M are from compressor blowdowns only.” Exhibit 2, Response to Comments at 2. NMED continues, “This is how Condition A107 was written, A107.C even specifies compressor blowdowns in the title of the condition, and the calculations equation in the requirement section is only for compressor blowdowns.” *Id.* While the title of Condition A107.C may refer to compressor blowdowns, the Condition simply provides a “Method for Determining Compliance” in relation to compressor blowdown venting. This does not mean that the entirety of Condition A107 applies only to compressor blowdowns, simply that the permit provides a method for determining compliance when venting is the result of compressor blowdowns.

As plainly written, Condition A107 broadly applies to all “Venting of Gas Due to SSM and Malfunction.” If, as NMED asserts, Condition A107 only applies narrowly to SSM/M emissions that result from compressor blowdowns, then Condition A107 needs to be written to expressly state this. It is not sufficient for Condition A107.C to make a reference to compressor blowdowns in relation to methods for determining compliance as a basis for interpreting the permit to mean that the SSM/M emission limit at Condition A107 only applies to instances of compressor blowdown venting.

Regardless, presuming that the SSM/M VOC limit set forth at Condition A107 only applies to venting during compressor blowdowns, the Title V Permit does not set forth sufficient periodic monitoring that assures compliance with the applicable limit.

The Title V Permit sets forth the “method” for determining compliance at Condition A107.C. The “Requirement” Section of Condition A107.C provides the “Calculation Methodology for Determining Compliance,” stating in paragraph (1)(e) that, “For each SSM/M event, [Harvest] shall calculate the emissions from each resulting from the event. The calculation shall be performed using the example calculations below[.]”. The “calculations below” state that Harvest must calculate SSM/M VOC emissions from engines using the equation, “[6,804 scf/event] x [866 events/yr/unit] x [No. of units] x [VOC emission factor lb/scf] / [2,000 lb/ton] = VOC emissions per year/unit,” where the VOC emission factor is calculated based on the extended gas analysis required by paragraph (1)(a) of the “Requirement” Section of Condition A107.C.

When commenting on the draft Title V Permit, Petitioner raised concerns that, although the “example” equation at paragraph (1)(e) of the “Requirements” Section of Condition A107.C requires the input of the volume of gas vented, that the permit did not set forth any method or methods for accurately measuring the volume of gas vented during SSM/M events. As Petitioner commented:

Nowhere does the draft Title V explain how the volume of gas vented during SSM and malfunctions will be accurately measured for purposes of reliably utilizing the example formulas in Condition A107.C(1)(e). Although the ‘Recordkeeping’ requirements in Condition A107.C state that Harvest ‘shall keep records of [] the volumetric total gas vented in scf or MMscf,’ it is not clear what methods will be used to record volume of gas vented and whether those methods will yield reliable data necessary to assure compliance.

Exhibit 1, Center Technical Comments at 1-2. When commenting on the draft Title V Permit, Petitioner was under the impression that the “example calculation” set forth at Condition A107.C was meant to be a placeholder, and that the numeric variables, namely the volume of 6,804 standard cubic feet (“scf”)/event were simply placeholders and that accurate data, including accurate volumetric data, would be entered as necessary to assure compliance.

In response to comments, however, NMED responded that the “example” equation in the “Requirements” Section at paragraph (1)(e) of Condition A107.C, including the numeric values, was actually intended to be the formula for calculating SSM/M emissions at all times. NMED further responded that the volume figure of “6,804 scf/event” was intended to be the sole authoritative number to assume when calculating emissions. In other words, NMED asserted that for every instance of SSM/M emissions, the volume of gas released would be 6,804 scf/event. As NMED explained:

There are physical limitations on how much gas can be vented from a compressor unit in an individual blowdown event, because compressors have design limitations and contain known volumes of gas. And in the case of the five compressors at this facility that volume is 6804 scf (standard cubic feet) per compressor.

Exhibit 2, Response to Comments at 2. This response to Petitioner’s concerns is unsupported.

The basis for NMED’s response appears to be twofold: First, that SSM/M emissions are “predictable” and second, that the 11.2 ton/year limit is based on a “worst-case” calculation of potential SSM/M emissions. Taken together, NMED appears to assume that the Title V Permit does not even need to require monitoring of the volume of gas vented during SSM/M events because the volume of gas vented will always be 6,804 scf/event. This assumption is misplaced.

For one, NMED’s assertions are based on an implicit acknowledgement that there are no physical limitations on venting during SSM/M, simply limitations based on when Harvest chooses to vent. In response to comments, NMED states that the 32-9 CDP has “866 events/year/unit. This makes for 2.4 blowdowns per day.” Exhibit 2, Response to Comments at 2. This is not a physical limitation on the equipment, this is an estimate on how often Harvest may choose to conduct compressor blowdowns and vent gas for SSM/M purposes. This is confirmed by Harvest’s Title V permit renewal application, which estimated the number of blowdown events based on “historical operations.” Exhibit 5, Application to Renew Title V Operating Permit P030-R4-M1 (A.I. No. 1226) Harvest Four Corners, LLC—32-9 Central Delivery Point (October 6, 2022) at .pdf p. 40; *see also* Exhibit 6, Update to Application to Renew Title V Operating Permit P030-R4-M1 (A.I. No. 1226) Harvest Four Corners, LLC—32-

9 Central Delivery Point (April 17, 2024) at .pdf p. 12.² While Harvest may have estimated that the likely number of blowdowns would be 866 per year, there is no actual physical constraint, and certainly no federally enforceable limit on the number of blowdowns, that prevents the company from undertaking additional compressor blowdowns.

In spite of this, NMED claims, “there are physical limitations on how much gas can be vented from a compressor unit during the time of a blowdown. Compressors have design limitations and contain known (maximum) volumes of gas.” Exhibit 2, Response to Comments at 2. This is not supported by Harvest’s application.

According to Harvest’s application for its Title V Permit renewal, each engine has a maximum gas throughput of 11,277 scf/hour, meaning that each engine has the physical potential to vent up to 11,277 scf/hour. *See* Exhibit 5, Title V Permit Renewal Application at .pdf p. 24. If each blowdown event regularly releases 6,804 scf, this means that Harvest would only be venting a little more than half of its hourly potential throughput per event. Indeed, venting 6,804 scf would equate to venting for 36 minutes at maximum throughput, much less than the maximum throughput capacity. At 2.4 events/day, this would amount to 86.4 minutes of venting/day, or 1.44 hours/day. This would amount to 525.6 hours/year, which is 6% of the 8760 hours the engines are authorized to operate. This means that any limitation on venting is due to Harvest choosing not to vent or to otherwise limit venting, not due to a physical limitation, as asserted by NMED, and certainly not due to any engine design limitation.

This is reinforced by NMED’s response to comments.

Petitioner commented that, “Nothing in the permit actually prohibits Harvest from venting 24 hours a day, seven days a week, 365 days a year under the guise of ‘maintenance.’ Although it appears Harvest assumed the venting of 6,804 scf of gas per SSM event, there are no limits on the duration of or frequency of events such that this assumption will be valid at all times.” Exhibit 1, Center Technical Comments at 2. In response, NMED stated:

Your statement that Harvest could be venting 24 hours a day, seven days a week, 365 days a year potentially means the compressor station would not be serving its purpose, meaning Harvest would not be moving any gas down the pipelines, no gas to other facilities and no gas to consumers, and that Harvest is wasting its own money and resources non-stop year long.

Exhibit 2, Response to Comments at 3. As is clear by NMED’s response, there are no physical limitations on venting, just a belief that excessive venting means the compressor station “would not be serving its purpose” and that Harvest would be “wasting its own money and resources.” However, just because excessive venting may be bad for Harvest’s business does not mean that it is physically incapable of occurring.

Regardless, Harvest’s application confirms that the 6,804 scf/event volume was not based on any physical or design limitation for the engines. According to the application, the volume of

² Harvest submitted its original Title V Permit renewal application in October 2022. Harvest apparently submitted an update to this application in April 2024. Both submissions are attached to this Petition as exhibits.

gas vented during blowdown events was “determined by Harvest engineering.” Exhibit 5, Title V Permit Renewal Application at .pdf p. 40; *see also* Exhibit 6, Update to Application at .pdf p. 12. There is no explanation or further detail provided on the actual methods that “Harvest engineering” may have utilized to determine the volume of gas vented during blowdowns, which appears to indicate the 6,804 scf/event estimate is simply an educated guess based on past operations. It is not an estimate based on any “worst-case” analysis and certainly not an estimate based on actual physical or design limitations.

While venting 24 hours a day 365 days a year is an extreme example of worst-case potential SSM/M venting at the 32-9 CDP, the point is that there are no limits, whether physical limits or federally enforceable limits, in place to actually prevent Harvest from venting more than 6,804 scf per SSM/M event. There are simply no actual limits set forth in the Title V Permit on the volume of gas that can be vented, including limits on the duration and frequency of SSM/M venting events, meaning the 6,804 scf per SSM/M event is not a legitimate assumption for purposes of assuring compliance with the 11.2 ton per year VOC limit.

This is underscored in relation to malfunctions, which are inherently unpredictable. As NMED states in its response to comments, “The Malfunction emissions are harder to predict, since they are unexpected events at the facility.” Exhibit 2, Response to Comments at 2. The Title V Permit explicitly states that a malfunction “means any sudden and unavoidable failure of air pollution control equipment or process equipment beyond the control of the owner or operator, including malfunction during startup or shutdown.” Exhibit 3, Title V Permit at Condition B109.E(3). It is impossible to reconcile the unpredictability and unavoidable nature of malfunctions with the claim that any and all malfunction events will not release more than 6,804 scf/event, as NMED asserts.

In spite of this, NMED states that because SSM and malfunction emissions are “combined,” that malfunction emissions are “considered predictable.” Exhibit 2, Response to Comments at 2. This response makes no sense, but it also appears that NMED believes that even during a malfunction event, the maximum amount of gas that could ever possibly be vented is 6,804 scf. There is no support for this assumption and it appears undercut by Harvest’s own application materials.

In Harvest’s October 2022 application, the company presented its estimations of both SSM and malfunction emissions. For SSM, the company estimated the number of blowdown events per year per unit, estimated that 6,800 scf/event of gas would be vented and that total VOC emissions would be 1.2 tons/year. *See* Exhibit 5, Title V Permit Renewal Application at .pdf p. 46. For malfunctions, Harvest provided no details regarding any activity levels, such as number of events and estimated volume of gas vented, but rather simply stated that uncontrolled vented VOC emissions during malfunctions would amount to 10 tons/year. *Id.* at .pdf p. 74. The calculation of potential malfunction VOC emissions did not actually consider any gas volume estimates, estimated number of events, or any other such recurring activity data, likely for one reason: malfunctions are not predictable.³

³ It is telling that under NMED’s permitting policies, malfunction emissions may be permitted for only up to 10 tons per year per pollutant. *See* Exhibit 7, NMED, “Implementation Guidance for Permitting SSM Emissions and Excess Emissions” (June 2012), available online at <https://www.env.nm.gov/wp->

In Harvest's 2024 update to its 2022 application, the company merged SSM and malfunction venting emissions into a single category, SSM/M, and estimated total VOC emissions to be 11.21 tons/year, essentially the same amount of emissions estimated in the 2022 application. However, the updated calculation contains inexplicable changes between the submissions. For example, Harvest appears to have calculated emissions using the methodology for calculating SSM emissions, which considered an estimated number of events per year and estimated volume of gas vented per event, yet claims to include malfunctions, which are not predictable.⁴ Further, while the estimated volume of gas vented per event remained virtually unchanged at 6,804 scf/event, the VOC emission factor and number of events both increased more than threefold, yet total VOC emissions remained at 11.2 tons/year. This means that either the number of malfunction events somehow decreased substantially and the number of SSM events somehow increased substantially, or the duration of SSM/M events decreased. Either way, there is no explanation as to the discrepancy between the 2022 and 2024 submissions and no explanation as to how Harvest accurately estimated malfunction emissions.⁵ Certainly nothing in Harvest's 2024 update suggests that malfunctions are predictable, as NMED claims.

All this continues to point to the fact that because the Title V Permit fails to set forth any monitoring of the actual volume of gas vented during SSM/M, the Permit does not set forth monitoring that assures compliance with the 11.2 ton per year VOC limit for emissions vented during SSM/M. It is telling that the Title V Permit explicitly acknowledges that monitoring of the volume of vented gas is necessary for compliance determinations. In the "Recordkeeping" Section of Condition A107.C, paragraph (1)(ii) requires Harvest to "keep records of [] the volumetric total gas vented in scf or MMscf." Although the Title V Permit does not set forth any method for accurately monitoring and recording the volume of gas vented, this requirement nevertheless underscores that accurate measurements of vented gas volume are necessary to assure compliance.

The EPA has already objected to virtually identical SSM/M VOC venting limits in other Title V permits approved by NMED for oil and gas processing facilities. *See In the Matter of Lucid Energy Delaware, LLC, Frac Cat Compressor Station and Big Lizard Compressor Station*, Order on Petition Nos. VI-2022-05 and VI-2022-11 (Nov. 16, 2022) at 15-19; *In the Matter of XTO Energy Inc., Wildcat Compressor Station*, Order on Petition No. VI-2023-4 (Aug. 7, 2023) at 19-21 ("*Wildcat Order*"). In these Title V objections, the EPA specifically ruled that because

[content/uploads/sites/2/2017/06/AQBP_SSM_PERMITTING_IMPLEMENTATION_GUIDANCE_07Jun12.doc](#). It appears most likely that Harvest estimated malfunction VOC emissions to be up to 10 tons/year simply because of NMED's policy of permitting malfunction emissions up to 10 tons per year.

⁴ Harvest acknowledges the unpredictability of malfunction events, claiming that while its estimates include "malfunctions and upsets," such events are "unscheduled." Exhibit 6, Update to Application at .pdf p. 12.

⁵ This discrepancy also appears to defy applicable requirements. As the Title V Permit notes in Condition A107, the underlying new source review ("NSR") permit for the 32-9 CDP is NSR Permit No. 924-M3. This NSR permit, however, sets forth disaggregated venting limits of 1.2 tons per year of VOCs for SSM and 10 tons per year of VOCs for malfunctions. *See* Exhibit 8, NMED NSR Permit No. 924-M3 (March 24, 2011). In aggregating the emissions and in proposing an overall limit of 11.2 tons per year for all SSM/M events, Harvest's application update is based on a potential for SSM emissions to be above 1.2 tons per year and malfunction emissions to be greater than 10 tons per year, contrary to the applicable limits in NSR 924-M3.

the Title V permits did not require permittees to follow any particular monitoring or recordkeeping methodology, particularly related to measuring the volume of vented gas, the permits did not “set forth” monitoring sufficient to assure compliance. 42 U.S.C. § 7661c(c).” *Wildcat Order* at 20. Here, for the same reasons, EPA must object to the issuance of the Title V Permit for the 32-9 CDP.

II. The “Emergency Provision” Affirmative Defense is no Longer an Applicable Requirement and Cannot be Included in the Title V Permit

The Title V Permit at Part B, Condition B114 sets forth a federally enforceable affirmative defense for violations of “technology-based emission limitations” in the Title V Permit during “emergencies,” effectively granting Harvest the ability to violate the terms and conditions of the Title V Permit in the event of emergencies. This “Emergency Provision,” however, cannot be included in the Title V Permit as a federally enforceable condition.

Petitioner raised this objection with reasonable specificity on page 3 of the technical comments submitted as part of its overall comment submission. *See* Exhibit 1.

In July of 2023, the EPA finalized a rule removing the “emergency” affirmative defense provision from Title V regulations at 40 C.F.R. § 70. 88 Fed. Reg. 47,029 (July 21, 2023). This rule became effective August 21, 2023. As part of this rule, EPA instructed states to remove “emergency” affirmative defenses from individual Title V permits “at their earliest convenience.” 88 Fed. Reg. 47,029, 47,046.

While the “Emergency Provision” condition is currently contained in NMED’s regulations at 20.2.70.304 NMAC, the EPA’s final rule clearly instructs states to comply with 40 C.F.R. § 70 and remove any “emergency” affirmative defense provisions from individual Title V permits. As Petitioner noted in its comments, other states have already taken steps to remove “emergency” affirmative defense language in individual Title V permits.

In response to comments on this issue, NMED asserted that “Condition B114 on Emergencies (per 20.2.70.304 NMAC) is not federally enforceable because as you have stated the US EPA removed that language from the federal Title V rule at 40 CFR 70, on July 21, 2023, effective August 21, 2023.” Exhibit 2, Response to Comments at 5. This response is incorrect. Pursuant to 40 C.F.R. § 70.6(b), all terms and conditions in a Title V permit are federally enforceable, meaning Condition B114 is a federally enforceable condition of the Title V Permit. Although Title V permits can contain conditions that are not federally enforceable, such conditions must be “specifically designate[d].” 40 C.F.R. § 70.6(b)(2). Here, NMED has not specifically designated Condition B114 as not federally enforceable. It is set forth in the Title V Permit as a federally enforceable requirement, contrary to NMED’s assertions otherwise.

NMED appears to further respond that because 20.2.70.304 NMAC remains in the state’s regulations, that Condition B114 must be included in the Title V Permit. *See* Exhibit 2, Response to Comments at 5. However, simply because the “Emergency Provision” may continue to exist at 20.2.70.304 NMAC does not mean that its inclusion in the Title V Permit as a federally enforceable provision is appropriate.

For one, NMED’s regulations do not actually require that 20.2.70.304 NMAC be incorporated into a Title V Permit. While 20.2.70.304 NMAC sets forth the “Emergency Provisions,” nothing in 20.2.70 NMAC states that the 20.2.70.304 NMAC provisions must be incorporated into any permit. Thus, its inclusion in the Title V Permit is discretionary, meaning NMED could have chosen not to include it.

Further, because the “emergency” affirmative defense has been removed from Title V rules at 40 C.F.R. § 70, it is no longer a requirement of these regulations and there is no requirement that it be included in any Title V permit. Indeed, inclusion of the “Emergency Provision” affirmative defense as a federally enforceable requirement actually defies 40 C.F.R. § 70. It means the Title V Permit does not “provide for compliance with all applicable requirements and the requirements of [40 C.F.R. § 70]” as required by 40 C.F.R. § 70.7(a)(1)(iv). The federally enforceable affirmative defense explicitly allows for noncompliance with emission limitations that are applicable requirements and/or established pursuant to 40 C.F.R. § 70. Accordingly, it cannot be included in the Title V Permit.

The EPA must object to the inclusion of Condition B114 in the Title V Permit as it defies applicable requirements under Title V of the Clean Air Act.

CONCLUSION

A Title V permit must include sufficient monitoring requirements to assure compliance with the terms and conditions of the permit. *See* 42 U.S.C. § 7661c(c); *see also* 40 C.F.R. § 70.6(a)(3)(i)(B) and 40 C.F.R. § 70.6(c)(1). Accordingly, the EPA must object to the proposed Title V permit on the basis that Condition A107 fails to require sufficient monitoring to assure compliance with the 11.2 ton per year limit on VOC emissions vented during SSM/M events.

DATED: October 21, 2024

Respectfully submitted,



Jeremy Nichols
Senior Advocate
Environmental Health Program
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
(303) 437-7663
jnichols@biologicaldiversity.org

cc (per 40 C.F.R. § 70.8(d)):

James Kenney
Cabinet Secretary
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Dr., Suite N4050
Santa Fe, NM 87505

Harvest Four Corners LLC
1755 Arroyo Drive
Bloomfield, NM 87413

TABLE OF EXHIBITS

1. Center for Biological Diversity Comments on Draft Title V Permit Renewal for 32-9 CDP (May 24, 2024).
2. New Mexico Air Quality NMED, “Response to Comments (RTC): On Draft-Proposed P030-R5 for 32-9 Central Delivery Point, Harvest Four Corners, San Juan County, NM” (Aug. 2, 2024).
3. Final Title V Permit, Harvest 32-9 CDP (Oct. 17, 2024).
4. Final SOB, Harvest 32-9 CDP (Oct. 17, 2024).
5. Application to Renew Title V Operating Permit P030-R4-M1 (A.I. No. 1226) Harvest Four Corners, LLC—32-9 Central Delivery Point (October 6, 2022).
6. Update to Application to Renew Title V Operating Permit P030-R4-M1 (A.I. No. 1226) Harvest Four Corners, LLC—32-9 Central Delivery Point (April 17, 2024)
7. NMED, “Implementation Guidance for Permitting SSM Emissions and Excess Emissions” (June 2012), available online at https://www.env.nm.gov/wp-content/uploads/sites/2/2017/06/AQBP_SSM_PERMITTING_IMPLEMENTATION_GUIDANCE_07Jun12.doc.
8. NMED NSR Permit No. 924-M3 (March 24, 2011).