UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:	)	
	)	
Desert View Power, LLC	)	**FINDING AND NOTICE OF VIOLATION**
	)	
Mecca, California	)	
	)	**R9-CAA-22-1007**
Proceedings Pursuant to Section 113(a)(3) of the Clean Air Act, 42, U.S.C. § 7413(a)(3)	)	

FINDING AND NOTICE OF VIOLATION

This Finding and Notice of Violation ("NOV") is issued pursuant to Section 113(a) of the Clean Air Act 42 U.S.C. § 7401-7671q ("CAA" or "the Act"). Pursuant to Section 113(a)(3) of the CAA, the Administrator of the United States Environmental Protection Agency ("EPA") may notify any person in violation of a national emission standard of hazardous air pollutants ("NESHAP") promulgated under Section 112 of the CAA of the violations. This NOV is issued to Desert View Power, LLC ("Desert View") for violations of the CAA at its facility located in Mecca, California. Specifically, this NOV alleges violations of conditions in the Facility's federal prevention of significant deterioration ("PSD") permit, issued pursuant to 40 C.F.R. § 52.21; conditions in the Facility's Title V permit, issued pursuant to 40 C.F.R. Part 71; and the NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters," 40 C.F.R. Part 63, Subpart DDDDD, 40 C.F.R. § 63.7480 et seq., otherwise known as the "Boiler MACT." The authority to issue NOVs has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated to the Director of the Enforcement and Compliance Assurance Division of EPA, Region 9.

STATUTORY AND REGULATORY BACKGROUND

Statutory Provisions

1. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes "an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof."

2. Section 101 of the CAA lists the purposes of the Act including, among others, to protect and enhance the quality of the nation's air to promote the public health and welfare and the productive capacity of its population.

A. The National Ambient Air Quality Standards ("NAAQS").

3. Under § 107(d) of the Act, each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to such pollutant.

4. Section 107(d)(1)(A)(iii) provides that an area that cannot be classified as either "attainment" or "nonattainment" with respect to a particular pollutant due to insufficient data is termed "unclassifiable" with respect to such pollutant.

5. Section 108(a)(1) of the Act requires the Administrator of EPA to identify and publish a list of each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources.

6. Section 108(a)(2) of the Act requires the Administrator of EPA to issue air quality criteria for each air pollutant listed pursuant to § 108(a)(1) of the Act.

7. Section 109 of the Act requires the EPA Administrator to promulgate regulations establishing primary and secondary NAAQS for those air pollutants (criteria pollutants) for which air quality criteria has been issued pursuant to § 108 of the Act.

8. Pursuant to § 109(b)(1), the primary NAAQS must contain an adequate margin of safety to protect the public health.

9. Pursuant to § 109(b)(2), the secondary NAAQS must protect the public welfare from any known or anticipated adverse effects associated with air pollutants in the ambient air.

10. Pursuant to §§ 108 and 109 of the Act, EPA promulgated the NAAQS at 40 C.F.R. Part 50.

11. 40 C.F.R. § 50.2(b) provides that: (1) the primary NAAQS define levels of air quality which the Administrator judges necessary, with an adequate margin of safety, to protect the public health; and (2) the secondary NAAQS define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.

B. The Prevention of Significant Deterioration Program

12. Under the authority of §§ 110, 114, 161, 165 and 166 of the Act, EPA promulgated the PSD regulations to implement Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, entitled "Prevention of Significant Deterioration of Air Quality" provisions in the CAA.

13. Part C of Title I of the Act, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of

meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process.

14. EPA initially promulgated the PSD regulations on June 19, 1978 (43 Fed. Reg. 26402 (June 19, 1978)) and promulgated significant amendments to the PSD regulations on August 7, 1980 (45 Fed. Reg. 52741), and December 31, 2002 (67 Fed. Reg. 80186).

15. Section 165(a)(1) and (4) of the Act, among other things, prohibits the construction of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit has been issued for such proposed facility that conforms to the requirements of Part C of Title I of the Act and the facility is subject to best available control technology ("BACT") for each pollutant subject to regulation under the Act that is emitted from, or which results from, the facility.

16. To obtain a PSD permit, an applicant must, among other things, (1) conduct an ambient air quality analysis to demonstrate that its emissions would not violate either the NAAQS or the PSD increments and (2) apply BACT. See Part C of Title I of the Act, 40 C.F.R. § 52.21, and NSR Workshop Manual, October 1990 Draft.

17. Section 169(1) of the Act defines "major emitting facility" as sources in specific categories (category sources) with the potential to emit 100 tons per year or more of any air pollutant and any other sources (non-category sources) with the potential to emit 250 tons per year or more of any air pollutant.

C. Applicable PSD Regulations

18. 40 C.F.R. § 52.21(b)(1)(i)(a) and (b) defines "major stationary source" as any stationary source that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act for any source category listed in 40 C.F.R. § 52.21(b)(1)(i)(a) and any stationary source that emits or has the potential to emit 250 tons per year or more of any air pollutant subject to regulation under the Act at a non- listed source category.

19. 40 C.F.R. § 52.21(b)(1)(i)(c) defines "major stationary source" as any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of 40 C.F.R. § 52.21 as a major stationary source, if the changes would constitute a major stationary source by itself.

20. 40 C.F.R. § 52.21(b)(5) defines "stationary source" as any building, structure, facility or installation that emits or may emit any pollutant subject to regulation under the Act.

21. 40 C.F.R. § 52.21(b)(4) defines "potential to emit" as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted,

stored, or processed, must be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

22. Pursuant to 40 C.F.R. § 52.21(d), no concentration of a pollutant shall exceed the concentration permitted under the primary or secondary NAAQS.

23. Pursuant to 40 C.F.R. § 52.21(i)(1), no stationary source to which the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply shall begin actual construction without a permit that states the stationary source will meet those requirements.

24. Pursuant to 40 C.F.R. § 52.21(i)(2), the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit except as 40 C.F.R. § 52.21 otherwise provides.

25. Pursuant to 40 C.F.R. § 52.21(i)(3), the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under § 107(d)(1)(D) or (E) of the Act.

26. Pursuant to 40 C.F.R. § 52.21(r)(1), any owner or operator who constructs or operates a source or modification not in accordance with an application submitted pursuant to the PSD regulations or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the PSD regulations who commences construction after the effective date of the PSD regulations without applying for and receiving approval thereunder, is subject to appropriate enforcement action. See also, 40 C.F.R. §§ 52.21(b)(8), (9) and (11).

27. Pursuant to 40 C.F.R. § 52.23, failure to comply with any condition in a permit issued pursuant to approved or promulgated regulations for the review of, among other things, new stationary sources shall be subject to EPA enforcement action under § 113 of the Act.

28. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, recordkeeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any emission standard under Section 112 of the Act.

D. Title V Operating Permit

29. Title V of the CAA, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources" and "major stationary sources."

30. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to the Title V of the Act, it is unlawful for any person to operate a Title V affected source, except in compliance with a permit issued by a permitting authority under Title V of the Act.

31. Under Section 502(b) of the Act, EPA promulgated 40 C.F.R. Part 71, "Federal Operating Permit Programs," which provides for the establishment of comprehensive federal air quality permitting programs consistent with the requirements of Title V of the Act. EPA's Part 71 regulations define the minimum elements required by the Act for federal operating permit programs, among other things. See 40 C.F.R. § 71.

32. 40 C.F.R. § 71.1(b) provides that all sources subject to the operating permit requirements of title V and Part 71 regulations shall have a permit to operate that assures compliance by the source with all applicable requirements, as defined in 40 C.F.R. § 71.2.

33. 40 C.F.R. § 71.5(a) provides that the owner or operator, for each Part 71 source, must submit a timely and complete permit application in accordance with 40 C.F.R. Part 71.

34. 40 C.F.R. § 71.7(b) provides, in part, that no Part 71 source may operate after the time that it is required to submit a timely and complete application under an approved permit program except in compliance with a permit issued under a Part 71 program.

E. Part 63 NESHAP General Provisions

35. Pursuant to Section 112 of the CAA, EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories," 40 C.F.R. Part 63, Subpart A, 40 C.F.R. §§ 63.1 – 63.16, previously defined as Part 63 NESHAP General Provisions.

36. 40 C.F.R. § 63.2 defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

37. 40 C.F.R. § 63.2 defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant.

38. 40 C.F.R. § 63.1(a)(4)(i) provides that each relevant standard in Part 63 must identify explicitly whether each provision in subpart A is or is not included in such relevant standard. Table 10 of 40 C.F.R. Part 63, Subpart DDDDD indicates the relevant provisions.

The Boiler MACT

39. Under the authority of Section 112 of the Act, EPA promulgated the Boiler MACT 40 C.F.R. Part 63, Subpart DDDDD, § 63.7480 et seq., otherwise known as the "Boiler MACT." *See* 76 Fed. Reg. 15,664 (March 21, 2011); as amended 78 Fed. Reg. 7,162 (January 31, 2013); and 80 Fed. Reg. 72,806 (November 20, 2015).

40. A boiler or process heater is new if an owner or operator, *inter alia*, commences construction of the boiler or process heater after June 4, 2010. A boiler or process heater is existing if it is not new or reconstructed as defined. 40 C.F.R. § 63.7490.

41. An owner or operator of an existing boiler or process heater must comply with the Boiler MACT no later than January 31, 2016, unless an extension is granted. 40 C.F.R. § 63.7495(b).

42. The Boiler MACT applies to the collection at a major source of all existing industrial, commercial, and institutional boilers and process heaters as defined in 40 C.F.R. § 63.7575.

43. "Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity. 40 C.F.R. § 63.2.

44. In general, the Boiler MACT requires each owner or operator to comply with the applicable emission limits, work practice standards, and operating limits in Subpart DDDDD.

45. Pursuant to 40 C.F.R. § 63.7510(e), for existing affected sources (as defined in 40 C.F.R. § 63.7490), an owner or operator must complete the initial compliance demonstrations, as specified in paragraphs (a) through (d) of this section, no later than 180 days after the compliance date that is specified for the source in 40 C.F.R. § 63.7495 and according to the applicable provisions in 40 C.F.R. § 63.7(a)(2) as cited in Table 10 to this subpart, except as specified in paragraph (j) of this section.

46. 40 C.F.R. § 63.7500 requires an owner or operator to meet the emission limitations and work practice standards specified in Table 1 through 3, and 11 through 13 of the Boiler MACT that applies to each boiler or process heater at the source except, as provided by 40 C.F.R. § 63.7522. An owner or operator is required to meet each operating limit in Table 4 of the Boiler MACT that applies to each boiler or process heater.

47. Table 2 of the Boiler MACT requires each owner or operator to comply with the following emission limitations: 0.022 lb per MMBtu of heat input hydrogen chloride ("HCl"); and 5.7E-06 lb per MMBtu of heat input mercury. 40 C.F.R. § 63.7500.

48. An owner or operator must demonstrate continuous compliance with each emission limit in Tables 1 and 2 or 11 through 13 to this subpart, the work practice standards in Table 3 to this subpart, and the operating limits in Table 4 to this subpart that applies according to the methods specified in Table 8 to this subpart and paragraphs (a)(1) through (19) of this section. Following the date on which the initial compliance demonstration is completed or is required to be completed under 40 C.F.R. §§ 63.7 and 63.7510, whichever date comes first, operation above the established maximum or below the established minimum operating limits shall constitute a deviation of established operating limits listed in Table 4 of this subpart except during performance tests conducted to determine compliance with the emission limits or to establish new operating limits. Operating limits must be confirmed or reestablished during performance tests. 40 C.F.R. § 63.7540(a)(1).

49. Table 4, Item 3 of the Boiler MACT requires each owner or operator using a fabric filter control on a boiler or process heater not using a PM continuous monitoring system ("CMS") to meet the operating limit by maintaining opacity to less than or equal to 10 percent opacity or the highest hourly average opacity reading measured during the performance test run demonstrating compliance with the PM (or TSM) emission limitation (daily block average). 40 C.F.R. § 63.7500.

50. Table 7, Item 2.c., of the Boiler MACT requires each owner or operator, demonstrating compliance with an HCl emission limit with an SO2 CEMS, to establish a site-specific maximum SO2 emission rate operating limit using data from SO2 CEMS and the HCl performance test and to collect the SO2 emissions data during the most recent HCl performance tests. 40 C.F.R. § 63.7520.

51. Table 4, Item 9, of the Boiler MACT requires each owner or operator, demonstrating compliance with an HCl emission limit with a sulfur dioxide ("SO2") continuous emission monitoring system ("CEMS"), to meet the operating limit by maintaining the 30-day rolling average SO2 emission rate at or below the highest hourly average SO2 concentration (i.e., site-specific maximum rate) measured during the HCl performance test, as specified in Table 8 of the Boiler MACT. 40 C.F.R. § 63.7500.

52. Table 8, Item 11, of the Boiler MACT requires each owner or operator, demonstrating compliance with an HCl emission limit with an SO2 CEMS, to collect the SO2 CEMS output data, reduce the data to 30-day rolling averages, and maintain the 30-day rolling average SO2 CEMS emission rate to a level at or below the highest hourly SO2 rate measured during the HCl performance test. 40 C.F.R. § 63.7540.

53. 40 C.F.R. § 63.7520 requires each owner or operator to conduct all performance tests according to 40 C.F.R. §§ 63.7(c), (d), (f), and (h). Owners and operators must also develop a site-specific stack test plan according to the requirements in 40 C.F.R. § 63.7(c). All performance tests must be conducted under such conditions as the Administrator specifies to the owners and operators based on the representative performance of each boiler or process heater for the period being tested. Records must be made available to the Administrator upon request as such records may be necessary to determine the conditions of the performance tests.

54. Table 4, Item 5, of the Boiler MACT requires each owner or operator that has a mercury emission limit and that uses a dry scrubber or carbon injection control on a boiler without a mercury CEMS to maintain the minimum sorbent or carbon injection rate as defined in 40 C.F.R. § 63.7575 of this subpart. 40 C.F.R. § 63.7500.

55. Table 7 of the Boiler MACT requires each owner or operator that has a mercury emission limit to establish operating limits according to: (1) Item 1.c., a site-specific maximum opacity level; or (2) Item 3., a site-specific minimum activated carbon injection rate operating limit in accordance with 40 C.F.R. § 63.7530(b). 40 C.F.R. § 63.7520.

56. Table 8 of the Boiler MACT requires each owner or operator that is subject to a mercury emission limit and has either an opacity operating limit; or a dry scrubber sorbent or carbon injection rate to demonstrate continuous compliance by meeting the requirements of Item 1 or 6, respectively, of Table 8. 40 C.F.R. § 63.7540.

FINDINGS OF FACT

Background

57. Desert View owns and operates a biomass-fired power plant facility at 62-300 Gene Welmas Drive in Mecca, California (the "Facility").

58. Desert View is a "person" within the meaning of the Act. 42 U.S.C. § 7602(e).

PSD Permit

59. On June 28, 1988, EPA issued to Colmac Energy, Inc., an Approval to Construct/Modify a Stationary Source PSD Permit (NSR 4-4-11, SE 8701) ("PSD Permit") for the Facility.

60. On May 6, 1998, EPA issued to Colmac Energy, Inc., an administrative permit amendment that included the following amendments to the PSD Permit:

    a. The amendment to the PSD Permit requires that SO2 emissions must not exceed, the more stringent of, 12.0 lbs/hr per boiler or 27 ppm, dry, corrected to 3% O2 (3-hour average). Special Condition IX.E.
    b. The amendment to the PSD Permit requires that carbon monoxide ("CO") emissions must not exceed, the more stringent of, 45.0 lbs/hr per boiler or 231 ppm, dry, corrected to 3% O2 (3-hour average). Special Condition IX.G.

61. On August 14, 2003, EPA issued to Colmac Energy, Inc., a permit amendment that included the following amendments to the PSD Permit:

    a. The amendment to the PSD permit requires that particulate matter ("PM10") emissions must not exceed, the more stringent of, 0.010 gr/dscf at 12% CO2 or 3.9 lbs/hr per boiler (3-hr average). Special Condition IX.F.
    b. The amendment to the PSD Permit requires that CO emissions must not exceed, the more stringent of, 13.0 lbs/hr per boiler or 231 ppm, dry, corrected to 3% O2 (3-hour average). Special Condition IX.G.
    c. The amendment to the PSD Permit requires that hydrocarbons emissions must not exceed, 5.9 lbs/hr per boiler (3-hour average). Special Condition IX.I.
    d. Special Condition IX.H remained unchanged and required that nitrogen oxides ("NOx") emissions must not exceed, the more stringent of, 30 lb/hr per boiler or 94 ppm city, corrected to 3 % 02 (3-hour average). In addition, the Facility must not discharge or cause the discharge of NOx in excess of 648 lbs/day per boiler for any calendar day.

62. In January 2011, Desert View acquired or purchased the Facility and assumed all permits relevant to this NOV.

63. On July 6, 2020, EPA issued to Desert View a Prevention of Significant Deterioration Permit Pursuant to 40 C.F.R. § 52.21 and Minor New Source Review Permit in Indian Country Pursuant to 40 C.F.R. §§ 49.151 through 161 which administratively revised to consolidate all previous

amendments to the permit, such that all PSD and Tribal Minor NSR conditions are in a single permit document.

64. The PSD Permit, as amended, for the Facility provides and prohibits the exceedance of SO2, PM10, CO, NOx, and hydrocarbons during operation.

65. The PSD Permit, as amended, requires the boiler exhaust stack be equipped with operable (1) CEMS to measure SO2, CO and NOx; the (2) CMS to measure volumetric flow rates; and (3) a transmissometer system for continuous measurement of the stack gas opacity.

66. The PSD Permit, as amended, for the Facility provides that not less than 90 days prior to the date of startup of the facility, the facility shall submit to the EPA a quality assurance project plan for the certification and operation of the continuous emission monitors. Such a plan must conform to the EPA document "Guidelines for Developing a Quality Assurance Project Plan." CEMS may not begin until the quality assurance project plan has been approved by EPA Region 9.

67. The PSD Permit, as amended, for the Facility provides that a file of all measurements, including continuous monitoring systems evaluations; all continuous monitoring systems or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; performance and all other information required by 40 C.F.R. Part 60 must be recorded and maintained in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports and records.

68. The PSD Permit, as amended, requires that SO2 emissions must not exceed, the more stringent of, 12.0 lbs/hr per boiler or 27 ppm, dry, corrected to 3% O2 (3-hour average). In addition, the SO2 emissions must not exceed a rolling average of 70 tons/year calculated daily.

69. The PSD Permit, as amended, requires that PM10 emissions must not exceed, the more stringent of, 0.006 gr/dscf at 12% CO2 or 3.9 lbs/hr per boiler (3-hour average).

70. The PSD Permit, as amended, requires that opacity of the boiler exhaust stack gases must not exceed 10 percent or greater for any period or periods aggregating more than three minutes in any one hour.

71. The PSD Permit, as amended, requires that CO emissions must not exceed, the more stringent of, 13.0 lbs/hr per boiler or 231 ppm, dry, corrected to 3% O2 (3-hour average).

72. The PSD Permit, as amended, requires that NOx emissions must not exceed, the more stringent of, 30 lbs/hr per boiler or 94 ppm, dry corrected to 3% O2 (3-hour average). In addition, the NOx emissions must not exceed 648 lbs/day per boiler for any calendar day.

73. The PSD Permit, as amended, requires that hydrocarbon emissions must not exceed 5.9 lbs/hr per boiler (3-hour average).

Title V Permit

74. On August 1, 2000, EPA issued Colmac Energy, Inc. a Title V operating permit ("2000 Title V Permit"), pursuant to Title V of the Act and 40 C.F.R. § 71, for operation of the Facility.

75. The 2000 Title V permit incorporates the prohibitions from the PSD Permit, as amended, governing the exceedance of SO2, PM10, carbon CO, NOx, and hydrocarbons during operation of the Facility.

76. On September 30, 2020, EPA issued Respondent a Title V operating permit ("2020 Title V Permit"), pursuant to Title V of the Act and 40 C.F.R. § 71, for operation of the Facility.

The Boiler MACT

77. At all times relevant to this NOV, Desert View was an owner or operator of existing boilers that are located at, or are part of, a major source of hazardous air pollutants as defined in 40 C.F.R. § 63.2.

78. Beginning January 31, 2016, Desert View was required to comply with the Boiler MACT.

79. Desert View was required to complete is initial compliance demonstrations within 180 days of January 31, 2016, or by July 29, 2016.

Mercury

80. On May 11, 2016, Desert View conducted a performance test to demonstrate compliance with the mercury emission limit.

81. The mercury emissions results from the May 11, 2016 performance test on Boilers 1 and 2, were 6.0E-06 and 13E-06 lb per MMBtu of heat input respectively, which exceeded the Title V permit and Boiler MACT mercury emission limit of 5.7E-06 lb per MMBtu of heat input.

82. On March 11, 2021, Desert View conducted a performance test to demonstrate compliance with the mercury limit.

83. The mercury emissions results from the March 11, 2021 performance test on Boilers 1 and 2, were 11E-06 and 21E-06 lb per MMBtu of heat input respectively, which exceeded the Title V permit and Boiler MACT mercury emission limit of 5.7E-06 lb per MMBtu of heat input.

84. The Desert View did not conduct performance tests for mercury during calendar years 2017, 2018, 2019 and 2020 to demonstrate compliance.

HCl

85. On June 2 and 3, 2020, Desert View conducted a performance test to demonstrate compliance with HCl limit of 2.2E-02 lb per MMBtu of heat input.

86. On various dates between March 28, 2017 and May 3, 2021, Desert View conducted performance tests on Boilers 1 and 2 to in order to demonstrate continuous compliance with the HCl emission limit of 2.2E-02 lb per MMBtu of heat input.

87. Beginning March 28, 2017 through March 18, 2019, the highest hourly average SO2 emission rate for Boiler 1 was 12.57 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on March 28, 2017).

88. Beginning March 19, 2019 through June 1, 2020, the highest hourly average SO2 emission rate for Boiler 1 was 8.45 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on March 19, 2019).

89. Beginning June 2, 2020 through September 9, 2020, the highest hourly average SO2 emission rate for Boiler 1 was 16.54 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on June 2, 2020).

90. Beginning September 10, 2020 through March 3, 2021, the highest hourly average SO2 emission rate for Boiler 1 was 15.50 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on September 10, 2020).

91. Beginning March 4, 2021 through May 4, 2021, the highest hourly average SO2 emission rate for Boiler 1 was 19.3 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on March 4, 2021).

92. Beginning March 29, 2017 through March 26, 2018, the highest hourly average SO2 emission rate for Boiler 2 was 15.25 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on March 29, 2017).

93. Beginning March 27, 2018 through March 20, 2019, the highest hourly average SO2 emission rate for Boiler 2 was 11.73 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on March 27, 2018).

94. Beginning March 21, 2019 through June 2, 2020, the highest hourly average SO2 emission rate for Boiler 2 was 14.3 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on March 21, 2019).

95. Beginning June 3, 2020 through September 9, 2020, the highest hourly average SO2 emission rate for Boiler 2 was 16.21 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on June 3, 2020).

96. Beginning September 10, 2020 through March 3, 2021, the highest hourly average SO2 emission rate for Boiler 2 was 16.53 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on September 10, 2020).

97. Beginning March 4, 2021 through May 3, 2021, the highest hourly average SO2 emission rate for Boiler 2 was 16.40 ppmvd @ 3% O2 based on available data reflecting the then-most recent HCl performance test (on March 4, 2021).

General

98. On April 2, 2021, under the authority of Section 114 of the Act, the EPA issued an information request letter to Desert View. Desert View provided responses on May 3, 2021, and July 6, 2021.

99. On November 17-18, 2021, EPA Region 9 conducted an announced on-site inspection of the Facility. An inspector from the South Coast Air Quality Management District ("SCAQMD") was also present at the inspection. Desert View granted access to the Facility during the inspection and Desert View personnel were present to answer questions.

100. During the on-site inspection, EPA inspectors observed large amounts of dust whenever winds were gusty. On the second day, EPA inspectors noted that water trucks were spraying water on the grounds. An SCAQMD inspector attempted EPA Method 9 visible emissions readings at the emission stack but the conditions did not allow for successful readings.

101. The results of the CEMS data and stack tests are evidence that the Facility continues to exceed the emission limits of SO2, NOx, CO, mercury and HCl during operation. The EPA is not aware of any changes that Desert View has made that would bring the Facility's emissions below the emission limits.

FINDINGS OF VIOLATION

102. Between June 1, 2017 and May 3, 2021, Desert View exceeded the SO2 3-hour rolling average emission limit of 27 ppm at 3% O2 at Boilers 1 and 2, in violation of Condition II.A.1 of the 2000 Title V Permit, Condition II.A.1 of the 2020 Title V Permit, and/or Special Condition IX.E of the PSD Permit, as amended, on approximately 41 occasions in 2017, 81 occasions in 2018, 51 occasions in 2019, 55 occasions in 2020, and 39 occasions in 2021.

103. Between June 1, 2017 and May 3, 2021, Desert View exceeded the 3-hour rolling average SO2 hourly limit of 12 pounds per hour at Boilers 1 and 2, in violation of Condition II.A.1 of the 2000 Title V permit, Condition II.A.1 of the 2020 Title V permit, and/or Special Condition IX.E of the PSD Permit, as amended, on approximately 1 occasion in 2017, 9 occasions in 2018, 7 occasions in 2019, 8 occasions in 2020, and 1 occasion in 2021.

104. Between June 1, 2017 and May 3, 2021, Desert View exceeded the NOx 3-hour rolling average emission limit of 94 ppm at 3% O2 at Boilers 1 and 2, in violation of Condition II.A.15 of the 2000 Title V permit, Condition II.A.12 of the 2020 Title V permit, and/or Special Condition IX.H of the PSD Permit, as amended, on approximately 109 occasions in 2017, 152 occasions in 2018, 145 occasions in 2019, 94 occasions in 2020, and 64 occasions in 2021.

105. Between June 1, 2017 and May 3, 2021, Desert View exceeded the 3-hour rolling average NOx hourly limit of 30 pounds per hour at Boilers 1 and 2, in violation of Condition II.A.15 of the 2000

Title V permit, Condition II.A.12 of the 2020 Title V permit, and/or Special Condition IX.H of the PSD Permit, as amended, on approximately 8 occasions in 2017, 15 occasions in 2018, 6 occasions in 2019, 4 occasions in 2020, and 8 occasions in 2021.

106. Between June 1, 2017 and May 3, 2021, Desert View exceeded the CO 3-hour rolling average emission limit of 231 ppm at 3% O2 at Boilers 1 and 2, in violation of Condition II.A.13 of the 2000 Title V permit, Condition II.A.10 of the 2020 Title V permit, and/or Special Condition IX.G of the PSD Permit, as amended, on approximately 11 occasions in 2017, 37 occasions in 2018, 20 occasions in 2019, 18 occasions in 2020, and 19 occasions in 2021.

107. Between June 1, 2017 and May 3, 2021, Desert View exceeded the CO 3-hour rolling average hourly limit of 13 pounds per hour at Boilers 1 and 2, in violation of Condition II.A.10 of the 2020 Title V permit, and Special Condition IX.G of the PSD Permit, as amended, on approximately 11 occasions in 2017, 46 occasions in 2018, 16 occasions in 2019, 10 occasions in 2020, and 14 occasions in 2021.

108. Between June 1, 2017 and May 3, 2021, Desert View exceeded the opacity limit of 10 percent or greater for any period or periods aggregating more than three minutes in any one hour, in violation of Condition II.A.7 of the 2020 Title V permit, and Special Condition IX.F of the PSD Permit, as amended, on approximately 5 occasions in 2017, 7 occasions in 2018, 2 occasions in 2020, and 1 occasion in 2021.

109. Desert View exceeded the mercury emissions limit at Boilers 1 and 2, as shown by the May 11, 2016 performance test, in violation of Condition II.A.17 of the 2020 Title V Permit and 40 C.F.R. § 63.7500 and Table 2, Item 1.b, of the Boiler MACT.

110. Desert View exceeded the mercury emissions limit at Boilers 1 and 2 as shown by the March 11, 2021 performance test, in violation of Condition II.A.17 of the 2020 Title V Permit and 40 C.F.R. § 63.7500 and Table 2, Item 1.b, of the Boiler MACT.

111. Desert View failed to conduct annual performance tests for mercury emissions from Boilers 1 and 2 for the years 2017, 2018, 2019, and 2020, in violation of 40 C.F.R. § 63.7515(a).

112. Desert View exceeded the HCl emissions limit at Boilers 1 and 2 as shown by the June 2 and 3, 2020 performance test, in violation of Condition II.A.16 of the 2020 Title V Permit and 40 C.F.R. § 63.7500 and Table 2 of the Boiler MACT.

113. Beginning March 28, 2017 through June 3, 2020, Desert View exceeded the HCl operating limit for Boilers 1 and 2 when Desert View failed to maintain their respective 30-day rolling average SO2 emission rates at or below the highest hourly average SO2 concentrations (i.e., site-specific maximum rates) measured during their HCl performance tests, in violation of 40 C.F.R. §§ 63.7500, 63.7540, and Tables 4 and 8 of the Boiler MACT on approximately 214 occasions in 2017, 469 occasions in 2018, 642 occasions in 2019, and 259 occasions in 2020.

114. Desert View failed to establish and maintain a site-specific maximum opacity level (or, in the alternative, a minimum sorbent or carbon injection rate as defined in 40 C.F.R. § 63.7575 when

using a dry scrubber or a carbon injection control) to develop an operating limit for mercury in violation of 40 C.F.R. § 63.7520 and Table 7, Item 1.c. (or, in the alternative, Item 3) of the Boiler MACT.

NOTICE OF VIOLATION

115. Notice is given to Desert View that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that Desert View has violated conditions in the Facility's 2000 Title V Permit and 2020 Title V Permit both issued pursuant to 40 C.F.R. Part 71; conditions in the Facility's PSD Permit, as amended, issued pursuant to 40 C.F.R. § 52.21; and 40 C.F.R. Part 63, Subpart DDDDD, as set forth in the Findings of Violation.

ENVIRONMENTAL AND HEALTH IMPACTS

116. Desert View's operation of the Facility is resulting in excess emissions of SO2, NOx, CO, opacity, mercury, and HCl.

117. SO2 emissions can cause wheezing, chest-tightness, shortness of breath, and respiratory-related illnesses. Children, elderly, and those with asthma are at most risk.

118. NOx gases, when wafted into the air, contribute to smog, soot, and acid rain. Breathing in NOx can trigger asthma attacks or respiratory-related illnesses and increase hospital visits. People with asthma are especially susceptible to the effects of NOx.

119. CO is a colorless, odorless gas that can be harmful when inhaled in large amounts. CO is released when something containing carbon is burned. Breathing air with a high concentration of CO reduces the amount of oxygen that can be transported in the blood stream to critical organs like the heart and brain. At very high levels, which are possible indoors or in other enclosed environments, CO can cause dizziness, confusion, unconsciousness, and death.

120. Opacity is the degree to which visibility of a background is reduced by particles or smoke. The smaller the particle size, the greater the opacity. Higher opacity values mean more there is more particulate matter in the air.

121. Particulate matter are chemically and physically diverse substances that are particles (liquid droplets or solids) which vary in sizes. Effects associated with exposure to PM include decreased lung function growth, exacerbation of allergic symptoms, and increased respiratory symptoms.

122. Mercury can cause acute health disorders as well as irritation to the lung, skin, and mucus. Acute (short-term) exposure to high levels of elemental mercury in humans results in effects in a person's central nervous system such as tremors, mood changes, and slowed sensory and motor nerve function. High inhalation exposures can also cause kidney damage and effects on the gastrointestinal tract and respiratory system.

123. HCl is corrosive to human eyes, skin, and mucous membranes. Acute or short-term inhalation exposure to HCl may cause irritation and inflammation, while chronic or long-term occupational exposure can lead to gastritis, bronchitis, dermatitis.

ENFORCEMENT

124. Section 113(a)(3) of the Act provides that when any person has violated any requirement or prohibition of title I of the Act (including CAA § 111), EPA may:

- issue an order requiring compliance with the requirement or prohibition;
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties; or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties.

The amount of civil penalties that may be recovered for violations such as those discussed above of the CAA and its implementing regulations is set by statute. *See* 40 C.F.R. Part 19.

Furthermore, if a person knowingly violates any requirements of an applicable implementation plan for more than thirty (30) days after the date of issuance of this NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. 42 U.S.C. § 7413(c). Under Section 306(a) of the Act (42 U.S.C. § 7606(a)), the regulations promulgated thereunder (2 C.F.R. Part 1532), and Executive Order 11738, persons convicted of an offense under section 113(c) of the Act are disqualified from receiving federal contracts, grants, and loans.

PENALTY ASSESSMENT CRITERIA

125. Section 113(e)(1) of the Act states that, in determining the amount of any penalty to be assessed, the Administrator will take into consideration (in addition to such other factors as justice may require) the size of the violator, the economic impact of the penalty on the violator, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator for penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

126. Section 113(e)(2) of the Act allows the Administrator to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to this violation likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

Desert View may, upon request, confer with EPA. The conference will enable Desert View to present evidence bearing upon the Finding and Notice of Violation, on the nature of the violations, and on any efforts Desert View has taken or may have taken or proposes to take to achieve compliance. Desert View has the right to be represented by counsel. A request for conference with EPA must be made within thirty (30) days from receipt of this NOV, and the request for a conference or other inquiries concerning this NOV should be made in writing to Andrew Chew (415-947-4197) and Yvezee Lapada (415-947-8700) of the Enforcement and Compliance Assurance Division at Chew.Andrew@epa.gov and Lapada.Yvezeenikita@epa.gov, respectively, or by your attorney to Denise Leong of the Office of Regional Counsel at 415-972-3409 or leong.denise@epa.gov.

/s/ 6/13/2022

Date

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

cc: Paul Slama, Director, Tribal Affairs, Cabazon Band of Mission Indians
Terrence Mann, Deputy Executive Officer, South Coast Air Quality Management District