



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

February 12, 2013

Ms. Rykki R. Tepe  
Environmental Engineer  
XTO Energy, Inc.  
810 Houston Street  
Fort Worth, TX 76102

RE: XTO Energy Inc.  
Synthetic Minor Limit Request  
Jicarilla Compressor Station  
Rio Arriba County, New Mexico

Dear Ms. Tepe:

After conducting an initial review of XTO Energy Inc.'s (XTO) synthetic minor permit application for the Jicarilla Compressor Station, the United States Environmental Protection Agency, Region 6 (EPA) has determined that additional information is necessary to continue processing your request. Even though your application was deemed complete by rule (49.158 (b) (3)), it does not preclude EPA from requesting, additional information necessary for our review and determination of the pollutant-emitting activities which comprise the stationary source which includes the Jicarilla Compressor Station. In order to continue the timely processing of your permit please provide this information by March 12, 2013.

Our review is based on the requirements of the Clean Air Act (Act) and the EPA regulations found at 40 C.F.R. § 52.21, as well as the EPA's September 22, 2009 guidance document entitled "Withdrawal of Source Determinations for Oil and Gas Industries" (the "McCarthy Memo")<sup>1</sup>, and the December 21, 2012 Steven Page memorandum "Applicability of the Summit Decision on to EPA Title V and NSR source determinations."<sup>2</sup>

For purposes of determining applicability of the Act's NSR program, the McCarthy Memo states that permitting authorities should rely foremost on the three regulatory criteria for identifying emissions activities that belong to the same "building," "structure," "facility," or "installation." These criteria are: (1) whether the activities are under the control of the same person (or persons under common control); (2) whether the activities are located on one or more

<sup>1</sup> <http://www.epa.gov/region07/air/title5/t5memos/oilgaswithdrawal.pdf>

<sup>2</sup> In light of the recent court decision in *Summit Petroleum Corp. v. EPA et al.*, Consolidated Case Nos. 09-4348 and 10-4572 (6<sup>th</sup> Cir. Aug. 7, 2012), EPA issued a memorandum on December 21, 2012, entitled "Applicability of the Summit Decision to EPA Title V and NSR Source Determinations," which further describes EPA's interpretation of the term "adjacent." See <http://www.epa.gov/region07/air/title5/t5memos/inter2012.pdf>



contiguous or adjacent properties; and (3) whether the activities belong to the same industrial grouping. See 40 C.F.R. § 52.21(b)(6). The McCarthy Memo emphasizes that whether to aggregate sources for purposes of NSR and Title V applicability is a case-by-case determination that represents highly fact-specific decisions, and that no single determination can serve as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances. Thus, EPA is seeking the supplemental information set forth in Enclosure A on fact-specific circumstances regarding XTO's operations in order to fulfill our obligations under the Act and EPA's implementing regulations.

Please provide the information requested in Enclosure A, by March 12, 2013. If a business confidentiality claim is made covering any part of the submitted information, please see Enclosure B, which specifies the assertion and substantiation requirements for business confidentiality claims. Upon receipt of your submittal, EPA will continue processing your request for a synthetic minor permit.

Should you have any questions, please contact Bonnie Braganza, of my staff at (214) 665-7340. We look forward to continuing to work with you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jeff Robinson", with a long horizontal flourish extending to the right.

Jeff Robinson  
Air Permits Section Chief  
Multimedia Planning and  
Permitting Division

Enclosures (2)



## Enclosure A - Additional Information Requested

Pursuant to 40 C.F.R. § 124.3(c), EPA is seeking the following supplemental information to further assist in our understanding of your operations and to properly evaluate the source for applicability as a synthetic minor source in Indian Country. More specifically, EPA is requesting you provide information on the nature of your operations in the San Juan Basin, in order to determine the stationary source and whether it continues to meet the requirements for a synthetic minor source permit. We request you provide adequate documentation to support the information you submit. It is also recommended that the information provided be in a form that can be released to the public, in the event we rely upon such information in our source determination.

If a business confidentiality claim is made covering any part of the submitted information, please see Enclosure B, which specifies the assertion and substantiation requirements for business confidentiality claims.

Please provide, at a minimum, the following information. However, feel free to provide other information beyond that requested below, if you deem it necessary to describe the stationary source.

1. A map showing the location of the field operations and production field facilities associated with production unit(s) which gather and/or transport natural gas directly or indirectly to the Jicarilla Compressor Station or from that station to other facilities. This would include well sites that are connected to gathering pipelines, tank batteries, compressor stations, gas plants, etc. Include latitude and longitude coordinates for each field operation and production field component identified on said map.
2. For each field operation and production field component identified on the above referenced map, confirm XTO's ownership or operational interest (or indicate the name and address of the owner and/or operator of those operations or components for which XTO does not have any interest) and provide the Standard Industrial Classification (SIC) code.
3. A simple process flow diagram of the gas flow among the field components identified on the above referenced map and emissions associated with the operations of the equipment.
4. A description of the operations associated with each production facility on the above referenced map. Is the natural gas pipeline from the Jicarilla Compressor Station owned by XTO?
5. A description of how the pipeline gathering systems that serve the Jicarilla Compressor Station are utilized. Are they exclusive to XTO? Or are they a shared resource with other companies? Is natural gas from the gathering pipeline transferred to other third party compressor stations? Are there any gathering pipelines used exclusively by XTO?
6. Operational agreements if any between XTO and other gas production and gathering companies that are relevant to or discuss the Jicarilla Compressor Station.

## **Enclosure B - Confidential Business Information (CBI) Assertion and Substantiation Requirements**

### Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in response to this information request, as provided in 40 C.F.R. § 2.203(b). You may assert a business confidentiality claim covering such information by placing on (or attaching to) the information you desire to assert a confidentiality claim, at the time it is submitted to EPA, a cover sheet, stamped, or typed legend (or other suitable form of notice) employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is desired up until a certain date or until the occurrence of a certain event, the notice should state this. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2. EPA will construe the failure to furnish a confidentiality claim with your response to Enclosure A to this letter as a waiver of that claim, and the information may be made available to the public without further notice to you. You should read 40 C.F.R. Part 2 carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of a claim. Emission data is exempt from claims of confidentiality under Section 114 of the Clean Air Act (the Act), and the emissions data that you provide may be made available to the public. Information subject to a business confidentiality claim is available to the public only to the extent allowed under 40 C.F.R. Part 2, Subpart B.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as "Personal Privacy Information" given that disclosure of such information to the general public may constitute an invasion of privacy.

### Substantiation Requirements

All confidentiality claims are subject to EPA verification in accordance with 40 C.F.R. Part 2, Subpart B. The criteria for determining whether material claimed as confidential is entitled to such treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301, which provide, in part, that you must satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; that the information is not and has not been reasonably obtainable by legitimate means without your consent; and the disclosure of the information is likely to cause substantial harm to your business's competitive edge.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. If you receive such a letter, you must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time would be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. If you receive such a letter, EPA will ask you to specify which portions of the information you consider confidential. You must be specific by

page, paragraph, and sentence when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim may be disclosed without further notice to you. For each item or class of information that you identify as being subject to CBI, you must answer the following questions, giving as much detail as possible, in accordance with 40 C.F.R. § 2.204(e):

1. What specific portions of the information do you allege to be entitled to confidential treatment? For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
8. Any other issue you deem relevant.

Please note that emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" means, with reference to any source of emission of any substance into the air:

- (A) Information necessary to determine the identity, amount, frequency,

concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source). 40 C.F.R. §§ 2.301(a)(2)(i)(A),(B) and (C).

If you receive a request for a substantiation letter from EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.