BEFORE THE HEARING BOARD
OF THE SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT

In the Matter of the Application of Sable Offshore Corp. for a 90-Day Variance from District Rule, 206, Part 70/Permit to Operate 9102-R7, Conditions 9.C.3(a), 9.C.3(b)(i), and 9.C.18	)))))	H.B. Case No. 2026-07-N OBJECTION TO VARIANCE PETITION, REQUEST FOR CONTINUANCE TO ACCOMMODATE REMOTE PARTICIPATION

The Center for Biological Diversity (Center) submits the following objections in this matter and requests the Santa Barbara County Air Pollution Control District Hearing Board (Board) deny Sable Offshore Corp.'s (Sable's) petition for a variance for the Company's Platform Heritage, Permit No. 9102-R7. The Center further requests the Board continue the June 25, 2026 hearing date in order to accommodate remote participation in any hearing in this matter. In support of these requests, the Center provides as follows.

I. Sable's Pattern and Practice of Requesting Variances

It's critical to first highlight the context in which Sable's latest variance petition has been filed. Following the 2015 Plains All American Pipeline oil spill and numerous reports of maintenance concerns at Sable's Santa Ynez Unit facilities (previously ExxonMobil's), Platform Heritage and Sable's other operations were shut-in and ceased operations. A decade later, the Company has been attempting to recommission its Santa Ynez Unit operations, seeming only to find that years of inactivity have created serious issues leading to malfunctions and other problems. This seems to be creating air quality compliance challenges, which in turn appear to be presenting very real risks to public health and the environment.[1]

Unfortunately, rather than take appropriate action to cease or curtail operations and undertake the maintenance necessary to ensure compliance, Sable appears to be seeking "get out of jail free" cards form the Board. In 2025 and so far in 2026, Sable has sought and received at least 11 emergency variances form the Board, which have authorized violations of various permit conditions at all of its Santa Ynez Unit facilities. *See* Table below. Although some of

[1] The Center remains extremely concerned that the recommissioning of the Santa Ynez Unit triggered new Clean Air Act Prevention of Significant Deterioration (PSD) permitting obligations on Sable and the Santa Barbara County Air Pollution Control District. In April 2024 comments on the draft renewed operating permits for the Santa Ynez Unit, the Center detailed the legal obligation for Sable to obtain a new PSD permit and the District's duty to assure compliance with the Clean Air Act. These comments are attached as Exhibit 1. More than two years later now, Sable still has not been issued renewed operating permits. The fact that recommissioning of the Santa Ynez Unit is leading to air quality compliance challenges underscores the need to assure Sable obtains and operates in compliance with a new PSD permit.

these violations related to compliance reporting deadlines, a number of violations related to emission standards and limitations established for the protection of health and the environment. Instead of confronting the root cause of compliance issues at the Santa Ynez Unit facilities, Sable seeks to keep operating under free passes to pollute.

Emergency Variances Approved for Sana Ynez Unit Facilities

Facility	Emergency Variance Case No.
Platform Harmony	2025-07-E, 2025-10-E, 2025-17-E
Platform Heritage	2025-18-E
Platform Hondo	2025-19-E
Las Flores Canyon	2025-13-E, 2025-14-E, 2025-15-E, 2026-01-E, 2026-02-E
Pacific Offshore Pipeline Company Gas Plant	2025-16-E

This latest variance request for Platform Heritage underscores growing concerns that Sable is avoiding, rather than assuring, compliance with its air pollution permits. The request seeks a 90-day variance from Conditions 9.C.3(a), 9.C.3(b)(i), and 9.C.18 of Permit No. 9102-R7. These Conditions limit hourly, daily, quarterly, and annual emissions and volumes from the facility's flare relief system. These Conditions limit emissions of nitrogen oxides (NO_x), reactive organic compounds (ROC), carbon monoxide (CO), sulfur oxides (SO_x), particulate matter, and greenhouse gases, all pollutants known to be harmful to public health and the environment.

In its May 22, 2026 Petition for Variance (Petition), Sable discloses the reasons for these violations are tied to the challenges faced by the Company in recommissioning Platform Heritage. These challenges include "an unexpected number of equipment malfunctions, onshore and offshore production balancing issues, and well production issues which are related to restart of the platform [as well as] [u]nforeseen issues with the reestablishment of sweet gas well production[.]" Petition at 2-3. Although Sable discloses in its Petition that it could assure compliance with Conditions 9.C.3(a), 9.C.3(b)(i), and 9.C.18, the Company claims it would lead to delayed production and revenue and require planned flaring for depressurization and shutdown. In other words, compliance would cost the Company. Sadly, Sable is pursuing economic benefits from ongoing air quality violations.

It's important to flag for this Board that denial of Sable's Petition would not require the Company to do anything more than shoulder the liability of violating its permit. While this could subject the Company to penalties or other remedies, the Company would remain free to determine the course of action it believes to be most appropriate for managing this liability. The Company could decide to shut down and make any necessary repairs and adjustments or perhaps the Company could continue operating in noncompliance and accept any consequences as it works to bring Platform Heritage into compliance. A denial of the Petition would not dictate how Sable should manage liability, it would simply affirm the responsibilities of the Company.

In the interest of public health, the environment, and the integrity of Santa Barabara County's air quality regulatory and enforcement program, the Center requests the Board deny Sable's latest request for a variance and uphold the terms and conditions of Permit No. 9102-R7. For the following reasons, we urge the Board to put clean air first.

II. Request for Continuance to Accommodate Remote Participation in Hearing

Before detailing our objections to Sable's variance request, the Center first respectfully requests the Board continue the scheduled hearing in this matter in order to accommodate remote participation.

Although we understand an in-person hearing has already been scheduled and noticed for June 25, 2026, we request the Board continue this hearing to a later date so that it can accommodate remote participation and assure proper public notice of such accommodation. District Rule 516 authorizes the Board to grant any reasonable continuance. We believe a continuance is reasonable as follows.

The Center for Biological Diversity wishes to participate as a party in the hearing in this matter and to be afforded the rights conferred upon parties by District Rule 513. These rights include the right to testify, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, to impeach any witness, and to rebut evidence.

Unfortunately, the Center's authorized representative who would participate in any hearing on this matter on behalf of the organization is unable to attend the in-person hearing scheduled for June 25, 2026 due to familial obligations. Furthermore, the Center's authorized representative resides in Denver, Colorado and would be required to fly in to attend any in-person hearing. Although the Center's authorized representative may be able to fly in to an in-person hearing scheduled later than June 25, 2026, the Center requests the Board instead consider providing an opportunity for remote participation in order to afford flexibility and accommodation for others who may also wish to participate remotely. The Center understands that remote participation is routinely provided for during meetings of the Santa Barabara Air Pollution Control District Board of Directors.

Granting a continuance in this matter in order to accommodate remote participation is imminently reasonable. Sable, the petitioner, would not be prejudiced by a delay in a hearing. Sable's Petition seeks a 90-day variance for the dates May 22, 2026 to August 20, 2026. Whether the hearing proceeds on June 25, 2026 or at some later date does not affect Sable's ability to obtain variance relief for the requested 90 days. The Company's request is, in part, seeking retroactive variance relief, and the timing of a hearing also has no bearing on the Company's ability to obtain such relief for past violations.

Conversely, if a continuance is not granted, the Center will not be able to participate in the June 25, 2026 hearing and exercise its rights as a party in the proceeding. Although the Center is herein providing written objections, a hearing is meant to afford parties an

opportunity for cross-examination, to call and examine witnesses, to impeach witnesses, and to rebut evidence, all of which cannot be fulfilled via written submissions. Continuing the June 25, 2026 hearing and providing an opportunity for remote participation in any continued hearing will assure the Center is able to participate as a party and uphold the organization's procedural rights.

District Rules provide no mandatory deadline by which a hearing must be held in response to a petition for variance. Although Section 42359 of the Health and Safety Code of the State of California requires the Board to hold a hearing in response to a petition for a variance, it is up to the Board to determine the appropriate timing for a hearing. Accordingly, the Board has wide leeway to set a reasonable hearing date.

In requesting a continuance, the Center understands and fully respects the Board's interest in timely resolution of Sable's variance petition. We believe setting a new hearing date sometime in July would be reasonable, particularly if an opportunity for remote participation is provided.

III. Objections to Sable's Petition for Variance

The Center objects to Sable's Petition and requests the Board deny the Petition.

At the outset, it's important to emphasize that the Board is not bound to approve a petition for variance simply because it has been submitted. Although District Rules provide several criteria that must be addressed by petitioners, the Board must assess compliance with these criteria in determining whether a variance is appropriate. And while Section 42352 of the Health and Safety Code of the State of California requires that several findings be made if a variance is to be granted, the Board must engage in an inquiry if it is to justify such findings. All that's to say, the Board cannot simply rubberstamp Sable's Petition.

Here, it appears that the Board cannot grant Sable's Petition due to a number of deficiencies and omissions, as well as clear indications that granting such a variance would be contrary to District Rules regarding the modification of Operating Permits. Below we detail our objections.

A. Sable's Petition is Deficient

To sustain a petition, District Rules at Rule 504 require petitioners to address nine criteria to establish a prima facie case for a variance. Although the rules only require that petitioners briefly discuss these criteria, here, Sable did not even address a number of criteria necessary for the Board to determine whether there is a reasonable basis for deliberating the petition and scheduling a hearing.

District Rule 504.B states that petitioners must provide "facts showing why compliance with the section, Rule or order is unreasonable." Sable's Petition does not address this criterion

or otherwise present facts showing why compliance is unreasonable. Although the Company avers that compliance could result in delayed production and lost revenues, there is no explanation as to how this is unreasonable. The Company also asserts that compliance would require additional work at Platform Heritage, including a shutdown of operations, depressurization of equipment, and planned flaring, but again, there is no explanation as how this is unreasonable. Although Sable may not like compliance, the Petition presents no facts indicating that compliance would be unreasonable, indicating the Petition is deficient.

Further, District Rule 504.F states that petitioners must address "[t]he advantages and disadvantages to the residents of the District resulting from requiring compliance or resulting from granting a variance." Sable's Petition does not address this criterion or even mention any impacts, advantageous or otherwise, to residents of the District. To be sure, the Petition addresses apparent advantages and disadvantages to Sable, but makes no effort to reasonably disclose advantages and disadvantages to those impacted by Sable's violations.

Sable's Petition does not present the information required by District Rule 504, which requires that petitioners "shall" provide all the required information. Accordingly, the Board must deny the Petition as deficient.

B. Sable Does not Qualify for the Requested Variance

Section 42352 of the Health and Safety Code of the State of California sets forth the criteria that must be met in order for the Board to grant a variance. Based on Sable's Petition, it does not appear that the requested variances satisfies the criteria for the Board to find that a variance is warranted.

Section 42352(a)(2) first states that a variance may be granted only where there are violations that are "due to conditions beyond the reasonable control of the petitioner[.]" Here, there is no indication that the violations identified by Sable are "beyond the reasonable control" of the Company. In fact, Sable's Petition indicates that compliance is completely within its control, it's just that the Company would prefer not to exercise this control. These do not constitute conditions beyond the reasonable control of Sable and therefore a variance cannot be granted in this matter.

Even if the Board determines that conditions are beyond the reasonable control of Sable, Section 42352(a)(2)(A) and (B) states that a variance may only be granted if requiring compliance would result in either "an arbitrary or unreasonable taking of property" or "the practical closing and elimination of a lawful business." Here, there is no indication that requiring compliance with Conditions 9.C.3(a), 9.C.3(b)(i), and 9.C.18 of Permit No. 9102-R7 would result in an arbitrary or unreasonable taking of property or lead to the practical closing and elimination of a lawful business. While Sable does not address these criteria directly in its Petition, it is clear that based on the information submitted that requiring compliance would not result in a taking of property. Requiring compliance would simply result in Sable taking steps to bring Platform Heritage into compliance. Similarly, requiring compliance would not

result in the practical closing or elimination of lawful business. Requiring compliance could result in Sable curtailing operations in order to bring Platform Heritage into compliance, but this not a "practical closing and elimination" of a business. According to Sable's own Petition, the Company ultimately expects to bring Platform Heritage into compliance and makes no mention or insinuation that compliance would somehow lead to the permanent closure or elimination of its business. In accordance with Section 42352(a)(2)(A) and (B) of the Health and Safety Code of the State of California, the Board has no authority to grant Sable's requested variance.

Finally, Section 42352(a)(4) of the Health and Safety Code of the State of California states that a variance may only be granted where the petitioner has given consideration to curtailing operations of the source in lieu of obtaining a variance. Here, Sable expressly states in its Petition that it has not given consideration to the curtailment of operations. The Company asserts that curtailment of production at Platform Heritage would "not necessarily reduce the volume of flaring," yet its Petition indicates that the flaring violations are largely a function of production activities. For example, the Company explains that "production balancing issues," "well production issues," and "sweet gas well production have resulted in excess unplanned flaring. Sable Petition at 2-3. The Company also explains that it must flare produced gas that cannot be injected at Platform Heritage. In these instances, it is unclear how curtailed production would not reduce unplanned flaring or otherwise ameliorate any perceived need for a variance.

For the aforementioned reasons, pursuant to Section 42352 of the Health and Safety Code of the State of California, the Board has no grounds to grant Sable's request for a variance. Accordingly, the Company's Petition must be denied.

C. Approval of the Requested Variance Requires a Significant Modification of the Platform Heritage Operating Permit

Finally, the Board cannot approve Sable's Petition as it would improperly modify the Company's operating permit without adherence to proper procedures.

In this case, Sable is requesting the Board to exempt the Company from compliance with Conditions 9.C.3(a), 9.C.3(b)(i), and 9.C.18 of Permit No. 9102-R7. Effectively, Sable is asking the Board to modify Permit No. 9102-R7 to remove the requirements of Conditions 9.C.3(a), 9.C.3(b)(i), and 9.C.18 from Permit No. 9102-R7, albeit on an interim basis. In this case, the Board cannot approve such a request unless it complies with District Rules at Rule 1304 regarding the significant modification of operating permits.

Here, Permit No. 9102-R7 was approved pursuant to the Santa Barbara County Air Pollution Control District's federally approved operating permit program. Permit No. 9102-R7, including Conditions 9.C.3(a), 9.C.3(b)(i), and 9.C.18, was approved pursuant to District Rule 1304. Rule 1304 sets forth requirements for the significant modification of permits, providing that modifications are subject to public notice and comment, an opportunity for EPA review, and an opportunity for the public to petition the EPA to object.

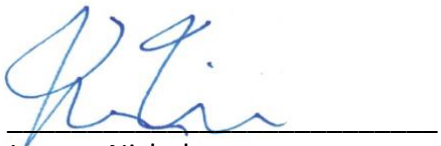
Sable's request for a variance is effectively an application for a significant modification to Permit No. 9102-R7. Given this, the Board cannot approve the variance without adherence to procedures regarding the significant modification of operating permits.

Although the Health and Safety Code of the State of California provides that variances may be granted by the Board, the Santa Barbara County Air Pollution Control District's federally approved operating permit program does not incorporate this Code. Therefore, the Health and Safety Code cannot serve to allow the Board to unilaterally modify operating permits without adherence to proper procedure. Effectively, this state law is subordinate to the District's duty to comply with its federally approved operating permit program. This means that although the Board may have authority to approve Sable's requested variance, such a variance cannot take effect and serve to modify the terms and conditions of an operating permit unless and until the operating permit is modified consistent with District Rule 1304.

Accordingly, if the Board is to proceed with Sable's requested variance, it must process the petition as an application for a significant operating permit modification and process it according to District Rule 1304.

The Center greatly appreciates the Board's thoughtful and careful consideration of our requests and arguments and looks forward to further participation in this proceeding. We also look forward to the Board's response to our request for a continuance to accommodate remote participation.

Submitted via e-mail June 18, 2026,



Jeremy Nichols
Senior Advocate and
Authorized Representative
Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
(303) 437-7663
jnichols@biologicaldiversity.org

SUBMITTED VIA EMAIL

May 23, 2024

Santa Barbara County Air Pollution Control District
Attn: William Sarraf
260 North San Antonio Road, Suite A
Santa Barbara, CA 93110
SarrafW@sbcapcd.org

RE: Draft Part 70 Renewal Permits for Sable Offshore's Santa Ynez Unit Stationary Source

Santa Barbara County Air Pollution Control District:

The Center for Biological Diversity submits the following comments on five draft Part 70 permits (collectively, "Draft Permits") for Platform Hondo, Platform Harmony, Platform Heritage, Las Flores Canyon Oil and Gas Plant ("LFC Plant"), and the Pacific Offshore Pipeline Company Gas Plant ("POPCO Plant"),[1] which, collectively, comprise Sable Offshore Corporation's ("Sable") Santa Ynez Unit.

Renewing ExxonMobil's operating permits would cause significant harm to air and water quality and is fundamentally incompatible with a safe and healthy climate for current and future generations. Before they were shutdown, Exxon's facilities were by far the largest source of greenhouse gas, volatile organic compounds, fine particulate matter, and formaldehyde pollution in Santa Barbara County. In addition, the facilities have a history of breakdowns and violations for leaking emissions beyond those authorized by the operating permits. The facilities have been out of operation for nearly a decade, with no viable plans to restart, and must be treated as new sources that must undergo a new PSD review before they are allowed to reactivate. Otherwise the requirements of Conditions 9.A, 9.B, and 9.C will not reflect the obligations PSD imposes on this reactivated source. The Draft Permits are also based on outdated information and monitoring requirements. For all of these reasons, the Santa Barbara County Air Pollution Control District ("District") should deny the Draft Permit renewals.

[1] The Part 70 Operating Permit numbers for these facilities are 9100 for Platform Hondo; 9101 for Platform Harmony; 9102 for Platform Heritage, 5651 for the LFC Plant, and 8092 for the POPCO Plant.

I. Factual background

Sable acquired the Santa Ynez Unit from ExxonMobil on February 14, 2024, pursuant to a November 1, 2022 purchase and sale agreement. U.S. Securities and Exchange Commission ("SEC"), Sable Offshore Corp. Form 10-Q, at 5 (Mar. 31, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1831481/000119312524139428/d815914d10q.htm.

ExxonMobil historically used the three offshore platforms in the Santa Barbara Channel to produce crude oil and natural gas. ExxonMobil pumped the oil and gas by subsea pipeline to the LFC and POPCO Plants, located about 20 miles west of Santa Barbara, and relied on the Plains All American Pipeline to ship its product to market. After the catastrophic Refugio oil spill in 2015, when the Plains All American Pipeline ruptured, ExxonMobil shut in its platforms, ceasing all operations except those required to preserve the facilities from irreversible deterioration.

Federal records show that the Santa Ynez Unit's offshore drilling platforms had widespread corrosion and gas leaks requiring emergency responses before they were shut down.[2] For example, federal officials who inspected Platform Hondo on May 1, 2015, found "numerous corrosion issues" and components out of compliance. Just three weeks prior, officials found corrosion, five failed gas detectors, and "leakage rates higher than the maximum allowable" on the platform's Well H-12U. All three of the platforms had early-2015 gas leaks that required their crews to gather for safety reasons. While ExxonMobil's crew gathered on Platform Heritage on the morning of May 19th in response to an incident on the platform, the broken Plains All American pipeline was spewing what was thought to be 120,000 gallons of oil into the coastal environment. Experts now believe more than 450,000 gallons of oil came from the spill.[3] Platform Hondo also had a gas leak on April 27, 2015, and Platform Harmony had one on March 29 of that year. A federal inspection of Harmony on Aug. 27, 2015 found "corrosion issues throughout the platform" and "electrical issues throughout the platform." Continued corrosion issues have continued to plague the facilities even in a "preserved" state, as explained further below.

In the nine years since the 2015 oil spill, the Santa Ynez Unit facilities have been "preserved" or "shut in." In variance requests to SBAQMD, ExxonMobil stated that the Santa Ynez Unit onshore and offshore facilities have "*ceas[ed] operations*."[4] On June 16, 2015, incoming platform gas terminated. The platform flares operate only to combust gases accumulated from well casing pressure build up, but otherwise

[2] The Center for Biological Diversity obtained the Bureau of Safety and Environmental Enforcement's 2015-2018 regulatory reports through a Freedom of Information Act request. Reports are available at the following online repository: https://www.biologicaldiversity.org/campaigns/Refugio_oil_spill/pdfs/exxonmobile-offshore-accident-reports.pdf

[3] Environmental Defense Center, *Refugio Oil Spill: What Restoration Looks Like 5 Years Later* (Aug. 20, 2020), https://www.environmentaldefensecenter.org/refugio-oil-spill-what-restoration-looks-like-5-years-later/#_ftn1 (citing Expert Report of Igor Mezic, Ph.D., *Andrews v. Plains All American Pipeline, L.P.*, United States District Court, Central District of California, Case No. 2:15-cv-04113-PSG-JEM, at 16–17 (Mar. 29, 2019)).

[4] *See, e.g.*, Las Flores Canyon 2015-27-I Petition, Oct. 12, 2015 (emphasis added).

equipment and flow lines are preserved. Tanks have been drained and purged.[5] The majority of the staff at the facility has been laid off, though a skeleton crew of less than 15% of the in-service workforce has been retained for preservation work according to an anonymous source.[6] Prior to the sale to Sable, ExxonMobil also stated that prior to a phased restart, the Santa Ynez Unit facilities would require "conducting equipment and system inspections, equipment maintenance, equipment testing, developing restart procedures, and conducting a comprehensive safety review of the restart operations with the Santa Barbara County System Safety and Reliability Review Committee[.]"[7]

Although ExxonMobil, and now Sable, have attempted to get permits to enable the facilities to restart, they have been unsuccessful. All plans have been stalled since mid-2020. In June 2015, the Santa Barbara County Planning and Development Director denied an emergency permit that would have allowed ExxonMobil to continue full Santa Ynez Unit operations and transport produced oil via tanker truck.[8] In 2016, an emergency trucking project was approved only to de-inventory about 400,000 barrels of crude oil from tanks orphaned by the pipeline shutdown.[9] Since that time, ExxonMobil has attempted to obtain approval truck oil to San Luis Obispo and Kern Counties. However, last year, the Santa Barbara Planning Commission Staff Report recommended that the Pentland Terminal in Kern County be "eliminat[ed] . . . as one of the main receiver sites during normal operations,"[10] because of the danger posed by transporting oil and gas by tanker truck on Highway 166, which follows the course of the Cuyama River.[11] In fact, in early 2020, a tanker truck overturned on Highway 166, spilling an estimated 4,000 to 6,000 gallons of oil into the Cuyama River above Twitchell Reservoir—the main source of water for Santa Maria.[12]

The remaining destination for the tanker trucks, the Santa Maria facility in San Luis Obispo, also became impracticable last year. In August 2020 Phillips 66 announced that it is shutting down its Santa Maria refinery and associated pipeline system in 2023—including the Santa Maria Pump Station to which ExxonMobil planned

---

[5] *Id.*

[6] Cooper, Lara, *ExxonMobil to Relocate 200 Employees in Wake of Halted Operations in Santa Barbara County*, NOOZHAWK, Oct. 8, 2015, https://www.noozhawk.com/article/exxonmobil_to_relocate_200_employees_in_wake_of_halted_operations.

[7] Santa Barbara County, ExxonMobil Interim Trucking for Santa Ynez Unit Phased Restart Project, Final Supplemental Environmental Impact Report ("Trucking Final SEIR"), 3-2 (July 2020).

[8] Santa Barbara County Planning Commission, Staff Report for ExxonMobil Interim Trucking for Santa Ynez Phased Restart ("Interim Trucking Staff Report"), 12 (July 22, 2020).

[9] *Id.* at 13.

[10] *Id.* at 4.

[11] The Interim Trucking Staff Report found that an alternative trucking route to Santa Maria Pump Station only rather than the Santa Maria Pump Station and Pentland Terminal in Kern County "would reduce truck miles traveled by substantially limiting the number of trucks that could go to the Pentland Terminal. State Route 166 has several long road stretches that parallel waterways such as the Cuyama River. By substantially limiting the number of trucks that could use State Route 166, this alternative would also reduce the probability of an oil spill entering a waterway." *Id.* at 22.

[12] Yamamura, Jean, *Tanker Spills over 4,000 Gallons of Crude Oil into Cuyama River*, Santa Barbara Independent, Mar. 24, 2020, https://www.independent.com/2020/03/24/tanker-spills-over-4000-gallons-of-crude-oil-into-cuyama-river/.

to send its crude oil.[13] As a result, ExxonMobil cancelled the scheduled Planning Commission hearings on the proposed project.[14]

Since 2015 ExxonMobil made representations to several state entities indicating that it does not intend a prompt restart at the facility. For example, ExxonMobil removed the Fast Response Vessel from the Oil Spill Response Plan associated with its platforms in the Santa Barbara Channel. The Coastal Commission has issued a No Effects Determination #NE-0001-21, finding that removing the vessel from the Santa Barbara Harbor does not reduce protection of coastal resources because the platforms are shut in so the discharge possibility to waters is zero.[15] Similarly, ExxonMobil requested a series of variances from the District to indefinitely suspend requirements related to operation of flares as well as monitoring and measuring provisions while equipment is out of service. The variances were extended so many times that the District staff told ExxonMobil that permit modifications would be needed as variances could not be used to extend deadlines moving forward.[16]

Since acquiring ownership of the Santa Ynez Unit in February of this year, Sable has made general statements regarding its intent to recommence production in the third quarter of 2024.[17] These statements, however, are broad, vague, and couched in caveats, such that they are far from representing a clear path forward.[18]

II. Title V and Part 70 requirements

Pursuant to the Clean Air Act, major stationary sources of air pollution cannot operate without a Title V (i.e., Part 70) permit. A Title V permit must "include enforceable emission limitations and standards … and such other conditions as are necessary to **assure compliance with applicable requirements of this chapter**,

---

[13] Santa Maria Times Staff Report, *Phillips 66 to close refinery on Nipomo Mesa, phase out associated pipelines*, Santa Maria Times, Aug 13, 2020, https://santamariatimes.com/news/san_luis_obispo_county_news/phillips-66-to-close-refinery-on-nipomo-mesa-phase-out-associated-pipelines/article_6b52217c-2a3b-5fe8-a68a-93ae8390b525.html.

[14] Santa Barbara Department of Planning & Development, *ExxonMobil Interim Trucking for SYU Phased Restart Project Case Number: 17RVP-00000-00081* (2020), https://www.countyofsb.org/plndev/projects/energy/ExxonMobil-InterimTrucking.sbc (last visited May 15, 2021); Santa Barbara County Planning Commission, *Request to Drop the ExxonMobil Interim Trucking Project from the September 2nd and 9th Planning Commission Hearings 17RVP-00000-00081, 19EIR-00000-00001*, Aug. 21, 2020.

[15] California Department of Fish and Wildlife Office of Spill Prevention and Response, *Oil Spill Technical Advisory Committee Meeting Binder*, April 21, 2021, https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=191997&inline; California Coastal Commission, *Energy, Ocean Resources and Federal Consistency Division Deputy Director's Report for May 2021*, May 7, 2021, https://documents.coastal.ca.gov/reports/2021/5/F10/F10-5-2021.pdf.

[16] E-mail from Michael F. Goldman, Manager Engineering Division, to Patrice Surmeier, Exxon (Aug. 9, 2019, 10:44 PST).

[17] *See, e.g.*, Sable Offshore Corp., *Investor Presentation*, at 2 (May 2024) (Exhibit 4).

[18] *See, e.g.*, *id.* ("We estimate in this presentation that production can be recommenced the third quarter of 2024, but there can be no assurance that the necessary permits will be obtained that would allow the pipeline to recommence transportation and allow the assets to recommence production by that date or at all. If production is not recommenced by January 1, 2026, the terms of the asset acquisition with EM would result in the assets being reverted to EM without any compensation to Sable therefor.")

including the requirements of the applicable implementation plan." 42 U.S.C. § 7661c(a) (emphasis added).

Emission limits and operational standards necessary to prevent the significant deterioration of local air quality—as required by the Prevention of Significant Deterioration ("PSD") piece of the state and District's New Source Review permitting program—are among the requirements that must be included in a source's Title V permit. EPA's Title V regulations state, in relevant part:

> Applicable requirement means all of the following as they apply to emissions units in a part 70 source . . .
>
> (1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act . . .
>
> (2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D of the Act . . .

40 C.F.R. § 70.2. Beginning with the United States Environmental Protection Agency's ("EPA") first orders on Title V permits nearly 20 years ago, EPA interpreted part (1) of this definition to encompass the requirement to obtain a major New Source Review permit and abide by the requirements of major New Source Review. *See, e.g.*, In the Matter of Roosevelt Reg'l Landfill Reg'l Disposal Co., 1999 EPA CAA Title V LEXIS 10, at *14-15 (E.P.A. May 4, 1999) ("[A]pplicable requirements include the requirement to obtain preconstruction permits that comply with applicable preconstruction requirements under the Act, EPA regulations, and State Implementation Plans.").

Courts have reached the same conclusion. *See Sierra Club v. EPA*, 964 F.3d 882, 885–86 (10th Cir. 2020) (holding that "all of the Act's requirements constitute 'applicable requirements' under the regulation," including the requirements of major New Source Review); *see also LaFleur v. Whitman*, 300 F.3d 256, 262 (2nd Cir. 2002) (explaining that a Title V permit "must include limitations on emissions and other conditions (such as regular monitoring, recordkeeping, and reporting) necessary to ensure compliance with the provisions of the CAA, including the PSD program (if applicable)."); *contra Environmental Integrity Project v. EPA*, 960 F.3d 236 (5th Cir. 2020).

To assure compliance with all applicable requirements, Title V permits must also establish "inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c); *see also* 40 C.F.R. §§ 70.6(a)(1), (c)(1). As EPA explained when promulgating its Title V regulations, the Title V program "will 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." 57 Fed. Reg. 32,250, 32,251 (July 21, 1992).

To this end, procedures for determining compliance must be "sufficiently reliable" for determining compliance. 42 U.S.C. § 7661c(b); *see also* 40 C.F.R. § 70.6(a)(3). A Title V permit must also contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit[.]" 40 C.F.R. § 70.6(a)(3)(i)(B); *see also* 40 C.F.R. § 70.6(c)(1). Further, EPA's regulations must require that an "applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this chapter." *Id*. § 7661b(b). Where a Title V permit fails to require sufficient monitoring to assure compliance, the permit cannot provide the information necessary to determine whether a source is in compliance and is therefore unenforceable federally or as a practical matter, contrary to Title V of the Clean Air Act. *See* 42 U.S.C. § 7661c(a) (stating that Title V permits shall include "enforceable emission limitations and standards").

III. The Draft Permits violate EPA's reactivation policy for PSD permits

The Draft Permits authorize the Santa Ynez Unit to operate, and thus to restart, even though the Unit does not meet PSD requirements and new PSD permitting is required after the Unit's 9-year closure because of EPA's reactivation policy. The District's review of Sable's applications and its issuance of the Draft Permits must abide by EPA's long-standing reactivation policy, which defines when re-opening a shuttered facility triggers PSD requirements. EPA first articulated the policy in *In the Matter of Monroe Electric Generating Plant Entergy Louisiana, Inc.*, Petition No. 6-99-2 (June 11, 1999) [hereinafter, "Monroe Order"], and EPA continues to apply it because "it remains an appropriate method for determining whether the reactivation of a stationary source qualifies as the construction of a new source under the PSD regulations." Letter from Joseph Goffman, EPA, Principal Deputy Assistant Administrator, to Julie Domike, Babst Calland, and Thomas Eagan, Rasco Klock Perez & Nieto, at 2, Attachment 1 n.2, & Attachment 2 (Nov. 16, 2022), https://www.epa.gov/system/files/documents/2022-12/PSD%20Letter%20to%20PHRT%2011.16.22_0.pdf [hereinafter, "West Indies Reactivation Letter"] (Exhibit 1).[19]

[19] *See also* U.S. EPA Memorandum from Edward Reich, Director, Division of Stationary Source Enforcement to Stephen A. Dvorkin, Chief, General Enforcement Branch, Region II, Re: PSD Requirements (Sept. 6, 1978), https://www.epa.gov/sites/production/files/2015-07/documents/babln2_2.pdf [hereinafter "1978 Memorandum"]. Although former EPA Administrator Andrew Wheeler attempted to revoke the Reactivation Policy in response to comments on the Clean Air Act Plantwide Applicability Limit Permit for Limetree Bay Terminals, LLC and Limetree Bay Refining, LLC, St. Croix, U.S. Virgin Islands, current Administrator Michael Regan withdrew that response to comments on March 25, 2021. *See* U.S. EPA Memorandum from Michael Regan, Administrator to Albert Bryan, Jr., U.S. Virgin Islands Governor, Re: Withdrawal of Final Plantwide Applicability Limit Permit for Limetree Bay Terminals, LLC and Limetree Bay Refining, LLC, St. Croix, U.S. Virgin Islands (Mar. 25, 2021), https://www.epa.gov/sites/production/files/2021-03/documents/withdrawal_letter_gov_bryan.signed.pdf. Thus, the reactivation policy remains in place.

A. EPA's reactivation policy for PSD sources

The reactivation policy addresses whether existing major stationary sources that have been out of operation are considered "new" sources when evaluating the need to obtain a PSD permit prior to restarting the existing major stationary source. The policy is grounded on EPA's interpretation that "a major stationary source that has permanently shut down is subject to the PSD regulations at 40 C.F.R. 52.21 as a new major stationary source upon restart." West Indies Reactivation Letter, Attachment 2, at 2. Pursuant to this well-established policy:

> Where facilities are reactivated after having been permanently shutdown, operation of the facility will be treated as operation of a new source. Alternatively, shutdown and subsequent reactivation of a long-dormant facility may trigger PSD review by qualifying as a major modification.

Monroe Order at 8 & n.9 (collecting sources for Reactivation Policy from 1978 onwards); *see also Communities for a Better Env't v. Cenco Ref. Co.*, 179 F. Supp. 2d 1128, 1143-46 (C.D. Cal. 2001) (applying the reactivation policy and finding that a six-year shutdown was likely to trigger PSD review in granting an injunction).

If a facility has been shutdown for two or more years, much less nine, the shutdown should be presumed to be permanent. Thus, the burden falls on the owner, Sable, to rebut the presumption that the facility is permanently closed and does not require a new PSD permit. *See* 1978 Memorandum. EPA has consistently applied the two-year presumption. See, e.g., Noranda Lakeshore Mines, Memo from John Seitz, Director, Stationary Source Compliance Division, OAQPS, to David Howekamp, Director, Air Mgt. Div. Reg. IX (May 27, 1987); Watertown Power Plant, South Dakota, Memo from John B. Rasnic, Director Stationary Source Compliance Division, OAQPS, to Douglas M. Skie, Chief, Air Programs Branch (Nov. 19, 1991); Letter from Judith A. Enck, Regional Administrator, to Honorable Basil Seggos, EPA Review of Proposed Title V Operating Permit for Greenidge Station Permit ID: 8-5736-00004/00017 (Dec.7, 2015) (determining that the facility owner must rebut the presumption after placing the facility in protective lay-up for five years); Letter from Suilin Chan, Chief, Permitting Section, to Alfred Carlacci, Air Pollution Control Engineer (Sept. 19, 2017) (instructing New York air regulator that two years after a shutdown of the Caithness plant, it was the permit applicant's obligation to fill information gaps related to whether the shutdown was permanent).

The U.S. Court of Appeals for the Third Circuit decision overturning EPA's determination that Port Hamilton must obtain a PSD permit prior to resuming its operations at its St. Croix refinery is only applicable within the Third Circuit (i.e., Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands) and thus is not relevant to the District's evaluation of the Draft Permits. *Port Hamilton Refin. & Transp., LLLP v. EPA*, 75 F.4th 166 (3rd Cir. 2023).

Under the Policy, EPA had established six criteria to determine if the presumption that a major stationary source has been permanently shutdown may be overcome:

- Amount of time the facility has been out of operation,
- Reason for the shutdown,
- Statements by the owner or operator regarding intent,
- Cost and time required to reactivate the facility,
- Status of permits, and
- Ongoing maintenance and inspections that have been conducted during shutdown.

1978 Memorandum; West Indies Reactivation Letter, Attachment 1, at 7.

B. The Santa Ynez Unit was permanently shutdown in 2015

As discussed above, a presumption of permanent closure applies for a facility that has been closed for more than two years, and the burden falls on the owner to rebut that presumption. The six policy reactivation factors weigh in favor of treating the Santa Ynez Unit as a new source for purposes of PSD requirements. Any future rebuild or operation of the Santa Ynez Unit's facilities requires New Source Review and subjects the facilities to PSD requirements. It is therefore contrary to the Clean Air Act and the reactivation policy to authorize the future operation of these facilities without "includ[ing] requirement[s] to obtain preconstruction permits that comply with applicable new source review requirements." Monroe at 2 (citing Order *In re Roosevelt Regional Landfill*, at 2 (May 4, 1999)). The Title V operating permits program is "a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document and that compliance with these applicable requirements is assured." *Id*.

Amount of time the facility has been out of operation. The permitted facilities comprising the Santa Ynez Unit have been shut down for nine years, nearly to the day, and counting. The only operations at the facilities are for preservation and are undertaken by a skeleton staff. Nine years is at the long end of the range of facilities that have even tried to rebut the presumption of permanent closure.

Various authorities have found permanent closure necessitating new PSD review for facilities that were inactive for the same or a shorter period of time. *See e.g.*, EPA Memorandum from Edward Reich, Director, Stationary Source Enforcement Division to Sandra S. Gardebring, Director, Enforcement Division, Region V (Oct. 3, 1980) (cement kiln shut down for over three years, removed from State's emissions inventory, and described by the owner as permanently closed is to be considered a new source upon reactivation, requiring NSR and PSD permitting), https://archive.epa.gov/airquality/

ttnnsr01/web/html/p3_15.html; 1978 Memorandum (requiring a new PSD permit after four years of closure); *Communities for a Better Env't v. Cenco Ref. Co.*, 179 F. Supp. 2d 1128, 1143-46 (C.D. Cal. 2001) (applying the reactivation policy and finding that a six-year shutdown was likely to trigger PSD review in granting an injunction); West Indies Reactivation Letter at 1 & Attachment 1, at 2 (EPA determining a facility would need a new PSD permit before reactivating after nine years of closure); *Port Hamilton Refin. & Transp., LLLP v. EPA*, 75 F.4th 166, 167 (3d Cir. 2023) (finding that EPA determined a facility would need a new PSD permit before reactivating after nine years of closure). The Center for Biological Diversity is not aware of *any* facility that has evaded the reactivation policy after being closed for more than nine years. The District will make history or tie the record for the longest sitting facility that was allowed to evade PSD permitting requirements. *See* Memorandum from John Rasnic, Stationary Source Compliance Director, EPA, to Douglas Skie, Air Programs Branch (Nov. 19, 1991), https://www.epa.gov/sites/default/files/2015-07/documents/watertwn.pdf (allowing reactivation of a shutdown power plant after nine years but characterizing this as "a unique situation given the very long period of the shutdown").

Further, the nature of PSD review means that a period of closure for nine years or more is of particular consequence when it comes the invalidity of the prior PSD permits for the Santa Ynez Unit. The two-year presumption of permanent closure is grounded, in significant part, on the premise that stationary source that has permanently ceased operating no longer has a baseline level of actual emissions, that such baseline emissions are zero. *See* West Indies Reactivation Letter, Attachment 2, at 2. As EPA describes:

> The absence of any baseline emissions is a key characteristic of a new source. From 1978 to 2002, this interpretation was supported by [New Source Review] regulations that generally defined baseline emissions to include emissions over the last two years but placed the burden on sources to show that another period should be used to determine baseline emissions. **These provisions were amended in 2002 to enable most existing sources to use any 24-month period in the last 10 years to determine the baseline level of emissions for existing emissions units**. However, consistent with agency's understanding of "new source" described above, the existing sources subject to this provision were not intended to include sources that permanently shut down. Although the 2002 rulemaking did not add any definition of "existing major stationary source" that excluded permanently shut down sources, the 2002 rule carried forward the principle that a permanently shut down source has no baseline emissions and should thus be treated as a new one.

Id. (emphasis added). Thus, while the presumption of closure after two years is still very well supported, closure of nine or more years prevents the establishment of a baseline for emissions even under the more generous rule allowing the baseline to be established based on any 24-month period in the last 10 years. At present, Sable *cannot* provide the District an accurate determination of normal baseline emissions that is acceptable for PSD permitting purposes. This is characteristic of a new source in the PSD permitting scheme. Sable, for example, could not provide a normal baseline should it seek to modify the Santa Ynez Unit in a way that would increase emissions.

Declining to treat the Santa Ynez Unit as an existing source based on its nine-year closure would also further a crucial balance struck by Congress in enacting the New Source Review program. As part of New Source Review and PSD, the Clean Air Act requires that *new* facilities be designed to incorporate the best available pollution control technology ("BACT"), but does not require *existing* facilities to upgrade their pollution controls until it is cost-effective to do so in conjunction with other upgrades or changes to the facility (i.e., modifications). *See, e.g.*, 40 C.F.R. § 51.166(b)(12). Thus, the Act grandfathers existing facilities when it comes to BACT, but does not permanently exempt them, recognizing that BACT expires as pollution controls improve during the lifetime of the facility. *See Ala. Power Co. v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979); *see also Wisconsin Electric Power Co. v. Reilly*, 893 F.3d 901, 909 (7th Cir. 1990) ("Consistent with its balanced approach, Congress chose not to subject existing plants to the requirements of NSPS and PSD. … But Congress did not permanently exempt existing plants from these requirements."). The rationale for subjecting a source to PSD when it is modified is because this is a cost-effective time to improve controls. *See* H.R. Rep. No. 294, 95th Cong., 1st Sess. 185*, reprinted in* 1977 U.S. Code Cong. & Admin. News at 1264 ("[b]uilding control technology into new plants at time of construction will plainly be less costly then [sic] requiring retrofit when pollution control ceilings are reached."). Where a source is doing much more to resume operation of an entire facility, undertaking substantial capital investment to restart after a "permanent" shutdown, this is an opportune time to cost-effectively upgrade pollution control technology.

While this rationale underlying BACT support the basis for the reactivation policy's consideration of the cost and time to reactivate this facility, it also relates to the duration prong because BACT expires and existing facilities are not allowed to evade BACT when there is an opportunity for them to catch up.

For example, pursuant to the State Implementation Plan to which the District is subject and EPA's PSD regulations, proposed sources that obtain a PSD permit must construct within 18 months or the permit becomes invalid. 40 C.F.R. § 51.21(r)(2). Limited extensions are available, but not indefinite ones because BACT expires. In fact, "when construction does not begin until 36 months or longer" after a PSD permit is issued, "EPA believes that it is more likely that technology and air quality considerations will become outdated." EPA, *Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 C.F.R. 52.21(r)(2)*, at 4 (Jan. 31, 2014), https://www.epa.gov/sites/default/files/2015-07/documents/extend14.pdf. The POPCO

Plant, for instance, was subjected to BACT in 1997 after the expansion of its gas processing capacity. POPCO Plant Draft Permit at 4–5. This BACT and the underlying PSD analysis have long expired, and there is a basis for, and requirement to, address this, yet the District is allowing the Santa Ynez Unit to evade PSD requirements.

Cost and time required to reactivate the facility. As discussed above with respect to the duration prong, declining to treat the Santa Ynez Unit as an existing source based on its nine-year closure would also further a crucial balance struck by Congress in enacting the New Source Review program. As part of New Source Review and PSD, the Clean Air Act requires that *new* facilities be designed to incorporate BACT, but does not require *existing* facilities to upgrade their pollution controls until it is cost-effective to do so in conjunction with other modifications to the facility. *See, e.g.*, 40 C.F.R. § 51.166(b)(12). Thus, the Act grandfathers existing facilities when it comes to BACT, but does not permanently exempt them, based on the expiration of BACT. *See Wisconsin Electric Power Co. v. Reilly*, 893 F.3d at 909. The rationale for subjecting a source to PSD when it is modified is because this is a cost-effective time to improve controls. *See* H.R. Rep. No. 294, 95th Cong., 1st Sess. 185*, reprinted in* 1977 U.S. Code Cong. & Admin. News at 1264 ("[b]uilding control technology into new plants at time of construction will plainly be less costly then [sic] requiring retrofit when pollution control ceilings are reached."). Where a source is doing much more to resume operation of an entire facility, undertaking substantial capital investment to restart after a "permanent" shutdown, this is an opportune time to cost-effectively upgrade pollution control technology.

1. Time to reactivate the facilities

Sable has not provided a clearer or more definite timeline for a full restart. Sable has made general statements regarding its intent to recommence production in the third quarter of 2024.[20] These statements, however, are broad, vague, and couched in caveats, such that they are far from representing a clear path forward.[21] *See also, e.g.*, Sable, U.S. Securities and Exchange Commission ("SEC") Form 10-Q, Prospectus, at 6 (May 15, 2024), https://www.sec.gov/Archives/edgar/data/1831481/000119312524139459/d778729d424b3.htm [hereinafter, "Sable SEC Prospectus"] (Exhibit 2) ("Due to the remaining regulatory approvals necessary to restart production, along with the timing of ongoing construction repair efforts, substantial doubt exists about the Company's ability to continue as a going concern. The financial statements included in this Quarterly Report do not include any adjustments relating to the recovery of the recorded assets or the classification of the liabilities that could be necessary if the Company is unable to continue as a going concern."). In another SEC filing, Sable

[20] *See, e.g.*, Sable Offshore Corp., *Investor Presentation*, at 2 (May 2024).

[21] *See, e.g.*, *id.* ("We estimate in this presentation that production can be recommenced the third quarter of 2024, but there can be no assurance that the necessary permits will be obtained that would allow the pipeline to recommence transportation and allow the assets to recommence production by that date or at all. If production is not recommenced by January 1, 2026, the terms of the asset acquisition with EM would result in the assets being reverted to EM without any compensation to Sable therefor.")

stated:

> [T]here is no assurance that we will be successful in satisfying the remaining requirements and restarting production in a timely manner. If we fail to restart production by January 1, 2026, the prior owner of SYU may exercise its right to cause us to reassign the SYU Assets. See "*Risk Factors—Risks Related to the Business of the Company—We may be unable to restart production of SYU by January 1, 2026, which would permit EM to exercise a reassignment option and take ownership of SYU without any compensation or reimbursement other than the deemed repayment in full of the principal and accrued interest outstanding under the Term Loan Agreement*."

Sable, Rule 424(b)(3) Prospectus: Risk Factors, at 19 (May 10, 2024), https://www.sec.gov/Archives/edgar/data/1831481/000119312524136247/d791997d424b3.htm#tx791997_8 [hereinafter, "Sable SEC Risk Factors"] (Exhibit 3). Thus, the time to reactivate the facility is far from clear or reasonably foreseeable, and, by Sable's own admission, could extend beyond January 1, 2026.

In filings associated with ExxonMobil's Trucking and pipeline proposals, ExxonMobil stated that the construction schedule for trucking, which includes building some trucking infrastructure and restarting the facilities, was four to six months for one new truck loading rack with four loading bays[22] A full restart would require preparations to start *two to three years* ahead of time.[23] This long period of preparation, and the significant costs associated with it, weighs heavily in favor of requiring a new PSD analysis for the Santa Ynez Unit. The Santa Ynez Unit is already shut down so identification and installation of BACT is more cost-effective at present because it will not obstruct active operations.

2. Cost to reactivate the facilities

In addition, Sable's recent SEC filings demonstrate that the cost needed to restart the Santa Ynez Unit is exorbitant, which has the potential to postpone or entirely preclude reactivation of the facilities. In its May 15, 2024 Prospectus, Sable disclosed that the costs to restart the Santa Ynez Unit are significant, stating that that it raised "approximately $440.0 million" from investors for an aggregate commitment. Sable SEC Prospectus at 6. Earlier this month, Sable estimated stated that, "We currently estimate that the total costs we will incur in order to restart production to be approximately $197,000,000." Sable SEC Risk Factors at 19. Sable went on to assert that even this massive capital may not be enough to restart the facility, stating that, it:

[22] Interim Trucking Staff Report at 8.
[23] Trucking Final SEIR at 3-3.

> ". . .**believes the Company [(Sable)] has sufficient capital to maintain operations and complete the repairs necessary to restart production** of the SYU Assets. However, the Company's plans for production restart are contingent upon approvals from federal, state and local regulators. **Additionally, if the Company's estimates of the costs of restarting production are less than the actual amounts necessary to do so, the Company may have insufficient funds available to operate its business prior to first production and will need to raise additional capital**. If the Company is unable to raise additional capital, it may be required to take additional measures to conserve liquidity, which could include, among other things, suspending repair efforts and reducing overhead expenses. The Company cannot provide any assurance that new financing will be available to it on commercially acceptable terms, if at all.

Sable SEC Prospectus at 6 (emphasis added). Thus, the cost required to restart the Santa Ynez Unit is extraordinarily high, to the point where a capital raise of nearly half-a-billion dollars may not cover Sable's costs, by its own admission. *See* West Indies Reactivation Letter, Attachment 1, at 9 ("EPA considered the 'limited time and capital' necessary to restart a power plant in South Dakota 'with only a few weeks of work' after nine years on cold standby an important factor in determining that the plant had not been permanently shut down. Memorandum from John B. Rasnic to Douglas M. Skie, Applicability of PSD to Watertown Power Plant, South Dakota (Nov. 19, 1991).").

Meanwhile, the cost of BACT, relatively, would amount to a fraction of Sable's total reactivation costs. Further, cost-effectiveness is further accounted for in the selection of BACT itself. *See, e.g.*, South Coast AQMD, Cost Effectiveness Values and Calculations (accessed May 9, 2024), https://www.aqmd.gov/home/permits/bact/cost-effectiveness-values. It is a relatively small price to pay for the protection of human health and welfare, and a crucial, cost-effective time for the District to impose PSD requirements.

As stated above, one of the core principles underlying the reactivation policy, is based, in part, on Congress' decision to subject existing sources to PSD requirements when they modify for cost-efficiency reasons, Here Sable is already expending hundreds of millions to "complete the repairs necessary to restart production." *Id*. Sable has also flagged "the timing of ongoing construction repair efforts" as a reason for why "substantial doubt exists about the Company's ability to continue as a going concern." *Id*. Pursuant to the reactivation policy, now is also the time to remove the grandfathering of the Santa Ynez Unit from PSD requirements, and to cost-effectively require the imposition of PSD requirements, including BACT, *now*, when the facility will already be under repair anyway.

Statements by the owner or operator regarding intent. Although, prior to selling, ExxonMobil made vague representations as to its desire to restart the facilities, EPA has made clear that:

> [O]wners and operators of shutdown facilities must **continuously demonstrate concrete plans to restart the facility sometime in the reasonably foreseeable future.** If they cannot make such a demonstration, it suggests that for at least some period of the shutdown, the shutdown was intended to be permanent. Once it is found that an owner or operator has no real plan to restart a particular facility, such owner or operator cannot overcome this suggestion that the shutdown was intended to be permanent by later pointing to the most recent efforts to reopen the facility.

Monroe Order at 9–10 (emphasis added). In keeping with the burden placed on the source operator to justify why the reactivation policy does not apply, vague assertions about intent do not suffice.

EPA explains that this approach to assessing intent is "consistent with the general notion that a company cannot sit indefinitely on a governmental permission to emit air pollution without showing some definite intention to use it." *Id.* at 10, n.11 ("40 CFR § 52.21(r) (construction must be commenced within 18 months of receiving a permit); L.A.C. 33:III.509(R)*; see also In re West Suburban Recycling and Energy Center, L.P.*, PSD Appeal No. 97-12, slip op. at 8 (EAB, Mar. 10, 1999) (finding PSD permit should be denied because "there is no realistic prospect that the resource recovery facility described in WSREC's permit application will be completed")). At least one court has held that this factor can be determinative. That is, even if other factors don't necessarily militate in favor of a finding that the facilities are permanently shut down, lack of "continuous intent and concrete plans to restart the facility," even for "some short period of time," means that a restart is likely to trigger PSD review. *See Cmtys. for a Better Env't v. Cenco Ref. Co.*, 179 F. Supp. 2d 1128, 1147 (C.D. Cal. 2001) (applying the Reactivation Policy and finding that a six-year shutdown was likely to trigger PSD review in granting an injunction, and noting that under *Monroe*, failure to establish continuous concrete plans is "fatal").

While it was owner of the Santa Ynez Unit, ExxonMobil did not continuously demonstrated concrete plans to restart the facility, repeatedly telling the District that "it is unclear when restart of the facility may occur." *See, e.g.*, Las Flores Canyon 2015-27-I Petition, Oct. 12, 2015. As explained above, ExxonMobil was unsuccessful in its efforts to secure permits to truck oil to Santa Maria and Kern County. Three years ago, the Santa Barbara Planning Commission Staff recommended that the Kern County receiver site be largely eliminated from consideration. The remaining Santa Maria receiver site is now no longer viable because refinery operations ceased in January 2023.[24]

[24] Phillips 66, *Santa Maria Refinery*: *Information on Plant Closure* (accessed May 15, 2024), https://www.phillips66.com/refining/santa-maria-refinery/.

ExxonMobil cancelled the scheduled hearings before the Planning Commission and made no further statements about any "concrete plans" for restart.

In addition, ExxonMobil did not reopen the Santa Ynez Unit. It is counterfactual to conclude that ExxonMobil had the concrete intent to reopen the facilities pursuant to a concrete, reasonably foreseeable timeline, when ExxonMobil "preserved" and "shut in" the facilities and then sold them off. ExxonMobil's actions are also consistent with a course of action in which it did not intend to reactivate the facilities but idled them to avoid the costs of decommissioning the platforms, which are estimate to cost $97.1 million for Platform Hondo, $185.8 million for Platform Harmony, and $188.7 for Platform Heritage—$471.6 million total for the platforms alone. Bureau of Safety and Environmental Enforcement, *Decommissioning Cost Update for Pacific Outer Continental Shelf Region (POCSR) Facilities*, Appendix H, at H-4 (Sept. 10, 2020) https://www.bsee.gov/sites/bsee.gov/files/vol-1-a-study-for-the-bureau-of-safety-and-environmental-enforcement-bsee-final-9-10-2020.pdf. According to the U.S. Government Accountability Office, industry operators regularly delay decommissioning, nor do they maintain the necessary resources to effectuate decommissioning, resulting in a system of delay and federal government liability for decommissioning costs. U.S. Government Accountability Office, Offshore Oil and Gas: Interior Needs to Improve Decommissioning Enforcement and Mitigate Related Risks, at Introduction, 1–2, 5–12 (Jan. 2024), https://www.gao.gov/assets/d24106229.pdf.

Sable has not provided a clearer or more definite timeline for a full restart or evinced a clear intent to reopen. Sable has made general statements regarding its intent to recommence production in the third quarter of 2024.[25] These statements, however, are broad, vague, and couched in caveats, such that they are far from representing a clear path forward.[26] *See also, e.g.*, Sable SEC Prospectus at 6 ("Due to the remaining regulatory approvals necessary to restart production, along with the timing of ongoing construction repair efforts, substantial doubt exists about the Company's ability to continue as a going concern. The financial statements included in this Quarterly Report do not include any adjustments relating to the recovery of the recorded assets or the classification of the liabilities that could be necessary if the Company is unable to continue as a going concern."). Sable has expressed "substantial doubt" to investors regarding its ability to continue. It has also expressed that issues with capital may halt or delay its ability to restart production. *Id*. ("If the Company is unable to raise additional capital, it may be required to take additional measures to conserve liquidity, which could include, among other things, suspending repair efforts and reducing overhead expenses. The Company cannot provide any assurance that new financing will be available to it on commercially acceptable terms, if at all.").

[25] *See, e.g.*, Sable Offshore Corp., *Investor Presentation*, at 2 (May 2024).

[26] *See, e.g.*, *id.* ("We estimate in this presentation that production can be recommenced the third quarter of 2024, but there can be no assurance that the necessary permits will be obtained that would allow the pipeline to recommence transportation and allow the assets to recommence production by that date or at all. If production is not recommenced by January 1, 2026, the terms of the asset acquisition with EM would result in the assets being reverted to EM without any compensation to Sable therefor.")

Because neither ExxonMobil nor Sable has been unable to demonstrate any "concrete plans to restart the facility sometime in the reasonably foreseeable future" since at least mid-2020, this "suggests that for at least some period of the shutdown, the shutdown was intended to be permanent."

Reason for the shutdown. The Santa Ynez Unit shut down after the severely-corroded Plains All American Line 901 ruptured and released oil near Refugio State Beach. The spill resulted in the shutdown of both Lines 901 and 903. The pipeline system remained out of service since the release, eliminating the only permitted transportation option for Santa Ynez Unit oil. EPA has determined that a facility that shutdown because of an industrial accident is subject to the reactivation policy, and, thus, new PSD review. Memorandum from Direct, Division of Stationary Source Enforcement, to Stephen Dvorkin, General Enforcement Branch, EPA Region 2, at 2–3 (Sept. 6, 1978), https://www.epa.gov/sites/default/files/2015-07/documents /watertwn.pdf.

Although ExxonMobil initially processed oil from Platform Hondo aboard a large floating treatment and storage facility before loading the oil onto tanker ships, Santa Barbara County Supervisors approved the consolidation of oil and gas processing in the Los Flores Canyon facility and sanctioned oil transportation and sales by pipeline only.[27]

The reasons for the shutdown were outside of ExxonMobil and Sable's control, so while the company can express its desire to return the facilities to service, it has no ability to actually restart them until it receives the necessary permits. The environmental review for these permits has not yet been completed. This weighs in favor of finding that the shutdown is permanent.

In addition, Sable's expressed desire to restart the facilities is at odds with the current economic reality. Oil and gas operations are increasingly uncompetitive as California and the rest of the country make the necessary transition away from fossil fuels in order to mitigate climate change and sustain a livable planet. In a previous tax valuation case contesting Santa Barbara County's property-tax appraisal of ExxonMobil's oil processing facility at Las Flores Canyon, ExxonMobil stated in court documents that it valued the Santa Ynez Unit facilities at a loss of $1.246 billion. *See generally Exxon Mobil Corp. v. County of Santa Barbara*, 92 Cal. App. 4th 1347 (2001). Sable has admitted that ExxonMobil reported "an accumulated deficit of $261.1 million. Sable SEC Prospectus at 6. Further, the county tax appraiser linked the property value of the facility to the value of the offshore Santa Ynez Unit oil fields, but ExxonMobil countered that the oil fields were worthless due to low oil prices in the early 1990s, and that the oil-processing facility's value should be reduced accordingly. The economic state of the industry and apparent unprofitability of the Santa Ynez Unit are further indicators that the shutdown is permanent.

[27] Interim Trucking Staff Report at 12.

Status of permits. Although ExxonMobil has attempted to get permits to enable the facilities to restart, it has been unsuccessful. All plans have been stalled since mid-2020. In June 2015, the Santa Barbara County Planning and Development Director denied an emergency permit that would have allowed ExxonMobil to continue full Santa Ynez Unit operations and transport produced oil via tanker truck.[28] In 2016, an emergency trucking project was approved only to de-inventory about 400,000 barrels of crude oil from tanks orphaned by the pipeline shutdown.[29] Since that time, ExxonMobil has attempted to obtain approval truck oil to San Luis Obispo and Kern Counties. However, last year, the Santa Barbara Planning Commission Staff Report recommended that the Pentland Terminal in Kern County be "eliminat[ed] . . . as one of the main receiver sites during normal operations,"[30] because of the danger posed by transporting oil and gas by tanker truck on Highway 166, which follows the course of the Cuyama River.[31] In fact, in early 2020, a tanker truck overturned on Highway 166, spilling an estimated 4,000 to 6,000 gallons of oil into the Cuyama River above Twitchell Reservoir—the main source of water for Santa Maria.[32]

Ongoing maintenance and inspections that have been conducted during shutdown. Maintenance and inspections at the facilities during the shutdown also support a finding of a permanent shutdown. As EPA has stated: "Under the Reactivation Policy, a facility should be maintained in a state of readiness to resume operations. EPA previously determined that a facility that is well maintained with periodic testing of the equipment 'to ensure quick reactivation' so that a plant could be brought back online 'with only a few weeks of work' could arguably overcome deficits in the other factors." West Indies Reactivation Letter, Attachment 1, at 18 (citing Watertown Power Plant, South Dakota, Memo from John B. Rasnic, Director, Stationary Source Compliance Division, OAQPS, to Douglas M. Skie, Chief, Air Programs Branch (Nov. 19, 1991)). In the West Indies Reactivation Letter, EPA concluded that, "the significant time and money required to bring the Refinery back into service (see Section III.A, above) leads EPA to conclude that the Refinery was not well-maintained to enable a quick restart and supports the determination that the Refinery was permanently shut down." *Id*.

As discussed above, the significant cost, time, and volume of repairs Sable disclosed to investors, to the point where there is "substantial doubt" as to its ability to continue with the project, are clear indications that the minimal, haphazard maintenance

[28] Santa Barbara County Planning Commission, Staff Report for ExxonMobil Interim Trucking for Santa Ynez Phased Restart ("Interim Trucking Staff Report"), 12 (July 22, 2020).
[29] *Id.* at 13.
[30] *Id.* at 4.
[31] The Interim Trucking Staff Report found that an alternative trucking route to Santa Maria Pump Station only rather than the Santa Maria Pump Station and Pentland Terminal in Kern County "would reduce truck miles traveled by substantially limiting the number of trucks that could go to the Pentland Terminal. State Route 166 has several long road stretches that parallel waterways such as the Cuyama River. By substantially limiting the number of trucks that could use State Route 166, this alternative would also reduce the probability of an oil spill entering a waterway." *Id.* at 22.
[32] Yamamura, Jean, *Tanker Spills over 4,000 Gallons of Crude Oil into Cuyama River*, Santa Barbara Independent, Mar. 24, 2020, https://www.independent.com/2020/03/24/tanker-spills-over-4000-gallons-of-crude-oil-into-cuyama-river/.

that has taken place will enable a quick restart, supporting a determination that the Santa Ynez Unit was permanently shutdown. *See* Sable SEC Prospectus at 6.

As early as June 2015, ExxonMobil started to implement preservation plans for the Santa Ynez Unit:

> Offshore platform wells were shut-in and isolated. Processing equipment on the platforms was drained, cleaned, and purged of hydrocarbons and filled with nitrogen. Gas pipelines were also purged with nitrogen. Emulsion pipelines between the platforms and the LFC facility were cleaned to remove hydrocarbons and filled with seawater and preservation chemicals. To date, this fluid is tested monthly and lines are re-preserved and inspected every two years. To ensure the integrity of offshore well isolation, ongoing pressure monitoring remains in place and equipment has remained under a nitrogen blanket to prevent air ingress into the equipment. All utility systems and the firewater system remain in service.
>
> Onshore facilities have similarly been preserved. All tanks, vessels, and associated equipment with hydrocarbons have been purged and filled with nitrogen. Utilities and limited water treating equipment have remained in service to support preservation, waste water disposal, and monitoring/ surveillance activities. Safety and firewater systems remain in service. . . .[33]

All activities at the facilities since 2015 have been to support this preservation. In fact, as the shutdown wore on, ExxonMobil requested a series of variances to avoid monitoring and testing provisions required by its permits and district rules. Variances serve a very specific function, however—*temporary* enforcement relief so that a facility can operate in violation of District rules while the facility operator *takes steps to come into compliance*.[34] This is why variances include a schedule and require reporting on increments of progress. Since it is "*unknown when normal facility operations will resume*," continued use of the variance process was found to be inappropriate, and ExxonMobil obtained minor modifications to its permits for relief from permit conditions and district rules for facility equipment and processes that are non-operational."[35] These modifications include the following:

---

[33] Interim Trucking Staff Report at 12-13.

[34] California Health and Safety Code sections 40800 to 40865, 42350 to 42364; Santa Barbara Air Pollution Control District Rule 504.

[35] Hondo Part 70 Minor Modification and Permit to Operate Modification 09100-05 (Sept. 26, 2019); Harmony Part 70 Minor Modification and Permit to Operate Modification 09101-05 (Sept. 26, 2019); Heritage Part 70 Minor Modification and Permit to Operate Modification 09102-07 (Sept. 26, 2019); POPCO Part 70 Minor Modification and Permit to Operate Modification 08092-06 (Sept. 26, 2019); LFC Part 70 Minor Modification and Permit to Operate Modification 05651-05 (Sept. 26, 2019).

- Platform Hondo - 24 permit conditions suspended, including flare monitoring, recordkeeping, and compliance verification reports; vapor recovery system use; tanks/sumps/separators monitoring, recordkeeping, and compliance verification reports; pigging compliance verification reports; process stream sampling; process monitoring operation and maintenance; facility throughput limitations; reporting and maintenance plans.

- Platform Harmony – 33 permit conditions suspended, including central process heater monitoring, recordkeeping, compliance verification reports, source testing, and sulfur content of natural gas and propane; flare monitoring, recordkeeping, and compliance verification reports; vapor recovery system and fuel use; tanks/sumps/separators recordkeeping and compliance verification reports; pigging compliance verification reports; ERC monitoring; process stream sampling; process monitoring operation and maintenance; facility throughput limitations; reporting and maintenance plans.

- Platform Heritage – 35 permit conditions suspended, including central process heater monitoring, recordkeeping, compliance verification reports; source testing; flare recordkeeping and compliance verification reports; vapor recovery system use; tanks/sumps/separators recordkeeping and compliance verification reports; pigging compliance verification reports; fuel gas analyses compliance verification reports; process stream sampling; process monitoring operation and maintenance; facility throughput limitations; reporting and maintenance plans.

- POPCO Plant – 50 permit conditions suspended, including continuous emissions monitoring; utility boiler limits, monitoring, and recordkeeping; thermal oxidizer monitoring, recordkeeping, and compliance verification reports; vapor recovery system use; ERC monitoring; tank operational limits and monitoring; sulfur recovery unit limits, monitoring, recordkeeping; external combustion and pigging compliance verification reports; facility throughput limitations; natural gas liquids loading rack and flowline requirements; reporting and maintenance plans; maintenance and calibration; data telemetry; central data acquisition; offsets; wastewater tank operational limits and monitoring; visible emissions requirements

- LFC Plant – 52 permit conditions suspended, including continuous emissions monitoring; cogeneration power plant operational limits, monitoring, recordkeeping, and compliance verification reports; thermal oxidizer monitoring, recordkeeping, and compliance verification reports; vapor recovery system use; ERC monitoring; tank operational limits and monitoring; sulfur recovery unit limits, monitoring, recordkeeping; facility throughput limitations; external combustion and pigging compliance verification reports; data telemetry; central data acquisition; offsets; source testing; process stream sampling and analysis; wastewater tank operational limits and monitoring; reporting and maintenance

plans; natural gas liquids loading rack and flowline requirements; visible emissions requirements

While it was still the owner, ExxonMobil stated that prior to a phased or full restart, the Santa Ynez Unit facilities would require additional equipment maintenance.[36] Sable's SEC disclosures make clear that substantial investment and repairs are necessary to recommence production, evincing that maintenance has been woefully inadequate to enable a "quick reactivation," which favors a determination of permanent closure. Sable SEC Prospectus at 6.

IV. The District must deny the Draft Permits because the Santa Ynez Unit's compliance history demonstrates that it has not been meeting applicable requirements

As discussed in the factual background section above, and as demonstrated by the table summarizing the Santa Ynez Unit's violations (Exhibit 5), the facilities have consistently and substantially failed to comply with their permit conditions both prior to the Refugio spill and since. Thus, it cannot be disputed that the Santa Ynez Unit is not meeting applicable requirements. Yet, despite the unambiguous Title V requirement that the District only issue a permit renewal if the permit contains "operational requirements and limitations that assure compliance with all applicable requirements," 40 C.F.R. § 70.6(a)(1), the District has only imposed limited additional operating requirements or limitations in the Draft Permits to assure compliance. *See also* 42 U.S.C. §§ 7661c(a), 7661a(f) (a state's Title V program must "appl[y] and ensure[] compliance with" all Clean Air Act requirements), *id.* § 7661a(b)(5)(A) (a state must have adequate authority to "issue permits and assure compliance by all [Title V sources] with each applicable standard, regulation or requirement under this chapter").

The District's obligations are not met if Sable simply follows existing monitoring requirements and reports deviations from permit conditions. This take too limited a view of what it means for a Title V permit to "assure compliance" with applicable requirements, and runs afoul of the requirement that the District provide a reasoned explanation for why the conditions it does include in the Draft Permits are sufficient to ensure the facilities' ongoing compliance.

The plain language and structure of Title V and the federal Title V implementing regulations—40 C.F.R. Part 70 ("Part 70")—unambiguously demonstrate that a Title V permit does not "assure compliance" merely by documenting violations with monitoring, recordkeeping, and reporting. Specifically, though documenting violations is an important Title V purpose, see, e.g., 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1), a Title V permit must also aid in avoiding violations through enforceable permit conditions establishing "[e]mission 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. § 70.6(a)(1) (emphasis added)*; see also* 42

[36] Trucking Final SEIR at 3-2, 3-3

U.S.C. § 7661c(a). These compliance assurance conditions can (and must) be created for the first time in a facility's Title V permit.

Further, if there are changes necessary to enable a facility to comply with applicable requirements, the facility's Title V permit must include an enforceable compliance schedule with deadlines for making the requisite changes. 42 U.S.C. § 7661(3) (a Title V compliance schedule must include "a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition"); *see also* U.S.C. § 7661c(a); 40 C.F.R. §§ 70.5(c)(8)(iii), 70.6(c)(3).

Through a combination of new permit conditions establishing improved monitoring and operating practices and corrective action set forth in enforceable compliance schedules, Congress intended for Title V to ensure that major stationary sources fully comply with Clean Air Act requirements.

EPA recently objected to a Title V for the Suncor Refinery in Commerce City, Colorado, on the basis of the facility's chronic noncompliance and, thus, a failure to meet applicable requirements. Over the counterarguments of the state regulator, CDPHE, EPA stated:

> EPA generally agrees with CDPHE that a facility's alleged noncompliance with permit terms or applicable requirements would be better addressed through the enforcement process, as opposed to the permitting process. These are important and well-established principles. See supra pages 14–17. However, because both CAA § 504(a) and 40 C.F.R. § 70.6(a) authorize measures beyond existing applicable requirements and monitoring, recordkeeping, and reporting requirements (see supra pages 13–14), CDPHE was incorrect to conclude that those enumerated measures and the enforcement process are the only available mechanisms to address persistent problems with a facility's noncompliance. Thus, the various reasons supplied by CDPHE to reject the commenters' requested operational requirements are insufficient. Critically, CDPHE's response neglects to address the key question: *whether the Permit can be said to assure compliance* ***without additional measures*** *and, if not, whether these operational requirements the Petitioners recommend are* ***necessary*** *to assure compliance with the relevant FCCU limits.*

EPA, *In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Petition Nos. VIII-2022-13 & VIII-2022-14, at 12–20 (July 31, 2023) (emphasis in original).

The history of emissions breakdowns at the platforms and other violations at the Santa Ynez Unit's onshore facilities indicate that ExxonMobil could not show that its equipment is designed, controlled, or equipped to operate without emitting air contaminants in violation of District rules. Santa Barbara Air Pollution Control District Rule 205. The change in ownership does not matter—it is the permits that must be assessed to determine whether compliance with applicable requirements is assured, not the operator. Further, Sable has recently represented that:

> The operating team in California includes essentially the entire workforce of the prior owner/operator of 48 individuals who signed on with Sable and who have been operating and maintaining the facilities under [ExxonMobil] . . . The same well-trained, experienced, and knowledgeable team will continue to fill this role.

Sable, Application for Change of Owner, Operator and Guarantor of Oil and Gas Facilities: Pacific Offshore Pipeline Company (POPCO) (Mar. 14, 2024), https://cosantabarbara.app.box.com/s/ijgspumfl8m30ug99kprpjkfi1dvecfe/file/1489574080314?sb=/details (Exhibit 6).

Historical breakdown reports and variances associated with the POPCO Plant show that the District should require Sable to do additional preparation and maintenance prior to any restart. For example, on April 24, 2014, as ExxonMobil brought a compressor online, second stage compression valves malfunctioned. The gas between the valves built pressure and relieved to the flare headers, causing a loss of pressure that reduced H_2S removal and lead to excess SO_2 emissions.[37] As another example, during a May 2015 startup following "an extended shut down," the Stretford tail gas H_2S analyzer malfunctioned.[38] The District should require more frequent maintenance and reporting for the compressor(s), especially immediately upon restart—quarterly at the very least, but preferably monthly—to ensure that malfunctions are prevented, detected early, and addressed promptly.

Another outdated aspect is the monitoring approach for the thousands of components of fugitive VOC leaks at the Santa Ynez Unit. Leaks are a significant source of fugitive VOC emissions from the many components such as connectors, valves, etc. The manner in which the emissions from these thousands of sources are monitored is outdated.

The LFC Plant Draft Permit relies on a couple of different varieties of Leak Detection and Repair ("LDAR") programs, which involve "sniffing" of a subset of the total facility components (i.e., those that are accessible, safe to monitor, etc.) manually periodically to determine if they are leaking and then to repair them. This approach, although still widely used, is recognized as deficient for many reasons, including but not limited to: the improper use of the sniffers by poorly trained staff to detect the leaks

[37] POPCO Breakdown Report 2014-05-15 10711, May 15, 2014.
[38] POPCO Variance 2015-15-R, July 1, 2015.

using EPA's Method 21; the lack of coverage of all components at a facility, allowing inaccessible components to completely escape monitoring (*see* Section 3.1, *Fugitive Emissions Inspection and Maintenance*, for example); and the long time periods between leak detection and eventual repair—i.e., a leak might occur a few days after a round of sampling and go undetected and therefore unrepaired until the next monitoring round, which may be a month or more later. The weakness of the Draft Permit's LDAR approach undermines, in particular, Conditions C.3(b)(ii) & C.45.

The same issue is inherent to the POPCO Plant Draft Permit, of particular concern where adequate LDAR is part of BACT / BARCT for the facility, *see* Table 4.4 & Section 4.10. Failure to implement superior LDAR techniques also particularly undermines Conditions 9.C.37 & 9.C.39. Likewise, this problem adheres in the Platform Hondo, Heritage, and Harmony Draft Permits, rendering Condition C.29 (and, relatedly, Condition 4.3.2) inadequate to assure compliance with the permits' limits and conditions contrary to the requirements of Title V.

The Draft Permits should recognize and implement better leak detection approaches. For example, Optical Gas Imaging (OGI) is now recognized as a superior leak detection technology, especially to identify the biggest leakers (which disproportionately contribute to fugitive emissions) since this technology, relying on a handheld camera capable of quickly accessing a large area, can quickly identify the large leakers without component-by-component sniffing. *See, e.g.*, 89 Fed. Reg. 16,820, 17,013–16 (Mar. 8, 2024). This is why EPA has adopted the widespread use of OGI for LDAR in various contemporary rulemakings to address fugitive emissions from oil and gas infrastructure. *See, e.g.*, 40 C.F.R. Part 60, Appendix K. OGI can be implemented more frequently, for example, daily or weekly, allowing prompt leak detection as compared to the current LDAR and even the "enhanced" LDAR listed in the Draft Permits.

There are even more advanced methods used to identify leaks, such as the used of area-wide monitoring, that should be incorporated to either replace or supplement the LDAR approach in the permit. *See, e.g.*, mPACT2WO, *mPACT2WO Leak Detection Solution Enables U.S. EPA Approved AMEL for LDAR* (Feb. 22, 2023).[39]

Especially considering the Santa Ynez Unit's terrible compliance history, as discussed above, particularly with respect to fugitive emissions, the District should ensure that LDAR requirements and methods are as strong as possible. The platform breakdown and violation reports that the Center for Biological Diversity requested from the District and reviewed show a troubling pattern of equipment failures caused by corrosion and start-up/shut-down activities. The most common breakdowns since 2014 have been related to exceeding the number of major leaks allowed during an inspection period under District Rule 331. Under this rule, monitoring takes place quarterly or

[39] *Available at* https://mpact2wo.com/en/blog/mpact2wo-leak-detection-solution-enables-u.s.-epa-approved-amel-for-ldar#:~:text=mPACT2WO%20Leak%20Detection%20Solution%20Enables%20U.S.%20EPA%20Approved%20AMEL%20for%20LDAR,-mPACT2WO%20Feb%2022&text=mPACT2WO%2C%20a%20Molex%20business%2C%20today,Environmental%20Protection%20Agency%20(EPA).

annually, so leaks may be discovered long after they begin. ExxonMobil has stated repeatedly that it cannot determine the cause of these fugitive emission leaks, but that "the most likely cause [of these breakdowns is] is due to the high vibration, operating pressures and thermal expansion/ contraction that occurs during start-ups & shutdowns of the equipment." Further, ExxonMobil states that "due to the high vibration, operating pressures and thermal expansion/contraction that occurs during start-ups & shutdowns of the equipment, it is *relatively next to impossible* to totally to prevent a recurrence" of breakdowns. *See* Violations Table, Exhibit 5. One related breakdown has occurred even while the platforms have been shutdown.

In order to address ExxonMobil's admission that preventing these breakdowns is "next to impossible,"[40] and that corrosion can allow problems to go unnoticed for long periods of time,[41] it is critical that any breakdowns that do occur are discovered, and are discovered as close to when they happen as possible. Even where the default LDAR monitoring methods in District Rule 331 may be adequate for other facilities, the highly problematic history of noncompliance at the Santa Ynez Unit requires additional measures to ensure compliance with applicable requirements. In the last renewal of the Santa Ynez Permits three years ago, the District seemingly recognized this problematic compliance history and the threat of excess fugitive emissions by adding Condition 9.C.45 to the LFC Plant Draft Permit; Condition 9.C.37 to the POPCO Plant Permit; and Condition 9.C.27 to the Platform Hondo, Heritage, and Harmony Draft Permits. But increasing frequency and improved specific of LDAR monitoring are substantially weakened without adequate detection methods.

The operating permits should therefore be denied, or, if the decades-old facilities are to be resurrected following their multi-year shutdown, the District should amend the Draft Permits to prevent excess fugitive emissions and to require Sable to perform maintenance avoided before the shutdown.

V. Conditions 9.A, 9.B, and 9.C of the Draft Permits are based on outdated information and therefore fail to assure compliance with applicable requirements

The LFC Plant Draft Permit's Conditions 9.A, 9.B, and 9.C are based on obsolete information. Section 2.2 notes that this Draft Permit is based on equipment lists from 1990, process flow diagrams from 1998, and piping and instrumentation diagrams also from 1998. In other words, even the most recent of these dates back over 25 years. There have been significant changes to the LFC Plant in the last 25 years. For instance, as the Draft Permit itself notes, this Draft Permit "incorporates previous Part 70 revision permits (ATC/PTOs, PTOs, PTO Modifications, and Administrative Modifications) that

[40] *See, e.g.*, Hondo Breakdown Report 11124, Jan. 27, 2015; Exhibit 5.

[41] Heritage Breakdown Report 10990, Feb. 2, 2014 ("ExxonMobil conducts corrosion mitigation programs at its facilities to combat the issues of long term exposure to the elements, especially offshore, however, with all of the piping and equipment that make up the facilities, sometimes small amounts of corrosion in inconspicuous places can go unnoticed.")

have been issued since April 1, 2018. LFC Plant Draft Permit, Section 1.1 “Part 70 Permitting”; *see also* Section 1.2.2. Condition 9.C.25 provides that “Only those equipment items listed in Section 2.2 are covered by the requirements of this permit and District Rule 201.E.2,” rendering this obsolete information within this scope of this Part 70 permit renewal, and of material consequence to the effectiveness and accuracy of the LFC Plant Draft Permit.

Because the permit is based on obsolete and outdated plant information, there is no reason to assume that the emissions calculations and modeling included in the permit are representative of the current facility. This is in addition to the additional deficiencies detailed below.

One of the more glaring consequences of using obsolete source information is the fact that all BACT limits in the LFC Canyon Draft Permit are obsolete, by the permit’s own admission in Section 4.11.1. The permit states that “[p]ursuant to District Policy and Procedure 6100.064, once an emission unit is subject to BACT requirements, then any subsequent modifications to that emissions unit or process is subject to BACT. **This applies to both de minimis changes and equivalent replacements, regardless of whether or not such changes or replacements require a permit**.” (emphasis added). Since it is implausible and impossible that there have been no “de minimis” changes over 25 years at the plant, it is clear that the various BACT limits in the permit are outdated *per se*.

It is unclear whether this same problem is inherent to the POPCO Plant Draft Permit, which at Section 2.3, apparently erroneously, refers to an equipment list at Section 10.3, when it appears that the equipment list is laid out in Section 10.2.

Another significant and outdated deficiency in the LFC Draft Permit with regards to modeling, in Section 6, is the use of the ISCST model for the “updated modeling” to ensure compliance with national ambient air quality standards (*see* Section 6.1.1). While this used to be a preferred model decades ago, it is no longer so. In fact, EPA’s preferred and recommended regulatory model is AERMOD. *See* EPA, *Air Quality Dispersion Modeling – Preferred and Recommended Models* (Nov. 3, 2023), https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models. In fact, AERMOD has been the preferred regulatory model since 2005. *See* EPA, *AERMOD Modeling System Development* (June 20, 2023), https://www.epa.gov/scram/aermod-modeling-system-development.

It is therefore more than surprising, and concerning, that the District has not bothered to update its modeling analysis in the last several triennial permit updates – i.e., by using AERMOD instead of ISCST. As discussed above, New Source Review requirements, including preventing violations of the national ambient air quality standards, are applicable requirements that Title V permits must ensure permitted facilities comply with. Use of an outdated model threatens the health- and welfare-based air quality standards by inaccurately representing the impact of the facility on the standards. Without accurate modeling, the requirements set forth in Conditions 9.A, 9.B,

and 9.C do not guarantee compliance with applicable requirements (i.e., compliance with the national ambient air quality standards).

The same problems prevail with respect to the Platform Hondo, Harmony, and Heritage Draft Permits, which rely upon the same ISCST modeling results from 1987 as the LFC Plant Draft Permit to determine that further national ambient air quality standard analyses, or increments analyses, are not necessary. *See* Platform Hondo, Harmony, and Heritage Draft Permits, Sections 6.1 & 6.2.

An additional concerning example of outdated emissions analyses are the emissions calculations for the storage tanks discussed in Section 4.6.2 of the LFC Plant Draft Permit. It references "USEPA Chapter 7 (5th Edition)." *Id*. The current, up-to-date calculation, updated in 2020, is in Chapter 7.1. *See* EPA, AP-42, *Organic Liquid Storage Tanks* (June 2020), https://www.epa.gov/sites/default/files/2020-10/documents/ch07s01.pdf. It is clear that the LFC Plant Draft Permit has not been updated in this regard for some time. Therefore these calculations are unreliable and obsolete. This is unacceptable because Title V permits must assure compliance with applicable requirements, including emissions limits and conditions that apply to the facility. Reliance on the outdated emissions factors to assure compliance with the applicable requirements for the tanks in Condition 9.C.6 means the Draft Permit impermissibly falls short of assuring compliance.

It appears that the same problem prevails in the Platform Hondo, Harmony, and Heritage Draft Permits, which also rely on the methods presented in AP-42, Chapter 7, for the detailed tank calculations for compliance. Platform Hondo, Harmony, and Heritage Draft Permits, Section 4.6.1. It is not clear, however, because the specific version of Chapter 7 that Sable is meant to apply is not identified Reliance on the outdated emissions factors to assure compliance with the requirements applicable to the tanks in Condition 9.C.7 means the Draft Permits do not assure compliance.

VI. The Draft Permits fail to adequately address fine particulate matter

The Draft Permits do not appear to recognize that PM2.5 is an independent criteria pollutant for which there are distinct national ambient air quality standards, *see* 40 C.F.R. §§ 50.13, 50.18, 50.20. While PM2.5 is mentioned, often perfunctorily, the emissions calculations generally assume that emissions of PM10 and PM2.5 are the same. This means that the Draft Permits assume that none of the sources of emissions have *any* particulate emissions whose size is greater than 2.5 microns and less than 10 microns, which is simply impossible and unsupported.

The fact that PM2.5 is not considered in the Draft Permits is glaringly obvious in Section 6, where air quality standards are listed in Section 6.1.1. There is simply no mention of the PM2.5 NAAQS, which is quite remarkable since PM2.5 NAAQS were first promulgated in 1997. *See* EPA, *Timeline of Particulate Matter (PM) National*

Ambient Air Quality Standards (NAAQS) (Feb. 7, 2024), https://www.epa.gov/pm-pollution/timeline-particulate-matter-pm-national-ambient-air-quality-standards-naaqs.

Section 6 provides no discussion or comparison of the impact of the emissions of PM2.5 from sources covered by the Draft Permits on how they affect the PM2.5 NAAQS. See, for example, the summary of the modeling analysis as shown on Table 6.0.1 of the LFC Plant Draft Permit, which does not even have PM2.5 as a listed pollutant.

The above does not mean, however, that PM2.5 emissions are overestimated. A large portion of PM2.5 emissions from most combustion sources are condensable PM, almost invariably PM2.5. The Draft Permits make no mention of condensable PM2.5 at all. This is likely because this is the eight renewal of a Title V permit that has simply not been updated since the first time it was issued two decades ago, when most permits did not include condensable PM2.5.

This also means that the provisions of Conditions 9.A, 9.B, and 9.C of the Draft Permits do not adequately address condensable PM2.5 and are therefore grossly deficient.

VII. The Draft Permits deny the public access to monitoring, testing, and recordkeeping information needed to assure compliance with the applicable requirements

Conditions 9.A.20, 9.C.1(d), 9.C.5(d), 9.C.7(d), 9.C.9, 9.C.10 of the Platform Hondo, Harmony, and Heritage Draft Permits require Sable to maintain certain records necessary to determine compliance, but the permittee is only required to make the records available to the Division "upon request."

This is also true of Conditions 9.A.22, 9.C.1(c)(vi) & (vii), 9.C.2(c)(ii) & (d)(vii), 9.C.3(d)(iii) & (iv), 9.C.9, 9.C.10, 9.C.12(d), 9.C.24(b), 9.C.28(b), 9.C.34, and 9.C.35, of the POPCO Plant Draft Permit. And it is true of Conditions 9.A.20, 9.C.4(d), 9.C.9(b), 9.C.10(d), 9.C.11 and 9.C.12 of the LFC Plant Draft Permit.

This practice bars the public from obtaining this information in the vast majority of cases in which the District does not request the information.

EPA recognizes that a primary purpose of a Title V permit is to "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." 57 Fed. Reg. at 32,251; *see also* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). It was on these grounds that EPA recently disapproved of these types of reporting rules in Colorado's 2008 ozone NAAQS serious State Implementation Plan submittal. 88 Fed. Reg. 29,827 (May 9, 2023). In so doing, EPA stated:

> Specifically, these rules do not include sufficient reporting requirements to ensure that citizens will be able to enforce the SIP requirements, as is necessary under the CAA and EPA regulations. That is, the regulations in Table 2 require facilities to maintain records necessary to establish compliance with these rules for a certain period of time and to make them available to the state on request. But if there is no requirement for these records to be submitted to the state absent a request, then unless the state requests the compliance records and then makes them publicly available, no parties other than the state or the EPA under its CAA section 114 authority will have practical access to the basic information necessary to determine compliance by the regulated entities under these rules. This undermines citizens' ability to participate in the enforcement of the SIP as allowed by CAA section 304. As EPA has repeatedly stated, to be enforceable, a CAA SIP rule must be legally and practically enforceable. We find that a requirement to provide records to the state only on request, without any required periodic reporting to the state, is inconsistent with CAA and regulatory requirements for enforceability. Therefore, due to the lack of adequate reporting requirements (or some equivalent means of ensuring enforceability), the EPA is simultaneously finalizing a limited approval and disapproval of these rules, as authorized under sections 110(k)(3) and (4) and 301(a).

Id. at 29,828; *see also* EPA, Response to Comments for the Federal Register Notice on Air Plan Approval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, at 46–50, Dkt. No. EPA-R08-OAR-2022-0632 (Apr. 25, 2023) (Exhibit 7).

The ability of the public to determine whether a source is meeting the many of the requirements of its permit is thwarted without access to the compliance records required in the conditions listed above, that the Draft Permits exempt Sable from reporting to the District.

The District knows that it is possible to give the public access to this critical information. For example, Condition 2.2.3(10) of the Platform Heritage Draft Permit, at 24, requires the permittee to make information available to the public upon the public's request. The District could apply the same requirement to all of the records required to be generated pursuant to the Draft Permits.

The Center and its counsel have real world experience that demonstrates the need for the public to have access to records. For example, the Center was working on

enforcement for a Title V permit for a facility in another state. The Title V permit required the source to maintain a log of required daily visible inspections and make those records available upon request of the state agency. However, that particular facility was subject to open records act requests. Thus, the Center obtained the records under the open records act even though the Center was not able to obtain those records pursuant to the Title V permit. Upon obtaining the records, the Center was able to determine that the records showed that the source had recorded that it had conducted the visible inspection at the exact same minute every day of the year. However, some of the claimed times for visible inspections at this outdoor facility occurred after dark. The Center also noticed that the nature of how the log was filed out strongly indicated that the source had not filled out the log on a daily basis, but rather had backfilled the log at a later date.

VIII. Additional concerns

The permit is confusing when it refers to "flaring" that is occurring at the thermal oxidizer. *See*, for example, Section 2.1.4.1.4. Since the thermal oxidizer appears to treat several different waste gas streams, it is not clear when flaring is or is not allowed, separate and distinct from the disposal of these waste streams in the thermal oxidizer.

The permit should refer to flaring if that occurs in a flare and otherwise not use the term flaring when the disposal occurs in a thermal oxidizer. If the thermal oxidizer itself is simply an enclosed flare, then the permit should refer to it as such and not call it a thermal oxidizer. The discussion in Sectoin 4.5.1 is confusing at best and needs clarification. For example, "[A]t low flow events valving bypasses the thermal oxidizer." Under these circumstances, what is the fate of the bypassed waste gases?

The Engineering Analysis in Section 4.2.3 states that to "…[T]he PM and PM10 emission factors were proposed by the permittee in order to minimize the PM offset liability." What does this mean? It seems to suggest that Exxon (the prior permittee) chose the PM and PM10 emission factors for the turbine purposely to lower the estimate of emissions of these pollutants since that would "minimize" Exxon's "offset liability." If that is the case, it is highly improper. Emission factors should be representative of the actual emissions from a source, i.e., the turbine and not be biased to "minimize…offset liability."

IX. Conclusion

Renewing ExxonMobil's operating permits would cause significant harm to air and water quality and is fundamentally incompatible with a safe and healthy climate for current and future generations. Before they were shutdown, Exxon's facilities were by far the largest source of greenhouse gas, volatile organic compounds, fine particulate matter, and formaldehyde pollution in Santa Barbara County. In addition, the facilities have a history of breakdowns and violations for leaking emissions beyond those

authorized by the operating permits. The facilities have been out of operation for nearly a decade, with no viable plans to restart, and must be treated as new sources that must undergo a new PSD review before they are allowed to reactivate. Otherwise the requirements of Conditions 9.A, 9.B, and 9.C will not reflect the obligations PSD imposes on this reactivated source. The Draft Permits are also based on outdated information and monitoring requirements. For all of these reasons, the Santa Barbara County Air Pollution Control District ("District") should deny the permit renewals.

Respectfully submitted,

Ryan Maher
Staff Attorney, Environmental Health Program
Center for Biological Diversity