

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

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit No. O2269	§	
	§	
Issued to Exxon Mobil Corporation	§	
	§	Permit No. O2269
Issued by the Texas Commission on	§	
Environmental Quality	§	
	§	
	§	

**PETITION TO OBJECT TO TITLE V PERMIT NO. O2269 ISSUED BY THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY**

Pursuant to section 42 U.S.C. § 7661d(b)(2), the Environmental Integrity Project, Sierra Club, and Texas Campaign for the Environment (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Proposed Federal Operating Permit No. O2269 (“Revised Proposed Permit”)¹ issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) authorizing operation of the Baytown Chemical Plant, located in Harris County, Texas.

I. PETITIONERS

The Environmental Integrity Project (“EIP”) is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or comply with

¹ As explained below, EPA objected to the Proposed Permit for this project issued on December 6, 2019. In response to EPA’s objection, the Proposed Permit was revised and re-issued.

environmental laws; and (3) to help communities obtain protections guaranteed by environmental laws. EIP has offices and programs in Austin, Texas and Washington, D.C.

The Sierra Club is a national nonprofit organization with 67 chapters and over 635,000 members dedicated to exploring, enjoying, and protecting the wild places of earth; to practicing and promoting the responsible use of earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Lone Star Chapter of the Sierra Club has members who live, work, and/or recreate in areas affected by air pollution from the Baytown Chemical Plant.

Texas Campaign for the Environment is a nonprofit membership organization dedicated to informing and mobilizing Texans to protect their health, their community, and the environment. Texas Campaign for the Environment works to promote the strict enforcement of anti-pollution laws designed to stop or clean up pollution. Texas Campaign for the Environment has members who live, work, and/or recreate in areas affected by air pollution from the Baytown Chemical Plant.

II. PROCEDURAL BACKGROUND

This petition addresses the TCEQ's renewal of Permit No. O2269 authorizing operation of the Baytown Chemical Plant. The Baytown Chemical Plant is a major source of criteria air pollutants and air toxics located in Harris County, Texas.

Exxon Mobil Corporation ("ExxonMobil") filed its application to renew Permit No. O2269 on May 29, 2018. The Executive Director concluded his technical review of ExxonMobil's application on July 2, 2019. The Executive Director proposed to approve ExxonMobil's application and issued Draft Permit No. O2269, notice of which was published on August 23, 2019. Bilingual notice was published on August 25, 2019. Environmental Integrity Project, Texas Campaign for the Environment, Air Alliance Houston, Sierra Club, and Environment Texas

(“Commenters”) filed public comments on the Draft Permit on September 23, 2019. (Exhibit A), Public Comments on Draft Permit No. O2269 (“Public Comments”).

On December 6, 2019, the TCEQ’s Executive Director issued notice of Proposed Permit No. O2269 along with his response to public comments on the Draft Permit. (Exhibit B), Notice of Proposed Permit and the Executive Director’s Response to Public Comment (“Response to Comments”). The Executive Director declined to revise the Draft Permit to resolve the deficiencies identified by the Public Comments.

On January 23, 2020, EPA objected to the Proposed Permit. (Exhibit C), Objection to Title V Permit No. O2269, ExxonMobil Corporation, Baytown Chemical Plant (“ExxonMobil Objection Order”). The ExxonMobil Objection Order identified three deficiencies in the Proposed Permit, which had also been identified by the Public Comments: First, EPA objected to the Proposed Permit because it improperly incorporated confidential permit terms and application representations. ExxonMobil Objection Order at 3-5. Second, EPA objected to the Proposed Permit’s failure to include all applicable Permit by Rule (“PBR”) requirements. *Id.* at 5-7. Finally, EPA objected to the Proposed Permit’s failure to include monitoring, testing, and recordkeeping conditions necessary to assure compliance with applicable PBR requirements. *Id.* at 7-10.

On June 9, 2020, the Executive Director made his response to the ExxonMobil Objection Order and issued a revised Proposed Permit and Statement of Basis for Permit No. O2269. (Exhibit D), Executive Director’s Response to EPA Objection, Permit No. O2269 (“Response to ExxonMobil Objection Order”); (Exhibit E), Proposed Permit No. O2269 (“Revised Proposed Permit”); (Exhibit F), Statement of Basis, Permit No. O2269 (“Statement of Basis”). The Executive Director made the following changes to the initial Proposed Permit and associated materials in response to the ExxonMobil Objection Order:

- New Source Review (“NSR”) Permit Nos. 96220, 28441, and 8586, which are incorporated by reference in the Revised Proposed Permit, were changed to remove references to confidential application representations;
- ExxonMobil submitted publicly accessible updated emissions calculations for various PBR registrations incorporated by the Revised Proposed Permit that removed or redacted information ExxonMobil believes is confidential;
- Various PBRs that do not authorize any equipment at the Baytown Chemical Plant were removed from the Proposed Permit; and
- A table summarizing applicable regulations and/or NSR permit special conditions that contain monitoring, testing, and/or recordkeeping requirements that the Executive Director believes apply to PBRs listed in the ExxonMobil Objection Order was added to the Statement of Basis.

EPA’s 45-day review period for the Revised Proposed Permit began on June 16, 2020 and ended on July 31, 2020. *See* Operating Permit Timeline for Texas, at: <https://www.epa.gov/caa-permitting/operating-permit-timeline-texas>. The petition period for the Revised Proposed ends on September 30, 2020. *Id.* This Petition was timely filed on September 30, 2020.

III. LEGAL REQUIREMENTS

Title V permits are the primary method for enforcing and assuring compliance with the Clean Air Act’s pollution control requirements for major sources of air pollution. *Operating Permit Program*, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). Prior to enactment of the Title V permitting program, regulators, operators, and members of the public had difficulty determining which requirements applied to each major source and whether sources were complying with applicable requirements. This was a problem because applicable requirements for each major

source were spread across many different rules and orders, some of which did not make it clear how general requirements applied to specific sources.

The Title V permitting program was created to improve compliance with and to facilitate enforcement of Clean Air Act requirements by requiring each major source to obtain an operating permit that (1) lists all applicable federally-enforceable requirements, (2) contains enough information for readers to determine how applicable requirements apply to units at the permitted source, and (3) establishes monitoring requirements that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) (“The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source.”); *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008) (“But Title V did more than require the compilation in a single document of existing applicable emission limits It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions”).

The Title V permitting program provides a process for stakeholders to resolve disputes about which requirements should apply to each major source of air pollution outside of the enforcement context. 57 Fed. Reg. 32,266 (“Under the [Title V] permit system, these disputes will no longer arise because any differences among the State, EPA, the permittee, and interested members of the public as to which of the Act’s requirements apply to the particular source will be resolved during the permit issuance and subsequent review process.”). Accordingly, federal courts do not generally second-guess Title V permitting decisions made by state permitting agencies and will not enforce otherwise-applicable requirements that have been omitted from or displaced by conditions in a Title V permit. *See*, 42 U.S.C. § 7607(b)(2); *see also*, *Sierra Club v. Otter Tail*,

615 F.3d 1008 (8th Cir. 2008) (holding that enforcement of New Source Performance Standard omitted from a source’s Title V permit was barred by 42 U.S.C. § 7607(b)(2)). Because courts rely on Title V permits to determine which requirements may be enforced and which requirements may not be enforced against each major source, state-permitting agencies and EPA must exercise care to ensure that each Title V permit includes a clear, complete, and accurate account of the requirements that apply to the permitted source.

The Act requires the Administrator to object to a state-issued Title V permit if he determines that it fails to include and assure compliance with all applicable requirements. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If the Administrator does not object to a Title V permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. The Administrator “shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the . . . [Clean Air Act].” 42 U.S.C. § 7661d(b)(2); *see also*, 40 C.F.R. § 70.8(c)(1). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

IV. GROUNDS FOR OBJECTION

A. The Revised Proposed Permit Improperly Incorporates a Major NSR Permit by Reference.

1. Specific Grounds for Objection, Including Citation to Permit Term

Revised Proposed Permit, Special Condition No. 30 states:

Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule, standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116,

Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment. These requirements:

- A. Are incorporated by reference into this permit as applicable requirements
- B. Shall be located with this operating permit
- C. Are not eligible for a permit shield.

The Revised Proposed Permit's New Source Review Authorization References table lists PAL16 as an applicable Chapter 116 Permit for the Application Area. *Id.* at 607.

Appendix B to the Revised Proposed Permit contains a copy of Permit No. 36476/PSDTX996M1. It does not contain a copy of PAL16.

2. Applicable Requirement or Part 70 Requirement Not Met

Consistent with 42 U.S.C. § 7661c(a) and (c), 40 C.F.R. § 70.6(a)(1) and (3), each Title V permit must contain applicable requirements and monitoring, testing, and recordkeeping provisions, as well as other conditions necessary to assure compliance with applicable requirements. Applicable requirements include conditions and emission limitations established by federally-enforceable Title I permits that apply to a Title V source. *See* 40 C.F.R. § 70.2 (defining “applicable requirement”).

While EPA has allowed the TCEQ to incorporate applicable PBR and minor NSR permit requirements by reference into Texas Title V permits, EPA has determined that other kinds of applicable requirements—including applicable requirements established by major NSR permits—may not be incorporated by reference without violating 42 U.S.C. § 7661c(a). *In the Matter of Premcor Refining Group, Inc.*, Order on Petition No. IV-2007-02 at 6 (May 28, 2009) (“*Premcor Order*”).²

² Available electronically at: https://www.epa.gov/sites/production/files/2015-08/documents/premcor_portarthur_response2007.pdf

3. Inadequacy of the Permit Term

EPA's approval of Texas's Title V program indicates that EPA would allow the TCEQ to use incorporation by reference to include requirements in Texas minor NSR permits and PBRs in Texas Title V permits. *Clean Air Act Full Approval of Operating Permits Program, State of Texas*, 66 Fed. Reg. 63318, 63324 (December 6, 2001). EPA has clarified its limited approval of Texas's practice of incorporation by reference in subsequent Title V orders:

In approving Texas' limited use of incorporation by reference of emissions limitations from minor NSR permits and Permits by Rule, EPA balanced the streamlining benefits of incorporation by reference against the value of a more detailed title V permit and found Texas' approach for minor NSR permits and Permits by Rule acceptable. EPA's decision approving this use of IBR in Texas' program was limited to, and specific to, minor NSR permits and Permits by Rule in Texas. EPA noted the unique challenge Texas faced integrating requirements from these permits into title V permits. EPA did not approve (and does not approve of) Texas' use of incorporation by reference of emissions limitations for other requirements.

Premcor Order at 6.

Texas Title V permits that incorporate applicable requirements not found in a minor NSR permit or Texas PBR "fail[] to include emission limitations and standards as necessary to assure compliance with all applicable requirements." *Objection to Federal Operating Permit No. O2282, Lanxess Corporation, LiBR Flex Unit* (February 5, 2010) (citing 40 C.F.R. § 70.6(a), (c)).³

Texas's federally-approved PAL program implements federal Clean Air Act NSR requirements for *major* sources of air pollution. 36 Tex. Reg. 1305 (February 25, 2011) (describing Texas's PAL program as a modification to its PSD and NNSR major source programs). The minimum requirements for state PAL permitting programs are found in EPA's Prevention of Significant Deterioration ("PSD") regulations at 40 C.F.R. § 51.166(w) and its Nonattainment

³ Available electronically at: <https://www.tceq.texas.gov/assets/public/permitting/air/Announcements/epa-lanxesslibr-2282.pdf>

New Source Review (“NNSR”) regulations at 40 C.F.R. § 51.165(f), which apply to major sources. The PSD and NNSR programs are the Clean Air Act’s construction permitting programs for *major* sources. Texas’s PAL rules clarify that PAL permits may only be issued for existing *major* sources. 30 Tex. Admin. Code § 116.180(a)(5). A PAL permit is a *major* permit. It is not a minor NSR permit or PBR. Accordingly, the Revised Proposed Permit’s incorporation by reference of PAL16 is improper and fails to comply with 40 C.F.R. § 70.6(a) and (c).

4. Issues Raised in Public Comments

This issue was raised on pages 2-4 of the Public Comments.

5. Analysis of State’s Response

The Executive Director disagrees with Petitioners that PAL16 must be attached to the Revised Proposed Permit:

The PAL is an alternative and voluntary permit limit that an owner or operator can choose to implement and use to assess Federal NSR applicability. If the emission rates of a future project, for a pollutant, which received a PAL, stay below the PAL emission rate, major NSR is not applicable. Therefore, the ED disagrees that the PAL is a major NSR permit.

Additionally, in its March 21, 2012 letter to TCEQ (letter attached), EPA limited the scope of which NSR permits to append to the Title V permit and which NSR permits to address in the Major New Source Review Summary Table. In that letter, EPA stated:

“The restructured Title V permits remove IBR of PSD and NNSR permits, by specifying PSD and NNSR emission limits in a table, and including applicable PSD and NNSR permits in an appendix to the Title V permit. This approach will resolve our concerns regarding IBR of PSD and NNSR permits provided the table listing PSD/NNSR requirements includes at a minimum:

1) emission point ID No.; 2) PSD/NNSR permit number and permit date; 3) pollutant short term emission limitation; 4) pollutant long-term emission limitation; and 5) footnotes to or summaries of monitoring, recordkeeping, and reporting requirements in appended PSD/NNSR permits (see Enclosure for an example).”

Response to Comments at Response 2.

This response does not rebut Petitioners' demonstration of deficiency. As EPA has explained to the TCEQ, EPA only approved Texas's practice of incorporation by reference for minor NSR permits and PBRs and "does not approve of ... Texas' use of incorporation by reference of emissions limitations for other requirements." Premcor Order at 6. As Texas's rules make clear, PAL permits are *major* permits that are only available to existing *major* sources of air pollution. 30 Tex. Admin. Code § 116.180(a)(5). Moreover, changes to increase PAL limits are subject to major NSR requirements. *Id.* at § 116.192(a)(1), (2).

EPA's March 21, 2012 letter does not, as the Executive Director suggests, contradict EPA's consistent policy regarding Texas's use of incorporation by reference for Title V permits. That letter addresses Texas's proposal to resolve EPA objections to Title V permits incorporating PSD and NNSR permits by reference by attaching PSD and NNSR permits to the Title V permits. EPA states that Texas's proposal to attach PSD and NNSR permits to Title V permits addresses its previous objections to Title V permits that incorporate PSD and NNSR permit requirements by reference. It does not suggest that EPA has reconsidered its position that only minor NSR permits and PBRs may be incorporated into Title V permits by reference. EPA's letter is also inapposite, because PAL permits implement PSD and NNSR program requirements. If PAL16 is a federally-enforceable permit, it *is* a major source PSD and NNSR permit. As Petitioners explained:

Texas's federally-approved PAL program implements federal Clean Air Act New Source Review ("NSR") requirements for *major* sources of air pollution. The minimum requirements for state PAL permitting programs are found in EPA's Prevention of Significant Deterioration ("PSD") regulations at 40 C.F.R. § 51.166(w) and its Nonattainment New Source Review ("NNSR") regulations at 40 C.F.R. § 51.165(f). The PSD and NNSR programs are the Clean Air Act's construction permitting programs for *major* sources. Texas's PAL rules clarify that PAL permits may only be issued for existing *major* sources. 30 Tex. Admin. Code § 116.180(a)(5). A PAL permit is a *major* NSR permit. It is not a minor NSR permit or PBR.

Public Comments at 2-3.

B. The Executive Director Failed to Adjust ExxonMobil’s Plantwide Applicability Limits for NO_x and VOC Downward to Account for Harris County’s Recent Designation as a Serious Ozone Nonattainment Area.

1. Specific Grounds for Objection, Including Citation to Permit Term

The Revised Proposed Permit incorporates the version of PAL16 issued on April 14, 2017 by reference. Revised Proposed Permit at 607. According to PAL16, “[p]hysical changes and changes in the method of operation at this site are exempt from federal New Source Review for VOC, CO, NO_x, SO₂, H₂S, H₂SO₄, and PM as long as site emissions do not exceed the PAL caps.” (Exhibit G), Permit No. 20211/PAL16 at Special Condition No. 86.

The PAL for NO_x, 526.14 TPY, and the PAL for VOC, 1414.45 TPY, were established in 2011 by adding applicable significance levels for projects in moderate nonattainment areas to baseline emissions. (Exhibit H), Permit Amendment Source Analysis and Technical Review, Project No. 135435 at 3; (Exhibit I), Excerpt from Application for PAL16 (December 2007). Because, Harris County was designated as a moderate nonattainment area for ozone at the time that PAL16 was issued, the significance level added to baseline emissions used to establish the NO_x and VOC PALs was 40 tons per year. Exhibit I; *see also* 30 Tex. Admin. Code § 116.12(20)(A), Table 1 (establishing significance levels for nonattainment areas).

In 2019, Harris County was re-designated as a serious ozone nonattainment area. *Determination of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards*, 84 Fed. Reg. 44238 (August 23, 2019). Under Harris County’s revised nonattainment designation, the applicable significance level for determining whether projects at the Baytown Chemical Plant trigger major NSR preconstruction permitting requirements for NO_x and VOC, which are ozone precursors, is no longer 40 tons per year. It is now 25 tons per year.

30 Tex. Admin. Code § 116.12(20)(A), Table 1. ExxonMobil’s PALs for NO_x and VOC in PAL16 have not been adjusted to account for Harris County’s re-designation.

30 Tex. Admin. Code § 116.186(b)(6) provides that:

Acceptance of a PAL permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules and orders of the commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit. If more than one state or federal rule or PAL permit condition is applicable, the most stringent limit or condition will govern and be the standard by which compliance must be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the PAL permit.

30 Tex. Admin. Code § 116.188(1) provides that “[a]n amount equal to the applicable significant level for the PAL pollutant may be added to the baseline actual emissions when establishing the PAL.”

30 Tex. Admin. Code § 116.196(c) provides that “[a]ll PAL permits issued prior to the effective date of this section are subject to the renewal requirements under this section.”

30 Tex. Admin. Code § 116.196(g) provides that “[i]f the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the executive director has not already adjusted for such requirement, the PAL should be adjusted at the time of PAL permit renewal or *federal operating permit renewal*, whichever occurs first.” (emphasis added).

2. Applicable Requirement or Part 70 Requirement Not Met

40 C.F.R. § 70.6(a)(1) states that each Title V permit must include “[e]mission limitations and standards ... that assure compliance with all applicable requirements at the time of permit issuance.” *See also* 42 U.S.C. § 7661c(a). Applicable requirements include applicable provisions in the Texas State Implementation Plan. 40 C.F.R. § 70.6. The Texas SIP includes significance levels that operators and the TCEQ must apply when determining whether projects at an existing

major source located in a nonattainment area trigger major nonattainment NSR preconstruction permitting requirements. *See, e.g.*, 30 Tex. Admin. Code §§ 116.12(20)(A), Table 1. Texas’s PAL rules provide that PALs should be calculated by adding the applicable significance level to baseline actual emissions. *Id.* at § 116.188(1). In cases where the attainment designation of an area where a PAL source is located changes during the effective term of a PAL permit, PALs affected by the change in area designation must be revised when the PAL permit is renewed or when the Title V permit incorporating that PAL is renewed or amended, whichever occurs first. *Id.* at § 116.196(g).

3. Inadequacy of the Permit Term

The Revised Proposed Permit is deficient because it incorporates NO_x and VOC PALs calculated to reflect major modification thresholds applicable to moderate nonattainment areas. The ozone attainment status of Harris County was revised from moderate nonattainment to serious nonattainment after the issuance of PAL16. Texas’s SIP-approved PAL rules required the Executive Director to adjust ExxonMobil’s NO_x and VOC PALs downward to account for Harris County’s re-designation, *id.*, but the Executive Director declined to make this change. Accordingly, the NO_x and VOC PALs incorporated by the Revised Proposed Permit fail to reflect applicable major modification thresholds for projects at the Baytown Chemical Plant and the Executive Director’s issuance of the Revised Proposed Permit violates 30 Tex. Admin. Code § 116.196(g).

4. Issues Raised in Public Comments

This issue was raised on page 5 of the Public Comments.

5. Analysis of State’s Response

The Executive Director claims that changes to Permit No. PAL16 that 30 Tex. Admin. Code § 116.196(g) requires be made *as part of the Title V process* to reflect the 2019 re-designation of Harris County as a serious nonattainment area for ozone should have been raised when the

permit was first issued in 2011 and that “[i]t is not appropriate for” Petitioners’ “to attempt to challenge these issues in a Title V permit action.” Response to Comments at Response 4. The Executive Director’s response fails to address Petitioners’ demonstration for two reasons. First, as explained in the public comments, Harris County was not re-designated as a serious nonattainment area until 2019. Thus, there was no opportunity for Petitioners to challenge the significance threshold added to ExxonMobil’s NO_x and VOC PALs based on Harris County’s nonattainment designation in 2011 when the permit was issued. Second, the Texas SIP expressly required the Executive Director to adjust ExxonMobil’s VOC and NO_x PALs *as part of the Title V renewal process*. 30 Tex. Admin. Code § 116.196(g); *see also* 40 C.F.R. § 52.2270(c) (incorporating § 116.196 into the Texas SIP). Accordingly, the Executive Director’s response is contrary to the clear requirements of the Texas SIP and fails to rebut Petitioners’ demonstration of deficiency. The Revised Proposed Permit is deficient because it fails to reflect a “federal requirement that applies to the PAL source” and which “occur[red] during the PAL effective period,” consistent with § 116.196(b), 42 U.S.C. § 7661c(a), and the Administrator must object to it. *Id.* at § 7661d(b)(2).

C. The Revised Proposed Permit Fails to Provide Sufficiently Detailed NESHAP Applicability Determinations.

1. Specific Grounds for Objection, Including Citation to Permit Term

The Revised Proposed Permit’s Applicable Requirements Summary table contains the following language incorporating applicable requirements in NESHAP Subpart DDDDD:

Unit Group Process ID Nos.	Emission Limitation, Standard or Equipment Specification Citation	Textual Description	Monitoring and Testing Requirements	Recordkeeping Requirements	Reporting Requirements
BHUF100A, IBUF730A/B/C, LPUF101A,	§63.7505 The permit holder shall comply	The permit holder shall comply with the	The permit holder shall comply with the	The permit holder shall comply with the	The permit holder shall comply with the

LPUF102, NRUF1, NRUF1A, NRUF6, NRUF9A, NRUF9B, NRUH2, NRUH3, PAUF311, PAUF321, PFUF501, PFUF510, PFUF530, PTUF301, TDUF501, TDUF507	with the applicable limitation, standard and/or equipment specification requirements of 40 CFR Part 63, Subpart DDDDD	applicable requirements of 40 CFR Part 63, Subpart DDDDD	applicable monitoring and testing requirements of 40 CFR Part 63, Subpart DDDDD	applicable recordkeeping requirements of 40 CFR Part 63, Subpart DDDDD	applicable reporting requirements of 40 CFR Part 63, Subpart DDDDD
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Revised Proposed Permit at 118, 252, 257, 260, 293, 295, 297, 300, 303, 304, 306, 313, 316, 334, 336, 338, 436, 449, 450.

2. Applicable Requirement or Part 70 Requirement Not Met

30 Tex. Admin. Code § 122.142(b)(2)(B) requires Title V permits to include:

the specific regulatory citations in each applicable requirement ... identifying the emission limitations and standards; and ... the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards ... sufficient to ensure compliance with the permit.

40 C.F.R. § 70.6(a)(1) provides that “[e]ach permit issued under this part shall include ... [e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”

3. Inadequacy of the Permit Term

The Revised Proposed Permit’s failure to specify the detailed applicability determinations for applicable NESHAP Subpart DDDDD is inconsistent with black-letter requirements in Texas’s federally-approved Title V regulations. 30 Tex. Admin. Code § 122.142(b)(2)(B) (requiring Title V permits to include detailed applicability determinations and citations for emission limits standards, equipment specifications, monitoring, testing, and recordkeeping requirements). Specifically, the Revised Proposed Permit fails to identify which of the many potentially-

applicable Subpart DDDDD provisions establish applicable emission limitations, standards, and/or equipment specifications, monitoring requirements, testing requirements, and recordkeeping requirements that apply to the Baytown Chemical Plant.

4. Issues Raised in Public Comments

This issue was raised on pages 6-8 of the Public Comments.

5. Analysis of State's Response

The Executive Director provided the following response to public comments on this issue:

It has been a long-standing practice for TCEQ to list high level applicable requirements in the Title V permit's Applicable Requirement Summary when the TCEQ has not developed the Decision Support System (DSS) for certain state and federal applicable requirements. The DSS consists of Requirement Reference Tables (RRT), unit attribute forms and regulatory flowcharts that assist in making applicability determinations which include monitoring/testing, recordkeeping, and reporting requirements. After these documents are developed, detailed citations will be included in the permit with the first permit project submitted that addresses the subject units. Even with the high level applicable requirements, the permit holder is always required to keep appropriate records of monitoring/testing and other requirements to certify compliance and report deviations with the regulations addressed by the high level applicable requirements. TCEQ's position is that high level requirements are enforceable as the records will indicate the compliance options and monitoring data that were used to certify compliance with the emission limitations and standards.

Response to Comments at Response 6.

The Executive Director's practice of delaying applicability determinations for effective NESHAP requirements until the TCEQ develops a standardized process, complete with flowcharts and unit attribute forms is plainly contrary to law. The effective date of applicable requirements establish by 40 C.F.R., Part 63 is determined by the regulations in Part 63 and not the Executive Director's schedule for developing materials to standardize the applicability determination process for those requirements. The Revised Proposed Permit is deficient because it does not contain detailed applicability determinations for Subpart DDDDD, as required by 30 Tex. Admin. Code § 122.142(b)(2)(B) and because the permit's high-level citations fail to include and assure

compliance with the specific applicable Subpart DDDDD requirements, contrary to 40 C.F.R. § 70.6(a) and (c).

D. The Proposed Permit Fails to Assure Compliance with ExxonMobil’s Plantwide Applicability Limits.

1. Specific Grounds for Objection, Including Citation to Permit Term

The Revised Proposed Permit incorporates the version of PAL16 issued on April 14, 2017 by reference. Revised Proposed Permit at 607. PAL16 is part of flexible permit No. 20211. Permit No. 20211/PAL16 includes the following condition explaining how ExxonMobil should determine compliance with its PALs:

The holder of this permit shall provide a demonstration of compliance with the emission cap limits listed in the enclosed table entitled “Emission Sources – Emission Caps and Rates” by calculating and recording aggregate air contaminant emission rates as required in 30 TAC § 116.715(c)(6): (08/04)

....

The actual air contaminant emission rates shall be calculated and recorded using the emission factors and methods included in the amendment applications to Permit Number 20211 as follows. However, the emissions will be calculated using the actual control technology and control efficiency applied to each of the facilities in the cap:

- A. Emission Calculation Basis in the January 2006 renewal application, July 2006 amendment application, and any corresponding supplemental information (Chapter 1).
- B. January 2006 Renewal Application (Chapter 2).
- C. January 2006 Renewal Application (Chapter 3).

Permit No. 20211/PAL16, Special Condition No. 16.

2. Applicable Requirement or Part 70 Requirement Not Met

Title V permits must specify monitoring methods that assure compliance with applicable requirements. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c); *In the Matter of Wheelabrator Baltimore*,

L.P., Permit No. 24-510-01886 at 10 (April 14, 2010) (“*Wheelabrator Order*”);⁴ *In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII-2016-4 at 17 (October 16, 2017) (“*Hunter Order*”) (“In the case of a preconstruction permit, the EPA’s oversight role under Title V is to ensure that the terms and conditions of the preconstruction permit are properly included as ‘applicable requirements,’ and that the permit contains monitoring, recordkeeping, and reporting sufficient to assure compliance with those permit terms and conditions.”).⁵ The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5). Where a permit allows an operator to use emission factors to demonstrate compliance with applicable requirements, the permit must actually identify the emission factors that will be used to demonstrate compliance and the record must establish that the emission factors accurately reflect the source’s actual emissions. *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2011-2 at 9-12 (December 3, 2012) (“*Granite City II Order*”) (objecting to permit for failing to specify which emission factors operator was required to use to determine compliance with applicable requirements).⁶

Texas’s SIP-approved PAL monitoring requirements were established after PAL16 was issued, but nonetheless apply to PAL16. 30 Tex. Admin. Code §§ 116.186(b) (listing requirements that apply to all PALs), 116.186(c) (“Each PAL permit must include special conditions that satisfy” listed requirements).

⁴ Available electronically at: https://www.epa.gov/sites/production/files/2015-08/documents/wheelabrator_decision2009.pdf

⁵ Available electronically at: https://www.epa.gov/sites/production/files/2017-10/documents/pacificorp_hunter_order_denying_title_v_petition.pdf

⁶ Available electronically at: https://www.epa.gov/sites/production/files/2015-08/documents/uss_2nd_response2009.pdf

3. Inadequacy of the Permit Term

The Revised Proposed Permit is deficient, because it fails to identify specific monitoring and testing provisions that assure compliance with emission limits established by PAL16, and because the Executive Director has not provided any rationale for his determination that monitoring and testing provisions in Permit No. 20211/PAL16 assure compliance with those limits and satisfy applicable PAL program monitoring requirements. In fact, the records for the present Title V renewal as well as for issuance of PAL16 and subsequent alterations and amendments to that permit fail to include any evidence that the Executive Director has ever conducted any review to determine whether monitoring requirements in Permit No. 20211/PAL16 are consistent with Texas's PAL program rules. *See*, 30 Tex. Admin. Code §§ 116.186(b)(9), (10), (11), (c). The Executive Director's failure to provide a rationale for the sufficiency of the monitoring requirements in Permit No. 20211/PAL16 is enough to render the Revised Proposed Permit deficient. 40 C.F.R. § 70.7(a)(5); *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03, at 7-8 (Jan. 31, 2011) ("*Granite City I Order*") (finding that state agency failed to explain how recordkeeping and pollution control inspection requirements, in the absence of any actual monitoring requirements, would assure compliance with applicable PM limits and yield reliable data representative of compliance with the permit).⁷

The only provision in Permit No. 20211/PAL16 that directly explains how compliance with limits in PAL16 should be determined highlights this deficiency:

The holder of this permit shall provide a demonstration of compliance with the emission cap limits listed in the enclosed table entitled "Emission Sources – Emission Caps and Rates" by calculating and recording aggregate air contaminant emission rates as required in 30 TAC § 116.715(c)(6): (08/04)

....

⁷ Available electronically at: https://www.epa.gov/sites/production/files/2015-08/documents/uss_response2009.pdf

The actual air contaminant emission rates shall be calculated and recorded using the emission factors and methods included in the amendment applications to Permit Number 20211 as follows. However, the emissions will be calculated using the actual control technology and control efficiency applied to each of the facilities in the cap:

- A. Emission Calculation Basis in the January 2006 renewal application, July 2006 amendment application, and any corresponding supplemental information (Chapter 1).
- B. January 2006 Renewal Application (Chapter 2).
- C. January 2006 Renewal Application (Chapter 3).

Permit No. 20211/PAL16 at Special Condition No. 16.

The rule cited in Special Condition No. 16, 30 Tex. Admin. Code § 116.715(c)(6), establishes general recordkeeping requirements for Texas flexible permits and not Texas PAL permits. The 2006 renewal application referenced by Special Condition No. 16 predates Texas's initial PAL rules—which were disapproved by EPA—and relates to flexible permit requirements established before ExxonMobil submitted its application for PAL16. EPA has already determined that monitoring and testing requirements in Texas's flexible permit program rules are less stringent than federal PAL rules require. *Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permits*, 75 Fed. Reg. 41312, 41317 (July 15, 2010).⁸ Thus, allowing ExxonMobil to determine compliance based on the flexible permit program rule at § 116.715(c)(6) is insufficient to assure compliance with PAL program monitoring requirements. Additionally, allowing ExxonMobil to calculate emissions

⁸ This rule disapproving Texas's flexible permits was vacated by the Fifth Circuit of Appeals. The Court, however, did not reject EPA's determination that the flexible permit's monitoring requirements were insufficient to satisfy monitoring requirements for PAL permits. Instead, the Court held that EPA's determination did not provide a basis for denying the flexible permit program, which is a minor source program not subject to major source PAL monitoring requirements. *See Texas v. EPA*, 690 F.3d 670, 684 (5th Cir. 2012).

from PAL16 sources based on application representations filed years before PAL16 was actually established, and before Texas actually promulgated its initial PAL rules (which were subsequently disapproved) cannot be sufficient to assure compliance with applicable PAL monitoring requirements or the limits established by PAL16. The Revised Proposed Permit is also deficient, because it fails to actually identify the emission factors and control efficiencies used to determine compliance with emission limits in Permit No. 20211/PAL16. Granite City II Order at 9-12 (granting claim, because permit failed to specify which emission factors operator was required to use to demonstrate compliance with applicable requirements). The relevant permit amendment application documents, moreover, are not even available through the TCEQ's electronic file room website.⁹ *In the Matter of the Premcor Refining Group*, Order on Petition No. VI-2007-02 (May 28, 2009) at 4-5 (objecting to Title V permit's incorporation of requirements that were not readily available to the public).¹⁰

4. Issues Raised in Public Comments

This issue was raised on pages 8-10 of the Public Comments.

5. Analysis of State's Response

The Executive Director provided the following response to public comments on this issue:

The TCEQ implements the periodic monitoring requirements of 30 TAC § 122.142(c) (and other monitoring requirements) for NSR permits through the NSR permit project review to determine the appropriate monitoring associated with the NSR permit and specifying those monitoring requirements in the NSR permit or permit record. Any challenges to the validity of an NSR permit; including whether it is federally enforceable, references confidential information, or any other comment regarding the completeness or content of the NSR permit; should have been raised or should be raised through the appropriate NSR permit process. It is

⁹ A search for this permit (primary ID "20211") on September 15, 2020 did not return any results for ExxonMobil's renewal application. A search of the TCEQ's Central File Room Online using ExxonMobil's RN number and a full text search using the project number for ExxonMobil's renewal application also failed to return any results.

¹⁰ The Revised Proposed Permit's Statement of Basis provides relevant permit documents may be obtained electronically through the TCEQ's Central File Room Online. Statement of Basis at 313.

not appropriate for Commenters to attempt to challenge these issues in a Title V permit action.

Response to Comments at Response 8.

EPA's objection to the renewal of ExxonMobil's Title V permit in this case sufficiently rebuts the Executive Director's response to comments on this issue:

As the EPA has previously explained, "claims concerning whether a title V permit contains enforceable permit terms, supported by monitoring [recordkeeping, and reporting] sufficient to assure compliance with an applicable requirement or permit term (such as an emission limit established in a [NSR] permit), *are* properly reviewed during title V permitting. The statutory obligations to ensure that each title V permit contains 'enforceable emission limitations and standards' supported by 'monitoring ... requirements to assure compliance with the permit terms and conditions,' apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit." Therefore, regardless of the monitoring, recordkeeping, and reporting initially associated with a[n] ... NSR permit ..., TCEQ has a statutory obligation independent of the process of issuing those permits to evaluate monitoring, recordkeeping, and reporting in the title V permitting process to ensure that these terms are sufficient to assure compliance with all applicable requirements and title V permit terms.

ExxonMobil Objection Order at 8 (citations omitted) (emphasis in original).

Additionally, the Executive Director's unsupported claim that he implements the periodic monitoring requirements of 30 Tex. Admin. Code § 122.142(c) as part of the NSR permit review has no bearing on Petitioners' demonstration that PAL16 fails to comply with monitoring requirements in Texas's federally-approved PAL rules that were finalized and approved by EPA *after* PAL16 was issued. As Petitioners explain, the only provisions in Permit No. 20211/PAL16 explaining how ExxonMobil should calculate emissions to determine compliance with its PALs refer to application representations filed in 2006 and 2007 as part of ExxonMobil's flexible permit application. Texas's PAL rules, including its rules establishing PAL monitoring requirements, were twice revised after 2007 and were not approved by EPA until 2012. 36 Tex. Reg. 1305, 1307 (August 10, 2012); 37 Tex. Reg. 6049, 6051 (November 25, 2012). The Executive Director could

not have evaluated PAL16 for consistency with these requirements as part of his review of that permit prior to the promulgation of the new requirements.

E. The Revised Proposed Permit Fails to Establish a Schedule for ExxonMobil to Comply with its Commitment to Obtain a SIP-Approved Chapter 116, Subchapter B Permit for Units and Emissions Authorized by State-Only Flexible Permit No. 20211/PAL16.

1. Specific Grounds for Objection, Including Citation to Permit Term

On March 31, 2011, ExxonMobil submitted a supplement to its annual compliance certification for Title V Permit No. O2269. (Exhibit J), Supplement to Annual Compliance Certification for Title V Permit No. O2269. This supplement formalized ExxonMobil's commitment to obtain a SIP-approved Chapter 116, Subchapter B permit authorizing units and emissions currently authorized by its state-only Flexible Permit No. 20211.

ExxonMobil submitted an application to “de-flex” Permit No. 20211 in June, 2012. (Exhibit K), TCEQ IMS Webpage, Permit No. 20211, Project 178579. Three months later, ExxonMobil asked the TCEQ to stop its review of the de-flex application and to put the project on hold. *Id.* The application sat on hold for approximately four years, until ExxonMobil asked the TCEQ to withdraw the de-flex application in 2016. (Exhibit L), Letter Requesting Withdrawal of Amendment Application, Permit No. 20211, Project No. 178579. Approximately three years later, the TCEQ granted ExxonMobil's request. (Exhibit M), Permit Source Analysis & Technical Review for Permit No. 20211, Project No. 178579.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must:

include enforceable emission limitations and standards, a schedule of compliance, ... and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.

42 U.S.C. § 7661c(a); *see also* 40 C.F.R. § 70.6(a), (c)(3).

ExxonMobil's commitment to submit an application to convert its flexible permit into a SIP-approved Chapter 116, Subchapter B permit is a federally enforceable applicable requirement. Exhibit J ("ExxonMobil is submitting a supplement to the certification provided on October 29, 2010 to formally set forth our commitment to submit applications to TCEQ to transition the affected facilities to 30 TAC Subchapter 116 SIP-approved permits.").

Additionally, Texas's flexible permit program may not be used to authorize major sources of air pollution, like the Baytown Chemical Plant. *Environmental Integrity Project v. EPA*, 610 Fed. Appx. 409 (5th Cir. 2015) ("Under the [flexible permit] plan, an entity may obtain a flexible permit for emissions up to a specified aggregate limit *below the major source threshold.*") (emphasis added). Major source flexible permits issued prior to EPA's program approval, like Permit No. 20211, are not federally-enforceable authorizations. *Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permit Program*, 79 Fed. Reg. 40666, 40667-68 (July 24, 2014) ("strongly reject[ing] any suggestion" that EPA's approval of the flexible permit program "transformed state-only flexible permits issued [prior to EPA's approval] into federally approved permits[.]").

3. Inadequacy of the Permit Term

ExxonMobil's withdrawal of its de-flex application is a violation the company's federally-enforceable commitment, incorporated into its Title V permit, to transform state-only Flexible Permit No. 20211 into a federally-approved Chapter 116, Subchapter B NSR permit. Accordingly, the Revised Proposed Permit must establish a schedule for ExxonMobil to covert state-only Flexible Permit No. 20211 into a Subchapter B NSR permit. 42 U.S.C. § 7661c(a).

4. Issues Raised in Public Comments

This issue was raised on page 14 of the Public Comments.

5. Analysis of State's Response

The Executive Director offered the following response to comments on this issue:

Applicant has a pending application for NSR Permit Number 20211 for obtaining a SIP-approved flexible permit. Once the permit is issued by TCEQ, applicant intends to submit a Title V revision application to incorporate the SIP-approved flexible NSR permit into FOP O2269.

Response to Comments at Response 10.

The Executive Director's response is insufficient, because ExxonMobil is not eligible for a SIP-approved flexible permit. The Clean Air Act "distinguishes between major and minor pollution sources based on a threshold amount of pollution; major sources are subject to much more stringent regulations." *Environmental Integrity Project*, 610 Fed. Appx. 409. While the preconstruction permitting exemption for flexible permit changes that do not increase allowable emissions may not threaten the integrity of Texas's major source permitting requirements if it is only available to minor sources, it undermines the enforceability of major source requirements if it is made available to major sources, like the Baytown Chemical Plant. Accordingly, as Texas argued to the Fifth Circuit Court of Appeals and as the Court subsequently held, Texas may not issue flexible permits to major sources and emission caps in flexible permits must remain below the applicable major source threshold. *Id.*; *see also* Brief of Intervenor, State of Texas, In Support of Respondent Environmental Protection Agency, 2015 WL 1156712 at *7 ([M]inor new source review . . . pertains to the construction of new minor sources and to minor modifications of minor sources. A minor source is any source that is not a major source") and *16 ("Texas's Flexible Permit Program is a state minor new source review program") (emphasis in original); Petition for Review, *State of Texas v. EPA* (July 23, 2010) ("The FPP is a voluntary authorization mechanism for Minor NSR sources designed to enhance control of emissions while allowing for greater operational flexibility") (emphasis added).

Accordingly, ExxonMobil's application requesting that the Executive Director transform its state-only major source flexible permit into a federally-enforceable minor source flexible permit cannot be granted and does not fulfill ExxonMobil's obligation to file an application to convert its state-only flexible permit into a SIP-approved major source permit. The Revised Proposed Permit must still establish a schedule for ExxonMobil to submit an application to convert its state-only major source flexible permit into a SIP-approved major source permit. 42 U.S.C. § 7661c(a).

F. The Revised Proposed Permit Improperly Incorporates Confidential Permit Terms.

1. Specific Grounds for Objection, Including Citation to Permit Term

Revised Proposed Permit, Special Condition No. 30 provides that ExxonMobil must comply with the requirements of preconstruction permits listed in the Proposed Permit's New Source Review Authorization References attachment and that such requirements are incorporated by reference into the Proposed Permit as applicable requirements.

The Revised Proposed Permit's New Source Review Authorization References attachment incorporates the requirements of Permit Nos. 96220, 28441, and 8586 by reference into the Revised Proposed Permit. Revised Proposed Permit at 607. The versions of these permits incorporated by the Draft Permit and the initial Proposed Permit each contained special conditions identifying operational limitations contained in ExxonMobil's confidential application materials as enforceable permit terms. Public Comments at 5-6.

Permit No. 96220, Special Condition No. 4(A) established a production rate for polymer production based on representations in Table 2, "Material Balance" included in the confidential section of the permit application dated November 2011. Special Condition No. 11 established a limitation on the kind of liquids certain tanks at the Baytown Chemical Plant are allowed to store, based on representations in the confidential section of ExxonMobil's November 2011 application. Special Condition No. 12 limited liquids that could be transferred through authorized loading and

unloading operations to those represented in the confidential section of ExxonMobil's 2011 application.

Permit No. 28441, Special Condition No. 4 established an operational production limitation on the Toluene Disproportionation Unit based on representations in the confidential section of ExxonMobil's August 2014 permit amendment application.

Permit No. 8586, Special Condition No. 4 established an operational limitation on production rates of polypropylene for all production lines based on representations in the confidential section of ExxonMobil's February 2003 application.

EPA objected to the initial Proposed Permit, because Title V permit terms, including operating limitations, may not be treated as confidential. ExxonMobil Objection Order at 3-5. The TCEQ subsequently revised Permit Nos. 96220, 28441, and 8586 to remove references to ExxonMobil's confidential application files. These revised permits are incorporated by reference into the Revised Proposed Permit. Revised Proposed Permit at 607.

The TCEQ's revisions to Permit Nos. 96220, 28441, and 8586 did not nullify the previously-referenced operating limitations in ExxonMobil's confidential application materials, which remain federally-enforceable conditions of these permits under Texas's federally-approved rules.¹¹ 30 Tex. Admin. Code § 116.116(a)(1) ("The following are the conditions upon which a permit ... [is] issued: (1) representations with regard to construction plans and operation procedures in an application for a permit[.]"); *In the Matter of ExxonMobil Corporation, Baytown Refinery*, Order on Petition No. VI-2016-14 at 8 (April 2, 2018) ("*Baytown Refinery Order*") ("As

¹¹ See (Exhibit N), Permit Alteration Source Analysis & Technical Review, Permit No. 96220, Project No. 314963; (Exhibit O), Permit Alteration Source Analysis & Technical Review, Permit No. 28441, Project No. 314960; (Exhibit P), Permit Alteration Source Analysis & Technical Review, Permit No. 8586, Project No. 314961. These documents state that references to confidential materials were removed from NSR permit special conditions, but do not indicate that the underlying representations were nullified. Even if the operational limitations on ExxonMobil's production rates were not used to calculate presently-applicable emission limits, they remain effective operational limits that are enforceable permit conditions pursuant to 30 Tex. Admin. Code § 116.116(a)(1).

TCEQ has explained and the EPA acknowledged, [t]he permit application, and all the representations in it, is part of the permit when it is issued and as such is enforceable.”) (internal quotation marks omitted).¹²

2. Applicable Requirement or Part 70 Requirement Not Met

Each 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, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a).

Applicable requirements include requirements in preconstruction permits issued pursuant to the Texas SIP, like Permit Nos. 96220, 28441, and 8586. 40 C.F.R. § 70.2 (defining applicable requirements). The TCEQ’s rule making application representations enforceable conditions of Texas preconstruction permits is also an applicable requirement. 40 C.F.R. §§ 52.2270(c) (identifying 30 Tex. Admin. Code § 116.116(a) as part of the Texas SIP), 70.2 (identifying SIP requirements as applicable requirements for purposes of Title V).

EPA’s Title V regulations provide that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source’s potential to emit, are enforceable by the Administrator and citizens under the Act.” 40 C.F.R. § 70.6(b)(1). Confidential Title V permit terms are not enforceable by members of the public. ExxonMobil Objection Order at 4 (“Because the production rates or limitations are confidential, the public does not know what these applicable requirements are, negating the ability of citizens to enforce these conditions.”).

Title V provides that “[t]he contents of a permit shall not be entitled to protection [as confidential information] under section 7414(c) of this title.” 42 U.S.C. § 7661b(e).

¹² Available electronically at: https://www.epa.gov/sites/production/files/2018-04/documents/exxonmobil_baytown_refinery_order_4-2-18.pdf.

3. Inadequacy of the Permit Term

The operational limitations on production rates previously referenced by Permit Nos. 96220, 28441, and 8586 remain enforceable conditions of those permits, pursuant to 30 Tex. Admin. Code § 116.116(a)(1), even if they are no longer referenced on the face of permits incorporated by reference into the Proposed Permit. *See* Revised Proposed Permit, Special Condition No. 30 (providing that requirements of preconstruction permits listed in the New Source Review Authorizations attachment are incorporated by reference into the Proposed Permit); *see also* Baytown Refinery Order at 8. These operational limitations, which are Title V permit terms, are only listed in confidential sections of ExxonMobil's permit application files. This is impermissible, because Title V permit terms may not be treated as confidential. 42 U.S.C. § 7661b(e); ExxonMobil Objection Order at 3-5.

4. Issues Raised in Public Comments

This issue was raised on pages 5-6 of the Public Comments. It was also raised by EPA in its order objecting to the initial Proposed Permit. ExxonMobil Objection Order at 3-5.

5. Analysis of State's Response

The Executive Director provides the following description of the changes made to the initial Proposed Permit and explanation for why he believes these changes resolve EPA's objection:

Exxon Mobil Corporation submitted NSR permit alterations for permits 8586, 28441, and 96220 to remove references to confidential business information (CBI) from the Special Conditions. The permits were revised as follows:

- NSR permit 8586 was altered on April 29, 2020 to remove CBI references in Special Condition 4 as it was determined that the polypropylene production limit was not used in the calculation basis of the current permit emission limits and therefore is not necessary for demonstrating compliance with permit emission limits.

- NSR permit 28441 was altered on May 5, 2020 to remove CBI references in Special Condition 4 and 5. It was determined that the TDU production limit was not used in the calculation basis of the current permit emission limits and therefore is not necessary for demonstrating compliance with permit emission limits and Special Condition 4 was removed. In Special Condition 5, the firing rate value for furnace F-507 is referenced to the Appendix B of the confidential section of the March 1995 submittal. The firing rate of 8.1 MMBtu/hr from that submittal will now be listed in Special Condition 4 which replaces the one that was removed.
- NSR permit 96220 was altered on April 29, 2020 to remove CBI references in Special Condition 4, 11, 12, and 22A. It was determined that the polymer production rates are not directly associated with any emission calculation and therefore are not necessary for determining compliance with permit emission limits. In addition, the recordkeeping requirement in Special Condition 4B is duplicative of the recordkeeping requirement in Special Condition 22A. Therefore, Special Conditions 4A and 4B were removed. The records in Special Condition 4 are kept as “reserved”. References to the confidential file were removed from Special Conditions 11 and 12 and a summary table was attached for each Special Condition. Special Condition 22A was changed to remove a reference to Special Condition 4B.

The Title V permit incorporates the NSR alterations by reference as reflected in the new issuance dates for these permits in the New Source Review Authorization by Emissions Unit table in the permit attachments.

Response to ExxonMobil Objection Order at 3-4.

Removing references to applicable requirements in confidential application files from the face of permits incorporated by reference into the Revised Proposed Permit does not resolve EPA’s objection, because the previously-referenced application representations still establish binding operating limits that may not be marked confidential. As EPA explained in the Baytown Refinery Order:

So long as a permit specifies all binding emissions and operating limits, as well as all other conditions necessary to assure compliance with such limits (either on the face of the NSR permit or in the non-confidential portion of the application); these permits will generally not conflict with EPA’s title V requirements.

Baytown Refinery Order at 8-9.

The Executive Director’s response to EPA’s objection does not pass this test. The operating limitations on production rate previously referenced by the special conditions of

preconstruction permits incorporated into the Revised Proposed Permit are still applicable requirements under 30 Tex. Admin. Code § 116.116(a)(1). That these operational limits are enforceable applicable requirements, regardless of whether they were used to directly calculate applicable emission limitations is demonstrated by the fact that ExxonMobil was required to apply for a permit amendment to increase the permitted operating limitations, even though such increases did not cause an increase in the amount of pollution ExxonMobil was authorized to emit. *See e.g.* (Exhibit Q), Permit Amendment Source Analysis & Technical Review, Permit No. 28441, Project No. 217062 (permit amendment required to increase in TDU unit production rate without increasing emission limitations).¹³ Because these enforceable representations remain confidential, the Revised Proposed Permit violates 42 U.S.C. § 7661b(e) and fails to assure compliance with applicable requirements, as required by *id.* at § 7661c(a) and 40 C.F.R. § 70.6(a), (b)(2).

G. The Revised Proposed Permit Fails to Specify Monitoring, Testing, and Recordkeeping Requirements Sufficient to Assure Compliance with Applicable Requirements for Projects Authorized by PBR.

1. Specific Grounds for Objection, Including Citation to Permit Term

Revised Proposed Permit, Special Condition No. 30 provides that requirements in permits by rule referenced in the Revised Proposed Permit’s New Source Review Authorization References attachment are applicable requirements that are incorporated by reference into the Revised Proposed Permit.

The Revised Proposed Permit’s New Source Review Authorization References attachment lists the following PBRs that are incorporated by reference into the Revised Proposed Permit:

106.261	Version Date: 12/24/1998
106.261	Version Date: 9/4/2000

¹³ Compare with Exhibits N, O, and P, which were authorized as *alterations* pursuant to 30 Tex. Admin. Code § 116.116(c) and not as an *amendment* pursuant to § 116.116(b), because removing *references* to enforceable applicable representations did not nullify or revise the underlying requirement. Changes to increase (or nullify) operating limitations established by a confidential application representation must be made through the amendment process, because such changes represent a “change in the method of control of emissions.” *Id.* at § 116.116(b)(1)(A).

106.261	Version Date: 11/1/2003
106.262	Version Date: 12/24/1998
106.262	Version Date: 9/4/2000
106.262	Version Date: 11/1/2003
106.263	Version Date: 11/1/2001
106.264	Version Date: 9/4/2000
106.266	Version Date: 9/4/2000
106.371	Version Date: 9/4/2000
106.472	Version Date: 9/4/2000
106.473	Version Date: 9/4/2000
106.478	Version Date: 9/4/2000
106.511	Version Date: 9/4/2000
106.512	Version Date: 3/14/1997
106.533	Version Date: 3/14/1997
106.533	Version Date: 9/4/2000

Revised Proposed Permit at 607.

The Revised Proposed Permit also incorporates Permit No. PAL16 by reference. *Id.*

Revised Proposed Permit, Special Condition No. 31 provides that “[t]he permit holder shall comply with the general requirements of 30 TAC Chapter 106, Subchapter A or the general requirements, if any, in effect at the time of the claim of any PBR.”

Revised Proposed Permit, Special Condition No. 32 provides that:

The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit’s compliance with the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, safety data sheets (SDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144. Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).

The Revised Proposed Permit’s Statement of Basis includes the following table that purports to “specify monitoring and/or recordkeeping for emission units authorized by PBRs:

**Exxon Mobil Corporation Baytown Chemical Plant Title V Permit No. O2269
Summary Table of Permit by Rule Regulatory Applicability**

Unit ID	Applicable Regulation(s)	30 TAC Chapter 116 Authorization (including Special Conditions specific to Monitoring/Testing and/or Recordkeeping)	30 TAC 106 PBR Authorization
ANALYZE	30 TAC Chapter 115, HRVOC Vent Gas 30 TAC Chapter 115, Vent Gas Controls	Multiple	106.261/11/01/2003 (149708), 106.262/11/01/2003 (149708)
BTCPFUG	30 TAC Chapter 115, HRVOC Fugitive Emissions 30 TAC Chapter 115, Pet. Refinery & Petrochemicals 40 CFR Part 60, Subpart DDD 40 CFR Part 60, Subpart VV 40 CFR Part 63, Subpart H 40 CFR Part 63, Subpart FFFF	NSR Permit 20211 MAERT, SC3, SC4, SC55, SC56, SC61, SC62, SC64, SC65, SC66, SC68, SC69, SC70 NSR Permit 96220 MAERT	106.261/09/04/2000 (50763, 51242, 54715), 106.261/11/01/2003 (76317, 78572, 80253, 80411, 80715, 80920, 82149, 82657, 83400, 83906, 84579, 108815, 109284, 109740, 110913, 117728, 118027, 118033, 120433, 122563, 122598, 124055, 124140, 129931, 130000, 131373, 132686, 133867, 136006, 136897, 138601, 138709, 138869, 139477, 141229, 144054, 144055, 145938, 147270, 148600, 151017, 152890), 106.261/12/24/1998 (44074), 106.262/09/04/2000 (50641, 51242, 54171, 54715), 106.262/11/01/2003 (76317, 80253, 80411, 80715, 80920, 81081, 82149, 82657, 83400, 83906, 124140, 108815, 109740, 110913, 112083, 117728, 118027, 118033,

**Exxon Mobil Corporation Baytown Chemical Plant Title V Permit No. O2269
Summary Table of Permit by Rule Regulatory Applicability**

Unit ID	Applicable Regulation(s)	30 TAC Chapter 116 Authorization (including Special Conditions specific to Monitoring/Testing and/or Recordkeeping)	30 TAC 106 PBR Authorization
			120433, 122563, 122598, 124055, 126098, 129931, 130000, 132686, 133867, 135448, 136006, 136897, 138601, 138709, 138869, 139477, 141229, 144054, 144055, 147270, 148600, 151017, 152890), 106.262/12/24/1998 (44619), 106.263/11/01/2001, 106.371/09/04/2000
D4022-1	30 TAC Chapter 115, Loading and Unloading of VOC		106.263/11/01/2001
FGRHB	30 TAC Chapter 115, Pet. Refinery & Petrochemicals 40 CFR Part 63, Subpart U	NSR Permit 20211 MAERT, SC3, SC4	106.261/11/01/2003 (148594, 148861, 108566, 111297, 119875, 131804, 132685, 143521), 106.262/11/01/2003 (145967, 148594, 148861, 108566, 108574, 108595, 111297, 119875, 123247, 124149, 129961, 131804, 132685, 136019, 140847, 143521)
FS09	30 TAC Chapter 111, Visible Emissions 30 TAC Chapter 115, HRVOC Vent Gas 40 CFR Part 60, Subpart A 40 CFR Part 63, Subpart A	NSR Permit 4600 MAERT, SC8, SC9 NSR Permit 96220 MAERT	106.261/11/01/2003 (144054), 106.262/11/01/2003 (144054)

**Exxon Mobil Corporation Baytown Chemical Plant Title V Permit No. O2269
Summary Table of Permit by Rule Regulatory Applicability**

Unit ID	Applicable Regulation(s)	30 TAC Chapter 116 Authorization (including Special Conditions specific to Monitoring/Testing and/or Recordkeeping)	30 TAC 106 PBR Authorization
FS09-VENT	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 4600 MAERT, SC8, SC9 NSR Permit 96220 MAERT	106.261/11/01/2003, 106.262/11/01/2003
FS12	30 TAC Chapter 111, Visible Emissions 30 TAC Chapter 115, HRVOC Vent Gas 40 CFR Part 60, Subpart A 40 CFR Part 63, Subpart A	NSR Permit 20211 MAERT	106.261/11/01/2003 (148321, 151047, 151078, 153201), 106.261/12/24/1998 (44053), 106.262/11/01/2003 (148321, 151047, 151078, 153201)
FS12-VENT	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 20211 MAERT	106.261/11/01/2003, 106.261/12/24/1998, 106.262/11/01/2003
FS23	30 TAC Chapter 111, Visible Emissions 30 TAC Chapter 115, HRVOC Vent Gas 40 CFR Part 60, Subpart A 40 CFR Part 63, Subpart A	NSR Permit 4600 MAERT, SC8, SC9 NSR Permit 96220 MAERT	106.261/11/01/2003 (144054), 106.262/11/01/2003 (144054)
FS23-VENT	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 4600 MAERT, SC8, SC9 NSR Permit 96220 MAERT	106.261/11/01/2003, 106.262/11/01/2003
FS24	30 TAC Chapter 111, Visible Emissions 30 TAC Chapter 115, HRVOC Vent Gas 40 CFR Part 60, Subpart A 40 CFR Part 63, Subpart A	NSR Permit 4600 MAERT, SC8, SC9 NSR Permit 96220 MAERT	106.261/09/04/2000 (50763), 106.261/11/01/2003 (76317, 80411, 144054), 106.262/11/01/2003 (76317, 80411, 144054)
FS24-VENT	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 4600 MAERT, SC8, SC9 NSR Permit 96220 MAERT	106.261/11/01/2003, 106.262/11/01/2003
FS28	30 TAC Chapter 111, Visible Emissions	NSR Permit 36476 MAERT, SC4, SC6	106.262/11/01/2003 (81081)
NRUC9A	40 CFR Part 63, Subpart G		106.261/11/01/2003
NRUC9B	40 CFR Part 63, Subpart G		106.261/11/01/2003
NRUF9A/B	30 TAC Chapter 115, HRVOC Vent Gas 30 TAC Chapter 115, Vent Gas Controls	NSR Permit 5259 MAERT, SC2, SC4	106.261/11/01/2003 (78572, 84579)

**Exxon Mobil Corporation Baytown Chemical Plant Title V Permit No. O2269
Summary Table of Permit by Rule Regulatory Applicability**

Unit ID	Applicable Regulation(s)	30 TAC Chapter 116 Authorization (including Special Conditions specific to Monitoring/Testing and/or Recordkeeping)	30 TAC 106 PBR Authorization
NRUF9A	30 TAC Chapter 115, HRVOC Fugitive Emissions 30 TAC Chapter 115, Vent Gas Controls 30 TAC Chapter 117, Subchapter B 40 CFR Part 63, Subpart DDDDD	NSR Permit 5259 MAERT, SC2, SC4	106.261/11/01/2003
NRUF9B	30 TAC Chapter 115, HRVOC Fugitive Emissions 30 TAC Chapter 115, Vent Gas Controls 30 TAC Chapter 117, Subchapter B 40 CFR Part 63, Subpart DDDDD	NSR Permit 5259 MAERT, SC2, SC4	106.261/11/01/2003
PPBL3-303	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 8586 MAERT, SC7, SC8	106.262/11/01/2003 (147480)
PPBL3-310	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 8586 MAERT, SC7, SC8	106.262/11/01/2003 (147480)
PPBL3-312	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 8586 MAERT, SC7, SC8	106.262/11/01/2003 (147480)
PPDC402	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 8586 MAERT, SC7	106.262/11/01/2003
PPDC804	30 TAC Chapter 115, Vent Gas Controls	NSR Permit 8586 MAERT, SC7	106.262/11/01/2003
TK0030	30 TAC Chapter 115, Storage of VOCs 40 CFR Part 63, Subpart U	NSR Permit 20211 MAERT, SC6	106.264/09/04/2000
TK1123	30 TAC Chapter 115, Storage of VOCs 40 CFR Part 63, Subpart G		106.261/11/01/2003 (131037) 106.262/11/01/2003 (131037)

Statement of Basis at 242-244.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must list emission limitations and include monitoring, testing, and recordkeeping requirements sufficient to assure compliance with all applicable requirements, including requirements in the applicable SIP. 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a), (c).

Each Texas Title V permit must contain “detailed applicability determinations,” including “specific regulatory citations in each applicable requirement ... identifying the emission limitations and standards; and ... the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards[.]” 30 Tex. Admin. Code § 122.142(b)(2)(B).

A “plant-wide applicability limit ... will impose an annual emission limitation in tons per year, that is enforceable for all facilities, or emissions units at a major stationary source, that emit the PAL pollutant.” 30 Tex. Admin. Code § 116.186(a); 40 C.F.R. § 52.2270(c) (incorporating § 116.186(a) into the Texas SIP).

PAL monitoring systems “must accurately determine all emissions of the PAL pollutant in terms of mass per unit of time.” *Id.* at § 116.186(c)(2); 40 C.F.R. § 52.2270(c) (incorporating § 116.186(c)(2) into the Texas SIP).

Emissions covered by a PAL must be monitored using a method specified by 30 Tex. Admin. Code § 116.186(c)(3) and PAL permit holders must conduct validation testing required by 30 Tex. Admin. Code § 116.186(c)(3)(D)(iii). 30 Tex. Admin. Code § 116.186(c)(3); 40 C.F.R. § 52.2270 (incorporating 30 Tex. Admin. Code § 116.186(c)(3) into the Texas SIP).

3. Inadequacy of the Permit Term

Neither the Revised Proposed Permit nor the PBR rules identified below and listed in the Revised Proposed Permit’s New Source Review Authorization References attachment specify

monitoring and testing methods that assure compliance with applicable emission limits and operating requirements for the following PBRs ExxonMobil has claimed:

The current and previous versions of the PBR at 106.261 and 106.262 incorporated by reference into the Revised Proposed Permit provide a general authorization to construct units and processes that are not covered by other PBRs. These PBRs establish emission limits for various chemicals listed in the rule, leaving other chemicals subject to emission limits at 106.4. The versions of PBRs 106.261 and 106.262 incorporated into the Revised Proposed Permit do not specify any monitoring or testing requirements that assure compliance with emission limits and operating requirements for units and processes authorized under these PBRs.

The version of the PBR at 106.263 that is incorporated into the Revised Proposed Permit may be used to authorize routine maintenance activities, routine start-ups and shutdowns, and temporary maintenance facilities that are constructed in conjunction with maintenance activities. 30 Tex. Admin. Code § 106.263(c) (11/1/2001). The rule establishes several emissions limits and incorporates requirements from other listed PBRs. While the rule does require facility owners to retain records containing sufficient information to demonstrate compliance with the emission limits, *see Id.* at 106.263(g), neither the PBR nor the Revised Proposed Permit identify any monitoring or testing methods that assure compliance with the applicable limits and operating requirements established by 106.263.

The version of the PBR at 106.264 incorporated by reference into the Revised Proposed Permit authorize the construction of replacement facilities, subject to constraints and limits specified by the rule. *See, e.g.*, 30 Tex. Admin. Code § 106.264(6) (9/4/2000) (providing that the PBR may not be claimed to authorize replacement facilities that will emit “hazardous constituents” listed in 40 C.F.R. 261, Appendix VIII). This PBR, however, does not specify any monitoring or

testing requirements that assure compliance with the applicable limits and operating requirements for the units they authorize.

The version of the PBR at 106.371 incorporated by reference into the Revised Proposed Permit authorizes the construction of water cooling towers, water treating systems for process cooling or boiler feedwater, and water tanks, reservoirs, or other water containers designed to cool, store, or otherwise handle water that has not been used in direct contact with gaseous or liquid process streams containing carbon compounds, sulfur compounds, halogens or halogen compounds, cyanide compounds, inorganic acids, or acid gases. 30 Tex. Admin. Code § 106.371 (9/4/2000). The PBR, however, does not specify any monitoring or testing requirements that assure compliance with the applicable limits and operating requirements for units authorized by the PBR.

The version of the PBR at 106.472 incorporated by reference into the Revised Proposed Permit authorizes organic and inorganic liquid loading and unloading. This PBR does not specify any testing or monitoring requirements that ExxonMobil must use to assure compliance with applicable emission limits for units and activities authorized by this PBR.

The version of the PBR at 106.473 incorporated by reference into the Revised Proposed Permit authorizes organic liquids loading or unloading equipment and storage containers, tanks, or change of service for such equipment subject to several restrictions. For example, 106.473(1) provides that uncontrolled emissions from the authorized equipment is less than 25 tons per year of organic compounds or any other air contaminant, as calculated by the version of AP-42 in effect at the time a project is constructed and (5) provides that facilities constructed under this PBR must meet any applicable requirements of Chapter 115 (relating to Control of Air Pollution from Volatile Organic Compounds). The 25 ton per year limit is not sufficient to assure compliance

with Texas's major NSR requirements for sources located in severe ozone nonattainment areas, which requires a NNSR applicability analysis for all projects that increase NO_x or VOC emissions by more than five TPY and an NNSR permit for all projects that result in a net increase VOC or NO_x increase of 25 tpy. 30 Tex. Admin. Code § 116.150. Thus, the Revised Proposed Permit must identify the applicable limits that assures compliance with NNSR requirements and specify monitoring and testing requirements that assure compliance with these limits.

The version of the PBR at 106.511 incorporated by reference into the Revised Proposed Permit authorizes various engines, compressors, generator sets, and water pumps for portable, emergency, and standby services, provided that the maximum operating hours for such equipment shall not exceed 10% of the normal annual operating schedule of the primary equipment. The PBR does not specify any testing or monitoring requirements that assure compliance with applicable emission limits for units authorized under the PBR.

While the Revised Proposed Permit does identify the TCEQ's general PBR rules at 30 Tex. Admin. Code, Subchapter A as applicable requirements, and includes Special Condition Nos. 31 and 32, which are related to PBR recordkeeping, these provisions do not specify which monitoring methods—*if any*—are necessary to assure compliance with PBR emission limits and operating requirements. Rather, these provisions provide a non-exhaustive menu of options that ExxonMobil may pick at choose from at its discretion to demonstrate compliance with PBR emission limits and operating requirements. The laundry list of option for monitoring compliance contained in Proposed Permit, Special Condition No. 32 is so vague as to be meaningless.

The Revised Proposed Permit allows ExxonMobil to determine which records and monitoring provide sufficiently “reliable data,” effectively outsourcing the Executive Director's obligation to specify the monitoring method(s) that will assure compliance with each emission

limit or standard established by PBRs incorporated by reference into the Revised Proposed Permit. This vagueness also prevents EPA and the public from effectively evaluating whether the monitoring methods—if any—that ExxonMobil uses to assure compliance with PBR are consistent with Title V. For example, Commenters would likely challenge monitoring that relies upon undefined “engineering calculations” to determine compliance, unless the permit record contained information show that such calculations actually assure compliance with applicable PBR emission limits and operating requirements.

EPA objected to the initial Proposed Permit because it failed to specify monitoring, testing, and recordkeeping requirements that assure compliance with claimed PBRs at §§ 106.261, 106.262, 106.263, 106.264, and 106.371. ExxonMobil Objection Order at 7-10. In its objection order, EPA provided the following instructions to the TCEQ:

In responding to this objection, TCEQ should amend the title V permit and permit record as necessary to specify monitoring, recordkeeping, and reporting requirements that assure compliance with the PBRs As part of this process, it may be necessary for TCEQ to amend an underlying NSR permit and then incorporate the amended NSR permit into the title V permit. If the title V permit, the underlying PBR permit, or the enforceable representation in the application already contain adequate terms to assure compliance with these PBRs, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with these emission limits and operational requirements for an individual emission unit, process area, or site-wide where such permit applies site-wide.

Id. at 9.

In response, the Executive Director added a table to the Revised Proposed Permit’s Statement of Basis providing high-level citations to various regulatory programs that apply to units authorized by each PBR and special conditions in NSR permits incorporated by reference into the Revised Proposed Permit that establish monitoring, testing, and recordkeeping requirements for units authorized by the NSR permits. According to the Executive Director, requirements in this

table “contain monitoring/testing and/or recordkeeping requirements for the PBRs identified in the objection.” Response to ExxonMobil Objection Order at 13.

This revision to the Statement of Basis failed to resolve EPA’s objection and fails to rebut Petitioners’ demonstration that the Revised Proposed Permit fails to identify monitoring, testing, and recordkeeping requirements sufficient to insure that emissions units and activities authorized by PBR comply with applicable requirements. Such requirements not only include emission limitations established by the claimed PBRs, ExxonMobil’s registered and/or certified PBRs, and general PBR requirements at § 106.4, but also PALs in Permit No. PAL16, which by definition, establishes emission limits that apply to all units at the Baytown Chemical Plant. 30 Tex. Admin. Code § 116.186(a) (The PAL “will impose an annual emission limitation in tons per year, that is enforceable for all facilities, or emissions units at a major stationary source, that emit the PAL pollutant.”).

The table inserted into the Revised Proposed Permit’s Statement of Basis fails to resolve the permit’s deficiency for several reasons. First, the Statement of Basis “is not part of the permit, nor is it enforceable.” *In the Matter of Midwest Generation, LLC, Waukegan Generating Station*, Order on Petition No. V-2016-10 at 7 (September 15, 2020).¹⁴ The Statement of Basis “is not used to set limits or create obligations for the facility.” *Id.* Thus, the table inserted into the Statement of Basis does not, by itself, establish enforceable conditions that satisfy 42 U.S.C. § 7661c(a), (c), or 40 C.F.R. § 70.6(a), (c). None of the NSR permits, or PBR registration letters, or PBR rules incorporated into the Revised Proposed Permit indicate that ExxonMobil must use the monitoring, testing, and recordkeeping requirements identified by the Statement of Basis table to determine compliance with applicable PBR emission limitations or PALs that apply to emissions authorized

¹⁴ Available electronically at: https://www.epa.gov/sites/production/files/2020-09/documents/waukegan_response2016.pdf

by PBR. Accordingly, the Revised Proposed Permit fails to include monitoring, testing, and recordkeeping conditions necessary to assure compliance with applicable requirements for units authorized by PBR.

The Revised Proposed Permit would still be deficient if the regulatory provisions and NSR permit special conditions identified by the Statement of Basis table were enforceable conditions ExxonMobil must apply to determine compliance with applicable requirement for PBR projects. This is so, because the high-level citations to regulatory program requirements included in the Statement of Basis table fails to provide detailed citations to the specific provisions in the applicable regulatory programs that establish relevant monitoring, testing, and recordkeeping requirements, as required by Texas's federally-approved Title V regulations. 30 Tex. Admin. Code § 122.142(b)(2)(B) (Each permit shall contain “[t]he specific regulatory citations in each applicable requirement identifying ... the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards ... to ensure compliance with the permit.”). Because the programs identified by the Statement of Basis table contain many different kinds of potentially-applicable monitoring, testing, and recordkeeping requirements for different kinds of units and pollutants, the Revised Proposed Permit must specify which ones apply to PBR projects at the Baytown Chemical Plant before members of the public and EPA can determine whether the relevant provisions actually assure compliance with applicable requirements, as mandated by 42 U.S.C. § 7661c(a), (c).

Additionally, many of the NSR permit special conditions listed by the Statement of Basis table fail to establish monitoring requirements sufficient to accurately determine emissions from units authorized by PBR in terms of mass per unit of time, as required to assure compliance with ExxonMobil's PALs. 30 Tex. Admin. Code § 116.186(c)(2). First, the entry for Unit ID

ANALYZE fails to identify any applicable special conditions. Instead, the entry simply states “Multiple.” Statement of Basis at 242. This entry fails to comply with 30 Tex. Admin. Code § 122.142(b)(2)(B), which requires the Executive Director to identify the specific conditions that establish relevant monitoring, testing, and recordkeeping requirements. The entry also fails to assure compliance with applicable PBR and PAL emission limitations, because it does not identify any monitoring, testing, or recordkeeping requirements that apply to the unit.

The Statement of Basis table entries for fugitives (BTCPFUG and FGRHB) are also deficient. The entries for these Unit IDs indicate that Permit No. 20211’s MAERT establishes relevant monitoring, testing, and/or recordkeeping requirements that apply to fugitive emissions and components authorized by many different PBR registrations. Statement of Basis at 242-244. The MAERT for Permit No. 20211, however, includes a footnote indicating that emission limitations for fugitive emissions are not actually enforceable. Exhibit G at MAERT, n5 (“Emission rate is an estimate and compliance is demonstrated by meeting the requirements of the applicable special conditions and permit application representations.”). This provision, applied to the PBRs listed in the Statement of Basis table, indicates that the limits in the many different PBR registrations and certified registrations listed in the table are not directly enforceable. This is a problem, because ExxonMobil’s certified PBR registrations are intended to “establish federally-enforceable allowable emission rates which are below the emission limitations in § 106.4 of this title (relating to Requirements for Permitting by Rule)” and “maximum emission rates in any certified registration ... become conditions upon which the facility permitted by rule shall be constructed and operated.” 30 Tex. Admin. Code § 106.6(a), (b).¹⁵ Additionally, while the special

¹⁵ The certified PBR registrations listed in the Statement of Basis table for plant fugitives are: 76317, 82657, 84579, 108815, 109284, 109740, 110913, 117728, 118027, 118033, 120433, 122563, 122598, 124055, 124140, 129931, 130000, 131373, 132686, 133867, 136006, 136897, 138601, 138709, 138869, 139477, 141229, 144054, 144055, 145938, and 148600. (Exhibit R), ExxonMobil PBR Certification Letters and Agency Review Documents.

conditions listed in the Statement of Basis table identify various leak detection and repair requirements for fugitive components, they fail to explain how ExxonMobil should use data obtained through its LDAR programs to accurately determine fugitive emissions in terms of mass per unit of time, as required by Texas's PAL rules. 30 Tex. Admin. Code § 116.186(c)(2). Accordingly, the Revised Proposed Permit is deficient because it fails to include monitoring, testing, and recordkeeping conditions necessary to assure that ExxonMobil complies with certified PBR emission limitations and that emissions from units authorized by PBR do not cause or contribute to violations of ExxonMobil's PALs. Finally, the Statement of Basis table does not address the Revised Proposed Permit's failure to require ExxonMobil to conduct validation testing for the many different PBR units for which the applicable monitoring provisions rely on emission factors to calculate PAL emissions, as required by 30 Tex. Admin. Code § 16.186(c)(3)(D)(iii). Accordingly, the Statement of Basis table and the Revised Proposed Permit fail to assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a), (c).

4. Issues Raised in Public Comments

This issue was raised on pages 10-14 of the Public Comments. It was also addressed by EPA in its order objecting to the initial Proposed Permit. ExxonMobil Objection Order at 7-10.

5. Analysis of State's Response

The Executive Director contends that Petitioners' concerns about the sufficiency of monitoring required by the Revised Proposed Permit are inappropriate:

Texas' Permits by Rule (PBR) are approved as part of the Texas SIP. 30 TAC Chapter 106 provides a list of authorizations for certain types of facilities or changes within facilities which the Commission has determined qualify for a PBR. In addition, Chapter 106, Subchapter A is a defined applicable requirement under Chapter 122 and the EPA-approved Texas operating permit program. Subchapter A includes applicability, requirements for permitting by rule, registration of emissions, recordkeeping and references to standard exemptions, and exemptions from permitting.

In addition, the ED notes that TCEQ implements the periodic monitoring requirements of 30 TAC § 122.142(c) (and other monitoring requirements) for NSR permits, including the SIP approved PBR program, through the NSR permit project review to determine the appropriate monitoring associated with the NSR permit, including PBRs, and specifying those monitoring requirements in the NSR permit or permit record. Any challenges to the validity of an NSR permit or PBR; including whether it is federally enforceable, references confidential information, or any other comment regarding the completeness or content of the NSR permit; should have been raised or should be raised through the appropriate NSR permit process. It is not appropriate for Commenters to attempt to challenge these issues in a Title V permit action. The ED's position is that all Chapter 116 and Chapter 106 permits are enforceable as the records required by those regulations and/or permits will indicate the compliance options and monitoring data that were used to certify compliance and report deviations with the emission limitations and standards of those permits.

Even though the TCEQ implements the periodic monitoring (and other monitoring) requirements for NSR through the NSR process, the ED notes, as does the Commenter, that the draft permit contains Special Condition No. 32, which requires the permit holder to maintain records to demonstrate compliance with any emission limitation or standard that is specified in a PBR or Standard Permit listed in the Title V permit. Further, it requires that the records shall yield reliable data from the relevant time period that are representative of the emission unit's compliance with the PBR or Standard Permit.

Response to Comments at Response 9.

EPA's objection letter explains why the Executive Director's contention that Petitioners' concerns are beyond the scope of his Title V review is incorrect:

As the EPA has previously explained, "claims concerning whether a title V permit contains enforceable permit terms, supported by monitoring [recordkeeping, and reporting] sufficient to assure compliance with an applicable requirement or permit term (such as an emission limit established in a [NSR] permit), *are* properly reviewed during title V permitting. The statutory obligations to ensure that each title V permit contains 'enforceable emission limitations and standards' supported by 'monitoring . . . requirements to assure compliance with the permit terms and conditions,' 42 U.S.C. § 7661c(a), (c), apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit." Therefore, regardless of the monitoring, recordkeeping, and reporting initially associated with a minor NSR permit or PBR, TCEQ has a statutory obligation independent of the process of issuing those permits to evaluate monitoring, recordkeeping, and reporting in the

title V permitting process to ensure that these terms are sufficient to assure compliance with all applicable requirements and title V permit terms.

ExxonMobil Objection Order at 8 (citations omitted) (emphasis in original).

Section G(3) of this Petition explains why the Executive Director's revision to the Proposed Permit's Statement of Basis fails to address EPA's objection to ExxonMobil's Title V permit.

V. CONCLUSION

For the foregoing reasons, and as explained the Public Comments, the Proposed Permit is deficient. Accordingly, the Clean Air Act requires the Administrator to object to the Proposed Permit.

Sincerely,

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