ENVIRONMENTAL INTEGRITY PROJECT

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March 30, 2007

VIA FACSIMILE AND CERTIFIED MAIL
Administrator Stephen L. Johnson
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Fax Number: (202) 501-1450

Re: Petition for objection to CITGO Refining and Chemicals Company, L.P.'s proposed permit for operation of Corpus Christi Refinery – West Plant: RN100238799, Permit No. O1420

Dear Administrator Johnson:

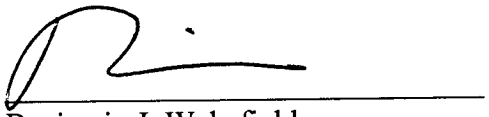
Enclosed is a Petition requesting the Administrator of the U.S. Environmental Protection Agency to object to proposed Title V Federal Operating Permit number O1420, issued to CITGO Refining and Chemicals Company, L.P., for operation of its Corpus Christi Refinery – West Plant. This Petition is submitted by the Environmental Integrity Project, the Refinery Reform Campaign, Citizens for Environmental Justice, and Suzie Canales pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), 40 C.F.R. § 70.8(d), and Title 30 § 122.360 of the Texas Administrative Code. As required by these provisions, Petitioners are also providing a copy of this Petition to the Texas Commission on Environmental Quality and to CITGO. Petitioners are also providing a courtesy copy of this Petition to the EPA Region VI Air Permit Section Chief.

As addressed in detail in the Petition, the proposed permit is not in compliance with the Clean Air Act. Specifically, the proposed permit's monitoring requirements are not adequate to ensure compliance with all emission limitations and other substantive Clean Air Act requirements such as opacity standards, and its use of incorporation by reference for emissions limitations and standards violates Title V of the Act and its implementing regulations at 40 C.F.R. Part 70 and renders the permit practically

unenforceable.

If you have any questions regarding this Petition, please contact me at (202) 263-4450.

Sincerely,



Benjamin J. Wakefield
Counsel
Environmental Integrity Project

cc (facsimile and certified mail):

Texas Commission on Environmental Quality
Office of Permitting, Remediation, and Registration
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, TX 78711-3087
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Mr. Eduardo Assef
Vice President and General Manager
Corpus Christi Refinery
CITGO Refining and Chemicals Co., L.P.
P.O. Box 9176
Corpus Christi, TX 78469
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U.S. Environmental Protection Agency
Attn: Air Permit Section Chief
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Fax Number: (214) 665-7263

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	PETITION FOR OBJECTION
Proposed Clean Air Act Title V Operating Permit Issued to CITGO Refining and Chemicals Company, L.P., for Operation of Corpus Christi Refinery – West Plant	)	Permit No. O1420

Pursuant to section 505(b)(2) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7661d(b)(2), 40 C.F.R. § 70.8(d), and Title 30 § 122.360 of the Texas Administrative Code ("TAC"), the Environmental Integrity Project, the Refinery Reform Campaign, Citizens for Environmental Justice, and Suzie Canales ("Petitioners") petition the Administrator of the U.S. Environmental Protection Agency ("EPA") to object to proposed Title V Federal Operating Permit number O1420, issued by the Texas Commission on Environmental Quality ("TCEQ") to CITGO Refining and Chemicals Company, L.P. ("CITGO") for operation of CITGO's Corpus Christi Refinery – West Plant. As required by the cited provisions, Petitioners are providing this Petition to the EPA Administrator, the TCEQ, and CITGO. Petitioners are also providing this Petition to the EPA Region VI Air Permit Section Chief.

EPA must object to the proposed permit because it is not in compliance with the Clean Air Act. Specifically, the proposed permit is not in compliance with the CAA in the following respects, which will be discussed in detail below:

1. The proposed permit's monitoring requirements are not adequate to ensure compliance with all emission limitations and other substantive Clean Air Act requirements.

   - The permit should require that CITGO videotape the coking unit, which would provide on-going, detailed information about visual emissions.
   - The permit should tie opacity monitoring to conditions that could cause violations; for example, requiring Method 9 readings when CITGO observes visual emissions.
   - The TCEQ compliance certification form should require that the specific monitoring method used to determine compliance be identified, and, to the extent that compliance is based on credible evidence, the form should require this evidence to be identified.

2. The proposed permit's use of incorporation by reference for emission limitations and standards violates Title V of the Act and its implementing regulations at 40 C.F.R. Part 70 and renders the permit practically unenforceable.

   - The permit should include the maximum allowable emission rate tables ("MAERT") located in underlying Prevention of Significant Deterioration ("PSD") permits.
   - The Applicable Requirements Summary must reference the TCEQ Order contained in TCEQ Docket No. 2001-1469-AIR-E, and the permit should explicitly state the provisions of the TCEQ Order as terms of the permit.
   - The permit must explicitly incorporate the EPA global Consent Decree (Docket No. H-04-3883), and the permit should specifically state the

emission limitations and monitoring requirements of the Consent Decree as terms of the permit.

BACKGROUND

CITGO applied to the TCEQ for a Federal Operating Permit Significant Revision, to allow CITGO to operate its Corpus Christi – West Plant petroleum refinery, located in Corpus Christi, Texas, on August 16, 2005. Notice was published on November 16, 2005, and TCEQ held a public hearing on June 8, 2006. The public comment period ended on June 8, 2006.

During the public comment period on the draft Title V permit, Petitioners timely submitted written comments to TCEQ on December 16, 2005. Petitioner Suzie Canales submitted additional comments to TCEQ during the notice and comment hearing held on June 8, 2006. Petitioners raised all issues in this Petition in their comments to the TCEQ. See App. A (Petitioners' Comments to TCEQ (Dec. 16, 2005)); App. B (DVD Video presented by Petitioner Suzie Canales to TCEQ at Public Hearing on June 8, 2006).

EPA received the proposed Title V permit from TCEQ on December 19, 2006. EPA's 45-day review period ended on February 2, 2007. EPA did not object to the proposed permit during the review period, and TCEQ issued the permit on February 2, 2007. See App. C at 1-2, 4 (Letter from Jesse E. Chacon, TCEQ, to Karla Raettig, Environmental Integrity Project, and TCEQ Executive Director's Response to Public Comment (Dec. 18, 2006)). This Petition is timely filed since Petitioners submitted it within 60 days following the end of EPA's 45-day review period as required by CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2).

SPECIFIC OBJECTIONS

"If any [Title V] permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter ... the Administrator shall ... object to its issuance." CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1) (emphasis added). EPA "does not have discretion whether to object to draft permits once noncompliance has been demonstrated." N.Y. Pub. Interest Group v. Whitman, 321 F.3d 316, 334 (2nd Cir. 2003) (holding that EPA is required to object to Title V permits once petitioner has demonstrated that permits do not comply with the Clean Air Act).

I. INADEQUATE MONITORING

The Clean Air Act requires that "[e]ach [Title V] permit ... shall set forth ... monitoring ... and reporting requirements to assure compliance with the permit terms and conditions." CAA § 504(c), 42 U.S.C. § 7661c(c) (emphasis added). The EPA itself has acknowledged:

> In the absence of effective monitoring, emissions limits can, in effect, be little more than paper requirements. Without meaningful monitoring data, the public, government agencies and facility officials are unable to fully assess a facility's compliance with the Clean Air Act.

Initial Brief of Respondent U.S EPA, Appalachian Power Co. v. EPA, No. 98- 1512 (D.C. Cir., Oct. 25, 1999) quoted at 71 Fed. Reg. 75422, 75425 (Dec. 15, 2006) (emphasis added), hereinafter EPA Brief in Appalachian Power.

The proposed CITGO permit lacks monitoring requirements sufficient to assure compliance with all emission limitations and other substantive Clean Air Act

requirements, rendering its emission limits "little more than paper requirements" and defeating Title V's central purpose of increasing enforcement and compliance.

First, 30 TAC § 111.111 sets opacity limitations that are continuous, six-minute averages. The proposed permit, however, requires only an annual observation of stationary vents to determine compliance with opacity standards, and requires only a quarterly observation for buildings, enclosed facilities, and other structures.[1] A once-per-year observation is not sufficient monitoring to assure compliance for any unit. See In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants; Petitioner No. VIII-00-1: Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Title V Operating Permits, pp. 20-21 (finding quarterly Method 9 visual readings insufficient to assure compliance with 20% opacity limit in SIP). The permit should require that the company videotape the coking unit, which would provide on-going, detailed information about visual emissions.

In addition, the proposed permit does not require that the observations occur when violations are most likely to occur, such as during "decoking" operations. The permit should tie opacity monitoring to conditions that could cause violations. For example, the permit should require Method 9 readings when CITGO observes visual emissions.

Finally, the CAA Title V regulations require an annual compliance certification, which must define the specific emission limits and monitoring methods upon which the compliance determination is based. 40 C.F.R. § 70.6(c)(5)(iii)(A), (B). See also, 30 TAC § 122.146(5)(A). The proposed permit, at page 1, incorporates this requirement by

[1] Further, the permit's Applicable Requirements Summary does not reference any units subject to Chapter 111 opacity requirements, so it is not clear to which units these requirements apply.

reference. The TCEQ compliance certification form requires facilities to identify deviations, but allow facilities certify compliance with all other applicable requirements based on reference methods and "any other credible evidence or information.". See TCEQ compliance certification form, ¶ I, available at http://www.tceq.state.tx.us/assets/public/compliance/field_ops/fod_forms/pccf.pdf. The TCEQ form should require that the specific monitoring method used to determine compliance be identified when certifying compliance, and, to the extent that compliance is based on credible evidence, the certifications should require this evidence to be identified.

The inadequacy of the permit's monitoring requirements, and the necessity for more robust monitoring, was vividly illustrated by Petitioner Suzie Canales at the public hearing held on June 8, 2006. During that hearing, Ms. Canales presented a video (DVD) of CITGO's coking unit emitting a large cloud of uncontrolled coke dust into the air on April 1, 2006 (attached hereto as Appendix B). This video documents a significant upset emission of coke dust, which contains large amounts of dust particles in the PM_{10} and $PM_{2.5}$ range, as well as numerous toxics such as heavy metals and known human carcinogens such as benzene. The TCEQ Executive Director responded: "The plume of smoke and particulates presented on the DVD submitted may be categorized as an upset.... Upset emissions are required to be reported as outlined in [30 TAC § 101.201]." App. C at 10, Response 12. However, despite the Executive Director's acknowledgement and assurance, the April 1, 2006 upset event has not, in fact, been reported as required by

30 TAC § 101.201. See

http://www2.tceq.state.tx.us/eer/main/index.cfm?fuseaction=searchForm.[2]

CITGO has thus failed to report upset events, at least one of which TCEQ has acknowledged "may be categorized as an upset," raising serious concerns that many other upset events are going unreported. This is precisely the danger of inadequate monitoring described by the EPA in observing that "[i]n the absence of effective monitoring, emissions limits can, in effect, be little more than paper requirements. Without meaningful monitoring data, the public, government agencies and facility officials are unable to fully assess a facility's compliance with the Clean Air Act." EPA Brief in Appalachian Power, supra.

The proposed CITGO permit lacks monitoring requirements sufficient to assure compliance with the Clean Air Act, such that the EPA must object to the proposed permit.

II. INCORPORATION BY REFERENCE

The Clean Air Act's Title V permit program is to be implemented by states in a manner which improves enforcement of, and compliance with, federal air quality requirements, as the EPA has explained that by "clarify[ing], in a single document, which requirements apply to a source," the Title V program "will enable the source, States,

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[2] In addition to the video of the April 1, 2006 upset event, Petitioner Citizens for Environmental Justice has videotaped similar upset events occurring on June 17, 2003 and July 19, 2004. None of the upset events have been reported as required by 30 TAC § 101.201. See http://www2.tceq.state.tx.us/eer/main/index.cfm?fuseaction=searchForm. Although Petitioners Suzie Canales and Citizens for Environmental Justice sent a letter to TCEQ on February 9, 2007 asking to be informed of the action TCEQ will take with regard to these unreported upset events, TCEQ has yet to respond to that letter. See App. D (Letter from Suzie Canales, Citizens for Environmental Justice, to John Sadlier, TCEQ (Feb. 9, 2007)).

EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result." 57 Fed. Reg. 32250, 32251 (Jul. 21, 1992) (emphasis added). The court stated the matter even more emphatically in Virginia v. Browner, 80 F.3d 869, 873 (4th Cir. 1996):

> The [Title V] permit is crucial to the implementation of the [Clean Air Act]: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular polluting source. Clean Air Act Amendments of 1990: Chafee-Baucus Statement of Senate Managers (Conf. Rep. No. 952, 101st Cong., 2d Sess.) ("Chafee-Baucus Statement "), reprinted in 136 Cong. Rec. S16933, S16983 (daily ed. Oct. 27, 1990). In a sense, a permit is a source-specific bible for Clean Air Act compliance.

(Emphasis added). The D.C. Circuit similarly held in Environmental Integrity Project v. EPA, 425 F.3d 992, 993-94 (D.C. Cir. 2005):

> Title V of the 1990 Amendments to the Clean Air Act (CAA) requires that certain air pollution sources ... obtain a single, comprehensive operating permit to assure compliance with all emission limitations and other substantive CAA requirements that apply to the source. See 42 U.S.C. §§ 7661a(a), 7661c(a) (2000); Virginia v. Browner, 80 F.3d 869, 873 (4th Cir. 1996) (describing the Title V permit as "a source-specific bible for Clean Air Act compliance").

(Emphasis added).[3]

[3] See also 40 C.F.R. § 70.6(a)(1): Title V permits are required to contain "emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." In addition, "the permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." 40 C.F.R. § 70.6(a)(1)(i). Finally, "each permit shall include ... such other conditions as are necessary to assure compliance with the applicable requirements." 42 U.S.C. § 7661c(a). The use of incorporation by reference in CITGO's proposed operating permit violates these requirements of Title V and Part 70 and renders the permit practically unenforceable.

Flaws in the current proposed permit, however, thwart the goals of Title V. Specifically, the permit uses incorporation by reference without any guidance as to where the referenced regulations and permits may be found, thus violating the requirements of 40 C.F.R. Part 70.

Part 70 and EPA's guidance are clear that permits must specifically include all emission limitations, and may only use incorporation by reference for other permit terms if the method of their application is clear and the permit can still "assure compliance." CITGO's proposed permit does not specifically include all emission limitations, nor does it make application of permit terms clear so as to "assure compliance." Specifically, the proposed permit states:

> Emission units ... in the Applicable Requirements Summary attachment shall meet the limitations, standards, equipment specifications, monitoring, recordkeeping, reporting, testing, and other requirements listed in the Applicable Requirements Summary attachment to assure compliance with the permit.

Proposed permit at 1. However, the Applicable Requirements Summary (see proposed permit at 29-89) relies extensively on incorporation by reference, thus basing the entire permit's emission limitations on incorporation by reference. This does not "assure compliance." To the contrary, it poses a significant barrier to members of the public who wish to discover and/or comment on whether the permit assures compliance.

First, the proposed permit fails to include maximum allowable emission rate tables ("MAERT") located in underlying Prevention of Significant Deterioration ("PSD") permits. For example, heaters and boilers built after 1984 that use refinery fuel gas are subject to NO_X, PM, and SO_2 limits. For CITGO's platform heater and related units (546-H1 through 546-H6), the proposed permit only references the PSD permit (see

proposed permit at 137). Thus, without obtaining the PSD permit, it is impossible to know whether the appropriate limits are included, and whether the permit includes monitoring sufficient to assure compliance with the requirements. Instead, the permit should specifically include the MAERT tables.

In addition, according to the compliance schedule, Units 527-H2 and 573 did not have required continuous monitoring, and CITGO was required to submit an alternative monitoring plan and install a flare. However, in the "Periodic Monitoring Summary," the applicable consent decree terms are not included or even referenced.

Further, the proposed permit incorporates by reference limitations and monitoring requirements found in a Consent Agreement with TCEQ. Specifically, the Compliance Schedule references TCEQ Docket No. 2001-1469-AIR-E (see proposed permit at 143), yet nowhere in the Applicable Requirements Summary is the TCEQ Order referenced.[4] In addition, the TCEQ Order "shall terminate five years from its effective date or upon compliance with all terms and conditions...." TCEQ Agreed Order, Docket No. 2001-1469-AIR-E, at 3, ¶ 11 (Feb. 20, 2004). If the provisions of the TCEQ Order are not explicitly stated as terms of the permit, upon expiration of the Order, the impact of the Order and its incorporation by reference into the permit is at best uncertain. The Applicable Requirements Summary must reference the TCEQ Order contained in TCEQ Docket No. 2001-1469-AIR-E, and the permit should explicitly state the provisions of the Order as terms of the permit.

[4] Petitioners were able to obtain the TCEQ Order only after devoting at least two days of attorney time to that endeavor. This situation highlights the fact that the use of such "incorporation by reference" thwarts the goal of the Title V program to create a "source-specific bible for Clean Air Act compliance" (Virginia v. Browner, 80 F.3d at 873) which "will enable the ... public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251.

Finally, the proposed permit appears to reference the global Consent Decree that CITGO entered into with EPA on October 6, 2004, docket number H-04-3883, available at http://www.epa.gov/compliance/resources/decrees/civil/caa/citgo-cd.pdf (see, e.g., proposed permit at 144: "[Alternative monitoring plan] will be submitted to the EPA within six months of date of entry into EPA's consent decree or by December 31, 2005, whichever comes first."). However, nowhere does the proposed permit explicitly incorporate the Consent Decree by reference (let alone set forth the specific provisions of the Consent Decree). The EPA Consent Decree is binding upon the CITGO Corpus Christi West Refinery. EPA Consent Decree at 7, ¶ 4. The proposed permit must, therefore, explicitly incorporate the emission limitations and monitoring requirements established in the EPA Consent Decree. The Consent Decree will expire (see Consent Decree at 161 ("Termination")), but the limitations and monitoring requirements are intended to be incorporated into federal operating permits. If the provisions of the EPA Consent Decree are not explicitly stated as terms of the permit, upon termination of the Consent Decree, the impact of the Consent Decree is at best uncertain. Not only must those limitations and requirements be "incorporated" into the proposed permit, the permit should also specifically state those substantive provisions.

Because orders and consent decrees impose enforceable terms and conditions, the permit should explicitly state the limitations and monitoring requirements of those orders and consent decrees as permit terms in the Applicable Requirements and Periodic Monitoring Summaries.

The proposed permit's use of incorporation by reference does not, therefore, "assure compliance." To the contrary, the proposed permit's extensive use of

incorporation by reference makes it difficult, if not impossible, for the public to know the precise requirements of the permit from its face, thus defeating the central purpose of the Title V program to improve accountability and enforcement by "clarify[ing], in a single document, which requirements apply to a source" (57 Fed. Reg. 32251 (Jul. 21, 1992) (emphasis added)); that is, by creating "a source-specific bible for Clean Air Act compliance." Virginia v. Browner, 80 F.3d at 873 (emphasis added).

CONCLUSION

The proposed CITGO Title V permit lacks monitoring sufficient to assure compliance with all emission limitations and other substantive Clean Air Act requirements, such as opacity limitations. Additional monitoring, as described above, must be required by the final permit. Without the required monitoring, Title V's purpose of increasing enforcement and compliance will be defeated.

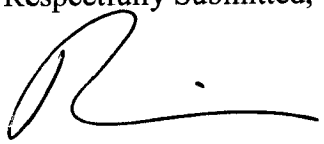
Further, the proposed permit's extensive use of incorporation by reference makes it practically impossible for the public to discover the requirements of the permit, thus defeating the central purpose of the Title V program to improve accountability and enforcement by "clarify[ing], in a single document, which requirements apply to a source." 57 Fed. Reg. 32250, 32251 (Jul. 21, 1992).

For all of these reasons, the proposed permit is not in compliance with the Clean

Air Act or its implementing regulations, and the EPA therefore must object to the proposed permit.

DATED: March 30, 2007

Respectfully Submitted,



Benjamin J. Wakefield
Counsel
Environmental Integrity Project
919 Eighteenth Street, N.W., Suite 650
Washington, D.C. 20006
(202) 263-4450

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the United States that I have provided copies of the foregoing Petition to persons or entities below on March 30, 2007 as specified:

VIA FACSIMILE AND CERTIFIED MAIL
Administrator Stephen L. Johnson
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Fax Number: (202) 501-1450

VIA FACSIMILE AND CERTIFIED MAIL
Texas Commission on Environmental Quality
Office of Permitting, Remediation, and Registration
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, TX 78711-3087
Fax Number: (512) 239-1070

VIA FACSIMILE AND CERTIFIED MAIL
Mr. Eduardo Assef
Vice President and General Manager
Corpus Christi Refinery
CITGO Refining and Chemicals Co., L.P.
P.O. Box 9176
Corpus Christi, TX 78469
Fax Number: (361) 844-4853

VIA FACSIMILE AND CERTIFIED MAIL
U.S. Environmental Protection Agency
Attn: Air Permit Section Chief
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Fax Number: (214) 665-7263

Benjamin J. Wakefield

Appendix A

COMMENTS ON THE CITGO REFINING CORPUS CHRIST REFINERY-WEST PLANT: PERMIT NO. O1420

Submitted by:
CITIZENS FOR ENVIRONMENTAL JUSTICE, SUZIE CANALES, THE REFINERY REFORM CAMPAIGN, AND THE ENVIRONMENTAL INTEGRITY PROJECT

December 16, 2005

ENVIRONMENTAL INTEGRITY PROJECT

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Washington, D.C. 20006
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www.environmentalintegrity.org

December 16, 2005

VIA FACSIMILE 512-239-3311 AND U.S MAIL
Chief Clerk
Texas Commission on Environmental Quality
MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Comments on CITGO Refining and Chemicals Company's draft permit for operation of Corpus Christ Refinery-West Plant: RN100238799, Permit No. O1420

Dear Chief Clerk:

Please find attached comments on CITGO's draft operating permit O1420, submitted by Citizens for Environmental Justice, Suzie Canales, the Refinery Reform Campaign, and the Environmental Integrity Project (Commenters). Because of flaws in the draft permit, TCEQ should not issue the permit as drafted. In addition, Commenters request a contested case hearing.

Thank you for your assistance with this matter. If you have any questions regarding these comments, please contact me at the number above.

Sincerely,

Karla Raettig
Counsel

cc: John Fogarty, EPA
Charles Sheehan, EPA
Adam Kushner, EPA
Steve Gilrein, EPA
Olivia Balandran, EPA

COMMENTS ON THE CITGO REFINING CORPUS CHRIST REFINERY-WEST PLANT: PERMIT NO. O1420

Submitted by:
CITIZENS FOR ENVIRONMENTAL JUSTICE, SUZIE CANALES, THE REFINERY REFORM CAMPAIGN, AND THE ENVIRONMENTAL INTEGRITY PROJECT

December 16, 2005

Commenters appreciate the opportunity to provide comments on CITGO's draft operating permit. In addition to submitting these comments, Commenters request a contested case hearing on CITGO's draft operating permit. Commenter Citizens for Environmental Justice is a Corpus Christi non-profit community organization. Suzie Canales is a Corpus Christi resident and Chair of Citizens for Environmental Justice. The Refinery Reform Campaign is a national campaign that seeks to clean up refineries. EIP is a national nonprofit that works to increase enforcement of federal, state and local environmental laws. Suzie Canales and the Citizens for Environmental Justice's members live and work near, and are directly affected by, CITGO's facility. Emissions from CITGO affect these members' health and safety.

Commenters have an interest in ensuring that CITGO's Title V permits include all applicable requirements, require adequate reporting and monitoring, are practicably enforceable, and otherwise comply with federal requirements. Commenters file these comments, and seek a contested case hearing in order to ensure that CITGO's Title V permit is sufficient to encourage compliance by the facility and to enable effective enforcement if the facility does not comply.

DEFICIENCIES

The draft permit has the following deficiencies which will be addressed in detail:

- The use of incorporation by reference for emissions limitations and standards in CITGO's draft operating permit violates Title V and Part 70 and renders the permit practically unenforceable.

- The draft operating permit's monitoring requirements are not adequate to ensure compliance. Specifically, the draft permit should require more frequent monitoring to ensure compliance with opacity standards.

- The draft operating permit fails to require prompt reporting of deviations during normal operations.

- The draft operating permit does not clearly indicate which units must meet special conditions requiring compliance with Texas Administrative Code and Code of Federal Regulation provisions.

1. The Permit Illegally Uses Incorporation by Reference.

The Clean Air Act's Title V permit program should be implemented by States so as to improve compliance with, and enforcement of, federal air quality requirements and, thereby, improve air quality. As U.S. EPA stated, the Title V program "will enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result." 57 Fed. Reg. 32,251 (1992).

Flaws in the current proposed draft permit, however, thwart the goals of Title V. Specifically, the permit uses incorporation by reference without any guidance as to where the referenced regulations and permits may be found. The permit's use of incorporation by reference violates the requirements of 40 C.F.R. Part 70.

Title V permits are required to contain "emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. § 70.6(a)(1). In addition, "the permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." 40 C.F.R. § 70.6(a)(1)(i). Finally, "each permit shall include...such other conditions as are necessary to *assure compliance* with the applicable requirements." 42 U.S.C. § 7661c(a) (emphasis added). The use of incorporation by reference in CITGO's draft operating permit violates these requirements of Title V and Part 70 and renders the permit practically unenforceable.

Part 70 and EPA's guidance are clear that permits must specifically include all emissions limitations, and may only use incorporation by reference for other permit terms if the method of their application is clear and the permit can still "assure compliance." CITGO's draft permit does not specifically include all emission limitations nor does it make application of permit terms clear so as to "assure compliance." The draft permit reads on p. 1 "Emission units...in the Applicable Requirements Summary shall meet the limitations, standards, equipment specifications, monitoring, recordkeeping, reporting, testing, and other requirements listed in the Applicable Requirements Summary attachment to assure compliance with the permit." Yet, the Applicable Requirements Summary (see pp. 30-54) relies extensively on incorporation by reference, thus basing the entire permit's emissions limitations on incorporation by reference. This does not "assure compliance." At a minimum, it creates difficulties for a member of the public to comment on whether the permit assures compliance.

This issue is illustrated by the failure to include maximum allowable emission rate tables (MAERT) for PSD permits. For example, heaters and boilers built after 1984 that use refinery fuel gas are subject NOx, PM, and SO2 limits. For CITGO's platform heater

and related units (546-H1 through H-6), the draft permit only references the PSD permit (see p. 131). Without obtaining the PSD permit, it is impossible to know whether the appropriate limits are included, and whether the permit includes monitoring sufficient to assure compliance with the requirements. Instead, the draft permit should specifically include the MAERT tables.

Another troubling incorporation by reference issue is the draft permit's incorporation by reference of limitations and monitoring required by orders and consent decrees with TCEQ and EPA. Specifically, the Compliance Schedule references TCEQ Docket No. 2001-1469-AIR-E. Yet nowhere in the Applicable Requirements Summary is TCEQ order or EPA's consent decree referenced. In addition, according to the compliance schedule, Units 527-H2 and 573 did not have required continuous monitoring and CITGO must submit an alternative monitoring plan and install a flare. However, in the "Periodic Monitoring Summary," the applicable consent decree terms are not included or even referenced. Because orders and consent decrees impose enforceable terms and conditions, TCEQ should incorporate the limitations and monitoring directly into the Applicable Requirements and Periodic Monitoring Summaries. As currently written, it is difficult, if not impossible, for the public to know the precise requirements of the permit from its face.

2. The Permit Lacks Adequate Monitoring.

The proposed draft permit generally lacks monitoring sufficient to assure compliance. For example, 30 TAC 111.111 sets opacity limitations that are continuous, six-minute averages. Yet, the permit requires only an annual observation of stationary vents to determine compliance with opacity standards while it only requires a quarterly observation for building, enclosed facilities, and other structures. The permit's applicable requirements summary does not reference any units subject to Chapter 111 opacity requirements, so it is not clear to which units this requirements applies. However, a once-per-year observation, however, is not sufficient monitoring to assure compliance for any unit. *See, In the Matter of: Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*; Petitioner No, VIII-00-1: Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Title V Operating Permits, pp. 20-21 (finding quarterly Method 9 visual readings insufficient to assure compliance with 20% opacity limit in SIP).

In addition, the draft permit does not require that the observations occur when violations are most likely to occur, for example during "decoking" operations. The draft permit should tie opacity monitoring to conditions that could cause violations. For example, the draft permit should require Method 9 readings when the company observes visual emissions and require that the company video the coker unit, which would provide on-going, detailed information about visual emissions.

3. The Draft Permit Does Not Require "Prompt" Deviation Reporting

Part 70 requires that Title V permits include "[p] rompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective action or preventive measures." 40 C.F.R. § 70.6(a)(3)(iii)(B).

Although Texas has strong reporting provisions for upsets and emissions during startup, shutdown, and maintenance, CITGO's draft operating permit incorporates by reference the requirements of 30 TAC § 122.145, which allows deviation reports for exceedances during normal operations to be submitted once every six months. [1] Such deviation reporting is not prompt. As EPA noted in the proposed interim approval of Arizona's Title V program:

> The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under Sec. 70.6(a)(3)(iii)(A). 60 Fed. Reg. 36083 (July 13, 1995).

Likewise, EPA Region 6 stated:

> Region 6 does not consider six month reporting of deviations to be 'prompt,' as required by § 70.6(a)(3)(iii)(B). Other Region 6 States require notification to the permitting authority within 24-48 hours after the emission limitation was exceeded, followed by a written report within 10 days.[2]

The permit does not require "prompt" reporting of deviations.

4. The Permit Should Clearly Indicate The Units That Are Subject To The Special Conditions.

Special Terms and Conditions 3 and 4 require the permit holder to comply with 30 TAC Chapter 111 and 30 TAC Chapter 115 but do not identify the units or facilities to which the requirements of Special Terms and Conditions 3 and 4 apply. In addition, Special Conditions 6-10 state that the sources subject to various C.F.R. provisions must comply

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[1] See draft operating permit O1420 'General Terms and Conditions,' p. 1 and 'Applicable Requirements Summary: Reporting Requirements' pp. 30-54.

[2] Letter dated June 20, 1997 from Bill Luthans, EPA, Associate Director for Air, Pesticides and Toxics to Lisa Martin, TCEQ Office of Policy and Regulatory Development, Enclosure 2, p. 7.

with listed requirements "unless otherwise stated in the applicable subpart." This is not a sufficient identification of the units excluded from compliance. The permit should specifically identify either those units that much comply with the listed requirements and/or those units subject to the C.F.R. provision that need not comply.

One option would be to revise the general conditions to state that "The permit holder shall comply with the following requirements for units subject to any subpart of 40 C.F.R. Part 60 as identified in the Applicable Requirements Summary." The applicable requirements summary could then include a reference to the relevant Special Term and Condition in the "citation" column for those units subject to the requirements referenced in that condition.[3]

5. Additional Comments

a. The permit should clearly state that any more stringent requirement in applicable New Source Review permits control over general references to C.F.R. requirements.

b. The permit shield provisions of the permit should clearly state that the permit shield cannot excuse past violations. 40 C.F.R. § 70.6(f)(3)(ii).

CONCLUSION

CITGO's draft operating permit does not meet all requirements of 40 C.F.R. Part 70. Monitoring and reporting, key elements of the Title V program are also inadequate. Finally, incorporation by reference prevents the Title V permit from serving its core function of consolidating all federally applicable requirements into one comprehensive compliance document. For these reasons, Commenters believe that this draft permit should be denied. In addition, Commenters request that the EPA review period for this permit be extended to begin no earlier that the closing date of the public comment period.

[3] Adding similar footnotes to the applicable requirements summary would be very helpful for each of the lists of general requirements that apply whenever a particular C.F.R. section applies.

Appendix B

DVD Video presented by Petitioner Suzie Canales to TCEQ at Public Hearing

June 8, 2006

(The DVD is not capable of service by facsimile, but is attached to the Petition served by certified mail)

Appendix C

Letter from Jesse E. Chacon, TCEQ, to Karla Raettig, Environmental Integrity Project

and

TCEQ Executive Director's Response to Public Comment

December 18, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 18, 2006

Ms. Karla Raettig
Environmental Integrity Project
919 Eighteenth Street Northwest, Suite 650
Washington, DC 20006

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Significant Revision
Permit Number: O1420
CITGO Refining and Chemicals Company, L.P.
Corpus Christi Refinery - West Plant
Corpus Christi, Nueces County
Regulated Entity Number: RN100238799
Customer Reference Number: CN600127922

Dear Ms. Raettig:

The Texas Commission on Environmental Quality (TCEQ) Executive Director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered and are addressed in the enclosed TCEQ Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

Changes unrelated to comments have been made to the permit since commencement of the public notice period. A detailed explanation of these changes is enclosed. Additionally, the statement of basis has been updated to reflect changes made to the permit and is available upon request.

As of December 19, 2006, the proposed permit is subject to an EPA review for 45 days, ending on February 2, 2007.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the TCEQ Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration.

The petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such objections within the public comment period, or the grounds for such objections arose after the public comment period. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period begins on February 3, 2007 and ends on April 3, 2007. Public petitions should be submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Texas Commission on Environmental Quality
Office of Permitting, Remediation, and Registration
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

U.S. Environmental Protection Agency
Attn: Air Permit Section Chief
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency
Administrator Mike O. Leavitt
Ariel Rios Building (AR 1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr. Randall J. Carbo
Vice President and General Manager,
Corpus Christi Refinery
CITGO Refining and Chemicals Co., L.P.
P.O. Box 9176
Corpus Christi, Texas 78469

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Alfredo Mendoza at (512) 239-1335.

Sincerely,

Jesse E. Chacon, P.E., Manager
Operating Permits Section
Air Permits Division
Texas Commission on Environmental Quality

JEC/AAM/js

Enclosures: 1. TCEQ Executive Director's Response to Public Comment
2. Proposed Permit
3. Modifications Made from the Draft to the Proposed Permit

cc: Air Section Manager, Region 14 - Corpus Christi
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas

Project Number 7733

Modifications Made from the Draft to the Proposed Permit

1. The permit was updated to include the 30 TAC Chapter 115 and 40 CFR Part 60, Subpart GGG fugitive requirements in the Applicable Requirement Summary for the installation of a flare gas recovery system, FUG-FGRS. This action was authorized under Standard Permit No. 74513 issued on November 15, 2005 in accordance with 30 TAC § 116.617.

2. Emission units 546-V18 and 546-V28 were removed from group GRP16VENT. GRP16VENT was removed throughout the permit. The previous 30 TAC Chapter 115 and 40 CFR Part 63, Subpart CC requirements for GRP16VENT were incorporated into units 546-V18 and 546-V28 in the Unit Summary, Applicable Requirements Summary Table, and Periodic Monitoring Summary.

3. Emission unit 546-V28 was added to the Unit Summary and Applicable Requirement Summary Tables for incorporation of 40 CFR Part 63, Subpart CC requirements.

4. The permit was updated to remove 40 CFR Part 63, Subpart CC requirements for process vents GRP10VENT, 525-V9, 546-V27, 573-V2, GRP14VENT, GRP15VENT, and GRP17VENT. CITGO determined that several of the vent streams previously determined to be subject to 40 CFR Part 63, Subpart CC are not subject as these streams do not contain more than 20 parts per million by volume (ppmv) of organic hazardous air pollutant (HAP).

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ) Executive Director provides this Response to Public Comment and the executive director's preliminary decision on the CITGO Refining and Chemicals Company, L.P., Federal Operating Permit (FOP) application. As required by Title 30 Texas Administrative Code § 122.345 (30 TAC § 122.345) the executive director prepares a notice of proposed final action, which includes a response to all timely comments. These comments are summarized in this response. The Office of Chief Clerk (OCC) timely received comment letters from the following persons: Karla Raettig on behalf of Citizens for Environmental Justice, Suzie Canales, the Refinery Reform Campaign, and the Environmental Integrity Project. Additional comments were received from Stephanie Kodish, Neil Carman, Suzie Canales, Cindy Pena, James Sales, Lionel Lopez, and Melissa Jarrell during a notice and commnet hearing held on June 8, 2006.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site, and ultimately must obtain the FOP in order to operate. CITGO Refining and Chemicals Company, L.P. applied to the TCEQ for a FOP for a Petroleum Refining plant located in Corpus Christi, Nueces County on August 16, 2005, and notice was published on November 16, 2005. The public comment period ended on June 8, 2006.

Description of Site

CITGO Refining and Chemicals Company, L.P. has applied to the TCEQ for an FOP Significant Revision that would authorize the applicant to operate certain changes at the Corpus Christi Refinery-West Plant. These changes are summarized in the Statement of Basis document for this permit action. The facility is located at 7350 Interstate Highway 37.

The primary purpose of the West Plant is to further process refinery intermediate products produced at the East Plant into diesel fuel blending components and coke sales products, and into feed streams for gasoline and petrochemical processing units located at the East Plant. Intermediate products are transported to the West Plant via interconnecting pipeline and barge docks used for the unloading of Coker Unit feed.

COMMENTS AND RESPONSES

The following comments were submitted by Neil J. Carman, Ph.D. representing the Sierra Club Lone Star Chapter:

COMMENT 1: Commenter requests that the TCEQ require CITGO to conduct emissions testing to confirm the actual emission rates of VOCs as a result of Coker discharge operation and to determine if CITGO is in compliance with the permit emission rate limiations and applicable special conditions. Commenter requests that TCEQ require CITGO to perform periodic VOC emissions monitoring adequate to assure routine compliance.

RESPONSE 1: The Federal Operating Permit (FOP) requires CITGO to comply with all applicable requirements which include permits issued under 30 TAC Chapter 116, New Source Review. The coker unit is authorized under NSR permit 8778A/PSD-TX-408M3 which contains maximum allowable VOC emission rates. Special Condition 35 under the Continuous Demonstration of Compliance heading of the NSR permit requires CITGO to install a parameter monitoring plan or predictive emissions monitor for the delayed coker. The FOP also requires CITGO to certify compliance with all terms and conditions of the permit which also includes all NSR permits.

It is beyond the scope of this FOP permit revision to require CITGO to conduct emissions testing to confirm the actual emission rates of VOCs as a result of the coker discharge operation. The footnote in the maximum allowable emission rate table (MAERT) for the coker unit VOC fugitives (521-FUG) indicates that this rate is an estimate and that compliance is demonstrated by meeting the requirements of the applicable special conditions and permit application representations.

COMMENT 2: Commenter requests that TCEQ require CITGO to establish PM_{10} emission limitations for coker discharge for the permit and require CITGO to conduct emissions testing to confirm the actual emission rates of PM10 during Coker discharge operation are in compliance with the permit emission rate limitations.

Commenter requests that TCEQ require CITGO to perform periodic PM_{10} emission monitoring adequate to assure routine compliance as the permit does not contain special provisions for a "Continuous Demonstration of Compliance" by the delayed coker unit. Commenter also suggests that the TCEQ develop correlation factors that can be used to make estimates of VOC and PM_{10} emissions if CITGO can not measure the emissions practically.

RESPONSE 2: See Response 1 above as it also relates to demonstrating compliance. It is beyond the scope of this FOP permit revision to require CITGO to revisit the NSR permit for particulate emissions from coker discharge operations as the FOP does not authorize emission increases or modifcations to facilities.

COMMENT 3: CITGO's emission limits for particulates and sulfur pollution are not protective of public health.

RESPONSE 3: The Federal Operating Permit does not authorize increases of emissions and therefore a health effects review was not required for this permit action. The Executive Director disagrees that the MAERT limits for particulates (PM_{10}) and sulfur dioxide (SO_2) listed in NSR permit 8778/PSD-TX-408M3 are not protective of public health. The impacts of these pollutants were evaluated when the NSR permit was issued or last amended.

COMMENT 4: Commenter states the hydrogen sulfide emissions from CITGO's West Plant are too large in volume and concentration and lack performance testing and continuous monitoring. Commenter requests that TCEQ requires CITGO to conduct emissions testing to confirm the actual emission rates of hydrogen sulfide gas as a result of Coker discharge operation to determine if CITGO is in compliance with the permit emission rate limitations and applicable special conditions.

Commenter requests that TCEQ requires CITGO to perform periodic H2S emission monitoring to assure routine compliance because the permit does not contain special provisions for a "Continuous Demonstration of Compliance" by the delayed coker unit.

RESPONSE 4: The ED disagrees that the hydrogen sulfide emissions are too large in volume and concentration as they have been evaluated for negative health impacts during the review of the NSR permit. See Response 1 above regarding continuous demonstration of compliance for the installation of a parameter monitoring plan/predictive emissions monitor.

The following comments were submitted by Stephanie Kodish and Karla Raettig representing the Environmental Integrity Project:

COMMENT 5: Commenters state that the permit illegally uses incorporation by reference. Specifically, the permit fails to include MAERT for Prevention of Significant Deterioration (PSD) permits. Commenters state that without obtaining the PSD permit, it is impossible to know whether the appropriate limits are included, and whether the permit includes monitoring sufficient to assure compliance with the requirements. Commenters state that the permit should include the MAERT tables.

Commenters state that the draft permit incorporates by reference limitations and monitoring required by orders and consent decrees with TCEQ and EPA. Specifically, the Compliance Schedule attachment in the permit references TCEQ Docket No. 2001-1469-AIR-E, however it is not referenced in the Applicable Requirements Summary. Commenters state that emission units 527-H2 and 573 do not have required continuous monitoring and must submit an alternative monitoring plan as required by the permit's compliance schedule. Commenter feels that this alternative monitoring plan should be referenced in the "Periodic Monitoring Summary" attachment. Commenter feels that agreed orders and consent decrees should be included in their entirety for the public to know the precise compliance requirements.

RESPONSE 5: The Executive Director does not agree that incorporation by reference is improper or makes the permit unenforceable. The inclusion of minor NSR permit requirements and permits by rule in Title V permits through incorporation by reference was approved by EPA when granting Texas' operating permits program full approval in 2001. (See Volume 66 of the Federal Register

page 63324.) In recently decided litigation challenging EPA's full approval of the Texas program, EPA stated in its brief to the U.S. Fifth Circuit Court of Appeals, "nothing in the statute or regulations prohibits incorporation of applicable requirements by reference." The Court agreed that incorporation by reference is permissible stating "The Title V and 40 CFR Part 70 provisions specify what Title V permits "shall include" but do not state how the items must be included." [To read the Court's full opinion denying petitions to review EPA's full approval, go to the "opinions page" at http://www.ca5.uscourts.gov/ and Docket No. 02-60069, *Public Citizen, Inc. et al v. USEPA*, filed August 15, 2003.]

The executive director does not agree that the draft permit is unenforceable. EPA has stated that minor NSR terms and conditions incorporated by reference are fully enforceable. NSR permits themselves incorporate certain conditions by reference. Representations in the NSR applications also become binding conditions upon which the permit is issued. (See 30 TAC §§116.115 and 116.116) Applicants are required to demonstrate compliance with all terms and conditions codified in the permit including requirements of NSR permits. In order to obtain documents it is only necessary to contact the permit reviewer. The executive director is confident that the necessary information to assess compliance is available.

As the compliance schedule attachment references an agreed order (2001-1469-AIR-E) and an alternative monitoring plan, it is redundant to list these requirements elsewhere in the permit. See above comment regarding incorporation by reference.

COMMENT 6: Commenters state that the permit lacks adequate monitoring to assure compliance. Commenters state that 30 TAC § 111.111 sets opacity limitations that are continuous, six-minute averages, however the permit requires only an annual observation of stationary vents to determine compliance with opacity standards and a quarterly observation for buildings, enclosed facilities, and other structures. Commenters state that the permit's applicable requirement summary does not reference any units subject to Chapter 111 opacity requirements which makes it difficult to determine which units this requirement applies to. Commenters state that a once-per-year observation is not sufficient monitoring to assure compliance for any unit. *See, In the Matter of: Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*; Petitioner No. VIII-00-1: Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Title V Operating Permits, pp. 20-21 (finding quarterly Method 9 readings insufficient to assure compliance with 20% opacity limit in SIP).

Commenters state that the draft permit does not require that the observations occur when violations are most likely to occur, for example during "decoking" operations. Commenters state that the draft permit should tie opacity monitoring to conditions that could cause violations. Commenters feel that a video observation of the coker unit would provide continuous, detailed information on the visual emissions from this unit.

RESPONSE 6: The executive director has determined that the monitoring required by this permit demonstrates compliance with the applicable state and federal requirements. The permit specifies that an observation from stationary vents shall be conducted at least once each calendar quarter for vents subjects to 30 TAC § 111.111(a)(1)(B) as stated in Special Term and Condition 3.A.(iv)1. The executive director believes that, consistent with 40 CFR Part 70, CITGO's permit includes:

1. monitoring sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit; and

2. monitoring sufficient to assure compliance with the terms and conditions of the permit.

COMMENT 7: Commenters are concerned that the draft permit does not require "prompt" deviation reporting. Commenters state that CITGO's draft permit incorporates by reference the requirements of 30 TAC § 122.145, which allows deviation reports for exceedances during normal operations to be submitted once every six months.

RESPONSE 7: EPA gave states the discretion to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. [See 57 FR 32250, 32304 (1992)] In granting Texas full Title V program approval, the EPA supported the six month reporting requirement as prompt and consistent with 40 CFR Part 70. Indeed, the Texas deviation reporting rules are consistent with the federal Title V (Part 71) program requirements.

For excess emission events, the commission requires more expeditious reporting. 30 TAC § 101.201(a)(1) requires a notification within 24 hours upon discovery of an emissions event. The emissions event reporting and recordkeeping requirements of 30 TAC Chapter 101 and the deviation reporting of Chapter 122, together, provide prompt reporting. Emissions events reporting and response requirements in Chapter 101, Subchapter F address upsets and unscheduled maintenance, shutdowns, and startups that result in unauthorized emissions from an emission point. Should it be found that emissions reported under "emissions events" did not qualify as this type of event, the source could be found in violation of 30 TAC Chapter 101 and be subject to enforcement action. Subchapter F provides for different levels of enforcement available depending upon the type of event, and whether it meets certain criteria. The permit contains these requirements by reference in Special Terms and Conditions 2.F. (relating to Emission Event Reporting and Recordkeeping Requirements) and 2.G. (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

COMMENT 8: Commenters state that the permit does not clarify which units are subject to the Special Terms and Conditions. Commenters state that Special Terms and Conditions 3 and 4 require the permit holder to comply with provisions of 30 TAC Chapter 111 and 30 TAC Chapter 115, however the emission units or facilities to which these regulations apply are not identified. Additionally, Special Terms and Conditions 6-10 require sources subject to various 40 CFR Parts to comply with the listed requirements "unless otherwise stated in the applicable subpart." Commenter feels that this is not a sufficient identification of the emission units that are excluded from compliance. Commenter suggests the permit be modified to include a note in the Applicable Requirements Summary for units subject to these conditions.

RESPONSE 8: The commenter refers to Special Conditions for opacity standards for stationary vents subject to the opacity standard in 30 TAC § 111.111(a)(1)(B), for sources subject to the opacity standard in 30 TAC § 111.111(a)(8), sources subject to the particulate matter emission rate standard of 30 TAC § 111.151(a), and sources subject to the volatile organic compound (VOC) unloading requirements of 30 TAC Chapter 115. The TCEQ has designated the Chapter 111 visible emission requirements and Chapter 115 unloading requirements for these units as site-wide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its initial application that only the Chapter 111 and 115 site-wide requirements apply to these stationary vents and other sources, the applicant is not required to list these smaller units individually in the unit summary, and therefore, these emission units do not appear in the applicable requirements summary table. The EPA has approved of not listing emission units in the permit that have only site-wide or "generic" requirements. See *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

The particular "various CFR provisions" referenced are the General Provisions found in Subpart A of 40 CFR Parts 60, 61 and 63. These provisions apply to the vast majority of regulations, and the General Provisions themselves use the phrase "... unless otherwise specified in the applicable standard ..." and similar language. The executive director does not agree that anything is to be gained with the suggested approach.

The particular "various CFR provisions" referenced are the General Provisions found in Subpart A of 40 CFR Parts 60, 61 and 63. These provisions apply to the vast majority of regulations, and the General Provisions themselves use the phrase "... unless otherwise specified in the applicable standard ..." and similar language. The executive director does not agree that anything is to be gained with the suggested approach.

COMMENT 9: Commenters state that the permit should explicitly state that more stringent New Source Review permit requirements take precedence over the requirements specified in any Title 40 CFR requirement.

RESPONSE 9: The permit incorporates by reference the conditions of 30 TAC § 122.143 (relating to General Terms and Conditions). Specifically, 30 TAC § 122.143(1) states, "Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or the EPA, except for those requirements addressed by a permit shield." An explicit statement regarding NSR permit requirements is unnecessary.

COMMENT 10: Commenters state that the permit shield provisions of the permit should clearly state that the permit shield cannot excuse past violations as referenced in 40 CFR § 70.6(f)(3)(ii).

RESPONSE 10: The permit face clearly states that the site and emission units authorized by the permit shall be operated in accordance with 30 TAC Chapter 122 and that the operation of the site and emission units listed in the permit are subject to all additional rules or amended rules and orders of the Commission pursuant to the TCAA. These assertions would encompass §122.148(g)(2) where it is stated "Nothing in this section shall alter or affect...the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance." Additional references to this are not necessary.

COMMENT 11: Commenter requests a copy of the compliance history review and any notice of violations that did not result in incorporation into the compliance schedule of the permit.

RESPONSE 11: The purpose of a compliance plan and schedule is to provide a schedule to remedy current, ongoing, non-compliance situations to assure that the affected units will be in compliance no later than a certain date. It is not intended to address past instances of non-compliance, as these are handled by the TCEQ's Office of Compliance and Enforcement (OCE).

The TCEQ reviewed the compliance history as required by 30 TAC Chapter 60 and the TCEQ enforcement database for compliance issues that would impact the issuance of the significant permit revision. There is an open formal enforcement action (Docket # 2004-1279-AIR-E) that currently is in litigation. As this action has not been finalized, it was not included in the permit's compliance plan.

The following comments were received by Susie Canales and Cindy Pena representing the Citizens for Environmental Justice.

COMMENT 12: Commenters are concerned with the emissions from CITGO's coker unit that leave the fence line of the refinery twice a day. Commenters provided a DVD documenting visual evidence of emissions from the coker unit. Commenter is concerned about the health effects from the odor and particulates emanating from the coker unit, such as irritated eyes, nose, and throat; nausea; and headaches. Commenters are concerned about the health of the community especially children and the unborn.

RESPONSE 12: Health effects are outside the scope of the Federal Operating Permit. Health effects were evaluated in the issuance of the refinery's NSR permit 8778A/PSD-TX-408M3 which includes the coker unit.

The plume of smoke and particulates presented on the DVD submitted may be categorized as an upset. The TCEQ defines an upset as an unplanned or unanticipated occurrence or excursion of a process or operation that results in unauthorized emissions of air contaminants. An upset event that results in unauthorized emissions from an emission point is an emissions event. Reportable emissions events are handled by the TCEQ Office of Compliance and Enforcement and the TCEQ Region 14 office. Upset emissions are required to be reported as outlined in 30 TAC Chapter 101, Subchapter F, Division 1: Emissions Events, § 101.201. Upon issuance of the Federal Operating Permit, further violations of this section must be reported semi-annually in the company's Deviation Report as required by 30 TAC § 122.145(2).

Any person suspecting noncompliance with terms of any permit or other environmental regulation may file a complaint with the TCEQ's 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186 or the Corpus Christi Regional Office at 1-361-825-3100. The TCEQ investigates all complaints received. Plants or facilities found to be out of compliance with TCEQ rules and for statutes within TCEQ jurisdiction will be subject to the TCEQ's enforcement procedures.

COMMENT 13: Commenter would like CITGO to enclose the coker unit.

RESPONSE 13: The FOP does not authorize modifications to existing emission units at the refinery.

The following comments were recieved by James Sales.

COMMENT 14: Commenter wanted to know how close residential neighborhoods are to the refinery. Commenter wanted to know if CITGO has made any effort to investigate or monitor the heatlh effects from the refinery on the residents in the area. Commenter wanted to know what steps are being taken to keep the citizens alive and prospering.

RESPONSE 14: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in the statute. Accordingly, the TCEQ does not have jurisdiction to consider facility location choices made by an applicant when determining whether to approve or deny a permit application, unless state law imposes specific distance limitations that are enforceable by the TCEQ. Zoning and land use are beyond the authority of the TCEQ for consideration when reviewing air quality permit applications and such issues should be directed to local officials. As set forth in Section 382.052 of the Texas Clean Air Act (TCAA), the TCEQ shall consider possible adverse health effects on individuals attending schools which are located within 3,000 feet of a facility or proposed facility when processing permit applications under 30 TAC Chapter 116. For such permits, a protectiveness review must be conducted for all contaminants emitted. The maximum concentrations are evaluated at the property line, at the nearest off-property receptor, and at any schools located within 3,000 feet. However, such an evaluation is beyond the scope of the Federal Operating Permit. The Federal Operating Permit does not authorize new emissions or construction, therefore a protectiveness review for health effects was not required as part of this permit action. The requested investigation or monitoring is outside the scope of the FOP.

The following comments were received by Lionel Lopez.

COMMENT 15: Commenter read a letter dated February 4, 2003 written by Mr. Douglas Sullivan to then EPA director Christine Whitman. The letter concerns unreported air emissions from oil refineries, specifically from delayed coking units. The concern with the air emissions from the coker units is release of VOC and carcinogenic coke particles. The letter requests that EPA verify the quantity of emissions and develop emission factors for delayed coker units in oil refineries.

RESPONSE 15: The FOP does not authorize increases in permitted VOC or particulate emissions from the coker units. The TCEQ has no authority to require EPA to develop emissions factors for delayed coker units. Such a request should be submitted to EPA for consideration. CITGO is responsible for estimating the quantity of emissions from the coker units at the refinery based on engineering calculations, stack testing, or other such methodology and keeping records on site that demonstrate compliance with the permitted emission rate allowables for VOC and particulate emissions from the delayed coker unit. These permitted emission rates are enforceable under the FOP.

The following comments were received by Melissa Jarrell.

COMMENT 16: Commenter was concerned that the regional office did not attend the notice and comment hearing and therefore could not answer specific questions relating to site inspections. Commenter was concerned about how many violations have occurred at the refinery and how many enforcement actions have been taken. Commenter is concerned that the enforcement actions may not be a deterrent to repeat violations and that such repeat violations may be intentional.

RESPONSE 16: As of September 1, 2006 , the CITGO Corpus Christi Refinery - West Plant has been investigated 19 times in the last 5 years. The most recent compliance history shows 4 notice of violations that have been resolved and 20 administrative enforcement actions in that time period.

Multiple violations that occur during a compliance period are taken into consideration by the agency in determining whether to designate a person with the repeat violator classification as described in 30 TAC § 60.2(d). This classification is a deterrent for a permit holder as the TCEQ may take action to deny current and future permit actions as required by 30 TAC § 60.3(a)(3)(D)-(E). A repeat violator classification will increase the frequency of site investigations and enhance the amount of an administrative penalty (fine) assessed as required by 30 TAC § 60.3(b) and (c). The CITGO Refining and Chemicals Company, L.P. is not currently classified as a repeat violator. See response 11 above regarding the site's compliance rating.

Respectfully submitted,

Jesse E. Chacon

Jesse E. Chacon, P.E., Manager
Operating Permits Section
Air Permits Division
Texas Commission on Environmental Quality

Appendix D

Letter from Suzie Canales, Citizens for Environmental Justice, to John Sadlier, TCEQ

February 9, 2007

John Sadlier
Director, Enforcement Division, Office of Compliance & Enforcement, TCEQ
Mail Code 219
P.O. Box 13087
Austin, TX 78711-3087

RE: Executive Director's Response to Public Comment, June 8, 2006 Public Meeting, for Federal Operating Permit, Citgo Refining and Chemicals Company, L.P. West Plant, Corpus Christi, Texas

Dear Mr. Sadlier:

February 9, 2007

My name is Suzie Canales with Citizens for Environmental Justice based in Corpus Christi, Texas. We submitted comments during the pubic comment period and attended a public meeting regarding Citgo West plant application to TCEQ for an FOP Signifcant Revision for its west plant.

At the public meeting on June 8, 2006 we presented a DVD of Citgo's Coker emitting a huge black cloud of uncontrolled emissions going directly into the environment and emitting coke dust. The response from the Executive Director (comment/response 12) said that the plume of smoke and particulates presented on the DVD submitted may be categorized as an upset and that upset emissions are required to be reported as outlined in [30 TAC 101.201]. This video was taped on April 1, 2006, presented it to TCEQ at the public meeting and your response is that it was an upset, and upsets are required to be reported; however, when I checked the listed of reported upsets, this event was not there. In addition, I have video of similar "upset" events on June 17, 2003 and July 19, 2004, and they weren't reported either.

Apparently, Citgo is not reported upset events that we have documented on video, one of which you have been presented with. We would like to be informed on the action TCEQ will take with regard to Citgo not reporting upset events.

Thank you,

Suzie Canales

Cc: Richard A. Hyde, P.E. Director Air Permits Division (TCEQ)
Jessse Chacon, P.E. Manager, Federal Operating Permits Section (TCEQ)

Citizens for Environmental Justice 5757 S. Staples # 2506, Corpus Christi, TX 78413 (361) 334-6764
Suzie Canales is the recipient of the Congressional Hispanic Caucus Institute Award for Outstanding Achievements in Environmental Justice
www.cfejcorpuschristi.org or www.citgojustice.org

PLACE STICKER AT TOP OF ENVELOPE
OF THE RETURN ADDRESS, FOLD

CERTIFIED M

7003 1010 0003

Administrator Stephen L. Johnson
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460