

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

IN THE MATTER OF	§	PETITION FOR OBJECTION
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Clean Air Act Title V Permit (Federal Operating Permit) No. O3711	§	
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Issued to Pasadena Refining System Inc.	§	Permit No. O3711
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Issued by the Texas Commission on Environmental Quality	§	
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**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO  
ISSUANCE OF PROPOSED TITLE V OPERATING PERMIT NO. O3711 FOR THE  
PASADENA REFINERY**

Pursuant to section 42 U.S.C. § 7661d(b)(2), Environmental Integrity Project, Sierra Club, Texas Environmental Justice Advocacy Services, and Air Alliance Houston (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Federal Operating Permit No. O3711 (“Proposed Permit”) issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) for the Pasadena Refinery, operated by Pasadena Refining, Inc.

**I. INTRODUCTION**

The Pasadena Refinery is one of the oldest refineries in the nation and has a history of poor compliance. The refinery routinely exceeds permitted air pollution limits due to old and inefficient units and inadequate pollution control equipment. For example, during the single week preceding the filing deadline for this Petition, unauthorized particulate matter emissions from Pasadena Refining’s FCC Seal Pot exceeded the amount of particulate matter Pasadena Refining is

authorized to emit from that unit over the course of an entire year.<sup>1</sup> *See also*, (Exhibit 1) Petitioners' Initial Comments at 3-4 (identifying other serious emission events involving the FCC Seal Pot and other units at the Pasadena Refinery).

The refinery's current owner, Brazil's state-owned oil company Petrobras, failed to timely renew its previous Title V permit for the Pasadena Refinery and recently concluded internal investigations into fraud and bribery charges, which include overbilling, involving their Pasadena Refinery. Taken together with the Refinery's repeated violations of applicable emissions limits, these concerns reflect a poorly controlled facility with a questionable commitment to environmental compliance.

## II. PETITIONERS

Environmental Integrity Project is a non-partisan, nonprofit organization that works to ensure that anti-pollution laws, including the Clean Air Act, are enforced in the public interest without fear or favor. EIP has participated in Title V proceedings in Texas, Maryland, Pennsylvania, Tennessee, Kentucky, Arkansas, and California.

Sierra Club is America's oldest and largest grassroots environmental organization, with over 648,000 members nationwide. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth, to practice and promote the responsible use of the Earth's resources and ecosystems, to educate and enlist humanity to protect and restore the quality of the natural and

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<sup>1</sup> During emission event 246521, which lasted for seven hours on November 3, the FCC Seal Pot emitted 2,028.19 pounds of particulate matter. *See*, <http://www2.tceq.texas.gov/oce/ee/index.cfm?fuseaction=main.getDetails&target=246521> During an unauthorized startup that lasted from November 3 until November 5, the FCC Seal Pot emitted 7,000 pounds of particulate matter. *See*, <http://www2.tceq.texas.gov/oce/ee/index.cfm?fuseaction=main.getDetails&target=246488> The 4.5 tons of particulate matter emitted from the FCC Seal Pot emitted during two events lasting less than a week is almost double the amount of particulate matter this unit is authorized to emit over the course of an entire year. (Exhibit 2) Permit No. 20246 (authorizing the FCC Seal Pot to emit 2.57 tons of particulate matter each year). Emissions of other pollutants from the FCC Seal Pot and pollutants including particulate matter from other units at the Refinery during these two events totaled 13,250.36 pounds.

human environment, and to use all lawful means to carry out those objectives. As part of this mission, the Club has worked for many years to improve implementation of Title V program by filing comments on behalf of its members and petitioning EPA to object to proposed permits for major sources across the United States where those permits fail to protect air quality, public health, and the environment.

Texas Environmental Justice Advocacy Services is an advocacy group whose mission includes educating the public about air pollution issues in Texas, with a strong focus on air pollution created by refineries and petrochemical plants in the Houston Ship Channel. TEJAS promotes environmental protection through education, policy development, community awareness, and legal actions.

Air Alliance Houston is a nonprofit corporation that works to reduce air pollution on behalf of the communities it serves and to protect public health and environmental integrity through research, education, and advocacy.

### **III. PROCEDURAL BACKGROUND**

This Petition addresses the TCEQ's initial issuance of Permit No. O3711. Operation of the Pasadena Refinery had previously been authorized by Permit No. O1544, but Pasadena Refining failed to timely submit a renewal application for this permit and it expired.<sup>2</sup> Pasadena Refining filed its application for Permit No. O3711 on May 30, 2014. English notice of the Draft Permit was published on November 13, 2014. Bilingual notice of the Draft Permit was published on November 22, 2014. Environmental Integrity Project, Air Alliance Houston, Texas Organizing Project, Public Citizen, Environment Texas, and the Sierra Club timely-filed public comments and

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<sup>2</sup> A copy of the TCEQ's enforcement order addressing Pasadena Refining's failure to timely apply for a renewed federal operating permit is available electronically at: [http://www14.tceq.texas.gov/epic/CIO/index.cfm?fuseaction=search.download2&AGY\\_DKT\\_NUM\\_TXT=2014-0763-AIR-E&doc\\_id=739527522014239&doc\\_name=Order%202014-0763-AIR-E.pdf&format\\_cd=pdf](http://www14.tceq.texas.gov/epic/CIO/index.cfm?fuseaction=search.download2&AGY_DKT_NUM_TXT=2014-0763-AIR-E&doc_id=739527522014239&doc_name=Order%202014-0763-AIR-E.pdf&format_cd=pdf)

a hearing request on the Draft Permit on December 12, 2014. On December 9, 2015, the Executive Director approved Commenters' hearing request. Accordingly, the public comment period was extended until January 28, 2016, the date of the public hearing. On January 28, 2016, Environmental Integrity Project filed supplementary comments on the Draft Permit. (Exhibit 3) Supplementary Public Comments.

On July 22, 2016, the TCEQ issued Notice of Proposed Permit and Executive Director's Response to Public Comment. (Exhibit 4) Response to Comments. In response to public comments, the Executive Director removed references to several voided New Source Review ("NSR") permits from the Proposed Permit and added several Permits by Rule ("PBRs") and emission units authorized by PBR to the Proposed Permit's New Source Review Authorizations by Emissions Unit Table. The Executive Director declined to make other changes requested by public commenters.

EPA's 45-day review period ran from July 26, 2016 until September 9, 2016. On September 6, 2016, EPA submitted comments indicating that the Agency could not determine how requirements in various NSR permits, standard permits, and PBRs applied to units at the Pasadena Refinery. (Exhibit 5) EPA Comments. On October 12, 2016, the Executive Director issued Permit No. O3711 and made his response to EPA's comments. (Exhibit 6) Effective Permit Approval and Response to EPA Comments. In his response, the Executive Director maintained that he was not required to revise the Draft Permit to address EPA's concerns, but indicated that Pasadena Refinery was willing to voluntarily comply with some of EPA's requests for clarification but not others.

EPA did not object to the Proposed Permit. (Exhibit 7) Proposed Permit No. O3711; (Exhibit 8) Statement of Basis, Permit No. O3711. Accordingly, members of the public have 60-

days from the end of EPA's review period to petition EPA to object to the Proposed Permit. This Petition is timely filed and requests that the Administrator object to the Proposed Permit based on deficiencies that were raised with reasonable specificity during the public comment period.

#### IV. LEGAL REQUIREMENTS

The Clean Air Act requires each major stationary source of air pollution to apply for and comply with the terms of a federal operating permit issued under Title V of the Act. 42 U.S.C. § 7661a(a). Congress created the Title V permit program to “enable . . . source[s], States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” *Operating Permit Program*, 57 Fed. Reg. 32250, 32251 (July 21, 1992). Title V permits accomplish this goal by compiling all the applicable requirements for each major source in a single document. 42 U.S.C. § 7661c(a); *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.”). Additionally, Title V permits must include monitoring, recordkeeping, and reporting methods that assure ongoing compliance with each requirement and may not restrict the right of regulators or the public to rely on any credible evidence to demonstrate non-compliance with applicable requirements. *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.”); *In the Matter of Southwestern Electric Power Company* (“Pirkey Order”), Order on Petition No. VI-2014-01 at 13 (February 3, 2016) (“[A] title V permit may not preclude any entity, including the EPA, citizens or the state, from using any credible

evidence to enforce emissions standards, limitations, conditions, or any other provision of a title V permit.”).

Title V permits are the primary method for enforcing and assuring compliance with State Implementation Plan requirements for major sources. 57 Fed. Reg. 32,258. Accordingly, the Administrator must object to or reopen any Title V permit if she determines, at any point, that it fails to comply with Title V requirements. 42 U.S.C. § 7661d(b)(1) (b)(2), and (e); 40 C.F.R. §§ 70.7(f)(1)(iii) and (iv), 70.8(c) and (d). Because federal courts are often unwilling to enforce otherwise applicable requirements that have been omitted from or displaced by conditions in a Title V permit, state-permitting agencies and EPA must ensure that Title V permits accurately and clearly explain what each major source must do to comply with the law. *See, e.g., 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)).

If EPA does not object to a proposed 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).

## V. GROUNDS FOR OBJECTION

### A. The Proposed Permit Fails to Identify and Assure Compliance with Applicable Emission Limits (Incorporation by Reference of “Minor NSR Permits,” PBRs, and Standard Exemptions)

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

The Proposed Permit does not list a single emission limit or operating requirement contained in the 14 Chapter 116 NSR permits,<sup>3</sup> the many different applications for these various permits, or the 39 different PBRs and Standard Exemptions used to authorize the 214 emission units and unit groups listed in the Proposed Permit’s New Source Review Authorization References by Emission Unit table.<sup>4</sup> Instead, the Proposed Permit simply lists the applicable Chapter 116 NSR permits by number and the claimed PBRs and Standard Exemptions by rule number, leaving it to the reader to obtain and sort through all of the relevant permits, permit applications, and current and outdated PBR and Standard Exemption rules to determine which limits and operating requirements are effective and controlling for each unit listed in the Proposed Permit.

Several factors, aside from the sheer amount of information involved, make this task especially difficult. First, multiple permits—including one or more PBRs and Standard

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<sup>3</sup> A “Chapter 116 NSR permit” is a case-by-case permit issued pursuant to Texas’s federally-approved rules at 30 Texas Administrative Code, Chapter 116.

<sup>4</sup> The Proposed Permit’s list of emission units and groups at the Pasadena Refinery is incomplete. *See*, Response to EPA Comments at Response 1 (“TCEQ does not require the permit applicant to identify emission units where the only applicable requirement is the NSR Authorization; therefore . . . emission units [authorized by permits addressed in EPA’s comment] do not appear in the proposed Title V permit’s New Source Authorization References by Emission Unit Table . . . . Therefore, there are no emission units associated with these NSR permits that are required to be listed in the Title V permit.”). EPA has already rejected this position. *See, In the Matter of Shell Chemical and Shell Oil*, Order on Petition Nos. VI-2014-04 and VI-2014-05 (September 24, 2015) (“Deer Park Order”) at 15 (“The TCEQ should provide a list of emission units for which only general requirements are applicable, and if an emission unit is considered insignificant, it should be identified in the Statement of Basis as such.”).

Exemptions—may establish different and conflicting limits and requirements for a common unit.<sup>5</sup> Second, one cannot assume that each PBR and Standard Exemption listed in the Proposed Permit has only been claimed once or that the generic limits listed in applicable PBR and Standard Exemption rules apply to each unit authorized by a PBR or Standard Exemption. This is so because Pasadena Refining may have claimed listed PBRs and Standard Exemption to authorize multiple projects at the Pasadena Refinery and, for each project, the applicable emission limits may be divided among several different pieces of equipment involved in the project. Third, applicable requirements established through the permitting process, including requirements that modify existing permit terms, may only appear in application representations.<sup>6</sup>

The Proposed Permit is, as EPA has described other permits issued by the TCEQ, “a tedious maze and not practically enforceable.” *Objection to Title V Permit No. O1420, CITGO Refining and Chemical Company, Corpus Christi Refinery—West Plant* (October 29, 2010) at 3. In the end, even if an interested party is able to obtain current copies of each of the applicable Chapter 116 NSR permits, every application filed for each of those permits, and copies of the applicable PBR and Standard Exemption rules, it will still be impossible to figure out—with reasonable certainty—which emission limits and operating requirements currently apply to each emission unit at the

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<sup>5</sup> See, e.g., (Exhibit 9) Permit No. 80804, Special Condition No. 11(A) (“Combustion units, with the exception of flares, at this site are exempt from NO<sub>x</sub> and CO operating requirements identified in special conditions in other NSR permits during planned startup and shutdown if the following criteria are satisfied.”)

<sup>6</sup> Representations in permit applications, no less than special conditions listed on a permit’s face, are enforceable conditions of an authorization to construct. 30 Tex. Admin. Code § 116.116(a); see also, Notice of Proposed Permit and Executive Director’s Response to Public Comment, Permit No. O1229, ExxonMobil Baytown Refinery (June 28, 2016) at 2 (“The application representations for [incorporated NSR permits] . . . are enforceable in accordance with 30 TAC § 122.140(3) and are the conditions under which the site is operated.”). The Executive Director’s Response to Comments on Permit No. O1229 is available electronically at: <https://webmail.tceq.state.tx.us/gw/webpub/baeecca29a5b6f6cbddb1335c99a59e8cad8c72/GWDOC/DREF/tnrdom3.dms3apo.aopdp95a-new/78587/Official/webacc/GWContentRoot?action=Document.View&merge=fileview&Item.Attachment.type=Document&Item.Attachment.Library.id=tnrdom3.dms3apo.aopdp95a-new&Item.Attachment.Document.id=78587&Item.Attachment.Document.version=Official&Item.Attachment.allowViewNative=1&Item.Attachment.filename=PN%2d5+%2d+O1229+Exxon+Mobil+Corporation+%28Renewal%2c+15118%29&User.context=baeecca29a5b6f6cbddb1335c99a59e8cad8c72>



Pasadena Refinery. Because this is so and because federal courts are often unwilling to enforce applicable requirements that are not clearly included in a source's Title V permit, the Administrator must object to the Proposed Permit.

The preconstruction permits incorporated by the Proposed Permit are listed in the New Source Review Authorization References table. Proposed Permit at 253-254. The Proposed Permit's New Source Review Authorization References by Emission Unit table identifies which preconstruction permits apply to many but not all of the emission units at the Refinery. *Id.* at 255-267.

Proposed Permit Special Condition Nos. 23 and 24 incorporate the preconstruction permits listed in the New Source Review Authorization References table.

## **2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must 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.” 40 C.F.R. § 70.6(a)(1). The terms and conditions of preconstruction permits authorizing emissions from units at the Pasadena Refinery are “applicable requirements.” *Id.* at § 70.2.

As explained below, the Proposed Permit fails to identify how much pollution each unit at the Refinery is authorized to emit under incorporated preconstruction authorizations and fails to provide enough information to allow the reader to determine—with reasonable certainty—what the applicable limits and operating requirements are.

## **3. Inadequacy of the Permit Term**

The Proposed Permit does not directly list any of the operating requirements or emission limits contained in the many different Chapter 116 NSR permits, PBRs, and Standard Exemptions

used to authorize equipment at the Pasadena Refinery. Instead, the Proposed Permit incorporates the applicable permits by reference into the Proposed Permit. Consistent with 42 U.S.C. § 7661c(a) and 40 C.F.R. § 70.6(a), EPA has placed clear and reasonable limits on the proper use of incorporation by reference in Title V permits:

In order for incorporation by reference to be used in a way that fosters public participation and results in a title V permit that assures compliance with the Act, it is important that: (1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and the date of the document be included so that there is no ambiguity as to which version of a document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation.

*In the Matter of United States Steel—Granite City Works*, Order on Petition No. V-2009-03 (January 31, 2011) (“Granite City I Order”) at 42-43.

The Proposed Permit’s incorporation by reference of Pasadena Refining’s preconstruction permits fails to consistently comply with the three conditions listed in the *Granite City I Order*. Enforceable applications for Chapter 116 NSR permits and certified PBR registrations are not listed by date in the Proposed Permit. The Proposed Permit does not describe which permit limits, operating requirements, and application representations are controlling in cases where apparent conflicts exist. And finally, the Proposed Permit’s method of incorporating the many different preconstruction authorizations claimed by Pasadena Refining, as described below, is opaque and will inevitably give rise to misinterpretation. The Proposed Permit is deficient because it is impossible for the reader to identify, with reasonable certainty, exactly which requirements each unit at the Pasadena Refinery is subject to under applicable preconstruction authorizations it incorporates by reference.

a. *The Proposed Permit's Incorporation by Reference of Chapter 116 NSR Permits Fails to Identify and Assure Compliance with Applicable Requirements*

EPA has made it clear that the TCEQ may not use incorporation by reference to include operating requirements and emission limits from PSD or NNSR (or “Major NSR”) permits in Texas Title V permits:

Because the Texas [Title V] permits use IBR of Major NSR permits so extensively, as a practical matter it is extremely difficult to tell what emission limitations and standards apply to particular emission sources. For members of the public, it can be virtually impossible. This is completely contrary to the goals of the Title V program[.] . . . EPA will continue to object to Title V permits that use IBR for emissions limitations and standards found in Major NSR permits.

Letter to Mark Vickery, Executive Director, TCEQ from Al Armendariz, Regional Administrator, EPA Region 6 (June 10, 2010).<sup>7</sup>

The Proposed Permit's incorporation by reference of Pasadena Refining's preconstruction permits is objectionable for the same reasons. The Pasadena Refinery is a Title I major stationary source of air pollution. The preconstruction permits incorporated by reference into the Proposed Permit authorize emissions more than 20 times higher than the 100 tons per year major source threshold.<sup>8</sup> Indeed, Pasadena Refining's preconstruction permits authorize emissions that are much higher than emissions authorized by specific “Major NSR permits” that EPA held could not be incorporated by reference into a Texas Title V permit. Supplementary Comments at 23. Projects at the Pasadena Refinery are also subject to PSD and NNSR requirements. *See, e.g.*, 40 C.F.R. § 51.166(a)(7)(i) (“The requirements of this section apply to . . . any project at an existing major stationary source[.]”).

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<sup>7</sup> Available electronically at:

[https://www.tceq.texas.gov/assets/public/permitting/air/Announcements/from\\_epa\\_6\\_10\\_10.pdf](https://www.tceq.texas.gov/assets/public/permitting/air/Announcements/from_epa_6_10_10.pdf)

<sup>8</sup> Emissions authorized by nine of Pasadena Refining's 14 NSR permits total 4,340 tons per year, including 1,269 tons of NO<sub>x</sub>, 797 tons of VOC, 985 tons of SO<sub>2</sub>, 1,037 tons of CO, and 252 tons of PM. *See* Supplementary Comments at 23, n8.

Nonetheless, the TCEQ claims that the Proposed Permit's incorporation by reference of Pasadena Refining's Chapter 116 NSR permits is acceptable, because all of the NSR permits are "Minor NSR permits." This argument must fail because there is no material distinction between the PSD and NNSR permits EPA has held may not be incorporated by reference into Texas Title V permits and the so-called "Minor NSR permits" incorporated by reference into the Proposed Permit. The term "Minor NSR permit" is not actually defined in Texas's regulations and bears no relationship to the amount of pollution a permit authorizes. Instead, the TCEQ refers to Pasadena Refining's preconstruction authorizations as "minor" because the Refinery was constructed before the PSD and NNSR permitting programs were enacted. That the Pasadena Refinery is grandfathered from PSD and NNSR preconstruction permitting requirements is not a reasonable basis on which to hold that the terms of Pasadena Refining's Chapter 116 NSR permits, which authorize significant emissions from the Refinery's old and poorly maintained units, should not be listed on the face of the Proposed Permit.

Indeed, the Proposed Permit's incorporation by reference of Pasadena Refining's so-called "Minor NSR permits" is an even greater burden on the enforceability of emission limits for significant emission units at the Pasadena Refinery than the incorporation by reference of Major NSR permits that has drawn the Administrator's objection in the past. While most of the Title V permits that drew an EPA objection for incorporating Major NSR permit requirements by reference only incorporated one or two Major NSR permits, emission limits and operating requirements authorized by Pasadena Refining's NSR permits are spread across 14 different Chapter 116 permits. If incorporation by reference of one or two Major NSR permits made it "virtually impossible" for members of the public to identify applicable requirements, then incorporation by reference of emission limits and operating requirements spread across Pasadena Refining's 14

different Chapter 116 NSR permits guarantees that members of the public and other non-specialists will be unable to identify operating requirements and emission limits that apply to each unit at the Refinery with reasonable certainty.

In order to identify applicable emission limits and operating requirements established by Pasadena Refining's Chapter 116 NSR permits, the reader must identify and obtain copies of each of the 14 permits incorporated by reference into the Proposed Permit. The reader will also need to obtain copies of each of the applications and application files for each revision and amendment made to each of these permits. This is so because representations made in permit applications, no less than special conditions listed on a permit's face, are enforceable conditions of a Texas NSR permit. 30 Tex. Admin. Code § 116.116(a). Once a reader obtains copies of every relevant permit document, she must then work through all of these documents and reconcile the various and potentially conflicting requirements contained in each of the documents that apply to common units. This is necessary, because requirements for emission units authorized by one permit may be revised by a different permit. Indeed, in many cases, revisions to permit requirements may not be reflected on the face of any permit and will only be apparent in representations included in underlying permit applications. In such cases, the reader will also need to consult the TCEQ's project documents to determine which representations revising previously established requirements were actually approved by the Agency.

The Proposed Permit is a case-study in exactly the kind of convoluted regulatory practices resulting in unenforceable requirements that Title V was created to resolve. EPA has made it clear that Texas's practice of incorporating NSR permits by reference is only acceptable if "referenced permits are part of the public docket or otherwise readily available, and currently applicable, and that the title V permit is **clear and unambiguous as to how the emissions limits apply to**

**particular emission limits.”** Letter to Mark Vickery, Executive Director, TCEQ from Al Armendariz, Regional Administrator, EPA Region 6 (June 10, 2010) (emphasis in original). The Proposed Permit’s incorporation by reference of Pasadena Refining’s NSR permits is contrary to Title V because it is not clear and unambiguous about how incorporated requirements apply to each unit, because enforceable application representations are not readily available, and because the task of obtaining all the relevant records and compiling and reconciling requirements spread across these records to determine which requirements apply to each emission unit at the Pasadena Refinery places an unreasonable and unmanageable burden on stakeholders attempting to identify and enforce applicable requirements. *Granite City I Order* at 42-43.

*b. The Proposed Permit’s Incorporation by Reference of PBRs and Standard Exemptions Fails to Identify and Assure Compliance with Applicable Requirements*

The Proposed Permit is deficient because it fails to include information necessary for readers to answer the following basic questions about how emission limits and operating requirements contained in PBRs and Standard Exemptions claimed by Pasadena Refining:

- How much pollution is Pasadena Refining authorized to emit from each unit under claimed PBRs and Standard Exemptions?
- Which pollutants may Pasadena Refining emit from each unit under claimed PBRs and Standard Exemptions?
- Which emission units at the Refinery are subject to limits in the claimed PBRs and Standard Exemptions?

Until the TCEQ revises the Proposed Permit to include information necessary to answer these basic questions, applicable requirements in PBRs and Standard Exemptions claimed by Pasadena Refining will remain unenforceable.

(i) *The Proposed Permit Fails and Permit Record Fails to Provide Enough Information For a Reader to Determine How Much Each Unit Authorized by PBR or Standard Exemption is Authorized to Emit*

Before any actual work is begun on a new or modified facility, an operator must obtain a permit or permit amendment authorizing the project. 30 Tex. Admin. Code § 116.110(a). To authorize construction of new or modified facilities, an operator may apply for a new or amended Chapter 116 case-by-case permit. *Id.* at §§ 116.110 and 116.111. In lieu of applying for a new or amended case-by-case permit under § 116.111, an operator may instead claim a PBR (or PBRs) to authorize construction of modification of a facility, so long as the proposed construction project complies with PBR requirements. *See, e.g.*, 30 Tex. Admin. Code §§ 106.4 (stating that construction may be authorized by PBR) and 116.116(d) (stating that a PBR may be used in lieu of a permit amendment to authorize construction).<sup>9</sup> While each Chapter 116 NSR permit is assigned a unique permit number and includes source-specific emission limits and special conditions based on the Executive Director’s review of the operator’s application, PBRs and Standard Exemptions establish generic emission limits and operating requirements that apply to all new and modified facilities authorized by PBR or Standard Exemption (unless the operator registers PBR emissions at lower rates—*see, id.* at § 106.6). These generic requirements are found in Texas’s PBR rules. When construction of a new or modified emission unit authorized by PBR, the PBR or PBRs claimed by the operator—*i.e., the rule itself*—is the permit authorizing the project. *See, e.g., id.* at § 106.261 (“[F]acilities, or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.”).

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<sup>9</sup> The TCEQ’s Chapter 106 PBR rules replaced and are substantially similar to Texas’s previous practice of issuing Standard Exemptions.

Thus, while the Proposed Permit identifies incorporated Chapter 116 NSR permits by listing their unique permit numbers and the dates on which they were issued, the Proposed Permit identifies applicable PBRs and Standard Exemptions by *rule* number and the date that each rule was promulgated (not the date(s) the PBR or Standard Exemption was claimed to authorize construction at the Pasadena Refinery). Proposed Permit at 253-254. This way of listing applicable requirements is misleading, because it suggests that each claimed PBR, like the Chapter 116 NSR permits identified in the Proposed Permit, is a single authorization. This suggestion is misleading because Pasadena Refining has claimed some PBRs and Standard Exemptions multiple times to authorize multiple projects involving one or more emission units at the Pasadena Refinery.

Each PBR submission may involve one or more claimed PBRs that establish limits that apply to a single emission unit or to multiple emission units. Additionally, Pasadena Refining may claim the same PBR in different submissions to authorize multiple modifications to different emission units. Unless the Proposed Permit provides information identifying each emission unit covered by each claimed PBR (or Standard Exemption) *for each submission*, it is impossible to tell how much each emission unit is authorized to emit under PBRs and Standard Exemptions claimed by Pasadena Refining.

For example, the Proposed Permit's New Source Review Authorization References by Emission Unit table indicates that Pasadena Refining has claimed the PBR at § 106.261 (9/4/2000) to authorize emissions from 15 different emission units or unit groups: ALKHT001 (#1 Alky Heater), ALKHT002 (#2 Alky Heater), DOKLO001 (Barge Loading), HTREF002 (Reformer #2 Hydrotreater Stripper Heater Stack), LSGHT001 (Heater H-3701), TKFTK118 (Tank 118), TKFTK307 (Tank 307), TKFTK330 (Tank 330), TKFTK331 (Tank 331), TKFTK815 (Tank 815), TKFTK820 (Tank 820), TKFTK830 (Tank 830), TKFTK831 (Tank 831), TVFUG-ALL (Refinery



Fugitive Equipment), and TVFUG-GGA (Fugitive). Proposed Permit at 255-267. This PBR does not include any emission limits for federally regulated pollutants, so the emission limits at 30 Tex. Admin. Code § 106.4(a)(1) apply. However, one cannot tell, based on information contained in the Proposed Permit and the incorporated PBR, whether changes to or construction of each of the 15 emission units were authorized as part of the same submission or as different projects. This matters, because if construction or modification of each unit was separately authorized—*i.e.*, meaning the PBR has been claimed 15 times—*each* unit may emit up to the 30 Tex. Admin. Code § 106.4(a)(1) limits, while the units' *combined emissions* must remain below those same limits if construction of or modifications to all of those units was authorized as part of the same submission/project. The difference between these two scenarios is huge: If all the construction of or changes to all of these units was authorized as part of the same submission, then their combined VOC emissions must remain below 25 tons per year. 30 Tex. Admin. Code § 106.4(a)(1)(A). If each unit was individually authorized, then the combined VOC emissions from the units allowed under § 106.4 would be 375 tons per year (25 tons per year \* 15 emission units). *Id.* Because the Proposed Permit is ambiguous as to whether these units are authorized to emit 25 tons per year of VOC, 375 tons per year of VOC, or some other amount, it fails to specify and assure compliance with applicable emission limits. The Proposed Permit is deficient for the same reason with respect to each pollutant each emission unit is authorized to emit under § 106.261 (9/4/2000) PBR.

This same problem also applies to the following PBRs and Standard Exemptions incorporated by reference into the Proposed Permit to authorize multiple emission units:

<b>PBR/Standard Exemption Rule</b>	<b>Date PBR/Standard Exemption Promulgated</b>	<b>Emission Units or Unit Groups</b>
106.262	11/1/2003	HTREF002 (Reformer #2 Hydrotreater Stripper Heater Stack), LSGHT001 (Heater H-3701), TVFUG-ALL (Refinery Fugitive Equipment), TVFUG-GGA (Fugitive)
106.371	9/4/2000	COOLINGTWR (Cooling Water Units), ENGCT1 (Engineering Building AC Cooling Tower)
106.472	3/14/1997	DOKLO001 (Barge Loading), HSSUMP (Hydroblant Slab Sump), TKFTK027B (Caustic Tank #27B), TKFTK036 (Tank #36), TKFTK049 (Caustic Tank #49), TKFTK205 (Tank 205), TKFTK321 (Fresh Caustic Tank 321), TKFTK330 (Tank 330), TKFTK535 (KOH Tank 535), TKFTKD-8 (Spent KOH Tank D-8), TKFTKD-9 (Spent KOH Tank D-9), TKFTKGDISL (Diesel Tanks), TKFTKGLUBE (Lube Oil Tanks), TKFTKNAL1 (Nalco Tanks Group 1)
106.476	3/14/1997	TKFTK901, TKFTK902, TKFTK903, TKFTK904, TKFTK905, TKFTK906, TKFTK907, TKFTK908, TKFTK909, TKFTK910, TKFTK911, TKFTK912, TKFTK920, TKFTK921, TKFTK922, TKFTK950, TKFTK951, TKFTK952, TKFTK953, TKFTK954, TKFTK955, TKFTK956
106.478	3/14/1997	TKFTK244 (Condensate Tank), TKFTKNAL2 (Nalco Tanks Group 2)
106.478	9/4/2000	TKFTK250 (Tank 250), TKFTK807 (Tank 807), TKFTK808 (Tank 808), TKFTK810 (Tank 810), TKFTK811 (Tank 811), TKFTK812 (Tank 812), TKFTK815 (Tank 815), TKFTK818 (Tank 818), TKFTK822 (Tank 822), WESTDSLTK1 (West Diesel Tank 1), WESTDSLTK2 (West Diesel Tank 2)
106.511	9/4/2000	EMGEN001 (Emergency Diesel Generator-DCS), EMGEN002 (Emergency Gasoline Generator-Main Office), EMWEN001 (Emergency Diesel Firewater Pump #1), EMWEN002 (Emergency Diesel Firewater Pump #2), EMWEN0003 (Emergency Diesel Firewater Pump #3), FWPUMP (Firewater Pump Engine - 380 HP), LITTLEBLUE (Little Blue Engine (less than 150 HP))
106.532	3/14/1997	CKRSUMP (Coker Unit Sump), FEWWS (Water and Wastewater Treatment)
S.E. 7	8/30/1988	CKRHT001 (Coker Heater #2), CKRHT002 (Coker Heater #2), HTCKR002 (Coker Heater #2 Stack)
S.E. 51	11/5/1986	CAUSUNLOAD (AMI-PUR Unit Caustic Unloading), REFUNLOAD (Ref. Area Unloading), SRU-UNLOAD (MDEA Unloading)

S.E. 107	6/7/1996	DEGREASE1 (Degreaser #1), DEGREASE2 (Warehouse Degreaser #1), DEGREASE3 (Warehouse Degreaser #2)
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- (ii) *The Proposed Permit Fails and Permit Record Fails to Provide Enough Information For a Reader to Determine which Pollutants Pasadena Refining is Authorized to Emit Under Claimed PBRs and Standard Exemptions*

Texas’s General PBR requirements rule at § 106.4 indicates that a PBR may be used to authorize emission of *any* contaminant other than water, nitrogen, ethane, hydrogen, oxygen, and greenhouse gases. 30 Tex. Admin. Code § 106.4(a)(1)(E).<sup>10</sup> However, claiming a PBR for a project cannot automatically authorize the emission of *all* pollutants up to the limits identified in § 106.4 (*i.e.*, 250 TPY NO<sub>x</sub> + 250 TPY CO + 25 TPY VOC + 25 TPY SO<sub>2</sub> + 25 TPY PM + 25 TPY Lead + 25 TPY H<sub>2</sub>S + 25 TPY H<sub>2</sub>SO<sub>4</sub>). If PBRs worked that way, *each* claimed PBR would authorize allowable emission increases exceeding applicable major source and major modification thresholds, in most cases, without any prior authorization or public participation. It would completely undermine the integrity of Texas’s PSD and NNSR programs. Such a program would also improperly allow Pasadena Refining to construct emission units with the potential to emit NSR pollutants at levels that could significantly deteriorate existing air quality and contribute to violations of health-based ambient air quality standards without prior approval by the TCEQ. 42 U.S.C. § 7410(a)(2)(D) (providing that State Implementation Plans must contain provisions to prohibit construction of sources that will cause or contribute to the violation of ambient air quality standards or PSD requirements).

Fortunately, Texas does not seem to read its rules provide that each project authorized by PBR is authorized to emit all contaminants up to the thresholds contained in § 106.4(a)(1). Instead,

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<sup>10</sup> The term “contaminant,” as defined by the Texas Clean Air Act encompasses all federally-regulated NSR pollutants. Tex. Health & Safety Code § 382.003(2).

(1) only emissions related to the particular construction project for which a PBR is claimed are authorized, *see, e.g.*, 30 Tex. Admin. Code § 106.4(a) (stating that emissions from a facility authorized by PBR must remain below the § 106.4(a)(1) limits, “*as applicable*”) (emphasis added) and (2) cumulative authorized emissions for each PBR project must remain below major modification thresholds. (Exhibit 10) PBR Checklist, Section 1. The Proposed Permit, however, undermines the enforceability of these necessary restrictions because it does not contain any information about the projects and emissions authorized by PBR (or Standard Exemption) for any emission unit at the Pasadena Refinery. Instead, the Proposed Permit only lists claimed PBRs and Standard Exemptions by rule number and identifies emissions units subject to requirements in some, but not all, of the claimed PBRs and Standard Exemptions. Because the incorporated rules do not identify which of the many different pollutants each claimed PBR *may* be used to authorize each unit at the Pasadena Refinery is *actually authorized to emit*, the Proposed Permit must provide this information: It must explain how the incorporated PBRs and Standard Exemptions apply to emission units at the Pasadena Refinery. Because the Proposed Permit omits this information, it is incomplete and fails to assure compliance with applicable requirements. *Granite City I Order* at 42-43.

As the Proposed Permit is currently written, the only limits that clearly apply to emission units authorized by PBR are those listed at 30 Tex. Admin. Code § 106.4 and the claimed PBRs. These limits are not stringent enough to assure compliance with PSD and NNSR requirements and to prevent construction of projects that violate applicable air quality standards. Because the Proposed Permit incorrectly suggests that all pollutants that *may* be authorized by a PBR are in fact authorized by each PBR Pasadena Refining has claimed, it fails to assure compliance with applicable requirements.

(iii) *The Proposed Permit Fails to Identify any Emission Units Authorized by Twelve PBRs and Standard Exemptions Claimed by Pasadena Refining*

While the Proposed Permit incorporates the following PBRs and Standard Exemptions, it does not identify *any* emission unit or group of units subject to requirements in the claimed rules: 106.261 (3/14/1997), 106.261 (9/4/2000), 106.262 (3/14/1997), 106.475 (9/4/2000), 14 (6/7/1996), 86 (8/30/1988), 100 (6/7/1996), 106 (9/13/1993), 111 (1/8/1980), 111 (9/12/1989), and 261 (12/24/1988). Proposed Permit 253-267. Because the Proposed Permit fails to identify the emission units authorized by and subject to the requirements in these claimed rules, it is completely opaque as to how the PBRs and Standard Exemptions apply to emission units at the Pasadena Refinery and thereby undermines the enforceability of PBR and Standard Exemption requirements. *Objection to Title V Permit No. O2164, Chevron Phillips Chemical Company, Philtex Plant* (August 6, 2010) at ¶ 7 (draft permit fails to meet 40 C.F.R. § 70.6(a)(1) and (3) because it does not list any emission units authorized under specified PBRs); *Deer Park Order* at 11-15. Moreover, even if an interested party is able to determine which emission units *should* be subject to one or more of these PBRs and Standard Exemptions, a court is unlikely to enforce these requirements, because the Proposed Permit fails to identify them as applicable for any specific emission unit or units at the Pasadena Refinery. *See, United States v. EME Homer City Generation*, 727 F.3d 274, 300 (3d Cir. 2013) (explaining that court lacks jurisdiction to enforce requirements improperly omitted from a Title V permit). Because this is so, the Proposed Permit fails to identify and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a).

c. The Proposed Permit's Incorporation by Reference of So-Called Minor NSR Permits and PBRs that Apply to the Same Emission Unit Makes it Impossible to Determine the Emission Limits that Apply to Such Units

According to the Proposed Permit, Pasadena Refining has used a Chapter 116 NSR permit or permits *and* a PBR or Standard Exemption to authorize projects at and emissions from the following units:

<b>Unit/Unit Group</b>	<b>Description</b>	<b>NSR Permits and PBRs</b>
ALKHT001	#1 Alky Heater	56389, 106.261 (11/01/2003)
ALKHT002	#2 Alky Heater	56389, 106.261 (11/01/2003)
DOKLO001	Barge Loading	26891, 106.261 (11/01/2003), 106.472 (09/04/2000)
HTREF002	Reformer #2 Hydrotreater Stripper Heater Stack	56389, 106.261 (11/01/2003), 106.262 (11/01/2003)
LSGHT001	Heater H-3701	76192, 106.261 (11/01/2003), 106.262 (11/01/2003)
REFHT201	Reformate Splitter Heater (Former Isom)	26891, 106.264 (09/04/2000)
TKFTK118	Tank 118	56389, 106.261 (11/01/2003)
TKFTK205	Tank 205	56389, 106.472 (09/04/2000)
TKFTK307	Tank 307	20246, 106.261 (11/01/2003)
TKFTK331	Tank 331	56389, 106.261 (11/01/2003)
TKFTK807	Tank 807	56389, 106.478 (09/04/2000)
TKFTK808	Tank 808	20246, 106.478 (09/04/2000)
TKFTK810	Tank 810	20246, 106.478 (09/04/2000)
TKFTK811	Tank 811	20246, 106.478 (09/04/2000)
TKFTK812	Tank 812	56389, 106.478 (09/04/2000)
TKFTK815	Tank 815	56389, 106.261 (11/01/2003)
TKFTK818	Tank 818	20246, 106.478 (09/04/2000)
TKFTK820	Tank 820	20246, 106.261 (11/01/2003)
TKFTK822	Tank 822	56389, 106.478 (09/04/2000)
TKFTK830	Tank 830	56389, 106.261 (11/01/2003)
TKFTK831	Tank 831	56389, 106.261 (11/01/2003)
TVFUG-ALL	Refinery Fugitive Equipment	20246, 22039, 26891, 3776, 56389, 5953, 76192, 106.261 (11/01/2003), 106.262 (11/01/2003)
TVFUG-GGA	Fugitive	20246, 56389, 5953, 106.261 (11/01/2003), 106.262 (11/01/2003)

Proposed Permit at 253-267.

While the Special Conditions and MAERTs in the applicable Chapter 116 NSR permits and representations in the many different applications for each permit may list operating requirements and operating limits for these units, there is no way to determine whether these requirements are controlling. This is so because the TCEQ’s Chapter 116 rules provide that PBRs may be used in lieu of a permit amendment or alteration to authorize changes to a facility. 30 Tex. Admin. Code § 116.116(d). Because there is no way, based on the text of the applicable PBRs, to determine exactly how they have been applied to units at the Pasadena Refinery, one cannot determine based on information included in the Proposed Permit and the permit record for this project, which operating requirements and emission limits in the above-listed Chapter 116 NSR permits remain controlling for the above-listed units and which have been revised by a PBR. Because this is so, the Proposed Permit fails to include information required to understand how applicable requirements, including Chapter 116 NSR permits and PBRs apply to emission units at the Pasadena Refinery. Accordingly, the Proposed Permit fails to comply with Title V. 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a).

**4. Issues Raised in Public Comments**

<b>Issue</b>	<b>Citation</b>
The Proposed Permit fails to identify applicable requirements in Pasadena Refining’s preconstruction permit applications	Petitioners’ Initial Comments at 2-3
	Supplementary Comments at 8
The Proposed Permit fails to identify and assure compliance with NSR emission limits and operating requirements it incorporates by reference	Petitioners’ Initial Comments at 2, 5-8 (Chapter 116 NSR Permits), 8-10 (PBRs)
	Supplementary Comments at 20-28 (Chapter 116 NSR Permits and PBRs), 28-35 (PBRs and Standard Exemptions)

## **5. Analysis of State’s Response**

Petitioners’ Initial and Supplementary Comments explain in great detail why the Proposed Permit’s incorporation by reference of Pasadena Refining’s preconstruction permits fails to assure compliance with applicable requirements. These comments (1) identify the specific kinds of information omitted from the Proposed Permit that makes it impossible or nearly impossible to identify applicable emission limits and operating requirements for each unit and (2) asked the Executive Director to explain where—in the permit record—such information could be found.<sup>11</sup> The Executive Director failed to address the substance of Petitioners’ specific comments, relying instead on the argument that the Proposed Permit’s incorporation by reference of so-called “Minor NSR permits,” PBRs, and Standard Exemptions was approved by EPA. Response to Comments at 10, 14, 17, and 23.

Petitioners anticipated and rebutted this unsatisfactory response. Supplementary Comments at 21-28. Even if EPA has declined to object to the TCEQ’s practice of incorporating NSR permit requirements into Texas Title V permits in the past, the Administrator must object to the Proposed Permit because it fails to conform to EPA’s reasonable conditions on the use of IBR and because it fails to assure compliance with emission limits and operating requirements in Pasadena Refining’s many different preconstruction permits.

### **B. The Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Applicable Limits (PBRs and Standard Exemptions)**

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

Each Title V permit issued by the TCEQ must specify monitoring methods that assure compliance with each applicable requirement. 42 U.S.C. §§ 7661c(a) and (c). Emission limits

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<sup>11</sup> See, Initial Comments at 2; Supplementary Comments at 31-32.



and operating conditions established by PBRs and Standard Exemptions incorporated by reference into the Proposed Permit are “applicable requirements.” 30 Tex. Admin. Code § 122.10(2)(H); 40 C.F.R. § 70.2. The Proposed Permit is deficient because it fails to specify monitoring methods that assure compliance with applicable PBR and Standard Exemption requirements.

Special Condition No. 23 of the Proposed Permit provides that PBRs and Standard Exemptions listed in the Proposed Permit’s New Source Review Authorization References attachment are incorporated by reference as applicable requirements.

Special Condition No. 24 of the Proposed Permit requires Pasadena Refining to 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.” The TCEQ’s 30 Texas Administrative Code, Chapter 106, Subchapter A rules establish general requirements for all PBRs.

Special Condition No. 25 establishes a non-exhaustive list of monitoring and recordkeeping methods that Pasadena may use to demonstrate compliance with applicable PBR and Standard Exemption requirements. Because the list of monitoring methods is non-exhaustive, Pasadena Refining may also choose unlisted methods to determine and demonstrate compliance with applicable PBRs and Standard Exemptions.

## **2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. §§ 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1); *In the Matter of Wheelabrator Baltimore, L.P.*, Permit No. 24-510-01886 (April 14, 2010) at 10. As explained below, the Proposed Permit is deficient because it fails to specify monitoring methods that assure compliance with applicable PBR and Standard Exemption requirements.

### **3. Inadequacy of the Permit Term**

Emission units at the Pasadena Refinery authorized by PBRs and Standard Exemptions must comply with general PBR requirements listed at 30 Tex. Admin. Code § 106.4, the general Standard Exemption requirements in effect at the time each exemption was claimed, as well as any requirements listed in the specific PBRs and Standard Exemptions Pasadena Refining has claimed. Proposed Permit, Special Condition Nos. 23 and 24.

As described in Section A of this Petition, the Proposed Permit is deficient because it fails to identify, with reasonable specificity, which PBR and Standard Exemption emission limits and operating requirements apply to each unit at the Refinery. The Proposed is also deficient because it fails to specify monitoring methods that assure compliance with each such limit and operating requirement. Instead, the Proposed Permit outsources the TCEQ's obligation to specify minimum monitoring requirements that assure compliance with applicable limits and operating conditions to Pasadena Refining:

**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, material safety data sheets (MSDS), 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.**

- A. If applicable, monitoring of control device performance or general work practice standards shall be made in accordance with the TCEQ Periodic Monitoring Guidance document.**
- B. 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).**

Proposed Permit, Special Condition No. 25.

Pasadena Refining is not required to use records relating to any of the methods listed in Special Condition No. 25 to demonstrate compliance with any particular applicable PBR and Standard Exemption emission limit or operating requirement. Instead, the Special Condition leaves it to Pasadena Refining's discretion to determine which monitoring methods should be used to demonstrate compliance with each PBR and Standard Exemption emission limit and operating requirement without providing any process for the TCEQ, the public, or EPA to evaluate whether the Company's determination that a particular method yields data representative of compliance with applicable requirements is reasonable.

This outsourcing renders the Proposed Permit deficient for three reasons: First, the Proposed Permit is deficient because it fails to specify monitoring that assures compliance with each applicable requirement. It is not enough for the permit to require Pasadena to use reliable monitoring; instead, the purpose of the permit is to identify and mandate specific monitoring methods that assure compliance with applicable requirements. *In the Matter of Yuhuang Chemical Inc.*, Order on Petition No. VI-2015-03 (August 31, 2016) at 14. ("In order for an emission limit to be enforceable as a practical matter, the permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit."). Second, the Proposed Permit is deficient because the permitting record does not explain how the Proposed Permit assures compliance with applicable PBR and Standard Exemption requirements. *In the Matter of Mettiki Coal*, Order on Petition No. III-2013-1 (September 26, 2014) at 7-8 ("In addition to including permit terms sufficient to satisfy EPA's part 70 monitoring requirements, permitting authorities must include a rationale for the monitoring requirements selected that is clear and

documented in the permit record.”). Third, the Proposed Permit is deficient because the Executive Director’s failure to specify monitoring methods for applicable PBR and Standard Exemption requirements has prevented the public from evaluating whether Title V monitoring requirements have been met. *In the Matter of United States Steel—Granite City Works*, Order on Petition No. V-2011-2 (December 3, 2012) at 9-12 (granting petition for objection because the “permit fails to specify the monitoring methodology and also fails to provide a mechanism for review of the methodology by IEPA, the public, and EPA after the permit is issued.”).

#### **4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in the Supplementary Comments at 2-4.

#### **5. Analysis of State’s Response**

The Executive Director makes two arguments in response to Petitioners’ demonstration that the Proposed Permit fails to require specific monitoring methods that assure compliance with each PBR and Standard Exemption emission limitation and operating requirement. First, the Executive Director contends that the Proposed Permit contains adequate monitoring to provide an assurance of compliance with applicable requirements. Response to Comments at 22. As support for this contention, the Executive Director references his unsupported assertion in response to a different comment that “[t]he ED has determined that the monitoring required by the terms and conditions of the draft permit, including periodic monitoring and Compliance Assurance Monitoring in the Additional Monitoring Summary attachment, is sufficient for PRSI to demonstrate compliance for the applicable state and federal requirements.” *Id.* at 19. As part of the referenced response, however, the Executive Director makes it clear that he does not review the sufficiency of monitoring included in NSR permits issued under the provisions of 30 Tex.

Admin. Code, Chapter 116. *Id.* at 20. Second, the Executive Director contends that the Proposed Permit does not need to specify monitoring methods that assure compliance with PBR and Standard Exemption emission limits and operating requirements:

The ED disagrees that specific monitoring has to be included for every PBR (including Standard Exemptions) held at the site. As stated in Special Terms and Condition 25, PRSI is required to keep records that include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets (MSDS), 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), and control device parametric monitoring. PRSI is required to keep these records for demonstrating compliance in the annual permit compliance certification report for the FOP.

Response to Comments at 23.

The Executive Director's response does not rebut Petitioners' demonstration that the Proposed Permit is deficient because it fails to specify which monitoring methods assure compliance with each applicable PBR and Standard Exemption emission limit and operating requirement. The Executive Director's contention that the Proposed Permit includes monitoring conditions that assure compliance with all applicable requirements is unsupported, because neither the Proposed Permit nor the Statement of Basis identify (1) applicable PBR and Standard Exemption emission limits on a unit-by-unit basis<sup>12</sup> or (2) mandatory monitoring methods that assure compliance with each such limit. While Proposed Permit, Special Condition No. 25 includes a laundry list of records that Pasadena Refining might use to determine compliance with applicable limits, the Proposed Permit does not require Pasadena Refining to use records related

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<sup>12</sup> This information is not included in the claimed PBRs and Standard Exemptions. Though each Chapter 106 PBR is subject to limits at 106.4 and listed in the specific claimed PBR, additional information is needed about the specific projects authorized by PBR to determine how these limits apply. For example, if changes related to a particular project involving multiple pieces of equipment are authorized by a single PBR, cumulative emission increases resulting from the project may not exceed the applicable limits. Thus, the allowable increases from each affected unit may be less than the limit(s) listed in the applicable rule.

to any particular monitoring method(s), listed or unlisted, to determine and demonstrate compliance with applicable PBR and Standard Exemption emission limits. Because the Proposed Permit fails to identify the applicable limits or explain the kind of monitoring Pasadena Refining must undertake to assure compliance with each such limit, the Proposed Permit is deficient.

The Executive Director’s contention that he is not required to specify monitoring that assure compliance with each applicable PBR and Standard Exemption emission limit is incorrect. The TCEQ “does not have the discretion to issue a permit without specifying the monitoring methodology needed to assure compliance with applicable requirements in the title V permit.” *Wheelabrator Order* at 10 (citing 42 U.S.C. § 7661c(c)).

**C. The Proposed Permit Fails to Establish Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Emission Limits for Pasadena Refining’s CO Boiler and FCC Charge Heater**

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

The Proposed Permit is deficient because it fails to establish any monitoring requirements that assure compliance with the following emission limits for combustion units at the Pasadena Refinery authorized by Permit No. 20246:<sup>13</sup>

<b>Unit</b>	<b>Pollutant</b>	<b>Pounds Per Hour Limit</b>	<b>Tons Per Year Limit</b>
HTBLR010 (CO Boiler)	PM <sub>10</sub>	34.80	152.43
	VOC	10.11	44.30
HTFCC002 (FCC Charge Heater)	CO	4.94	21.64
	NO <sub>x</sub>	5.88	25.76
	PM <sub>10</sub>	.45	1.96
	SO <sub>2</sub>	1.92	8.41
	VOC	.32	1.42

<sup>13</sup> (EXHIBIT 2) Permit No. 20246.

Proposed Permit, Special Condition No. 23 incorporates each of the permits listed in its New Source Review Authorization References Attachment. The New Source Review Authorizations References Attachment lists Permit No. 20246 as an incorporated NSR permit.

## **2. Applicable Requirement or Part 70 Requirement Not Met**

The Clean Air Act and EPA's implementing regulations require all Title V permits to contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). The Proposed Permit does not meet this requirement, because it fails to include any monitoring requirements that assure compliance with the above-listed emission limits.

## **3. Inadequacy of the Permit Term**

Each Title V permit must specify monitoring requirements that assure ongoing compliance with each applicable requirement and the permit record for each permit must explain the rationale for the selected monitoring requirements. *Wheelabrator Order* at 10-11. The Proposed Permit incorporates the above-listed emission limits established by Permit No. 20246. Neither the Proposed Permit nor Permit No. 20246 identify monitoring and/or testing requirements that assure compliance with the limits. The Statement of Basis, moreover, does not identify any conditions that assure compliance with the limits. Accordingly, the Proposed Permit fails to comply with 40 C.F.R. § 70.6(a) and (c).

## **4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in the Supplementary Comments at 4-5.

## **5. Analysis of State's Response**

In response to Petitioners' detailed comments regarding the Draft Permit's failure to include monitoring that assures compliance with applicable requirements in Chapter 116 NSR

permits that it incorporated by reference, the Executive Director explained that monitoring provisions in NSR permits are not reviewed as part of the Title V permitting process:

The mentioned NSR permits are not being revised as part of the federal operating permit initial issuance because the FOP cannot authorize new construction or modification. Monitoring concerns regarding the NSR permits are best addressed through the NSR permitting process that provides public comment opportunity when the permits are up for renewal. The Executive Director cannot make changes to the underlying NSR permits as part of the Title V permitting process as NSR is governed by 30 TAC Chapter 116.

Response to Comments at 22.

The Executive Director's response does not rebut Petitioners' demonstration that the Proposed Permit fails to comply with Title V. NSR permit limits are applicable requirements for purposes of Title V and the Proposed Permit must assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c). The fact that NSR permits are issued pursuant to the TCEQ's Chapter 116 rules and not its Chapter 122 Title V permit rules has no bearing on the Executive Director's obligation to ensure that the Proposed Permit assures compliance with the NSR permit limits it incorporates by reference. Indeed, few—if any—of the limits and operating requirements listed in the Proposed Permit were issued pursuant to the TCEQ's Chapter 122 rules. The purpose of the Title V permitting program is to bring together all the federally enforceable requirements issued under various state and federal rules that apply to each major stationary source in a single document that contains monitoring, recordkeeping, and reporting conditions that assure compliance with each such requirement.

The Proposed Permit is deficient because it fails to assure compliance with emission limits established by Permit No. 20246, which are incorporated by reference into the Proposed Permit. The Executive Director did not rebut Petitioners' demonstration that the Proposed Permit is deficient and the Administrator must object to it.



**D. The Proposed Permit Fails to Establish Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Emission Limits for Pasadena Refining’s Boiler #4 and Boiler #6**

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

The Proposed Permit is deficient because it fails to establish monitoring requirements that assure compliance with the following emission limits for combustion units at the Pasadena Refinery authorized by Permit No. 22039:<sup>14</sup>

Unit	Pollutant	Pounds Per Hour Limit	Tons Per Year Limit
HTBLR004 (Boiler #4)	VOC	1.62	7.1
	SO <sub>2</sub>	8	35.04
	PM	3	13.10
HTBLR006 (Boiler #6)	VOC	4.94	21.64
	SO <sub>2</sub>	5.88	25.76
	PM <sub>10</sub>	.45	1.96
	NH <sub>3</sub>	1.92	8.41

Proposed Permit, Special Condition No. 23 incorporates each of the permits listed in its New Source Review Authorization References Attachment. The New Source Review Authorizations References Attachment lists Permit No. 22039 as an incorporated NSR permit.

**2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(c)(1) and 70.6(a)(3). The Proposed Permit does not meet this requirement, because it fails to include any monitoring requirements that assure compliance with the above-listed emission limits.

**3. Inadequacy of the Permit Term**

Each Title V permit must specify monitoring requirements that assure ongoing compliance with each applicable requirement and the permit record for each permit must explain the rationale

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<sup>14</sup> (Exhibit 11) Permit No. 22039.

for the selected monitoring requirements. *Wheelabrator Order* at 10-11. The Proposed Permit does not establish any monitoring requirements that assure compliance with the above-listed limits. While Permit No. 22039 does establish some operating constraints that may be intended to limit potential emissions from the authorized boilers—*e.g.*, heat input limits, opacity limits, and H<sub>2</sub>S fuel gas content limits—the Proposed Permit fails to establish specific monitoring requirements to assure compliance with these operational limits and the permit record fails to explain how these operating constraints—even if properly monitored—assure compliance with the applicable hourly and annual emission limits. *Deer Park Order* at 22.

Special Condition No. 14 of Permit No. 22039 indicates that “[u]pon achieving normal operation, the boiler shall complete initial compliance testing.” However, the Special Condition fails to explain what kind of testing is required, what pollutants must be tested, whether Pasadena Refining is required to document the test results and submit them to the TCEQ, and how the test results should be used to determine compliance with applicable limits. *Deer Park Order* at 22.

Accordingly, the Proposed Permit is deficient because it does not contain provisions that assure compliance with the above-listed emission limits and because the permit record does not explain how the conditions included in the Proposed Permit assure compliance with the above-listed emission limits.

#### **4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in the Supplementary Comments at 6-7.

#### **5. Analysis of State’s Response**

*See*, Section C.5 on pages 31-32 of the Petition above.

**E. The Proposed Permit Fails to Establish Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Emission Limits for Various Units Established by NSR Permit No. 56389**

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

The Proposed Permit is deficient because it fails to establish monitoring requirements that assure compliance with the following emission limits for units at the Pasadena Refinery authorized by Permit No. 56389:<sup>15</sup>

<b>EPN</b>	<b>Source Name</b>	<b>Pollutant</b>	<b>Pounds Per Hour Limit</b>	<b>Tons Per Year Limit</b>
FEWWS	Wastewater System Initial	VOC	22.32	42.38
		Acetone	0.01	0.01
		NH <sub>3</sub>	2.13	1.51
		H <sub>2</sub> S	3.35	1.54
FEWWS	Wastewater System Final	VOC	20.89	39.96
		Acetone	0.01	0.01
		NH <sub>3</sub>	2.01	1.44
		H <sub>2</sub> S	2.72	1.44
HTCRU001-S	Atmospheric and Vacuum Tower Heaters	VOC	3.48	15.23
		PM	4.81	21.05
		NH <sub>3</sub>	2.90	12.50
HTCRU004	Crude Tower Heater (50 MMBtu/hr)	CO	4.10	18.00
		VOC	0.30	1.20
		NO <sub>x</sub>	3.00	13.10
		PM	0.40	1.60
		SO <sub>2</sub>	1.60	7.00
HTREF001	Diesel Hydrotreater Charge Heater No. 1 (22.7 MMBtu/hr)	CO	1.90	1.60
		VOC	0.10	0.50
		NO <sub>x</sub>	1.40	6.00
		PM	0.20	0.70
		SO <sub>2</sub>	0.70	3.20
HTREF002	Diesel Hydrotreater Stripper Heater No. 2 (20.4 MMBtu/hr)	CO	1.70	7.40
		VOC	0.10	0.50
		NO <sub>x</sub>	1.20	5.40
		PM	0.20	0.70
		SO <sub>2</sub>	0.70	2.90
HTALK001	Alky Heater No. 1 (80 MMBtu/hr)	CO	6.60	28.90
		VOC	0.40	1.90
		NO <sub>x</sub>	4.80	21.00

<sup>15</sup> (Exhibit 12) Permit No. 56389.

		PM	0.60	2.60
		SO <sub>2</sub>	2.60	11.20
HTALK002	Alky Heater No. 2 (80 MMBtu/hr)	CO	6.60	28.90
		VOC	0.40	1.90
		NO <sub>x</sub>	4.80	21.00
		PM	0.60	2.60
		SO <sub>2</sub>	2.60	11.20
HTCKR001	Coker Heater No. 1 (95 MMBtu/hr)	CO	7.80	34.30
		VOC	0.50	2.20
		NO <sub>x</sub>	5.70	25.00
		PM	0.70	3.10
		SO <sub>2</sub>	3.00	13.30

Proposed Permit, Special Condition No. 23 incorporates each of the permits listed in its New Source Review Authorization References Attachment. The Proposed Permit's New Source Review Authorizations References Attachment lists Permit No. 56389 as an incorporated NSR permit.

## **2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(c)(1) and 70.6(a)(3). The Proposed Permit does not meet this requirement, because it fails to include any monitoring requirements that assure compliance with the above-listed emission limits.

## **3. Inadequacy of the Permit Term**

Each Title V permit must specify monitoring requirements that assure ongoing compliance with each applicable requirement and the permit record for each permit must explain the rationale for the selected monitoring requirements. *Wheelabrator Order* at 10-11. The Proposed Permit does not establish any monitoring requirements that assure compliance with many of the above-listed limits, and the monitoring conditions that the permit does include fail to assure compliance with applicable limits. Moreover, the permit record for this project does not contain an explanation

of the Executive Director's determination that monitoring requirements in the Proposed Permit assure compliance with Permit No. 56389 emission limits.

The only direct emissions monitoring requirement that applies for any of the above-listed emission limits in Permit No. 56389 is a one-time stack test to measure NH<sub>3</sub> emissions from HTCRU001-S and CO, NO<sub>x</sub>, and SO<sub>2</sub> emissions from HTCRU004. Permit No. 56389, Special Condition No. 29. A one-time stack test is not sufficient to assure ongoing compliance with these emission limits, because it does not indicate how much pollution Pasadena Refining's units will emit over all potential operating scenarios through the life to the units. Instead, a stack-test provides a snapshot of the units' performance at a particular point in time, under optimal conditions. Additionally, a single stack test fails to provide sufficient information to demonstrate that process equipment and controls will function properly on an ongoing basis. *In the Matter of Luke Paper Co.*, Order on Petition to Object to Permit No. 24-001-00011 (November 18, 2010) at 5-6.

Permit No. 59389, Special Condition No. 18 instructs Pasadena Refining to determine compliance with the hourly emission limit for HTCRU001-S by monitoring H<sub>2</sub>S concentration in fuel gas fed to the unit. Monitoring H<sub>2</sub>S content of fuel is not sufficient to assure compliance with hourly SO<sub>2</sub> emission limits, because SO<sub>2</sub> emissions also result from the combustion of non-H<sub>2</sub>S sulfur compounds. Information submitted by industry in response to EPA's comprehensive data requires for the petroleum refining section shows that refinery fuel gas often contains a significant concentration of non-H<sub>2</sub>S sulfur compounds that contribute to SO<sub>2</sub> emissions. U.S. EPA, Comprehensive Data Collected from the Petroleum Refining Sector, ICR Component 4 – Emissions Source Testing, Fuel Gas Memo and Summary Table and Fuel Gas Summary Spreadsheet. For example, at one California refinery, the total reduced sulfur content of the fuel

gas was more than 4,000 times higher than the H<sub>2</sub>S content, and on average, the ratio of total reduced sulfur to H<sub>2</sub>S was about 98 to 1. *Id.* As a result, monitoring for H<sub>2</sub>S alone cannot assure compliance with Permit No. 56389’s hourly SO<sub>2</sub> limit for HTCRU001-S.

**4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in the Supplementary Comments at 12-18.

**5. Analysis of State’s Response**

*See*, Section C.5 on pages 31-32 of the Petition above.

**F. The Proposed Permit Fails to Establish Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Emission Limits for Pasadena Refining’s Tail Gas Incinerator**

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

The Proposed Permit is deficient because it fails to establish any monitoring requirements that assure compliance with the following emission limits for combustion units at the Pasadena Refinery authorized by Permit No. 6059:<sup>16</sup>

<b>Unit</b>	<b>Pollutant</b>	<b>Pounds Per Hour Limit</b>	<b>Tons Per Year Limit</b>
INSRU001 (Tail Gas Ininerator)	VOC	0.05	0.22
	NO <sub>x</sub>	2.18	9.55
	PM <sub>10</sub>	0.25	1.10
	CO	15.96	69.90
	H <sub>2</sub> SO <sub>4</sub>	1.03	4.51

Proposed Permit, Special Condition No. 23 incorporates each of the permits listed in its New Source Review Authorization References Attachment. The Proposed Permit’s New Source Review Authorizations References Attachment lists Permit No. 6059 as an incorporated NSR permit.

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<sup>16</sup> (Exhibit 13) Permit No. 6059.

## **2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). The Proposed Permit does not meet this requirement, because it fails to include any monitoring requirements that assure compliance with the above-listed emission limits.

## **3. Inadequacy of the Permit Term**

Each Title V permit must specify monitoring requirements that assure ongoing compliance with each applicable requirement and the permit record for each permit must explain the rationale for the selected monitoring requirements. *Wheelabrator Order* at 10-11. The Proposed Permit incorporates the above-listed emission limits established by Permit No. 6059. Neither the Proposed Permit nor Permit No. 6059 identify monitoring and/or testing requirements that assure compliance with the limits. The Statement of Basis, moreover, does not identify any conditions that assure compliance with the limits. Accordingly, the Proposed Permit fails to comply with 40 C.F.R. § 70.6(a) and (c).

## **4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in the Supplementary Comments at 20.

## **5. Analysis of State's Response**

*See*, Section C.5 on pages 31-32 of the Petition above.

**G. The Proposed Permit Fails to Establish Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Emission Limits for Pasadena Refining’s Reformer No. 3 Combined Heaters**

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

The Proposed Permit is deficient because it fails to establish any monitoring requirements that assure compliance with the following emission limits for combustion units at the Pasadena Refinery authorized by Permit No. 5953:<sup>17</sup>

<b>Unit</b>	<b>Pollutant</b>	<b>Pounds Per Hour Limit</b>	<b>Tons Per Year Limit</b>
HTREF2631 (Reformer No. 3 Combined Heaters)	SO <sub>2</sub>	17.84	78.14
	NO <sub>x</sub>	32.40	141.91
	PM <sub>10</sub>	7.40	32.41
	CO	39.94	96.21
	VOC	1.5	6.57

Proposed Permit, Special Condition No. 23 incorporates each of the permits listed in its New Source Review Authorization References Attachment. The Proposed Permit’s New Source Review Authorizations References Attachment lists Permit No. 5953 as an incorporated NSR permit.

**2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). The Proposed Permit does not meet this requirement, because it fails to include any monitoring requirements that assure compliance with the above-listed emission limits.

**3. Inadequacy of the Permit Term**

Each Title V permit must specify monitoring requirements that assure ongoing compliance with each applicable requirement and the permit record for each permit must explain the rationale

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<sup>17</sup> (Exhibit 14) Permit No. 5953.



for the selected monitoring requirements. *Wheelabrator Order* at 10-11. The Proposed Permit incorporates the above-listed emission limits established by Permit No. 5953. Neither the Proposed Permit nor Permit No. 5953 identify monitoring and/or testing requirements that assure compliance with the limits. The Statement of Basis, moreover, does not identify any conditions that assure compliance with the limits. Accordingly, the Proposed Permit fails to comply with 40 C.F.R. § 70.6(a) and (c).

**4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in the Supplementary Comments at 19.

**5. Analysis of State’s Response**

*See*, Section C.5 on pages 31-32 of the Petition above.

**H. The Proposed Permit Fails to Require Monitoring that Assures Compliance with Emission Limits for Pasadena Refining’s Flares**

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

The Proposed Permit is deficient because it fails to establish monitoring requirements that assure compliance with the following emission limits for flares authorized by Permit Nos. 56389 and 80804:<sup>18</sup>

EPN	Source Name	Pollutant	lb/hr	TPY
FLRFNEAST FLRFNWEST	East and West Flares	CO	161.39	53.82
		VOC	239.81	79.98
		Benzene	7.29	2.43
		NO <sub>x</sub>	31.68	10.57
		SO <sub>2</sub>	11.86	3.99
		H <sub>2</sub> S	0.13	0.04
FLRFNMSS	MSS from East and West Flares	VOC	663.48	30.11
		NO <sub>x</sub>	58.47	4.59
		CO	297.93	25.73

<sup>18</sup> (Exhibit 12) Permit No. 56389 and (Exhibit 9) Permit No. 80804.

		SO <sub>2</sub>	332.39	8.23
		H <sub>2</sub> S	3.33	0.05
		NH <sub>3</sub>	1.62	0.01

Proposed Permit, Special Condition No. 23 incorporates each of the permits listed in its New Source Review Authorization References Attachment. The Proposed Permit’s New Source Review Authorizations References Attachment lists Permit Nos. 56389 and 80804 as incorporated NSR permits.

**2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). The Proposed Permit does not meet this requirement, because it fails to include monitoring requirements that assure compliance with the above-listed emission limits.

**3. Inadequacy of the Permit Term**

The Proposed Permit fails to assure compliance with emission limits for Pasadena Refining’s flares, because the permit presumes without justification that the flares will continuously achieve a destruction efficiency of 98%. However, data shows that flares subject to the same monitoring requirements as contained in the Proposed Permit achieved, on average, a destruction efficiency of 93.9%. U.S. EPA Petroleum Refinery Sector Rule: Flare Impact Estimates, EPA-HQ-OAR-2010-0682-0209 (January 16, 2014) at 9. The TCEQ’s own analysis confirms EPA’s conclusion that applicable monitoring requirements in the Proposed Permit “do[] not ensure that the flare will achieve 98 percent [destruction efficiency].” TCEQ, 2015 Emissions Inventory Guidelines, RG-360/15, A-43 (January 2016).

To prevent over-steaming that frequently interferes with flare performance and to assure compliance with the applicable flare emission limits, the Proposed Permit must be revised to

require Pasadena Refining to use Passive Fourier Transform Infrared Technology or equivalent to monitor the actual deficiency of Pasadena Refining's flares on a continuous bases or to include monitoring equipment and instrumentation that allows Pasadena Refining to maintain a net heat value of 270 but/scf on a 15-minute block period in the combustion zone of its flares. 40 C.F.R. § 63.670(e); *Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards*, 80 Fed. Reg. 75178, 75210 (December 1, 2015).

#### **4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in their Initial Comments at 12 and Supplementary Comments at 12-13.

#### **5. Analysis of State's Response**

*See*, Section C.5 on pages 31-32 of the Petition above.

### **I. The Proposed Permit Fails to Require Monitoring that Assures Compliance with the 90% Removal Efficiency Requirement for Pasadena Refining's Acid Relief Neutralization System**

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

Permit No. 56389, Special Condition No. 10 provides that "[a]ll waste streams containing HF shall be routed to the acid relief neutralization system, operating with a 90% HF removal efficiency at all time prior to being routed to a flare." The Proposed Permit is deficient because it does not establish any monitoring requirement that assure compliance with this requirement.

Proposed Permit, Special Condition No. 23 incorporates each of the permits listed in its New Source Review Authorization References Attachment. The Proposed Permit's New Source Review Authorizations References Attachment lists Permit Nos. 56389 as an incorporated NSR permit.

## **2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). The Proposed Permit does not meet this requirement, because it fails to include monitoring requirements that assure compliance with the above-listed HF removal efficiency requirement.

## **3. Inadequacy of the Permit Term**

The Proposed Permit is deficient because it fails to establish any monitoring requirement that assures that Pasadena Refining's acid neutralization system will continuously comply with the applicable 90% removal efficiency requirement established by Permit No. 56389, Special Condition No. 10.

## **4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in their Supplementary Comments at 14.

## **5. Analysis of State's Response**

*See*, Section C.5 on pages 31-32 of the Petition above.

## **J. The Proposed Permit Fails to Specify and Assure Compliance with Planned Maintenance, Startup, and Shutdown Emission Limits and Operating Requirements for Boiler #6**

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

The Proposed Permit incorporates Permit No. 22039 by reference. Permit No. 22039, Special Condition No. 13 states that:

This permit authorizes maintenance, start-up, and shutdown emissions associated with the operation of the Boiler (EPN HTBLR006) described in the permit application dated August 2006 and subsequent submittals updating that application. Changes to the types of activities in the future will require either an amendment or an alteration of this permit.

This Special Condition is deficient for two reasons: First, it fails to identify the applicable planned maintenance, startup, and shutdown emissions authorized by Permit No. 22039 and which permit application(s) filed after August 2006 contain enforceable requirements related to planned MSS activities at the Pasadena Refinery. Second, the Special Condition suggests that “updates” to previously-approved application representations may be effective prior to their approval by the Executive Director. This is improper, because application representations for projects that have been approved by the Executive Director are enforceable representations that may only be changed through the amendment or alteration process. 30 Tex. Admin. Code § 116.116(a).<sup>19</sup>

## **2. Applicable Requirement or Part 70 Requirement Not Met**

Each Title V permit must contain enforceable emission limits and operating requirements and such conditions necessary to assure compliance with applicable requirements. 42 U.S.C. § 7661(a) and (c); 40 C.F.R. § 70.6(a) and (c). Applicable requirements include requirements in preconstruction permits and federally-approved preconstruction permitting rules. 40 C.F.R. § 70.2.

Texas’s federally-approved preconstruction permitting rules provide that special conditions and emission limits in preconstruction permits issued by the TCEQ and representations in applications for approved permits are enforceable requirements. 30 Tex. Admin. Code § 116.116.

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<sup>19</sup> The Executive Director acknowledges this fact in his Response to Comments at 9 (“While it is true that there may be pending permit actions occurring during the Title V permit process, the federal operating permit can only address those permits that are currently authorized. Any subsequent changes to underlying NSR authorizations that will impact the Title V permit will be addressed through the Title V revision process.”).

### **3. Inadequacy of the Permit Term**

Permit No. 22039, Special Condition No. 13 fails to assure compliance with applicable requirements, because it fails to actually identify what the applicable planned MSS requirements are or indicate where they can be found. The Proposed Permit may not incorporate by reference NSR permit application representations for projects that have not been approved. Changes to representations after August 2006 must be authorized by a permit amendment or alteration to Permit No. 22039, 30 Tex. Admin. Code § 116.116, and the revised requirements must be brought into the Title V permit by a Title V permit revision before they become enforceable requirements of the Proposed Permit. *Id.* at § 122.210(a).

Moreover, the Draft Permit's incorporation by reference of Permit No. 22039, Special Condition No. 13, which incorporates by reference representations in an unspecified number of permit applications makes it too difficult for those wishing to comment on the draft permit and to enforce the requirements of the final issued Title V permit to determine what the applicable requirements are. To assure compliance with applicable requirements, either Permit No. 22039 or the Proposed Permit must directly identify the applicable requirements regarding planned MSS emissions associated with the operation of the boiler HTBLR006 described in Pasadena Refining's application(s). *Granite City I Order* at 43.

### **4. Issue Raised in Public Comments**

Petitioners raised this issue with reasonable specificity in the Supplementary Comments at 8.

### **5. Analysis of State's Response**

*See*, Section C.5 on pages 31-32 of the Petition above.

## VI. CONCLUSION

For the foregoing reasons, and as explained in Petitioners' timely-filed public comments, the Proposed Permit is deficient. The Executive Director's Response to Comments failed to address Petitioners' significant comments. Accordingly, the Clean Air Act and EPA's 40 C.F.R. Part 70 rules require that the Administrator object to the Proposed Permit.

Sincerely,

/s/ Gabriel Clark-Leach

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