UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit (Federal Operating Permit) No. O1386	§	
	§	
Issued to Motiva Enterprises LLC	§	Permit No. O1386
	§	
Issued by the Texas Commission on Environmental Quality	§	
	§	

PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF PROPOSED TITLE V OPERATING PERMIT NO. O1386 FOR MOTIVA'S PORT ARTHUR REFINERY

Pursuant to section 42 U.S.C. § 7661d(b)(2), Environmental Integrity Project and Sierra Club, 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. O1386 ("Proposed Permit") issued by the Texas Commission on Environmental Quality ("TCEQ" or "Commission") for the Port Arthur Refinery, operated by Motiva Enterprises LLC ("Motiva").

I. INTRODUCTION

Occupying approximately 3,600 acres in Jefferson County and located 90 miles east of Houston, Texas, Motiva's Port Arthur Refinery is the largest petroleum refinery in the United States. It is a major source of criteria pollutants and Hazardous Air Pollutants.

II. PETITIONERS

Environmental Integrity Project ("EIP") is a non-profit, non-partisan organization with offices in Austin, Texas and Washington, D.C. that seeks to improve implementation, enforcement, and compliance with federal environmental statutes.

Sierra Club, founded in 1892 by John Muir, is the oldest and largest grassroots environmental organization in the country, with over 600,000 members nationwide. Sierra Club is a non-profit corporation with offices, programs and numerous members in Texas. Sierra Club has the specific goal of improving outdoor air quality.

Air Alliance Houston is a non-profit organization whose mission is to reduce air pollution in the Houston region and to protect public health and environmental integrity through research, education, and advocacy. Air Alliance Houston participates in regulatory and legislative processes, testifies at hearings, and comments on proposals. Air Alliance Houston is heavily involved in community outreach and works to educate those living in neighborhoods directly affected by air pollution about local air pollution issues, as well as state and federal policy issues.

III. PROCEDURAL BACKGROUND

This Petition addresses the TCEQ's renewal of Permit No. O1386, which was first issued on October 7, 2004 and expired on October 7, 2009. Motiva filed its application to renew the permit on April 6, 2009. The Executive Director completed his technical review of Motiva's renewal application more than eight years later, on July 17, 2014. Notice of the Draft Renewal Permit was published on October 5, 2014. Environmental Integrity Project timely-filed Public Comments on the Draft Permit on November 4, 2014. (Exhibit 1), Public Comments.

Upon receiving these comments, the Executive Director placed Motiva's renewal application on a management delay for nearly two years; from November 4, 2014 until September 2, 2016. On September 6, 2016, the Executive Director finally issued his response to public comments and notice of the Proposed Permit. (Exhibit 2), Notice of Proposed Permit and Executive Director's Response to Public Comment on Permit No. O1386 ("Response to Comments"); (Exhibit 3), Proposed Permit No. O1386. In response to EIP's public comments, the

Executive Director updated the Proposed Permit to remove references to a voided New Source Review permit and to include three tanks that had been omitted from the Draft Permit. The Executive Director declined to make any other changes to address EIP's public comments.

The Executive Director forwarded the Proposed Permit and his Response to Comments to EPA for review. EPA's 45-day review period ran from September 6, 2016 until October 21, 2016. On October 21, 2016, EPA submitted comments concerning the Proposed Permit to the TCEQ. (Exhibit 4), EPA Comments on Proposed Permit No. O1386. These comments raise several concerns about the Proposed Permit's incorporation by reference of applicable requirements. Despite these concerns, EPA did not object to the Proposed Permit. On November 10, 2016, the TCEQ made its response to EPA's comments and approved Motiva's application to renew Permit No. O1386. (Exhibit 5), Response to EPA's Comments. Because EPA declined to object to the Proposed Permit, 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.

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, in a single document, all the applicable requirements for each major source. 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. 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)).

Where a state permitting authority issues a Title V operating permit, EPA must object to the permit if it is not in compliance with applicable requirements under 40 C.F.R. Part 70. 40 C.F.R. § 70.8(c). If EPA does not object, "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 Assure Compliance with Emission Limits and Operating Requirements Established by Motiva's New Source Review Permits

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

The Proposed Permit is deficient because it fails to establish monitoring, reporting, and recordkeeping requirements that assure ongoing compliance with emission limits in New Source Review ("NSR") permits that it incorporates by reference.

Proposed Permit, Special Condition No. 19 provides that NSR permits listed in the Proposed Permit's New Source Review Authorization References attachment are incorporated by reference into the Proposed Permit as applicable requirements.

Proposed Permit, New Source Review Authorization References table lists the following incorporated Chapter 116 NSR permits: Permit No. 3415, 56287, 6056/PSD-TX-106M2, and 8404. Proposed Permit at 605.

The Proposed Permit also incorporates by reference various permits by rule, *Id*. at Special Condition Nos. 19-20 and pages 605-606. Proposed Permit, Special Condition No. 21 establishes the following recordkeeping requirement:

> The permit holder shall maintain record to demonstrate compliance with any emission limitation of 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 access and available as required by 30 TAC § 122.144.

The Statement of Basis for the Proposed Permit states that "[w]ith the exception of any emission units listed in the Periodic Monitoring or CAM Summaries in the FOP, the TCEQ Executive Director has determined that the permit contains sufficient monitoring, testing, recordkeeping, and reporting requirements that assure compliance with the applicable requirements." Statement of Basis at 206. The Statement of Basis, however, does not provide the legal and factual basis for the Executive Director's determination and none of the Periodic Monitoring or CAM Summaries for the permit establish requirements to assure compliance with emission limits in Motiva's New Source Review permits.

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* ("Wheelabrator Order"), Permit No. 24-510-01886 at 10 (April 14, 2010). Emission limits in NSR permits incorporated by reference into the Proposed Permit are "applicable requirements." 40 C.F.R. § 70.2. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5); *In the Matter of United States Steel, Granite City Works* ("Granite City I Order"), Order on Petition No. V-2009-03 at 7-8 (January 31, 2011) (state agency failed to explain

how recordkeeping and pollution control inspection requirements, in the absence of any actual monitoring requirements, would assure compliance with applicable PM limits and yield reliable data representative of compliance with the permit).

As explained below, the Proposed Permit is deficient because (1) it fails to specify monitoring methods that assure compliance with emission limits in incorporated NSR permits, including PBRs and (2) the permit record does not contain a reasoned justification for the monitoring methods included in the permit.

3. Inadequacy of the Permit Term

a. Permit No. 3415

(i) PM_{10}

Permit No. 3415 authorizes significant annual emissions from two 587 MMBtu/hr boilers at the Port Arthur Refinery, but does not directly identify any monitoring that assures compliance with the following emission limits:

EPN	Unit Name	Pollutant	lb/hr	TPY
SPS3-4	Boiler 34 (Normal and MSS operation)	PM_{10}	12.6	22.4
SPS3-5	Boiler 35 (Normal and MSS operation)	PM_{10}	12.6	22.4

(Exhibit 6), Permit No. 3415, Maximum Allowable Emission Rate table ("MAERT").

While Permit No. 3415, Special Condition No. 13(D) provides that Motiva should demonstrate compliance with emission limits for NO_x and CO using CEMS, the permit does not explain how Motiva should determine compliance with hourly and annual emission limits for PM_{10}. Nothing in the Statement of Basis or permit record for this project clarifies how PM_{10} emissions should be monitored or how Motiva should determine compliance with applicable

hourly and annual PM_{10} emission limits in Permit No. 3415. Accordingly, the Proposed Permit is deficient because it does not assure ongoing compliance with applicable requirements and the Executive Director has not provided the legal or factual basis to support his contrary determination.

(ii) Opacity

Permit No. 3415, Special Condition No. 6 provides that the two boilers authorized by the permit may not exceed 20 percent opacity. While the permit does include monitoring for this limit—Method 9 *or* COMs—this monitoring does not assure ongoing compliance with the opacity limit. First, the permit does not specify how frequently Motiva must make Method 9 observations if Method 9 is the compliance option Motiva selects. Second, intermittent Method 9 monitoring is not sufficient to assure ongoing compliance with the opacity limit. Third, the permit record fails to include a legal and factual basis for the Executive Director's determination that the Proposed Permit assure compliance with this opacity limit.

b. Permit No. 56287

(i) NO_x and PM_{10} Emission Limits

Permit No. 5687 authorizes significant annual emissions from Motiva's 15 megawatt gas turbine at the Port Arthur Refinery, but does not directly identify any monitoring that assures compliance with the following emission limits:

EPN	Unit Name	Pollutant	lb/hr	TPY
SPS3-7	Gas Turbine No. 34 15-MW	NO_x	31.8	139.3
		PM_{10}	3.21	14.1

(Exhibit 7), Permit No. 56287 MAERT.

Nothing in the Statement of Basis or permit record for this project clarifies how NO_x and PM_{10} emissions should be monitored or how Motiva should determine compliance with applicable hourly and annual NO_x and PM_{10} emission limits in Permit No. 5687. Accordingly, the Proposed

Permit is deficient because it does not assure ongoing compliance with applicable requirements and the Executive Director has not provided the legal or factual basis to support his contrary determination.

(ii) NO_x Performance Standard

Permit No. 56287, Special Condition No. 3 also contains a performance standard for NO_x of 25 parts per million by volume, dry at 15 percent oxygen. Compliance with this limit is to be demonstrated by continuous monitoring of the water-to-fuel ratio. Permit No. 56287 at Special Condition No. 12. This monitoring requirement fails to assure compliance with the NO_x standard because the permit does not specify a ratio or range of ratios indicative of compliance with the standard or explain how the monitoring data should be used to determine compliance with the standard. *Wheelabrator Order* at 10-11 (objecting to Title V permit that failed to explain how monitoring data should be used to calculate emissions for purposes of determining compliance with applicable emission limits). The permit record, moreover, fails to provide the legal and factual basis for the Executive Director's determination that this monitoring method assures compliance with the NO_x performance standard.

c. Permit No. 6056/PSDTX1062M1

(i) Flares

Permit No. 6056/PSDTX1062M1 authorizes emissions from various flares at the Port Arthur Refinery. The permit requires any gas or vapor removed from process or storage vessels to be routed to a control device with a least 98 percent VOC destruction efficiency. Permit No. 6056/PSDTX1062M1, Special Condition No. 54. The Proposed Permit is deficient, because the flare monitoring required by Permit No. 6056/PSDTX1062M1—continuous monitoring to determine presence of a pilot flame—does not assure that Motiva's flares will continuously

achieve the required level of control. EIP presented several detailed studies demonstrating that factors, like over steaming, can impair flare performance and that additional instrumentation was required to assure compliance with applicable requirements. Public Comments at 4-5. After the public comment period ended, additional information became available confirming EIP's comments. Extensive data collected by EPA shows that flares using the kind of monitoring required by the Proposed Permit achieve, on average, a destruction efficiency of 93.9 percent. 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 ongoing compliance with the applicable flare emission limits, the Proposed Permit must be revised to require Motiva to use Passive Fourier Transform Infrared Technology or equivalent to monitor the actual eficiency of Motiva's flares on a continuous basis or to include monitoring equipment and instrumentation that allows Motiva 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).

(ii) Tanks

Permit No. 6056/PSDTX1062M1, Special Condition 58A provides that routine annual emissions from Motiva's tanks shall be calculated using AP-42 emission factors. The permit record does not demonstrate that this method of calculating tank emissions assures compliance

with the permit's VOC emission limits. As EPA has explained, AP-42 emission factors should not usually be used to determine compliance with permit requirements. *In the Matter of Tesoro Refining and Marketing* ("Tesoro Order"), Order on Petition No. IX-2004-6 at 32 (March 15, 2005) ("Because [AP-42] emission factors essentially represent an average of a range of facilities and of emission rates, they are not necessarily indicative of the emissions from a given source at all times; with a few exceptions, use of these factors . . . to determine compliance with permit requirements is not general recommended."). As EIP demonstrated in its public comments, direct monitoring studies conducted at petroleum refineries, including refineries in Texas, show that AP-42 emission factors can drastically underestimate actual tank emissions. Public Comments at 6, n14. Petitioners are particularly concerned, because Permit No. 6056/PSDTX1062M1 only requires Motiva to inspect tank components once a year and annual inspections are not frequent enough to prevent tank leaks that are not accounted for by AP-42 emission factors. Public Comments at 6.

Because AP-42 emission factors are a disfavored method for demonstrating source-specific emission limits, because recent studies show that AP-42 emission factors may drastically underestimate actual emissions from petroleum refinery tanks, and because the permit record does not demonstrate that AP-42 emission factors accurately reflect actual emissions from Motiva's tanks, the Proposed Permit fails to assure compliance with emission limits for tanks at the Port Arthur Refinery.

(iii) Combustion Units

Permit No. 6056/PSDTX1062M1 authorizes many different combustion units at the Port Arthur Refinery and establishes limits allowing these units to emit significant quantities of criteria pollutants. The authorized units and the relevant emission limits are listed in (Exhibit 8) to this

petition. Permit No. 6056/PSDTX1062M1, Special Condition 58(D) provides that emissions from boilers and heaters covered by the permit:

> [s]hall be calculated based on CEM information, if required for the source. If CEM information is not available, emissions shall be calculated based on the most recent stack sampling results, if available. If no stack sampling data is available, emissions shall be calculated using the appropriate emission factor for the specific source and the measured daily heating value and average flow rate of the fuel gas. If the facility is fired with fuel oil, the emissions from fuel oil combustion shall be calculated using the appropriate emission factor for the specific source, the quantity of fuel oil fired, and the fuel oil sulfur content.

Permit No. 6056/PSDTX1062M1, Special Condition No. 58(E) provides that:

> SRU emissions shall be calculated based on CEM information, if required for the source. If CEM information is not available, emissions shall be calculated based on the most recent stack sampling results for those compounds, if available. If no stack sampling results are available, use the appropriate emission factor for the specific source.

Permit No. 6056/PSDTX1062M1, Special Condition No. 58(E) establishes identical requirements for Motiva's cogeneration power plant units.

These special conditions fail to assure compliance with applicable emission limits for several reasons. First, the Proposed Permit must identify the monitoring, recordkeeping, and reporting requirements that assure compliance with each applicable emission limit. *Wheelabrator Order* at 10. While Permit No. 6056/PSDTX1062M1 does identify units and pollutants to be monitored by CEMS, it is unclear which units and pollutants not monitored by CEMS have been subject to stack testing, when the relevant stack testing was performed, and how stack test results are to be used to calculate emissions for purposes of demonstrating compliance. For units and pollutants not monitored by CEMS and not subject to stack testing, the permit fails to identify which "appropriate" emission factor(s) are to be used to demonstrate compliance, the permit record fails to demonstrate that these emission factors accurately reflect actual emissions from the

relevant units and that the permit contains emission limits and operating requirements sufficient to assure that each unit will be operated consistent with conditions presumed by the emission factors. Where a permit allows an operator to demonstrate compliance with emission limits using an emission factor, the permit must specify the emission factor that assures compliance with the limit[1] and the permit record must provide an explanation why the use of emission factors is adequate to assure compliance. *Granite City I Order* at 13-14. Because the Proposed Permit and permit record do not contain this information, the Proposed Permit is deficient.

d. Permit No. 8404/PSDTX1062M1

(i) Tanks

Permit No. 8404/PSDTX1062M1 authorizes many different storage tanks located at the Port Arthur Refinery. *See* Permit No. 8404/PSDTX1062M1 MAERT, pages 15-19.[2] Permit No. 8404/PSDTX1062M1, Special Condition Nos. 2(G) and 37(A) direct Motiva to use AP-42 emission factors to calculate emissions from these tanks to determine ongoing compliance with applicable tank emission limits in Permit No. 8404/PSDTX1062M1. As explained above with respect to tanks authorized by Permit No. 6056/ PSDTX1062M1, AP-42 emission factors do not assure compliance with applicable emission limits and the permit record fails to provide legal and factual support for the Executive Director's contrary determination. *See*, *supra* at 10-11.

(ii) Boilers, Heaters, and FCCU

Permit No. 8404/PSDTX1062M1 authorizes significant emissions from boilers, heaters, and the FCCU unit at the Port Arthur Refinery. Permit No. 8404/PSDTX1062M1, Special

[1] *In the Matter of United States Steel, Granite City* Works ("*Granite City II Order*"), Order on Petition No. V-2011-2 at 9-12 (December 3, 2012) (granting claim, because permit failed to specify which emission factors operator was required to use to demonstrate compliance with applicable requirements).

[2] The permit establishes aggregate limits for a group of tanks identified as "Tank Group." While footnote 6 to the MAERT states that the tanks included in this group are listed in an attachment to the permit. This attachment, however, does not seem to be included in the Proposed Permit's Appendix B.

Condition No. 37(D), (E), and (H) direct Motiva to calculate emissions from these units using CEMS data for pollutants monitored by CEMS, stack sampling data for units and pollutants not monitored by CEMS, and appropriate emission factors for units and pollutants not monitored by CEMS and for which stack sampling data is not available.

As explained above with respect to combustion units authorized by Permit No. 6056/PSDTX1062M1, this monitoring provision fails to assure compliance with applicable emission limits because it fails to clearly identify which method applies for each pollutant emitted from each unit, because the Proposed Permit fails to identify the applicable emission factor(s), and because the permit record does not justify the Executive Director's determination that Special Condition No. 37 assures compliance with hourly and annual emission limits for combustion units authorized by Permit No. 6056/PSDTX1062M1.

e. Permits by Rule

According to the Proposed Permit's NSR Authorization References by Emission Unit table, more than 200 tanks at the Port Arthur Refinery are authorized by PBR. Cumulative potential emissions from these tanks and other emission units authorized by PBRs at the Port Arthur Refinery present a significant risk to local air quality. Thus, it is important that the Proposed Permit include monitoring that assures compliance with applicable PBR requirements and limits. Where a PBR does not identify specific monitoring requirements or where the monitoring requirements specified by a PBR do not assure compliance with applicable limits, the Executive Director must revise the Proposed Permit to include supplemental monitoring requirements. 42 U.S.C. § 7661c(c); *Sierra Club v EPA*, 536 F.3d 673, 677 (D.C. Cir. 2008). The Executive Director does not have discretion to issue a permit without specifying the monitoring methodology needed to assure compliance with applicable requirements. *Wheelabrator Order* at

10. Neither the Proposed Permit nor the PBR rules listed in the Proposed Permit's New Source Review Authorization References table identify specific monitoring methods that assure compliance with applicable PBR requirements. For example, Motiva claims the PBR at 106.472 (9/4/2000) to authorize emissions from more than 150 tanks and loading facilities. This PBR contains nothing more than a list of chemicals that may be stored in units under the rule. While the Proposed Permit does identify the TCEQ's PBR general requirements at 30 Tex. Admin. Code Chapter 106, Subchapter A as applicable requirements and includes Special Condition Nos. 20 and 21, which are related to PBR recordkeeping, these provisions do not specify which monitoring methods—*if any*—are necessary to assure compliance with applicable PBR requirements. Rather, these provisions provide a non-exhaustive menu of options that Motiva may pick and choose from at its discretion to demonstrate compliance. This broad, non-exhaustive list does not assure compliance with PBR requirements. In fact, the laundry list of options for monitoring compliance with PBR requirements is so vague that it is virtually meaningless:

> 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 limit to,* production capacity and throughput, hours of operation, material safety data sheets . . . , chemical composition of raw materials, speciation of air contaminants data, engineer calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring . . ., or control device parametric monitoring.

Proposed Permit, Special Condition No. 21.

This provision allows Motiva to determine which records and monitoring provide sufficiently "reliable data" effectively outsourcing the Executive Director's obligation to specify the monitoring method(s) that will assure compliance with each emission limit or standard

established by PBRs incorporated by reference into the Proposed Permit. This vagueness also prevents EPA and the public from effectively evaluating whether the monitoring methods Motiva actually uses to determine compliance with PBR requirements are consistent with Title V. For example, Petitioners would likely review and/or challenge monitoring relying upon undefined "engineering calculations" to determine compliance, unless the permit record contained information showing that such calculations assure compliance with applicable emission limits.

Neither the Proposed Permit, nor the accompanying Statement of Basis provide support for the Executive Director's determination that the Proposed Permit specifies monitoring methods that assure compliance with PBR requirements. Because this is so, the Proposed Permit is deficient.

4. Issues Raised in Public Comments

EIP identified this issue on pages 1-10 of its Public Comments.

5. Analysis of State's Response

The Executive Director's Response to Comments addresses Petitioners' comments concerning the Draft Permit's failure to specify monitoring methods that assure ongoing compliance with emission limits and operating requirements established by Motiva's New Source Review permits in two parts. First, the Executive Director addresses Petitioners' concerns generally. Next, the Executive Director provides brief responses to Petitioners' concerns about each of the incorporated NSR permits. As shown below, these responses fail to rebut Petitioners' demonstration that the Proposed Permit fails to identify monitoring that assures ongoing compliance with emission limits and operating requirements established by Motiva's NSR permits.

a. The Executive Director's Contention that the Sufficiency of Monitoring Requirements in NSR Permits is Beyond the Scope of Title V Permit Reviews is Incorrect

The Executive Director provides the following general response to Petitioners' comments regarding monitoring:

> The NSR permits listed in the draft permit were issued separately under the provisions of 30 TAC Chapter 116 and are not reviewed as part of the Title V renewal process; therefore, it is not appropriate for the Statement of Basis to discuss the monitoring requirements for these permits. The technical review for each NSR permit authorization was made available to the public via the remote document server during the public notice period. These technical reviews include discussions of the appropriateness of monitoring and best available control technology (BACT).

Response to Comments at 7.

The Executive Director's contention that he is not obligated to review and document the sufficiency of monitoring requirements in NSR permits as part of the Title V process, because such permits were issued through a separate process using rules that do not apply to Title V permits is incorrect. If monitoring for limits and operating requirements established outside the Title V process did not need to be considered as part of the Title V process, then Title V's monitoring requirements would be entirely meaningless. That is so because the purpose of Title V permits is to compile and assure compliance with applicable requirements *established outside the Title V process*:

> While title V generally does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be followed, especially with respect to determining compliance with underlying applicable requirements. The program will generally clarify, in a single document, which requirements apply to a source and, thus, should enhance compliance with the requirements of the Act. Currently, a source's obligations under the Act (ranging from emissions limits to monitoring, recordkeeping, and reporting requirements) are, in many cases, scattered among numerous provisions of the SIP

> or Federal regulations. In addition, regulations are often written to cover broad source categories, therefore, it may be unclear which, and how, general regulations apply to a source. As a result, EPA often has no easy way to establish whether a source is in compliance with regulations under the Act.

57 Fed. Reg. 32251.

As EPA and federal courts have made clear, the Title V permitting process assures compliance with applicable emission limits and operating requirements compiled in Title V permits because state permitting authorities must evaluate monitoring methods contained in applicable rules and NSR permits and supplement non-existent or unreliable monitoring methods. *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008) ("But Title V did more than require the compilation in a single document of existing applicable emission limits . . . . It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions.").

The Proposed Permit must include monitoring, recordkeeping, and reporting requirements that assure ongoing compliance with all "applicable requirements." 42 U.S.C. § 7661c(a) and (c). Emission limits and operating requirements established by Motiva's NSR permits are "applicable requirements" for purposes of this Title V project. 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2)(H). Accordingly, the Proposed Permit must specify monitoring methods that assure compliance with emission limits and operating requirements in Motiva's NSR permits and the permit record must provide the legal and factual basis for the Executive Director's determination that the selected monitoring methods are sufficient. 40. C.F.R. §§ 70.6(a) and (c) and 70.7(a)(5).

While the unambiguous text of Title V and EPA's Part 70 regulations provide a sufficient rebuttal of the Executive Director's claim that he need not review NSR monitoring requirements as part of the Title V permitting process, EPA's orders concerning NSR monitoring requirements

incorporated by reference into Texas Title V permits provide additional evidence to the contrary. *See, e.g., Deer Park Order* at 17-28 (objecting to Title V permits on ground that incorporated NSR permits and the Title V permit record did not sufficiently identify applicable monitoring requirements for tanks, wastewater treatment plants, and combustion sources); *In the Matter of the Premcor Refining Group* ("Premcor Order"), Order on Petition No. VI-2007-02 (May 28, 2009) 8-29 (granting petition because incorporated NSR permits failed to require monitoring sufficient to assure ongoing compliance with applicable emission limits and because the permit record failed to demonstrate that monitoring required by the permits assured ongoing compliance).

Additionally, while it may be true that some technical review documents for the various projects authorized by Motiva's NSR permits contain "discussions" about the "appropriateness" of monitoring required by those permits, this information was not part of the permit record for this project. EPA's regulations are clear that "[a]ny cross-referenced documents must be included in the title V application that is sent to EPA and that is made available as part of the public docket on the permit action." 57 Fed. Reg. 32254. The technical review documents the Executive Director relies upon in his Response to Comments were not only not in the permit record for this project, they were not even cross-referenced by the Proposed or the Statement of Basis. The mere fact that information about the monitoring methods Motiva uses to determine compliance with applicable requirements may exist in some document(s) possessed by the TCEQ is not sufficient to make these methods enforceable or to put members of the public on notice as to which methods are required and to the basis for the Executive Director's determination that these methods assure ongoing compliance with applicable emission limits and operating requirements. Accordingly, the Executive Director may not rely on these documents to demonstrate the sufficiency of monitoring required by the Proposed Permit.

b. The Executive Director's Response to Petitioners' Specific Concerns Fails to Rebut Petitioners' Demonstration that the Proposed Permit Fails to Assure Compliance with Emission Limits and Operating Requirements in Motiva's NSR Permits

In addition to the Executive Director's general claim that monitoring methods that assure compliance with emission limits and operating requirements in Motiva's NSR permits need not be reviewed or documented as part of the Title V permit review process, the Executive Director offers a brief response to each of EIP's permit-specific demonstrations. As explained below, these responses do not rebut Petitioners' demonstration the Proposed Permit fails to assure compliance with applicable requirement and that the permit record fails to provide support for the Executive Director's determination to the contrary.

(i) Permit No. 3415

In response to EIP's comments that Permit No. 3415 fails to (1) directly identify the required monitoring methods that assure compliance with hourly and annual PM_{10} limits for Boilers 34 and 35 at the Port Arthur Refinery and (2) establish monitoring that assures ongoing compliance with the 20 percent opacity limit, the Executive Director writes:

> The ED disagrees that the NSR permit lacks monitoring requirements to demonstrate compliance with the emission limits in the Maximum Allowable Emission Rate table for the two boilers. As stated in the NSR technical review for NSR Permit 3415, compliance with the PM_{10} limits for these boilers, SPS3-4 and SPS3-5, is determined by monitoring for opacity of emissions, as required in Special Condition 6, and continuously monitoring fuel consumption, as required in Special Condition 7.
>
> Special Condition 6 provides compliance flexibility for Motiva to either conduct opacity readings under subparagraph 6.A. or installing a COMS for continuously monitoring opacity under subparagraph 6.B. The ED disagrees that the opacity readings specified in Special Condition 6.A. do not specify a monitoring frequency. The condition explicitly requires observations to be conducted once per calendar quarter. Periodic monitoring does not necessarily have to be conducted continuously, but only to the extent that a reasonable assurance of compliance is provided by the monitoring frequency. EPA previously stated that TCEQ may

> consider several factors in determining the adequacy of monitoring including the likelihood of exceeding the emission limits, past compliance history, and monitoring requirements for similar units. It is not expected that Motiva will exceed the PM limits when burning refinery fuel gas or fuel oil limited to less than 0.05 percent by weight sulfur.

Response to Comments at 8.

There are several problems with this response. First, the technical review for Permit No. 3415 is not itself directly enforceable. If monitoring opacity and fuel consumption is sufficient to assure compliance with the applicable hourly and annual limits, the Executive Director must revise the Proposed Permit to require Motiva to use this monitoring data to assure compliance with the applicable limits.

Second, Permit No. 3415, Special Condition No. 6 appears to allow Motiva to monitor the opacity of emissions from its boilers on a quarterly basis. Response to Comments at 8 ("The condition explicitly requires observations to be conducted once per calendar quarter."). Quarterly opacity monitoring does not yield reliable data representative of ongoing compliance with the applicable hourly and annual opacity and PM_{10} limits. *In the Matter of EME Homer City Generation, Bruce Mansfield Plant* ("Homer City Order"), Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 44 (July 30, 2014) (objecting to permit because "PADEP [does not] attempt to explain how a weekly Method 9 observation relates to an opacity limit that must be met at all times.").

Third, it is not clear how monitoring fuel consumption in conjunction with quarterly opacity monitoring assures compliance with the applicable hourly and annual PM_{10} limits. Even if one presumes that the annual fuel consumption monitoring and limits in Special Condition No. 7, if met, provide some assurance of compliance with annual PM_{10} limits, the annual fuel consumption limit has no bearing on short-term fuel consumption and PM_{10} emission rates. And,

of course, the Executive Director has not demonstrated that monitoring fuel consumption for compliance with Motiva's annual fuel consumption limits assures compliance with Motiva's annual PM_{10} emission limits.

Fourth, the Executive Director has not provided any basis for his contention that "[i]t is not expected that Motiva will exceed the PM limits when burning refinery fuel gas or fuel oil limited to less than 0.05 percent by weight sulfur." Response to Comments at 8. Because the permit record does not contain information supporting this claim and fails to provide a reasoned basis for the Executive Director's determination that the Proposed Permit's monitoring requirements assure compliance with PM_{10} and opacity emission limits contained in Permit No. 3415, the Proposed Permit is deficient and the Administrator must object to it.

(ii) Permit No. 56287

The Executive Director offers the following response to EIP's demonstration that the Draft Permit failed to assure compliance with hourly and annual NO_x and PM_{10} emission limits and the NO_x performance standard for Motiva's Gas Turbine No. 34:

> The ED disagrees that permit 56287 does not specify monitoring requirements to demonstrate compliance with conditions of the permit. As stated in the technical review for this permit, engineering calculations and fuel usage are used to calculate emissions. The water-to-fuel ratio is used to calculate NO_x emissions and opacity is used as a surrogate for demonstrating compliance with PM emissions.
>
> The turbines use water injection to control NO_x emissions. The permit specifies the use of a continuous water to fuel ratio monitoring system to monitor the ratio of water injected to the fuel fired in the turbine in order to demonstrate continuous compliance with the NO_x limits. It is not practical to specify a range for the water-to-fuel ratios since this value will vary depending on the water injected and fuel fired at various turbine load rates. The permit holder is responsible for keeping records to show that these rates correspond to the values established at the last performance test.

Response to Comments at 8.

The Executive Director's contention that the technical review document for the version of Permit No. 56287 explains that fuel usage and engineering calculations are used to calculate NO_x PM_{10} emissions from Motiva's turbine is incorrect. This document, attached to this Petition as (Exhibit 9), does not provide any information about how NO_x and PM_{10} emissions from Motiva's turbine should be calculated to assure compliance with the applicable limits. The technical review document does confirm that "[c]ontinuing compliance for the NO_x limitation is required by Special Condition No. 3 under routine operations is demonstrated by water-to-fuel ration monitoring," but fails to explain how this monitoring should be used to calculate emissions or to determine compliance with hourly and annual NO_x emission limits and the NO_x performance standard established by Permit No. 56287, Special Condition No. 3. *Deer Park Order* at 22 ("A review of the permit and the permit record in light of the Petitioners' claims, in particular a comparison between what the permit actually provides and TCEQ's response, indicates that it was not clear . . . how the rolling 12-month VOC emissions from the storage tanks are determined despite the numerous monitored parameters").

The Executive Director's Response to Comments suggests that monitoring the water-to-fuel ratio for the turbine assures compliance with applicable NO_x limits and standards because "[t]he permit holder is responsible for keeping records to show that these rates correspond to the values established at the last performance test." Response to Comments at 8. This claim, however, is not reflected in the permit terms and is not independently enforceable. *Deer Park Order* at 22. If monitoring the water-to-fuel ratio assures compliance with the NO_x performance standard so long as the rates correspond to values established during the last stack test, the Proposed Permit must make the performance test values enforceable limits and the permit record must explain how

maintaining rates consistent with the last performance test assures compliance with the NO_x performance standard.

The Executive Director's contention that Motiva must use opacity as a surrogate for determining compliance with applicable hourly and annual PM_{10} limits is not supported by the permit and the permit record does not contain information showing that compliance with the applicable opacity limit correlates to compliance with the PM_{10} limit.

Thus, the Executive Director's Response to Comments fails to rebut Petitioners' demonstration that the Proposed Permit fails to assure compliance with NO_x requirements in Permit No. 56287 and that the permit record for this project fails to establish reasonable support for the Executive Director's determination to the contrary.

(iii) Permit No. 6056/PSDTX1062M1

Flares

In response to EIP's comments concerning the Draft Permit's flare monitoring provisions, the Executive Director explained that: (1) flares like the ones at the Port Arthur Refinery have a low probability of visible emissions when operated correctly, (2) visible emissions are subject to Method 22 opacity monitoring requirements, and (3) there is no currently-available, EPA-approved mechanism for testing or monitoring emissions from an operating flare. Response to Comments at 9-10.

The Executive Director's first two arguments related to visible emissions requirements are not responsive to EIP's comments because EIP did not comment about visible emissions from Motiva's flares. Instead, EIP demonstrated that the Proposed Permit fails to assure compliance with VOC emission caps and limits. The Executive Director's focus on visible emissions is

surprising, because studies cited in EIP's comments explain that assist steam used to minimize visible emissions may interfere with the proper combustion of VOC.

The Executive Director's third contention, that there is no currently-available EPA-approved mechanism for testing or monitoring emissions from an operating flare, is incorrect. EPA has approved monitoring requirements that "ensure that refinery flares meet 98-percent destruction efficiency at all times." *Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards*, 80 Fed. Reg. 75175, 75211 (December 1, 2015). These requirements are found at 40 C.F.R. § 63.670. While these monitoring requirements had not been approved at the time EIP filed its Public Comments, they were approved well before the Executive Director issued his Response to Comments.

The Executive Director's Response to Comments failed to address the substance of EIP's comments, ignored the studies presented in those comments, and failed to acknowledge monitoring requirements for flares promulgated after the close of the public comment period, which were established to address factors EIP identified in their comments that diminish flare performance.[3] Because the permit record fails to contain information showing that the Executive Director considered significant issues raised in EIP's comments and because the TCEQ has not explained how the monitoring requirements in the Proposed Permit assure ongoing compliance with VOC emission limits in Permit No. 6056/PSDTX1062M1, the Administrator must object to the Proposed Permit. *Wheelabrator Order* at 7 ("The Petition is granted on this issue . . . because

[3] This is so even though EIP's comments specific requested the Executive Director to provide a response to EPA's flare study: "If the Executive Director disagrees with the study Commenters cite or EPA's findings regarding flare emissions discussed in the recently proposed refinery NESHAP rule, or believes that these findings are inapplicable to Motiva's flares, Commenters request that he explain the basis for that determination and explain how monitoring requirements in the Draft Permit will prevent over steaming and other factors that are known to reduce flare destruction efficiency." Public Comments at 5.

MDE's response does not address and is thus substantively non-response to the specific objection(s) raised by Petitioners").

Tanks

In response to EIP's comments concerning the sufficiency of tank monitoring requirements in Permit No. 6056/PSDTX1062M1, the Executive Director writes:

> The ED disputes the claim that AP-42 factors are inappropriate for calculating emissions from storage tanks. AP-42 is an accepted methodology for calculating emissions based on industry accepted emission factors. AP-42 emissions factors are conservative in nature and often overestimate emissions. Thus, the ED does not agree it is necessary to develop site-specific emission factors.

Response to Comments at 10.

This response fails to even acknowledge EIP's concern that inspections of Motiva's tanks required by Permit No. 6056/PSDTX1062M1 is too infrequent to detect leaks that can result in significant emissions that are not accounted for by AP-42 emission factors or address the studies cited by EIP's comments demonstrating that AP-42 emission factors have underestimated actual emissions from storage tanks at petroleum refineries in Texas. Public Comments at 6 ("The Draft Permit's current periodic monitoring provisions, which require visual inspection of vapor collection system tank components once a year, are not sufficient to assure that the tanks are well maintained and to prevent leaks."). The Executive Director's response is also at odds with EPA's position that, in most situations, AP-42 emission factors should not be used to determine compliance with emission limits. *Tesoro Order* at 32. Accordingly, the Proposed Permit is deficient because the Executive Director failed to respond to significant comments and because the permit record for this project does not establish that AP-42 emission factors provide a reliable basis for determining compliance with applicable hourly and annual emission limits for Motiva's storage tanks. *Wheelabrator Order* at 7.

Combustion Units

In response to EIP's demonstration that Permit No. 6056/PSDTX1062M1 fails to assure compliance with annual and hourly emission limits for combustion units for pollutants that are not measure by CEMS, the Executive Director writes:

> The ED disagrees that the special conditions included by the commenter do not provide an adequate assurance of compliance with emission limits from these sources. CEM, stack testing, or emission calculations are accepted protocols for determining compliance with emission limits. The ED disagrees that annual stack testing should be required of Motiva to establish source specific emission factors. The rationale for the emission factors and emission calculations are included in the application representations that were made during the NSR permit action that authorized these terms and conditions.

Response to Comments at 10.

This response fails to rebut EIP's demonstration that the Proposed Permit is deficient. First, even if the Executive Director were correct that CEM, stack testing, and emission calculations are accepted protocols for determining compliance with emission limits, the Proposed Permit must still make it clear which protocol Motiva must use to assure compliance with each limit for each unit covered by the permit. *Wheelabrator Order* at 10. Moreover, where the Proposed Permit allows Motiva to rely on emission factors and calculations to determine compliance with applicable limits, the Proposed Permit must list the relevant emission factors and the permit record must demonstrate that such emission factors are an appropriate method to determine compliance with applicable requirements. *Granite City I Order* at 13-14; *Granite City II Order* at 9-12. Finally, the fact that certain emission factors may be an appropriate method to determine compliance with certain limits on certain units does not suggest—as the Executive Director contends—that emission factors and emission calculations of all kinds are appropriate measures of compliance with all limits for all pollutants on all emission units. In many cases,

general emission factors of the kind that are most likely used to determine compliance with applicable limits in Permit No. 6056/PSDTX1062M are not an appropriate means to determine compliance with applicable limits. *Tesoro Order* at 32.

The Proposed Permit is deficient because it fails to identify the specific monitoring method that assures compliance with each emission limit for combustion units authorized by Permit No. 6056/PSDTX1062M1 and because the permit record does not demonstrate that the applicable monitoring methods assure compliance with applicable emission limits.

(iv) Permit No. 8404/PSDTX1062M1

Tanks

Permit No. 8404/PSDTX1062M1 directs Motiva to use AP-42 emission factors to calculate emissions from storage tanks authorized by Permit No. 8404/PSDTX1062M1 for purposes of determining compliance with hourly and annual emission limits established by that permit. EIP's comments explained that the Executive Director has not demonstrated that AP-42 emission factors are a reliable basis for determining compliance with applicable storage tank emission limits. The Executive Director responds: "As stated previously, the ED disagrees that AP-42 emission factors are not acceptable for estimating emissions." Response to Comments at 10. As explained above, this response is not sufficient to rebut Petitioners' demonstration that the Proposed Permit fails to assure ongoing compliance with storage tank emission limits in Permit No. 8404/PSDTX1062M1.

Combustion Units

Petitioners contend that the Proposed Permit fails to specify monitoring methods that assure compliance with hourly and annual emission limits on combustion units authorized by Permit No. 8404/PSDTX1062M1. The basis for this condition and the monitoring conditions at issue are substantially the same as those in Permit No. 6056/PSDTX1062M1 addressed above.

The Executive Director's response to EIP's comments concerning the insufficiency of monitoring conditions in Permit No. 8404/PSDTX1062M1 is substantially the same as his response to EIP's comments regarding the same issue in Permit No. 6056/PSDTX1062M1. Response to Comments at 10. For the same reasons addressed above, *see, supra* at 27-28, the Executive Director's response to comments fails to rebut EIP's demonstration that the Proposed Permit is deficient because it fails to assure ongoing compliance with applicable emission limits and because the permit record does not provide support for the Executive Director's contrary determination.

(v) Permits by Rule

In response to EIP's comments demonstrating that the Proposed Permit fails to identify monitoring methods that assure compliance with emission limits and operating requirements in PBRs claimed by Motiva to authorize emissions at the Port Arthur Refinery, the Executive Director writes:

> The ED disagrees that specific monitoring has to be included for every PBR held at the site. As stated in Special Terms and Condition 21, Motiva 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), or control device parametric monitoring. Motiva is required to keep these records for demonstrating compliance in the annual permit compliance certification report for the Title V permit.

Response to Comments at 11.

The Executive Director's response does not rebut EIP's demonstration that the Proposed Permit is deficient because it fails to specify which monitoring methods assure compliance with each applicable PBR 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[4] or (2) mandatory monitoring methods that assure compliance with each such limit. While Proposed Permit, Special Condition No. 21 includes a laundry list of records that Motiva might use to determine compliance with applicable limits, the Proposed Permit does not require Motiva to use records related to any particular monitoring method(s), listed or unlisted, to assure compliance with applicable PBR emission limits. Because the Proposed Permit fails to identify the applicable limits or explain the kind of monitoring Motiva must undertake to assure compliance with each such limit, the Proposed Permit is deficient. *Wheelabrator Order* at 10.

The Executive Director's contention that he is not required to specify monitoring that assure compliance with each applicable PBR 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." *Id*.

B. The Proposed Permit's Defective Method of Incorporating Permit by Rule Requirements by Reference Fails to Assure Compliance with Applicable Requirements

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

The Proposed Permit is deficient because it fails to provide enough information for readers to determine how much and what kind(s) of pollution each unit at the Port Arthur Refinery may emit under PBRs claimed by Motiva. Generic emission limits established by claimed PBRs and source-specific emission limits contained in Motiva's certified PBR registrations are

[4] This information is not included in the claimed PBRs. 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. This issue is addressed at length below, in Section B of this Petition.

unenforceable because (1) the Proposed Permit fails to provide enough information for readers to determine how the generic limits apply to specific units or unit groups at the Port Arthur Refinery; and (2) the Proposed Permit fails to identify which units authorized by PBR are subject to source-specific certified PBR registration limits.

Proposed Permit, Special Condition No. 19 provides that requirements in PBRs claimed by Motiva are applicable requirements that are incorporated by reference into the Proposed Permit. Proposed Permit, Special Condition No. 20 requires that "[t]he permit holder shall comply with the general requirements of 30 TAC Chapter 106, Subchapter A or the general requirements, if any, in effect at the time of the claim of any PBR."

The Proposed Permit's New Source Review Authorization References table lists PBRs that Motiva has claimed. Proposed Permit at 605-606. The Proposed Permit's New Source Review Authorization References by Emissions Unit table lists some, but not all, emissions units at the Port Arthur Refinery subject to PBR requirements. *Id*. at 607-631.

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 PBRs authorizing emissions from units at the Port Arthur Refinery are "applicable requirements." *Id.* at § 70.2; 30 Tex. Admin. Code § 122.10(2)(H).

As explained below, the Proposed Permit fails to include enough information to allow readers to determine how much and what kind(s) of pollution each unit at the Port Arthur Refinery is authorized to emit under claimed PBRs. Because this is so, the Proposed Permit fails to include and assure compliance with all applicable requirements.

3. Inadequacy of the Permit Term

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 claimed by Motiva:

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

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

a. The Proposed Permit Fails and Permit Record Fails to Provide Enough Information to Determine How Much Each Unit Authorized by PBR 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). 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 establish generic emission

limits and operating requirements that apply to all new and modified facilities authorized by PBR (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 is 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.").

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 by *rule* number and the date that each rule was promulgated (not the date(s) the PBR was claimed to authorize construction at the Port Arthur Refinery). Proposed Permit at 605-606. 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 Motiva has claimed some PBRs multiple times to authorize multiple projects involving one or more emission units at the Port Arthur 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, Motiva 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 *for each submission*, it is impossible to tell how much each emission unit is authorized to emit under PBRs claimed by Motiva.

For example, the Proposed Permit's New Source Review Authorization References by Emission Unit table indicates that Motiva has claimed the PBR at § 106.472 (9/4/2000) to authorize emissions from 151 different tanks and loading facilities. Proposed Permit at 607-631. 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 151 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 151 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 *3,775* tons per year (25 tons per year * 151 emission units). *Id*. Because the Proposed Permit is ambiguous as to whether units at the Port Arthur Refinery covered by PBR § 106.472 (9/4/2000) are authorized to emit 25 tons per year of VOC, 3,775 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 § 106.472 (9/4/2000) PBR.

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

PBR	Date PBR Promulgated	Emission Units or Unit Groups
106.261	9/4/2000	TK01932 (Tank 01932), TK01933 (Tank 01933), TK01934 (Tank 01934)
106.454	11/1/2001	DEGR8 (Safety Klean Degreaser), DEGR9 (Safety Kean Degreaser),
106.472	3/14/1997	TK01506 (Storage Tank No. 1506), TK01507 (Storage Tank No. 1507), TK01508 (Storage Tank No. 1508), TK01509 (Storage Tank No. 1509), TK01658 (Storage Tank No. 1658), TK01709 (Storage Tank No. 1709), TK01838 (Storage Tank No. 1838), TK01839 (Storage Tank No. 1839, TK01840 (Storage Tank No. 1840), TK01972 (Storage Tank No. 1972), TK01973 (Storage Tank No. 1973), TK08416 (Storage Tank No. 8416), TK08745 (Storage Tank No. 8745), TK08890 (Storage Tank No. 8890), TK09400 (Storage Tank No. 9400), TK09636 (Storage Tank No. 9636), TK19219 (Tank 19219)
106.476	9/4/2000	TK01927 (Storage Tank No. 1927), TK02060 (Tank 02060), TK02086 (Storage Tank No. 2086), TK02087 (Storage Tank No. 2087), TK02088 (Tank 02088), TK02089 (Tank 02089), TK02090 (Storage Tank No. 2090), TK02091 (Storage Tank No. 2091), TK02116 (Storage Tank No. 2116), TK02117 (Storage Tank No. 2117), TK02118 (Storage Tank No. 2118), TK26094 (Storage Tank No. 26094), TK29791 (Storage Tank No. 29791), TK32557 (Storage Tank No. 32557), TK33222 (Storage Tank No. 33222), TK33223 (Storage Tank No. 33223), TK35142 (Storage Tank No. 35142), TK35143 (Storage Tank No. 35143)
106.478	9/4/2000	TK02145 (Tank 02145), TK02148 (Tank 02148)
106.512	6/13/2001	RESENG1008 (RES 11 Engine 2), RESENG2005 (RES 11 Engine 1), SWENG0002 (South Weir Engine 1), SWENG2001 (South Weir Engine 3), SWENG9003 (South Weir Engine 2), SWENG9012 (South Weir Engine 4)
106.532	9/4/2000	TK02084 (Tank 02084), TK02125 (Storage Tank No. 2125), TK02126 (Storage Tank No. 2126)

Proposed Permit at 607-631.

This problem is even more complicated that it seems, because, Texas's PBR rules give Motiva the option of certifying emission limits for PBR units that are lower than the generic limits established by § 106.4. 30 Tex. Admin. Code § 106.6. Because emission limits in § 106.4 are high enough that they might trigger major NSR preconstruction permitting requirements or contribute to significant net increases that are subject to major NSR preconstruction permitting requirements, Texas's PBR rules allow major source operators, like Motiva, to certify source-specific limits lower than the generic limits listed in the TCEQ's Chapter 106 rules to avoid major NSR requirements. Response to Comments at 14. Because on cannot tell by looking at information in the Proposed Permit and the Statement of Basis whether each project authorized by PBR is subject to generic limits specified in Texas's Chapter 106 rules or source-specific certified PBR registration limits, the Proposed Permit fails to clearly explain how claimed PBRs apply to units at the Port Arthur Refinery. Because the Proposed Permit fails to clarify which limits apply to units at the Port Arthur Refinery, it also fails to assure compliance with those limits.

b. The Proposed Permit Fails and Permit Record Fails to Provide Enough Information For a Reader to Determine which Pollutants Motiva is Authorized to Emit Under Claimed PBRs

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).[5] 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_x + 250 TPY CO + 25 TPY VOC + 25 TPY SO_2 + 25 TPY PM + 25 TPY Lead + 25 TPY H_2S + 25 TPY H_2SO_4). If PBRs worked that way, *each* claimed PBR would authorize

[5] The term "contaminant," as defined by the Texas Clean Air Act encompasses all federally-regulated NSR pollutants. Tex. Health & Safety Code § 382.003(2).

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 Motiva 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, (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), TCEQ 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 for any emission unit at the Port Arthur Refinery. Instead, the Proposed Permit only lists claimed PBRs by rule number and identifies emissions units subject to requirements in some, but not all, of the claimed PBRs. 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 Port Arthur Refinery is *actually authorized to emit*, the Proposed Permit must provide this information: It must explain how the incorporated PBRs

apply to emission units at the Port Arthur 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 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 Motiva has claimed, it fails to assure compliance with applicable requirements.

c. The Proposed Permit Fails to Identify any Emission Units Authorized by Five PBRs Claimed by Motiva

While the Proposed Permit incorporates the following PBRs, it does not identify *any* emission unit or group of units subject to requirements in the claimed rules: 106.262 (11/1/2003), 106.263 (11/1/2001), 106.264 (9/4/2000), 106.355 (11/1/2001), 106.473 (9/4/2000). Proposed Permit 605-631. 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 apply to emission units at the Port Arthur Refinery and thereby undermines the enforceability of PBR requirements. *Objection to Title V Permit No. O2164, Chevron Phillips Chemical Company, Philtex Plant* at ¶ 7 (August 6, 2010) (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, 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 Port Arthur 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).

4. Issues Raised in Public Comments

EIP raised this issue in their Public Comments on pages 10-14.

5. Analysis of State's Response

The Executive Director begins his response with the following paragraph:

> It has been longstanding TCEQ policy to not list specific emission units in the Title V permit where the sole applicable requirement is the underlying New Source Review (NSR) Authorization as stated under the Reading of Texas's Federal Operating Permit section of the Statement of Basis document. The Executive Director notes that EPA has approved the incorporation by reference (IBR) for minor NSR requirements including PBRs in the Title V permit. However for clarity and as directed in the Petition order, the Executive Director (ED) provides the attached list of all emission units that are authorized by PBRs listed in the NSR Authorization Tables in Title V permits O1668 and O1669.

Response to Comments at 13.

Not only does this paragraph, which is obviously copied from a document in a different case, misidentify the relevant permit number in this case (O1386), it incorrect suggests that the Proposed Permit has been revised to identify all units at the Port Arthur Refinery that have been authorized by PBR. As Petitioners explain above, the Proposed Permit fails to identify any emission unit authorized by five PBRs claimed by Motiva. EPA has repeatedly objected to Texas Title V permits that fail to identify units authorized by claimed PBRs. *See, e.g., Deer Park Order* at 14-15.

Moreover, EPA has already explained that TCEQ's longstanding policy of omitting emission units only subject to requirements in NSR permits is contrary to law in its order objecting

to the permits (O1668 and O1669) the Executive Director erroneously references in the cited text above:

> The EPA does not agree with the TCEQ's interpretation that *White Paper Number 1* and *White Paper Number 2* support the practice of not listing in the title V permit those emission units to which generic requirements apply. As both White Papers state, such an approach is only appropriate where the emission units subject to generic requirements can be unambiguously defined without a specific listing and such requirements are enforceable. *See, e.g., White Paper Number 1* at 14; *White Paper Number 2* at 31. Thus, not listing emission units for PBRs that apply site-wide may appropriate in some cases. However, for other PBRs that apply to multiple and different types of emission units and pollutants, the Proposed Permit should specify to which units and pollutants those PBRs apply. Further, PBRs are applicable requirements for title V purposes. The TCEQ's interpretation of how *White Paper Number 1* and *White Paper Number 2*would apply to insignificant emission units does not inform how PBR requirements must be addressed in a title V permit. *See, e.g.*, 30 TAC 122.10(2)(H). 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 State of Basis as such. The TCEQ must revise the permits accordingly to address the ambiguity surrounding PBRs.

Deer Park Order at 15.

Next, the Executive Director explains that:

> The NSR Authorization References table in the draft Title V permit incorporates the requirements of NSR Permits, including PBRs by reference. All "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance" are specified in the PBR incorporated by reference or cited in the draft Title V permit. When the emission limitation or standard is not specified in the referenced PBR, then the emissions authorized under the permit by rule from the facility are specified in 30 TAC § 106.4(a)(1).

Response to Comments at 13.

While the Executive Director is correct that, with the exception of PBRs certified under 30 Tex. Admin. Code § 106.6, which will be addressed shortly, Texas's rules establish generic limits

for projects authorized by PBR, this fact does nothing to rebut EIP's demonstration that the Proposed Permit fails to explain *how* these generic limits apply to emission units at the Port Arthur Refinery.

For example, the Proposed Permit lists 151 different emission units at the Port Arthur Refinery that have been authorized by the same PBR, 106.472 (9/4/2000). Depending upon how many times this single PBR has been claimed to authorize projects at the Port Arthur Refinery, Motiva's 106.472 tanks may be permitted to emit between 25 and 3,775 tons of VOC each year. Reading the applicable rules identified by the Executive Director does nothing to clarify how much each unit at the Port Arthur Refinery authorized by 106.472 (9/4/2000) is authorized to emit or how much the units—in aggregate—are authorized to emit. Because the Proposed Permit fails to explain how the generic limits in claimed PBRs apply to units at the Port Arthur Refinery, and because it is impossible for the reader to determine what the applicable limits are for each unit authorized by PBR based on information in the permit record for this project, the applicable PBR limits are not practicably enforceable. Accordingly, the Administrator must object to the Proposed Permit.

In the next section of his response, the Executive Director proceeds to undermine his assertion that readers of the Proposed Permit may look to TCEQ's PBR rules to identify the relevant limits for each of the PBRs claimed by Motiva:

> Permit holders may also certify emissions in a PBR registration to establish federally enforceable emission limits below the emission limits of 30 TAC 106.4 which establishes limits for production and planned MSS for each facility (piece of equipment)[.]
>
> . . . .PBR registrations may be certified to demonstrate that emission allowables for each facility claimed under the PBR are less than the netting or major source trigger levels under the PSD and NNSR programs. Certifications are also required for sites subject to NOx cap and trade programs under 30 TAC Chapter 101 and for ensuring

> that any PBR claims do not exceed permitted flexible caps for facilities permitted under 30 TAC Chapter 116, Subchapter G.

Response to Comments at 14.

The Proposed Permit, however, does not list which units authorized by PBR are subject to federally enforceable limits in certified PBR registration. Thus, even if the Proposed Permit was clear about how many times Motiva has claimed each PBR listed in the Proposed Permit and which units were included in each such project, the reader could still not determine whether the limits for each such project are the generic limits listed in Texas's Chapter 106 rules or lower case-specific limits established by a certified PBR registration. Because a reader cannot determine, based on information in the permit record whether limits for each claimed PBR are generic or case-specific, it is impossible to determine which limits apply to units at the Port Arthur Refinery authorized by PBR and the limits, therefore, are not practicably enforceable.

The Executive Director's acknowledgment that PBRs can be used to establish case-specific limits for PBR projects that would otherwise trigger major NSR preconstruction review requirements also provides additional support for Petitioners' demonstration that the Proposed Permit's PBR monitoring requirements are deficient. Limits established to restrict a facility's potential to emit below major modification thresholds must be practicably enforceable. *In the Matter of Yuhuang Chemical Inc. Methanol Plant*, Order on Petition No. VI-2015-03 at 14 (August 31, 2016). 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." *Id*. Motiva's certified PBR registrations are not practically enforceable, not only because the Proposed Permit fails to establish any specific monitoring methods that assure compliance with any certified PBR limit, but also because the Proposed Permit

fails to identify applicable source-specific certified PBR emission limits used to avoid major NSR requirements.

The Proposed Permit is deficient because one cannot tell from information in the Proposed Permit and the Statement of Basis how much pollution and which pollutants each unit at the Port Arthur Refinery may emit under claimed PBRs. The Executive Director's response to comments on this issue include factual inaccuracies, raises new problems, and fails to rebut Petitioners' demonstration that the Proposed Permit fails to sufficiently identify and assure compliance with applicable requirements.

C. The Proposed Permit Fails to Identify Applicable Emission Limits, Operating Requirements, and Monitoring, Reporting, and Recordkeeping Requirements for Emission Units Subject to NSPS and NESHAP Rules

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

The Proposed Permit's incorporation by reference of 40 C.F.R. Part 60, Subpart Ja and Part 63, Subparts DDDDD, ZZZZ, and EEEE ("Federal Subparts") requirements is deficient because the Proposed Permit fails to the identify specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements that apply to each unit at the Port Arthur Refinery under these regulations. Proposed Permit at 72-323.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must include and assure compliance with applicable requirements. 40 C.F.R. § 70.6(a) and (c). Applicable requirements include 40 C.F.R. Parts 60 and 63 rules "that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates." 40 C.F.R. § 70.2. While incorporation by reference of requirements in federal regulations may be acceptable in some circumstances, Title V permits incorporating federal requirements by reference must, at a minimum, "identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting

requirements for each unit." *Objection to Title V Permit No. O1420, CITGO Refining and Chemicals Company, Corpus Christi Refinery—West Plant* ("Citgo Order") at 2-3 (October 29, 2010); *Tesoro Order* at 8-9.

3. Inadequacy of the Permit Term

For each unit at the Port Arthur Refinery subject to the above-listed Federal Subparts, the Proposed Permit's Applicable Requirements Summary table includes a generic statement that Motiva must comply with applicable provisions in the relevant subpart. The Proposed Permit does not identify *any* specific limits, operating requirements, monitoring, testing, recordkeeping, or reporting requirements that apply to any unit at the Port Arthur Refinery under these regulations. EPA has objected to many Title V permits, which, like the Proposed Permit, incorporate Part 60 and 63 regulations by reference without specifying which requirements in the relevant subparts apply to units at the source. *See, e.g., Citgo Order* at 2-3; *Tesoro Order* at 8-9.

The Proposed Permit's failure to list the specific Federal Subpart compliance options and emission limits for units at the Port Arthur Refinery makes Motiva's compliance obligations unclear. The lack of specific monitoring and testing requirements creates ambiguity, raises applicability concerns, and renders the permit unenforceable as practical matter. In addition, the lack of detail detracts from the usefulness of the permit as a compliance tool for the source. To resolve this deficiency, the Executive Director must revise the Proposed Permit to identify each unit subject to the Federal Subparts and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each unit. *Citgo Order* at 2-3.

4. Issues Raised in Public Comments

EIP did not raise this issue in its public comments. However, the Proposed Permit's deficient method of incorporating Part 60 and 63 requirements may be raised for the first time in

this Petition, because the basis for this issue did not arise until after the public comment period closed. 42 U.S.C. § 7661d(b)(2) ("The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period . . . unless . . . it was impracticable to raise such objections . . . or unless the grounds for such objection arose after such period."). The Draft Permit's Applicable Requirements Summary did not include references to above-listed Federal Subparts. These requirements were added to the Proposed Permit after the close of the public comment period. *Compare* (Exhibit 11), Draft Permit at 54-176 to Proposed Permit at 72-323.

5. Analysis of State's Response

Though EIP did not raise this issue in its public comments, the Executive Director provided some relevant information about revisions to the Draft Permit in response to EPA's comments on the permit:

> It has been a long standing practice for TCEQ to list applicable requirements in the Title V permit's Applicable Requirement Summary when the TCEQ has not developed the Requirement Reference Tables (RRT) for state and federal applicable requirements. The RRT consists of unit attribute forms and regulatory flowcharts that assist in making applicability determinations which include monitoring/testing, recordkeeping, and reporting requirements. This practice was discussed with EPA Region 6 in Waco during the last round of objection negotiations and there were no objections raised by EPA during that time.
>
> Motiva is required to keep appropriate records of monitoring/testing and other requirements to certify compliance with 40 CFR Part 63, Subpart DDDDD. TCEQ's position is that high level requirements are enforceable as the records will indicate the compliance options and monitoring data that was used to certify compliance with the emission limitations/standards.

Response to EPA at Response 4.

This response does not rebut Petitioners' demonstration that the Proposed Permit's incorporation by reference of Federal Subpart requirements is deficient. Whether or not the TCEQ

has developed general attribute forms and applicability flowcharts for these federal requirements, each Title V permit must identify the specific limits, operating requirements, and monitoring, recordkeeping, and reporting requirements that apply to the permitted source. Relevant applicability determinations must be made as part of the Title V review process and must be reflected in each Title V permit. EPA's failure to object to the incomplete incorporation by reference of federal requirements at a negotiation meeting has no bearing on the clear requirements of the Act and EPA's repeated objection to Title V permits, which, like the Proposed Permit, fail to specify the applicable limits, operating requirements, and methods that assure compliance with such requirements in applicable Part 60 and 63 regulations.

VI. CONCLUSION

For the foregoing reasons, and as explained in EIP's timely-filed public comments, the Proposed Permit is deficient. The Executive Director's Response to Comments also 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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