

**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. O1541	§	
	§	
Issued to the Blanchard Refining Company LLC	§	Permit No. O1541
	§	
Issued by the Texas Commission on Environmental Quality	§	
	§	

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE
ISSUANCE OF PROPOSED TITLE V OPERATING PERMIT NO. O1541 FOR
BLANCHARD REFINING COMPANY’S GALVESTON BAY REFINERY**

Pursuant to section 42 U.S.C. § 7661d(b)(2), Environmental Integrity Project and Sierra Club (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Federal Operating Permit No. O1541 (“Proposed Permit”) issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) for the Galveston Bay Refinery, operated by the Blanchard Refining Company (“Blanchard”) in Galveston County, Texas.

I. PETITIONERS

The Environmental Integrity Project is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain protections guaranteed by

environmental laws. The Environmental Integrity Project has offices and programs in Austin, Texas and Washington, D.C.

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

II. PROCEDURAL BACKGROUND

This Petition addresses the TCEQ's renewal of Title V Permit No. O1541. Blanchard filed its application to renew the permit on March 3, 2009. The Executive Director completed his technical review of Blanchard's renewal application on May 18, 2012. Notice of the Draft Renewal Permit was published on September 6, 2012 and the first public comment period for the Draft Permit ended on October 5, 2012. Environmental Integrity Project, Air Alliance Houston, and Sierra Club timely-filed public comments on the Draft Permit on October 5, 2012. (Exhibit 1), Public Comments Regarding Draft Renewal Title V Permit No O1541 ("Public Comments"). Notice of a revised Draft Permit was published on August 27, 2014. This notice did not identify any changes made to the initial Draft Permit, nor did it respond to Petitioners' public comments. The public comment period on the revised Draft Permit ended on October 6, 2014. Notice of a second revised Draft Permit was published on December 17, 2015. This notice did not identify any changes made to the initial Draft Permit, nor did it respond to Petitioners' public comments. The comment period for the second revised Draft Permit ended on January 19, 2016. On January

19, 2016, Environmental Integrity Project, Air Alliance Houston, and Sierra Club timely-filed Public Comments on the second revised Draft Permit. (Exhibit 2), Public Comments Regarding the Second Revised Draft Renewal Title V Permit No. O1541 (“Supplementary Public Comments”). On December 19, 2016, the TCEQ’s Executive Director issued his response to public comments and provided notice of the Proposed Permit. (Exhibit 3), Notice of Proposed Permit and Executive Director’s Response to Public Comment on Permit No. O1541 (“Response to Comments”); (Exhibit 4), Proposed Permit No. O1541; (Exhibit 5), Statement of Basis for Permit No. O1541.

The Executive Director forwarded the Proposed Permit and his Response to Comments to EPA for review. EPA’s 45-day review period ran from December 27, 2016 until February 10, 2017. EPA did not object to the Proposed Permit. Because EPA failed to object to the Proposed Permit during its review period, 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.

III. LEGAL REQUIREMENTS

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

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

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

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)).

EPA must object to a state issued Title V permit if it fails to include and assure compliance with all applicable requirements. 40 C.F.R. § 70.8(c). If EPA does not object to a Title V permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 42 U.S.C. § 7661d(b)(2); 40

C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. The Administrator “shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the . . . [Clean Air Act].” 42 U.S.C. § 7661d(b)(2); *see also*, 40 C.F.R. § 70.8(c)(1). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

IV. GROUNDS FOR OBJECTION

A. The Proposed Permit’s Incorporation of Blanchard’s State-Only Major Source Flexible Permit and Texas’s Federally-Approved Minor Source Flexible Permit Rules Fails to Assure Compliance with Applicable Requirements in the Texas State Implementation Plan

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

The Proposed Permit is deficient because it incorporates by reference Blanchard’s State-only major source flexible permit as a federally-approved permit and allows Blanchard to use Texas’s minor source flexible permit rules to avoid otherwise-applicable preconstruction permitting requirements in the Texas State Implementation Plan’s (“SIP”) 30 Texas Administrative Code, Chapter 116, Subchapter B rules. Blanchard is not eligible for a federally-approved flexible permit and may not use Texas’s federally-approved flexible permit program rules to authorize projects at the Galveston Bay Refinery, because the flexible permit program only applies to minor sources and the Galveston Bay Refinery is a major source.

Proposed Permit, Special Condition No. 28 incorporates all of Blanchard’s preconstruction permits, including its State-only flexible permit, as applicable requirements. Proposed Permit, Special Condition No. 32 lists provisions in Texas’s federally-approved minor source flexible permit program rules as applicable requirements. The Proposed Permit’s New Source Review Authorizations References Table lists Flexible Permit No. 47256 as an applicable requirement.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must include all federally-enforceable requirements that apply to a major source and conditions as are necessary to assure compliance with applicable requirements. 42 U.S.C. § 7661c(a). State permitting authorities may not use Title V permits to modify applicable requirements in a SIP that apply to any stationary source. 42 U.S.C. § 7410(i); 40 C.F.R. § 70.6(b)(2).

Because Blanchard has not and may not properly obtain a flexible permit under Texas's federally-approved minor source program and because major sources like the Galveston Bay Refinery are not eligible for Texas's minor source flexible permit program, Blanchard is obligated to use Texas's 30 Texas Administrative Code, Chapter 116, Subchapter B permitting rules for major and minor sources to authorize past and future projects at the Galveston Bay Refinery. The TCEQ may not modify this obligation by incorporating Blanchard's State-only Flexible Permit and the TCEQ's federally-approved *minor source* flexible permit program rules into the Proposed Permit as applicable requirements without violating the Clean Air Act. 42 U.S.C. § 7410(i); 40 C.F.R. § 51.105 ("Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part").

3. Inadequacy of the Permit Term

Title I of the Clean Air Act "distinguishes between major and minor pollution sources based on a threshold amount of pollution; major sources are subject to much more stringent regulations." *Environmental Integrity Project v. EPA*, 2015 WL 4399482 (5th Cir. 2015) ("*Flex II*"). Texas's flexible permit program is a federally-approved program for *minor sources* that creates an allowables-based exemption to the State's preconstruction approval process for

modifications. *See*, 30 Tex. Admin. Code §§ 116.721 (changes to a source increasing emissions only require an amendment if increases are significant); 116.718 (flexible permit emission increases below current allowables are insignificant); 116.10(9)(E) (physical and operational changes within the scope are not modifications that require a permit amendment). Because the Clean Air Act requires major NSR preconstruction permitting requirements to be triggered by increases in actual emissions and increases in allowable emissions may not be used as a surrogate for determining major NSR applicability, major sources may not use the flexible permit program allowables-based permitting exemption. *See, e.g., New York v. EPA*, 413 F.3d 3, 40 (D.C. Cir. 2005) (vacating EPA’s Clean Unit program, “because the plan language of the CAA indicates that Congress intended to apply [Major] NSR to changes that increase actual emissions instead of potential or allowable emissions”).

Accordingly, Texas represented to EPA and the Fifth Circuit Court of Appeals that Texas’s flexible permit program rules only apply to minor sources of air pollution. Brief of Intervenor, State of Texas, In Support of Respondent Environmental Protection Agency, 2015 WL 1156712 at *7 (“[M]inor new source review . . . pertains to the construction of new *minor sources* and to *minor modifications* of minor sources. A minor source is any source that is not a major source”) and * 16 (“Texas’s Flexible Permit Program is a state *minor* new source review program”) (emphasis in original); Petition for Review, *State of Texas v. EPA* (“*Flex I*”) (July 23, 2010) (“The FPP is a voluntary authorization mechanism for *Minor NSR sources* designed to enhance control of emissions while allowing for greater operational flexibility”) (emphasis added). Based on these representations and the Court’s reading of Texas’s rules, the Fifth Circuit Court of Appeals held that Texas’s federally-approved flexible permit program rules only apply to minor source of air pollution. *Flex II* at *1 (holding that major sources may not use flexible permits, that such sources

are regulated under Texas's more stringent Major NSR rules and that emission caps in federally-approved flexible permits must remain below the major source threshold).

Blanchard may not use Texas's federally-approved minor source flexible permit program rules to authorize construction of or modifications to facilities at the Galveston Bay Refinery, because the refinery is a major source of air pollution. The Proposed Permit fails to assure compliance with the limits of Texas's federally-approved *minor source* flexible permit program and the State's federally-approved rules for major sources, because it incorporates by reference State-only major source Flexible Permit No. 47256 (which establishes emission caps that are much higher than the applicable major source thresholds) as a federally-enforceable authorization and indicates that Texas's flexible permit program rules at 30 Tex. Admin. Code, Chapter 116, Subchapter G are available to Blanchard to authorize construction at the Galveston Bay Refinery. Proposed Permit, Special Condition Nos. 28, 32, and New Source Review Authorization References Table.

Blanchard's major source flexible permit is a State-only authorization because it was issued prior to EPA's approval of Texas's minor source flexible permit program and because it is inconsistent with the program as approved, which is only available to minor sources. *Revisions to the New Source Review State Implementation Plan; Flexible Permit Program*, 79 Fed. Reg. 40666, 40667-68 (July 14, 2014) (“[T]he commenters appear to be implying that this approval will transform state-only flexible permits issued since 1994 into federally approved permits[.] . . . This is not the case and the EPA strongly rejects any suggestion to the contrary”). Accordingly, the Proposed Permit is objectionable because it lists Blanchard's State-only Flexible Permit as a federally-enforceable applicable requirement. See e.g., *Objection to Federal Part Operating Permit No. O1227*, Houston Chemical Plant (January 8, 2010) (“Finally, the terms and conditions

of flexible permits based upon the requirements of 30 TAC Chapter 116, Subchapter G [that were issued prior to EPA’s program approval] must be identified as State-only terms and conditions, pursuant to 40 CFR § 70.6(b)(2)’’).

4. Issue Raised in Public Comments

Petitioners raised this issue on pages 1-3 of their Supplementary Comments.

5. Analysis of State’s Response

The Executive Director responds that EPA “fully approved revisions to the Texas NSR State Implementation Plan (SIP) to establish the Texas Minor NSR Flexible Permits Program (FPP)” and that once Blanchard’s Flexible Permit is renewed, it will be in compliance with Texas’s SIP-approved program. Response to Comments at 30. This response does not resolve Petitioners’ objection.

As Petitioners explain above, it is incorrect that Blanchard’s State-only major source Flexible Permit may be renewed under Texas’s *minor source* flexible permit program rules. Despite the clarity of the Court’s holding in *Flex II* and the State’s own representations to the Court, Commenters expected the Executive Director to take the position that Blanchard may obtain a federally-approved flexible permit and asked him to provide the legal basis for this position, if applicable:

- If the Executive Director contends that Blanchard’s flexible permit is a federal permit, Commenters ask that he identify the basis of his authority to issue major source flexible permits establishing emission caps that exceed the applicable major source threshold;
- If the Executive Director contends that Texas’s flexible permit rules allow him to issue flexible permits for major sources, Commenters ask that he explain why that reading of the rules is not foreclosed by the State’s own pleadings and briefing, and the Fifth Circuit Court of Appeal’s decisions in *Flex I and Flex II*; *and*

- If the Executive Director contends that Texas’s flexible permit rules allow him to establish flexible permit caps that exceed the applicable major source threshold, Commenters ask that he explain why that reading of the of the rules is not foreclosed by the Fifth Circuit Court of Appeals decision in *Flex II*.

Supplementary Comments at 3.

These are basis questions that the Executive Director must answer to establish that incorporation of flexible permit program provisions into the Proposed Permit does not undermine the enforceability of Texas’s SIP-approved program requirements for major and minor sources in Chapter 116, Subchapter B. Even so, the Executive Director ignores the questions completely. Accordingly, the Executive Director failed to respond to Petitioners’ significant comments and the Administrator must object to the Proposed Permit.

Instead of addressing the substance of Petitioners’ argument that the Proposed Permit’s incorporation of Blanchard’s major source Flexible Permit and Texas’s minor source flexible permit program rules undermines the enforceability of Texas’s federally-approved permitting requirements for minor and major sources, the Executive Director argues that Texas’s Title V rules require him to list Blanchard’s Flexible Permit as a federally-enforceable applicable requirement:

With respect to issuing a flexible permit prior to EPA approving those rules into the SIP, the Texas Operating Permit Program was granted full approval on December 6, 2001 (66 Fed. Reg. 63318), and subsequent rule changes were approved on March 30, 2005 (70 Fed. Reg. 161634). The application procedures, found in 30 TAC § 122.132(a) require an applicant to provide information required by the ED to determine applicability of an applicable requirement. In order for the ED to issue an FOP, the permit must contain all applicable requirements for each emission unit per 30 TAC § 122.142. “Applicable requirement” is specifically defined in 30 TAC § 122.10(2)(h) to include all requirements of 30 TAC Chapter 116 and any term and condition of any preconstruction permit. As a Chapter 116 preconstruction authorization, flexible permits are applicable requirements, and are [to] be included in applications and Texas-issued FOPs, in compliance with Texas’s approved program.

Response to Comments at 30.

In short, the Executive Director believes that he has complete discretion to issue preconstruction permits that undermine the enforceability of SIP and that he is obligated to incorporate unlawful provisions in such permits as federally-enforceable Title V permit requirements, because preconstruction permits are “applicable requirements,” as defined by Texas’s Title V rules. This nifty argument is clearly contrary to the Clean Air Act, *see* 42 U.S.C. § 7410(i), and has been expressly preempted by EPA’s many orders—issued after EPA’s approval of Texas’s Operating Permit Program rules—objecting to Texas Title V permits incorporating State-only flexible permits as federally enforceable applicable requirements. *Objection to Federal Operating Permit No. O1227*, Goodyear Tire & Rubber Company, Houston Chemical Plant (January 8, 2010) (“[T]he terms and conditions of flexible permits based upon the requirements of 30 TAC Chapter 116, Subchapter G must be identified as State-only terms and conditions, pursuant to 40 CFR § 70.6(b)(2)”; *see also*, *Objection to Federal Part 70 Operating Permit No. O1253*, Valero Refining Texas, Texas City Refinery (October 30, 2009); *Objection to Title V Permit No. O1272*, Flint Hills Resources, Corpus Christi West Refinery (March 26, 2010); *Objection to Federal Operating Permit No. O1282*, Flint Hills Resources, Longview Facility (January 8, 2010); *Objection to Title V Permit No. O1294*, Lockheed Martin Corporation, Air Force Plant 4 (May 21, 2010); *Objection to Title V Permit No. O1439*, Ineos Polyethylene North America La Porte Plant (September 24, 2010); *Objection to Federal Operating Permit No. O1445*, Flint Hills Resources East Refinery (December 4, 2009); *Objection to Title V Permit No. O1555*, Diamond Shamrock Refining Company, Valero McKee Refinery (June 4, 2010); *Objection to Title V Permit No. O1804*, Oiltanking Beaumont Partners, Special Warehousing and Storage (September 3, 2010); *Objection to Federal Operating Permit No. 2000*, ExxonMobil Oil Corporation, Beaumont

Refinery (December 30, 2009); *Objection to Title V Permit No. O2151*, Chevron Phillips Chemical Company, Sweeny Complex (January 20, 2011); *Objection to Title V Permit No. O2164*, Chevron Phillips Chemical Company, Philtex Plant (August 6, 2010); *Objection to Federal Operating Permit No. O2208*, Dow Chemical Company, Epoxy Projects 2 (December 11, 2009); *Objection to Federal Operating Permit No. O2238*, Valero Corpus Christi Refinery East Plant (November 20, 2009); *Objection to Title V Permit No. O2269*, ExxonMobil Corporation, Baytown Chemical Plant (August 20, 2010); *Objection to Federal Operating Permit No. O2327*, Ineos USA, Chocolate Bayou Plant (December 4, 2009); *Objection to Title V Permit No. O2715*, ExxonMobil Oil Corporation, Colonial Storage Facility (March 5, 2010); *Objection to Federal Operating Permit No. O3275*, Motiva Enterprises, Houston Terminal.¹

However “applicable requirement” is defined by Texas’s regulations, Title V requires the TCEQ to issue Title V permits that assure compliance with enforceable requirements in the Texas SIP. 42 U.S.C. § 7661c(a). The Proposed Permit incorporates the preconstruction permitting exemption for projects that remain below existing allowables in Texas’s *minor source* flexible permit program and allows Blanchard to rely on emission caps in its State-only major source Flexible Permit to determine the scope of this exemption. For this reason, the Proposed Permit fails to assure compliance with Texas’s federally-approved Chapter 116, Subchapter B preconstruction permitting requirements that contain no such exemption. The Executive Director’s appeal to the TCEQ’s Title V regulations does not resolve this deficiency.

¹ Copies of these objection orders are available electronically at:
https://www.tceq.texas.gov/permitting/air/announcements/tv_announce_05_27_10.html

B. The Proposed Permit Fails to Establish a Schedule for Blanchard to Obtain a SIP-Approved Major Source Permit for Projects Authorized by State-Only Flexible Permit No. 47256

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

The Proposed Permit is deficient because it fails to establish a compliance schedule for Blanchard to apply for and obtain a federally-approved major source preconstruction permit for projects authorized by State-only Flexible Permit No. 47256. At the time Blanchard's Flexible Permit was issued, Texas's minor source flexible permit program rules were not part of Texas's federally-approved State Implementation Plan. Accordingly, issuance of the Flexible Permit did not relieve Blanchard of its obligation to obtain preconstruction authorization for construction projects at the Galveston Bay Refinery under Texas's SIP-approved 30 Texas Administrative Code, Chapter 116, Subchapter B rules.² 42 U.S.C. § 7410(i); 40 C.F.R. § 51.105. Blanchard did not obtain a Subchapter B permit authorizing any of the projects covered by State-only Flexible Permit No. 47256. Blanchard's failure to obtain SIP-approved authorizations for these projects is a violation of the Clean Air Act and the Texas SIP. To avoid an enforcement action for these violations, Blanchard "made a formal commitment via Federal Operation Permit No. O-1541 . . . to submit an amendment application by June 30, 2011 to convert Flexible Permit No. 47256 . . . to a *Subchapter B* permit." (Exhibit 6), Excerpt from De-Flex Application Dated June 2011 (emphasis added). This commitment and acknowledgement of non-compliance are reflected in an Addendum to the Refinery's semi-annual deviation report submitted to the TCEQ on January 26, 2011. (Exhibit 7), Addendum, Semi-Annual Deviation Report for Federal Operating Permit No. O-01541 Dated October 29, 2010. The Executive Director's Response to Comments reveals that

² Relevant portions of these rules establishing preconstruction permitting requirements for the Galveston Bay Refinery may be found at 30 Tex. Admin. Code §§ 116.110, 116.111, and 116.116.

Blanchard has abandoned this commitment. Response to Comments at 30 (“On July 10, 2015, Blanchard submitted a renewal application for NSR Permit No. 47256/PSDTX402M3 under the EPA SIP-approved [flexible] permit program and 30 Tex. Admin. Code Chapter 116”); *see also*, (Exhibit 8), Source Analysis & Technical Review, Project No. 167140 (“On November 20, 2015 an[] email was received from Mr. Bharat Contractor requesting that the amendment be voided as Blanchard is no longer seeking conversion to a subchapter B permit”).

Because Blanchard is in violation of the Clean Air Act and the Texas SIP and because Blanchard abandoned its commitment to come into compliance with the law, the Proposed Permit must establish a compliance schedule for Blanchard to apply for and obtain a SIP-approved major source permit under Texas’s 30 Texas Administrative Code, Chapter 116, Subchapter B rules.

The Proposed Permit incorporates Blanchard’s State-only Flexible Permit by reference at Special Condition No. 28. The Flexible Permit is also listed as an applicable requirement in the Proposed Permit’s New Source Review Authorization References table.

2. Applicable Requirement or Part 70 Requirement Not Met

If a source has failed to comply with requirements in an applicable SIP at the time its Title V permit is issued, its Title V permit must include a schedule for the source to correct its non-compliance. 42 U.S.C. §§ 7661b(b); 7661c(a); 40 C.F.R. §§ 70.5(c)(8)(iii)(C); 70.6(c)(3); 30 Tex. Admin. Code § 122.142(e). The preconstruction permitting requirements in the Texas SIP at the time Blanchard’s Flexible Permit was issued required Blanchard to obtain preconstruction authorizations for projects at the Galveston Bay Refinery the TCEQ’s Chapter 116, Subchapter B rules. *See*, 30 Tex. Admin. Code §§ 116.110, 116.111, 116.116. These rules, unlike Texas’s federally-approved *minor source* flexible permit program, require Blanchard to apply Best Available Control Technology (“BACT”) to each new and modified facility and to obtain a

preconstruction permit before commencing any project that would increase actual emissions from any existing unit, even if the actual increases could be maintained below previously permitted allowables. *See*, 30 Tex. Admin. Code §§ 116.11(a)(2)(C) and 116.116(b)(1)(C).

3. Inadequacy of the Permit Term

The Proposed Permit is deficient, because it does not include a compliance schedule for Blanchard to obtain a SIP-approved major source authorization under the TCEQ's Chapter 116, Subchapter B rules.

4. Issue Raised in Public Comments

Petitioners raised this issue on pages 19-20 of their initial Public Comments.

5. Analysis of State's Response

While the Executive Director responded to Petitioners' objection to the Proposed Permit's incorporation of Blanchard's Flexible Permit and the TCEQ's flexible permit program rules as federally-enforceable applicable requirements (*see*, Section A *supra*), he did not address Petitioners' separate contention that the Proposed Permit must include a compliance schedule for Blanchard to obtain a SIP-approved major-source Subchapter B preconstruction permit authorizing projects covered by Blanchard's State-only Flexible Permit.

C. The Proposed Permit Fails to Identify, Incorporate, and Assure Compliance with all Requirements in Permits by Rule Claimed by Blanchard

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

At least 512 units and unit groups at the Galveston Bay Refinery are authorized under the TCEQ's Permit by Rule ("PBR") program. Proposed Permit at 782-836. These units have the potential to emit major quantities of many different regulated pollutants. To assure that emissions from these units do not violate major NSR requirements or contribute to new or existing violations

of National Ambient Air Quality Standards, the Proposed Permit must assure compliance with applicable PBR requirements. The Proposed Permit is deficient because it fails to identify and incorporate by reference all applicable PBR requirements and because it presents a misleading account of how the TCEQ's PBR program operates and applies to units at the Galveston Bay Refinery. 42 U.S.C. § 7661c(a) and (c).

Proposed Permit, Special Condition No. 28 requires Blanchard to “comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including . . . permits by rule . . . referenced in the New Source Review Authorization References attachment” and provides that such requirements “[a]re incorporated by reference into this permit as applicable requirements.”

Proposed Permit, Special Condition No. 29 provides that “[t]he permit holder shall comply with the general requirements of 30 TAC Chapter 106, Subchapter A or the general requirements, if any, in effect at the time of the claim of any PBR.”

The Proposed Permit's New Source Authorization References table, Proposed Permit at 777-781, lists more than 80 Chapter 106 PBR rules that Blanchard has used to authorize and undisclosed number of projects on hundreds of units and unit groups at the Refinery. The Proposed Permit's New Source Review Authorization References by Emission Unit table, Proposed Permit at 782-836, lists emission units at the Refinery and identifies the preconstruction permit number(s) and/or PBR rule number(s) that establishes emission limits and operating requirements that apply to each unit. The New Source Review Authorization References by Emission Unit table does not identify any emission unit or unit group for 20 of the PBR rules listed in the New Source Review Authorization References table.

The only information in the Proposed Permit or the Statement of Basis about how Texas's PBR program works or where relevant information about how PBR requirements apply to units at the Galveston Bay Refinery may be found is the following description in the Statement of Basis:

[T]he site contains emission units that are permitted by rule under the requirements of 30 TAC Chapter 106, Permits by Rule. The following table specifies the permits by rule that apply to the site. All current permits by rule are contained in Chapter 106. Outdated 30 TAC Chapter 106 permits by rule may be viewed at the following Web site:

www.tceq.texas.gov/permitting/air/permitbyrule/historical_rules/old106list/index106.html

Outdated Standard Exemption lists may be viewed at the following Web site:

www.tceq.texas.gov/permitting/air/permitbyrule/historical_rules/oldselist/se_index.html

The status of air permits and applications and a link to the Air Permits Remote Document Server is located at the following Web site:

www.tceq.texas.gov/permitting/air/nav/air_status_permits.html

Statement of Basis at 274.

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 Galveston Bay Refinery, including source-specific PBR certified registrations, 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 incorporate and assure compliance with PBR requirements and emission limits.

3. Inadequacy of the Permit Term

While the Statement of Basis suggests that all the relevant information a reader needs to understand how claimed PBRs apply to emission units at the Galveston Bay Refinery may be found in the various Chapter 106 rules cited in the Proposed Permit, Statement of Basis at 274, the situation is much more complicated. In fact, source-specific information is necessary to determine the emission limits and operating requirements that apply to units at the Galveston Bay Refinery under claimed PBRs. For example, many of the PBR rules Blanchard has claimed for units at the Galveston Bay Refinery give Blanchard the option to register emission limits for multiple units covered by a PBR project to assure that cumulative emissions from the various units will not exceed generic emission limits listed in the applicable Chapter 106 rule(s). Operators may also certify federally-enforceable source-specific emission limits lower than limits listed in PBRs claimed to avoid triggering major New Source Review requirements. 30 Tex. Admin. Code § 106.6. When a source certifies source-specific federally-enforceable PBR limits, “[a]ll representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration under this section become conditions upon which the facility permitted by rule shall be constructed and operated.” *Id.* The existence of source-specific PBR requirements and limits in registered or certified PBRs is not explained in the Proposed Permit or Statement of Basis. While the Executive Director revised the Proposed Permit’s New Source Review Authorizations References by Emission Unit table to include registration numbers for PBR certifications and registrations claimed by Blanchard, nothing in the Proposed Permit or Statement of Basis explains what a PBR certification or registration is or explains how information in Blanchard’s certifications and registrations modifies generic requirements in the TCEQ’s Chapter 106 rules. Because nothing in the Statement of Basis or Proposed Permit suggests that Blanchard

may be subject to source-specific PBR requirements that are not listed in PBR rules incorporated by reference into the Proposed Permit and because the Proposed Permit and Statement of Basis fail to explain what registration numbers for PBR projects listed in the Proposed Permit's New Source Authorization References by Emission Unit table refer to or indicate that information about source-specific PBR requirements may be obtained by requesting records related to the registrations, the Proposed Permit fails to properly incorporate and assure compliance with applicable PBR requirements.

The Proposed Permit's New Source Review Authorizations by Emission Unit table also lists many units subject to requirements in *unregistered* PBRs. When a project is authorized under an unregistered PBR, generic emission limits in the claimed PBRs and the TCEQ's general PBR limits rule, 30 Tex. Admin. Code § 106.4(a)(1) apply. However, one must know which units are covered by each claimed PBR project and how many projects have been authorized under a particular PBR to understand how the generic limits for each project are divided amongst units at the Galveston Bay Refinery. For example, the Proposed Permit indicates that 306 tanks and other pieces of equipment for loading and unloading liquids are authorized under the TCEQ's PBR at 30 Tex. Admin. Code § 106.472 (9/4/2000). This PBR does not establish any emission limits, so the generic limits in the § 106.4(a) apply. If all of the equipment authorized under this unregistered PBR was constructed as part of the same PBR project, then combined VOC emissions would be required to remain under the 25 ton per year limit in 30 Tex. Admin. Code § 106.4(a)(1)(B). If each of the listed units was authorized independently and the 106.472 (9/4/2000) PBR was claimed 306 times, then cumulative VOC emissions authorized under the general PBR limit would be 7,650 tons per year (306 * 25 TPY). Because the Proposed Permit is ambiguous as to whether unregistered emission units authorized under the 106.472 (9/4/2000) PBR are allowed to emit 25

tons of VOC each year, 7,650 tons of VOC, or some other amount, the Proposed Permit fails to sufficiently incorporate PBR requirements by reference and does not assure compliance with applicable requirements. The Proposed Permit is deficient for the same reason with respect to each pollutant each emission unit is authorized to emit under the unregistered § 106.472 (9/4/2000) PBR. This same problem also applies to the following unregistered PBRs incorporated by reference into the Proposed Permit to authorize multiple emission units:

Table 1: Unregistered PBRs Used to Authorize Multiple EPNs

PBR	Date PBR Promulgated	Emission Units or Unit Groups
106.261	11/1/2003	T280-3105, TK-SM1001
106.264	9/4/2000	SRU-F8C, SRU-F8D
106.371	9/4/2000	ALK2-CTWR, LAB-CTWR1, LAB-CTWR2, TNT444, TNT445, TNT446, TNT447, ULC-CTWR
106.472	3/14/1997	T280-515, T280-516, TK-210F, TK-264F, TK-303F, TK-304F, TK-305F, TK-314F, TK-315F, TK-356F, TK-440F, TK-517F, TK-527F, TK-600, TK-601, TK-602, TK-603, TK-604, TK-610, TK-611, TK-612, TK-613, TK-614, TK-615, TK-616, TK618, TK-620, TK-622, TK-624, TK-626, TK-ACIDTK, TK-F180, TK-F190, TK-FUELTK, TK-I656, TK-I657, TK-L1501, TK-L1502, TK-T1000, TK-V305
106.476	3/14/1997	T280-135, T280-136, T280-137, T280-138
106.476	9/4/2000	D2A, D2R, D3A, D3R, D4A, D4R, D5A, D5R, D6A, D7R, T280-132, T280-133, T280-134, T280-160, T280-161, T280-222, T280-223
106.478	9/4/2000	T280-106, T280-3027, TK-SM1001, TNT165
106.511	9/4/2000	EMERGEN, ESBGEN, P-617, P-618, P-J16A, P-J16B, P-J35A, P-J35B, P-J53A, P-J53B, P-J615, P-J616, P-J682
106.512	9/4/2000	PRESSURE1, PRESSURE2
106.512	6/13/2001	J803PUMP, J804PUMP, LAMPUMP, T1046PUMP, T10563APUMP, TEMPPJ16B, TK117APUMP, TK20PUMP, TK4000PUMP, TK536CMPB
106.532	3/14/1997	TK-F600, TK-F601

Proposed Permit at 782-836.

Matters are even more complicated than they seem, because the TCEQ has also allowed Blanchard to claim PBRs to authorize emissions from the following units that are also subject to limits in one or more Chapter 116 New Source Review authorizations:

Table 2: Units Authorized by PBR(s) and Chapter 116 Permit(s)

Unit	PBR(s)	Chapter 116 Permits
ALK2-CTWR	106.371 (9/4/2000)	47256, PSDTX402M3
AU2-B601	106.261 (11/1/2003)	2612
BOOTH 1	106.433 (9/4/2000)	22107
COKR-B101	106.261 (11/1/2003)	2315
COKR-B201	106.261 (11/1/2003)	2315, 83422
COKR-B203	106.261 (11/1/2003)	6592
COKR-B301	106.261 (11/1/2003)	2315, 87463
COKR-B302	106.261 (11/1/2003)	47256, PSDTX402M3
DDU-101/2B	106.261 (9/4/2000)	47256, PSDTX402M3
DDU-102B	106.261 (9/4/2000)	47256, PSDTX402M3
DDU-201/2B	106.261 (9/4/2000)	47256, PSDTX402M3
DDU-201B	106.261 (9/4/2000)	47256, PSDTX402M3
DDU-202B	106.261 (9/4/2000)	47256, PSDTX402M3
DOCK32	106.478 (9/4/2000)	47256, PSDTX402M3
DOCK33	106.478 (9/4/2000)	47256, PSDTX402M3
DOCK34	106.478 (9/4/2000)	47256, PSDTX402M3
DOCK37	106.478 (9/4/2000)	47256, PSDTX402M3
DOCK38	106.478 (9/4/2000)	47256, PSDTX402M3
REF-FUG	106.261 (9/4/2000), 106.261 (11/1/2003), 106.262 (11/1/2003)	19599, 22107, 2162, 46052, 4715, 47256, 6488, 6592, 83422, 84658, 94345, 9606, PSDTX023, PSDTX402M3
SRU-F8CD	106.264 (9/4/2000)	47256, PSDTX402M3
SRU-F8C	106.264 (9/4/2000)	47256, PSDTX402M3
SRU-F8D	106.264 (9/4/2000)	47256, PSDTX402M3
T280-1018	106.472 (9/4/2000)	47256, PSDTX402M3
T280-102	106.262 (11/1/2003)	2231
T280-1044	106.478 (9/4/2000)	2231
T280-104	106.478 (9/4/2000)	47256, PSDTX402M3
T280-1052	106.478 (9/4/2000)	4714
T280-1055	106.478 (9/4/2000)	47256, PSDTX402M3
T280-106	106.478 (9/4/2000)	47256, PSDTX402M3

T280-128	106.478 (9/4/2000)	47256, PSDTX402M3
T280-129	106.478 (9/4/2000)	47256, PSDTX402M3
T280-181	106.261 (not identified)	47256, PSDTX402M3
T280-186	106.262 (11/1/2003), 106.478 (9/4/2000)	2231
T280-23	106.478 (9/4/2000)	47256, PSDTX402M3
T280-270	106.478 (9/4/2000)	47256, PSDTX402M3
T280-27	106.478 (9/4/2000)	47256, PSDTX402M3
T280-501	106.478 (9/4/2000)	47256, PSDTX402M3
T280-502	106.261 (not identified)	47256, PSDTX402M3
T280-504	106.478 (9/4/2000)	47256, PSDTX402M3
T280-530	106.261 (11/1/2003)	47256, PSDTX402M3
T280-97	106.261 (11/1/2003)	47256, PSDTX402M3
T280-98	106.478 (9/4/2000)	47256, PSDTX402M3
TK-601	106.472 (3/14/1997)	47256, PSDTX402M3
TK-602	106.472 (3/14/1997)	47256, PSDTX402M3
ULC-CTWR	106.371 (9/4/2000)	47256, PSDTX402M3

Id.

Nothing in the Proposed Permit, Statement of Basis, or the permit record for this project explains how PBR authorizations affect emission limits and operating requirements established by the Chapter 116 permit(s) covering the same source. Many of the above-listed PBRs appear to authorize emissions from and modifications to units previously authorized by Blanchard’s major source permit, PSDTX402M3. As EPA has acknowledged, this practice undermines the enforceability of applicable requirements, because it creates confusion about whether emission limits in the major source permit attached to a Texas Title V permit are actually controlling, and leads to a situation where “EPA and the public” are unable “to determine the applicable emission limitations and standards for each particular emission unit.” *Letter from Al Armendariz, Regional Administrator Region 6 to Mark R. Vickery, Executive Director, TCEQ, Re: Incorporation by*

*Reference in Texas Title V Permits (June 10, 2010).*³ The Proposed Permit’s incorporation by reference of Blanchard’s Chapter 116 permits and PBRs is incomplete, because the Proposed Permit fails to explain how and whether PBRs affect requirements in Blanchard’s Chapter 116 permits. Thus, it is unclear, based on information available in the permit record, what emission limits and operating requirements apply to units at the Galveston Bay Refinery subject to requirements in one or more Chapter 116 permits in addition to limits and requirements in one or more PBRs.

The Proposed Permit is also deficient because it fails to identify any unit or unit group subject to requirements in the following 20 PBRs claimed by Blanchard: 106.122 (9/4/2000), 106.183 (6/18/1997), 106.227 (3/14/1997), 106.231 (9/4/2000), 106.262 (9/4/2000), 106.263 (11/1/2001), 106.352 (11/22/2012), 106.353 (3/14/1997), 106.355 (3/14/1997), 106.371 (3/14/1997), 106.373 (3/14/1997), 106.373 (7/8/1998), 106.432 (3/14/1997), 106.433 (3/14/1997), 106.451 (3/14/1997), 106.452 (3/14/1997), 106.471 (3/14/1997), 106.473 (3/14/1997), 106.512 (3/14/1997), and 106.533 (3/14/1997). Proposed Permit at 777-836. 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 Galveston Bay Refinery. *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); *In the Matter of Shell Chemical LP and Shell Oil Co* (“Deer Park Order”), Order on Petition Nos. VI-2014-04 and VI-2014-05, at 11-15 (Sep. 24, 2015). 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

³ This letter was included as Attachment 3 to Petitioners’ initial public comments.

requirements, because the Proposed Permit fails to identify them as applicable for any specific emission unit or units at the Galveston Bay 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. Issue Raised in Public Comments

Petitioners raised this issue on pages 2-9 of their initial Public Comments. While these comments do not address PBR registration numbers listed in the Proposed Permit's New Source Review Authorizations References by Emission Unit table, Petitioners' objection regarding the way these registration numbers are incorporated into the Proposed Permit may be raised for the first time in this Petition, because the registration numbers were added to the Proposed Permit after the close of the public comment period. 42 U.S.C. § 7661d(b)(2).

5. Analysis of State's Response

The Executive Director's response to Petitioners' comments objecting to the Draft Permit's incomplete and misleading method of incorporating PBR requirements by reference is also incoherent and incomplete. On the one hand, he maintains that all applicable PBR requirements are listed in the rules cited by the Proposed Permit's New Source Review Authorization References table and the TCEQ's General PBR Requirements rule at 30 Tex. Admin. Code § 106.4:

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 Permit. When the emission limitation or standard is not specified in the referenced PBR, then the emissions authorized under permit by rule from the facility are specified in § 106.4(a)(1).

Response to Comments at 8.

The Executive Director, however, contradicts this position by acknowledging that certified maximum emission rates apply to units at the Galveston Bay Refinery. *Id.* Certified emissions limits, are by definition, source-specific limits that are not listed in the Chapter 106 rules incorporated by reference into the Proposed Permit. *See*, 30 Tex. Admin. Code § 106.6; *see also*, Public Comments at 8-9. The Executive Director also explains that “[a]ll registration number for specific units with registered PBRs have been added to the New Source Review Authorizations by Emission Unit table of the Draft Permit.” These source-specific PBR registrations include source-specific project information that is not found in the Chapter 106 rules incorporated by reference into the Proposed Permit that is necessary to understand how emission limits in Chapter 106 rules apply to units at the Galveston Bay Refinery. Thus, based on information included in the Executive Director’s response to comments, it is clear that the Executive Director’s contention that all the information one needs to understand how PBR requirements apply units at the Galveston Bay Refinery is available in the Chapter 106 rules incorporated by reference into the permit is untrue.

Next, the Executive Director rejects Petitioners’ contention that the Proposed Permit is deficient because it fails to identify any emission units subject to requirements in 20 of the PBRs claimed by Blanchard. According to the Executive Director, the Proposed Permit does not need to identify units for these PBRs because they are “site-wide” authorizations that apply “generally” to all activities at the Galveston Bay Refinery. Response to Comments at 8. According to the Statement of Basis, a “site-wide requirement is a requirement that applies uniformly to all the units or activities at the site.” Statement of Basis at 3. As a matter of law, PBRs may not be used to authorize site-wide changes to the Galveston Bay Refinery, because (1) PBRs are “only available to sources belonging to categories for which the Commission has adopted a PBR,” Response to Comments at 7, and the Commission has not issued a PBR for petroleum refineries; and (2) PBRs

may not be claimed to authorize sources and facilities that the TCEQ has determined make a significant contribution of air contaminants, like the Galveston Bay Refinery (which is a major stationary source of air pollution for purposes of PDS, NNSR, HAPs, and Title V). 68 Fed. Reg. 65,544; 30 Tex. Admin. Code § 106.1.

The Executive Director's statement that PBRs claimed by Blanchard apply uniformly to all units and activities at the Galveston Bay Refinery is further undermined by the text of the claimed PBRs. For example:

106.183 (6/18/1997) may be used to authorize "boilers, heaters, drying or curing ovens, furnaces, or other combustion units." Many units at the Galveston Bay Refinery are not combustion units authorized by this PBR, accordingly this PBR cannot apply uniformly to all units and activities at the Galveston Bay Refinery.

106.231 (9/4/2000) applies to "[f]acilities, including drying and curing ovens, and hand-held or manually operated equipment, used for manufacturing, refinishing, and/or restoring wood products." Many units and activities at the Galveston Bay Refinery are not used for manufacturing, refinishing, and/or restoring wood products. Accordingly the PBR cannot apply uniformly to all units and activities at the Galveston Bay Refinery.

106.263 (11/1/2001) "authorizes routine maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities," but excludes "piping fugitive emissions authorized under a permit or another permit by rule" and "any emissions associated with operations claimed under" the following PBRs: 106.352, 106.353, 106.355, 106.433, and 106.512. Blanchard has claimed each of these PBRs to authorize emissions from units at the Galveston Bay Refinery, thus it cannot be true that 106.263 applies uniformly to emission units at the Refinery. Moreover, many permits issued to Blanchard authorize activities unrelated to maintenance activities. PBR 106.263

cannot apply to these activities. Thus, it can't be true that this PBR applies uniformly to all activities at the Galveston Bay Refinery.

Because, as a matter of law, PBRs may not be used to authorize site-wide emissions at a major stationary source or a petroleum refinery, the Executive Director's response to comments concerning the Proposed Permit's failure to specify emission units subject to requirements in 20 PBRs claimed by Blanchard fails to rebut Petitioners' demonstration that the Proposed Permit is deficient.

Finally, the Executive Director's response to comments fails to shed any light on the question of how emission limits in unregistered PBRs used to authorize projects involving multiple units at the Galveston Bay Refinery apply to particular units at the Refinery. For example, the Executive Director's response does not explain how one can determine whether the 300+ units subject to requirements under 106.472 (9/4/2000) are allowed to emit 25 tons of VOC each year, 7,650 tons of VOC, or some other amount. Because the Executive Director's response fails to identify information in the record or in the Agency's files that would allow one to resolve questions like this, it fails to address Petitioners' concern that the Proposed Permit fails to explain how PBR requirements apply to units at the Galveston Bay Refinery and the Administrator must object to the permit.

D. The Proposed Permit Fails to Assure Compliance with Emission Limits and Operating Requirements Established by Blanchard's New Source Review Permits, Including Permits by Rule

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 NSR permits, including PBRs, that it incorporates by reference and because the permit record does not contain

a reasoned explanation supporting the Executive Director's determination that monitoring provisions in the Proposed Permit assure compliance with these requirements.

Proposed Permit, Special Condition No. 28 provides that NSR permits (including PBRs) 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 Authorization References table incorporates many different Chapter 116 permits by reference, including: PSDTX023, PSDTX402M3, 47256, and 19599. Proposed Permit at 777. These four different permit numbers only identify two permits, which are attached to the Proposed Permit in Appendix B. The first permit is Blanchard's State-only Flexible Permit No. 47256/PSDTX402M3. The second permit is Permit No. 19599/PSDTX023. The Proposed Permit also includes two "Major NSR Summary Tables" that identify emission limits in these permits' Maximum Allowable Emission Rate Tables ("MAERT") and list special conditions in the incorporated permits that establish monitoring, testing, recordkeeping, and reporting requirements that the Executive Director contends assure ongoing compliance with the emission limits. *Id.* at 851-856.

The Proposed Permit's New Source Review Authorization References table lists more than 80 current and outdated Chapter 106 PBR rules Blanchard has claimed to authorize projects and emissions at the Galveston Bay Refinery. *Id.* at 778-781. The Proposed Permit includes the following recordkeeping requirement for emission units authorized by PBR:

The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit's compliance with the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, safety data sheets (SDS), chemical composition of raw materials,

speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144. Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).

Proposed Permit at Special Condition No. 30.

The Statement of Basis provides the following statement regarding the sufficiency of monitoring in the Proposed Permit:

Federal and state rules, 40 CFR § 70.6(a)(3)(i)(B) and 30 TAC § 122.142(c) respectively, require that each federal operating permit include additional monitoring for applicable requirements that lack periodic or instrumental monitoring (which may include recordkeeping that serves as monitoring) that yields reliable data from a relevant time period that are representative of the emission unit's compliance with the applicable emission limitation or standard. Furthermore, the federal operating permit must include compliance assurance monitoring (CAM) requirements for emission sources that meet the applicability criteria of 40 CFR Part 64 in accordance with 40 CFR § 70.6(a)(3)(i)(A) and 30 TAC § 122.604(b).

With 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. If applicable, each emission unit that requires additional monitoring in the form of periodic monitoring or CAM is described in further detail under the Rationale for CAM/PM Methods Selected section following this paragraph.

Statement of Basis at 278.

None of the Periodic Monitoring or CAM Summaries in the Proposed Permit address requirements in Blanchard's NSR permits or PBRs, and the Statement of Basis does not provide a reasoned justification for the Executive Director's determination that existing provisions in

Blanchard's NSR permits and PBRs assure compliance with applicable permit limits and operating requirements.

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 and PBRs 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).

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

3. Inadequacy of the Permit Term

a. Permits by Rule

According to the Proposed Permit's New Source Review Authorization References by Emission Unit table, more than 500 units and unit groups at the Galveston Bay Refinery are subject to requirements in Texas's Chapter 106 Permits by Rule. Proposed Permit at 782-836. Neither the Proposed Permit nor the PBR rules listed in the Proposed Permit's New Source Review Authorization References table specify monitoring methods that assure compliance with

applicable PBR requirements for any of these units or unit groups. For example, Blanchard claims the PBR at 106.472 (9/4/2000) to authorize emissions from 306 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. 29 and 30, 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 Blanchard 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 Proposed Permit allows Blanchard 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 Blanchard 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. *Wheelabrator Order* at 10.

The Proposed Permit's Special Condition No. 30 recordkeeping requirement is deficient for an additional reason: It fails to require permit records demonstrating compliance with PBR limits to be made available to the public as required by Texas's Title V program. *Deer Park Order* at 15 (“[T]he permit records for demonstrating compliance with PBRs must be available to the public as required under the approved Texas title V program”).

b. Permit No. 47256

As explained in Sections A and B of this Petition above, the Proposed Permit is objectionable because it incorporates Blanchard's State-only major source Flexible Permit as a federally-enforceable permit and lists provisions in the TCEQ's federally approved *minor source* flexible permit program as applicable requirements for the Galveston Bay Refinery. The Proposed Permit is also deficient because the monitoring provisions in Blanchard's State-only Flexible Permit are inconsistent with the TCEQ's federally-approved minor source flexible permit program rules and fail to assure compliance with emission limits and emission caps established by the Flexible Permit.

- (i) *Permit No. 47256 Fails to Identify the Methodology for Calculating Emissions from Certain Source Categories at the Galveston Bay Refinery that Assures Compliance with Emission Caps*

The TCEQ's federally-approved minor source flexible permit program rules provide that “[e]ach flexible permit shall specify methods for calculating annual and short term emissions for each pollutant for a given type of facility.” 30 Tex. Admin. Code § 116.715(c)(5)(B). Permit No. 47256, Special Condition No. 56 lists calculation methods for some, but not all types of facilities at the Galveston Bay Refinery. For facility types that are not listed, like Blanchard's flares, the

permit provides “the permit holder shall use the methodology which was used in the permit application.” The Proposed Permit does not identify the methodology that should be used for unlisted source-types, fails to identify the source-types that have been omitted from the special condition, and it does not identify the application(s) that contain the relevant information. The Proposed Permit’s failure to specify the appropriate calculation methodology for all facility types at the Galveston Bay Refinery, its failure to list the omitted facility types, and to specifically reference and incorporate calculation methodologies in Blanchard’s permit application(s) is contrary to the TCEQ’s flexible permit rules and fails to assure compliance with emission caps in Blanchard’s Flexible Permit.

(ii) *Permit No. 47256 Fails to Identify Reasonable Emission Calculation Methodologies for Planned Maintenance, Startup, and Shutdown Activities that Assure Compliance with Applicable Limits and Emission Caps*

Permit No. 47256, Special Condition No. 68 states that planned maintenance, startup, and shutdown (“MSS”) “[e]missions shall be estimated using good engineering practice and methods to provide reasonably accurate representations for emissions.” This vague condition fails to specify monitoring and emission calculation methods that assure compliance with applicable emission limits in Permit No. 47256. Where an applicable requirement creates a general duty to behave reasonably, a Title V permit incorporating that requirement must identify the specific reasonable measures the operator must take to assure compliance with the applicable requirement. *In the Matter of Scherer Steam Electric Generating Plant*, Order on Petition Nos. IV-2012-1, IV-2012-2, IV-2012-3, IV-2012-4, and IV-2012-5, at 18-20 (Jan. 31, 2011). The Proposed Permit is deficient because it fails to identify reasonably accurate methods for calculating planned MSS emissions that assure compliance with applicable emission limits and caps in Permit No. 47256.

(iii) Permit No. 47256 Fails to Include Monitoring Provisions and Operating Requirements for Flares at the Galveston Bay Refinery that Assure Compliance with Applicable VOC Emission Caps

Permit No. 47256 establishes multi-unit VOC emission caps of 1,446.27 lbs/hour and 1,567.73 tons per year. These emission caps limit emissions from many different units at the Galveston Bay Refinery, including the following flares: Refinery Flare No. 2, Refinery Flare No. 3, Refinery Flare No. 4, ULC Flare, SRU A/B Flare, SRU C/D Flare, Flare 8, and CFHU Flare 1. Permit No. 47256, Attachment E (listing units included in the Flexible Permit's VOC emission caps). To determine emissions from Blanchard's flares, Permit No. 47256 directs Blanchard to presume that each flare operates with a 98 percent destruction efficiency, so long as Blanchard complies with general provisions for flares found at 40 C.F.R. § 60.18. Permit No. 47256 at Special Condition Nos. 14 and 56 (directing Blanchard to calculate flare emissions using method in its application); (Exhibit 9), De-Flex Application Table Listing Historic BACT for Units Covered by Permit No. 47256 (explaining that Blanchard's flares are represented to continuously achieve at least a 98% VOC destruction efficiency).

The Proposed Permit is deficient because general provisions for flares found at 40 C.F.R. § 60.18 and operating requirements equivalent to those in Blanchard's Permit No. 47256 do not ensure that Blanchard's flares will continuously achieve the presumed level of control. In fact, EPA found that flares complying with general provisions for flares found at 40 C.F.R. §§ 60.18 and 63.11 only achieved an average destruction efficiency of only 93.9%. *U.S. EPA, Petroleum Refinery Sector Rule: Flare Impact Estimates* at 9 (January 16, 2014), EPA-HQ-OAR-2010-0682-0209. The TCEQ conducted an analysis and reached the same conclusion: "operating an assisted flare in compliance with 40 C.F.R. § 60.18 does not ensure that the flare will achieve [a] 98%

[destruction efficiency].” TCEQ, 2015 Emission Inventory Guidelines, RG-360/15 at A-43 (January 2016).

Because EPA and the TCEQ have both determined that steam assisted flare monitoring and emission calculation requirements indistinguishable from those in Permit No. 47526 significantly under-predict actual VOC emissions, the Proposed Permit fails to assure compliance with hourly and annual VOC emission caps in Permit No. 47256 that include emissions from Blanchard’s flares.

- (iv) Permit No. 47256 Fails to Specify Operational Limits and Monitoring to Assure Compliance with the Prohibition on VOC Emissions from Blanchard’s Pressure Tanks

Permit No. 47256, Special Condition No. 6 prohibits Blanchard from venting VOC emissions to atmosphere from pressure tanks at the Galveston Bay Refinery. The permit, however, does not establish any monitoring, recordkeeping, or operating requirements to assure compliance with this prohibition. Accordingly, the Proposed Permit fails to assure compliance with applicable requirements.

- (v) Permit No. 47256 Fails to Identify the Monitoring Protocol that Assures Compliance with the Permit’s Collection Efficiency Requirement for Material Transfer from Inerted Ocean-Going Vessels

Permit No. 47256, Special Condition No. 8(B) requires Blanchard to conduct tests demonstrating a 99% VOC collection efficiency for transfer of materials from inerted ocean-going marine vessels using a protocol approved by the Executive Director. Neither Permit No. 47256 nor the Proposed Permit identify and incorporate the applicable test protocol. The Proposed Permit is therefore incomplete and fails to assure compliance with applicable requirements. *In the Matter of WE—Oak Creek Power Plant*, Order on Petition to Object to Permit No. 241007690-P10 at 25-26 (June 12, 2009) (“Furthermore, along with the construction permit requirement to comply with

an MPAP approved by WDNR, the permit also requires ESP inspection in accordance with an approved MPAP as a means of demonstration and monitoring compliance with the PM limit[.] . . . Because compliance with the approved MPAP is required, the plan must be include in the permit pursuant to 40 C.F.R. 70.6(a)(1)’’).

c. Permit No. 19599/PSDTX023

Permit No. 19599/PSDTX023 establishes the following emission limits for units at the Galveston Bay Refinery:

Table 3: Emission Limits

EPN	Source Name	Pollutant	lb/hr	TPY
41	401BA	CO	11.60	42.30
		NO _x	37	135
		PM ₁₀	1.5	5.3
		VOC	.4	1.5
42	401BB	CO	11.60	42.30
		NO _x	37	135
		PM ₁₀	1.5	5.3
		VOC	.4	1.5
51	101-BA/BB	CO	29.9	109
		NO _x	47.62	173.8
		PM ₁₀	3.7	13.6
		VOC	1	3.8
53	102-BA/BB	CO	22.45	81.94
		NO _x	10.62	38.75
		PM ₁₀	1.4	5.2
		VOC	.8	3
46	Oil Water Separator	VOC	5.8	25
47	Oil Water Separator	VOC	.9	4
56	Oil Water Separator	VOC	4.4	19

Proposed Permit at 851.

According to the Draft Permit’s Major NSR Summary Table, the following requirements assure compliance with each of these limits:

- The feed rate to Pipe Still No. 3 shall not exceed 500,000 barrels per calendar day. A record of feed rate (daily throughput in barrels) to Pipe Still No. 3 shall be kept on a rolling five-year basis and made available to the Texas Commission on Environmental Quality

Executive Director or his designated representatives upon request. Permit No. 19599/PSDTX023, Special Condition No. 2;

- These facilities [authorized by Permit No. 19599/PSDTX023] shall comply with all applicable requirements of the U.S. Environmental Protection Agency (EPA) Regulations on Standards of Performance for New Stationary Sources promulgated for Petroleum Refineries in Title 40 Code of Federal Regulations Part 60 (40 CFR Part 60), Subparts A and J. *Id.* at Special Condition No. 6.
- These facilities [authorized by Permit No. 19599/PSDTX023] shall comply with the applicable requirements of Title 30 Texas Administrative Code (30 TAC) § 113.340, including the referenced requirements promulgated for National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries in 40 CFR Part 63, Subpart CC. *Id.* at Special Condition No. 7.

Draft Permit at 851.

These monitoring, recordkeeping, and reporting requirements fail to assure compliance with the permit limits for several reasons:

First, no 40 C.F.R. Part 63 Subpart CC requirements apply to any of these units. Response to Comments at 20. Because no Subpart CC requirements apply, Special Condition 7 cannot assure compliance with any emission limit for these units.⁴ Second, the only applicable requirements in EPA's Part 60, Subparts A and J rules establish a monitoring method for H₂S, which is used as a surrogate for SO₂ emissions. Thus, the Part 60 monitoring required for the listed units by Permit No. 19599/PSDTX023, Special Condition No. 6 does not assure compliance with applicable limits on NO_x, CO, PM, and VOC emissions from these units. Response to Comments at 20 (“[B]ased on the applicability information provided by Blanchard in the application, EPNs 41, 42, 51, and 53 . . . are not subject to any emission limits for NO_x, CO, PM, and/or VOC requirements under 40 CFR 60, Subpart J”).

⁴ 30 Tex. Admin. Code § 113.340 simply incorporates EPA's Subpart CC regulations by reference into the TCEQ's rules.

Accordingly, two of the three monitoring and testing special conditions listed in the Proposed Permit’s Major NSR Summary Table as assuring compliance with emission limits for the above-listed limits do not establish *any* monitoring or testing to assure compliance with the limits. The only condition listed in the Major NSR Summary Table that actually establishes a requirement relevant to emissions from the listed units is the feed rate limit in Permit No. 19599/PSDTX023, Special Condition No. 2. This feed rate limit cannot assure compliance with the applicable hourly and annual emission limits, because variables unrelated or only indirectly related to feed rate affect the amount of pollution emitted by the units in question. To assure compliance with the applicable emission limits, the Proposed Permit must—at a minimum—establish parametric monitoring requirements to assure that the units and their controls are working properly.

Permit No. 19599/PSDTX023 establishes the following emission limits for combustion units at the Galveston Bay Refinery:

Table 4: Emission Caps

EPN	Source Name	Pollutant	lb/hr	TPY
43A	PS3B Heaters 402BE, 402BF, and 402BG	CO	26.74	114.12
		NO _x	32.56	87.86
		PM ₁₀	3.77	16.87
		VOC	1.91	8.2

Draft Permit at 851.

The monitoring, recordkeeping, and reporting requirements for these limits include the same provisions addressed above with respect to other combustion units and oil water separators authorized by Permit No. 19599/PSDTX023. For the same reasons listed above, the compliance requirements established by Permit No. 19599/PSDTX023, Special Conditions 2, 6, and 7 do not assure compliance with these emission caps. In addition to these requirements, the Draft Permit

identifies Permit No. 19599/PSDTX023, Special Condition No. 8 as an applicable testing, recordkeeping, and reporting requirement for EPN 43A emission caps. Draft Permit at 851.

Special Condition 8, in conjunction with requirements in Special Conditions 2, 6, and 7, does not assure compliance with the permit limits. The Special Condition allows, but does not require, the Executive Director to request stack testing to establish the actual pattern and quantities of PM and CO being emitted from PS3B Heater 402BE, but not units 402BF or 402BG. This requirement fails to assure compliance with applicable requirements, because it is completely discretionary and only addresses emissions of two pollutants from a single unit covered by the applicable emission caps.

Permit No. 19599/PSDTX023 establishes the following emission limits for combustion units 103-B at the Galveston Bay Refinery:

Table 5: Emission Limits

EPN	Source Name	Pollutant	lb/hr	TPY
55	103-B	CO	5.65	24.72
		NO _x	15.80	65.70
		PM ₁₀	2.42	10.61
		VOC	.20	.87

Draft Permit at 851.

The Draft Permit’s compliance conditions for these limits include the same special conditions that apply to the EPN 43A emission limits, as well as an additional requirement related to the unit’s maximum allowable firing rate, found at Permit No. 19599/PSDTX023, Special Condition No. 3. For the same reasons listed above, the compliance requirements established by Permit No. 19599/PSDTX023, Special Conditions Nos. 2, 6, and 7 do not assure compliance with these limits. As above, Special Condition No. 8 does not cure this deficiency, because it makes stack testing discretionary with the Executive Director and does not require periodic testing to determine actual emission rates for all of the authorized pollutants.

Permit No. 19599/PSDTX023, Special Condition 3 establishes a daily firing rate for EPN 55 of 185.2 MMBtu/hr. The Executive Director has not explained how this heat-input limit is sufficient, in conjunction with other applicable requirements, to assure compliance with hourly and annual emission limits for CO, NO_x, PM₁₀, and VOC. On its face, the requirement is not sufficient to assure compliance, because the amount of pollution emitted by Blanchard's combustion units is a function of various different operating parameters unrelated or only indirectly related to heat input.

4. Issue Raised in Public Comments

Petitioners raised these objections in Public Comments at 14-17 and Supplementary Comments at 3-17.

5. Analysis of State's Response

a. The Executive Director Fails to Rebut Petitioners' Demonstration that the Proposed Permit Does Not Specify Monitoring to Assure Compliance with Incorporated PBR Emission Limits

The Executive Director disagrees with Petitioners that the Proposed Permit should be revised to (1) specify monitoring methods that assure compliance with applicable PBR limits and operating requirements and (2) make records used to demonstrate compliance with PBR requirements available to the public on request.

With respect to the first point, the Executive Director contends that Proposed Permit, Special Condition No. 30 assures compliance with applicable limits by requiring Blanchard to maintain records demonstrating compliance with the limits. Response to Comments at 14. The Executive Director emphasizes that this recordkeeping special condition identifies many kinds of monitoring that could be used to generate reliable information about emissions from units subject to PBR limits. Unfortunately, Special Condition No. 30 does not actually require Blanchard to

conduct any particular kind monitoring or to use records related to any particular monitoring method(s), listed or unlisted, to assure compliance with applicable PBR emission limits. For example, nothing in the permit record suggests that Blanchard must use CEMS to directly monitor emissions or to conduct stack testing to determine emissions from any unit to assure compliance with PBR requirements incorporated by reference into the Proposed Permit. Instead, the Proposed Permit leaves it entirely to Blanchard's discretion to decide how it will determine compliance with PBR requirements. The requirement to maintain records demonstrating compliance with PBR emission limits is not itself a monitoring protocol and only assures compliance if the information in Blanchard's compliance records is based upon reliable monitoring information. *Granite City I Order* at 7-8 (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). Accordingly, the Administrator must object to the Proposed Permit because it fails to specify minimum monitoring requirements necessary to assure compliance with PBR limits at the Galveston Bay Refinery. *Wheelabrator Order* at 10 ("EPA agrees that MDE 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").

The Executive Director offers the following response to Petitioners' objection that the Proposed Permit does not make records used to demonstrate compliance available to the public on request:

The ED disagrees that the Draft Permit fails to require permit records demonstrating compliance be made available to the public. General Terms and Conditions of the Draft Permit specify the requirement to comply with 30 TAC § 122.144 (Recordkeeping Terms and Conditions), 30 TAC § 122.145 (Reporting Terms and Conditions), and 30 TAC § 122.146 (Compliance Certification Terms and Conditions). The public can review documents submitted to the ED as well as

reports of TCEQ investigations by visiting the regional office or Central Records office in Austin. TCEQ is developing a website-based mechanism to access public documents. For more information see:

<http://www.tceq.texas.gov/assets/public/agency/How-to-Use-Central-File-Room-Online.pdf>

and

https://inewx.tceq.texas.gov/TCEQ_public/Records/BasicSearch.aspx

Response to Comments at 15.

Petitioners used the referenced website to search for electronic compliance records for units at the Galveston Bay Refinery. The search returned the following 17 files, *each of which is marked confidential and is not available to members of the public:*

Record Number	Record Series	Primary ID	Document Type
2122178	Air Compliance	GB0004L	Compliance CONFIDENTIAL
2947854	Air Compliance	GB0004L	Compliance CONFIDENTIAL
3796771	Air Compliance	GB0004L	Compliance CONFIDENTIAL
4032852	Air Compliance	102535077	Compliance CONFIDENTIAL
4034038	Air Compliance	102535077	Compliance CONFIDENTIAL
4117515	Air Compliance	102535077	Compliance CONFIDENTIAL
4140363	Air Compliance	102535077	Compliance CONFIDENTIAL
4143667	Air Compliance	102535077	Compliance CONFIDENTIAL
4144057	Air Compliance	102535077	Compliance CONFIDENTIAL
4212752	Air Compliance	102535077	Compliance CONFIDENTIAL
4219603	Air Compliance	102535077	Reports CONFIDENTIAL
4235628	Air Compliance	102535077	Reports CONFIDENTIAL
4249105	Air Compliance	102535077	Compliance CONFIDENTIAL
4250672	Air Compliance	102535077	Compliance CONFIDENTIAL
4326727	Air Compliance	102535077	Compliance CONFIDENTIAL
4326969	Air Compliance	102535077	Compliance CONFIDENTIAL
4336413	Air Compliance	102535077	Compliance CONFIDENTIAL

Because the TCEQ's website indicates that Blanchard's compliance documents are categorically treated as confidential information that is not available to the public, the Executive

Director's response to Petitioners' objection supports rather than rebuts Petitioners' demonstration that the Proposed Permit is deficient.

b. The Executive Director's Response to Comments Fails to Rebut Petitioners' Demonstration that the Proposed Permit Fails to Assure Compliance with Emission Limits and Caps in Blanchard's Flexible Permit

- (i) *The Executive Director Does Not Explain Where the Flexible Permit Identifies Emission Calculation Methodologies that Assure Compliance with Requirements for Unit-Types that are Not Listed in Special Condition No. 56*

The Executive Director's Response to Comments does not address Petitioners' objection that Permit No. 47256, Special Condition No. 56 fails to explain how emissions from various kinds of units, including flares, should be calculated to assure compliance with Flexible Permit emission limits and caps, as the TCEQ's flexible permit program rules require.

- (ii) *The Executive Director Does Not Attempt to Demonstrate that Blanchard's Flexible Permit Specifies Reliable Methods for Determining Emissions from Planned MSS Activities at the Galveston Bay Refinery*

The Executive Director does not address Petitioners' objection that Permit No. 47256, Special Condition No. 68 fails to specify reasonable and reliable practices for calculating emissions from planned MSS activities at the Galveston Bay Refinery. The Response to Comments does not rebut Petitioners' demonstration that the Flexible Permit's special condition is too vague to assure compliance with applicable requirements, nor it identify information incorporated by reference into the Proposed Permit that explains how planned MSS emissions should be calculated.

(iii) *The Executive Director Does Not Rebut Petitioners' Demonstration that Blanchard's Flexible Permit Does not Assure Compliance with VOC Emission Limits that Regulate Emissions from Flares at the Galveston Bay Refinery*

The Executive Director disagrees that additional monitoring and operating requirements must be added to the Proposed Permit to assure compliance with VOC emission caps in Permit No. 47256 that include Blanchard's flares, because (1) "[t]here is no currently-available, EPA-approved mechanism for testing or monitoring emissions from an operating flare"; (2) continuous monitoring to document a flame is present at all times, as required by 40 CFR § 60.18, assures proper operation of the flares; (3) two studies show that flares typically meet applicable standards when properly design and operated; and (4) Permit No. 47256 requires monitoring of visible emissions using Method 22. Response to Comments at 12-13.

The Executive Director's first three contentions were anticipated and rebutted by Petitioners' comments. EPA has in fact developed a method for monitoring and controlling emissions from an operating refinery flare that assures the flare will continuously achieve a VOC destruction efficiency of 98%. Petitioners identified and explained this method on pages 13-14 of their Supplementary Comments. Petitioners also explained that EPA and the TCEQ have both concluded that compliance with General Requirement in 40 C.F.R. 60.18 does not ensure that steam-assisted flares, like the ones at the Galveston Bay Refinery, will continuously achieve the 98% destruction efficiency presumed by Blanchard's Flexible Permit. *Id.* The Executive Director's citation of two papers published more than a decade ago does not explain why EPA and the TCEQ's more recent conclusion that § 60.18 requirements are not sufficient to assure that flares will achieve a destruction efficiency of 98% on an ongoing basis is flawed or inapplicable. Response to Comments at 12. Finally, the Executive Director's response regarding visible

emissions monitoring for the flares is not responsive to Petitioners' comments, because Petitioners did not object to the Flexible Permit's monitoring provisions for flare opacity.

(iv) *The Executive Director Failed to Identify Enforceable Operational Limits and Monitoring to Assure Compliance with the Prohibition on VOC Emissions from Blanchard's Pressure Tanks*

The Executive Director offers the following defense of his determination that provisions in Blanchard's Flexible Permit assure compliance with the prohibition on VOC emissions from pressure tanks at the Galveston Bay Refinery:

Pressure tanks have no emissions to the atmosphere since they are designed to operate with a "dead zone" between the tank operating pressure and the set pressure for the tank relief valve. This dead zone is set at a value that ensures an accidental release during tank filling operations does not occur. The pressure tank operating pressures and relief valve set pressures are permit representations which are enforceable. Additional monitoring, recordkeeping, and reporting are not required because the relief valve set pressures do not change and any exceedance of the operating pressure that resulted in a release would be reported as an emission event under 30 TAC Chapter 101.

Response to Comments at 22.

The Executive Director's response does not rebut Petitioners' demonstration that the Proposed Permit is deficient. Even if compliance with pressure tank operating limits and relief valve set pressures limits represented in Blanchard's application would assure compliance with the prohibition on VOC emissions from Blanchard's pressure tanks, the Proposed Permit is still deficient because it fails to include the relevant pressure limits as applicable requirements. While the Executive Director contends that the pressure limits are enforceable representations, he fails to show where these representations are listed in or incorporated by the Proposed Permit. Accordingly, the Administrator must object to the Proposed Permit because it fails to incorporate

enforceable operating requirements that are necessary to assure compliance with its prohibition on VOC emissions from Blanchard's pressure tanks.

- (v) *The Executive Director's Response to Comments Does Not Demonstrate that the Proposed Permit Specifies the TCEQ-Approved Testing Protocol for Inerted Ocean-Going Vessels*

The Executive Director makes the following response to Petitioners' objection that the Proposed Permit fails to incorporate the testing protocol that assures compliance with the 99.9% VOC collection efficiency requirement for inerted ocean-going marine vessels:

Blanchard's proposed test protocol to determine compliance with the collection requirement was approved by TCEQ on September 4, 2015, and can be found in the permit record for Permit No. 47256/PSDTX402M3. Air permits authorizing construction or modification of facilities, or that authorize emission increases, are issued under the authority of 30 TAC Chapter 116, relating to control of air pollution by permits for new construction or modification under NSR. The ED has determined that, in the case of NSR permits, it is clearer and more beneficial to the public and the regulated community to include all relevant NSR related requirements, including sufficiency monitoring, in those particular NSR permitting documents and files.

Response to Comments at 22-23.

The Executive Director's response that information about the applicable testing protocol "can be found in the permit record for Permit No. 47256/PSDTX402M3" does not answer Petitioners' objection that the Proposed Permit fails to identify and incorporate the protocol as an applicable requirement. While the Executive Director may believe that "it is clearer and more beneficial to the public and the regulated community to include all relevant NSR related requirements, including sufficiency monitoring, in those particular NSR permitting documents and files," that belief has no bearing on his statutory obligation to issue Title V permits that include and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c).

The Proposed Permit is deficient because it fails to identify and incorporate the testing protocol mandated by Blanchard's major source permit. This testing protocol may not be incorporated by reference, because it is an applicable requirement of a major NSR permit and incorporation by reference of major NSR requirements is not allowed under Texas's federally-approved Title V program rules. Even if incorporation by reference of a major NSR permit testing protocol was acceptable in theory, the Proposed Permit would still be deficient because it does not identify and incorporate the document(s) describing the testing protocol as an applicable requirement. *Granite City I Order* at 43 ("In order for incorporation by reference to be used in a way that fosters public participation and results in a title V permit that assures compliance with the Act, it is important that: (1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and the date of the document be included so that there is no ambiguity as to which version of a document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation").

c. The Executive Director's Response to Comments Fails to Rebut Petitioners' Demonstration that the Proposed Permit Fails to Assure Compliance with Emission Limits in Permit No. 19599/PSDTX023

The Executive Director's response to comments confirms that Permit No. 19599/PSDTX023, Special Condition Nos. 6 and 7 do not establish any monitoring requirements that assure compliance with NO_x, PM₁₀, CO, or VOC emission limits listed in Petition, Tables 3-5. Response to Comments at 20-21. The Executive Director, however, does not explain why the Proposed Permit's Major NSR Summary Table indicates that these special conditions establish monitoring and testing requirements that assure compliance with the emission limits. Proposed

Permit at 851. Nor does the Executive Director explain which Special Conditions in Permit No. 19599/PSDTX023 actually assure compliance with the applicable limits.

With respect to combustion units listed in Tables 3-5, the Executive Director explains that he “is not aware of any facts that would compel additional monitoring beyond that which is required in 40 CFR Part 60, Subpart J for fuel gas combustion devices as applicable in the Draft Permit.” Response to Comments at 21. Nonetheless, the Executive Director must be aware that Subpart J does not establish any applicable monitoring requirements for the NO_x, PM₁₀, CO, or VOC emission limits, because he says as much in his response to comments. *Id.* at 20 (indicating that relevant EPNs are not subject to NO_x, CO, PM, or VOC requirements under 40 CFR 60, Subpart J). The Executive Director’s position that this fact does not compel additional monitoring is not supported by the record and is contrary to law.

With respect to Blanchard’s Oil Water Separators, the Executive Director explains:

The oil water separators EPNs 46, 47, and 56 . . . VOC emission requirements can be found in the Draft Permit. The units must comply with 30 TAC Chapter 115 and 40 CFR 60, Subpart QQQ for VOC requirements. TCEQ is not aware of any facts that would compel additional monitoring beyond the requirements in the Draft Permit. Oil water separators are not subject to the requirements of 40 CFR 60, Subpart J or 40 CFR 63, Subpart CC.

And

[A]ccording to Blanchard, the Pipestills permit applications have historically calculated the oil water separators (OWS) emissions by using an AP-42 oil water separator factor (Table 5.1-2) for controlled emissions of 0.2 lb VOC/1,000 gal wastewater for covered separators and/or vapor recovery systems. Galveston Bay Refinery monitors the carbon canister systems three times per week and has complied with applicable 40 CFR 61 Subpart FF (BWON) rules for monitoring of the control devices on these OWS.

Id. at 21.

None of this actually addresses Petitioners' contention that monitoring and testing requirements identified in the Proposed Permit's Major NSR Summary Table as assuring compliance with VOC emission limits for Blanchard's oil water separators do not actually assure compliance with the applicable limits. If the Executive Director believes that requirements in 30 TAC Chapter 115 and 40 CFR, Subpart QQQ, and calculation methods in Blanchard's permit applications assure compliance with the emission limits in Permit No. 19599/PSDTX023, then he should revise the Proposed Permit's Major NSR Summary table to identify those requirements as mandatory monitoring and testing methods for the permit.

The Executive Director also references information in Blanchard's pending application to renew Permit No. 19599/PSDTX023 in support of his determination that the Proposed Permit's monitoring requirements for Blanchard's oil water separators assure compliance with applicable limits. Representations in a pending application for a permit action that has not been completed or incorporated into the Proposed Permit are not enforceable requirements. Thus, the cited permit application representations have no bearing on the question of whether monitoring and testing requirements in the Proposed Permit assure compliance with applicable emission limits.

Finally, the Executive Director falls back on the recordkeeping requirement at Permit No. 19599/PSDTX023, General Condition No. 7 to support his conclusion that monitoring provisions in Blanchard's NSR permit assure compliance with applicable emission limits:

Also, the NSR permit face states in condition 7 that the permit holder shall maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records, and operating hours, and keep all required record in a file at the plant site.

Response to Comments at 21.

The requirement to maintain records demonstrating compliance with NSR permit limits is not itself a monitoring protocol and only assures compliance if the information in Blanchard's

compliance records is based upon reliable monitoring information. *Granite City I Order* at 7-8. Petitioners have demonstrated that monitoring provisions in Permit No. 19599/PSDTX402M3 do not assure compliance with applicable emission limits. The Executive Director's response to Petitioners' objection fails to rebut this demonstration. Accordingly, the Administrator must object to the Proposed Permit because it fails to specify minimum monitoring requirements necessary to assure compliance with emission limits in Permit No 19599/PSDTX402M3.

V. CONCLUSION

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

Gabriel Clark-Leach
Environmental Integrity Project
1206 San Antonio Street
Austin, TX 78701
(512) 637-9478 (phone)
(512) 584-8019 (fax)
gclark-leach@environmentalintegrity.org