UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL INTEGRITY PROJECT 1000 Vermont Ave. NW, Suite 1100 Washington, DC 20005, AIR ALLIANCE HOUSTON 3914 Leeland Street Houston, TX 77003, and SIERRA CLUB 1202 San Antonio Street Austin, TX 78701, *Plaintiffs*, v. SCOTT PRUITT, in his official capacity as Administrator, U.S. Environmental Protection Agency, William Jefferson Clinton Building Mail Code 1101A 1200 Pennsylvania Ave., NW Washington, DC 20460, *Defendant*.	Civil Action No. 1:17-cv-1440 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

STATEMENT OF THE CASE

1. This is a civil action for declaratory and injunctive relief, with costs and fees under the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the declaratory judgment statute, 28 U.S.C. §§ 2201, 2202.

2. With this action, Plaintiffs Environmental Integrity Project, Air Alliance Houston, and Sierra Club ("Plaintiffs") seek an order declaring that the United States Environmental Protection Agency ("EPA"), through the Defendant EPA Administrator Scott Pruitt ("Administrator") is required, pursuant to 42 U.S.C. § 7661d(b)(2), to grant or deny a petition filed

by Plaintiffs. The petition requests that the Administrator object to Title V Permit No. O1229 ("Permit" or "Proposed Permit"), issued by the Texas Commission on Environmental Quality ("TCEQ") to the ExxonMobil Corporation authorizing operation of the company's Baytown Refinery. *See* Exhibit A (Petition to Object to Proposed Permit) (attachments omitted). Plaintiffs also seek an order requiring the Administrator to perform his non-discretionary duty to grant or deny this petition.

JURISDICTION, VENUE, AND NOTICE

3. This is a Clean Air Act citizen suit. Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), and has the authority to award attorneys' fees pursuant to 42 U.S.C. § 7604(d). The Clean Air Act is a federal statute. The Administrator is an agent of the United States government. Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as defendant). This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, nor does it involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders such relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief and 28 U.S.C. § 2412 authorizes this Court to award Plaintiffs their costs and attorneys' fees.

4. A substantial part of the alleged events or omissions giving rise to Plaintiffs' claims occurred in the District of Columbia. In addition, this suit is being brought against the Administrator in his official capacity as an officer or employee of the United States Environmental Protection Agency, residing in the District of Columbia. Thus, venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e).

5. As required by 42 U.S.C. § 7604(b)(1)(A), Plaintiffs notified the Administrator of the EPA of the violations alleged in this complaint and of Plaintiffs' intent to sue, via certified first-class mail on February 10, 2017. *See* Exhibit B (Notice of Intent to Sue Acting Administrator McCabe for her Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O1229) (attachments omitted). More than 60 days have passed since the Administrator received this notice of intent to sue letter. The Administrator has not acted to remedy the violations alleged in this complaint. Therefore, an actual controversy exists between the parties.

PARTIES

The Plaintiffs

6. Plaintiff ENVIRONMENTAL INTEGRITY PROJECT ("EIP") is a national nonprofit corporation founded to advocate for the effective enforcement of state and federal environmental laws, with a specific focus on the Clean Air Act and large stationary sources of air pollution, like chemical plants and petroleum refineries. EPA's failure to timely respond to the petition, which demonstrates that the Title V permit fails to comply with the law, adversely affects EIP's ability to assure that ExxonMobil complies with Clean Air Act requirements at the Baytown Refinery.

7. Plaintiff AIR ALLIANCE HOUSTON is a 501(c)(3) nonprofit organization whose mission is to reduce air pollution in the Houston region and protect public health and environmental integrity through research, education, and advocacy. Air Alliance Houston is active throughout the greater Houston area, with a particular focus on the communities and industry around the Houston Ship Channel.

8. Plaintiff SIERRA CLUB is one of the Nation's largest and oldest grassroots nonprofit membership organizations. Sierra Club's Texas chapter was formed more than forty years ago and has a long history of working to reduce power industrial air pollution that adversely

affect air quality in Texas. Sierra Club petitioned the Administrator to object to Title V Permit No. O1229, because the permit fails to comply with applicable Clean Air Act requirements. The Administrator's failure to perform his non-discretionary duty to grant or deny this petition injures the organizational interests of Sierra Club as well as the concrete public health interests of its members.

9. Plaintiffs have an interest in ensuring that ExxonMobil's Title V operating permit complies with all applicable federal requirements. Members and employees of Plaintiff organizations live, work, and recreate in areas that are affected by air pollution from the Baytown Refinery. These members and employees, as well as Plaintiff organizations, will be adversely affected if EPA fails to object to ExxonMobil's Title V permit.

The Defendant

10. Defendant SCOTT PRUITT is the Administrator of the Environmental Protection Agency. The Administrator is responsible for implementing and enforcing the Clean Air Act. As described below, the Clean Air Act assigns to the Administrator a non-discretionary duty to grant or deny timely filed Title V petitions within 60 days.

11. For the foregoing reasons, the Administrator's failure to respond to Plaintiffs' petition has caused, is causing, and unless this Court grants the requested relief, will continue to cause Plaintiffs concrete injuries that the Court can redress through this case.

LEGAL AUTHORITY

12. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and productive capacity of its population. 42 U.S.C. § 7401(b)(1). To advance this goal, Congress amended the Act in 1990 to establish the Title V operating permit program. *See* 42 U.S.C. §§ 7661-7661f. Title V of the Clean Air Act provides

that "[a]fter the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate . . . a major source . . . except in compliance with a permit issued by a permitting authority under this subchapter. 42 U.S.C. § 7661a(a).

13. ExxonMobil's Baytown Refinery is a major source subject to Title V permitting requirements.

14. The Clean Air Act provides that the Administrator may approve a state's program to administer the Title V operating permit program with respect to sources within its borders. 42 U.S.C. § 7661a(d). The Administrator approved Texas's administration of its Title V operating permit program. 61 Fed. Reg. 32693 (June 25, 1996); 66 Fed. Reg. 66318 (December 6, 2001). Thus, the TCEQ is responsible for issuing Title V operating permits in Texas.

15. Before the TCEQ may issue, modify, or renew a Title V permit, it must forward the proposed permit to EPA for review. 42 U.S.C. § 7661d(a)(1)(B). The Administrator then has 45 days to review the proposed permit. The Administrator must object to the permit if he finds that it does not comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1). If the Administrator does not object to the permit during EPA's 45-day review period, "any person may petition the Administrator within 60 days" to object to the permit. 42 U.S.C. § 7661d(b)(2).

16. If a petition is timely filed, the Administrator has a non-discretionary duty to grant or deny it within 60 days. *Id.*

17. The Clean Air Act authorizes citizen suits "against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2).

FACTUAL BACKGROUND

18. ExxonMobil's Baytown Complex is located in Harris County, Texas. The complex consists of a petroleum refinery, a chemical plant, and an olefins plant and is the largest integrated petrochemical manufacturing facility in the United States. Each of the three sources that comprise ExxonMobil's Baytown Complex is a major source of air pollution that emits a variety of federally regulated pollutants, including particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, and hazardous air pollutants.

19. ExxonMobil filed a renewal application for Title V Permit No. O1229 on May 17, 2010. The Executive Director of the TCEQ issued a draft renewal operating permit ("ExxonMobil Draft Permit"), notice of which was published on December 27, 2012. The public comment period for the ExxonMobil Draft Permit ended on January 28, 2013.

20. On December 19, 2012 and again on January 18, 2013, Plaintiffs submitted timely written comments to the TCEQ during the public comment period. The comments identified specific deficiencies contained in the ExxonMobil Draft Permit.

21. EPA's 45-day review period for the proposed permit ended on August 19, 2016. EPA did not object to the permit.

22. On September 26, 2016, Plaintiffs timely filed with EPA a petition to object to the ExxonMobil Title V operating permit ("Petition"). 42. U.S.C. § 7661d(b)(2). The Petition was based on objections to the ExxonMobil Draft Permit that were raised with reasonable specificity during the public comment period, as required by 42 U.S.C. § 7661d(b)(2).

23. Though the Administrator was required to grant or deny the Petition within 60 days, he has not yet done so. 42 U.S.C. § 7661d(b)(2).

24. On February 10, 2017, Plaintiffs sent Acting Administrator Catherine McCabe notice of their intent to sue for her failure to grant or deny the Petition within 60 days.

CLAIM FOR RELIEF

VIOLATION OF 42 U.S.C. § 7661d(b)(2)
(Failure to Respond to Plaintiffs' Petition)

25. Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1-24.

26. The Clean Air Act required the Administrator to act on the Petition within 60 days of its filing. 42 U.S.C. § 7661d(b)(2) (stating that "[t]he Administrator *shall* grant or deny such a petition within 60 days after the petition is filed.") (emphasis added). This is a non-discretionary duty.

27. It has been more than 60 days since the Administrator received the Petition. The Administrator's failure to grant or deny the Petition constitutes a failure to perform an act or duty that is not discretionary. 42 U.S.C. § 7604(a)(2).

PRAYER FOR RELIEF

WHEREFORE, based upon the allegations set forth above, Plaintiffs respectfully request that this Court:

A. Declare that the Administrator's failure to grant or deny the Plaintiffs' Petition within 60 days constitutes a failure to perform acts or duties that are not discretionary within the meaning of 42 U.S.C. § 7604(a)(2);

B. Order the Administrator to grant or deny the Petition within sixty (60) days;

C. Retain jurisdiction over this action to ensure compliance with the Court's Order;

D. Award Plaintiffs their costs and fees related to this action; and

E. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 20th day of July, 2017.

/s/ Adam Kron
ADAM KRON (D.C. Bar No. 992135)
Environmental Integrity Project
1000 Vermont Ave. N.W., Suite 1100
Washington, D.C. 20005
(202) 263-4451
(202) 296-8822
akron@environmentalintegrity.org

Attorney for Plaintiffs

EXHIBIT A

Cover Letter and Petition for Objection to Texas Title V Permit No. O1229

707 Rio Grande, Suite 200
Austin, TX 78701
p: 512-637-9478 f: 512-584-8019
www.environmentalintegrity.org

September 26, 2016

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Fax number (202) 501-1450

via Electronic Filing

Re: Petition for Objection to Texas Title V Permit No. O1229

Dear Administrator McCarthy:

Enclosed is a petition requesting that the U.S. Environmental Protection Agency object to the TCEQ's renewal of Title V Permit No. O1229, issued to ExxonMobil for operation of the Baytown Refinery. This petition is timely submitted by the Environmental Integrity Project, Sierra Club, and Air Alliance Houston. As required by law, Petitioners are filing this Petition with the EPA Administrator, with copies to EPA Region VI, the TCEQ, and ExxonMobil.

Thank you for your attention to this matter.

Sincerely,

/s/ Gabriel Clark-Leach
Gabriel Clark-Leach
Environmental Integrity Project
707 Rio Grande, Suite 200
Austin, TX 78701
(512) 637-9478 (phone)
(512) 584-8019 (fax)
gclark-leach@environmentalintegrity.org

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF Clean Air Act Title V Permit (Federal Operating Permit) No. O1229 Issued to ExxonMobil Corporation Issued by the Texas Commission on Environmental Quality	§ § § § § § § § § §	PETITION FOR OBJECTION Permit No. O1229

PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF PROPOSED TITLE V OPERATING PERMIT NO. O1229 FOR EXXONMOBIL'S BAYTOWN REFINERY

Pursuant to section 42 U.S.C. § 7661d(b)(2), Environmental Integrity Project and Sierra Club, and Air Alliance Houston ("Petitioners") hereby petition the Administrator of the U.S. Environmental Protection Agency ("Administrator" or "EPA") to object to Federal Operating Permit No. O1229 ("Proposed Permit") issued by the Texas Commission on Environmental Quality ("TCEQ" or "Commission") for the Baytown Refinery, operated by the ExxonMobil Corporation ("ExxonMobil").

I. INTRODUCTION

ExxonMobil's Baytown Refinery is the second largest petroleum refinery in the United States and is part of the Country's largest integrated refining and petrochemical complex. The ExxonMobil Baytown complex is located in Baytown, Texas; approximately 30 miles east of Houston. The Baytown Refinery is a major source of criteria pollutants—including NO_x and VOC, which interact with sunlight to form ozone—that contributes to air pollution in the Harris County ozone non-attainment area. The Baytown Refinery is also a major source of Hazardous Air Pollutants (or "HAPs").

For nearly two decades, the primary New Source Review ("NSR") authorization for the Baytown Refinery has been State-only Flexible Permit No. 18287.[1] Flexible Permit No. 18287 was first issued on March 31, 2000. At the time the TCEQ issued ExxonMobil's flexible permit, EPA had not approved Texas's minor source flexible permit program as part of the Texas State Implementation Plan ("SIP") and Texas routinely issued State-only flexible permits to major sources. To address potential confusion created by Texas's implementation of its non-approved program, EPA sent all flexible permit holders—including ExxonMobil—a letter in 2007 clarifying that Texas's flexible permit rules did not displace existing preconstruction permitting requirements in the Texas SIP.[2]

In 2006, the TCEQ amended ExxonMobil's State-only flexible permit to include a Plantwide Applicability Limit ("PAL"), which purports to establish multi-unit emission caps that ExxonMobil may use to determine whether projects at the Baytown Refinery trigger major NSR preconstruction permitting requirements. This permit predates the TCEQ's initial PAL rules, which were eventually disapproved by EPA. Accordingly, EPA sent ExxonMobil a letter explaining that PAL7 is a State-only permit that does not fulfil or modify any requirement in the Texas SIP. (Exhibit 1) Petitioners' Comments on Draft Renewal Permit No. O1229 ("Public Comments"), Attachment 18, Letter from John Blevins, Director, Compliance Assurance and Enforcement Division, U.S. EPA Region 6, to Gary D. Robbins, Air Permitting Team Leader, ExxonMobil Corporation, Re: Baytown Refinery Permit Number PAL7 (March 6, 2012).

[1] While this State-only flexible permit is listed in the Proposed Permit as Permit No. 18287/PSDTX730M4/PAL7, these numbers do not actually refer to different permits. ExxonMobil's various PSD permits were consolidated into a single permit with limits and conditions established consistent with Texas's State-only flexible permit rules. A State-only PAL condition was added to this permit in 2006.

[2] A copy of the letter sent to all Texas flexible permit holders and a list of recipients is available electronically at: http://www.tceq.state.tx.us/assets/public/permitting/air/NewSourceReview/notices/FlexPermitLetterFAQandRecipients.pdf

ExxonMobil's State-only permits purport to create exemptions to federally-enforceable requirements in the Texas SIP and the Company has relied on them to circumvent otherwise-applicable minor and major SIP preconstruction permitting requirements. Though EPA has notified ExxonMobil and the TCEQ that ExxonMobil's State-only permits do not modify SIP obligations, EPA has not yet required TCEQ to remove these permits from ExxonMobil's Title V permit or identify them as State-only authorizations.

II. PETITIONERS

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

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

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

III. PROCEDURAL BACKGROUND

This Petition addresses the TCEQ's renewal of Permit No. O1229, which was first issued on November 21, 2005 and expired on November 21, 2010. ExxonMobil filed its application to renew the permit on May 17, 2010. The Executive Director completed his technical review of ExxonMobil's renewal application on November 31, 2012. Notice of the Draft Renewal Permit was published on December 27, 2012. Environmental Integrity Project, Sierra Club, and Air Alliance Houston filed their Public Comments before ExxonMobil published notice of the Draft Permit and then resubmitted those comments on January 18, 2013, after the 30-day comment period had begun.

Upon receiving these comments, the Executive Director placed ExxonMobil's renewal application on a management delay for three and a half years; from December 19, 2012 until June 28, 2016. On June 28, 2016, the Executive Director finally issued his response to public comments and notice of the Proposed Permit. (Exhibit 2), Notice of Proposed Permit and Executive Director's Response to Public Comment on Permit No. O1229 ("Response to Comments"). The Executive Director declined to make any changes to the Draft Permit in response to Petitioners' Public Comments.

The Executive Director forwarded the Proposed Permit and his Response to Comments for EPA to review. EPA's 45-day review period ran from July 5, 2016 until August 19, 2016. EPA did not object to the Proposed Permit. Accordingly, members of the public have 60-days from the end of EPA's review period to petition EPA to object to the Proposed Permit. This

Petition is timely filed and requests that the Administrator object to the Proposed Permit based on deficiencies that were raised with reasonable specificity during the public comment period.[3]

IV. LEGAL REQUIREMENTS

The Clean Air Act requires each major stationary source of air pollution to apply for and comply with the terms of a federal operating permit issued under Title V of the Act. 42 U.S.C. § 7661a(a). Congress created the Title V permit program to "enable . . . source[s], States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." *Operating Permit Program*, 57 Fed. Reg. 32250, 32251 (July 21, 1992). Title V permits accomplish this goal by compiling, in a single document, all the applicable requirements for each major source. 42 U.S.C. § 7661c(a); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) ("The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source."). Additionally, Title V permits must include monitoring, recordkeeping, and reporting methods that assure ongoing compliance with each requirement and may not restrict the right of regulators or the public to rely on any credible evidence to demonstrate non-compliance with applicable requirements. *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008) ("But Title V did more than require the compilation in a single document of existing applicable emission limits . . . . It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions."); *In the Matter of Southwestern Electric Power Company* ("Pirkey Order"), Order on Petition No. VI-2014-01 at 13 (February 3, 2016) ("[A] title V permit may not preclude any entity, including the EPA,

[3] To the extent that Petitioners rely on information that was not presented in its public comments, that information was either not available during the public comment period or is presented for the sole purpose of rebutting arguments made by the TCEQ in response to public comments.

citizens or the state, from using any credible evidence to enforce emissions standards, limitations, conditions, or any other provision of a title V permit.").

Title V permits are the primary method for enforcing and assuring compliance with State Implementation Plan requirements for major sources. 57 Fed. Reg. 32,258. Because federal courts are often unwilling to enforce otherwise applicable requirements that have been omitted from or displaced by conditions in a Title V permit, state-permitting agencies and EPA must ensure that Title V permits accurately and clearly explain what each major source must do to comply with the law. *See, e.g., Sierra Club v. Otter Tail*, 615 F.3d 1008 (8th Cir. 2008 (holding that enforcement of New Source Performance Standard omitted from a source's Title V permit was barred by 42 U.S.C. § 7607(b)(2)).

Where a state permitting authority issues a Title V operating permit, EPA must object to the permit if it is not in compliance with applicable requirements under 40 C.F.R. Part 70. 40 C.F.R. § 70.8(c). If EPA does not object, "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. The Administrator "shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the . . . [Clean Air Act]." 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(c)(1). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

V. GROUNDS FOR OBJECTION

A. The Proposed Permit Incorporates Confidential Applicable Requirements

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

The Proposed Permit fails to include and assure compliance with confidential applicable requirements in Permit No. 18287/PSDTX730M4/PAL7, which are incorporated by reference into the Proposed Permit. Proposed Permit, Special Condition No. 32 and New Source Review Authorization References Table.

Permit No. 18287/PSDTX730M4/PAL7, Special Condition No. 38 states:

> This permit authorizes emissions from the flares for maintenance, start-up, and shutdown ["MSS"] activities as represented in the confidential section of the permit amendment application dated March 2, 2004. . . . Any emissions from maintenance, start-up, or shutdown activities not contained in the listing provided in the confidential file are not authorized by this permit.

Special Condition 39 of the same permit states:

> This permit authorizes atmospheric emissions from various sources for maintenance, startup, and shutdown activities as represented in the confidential section of the permit amendment application dated March 2, 2004. . . . Any emissions from maintenance, start-up, or shutdown activities not contained in the listing provided in the confidential file are not authorized by this permit.

Thus, just as the Proposed Permit incorporates requirements in Permit No. 18287/PSDTX730M4/PAL7 by reference, ExxonMobil's NSR permit incorporates specific application representations as enforceable conditions of the permit. These representations are just as much a part of ExxonMobil's permit as the special conditions printed on its face. 30 Tex. Admin. Code § 116.116(a) (establishing that application representations, no less than a permit's special conditions, are enforceable conditions of the authorization to construct).

Because it is impossible for members of the public to determine which planned MSS activities are authorized and which are not without access to information in confidential files, it

is also impossible for the public to properly assess ExxonMobil's compliance with Permit No. 18287/PSDTX730M4/PAL7, Special Condition Nos. 38 and 39. The Administrator must object to the Proposed Permit because its inclusion of confidential permit terms is contrary to the Act and fails to assure compliance with applicable requirements.

2. Applicable Requirement or Part 70 Requirement Not Met

42 U.S.C. § 7661c(a) and (c) require that each Title V permit include conditions that assure compliance with all applicable requirements. Applicable requirements include emission limits and conditions in New Source Review ("NSR") permits issued for the Title V source. 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2)(H). All terms and conditions in a Title V permit are enforceable by the Administrator and the public. 40 C.F.R. § 70.6(b)(1).

Consistent with the Act's enforceability requirement, Title V provides that "[t]he contents of a permit shall not be entitled to protection" as confidential business information or trade secrets. 42 U.S.C. § 7661b(e). This makes good sense, because members of the public cannot effectively enforce confidential requirements.

The Proposed Permit does not meet the requirements of 42 U.S.C. §§ 7661b(e) and 7661c(a) as explained in the following analysis.

3. Inadequacy of the Permit Term

The Proposed Permit's incorporation by reference of requirements in Permit No. 18287/PSDTX730M4/PAL7, Special Condition Nos. 38 and 39 violates the Act, because these conditions establish confidential requirements that are not practicably enforceable by members of the public. 42 U.S.C. §§ 7661b(e) and 7661c(a).

4. Public Participation Procedure Not Provided

Petitioners' Public Comments did not specifically allege that the Proposed Permit's improper incorporation of confidential permit terms violated public participation requirements in Title V of the Clean Air Act.

5. Issues Raised in Public Comments

Petitioners raised this issue on pages 2-3 of their Public Comments.

6. Analysis of State's Response

The Executive Director's Response to Comments fails to rebut Petitioners' demonstration that the Proposed Permit's incorporation of confidential permit terms violates 42 U.S.C. §§ 7661b(e) and 7661c(a). While the Executive Director claims that "[t]here is no requirement in 30 TAC Chapter 122 to list MSS application representations in the draft permit," he also concedes that the representations directly incorporated by Permit No. 18287/PSDTX730M4/PAL7 "are enforceable in accordance with 30 TAC § 122.140(3) and are the conditions under which the site is operated." Response to Comments at 2. Because the representations are enforceable conditions under which the site is operated—or in other words, because the representations are applicable requirements—they must be included in the permit and permit terms may not be made confidential. 42 U.S.C. §§ 7661b(e) and 7661c(a).

Additionally, because the Executive Director concedes the representations are enforceable requirements, the Proposed Permit must provide sufficient information to allow members of the public to identify and determine ExxonMobil's compliance with them. 42 U.S.C. §§ 7661c(a) and (c); 40 C.F.R. § 70.6(b)(1). Because the terms of ExxonMobil's authorization to conduct planned MSS activities at the Baytown Refinery are confidential, they are not adequately described by the Proposed Permit.

The Executive Director also contends that application information about MSS activities incorporated into Permit No. 18287/PSDTX730M4/PAL7 may be kept confidential because this information is not necessary to calculate emission rates and therefore does not constitute 'emission data." Response to Comments at 2-3. While this contention is irrelevant, because Title V permit terms may not be confidential, it is also incorrect. Emission data, which is public information as a matter of law, includes:

> Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source[.]

40 C.F.R. § 2.301(a)(2)(i)(B).

Because units at the Baytown Olefins Plant are only authorized to emit pollution during routine MSS activities *as represented in ExxonMobil's permit application*, the incorporated application representations are necessary to "determine the identity, amount, frequency, concentration, or other characteristics . . . of emissions" authorized by the Proposed Permit. *Id.* Because this is so, the incorporated application representations are emission data and may not be treated as confidential information.

Petitioners demonstrated that the Proposed Permit improperly contains confidential permit terms that undermine the enforceability of applicable requirements. The Executive Director's Response to Comments failed to rebut this demonstration and, in fact, contained information strengthening Petitioners' argument. Accordingly, the Administrator must object to the Proposed Permit and require the TCEQ to make the terms of ExxonMobil's authorization to conduct planned MSS activities at the Baytown Refinery public information.

B. The Proposed Permit's Incorporation of State-Only Permit PAL7 Undermines the Enforceability of Major New Source Review Requirements

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

The Proposed Permit incorporates by reference PAL7, which is part of State-only Permit No. 18287/PSDTX730M4/PAL7. Proposed Permit, Special Condition No. 32 and New Source Review Authorization References Attachment. As EPA has explained to ExxonMobil and the TCEQ, ExxonMobil's PAL is a State-only authorization that does not affect ExxonMobil's obligation to determine major NSR applicability for projects at the Baytown Refinery using the netting process established by the Texas SIP. Public Comments, Attachment 18. ExxonMobil's PAL, however, is incorporated into the Proposed Permit as a federally-enforceable authorization that purports to establish an alternative to the netting requirements in the Texas SIP. According to PAL7:

> This permit establishes Plant-Wide Applicability Limits (PALs) for VOC, carbon monoxide (CO), nitrogen oxide (NO_x), sulfur dioxide (SO_2), particulate matter (PM), H_2S, and H_2SO_4. The PALs are effective for ten years after this permit is issued. Physical changes and changes in method of operation at this site are exempt from federal New Source Review for VOC, CO, NO_x, SO_2, H_2S, H_2SO_4, and PM as long as site emissions do not exceed PAL caps.

Because PAL7 purports to establish the exclusive basis for determining whether projects at the Baytown Refinery are subject to major NSR preconstruction permitting requirements and because the permit displaces the actual applicable netting requirements in the Texas SIP, *see* 30 Tex. Admin. Code §§ 116.150(c) and (d); 116.160(b) and (c), it undermines the enforceability of the Texas SIP.

2. Applicable Requirement or Part 70 Requirement Not Met

Title V permits must include and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c). Applicable requirements include "[a]ny standard or other

requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act[.]" 40 C.F.R. § 70.2. The Act prohibits states and EPA from issuing orders that purport to modify SIP requirements with respect to any stationary source. 42 U.S.C. § 7410(i). At the time that ExxonMobil's PAL7 was issued, Texas's federally-approved SIP did not authorize the TCEQ to issue federally-enforceable PAL permits and required operators to apply case-by-case netting procedures described at 30 Tex. Admin. Code §§ 116.12, 116.150, and 116.160 to determine whether proposed modifications to major sources triggered major NSR preconstruction permitting requirements. ExxonMobil has not obtained a PAL authorization under Texas's subsequently approved PAL rules.

As explained below, the Proposed Permit's incorporation of PAL7 as a federally-enforceable authorization undermines the enforceability of Texas's SIP-approved netting rules.

3. Inadequacy of the Permit Term

The Proposed Permit's incorporation of State-only PAL7 as a federally-enforceable authorization is improper because it undermines the enforceability of Texas SIP requirements and improperly purports to modify SIP requirements with respect to ExxonMobil's Baytown Refinery.

As EPA has explained to ExxonMobil and the TCEQ, ExxonMobil's PAL permit is a State-only authorization that does not affect ExxonMobil's obligation to determine major NSR applicability for projects at the Baytown Refinery using the netting process established by the Texas SIP. While EPA approved Texas's PAL permitting rules at 30 Tex. Admin. Code, Chapter 116, Subchapter C rules in 2012, *Approval Texas Major NSR Reform Program*, 77 Fed. Reg. 65119 (October 25, 2012), ExxonMobil's PAL7 permit was not issued under those rules.

In fact, ExxonMobil's PAL7 was issued in 2006 and predates even the TCEQ's initial PAL rules, which were *disapproved* by EPA. *Disapproval of Texas PAL and Qualified Facilities Program Rules*, 75 Fed. Reg. 56424 (September 15, 2010). Because PAL7 was not issued under Texas's SIP-approved rules, it is a State-only permit that does not modify ExxonMobil's obligation to comply with Texas SIP netting requirements that apply to all major sources not covered by a federally-enforceable PAL permit.[4] 42 U.S.C. § 7410(i); *see also, Approval of Texas Flexible Permit Program*, 79 Fed. Reg. 40666, 40667-68 (July 14, 2014) (explaining that approval of Texas program does not convert State-only permits issued prior to approval into federally-approved permits).

Because PAL7 purports to displace Texas SIP netting requirements, it undermines the enforceability of those applicable requirements. Because this is so, the Proposed Permit fails to assure compliance with applicable requirements and the Administrator must object to it.

4. Public Participation Procedure Not Provided

Petitioners' Public Comments did not specifically allege that the Proposed Permit's improper incorporation of Permit No. PAL7 violated public participation requirements in Title V of the Clean Air Act.

5. Issue Raised in Public Comments

Petitioners raised this issue on pages 13-14 of their Public Comments.

6. Analysis of State's Response

The Executive Director's Response to Comments does not address Petitioners' demonstration that PAL7 is a State-only authorization that may not be incorporated into the Proposed Permit without undermining the enforceability of major NSR requirements in the

[4] The relevant Texas SIP rules regarding major NSR applicability determinations are found at: 30 Tex. Admin. Code §§ 116.150(d); 116.160(c); and 116.190.

Texas SIP. Instead, the Executive Director states that "ExxonMobil will amend the PAL when it comes in for renewal in October 2016. The amended permit must comply with the SIP-approved rules." Response to Comments at 16. That sentence is the entirety of the Executive Director's response on this issue. That ExxonMobil will apply for and, perhaps, receive a federally-enforceable PAL permit at some point in the future has no bearing on the question of whether the Proposed Permit can incorporate ExxonMobil's current State-only PAL permit as a federally-enforceable authorization without violating Title V requirements.

Because Petitioners have demonstrated that the Proposed Permit's incorporation of PAL7 undermines the enforceability of SIP requirements and because the Executive Director failed to make a substantive response to this demonstration, the Administrator must object to the Proposed Permit.

C. The Proposed Permit Fails to Require ExxonMobil to Obtain SIP-Compliant Authorizations for Flexible Permit Projects at the Baytown Refinery

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

The Proposed Permit is deficient because it fails to include a schedule for ExxonMobil to address its non-compliance with Texas SIP preconstruction permitting requirements. ExxonMobil violated the SIP by making changes to the Baytown Refinery without obtaining authorizations required by Texas's federally-approved Changes to Facilities rule at 30 Tex. Admin. Code § 116.116. The projects at issue are listed in Public Comments, Attachment 22. ExxonMobil relied on Texas's unapproved flexible permit alteration process instead of Texas's federally-approved Changes to Facilities rule at 116.116 to authorize these projects as flexible without any substantive preconstruction review by the TCEQ and without establishing Best Available Control Technology requirements. *See,* 30 Tex. Admin. Code § 116.721(b) (providing that alterations may be constructed without prior review and that alterations are not subject to

BACT). Though Texas's flexible permitting program has since been approved, the approved program does not apply to major sources—like the Baytown Refinery—and the minor source flexible permit rules were not applicable at the time the projects identified in Petitioners' Public Comments were undertaken.

ExxonMobil violated the Texas SIP by failing to obtain preconstruction authorizations required by 30 Tex. Admin. Code § 116.116 for flexible permit projects at the Baytown Refinery. The Proposed Permit must include a schedule for ExxonMobil to correct this non-compliance.

2. Applicable Requirement or Part 70 Requirement Not Met

If a source has failed to comply with applicable requirements 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). Applicable requirements include "[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act[.]" 40 C.F.R. § 70.2. The Texas SIP requires major sources of pollution, like the Baytown Refinery, to authorize modified representations with regard to construction plans and operation procedures—including, but not limited to construction of new or modified facilities—consistent with the requirements in 30 Texas Administrative Code, Chapter 116, Subchapter B. *See,* 30 Tex. Admin. Code §§ 116.110, 116.111, 116.116; *see also, Id.* at §§ 116.150 and 116.160. While Texas also has separate, less stringent program rules for permitting changes to minor sources authorized by a previously-issued federally-approved flexible permit, these rules do not

apply to major sources—like the Baytown Refinery—and were not federally-approved at the time the projects listed in Petitioners' Public Comments were undertaken.[5]

3. Inadequacy of the Permit Term—Omission of Compliance Schedule

As EPA has explained to ExxonMobil and the TCEQ, ExxonMobil's flexible permit is a State-only permit that does not displace ExxonMobil's obligation to comply with preconstruction permitting requirements in the Texas SIP. *See*, *supra* n2**.** At the time each of the projects listed in Public Comments, Attachment 22 were undertaken, the Texas SIP did not include Texas's flexible permit program rules at 30 Tex. Admin. Code § 116, Subchapter G. Instead, any changes to representations regarding construction or operation of the refinery—including, but not limited to physical and operational changes that increased actual emissions—were subject to the requirements in Texas's Changes to Facilities rule at 30 Tex. Admin. Code § 116.116.

This requirement was not obviated or changed by EPA's subsequent approval of Texas's minor source flexible permit rules, because ExxonMobil has not obtained a federally-enforceable flexible permit and because the flexible permit program may not be used to authorize projects at major sources of air pollution, like the Baytown Refinery.

ExxonMobil did not obtain the required 116.116 authorizations for the projects listed in Petitioners' Public Comments. Instead, ExxonMobil constructed the changes without preconstruction approval in reliance on Texas's unapproved flexible permit rules at 30 Tex. Admin. Code §§ 116.718 and 116.721, which provide that an operator who has obtained a flexible permit may make physical and operational changes to existing facilities without prior authorization or review by the TCEQ—even if such changes increase the amount of pollution actually emitted by the source—so long as plant-wide emissions remain below the source's existing emission caps and limits. These State-only rules did not exempt ExxonMobil from its

[5] Support for these contentions is provided below in Petitioners' analysis of the State's response.

obligation to obtain authorization for each of the projects listed in Petitioners' Public Comments under Texas's federally-approved rule at 30 Tex. Admin. Code § 116.116. Because ExxonMobil failed to obtain these necessary authorizations, ExxonMobil is in violation of the Texas SIP and the Proposed Permit must establish a schedule for ExxonMobil to correct this non-compliance.

4. Public Participation Procedure Not Provided

Petitioners' Public Comments did not specifically allege that the Proposed Permit's failure to establish a compliance schedule violated public participation requirements in Title V of the Clean Air Act.

5. Issue Raised in Public Comments

Petitioners raised this issue on pages 16-17 of their Public Comments.

6. Analysis of State's Response

In response to Petitioners' comments, the Executive Director makes three points, each of which is irrelevant and fails to rebut Petitioners' demonstration that the Proposed Permit must include a schedule for ExxonMobil to correct its non-compliance with the Texas SIP.

First, the Executive Director explains that the TCEQ's rules at 30 Tex. Admin. Code §§ 122.10(2)(h) and 122.142 require the TCEQ to include the terms and conditions of any preconstruction permit issued under 30 Tex. Admin. Code, Chapter 116 in a source's Title V permit. Response to Comments at 18. This contention is irrelevant because it does not address Petitioners' claim that the Proposed Permit must include a compliance schedule for ExxonMobil to correct its non-compliance with the Texas SIP. Additionally, whatever § 122.142 might require, it does not trump the Executive Director's obligation to identify Title V permit requirements that are not-federally enforceable as "State-only" requirements, 40 C.F.R. § 70.6(b)(2), and to assure compliance with applicable requirements in the SIP. 42 U.S.C. §

7661c(a) and (c). To the extent that State-only permits incorporated into a Title V permit purport to modify federally-enforceable applicable requirements, Title V permits must contain conditions clarifying that State-only terms purporting to modify federal requirements are ineffective. 42 U.S.C. § 7410(i); *Pirkey Order* at 11-12 (requiring the TCEQ to clarify that permit terms purporting to modify SIP requirements do not effectively modify the requirement).

Second, the Executive Director explains that Texas's flexible permit program rules were approved by EPA after the close of the public comment period and that ExxonMobil will convert Permit No. 18287 into a SIP-approved flexible permit when the permit comes up for renewal in October, 2016. Response to Comments at 19. This response is irrelevant and incorrect.

At the time the projects listed in Petitioners' public comments were undertaken, Texas's minor source flexible permit program rules were not federally-approved and did not displace ExxonMobil's obligation to authorize changes to the Baytown Refinery through the SIP-approved process established by 30 Tex. Admin. Code § 116.116. Accordingly, EPA's subsequent approval of Texas's program rules has no bearing on the question of whether ExxonMobil's failure to obtain SIP-compliant authorizations for projects at the Baytown Refinery is a violation of the Texas SIP. Moreover, the preamble to EPA's approval of Texas's flexible permit program is absolutely clear that EPA's program approval did not convert State-only flexible permits issued prior to the approval into federal permits. 79 Fed. Reg. 40666, 40667-68 (July 14, 2014) ("In sum, the commenters appear to be implying that this approval will transform State-only flexible permits issued since 1994 into federally approved permits upon the effective date of this rule. *This is not the case and the EPA strongly rejects any suggestion to the contrary*.") (emphasis added). Thus, ExxonMobil's flexible permit is a State-only permit that does not satisfy or displace ExxonMobil's obligation to obtain SIP-compliant authorizations for

projects at the Baytown Refinery. Finally, putting aside the fact that EPA's approval of the flexible permit program cannot convert ExxonMobil's State-only flexible permit authorizations into federal authorizations, the Executive Director's response is irrelevant, because Texas's flexible permit program—as a matter of law—may not be used to authorize projects at major sources. EPA's approval of the program, consistent with the State's representations, was upheld by the Fifth Circuit Court of Appeals based upon the Court's holding that the flexible permit program could not be used to authorize major sources. *Environmental Integrity Project v. EPA*, 610 Fed.Appx. 409, 410 (5th Cir. 2015) (unpublished) (hereafter, "Flex II") ("Under the [flexible permit] plan, an entity may obtain a flexible permit for emissions up to a specified aggregate limit *below the major source threshold*.") (emphasis added). ExxonMobil's Baytown Refinery is a major source and the Fifth Circuit Court of Appeals decision affirming EPA's approval of the flexible permit program limits the applicability of the program to minor sources. *Flex II* at 1.[6]

In his third argument, the Executive Director purports to dispute Petitioners' claim that flexible permit program review procedures and requirements conflict with the SIP, because

> the technical review summary of the flexible permit No. 18287/PSDTX730M4/PAL7 application provides information regarding how Subchapter B requirements in § 116.111 are met, including compliance with the SIP approved Subchapter B rules and review requirements, unit-specific limits based on BACT review at the time of the permit issuance, and demonstrations that each emission unit and the facility covered by Permit No. 18287/PSDTX730M4/PAL7 meets all applicable NSPS, NESHAP requirements, and air dispersion modeling conducted by the applicant.

Response to Comments at 19.

This response is irrelevant, because it focusses on flexible permit program requirements that were not triggered by the projects listed in Petitioners' Public Comments. Under Texas's

[6] The Executive Director's contention that ExxonMobil may convert its State-only flexible permit into a SIP-compliant flexible permit when the permit is renewed is therefore incorrect. **Petitioners request that the Administrator make this clear in her response to this Petition.**

flexible permit rules, changes to increase actual emissions from existing facilities at a source that has obtained a flexible permit do not require preconstruction approval, so long as increases remain below the existing emission caps in the flexible permit. *Flex II* at 1 (after an operator obtains a flexible permit, "the flexible permit holder may modify its facilities without further regulatory review provided emissions remain below the aggregate permit limit."); *see also,* 30 Tex. Admin. Code §§ 116.721(a) (requiring preconstruction authorization for projects that result in a "significant increase in emissions") and 116.718 (providing that "[a]n increase in emissions from operational or physical changes at an existing facility authorized by a flexible permit is insignificant, for the purposes of minor new source review under this subchapter, if the increase does not exceed either the emission cap or individual emission limitation.").[7] ExxonMobil claimed this exemption for each of the projects listed in Petitioners' Public Comments, Attachment 22. Thus, these projects were not subject to the application requirement at 30 Tex. Admin. Code § 116.711, which was the basis for the Executive Director's determination that the flexible permit—when first issued—complied with the requirements of 30 Tex. Admin. Code § 116.111.

Because ExxonMobil has not obtained preconstruction authorizations required by the Texas SIP for projects identified in Public Comments, Attachment 22, and because the Executive Director failed to rebut Petitioners' demonstration that ExxonMobil has failed to comply with 30 Tex. Admin. Code § 116.116 at the time the Proposed Permit was issued, the Administrator must object to the Proposed Permit and require the TCEQ to establish a schedule for ExxonMobil to comply with preconstruction permitting requirements at 30 Tex. Admin. Code § 116.116.

[7] *Compare* with the Changes to Facilities rule at 30 Tex. Admin. Code § 116.116(b)(1)(C), which requires preconstruction authorization for changes that increase actual emissions, even if the increases do not exceed previously-established permit limits.

D. The Proposed Permit Fails to Identify Permit by Rule Certified Registrations as Applicable Requirements

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

The Proposed Permit incorporates by reference various Permits by Rule ("PBRs") claimed by ExxonMobil to authorize construction of or modifications to units at the Baytown Refinery. Proposed Permit at 1767-68. The Proposed Permit provides that ExxonMobil "shall comply with the general requirements of 30 TAC 106, Subchapter A or the general requirements, if any, in effect at the time of the claim of any PBR." *Id.* at Special Condition No. 33. While claimed PBRs often establish generic emission limits and operating requirements that may be identified by reading the TCEQ's PBR rules, operators may also choose to certify source-specific emission rates for PBRs that are lower than the generic limits. 30 Tex. Admin. Code § 116.6.

Where an operator certifies maximum emission rates under 106.6, all representations with regard to construction plans, operating procedures, and maximum emission rates contained in the certified registration become federally-enforceable permit conditions and limits. *Id*. Because these source-specific requirements are not contained in the claimed rules, they must be identified with specificity by the Proposed Permit.

After the public comment period for the Draft Permit had closed, ExxonMobil certified emission limits under 30 Tex. Admin. Code § 106.6 for several projects at the Baytown Refinery. *See,* (Exhibit 3) Certified Registration Approval Letter, Registration No. 137342 (December 21, 2015); (Exhibit 4) Certified Registration Approval Letter, Registration No. 136500 (November 16, 2015); (Exhibit 5) Certified Registration Approval Letter, Registration No. 115627 (February 21, 2014); (Exhibit 6) Certified Registration Approval Letter, Registration No. 107643 (February 8, 2013). Each of these registrations establish federally-enforceable emission limits that are significantly lower than the general PBR limits established by 30 Tex.

Admin. Code § 106.4 and the generic limits contained in the claimed PBRs. Because the Proposed Permit fails to identify certified PBR limits as applicable requirements, it is incomplete and fails to assure compliance with applicable requirements.

2. Applicable Requirement or Part 70 Requirement Not Met

Title V permits must include and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c). "Applicable requirements" include requirements in 30 Texas Administrative Code, Chapter 106 PBR certified registrations. 30 Tex. Admin. Code § 122.10(2)(H).

3. Inadequacy of the Permit Term

While the Proposed Permit incorporates by reference the rules establishing generic requirements with respect to PBRs claimed by ExxonMobil, it does not indicate that ExxonMobil has certified emission rates that are lower than those allowed by Texas's PBR rules, identify the applicable source-specific emission limits established by these certified registrations, explain which units are subject to the source-specific limits, or specify how compliance with the limits should be determined. Because the Proposed Permit and Statement of Basis fail to indicate that ExxonMobil has established source-specific emission limits and operating requirements through the 30 Tex. Admin. Code § 106.6 certification process or even explain what a PBR certified registration is, the Proposed Permit fails to identify and assure compliance with applicable requirements in ExxonMobil's certified PBR registrations.

4. Public Participation Procedure Not Provided

Petitioners' Public Comments did not specifically allege that the Proposed Permit's failure to include information about ExxonMobil's certified PBR registrations violated public participation requirements established by Title V of the Clean Air Act.

5. Issue Raised in Public Comments

Petitioners raised this issue on pages 7-11 of their Public Comments. Petitioners' Public Comments, however, did not identify the specific certified PBR registrations attached to this Petition. *See*, Exhibits 3-6. These registrations may be raised for the first time in this Petition, because they were not issued until after the public comment period had ended. 42 U.S.C. § 766d(b)(2) ("The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (*unless the petitioner demonstrates in the petition . . that it was impracticable to raise such objections within such period or unless the ground for such objection arose after such period*)") (emphasis added).

6. Analysis of State's Response

In his Response to Comments, the Executive Director explains that:

> The permit holder may certify and register emissions limits below the levels specified in 30 TAC § 106.4(a)(1) through a certified registration that is issued in accordance with 30 TAC § 106.6. The certified registration letter with the maximum permitted allowables and the technical review are available on the TCEQ remote document server (RDS) at https://webmail.tceq.state.tx.us/gw/webpub. Additional requirements for PBRs are found in the Special Terms and Conditions under New Source Review Authorization Requirements. In the Exxon Mobil draft Title V permit, these requirements are found in Special Terms and Conditions 32 and 33, relating to PBRs.

Response to Comments at 6.

While all this is true, the Proposed Permit is still deficient because it fails to indicate that ExxonMobil has obtained certified registration approvals and that source-specific certified PBR limits are applicable requirements. Mere incorporation by reference of the general rule at § 106.6 allowing ExxonMobil to certify source-specific PBR emission limits is not sufficient to identify ExxonMobil's obligations under the SIP, because it does not explain how the rule and orders issued pursuant to it apply to units at the Baytown Refinery. Because the Proposed Permit

fails to identify ExxonMobil's certified registrations as applicable requirements, they are likely unenforceable under the prevailing doctrine of collateral attack. *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)). Because the Proposed Permit fails to properly identify ExxonMobil's certified PBR registrations as applicable requirements and because the Executive Director's Response to Comments did not explain how the Proposed Permit assures compliance with these registrations, the Administrator must object.

E. The Proposed Permit Fails to Specify Applicable Monitoring Requirements that Assure Compliance with Emission Limits for Units Authorized by Permit No. 18287/PSDTX730M4/PAL7

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

Permit No. 18287/PSDTX730M4/PAL7, Special Condition Nos. 20-22 explain how ExxonMobil is to calculate emissions from units at the Baytown Refinery to determine compliance with the permit's emission limits and caps. These Special Conditions, however, fail to assure compliance with the limits and caps, because they omit key information necessary to understand and evaluate how emissions are to be calculated. Specifically, the special conditions incorporate by reference various emission factors, provisions in TCEQ guidance documents, application representations, and vendor data without identifying the relevant emission factors or data. Because the Proposed Permit is unclear about how ExxonMobil is to calculate emissions from units at the Baytown Refinery to determine compliance with applicable limits and caps and because the permit record fails to demonstrate that the methods ExxonMobil must use to calculate emissions from its units---whatever those methods may be—assures compliance with applicable requirements.

2. Applicable Requirement of Part 70 Requirement Not Met

The Clean Air Act and EPA's implementing regulations require all Title V permits to contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(c)(1) and 70.6(a)(3). The Proposed Permit does not meet this requirement as explained in the following analysis.

3. Inadequacy of the Permit Term

Title V permits must include monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements, including emission limits established by NSR permits. 42 U.S.C. §§ 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c). To comply with this requirement, a Title V permit must specify the monitoring method that assures compliance with each applicable requirement. *In the Matter of Wheelabrator Baltimore*, Permit No. 24-510-01886 at 10 (April 14, 2010) ("EPA agrees that . . . [the permitting agency] 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."). Where a Title V permit allows an operator to determine compliance with emission limits by monitoring and maintaining records for various operating parameters, the permit and the permit record must explain how the permittee is to use this information to determine compliance. *In the Matter of Shell Deer Park Chemical Plant and Shell Deer Park Refinery* ("Deer Park Order"), Order Responding to Petition Nos. VI-2014-04 and VI-2014-05 at 22 (September 24, 2015) (objecting to Title V permit that failed to explain how tank emissions were to be determined "despite the numerous monitored parameters and recordkeeping requirements," because it rendered "compliance assurance for purposes of title V . . . unclear."). Finally, where a Title V allows an operator to rely on emission factors to determine compliance with applicable requirements, the permit record must

(1) identify the applicable emission factor(s), (2) explain the basis for the agency's determination that the factors assure compliance, and (3) provide evidence that operations at the source will not vary by a degree that would cause an exceedance of standards. *See, In the Matter of United States Steel, Granite City Works* ("Granite City I Order"), Order on Petition No. V-2009-03 at 13-14 (January 31, 2011) ("IEPA has failed to provide an explanation why use of the emission factors is adequate to assure compliance. With a few exceptions, EPA does not recommend the use of emission factors to develop source-specific permit limits or to determine compliance with permit requirements . . . . IEPA either must justify in the record why these emission factors are representative of . . . operations . . . and provide sufficient evidence to demonstrate that the emissions will not vary by a degree that would cause an exceedance of the standards, or IEPA must determine and adequately support another mechanism to assure compliance with the applicable emission limits"); *In the Matter of United States Steel, Granite City* Works ("Granite City II Order"), Order on Petition No. V-2011-2 at 9-12 (December 3, 2012) (granting claim, because permit failed to specify which emission factors operator was required to use to demonstrate compliance with applicable requirements).

Permit No. 18287/PSDTX730M4/PAL7, Special Condition Nos. 20-22 fail to assure compliance with applicable emission limits and caps, because they fail to specify relevant monitoring requirements, fail to explain how parametric monitoring information, vendor data and recordkeeping requirements should be used to determine compliance with applicable requirements, fail to identify applicable emission factors, and because the permit record fails to demonstrate that the monitoring methods—including unspecified emission factors—established by the permit are appropriate to determine compliance with applicable emission limits and caps.

4. Public Participation Procedure Not Provided

Petitioners' Public Comments did not specifically allege that the Proposed Permit's failure to include information improperly omitted from Permit No. 18287/PSDTX730M4/PAL7, Special Condition Nos. 20-22 violated public participation requirements established by Title V of the Clean Air Act

5. Issue Raised in Public Comments

This issue was raised on pages 8-9 of Petitioners' Public Comments.

6. Analysis of State's Response

The Executive Director contends that Petitioners' concerns about Permit No. 18287/PSDTX730M4/PAL, Special Condition Nos. 20-22 are misplaced, because (1) Special Condition Nos. 28-30 of the same permit still require ExxonMobil to maintain records sufficient to establish compliance with permit limits and (2) "[t]he application representations that describe the calculation methodology for the emissions are not required to be listed in the NSR permit or FOP O1229." Response to Comments at 10.

The Executive Director's first claim fails to rebut Petitioners' demonstration, because—regardless of whether ExxonMobil's actual records contain information that demonstrates compliance with the applicable limits—the Proposed Permit must establish specific requirements that assure compliance with applicable emission limits. It must identify the specific monitoring and emissions calculation methods that assure compliance with applicable requirements, which are to be reflected in the records ExxonMobil maintains pursuant to Permit No. 18287/PSDTX730M4/PAL7, Special Conditions No. 28-30. *Granite City II Order* at 9-12; *Deer Park Order* at 22. Because, the special conditions in Permit Nos. 18287/PSDTX730M4/PAL7 that purport to establish such methods fail to contain information necessary to identify and

evaluate the monitoring methods and calculation procedures that assure compliance with applicable limits and caps, the Proposed Permit is deficient.

The Executive Director's second argument—that the Proposed Permit needn't contain the specific application representations that describe the calculation methodology that assure compliance with applicable requirements—is incorrect. The Proposed Permit must contain all monitoring requirements established by Permit No. 18287/PSDTX730M4/PAL7 and any other conditions necessary to assure compliance with that permit's emission limits and caps. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3)(i)(A). Moreover, even if the Executive Director was correct that the Proposed Permit needn't include this information, the permit record must still describe the incorporated application representations and explain how they assure compliance with applicable limits. *Deer Park Order* at 22 (objecting to permit because "the Petitioners demonstrated that the record, including the permit and the RTC, does not explain what monitoring methods assure compliance with VOC emission limits for storage tanks as required by 42 U.S.C. § 7661c(c)."). Because the Proposed Permit and the permit record, including the Proposed Permit, its Statement of Basis, and the Executive Director's Response to Comments fail to identify the specific monitoring and emission determination methods that assure compliance with applicable limits and emission caps, the Administrator must object.

F. The Proposed Permit Fails to Require Monitoring That Assures Compliance with Emission Limits and Caps for Tanks and Wastewater Treatment Plants at the Baytown Refinery

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

Permit No. 18287/PSDTX730M4/PAL7, Special Condition Nos. 14(F) and 22(B) direct ExxonMobil to use AP-42 emission factors in conjunction with an undisclosed methodology contained in TCEQ guidance to calculate emissions from storage tanks and wastewater treatment

plants at the Baytown Refinery for the purpose of determining compliance with applicable emission limits and caps. These special conditions fail to assure compliance with applicable emission limits and caps, because the permit record does not demonstrate that the AP-42 emission factors the Proposed Permit instructs ExxonMobil to use reliably estimate actual emissions from units at the Baytown Refinery. Petitioners' Public Comments identified studies showing that these emission factors have significantly underestimated actual emissions from petroleum refineries in Texas. The Executive Director failed to address these studies or explain how he determined that the applicable AP-42 emission factors, along with TCEQ's guidance document—which is not part of the permit record or readily accessible online—provide a reliable basis for calculating emissions from ExxonMobil's tanks and wastewater treatment facilities.

2. Applicable Requirement or Part 70 Requirement Not Met

The Clean Air Act and EPA's implementing regulations require all Title V permits to contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(c)(1) and 70.6(a)(3). The Proposed Permit does not meet this requirement as explained in the following analysis.

3. Inadequacy of the Permit Term

AP-42 emission factors are generic rules of thumb that represent an average range of facilities and emission rates. They do not reliably predict emissions from individual sources under all operating conditions, and for that reason, are rarely an acceptable method for operators to determine compliance with applicable emission limits. *In the Matter of Tesoro Refining and Marketing Co*, Order on Petition No. IX-2004-6 at 32 (March 15, 2005). Because this is so, and because recent studies identified in Petitioners' Public Comments show that AP-42 emission

factors for storage tanks and wastewater treatment plants at petroleum refineries may drastically underestimate actual emissions, the Proposed Permit's unsupported reliance on AP-42 emission factors to calculate emissions from these kinds of units at the Baytown Refinery is unjustified and fails to assure compliance with applicable emission limits and caps. *See*, Public Comments, Attachments 5-14.

Because the Proposed Permit fails to establish monitoring requirements that assure compliance with limits on emissions from ExxonMobil's tanks and wastewater treatment plants, and because the permit record fails to support the Executive Director's determination that AP-42 emission factors for these kinds of units reliably predicts emissions from the Baytown Refinery, the Administrator must object.

4. Public Participation Procedure Not Provided

Petitioners' Public Comments did not specifically allege that the Proposed Permit's failure to include monitoring requirements that assure compliance with applicable emission limits and caps violated public participation requirements established by Title V of the Clean Air Act.

5. Issue Raised in Public Comments

This issue was raised on pages 9-11 of Petitioners' Public Comments.

6. Analysis of State's Response

The Executive Director makes two arguments in response to Petitioners' Public Comments on this issue. First, he contends that the Proposed Permit's compliance determination method for storage tank and wastewater treatment plant emissions "is not a general emission factor," and that the "equation currently accepted for use by the TCEQ and the Environmental Protection Agency was developed from rigorous testing following an approved protocol and

requires the use of data specific to the storage tank and material stored in the tank." Response to Comments at 10-11. Second, he contends that the permit's recordkeeping provisions at Special Condition Nos. 14(F) and 28 "require[] sufficient records to demonstrate compliance with the hourly and annual TPY emission limits[.]" *Id*.

The Executive Director's first argument is unsuccessful, because nothing in the permit record—including the Proposed Permit, the Statement of Basis, or the Response to Comments—explains how the special conditions the Executive Director mentions "relate to the TCEQ's assertion that VOC emissions are calculated using an 'approved protocol and requires the use of data specific to the storage tank and the material stored in the tank.'" *Deer Park Order* at 24; *see also, In the Matter of Wheelabrator Baltimore*, Permit No. 24-510-01886 at 10 (April 14, 2010).[8]

The Executive Director's second response is deficient because it is not enough that the Proposed Permit require ExxonMobil to demonstrate compliance with applicable requirements. The Proposed Permit may not leave it to ExxonMobil's discretion to decide on a case-by-case basis what kind of demonstration is appropriate. Instead, the Proposed Permit must actually specify monitoring methods that are sufficient to assure compliance.

Because the permit record fails to demonstrate that AP-42 emission factors that recent studies have called into question are appropriate methods for determining compliance with applicable requirements and because the Executive Director's Response to Comments fails to address Petitioners' demonstration that the Proposed Permit's monitoring provisions are deficient, the Administrator must object.

[8] The language in the Response to Comments is actually identical to language in the Deer Park record that drew the Administrator's objection.

G. The Proposed Permit Fails to Including Monitoring Requirements That Assure Compliance with VOC and Benzene Emission Limits and Caps for Flares at the Baytown Refinery

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

Permit No. 18287/PSDTX730M4/PAL7, Special Condition No. 21 directs ExxonMobil to presume that its flares continuously achieve at least a 98% VOC destruction efficiency to calculate flare emissions to determine compliance with applicable VOC and benzene emission limits and caps. Recent studies have shown that this method of monitoring emissions from petroleum refinery flares does not accurately predict actual emissions. The Proposed Permit is deficient, because its monitoring requirements do not ensure ongoing compliance with the presumed level of destruction efficiency and because the permitting record does not include information showing that the Executive Director's contention that the monitoring will assure compliance with applicable emission limits and caps is justified.

2. Applicable Requirement or Part 70 Requirement Not Met

The Clean Air Act and EPA's implementing regulations require all Title V permits to contain monitoring requirements that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(c)(1) and 70.6(a)(3). The Proposed Permit does not meet this requirement as explained in the following analysis.

3. Inadequacy of the Permit Term

Petitioners' Public Comments identified studies showing that the presence of a pilot light is not enough to ensure that ExxonMobil's flares will continuously achieve the presumed level of performance and asked the Executive Director to establish additional monitoring requirements addressing problems, like over-steaming, excess aeration, high winds, and flame liftoff that are

known to impair the performance of refinery flares. Public Comments at 10-11 and Attachments 9-14.

After the Draft Permit public comment period closed, EPA released additional information supporting Petitioners' contention that the Proposed Permit's flare monitoring requirements fail to assure compliance with applicable VOC and benzene emission limits and caps.[9] Specifically, based on its extensive review of data provided by industry, EPA found that flares complying with monitoring requirements equivalent to those in the Proposed Permit only achieved an average destruction efficiency of 93 percent. *Petroleum Refinery Sector Rule: Flare Impact Estimates*, U.S. EPA, EPA-HQ-OAR-2010-0682-0209 at 9 (January 16, 2014).[10] Because available information demonstrates that flares implementing monitoring methods equivalent to those in the Proposed Permit do not perform at the level that the permit presumes, the Proposed Permit's monitoring requirements fail to assure compliance with applicable emission limits and caps. Accordingly, the Administrator must object to the Proposed Permit.

4. Public Participation Procedure Not Provided

Petitioners' Public Comments did not specifically allege that the Proposed Permit's failure to include monitoring requirements that assure compliance with applicable emission limits and caps violated public participation requirements established by Title V of the Clean Air Act.

5. Issue Raised in Public Comments

Petitioners raised this issue on pages 9-11 of their Public Comments.

[9] This information is properly raised for the first time in this Petition, because it was not available during the public comment period. 42 U.S.C. § 7661d(b)(2).
[10] Available electronically at: http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2010-0682-0209

6. Analysis of State's Response

In response to Petitioners' Public Comments concerning the Draft Permit's flare monitoring provisions, the Executive Director explained that: (1) "flares like the ones at this site have a low probability of visible emissions when operated correctly," (2) visible emissions are subject to Method 22 opacity monitoring requirements, (3) "[t]here is no currently-available, EPA–approved mechanism for testing or monitoring emissions from an operating flare," and (4) that because applicable federal rules only require ExxonMobil to continuously monitor for the presence of a pilot flare, "the federal operating permit already requires continuous mentoring necessary to assure compliance." Response to Comments at 11-12.

The Executive Director's first two arguments related to visible emissions requirements are not responsive to Petitioners' Public Comments, because Petitioners did comment about visible emissions from the flares. Instead, Petitioners demonstrated that the Proposed Permit fails to assure compliance with VOC and benzene emission limits and caps. The Executive Director's focus on visible emissions is surprising, because studies cited in Petitioners' Public Comments explain that assist steam used to minimize visible emissions may interfere with the proper combustion of VOC and benzene. Public Comments, Attachment 9.

The Executive Director's third contention, that there is no currently-available EPA-approved mechanism for testing or monitoring emissions from an operating flare, is incorrect. EPA has approved monitoring requirements that "ensure that refinery flares meet 98-percent destruction efficiency at all times." *Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards*, 80 Fed. Reg. 75178, 75211 (December 1, 2015). These requirements are found at 40 C.F.R. § 63.670. While these monitoring requirements had not

been approved at the time Petitioners filed their Public Comments, they were approved well before the Executive Director issued his Response to Comments.

The Executive Director's final argument, that the Proposed Permit's flare monitoring requirements are sufficient because they incorporate the monitoring requirements established by applicable EPA rules, is also incorrect. If monitoring methods established by applicable requirements are not sufficient to assure compliance, the TCEQ must establish additional monitoring provisions that do assure compliance. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3)(i)(B). Petitioners have demonstrated that Permit No. 18287/PSDTXM4/PAL7 monitoring requirements do not assure compliance with applicable VOC and benzene emission limits and caps. Accordingly, the Executive Director must include additional monitoring conditions that do assure compliance with the applicable limits and caps.

The Executive Director's Response to Comments failed to address the substance of Petitioners' Public Comments, ignored the studies presented in those comments, and failed to acknowledge monitoring requirements for flares promulgated after the close of the public comment period, which were established to address factors Petitioners identified in their public comments that diminish flare performance. Because the permit record fails to contain information showing that the Executive Director considered issues raised in the Petitioners' Public Comments and because the TCEQ has not explained how the monitoring requirements in the Proposed Permit assure ongoing compliance with VOC and benzene emission limits and caps contained in Permit No. 18287/PSDTX730M4/PAL7, the Administrator must object to the Proposed Permit.

VI. CONCLUSION

For the foregoing reasons, and as explained in Petitioners' timely-filed public comments, the Proposed Permit is deficient. The Executive Director's Response to Comments 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
707 Rio Grande, Suite 200
Austin, TX 78701
(512) 637-9477 (phone)
(512) 584-8019 (fax)
gclark-leach@environmentalintegrity.org

EXHIBITS

(Exhibit 1) Petitioners' Comments on Draft Renewal Permit No. O1229 ("Public Comments")

(Exhibit 2) Notice of Proposed Permit and Executive Director's Response to Public Comment on Permit No. O1229 ("Response to Comments").

(Exhibit 3) Certified Registration Approval Letter, Registration No. 137342 (December 21, 2015)

(Exhibit 4) Certified Registration Approval Letter, Registration No. 136500 (November 16, 2015)

(Exhibit 5) Certified Registration Approval Letter, Registration No. 115627 (February 21, 2014)

(Exhibit 6) Certified Registration Approval Letter, Registration No. 107643 (February 8, 2013)

EXHIBIT B

Notice of Intent to Sue Letter

1206 San Antonio Street
Austin, TX 78701
Phone: (512) 637-9478
www.environmentalintegrity.org

February 10, 2017

Acting Administrator Catherine McCabe
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Fax number (202) 501-1450

Via Certified Mail

RE: Notice of Intent to Sue for Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O1229 Issued to the ExxonMobil Corporation for the Baytown Refinery in Harris County, Texas

Dear Administrator McCabe:

With this letter, the Environmental Integrity Project, Sierra Club, and Air Alliance Houston ("Plaintiffs") are giving you notice of our intent to sue you in your official capacity as Administrator of the U.S. Environmental Protection Agency for your failure to timely respond to our petition to object to the Part 70 Operating Permit (Title V permit) No. O1229 issued to the ExxonMobil Corporation for operation of the Baytown Refinery in Harris County, Texas. Plaintiffs timely filed their petition on September 26, 2016, within 60 days following the end of EPA's 45-day review period for the Title V permit.[1] Though more than 60 days have passed since Plaintiffs filed their petition, you have not yet granted or denied the petition, as required by 42 U.S.C. § 7661d(b)(2).

Authority to Bring Suit

Clean Air Act, Section 304(a)(2) authorizes a citizen suit in federal district court "against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). You have failed to perform your nondiscretionary duty to grant or deny Plaintiffs' petition within 60 days of receipt. 42 U.S.C. § 7661d(b)(2). Plaintiffs are hereby giving you the required 60-day notice of our intent to bring a citizen suit to compel you to expeditiously grant or deny our petition.

[1] Plaintiffs' Title V petition is included with this NOI as Attachment 1.

If you fail to grant or deny Plaintiffs' petition within 60 days after receiving this notice, Plaintiffs will file suit in federal district court to compel your response.

Relief Requested

Plaintiffs will seek the following relief:

1. An order compelling you to expeditiously grant or deny the Petition;
2. Attorney's fees and other litigation costs; and
3. Other appropriate relief as allowed.

Parties

As required by 40 C.F.R. § 54.3, the persons providing this notice are:

Environmental Integrity Project
1206 San Antonio Street
Austin, Texas 78701
Attn: Gabriel Clark-Leach
Tel: (512) 637-9478

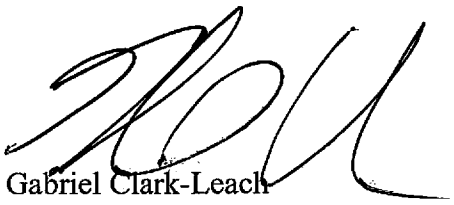
Sierra Club
2101 Webster Street, Suite 1300
Oakland, California 94612
Attn: Aaron Isherwood
Tel: 415-977-5680

Air Alliance Houston
3914 Leeland
Houston, Texas 77003
Tel: (713) 528-3779
Attn: Adrian Shelley

While EPA regulations require this information, please direct all correspondence and communications regarding this matter to the undersigned attorney.

If you have any questions regarding this notice letter, believe any of the foregoing information to be in error, or would otherwise like to discuss settlement of this matter, please contact Gabriel Clark-Leach at (512) 637-9478 or gclark-leach@environmentalintegrity.org.

Sincerely,



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

Attorney for Plaintiffs
Environmental Integrity Project,
Sierra Club, and Air Alliance Houston

Attachment

cc: (Via Certified Mail)

Jeff B. Sessions, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Samuel Coleman, Regional Administrator
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Steve Hagle, P.E.
Office of Air Deputy Director, MC-122
Texas Commission on Environmental Quality
P.O Box 13087
Austin, Texas 78711-3087

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Administrator Catherine McCabe
U.S. EPA
Ariel Rios Building MC1101A
1200 Pennsylvania Ave, NW
Washington, DC 20460

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Mail Manage ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FEB 21 2017

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Num *(Transfer fr* 7008 1300 0002 4881 2248

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS
Environmental Integrity Project,
Air Alliance Houston, and
Sierra Club

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 11001
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
Scott Pruitt, in his official capacity as Administrator, U.S. Environmental Protection Agency

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Adam Kron
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005
(202) 263-4451

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***
- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

◉ **C. *Administrative Agency Review***
- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☒ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ **E. *General Civil (Other)*** **OR** ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 27 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

○ **G. *Habeas Corpus/ 2255***	○ **H. *Employment Discrimination***	○ **I. *FOIA/Privacy Act***	○ **J. *Student Loan***
☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ **K. *Labor/ERISA (non-employment)***	○ **L. *Other Civil Rights (non-employment)***	○ **M. *Contract***	○ **N. *Three-Judge Court***
☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge ○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

42 U.S.C. 7604(a)(2), failure to perform a nondiscretionary act or duty

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $** 0 **JURY DEMAND:** Check YES only if demanded in complaint **YES** ☐ **NO** ☒

VIII. RELATED CASE(S) IF ANY (See instruction) **YES** ☐ **NO** ☒ If yes, please complete related case form

DATE: 07/20/2017 **SIGNATURE OF ATTORNEY OF RECORD** /s/ Adam Kron

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Environmental Integrity Project, Air Alliance Houston, and Sierra Club

Plaintiff(s)

v.

Scott Pruitt, in his official capacity as the Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Scott Pruitt, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania, Ave NW, Mail Code 1101A
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Adam Kron
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Environmental Integrity Project, Air Alliance Houston, and Sierra Club

Plaintiff(s)

v.

Scott Pruitt, in his official capacity as the Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Adam Kron
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Environmental Integrity Project, Air Alliance Houston, and Sierra Club

Plaintiff(s)

v.

Scott Pruitt, in his official capacity as the Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Channing D. Phillips
c/o Civil Process Clerk
United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Adam Kron
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: