

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	PETITION No. VI-2016-20
)	
PASADENA REFINING SYSTEM)	
PASADENA REFINERY)	ORDER RESPONDING TO
HARRIS COUNTY, TEXAS)	PETITION REQUESTING
)	OBJECTION TO THE ISSUANCE OF
PERMIT No. O3711)	A TITLE V OPERATING PERMIT
)	
ISSUED BY THE TEXAS COMMISSION ON)	
ENVIRONMENTAL QUALITY)	

ORDER DENYING IN PART AND GRANTING IN PART
A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (the EPA) received a petition dated November 8, 2016, (the Petition) from the Environmental Integrity Project, Sierra Club, Texas Environmental Justice Advocacy Services, and Air Alliance Houston (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The Petition requests that the EPA object to the proposed operating permit no. O3711 (the Proposed Permit) issued by the Texas Commission on Environmental Quality (TCEQ) to the Pasadena Refining System, Pasadena Refinery (Pasadena or the facility) in Harris County, Texas. The operating permit was proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Title 30, Chapter 122 of the Texas Administrative Code (TAC). *See also* 40 C.F.R. part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Proposed Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further below, the EPA grants in part and denies in part the Petition requesting that the EPA object to the Proposed Permit. The EPA recognizes that TCEQ and Pasadena are already working to resolve some of the issues raised in the claims the EPA is granting in this order. For example, Pasadena has already submitted an application for a minor modification to the title V permit that will remove some 30 TAC Chapter 106 Permits by Rule (PBRs) that are no longer applicable and incorporate the registration numbers for PBRs that are registered with TCEQ. PRSI Refinery – Pasadena, Minor Revision Application Permit No. O3711 (April 18, 2018); *see infra* at p. 16. In this order, the EPA identifies possible options available to TCEQ for addressing the issues identified in the grants.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The state of Texas submitted a title V program governing the issuance of operating permits on September 17, 1993. The EPA granted interim approval of Texas's title V operating permit program in 1996, and granted full approval in 2001. *See* 61 Fed. Reg. 32693 (June 25, 1996) (interim approval effective July 25, 1996); 66 Fed. Reg. 63318 (December 6, 2001) (full approval effective November 30, 2001). This program is codified in 30 TAC Chapter 122.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. CAA §§ 502(a), 504(a), 42 U.S.C. §§ 7661a(a), 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure sources' compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may petition the Administrator, within 60 days of the expiration of the EPA's 45-day review period, to object to the permit. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

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 to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit

is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).¹ Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.²

The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," to determine whether a petition demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).³ When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., MacClarence*, 596 F.3d at 1130–31.⁴ Certain aspects of the petitioner's demonstration burden are discussed below; however, a more detailed discussion can be found in *In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA has looked at a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the state's response to comments, or RTC), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.⁵ Another factor the EPA has examined is whether a

¹ *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

² *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *c.f. NYPIRG*, 321 F.3d at 333 n.11.

³ *See also Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' . . . plainly mandates an objection *whenever* a petitioner demonstrates noncompliance." (emphasis added)).

⁴ *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

⁵ *See also, e.g., In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in the RTC or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's RTC or provide a particularized rationale for why the state erred or the permit was deficient); *In the Matter of Georgia Power Company*, Order on Petitions, at 9–13 (January 8, 2007) (*Georgia Power Plants Order*).

petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 (“[T]he Administrator’s requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.”).⁶ Relatedly, the EPA has pointed out in numerous orders that, in particular cases, general assertions or allegations did not meet the demonstration standard. *See, e.g., In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013) (*Luminant Sandow Order*).⁷ Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).⁸

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) on a proposed permit generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement of basis for the draft and proposed permits; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; relevant supporting materials made available to the public according to 40 C.F.R. § 70.7(h)(2); and all other materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered as part of making a determination whether to grant or deny the petition.

C. New Source Review

The major New Source Review (NSR) program is comprised of two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for

(denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the RTC).

⁶ *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition, at 7 (June 20, 2007) (*Portland Generating Station Order*).

⁷ *See also Portland Generating Station Order* at 7 (“[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement].”); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (Apr. 20, 2007); *Georgia Power Plants Order* at 9–13; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

⁸ *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and other pollutants regulated under the CAA. CAA §§ 160–169, 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. CAA §§ 171–193, 42 U.S.C. §§ 7501–7515. The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA’s federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA’s regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources, and minor modifications to major sources. The EPA commonly refers to the latter program as the “minor NSR” program. States must also develop minor NSR programs to attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R. § 51.160 through 51.164. These federal requirements for minor NSR programs are less prescribed than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs.

Where the EPA has approved a state’s title I permitting program (whether PSD, NNSR, or minor NSR), duly issued preconstruction permits will establish the NSR-related “applicable requirements,” and the terms and conditions of those permits should be incorporated into a source’s title V permit without further review. *See generally In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII-2016-4 at 8–21 (October 16, 2017) (*PacifiCorp-Hunter Order*); *In the Matter of Big River Steel, LLC*, Order On Petition No. VI-2013-10 at 8–20 (October 31, 2017) (*Big River Steel Order*); 56 Fed. Reg. 21712, 21738–39 (May 10, 1991).⁹ The legality of a permitting authority’s decisions undertaken in the course of preconstruction permitting is not a subject the EPA will consider in a petition to object to a source’s title V permit. *See PacifiCorp-Hunter Order* at 8, 13–19; *Big River Steel Order* at 8–9, 14–20.¹⁰ Rather,

⁹ As the EPA has explained, “[A] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the ‘applicable requirement’ remains the terms and conditions of the issued preconstruction permit and they should be included in the source’s title V permit.” *Big River Steel Order* at 19; *see PacifiCorp-Hunter Order* at 19; *id.* at 20 (“That the EPA views the incorporation of the terms and conditions of these preconstruction permits into the title V operating permit as proper for purposes of title V does not indicate that the EPA agrees that the state reached the proper decision when setting terms and conditions in the preconstruction permits. . . . The EPA’s lack of objection to the inclusion of that requirement in the title V permit does not indicate that the EPA agrees that it is legal or complies with the Act; it merely indicates that a title V permit is not the appropriate venue to correct any such flaws in the preconstruction permit.”).

¹⁰ The EPA does view monitoring, recordkeeping, and reporting to be part of the title V permitting process and will therefore continue to review whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit. *See PacifiCorp-Hunter Order* at 16, 17, 18, 18 n.33, 19; *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20.

any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

The EPA has approved Texas's PSD, NNSR, and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.2270(c) (identifying EPA-approved regulations in the Texas SIP). Texas's major and minor NSR provisions, as approved by the EPA into Texas's SIP, are contained in portions of 30 TAC Chapters 116 and 106.

III. BACKGROUND

A. The Pasadena Refinery Facility

The Pasadena Refinery, located in Harris County, Texas, has the capability to process up to 110,000 barrels of crude oil per day and features numerous emission units related to its petroleum refining operations. The facility is a major source of particulate matter (PM), sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), and hazardous air pollutants (HAPs), and is subject to the requirements of title V. Emission units within the facility are also subject to the PSD program, other preconstruction permitting requirements, and various New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).

B. Permitting History

Pasadena first obtained a title V permit for the Pasadena Refinery in 2004. After their initial permit expired, Pasadena applied for a new title V permit on May 30, 2014. TCEQ issued a draft permit on November 13, 2014, subject to a public comment period from November 13, 2014, until January 28, 2016. On July 5, 2016, TCEQ submitted the Proposed Permit, along with its RTC, to the EPA for its 45-day review. The EPA's 45-day review period ended on September 9, 2016, during which time the EPA did not object to the Proposed Permit. TCEQ issued the final title V renewal permit for the Pasadena Refinery on October 12, 2016.

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on September 9, 2016. Thus, any petition seeking the EPA's objection to the Proposed Permit was due on or before November 8, 2016. The Petition was received November 8, 2016, and, therefore, the EPA finds that the Petitioners timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

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

Claim A in the Petition contains three distinct sub-claims as summarized in the subsequent sections titled Claim A.3.a, A.3.b, and A.3.c. Claim A also contains general background in A.1 and A.2, which the EPA has included as necessary in the claim summaries below.

Claim A.3.a: The Petitioners Claim That “The Proposed Permit’s Incorporation by Reference of Chapter 116 NSR Permits Fails To Identify and Assure Compliance with Applicable Requirements.”

Petitioners’ Claim: The Petitioners generally claim that the title V permit’s incorporation by reference (IBR) of case-by-case minor NSR permits authorized under 30 TAC Chapter 116 permits (“minor NSR permits”) is inconsistent with title V requirements under 42 U.S.C. § 7661c(a) and 40 C.F.R. § 70.6(a)(1) to include all conditions necessary to assure compliance with applicable requirements and is objectionable for the same reason the EPA has objected to IBR of major NSR permits. Petition at 9, 11.

The Petitioners contend that the title V permit’s IBR of minor NSR permits “puts an even greater burden on the enforceability of emission limits for significant emission units at Pasadena Refinery” than the IBR of major NSR permits, which the EPA has objected to in the past. *Id.* at 12. The Petitioners generally assert that there is no distinction between major NSR permits and the minor NSR permits at Pasadena because these minor NSR permits were authorized “before the PSD and NNSR permitting programs were enacted” and the permits “authorize significant emissions.” *Id.* For support, the Petitioners provide what they claim is the total sum of the emissions, by pollutant, authorized by fourteen minor NSR permits at Pasadena. *Id.* at 11, n.11.

The Petitioners claim that the title V permit’s IBR of minor NSR permits does not satisfy the three requirements outlined in the EPA’s 2011 Granite City Order. *Id.* at 10 (quoting *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03 (January 31, 2011) (*2011 Granite City Order*) at 42–43 (“(1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and the date of the document be included so that there is no ambiguity as to which version of a document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation.”)).

The Petitioners generally claim that enforceable applications for minor NSR permits are not listed by date in the title V permit and that the application representations are not readily available. *Id.* at 10, 14. Further, the Petitioners assert that the title V permit does not list “which permit limits, operating requirements, and application representation are controlling in cases where apparent conflict exists” (e.g., different methods for monitoring the same emission limits or less stringent emission limits in one permit than another), and the title V permit’s method of

IBR is “opaque and will inevitably give rise to misinterpretation.” *Id.* at 10, 13–14. Therefore, the Petitioners conclude that the title V permit is not “clear and unambiguous about how incorporated requirements apply to each unit” and the lack of readily available information “places an unreasonable and unmanageable burden on stakeholders attempting to identify and enforce applicable requirements.” *Id.* at 14 (citing to Letter to Mark Vickery, Executive Director, TCEQ from Al Armendariz, Regional Administrator, EPA Region 6 (June 10, 2010) (2010 Armendariz Letter)).

EPA’s Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

The EPA has discussed the issue of IBR in numerous orders and in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (March 5, 1996) (*White Paper Number 2*). *See, e.g., In the Matter of ExxonMobil, Baytown Refinery*, Order on Petition No. VI-2016-14 at 20–21 (April 2, 2018); *In the Matter of Shell Chemical LP and Shell Oil Company, Shell Deer Park Chemical Plant and Shell Deer Park Refinery*, Order on Petition Nos. VI-2014-04 & VI-2014-05 at 8–11 (September 24, 2015) (*Shell Deer Park Order*); *In the Matter of CITGO Refining and Chemicals Company L.P. West Plant, Corpus Christi, Texas*, Order on Petition No. VI-2007-01 at 11 (May 28, 2009) (*CITGO Order*); *In the Matter of Tesoro Refining and Marketing*, Order on Petition No. IX-2004-6 at 8–9 (March 15, 2005) (*Tesoro Order*). As the EPA explained in *White Paper Number 2*, IBR may be useful in many instances, though it is important to exercise care to balance the use of IBR with the obligation to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. *White Paper Number 2* at 36–41; *see also Tesoro Order* at 8. Further, as the EPA noted in the *Tesoro Order*, the EPA’s expectations for what requirements may be referenced and for the necessary level of detail are guided by sections 504(a) and (c) of the CAA and corresponding provisions at 40 C.F.R. § 70.6(a)(1) and (3). *Id.* The EPA’s decision approving the use of IBR in Texas’s program was limited to, and specific to, 30 TAC Chapter 116 minor NSR permits and 30 TAC Chapter 106 PBRs in Texas. *See* 66 Fed. Reg. 63318, 63324 (December 6, 2001); *see also, Public Citizen v. EPA*, 343 F.3d 449, 460–61 (5th Cir. 2003). In approving Texas’s limited use of IBR of emissions limitations, terms and conditions from minor NSR permits, the EPA balanced the streamlining benefits of IBR against the value of a more detailed title V permit and found Texas’s approach for minor NSR permits acceptable. *See Public Citizen*, 343 F.3d at 460–61. The EPA noted the unique challenge Texas faced in integrating requirements from these permits into title V permits. *See, e.g.,* 66 Fed. Reg. 63318, 63326; 60 Fed. Reg. 30037, 30039; 59 Fed. Reg. 44572, 44574; *CITGO Order* at 11. Under the approved program, “Texas must incorporate all terms and conditions of the [minor NSR] permits and PBRs, which would include emission limits, operational and production limits, and monitoring requirements.” 66 Fed. Reg. 63318, 63324. Therefore, “the terms and conditions of the [minor NSR] permits so incorporated are fully enforceable under the fully approved title V program.” *Id.*

As explained above, the EPA has approved TCEQ’s use of IBR for minor NSR permits. Affirming the EPA’s approval of IBR for minor NSR permits in Texas, the 5th Circuit stated:

Nothing in the CAA or its regulations prohibits incorporation of applicable requirements by reference. The Title V and part 70 provisions specify what Title V permits “shall include” but do not state how the items must be included. *See* 42 U.S.C. § 7661c(a) (“Each permit issued under this subchapter shall include enforceable emissions limitations and standards... and such other conditions as are necessary to assure compliance with applicable requirements of this chapter.”); 40 C.F.R. § 70.6(a)(1) (“Each permit issued under this part shall include [elements including emissions limitations and standards]”).

Public Citizen v. EPA, 343 F.3d at 460. The IBR of minor NSR permits can be appropriate if implemented correctly, and the Petitioners did not demonstrate that there was improper implementation of the IBR of minor NSR permits in this case. Consistent with the 2010 Armendariz Letter, the permits that TCEQ has incorporated by reference into the Pasadena title V permit are not Major NSR permits (PSD or NNSR permits). In particular, the Petitioners did not demonstrate that the Texas’s EPA-approved use of IBR for minor NSR permits in the Pasadena title V permit rendered the permit practically unenforceable.

The EPA has previously stated that the use of IBR can be appropriate where the “title V permit is clear and unambiguous as to how the emissions limits apply to particular emission units.” *CITGO Order* at 11–12 n.5. The Petitioners did not demonstrate that use of IBR was improper in this case. The EPA interprets the “demonstration” requirement in CAA section 505(b)(2) as placing the burden on the Petitioner to supply information to the EPA sufficient to demonstrate the validity of the objection raised to the title V permit. Here the Petitioners appear to disagree with implementation of the IBR in Texas. However, the Petitioners did not identify any minor NSR permit or permit term for which TCEQ’s actions were inconsistent with the three conditions for IBR as outlined in *2011 Granite City Order*, the approved title V program, or the CAA. The Petitioners’ general assertions regarding its opinion on the balancing of the administrative benefits and enforcement burden do not demonstrate a flaw in the permit. The EPA has pointed out in numerous orders that general assertions or allegations do not meet the demonstration standard.¹¹

With regard to the Petitioners’ assertions that application representations and other relevant documents were not “readily available,” the Petitioners raise this concern in a general way, and without specifically identifying any particular applicable requirements that are not properly incorporated into the title V permit or specifying what application information or NSR permits the Petitioners were unable to locate. As TCEQ explained in its RTC, the minor NSR permits are listed in the permit and at the time of permit issuance, their content was accessible to the public through TCEQ’s Remote Document Server,¹² or at TCEQ’s main file room, located on the first floor of Building E, 12100 Park 35 Circle, Austin, Texas. *See* RTC at 14. Thus, the public and the EPA could have accessed the minor NSR permits and any necessary supporting documents, including the application, that are incorporated into the Pasadena title V permit on TCEQ’s Remote Document Server or at TCEQ’s main file room. Importantly, the Petitioners failed to

¹¹ *See MacClarence*, 596 F.3d at 1132–33; *supra* notes 6, 7, and accompanying text.

¹² The Remote Document Server has since been replaced by the TCEQ Central File Room, available at https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_SEARCH.

address TCEQ's response that all incorporated permits and supporting documents could be found on TCEQ's Remote Document Server or at TCEQ's main file room. Therefore, the Petitioners' general assertions did not demonstrate a flaw in the title V permit and the Petitioners have failed to address TCEQ's reasoning in the RTC.¹³

The EPA notes that TCEQ has recently upgraded their online permit database and has begun to include instructions on how to use the new system to locate information related to title V and NSR permitting actions.¹⁴ TCEQ intends for the database to include title V permits, major and minor NSR permits, registered PBRs, and the applications and communications related to each of these permitting actions. However, some older documents may only be available at TCEQ main file room.

To the extent that the Petitioners are asserting that TCEQ's practice of relying on application representations when issuing minor NSR permits is inconsistent with the requirements of title V, the Petitioners have not demonstrated that this practice is inconsistent with the approved SIP or with TCEQ's approved title V program. As the Petitioners acknowledge, Texas's EPA-approved NSR rules provide that "representations with regard to construction plans and operation procedures in an application for a permit . . . are [among] the conditions upon which a permit, special permit, or special exemption are issued." 30 TAC § 116.116(a); *see* Petition at 8, 13. In other words, as TCEQ has explained and the EPA acknowledged, "The permit application, and all the representations in it, is part of the permit when it is issued and as such is enforceable." 79 Fed. Reg. 8368, 8385 (February 12, 2014). While the Petitioners claim that the practice of relying on application representation does not comply with 2010 Armendariz Letter because obtaining the application is too difficult and the title V permit is unclear, the Petitioners have not addressed TCEQ's response that all necessary permit documents can be found on TCEQ's website or TCEQ's main file room. If the Petitioners believe that Texas's EPA-approved SIP does not comply with the requirements of the CAA, the title V petition process is not the appropriate venue to raise such an issue. The Petitioners' general contention that TCEQ's practice requires the public to obtain copies of the applications and to consider the representation therein does not demonstrate a flaw in the title V permit.¹⁵

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

Claim A.3.b: The Petitioners Claim That "The Proposed Permit's Incorporation by Reference of PBRs and Standard Exemptions Fails To Identify and Assure Compliance with Applicable Requirements."

Petitioners' Claim: The Petitioners raise three main points regarding the use of IBR of PBRs and Standard Exemptions (SEs): 1) the title V permit does not identify how much pollution Pasadena is authorized to emit from each unit under claimed PBRs and SEs; 2) the title V permit does not

¹³ *See supra* notes 6, 7, and accompanying text.

¹⁴ TCEQ Central File Room Online, available at https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_SEARCH. Several guides for how to find various types of air permitting records are available online, available at https://www.tceq.texas.gov/permitting/air/nav/air_status_permits.html

¹⁵ *See supra* notes 6, 7, and accompanying text.

identify which pollutants Pasadena may emit from each unit under claimed PBRs and SEs; and 3) the title V permit does not identify which emission units at Pasadena are subject to limits in the claimed PBRs and SEs. Petition at 14–15.

First, the Petitioners claim that the title V permit is unclear as to how much pollution Pasadena is authorized to emit for each unit under claimed PBRs and SEs because the title V permit is unclear as to how the emission limits from 30 TAC § 106.4 apply when multiple units are authorized by the same PBR or SE. *Id.* at 15–17. For support, the Petitioners identify 15 units as being authorized by PBR 30 TAC § 106.261 (9/4/2000) and claim that the permit does not identify which units were authorized as part of the same project or as part of different projects. *Id.* at 16–17. Therefore, the Petitioners contend that “if construction or modification of each unit was separately authorized—i.e., meaning the PBR has been claimed 15 times—each unit may emit up to the 30 [TAC] § 106.4(a)(1) limits, while the units’ combined emissions must remain below those same limits if construction of or modifications to all of those units was authorized as part of the same [project].” *Id.* at 17. Further, the Petitioners assert that if all the units were “authorized as part of the same [project], then their combined VOC emissions must remain below 25 tons per year. 30 [TAC] § 106.4(a)(1)(A). If each unit was individually authorized, then the combined VOC emissions from the units allowed under § 106.4 would be 375 tons per year (25 tons per year * 15 emission units).” *Id.* Therefore, the Petitioners conclude that because the title V permit “is ambiguous as to whether these units are authorized to emit 25 tons per year of VOC, 375 tons per year of VOC, or some other amount, it fails to specify and assure compliance with applicable emission limits.” *Id.* The Petitioners also provide other examples of multiple emission units being authorized by other PBRs and SEs. *Id.* at 18.

Second, the Petitioners claim that the title V permit does not identify which pollutants listed in 30 TAC § 106.4 Pasadena is authorized to emit for each unit under claimed PBRs and SEs. The Petitioners claim that a PBR may be used to authorize emissions of 250 tons per year (TPY) NO_x, 250 TPY CO, 25 TPY VOC, 25 TPY SO₂, 15 TPY of PM₁₀, 10 TPY PM_{2.5}, and 25 TPY of any other air containment except water, nitrogen, ethane, hydrogen, oxygen, and greenhouse gases. *Id.* at 19 (citing 30 TAC § 106.4(a)(1)). The Petitioners assert that if every PBR authorized emissions of all pollutants under 30 TAC § 106.4, it would “completely undermine the integrity of Texas’s PSD and NNSR programs” because each “claimed PBR would authorize allowable emission increases exceeding applicable major source and major modification thresholds.” *Id.* The Petitioners contend that Texas does not read its rules to authorize all pollutants for each claimed PBR. The Petitioners note that TCEQ reads 30 TAC § 106.4 to only authorize emissions of the pollutants “as applicable” to the particular construction project for which the PBR was claimed. *Id.* (quoting 30 TAC § 106.4(a)(1)). Further, the Petitioners claim that TCEQ limits PBRs such that the “cumulative authorized emissions for each *PBR project* [(group of units)] must remain below major modification thresholds.” *Id.* at 20 (citing TCEQ PBR Applicability Checklist, Section 1). While the Petitioners acknowledge these safeguards in the PBR program, the Petitioners claim that the title V permit still does not identify which of the many different pollutants under 30 TAC § 106.4 are authorized for each unit under a claimed PBR or SE. *Id.* Therefore, the Petitioners assert that the title V permit fails to assure compliance because, as written, the permit incorrectly suggests that all pollutants under 30 TAC § 106.4 are authorized for each PBR or SE. *Id.*

Third and finally, the Petitioners claim that the title V permit does not identify any emission unit or group of units for the following PBRs and SEs listed in the title V permit: 106.261 (3/14/1997), 106.261 (9/4/2000), 106.262 (3/14/1997), 106.475 (9/4/2000), 14 (6/7/1996), 86 (8/30/1988), 100 (6/7/1996), 106 (9/13/1993), 111 (1/8/1980), 111 (9/12/1989), and 261 (12/24/1988). *Id.* at 21. Therefore, the Petitioners contend that the title V permit is unclear as to how the PBRs and SEs apply to emission units at the Pasadena and thereby undermines the enforceability of PBR and SE requirements. *Id.* (citing *Objection to Title V Permit No. O2164, Chevron Phillips Chemical Company, Philtex Plant* (August 6, 2010) at ¶ 7; *Shell Deer Park Order* at 11–15).

EPA’s Response: For the following reasons, the EPA grants the Petitioners’ request for an objection on this claim.

In responding to comments, TCEQ explained that PBRs were approved as part of the Texas SIP under 30 TAC Chapter 106, Subchapter A, and are applicable requirements as defined by the Texas operating permit program under 30 TAC Chapter 122. RTC Response III.E, at 13. First, TCEQ stated that it “does not agree that the emission limitations and standards for PBRs should be listed in the Title V permit, as the EPA has supported the practice of incorporation by reference for the purpose of streamlining the content of the Part 70 permit.” *Id.* at 14. TCEQ then explained that PBRs “can apply to distinct, insignificant sources of emissions (i.e. engine, production process, etc.) at a Title V site” and that the “EPA has also supported the practice of not listing insignificant emission units for which ‘generic’ requirements apply.” *Id.* at 13–14. TCEQ noted that all PBRs, historical and current, are available on TCEQ’s website for review.¹⁶ *Id.* at 14.

To the question of what emission limits apply to units authorized by PBRs, TCEQ stated:

When the emission limitation or standard is not specified in the referenced PBR, then the emissions authorized under permit by rule from the facility are specified in 30 TAC § 106.4(a)(1). 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.

Id. TCEQ explained that the certified registration letters for PBRs, including the certified emission limits and the technical review, can be found on TCEQ’s website. *Id.*

Under title V of the CAA, the EPA’s part 70 regulations, and Texas’s EPA-approved title V program rules, every title V permit must include all applicable requirements that apply to a source, as well as any permit terms necessary to assure compliance with these requirements. *See, e.g.,* 42 U.S.C. § 7661c(a).¹⁷ “Applicable requirements,” as defined in the EPA’s and TCEQ’s

¹⁶ *See supra* note 13, and accompanying text.

¹⁷ CAA section 504(a) requires the following: “Each permit issued under this subchapter shall include enforceable emission limitations and standards, . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.” *Id.*; *see also* 40 C.F.R. § 70.6(a)(1) (“Each permit issued under this part shall include the following elements: (1) Emissions

rules, include the terms and conditions of preconstruction permits issued by TCEQ, including requirements contained in a PBR that is claimed by a source, as well as source-specific emission limits established through certified registrations associated with PBRs. *See* 40 C.F.R. § 70.2; 30 TAC § 122.10(2)(H).

The CAA requirement to include all applicable requirements in a title V permit can be satisfied through the use of IBR in certain circumstances. *See supra* pp. 7–9. In the context of PBRs, the EPA has stated that the use of IBR can be appropriate where the “title V permit is clear and unambiguous as to how the emissions limits apply to particular emission units.” *CITGO Order* at 11–12 n.5. As a condition of approving TCEQ’s title V program, the EPA stated that PBRs “are incorporated by reference into the title V permit by identifying . . . the PBR by its section number.” 66 Fed. Reg. 63318, 63324. Notably, the EPA and TCEQ also agreed as part of the approval process that “PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility.” *Id.* at 63322 n.4. This agreement is consistent with TCEQ’s regulations approved by the EPA. *See* 30 TAC § 122.142(2)(B)(i) (“Each permit shall also contain specific terms and conditions for each emission unit regarding the following: . . . the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards.”). This also conforms with the EPA’s longstanding position that materials incorporated by reference must be clearly identified in the permit. *See, e.g., White Paper Number 2* at 37 (“Referenced documents must also be specifically identified.”).

With regard to the Petitioners’ claim that the title V permit is unclear as to what emission limits apply to the units authorized by PBRs, the Petitioners have demonstrated that neither the title V permit nor the permit record explain what emission limits apply (*i.e.*, how much pollution and which pollutants) to each unit authorized by a PBR. As explained by TCEQ in the RTC, a unit authorized by a PBR assumes emission limits from one of three places: 1) the individual PBR can contain emission limits or standards itself; 2) the source can certify and register specific emission limits below the limits specified in 30 TAC § 106.4(a)(1) or the relevant PBR; or 3) the emissions authorized under the PBR from the unit can be specified in 30 TAC § 106.4(a)(1). The Petitioners’ claim is focused on the third scenario, and it is unclear how the public can identify what pollutants a PBR authorizes each unit to emit under 30 TAC § 106.4(a)(1). Further, the permit is unclear as to whether the emission limits under 30 TAC § 106.4(a)(1) apply to each unit or to an entire project (group of units) when multiple units are authorized by the same PBR.

First, the Petitioners have demonstrated that the title V permit and permit record do not explain whether the emission limits under 30 TAC § 106.4 apply cumulatively to a group of units authorized as one project, or rather to each individual unit. It appears that TCEQ’s regulations indicate that each individual unit authorized by a PBR assumes the emission limits in 30 TAC § 106.4(a)(1). 30 TAC § 106.4(a)(1) (“Total actual emissions authorized under permit by rule

limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”); § 70.3(c)(1) (“For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.”); 30 TAC 122.142(2)(B)(i) (“Each permit shall also contain specific terms and conditions for each emission unit regarding the following: . . . the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards.”).

from the *facility* shall not exceed the following limits, as applicable.”); *see TCEQ PBR Applicability Checklist, Title 30 TAC § 106.4* (Revised February 2018) (“Are the SO₂, PM₁₀, VOC, or other air contaminant emissions claimed for *each facility* in this PBR submittal less than 25 tpy? . . . Are the NO_x and CO emissions claimed for *each facility* in this PBR submittal less than 250 tpy?”). The EPA notes that TCEQ’s regulations define facility as an individual unit. *See* 30 TAC § 116.10(4); 79 Fed. Reg. 40666, 40668 n. 3 (July 14, 2014). If TCEQ interprets the limits from 30 TAC § 106.4 to apply cumulatively to all units under single project, then the title V permit is not clear as to which groups of units were authorized as single projects under a PBR for that particular project. In either case, TCEQ has not explained on the record whether the 30 TAC § 106.4 limits apply to each individual unit as the regulations suggest or cumulatively to one project as the Petitioners suggest. The EPA notes that the provisions of 30 TAC § 106.4 establish emission threshold limits to qualify for the PBR. While the language of 106.4(a)(1) states, “Total actual emissions authorized under permit by rule from the facility shall not exceed the following limits, as applicable . . .,” it is unclear whether these terms could be viewed as threshold requirements or emission limits that apply to a unit. If the provisions of 30 TAC § 106.4(a)(1) are only threshold requirements, then there might not be any additional information that needs to be included in the title V permit itself. However, the permit record is unclear as to whether the provisions of 30 TAC § 106.4(a)(1) are emission limits.

Second, assuming 30 TAC § 106.4(a)(1) establishes binding emission limits, the permit and permit record still do not explain how one can identify which pollutants a unit is authorized to emit from the list provided in 30 TAC § 106.4(a)(1). While the Petitioners suggest that a unit is only authorized to emit the pollutants that are “applicable” to the unit, the title V permit and permit record are unclear as to whether each unit is authorized to emit all pollutants at the limits under 30 TAC § 106.4(a)(1) or if only certain pollutants are authorized depending on the unit.¹⁸

Finally, the Petitioners have demonstrated that the permit record did not establish what emission units the following PBRs and SEs apply to: 106.261 (3/14/1997), 106.261 (9/4/2000), 106.262 (3/14/1997), 106.475 (9/4/2000), 14 (6/7/1996), 86 (8/30/1988), 100 (6/7/1996), 106 (9/13/1993), 111 (1/8/1980), 111 (9/12/1989), and 261 (12/24/1988). While the New Source Review Authorization References by Emission Unit table identified emission units for most of the PBRs in the title V permit, neither this table nor any other portion of the permits identified the specific emission units to which the aforementioned PBRs and SEs apply.

¹⁸ The EPA notes that, contrary to the Petitioners’ suggestions, even if all the emission limits in 106.4(a)(1) (i.e., limits for all of the listed pollutants) were to apply to a given unit or group of units, this would not necessarily have any substantive impact on whether or not a particular project would trigger major NSR review. The presence of an emission limit for a pollutant that a unit does not actually emit would not impact the potential to emit (PTE) or projected actual emissions (PAE) of that pollutant for that unit (which would remain at zero if that unit does not actually emit such pollutant). Therefore, even if all the limits listed in 106.4(a)(1)—even those relating to pollutants that a unit does not emit—were to apply to a given unit, some may simply be redundant, irrelevant, or unnecessary for determining the applicability of major NSR. The same logic holds true for the question of whether these limits apply individually or cumulatively: the fact that a unit is *authorized* to emit a certain amount by a generic emission limit in a PBR would not necessarily determine the facility’s PTE or PAE, provided the units were otherwise constrained by their physical or operational design or by other enforceable limits. While these generic limits may be able to be used to provide an enforceable limit to constrain PTE or PAE, it is not required that they serve this purpose. So, while the Petitioners have demonstrated that the title V permit is unclear as to what emission limits apply, the Petitioners have not demonstrated how these emission limits have an implication on whether or not the unit or project triggers the applicability of major NSR.

Direction to TCEQ: The EPA understands that TCEQ has begun a process to clarify which PBRs only apply to insignificant units at Pasadena and plans to begin identifying PBRs that apply to insignificant units in other title V permits in Texas. To the extent any PBRs in the Pasadena title V permit apply to insignificant units, TCEQ should make those clarifications in the permit and permit record, as necessary. If TCEQ makes those changes, the title V permit would likely contain sufficient information on these PBRs to satisfy the requirements of the CAA and TCEQ’s approved program. In *White Paper Number 2*, the EPA explained that part 70 allowed “considerable discretion to the permitting authority in tailoring the amount and quality of information required” for insignificant units in title V permits. *White Paper Number 2* at 35. The EPA explained that applicable requirements related to insignificant units can be addressed in title V permits with minimal or no reference to any specific emissions unit, activity, or emissions information. *White Paper Number 2* at 9, 36. If TCEQ amends the record or title V permit to identify those PBRs that only apply to insignificant units, without including any further information on the emissions or direct reference to applicable insignificant emission units, the EPA anticipates such an approach would be consistent with our guidance and the requirements of title V of the CAA.

For the remaining PBRs that do not apply to insignificant units, TCEQ must explain how the emission limits under 30 TAC § 106.4(a)(1) apply to the units authorized by PBR at Pasadena. If neither the permit nor permit record contain information to determine what emission limits apply, then TCEQ should amend the permit and permit record as necessary. Specifically, TCEQ must explain whether 30 TAC § 106.4(a)(1) is a threshold requirement or establishes binding emission limits. If 30 TAC § 106.4(a)(1) establishes emission limits, TCEQ must explain whether the emission limits under 30 TAC § 106.4(a)(1) apply to individual units (and identify specifically which limits apply to which units) or to an entire project or other grouping of units (and identify specifically which limits apply to which group(s) of units).

With regards to the question of what pollutants a unit or group of units is authorized to emit, TCEQ must amend the permit and permit record, as necessary, to identify the applicable pollutants for each unit or group of units. If a unit is authorized to emit only certain pollutants for which 30 TAC § 106.4(a)(1) provides emission limits, TCEQ should explain how to identify which pollutants are permitted by PBR authorization for a given unit so that the title V permit is clear as to how the emission limits apply to that unit, and TCEQ should revise the permit as necessary. On the other hand, if TCEQ believes that all units authorized by a PBR are permitted to emit all pollutants at the emission rates provided in 30 TAC § 106.4(a)(1), TCEQ should update the permit and permit record, as necessary, to reflect that.

In addition, TCEQ should explain to what emission units the 12 PBRs identified in the Petition apply. The EPA notes that TCEQ’s RTC for the Pasadena title V permit suggests that PBRs can sometimes apply to insignificant units. RTC at 13–14. The EPA has previously explained that for insignificant units, permitting authorities have broad discretion to “utilize standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and its enforcement are clear.” *White Paper Number 2* at 3–4. If TCEQ believes that the PBRs raised in the Petition only apply to insignificant units, then TCEQ should provide such explanation on the record and determine if any further information is

required in the title V permit. Otherwise, TCEQ should update the title V permit and list these PBRs next to their applicable emission units in the New Source Review Authorization References by Emission Unit table. If any of these PBRs apply to insignificant units, then TCEQ should identify those PBRs as applying to insignificant units; it is likely that no additional unit information about emission limits for insignificant units would be necessary. However, if any of these PBRs do not apply to insignificant units, then TCEQ should amend the permit to identify to what units those PBRs apply.

As explained previously, under title V of the CAA, the EPA's part 70 regulations, and Texas's EPA-approved title V program rules, the title V permit must clearly identify all applicable requirements that apply to a source. The CAA requirement to include all applicable requirements in a title V permit can be satisfied through the use of IBR if the title V permit is clear and unambiguous as to how the emission limits apply to particular emission units. *See* 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 70.6(a)(1) and 70.3(c)(1); 30 TAC 122.142(2)(B)(i); 66 Fed. Reg. 63318, 63322 n. 4, 63324; *White Paper Number 2* at 3–4, 9, 35, 37; *Shell Deer Park Order* at 11–15; *CITGO Order* at 11–12 n.5; *supra* pp. 13–14.

The EPA notes that Pasadena has already submitted an application for a minor modification to the title V permit that will remove some PBRs that are no longer applicable and incorporate the registration numbers for PBRs that are registered with TCEQ. PRSI Refinery – Pasadena, Minor Revision Application Permit No. O3711 (April 18, 2018). This minor modification proposes to remove the following PBRs and SEs: 106.261 (9/4/2000), 106.475 (9/4/2000), 86 (8/30/1988), 100 (6/7/1996), 106 (9/13/1993), 111 (1/8/1980), 111 (9/12/1989), and 261 (12/24/1988). If TCEQ revises the title V permit to remove these PBRs, TCEQ would only need to identify the units for PBRs and SEs 106.261 (3/14/1997), 106.262 (3/14/1997), and 14 (6/7/1996). Further, to the extent that these registered PBRs establish clear emission limits, this revision could clarify what emission limits, for which pollutants, apply to the emission units subject to those PBRs.

For the foregoing reasons, the EPA grants the Petitioners' request for an objection on this claim.

Claim A.3.c: The Petitioners Claim That “The Proposed Permit’s Incorporation by Reference of So-Called Minor NSR Permits and PBRs that Apply to the Same Emission Unit Makes It Impossible To Determine the Emission Limits That Apply to Such Units.”

Petitioners’ Claim: The Petitioners assert that 30 TAC § 116.116(d) allows sources to use PBRs to revise minor NSR permits in lieu of a permit amendment or alteration, and, therefore, the Petitioners claim that the title V permit and permit record are unclear as to which operating requirements and emission limits in Pasadena's minor NSR permits remain controlling and which have been revised by a PBR. Petition at 23. In addition, the Petitioners contend that applicable requirements that modify existing permit terms may only appear in application representations. *Id.* For support, the Petitioners provide a list of units that are authorized by both minor NSR permits and PBRs. *Id.* at 22. As a specific example, the Petitioners identify special condition 11(A) in minor NSR permit 80804, which states, “Combustion units, with the exception of flares, at this site are exempt from NO_x and CO operating requirements identified in

special conditions in other NSR permits during planned startup and shutdown if the following criteria are satisfied.” *Id.* at 8 n. 5.

EPA’s Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

The Petitioners raised concerns about special condition 11(A) in NSR Permit No. 80804, but the Petitioners have not explained how this special condition makes any other permit term unclear or why the existence of this permit term results in a flaw in the title V permit. The Petitioners only provide a quote of special condition 11(A) and do not provide any subsequent analysis or citation to other permit terms or PBR terms with which it might conflict. Further, the Petitioners have not provided any analysis to demonstrate why the existence of special condition 11(A), which appears to establish alternative operating scenarios during “planned startup and shutdown,” results in a flaw in the title V permit.¹⁹

The remainder of the Petitioners’ claim is focused on a list of units that are subject to both minor NSR permits and PBRs. Yet, the Petitioners do not provide any actual example of where a PBR term and minor NSR permit term or application representation contain conflicting conditions or emission limits (e.g., different methods for monitoring the same emission limits or less stringent emission limits in one permit than another). PBRs can be used for a variety of changes at a unit in Texas and the Petitioners have not demonstrated that any particular term of a PBR conflicts with any specific minor NSR permit term or application representation. Rather the Petitioners only point to a list of units that have more than one NSR authorization that applies. The Petitioners’ general assertion that they cannot tell what conditions are controlling when an NSR permit and PBR apply to the same unit does not demonstrate a flaw in the title V permit.²⁰

TCEQ has explained that 30 TAC § 116.116(b)–(c) provides that if more than one state or federal rule or regulation or permit conditions are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. *See* 79 Fed. Reg. 8368, 8385 (February 12, 2014) (“[S]tandard permits and PBRs cannot be used to alter compliance obligations in a flexible permit. Further, if more than one state or federal rule or regulation or permit conditions are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.”); Letter from Zak Covar, Executive Directive, TCEQ, to Ron Curry, Regional Administrator, EPA Region 6, Flexible Permit Program Interpretive Letter (December 9, 2013) at 6. In light of the explanation from TCEQ that the most stringent limit or condition is controlling, the Petitioners have not demonstrated that it is unclear what condition would apply if a PBR and minor NSR permit contained conflicting requirements

For the foregoing reasons, the EPA denies the Petitioners’ request for an objection on this claim.

¹⁹ *See supra* notes 6, 7, and accompanying text.

²⁰ *See supra* notes 6, 7, and accompanying text.

Claim B: The Petitioners Claim that “The Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Applicable Limits (PBRs and Standard Exemptions).”

Petitioners’ Claim: The Petitioners generally claim that the title V permit does not assure compliance with applicable PBRs and SEs because it does not include specific monitoring for these requirements. Petition at 24–25. Specifically, the Petitioners claim that the title V permit only relies on the “non-exhaustive list of monitoring and recordkeeping methods” in special condition 25 of the title V permit, which the Petitioners contend does not satisfy the requirement for all title V permits to “contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements.” *Id.* at 25 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *In the Matter of Wheelabrator Baltimore, L.P.*, Order on Petition at 10 (April 14, 2010) (*Wheelabrator Order*)). For support, the Petitioners quote special condition 25 of the title V permit:

The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit’s compliance with the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets (MSDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144.

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

B. Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).

Proposed Permit at 16.

The Petitioners assert that special condition 25 does not assure compliance with all PBRs and SEs for three reasons. First, the Petitioners claim that the title V permit does not “identify and mandate specific monitoring methods that assure compliance with applicable requirements.” Petition at 27 (citing *In the Matter of Yuhuang Chemical Inc.*, Order on Petition No. VI-2015-03 at 14 (August 31, 2016)). Second, the Petitioners contend that the permit record does not contain TCEQ’s rationale for how the title V permit assures compliance with applicable PBRs and SEs. *Id.* (citing *In the Matter of Mettiki Coal*, Order on Petition No. III-2013-1 at 7–8 (September 26, 2014)). Third, the Petitioners assert that the title V permit’s failure to specify monitoring methods for applicable PBRs and SEs “has prevented the public from evaluating whether Title V

monitoring requirements have been met.” *Id.* at 28 (citing *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2011-2 at 9–12 (December 3, 2012)).

EPA’s Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

The Petitioners appear to be claiming that the only monitoring, recordkeeping, and reporting requirement that applies to the PBRs and SEs is special condition 25 of the title V permit, which the Petitioners assert is inadequate to satisfy title V. The Petitioners only make allegations that special condition 25 alone is inadequate to satisfy title V monitoring, recordkeeping, and reporting requirements for all PBRs and SEs incorporated into the title V permit. However, the Petitioners did not consider or analyze the conditions and terms in the approved PBRs and SEs themselves. While the Petitioners claim that special condition 25 is a non-exhaustive list of monitoring, the Petitioners have not evaluated how special condition 25 interacts with the conditions in the underlying PBRs and SEs that could provide for more specific monitoring, recordkeeping, and reporting requirements. Further, the Petitioners do not identify any specific PBRs or SEs with which they are concerned or explain and analyze why special condition 25 does not constitute adequate monitoring for any specific PBR or SE requirement. The Petitioners did not actually demonstrate why special condition 25 is not adequate for any actual specific emission limit or condition contained in a PBR or SE that apply to Pasadena. These generalized allegations are insufficient to demonstrate a flaw in the permit, and the Petitioners have failed to provide the requisite citation and analysis to demonstrate that the permit does not assure compliance with specific applicable requirements or permit terms.²¹

In addition, the Petitioners have not considered whether a Chapter 116 NSR permit, NSPS, or NESHAP might apply to the same unit authorized by the PBR or SE, and that NSR permit, NSPS, or NESHAP might establish additional monitoring, recordkeeping, and reporting requirements. Therefore, the Petitioners have not demonstrated that the monitoring, recordkeeping, and reporting requirements as a whole, including any specific requirements in the underlying PBRs, SEs, NSR permits, NSPS, and NESHAP in conjunction with the requirements of special condition 25, do not satisfy title V. *See In the Matter of Raven Power, Fort Smallwood*, Order on Petition No. 111-2017-3 at 20–24 (January 17, 2018); *In the Matter of Yuhuang Chemical Inc. Methanol Plant, St. James Parish, Louisiana*, Order on Petition No. VI-2015-03 at 18 n.16 (August 31, 2016); *In the Matter of Public Service of New Hampshire, Schiller*, Order on Petition No. VI-2014-04 at 13–16 (July 28, 2015).

The Petitioners also argue that the permit and permit record fail to demonstrate that monitoring and recordkeeping in special condition 25 is adequate to assure compliance with applicable emission limits. *See* Petition at 28. Even if special condition 25 was the only monitoring and recordkeeping required, the Petitioners have impermissibly attempted to shift the burden to TCEQ to demonstrate the adequacy of the monitoring, rather than demonstrating themselves why the specific monitoring requirements included in the permit are not sufficient to assure compliance with a particular applicable requirement. *See In the Matter of ExxonMobil Baytown Refinery*, Order on Petition No. VI-2016-14 at 25 (April 2, 2018). However, the CAA places the burden on petitioners to demonstrate to the EPA that the title V permit does not comply with the

²¹ *See supra* notes 6, 7, and accompanying text.

Act. 42 U.S.C. § 7661d(b)(2). Here, the Petitioners' generalized claims, unsupported by any analysis of specific PBRs and SEs, including any monitoring, recordkeeping, or reporting terms, have failed to satisfy this burden.²²

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

Claims C, D, E, F, and G.

The EPA is responding to Claims C, D, E, F, and G together due to the similarity of the issues raised in the Petition. The EPA's response to these claims is located after the claim summary for Claim G.

Claim C: The Petitioners Claim That “The Proposed Permit Fails To Establish Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance with Emission Limits for Pasadena Refining’s CO Boiler and FCC Charge Heater.”

Petitioners' Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with various emission limits for the Carbon Monoxide (CO) Boiler and Fluid Catalytic Cracking (FCC) Charge Heater authorized by NSR Permit No. 20246 and incorporated by reference into the title V permit. Petition at 30–31 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *Wheelabrator Order* at 10–11). Specifically, the Petitioners assert that neither the title V permit, the statement of basis, nor NSR Permit No. 20246, contain monitoring and/or testing requirements that assure compliance with the hourly and annual PM and VOC limits for the CO Boiler and the hourly and annual CO, NO_x, PM₁₀, SO₂, and VOC limits for the FCC Charge Heater. *Id.*

Claim D: The Petitioners Claim That “The Proposed Permit Fails To Establish Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance with Emission Limits for Pasadena Refining’s Boiler #4 and Boiler #6.”

Petitioners' Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with various emission limits for Boiler #4 and Boiler #6 authorized by NSR Permit No. 22039 and incorporated by reference into the title V permit. Petition at 33–34 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *Wheelabrator Order* at 10–11). Specifically, the Petitioners assert that neither the title V permit, the statement of basis, nor NSR Permit No. 22039, contain monitoring and/or testing requirements that assure compliance with the hourly and annual VOC, SO₂, and PM limits for Boiler #4 and the hourly and annual VOC, SO₂, PM₁₀, and ammonia (NH₃) limits for Boiler #6. *Id.*

The Petitioners acknowledge that NSR Permit No. 22039 “does establish some operating constraints that may be intended to limit potential emissions from the authorized boilers—e.g., heat input limits, opacity limits, and H₂S fuel gas content limits.” *Id.* at 34. However, the Petitioners contend that the title V permit fails to establish “specific monitoring requirements to assure compliance with these operational limits and the permit record fails to explain how these

²² See *supra* notes 6, 7, and accompanying text.

operating constraints—even if properly monitored—assure compliance with the applicable hourly and annual emission limits.” *Id.* (citing *Shell Deer Park Order* at 22).

In addition, the Petitioners note that special condition 14 of NSR Permit No. 22039 requires that “upon achieving normal operation, the boiler shall complete initial compliance testing.” *Id.* The Petitioners claim that this condition “fails to explain what kind of testing is required, what pollutants must be tested, whether Pasadena Refining is required to document the test results and submit them to the TCEQ, and how the test results should be used to determine compliance with applicable limits.” *Id.* (citing *Shell Deer Park Order* at 22).

Claim E: The Petitioners Claim That “The Proposed Permit Fails To Establish Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance with Emission Limits for Various Units Established by NSR Permit No. 56389.”

Petitioners’ Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with various emission limits for nine units authorized by NSR Permit No. 56389 and incorporated by reference into the title V permit. Petition at 35–36 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *Wheelabrator Order* at 10–11). Specifically, the Petitioners assert that the neither the title V permit, the statement of basis, nor NSR Permit No. 56389, contain monitoring and/or testing requirements that assure compliance with the following hourly and annual emission limits: 1) VOC, acetone, NH₃, and hydrogen sulfide (H₂S) for the FEWS Wastewater System Initial; 2) VOC, acetone, NH₃, and H₂S for the FEWS Wastewater System Final; 3) VOC and PM for the HTRU001-S; 4) VOC and PM for the HTRU004; 5) CO, VOC, NO_x, PM, and SO₂ for the HTREF001; 6) CO, VOC, NO_x, PM, and SO₂ for the HTREF002; 7) CO, VOC, NO_x, PM, and SO₂ for the HTALK001; 8) CO, VOC, NO_x, PM, and SO₂ for the HTALK002; and 9) CO, VOC, NO_x, PM, and SO₂ HTCKR001. *Id.*

The Petitioners claim that the only direct monitoring related to the units at issue is a one-time stack test required by special condition 29 in NSR Permit No. 56389 to measure the NH₃ for HTRU001-S and CO, NO_x, and SO₂ for HTRU004. *Id.* at 37. The Petitioners contend that a one-time stack test does not indicate how much pollution these units will emit over all potential operating scenarios and does not provide sufficient information to demonstrate that process equipment and controls function properly on an ongoing basis. *Id.* (citing *In the Matter of Luke Paper Co.*, Order on Petition to Object to Permit No. 24-001-00011 at 5–6 (November 18, 2010)).

In addition, the Petitioners acknowledge that special condition 18 of NSR Permit No. 56389 requires monitoring of H₂S concentration in fuel gas fed to unit HTRU001-S, for purposes of demonstrating compliance with the “hourly SO₂ emissions limit.” The Petitioners assert that data collected by the EPA demonstrates that monitoring H₂S content of fuel is not sufficient to assure compliance with hourly SO₂ emission limits, because SO₂ emissions also result from the combustion of non-H₂S sulfur compounds. *Id.* (citing U.S. EPA, Comprehensive Data Collected from the Petroleum Refining Sector, ICR Component 4 – Emissions Source Testing, Fuel Gas Memo and Summary Table and Fuel Gas Summary Spreadsheet).

Claim F: The Petitioners Claim That “The Proposed Permit Fails To Establish Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance with Emission Limits for Pasadena Refining’s Tail Gas Incinerator.”

Petitioners’ Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with various emission limits for the Tail Gas Incinerator authorized by NSR Permit No. 6059 and incorporated by reference into the title V permit. Petition at 38–39 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *Wheelabrator Order* at 10–11). Specifically, the Petitioners assert that neither the title V permit, the statement of basis, nor NSR Permit No. 6059, contain monitoring and/or testing requirements that assure compliance with the hourly and annual VOC, NO_x, PM₁₀, CO, and sulfuric acid (H₂SO₄) for the Tail Gas Incinerator. *Id.*

Claim G: The Petitioners Claim That “The Proposed Permit Fails To Establish Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance with Emission Limits for Pasadena Refining’s Reformer No. 3 Combined Heaters.”

Petitioners’ Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with various emission limits for the Reformer No. 3 Combined Heaters authorized by NSR Permit No. 5953 and incorporated by reference into the title V permit. Petition at 40–41 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *Wheelabrator Order* at 10–11). Specifically, the Petitioners assert that neither the title V permit, the statement of basis, nor NSR Permit No. 5953, contain monitoring and/or testing requirements that assure compliance with the hourly and annual SO₂, NO_x, PM₁₀, CO, and VOC for the Reformer No. 3 Combined Heaters. *Id.*

EPA’s Response: The EPA is responding to Claims C, D, E, F, and G together due to the similarity of the issues raised in the Petition. For the following reasons, the EPA grants the Petitioners’ request for an objection on these claims.

In responding to comments regarding the same issues raised in these claims, TCEQ stated, in part:

Consistent with 40 Code of Federal Regulations (CFR) Part 70 and 30 TAC Chapter 122, the PRSI permit contains: (1) monitoring sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit; and (2) monitoring sufficient to assure compliance with the terms and conditions of the permit. . . .

For those requirements that do not include monitoring, or where the monitoring is not sufficient to assure compliance, the federal operating permit includes periodic monitoring for the emission units affected as required by 30 TAC § 122.142(c). Additional periodic monitoring was identified for emission units after a review of applicable requirements indicated that additional monitoring was required to provide an assurance of compliance. . . .

RTC at 19–20.

In addition, the Statement of Basis for the Pasadena title V permit states:

When necessary, periodic monitoring (PM) requirements are specified for certain parameters (i.e. feed rates, flow rates, temperature, fuel type and consumption, etc.) to determine if a term and condition or emission unit is operating within specified limits to control emissions. These additional monitoring approaches may be required for two reasons. First, the applicable rules do not adequately specify monitoring requirements (exception- Maximum Achievable Control Technology Standards (MACTs) generally have sufficient monitoring), and *second, monitoring may be required to fill gaps in the monitoring requirements of certain applicable requirements*. In situations where the NSR permit is the applicable requirement requiring extra monitoring for a specific emission unit, the preferred solution is to have the monitoring requirements in the NSR permit updated so that all NSR requirements are consolidated in the NSR permit. . . .

The Federal Clean Air Act requires that each federal operating permit include monitoring sufficient to assure compliance with the terms and conditions of the permit. Most of the emission limits and standards applicable to emission units at Title V sources include adequate monitoring to show that the units meet the limits and standards. For those requirements that do not include monitoring, or *where the monitoring is not sufficient to assure compliance, the federal operating permit must include such monitoring for the emission units affected*.

Pasadena Statement of Basis of the Federal Operating Permit, O3711 (October 15, 2014) (emphasis added).

With regard to the emission limits raised in the Petition for NSR Permit Nos. 20246, 22039, 56389, 6059, and 5953, the Petitioners have demonstrated that the permit record is unclear as to what monitoring, recordkeeping, and reporting requirements assure compliance with these limits. The CAA requires, “Each permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.” CAA § 504(c); 42 U.S.C. § 7661c(c); *see also*, 40 C.F.R. § 70.6(a)(3)(i)(A)–(B), (c)(1); 30 TAC § 122.142(c). While public comments raised concerns about the insufficiency and lack of monitoring, recordkeeping, and reporting for these emission limits, TCEQ did not identify any particular requirements that assured compliance with these permit terms. As a result, the EPA cannot determine from the permit or permit record what monitoring, recordkeeping, and reporting requirements apply to the units in question and whether any requirements assure compliance with the hourly and annual emission limits identified in the claim summaries for Claims C, D, E, F, and G. Nor do the permits themselves clearly identify what monitoring, recordkeeping, or reporting would be used to demonstrate compliance with the specific emission limits identified by the Petitioners.

Direction to TCEQ: In responding to this order, TCEQ should specify the monitoring, recordkeeping, and reporting requirements that assure compliance with these emission limits

identified in Claims C, D, E, F, and G. If the title V permit, the underlying NSR permit, or the enforceable representations in the application already contain adequate terms to assure compliance with these emission limits, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with the emission limits raised in the Petition. However, if the title V permit and all incorporated documents do not contain adequate requirements that assure compliance with the emission limits identified, then TCEQ should add such requirements to the permit.

The EPA notes that some of the NSR permits contain conditions that require recordkeeping of heat input, fuel sulfur content, and flow rate that might be able to be used in conjunction with other information to assure compliance with some emission limits. Recordkeeping can be sufficient to determine compliance. However, the permit record does not identify what emission limits are associated with the recordkeeping of heat input or flow rate or explain what, if any, additional information in the permit record is required to determine compliance with those emission limits. While these conditions could be used in conjunction with other information to assure compliance, TCEQ should explain how they will be used to do so. In addition, some of the NSR permits require a continuous emissions monitoring system (CEMS) for other emission limits that might be able to be used as parametric monitoring for the emission limits raised in the Petition. However, the permit, permit record, and application representations do not make clear whether any of the CEMS monitoring explicitly required in the NSR permits serves as a surrogate for the emission limits raised in the Petition. Finally, the title V permit contains some monitoring, recordkeeping, and reporting requirements in the *Applicable Requirements Summary Table*, such as NSPS, NESHAP, and SIP requirements, that might assure compliance with the limits raised in the Petition. However, this table does not appear to associate these requirements with the emission limits raised in the petition nor did TCEQ explain in the permit record how the requirements in the table would assure compliance with the emission limits raised in the Petition. Based on this information, TCEQ may find that, for some emission limits, the permit may already require Pasadena to collect the information necessary to assure compliance with these emission limits. If this is the situation, TCEQ would need to amend the permit or permit record, as necessary, to clarify how these requirements assure compliance with the emission limits raised in the Petition.

For the foregoing reasons, the EPA grants the Petitioners' request for an objection on these claims.

Claim H: The Petitioners Claim That “The Proposed Permit Fails To Require Monitoring That Assures Compliance with Emission Limits for Pasadena Refining’s Flares.”

Petitioners’ Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with various emission limits for the East and West Flares authorized by NSR Permit Nos. 56389 and 80804, which are incorporated by reference into the title V permit. Petition at 41–42 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *Wheelabrator Order* at 10–11). Specifically, the Petitioners assert that neither the title V permit nor NSR Permit No. 5953 contain monitoring adequate to assure compliance with the hourly and annual CO, VOC, Benzene, NO_x, SO₂, H₂S limits for normal

operations of the East and West Flares and the hourly and annual VOC, NO_x, CO, SO₂, H₂S, and NH₃ limits for operation of the East and West Flares during maintenance, start-up and shutdown (MSS). *Id.*

The Petitioners claim that the title V permit fails to assure compliance with these emission limits for the East and West Flares because the “permit presumes without justification that the flares will continuously achieve a destruction efficiency of 98%.” *Id.* at 42. For support, the Petitioners cite an EPA study, which found that flares complying with requirements allegedly equivalent to those in the Proposed Permit only achieved an average destruction efficiency of 93-percent. *Id.* (citing Petroleum Refinery Sector Rule: Flare Impact Estimates, EPA-HQ-OAR-2010-0682-0209 at 9 (January 16, 2014)). Petitioners also assert that TCEQ conducted analyses that confirmed the findings in the EPA’s study. *Id.* (citing TCEQ, 2015 Emission Inventory Guidelines, RG-360/15, A-43 (January 2016)). Further, the Petitioners contend that additional monitoring is necessary to “prevent over-steaming that frequently interferes with flare performance and to assure compliance with the applicable flare emission limits.” *Id.* at 42–43.

EPA’s Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

The Petitioners do not provide any analysis of, or even identify, any permit terms in the Pasadena title V permit or NSR permits that allows Pasadena to assume a 98-percent destruction efficiency, and therefore, the Petitioners have failed to provide the necessary citation and analysis to support their claim. The Petitioners state that the permit presumes a 98-percent destruction efficiency. However, the Petitioners provide no evidence that any permit term contains this assumption or that the permit relies on this assumption to demonstrate compliance with any emission limit. Beyond a brief reference to an EPA study and TCEQ analyses, the Petitioners only make general, conclusory, and unsupported arguments that the flares at Pasadena cannot assume a 98-percent destruction efficiency, which does not meet the demonstration burden of noncompliance with the CAA.²³ Moreover, the Petitioners do not provide any discussion of the EPA study they cite, including the variables and considerations underlying the EPA’s conclusions in this study, and whether and how the same concerns (and thus, the EPA’s conclusions in that study) would necessarily apply to any of the flares at Pasadena. The Petitioners assert equivalency between the monitoring requirements in NSR Permit Nos. 56389 and 80804 and those at issue in the cited EPA study, but provide no analysis to demonstrate such equivalency.

In addition, the Petitioners briefly mention over-steaming and the lack of monitoring to maintain a net heat value of 270 British thermal units per standard cubic foot (btu/scf) on a 15-minute block period in the combustion zone; however, the Petitioners provide no analysis as to why these are required to assure compliance with the flare emission limits at Pasadena. In fact, the Petitioners do not even acknowledge or evaluate the monitoring, recordkeeping, and reporting requirements relating to these flares contained in special condition 6 in NSR Permit No. 56389

²³ See *supra* notes 6, 7, and accompanying text.

and special conditions 11.E and 13 in NSR Permit No. 80804.²⁴ These generalized allegations are insufficient to demonstrate a flaw in the permit, and the Petitioners have failed to provide the requisite citation and analysis to demonstrate that the permit does not assure compliance with specific applicable requirements or permit terms.²⁵

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

Claim I: The Petitioners Claim That “The Proposed Permit Fails To Require Monitoring That Assures Compliance with the 90% Removal Efficiency Requirement for Pasadena Refining’s Acid Relief Neutralization System.”

Petitioners’ Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assures the acid neutralization system will continuously comply with the applicable 90-percent removal efficiency requirement established by NSR Permit No. 56389 special condition 10. Petition at 43–44 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1)). Specifically, the Petitioners assert that the neither the title V permit nor NSR Permit No. 56389, contain monitoring adequate to assure compliance with the requirement that “[a]ll waste streams containing [hydrofluoric acid (HF)] shall be routed to the acid relief neutralization system, operating with a 90% HF removal efficiency at all times prior to being routed to a flare.” *Id.* at 43 (quoting NSR Permit No. 56389, special condition 10).

EPA’s Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

Special condition 10 of NSR Permit No. 56389 states:

All waste gas steams containing HF shall be routed to the acid relief neutralization system, operating with a 90% HF removal efficiency at all times prior to being routed to a flare. There must be sufficient potassium hydroxide available to achieve the above control and backup utilities to maintain the control during a power or other utility failure. The circulation rate and potassium hydroxide concentration of the neutralization solution shall be checked and recorded once every 12 hours (once per shift). The potassium hydroxide concentration shall be checked more frequently during turnarounds or following unit upsets. The caustic solution shall not be allowed to reach a pH of less than 9.0. The pH of the solution shall be checked every 4 hours (three times per shift). Records of the circulation rates, potassium hydroxide concentrations, and pH values shall be maintained on-site for a period of five years and made available to

²⁴ In concluding that the Petitioners have not met their burden to demonstrate a flaw in the title V permit, the EPA is not making any judgment regarding the sufficiency of the special conditions and the application representations for assuring compliance with these limits. The EPA is merely determining that the Petitioners have failed to consider key terms in the NSR permit and enforceable application representations, which the EPA has historically considered grounds to determine that the Petitioners have not met their demonstration burden. *See supra* notes 6, 7, 8, and accompanying text; *see, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).

²⁵ *See supra* notes 6, 7, and accompanying text.

a representative of the TCEQ upon request. A flow meter shall be installed in the caustic circulation line. . . .

NSR permit 56389 (June 30, 2011).

The Petitioners only make allegations that neither the title V permit nor the NSR permit, including special condition 10, contain monitoring, recordkeeping, and reporting requirements to assure compliance with the 90-percent HF removal efficiency. However, the Petitioners fail to consider, or even acknowledge, that special condition 10 requires Pasadena to check and maintain records of the circulation rate, potassium hydroxide, and pH concentration every 4 to 12 hours, depending on the pH of the solution. Further, special condition 10 also requires the use of a flow meter. The Petitioners provided no analysis of these requirements in special condition 10 or explain why the Petitioners believe they are not sufficient to assure compliance with the 90-percent HF removal efficiency requirement.²⁶ These generalized allegations are insufficient to demonstrate a flaw in the permit, and the Petitioners have failed to provide the requisite citation and analysis to demonstrate that the permit does not assure compliance.²⁷

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

Claim J: The Petitioners Claim That “The Proposed Permit Fails To Specify and Assure Compliance with Planned Maintenance, Startup, and Shutdown Emission Limits and Operating Requirements for Boiler #6.”

Petitioners' Claim: The Petitioners claim that the title V permit is deficient because it does not identify what the applicable planned MSS requirements are for Boiler #6 authorized by NSR Permit No. 22039 special condition 13. Petition at 44–46 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1)).

The Petitioners contend that special condition 13 is deficient because “it fails to identify the applicable planned maintenance, startup, and shutdown emissions authorized by Permit No. 22039 and which permit application(s) filed after August 2006 contain enforceable requirements related to planned MSS activities at the Pasadena Refinery.” *Id.* at 45. Further, the Petitioners assert that the condition “suggests that ‘updates’ to previously-approved application representations may be effective prior to their approval by the Executive Director,” rather than requiring a permit amendment or alteration as required by 30 TAC § 116.116(a). *Id.*

In addition, the Petitioners claim that the incorporation by reference of an unspecified number of applications makes it too difficult for those wishing to comment on the draft permit and to enforce the requirements of the title V permit. *Id.* at 46. The Petitioners conclude that title V

²⁶ In concluding that the Petitioners have not met their burden to demonstrate a flaw in the title V permit, the EPA is not making any judgment regarding the sufficiency of the special conditions and the application representations for assuring compliance with these limits. The EPA is merely determining that the Petitioners have failed to consider key terms in the NSR permit and enforceable application representations, which the EPA has historically considered grounds to determine that the Petitioners have not met their demonstration burden. *See supra* notes 6, 7, 8, and accompanying text; *see, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).

²⁷ *See supra* notes 6, 7, and accompanying text.

permit must directly identify the applicable requirements regarding planned MSS emissions. *Id.* (citing *2011 Granite City Order* at 43).

EPA's Response: For the following reasons, the EPA denies the Petitioners' request for an objection on this claim.

Special condition 13 of NSR Permit No. 22039 states:

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

NSR Permit 22039 (December 15, 2006).

The Petitioners contend that special condition 13 allows TCEQ to incorporate new application representations without an amendment or alteration. However, special condition 13 explicitly requires an amendment or alteration when making changes to the MSS provisions. The Petitioners have not demonstrated that this permit condition allows TCEQ to avoid amending or altering Pasadena's NSR permit. In fact, the permit condition, on its face, contains language contrary to the Petitioners' claim.

To the extent that the Petitioners are asserting that TCEQ's practice of relying on application representations when issuing an NSR permit is inconsistent with the requirements of title V, the Petitioners have not demonstrated that this practice is inconsistent with the approved SIP or with TCEQ's approved title V regulations. As the Petitioners acknowledge, Texas's EPA-approved NSR rules provide that "representations with regard to construction plans and operation procedures in an application for a permit . . . are [among] the conditions upon which a permit, special permit, or special exemption are issued." 30 TAC § 116.116(a); *see* Petition at 8, 13. In other words, as TCEQ has explained and the EPA acknowledged, "The permit application, and all the representations in it, is part of the permit when it is issued and as such is enforceable." 79 Fed. Reg. 8368, 8385 (February 12, 2014). If the Petitioners believe that Texas's EPA-approved SIP does not comply with the requirements of the CAA, the original SIP approval would have been the appropriate time to raise this concern. The current title V petition process is not the appropriate venue to raise such an issue.

The Petitioners' general contention that incorporation by reference of an unspecified number of applications makes it too difficult to comment on or enforce the title V permit does not demonstrate a flaw in the title V permit.²⁸ As required by special condition 13, each time the MSS conditions in the application changes, there would have been a permit amendment or alteration that the public could locate to identify any new changes. The Petitioners have not explained nor demonstrated why the need to review multiple documents is inconsistent with title

²⁸ *See supra* notes 6, 7, and accompanying text.

V nor TCEQ's approved regulations.²⁹ Further, the Petitioners have not identified if there have been additional versions of the application since 2006. Therefore, the Petitioners claim appears theoretical in nature without any analysis of the actual MSS conditions in the title V permit.³⁰

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

V. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the Petition as described above.

Dated: _____



E. Scott Pruitt.
Administrator.

²⁹ In concluding that the Petitioners have not met their burden to demonstrate a flaw in the title V permit, the EPA is not making any judgment regarding the sufficiency of the special conditions and the application representations for assuring compliance with these limits. The EPA is merely determining that the Petitioners have failed to consider key terms in the NSR permit and enforceable application representations, which the EPA has historically considered grounds to determine that the Petitioners have not met their demonstration burden. *See supra* notes 6, 7, 8, and accompanying text; *see, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).

³⁰ *See supra* notes 6, 7, and accompanying text.