



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

June 30, 2022

Ms. Tonya Baer, Deputy Director  
Office of Air  
Texas Commission on Environmental Quality (MC 122)  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Objection to Title V Permit No. O3785 for the Intercontinental Terminals Company LLC, ITC Pasadena Terminal, located in Harris County, Texas.

Dear Ms. Baer:

On May 16, 2022, we received the proposed renewal of the Title V permit for the Intercontinental Terminals Company (ITC) Pasadena Terminal referenced above. As such, EPA's 45-day review period will end on July 1, 2022. We have reviewed this proposed Title V permit action including TCEQ's response to comments and Statement of Basis. In accordance with 40 CFR § 70.8(c), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act (Act) and 40 CFR § 70.8(c) require EPA to object in writing to the issuance of a proposed Title V permit within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. Specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections are enclosed.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to meet the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the objection issues must be fully addressed within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding issues may be resolved prior to the expiration of the 90-day period.

We are committed to working with the TCEQ to ensure that the final Title V permit is consistent with all applicable Title V permitting requirements and the EPA approved Texas Title V air permitting program.

If you have questions or wish to discuss this further, please contact me at (214) 665-7593, or Aimee Wilson, Texas Permit Coordinator at (214) 665-7596. Thank you for your cooperation.

Sincerely,

David F. Garcia, P.E.  
Director  
Air and Radiation Division

Enclosure:

cc:     Manager, Environmental Affairs  
          Intercontinental Terminals Company

Mr. Sam Short, Director  
Air Permits Division  
Texas Commission on Environmental Quality (MC-163)

# ENCLOSURE

## EPA Objections to Title V Renewal Permit O3785

- 1. Objection for Failure to Include Adequate Monitoring Requirements to Assure Compliance with Permitted Emission Limits.** The title V permit incorporates by reference minor NSR permit 95754 which was amended on April 16, 2021. Although this NSR permit received numerous comments during the public comment period which ran from December 18, 2020 to January 29, 2021, TCEQ made no changes to the NSR permit based on comments that were received. TCEQ received many comments on the proposed title V permit that make similar claims on the inadequacy of monitoring in the NSR permit. TCEQ failed to address these comments any further and directed the public to the response to comments document for the NSR permit for more detailed responses. TCEQ made no changes to the title V permit and did not add any supplemental monitoring to the title V permit. EPA has reviewed both response to comments documents and finds that the NSR permit does not contain adequate monitoring to assure compliance with the terms and conditions of the permit and provides specific examples below where additional monitoring is needed.
- a. NSR permit 95754 includes Special Condition (SC) 2 which establishes VOC emission caps for three groups of units. These groups are based on three separate projects that were reviewed by TCEQ retrospectively. The groups each contain the three vapor combustors (EPNs VC-001, VC-002, and VC-003) and the flare (EPN FL-001). There is no explanation on how compliance with each of these emission caps is to be determined across these EPNs. To make this even more confusing, the MAERT includes additional emission caps that apply to the vapor combustors and flares. Can TCEQ please explain why these emission units have multiple emission caps and how compliance is demonstrated to include the calculation methodology for each one?
  - b. The NSR permit refers to SC 46 for determining compliance with the emission limits in SC 2. These conditions are inadequate for determining compliance with the stated VOC emission caps. SC 46 states “Monthly compliance calculation for limits on VOC potential to emit”. Permit emission limit compliance should be based upon actual emissions and not on calculated potential to emit (PTE) levels. The permit must include adequate monitoring to assure compliance with the permitted limits and be monitored/calculated on measurable parameters for accurate calculation of emissions. TCEQ needs to confirm if the permit condition intended to state “potential to emit” as a permit limit and if so, to explain for the record why PTE would be used for compliance purposes and how this limit can be practically enforced.
  - c. SC 11 states “Storage tank emissions shall be estimated consistent with the methodology employed in the permit amendment application (PI-1 dated December 27, 2018).” EPA looked on the TCEQ Central File Room Online and found an application dated December 2018 with a PI-1 that appeared to have the date of December 21, 2018. The referenced document was difficult to locate and was found under content ID 5684402. EPA suggests providing this information or clarifying where the information can be found. The application states “ITC proposes to establish emission caps for the proposed facilities rather than individual throughput limits due to the varying nature of products and customer markets at this terminal. Specifically, rather than limiting product throughputs, ITC proposes to manage the facilities included in this application such that the permitted emission limits are not exceeded. Managing to emissions caps allows ITC the operational flexibility to respond to market changes and customer demands”. However, there is no explanation on how ITC manages the facilities to meet the emission caps. Can TCEQ please provide more detail on what monitoring and recordkeeping are required to ensure

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- compliance with these emission caps at all times and how the facility also ensure compliance with the lb/hr limits in the MAERT for each tank? If the company is relying on the limits in Attachment 1 of the permit for these purposes, have they provided data to show that it is physically impossible to exceed the emission limit caps and lb/hr emission limits for each tank? What data has been provided to ensure that the operational limits in Attachment 1 are sufficient to ensure compliance with both the emission caps and the lb/hr limits?
- d. **SC 17.C.** This condition refers to a maximum permitted loading rate. Does this condition refer to the operational limits in Attachment 1? Can TCEQ please identify where this maximum permitted loading rate can be found?
  - e. **SC 19.** This SC refers back to a “test conducted per Condition 17”. Should this condition be referring to Condition 18? Can TCEQ please confirm?
  - f. **SC 20.** This SC states the dates of ship collection efficiency tests. All of these collection efficiency tests were performed in 2015 and 2016. The SC goes on to state that “...additional ship collection efficiency testing is not required”. What basis is TCEQ using to support no additional periodic testing requirements? Can TCEQ or the applicant provide data to show that there is no decrease in the collection efficiency since the three tests were performed?
  - g. **SC 26.** States “The loading rate shall be recorded after loading any marine vessel, truck, or railcar with liquid if the loading rate is restricted under Attachment 1”. Can TCEQ explain for the record why the loading rate should not be recorded in all cases? Can TCEQ also explain how this condition may be related to SC 17 which referred to a maximum permitted loading rate?
  - h. **SC 46.A.** This SC refers to AP-42, Chapter 5 for calculating emissions from loading activities. There is no indication which EPNs are associated with loading activities or if one of the three groups from SC2 is specifically subject to this requirement. The condition at (2) refers to equation 1, however, no equation is shown or provided to be used for calculating emissions. Can TCEQ clarify this permit condition to identify the equation used for calculating emissions and to identify the EPNs that are subject to this emission calculation methodology?
  - i. **SC 46.A.3 and 4.** These conditions refer to the emissions associated with the transfer of a product, but the equation for calculation is not provided nor is it indicated for what EPNs this requirement is applicable to. Can TCEQ please include the equation that appears to be missing and provide information on what EPNs should have emissions calculated using this methodology?
  - j. **SC 46.E.** This special condition appears to have combined two unrelated permit conditions, one for wastewater emissions and one for vapor combustion units. The second part of the condition states “Monthly compliance calculation for limits on pollutants for annual control device potential to emit (EPNs VC-001, VC-002, VC-003, and FL-001)”. Should this condition be a stand-alone condition? Also, can TCEQ explain why compliance would be based on a potential to emit and not the VOC emission limit prescribed in the table of Special Condition 2 of NSR 95754?
  - k. **SC 46.G.** This condition relates to flare emissions. Is this flare equipped with continuous gas flow and composition monitors? How is the waste gas component contribution and the heat content of the waste gas constituents determined? Can TCEQ please clarify for the record what monitoring equipment is available for the waste gas flow to the flare and how any such data is used to calculate emissions.

- 2. Objection to the Lack of Assurance to Comply with Emission Limits and Operating Requirements.** Commenters identified several areas of concern regarding the monitoring requirements in NSR permit 95754 which is incorporated by reference into the title V permit. In responding to comments, TCEQ explained that Texas has a two-permit system and only NSR permits authorize air emissions under 30 TAC Chapter 116 and/or under 30 TAC Chapter 106 for PBRs. RTC Response 5, 6, 9, 10, and 11. TCEQ stated in their response to some of the public comments, “This is a Title V permitting action and therefore challenges related to emission limits or changes in emission limits in NSR permits are beyond the scope of this Title V review”. Many of these comments were related to how emissions are calculated, the monitoring established by the NSR permit, or how compliance with emission limits is determined. TCEQ does note in response to these comments that similar comments were made during the public comment period for the NSR permit and provides the content ID to obtain the more detailed response that was provided in that response to comments. TCEQ should consider reevaluating comments as they are received on title V permits even if similar comments were addressed under review of the underlying NSR permit. *The EPA does view monitoring, recordkeeping, and reporting adequacy to be part of the title V permitting process and will therefore continue to review whether a title V permit contains adequate monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit.* EPA has identified conditions in the NSR permit in the comment above where we question if the permit does contain adequate monitoring requirements. The statutory obligations to ensure that each title V permit contains “enforceable emission limitations and standards” supported by “monitoring . . . requirements to assure compliance with the permit terms and conditions,” 42 U.S.C. § 7661c(a), (c), apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit.” See South Louisiana Methanol Order at 10; Yuhuang II Order at 7-8; PacifiCorp-Hunter Order at 16, 17, 18, 18 n.33, 19; Big River Steel Order at 17, 17 n.30, 19 n.32, 20. Therefore, regardless of the monitoring, recordkeeping, and reporting initially associated with a minor NSR permit or PBR, TCEQ has a statutory obligation independent of the process of issuing those permits to evaluate monitoring, recordkeeping, and reporting in the title V permitting process to ensure that these terms are sufficient to assure compliance with all applicable requirements and title V permit terms. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008); see *Motiva Order* at 25-26.

In responding to this objection, TCEQ should amend the permit and permit record as necessary to specify monitoring, recordkeeping, and reporting requirements that assure compliance with the emission limits and operational requirements in NSR permit 95754. If the title V permit, the underlying NSR permit, or the enforceable representations in the application already contain adequate terms to assure compliance with the NSR permit, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with these emission limits and operational requirements for an individual emission unit, process area, or site-wide where such permit applies site-wide.

- 3. Objection for Failure to Include Specific Enforceable Terms and Conditions for Applicable NESHAP Requirements.** Under title V of the CAA, the EPA’s part 70 regulations, and TCEQ’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

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requirements. E.g., 42 U.S.C. § 7661c(a). The CAA requirement to include all applicable requirements (including NESHAP regulations) in a title V permit can be satisfied using IBR in certain circumstances. The CAA§ 504 requirement to include all applicable requirements in a title V permit can be satisfied using IBR in certain circumstances. See, e.g., White Paper 2 at 40 (explaining how IBR can satisfy the requirements of CAA § 504). In all cases where IBR is employed, the title V permit must contain references that are "detailed enough that the manner in which the referenced material applies to the facility is clear and is not reasonably subject to misinterpretation." White Paper 2 at 37. Moreover, "Where only a portion of the referenced document applies, . . . permits must specify the relevant section of the document." Id.

Requirements of a NESHAP that apply to emission units at a facility are "applicable requirements." 40 C.F.R. § 70.2; 30 TAC§ 122.10(2)(I)(ii). The EPA has previously addressed the manner by which NESHAP (or NSPS) requirements may be incorporated by reference into title V permits. In 1999, the EPA rejected suggestions that states have the discretion to include high-level citations to an entire NESHAP subpart, stating: "The permit needs to cite to whatever level is necessary to identify the applicable requirements that apply to each emissions unit or group of emission units (if generic grouping is used), and to identify how those units will comply with the requirements." The EPA has also objected to title V permits that have attempted to IBR NESHAP (or NSPS) requirements without providing sufficient detail to determine the specific requirements that apply to emission units at the source. Specifically, in the Tesoro Order, the EPA found that references to sections of a NESHAP that were not associated with specific emission units created ambiguity and applicability questions that "render[ ed] the Permit unenforceable as a practical matter and incapable of meeting the Part 70 standard that it assure compliance with all applicable requirements." In the Matter of Tesoro Refining, Order on Petition No. IX-2004-06 at 8 (March 15, 2005). Additionally, in the ETC Waha Order, the EPA found that high-level references to an entire NSPS subpart, which did not identify the specific requirements within the subpart that applied to each emissions unit, similarly failed to comply with the CAA. In the Matter of ETC Texas Pipeline, Ltd. Waha Gas Plant, Order on Petition No. VI-2020-3 at 17-19 (January 28, 2022)

Text from TCEQ's EPA-approved title V regulations is arguably more specific than language found in 40 CFR 70.6(a)(1); however, the underlying principle is the same and explicitly requires citation to the appropriate applicable requirements. 30 Tex. Admin. Code § 122.142(b)(2)(B), requires Title V permits to include "the specific regulatory citations in each applicable requirement . . . identifying the emission limitations and standards; and . . . the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards . . . sufficient to ensure compliance with the permit."

The permits Applicable Requirements Summary Table cites to 40 C.F.R. §§ 63.11089, 63.11088(a), or 63.11087(a) under the "Emission Limitation, Standard or Equipment Specification Citation" column and indicates: "The permit holder shall comply with the applicable limitation, standard, and/or equipment specification requirements of 40 CFR Part 63, Subpart BBBBBB" (or a similar variation of this text with respect to testing, monitoring, recordkeeping, or reporting requirements). The requirements under the citations provided might be the only applicable part of the NESHAP that is applicable, but that is not clear from the permit. The entirety of 40 C.F.R. § 63.11089 is indicated as applicable to some sources by the [G] indicated next to the citation. Looking at this entire citation, it appears to contain monthly monitoring (leak inspection under §§ 63.111000 is cited),

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recordkeeping (maintaining a log book under §63.11089(b), (c), and (d) which also refers to §§ 63.11094 and 63.11095. It also specified reporting under § 63.11089(f) which refers to § 63.11093 and §63.11089(g) which is also for recordkeeping. The title V permit Special Terms and Conditions 14 and 15 identify a list of the citations in 40 CFR Part 63 Subpart BBBBBB that the permit holder must comply with, but this list doesn't inform what emission units are subject to these requirements.

TCEQ must revise the Permit to ensure that it is unambiguous as to which requirements of NESHAP subpart BBBBBB are applicable to emission units at ITC. Specifically, TCEQ must revise the ITC Title V permit to include the specific emission limitations and standards applicable to each emission unit subject to 40 CFR Part 63 Subpart BBBBBB, as well as the specific monitoring and testing, recordkeeping, and reporting requirements applicable to each emission unit subject to 40 CFR Part 63 Subpart BBBBBB.

- 4. Objection for Failure to Include all Applicable Requirements.** The proposed title V permit fails to meet the requirements of CAA § 504(a) for “(e)ach 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.” TCEQ’s definition of “applicable requirement” (found at 30 TAC § 122.10(2)) includes an extensive list of federal and state provisions. Minor NSR permits and Permits by Rule (PBRs) are included in TCEQ’s definition of applicable requirement and are applicable requirements as defined under 40 CFR § 70.2. The application for the title V permit includes the May 2020 version of the PBR Supplemental Tables and on Table B and D, the applicant shows that EGEN-4, EGEN-5, EGEN-6, and EGEN-10 are authorized by PBR 106.511. However, the title V permit does not include this PBR on the New Source Review Authorization References Table on page 134 nor on the following pages on the New Source Review Authorization References by Emissions Unit table. TCEQ should verify if the PBR needs to be added to the title V permit or if the PBR has been consolidated by incorporation into the NSR permit and update the title V permit as necessary.