BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
TCEQ Title V Air Operating Permit No. O1061	)	Permit No. O1061
	)	
For International Terminals Company LLC Deer Park Terminal	)	
	)	
Issued by the Texas Commission on Environmental Quality	)	

PETITION TO OBJECT TO TITLE V PERMIT NO. O1061

INTRODUCTION

Pursuant to 42 U.S.C. § 7661d(b)(2) and 40 C.F.R. § 70.8(d), Harris County (Petitioner or the County) petitions the Administrator of the United States Environmental Protection Agency (EPA) to object to the renewal of Proposed Federal Operating Permit No. O1061 issued by the Texas Commission on Environmental Quality (TCEQ or Commission) to the International Terminal Company LLC's (ITC) Deer Park Terminal facility (the Facility) located at 1943 Pkwy S in Harris County, Texas 77571.

As discussed below, Federal Operating Permit No. O1061 fails to comply with requirements in Title V of the Clean Air Act (CAA) and Texas's State Implementation Program (SIP). EPA must object because (A) the Federal Operating Permit No. O1061 is rendered unenforceable as a practical matter and (B) public participation and public access for the Permit's renewal, specifically regarding incorporation of the PBR Supplemental Table, were deficient. Additionally, TCEQ failed to adequately respond to commenters' concerns in TCEQ's Response to Public Comment and in some instances, failed to respond at all.

PETITIONER

Harris County, with approximately 4.8 million residents, is the third largest county in the United States and is home to Houston, one of the largest and the most diverse cities in the United States. Harris County and its residents suffer from poor air quality caused by a large, diverse concentration of industry, including the Houston Ship Channel; heavy commuter traffic; emission events; chemical disasters; smog; and other factors. Houston is also the largest U.S. city without zoning laws, which brings these issues right to residents' fence lines. The Harris County Attorney's Office (HCAO) fights for the interests of Harris County through the civil justice system to preserve access to clean air and water; ensure safe, healthy neighborhoods; protect consumers against fraud, exploitation, and other bad acts; and defend voting rights. HCAO files this petition on behalf of Harris County.

BACKGROUND

I. Timeline

This Petition addresses TCEQ's renewal of Title V Permit No. O1061, re-authorizing operations at ITC's Deer Park Terminal. ITC filed its renewal application on October 17, 2018. TCEQ's Executive Director proposed to approve ITC's application and issued the Draft Permit. Notice of the application was initially published in English and in Spanish on September 11, 2019. TEX. COMM'N ON ENVT'L QUALITY, Notice of Draft Federal Operating Permit, Draft Permit No. O1061 (2019). TCEQ received a hearing request on October 15, 2019, and a hearing was scheduled for April 16, 2020. According to TCEQ's Technical Review of this permit, this hearing "was postponed on 4/2/20 based on the applicant stating they needed more time." **Exhibit A**, TEX. COMM'N ON ENVT'L QUALITY, Technical Review Summary, Federal Operating Permit No. O1061 (2025). A second public notice was published on August 24, 2022. **Exhibit B**, TEX. COMM'N ON ENVT'L QUALITY, Notice of Draft Federal Operating Permit, Draft Permit No. O1061 (2022) [hereinafter 2022 Public Notice]. The public comment period ended on May 4, 2023.

Petitioner filed a timely written comment identifying deficiencies in the 2019 Draft Permit with TCEQ on October 15, 2019. **Exhibit C**, Harris County's Public Comment on the Renewal of Title V Permit No. O1061 [hereinafter 2019 Public Comment]. Petitioner also timely filed an additional comment on May 4, 2023. **Exhibit D,** Harris County's Public Comment on the Renewal

of Title V Permit No. O1061 [hereinafter 2023 Public Comment]. Petitioner's comments raised all of the objections discussed below in this petition.

As of December 10, 2024, the proposed permit was subject to EPA review for 45 days, which ended on January 24, 2025. This petition was filed with EPA before the March 25, 2025, deadline.

Since the opening of this of this permit renewal in 2019, there have been several versions of the Federal Operating Permit (FOP) No. O1061, including different Draft Permits. For clarity, Petitioner is referring to the Draft Permit available for comment in 2022 when using the term "Draft Permit." Petition refers to the Draft Permit available for comment in 2019 using the term "2019 Draft Permit." Further, Petitioner refers to FOP No. O1061 issued on February 5, 2025, as Federal Operating Permit No. O1061 (2025).

II. Basis of Petition

This Petition is based on objections to the Draft Permit and 2019 Draft Permit raised with reasonable specificity during the public comment period and addressed in TCEQ's Response to Comments (RTC) issued after the public comment period. **Exhibit E**, TEX. COMM'N ON ENVT'L QUALITY, Executive Director's Response to Public Comment, Title V Permit Renewal No. O1061 (2024) [hereinafter RTC]. Per the RTC, TCEQ made the following modifications to the Draft Permit after the expiration of the public comment period:

1. Incorporated the alteration to NSR No. 1078 issued September 9, 2024, including updating the issuance date (from March 22, 2022) on the "New Source Review Authorization References" table.
2. Updated the issuance date of NSR No. 76266 to January 2, 2024 (from January 27, 2015) on the "New Source Review Authorization References" table.
3. Incorporated the submitted OP-PBRSUP dated March 1, 2024.
4. Replaced the previously existing high-level requirements with low-level requirements associated with 40 CFR Part 63, Subpart EEEE for: GRPITC01 (units 12-11, 12-12, 12-14, 12-15, 12-3, 12-7, 12-9, 50-1), GRPITC04 (units 12-16, 12-18, 12-19, 12-20, 12-21, 12-22, 12-23, 12-25, 12-29, 12-30, 12-31, 12-32, 12-33, 12-34, 12-35, 12-36, 33-1, 33-2), GRPITC08 (units 160-1, 160-2, 160-3, 160-4, 160-5, 160-6, 36-1, 36-2, 36-5, 80-18, 80-19, 80-20, 80-22), GRPITC09 (units 80-16, 80-17, 80-21, 80-23, 80-24), GRPITC13 (units

12-47, 12-50, 80-27, 80-28, 80-30), GRPITC14 (units 15-2, 30-4, 35-4, 35-7), GRPITC15 (units 10-1, 10-2, 100-1, 100-10, 100-11, 100-12, 100-13, 100-14, 100-15, 100-16, 100-17, 100-18, 100-19, 100-2, 100-20, 100-21, 100-22, 100-23, 100-24, 100-27, 100-28, 100-29, 100-3, 100-30, 100-31, 100-32, 100-33, 100-34, 100-35, 100-36, 100-37, 100-38, 100-39, 100-4, 100-40, 100-41, 100-42, 100-43, 100-49, 100-5, 100-50, 100-51, 100-54, 100-55, 100-56, 100-57, 100-58, 100-59, 100-6, 100-60, 100-61, 100-62, 100-63, 100-64, 100-65, 100-66, 100-7, 100-8, 100-9, 12-46, 12-48, 12-49, 12-51, 30-1, 30-5, 30-6, 30-7, 35-11, 35-13, 35-14, 35-15, 35-5, 35-6, 35-8, 35-9, 50-2, 60-1, 80-25, 80-26, 80-29, 80-31, 80-32, 80-33, 80-34), and GRPITC18 (units 105-1, 105-2, 105-3, 35-12, 35-16).

5. Updated Permit by Rule (PBR) authorizations based on the OP-PBRSUP dated March 1, 2024, as follows:
    a. Added claimed PBRs §§ 106.102, 106.222, 106.266, 106.372 (all version 09/04/2000) to the "New Source Review Authorization References" table as sitewide authorizations.
    b. Added unit specific PBR authorizations to the "New Source Review Authorization References by Emissions Unit" table as follows: BLAST (106.452/09/04/2000 [168196]), CONT-TEMP (106.263/11/01/2001 [169162]), DIES TNK 1000 (106.412/09/04/2000), FUEL DISPENSE (106.412/09/04/2000), GAS TNK 2000 (106.412/09/04/2000), HAND-HELD EQUI (106.265/09/04/2000), MSS (106.263/11/01/2001), ST 35-13-MSS (106.263/11/01/2001 [169162]), TANK 11-1, TANK 22-1, TANK 31-1, and TANK 31-2 (all 106.476/09/04/2000), and WWT-1 (106.532/09/04/2000). The units have no Title V applicability but are active at the facility.
    c. Added the following units, all authorized by claimed PBR 106.373/09/04/2000, to the "New Source Review Authorization References by Emissions Unit" table: REF002, REF003, REF004, REF005, REF006, REF007, REF008, REF009, REF013, REF054, REF055, REF061, REF062, RU14, and RU15. The units have no Title V applicability but are active at the facility.
    d. Added the following unit specific registered PBRs: § 106.478/09/04/2000 [169162] for unit 35-13, and § 106.261/11/01/2003 [169562] for unit FUG, to the "New Source Review Authorization References by Emissions Unit" table.

e. Removed the PBR § 106.261/11/01/2003 [95093] authorization from units 30-10 and 60-3.

These modifications do not adequately address or remedy the issues raised in this petition.

This petition follows content and formatting guidelines specified in Title 40 Code of Federal Regulations Part 70. EPA should object to the issuance of this permit because it is not in compliance with the applicable requirements contained in the applicable federal regulations nor Texas' SIP. Additionally, EPA should instruct TCEQ to follow the requests and recommendations Petitioner makes in this petition.

III. Title V Legal Requirements

To protect public health and the environment, the Clean Air Act prohibits stationary sources of air pollution from operating without or in violation of a valid Title V permit, which must include conditions sufficient to "assure compliance" with all applicable Clean Air Act requirements. 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(1), (c)(1). "Applicable requirements" include all standards, emission limits, and requirements of the Clean Air Act, including those contained in SIPs. 40 C.F.R. § 70.2. Congress intended for Title V to "substantially strengthen enforcement of the Clean Air Act" by "clarify[ing] and mak[ing] more readily available a source's pollution control requirements." S. Rep. No. 101–228 at 347–48 (1990), *as reprinted in* A Legislative History of the Clean Air Act Requirements of 1990 (1993), at 8687–88. As EPA explained when promulgating its Title V regulations, a Title V permit should "enable the source, states, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992) (to be codified at 40 C.F.R. § 70).

A Title V permit must include all applicable federally enforceable requirements (including requirements enshrined in a State's SIP); compliance certification, testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with these regulations and other terms and conditions of the permit; and enough information for the public to determine how applicable requirements apply to units at the permitted source. 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a), (c); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) ("The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source."). If a monitoring requirement is insufficient to assure compliance with

the relevant provisions in the permit, it "has no place in a permit unless and until it is supplemented by more rigorous standards." *Sierra Club v. EPA*, 536 F.3d 673, 677 (D.C. Cir. 2008). EPA has recognized the essential function of the Title V operating permit program as "a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements." *In the Matter of Kinder Morgan Crude & Condensate*, Order on Petition No. VI-2017-15 at 2 (Dec. 16, 2021).

If applicable requirements themselves contain no periodic monitoring, EPA's regulations require permitting authorities to add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B); *see also In the Matter of Mettiki Coal, LLC*, Order on Petition No. III-2013-1 at 7 (Sept. 26, 2014) [hereinafter *Mettiki* Order]. The D.C. Circuit has also acknowledged that the mere existence of periodic monitoring requirements may not be sufficient to ensure compliance with all applicable regulations. *Sierra Club*, 536 F.3d at 676–77. For example, the court noted that annual testing is unlikely to assure compliance with a daily emission limit. *Id.* Thus, the frequency of monitoring must bear a relationship to the averaging time used to determine compliance. 40 C.F.R. § 70.6(c)(1) of EPA's regulations require permit writers to supplement periodic monitoring requirements that are inadequate to assure compliance. *Id.* at 675; see also Mettiki Order at 7. Permitting authorities must also include a rational for the monitoring and reporting requirements in the permit that is clear and documented in the permit record. *Mettiki* Order at 7–8; 40 C.F.R. § 70.7(a)(5) ("The permitting authority shall provide a statement that sets for the legal and factual basis for the draft permit conditions . . . .").

The EPA Administrator shall object to the issuance of a Title V permit if he determines that the permit fails to include and assure compliance with all applicable requirements. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If the Administrator does not object before the end of the 45-day review period, "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. The Administrator "shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements," of the Clean Air Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see N.Y. Pub. Interest Group v. Whitman*, 321 F.3d 316, 333 n.12 (2d Cir. 2003) (explaining that under Title V,

"EPA's duty to object to non-compliant permits is nondiscretionary"). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

GROUNDS FOR OBJECTION

I. EPA Must Object to the ITC Permit because TCEQ Failed to Ensure the Location of the PBR Supplemental Tables were Specifically Identified.

a. Specific Grounds for Objection

ITC's Title V Permit does not adequately incorporate or assure compliance with the applicable requirements in ITC's Permit by Rules (PBRs) and related registrations because those requirements are not properly incorporated by reference into the Title V Permit. PBR Supplemental Tables identify applicable PBRs by number and, for registered PBRs, provide a registration number and the associated monitoring. The PBR Supplemental Tables' location is not adequately identified in the permit and was not adequately accessible during the public comment period.

Permit Special Condition No. 15 in the Draft Permit stated:

> Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms and conditions which include monitoring, recordkeeping, and reporting in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated May 24, 2022, in the application for project 28256) . . . .

Draft Permit at 9.

The applicable requirements from ITC's PBRs and the corresponding registrations were not properly incorporated by reference into the Title V Permit through this condition because: (1) the location of the PBR Supplemental Table was not specifically identified within the Draft Permit and (2) the Supplemental Table was not adequately accessible.

TCEQ is required to provide access to all information relevant to Title V renewals. 30 Tex. Admin. Code § 122.320. The majority of information and documents "collected, assembled, or maintained by the agency is public record open to inspection and copying during regular business hours." *Id.* § 1.5(a). TCEQ's Title V regulations also require the Executive Director to "make

available for public inspection the complete application and draft operating permit throughout the entire Title V comment period during business hours at the commission's regional office where the relevant site is located." *Id.* § 122.320(g). TCEQ shall also "direct the applicant to make a copy of the application, draft permit, and statement of basis available for review and copying at a public place in the county in which the site is located or proposed to be located." *Id.* § 122.320(b). The published notice must also include the location and availability of the complete permit application, draft permit, statement of basis, and all other relevant supporting materials in the public files of the agency. *Id.*

The 2022 Public Notice for Draft Permit No. O1061 stated that the permit application, statement of basis, and draft permit will be available for viewing and copying at TCEQ's Central Office, Houston Regional Office, and the City of Deer Park Public Library beginning the first day of publication of the notice. 2022 Public Notice at 1. While the notice technically included the location of these documents, it did not adequately describe the availability of the documents. The 2022 Public Notice did not provide clear instructions on how to access these documents (the availability) once at the Houston Regional Office (the location). TCEQ also effectively failed to make the necessary documents "available for public inspection" at the Houston Regional Office.

b. Applicable Requirements

Title V permits must include all a source's applicable requirements and monitoring, testing, recordkeeping, and other conditions necessary to assure compliance with the applicable requirements. 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(1), (3). "Applicable requirements" for Texas Title V permits include the terms and conditions of preconstruction permits issued by TCEQ, including the requirements contained in a PBR claimed by the source and any source-specific emission limits established through a certified registration associated with a PBR. 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2)(H); *see In the Matter of Oak Grove Management Company*, Order on Petition No. VI-2017-12 at 13 (Oct. 15, 2021).

c. Inadequacy of the Permit Term

The Supplemental Table was located within ITC's application. Because the Application was not accessible to the public in the manner required by TCEQ rules and instructed in the 2022 Public Notice, and generally not easily available, its incorporation was deficient. While TCEQ can

use incorporation by reference to incorporate certain applicable requirements into a Title V permit, EPA has long stated that incorporation by reference "may only be done to the extent that its manner of application is clear." U.S. EPA, *White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program*, (March 5, 1996) at 40 [hereinafter White Paper No. 2]. And EPA "does not recommend that permitting authorities incorporate into [Title V] permits" certain information "such as the application*." Id.* at 39.

EPA has further stated that

> Information that would be . . . incorporated by reference into the issued permit must first be currently applicable *and available* to the permitting authority and public . . . . Referenced documents must also be specifically identified. Descriptive information such as the title or number of the document and the date of the document must be included *so that there is no ambiguity as to which version of which document is being referenced*.

Id. at 37 (emphasis added). EPA has also stated

> [A] general statement in the Title V permit incorporating the PBR Supplemental Table without providing additional information detailing where the table is located *is not specific enough to effectively incorporate these requirements by reference*. In order to satisfy the requirement in title V that the Permit "set forth," "include," or "contain" monitoring to assure compliance with all applicable requirements, a special condition incorporating the PBR Supplemental Table would need to include, at a minimum, the date of the application and *specific location of the table, for example by providing a page number from the application*.

In the Matter of Phillips 66 Company, Borger Refinery, Order on Petition No. VI-2017-16 at 16 (Sept. 22, 2021) (emphasis added) [hereinafter *Phillips 66* Order].

Special Condition 15 in the Draft Permit does not provide the specific location where the public can find the PBR Supplemental Tables. This provision fails to adequately specify the location of the Tables in the application by including page numbers or any other location-identifying information. The lack of information on the Supplemental Table's location fails to meet the EPA's minimum requirements for incorporating PBRs and their associated registrations through the use of PBR Supplemental Tables.

The Title V program was created to simplify and streamline both the reporting and enforcement mechanisms for air permits. Requiring applicants to compile all relevant terms and applicable requirements and include them within the permit "enable[s] the source, States, 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 32,251. The failure of ITC's Permit to properly incorporate applicable requirements related to PBRs into the permit undermines the purpose of the Title V by interfering with the ability of the public and regulators to engage with and enforce such requirements, during the public comment period and throughout the life of the permit. This failure frustrates the purpose of Title V. To remedy this issue, Harris County suggested the Supplemental Table be included with the permit.

Additionally, the Supplemental Table was not adequately *available* to the public as mandated by EPA. White Paper No. 2 at 37. TCEQ's Title V regulations require Title V notices contain the "location and availability" of the complete permit application, the draft permit, the statement of basis, and all other relevant supporting materials in the public files of the agency. 30 Tex. Admin Code § 122.320(b). While TCEQ's notice for this renewal claimed that the permit materials were "available" for viewing and copying, it failed to layout and describe the additional procedures that the HCAO employees were "required" to complete before being granted access to the documents. The 2022 Notice stated that the Permit Application, Statement of Basis, and Draft Permit were available for viewing and copying at the TCEQ Houston Regional Office and the City of Deer Park Public Library. Thus, during the public comment period, the Application was only physically accessible at these two locations in Harris County. And because the Supplement Table was only located with the Application, Petitioner and other members of the public only had two means of accessing the Supplemental Table: either (1) in person at TCEQ's Houston Regional office or (2) in person at the Deer Park Public Library.

Despite these requirements, HCAO employees faced numerous difficulties in obtaining and viewing information related to the permit renewal that should have been publicly available and easily accessible. These difficulties include being outright denied access to the permit materials at TCEQ's Houston Regional Office.

On November 4, 2022, a County employee went to the TCEQ Houston Regional Office to review and copy the Permit Application and the NSR permits incorporated by reference. The County employee was ultimately denied access to any of these documents. During this visit, a TCEQ employee indicated to the HCAO employee that they were unsure which documents were available for public review and noted that the office was in the process of moving documents

online. The TCEQ employee directed the County employee to check to see if the application was online. It was not. The TCEQ employee also directed the County employee to contact two other TCEQ employees and provided an email that potentially belonged to one of those contacts. The TCEQ employee noted that the email might not have been accurate.

There is no information in these notices explaining how a member of the public might go about viewing and copying materials that should be accessible to the general public. The notice for this renewal did not contain sufficient information detailing the "location and availability" of the relevant permit materials and it was therefore difficult for stakeholders to access the Supplemental Table. This failure falls short of the applicable requirements adopted by TCEQ and approved by EPA in Texas's State Implementation Plan and renders the Supplemental Table impermissibly incorporated into the Permit.

d. Issues Raised in the Public Comment

Petitioner raised these issues with reasonable specificity in the public comment filed with TCEQ on May 4, 2023. *See* 2023 Public Comment. The issues regarding the Supplemental Table are discussed on pages 4–8 of the Comment. *Id.* at 4–8.

e. Analysis of TCEQ's Response

i. *"The Public Inaccessibility of Documents Related to the Draft Permit"*

TCEQ disagrees with Petitioner's assertion that documents related to the Draft Permit were inaccessible during the public comment period and states "[p]ublic participation requirements and all requirements under 30 TAC 122.320 were met by the following actions taken by the applicant and TCEQ. Copy of the draft permit and the statement of basis (SOB) FOP O1061 during the public comment period was publicly accessible online at TCEQ's web site . . . ." RTC at 18.

The availability of the Draft Permit and SOB online is not disputed by Petitioner. TCEQ did not adequately address Petitioners comment that the Application, and therefore the Supplemental Table, were not available online. The fact that the Draft Permit and SOB documents are available online does not cure TCEQ's failure to make the Application, the Supplemental Table found within, and other documents related to this permit available for public inspection at the Houston Regional Office.

TCEQ further states that "[w]hile the Commenter encountered difficulty in understanding the structure and organization of the permit application placed in a binder at the Deer Park Public Library, it appears that the Commenter was able to access the permit application based on the comment 'The materials relating to the 2022 renewal were found in a binder with a cover page entitled "Site Operating Permit Renewal Application O1061" dated October 2018.'" RTC at 18. Petitioner would reiterate that EPA has acknowledged the difficulty in finding incorporated materials within the Title V permitting record, which are themselves usually very large, as reason to specify the location of such incorporated materials. Failure to do so does not effectively incorporate PBR requirements by reference. *Phillips 66* Order at 16 (stating that, because Title V applications can be hundreds or thousands of pages long, a general statement in the permit incorporating the PBR Supplemental Table without additional information is not specific enough to effectively incorporate the requirements by reference.) Given the difficulty Petitioner encountered, the Permit should include a page number or table of contents to direct interested stakeholders to the Supplemental Table.

In the RTC, TCEQ asserts that the public is able to access the permit application online at TCEQ's CFR Online website upon issuance of the FOP. TCEQ further states "[i]f public would like to obtain a hard copy of the permit application during the public notice phase, the application is readily available at the local public library, at TCEQ's regional office, or by calling the designated contact person listed on the public notice and requesting assistance." RTC at 18.

Petitioner has searched TCEQ's online records multiple times and has not been able to find the updated Supplemental Table dated March 1, 2024, nor did Petitioner find the Supplemental Tables online during the 2022–2023 comment period. However, even if the Supplemental Table within an updated application is currently available online, that does not cure the TCEQ's failure to make the Application available and accessible at the Regional Office during the comment period, which it is obligated to do. The accessibility of a "hard copy" is mandated in TCEQ rules and supports public participation. 30 Tex. Admin. Code § 122.320.

TCEQ's assertion that the application is "readily available" at TCEQ's regional office is false, as is evidenced by Petitioner's inability to access the permit materials there. To reiterate, petitioner was **denied** access to the relevant permit materials at the TCEQ office in 2022, which TCEQ does not address or respond to at all in the RTC.

Additionally, ensuring the Application was available for review at the Deer Park Library does not cure TCEQ's failure to comply with other independent, nondiscretionary duties in the Title V Public Notice process. The Executive Director is required to make the Draft Permit and complete application available for public inspection throughout the comment period at a local library *and* the Houston Regional Office. TCEQ does not get to choose where it wants to make these documents available for public inspection—it is required to provide for public inspection at both locations. TCEQ's assertion that the application could be accessed by calling the designated contact person listed on the public notice and requesting assistance is irrelevant for the same reason and applicants are under no obligation to provide permitting materials in that manner. Notably, Petitioner has attempted to access permit materials through a designated contact person for other Title V permits and has been unsuccessful multiple times.

Finally, TCEQ's assertion that it plans to make pending permit applications and updates accessible online to the public is irrelevant to this action because it does not address the failure to make the relevant ITC permit materials available, both online and through the channels mandated by rule.

Because the Application and Supplemental Table were not publicly accessible in accordance with TCEQ rules and their instructions to the public contained in the notice, the Supplemental Table is not properly incorporated into the Permit.

ii. "Unclear Incorporation of PBRs"

TCEQ's response neither fully addresses nor rebuts Petitioner's arguments that the incorporation of the PBR Supplemental Tables is improper and deficient because the location of the PBR Supplemental Table within the Application is not specified (i.e. through a page number) and because the location of the Application itself is not specified in Draft Permit Condition 15. TCEQ does not address HCAO's suggestion to add the Supplemental Table into the final permit itself[1] nor does it address the lack of page numbers or table of contents to aid in directing the public to the Supplemental Table within the application.

[1] The RTC states "[a]s shown in OP-PBRSUP Table, *which is part of the permit record*, the site lists registered PBRs in Table A, claimed but not registered PBRs in Table B, and PBRs for insignificant sources in Table C. Table D lists

The RTC states

> Revised Special Term and Condition 15 in the proposed permit as follows: "Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBR and permits by rule identified in the PBR Supplemental Tables dated March 1, 2024 in the application for project 28256), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment.

RTC at 17. This paragraph does not contain the entirety of Revised Special Term and Condition 15 contained in the current version of the permit. The entirety of the condition reads:

> Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms and conditions which include monitoring, recordkeeping, and reporting in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated March 1, 2024 in the application for project 28256), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment. These requirements:
>
> A. Are incorporated by reference into this permit as applicable requirements
>
> B. Shall be located with this operating permit
>
> C. Are not eligible for a permit shield.

Federal Operating Permit No. O1061 (2025) at 9.

This revision does not remedy the impermissible lack of specificity of the Supplemental Table within the Application. Additionally, it is unclear what "located with this operating permit" is meant to indicate. If one opens the operating permit document on the TCEQ website, the

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monitoring requirements of PBRs listed in Tables A and B." RTC at 17 (emphasis added). Petitioner notes that it is unclear what "the permit record" is referring to or where such a "record" is physically or electronically housed. Regardless, this clause does not address or acknowledge the comments Petitioner raised regarding the Supplemental Table not being included in the permit or the lack of information given regarding its location.

Supplemental Table is not within this document. The revised Supplemental Table referenced Federal Operating Permit No. O1061 (2025) does not appear to be accessible online at all.

Therefore, the issues Petitioner raised in the Comment were not adequately addressed in the RTC and were not remedied by the changes made to the final permit. The Permit should be revised to specify where the Supplemental Table can be found by providing page numbers, table of contents, or similar instruction. Alternatively, the Permit could be revised to contain PBR terms within the text of the Permit.

II. EPA Must Object to the ITC Permit because Vague and Unclear Recordkeeping Requirements, Monitoring and Reporting Standards, and Language used in the Permit Render it Unenforceable as a Practical Matter.

a. Specific Grounds for Objection

All permit terms and conditions must be enforceable as a practical matter. 2023 Public Comment at 2; *see In the Matter of Salt River Project Agricultural Improvement and Power District*, *Agua Fria Generating Station*, Order on Petition No. IX-2022-4 at 20 (July 28, 2022) (ordering state agency to ensure all permit terms are enforceable as a legal and practical matter); *see also In the Matter of Salt River Project Agricultural Improvement and Power District, Coolidge Generating Station*, Order on Petition No. IX-2024-7 at 11 (Sept. 11, 2024) (finding that petitioner demonstrated that even though certain limits were legally enforceable, the permit was deficient because the limits were not enforceable as a practical matter). Certain terms and conditions in the permit contain vague and unclear language that is not enforceable as a practical matter, rendering the permit deficient. 2023 Public Comment at 2–4.

b. Applicable Requirements

Federal Title V regulations require that a permit's emissions limitations and standards assure compliance with all applicable requirements. 40 C.F.R. § 70.6(a)(1). Periodic monitoring in the permit must be "sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" and "shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement." *Id.* § 70.6(a)(3)(i)(B). Information and "requirements concerning the use,

maintenance, and, where appropriate, installation of monitoring equipment or methods" also must be included. *Id.* § 70.6(a)(3)(i)(C). TCEQ failed to meet these applicable requirements by using vague and unclear language throughout the permit that does not fully describe the necessary reporting, monitoring, and recordkeeping requirements.

c. Inadequacy of the Permit Term

All permit terms and conditions must be enforceable as a practical matter. 2023 Public Comment at 2; *In the Matter of Tesoro Refining and Marketing*, Order on Petition No. IX-2004-6 at 9 (March 15, 2005) [hereinafter *Tesoro* Order]. When permit terms and conditions cannot be enforced as a practical matter, a Title V permit cannot assure compliance with all applicable requirements as required by the Clean Air Act. 40 C.F.R. § 70.6(a)(1). Additionally, periodic monitoring terms that are vague or unclear prevent the facility from yielding reliable data from the relevant time periods. *In the Matter of ETC Texas Pipeline, LTD, Waha Gas Plant*, Order on Petition No. VI-2020-3 at 17 ("The Title V permit should 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.") [hereinafter *Waha* Order]; *Tesoro* Order at 9 (finding that ambiguities in the petition rendered "the permit unenforceable as a practical matter" and detracted "from the usefulness of the permit as a compliance tool for the facility"). Petitioner objected to multiple instances of vague and unclear language in the permit, which each individually render the permit unenforceable as a practical matter.

d. Issues Raised in the Public Comment

Petitioner raised these issues with reasonable specificity in the public comment filed with TCEQ on May 4, 2023. *See* 2023 Public Comment. The issues regarding unclear and vague language in the permit are included on pages 2–4 of the Comment. *Id.* at 2–4.

e. Analysis of TCEQ's Response

Harris County identified and commented on multiple instances of vague and unclear language in the Draft Permit, which each render the permit unenforceable as a practical matter. In Petitioner's Comment, each phrase or language issue that is too vague or unclear to be enforceable

is grouped together, even if the phrase is used in different conditions throughout the permit. For the sake of clarity in this petition, Petitioner uses the original grouping of these issues.

i. "Significant Odors"

Special Conditions Nos. 5(A)(i) and (iii) require the Facility comply with specific control and inspection requirements regarding the filling of stationary gasoline vessels. Draft Permit at 4–6; 2023 Public Comment at 2. The Condition references 30 Tex. Admin. Code § 115.222(3), which reads "no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems." 30 Tex. Admin. Code § 115.222(3).

Neither "significant" nor "significant odor" is defined in 30 TAC Chapter 115, and thus the phrase is subject to interpretation in its relation to detection of gasoline odors. *See* 30 Tex. Admin. Code § 115.10. The County suggested that the threshold be revised to the detection of any gasoline odor. Alternatively, the County suggested including specific parameter levels or ranges which will trigger action or provide a definition for the term significant odor.

In the RTC, TCEQ responds by stating "significant odor" does not need to be defined because the underlying state and federal regulations themselves do not specify an acceptable limit. TCEQ then cites to 30 TAC Ch. 115, which states "detection methods incorporating sight, sound, and smell (or odor) are acceptable." RTC at 16.

Regardless of what is contained in TCEQ rules, Title V requirements must be enforceable as a practical matter. *Tesoro* Order at 9. This provision in the 30 TAC is stating that sensory-based detection methods are acceptable but does not indicate that simply using "odor" without further defining the threshold is acceptable, as TCEQ now suggests. Conditions or monitoring requirements still must comply with Clean Air Act and EPA requirements, i.e., they must be enforceable as a practical matter. Additionally, Petitioner never indicated in the Comment there was a problem with the use of odor in a condition and only raised concerns regarding the vagueness and resulting unenforceability. The final permit does not remedy the issues Petitioner raised regarding this condition and thus the permit term invalidates the permit.

ii. "Promptly"

Draft Permit Special Condition 13(E) states "[i]f the results of the following inspections indicate that the capture system is not working properly, the permit holder shall promptly take necessary corrective actions." RTC at 17. Petitioner requested the word "promptly" in this condition be changed to a measurable and/or less subjective unit of time. 2023 Public Comment at 3.

TCEQ states that its use of "promptly" is justified because references to promptness of remedial action are typically stated in the applicable regulations or work practice standards that typically define the applicable requirements for a unit. TCEQ cites to 30 TAC Chapter 115.178 as an example, which states "the owner or operator shall repair a leak or defect as soon as practicable and shall make a first attempt to repair a leak or defect no later than five calendar days after the leak or defect is found."

TCEQ's reference to nebulous and vague "work practice standards" in the RTC, of which Petitioner and the general public are not privy to, is emblematic of the vagueness found throughout ITC's permit. As discussed throughout this petition, outside materials incorporated into a Title V permit must be specifically cited and publicly available. White Paper No. 2 at 37. Whatever standard of "promptness" stated in "work practice standards" TCEQ is referring to must either be explicitly referenced and incorporated into the permit or, more simply, the standard should be stated in the permit itself.

Additionally, TCEQ argues that the relevant state regulation, whatever it may be for the technology involved in a specific permit condition, contains the relevant required "promptness of remedial action." Even if this is correct, the condition and monitoring requirement in the Title V Permit must be able to be practically enforced. The phrase "promptly," without a direct reference to a regulation or document that may expand on the meaning of the phrase, is too vague to be enforced as a practical matter.

iii. "Should"

In response to Petitioner's assertion that "should" be changed to "shall" in Compliance Assurance Monitoring (CAM) summaries, TCEQ states "descriptive CAM text is included for informational purposes only and it does not replace the combustion sensor requirements under the applicable state or federal regulation for TO-1 and TO-2 units." RTC at 17.

There is no indication within the permit indicating that descriptive CAM text is informational. In fact, the permit text appears to indicate the opposite. For example, Special Condition 13 explicitly states "unless otherwise specified, the permit holder shall comply with the compliance assurance monitoring requirements as specified in the attached "CAM Summary" upon issuance of the permit." Draft Permit at 8. This language indicates that CAM summaries do in fact contain monitoring requirements. Therefore, the language used in the CAM text must be enforceable. The term "should" is too vague and suggests compliance with the condition is not a requirement but rather up to the preference of ITC.

iv. "Manufacturer's Recommendations / Specifications"

In response to Petitioner's assertion that "manufacturer's recommendations" and "manufacturer's specifications" stated in the CAM text description be replaced with specific limits that are incorporated into the permit itself, TCEQ also "notes that descriptive CAM text is included for information purpose only and it does not replace the applicable requirements for the flare units listed in the ARS of the proposed permit."

TCEQ does not address Petitioner's concern that non-descript outside documents are improperly referenced and incorporated into this permit.

Petitioner again asserts here that 1) CAMs are monitoring requirements (for reasons outlined above) and therefore need enforceable language to be compliant with the Title V program and 2) references to outside documents must be specifically incorporated into the permit itself to be enforceable. The permit must properly explain and define what these nebulous "recommendations and specifications" are and where to find them to be enforceable. Alternatively, the language of these documents could simply be included within the text of the permit itself.

III. EPA Must Object to the ITC Permit because TCEQ Does Not Address All of Petitioner's Comments.

The permitting authority is required to respond to all comments raised during the public comment period. 30 Tex. Admin. Code § 122.345; 40 C.F.R. § 70.7. Petitioner asked TCEQ to publish public notice in languages other than English and Spanish and to hold hearings in all four

Harris County Precinct. 2019 Comment at 5. Petitioner notes TCEQ did not address these comments at all.

CONCLUSION

As explained above and detailed in the timely filed public comments, the Draft Permit is deficient and does not meet the requirements of the Clean Air Act. Petitioner urges the Administrator to object to the issuance of Permit O1061 as required by the Clean Air Act.

Respectfully submitted this March 25, 2025, on behalf of the Harris County.

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LIST OF EXHIBITS

Exhibit	Title
A	Federal Operating Permit No. O1061 Technical Review Summary
B	Public Notice for on the Renewal of Title V Permit No. O1061 (2022)
C	Harris County's Public Comment on the Renewal of Title V Permit No. O1061 (2019)
D	Harris County's Public Comment on the Renewal of Title V Permit No. O1061 (2023)
E	Texas Commission on Environmental Quality's Response to Comment on the Renewal of Title V Permit No. O1061