

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

---

Petition No. VI-2025-6

In the Matter of

Intercontinental Terminals Company LLC, Deer Park Terminal

Permit No. O1061

Issued by the Texas Commission on Environmental Quality

---

**ORDER DENYING A PETITION FOR OBJECTION TO A TITLE V OPERATING PERMIT**

**I. INTRODUCTION**

The U.S. Environmental Protection Agency (EPA) received a petition dated March 25, 2025, (the “Petition”) from the Harris County Attorney’s Office (the “Petitioner”), pursuant to Clean Air Act (CAA) section 505(b)(2).<sup>1</sup> The Petition requests that the EPA Administrator object to operating permit No. O1061 (the “Permit”) issued by the Texas Commission on Environmental Quality (TCEQ) to the Intercontinental Terminals Company LLC, Deer Park Terminal (“ITC Deer Park”) in Harris County, Texas. The Permit was issued pursuant to title V of the CAA and TCEQ’s EPA-approved operating permit program rules.<sup>2</sup> This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Permit, the permit record, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, the EPA denies the Petition requesting that the EPA Administrator object to the Permit.

---

<sup>1</sup> 42 U.S.C. § 7661d(b)(2).

<sup>2</sup> 42 U.S.C. §§ 7661–7661f; Title 30, Chapter 122 of TAC; *see also* 40 Code of Federal Regulations part 70 (title V implementing regulations).

## II. STATUTORY AND REGULATORY FRAMEWORK

### A. Title V Permits

CAA section 502(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 Agency's implementing regulations at 40 C.F.R. part 70.<sup>3</sup> The State of Texas submitted a title V program governing the issuance of operating permits in 1993. The EPA granted full approval of Texas's title V operating permit program in 2001.<sup>4</sup>

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with 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.<sup>5</sup> One purpose of the title V operating permit program is to "enable 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."<sup>6</sup> Title V operating permits compile and clarify, in a single document, the substantive air quality control requirements derived from numerous provisions of the CAA. By clarifying which requirements apply to emission units at the source, title V operating permits enhance compliance with those applicable requirements of the CAA. The title V operating permit program generally does not impose new substantive air quality control requirements, but does require that permits contain adequate monitoring, recordkeeping, and reporting requirements to assure the source's compliance with the underlying substantive applicable requirements.<sup>7</sup> Thus, the title V operating permit program is 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.

### B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V operating permit programs. Under CAA section 505(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.<sup>8</sup> Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the Agency determines that the proposed permit is not in compliance with applicable

---

<sup>3</sup> 42 U.S.C. § 7661a(d)(1).

<sup>4</sup> 61 Fed. Reg. 32693 (June 25, 1996) (interim approval); 66 Fed. Reg. 63318 (Dec. 6, 2001). This program is codified in 30 TAC Chapter 122.

<sup>5</sup> 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a).

<sup>6</sup> 57 Fed. Reg. 32250, 32251 (July 21, 1992).

<sup>7</sup> 40 C.F.R. § 70.1(b); *see* 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1).

<sup>8</sup> 42 U.S.C. § 7661d(a).

requirements under the CAA.<sup>9</sup> If the EPA does not object to a permit on the Agency's own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit.<sup>10</sup>

Each petition must identify the proposed permit on which the petition is based and identify the petition claims.<sup>11</sup> Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under C.F.R. part 70.<sup>12</sup> Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must generally be contained within the body of the petition.<sup>13</sup>

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 authority (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).<sup>14</sup>

In response to such a petition, the CAA requires the Administrator to issue an objection to the permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the CAA.<sup>15</sup> Under CAA section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA.<sup>16</sup> As courts have recognized, CAA section 505(b)(2) contains both a "discretionary component" under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the CAA, and a nondiscretionary duty on the Administrator's part to object if such a demonstration is made.<sup>17</sup> Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA section 505(b)(2) if the Administrator determines that the petitioner has demonstrated

---

<sup>9</sup> 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c).

<sup>10</sup> 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

<sup>11</sup> 40 C.F.R. § 70.12(a).

<sup>12</sup> 40 C.F.R. § 70.12(a)(2).

<sup>13</sup> If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id.*

<sup>14</sup> 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see* 40 C.F.R. § 70.12(a)(2)(v).

<sup>15</sup> 42 U.S.C. § 7661d(b)(2); *see also* *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

<sup>16</sup> 42 U.S.C. § 7661d(b)(2); *see 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); *cf. NYPIRG*, 321 F.3d at 333 n.11.

<sup>17</sup> *Sierra Club v. Johnson*, 541 F.3d at 1265–66 (“[I]t is undeniable [that CAA section 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.

that the permit is not in compliance with requirements of the CAA.<sup>18</sup> When courts have reviewed the EPA’s interpretation of the ambiguous term “demonstrates” and the Agency’s determination as to whether the demonstration has been made, they have applied a deferential standard of review.<sup>19</sup> Certain aspects of the petitioner’s demonstration burden are discussed in the following paragraphs. A more detailed discussion can be found in the preamble to the EPA’s proposed petitions rule.<sup>20</sup>

The EPA considers a number of factors in determining whether a petitioner has demonstrated noncompliance with the CAA.<sup>21</sup> For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under C.F.R. part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under C.F.R. part 70.<sup>22</sup>

If a petitioner does not satisfy these requirements and provide sufficient citations and analysis, the EPA is left to work out the basis for the petitioner’s objection, which is contrary to Congress’s express allocation of the burden of demonstration to the petitioner in CAA section 505(b)(2).<sup>23</sup> Relatedly, the EPA has pointed out in numerous previous orders that generalized assertions or allegations did not meet the demonstration standard.<sup>24</sup> Also, the failure to address a key element of a particular

---

<sup>18</sup> *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that CAA section 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)); 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)).

<sup>19</sup> See, e.g., *Voigt v. EPA*, 46 F.4th 895, 902 (8th Cir. 2022), *WildEarth Guardians*, 728 F.3d at 1081–82; *MacClarence*, 596 F.3d at 1130–31.

<sup>20</sup> When the EPA finalized this rulemaking in 2020, the Agency referred back to (but did not repeat) the proposed rule’s extensive background discussion regarding the petitioner’s demonstration burden. See 85 Fed. Reg. 6431, 6433, 6439 (Feb. 5, 2020) (final rule); 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016) (proposed rule); see also *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*).

<sup>21</sup> See generally *Nucor II Order* at 7.

<sup>22</sup> 40 C.F.R. § 70.12(a)(2)(i)–(iii).

<sup>23</sup> 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.”); see also *In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (Sept. 21, 2011) (denying a title V petition claim in which 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*).

<sup>24</sup> See, e.g., *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition No. VI-2011-05 at 9 (Jan. 15, 2013); 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);

issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit.<sup>25</sup>

Another factor the EPA examines is whether the petitioner has addressed the State or local permitting authority's decision and reasoning contained in the permit record.<sup>26</sup> This includes a requirement that petitioners address the permitting authority's final decision and final reasoning (including the State's response to comments) where these documents were available during the timeframe for filing the petition. Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment.<sup>27</sup>

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) 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 required by § 70.7(a)(5) (sometimes referred to as the "statement of basis"), any comments the permitting authority received during the public participation process on the draft permit, the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit, and all 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 EPA's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition.<sup>28</sup>

---

*In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (Jan. 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (Mar. 15, 2005).

<sup>25</sup> 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); see also *In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (Feb. 7, 2014); *Georgia Power Plants Order* at 10.

<sup>26</sup> 81 Fed. Reg. at 57832; see *Voigt*, 46 F.4th at 901–02; *MacClarence*, 596 F.3d at 1132–33; see also, e.g., *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x \*11, \*15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (Dec. 14, 2012) (denying a title V petition issue in which petitioners did not respond to the State's explanation in response to comments or explain why the State erred or why 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 in which petitioners did not acknowledge or reply to the State's response to comments or provide a particularized rationale for why the State erred or the permit was deficient); *Georgia Power Plants Order* at 9–13 (denying a title V petition issue in which petitioners did not address a potential defense that the State had pointed out in the response to comments).

<sup>27</sup> 40 C.F.R. § 70.12(a)(2)(vi).

<sup>28</sup> 40 C.F.R. § 70.13.

### **III. BACKGROUND**

#### **A. The ITC Deer Park Facility**

ITC Deer Park is a for-hire bulk liquid storage terminal. ITC Deer Park provides for the transfer of chemicals, crude, and petroleum products stored in storage tanks via pipelines, marine vessels, railcars, and tank trucks.

ITC Deer Park is a title V major source of volatile organic compounds, nitrogen oxides, and hazardous air pollutants. ITC Deer Park is subject to New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

#### **B. Permitting History**

The Intercontinental Terminals Company, LLC first obtained a title V permit for ITC Deer Park in 2003, which was last renewed in 2014. On October 17, 2018, ITC applied for a title V permit renewal. On September 11, 2019, TCEQ initially published notice of a draft permit. On August 24, 2022, TCEQ published a second notice of a draft permit subject to a public comment period that ended on May 4, 2023. On December 10, 2024, TCEQ submitted a proposed permit, along with its responses to public comments (RTC), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on January 24, 2025, during which time the Agency did not object to the proposed permit. On February 5, 2025, TCEQ issued the final Permit for ITC Deer Park.

#### **C. Timeliness of Petition**

Pursuant to the CAA, if the EPA does not object to a proposed permit during the Agency's 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object.<sup>29</sup> The EPA's 45-day review period ended on January 24, 2025. Thus, any petition seeking the EPA's objection to the Permit was due on or before March 25, 2025. The Petition was submitted by email on March 25, 2025. Therefore, the EPA finds that the Petitioner timely filed the Petition.

### **IV. EPA DETERMINATIONS ON PETITION CLAIMS**

#### **A. Claim 1: The Petitioner Claims That the "EPA Must Object to the ITC Permit because TCEQ Failed to Ensure the Location of the PBR Supplemental Tables were Specifically Identified."**

---

<sup>29</sup> 42 U.S.C § 7661d(b)(2).

**Petition Claim:** The Petitioner claims that the Permit “does not adequately incorporate or assure compliance with the applicable requirements in ITC’s Permits by Rules (PBRs) and related registrations because those requirements are not properly incorporated into the Title V Permit.”<sup>30</sup> The Petitioner also claims that TCEQ violated 30 TAC § 122.320 by failing to provide adequate public notice and availability of the Permit and application in the notice.<sup>31</sup>

#### *Incorporation by Reference*

The Petitioner states that “[t]itle V permits must include all a source’s applicable requirements and monitoring, testing, recordkeeping, and other conditions necessary to assure compliance with those applicable requirements.”<sup>32</sup> The Petitioner explains that these applicable requirements “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.”<sup>33</sup>

The Petitioner states that the applicable requirements from ITC’s PBRs and the corresponding registrations were not properly incorporated by reference into the Permit through Special Condition 15 because this Permit term does not specifically identify the location of the PBR Supplemental Table that contain requirements associated with PBRs.<sup>34</sup> The Petitioner quotes a conclusion by the EPA in a previous title V order regarding the location of PBR tables, which said “a special condition incorporating the PBR Supplemental Table would need to include, at a minimum, the date of the applications and specific location of the table, for example by providing a page number from the application.”<sup>35</sup> The Petitioner claims Special Condition 15 of the Permit, however, does not provide a specific location where the PBR Supplemental Table can be found, and thereby fails to adequately specify the location of the PBR Supplemental Table in the application by including page numbers or any other location-identifying information.<sup>36</sup> The Petitioner claims that the location of the PBR Supplemental Table within the application can be found by providing page numbers, table of contents, or similar instruction.<sup>37</sup>

#### *Public Notice and Access*

---

<sup>30</sup> Petition at 7.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 8 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(1), (3)).

<sup>33</sup> *Id.* (citing 40 C.F.R. § 70.2; 30 TAC § 122.10(2)(H); *In the Matter of Oak Grove Management Company*, Petition No. VI-2017-12 at 13 (Oct. 15, 2021)).

<sup>34</sup> *Id.* at 7.

<sup>35</sup> *Id.* at 9 (quoting *In the Matter of Phillips 66 Company, Borger Refinery*, Order on Petition No. VI-201716 at 16 (Sept. 22, 2021) (*Phillips 66 Borger Order*)).

<sup>36</sup> *Id.* (citing Permit at 9).

<sup>37</sup> *Id.* at 15.

The Petitioner also claims that the PBR Supplemental Table was not adequately available to the public as required by TCEQ regulations.<sup>38</sup>

The Petitioner cites Texas public notice and availability requirements under 30 TAC § 122.320, which 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.”<sup>39</sup> In addition, these regulations require that TCEQ shall “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” and that “[t]he 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.”<sup>40</sup>

Regarding the physical location of the permit materials, the Petitioner outlines the various obstacles it faced trying to view the permit materials in person at the TCEQ Regional Office in Houston, Texas on November 4, 2022, including “being outright denied access to the permit materials at TCEQ’s Houston Regional Office.”<sup>41</sup> The Petitioner contends that the notice for the Permit renewal did not contain sufficient information detailing the location and availability of the permit materials and that this failure “falls short of the application requirements adopted by TCEQ and approved by EPA in Texas’s State Implementation Plan and renders the Supplemental Table impermissibly incorporated into the Permit.”<sup>42</sup>

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

The Petitioner has failed to demonstrate that the Permit improperly incorporates by reference the PBR Supplemental Tables and failed to demonstrate that the methods for acquiring the incorporated table did not satisfy any requirements of the CAA, applicable requirements, or requirements of 40 C.F.R. part 70.

#### *Incorporation by Reference*

Under title V of the CAA and the EPA’s part 70 regulations, every title V permit must include all applicable requirements that apply to a source and any permit terms necessary to assure compliance with these requirements. CAA section 504(a) requires the following: “Each permit issued under this subchapter shall include enforceable

---

<sup>38</sup> *Id.* at 10.

<sup>39</sup> *Id.* at 7–8 (quoting 30 TAC § 122.320(g)).

<sup>40</sup> *Id.* at 8 (quoting 30 TAC § 122.320(b)).

<sup>41</sup> *Id.* at 10.

<sup>42</sup> *Id.* at 11.

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.”<sup>43</sup> The CAA section 504 requirement to include all applicable requirements in a title V permit can be satisfied using incorporation by reference in certain circumstances.<sup>44</sup> Among other things, the EPA has explained:

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. Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.<sup>45</sup>

The Petitioner cites the EPA’s previous direction in the *Phillips 66 Borger Order* in which the Agency stated “a special condition incorporating the PBR Supplemental Table would need to include, at a minimum, the date of the application and the specific location of the table, for example by providing a page number from the application.”<sup>46</sup> While the *Phillips 66 Borger Order* suggested providing a page number from the application as a means of providing the specific location of the table, this was an example, not a requirement or the only means of successfully incorporating by reference a PBR Supplemental Table. Notably, after issuing the *Phillips 66 Borger Order*, the EPA identified additional means by which title V permits can effectively incorporate by reference PBR Supplemental Tables. For example, in the *Valero Houston I Order*, the EPA stated that a title V permit could identify the location of a PBR Supplemental Table by identifying the date of the project application and the associated project number.<sup>47</sup> Similarly here, as TCEQ states in its RTC, Special Condition 15 of the Permit references “the terms, conditions, monitoring, recordkeeping, and reporting identified in registered

---

<sup>43</sup> 42 U.S.C. § 7661c(a); see also 40 C.F.R. § 70.6(a)(1), (3).

<sup>44</sup> See, e.g., *White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program*, 40 (Mar. 5, 1996) (*White Paper 2*) (explaining how incorporation by reference can satisfy the requirements of CAA section 504).

<sup>45</sup> *White Paper 2* at 37; see, e.g., *Phillips 66 Borger Order* at 15.

<sup>46</sup> Petition at 12 (quoting *Phillips 66 Borger Order* at 16).

<sup>47</sup> See *In the Matter of Valero Refining-Texas, L.P., Valero Houston Refinery, Order on Petition No. VI-2021-8* at 18 (June 30, 2022) (*Valero Houston I Order*).

PBRs and permits by rule identified in the PBR Supplemental Tables dated March 1, 2024 in the application for project 28256.<sup>48</sup> This is generally consistent with the EPA’s guidance, and the Agency’s agreements with TCEQ, on the topic.<sup>49</sup>

To the extent the Petitioner’s other concerns about the location or availability of the PBR Supplemental Tables were intended to support the claim that the Permit failed to incorporate the PBR Supplemental Tables by reference, those arguments are unpersuasive. Regarding the Petitioner’s assertion that the PBR Supplemental Tables should be physically attached to the Permit, the Petitioner identifies no legal authority that would mandate this. Instead, as explained above, the EPA has repeatedly indicated that material incorporated by reference into a permit must simply be available to the public.<sup>50</sup> There are multiple ways to make such documents available to the public.

With respect to the public accessibility of the incorporated materials, TCEQ explains that the applicant “submitted a ‘PBR Supplemental Table’ (OP-PBRSUP) dated March 1, 2024, in the application for project 28256 to the permit application” and that this OP-PBRSUP is part of the permit record.<sup>51</sup> TCEQ states that the official permit record is accessible at TCEQ’s Regional office or at the Deer Park Public library. Furthermore, TCEQ states that the permit application is also accessible online at TCEQ’s CFR Online website upon issuance of the project 28256.<sup>52</sup>

To the extent that the Petitioner claims that the permit application and PBR Supplemental Table were not available online, the Petitioners have not demonstrated that online availability is required for properly incorporating information by reference. Online publication is not a requirement of the EPA’s longstanding guidance on incorporation by reference and incorporation by reference can be satisfied so long as the information is contained in publicly accessible files located at the permitting authority’s office(s).<sup>53</sup> Here, the Petitioner does not demonstrate, and there is no indication to the EPA, that the permit application and PBR Supplemental Table were not contained in such files at TCEQ’s Central Office in Austin. The Petitioner acknowledges that it cannot confirm whether the permit and PBR Supplemental Tables were available at the Central TCEQ office in Austin because it did not attempt to travel to that physical office. Further, to the extent that the Petitioner prefers digital access, the Petition does not demonstrate that the Petitioners were unsuccessful via other means of obtaining the files electronically (*e.g.*, by requesting the files digitally).

---

<sup>48</sup> RTC at 8–9 (quoting Permit at 9–10).

<sup>49</sup> See Letter from David Garcia, Director, Air and Radiation Division, EPA Region 6, to Tonya Baer, Deputy Director, TCEQ Office of Air (May 21, 2020); Letter from Tonya Baer, Deputy Director, TCEQ Office of Air, to David Garcia, Director, Air and Radiation Division, EPA Region 6 (May 11, 2020).

<sup>50</sup> See, *e.g.*, *In the Matter of Valero Energy Partners, L.P., Valero Houston Refinery—Tank Farm*, Order on Petition No. VI-2024-30 at 16–17 (July 18, 2025) (*Valero Tank Farm Order*); White Paper 2 at 37.

<sup>51</sup> RTC at 17.

<sup>52</sup> *Id.* at 18.

<sup>53</sup> See *Valero Tank Farm Order* at 16–17; White Paper 2 at 37 n.23.

In summary, with respect to the portion of the claim that the PBR Supplemental Table was not properly incorporated into the Permit, the Petitioner has failed to demonstrate that TCEQ did not satisfy Federal requirements for properly incorporating the PBR Supplemental Table.

#### *Public Notice and Access*

With respect to the portion of the claim that the permit documents were not adequately accessible, the Petitioner has not identified any Federal regulations related to public notice and comment and access that requires the documents to be available at a specific location during the public comment period. As a result, the Petitioner has failed to demonstrate that TCEQ did not satisfy Federal requirements regarding public access.

CAA section 505(b)(2) requires that the EPA object to a permit “if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of *this chapter* . . . .”<sup>54</sup> The phrase “this chapter” refers to the CAA. The EPA’s regulations further specify that “[a]ny issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with *applicable requirements or requirements under this part*.”<sup>55</sup> The term “applicable requirements” is defined in 40 C.F.R. § 70.2 to include requirements of a SIP that are approved by the EPA under title I of the CAA. The term “requirements under this part” refers to requirements codified in 40 C.F.R. part 70.

Here, the Petitioner has failed to demonstrate that issuance of the Permit did not satisfy any requirements of the CAA, applicable requirements, or requirements of 40 C.F.R. part 70. The CAA requires that State programs include “[a]dequate, streamlined, and reasonable procedures . . . for public notice, including offering an opportunity for public comment and a hearing . . . .”<sup>56</sup> The statute does not specify a location where permit documents must be available to the public during the public comment period. As the Petitioner observes, the EPA’s regulations require that all permit proceedings “provide adequate procedures for public notice.”<sup>57</sup> Further, the EPA’s regulations state that notice must be given by specified methods and must contain certain information.<sup>58</sup>

---

<sup>54</sup> 42 U.S.C. § 7661d(b)(2) (emphasis added).

<sup>55</sup> 40 C.F.R. § 70.12(a)(2) (emphasis added); see *id.* § 70.12(a)(2)(ii)–(iv) (“For each claim raised, the petition must identify the following: . . . (ii) The *applicable requirement as defined in § 70.2*, or *requirement under this part*, that is not met. (iii) An explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding *applicable requirement or requirement under this part*. (iv) If the petition claims that the permitting authority did not provide for a public participation procedure *required under § 70.7(h)*, the petition must identify specifically the required public participation procedure that was not provided.” (emphases added)).

<sup>56</sup> 42 U.S.C. § 7661a(b)(6) (emphasis added).

<sup>57</sup> 40 C.F.R. § 70.7(h).

<sup>58</sup> *Id.* § 70.7(h)(1), (2).

However, the EPA's regulations generally do not prescribe a specific location where permit record documents must be made available to the public.<sup>59</sup> The Petitioner does not demonstrate that TCEQ did not satisfy any of these Federal requirements under the CAA or 40 C.F.R § 70.7(h).

Instead, the Petitioner's claim focuses on Texas State regulations, which contain different, more detailed public notice and availability requirements than the Federal requirements. Specifically, 30 TAC § 122.320(b) requires that public notices contain information identifying "the location and availability" of various permit documents and 30 TAC § 122.320(g) states that "[t]he executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office *and at the commission's regional office where the site is located*" (emphasis added). The Petitioner's claim is based on an incorrect premise that the public notice and access requirements under 30 TAC § 122.320(b) and (g) are "applicable requirements" approved into the Texas SIP.<sup>60</sup> These regulations are not, however, part of the EPA-approved SIP and are not federally enforceable applicable requirements.<sup>61</sup>

In general, petition claims alleging that a State failed to satisfy State regulations governing title V permit issuance that go beyond the Federal requirements (and which are not included in a SIP) do not present a basis for the EPA's objection to a title V permit. The CAA mandates an EPA objection if a petitioner demonstrates that a permit

---

<sup>59</sup> Specifically, 40 C.F.R. 70.7(h)(1) provides: "If Web site noticing is selected as the consistent noticing method, the draft permit shall also be posted, for the duration of the public comment period, on a public Web site identified by the permitting authority." Additionally, 40 C.F.R. § 70.7(h)(2) provides: "The notice shall identify . . . the name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information, including copies of the permit draft, the statement required by § 70.7(a)(5) (sometimes referred to as the 'statement of basis') for the draft permit, the application, all relevant supporting materials, . . . and all other materials available to the permitting authority . . . that are relevant to the permit decision . . ."

<sup>60</sup> Petition at 5, 11.

<sup>61</sup> See 40 C.F.R. §§ 52.2270 (identifying the regulations contained in the Texas SIP); 70.2 (definition of "applicable requirement" for title V purposes). The relevant statutory language governing title V petitions provides: "The Administrator shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661d(b)(2). The statutory reference to "requirements of the applicable implementation plan" refers to Federal, State, or Tribal Implementation Plans approved or promulgated under title I of the CAA, not State regulations that implement title V (which are not referred to as "plans"). 42 U.S.C. § 7602(q) (defining "applicable implementation plan"). The EPA's regulatory definition of "applicable requirement" makes this clear, as it refers to plan requirements approved under title I, not title V. 40 C.F.R. § 70.2. Here, the Petitioner conflates EPA-approved State regulations contained in a SIP (which are federally enforceable "applicable requirements") with EPA-approved State regulations that govern title V permit issuance (which are generally not contained in SIPs and are not federally enforceable). Compare 40 C.F.R. part 52 (incorporating into Federal law the specific State and local statutes and regulations that constitute the SIP) with 40 C.F.R. part 70, appendix A (identifying State and local permitting authorities that are approved to issue permits under title V).

does not satisfy “the requirements of [the CAA].”<sup>62</sup> The CAA does not mandate that the EPA object to a title V permit that satisfies the requirements of the CAA and the Agency’s implementing regulations in 40 C.F.R. part 70 but does not satisfy unique State regulations that go beyond those Federal requirements.<sup>63</sup> Instead, the CAA requires the EPA to establish minimum requirements of State operating permit programs and to approve State programs that satisfy these minimum Federal requirements.<sup>64</sup> Although the CAA provides that State programs may “establish[] additional permitting requirements not inconsistent with this chapter,”<sup>65</sup> the EPA’s longstanding position is that “Sections 116 and 506(a) of the Act stand for the proposition that States retain authority to adopt more stringent requirements, not that these requirements must be federally enforceable” or subject to Federal oversight.<sup>66</sup> Thus, the EPA’s oversight of State title V programs focuses on compliance with the minimum requirements of Federal law.<sup>67</sup>

That is why, when the EPA updated the Agency’s title V petition-focused regulations in 2020 (the “2020 Title V Petitions Rule”), the Agency specifically provided that “any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements [as defined in 40 C.F.R. § 70.2] or requirements under this part [*i.e.*, 40 C.F.R. part 70].”<sup>68</sup> The Texas regulations invoked by the Petitioner do not constitute applicable requirements or requirements under 40 C.F.R. part 70. Because the Petitioner has not identified an applicable requirement or a requirement of 40 C.F.R. part 70 that was not met, as required by 40 C.F.R. § 70.12(a)(2), the EPA denies the Petitioner’s request for an objection on this claim.

---

<sup>62</sup> 42 U.S.C. § 7661d(b)(2).

<sup>63</sup> *See* 42 U.S.C. § 7661d(b).

<sup>64</sup> 42 U.S.C. § 7661a(b), (d); *see* 40 C.F.R. §§ 70.1(a), 70.4(a).

<sup>65</sup> 42 U.S.C. § 7661e(a).

<sup>66</sup> Response to Comments on the 40 C.F.R. Part 70 Rulemaking, EPA Docket No. A-90-33, V-C-1 at 6-11 (June 1992). For example, the EPA’s regulations require that “the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.” 40 C.F.R. § 70.6(b)(2). Notably, “Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part . . .” and are therefore not subject to the EPA’s oversight when reviewing individual title V permits. *Id.*

<sup>67</sup> *See* 40 C.F.R. § 70.1(a) (“These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, *oversee*, and withdraw approval of State operating permit programs.” (emphasis added)); *see also* 70.12(a)(2). Beyond the context of individual title V permit actions, Congress established additional mechanisms for the EPA to oversee State title V programs, which similarly address compliance with Federal minimum requirements. For example, CAA § 502(i) repeatedly provides the EPA with authority to take certain oversight actions upon a finding “that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with *the requirements of this subchapter*,” meaning title V of the CAA. 42 U.S.C. § 7661a(i)(1), (2) (emphasis added).

<sup>68</sup> 40 C.F.R. § 70.12(a)(2); 85 Fed. Reg. 6431, 6445–46 (Feb. 5, 2020).

**B. Claim 2: The Petitioner Claims That the “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.”**

**Petition Claim:** The Petitioner claims that the Permit contains “multiple instances of vague and unclear language” which each “render the permit unenforceable as a practical matter.”<sup>69</sup> The Petitioner also cites the following Permit Conditions it believes are vague and unclear: Conditions 5(A)(i), 5(A)(iii), 13.<sup>70</sup>

The Petitioner cites the requirement of 40 C.F.R. § 70.6(a)(1) that “[w]hen 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.”<sup>71</sup> The Petitioner also states that “[p]eriodic 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.’”<sup>72</sup> In addition, the Petitioner cites 40 C.F.R. § 70.6(a)(3)(i)(C), which requires permits contain “requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.”<sup>73</sup> The Petitioner alleges that TCEQ has failed to meet these applicable requirements by “using vague and unclear language throughout the permit.”<sup>74</sup>

The Petitioner identifies four allegedly “vague” terms throughout the Permit that it claims render the Permit unenforceable as a practical matter.<sup>75</sup>

1. “Significant Odor”

The Petitioner claims that Special Conditions 5(A)(i) and 5(A)(iii) “require the Facility to comply with specific control and inspection requirements regarding the filling of stationary gasoline vessels.”<sup>76</sup> The Petitioner states that the Special Condition 5(A)(i) references 30 TAC § 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.”<sup>77</sup>

---

<sup>69</sup> Petition at 16.

<sup>70</sup> *Id.* at 17–19, 28 (citing Permit at 5–6, 8–9).

<sup>71</sup> *Id.* at 16; *see also* 40 C.F.R. § 70.6(a)(1).

<sup>72</sup> *Id.* at 15 (quoting 40 C.F.R. § 70.6(a)(3)(i)(B)).

<sup>73</sup> *Id.* at 15–16.

<sup>74</sup> *Id.* at 16.

<sup>75</sup> *Id.* at 17–19.

<sup>76</sup> *Id.* at 17 (citing Permit at 4–6).

<sup>77</sup> *Id.* at 17 (quoting 30 TAC § 115.222(3)).

The Petitioner states that “significant odor” is not defined in 30 TAC Chapter 115 and, as a result, the phrase is “subject to interpretation in its relation to detection of gasoline odors.”<sup>78</sup> The Petitioner claims that, in its public comments, it “suggested the threshold be revised to the detection of any gasoline odor” or to include “specific parameter levels or ranges which will trigger action or provide a definition for the term significant odor.”<sup>79</sup> According to the Petitioner, TCEQ responds in its RTC by stating that the term does not need to be defined because the underlying State and Federal regulations do not specify an acceptable limit and that the permitting authority cites to 30 TAC Chapter 115, which states “detection methods incorporating sight, sound, and smell (or odor) are acceptable.”<sup>80</sup>

## 2. “Promptly”

The Petitioner quotes Permit Condition 13(E) which states, in part, “[i]f the results of the following inspections indicated that the capture system is not working properly, the permit holder shall promptly take necessary corrective actions.”<sup>81</sup>

According to the Petitioner, TCEQ argues in its RTC that the definition of “promptly” is contained in the “applicable regulations or work practice standard” that defines or creates the applicable requirements for a unit.<sup>82</sup> TCEQ provides 30 TAC § 115.178 as an example which requires that upon detection of a leak or defect, a repair shall be made “as soon as practicable . . . no later than five calendar days after the leak or defect is found.”<sup>83</sup> However, the Petitioner contends that this “reference to nebulous and vague ‘work practice standards’ in the RTC, of which the Petitioner and the general public are not privy to, is emblematic of the vagueness found throughout ITC’s permit.”<sup>84</sup> The Petitioner claims that “outside materials incorporated into a Title V permit must be specifically cited and publicly available” and that the standard of “promptness” should be stated in the Permit itself.<sup>85</sup>

## 3. “Should”

The Petitioner asserts that the term “should” be changed to “shall” in Compliance Assurance Monitoring (CAM) summaries for the TO-1 and TO-2 thermal oxidizer units because the term “should” is “too vague and suggests compliance with the condition is not a requirement but rather up to the preference of ITC.”<sup>86</sup> While TCEQ claims in its

---

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* (quoting RTC at 16).

<sup>81</sup> *Id.* at 18 (citing RTC at 17; *see also* Permit at 9).

<sup>82</sup> *Id.* (quoting RTC at 17).

<sup>83</sup> RTC at 30 (quoting 30 TAC § 115.178).

<sup>84</sup> Petition at 18.

<sup>85</sup> *Id.* (citing *White Paper 2* at 37).

<sup>86</sup> *Id.* at 19.

RTC that “descriptive CAM text is included for informational purposes only and it does not replace the combustion sensor placement requirements under the applicable state or federal regulation for TO-1 and TO-2 units,” the Petitioner claims that there is no indication within the permit that the descriptive CAM text is informational.<sup>87</sup> The Petitioner points to Special Condition 13 of the Permit to assert that the Permit text “appears to indicate the opposite.” According to the Petitioner, this condition “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.’”<sup>88</sup> The Petitioner claims that this language indicates the CAM summaries “do in fact contain monitoring requirements” and, therefore, “the language used in the CAM test must be enforceable.”<sup>89</sup>

#### 4. “Manufacturer’s Recommendations/Specifications”

The Petitioner makes similar arguments as it did with respect to the term “should” for the terms “manufacturer’s specifications” and “manufacturer’s recommendations” used throughout the CAM Summaries for flares. The Petitioner asserts that the CAM summaries are monitoring requirements that “therefore need enforceable language to be compliant with the Title V program.”<sup>90</sup> The Petitioner also asserts that “references to outside documents must be specifically incorporated into the permit itself to be enforceable.”<sup>91</sup> The Petitioner states that TCEQ provides a similar response as it did for the term “should,” stating that the “descriptive CAM text is included for information purpose only and it does not replace the applicable requirements for the flare units listed in the [Applicable Requirements Summary] ARS of the proposed permit.”<sup>92</sup> The Petitioner once again asserts that the Permit must either “properly explain and define what these nebulous ‘recommendations and specifications’ are and where to find them to be enforceable” or “the language of these documents could simply be included within the text of the permit itself.”<sup>93</sup>

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

The EPA has confronted the issue of allegedly unclear permit terms in numerous previous orders. The EPA has clarified that “[p]ermits typically do not include a list of all relevant definitions, nor is that required by any applicable requirement.”<sup>94</sup> Generally, a

---

<sup>87</sup> *Id.* at 18–19 (quoting RTC at 17).

<sup>88</sup> *Id.* at 19. (quoting Permit at 8).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* (quoting RTC at 17).

<sup>93</sup> *Id.*

<sup>94</sup> *In the Matter of Louisville Gas and Electric Company, Trimble County*, Order on Petition at 24 (Sept. 10, 2008).

petitioner must show that the vagueness or ambiguity resulting from an undefined term leads directly to a flaw in the permit in order to demonstrate grounds for an EPA objection.<sup>95</sup> For example, the EPA has granted a petition claim in which ambiguity rendered monitoring conditions insufficient to assure compliance with emission limits.<sup>96</sup> The EPA has also denied petition claims in which the undefined term is a “commonly used regulatory term, and the plain meaning of the term is clear”<sup>97</sup> or in which the petitioner failed to explain why a term was so vague or subject to multiple interpretations as to render a permit condition unenforceable as a practical matter.<sup>98</sup>

### 1. “Significant Odor”

Special Conditions 5(A)(i) and (iii) of the Permit require that, when filling stationary gasoline storage vessels for motor vehicle dispensing facilities, the Permit holder shall comply with (i) 30 TAC § 115.222(3) “as it applies to liquid gasoline leaks, visible vapors, or significant odors” and (iii) 30 TAC § 115.224(1) “as it applies to liquid gasoline leaks, visible vapors, or significant odors.”<sup>99</sup>

The Petitioner fails to demonstrate that the Permit must provide a more precise or specific limit or threshold for odor to assure compliance with these underlying leak detection requirements. Odor is an inherently subjective concept, so the subjectivity associated with the word “significant” is not necessarily problematic.<sup>100</sup>

While the Petitioner contends that neither “significant” nor “significant odor” are defined in 30 TAC Chapter 115 and thus the phrase is “subject to interpretation in its relation to detection of gasoline odors,” the EPA disagrees with the Petitioner’s suggestion that the threshold be revised to the detection of any gasoline odor.<sup>101</sup> Neither of the underlying applicable requirements apply to “any” smell of gasoline. Instead, 30 TAC § 115.222(3) requires, for gasoline transfer operations, that there be “no avoidable gasoline leaks, as detected by sight, sound, or smell.” The Petitioner’s alternative suggestion to redefine these requirements in the Permit to apply to “any gasoline odor” would substantively change the underlying standards, which is not the purpose of title V. Such a reinterpretation would be particularly unreasonable in the context of these specific requirements. When filling a gasoline storage vessel, the

---

<sup>95</sup> See *In the Matter of South32 Hermosa Inc., South32 Hermosa Project*, Order on Petition No. IX-2024-20 at 11–12 (May 30, 2025) (*Hermosa Order*).

<sup>96</sup> See *In the Matter of Mountain Coal Co., LLC, West Elk Mine*, Order on Petition No. VIII-2024-3 at 31–34 (May 24, 2024).

<sup>97</sup> See *In the Matter of Midwest Generation, LCC, Crawford Generating Station*, Order on Petition No. V-2004-2 at 19 (Mar. 25, 2005).

<sup>98</sup> See *In the Matter of Piedmont Green Power, LLC*, Order on Petition No. IV-2015-2 at 25 (Dec. 13, 2016); see also *Hermosa Order* at 12.

<sup>99</sup> Permit at 5–6.

<sup>100</sup> The EPA notes that audio, visual, and olfactory (AVO) inspections are often used for checking for leaks of odorous or toxic organic compounds.

<sup>101</sup> Permit at 17.

presence of some amount of gasoline odor would be reasonably expected and would not necessarily indicate a leak. Changing the Permit requirements to apply to “any gasoline odor” could make the requirements impossible to satisfy.

In summary, the Petitioner has not demonstrated that the ambiguity in the term “significant odor” results in the Permit not assuring compliance with the underlying applicable requirements, such that the term needs further defining through the title V process. Therefore, the EPA denies the Petitioner’s request for an objection on this portion of Claim 2.

### 2. “Promptly”

The Petitioner has not demonstrated that the ambiguity in the term “promptly” results in the Permit not assuring compliance with the applicable requirements such that the term “promptly” needs further defining through the title V process.

In its review of the Special Condition that contains the term “promptly,” the Petitioner neglects to consider the context in which the term “promptly” functions—that is, how the term “promptly” relates to the underlying applicable requirements. In the Permit, “promptly” is used in reference to taking corrective action following an unsatisfactory inspection or deviation.<sup>102</sup> The Petitioner correctly notes that there is not a single definition of “promptly” in this instance. What the Petitioner fails to consider is that there may be different types of corrective actions that may take various lengths of time to complete, depending on the nature of the affected equipment and the specific underlying requirements that are involved. Not precisely defining the term “promptly” provides flexibility for the source owner or operator to apply an appropriate time frame to the appropriate corrective action that must be taken.

The Petitioner does not provide analysis demonstrating why this flexibility is problematic in assuring compliance with the underlying requirements or why it is necessary to precisely define the timeline associated with corrective action—such as its request that the term be changed to a measurable and/or less subjective unit of time<sup>103</sup>— to assure compliance with the underlying applicable requirements. Therefore, the EPA denies the Petitioner’s request for an objection on this portion of Claim 2.

### 3. “Should”

The Petitioner has not demonstrated that the ambiguity in the term “should” results in the Permit not assuring compliance with the applicable requirements such that the term “should” needs further defining through the title V process. Notably, as suggested by TCEQ, the CAM text description at issue is “for information purpose only” and does not

---

<sup>102</sup> *Id.* at 9.

<sup>103</sup> *Id.* at 36.

replace the combustion sensor placement enforceable requirements under the applicable State or Federal regulations for TO-1 and TO-2 units.<sup>104</sup> For example, according to the Permit's ARS, Units TO-1 and TO-2 are subject to numerous monitoring and testing requirements under 30 TAC § 117 Subchapter H in which the owner or operator "shall" install the appropriate monitoring device as prescribed in the applicable requirements.<sup>105</sup>

The Petitioner fails to demonstrate that changing the term "should" and the installation of the monitoring instrumentation is necessary to assure compliance with the Permit's terms. The Petitioner does not provide any analysis of how the term regarding the installation of monitoring instrumentation is related to any underlying emission limits and the Petitioner does not evaluate any of the other associated monitoring requirements associated with those limits. Thus, the Petitioner fails to demonstrate that further detail regarding the term "should" is necessary to assure compliance with those limits.<sup>106</sup> Therefore, the EPA denies the Petitioner's request for an objection on this portion of Claim 2.

#### 4. *"Manufacturer's Recommendations" and "Manufacturer's Specifications"*

With respect to the term "manufacturer's specifications," the Petitioner takes issue with not only the alleged vagueness of the term with respect to flare units, but also the term's use throughout the Permit's CAM summaries, in which it refers to "non-descript outside documents."<sup>107</sup>

In response to the Petitioner's public comment that the term "manufacturer's specifications" should be replaced with more specific requirements for flare units—such as a CAM flare monitoring requirement that the presence of a flare pilot flame be monitored "using a thermocouple or other equivalent device"—TCEQ explains the "manufacturer's specifications" text at issue is "for information purposes only" and does not replace the applicable requirements listed in the ARS of the Permit.<sup>108</sup> For example, the ARS of the Permit indicates that flare unit FL-105-1 is subject to numerous monitoring and testing requirements under 30 TAC § 111 and 40 C.F.R. part 60, including 40 C.F.R. § 60.18(f)(2), which requires "[t]he presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame."<sup>109</sup>

The Petitioner fails to demonstrate that additional detail related to "manufacturer's specifications" is necessary to assure compliance with the Permit's terms. The Petitioner

---

<sup>104</sup> RTC at 17.

<sup>105</sup> See Permit at 91–94; see, e.g., 30 TAC § 115.725.

<sup>106</sup> See 40 C.F.R. § 70.12(a)(2)(ii).

<sup>107</sup> Petition at 19.

<sup>108</sup> RTC at 10, 17.

<sup>109</sup> 40 C.F.R. § 60.18(f)(2).

does not provide any analysis of how the manufacturer’s specifications regarding monitoring devices are related to any underlying emission limits, and the Petitioner does not evaluate any of the other monitoring requirements associated with those limits, such as 40 C.F.R. § 60.18(f)(2). Thus, the Petitioner fails to demonstrate that further detail regarding manufacturer specifications is necessary to assure compliance with those limits.<sup>110</sup> Therefore, the EPA denies the Petitioner’s request for an objection on this portion of Claim 2.

**C. Claim 3: The Petitioner Claims That the “EPA Must Object to the ITC Permit because TCEQ Does Not Address All of Petitioner’s Comments.”**

**Petition Claim:** The Petitioner states that the permitting authority is required to respond to all comments raised during the public comment period pursuant to 30 TAC § 122.345 and 40 C.F.R. § 70.7. The Petitioner claims that, during the public comment period, it “asked TCEQ to published public notice in languages other than English and Spanish and to hold hearings in all four Harris County Precinct [sic]” but that “TCEQ did not address these comments at all.”<sup>111</sup>

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

The EPA’s regulations state that “[t]he permitting authority must respond in writing to all significant comments raised during the public participation process . . . .”<sup>112</sup> Since the EPA’s regulations require that the permitting authority to respond to significant comments, it is imperative to determine whether the comment at issue is significant. As communicated in the 2020 Title V Petitions Rule, “significant comments” typically include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing Federal applicable requirements and requirements under part 70, including adequate monitoring and related recordkeeping and reporting requirements.<sup>113</sup> Of note, it is the responsibility of the permitting authority to determine, in the first instance, if a comment submitted during the public comment period on a draft permit is significant.<sup>114</sup> Further, in the 2020 Title V Petitions Rule, the EPA explained that the Agency’s interpretation of “significant” is informed by the D.C. Circuit’s review of Federal agencies’ obligation to respond to significant comments in regulatory actions. For example, the D.C. Circuit has explained that: “only comments which, if true, raise points relevant to the agency’s decision and which, if

---

<sup>110</sup> See 40 C.F.R. § 70.12(a)(2)(ii).

<sup>111</sup> Petition at 19–20.

<sup>112</sup> *Id.* § 70.7(h)(6).

<sup>113</sup> “Revisions to the Petition Provisions of the Title V Permitting Program Permitting,” 85 Fed. Reg. 6431, 6436 (Feb. 5, 2020).

<sup>114</sup> *Id.*

adopted, would require a change in an agency's proposed rule cast doubt on the reasonableness of a position taken by the agency."<sup>115</sup>

The Petitioner notes that its comment "asked TCEQ to publish public notice in languages other than English and Spanish and to hold hearings in all four Harris County Precinct [sic]."<sup>116</sup> Specifically, the Petitioner's comment "request[ed] a public notice and comment hearing on the Draft Permit, with Spanish and Vietnamese translation services, and advance notice in Spanish, Vietnamese, and English" and also "that ITC hold a notice and comment hearing on the Draft Permit in each of the four Harris County Commissioner precincts."<sup>117</sup> The Petitioner has not demonstrated that these comments requesting notice be published in multiple languages and public hearings be held in several precincts are tied to any particular Federal requirements. The EPA's regulations do not specify that public notice be published in a particular language or that a public hearing be held in a particular location or multiple locations. As a result, the Petitioner has not demonstrated that these comments are significant such that TCEQ was obligated to specifically respond to those comments under 40 C.F.R § 70.7(h). To the extent that the Petitioner's comments concerned Federal requirements under 40 C.F.R § 70.7 related to public notice and providing an opportunity for a public hearing, TCEQ responded to those comments and explained in its RTC that those requirements were satisfied.<sup>118</sup>

The Petitioner's claim also cites a Texas State regulation that contains slightly different, more prescriptive requirements than the Federal requirements that pertain to responding to public comments. As stated by the Petitioner, 30 TAC § 122.345(b) requires that the permitting authority respond to "any comments submitted during the public comment period."<sup>119</sup> The Petitioner's claim is also based on an incorrect premise that the public notice and comment and access requirements under 30 TAC § 122.320 are applicable requirements approved into the Texas SIP.<sup>120</sup> However, that regulation is not part of the EPA-approved SIP and is not a federally enforceable applicable requirement.<sup>121</sup> As explained in the EPA's response to Claim 1, petition claims alleging that a State failed to satisfy State regulations governing title V permit issuance that go beyond the Federal requirements (and which are not included in a SIP) do not present a basis for the EPA's objection to a title V permit.

---

<sup>115</sup> *Home Box Office*, 567 F.2d at 35 n. 58 (D.C. Cir. 1977).

<sup>116</sup> Petition at 19–20.

<sup>117</sup> Petition Exhibit C – 2019 Comment at 4. The EPA notes that the Petition appears to have incorrectly cited page 5 of the 2019 public comment.

<sup>118</sup> See, e.g., RTC at 4, 45, 62, 67.

<sup>119</sup> 30 TAC § 122.345(b) (emphasis added); see Petition at 19.

<sup>120</sup> Petition at 5, 11

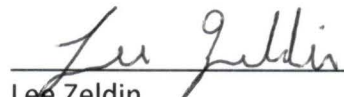
<sup>121</sup> See 40 C.F.R. §§ 52.2270 (identifying the regulations contained in the Texas SIP); 70.2 (definition of "applicable requirement" for title V purposes).

Because the Petitioner has not demonstrated that any applicable requirements or requirements of 40 C.F.R. part 70 were not met, as required by 40 C.F.R. § 70.12(a)(2), the EPA denies the Petitioner's request for an objection on this claim.

**V. CONCLUSION**

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

Dated: May 11, 2026

  
\_\_\_\_\_  
Lee Zeldin  
Administrator