

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

Petition Nos. VI-2025-5 & VI-2025-32

In the Matter of

Lubrizol Corporation, Deer Park Plant

Permit Nos. O1931 & O1932

Issued by the Texas Commission on Environmental Quality

ORDER DENYING PETITIONS FOR OBJECTION TO TITLE V OPERATING PERMITS

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received two petitions dated March 10, 2025, and September 10, 2025, respectively (collectively, the “Petitions”) from the Harris County Attorney’s Office (the “Petitioner”), pursuant to Clean Air Act (CAA) section 505(b)(2).¹ The first Petition (the “O1931 Petition”) requests that the EPA Administrator object to operating permit No. O1931 (the “O1931 Permit”) issued by the Texas Commission on Environmental Quality (TCEQ) to the Lubrizol Corporation for a portion of its operations at the Deer Park Plant (the “Lubrizol Deer Park Plant”) in Harris County, Texas. The second Petition (the “O1932 Petition”) requests that the EPA Administrator object to operating permit No. O1932 (the “O1932 Permit”) issued by TCEQ to a different portion of the Lubrizol Deer Park Plant. The Permits were issued pursuant to title V of the CAA and TCEQ’s EPA-approved operating permit program rules.² These types of operating permits are also known as a title V permit or part 70 permit.

Based on a review of the Petitions and other relevant materials, including the Permits, the permit records, and relevant statutory and regulatory authorities, and as explained in Sections IV and V of this Order, the EPA denies the Petitions requesting that the EPA Administrator object to the Permits.

¹ 42 U.S.C. § 7661d(b)(2).

² 42 U.S.C. §§ 7661–7661f; Title 30, Chapter 122 of TAC; *see also* 40 C.F.R. 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 70.³ 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 operation permit program in 2001.⁴

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.⁵ 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."⁶ 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.⁷ 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.⁸ 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

³ 42 U.S.C. § 7661a(d)(1).

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

⁵ 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a).

⁶ 57 Fed. Reg. 32250, 32251 (July 21, 1992).

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

⁸ 42 U.S.C. §§ 7661d(a).

requirements under the CAA.⁹ 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.¹⁰

Each petition must identify the proposed permit on which the petition is based and identify the petition claims.¹¹ 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 70.¹² 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.¹³

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).¹⁴

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.¹⁵ Under CAA section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA.¹⁶ 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.¹⁷ 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

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

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

¹¹ 40 C.F.R. § 70.12(a).

¹² 40 C.F.R. § 70.12(a)(2).

¹³ 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.*

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

¹⁵ 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*).

¹⁶ 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.

¹⁷ *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.¹⁸ 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.¹⁹ 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.²⁰

The EPA considers a number of factors in determining whether a petitioner has demonstrated noncompliance with the CAA.²¹ 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 70.²²

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).²³ Relatedly, the EPA has pointed out in numerous previous orders that generalized assertions or allegations did not meet the demonstration standard.²⁴ Also, the failure to address a key element of a particular

¹⁸ *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)).

¹⁹ 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.

²⁰ 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); 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*).

²¹ See generally *Nucor II Order* at 7.

²² 40 C.F.R. § 70.12(a)(2)(i)–(iii).

²³ 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*).

²⁴ 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.²⁵

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.²⁶ 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.²⁷

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.²⁸

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).

²⁵ 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.

²⁶ 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).

²⁷ 40 C.F.R. § 70.12(a)(2)(vi).

²⁸ 40 C.F.R. § 70.13.

III. BACKGROUND

A. The Lubrizol Deer Park Plant

The Lubrizol Deer Park Plant is a basic organic chemical manufacturing facility owned by the Lubrizol Corporation and located in Deer Park, Texas. The Lubrizol Deer Park Plant includes various operational units, including Acid 121 Alcohol Recovery Units, Chemithon, and 156 Units. These activities are collectively considered a single title V major source, but TCEQ issues separate title V permits to the Acid 121 Alcohol Recovery Units and Chemithon and 156 Units for administrative convenience. The Lubrizol Deer Park Plant is a title V major source of volatile organic compounds, particulate matter, nitrogen oxides, hazardous air pollutants, and carbon monoxide. The Lubrizol Deer Park Plant is subject to New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

B. Permitting History

For Permit O1931, the Lubrizol Corporation first obtained a title V permit for the Lubrizol Deer Park Plant Acid 121 and Alcohol Recovery Units in 2002, which was last renewed in 2018. On March 17, 2023, the Lubrizol Corporation applied for a title V permit renewal. On February 28, 2024, TCEQ published notice of a draft permit, subject to a public comment period that ended on March 29, 2024. On November 26, 2024, Texas submitted a proposed permit, along with its responses to public comments (the "O1931 RTC"), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on January 10, 2025, during which time the Agency did not object to the proposed permit. On February 28, 2025, TCEQ issued the final O1931 Permit for the Lubrizol Deer Park Plant Acid 121 and Alcohol Recovery Units.

For Permit O1932, the Lubrizol Corporation first obtained a title V permit for the Lubrizol Deer Park Plant Chemithon and 156 Units in 2003, which was last renewed in 2019. On May 13, 2024, the Lubrizol Corporation applied for a title V permit renewal. On March 26, 2025, Texas public notice of a draft permit, subject to a public comment period that ended on April 25, 2025. On May 27, 2025, Texas submitted the proposed permit, along with its response to public comments (the "O1932 RTC"), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on July 11, 2025, during which time the Agency did not object to the proposed permit. On July 23, 2025, TCEQ issued the final O1932 Permit for the Lubrizol Deer Park Plant Chemithon and 156 Units.

C. Timeliness of Petitions

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.²⁹ For the O1931 Permit, the EPA's 45-day review period ended on January 10, 2025. Thus, any petition seeking the EPA's objection to the O1931 Permit was due on or before March 11, 2025. The O1931 Petition was submitted by email on March 10, 2025. Therefore, the EPA finds that the Petitioner timely filed the O1931 Petition.

For the O1932 Permit, the EPA's 45-day review period ended on July 11, 2025. The 60-day period to file a petition should have closed on September 9, 2025. However, the EPA's website erroneously indicated that any petition seeking the Agency's objection to the O1932 Permit was due on or before September 10, 2025. The Petition was submitted by email on September 10, 2025. Therefore, the EPA will treat the Petition as if it had been timely filed. Had the EPA's website shown the correct date that petitions were due, the Agency would not have treated the Petition as timely filed.

IV. EPA DETERMINATIONS ON O1931 PETITION CLAIMS

A. Claim 1: The Petitioner Claims That the "EPA Must Object to the Lubrizol Permit Because TCEQ Did Not Provide Adequate Public Access for the Renewal of Draft Permit O1931."

Petition Claim: The Petitioner claims that TCEQ violated State requirements under 30 TAC § 122.320 by failing to provide adequate public access to the permit materials and failing to include the availability of the O1931 Permit and application in the public notice.³⁰

The Petitioner states that TCEQ's title V regulations require TCEQ to "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."³¹ In addition, the Petitioner explains that the public notice must also include 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.³² The Petitioner also states that the regulations require TCEQ "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."³³ The Petitioner

²⁹ 42 U.S.C § 7661d(b)(2).

³⁰ O1931 Petition at 5.

³¹ *Id.* (quoting 30 TAC § 122.320(b)).

³² *Id.* (quoting 30 TAC § 122.320(b)).

³³ *Id.* (quoting 30 TAC § 122.320(g)).

characterizes these requirements as “applicable requirements” that are part of the Texas State Implementation Plan (SIP).³⁴

The Petitioner contends that, despite these requirements, “HCAO employees faced numerous obstacles in obtaining and viewing information related to the permit renewal that should have been publicly available.”³⁵ The Petitioner states that HCAO employees attempted to view the draft permit, permit application, statement of basis, and additional documents related to the O1931 Permit on March 7, 2024, during the public comment period, at TCEQ’s Regional Office in Houston, Texas, but were not able to gain access to the materials at this location. The Petitioner claims it was “apparent” that “there was no protocol for viewing documents at the Houston Regional Office,” and that there was a “misunderstanding amongst TCEQ employees regarding how, when, and even *if* permits were available for public viewing or maintained at that office.”³⁶ The Petitioner argues that, as a result, this misunderstanding “led to incorrect and contradictory information being shared with HCAO employees” and rendered the public notice for the renewal insufficient.³⁷

According to the Petitioner, in its RTC for the O1931 Permit, TCEQ contends that “public participation requirements and all requirements under 30 TAC 122.320 were met” due to a series of actions taken by the applicant and TCEQ, but the Petitioner asserts that “TCEQ still must fully comply with 30 Texas Administrative Code § 122.320” and that these actions did not meet 30 TAC § 122.320(b) or (g) because the materials were not available at the Houston Regional Office.³⁸ The Petitioner does not dispute TCEQ’s claims in its O1931 RTC that the materials were available via other avenues, including at the TCEQ Central Office in Austin, TX, the Deer Park Library, and online.³⁹ However, the Petitioner asserts that whatever separate actions TCEQ may have taken or mechanisms it may have established regarding public availability of the permit materials “does not cure TCEQ’s failure to make the application and Draft Permit available for public inspection at the Houston Regional Office, or its failure to properly describe the location and availability of the application, Draft Permit, statement of basis, and all other relevant supporting materials in the public files of the agency, which are both required by TCEQ rules.”⁴⁰

As a result, the Petitioner contends that “[t]he notice for this renewal did not contain sufficient information detailing the ‘location and availability’ of the relevant permit materials and therefore failed to provide proper notice of this action.”⁴¹ The Petitioner

³⁴ *Id.*

³⁵ *Id.* at 6.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 7 (quoting O1931 RTC at 9).

³⁹ *Id.* at 8–10 (citing O1931 RTC at 9).

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 6–7.

concludes that “this failure falls short of the applicable requirements adopted by TCEQ and approved by EPA in Texas’s State Implementation Plan.”⁴²

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

CAA section 505(b)(2) requires that the EPA must object to a permit “if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of *this chapter*”⁴³ The term “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*.”⁴⁴ 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 O1931 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”⁴⁵ 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.”⁴⁶ Further, the EPA’s regulations state that notice must be given by specified methods and must contain certain information.⁴⁷ However, the EPA’s regulations generally do not prescribe a specific location where permit record documents must be made available to the public.⁴⁸ The Petitioner does

⁴² *Id.* at 7.

⁴³ 42 U.S.C. § 7661d(b)(2) (emphasis added).

⁴⁴ 40 C.F.R. § 70.12(a)(2) (emphasis added); *see id.* § 70.12(a)(2)(ii)–(iv). As relevant here, “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.” 40 C.F.R. § 70.12(a)(2)(ii)–(iv) (emphasis added).

⁴⁵ 42 U.S.C. § 7661a(b)(6).

⁴⁶ 40 C.F.R. § 70.7(h).

⁴⁷ *Id.* § 70.7(h)(1), (2).

⁴⁸ 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

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.⁴⁹ Those regulations are not, however, part of the EPA-approved SIP and are not federally enforceable applicable requirements.⁵⁰

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 does not satisfy "the requirements of [the CAA]."⁵¹ 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.⁵² Instead, the CAA requires the EPA to establish minimum requirements of State operating permit programs and to

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 . . ."

⁴⁹ O1931 Petition at 1–3.

⁵⁰ 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 SIPs under title I, not State regulations that implement title V (which are not referred to as "plans"). The EPA's regulatory definition of "applicable requirement" makes this clear, as it refers to SIP 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).

⁵¹ 42 U.S.C. § 7661d(b)(2).

⁵² See 42 U.S.C. § 7661d(b).

approve State programs that satisfy these minimum Federal requirements.⁵³ Although the CAA provides that State programs may “establish[] additional permitting requirements not inconsistent with this chapter,”⁵⁴ 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.⁵⁵ Thus, the EPA’s oversight of State title V programs focuses on compliance with the minimum requirements of Federal law.⁵⁶

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].”⁵⁷ 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.

B. Claim 2: The Petitioner Claims That the “EPA Must Object to the Lubrizol Permit because TCEQ Failed to Ensure the Location of the Permit By Rule (PBR) Supplemental Tables were Specifically Identified.”

Petition Claim: The Petitioner claims that the O1931 Permit “does not adequately incorporate or assure compliance with the applicable requirements in Lubrizol’s [Permits by Rule] PBRs and related registrations because those requirements are not

⁵³ 42 U.S.C. § 7661a(b), (d); *see* 40 C.F.R. §§ 70.1(a), 70.4(a).

⁵⁴ 42 U.S.C. § 7661e(a).

⁵⁵ 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.*

⁵⁶ *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 provided 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).

⁵⁷ 40 C.F.R. § 70.12(a)(2); 85 FR 6431, 6445–46 (Feb. 5, 2020).

properly incorporated by reference into the Title V permit.”⁵⁸ The Petitioner also claims that the O1931 Permit was not accessible for public inspection pursuant to public notice and availability requirements in 30 TAC § 122.320.⁵⁹

Incorporation by Reference

The Petitioner states that “[t]itle V permits must include all a source’s applicable requirements; monitoring, testing, recordkeeping; and other conditions necessary to assure compliance with those applicable requirements.”⁶⁰ 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.”⁶¹

The Petitioner states that “[t]he applicable requirements from Lubrizol’s PBRs and the corresponding registrations are not properly incorporated by reference into the Title V Permit through Special Condition 10 because: (1) the location of the PBR Supplemental Table was not specifically identified in the Draft Permit and (2) the Supplemental Table was not located with the Draft Permit.”⁶²

According to the Petitioner, “PBR requirements are purportedly incorporated into the Title V permit by reference through tables that include the PBR rule citation and the effective date of the rule, and for registered PBRs, the ‘registration number’ and the PBR Supplemental Table, which identifies required PBR monitoring.”⁶³ 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.”⁶⁴ The Petitioner claims Special Condition 10 of the O1931 Permit, however, does not provide a specific location where the PBR Supplemental Tables can be found, but instead states in part that all of the new source review requirements incorporated into the permit “shall be located with this operating permit.”⁶⁵

The Petitioner claims that PBR Supplemental Tables “identify applicable PBRs by number and, for registered PBRs, provide a registration number and the associated monitoring;”

⁵⁸ O1931 Petition at 11.

⁵⁹ *Id.*

⁶⁰ *Id.* at 12 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(1), (3)).

⁶¹ *Id.* (citing 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2)(H); *In the Matter of Oak Grove Management Company*, Petition No. VI-2017-12 at 13 (Oct. 15, 2021)).

⁶² *Id.* at 11.

⁶³ *Id.* at 12.

⁶⁴ *Id.* at 12–13 (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*)).

⁶⁵ *Id.* at 13 (citing O1931 Permit at 9–10).

however, the PBR Supplemental Tables “are not located with the permit, their location is not adequately identified in the permit, and the Tables were not adequately accessible during the public comment period.”⁶⁶ Specifically, the Petitioner states that Special Condition 10 includes the date of the PBR Supplemental Tables “but fails to adequately specify the location of the Tables in the application by including page numbers or other locational-identifying information . . . [n]or does the permit explain how the public can find the application during the life of the permit.”⁶⁷ As a result, the Petitioner claims 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.”⁶⁸ The Petitioner contends that TCEQ did not rebut in its O1931 RTC the Petitioner’s argument “that the incorporation of the PBR Supplemental Tables is improper and deficient.”⁶⁹

According to the Petitioner, “TCEQ claims that because the OP-PBRSRUP [sic] was included in the renewal application and because Special Condition 10 references ‘the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated January 8, 2024, in the application for project 34921,’ the location of the PBR Supplemental Table was sufficiently identified and thus incorporated into the permit.”⁷⁰ The Petitioner disagrees with this assessment and once again cites the *Phillips 66 Borger Order* in support of its argument that the O1931 Permit needs further detail regarding where the PBR Supplemental Tables are located.⁷¹ The Petitioner acknowledges that Special Condition 10 “includes the date the PBR Supplemental Tables were submitted and the application number they were included in,” however, the Petitioner contends that the condition does not “include the specific location, either by providing a page number or some other method of identification.”⁷²

Public Notice and Access

The Petitioner also contends that the PBR Supplemental Tables were not adequately accessible during the public comment period.⁷³ The Petitioner repeats its earlier references to Texas public notice and availability requirements under 30 Tex. Admin. Code § 122.320, including that the notice of draft permit must include the location and availability of the complete permit applications, the draft permit, the statement of basis, and all other supporting materials, and that the draft permit and complete applications

⁶⁶ *Id.* at 11.

⁶⁷ *Id.* at 13 (citing O1931 Permit at 15).

⁶⁸ *Id.*

⁶⁹ *Id.* at 14.

⁷⁰ *Id.* (quoting O1931 RTC at 11).

⁷¹ *Id.* at 14–15.

⁷² *Id.* at 15.

⁷³ *Id.* at 11.

be available for public inspection at the TCEQ central office and regional office where the site is located.⁷⁴

Regarding the physical location of the permit materials, the Petitioner takes issue with TCEQ's response in the O1931 RTC that the PBR Supplemental Tables were located with the draft permit because the renewal application, including the OP-PBRSUP form, "is considered part of the application representation [,] . . . is a part of the official permit record for FOP 1931/Project 34921, and was accessible at TCEQ's Central Office" in Austin.⁷⁵ The Petitioner claims that a title V permit "is not the same document as a Title V permit renewal application," and that "[e]ach document has specific requirements . . ."⁷⁶ The Petitioner then compares State and Federal requirements for title V permits and applications, noting that State and Federal rules "refer to these documents individually and require each to be made available . . ."⁷⁷ The Petitioner contends that "[i]f a stakeholder asks for Title V Permit O1931 at TCEQ's Central Office or Houston Regional Office, they will receive a copy of the Permit, not the application, entire permit record, or supporting documents," contrary to the requirement in Special Condition 10 that the PBR Supplemental Tables be located with the operating permit.⁷⁸

The Petitioner refers back to its arguments in Claim 1 of the O1931 Petition regarding the availability of the documents online and at TCEQ offices and states that its rebuttals to TCEQ's O1931 RTC in Claim 1 are equally applicable to Claim 2.⁷⁹

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 O1931 Permit improperly incorporates by reference the PBR Supplemental Tables and has 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 emission limitations and standards, . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the

⁷⁴ *Id.* at 15 (citing 30 Tex. Admin. Code § 122.320(b)(6), (g)).

⁷⁵ *Id.* at 15 (quoting O1931 RTC at 11).

⁷⁶ *Id.*

⁷⁷ *Id.* (citing 30 TAC §§ 122.132, 122.142, 122.320 and 40 C.F.R. §§ 71.5, 71.6).

⁷⁸ *Id.*

⁷⁹ *Id.* at 16.

requirements of the applicable implementation plan.”⁸⁰ 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.⁸¹ 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.⁸²

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.”⁸³ 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.⁸⁴ Similarly here, as TCEQ states in its RTC, Special Condition 10 of the O1931 Permit references “the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated

⁸⁰ 42 U.S.C. § 7661c(a); see also 40 C.F.R. § 70.6(a)(1), (3).

⁸¹ 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).

⁸² *White Paper 2* at 37; see, e.g., *Phillips 66 Borger Order* at 15.

⁸³ *Phillips 66 Borger Order* at 16.

⁸⁴ 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*).

January 8, 2024 in the application for project 34921.”⁸⁵ This is generally consistent with the EPA’s guidance, and the Agency’s agreements with TCEQ, on the topic.⁸⁶

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.⁸⁷ There are multiple ways to make such documents available to the public.

With respect to the public accessibility of the incorporated materials, in its RTC, TCEQ explains that the applicant submitted a revised OP-PBRSUP form dated January 8, 2024.⁸⁸ TCEQ explains that “a copy of the renewal application (including the OP-PBRSUP form) is considered to be a part of the application representation and hence it is a part of the official permit record for FOP O1931/Project 34921.”⁸⁹ TCEQ states that the official permit record is accessible at TCEQ’s Central Office in Austin, Texas and is also available at TCEQ’s CFR Online website upon issuance of the project 34921.⁹⁰

To the extent that the Petitioner claims that the permit application and PBR Supplemental Tables were not available online, the Petitioner has 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).⁹¹ Further, to the extent that the Petitioner prefers digital access, the Petition does not address or demonstrate that the Petitioners were unsuccessful via other means of obtaining the files electronically (*e.g.*, by requesting the files digitally).

In summary, with respect to the portion of the claim that the PBR Supplemental Tables were 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 Tables.

⁸⁵ O1931 RTC at 11 (quoting O1931 Permit at 9–10).

⁸⁶ 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).

⁸⁷ 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.*

⁸⁸ O1931 RTC at 11.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See *Valero Tank Farm Order* at 16–17; *White Paper 2* at 37 n.23.

Public Notice Access

With respect to the portion of the claim asserting that the issuance of the Permit violated public access requirements in the TCEQ regulations, the EPA denies this claim for the reasons explained in the EPA's response to Claim 1 of the O1931 Petition. Again, here, the Petitioner has not identified any Federal regulations related to public access that requires the PBR Supplemental Tables or permit applications to be available at a specific location during the public comment period. The public notice and access State regulations invoked by the Petitioner are not part of the EPA-approved SIP and are therefore not federally enforceable applicable requirements.⁹²

Because the Petitioner has not identified an applicable requirement or a requirement of 40 C.F.R. part 70 that was not met, the EPA denies the Petitioner's request for an objection on this claim.

C. Claim 3: The Petitioner Claims That the "EPA Must Object to the Lubrizol Permit because Vague and Unclear Recordkeeping Requirements, Monitoring and Reporting Standards, and Language used in the Permit Renders it Unenforceable as a Practical Matter."

Petition Claim: The Petitioner claims that the following terms in the O1931 Permit contain vague and unclear language that is not enforceable as a practical matter: Special Conditions 3(A)(iv)(1), 3(A)(iv)(3), 3(B)(iii)(1), 3(B)(iii)(2), 3(C)(iii)(1), and 3(C)(iii)(2).⁹³

The Petitioner cites the requirement of 40 C.F.R. § 70.6(a)(1) that a permit's emission limits and standards must assure compliance with all applicable requirements.⁹⁴ 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.'"⁹⁵ 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."⁹⁶ The Petitioner alleges that TCEQ has 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."⁹⁷

⁹² 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).

⁹³ O1931 Petition at 16. (citing O1931 Permit at 4–7).

⁹⁴ *Id.*

⁹⁵ *Id.* (quoting 40 C.F.R. § 70.6(a)(3)(i)(B)).

⁹⁶ *Id.*

⁹⁷ *Id.* at 17.

The Petitioner identifies three allegedly “vague” terms throughout the O1931 Permit that it claims render the O1931 Permit unenforceable as a practical matter.⁹⁸

1. *“Operation” or “Operating”*

The Petitioner states that the term “operating” as used in Special Conditions 3(A)(iv)(1), 3(B)(iii)(1), and 3(C)(iii)(1) of the O1931 Permit is unclear as to whether “a unit is capable of operating for the entire quarter or is actually operating for the entire quarter.”⁹⁹ The Petitioner claims that this is problematic because “[d]epending on which interpretation is used, the permit’s requirements are different.”¹⁰⁰

The Petitioner states that the O1931 RTC does not address its concerns with the term “operating” or identify the intended interpretation of this term, but instead “just said that all terminology for the Permit’s [special terms and conditions] STCs is from forms the facility is required to fill out as part of its application for a permit renewal and that these terms comply with applicable regulations and are used by EPA and industry trade organizations.”¹⁰¹

The Petitioner claims that while TCEQ asserts the term is consistent with definitions, terminology, and text used in 30 TAC Chapter 122 and the applicable rule text used in State and Federal regulations, “neither ‘operate’ nor ‘operating’ is defined in 30 TAC Chapter 122 or 40 C.F.R. Part 70.”¹⁰² In addition, the Petitioner claims that the fact that this vague language in the permit is generated in response to an application form “does nothing to ensure compliance with the Clean Air Act” and “these forms could easily be changed by TCEQ.”¹⁰³

2. *Record “Maintenance” or “Shall be Maintained”*

The Petitioner claims that the phrase “shall be maintained” as used in Special Conditions 3(A)(iv)(3), 3(B)(iii)(2), and 3(C)(iii)(2) of the O1931 Permit is too vague to be enforceable.¹⁰⁴ The Petitioner states that “Conditions 3(A)(iv)(3), 3(B)(iii)(2), and 3(C)(iii)(2) state ‘records of all observations shall be maintained.’”¹⁰⁵

The Petitioner critiques the O1931 RTC, arguing that “TCEQ used the same argument in justifying its use of ‘operating’ to justify its use of ‘shall be maintained’” and that the responses “inadequately address the fact that the Permit’s use of ‘shall be maintained’

⁹⁸ *Id.* at 17–21.

⁹⁹ *Id.* at 17–18.

¹⁰⁰ *Id.* at 18.

¹⁰¹ *Id.*

¹⁰² *Id.* (citing O1931 RTC at 13; 30 Tex. Admin. Code § 122.10; 40 C.F.R. § 70.2).

¹⁰³ *Id.* at 19.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* (quoting O1931 Permit at 4–5, 7).

is so vague and unclear that it renders each Special Condition in the Draft Permit, and thus the Draft Permit as a whole, unenforceable as a practical matter.”¹⁰⁶ The Petitioner asserts that special terms and conditions in a permit must be clear and enforceable.¹⁰⁷ The Petitioner also claims that the phrase “shall be maintained” is “not necessarily consistent with state and federal regulations and terminology used by TCEQ and trade organizations” and that the phrase is not defined in either set of regulations.¹⁰⁸

The Petitioner contends that even if a phrase is understood by the EPA and industry trade organizations, “that still does not necessarily mean the phrase is clear and understandable.”¹⁰⁹ The Petitioner also critiques TCEQ’s argument in the O1931 RTC that “the enforceability of the permit is assured since the Title V permit holder is required to file a permit compliance certification (PCC) report annually to certify compliance with the applicable requirements listed in the FOP O1931.”¹¹⁰ The Petitioner states that “merely filing a certification does not ensure a facility is in compliance and deviation reports often contain instances of non-compliance” and that requiring a facility to submit a PCC does not make Special Conditions 3(A)(iv)(3), 3(B)(iii)(2), or 3(C)(iii)(2) any clearer.¹¹¹ The Petitioner also notes that TCEQ fails to rebut this issue in Special Condition 3(C)(iii)(2) even though this condition also uses “shall be maintained” in a manner that is so vague as to be unenforceable.¹¹²

3. “RO”

The Petitioner claims that Special Condition 3 of the O1931 Permit “makes reference to the abilities of the ‘RO’ regarding compliance, but this term is not defined anywhere in the text of the Draft Permit nor is it included in the Draft Permit’s acronym list.”¹¹³ According to the Petitioner, the O1931 Permit states “the RO may certify compliance with relevant regulations where there are no visible emissions present and provides instructions for the RO when there are visible emissions present.”¹¹⁴

The Petitioner states that it requested TCEQ define the term “RO” in the O1931 Permit’s attached acronym sheet, but TCEQ instead states in the O1931 RTC that “the abbreviation for responsible official (RO) is well known in the field of federal air permitting and is well defined in the applicable Title V’ state and federal regulations.”¹¹⁵

¹⁰⁶ *Id.* at 19–20.

¹⁰⁷ *Id.* at 20 (citing *In the Matter of ETC Texas Pipeline, LTD, Waha Gas Plant*, Order on Petition No. VI-2020-3 at 17 (Jan. 28, 2022) (*Waha Order*); *In the Matter of Tesoro Refining and Marketing*, Order on Petition No. IX-2004-6 at 9 (Mar. 15, 2005) (*Tesoro Order*)).

¹⁰⁸ *Id.* (citing 30 Tex. Admin. Code § 122.10; 40 C.F.R. § 70.2.).

¹⁰⁹ *Id.*

¹¹⁰ O1931 RTC at 14.

¹¹¹ O1931 Petition at 20.

¹¹² *Id.* at 19, 20.

¹¹³ *Id.* at 20.

¹¹⁴ *Id.* (citing Special Conditions 3(A)(iv)(5)(a)–(b) & 3(B)(iii)(4)(a)–(b); O1931 Permit at 5, 6).

¹¹⁵ *Id.* at 21 (quoting RTC at 15).

The Petitioner argues that even if the term is well-known in the field of air permitting, “that does not mean TCEQ can include an unexplained acronym in the permit.”¹¹⁶ Lastly, the Petitioner claims that “RO” is not defined or explained in 30 TAC Chapter 122 and that “while the term ‘responsible official’ is defined in the federal regulations, there is no hint or indication that ‘RO’ is a common or often-used abbreviation for the term.”¹¹⁷ Because the O1931 Permit’s use of the term “RO” is “so unclear as to make the permit unenforceable as a practical matter,” the Petitioner states that TCEQ should add the term and its meaning to the O1931 Permit’s acronym table.¹¹⁸

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.”¹¹⁹ Generally, the petitioner must show that the vagueness or ambiguity resulting from an undefined term leads directly to a flaw in the permit to demonstrate grounds for an EPA objection.¹²⁰ For example, the EPA has granted a petition claim in which ambiguity rendered monitoring conditions insufficient to assure compliance with emission limits.¹²¹ 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”¹²² 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.¹²³

1. “Operation” or “Operating”

The Petitioner alleges that the term “operating” is so vague as to render Special Conditions 3(A)(iv)(1), 3(B)(iii)(1), and 3(C)(iii)(1) unenforceable. These conditions in the O1931 Permit read as follows:

¹¹⁶ *Id.*

¹¹⁷ *Id.* (citing 40 C.F.R. § 70.2).

¹¹⁸ *Id.*

¹¹⁹ *In the Matter of Louisville Gas and Electric Company, Trimble County*, Order on Petition at 24 (Sept. 10, 2008).

¹²⁰ *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*).

¹²¹ *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).

¹²² *See In the Matter of Midwest Generation, LCC, Crawford Generating Station*, Order on Petition No. V-2004-2 at 19 (Mar. 25, 2005).

¹²³ *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.*

3(A)(iv)(1): An observation of stationary vents from emission units in operation shall be conducted at least once during each calendar quarter unless the emission unit is not operating for the entire quarter.

3(B)(iii)(1): An observation of visible emissions from a source which is required to comply with 30 TAC § 111.111(a)(8)(A) shall be conducted at least once during each calendar quarter unless the source is not operating for the entire quarter.

3(C)(iii)(1): An observation of visible emissions from a source which is required to comply with 30 TAC § 111.111(a)(8)(A) shall be conducted at least once during each calendar quarter unless the source is not operating for the entire quarter.¹²⁴

The Petitioner questions whether the term “operating” means a unit is capable of operating for the entire quarter or is actually operating for the entire quarter. It is clear and unambiguous that the term “operating,” as used in these permit terms, refers to whether the units are actually operating for the entire quarter. The Petitioner has not demonstrated that the term “operating” is subject to multiple interpretations that would render these specific conditions unenforceable as a practical matter. Therefore, the EPA denies the Petitioner’s request for an objection on this portion of Claim 3.

2. Record “Maintenance” or “Shall be Maintained”

The Petitioner has not demonstrated that the phrase “shall be maintained” in the O1931 Permit is ambiguous. This phrase, as used in the Permit terms at issue, 3(A)(iv)(3), 3(B)(iii)(2), and 3(C)(iii)(2), unambiguously requires the Lubrizol Deer Park Plant to maintain certain records, consistent with the general terms and conditions of the O1931 Permit and 40 C.F.R. 70.6(a)(3)(ii)(b).¹²⁵

Therefore, the EPA denies the Petitioner’s request for an objection on this portion of Claim 3.

3. “RO”

With respect to the term “RO,” as explained in the O1931 RTC, the term Responsible Official is well known in the field of air permitting and is defined in 30 TAC Chapter 122 and 40 C.F.R. part 70. For example, 30 TAC § 122.165 and 40 C.F.R. § 70.2 generally describe what a Responsible Official is and what his or her duties as such entail.¹²⁶

¹²⁴ O1931 Permit at 4–5, 7.

¹²⁵ O1931 Permit at 1. As relevant here: “In accordance with 30 TAC § 122.144(1), records of required monitoring data and support information required by this permit, or any applicable requirement codified in this permit, are required to be maintained for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement.”

¹²⁶ See 30 TAC § 122.165(c) and 40 C.F.R. § 70.2.

Furthermore, TCEQ's title V permitting website describes the State requirement that a Responsible Official shall certify all documents submitted to TCEQ in support of a Federal operating permit.¹²⁷ In its O1931 RTC, TCEQ also explains that a list of commonly used air permit-related abbreviations (including RO) is publicly accessible on TCEQ's website.¹²⁸ For these reasons, the Petitioner has failed to demonstrate that there is any ambiguity in the term "RO." Additionally, even if there were ambiguity, the Petitioner has not demonstrated that such ambiguity results in the Permit not assuring compliance with any 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 3.

V. EPA DETERMINATION ON O1932 PETITION CLAIM

Claim 1: The Petitioner Claims That the "EPA Must Object to the Lubrizol Permit because TCEQ did not Provide Adequate Public Access for the Renewal of Draft Permit O1932."

Petition Claim: The Petitioner claims that TCEQ violated State requirements under 30 TAC § 122.320 by failing to provide adequate public access to the permit materials and failing to include the availability of the Permit and application in the public notice.¹²⁹

The Petitioner claims that "TCEQ failed to provide HCAO actual access to permitting materials at its Central Office and failed to provide adequate instructions on how to physically access documents in its possession, as it is required to do."¹³⁰ The Petitioner states that TCEQ's title V regulations require TCEQ "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 Central Office and at the commission's regional office where the relevant site is located."¹³¹ The Petitioner states that the public 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."¹³² The Petitioner also explains that under the TCEQ regulations, "[a] permit may be issued . . . provided the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied" and that "[t]he permit will not be final until the public petition requirements of this chapter have been satisfied."¹³³ The Petitioner references public notice and hearing requirements for title V permits

¹²⁷ See https://www.tceq.texas.gov/permitting/air/titlev/ro_and_certs.html.

¹²⁸ O1931 RTC at 30.

¹²⁹ O1932 Petition at 4.

¹³⁰ *Id.*

¹³¹ *Id.* (quoting 30 TAC § 122.320(g)).

¹³² *Id.* (quoting 30 TAC § 122.320(b)).

¹³³ *Id.* (quoting 30 TAC § 122.201(a)-(b)).

under 40. C.F.R. § 70.7(h) and characterizes 30 TAC § 122 requirements as “applicable requirements” that are part of the Texas SIP.¹³⁴

The Petitioner states that its employees visited TCEQ’s Central Office in Austin on two separate occasions (April 8, 2025, and April 15, 2025) to view and access permit documents related to the O1932 Permit, but “were denied access to view the documents at the Central Office.”¹³⁵ The Petitioner claims that TCEQ employees gave “confusing, contradictory, and incorrect directions to the Central File Room,” though eventually an HCAO representative located the Central Records Room which “was closed to the public for ‘renovation’ until ‘early 2025.’”¹³⁶ According to the Petitioner, HCAO’s representative “was not able to access any permit documents, nor ask if or when the Central Records Room would be open for ‘public inspection,’ as described in the notice.”¹³⁷ The Petitioner claims that TCEQ employees “again gave HCAO confusing, contradictory, and incorrect information regarding how they could access permitting materials.”¹³⁸ The Petitioner claims that, ultimately, HCAO “was never granted access to inspect, view, or copy the materials at the office.”¹³⁹

The Petitioner claims that TCEQ, in its O1932 RTC, “does not adequately address, explain, nor rebut many of the issues HCAO raised in its comment regarding the public access issues in the RTC.”¹⁴⁰ The Petitioner acknowledges and does not dispute that the permitting documents were available online, but emphasizes that “TCEQ must abide by all requirements set out in its Title V regulations and nothing, including uploading documents online, relieves TCEQ of these duties.”¹⁴¹

The Petitioner generally critiques the arguments TCEQ sets forth in its O1932 RTC regarding the availability of permit materials at TCEQ’s Central Office, ultimately concluding that the documents were not available when they were legally required to be.¹⁴² The Petitioner contends that if TCEQ would prefer to make permitting documents only available through its website, “it has the authority to do so” but “must go through the proper promulgation processes for Title V rules.”¹⁴³

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

¹³⁴ *Id.*

¹³⁵ *Id.* at 5.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at 6.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* (citing 30 TAC § 122.320).

¹⁴² *Id.* at 6–10 (citing O1932 RTC at 7–8).

¹⁴³ *Id.* at 11.

As explained in the EPA's response to Claim 1 for the O1931 Petition, CAA section 505(b)(2) prescribes that the Agency must object to a permit "if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter . . ." ¹⁴⁴ The term "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.*" ¹⁴⁵ 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 O1932 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 . . ." ¹⁴⁶ 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." ¹⁴⁷ Further, the EPA's regulations state that "[n]otice shall be given by . . . publishing the notice in a newspaper of general circulation in the area where the source is located . . . or by posting the notice, for the duration of the public comment period, on a public Web site . . ." ¹⁴⁸ This notice shall also include information where interested parties ". . . may obtain additional information including additional copies of the permit draft, [statement of basis] for the draft permit, the application, all relevant supporting materials . . . and all other materials available to the permitting authority." ¹⁴⁹ However, the EPA's regulations generally do not prescribe a specific location where permit record documents must be made available to the public. ¹⁵⁰ The Petitioner makes no statements or claims that the web publication of this notice violated Federal requirements under § 70.7(h)(1) or (2). In fact, the Petitioner explicitly does not dispute that the permitting documents were available online. ¹⁵¹ The Petitioner does not demonstrate that TCEQ failed to satisfy 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

¹⁴⁴ See *supra* note 41.

¹⁴⁵ See *supra* note 42.

¹⁴⁶ See *supra* note 43.

¹⁴⁷ 40 C.F.R. § 70.7(h).

¹⁴⁸ *Id.* § 70.7(h)(1).

¹⁴⁹ *Id.* § 70.7(h)(2).

¹⁵⁰ See *supra* note 47.

¹⁵¹ O1932 Petition at 7.

information identifying “the location and availability” of various permit documents, and 30 TAC § 122.320(g) requires: “The 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) as applicable requirements approved into the Texas SIP.¹⁵² Those regulations are not part of the EPA-approved SIP and are therefore not federally enforceable applicable requirements.¹⁵³

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.

VI. 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 Petitions as described in this Order.

Dated: May 11, 2026



Lee Zeldin
Administrator

¹⁵² O1932 Petition at 4.

¹⁵³ 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).