

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

Petition Nos. VI-2025-2 & VI-2025-3

In the Matter of

TPC Group LLC, Houston Plant

Permit No. O1598

Issued by the Texas Commission on Environmental Quality

**ORDER GRANTING IN PART AND DENYING IN PART PETITIONS FOR OBJECTION TO A
TITLE V OPERATING PERMIT**

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received two petitions dated February 17, 2025, (collectively, the “Petitions”), pursuant to Clean Air Act (CAA) section 505(b)(2).¹ One petition (the “HCAO Petition”) was submitted by the Harris County Attorney’s Office (the “HCAO Petitioner”) and the other Petition (the “AAH Petition”) was submitted by Air Alliance Houston (the “AAH Petitioner”). The Petitions request that the EPA Administrator object to operating permit No. O1598 (the “Permit”) issued by the Texas Commission on Environmental Quality (TCEQ) to the TPC Group LLC’s Houston Plant (“TPC Houston”) in Harris County, Texas. The Permit was issued pursuant to title V of the CAA and TCEQ’s EPA-approved operating permit program rules.² This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the two Petitions 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 grants in part and denies in part the Petitions and objects to the issuance of the Permit. Specifically, the EPA grants portions of Claims 1 and 4 of the AAH Petition and denies the rest of the claims.

¹ 42 U.S.C. § 7661d(b)(2).

² 42 U.S.C. §§ 7661–7661f; 30 Texas Administrative Code (TAC) Chapter 122; *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) of the CAA 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 operating 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 See 61 Fed. Reg. 32693 (June 25, 1996) (interim approval); 66 Fed. Reg. 63318 (Dec. 6, 2001) (final 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

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) (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*).

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*).

demonstration standard.²⁴ Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit.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

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); *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).

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

If the EPA grants a title V petition and objects to the issuance of a permit, a permitting authority may address the Agency's objection by, among other things, providing the Agency with a revised permit.²⁹ In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record. For example, when the EPA issues a title V objection on the grounds that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing an additional rationale to support its permitting decision.

When the permitting authority revises a permit or permit record to resolve an EPA objection, it must go through the appropriate procedures for that revision. If a final permit has been issued prior to the EPA's objection, the permitting authority should determine whether its response to the Agency's objection requires a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the State's EPA-approved title V operating permit program. If the permitting authority determines that the revision is a significant modification, the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the State's corresponding regulations.

In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, and regardless of the procedures used to make such revisions, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA section 505(b) and 40 C.F.R. § 70.8(c) and (d).³⁰ As such, it would be subject to the EPA's 45-day review per CAA section 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity for the public to petition under CAA section 505(b)(2) and 40 C.F.R. § 70.8(d) if the Agency does not object during the Agency's 45-day review period.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that the Agency identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to the EPA's objection.

²⁸ 40 C.F.R. § 70.13.

²⁹ 42 U.S.C. § 7661d(b)(3), (c); 40 C.F.R. § 70.8(d); *see id.* §§ 70.7(g)(4), 70.8(c)(4); *see generally* 81 Fed. Reg. at 57842 (describing post-petition procedures); *Nucor II Order* at 14–15 (same).

³⁰ *See Nucor II Order* at 14.

As described in various title V petition orders, the scope of the EPA’s review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action.³¹

C. New Source Review

The major New Source Review (NSR) program encompasses two core types of preconstruction permit requirements for major stationary sources. CAA title I, part C establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the National Ambient Air Quality Standards (NAAQS) and for other pollutants regulated under the CAA.³² CAA title I, part D establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment.³³ The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that State PSD programs must meet to be approved as part of a State Implementation Plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA’s Federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA’s regulations specifying requirements for State NNSR programs are contained in 40 C.F.R. § 51.165.

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

The EPA approved Texas’s PSD, NNSR, and minor NSR programs as part of its SIP.³⁴ Texas’s major and minor NSR provisions, as incorporated into Texas’s EPA-approved SIP, are contained in portions of 30 TAC Chapters 116 and 106.

³¹ See *In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (Sept. 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (Dec. 19, 2007).

³² 42 U.S.C. §§ 7470–7479.

³³ 42 U.S.C. §§ 7501–7515.

³⁴ See 40 C.F.R. § 52.2270(c) (identifying EPA-approved regulations in the Texas SIP).

III. BACKGROUND

A. The TPC Houston Facility

TPC Houston is a petrochemical manufacturing facility located in Harris County, Texas that produces petrochemicals for manufacturing synthetic rubbers, fuel additives, and plastics. TPC Houston includes numerous process units, boilers, tanks, and a marine facility for loading and unloading products. TPC Houston is a title V major source of volatile organic compounds (VOC), particulate matter, nitrogen oxides (NO_x), hazardous air pollutants, and carbon monoxide. TPC Houston is subject to New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

B. Permitting History

TCEQ first issued a title V permit for TPC Houston in 2004, which was last renewed in 2018. On April 19, 2022, TPC Group applied for a title V permit renewal. On October 4, 2023, TCEQ published notice of a draft permit subject to a public comment period that ended on April 11, 2024. On November 4, 2024, TCEQ submitted the 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 December 19, 2024, during which time the Agency did not object to the proposed permit. On January 9, 2025, TCEQ issued the final Permit for TPC Houston.

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.³⁵ The EPA's 45-day review period ended on December 19, 2024. Thus, any petition seeking the EPA's objection to the Permit was due on or before February 18, 2025. Both Petitions were submitted by email on February 17, 2025. Therefore, the EPA finds that the Petitioners timely filed the Petitions.

IV. EPA DETERMINATIONS ON HCAO PETITION CLAIMS

The HCAO Petition contains four separate claims in subsections I, II, III, and IV of the "Grounds for Objection" section, which have been labeled HCAO Claims 1, 2, 3, and 4.

³⁵ 42 U.S.C § 7661d(b)(2).

A. HCAO Claim 1: The HCAO Petitioner Claims That “EPA Must Object to the TPC Permit Because TCEQ Did Not Provide Adequate Notice for the Renewal of Draft Permit O1598.”

Petition Claim: The HCAO Petitioner claims that TCEQ’s public notice of the draft permit did not satisfy Federal and State procedural requirements because it was not published in a newspaper of general circulation in the area where the source is located in accordance with 40 C.F.R. § 70.7(h)(1) or in the municipality of Houston, as required by 30 TAC § 122.320.³⁶

The HCAO Petitioner states that TCEQ regulations prescribe “the Executive Director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant’s expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site.”³⁷

The HCAO Petitioner contends that public notice of the draft permit should have been published in a newspaper servicing the City of Houston because TPC Houston is located within the city limits of Houston.³⁸ Instead, the notice of the draft permit “was published in publications that circulate in and cater to communities outside of the limits of the City of Houston: the *Pasadena Citizen*, the *Pearland Journal*, and the *Bay Area Citizen*,” according to the HCAO Petitioner.³⁹ The HCAO Petitioner argues that these publications, owned and operated by the *Houston Chronicle*, are “zoned editions” that circulate in communities and municipalities outside of Houston.⁴⁰

As a result, the HCAO Petitioner claims that “[p]ublication of notice in the *Pasadena Citizen*, the *Pearland Journal*, and the *Bay Area Citizen* therefore does not meet the textual requirements of TCEQ rules, nor does it accomplish its intent to give adequate notice to communities around the relevant facilities.”⁴¹ The HCAO Petitioner states that “these publications service the Houston ‘area,’ and ‘area’ is the term used to describe the geographic location in which newspaper notice is to be published.”⁴² The HCAO Petitioner argues, however, that “TCEQ rules, which are incorporated into Texas’s SIP, further specify that the notice must be published in a newspaper located within the same municipality as the relevant site, or in the municipality nearest to the proposed site” and, as a result, “notice should have been published in a newspaper servicing the City of Houston, not one that specifically caters to the surrounding cities in the Houston

³⁶ HCAO Petition at 6, 11.

³⁷ *Id.* at 6 (quoting 30 TAC § 122.320(b)).

³⁸ *Id.* at 7–8.

³⁹ *Id.* at 7.

⁴⁰ *Id.*

⁴¹ *Id.* at 7–8.

⁴² *Id.* at 8. (citing 40 C.F.R. § 70.7).

metropolitan area.”⁴³ The HCAO Petitioner argues that “even if a broader interpretation of the terms ‘area’ and ‘municipality’ are applied, the zoned editions do not meet the intent of 40 C.F.R. § 70.7.”⁴⁴ According to the HCAO Petitioner, the Houston metropolitan area is “geographically vast and one of the most populous in the United States. Therefore, residents of ‘Houston proper’ are unlikely to be subscribed to, read, or even have knowledge of newspapers catering to suburban communities outside of the city limits, especially if that suburb is not geographically close to their own neighborhood.”⁴⁵

The HCAO Petitioner notes that TCEQ stated in its RTC that it had “verified that chosen publications meet the public notice publication criteria stated under 30 TAC Chapter 122.320 which states ‘a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site.’”⁴⁶ The HCAO Petitioner contends, however, that TCEQ’s response is conclusory and does not address how the chosen publications met the criteria of 30 TAC Chapter 122.320.⁴⁷ The HCAO Petitioner also disputes an affidavit signed by a representative of the *Houston Chronicle* and included in the permit record which attests that the *Pasadena Citizen* is a newspaper “generally circulated in Houston, Texas.”⁴⁸ The HCAO Petitioner expresses concern that the information in the affidavit is “misleading and/or inaccurate.”⁴⁹

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

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*”⁵⁰ 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

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 9 (quoting RTC at 20).

⁴⁷ *Id.*

⁴⁸ *Id.* at 10 (citing HCAO Petition Exhibit E, “Published Notice Verification Affidavit for Draft Permit O1598R Renewal” at 2).

⁴⁹ *Id.*

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

is not in compliance with *applicable requirements* or *requirements under this part*.”⁵¹ 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 HCAO 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”⁵² The statute does not specify how or where public notice must be provided. As the HCAO Petitioner observes, the EPA’s regulations require that all permit proceedings “provide adequate procedures for public notice.”⁵³ 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”⁵⁴

The HCAO Petitioner has not demonstrated that TCEQ failed to provide public notice of the draft permit for TPC Houston consistent with these Federal public notice requirements, which provide two different options. First, the HCAO Petitioner makes no statements or claims that TCEQ failed to provide adequate notice via a public website. Second, with respect to newspaper publication, the HCAO Petitioner concedes that the “zoned edition” publications that published notice of the draft permit (*i.e.*, the *Pasadena Citizen*, *Pearland Journal*, and *Bay Area Citizen*) “service the Houston ‘area,’ and ‘area’ is the term used [in 40 C.F.R. § 70.7(h)] to describe the geographic location in which newspaper notice is to be published.”⁵⁵ The HCAO Petitioner argues, however, that these “zoned edition” newspapers do not meet the “intent” of 40 C.F.R. § 70.7(h) because “residents of ‘Houston proper’ are unlikely to be subscribed to, read, or even have knowledge of newspapers catering to suburban communities outside of the city limits.”⁵⁶ This argument concerning the intent of 40 C.F.R. § 70.7(h) does little to counter the HCAO Petitioner’s concession that the selected newspapers service the Houston “area.” Additionally, the HCAO Petitioner does not address the fact that public notice of

⁵¹ 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).

⁵² 42 U.S.C. § 7661a(b)(6).

⁵³ 40 C.F.R. § 70.7(h).

⁵⁴ *Id.* § 70.7(h)(1).

⁵⁵ HCAO Petition at 8 (citing 40 C.F.R. § 70.7(h)).

⁵⁶ *Id.*

the draft permit was published not only in the “zoned edition” publications, but also in the *Houston Chronicle*, which is indisputably a newspaper of general circulation in the Houston area.⁵⁷

The majority of the HCAO Petitioner’s claim focuses on Texas State regulations, which contain different, more detailed public notice requirements than the Federal requirements. These State regulations require, in relevant part, that public notice of the draft permit and preliminary decision be published “in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located”⁵⁸

The HCAO Petitioner’s claim is based on an incorrect premise that the public notice requirements under 30 TAC § 122.320(b) are applicable requirements approved into the Texas SIP.⁵⁹ These regulations are not part of the EPA-approved SIP and are not federally enforceable applicable requirements.⁶⁰

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].”⁶¹ The CAA does not mandate that the EPA object to a title V permit that satisfies the requirements of the CAA and the EPA’s implementing regulations in 40 C.F.R. part 70 but does not satisfy unique State

⁵⁷ “Notice and Comment Hearing Draft Permit O1598” (*Houston Chronicle*, March 6, 2024); see also <https://www.hearst.com/newspapers/houston-chronicle> (The *Houston Chronicle* is circulated to “more than 3 million in Houston...”). The HCAO Petition does not address the public notice published in March 2024 in the *Houston Chronicle*, though the HCAO Petitioner had acknowledged this notice in its public comments on the draft permit. HCAO Petition Exhibit B, “Public Comments,” at 1.

⁵⁸ 30 TAC § 122.320(b).

⁵⁹ HCAO Petition at 8.

⁶⁰ 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 HCAO 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).

⁶¹ 42 U.S.C. § 7661d(b)(2).

regulations that go beyond those Federal requirements.⁶² 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.⁶³ Although the CAA provides that State programs may “establish[] additional permitting requirements not inconsistent with this chapter,”⁶⁴ 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.⁶⁵ Thus, the EPA’s oversight of State title V programs focuses on compliance with the minimum requirements of Federal law.⁶⁶

That is why, when the EPA updated the Agency’s title V petition-focused regulations in 2020 (“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].”⁶⁷ The Texas regulations invoked by the HCAO Petitioner do not constitute applicable requirements or requirements under 40 C.F.R. part 70. Because the HCAO 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 HCAO Petitioner’s request for an objection on this claim.

Moreover, even if the Texas regulations invoked by the HCAO Petitioner constituted requirements on which the EPA could base an objection, the HCAO Petitioner has not demonstrated that the methods of public noticing the draft permit in the selected newspapers did not satisfy State public notice requirements under 30 TAC § 122.320(b).

⁶² See 42 U.S.C. § 7661d(b).

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

⁶⁴ 42 U.S.C. § 7661e(a).

⁶⁵ 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.*

⁶⁶ 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 section 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).

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

Public notice of the draft permit was published not only in the “zoned edition” publications that the HCAO Petitioner objects to, but also in the *Houston Chronicle*, which is indisputably a newspaper of general circulation in the municipality of Houston. Further, the permit record contains two affidavits signed by a *Houston Chronicle* representative, one swearing that a “Notice of Draft Permit” was published in the *Pasadena Citizen* in October 2023 and a second swearing that a “Notice of Public Hearing” was published in the *Houston Chronicle* in March 2024.⁶⁸ Both affidavits confirm that the identified newspapers are generally circulated in the municipality of Houston, Texas.⁶⁹ While the HCAO Petitioner claims that “Pasadena is a distinct municipality to the east of Houston” and that “it would make little sense that a zone edition of a newspaper catering to a suburb would generally circulate in a major city like Houston,” these claims are insufficient to establish that the October 2023 affidavit was incorrect.⁷⁰ To the extent there is any uncertainty as to whether the *Pasadena Citizen* is a newspaper of general circulation in Houston, that uncertainty is resolved by TCEQ’s publication of an additional notice of the draft permit in the *Houston Chronicle*, which is clearly a newspaper of general circulation in Houston. Collectively, these publications satisfy the requirements for public notice in both 40 C.F.R. § 70.7(h) and 30 TAC § 122.320(b). The HCAO Petitioner fails to demonstrate that there was any flaw in TCEQ’s methods for providing public notice.

B. HCAO Claim 2: The HCAO Petitioner Claims That “EPA Must Object to the TPC Permit Because TCEQ Did Not Provide Adequate Public Access During the Title V Renewal Process.”

Petition Claim: The HCAO 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.⁷¹

The HCAO Petitioner states that “TCEQ’s Title V regulations require Title V notices contain the ‘location and availability’ of the complete permit application, the draft permit, the statement of basis, and all other relevant supporting materials in the public files of the agency.”⁷² Further, the HCAO Petitioner states that “TCEQ must make ‘available for public inspection the draft permit and the complete application

⁶⁸ See HCAO Petition Exhibit E, “Notice of Draft Federal Operating Permit Draft Permit O1598” (*Pasadena Citizen*, Oct. 25, 2023); “Notice of Notice and Comment Hearing Draft Permit O1598” (*Houston Chronicle*, Mar. 6, 2024).

⁶⁹ See “Public Notice Affidavits and Proof of Publication for FOP Revision Application – Affidavit of Publication for Air Permitting” dated Oct. 25, 2023. See also “Public Notice Affidavits and Proof of Publication for FIP O1598 Notice and Comment Hearing – Affidavit of Publication for Air Permitting” dated Mar. 6, 2024.

⁷⁰ HCAO Petition at 10.

⁷¹ *Id.* at 12.

⁷² *Id.* (quoting 30 TAC § 122.320(b)).

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.”⁷³ The HCAO Petitioner characterizes these requirements as “applicable requirements” that are part of the Texas SIP.⁷⁴

The HCAO 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.”⁷⁵ The HCAO Petitioner states that HCAO employees attempted to view the draft permit, permit application, statement of basis, and additional documents related to the TPC Houston title V permit renewal in March 2024 during the public comment period at TCEQ’s Regional Office in Houston, but were not able to gain access to the materials at this location.⁷⁶ The HCAO 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.”⁷⁷ The HCAO 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.⁷⁸

The Petitioner notes that TCEQ stated in its RTC 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 HCAO Petitioner argues that “TCEQ still must fully comply with 30 Texas Administrative Code § 122.320” and these actions did not meet the requirements of TAC § 122.320(b) or (g) because the materials were not available at the Houston Regional Office.⁷⁹ Specifically, the HCAO Petitioner acknowledges that it accessed the permit materials in person at the Park Place Regional Library in Houston, and the HCAO Petitioner does not dispute TCEQ’s assertions in its RTC that the materials were available via other avenues, including at the TCEQ Central Office in Austin and online.⁸⁰ However, the HCAO Petitioner argues that whatever separate actions TCEQ may have taken or mechanisms it may have established regarding public availability of the permit materials, these do “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.”⁸¹

⁷³ *Id.* at 19–20 (quoting 30 TAC § 122.320(g)).

⁷⁴ *Id.* at 12, 13.

⁷⁵ *Id.* at 12.

⁷⁶ *Id.* at 12–13.

⁷⁷ *Id.* at 12.

⁷⁸ *Id.*

⁷⁹ *Id.* at 14 (quoting RTC at 20–21).

⁸⁰ *Id.* at 14–16 (citing RTC at 20–21).

⁸¹ *Id.* at 15.

As a result, the HCAO Petitioner concludes 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. This failure falls short of the applicable requirements adopted by TCEQ and approved by EPA in Texas’s State Implementation Plan.”⁸²

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

As explained in the EPA’s response to HCAO Claim 1, 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*”⁸³ 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*.”⁸⁴

Here, the HCAO 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. As explained in the EPA’s response to HCAO Claim 1, 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”⁸⁵ The statute does not specify a location where permit documents must be available to the public during the public comment period. As the HCAO Petitioner observes, the EPA’s regulations require that all permit proceedings “provide adequate procedures for public notice.”⁸⁶ Further, the EPA’s regulations state that notice must be given by specified methods and must contain certain information.⁸⁷ However, the EPA’s regulations generally do not prescribe a specific location where permit record documents must be made available to the public.⁸⁸ The HCAO Petitioner does not address any of these Federal requirements under the CAA or 40 C.F.R § 70.7(h) and thus fails to demonstrate that TCEQ did not satisfy these requirements.

⁸² *Id.* at 13.

⁸³ *See supra* note 50.

⁸⁴ *See supra* note 51.

⁸⁵ *See supra* note 52.

⁸⁶ 40 C.F.R. § 70.7(h).

⁸⁷ *Id.* § 70.7(h)(1), (2).

⁸⁸ 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”

Instead, the HCAO Petitioner’s claim focuses on Texas State regulations, which contain different, more detailed public notice and availability requirements than the Federal requirements. 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.” The HCAO 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.⁸⁹ These regulations are not, however, part of the EPA-approved SIP and are not federally enforceable applicable requirements.⁹⁰

As explained in the EPA’s response to HCAO 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) will not present a basis for the EPA’s objection to a title V permit. Because the HCAO 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.

C. HCAO Claim 3: The HCAO Petitioner Claims That “EPA Must Object to the TPC Permit Because of Improper Incorporation of the PBR Supplemental Tables.”

Petition Claim: The HCAO Petitioner claims that the Permit “does not adequately incorporate or assure compliance with the applicable requirements in TPC’s PBRs [Permits by Rule] and related registrations because those requirements are not properly incorporated by reference into the Title V Permit.”⁹¹ The HCAO Petitioner also claims that the public notice was inadequate because the PBR Supplemental Tables were not accessible for public inspection as required by 30 TAC § 122.320.⁹²

Incorporation by Reference

The HCAO Petitioner states that “[e]very Title V permit must include all a source’s applicable requirements and monitoring, testing, recordkeeping, and other conditions necessary to assure compliance with those applicable requirements.”⁹³ The HCAO Petitioner explains that these applicable requirements “include the terms and

⁸⁹ HCAO Petition at 12, 13.

⁹⁰ See *supra* note 60.

⁹¹ HCAO Petition at 18.

⁹² *Id.* at 19.

⁹³ *Id.* (quoting 42 U.S.C. § 7661c(a), (c); citing 40 C.F.R. § 70.6(a)(1), (3)).

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.”⁹⁴

The HCAO Petitioner states that the Permit “fails to incorporate all applicable requirements because the purported incorporation by reference of requirements contained in TPC’s PBRs and related registrations is inadequate.”⁹⁵ According to the HCAO 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 ‘registrational number’ and the PBR Supplemental Table, which identifies required PBR monitoring.”⁹⁶ The HCAO Petitioner quotes a previous title V order regarding the location of PBR tables in which the EPA concluded that “a special condition incorporating the PBR Supplemental Table would need to include, at a minimum, the date of the application and *specific location of the table, for example by providing a page number from the application.*”⁹⁷ The HCAO Petitioner claims Special Condition 28 of the Permit, however, does not provide a specific location where the PBR Supplemental Tables can be found, but instead states that all of the NSR requirements incorporated into the Permit “shall be located with this operating permit.”⁹⁸

The HCAO Petitioner claims that while the PBR rule citations, effective dates, and “registration numbers” are referenced in tables that are included in the Permit, “the PBR Supplemental Table with its PBR monitoring was not included in the permit, located with the permit, nor was it reasonably available to the public during the public comment period.”⁹⁹ The HCAO Petitioner also claims that Special Condition 28 includes the date of the PBR Supplemental Tables “but fails to adequately specify the location of the Tables in the over 240-page application through page numbers or other locational information.”¹⁰⁰ As a result, the HCAO Petitioner claims that 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.”¹⁰¹ The HCAO Petitioner quotes the entirety of TCEQ’s relevant RTC and contends that TCEQ did “not rebut that the PBR Supplemental Tables were not attached to the permit and that the permit did not include a specific reference to their

⁹⁴ *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)).

⁹⁵ *Id.* at 20.

⁹⁶ *Id.*

⁹⁷ *Id.* at 20–21 (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*)).

⁹⁸ *Id.* at 21 (citing Permit at 15).

⁹⁹ *Id.* at 21.

¹⁰⁰ *Id.* (citing Permit at 15).

¹⁰¹ *Id.*

locations within the over 240-page permit application. This is plainly in violation of Title V and EPA’s express instructions to TCEQ regarding the PBR Supplemental Tables.”¹⁰²

The HCAO Petitioner asserts that “[t]he fact that the Supplemental Tables may not be *impossible* to publicly access does not mean they are sufficiently accessible to satisfy the purposes of Title V.”¹⁰³ According to the HCAO Petitioner, the “EPA has plainly stated that TCEQ’s incorporation by reference of PBR Supplemental Tables that are included in an application must reference the specific location of the Tables in the application.”¹⁰⁴ The HCAO Petitioner claims that “[t]he failure to specify where in the hundreds of pages of the application the PBR supplemental tables were located and how the public could find the application over the life of the permit violated Title V’s requirements. As a result of this failure, the HCAO faced difficulty in accessing the Supplemental PBR Tables, as detailed in this petition.”¹⁰⁵

Public Notice and Access

The HCAO Petitioner contends that the public notice and comment period were inadequate because the PBR Supplemental Tables were not accessible at the locations specified in the notice as required by TCEQ regulations.¹⁰⁶

The HCAO Petitioner references 40 C.F.R. § 70.7’s requirement that a title V permit renewal be subject to notice and an opportunity for public comment and a hearing.¹⁰⁷ The HCAO Petitioner also repeats its earlier references to Texas public notice and availability requirements under 30 TAC § 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 relevant supporting materials in the public files of the agency” and that the draft permit and complete applications be available for public inspection at the TCEQ central office and regional office where the site is located.¹⁰⁸

Regarding the physical location of the permit materials, the HCAO Petitioner outlines the various obstacles it faced trying to view the permit materials in person at the TCEQ Regional Office and the Park Place Regional Library in Houston.¹⁰⁹ The HCAO Petitioner claims that, contrary to TCEQ’s rules in 30 TAC § 122.320(g), HCAO was “unable to review the documents in person during the comment period during business hours at

¹⁰² *Id.* at 23.

¹⁰³ *Id.* at 24.

¹⁰⁴ *Id.* (citing *Phillips 66 Borger Order* at 15–16).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 19.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 19–20 (quoting 30 TAC § 122.320(b)(6), (g)).

¹⁰⁹ *Id.* at 21–26.

the TCEQ Regional Office.”¹¹⁰ The HCAO Petitioner states that it “cannot confirm whether or not the draft permit and application with the correct PBR Supplemental Tables were available in Austin at the Central TCEQ office during the public comment period.”¹¹¹ The HCAO Petitioner acknowledges that on April 3, 2024, HCAO received a copy of the permit application via email from TCEQ’s Houston Regional Office and that HCAO was also able to physically access the relevant application materials at the Park Place Regional Library during the public comment period.¹¹² However, the HCAO Petitioner states that the draft permit “was required to specify how the public could obtain the application . . . and where in the application the Tables were located so that the public could access them. . . .”¹¹³

In response to TCEQ’s RTC, in which the permitting authority described the various options that were available to the HCAO Petitioner to access the Permit and accompanying materials, the HCAO Petitioner contends that whatever actions TCEQ has taken or mechanisms it may have established regarding public availability of the permit materials “would not excuse TCEQ’s failure to comply with its own regulations requiring it to make the Application available at its Regional Office during business hours while the comment period was pending,” as required by 30 TAC § 122.320(g).¹¹⁴ In addition, the HCAO Petitioner argues that the various difficulties it experienced trying to view the permit materials online “make it clear why the PBR Supplemental Tables should be included in or attached to the permit, rather than left in the application.”¹¹⁵ The HCAO Petitioner asserts that “TCEQ continually indicates that CFR Online is where the public will have to go to obtain copies of PBR Supplemental Tables, through the application, during the life of the permit. However, the permit itself, the application, and related PBR documents, including the PBR Supplemental Tables, are not currently available through the CFR Online database, despite the permit having been issued.”¹¹⁶

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

The HCAO Petitioner has failed to demonstrate that the Permit improperly incorporates by reference the PBR Supplemental Tables or that the public notice did not satisfy any requirements of the CAA, applicable requirements, or requirements of 40 C.F.R. part 70.

Incorporation by Reference

As pointed out by the HCAO Petitioner, under title V of the CAA and the EPA’s part 70

¹¹⁰ *Id.* at 21.

¹¹¹ *Id.* at 26.

¹¹² *Id.* at 23–24.

¹¹³ *Id.* at 24.

¹¹⁴ *Id.* at 26.

¹¹⁵ *Id.* at 26–27.

¹¹⁶ *Id.* at 26.

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 requirements of the applicable implementation plan.”¹¹⁷ 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.¹¹⁸ 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.¹¹⁹

The HCAO Petitioner cites the EPA’s previous direction in the *Phillips 66 Borger Order* stating “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.”¹²⁰ 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

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

¹¹⁸ 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).

¹¹⁹ *White Paper 2* at 37; see, e.g., *Phillips 66 Borger Order* at 15.

¹²⁰ *Phillips 66 Borger Order* at 16.

project application and the associated project number.¹²¹ Similarly here, as TCEQ states in its RTC, Special Condition 28 of the Permit incorporates by reference “the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated July 22, 2022, in the application for project 33608.”¹²² This is generally consistent with the EPA’s guidance and the EPA’s agreements with TCEQ on the topic.¹²³

To the extent the HCAO 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 HCAO Petitioner’s claim that the PBR Supplemental Tables should be physically attached to the Permit, the HCAO Petitioner identifies no legal requirement 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.¹²⁴ There are multiple ways to make such documents available to the public.

With respect to the public accessibility of the incorporated materials, TCEQ explains in its RTC that “a copy of the renewal application (including the OP-PBR SUP form) is considered to be a part of the application representation and hence it is a part of the official permit record for FOP O1598/Project 33608.”¹²⁵ TCEQ states that the official permit record is accessible at TCEQ’s Central Office in Austin and is also available at TCEQ’s CFR Online website upon issuance of the project 34921.¹²⁶

To the extent that the HCAO Petitioner claims that the permit application and PBR Supplemental Table were not available online, the HCAO 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).¹²⁷ Here, the HCAO 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 HCAO Petitioner acknowledges that it cannot confirm whether the permit and PBR

¹²¹ 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*).

¹²² RTC at 22 (quoting Permit at 15).

¹²³ 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).

¹²⁴ 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.

¹²⁵ RTC at 22.

¹²⁶ *Id.* at 22–23.

¹²⁷ *Valero Tank Farm Order* at 16–17; *White Paper 2* at 37 n.23.

Supplemental Tables were available at TCEQ’s Central Office in Austin because it did not attempt to access the documents at that office. Further, to the extent that the HCAO Petitioner prefers digital access, the Petition does not demonstrate that the HCAO Petitioner was unable to obtain the files via other means (*e.g.*, by requesting the files digitally). In fact, the HCAO Petitioner concedes that TCEQ did provide the files digitally upon request.

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

Public Notice and Access

With respect to the portion of the claim asserting that issuance of the Permit violated public notice or access requirements in TCEQ regulations, the EPA denies this claim for the reasons explained in the Agency’s response to HCAO Claim 2. Again, here, the HCAO Petitioner has not identified any Federal regulations related to public notice or access that require PBR Supplemental Tables or permit applications to be available at a specific location during the public comment period. This portion of the HCAO Petitioner’s claim focuses on Texas State regulations in 30 TAC § 122.320(b) and (g), which contain different, more detailed public notice and availability requirements than the Federal requirements. These regulations are not part of the EPA-approved SIP and are not federally enforceable applicable requirements.¹²⁸ Because the HCAO 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 HCAO Petitioner’s request for an objection on this claim.

D. HCAO Claim 4: The HCAO Petitioner Claims That “EPA Must Object to the TPC Permit Because Vague and Unclear Language Used in the Permit Renders it Unenforceable as a Practical Matter.”

Petition Claim: The HCAO Petitioner claims that the following terms in the Permit contain vague and unclear language that is not enforceable as a practical matter: Conditions 3(A)(iv)(1), 3(A)(iv)(2), 3(A)(iv)(3), 3(A)(iv)(4), 3(A)(iv)(5)(a)–(b), 3(B)(iii)(1), 3(B)(iii)(2), 3(B)(iii)(3), 3(B)(iii)(4)(a), 3(C), 6(A)(i) and (iii), and 26.¹²⁹

The HCAO Petitioner recites 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.¹³⁰ The HCAO Petitioner also states that “[p]eriodic monitoring in the permit must be ‘sufficient to yield reliable data from the relevant time period that are

¹²⁸ See *supra* note 60.

¹²⁹ HCAO Petition at 28 (citing Permit at 3–7, 14).

¹³⁰ *Id.*

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.'"¹³¹ In addition, the HCAO Petitioner cites 40 C.F.R. § 70.6(a)(3)(i)(C), which requires permits to contain "requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods."¹³² The HCAO Petitioner alleges that TCEQ has failed to meet these applicable requirements by "using vague and unclear language throughout the permit."¹³³

The HCAO Petitioner identifies six allegedly vague terms throughout the Permit that it claims render the Permit unenforceable as a practical matter.¹³⁴

1. "Operating"

The HCAO Petitioner states that the term "operating," as used in Special Conditions 3(A)(iv)(1) and 3(B)(iii)(1), is unclear as to whether "a unit is capable of operating for the entire quarter or is actually operating for the entire quarter."¹³⁵ The HCAO Petitioner argues that this ambiguity is problematic because, "[d]epending on which interpretation is used, the permit's requirements are different."¹³⁶

The HCAO Petitioner states that TCEQ's RTC does not address the 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] are 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 requirements and are used by EPA and industry trade organizations."¹³⁷ The HCAO Petitioner claims that while TCEQ asserts the term "operating" 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."¹³⁸ In addition, the HCAO 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."¹³⁹

2. "Shall be Maintained"

¹³¹ *Id.* (quoting 40 C.F.R. § 70.6(a)(3)(i)(B)).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 30–36.

¹³⁵ *Id.* at 30.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* (citing RTC at 29; 30 TAC § 122.10; 40 C.F.R. § 70.2).

¹³⁹ *Id.*

The HCAO Petitioner claims that the phrase “shall be maintained,” as used in Special Conditions 3(A)(iv)(3), 3(B)(iii)(2), and 26, is too vague to be enforceable.¹⁴⁰ The HCAO Petitioner states that “Conditions 3(A)(iv)(3) and 3(B)(iii)(2) state ‘records of all observations shall be maintained’ and Condition 26 states that records ‘sufficient to demonstrate compliance with the established limits shall be maintained.’”¹⁴¹

The HCAO Petitioner critiques TCEQ’s RTC, arguing that “TCEQ used the same arguments 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’ is so vague and unclear that it renders each Special Condition in the permit as a whole unenforceable as a practical matter.”¹⁴² The HCAO Petitioner argues that special terms and conditions in a permit must be clear and enforceable.¹⁴³ The HCAO Petitioner also argues 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.¹⁴⁴

The HCAO Petitioner contends that even if a phrase is understood by the EPA and industry trade organizations, “that does not necessarily mean the phrase is clear and understandable.”¹⁴⁵ The HCAO Petitioner also critiques TCEQ’s argument in its 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 O1598.”¹⁴⁶ The HCAO 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) and 3(B)(iii)(2) any clearer.¹⁴⁷

Finally, the HCAO Petitioner claims that TCEQ does not respond to the HCAO Petitioner’s argument regarding Special Condition 26, which requires that records “sufficient to demonstrate compliance with the established limits shall be maintained.”¹⁴⁸ The HCAO Petitioner argues that this phrase “does not demonstrate what needs to be recorded, how the record is to be recorded, or how the record is meant to ensure compliance” and that it is “so vague and unclear that it is not enforceable as a practical matter.”¹⁴⁹

¹⁴⁰ *Id.* at 31.

¹⁴¹ *Id.* (quoting Permit at 4, 5).

¹⁴² *Id.*

¹⁴³ *Id.* at 31–32 (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*)).

¹⁴⁴ *Id.* at 32 (citing 30 TAC § 122.10; 40 C.F.R. § 70.2).

¹⁴⁵ *Id.*

¹⁴⁶ RTC at 29.

¹⁴⁷ Permit at 32.

¹⁴⁸ *Id.* (quoting Permit at 14–15).

¹⁴⁹ *Id.*

3. "RO"

The HCAO Petitioner claims that the term "RO" is referenced "[i]n multiple Special Conditions . . . but this term is not defined anywhere in the text of the Permit nor is it included in the Permit's acronym list."¹⁵⁰ The HCAO Petitioner notes that the Permit states "the RO may certify compliance with relevant regulations when there are no visible emissions present and provides instructions for the RO when there are visible emissions present."¹⁵¹

The HCAO Petitioner recounts how it requested TCEQ to define the term "RO" in the Permit's attached acronym sheet, but TCEQ stated in the 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."¹⁵² The HCAO Petitioner argues that even if the term "RO" is well-known in the field of air permitting, "that does not mean TCEQ can include an unexplained acronym in the permit."¹⁵³ Lastly, the HCAO 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."¹⁵⁴ Because the Permit's use of the term "RO" is "so unclear as to make the permit unenforceable as a practical matter," the HCAO Petitioner claims that "TCEQ should add the term and its meaning to the Permit's acronym table."¹⁵⁵

4. "Significant Odor"

The HCAO Petitioner states that Special Conditions 6(A)(i) and 6(A)(iii) of the Permit "require the Facility comply with specific control and inspection requirements regarding the filling of stationary gasoline vessels."¹⁵⁶ The HCAO Petitioner notes that Special Condition 6(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," and that Special Condition 6(A)(iii) references 30 TAC § 115.224(1), which reads "inspections for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer shall be conducted at gasoline dispensing facilities. Gasoline transfer shall be discontinued immediately when any liquid leaks, visible vapors, or significant odors are observed and shall not be resumed until the observed issue is repaired."¹⁵⁷

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 32–33 (citing Special Conditions 3(A)(iv)(5)(a)–(b) & 3(B)(iii)(4)(a)–(b); Permit at 5, 6).

¹⁵² *Id.* at 33 (quoting RTC at 30).

¹⁵³ *Id.*

¹⁵⁴ *Id.* (citing 40 C.F.R. § 70.2).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* (citing Permit at 7).

¹⁵⁷ *Id.* at 33–34 (quoting 30 TAC §§ 115.222(3), 115.224(1)).

The HCAO 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.”¹⁵⁸ The HCAO Petitioner alleges that, in Special Condition 6(A)(i), the Permit “adds in the word ‘significant’ without defining it, muddying a relatively clear burden in the rule of a leak detected by *any* smell of gasoline.”¹⁵⁹ The HCAO Petitioner states that TCEQ did not respond to its arguments with respect to “significant odor” in the RTC.¹⁶⁰

5. “Manufacturer’s Specifications”

The HCAO Petitioner claims that the term “manufacturer’s specifications” is used throughout the Periodic Monitoring Summaries in the Permit to specify how heaters and boilers should be maintained, calibrated, and operated.¹⁶¹ The HCAO Petitioner contends that the “manufacturer’s specifications” are neither explained nor defined in the Permit or any accompanying materials in the permit record.¹⁶²

According to the HCAO Petitioner, TCEQ states in its RTC that the text found in the compliance assurance monitoring (CAM) description is included for “informational purposes only” and is not intended to replace the applicable requirements for the flare units listed in the applicable requirements summary of the Permit.¹⁶³ The HCAO Petitioner acknowledges the language of the periodic monitoring summary and does not contend that it replaces or takes precedence over the language in the applicable requirements summary, such as the flare requirements under 30 TAC § 115.722(c)(1). Instead, the HCAO Petitioner argues the phrase “manufacturer’s specifications” is not defined, thereby rendering it “vague and unclear,” and “references third-party documents that create requirements for monitoring at the facility, but are not found within the permit record.”¹⁶⁴

The HCAO Petitioner states that permits can include information via incorporation by reference if applicability issues and compliance obligations are clear, the permit contains additional terms and conditions necessary to assure compliance with all applicable requirements, and the cited requirement “is part of the public docket or is otherwise readily available, current, clear and unambiguous, and currently applicable.”¹⁶⁵ However, the HCAO Petitioner claims that the “manufacturer’s specifications” at issue “do not create clear compliance obligations and the document(s) are not part of the public docket nor otherwise readily available, current, clear and

¹⁵⁸ *Id.* at 34.

¹⁵⁹ *Id.* (citing Permit at 7).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* (quoting Permit at 193, 200–09).

¹⁶³ *Id.* (citing RTC at 30).

¹⁶⁴ *Id.* at 34–35.

¹⁶⁵ *Id.* at 35 (quoting *Tesoro Order*).

unambiguous, or currently applicable.”¹⁶⁶ As a result, the HCAO Petitioner claims that TCEQ “attempts to create monitoring requirements in the Periodic Monitoring Summary by referencing an unknown and unincorporated third-party document” which is an “improper use of [incorporation by reference] and does not meet the applicable requirements of the Clean Air Act which require permits to contain all appropriate and relevant monitoring information and the terms and test methods of unit calibrations.”¹⁶⁷ The HCAO Petitioner “requests that the permit holder include the ‘manufacturer’s specifications’ it refers to in the permit application and thus the permit record.”¹⁶⁸

6. “Promptly”

The HCAO Petitioner claims that the term “promptly,” as used in certain NSR provisions of the Permit, “is so vague and unclear that it renders these provisions of the permit unenforceable as a practical matter.”¹⁶⁹ The HCAO Petitioner claims that “the word could mean anything: an hour, twenty-four hours, a week, as soon as the relevant employee can get around to it. There is no single, enforceable definition.”¹⁷⁰

According to the HCAO Petitioner, TCEQ argues in its RTC that the definition of “promptly” is contained in the “applicable regulation or work practice standard” that defines or creates the applicable requirements for a unit.¹⁷¹ TCEQ provides 30 TAC § 115.178 as an example which requires, 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.”¹⁷² However, the HCAO Petitioner argues that this is an unhelpful example as that regulation “is not cited in any of the relevant NSR provisions, or any or [*sic*] the NSR permits at all.”¹⁷³ The HCAO Petitioner claims that none of the NSR provisions at issue “contain any reference to any such ‘applicable regulation of work practice standard’” and that “there are no applicable regulations and no workplace standards cited” in the Permit.¹⁷⁴ The HCAO Petitioner requests TCEQ “replace the open-ended term ‘promptly’ with an outer time limit like ‘within 24 hours.’”¹⁷⁵

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

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 36 (citing Permit at 297 (NSR Permit 22052 Special Condition 12(E)(3)), 317 (NSR Permit 46307 Special Condition 28(C)), 349 (NSR Permit 46426 Special Condition 8), and 367 (NSR Permit 19806 Special Condition 17(C)).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* (quoting RTC at 30).

¹⁷² RTC at 30; *see* 30 TAC § 115.178.

¹⁷³ HCAO Petition at 36.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

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.”¹⁷⁶ 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.¹⁷⁷ For example, the EPA has granted a petition claim in which ambiguity rendered monitoring conditions insufficient to assure compliance with emission limits.¹⁷⁸ 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”¹⁷⁹ 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.¹⁸⁰

1. “Operating”

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

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.¹⁸¹

The HCAO 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 HCAO 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 HCAO Petitioner’s request for an objection on this portion of Claim 4.

¹⁷⁶ *In the Matter of Louisville Gas and Electric Company, Trimble County*, Order on Petition at 24 (Sept. 10, 2008).

¹⁷⁷ *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*).

¹⁷⁸ *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).

¹⁷⁹ *In the Matter of Midwest Generation, LCC, Crawford Generating Station*, Order on Petition No. V-2004-2 at 19 (Mar. 25, 2005).

¹⁸⁰ *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.

¹⁸¹ Permit at 4, 5.

2. “Shall be maintained”

The HCAO Petitioner has not demonstrated that the phrase “shall be maintained” is ambiguous. This phrase, as used in the Permit terms at issue, 3(A)(iv)(3), 3(B)(iii)(2), and 26, unambiguously requires TPC Houston to maintain certain records, consistent with the general terms and conditions of the Permit and 40 C.F.R. 70.6(a)(3)(ii)(b).¹⁸²

The HCAO Petitioner’s underlying concern, at least with respect to Special Condition 26, appears only loosely related to the phrase “shall be maintained” itself. Instead, the HCAO Petitioner appears concerned about the alleged lack of clarity regarding what types of records are maintained and how those records are used to assure compliance. The HCAO Petitioner has not demonstrated that the Permit fails to specify the records that must be maintained to assure compliance. This issue was previously identified by the EPA in the context of other permits, and TCEQ has resolved the issue in all permits (including the Permit at issue here) by specifying which records must be maintained within its PBR Supplemental Tables.¹⁸³ This is evident in Special Condition 26 of the Permit, which states “the permit holder shall comply with certified registrations submitted to TCEQ for purposes of establishing federally enforceable emission limits.”¹⁸⁴ The HCAO Petitioner neglects to consider the more specific recordkeeping requirements in the PBR Supplemental Tables and has not demonstrated that those requirements are insufficient to assure compliance. Therefore, the EPA denies the HCAO Petitioner’s request for an objection on this portion of Claim 4.

3. “RO”

With respect to the term “RO,” as TCEQ explains in its 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.¹⁸⁵ 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.¹⁸⁶ In its RTC, TCEQ also explains that a list of commonly used air permit-related abbreviations, including RO, is publicly accessible on TCEQ’s website.¹⁸⁷ For these reasons, the HCAO Petitioner has failed to demonstrate that there

¹⁸² 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.”

¹⁸³ See, e.g., *Valero Houston I Order* at 22–24.

¹⁸⁴ Permit at 14–15.

¹⁸⁵ See 30 TAC § 122.165(c) and 40 C.F.R. § 70.2.

¹⁸⁶ See https://www.tceq.texas.gov/permitting/air/titlev/ro_and_certs.html.

¹⁸⁷ RTC at 30.

is any ambiguity in the term “RO.” Additionally, even if there were ambiguity, the HCAO 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 HCAO Petitioner’s request for an objection on this portion of Claim 4.

4. “Significant Odor”

Special Conditions 6(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.”¹⁸⁸

The HCAO 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.¹⁸⁹

While the HCAO Petitioner contends that the use of the term “significant” in this instance is “muddying a relatively clear burden in the rule of a leak detected by *any* smell of gasoline,” the EPA disagrees.¹⁹⁰ Neither of the underlying applicable requirements apply to “any” smell of gasoline, as the HCAO Petitioner suggests. 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.” 30 TAC § 115.224(1) requires, as it pertains to inspection requirements for gasoline transfer operations, that “[g]asoline transfer shall be discontinued immediately when any liquid leaks, visible vapors, or significant odors are observed.” Thus, the phrase “significant odor” as used in Special Condition 6(A)(iii) is taken directly from the underlying applicable requirement.

The HCAO Petitioner’s alternative suggestion to redefine these requirements in the Permit to apply to “*any* smell of gasoline” or “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 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.

¹⁸⁸ Permit at 7.

¹⁸⁹ The EPA notes that audio, visual, and olfactory (AVO) inspections are often used for checking for leaks of odorous or toxic organic compounds.

¹⁹⁰ HCAO Petition at 34.

In summary, the HCAO 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. The EPA, therefore, denies the HCAO Petitioner’s request for an objection on this portion of Claim 4.

5. “Manufacturer’s Specifications”

With respect to the term “manufacturer’s specifications,” the HCAO Petitioner takes issue with not only the alleged vagueness of the term, but also the term’s use throughout the Permit’s Periodic Monitoring Summaries in which it “references to third-party documents,” which the HCAO Petitioner alleges are “not part of the public docket or otherwise readily available, current, clear and unambiguous, and currently applicable.”¹⁹¹

Notably, as explained by TCEQ, the “manufacturer’s specifications” text at issue is “for informational purposes only” and does not replace the enforceable requirements listed in the Applicable Requirements Summary of the Permit.¹⁹² For example, according to the Permit’s Applicable Requirements Summary, Unit 1B-2501 (the Dehydro No. 2 Unit Feed Heater cited by the HCAO Petitioner) is subject to numerous monitoring and testing requirements for CO under 30 TAC § 117 Subchapter B.¹⁹³

The HCAO Petitioner fails to demonstrate that additional detail related to “manufacturer’s specifications” and the installation, operation, and maintenance of the monitoring instrumentation is necessary to assure compliance with the Permit’s terms. The HCAO Petitioner does not provide any analysis of how the manufacturer’s specifications regarding monitoring instrumentation are related to any underlying emission limits, and the HCAO Petitioner does not evaluate any of the other associated monitoring requirements associated with those limits. Thus, the HCAO Petitioner fails to demonstrate that further detail regarding manufacturer specifications is necessary to assure compliance with those limits.¹⁹⁴ Therefore, the EPA denies the HCAO Petitioner’s request for an objection on this portion of Claim 4.

6. “Promptly”

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

¹⁹¹ Petition at 35.

¹⁹² RTC at 30.

¹⁹³ See Permit at 63–64; see also 30 TAC §§ 117.335, 117.340, 117.80000.

¹⁹⁴ See 40 C.F.R. § 70.12(a)(2)(ii).

In its review of the four NSR provisions that contain the term “promptly,” the HCAO 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.¹⁹⁵ The HCAO Petitioner correctly notes that there is not a single definition of “promptly” in this instance. What the HCAO 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 HCAO 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 replaced with an outer time limit “like within 24 hours”—to assure compliance with the underlying applicable requirements.¹⁹⁶ Therefore, the EPA denies the HCAO Petitioner’s request for an objection on this portion of Claim 4.

V. EPA DETERMINATIONS ON AAH PETITION CLAIMS

The AAH Petition contains four claims throughout Sections IV.A and IV.B, which have been reorganized and relabeled. The claim in Section IV.A has been labeled AAH Claim 1, and the three claims in Section IV.B have been re-organized and labeled AAH Claims 2, 3, and 4.

A. AAH Claim 1: The AAH Petitioner Claims That “The Proposed Permit Fails to Identify Monitoring, Testing, and Recordkeeping Methods That Assure Compliance with Applicable Permit by Rule (‘PBR’) Requirements for Unregistered PBR Projects at TPC’s Houston Plant.”

Petition Claim: The AAH Petitioner asserts that each title V permit must include all applicable emission limitations and standards as well as monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements.¹⁹⁷ The AAH Petitioner further contends that the rationale for the selected monitoring requirements must be clear and documented in the permit record.¹⁹⁸

¹⁹⁵ See Permit at 297 (NSR Permit 22052 Special Condition 12(E)(3)), 317 (NSR Permit 46307 Special Condition 28(C)), 349 (NSR Permit 46426 Special Condition 8), and 367 (NSR Permit 19806 Special Condition 17(C)).

¹⁹⁶ HCAO Petition at 36.

¹⁹⁷ AAH Petition at 5–6 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(2), (3), (c)(1); *In the Matter of Wheelabrator Baltimore*, Order on Petition at 10 (Apr. 14, 2010)).

¹⁹⁸ *Id.* at 6 (citing 40 C.F.R. § 70.5(a)(5); *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03 at 7–8 (Jan. 31, 2011)).

The AAH Petitioner claims that the Permit fails to assure compliance with requirements related to unregistered PBRs for several reasons. First, the AAH Petitioner asserts that the Permit fails to provide enough information to establish how applicable limits apply to units authorized by unregistered PBRs. Second, the AAH Petitioner contends that the Permit fails to specify monitoring, testing, and recordkeeping requirements that assure compliance with emission limits and operating requirements in those unregistered PBRs. Relatedly, the AAH Petitioner argues that the permit record does not contain a reasoned justification for TCEQ's determination that monitoring, testing, and recordkeeping requirements in the Permit assure compliance with limits established by unregistered PBRs.¹⁹⁹

The AAH Petitioner states that TPC Houston has claimed a number of unregistered PBRs to authorize a variety of projects at the facility, and that the PBR requirements listed in the Permit's NSR Authorization References attachment, as well as PBR Supplemental Tables, are applicable requirements.²⁰⁰ In addition to the limits and operating requirements established by the specific PBR rules, the AAH Petitioner asserts that each unit that is authorized by PBR is also subject to emission limits in the general PBR rule at 30 TAC § 106.4.²⁰¹ Specifically, the AAH Petitioner states that under 30 TAC § 106.4(a)(2), each facility (or piece of emitting equipment) may be authorized to emit up to 25 tons per year (tpy) of VOC.²⁰²

The AAH Petitioner claims that it is unclear how these general PBR limits in 30 TAC § 106.4 apply to tanks and other units at TPC Houston that were authorized by PBRs.²⁰³ The AAH Petitioner suggests that the full 25 tpy limit cannot apply individually to each emission unit because some projects authorized by PBR may have involved multiple units, and if multiple units were each authorized at 25 tpy VOC, the project would constitute a major modification and would not be eligible for authorization by PBR.²⁰⁴ The AAH Petitioner thus concludes that each individual unit authorized as part of a single project would need to be subject to a limit lower than 25 tpy. The AAH Petitioner

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 4–5 (citing 40 C.F.R. § 70.2; Permit Special Condition No. 28). The Petitioner specifically identifies the following PBRs used to authorize the following emission units: PBR Nos. 106.472 (for units T-33, T-34, T-83, T-94, T-100, T-101, T-102, T-105, T-106, T-107, T-108, T-110, T-428, T-910549, T-9203960, 1F-511, IF-963, 31F-2030, 4F-4473, 6F-433, T-73, T-74, 1F-4242, 1F-963, PIBFRAC1, PIBFRAC2, PIBFRAC1LD, PIBFRAC2LD, and PIBWW CaCL2), 106.474 (for unit T-99), 106.476 (for units Tanks 1 through 29, Tanks 41 through 44, Tanks 49 through 57, T-111, T-112, Tank 186, Tank 850, Tank 851, and MTBE Rail), 106.183 (for units Lab Blr 1, and Lab Blr 2), 106.263 (for units Des Vac, 2C CarbRem, Tank 54, T-84, OIL-SEP, DMFWashTow, 45A Maint, 45B Maint, FUG-REGV, and T-46), and 106.373 (for units Tank 850 and Tank 851), and 106.371 (for units F-CTRENT and C-10).

²⁰¹ *Id.* at 5, 6 (citing Permit Special Condition No. 29).

²⁰² *Id.* at 8.

²⁰³ *Id.* at 6, 8–9, 10 (citing *In the Matter of Motiva Enterprises Port Arthur Refinery*, Order on Petition No. VI-2016-23 at 29 (May 31, 2018) (*Motiva Order*)).

²⁰⁴ *Id.* at 8 (citing 30 TAC §§ 106.4(a)(2), 116.12 Table 1).

contends that nothing in the permit record or the PBR Supplemental Table indicates whether units authorized by PBR were authorized individually or as part of a project including multiple units, and therefore it is “impossible to identify applicable 106.4 emission limits for units at the Houston Plant” authorized by unregistered PBRs.²⁰⁵ The AAH Petitioner claims that TCEQ did not respond to comments raising this issue.²⁰⁶

Next, the AAH Petitioner claims that even if it were clear how various requirements applied to units at TPC Houston, the Permit fails to identify sufficient monitoring to assure compliance with those requirements. The AAH Petitioner notes that Special Condition No. 30, which requires TPC Houston to “maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment.”²⁰⁷ The AAH Petitioner contests TCEQ’s reliance on this provision, asserting that the “EPA has repeatedly held in objections to Texas Title V permits, the generic requirements established by Special Condition Nos. 29 and 30 are too vague to assure compliance with applicable requirements and deprive members of the public of their opportunity to evaluate and comment on the specific methods” facilities will use to determine compliance with PBR Requirements.²⁰⁸

The AAH Petitioner notes that, in resolving previous EPA objections to title V permits, TCEQ has agreed to require facilities to specify monitoring methods to assure compliance with PBR requirements in a PBR Supplemental Table that is incorporated by reference into the title V permit.²⁰⁹ The AAH Petitioner claims that the PBR Supplemental Table in this case does not assure compliance with PBR requirements because it does not actually identify the relevant monitoring methods and calculation procedures and generally fails to explain how compliance with the applicable PBR requirements for unregistered PBRs will be determined.²¹⁰

The AAH Petitioner then discusses a number of unregistered PBRs included in the PBR Supplemental Table, including 30 TAC §§ 106.472, 106.474, 106.476, 106.183, 106.263, 106.373, and 106.371, which authorize numerous different emission units and activities.²¹¹ The AAH Petitioner states that the monitoring in the PBR Supplemental Table includes phrases such as: “maintain throughput for tank,” “maintain throughput for loading,” “records of chemicals stored and throughput,” “records of chemicals stored,” “number of railcars,” “maximum firing rate,” “duration of activity,” “number of cleanings,” “number of decants,” “number of gasket replacements,” “maintain record of

²⁰⁵ *Id.* at 8–9.

²⁰⁶ *Id.* at 15.

²⁰⁷ *Id.* at 5.

²⁰⁸ *Id.* at 16 (citing RTC at 2; *In the Matter of BP Amoco Chemical Company*, Order on Petition No. VI-2017-6 at 33–37 (July 20, 2021)).

²⁰⁹ *Id.* at 6–7 (citing Permit Special Condition No. 28).

²¹⁰ *Id.* at 7, 9, 16.

²¹¹ See Petition at 7–15.

cooling media,” and “cooling tower circulation rate.”²¹² Addressing each in turn, the AAH Petitioner argues that it is unclear how monitoring this information will assure compliance with applicable requirements, including the emission limits in 30 TAC § 106.4 as well as the more specific limits and other requirements in individual PBR rules.²¹³ Further, for some of these PBRs (*e.g.*, 30 TAC § 106.263), the AAH Petitioner argues it is impossible to know which of many different limits and requirements apply to different activities at TPC Houston, and therefore to determine whether the Permit’s monitoring requirements assure compliance with the applicable limits.²¹⁴

The AAH Petitioner states that in responding to comments, TCEQ argues that requirements from other (non-PBR) NSR permit authorizations and other EPA and Texas regulations all work together to assure compliance with the emission limits and standards in unregistered PBR authorizations claimed by TPC Houston.²¹⁵ The AAH Petitioner claims, however, that the Permit does not itself require TPC Houston to use the monitoring requirements in NSR permits or Texas and EPA regulations to determine compliance with applicable PBR requirements.²¹⁶ Further, the AAH Petitioner argues that the permit record fails to include a justification for TCEQ’s determination that such requirements are sufficient to assure compliance with PBR requirements.²¹⁷

EPA Response: For the following reasons, the EPA grants in part and denies in part this Petition claim and objects to the issuance of the Permit.

All title V permits must contain conditions sufficient to assure compliance with all applicable requirements and permit terms, including through testing, monitoring, recordkeeping, and reporting requirements.²¹⁸

The AAH Petitioner has failed to demonstrate that the Permit fails to provide enough information to establish how the general emission limits in 30 TAC § 106.4 apply to units at TPC Houston authorized by unregistered PBRs. Although the EPA previously objected to several title V permits in Texas based on this issue, the issue has since been resolved through additional correspondence between the EPA and TCEQ.²¹⁹ Specifically, the EPA explained:

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at 12–14.

²¹⁵ *Id.* at 15, 17–18 (citing RTC at 2).

²¹⁶ *Id.*

²¹⁷ *Id.* at 16.

²¹⁸ 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(1), (a)(3), (c)(1); *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008).

²¹⁹ *See, e.g., Motiva Order* at 27–32; *In the Matter of Pasadena Refining System, Pasadena Refinery*, Order on Petition No. VI-2016-20 at 10–15 (May 1, 2018) (*Pasadena Refinery Order*).

The TCEQ has interpreted the emission limits prescribed in 30 TAC §106.4(a) as both emission thresholds and default emission limits. The emission limits in 30 TAC §106.4(a) are all considered applicable to each facility [defined in 30 TAC § 116.10(4) as each individual emissions unit] as a threshold matter to ensure that the owner/operator qualifies for the PBR authorization. Those same emission limits are also the default emission limits if the specific PBR does not further limit emissions or there is no lower, certified emission limit claimed by the owner/operator.²²⁰

Because it is clear that the limits in 30 TAC § 106.4(a) apply to each individual emission unit covered by a PBR, this part of the AAH Petitioner's claim presents no basis for the EPA's objection.²²¹ Therefore, the EPA denies the AAH Petitioner's request for an objection on this portion of AAH Claim 1.

Next, regarding the AAH Petitioner's claim that the Permit fails to identify monitoring to assure compliance with applicable PBR requirements for any units covered by an NSR authorization or title V permit requirement (in addition to PBR requirements), the AAH Petitioner has failed to demonstrate that those additional requirements are inadequate to demonstrate compliance with general PBR limits in 30 TAC § 106.4(a).²²² In responding to comments, TCEQ states that for a number of units covered by unregistered PBRs, those units are also authorized under NSR permits that include monitoring, recordkeeping, reporting, and testing requirements.²²³ TCEQ also notes that a number of units are listed in the Applicable Requirements Summary (ARS) Table that includes "extensive monitoring, reporting, recordkeeping, and testing (MRRT) requirements that are sufficient to demonstrate compliance with applicable state and federal regulations."²²⁴ TCEQ's RTC identifies each of the specific additional monitoring requirements at issue. The AAH Petitioner generally asserts that the permit record fails

²²⁰ *Valero Houston I Order* at 20; *In the Matter of Blanchard Refining Company, Galveston Bay Refinery*, Order on Petition No. VI-2017-7 at 15–16 (Aug. 9, 2021); see Letter from Michael Wilson, Director, Air Permits Division, TCEQ, to Jeff Robinson, Director, Air and Radiation Division, Region 6, U.S. EPA, Executive Director's Response to EPA Objections Regarding Permits by Rule (June 13, 2018).

²²¹ Further, the Petitioners are incorrect to suggest that these limits cannot apply to each individual emission unit in cases where multiple units are authorized as a single project under a single PBR. As the EPA has previously explained, the fact that units may be subject to generic emission limits that cumulatively exceed thresholds for major NSR applicability (and PBR eligibility) does not necessarily mean that a particular project would trigger major NSR (and be ineligible for a PBR). Emission limits are likely to be largely irrelevant to questions of major NSR applicability in situations in which maximum potential or projected actual emissions from a unit are significantly lower than generic emission limits established in rules like 30 TAC § 106.4. See *Motiva Order* at 30 n.39; *Pasadena Refinery Order* at 14 n.18.

²²² This conclusion applies to the following units: T-83, T-94, T-100, T-101, T-102, T-105, T-106, T-107, T-108, T-110, T-428, T-910549, T9203960, 1F-511, 1F-963, 31F-2030, 4F-4473, T-73, T-74, 1F-963, T-99, T-111, T-112, T-84, OIL-SEP, FUG-REGV, T-46, and C-10. Additionally, Tanks T-33 and T-34 have been removed from TPC Houston so the claim with respect to those tanks is moot. See Permit Application, Table 2 at 6 of 12 (Jan 15, 2025).

²²³ RTC at 11–13.

²²⁴ *Id.*

to include a justification that such requirements are sufficient to assure compliance with PBR requirements, but the AAH Petitioner does not provide any specific analysis of the NSR and title V requirements identified by TCEQ, or explain why they are insufficient.²²⁵ Finally, these units are arguably subject to more stringent limits than the general PBR limits. Including monitoring requirements to assure compliance with those more stringent limits would presumably assure compliance with the general PBR limits. The AAH Petitioner has not attempted to demonstrate that this is not the case. Therefore, the EPA denies the AAH Petitioner's request for an objection on this portion of AAH Claim 1.

In regard to the remaining units not covered by an NSR authorization or other title V permit requirements—that is, units covered solely by an unregistered PBR—the AAH Petitioner has demonstrated that the Permit fails to assure compliance with applicable PBR requirements.²²⁶ In general, the monitoring requirements in the PBR Supplemental Table are too vague to assure compliance with general PBR emission limits under 30 TAC § 106.4(a). For example, monitoring requirements such as “maintain throughput for tank” and “records of chemicals stored and throughput” may be important factors in calculating emissions, but neither the Permit nor the permit record contain sufficient information to determine how factors such as throughput are used in determining emissions and therefore demonstrating compliance with the applicable numerical emission limits in 30 TAC § 106.4(a). Additionally, neither the Permit nor the permit record explain the relationship between the vaguely described parameters that must be monitored and the additional, more specific limits and operational requirements in individual PBR rules, so it is impossible to assess whether the monitoring is sufficient to assure compliance with those limits. These problems are particularly acute for complex PBRs (like 30 TAC § 106.263) that include multiple different requirements whose applicability to different emission units and activities is not clear. TCEQ's RTC does not provide any substantive, technical justification in response to the specific public comments raising concerns with these monitoring requirements for units authorized solely by unregistered PBRs.²²⁷ Therefore, the EPA grants the AAH Petitioner's request for an objection on this portion of AAH Claim 1 and objects to issuance of the Permit.

Direction to TCEQ: For any units solely authorized by a PBR (and not subject to any requirements in an underlying NSR permit or the ARS table) TCEQ should amend the monitoring and recordkeeping requirements in the PBR Supplemental Table to ensure that those requirements are specific enough to assure compliance with applicable

²²⁵ AAH Petition at 6, 16.

²²⁶ This conclusion applies to the following units: 6F-433, 1F-4242, PIBFRAC1, PIBFRAC2, PIBFRAC1LD, PIBFRAC2LD, PIBWW CaCL2, Tanks 1 through 29, Tanks 41 through 44, Tanks 49 through 57, Tank 186, Tank 850, Tank 851, MTBE Rail, Lab Blr 1, Lab Blr 2, Des Vac, 2C CarbRem, Tank 54, DMFWashTow, 45A Maint, 45B Maint, and F-CTRENT.

²²⁷ See 40 C.F.R. § 70.7(h)(6); RTC at 13.

requirements.²²⁸ These revisions may require more information on the specific parameters being monitored, the source of calculation methodologies, and/or the frequency of emission calculations. In some cases, these revisions may also require TCEQ to explain within the PBR Supplemental Table or permit record how the requirements such as “maintain throughput for tank” or “records of chemicals stored and throughput” assure compliance with applicable requirements.

B. AAH Claim 2: The AAH Petitioner Claims That “The Vinyl Acetate Unit Chiller Project Is Not Eligible for Authorization by PBR.”

Petition Claim: The AAH Petitioner claims that the Vinyl Acetate Unit (VAU) chiller project was not eligible for authorization under PBR Registration No. 161519.

The AAH Petitioner asserts that TCEQ promulgated PBRs to serve as generic authorizations for certain kinds of insignificant projects. Further, when each PBR is promulgated, the public has an opportunity to review TCEQ’s determination that projects complying with a PBR will not make a significant contribution of air contaminants to the atmosphere. Thereafter, individual projects authorized under a PBR may proceed through a streamlined process without additional public participation.²²⁹

The AAH Petitioner states that PBR Registration No. 161519 authorizes installation of a new cooling tower, new fugitive components, increased emissions from Boilers 10 and 11 resulting from incremental increases in the amount of VAU off-gas sent to those boilers for combustion, and increased emissions resulting from incremental increases to steam demand from Boilers 9, 10, and 11.²³⁰ The AAH Petitioner states that this PBR Registration combined three different PBR authorizations (from 30 TAC §§ 106.261, 106.262, and 106.371) to authorize these emission increases.²³¹

The AAH Petitioner argues that this project was not eligible for authorization via PBR because it was not limited to “certain types of facilities or changes within facilities listed in” the PBR rules in 30 TAC chapter 106, “which the commission has determined will not make a significant contribution of air contaminants to the atmosphere[.]”²³² Specifically, the AAH Petitioner claims:

TPC has been allowed to mash-up different rules from different PBR categories to authorize complex projects involving significant emission

²²⁸ This direction applies to the following units: 6F-433, 1F-4242, PIBFRAC1, PIBFRAC2, PIBFRAC1LD, PIBFRAC2LD, PIBWW CaCl₂, Tanks 1 through 29, Tanks 41 through 44, Tanks 49 through 57, Tank 186, Tank 850, Tank 851, MTBE Rail, Lab Blr 1, Lab Blr 2, Des Vac, 2C CarbRem, Tank 54, DMFWashTow, 45A Maint, 45B Maint, and F-CTRENT.

²²⁹ *Id.* at 19 (citing 30 TAC §§ 106.1, 106.2; 40 C.F.R. § 51.161. 68 Fed. Reg. 64543, 64545 (Nov. 14, 2003)).

²³⁰ *Id.* at 20–21.

²³¹ *Id.* at 18, 20.

²³² *Id.* at 18, 21 (quoting 30 TAC §§ 106.1, 106.2).

units at an existing major source. Projects aggregating different PBRs in this way are not limited to the types of facilities and changes “the commission has determined will not make a significant contribution of air contaminants to the atmosphere[.]” 30 Tex. Admin. Code § 106.1. Because the public has not had the opportunity to comment on these kinds of complicated projects when any of the various PBRs they involve were promulgated, authorization of such projects without public notice and comment procedures conflicts with EPA’s regulation at 40 C.F.R. § 51.161 and exceeds the scope of EPA’s approval of the PBR program.²³³

The AAH Petitioner contends that because the VAU chiller project “does not ‘satisfy the conditions for facilities permitted by rule under Chapter 106,’” the Texas SIP requires TPC Houston to obtain a different kind of authorization for this project.²³⁴ The AAH Petitioner concludes that the Permit is deficient because it fails to establish a schedule for TPC Houston to comply with the Texas SIP to obtain proper authorization for the project.²³⁵

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

The AAH Petitioner is correct that PBR Registration No. 161519 authorizes several activities associated with the VAU chiller project using a combination of three different PBRs. However, the AAH Petitioner has not demonstrated that there is any restriction on combining any number of PBR authorizations into one registered PBR or that this project is in violation of any State or Federal regulation related to PBRs.²³⁶

The AAH Petitioner repeatedly cites 30 TAC §§ 106.1 and 106.2, but neither of those regulations (which are part of the EPA-approved Texas SIP) contain any prohibition on authorizing a single construction project using a combination of individual PBR authorizations.

The AAH Petitioner’s argument rests on an interpretation of 30 TAC § 106.1 that exceeds the text of that regulation. 30 TAC § 106.1 is a statement of purpose, indicating: “This chapter identifies certain types of facilities or changes within facilities which the commission has determined will not make a significant contribution of air contaminants to the atmosphere” The AAH Petitioner attempts to convert this statement of

²³³ *Id.* at 20; *see id.* at 27–28

²³⁴ *Id.* at 21 (quoting 30 TAC § 116.110(a); citing 40 C.F.R. § 52.2270(c)).

²³⁵ *Id.* (citing 42 U.S.C. § 7661c(a)).

²³⁶ This construction project was authorized by a PBR without public notice or the opportunity for comment. Therefore, it is proper for the EPA, in the present Order, to review questions regarding whether there are additional NSR-related “applicable requirements” of the SIP that apply to this project, and which should be included in the title V permit. *See, e.g., In the Matter of Intercontinental Terminals Co. LLC, Pasadena Terminal*, Order on Petition No. VI-2024-13 at 24–25 (Feb. 7, 2024) (*ITC Pasadena Order*).

purpose into an additional, implicit eligibility criterion, preventing the use of different PBRs to authorize multiple changes that are part of the same project. The AAH Petitioner’s argument fails because the plain text of the regulation contains no such limitation.

Further, 30 TAC § 106.2 states: “This chapter applies to certain types of facilities or changes within facilities listed in this chapter where construction is commenced on or after the effective date of the relevant permit by rule.” This regulation does not contain the limitation suggested by the AAH Petitioner. Instead, it reinforces the principle that any changes meeting the eligibility criteria listed in the individual PBR regulations—here, 30 TAC §§ 106.261, 106.262, and 106.371—may be authorized by PBR. Other regulations, such as 30 TAC § 106.4, identify additional general eligibility criteria for all PBRs. The AAH Petitioner does not discuss any of these specific or general eligibility criteria in this claim, much less demonstrate that the VAU chiller project ran afoul of any such criteria.

When the general PBR rules were promulgated by TCEQ and approved by the EPA into the Texas SIP, and when individual PBR rules were promulgated by TCEQ, the public had an opportunity to participate and could have raised any concerns regarding how the eligibility criteria in those rules functioned (including any concerns regarding the air quality impacts of “complicated” projects).²³⁷ The AAH Petitioner now essentially requests additional eligibility criteria in the PBR regulations prohibiting the use of multiple PBRs to authorize a single project. In other words, the AAH Petitioner seeks to use the title V petition process to collaterally attack the existing eligibility criteria in the general PBR rules that are now part of the federally enforceable Texas SIP and in the specific PBR rules that were promulgated by TCEQ consistent with the SIP. The AAH Petitioner cannot use the title V petition process to effectuate such a change. The State rulemaking and Federal SIP approval process—not the title V petition process—is the appropriate venue to address the AAH Petitioner’s concerns.

Overall, the AAH Petitioner fails to demonstrate that the VAU chiller project was not eligible for authorization via PBR. This, in combination with the EPA’s response to AAH Claim 3, means the AAH Petitioner has failed to demonstrate that this project was required to obtain a different type of preconstruction authorization or, accordingly, that the title V permit must include a compliance schedule that requires a different form of authorization. Therefore, the EPA denies the AAH Petitioner’s request for an objection on this claim.

C. AAH Claim 3: The AAH Petitioner Claims That “The [PBR] Application and Technical Review Document for This Project Underrepresent Project Emission Increases for TPC’s Boilers.”

²³⁷ As the Petitioner concedes, the provision of notice and the opportunity for comment when the rules were promulgated satisfied 40 C.F.R. § 51.161. 68 Fed. Reg. 64543, 64545 (Nov. 14, 2003).

Petition Claim: The AAH Petitioner asserts that according to TPC Houston’s application for PBR Registration No. 161519, emission increases from the VAU chiller project include 1.08 tpy of VOC emissions from Boilers 10 and 11 due to the additional firing of VAU off-gas, 3.29 tpy of VOCs from Boilers 9, 10, and 11 due to increased steam demand, 0.01 tpy of VOCs from new fugitive emissions, and 0.83 tpy of VOCs from the new rental cooling tower.²³⁸ The AAH Petitioner alleges that TPC Houston’s application, which projected total VOC project increases of 3.29 tpy, did not account for all of these emission increases.²³⁹ The AAH Petitioner argues that when all of the individual increases are added, the increased VOC emissions from the project total 5.3 tpy, which exceeds the NNSR netting threshold of 5 tpy.²⁴⁰ The AAH Petitioner claims that TPC Houston must “conduct netting to determine whether net contemporaneous VOC emission increases at the facility trigger [NNSR] requirements.” The AAH Petitioner claims that failure to conduct such a netting demonstration is a violation of the SIP.²⁴¹ The AAH Petitioner further concludes that the Permit must include a schedule to comply with this SIP requirement.²⁴²

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

The AAH Petitioner has failed to demonstrate that the Permit does not assure compliance with any applicable requirements of the SIP related to NSR.²⁴³ To start, the AAH Petitioner has failed to demonstrate that TPC Group LLC and TCEQ erred in not accounting for all emission increases associated with this project before determining that an NNSR netting analysis was not required. The AAH Petitioner asserts, without any explanation or analysis, that all four of the individual emission increases documented in the PBR application must be added to yield the total emission increases for this project. That unexplained assumption is not necessarily true. The AAH Petitioner neglects to consider the possibility—which is ascertainable based on the existing permit record—that the emission increase excluded from this analysis (from the additional firing of off-

²³⁸ AAH Petition at 22–23 (citing Application for PBR Registration No. 161519 at PDF p. 56–58 of 62).

²³⁹ *Id.* at 23.

²⁴⁰ *Id.* (citing 30 TAC § 116.150(c)(1)). The EPA notes the sum of the values provided by the AAH Petitioner total 5.21 tpy, not 5.3 tpy as asserted.

²⁴¹ *Id.* (citing 40 C.F.R. § 52.2270(c) (incorporating 30 TAC § 116.150 into the Texas SIP)).

²⁴² *Id.* (citing 42 U.S.C. § 7661c(a)).

²⁴³ This construction project was authorized by a PBR without public notice or the opportunity for comment. Therefore, it is proper for the EPA, in the present Order, to review questions regarding whether there are additional NSR-related “applicable requirements” of the SIP that apply to this project, and which should be included in the title V permit. *See, e.g., ITC Pasadena Order* at 24–25.

gas in two of the boilers) was already accounted for in the emission increases for three boilers due to increased steam demand.²⁴⁴

Additionally, even if TCEQ erred in not conducting a netting analysis, the AAH Petitioner has failed to demonstrate that this project triggered NNSR. Notably, the AAH Petitioner does not even allege that NNSR is applicable; the AAH Petitioner's claim merely alleges that TCEQ should have conducted a netting analysis to determine whether NNSR was triggered. The alleged failure of TCEQ to conduct netting does not, in and of itself, demonstrate that the Permit is missing any "applicable requirements" of the SIP. Netting is an intermediate step in the analysis of whether a project triggered NNSR. Contrary to the AAH Petitioner's assertion, the SIP regulations governing that intermediate step are not themselves "applicable requirements" with which a title V permit must directly assure compliance, as those regulations do not apply directly to emission units at the source.²⁴⁵ Instead, the "applicable requirements" would be the substantive NNSR requirements that would apply to emission units at the source if NNSR were triggered. Therefore, even if TCEQ erred in not conducting a netting analysis, that does not necessarily mean that the project triggered NNSR, or that the Permit is missing, or does not assure compliance with, applicable NNSR requirements. Therefore, the EPA denies the AAH Petitioner's request for an objection on this claim.

D. AAH Claim 4: The AAH Petitioner Claims That "The Proposed Permit Fails to Establish Monitoring, Testing, and Recordkeeping Requirements That Assure Compliance with Applicable Requirements for the VAU Chiller Project."

Petition Claim: The AAH Petitioner claims that the Permit fails to accurately describe how applicable requirements apply to the VAU chiller project and fails to include monitoring, testing, and recordkeeping provisions that are sufficient to assure compliance with applicable requirements for this project.²⁴⁶ The AAH Petitioner identifies several concerns.

The AAH Petitioner contends that while the Technical Review Document and application associated with the VAU chiller project (*i.e.*, PBR Registration No. 161519) indicates the project includes the construction and operation of a rental cooling tower (identified as unit F-CT-TEMP), the Permit's NSR Authorization Table does not include this unit or identify this unit as being subject to the requirements of PBR Registration No. 161519.²⁴⁷

²⁴⁴ Per the application for PBR Registration No. 161519, it appears that the VAU off-gas heating value of 804 BTU/scf is used in the calculation for both the incremental increase in VAU off-gas, but is also used as part of the calculation for the incremental increase in steam duty from the project, which suggests that the increase in emissions from the firing of VAU off-gas could be included in the increase in steam duty from the project. See Application for PBR Registration No. 161519 at PDF p. 57–58.

²⁴⁵ See 40 C.F.R. 70.2 (defining "applicable requirement" to include SIP provisions "as they apply to emissions units in a part 70 source").

²⁴⁶ Petition at 22 (citing 42 U.S.C. § 7661c(a), (c)).

²⁴⁷ *Id.*

The AAH Petitioner also claims the Permit does not include sufficient monitoring to assure compliance with several limits associated with PBR Registration No. 161519. The AAH Petitioner asserts that the PBR Supplemental Table indicates that compliance with emission limits on TPC Houston’s boilers (which, according to the AAH Petitioner, include a 3.29 tpy limit on VOC and a 3.27 tpy limit on NO_x) established in PBR Registration No. 161519 will be determined by “Monitor[ing] boiler emissions” but fails to explain how emissions will be monitored. The AAH Petitioner argues that this lack of detail is particularly problematic given TPC Houston’s failure to comply with NO_x control requirements on one of the affected boilers.²⁴⁸

Next, the AAH Petitioner claims that VOC increases for this project were calculated assuming that boilers will continuously achieve a destruction efficiency of 99.9 percent; however, the Permit does not contain any monitoring to assure compliance with this enforceable requirement.²⁴⁹

Finally, the AAH Petitioner notes that the application for PBR Registration No. 161519 indicates that although the marine loading docks are impacted by the project due to an increase in butadiene production, there will not be any increase in actual emissions from the marine loading docks because vapors from butadiene loading are routed back to the process.²⁵⁰ The AAH Petitioner claims that the Permit fails to include monitoring, testing, or recordkeeping requirements to assure butadiene loading losses associated with the project are actually captured and directed back to process equipment.²⁵¹

The AAH Petitioner claims that TCEQ’s RTC does not attempt to deliver substantive responses to comments on these issues, but instead simply points back to the PBR Supplemental Table and the emission calculation methodologies in TPC Houston’s permit application.²⁵² The AAH Petitioner contends that it has explained why the monitoring requirements in the PBR Supplemental Table are inadequate and asserts that TCEQ fails to identify any provision in the Permit requiring consistency between application calculation methods and emission data reporting methods.²⁵³

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

²⁴⁸ *Id.* at 23–24 (citing TCEQ Agreed Order, Docket No. 2018-0957-AIR-E; TCEQ Agreed Order, Docket No. 2020-1214-AIR-E).

²⁴⁹ *Id.* at 24 (citing Application for PBR Registration No. 161519 at PDF p. 59; 30 TAC § 106.6(b) (“All representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration . . . become conditions upon which the facility permitted by rule shall be constructed and operated.”)).

²⁵⁰ *Id.* (citing Application for PBR Registration No. 161519 at PDF p. 37).

²⁵¹ *Id.* at 24–25.

²⁵² *Id.* at 28 (citing RTC at 16–17).

²⁵³ *Id.*

The AAH Petitioner is factually incorrect in claiming that the NSR Authorization Table in the Permit does not include the rental cooling tower (F-CT-TEMP) that is subject to the requirements of registered PBR No. 161519. The NSR Authorization Table in the Permit lists the rental cooling tower and indicates it is subject to the registered PBR.²⁵⁴ The AAH Petitioner fails to demonstrate that the Permit does not include applicable requirements of the registered PBR as it applies to the rental cooling tower. Therefore, the EPA denies the AAH Petitioner's request for an objection on this portion of the claim.

The AAH Petitioner further asserts that the Permit lacks monitoring sufficient to assure compliance with VOC and NO_x emission limits applicable to boilers. As the AAH Petitioner states, the PBR Supplemental Table includes a vague direction to "Monitor boiler emissions" and does not provide any further detail about how VOC and NO_x emissions will be monitored.²⁵⁵ However, the Permit also incorporates the requirements of NSR Permit No. 46246, which includes more specific testing and monitoring requirements for VOC and NO_x emissions from Boilers 9, 10, and 11. Similar to the EPA's response to AAH Claim 1, the AAH Petitioner presents no arguments to demonstrate that the monitoring for the boilers included in NSR permit 46426 is inadequate to demonstrate compliance with applicable VOC and NO_x limits associated with PBR No. 161519. Therefore, the EPA denies the AAH Petitioner's request for an objection on this portion of the claim.

In contrast, neither the PBR Supplemental Table nor any other portion of the Permit (including NSR Permit No. 46246) specifies any monitoring to assure compliance with the 99.9 percent destruction efficiency requirement applicable to the boilers, which TCEQ appears to concede is an applicable requirement.²⁵⁶ Again, the only requirement included in the PBR Supplemental Table is the vague direction to "Monitor boiler emissions." The RTC does not directly address how this or any other requirement in the Permit might assure compliance with the 99.9 percent destruction efficiency

²⁵⁴ Permit at 243.

²⁵⁵ PBR Supplemental Table at 17.

²⁵⁶ The EPA understands that TCEQ's EPA-approved regulations provide that sources in Texas are bound by representations made in their applications for NSR permits (including registered PBRs), such that these application representations can become legally enforceable. See 30 TAC §§ 106.6(b), 116.116(a). TCEQ affirms this general principle in a portion of its RTC discussing the application for PBR Registration No. 161519. See RTC at 17 ("An applicant is bound by its representations in the application and those representations become an enforceable part of the permit, including production rates, authorized emission rates, and equipment. If the Applicant deviates from the representations made in the application, on which the permit was developed, the Applicant may be subject to enforcement action.").

requirement.²⁵⁷ Therefore, the EPA grants the AAH Petitioner’s request for an objection on this portion of the claim.

Regarding the AAH Petitioner’s claim that the Permit fails to identify any monitoring to assure that vapors from butadiene loading are captured and directed back to process equipment, the AAH Petitioner fails to demonstrate that this is necessary. The AAH Petitioner provides no citation to any legal authority that would require TPC Houston to monitor an aspect of process design such as this, simply because this process design was referenced as part of an analysis of emission increases for a construction project. Therefore, the EPA denies the AAH Petitioner’s request for an objection on this portion of the claim.

Direction to TCEQ: TCEQ should amend the monitoring requirements in the PBR Supplemental Table to ensure that those requirements are specific enough to assure compliance with all enforceable representations included in PBR Registration No. 161519. This includes assuring compliance with the 99.9 percent destruction efficiency requirement for Boilers 9, 10, and 11.

VI. CONCLUSION

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

Dated: May 6, 2026



Lee Zeldin
Administrator

²⁵⁷ See 40 C.F.R. § 70.6(h)(6); RTC at 17–18. TCEQ’s references to TPC Houston’s application for PBR No. 161519 are unavailing. As the EPA has repeatedly explained, although application representations associated with NSR permits and PBRs may be considered legally enforceable requirements that a facility must follow, that does not mean that such requirements are automatically included in a facility’s title V permit. For a requirement to be included in a title V permit, the permit must include it (or properly incorporate it by reference). As far as application representations are concerned, TCEQ’s EPA-approved title V regulations expressly require that such representations be identified in the permit itself. 30 TAC § 122.140 (“The only representations in a permit application that become conditions under which a permit holder shall operate are the following: . . . (3) any representation in an application *which is specified in the permit* as being a condition under which the permit holder shall operate.” (emphasis added)); see, e.g., *Valero Tank Farm Order* at 10; *In the Matter of BP Amoco Chemical Co., Texas City Chemical Plant*, Order on Petition No. VI-2017-6 at 36–37 (July 20, 2021).