

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

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Petition No. VI-2025-35

In the Matter of

ExxonMobil Corporation, Baytown Olefins Plant

Permit No. O1553

Issued by the Texas Commission on Environmental Quality

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

**I. INTRODUCTION**

The U.S. Environmental Protection Agency (EPA or “the Agency”) received a petition dated November 12, 2025, (the “Petition”) from the Harris County Attorney’s Office (the “Petitioner”), pursuant to Clean Air Act (CAA) section 505(b)(2).<sup>1</sup> The Petition requests that the EPA Administrator object to operating permit No. O1553 (the “Permit”) issued by the Texas Commission on Environmental Quality (TCEQ) to the ExxonMobil Corporation Baytown Olefins Plant in Harris County, Texas. The Permit was issued pursuant to title V of the CAA and TCEQ’s EPA-approved operating permit program rules.<sup>2</sup> This type of operating permit is also known as a title V permit or part 70 permit.

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

**II. STATUTORY AND REGULATORY FRAMEWORK**

**A. Title V Permits**

CAA section 502(d)(1) requires each State to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the

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<sup>1</sup> 42 U.S.C. § 7661d(b)(2).

<sup>2</sup> 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).

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

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

## **B. Review of Issues in a Petition**

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V operating permit programs. Under CAA section 505(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), States are required to submit each proposed title V operating permit to the EPA for review.<sup>8</sup> Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the Agency determines that the proposed permit is not in compliance with applicable requirements under the CAA.<sup>9</sup> If the EPA does not object to a permit on the Agency's own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit.<sup>10</sup>

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<sup>3</sup> 42 U.S.C. § 7661a(d)(1).

<sup>4</sup> 61 Fed. Reg. 32693 (June 25, 1996). This program is codified in 30 TAC Chapter 122.

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

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

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

<sup>8</sup> 42 U.S.C. § 7661d(a).

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

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

Each petition must identify the proposed permit on which the petition is based and identify the petition claims.<sup>11</sup> Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under 40 C.F.R. part 70.<sup>12</sup> Any arguments or claims the petitioner wishes the EPA to consider in support of each issue raised must generally be contained within the body of the petition.<sup>13</sup>

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period).<sup>14</sup>

In response to such a petition, the CAA requires the Administrator to issue an objection to the permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the CAA.<sup>15</sup> Under CAA section 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA.<sup>16</sup> As courts have recognized, CAA section 505(b)(2) contains both a “discretionary component,” under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the CAA, and a nondiscretionary duty on the Administrator’s part to object if such a demonstration is made.<sup>17</sup> Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA section 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the CAA.<sup>18</sup> When courts have reviewed the EPA’s interpretation of the ambiguous term “demonstrates” and the

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<sup>11</sup> 40 C.F.R. § 70.12(a).

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

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

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

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

<sup>16</sup> 42 U.S.C. § 7661d(b)(2); *see WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

<sup>17</sup> *Sierra Club v. Johnson*, 541 F.3d at 1265–66 (“[I]t is undeniable [that CAA section 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements.”); *NYPIRG*, 321 F.3d at 333.

<sup>18</sup> *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that CAA section 505(b)(2) “clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made” (emphasis added)); *see also Sierra Club v. Johnson*, 541 F.3d at 1265 (“Congress’s use of the word ‘shall’ . . . plainly mandates an objection *whenever* a petitioner demonstrates noncompliance.” (emphasis added)).

Agency's determination as to whether the demonstration has been made, they have applied a deferential standard of review.<sup>19</sup> Certain aspects of the petitioner's demonstration burden are discussed in the following paragraphs. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule.<sup>20</sup>

The EPA considers a number of factors in determining whether a petitioner has demonstrated noncompliance with the CAA.<sup>21</sup> For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under 40 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 40 C.F.R. part 70.<sup>22</sup>

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

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

<sup>20</sup> When the EPA finalized this rulemaking in 2020, the Agency referred back to (but did not repeat) the proposed rule's extensive background discussion regarding the petitioner's demonstration burden. See 85 Fed. Reg. 6431, 6433, 6439 (Feb. 5, 2020) (final rule); 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016) (proposed rule); see also *In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

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

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

<sup>23</sup> See *MacClarence*, 596 F.3d at 1131 (“[T]he Administrator’s requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.”); see also *In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (Sept. 21, 2011) (denying a title V petition claim in which petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007) (*Portland Generating Station Order*).

<sup>24</sup> See, e.g., *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition No. VI-2011-05 at 9 (Jan. 15, 2013); see also *Portland Generating Station Order* at 7 (“[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement].”); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (Apr. 20, 2007); *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).

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

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

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. The administrative record for a particular proposed permit includes the draft and proposed permits, any permit applications that relate to the draft or proposed permits, the statement required by § 70.7(a)(5) (sometimes referred to as the "statement of basis"), any comments the permitting authority received during the public participation process on the draft permit, the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit, and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). If a final permit and a statement of basis for the final permit are available during the EPA's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition.<sup>28</sup>

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<sup>25</sup> See, e.g., *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014); see also *In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (Feb. 7, 2014); *Georgia Power Plants Order* at 10.

<sup>26</sup> 81 Fed. Reg. at 57832; see *Voigt*, 46 F.4th at 901–02; *MacClarence*, 596 F.3d at 1132–33; see also, e.g., *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x \*11, \*15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (Dec. 14, 2012) (denying a title V petition issue in which petitioners did not respond to the State's explanation in response to comments or explain why the State erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue in which petitioners did not acknowledge or reply to the State's response to comments or provide a particularized rationale for why the State erred or the permit was deficient); *Georgia Power Plants Order* at 9–13 (denying a title V petition issue in which petitioners did not address a potential defense that the State had pointed out in the response to comments).

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

<sup>28</sup> 40 C.F.R. § 70.13.

### **III. BACKGROUND**

#### **A. The Baytown Olefins Plant**

The Baytown Olefins Plant is a petrochemical facility located in Harris County, Texas that manufactures ethylene, propylene, and butadiene, and operates 11 natural gas cogeneration units to generate electricity and high-pressure steam. The Baytown Olefins Plant is a title V major source of volatile organic compounds, sulfur dioxide, particulate matter, nitrogen oxides, hazardous air pollutants, and carbon monoxide. The Baytown Olefins Plant is also subject to New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

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

ExxonMobil Corporation first obtained a title V permit for the Baytown Olefins Plant in 2005, which was last renewed in 2010. On June 24, 2015, ExxonMobil Corporation applied for a title V permit renewal. On September 8, 2023, TCEQ published notice of a draft permit, subject to a public comment period that ended on May 6, 2024. On July 29, 2025, TCEQ submitted a proposed permit, along with its responses to public comments (RTC), to the EPA for the Agency's 45-day review. The EPA's 45-day review period ended on September 12, 2025, during which time the Agency did not object to the proposed permit. On September 24, 2025, TCEQ issued the final Permit for the Baytown Olefins Plant.

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

Pursuant to the CAA, if the EPA does not object to a proposed permit during the Agency's 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object.<sup>29</sup> The EPA's 45-day review period ended on September 12, 2025. Thus, any petition seeking the EPA's objection to the Permit was due on or before November 12, 2025. The Petition was submitted by email on November 12, 2025. Therefore, the EPA finds that the Petitioner timely filed the Petition.

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

The Petition contains two overarching sections that contain three distinct claims requesting the EPA's objection. The first claim is found in sections I.a, I.b.i, and I.b.ii of

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<sup>29</sup> 42 U.S.C. § 7661d(b)(2).

the Petition. The second claim is found in section I.b.iii of the Petition. The third claim is found in section II of the Petition.<sup>30</sup>

**A. Claim 1: The Petitioner Claims That “Lack of Proper Public Access to the Draft Permit, Statement of Basis, Permit Application, and Its Associated PBR Supplemental Table Violates the Clean Air Act.”**

**Petition Claim:** The Petitioner requests the EPA’s objection to the Permit for two reasons related to the alleged lack of public access to permit materials.<sup>31</sup> First, the Petitioner contends that public access to permit materials was “significantly hampered” by TCEQ not following its own State public access requirements.<sup>32</sup> Second, the Petitioner asserts that the Permit by Rule (PBR) Supplemental Table is not properly incorporated by reference because it is not properly identified or located with the Permit.<sup>33</sup>

*Public Notice and Access*

The Petitioner cites Texas public notice and availability requirements under 30 TAC § 122.320, which require the TCEQ executive director to “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.”<sup>34</sup> Regarding the physical location of the permit materials, the Petitioner outlines the various obstacles it faced trying to view the permit materials in person at the TCEQ Regional Office in Houston, Texas.<sup>35</sup> The Petitioner states that “[e]ventually, information was found by TCEQ and turned over to the HCAO employees,” but that the permit application provided to the Petitioner “was outdated and did not contain the PBR Supplemental Table.”<sup>36</sup>

The Petitioner contends that the EPA must object to the Permit because “TCEQ did not abide by the plain language of 30 TAC § 122.320, requiring the draft permit and complete application be made available at the TCEQ regional office nearest the facility.”<sup>37</sup> In addition, the Petitioner recommends that the EPA, in the Agency’s

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<sup>30</sup> Additionally, in section I.c of the Petition, the Petitioner states the Permit’s Table of Contents is unclear and recommends that the EPA require two monitoring summaries be added to the Table of Contents. Petition at 8. These recommendations do not appear to constitute a distinct claim requesting the EPA’s objection to the Permit. However, to the extent the Petitioner intended them as such, they do not demonstrate that the Permit, permit record, or permit process is not in compliance with applicable requirements or requirements under 40 C.F.R. part 70, and thus they present no basis for the EPA’s objection.

<sup>31</sup> Petition at 3.

<sup>32</sup> *Id.* at 3–4.

<sup>33</sup> *Id.* at 4–7.

<sup>34</sup> *Id.* at 4 (quoting 30 TAC § 122.320(g)).

<sup>35</sup> *Id.*

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

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

objection, “require TCEQ to create procedures for granting the public access to draft permits and their associated permit materials.”<sup>38</sup>

### *Incorporation by Reference*

The Petitioner also asserts that the Permit “does not sufficiently incorporate its PBR Supplemental Table.”<sup>39</sup> The Petitioner cites TCEQ’s August 1, 2022, requirement that permit applications for initial and renewal projects and project revisions with PBR updates include the revised PBR Supplemental Table.<sup>40</sup> The Petitioner acknowledges that ExxonMobil Corporation did indeed prepare a PBR Supplemental Table but claims that the PBR Supplemental Table “had various issues” regarding the location of the PBR Supplemental Table.<sup>41</sup>

The Petitioner quotes the EPA’s statement in a previous title V order regarding the location of PBR tables:

[A] general statement in the Title V permit incorporating the PBR supplemental Table without providing additional information detailing where the table is located *is not specific enough to effectively incorporate these requirements by reference*. In order to satisfy the requirement in [T]itle V that the Permit “set forth,” “include,” or “contain” monitoring to assure compliance with all applicable requirements, a special condition incorporating the PBR Supplemental Table would need to include, at a minimum, the date of the application and *specific location of the table, for example by providing a page number from the application*.<sup>42</sup>

The Petitioner claims Special Condition No. 29 of the Permit, however, does not provide a specific location where the PBR Supplemental Table can be found. The Petitioner states in part that, instead, all of the New Source Review requirements incorporated into the Permit “are incorporated by reference into this permit as applicable requirements.”<sup>43</sup>

The Petitioner explains that Special Condition No. 29 states that the PBR Supplemental Table “shall be *located with* the operating permit.”<sup>44</sup> The Petitioner contends that it is unclear whether the term “located with” means that the PBR Supplemental Table must

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

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 5 (citing “Announcements for Title V Operating Permit, TEX. COMM’N ON ENV’T’L QUALITY, <https://www.tceq.texas.gov/permitting/air/announcements/titlev-news>”).

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

<sup>42</sup> *Id.* (quoting *In the Matter of Phillips 66 Company, Borger Refinery*, Order on Petition No. VI-2017-16 at 16 (Sep. 22, 2021) (*Phillips 66 Borger Order*) (emphasis added by the Petitioner)).

<sup>43</sup> *Id.* at 6 (quoting Permit at 15).

<sup>44</sup> *Id.* (quoting Permit at 15) (emphasis added by Petitioner).

be located within the Permit, attached to or included as an exhibit to the Permit, or located physically with the Permit. In any case, the Petitioner asserts that PBR Supplemental Table was not at any of these aforementioned locations.<sup>45</sup>

The Petitioner claims that TCEQ incorrectly asserted in its RTC that the permit application, including the PBR Supplemental Table, could be found online and was available for viewing and copying at two other locations in addition to the TCEQ Regional Office, namely the TCEQ Central Office in Austin and the Sterling Municipal Library in Baytown.<sup>46</sup> According to the Petitioner, however, it “searched the [Central File Room] CFR Online database” and the permit application “is simply not there.”<sup>47</sup> Additionally, the Petitioner states that TCEQ “offers no evidence” that the permit application was located at the TCEQ Central Office in Austin or the Sterling Municipal Library in Baytown.<sup>48</sup> The Petitioner claims that “even if the other locations did have the May 17, 2023 permit application, simply stating in the Draft Permit that the PBR Supplemental Table is somewhere within the permit application, without providing any further direction is not adequate to guide the public.”<sup>49</sup>

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

#### *Public Notice and Access*

CAA section 505(b)(2) requires that the EPA must object to a permit “if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter . . . .”<sup>50</sup> The term “this chapter” refers to the CAA. The EPA’s regulations further specify that “[a]ny issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under this part.”<sup>51</sup> The term “applicable requirements” is defined in 40 C.F.R. § 70.2 to include requirements of a State Implementation Plan (SIP) that is approved by the EPA under

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 6–7 (citing RTC at 28).

<sup>47</sup> *Id.* at 7.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> 42 U.S.C. § 7661d(b)(2).

<sup>51</sup> 40 C.F.R. § 70.12(a)(2); *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. § 7012(a)(2)(ii)–(iv).

title I of the CAA. The term “requirements under this part” refers to requirements codified in 40 C.F.R. part 70.

Here, the Petitioner has failed to demonstrate that issuance of the Permit did not satisfy any requirements of the CAA, applicable requirements, or requirements of 40 C.F.R. part 70. The CAA requires that State programs include “[a]dequate, streamlined, and reasonable procedures . . . for public notice, including offering an opportunity for public comment and a hearing . . . .”<sup>52</sup> The statute does not specify a location where permit documents must be available to the public during the public comment period. The EPA’s regulations require that all permit proceedings “provide adequate procedures for public notice.”<sup>53</sup> Further, the EPA’s regulations state that notice must be given by specified methods and must contain certain information.<sup>54</sup> However, the EPA’s regulations generally do not prescribe a specific location where permit record documents must be made available to the public.<sup>55</sup> The Petitioner has not demonstrated that TCEQ did not satisfy any of these Federal requirements under the CAA or 40 C.F.R § 70.7(h).

Instead, the Petitioner’s claim focuses on Texas State regulations, which contain different, more detailed public notice and availability requirements than the Federal requirements. Specifically, as the Petitioner notes, 30 TAC § 122.320(g) requires: “[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 public notice and access requirements identified by the Petitioner under

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<sup>52</sup> 42 U.S.C. § 7661a(b)(6).

<sup>53</sup> 40 C.F.R. § 70.7(h).

<sup>54</sup> *Id.* § 70.7(h)(1), (2).

<sup>55</sup> Specifically, 40 C.F.R. 70.7(h)(1) provides: “If Web site noticing is selected as the consistent noticing method, the draft permit shall also be posted, for the duration of the public comment period, on a public Web site identified by the permitting authority.” Additionally, 40 C.F.R. § 70.7(h)(2) provides: “The notice shall identify . . . the name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information, including copies of the permit draft, the statement required by § 70.7(a)(5) (sometimes referred to as the ‘statement of basis’) for the draft permit, the application, all relevant supporting materials, . . . and all other materials available to the permitting authority . . . that are relevant to the permit decision . . . .”

30 TAC § 122.320(g) are not, however, part of the EPA-approved SIP and are not federally enforceable applicable requirements.<sup>56</sup>

In general, petition claims alleging that a State failed to satisfy State regulations governing title V permit issuance that go beyond the Federal requirements (and which are not included in a SIP) do not present a basis for the EPA's objection to a title V permit. The CAA mandates an EPA objection if a petitioner demonstrates that a permit does not satisfy "the requirements of [the CAA]."<sup>57</sup> The CAA does not mandate that the EPA object to a title V permit that satisfies the requirements of the CAA and the Agency's implementing regulations in 40 C.F.R. part 70 but does not satisfy unique State regulations that go beyond those Federal requirements.<sup>58</sup> Instead, the CAA requires the EPA to establish minimum requirements of State operating permit programs and to approve State programs that satisfy these minimum Federal requirements.<sup>59</sup> Although the CAA provides that State programs may "establish[] additional permitting requirements not inconsistent with this chapter,"<sup>60</sup> the EPA's longstanding position is that "Sections 116 and 506(a) of the [Clean Air] Act stand for the proposition that States retain authority to adopt more stringent requirements, not that these requirements must be federally enforceable" or subject to Federal oversight.<sup>61</sup> Thus, the EPA's

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<sup>56</sup> See 40 C.F.R. §§ 52.2270 (identifying the regulations contained in the Texas SIP); 70.2 (definition of "applicable requirement" for title V purposes). The relevant statutory language governing title V petitions provides: "The Administrator shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661d(b)(2). The statutory reference to "requirements of the applicable implementation plan" refers to SIPs under title I, not State regulations that implement title V (which are not referred to as "plans"). The EPA's regulatory definition of "applicable requirement" makes this clear, as it refers to SIP requirements approved under title I, not title V. 40 C.F.R. § 70.2. EPA-approved State regulations contained in a SIP (which are federally enforceable "applicable requirements") are not equivalent to 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, appx A (identifying State and local permitting authorities that are approved to issue permits under title V).

<sup>57</sup> 42 U.S.C. § 7661d(b)(2).

<sup>58</sup> See 42 U.S.C. § 7661d(b).

<sup>59</sup> 42 U.S.C. § 7661a(b), (d); see 40 C.F.R. §§ 70.1(a), 70.4(a).

<sup>60</sup> 42 U.S.C. § 7661e(a).

<sup>61</sup> Response to Comments on the 40 C.F.R. Part 70 Rulemaking, EPA Docket No. A-90-33, V-C-1 at 6-11 (June 1992). For example, the EPA's regulations require that "the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements." 40 C.F.R. § 70.6(b)(2). Notably, "Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part . . ." and are therefore not subject to the EPA's oversight when reviewing individual title V permits. *Id.*

oversight of State title V programs focuses on compliance with the minimum requirements of Federal law.<sup>62</sup>

That is why, when the EPA updated the Agency's title V petition-focused regulations in 2020, the Agency specifically provided that "any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements [as defined in 40 C.F.R. § 70.2] or requirements under this part [*i.e.*, 40 C.F.R. part 70]."<sup>63</sup> The Texas State regulations invoked by the Petitioner do not constitute applicable requirements or requirements under 40 C.F.R. part 70. Because the Petitioner has not identified an applicable requirement or a requirement of 40 C.F.R. part 70 that was not met, as required by 40 C.F.R. § 70.12(a)(2), the EPA denies the Petitioner's request for an objection on this claim.

#### *Incorporation by Reference*

Under title V of the CAA and the EPA's 40 C.F.R. part 70 regulations, every title V permit must include all applicable requirements that apply to a source and any permit terms necessary to assure compliance with those 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."<sup>64</sup> The CAA section 504 requirement to include all applicable requirements in a title V permit can be satisfied using incorporation by reference in certain circumstances.<sup>65</sup> Among other things, the EPA has explained:

Information that would be . . . incorporated by reference into the issued permit must first be currently applicable and available to the permitting authority and public . . . Referenced documents must also be specifically identified. Descriptive information such as the title or number of the

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<sup>62</sup> See 40 C.F.R. § 70.1(a) ("These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, *oversee*, and withdraw approval of State operating permit programs." (emphasis added)); see also 70.12(a)(2). Beyond the context of individual title V permit actions, Congress established additional mechanisms for the EPA to oversee State title V programs, which similarly address compliance with Federal minimum requirements. For example, CAA section 502(i) repeatedly provided the EPA with authority to take certain oversight actions upon a finding "that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with *the requirements of this subchapter*," meaning title V of the CAA. 42 U.S.C. § 7661a(i)(1), (2) (emphasis added).

<sup>63</sup> 40 C.F.R. § 70.12(a)(2); 85 Fed. Reg. 6431, 6445–46 (Feb. 5, 2020).

<sup>64</sup> 42 U.S.C. § 7661c(a); see also 40 C.F.R. § 70.6(a)(1), (3).

<sup>65</sup> See, e.g., *White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program*, 40 (Mar. 5, 1996) (*White Paper 2*) (explaining how incorporation by reference can satisfy the requirements of CAA section 504).

document and the date of the document must be included so that there is no ambiguity as to which version of which document is being referenced. Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.<sup>66</sup>

The Petitioner cites the EPA's previous direction in the *Phillips 66 Borger Order* in which the Agency stated "a special condition incorporating the PBR Supplemental Table would need to include, at a minimum, the date of the application and the specific location of the table, for example by providing a page number from the application."<sup>67</sup> While the *Phillips 66 Borger Order* suggested providing a page number from the application as a means of providing the specific location of the table, this was an example, not a requirement or the only means of successfully incorporating by reference a PBR Supplemental Table. Notably, after issuing the *Phillips 66 Borger Order*, the EPA identified additional means by which title V permits can effectively incorporate by reference PBR Supplemental Tables. For example, in the *Valero Houston I Order*, the EPA stated that a title V permit could identify the location of a PBR Supplemental Table by identifying the date of the project application and the associated project number.<sup>68</sup> Similarly, here, as TCEQ states in its RTC, Special Condition No. 29 of the Permit references "the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Table dated May 17, 2023 in the application for project 23071."<sup>69</sup> This is generally consistent with the EPA's guidance and the Agency's agreements with TCEQ on the topic.<sup>70</sup>

To the extent the Petitioner's other concerns about the location or availability of the PBR Supplemental Table were intended to support the claim that the Permit failed to incorporate the PBR Supplemental Table by reference, those arguments are unpersuasive. Regarding the Petitioner's assertion that the PBR Supplemental Table should be physically attached to the Permit, the Petitioner identifies no legal authority that would mandate this. Instead, as explained above, the EPA has repeatedly indicated

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

<sup>67</sup> *Phillips 66 Borger Order* at 16.

<sup>68</sup> See *In the Matter of Valero Refining-Texas, L.P., Valero Houston Refinery*, Order on Petition No. VI-2021-8 at 18 (June 30, 2022) (*Valero Houston I Order*).

<sup>69</sup> RTC at 29 (quoting Permit at 15).

<sup>70</sup> See Letter from David Garcia, Director, Air and Radiation Division, EPA Region 6, to Tonya Baer, Deputy Director, TCEQ Office of Air (May 21, 2020); Letter from Tonya Baer, Deputy Director, TCEQ Office of Air, to David Garcia, Director, Air and Radiation Division, EPA Region 6 (May 11, 2020).

that material incorporated by reference into a permit must simply be available to the public.<sup>71</sup> There are multiple ways to make such documents available to the public.

With respect to the public accessibility of the incorporated materials, in its RTC, TCEQ explains that the applicant submitted a revised PBR Supplemental Table (Form OP-PBRSUP) dated May 17, 2023.<sup>72</sup> TCEQ explains that “a copy of the renewal application (including the OP-PBRSUP form) is considered to be a part of the application representation and hence it is a part of the official permit record for FOP O1553/Project 23071.”<sup>73</sup> TCEQ states that the permit application is accessible at TCEQ’s Central Office in Austin, Texas, the Sterling Municipal Library in Baytown, Texas, and is also available at TCEQ’s Central File Room Online website upon issuance of the permit renewal project 23071.<sup>74</sup>

To the extent that the Petitioner claims that the permit application and PBR Supplemental Table were not available online, the Petitioner has not demonstrated that online availability is required for properly incorporating information by reference. Online publication is not a requirement of the EPA’s longstanding guidance on incorporation by reference and incorporation by reference can be satisfied so long as the information is contained in publicly accessible files located at the permitting authority’s office(s).<sup>75</sup> Further, to the extent that the Petitioner prefers digital access, the Petition does not address or demonstrate that the Petitioner was unsuccessful via other means of obtaining the files electronically (*e.g.*, by requesting the files digitally).

In summary, with respect to the portion of the claim that the PBR Supplemental Table was not properly incorporated into the Permit, the Petitioner has failed to demonstrate that TCEQ did not satisfy Federal requirements for properly incorporating the PBR Supplemental Table. Therefore, the EPA denies the Petitioner’s request for an objection on this claim.

**B. Claim 2: The Petitioner Claims That “Requirements within the PBR Supplemental Table are Not Clear.”**

***Petition Claim:*** The Petitioner claims that the PBR Supplemental Table creates impermissible ambiguity with regard to monitoring and recordkeeping requirements and therefore fails to assure compliance with related emission limits.<sup>76</sup>

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<sup>71</sup> See, *e.g.*, *In the Matter of Valero Energy Partners, L.P., Valero Houston Refinery—Tank Farm*, Order on Petition No. VI-2024-30 at 16–17 (July 18, 2025) (*Valero Tank Farm Order*); *White Paper 2* at 37.

<sup>72</sup> RTC at 29.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 28–29.

<sup>75</sup> See *Valero Tank Farm Order* at 16–17; *White Paper 2* at 37 n.23.

<sup>76</sup> Petition at 7.

The Petitioner states that “[i]ncorporation by reference in Title V permits should include test method procedures, inspection and maintenance plans and calculation methods for determining compliance.”<sup>77</sup> The Petitioner cites previous EPA direction in a permit objection letter in which the Agency stated that the goal of the PBR Supplemental Table is to “explicitly incorporate monitoring/recordkeeping requirements and reduce ambiguity with respect to how emissions are calculated and how compliance is determined.”<sup>78</sup> The Petitioner claims that the PBR Supplemental Table associated with the Permit “fails to explicitly incorporate clear limits and requirements and does not reduce ambiguity with respect to how emissions are calculated nor how compliance is determined.”<sup>79</sup>

The Petitioner cites Table D of the PBR Supplemental Table, which it claims “only requires monitoring and recordkeeping ‘where applicable’ for multiple units, including but not limited to units KTLK-01C [sic], ZTK 13B, ZTK 13A, C1042, XMLTK02, TMK02 [sic].”<sup>80</sup> According to the Petitioner, requiring monitoring and recordkeeping “where applicable” is “not sufficient to assure compliance with emission limitations and operational requirements.”<sup>81</sup>

The Petitioner claims that the EPA previously objected to a different permit which used a “similar catch-all term in Table D (‘as appropriate’)” on the basis that the term “did not ‘establish a practically enforceable limit or condition’” and that “[w]hen records are maintained, it is ‘practical and necessary to include a frequency for the recordkeeping.’”<sup>82</sup> The Petitioner claims that the phrase “where applicable” at issue in this PBR Supplemental Table “creates the same ambiguity and enforceability issues that the EPA corrected in TotalEnergies’ Title V permit.”<sup>83</sup> The Petitioner contends that TCEQ’s RTC on the issue is insufficient because “TCEQ’s only rebuttal is that this language is common, not that it is legally sufficient.”<sup>84</sup> The Petitioner suggests the

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<sup>77</sup> *Id.* (citing *White Paper 2* at 38).

<sup>78</sup> *Id.* (quoting Letter from David F. Garcia, Director of the Air & Radiation Division – EPA to Samuel Short, Office of Air – TCEQ, Objection to Title V Permit No. O1441 ALTIVA Oxide Chemicals LLC, ALTIVA Oxide Chemicals Harris County, Texas (Nov. 29, 2022); (citing *In the Matter of Kinder Morgan Crude & Condensate LLC, Galena Park Terminal*, Order on Petition No. VI-2017-15 at 18-20 (Dec. 16, 2021); *In the Matter of Premcor Refining Group, Inc., Valero Port Arthur Refinery*, Order on Petition No. VI-2018-4 at 26-28 (Nov. 30, 2021)).

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

<sup>80</sup> *Id.* (quoting PBR Supplemental Table at 12, 21, 23–24). The EPA notes that the Petition appears to have erroneously misidentified two emissions units from the PBR Supplemental Table. The Petition cites emissions units “KTLK-01C” and “TMK02,” which are identified as “KLTK-01C” and “MTK02,” respectively, in the PBR Supplemental Table. See PBR Supplemental Table at 12, 24.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* (citing Letter from David F. Garcia, Director of the Air & Radiation Division – EPA to Cory Chism, Office of Air – TCEQ, Objection to Title V Permit No. O1267 TotalEnergies Petrochemicals & Refining USA, Inc. Port Arthur Refinery, Jefferson County, Texas at 3 (Apr. 27, 2023). The EPA notes that the Petition appears to incorrectly cite to the EPA’s Nov. 3, 2021, Letter of Objection to Title V Permit No. O1441.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 8 (citing RTC at 29).

“where applicable” language must be removed from Table D and replaced with “unambiguous monitoring and recordkeeping requirements that clearly state how monitoring is to be performed, the frequency for performing such monitoring, as well as how and for how long records must be maintained.”<sup>85</sup>

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

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.<sup>86</sup> Determining the adequacy of compliance assurance requirements is generally a context-specific determination made on a case-by-case basis. Thus, to demonstrate a basis for the EPA’s objection to a particular issue related to compliance demonstration requirements, petitioners must provide some fact-specific analysis of the relevant permit terms, as opposed to general arguments that may or may not be determinative as applied to particular permit terms.<sup>87</sup>

The Petitioner has failed to demonstrate that the monitoring and recordkeeping requirements of the Permit, including those established in the PBR Supplemental Table, are inadequate to assure compliance with any specific applicable emission limitations and operational requirements. The Petitioner generally asserts that Table D of the PBR Supplemental Table “only” requires monitoring and recordkeeping “where applicable” for several emissions units, and that requiring monitoring and recordkeeping “where applicable” is “not sufficient to assure compliance” with applicable requirements.<sup>88</sup> However, the Petitioner does not provide any specific analysis of the monitoring and recordkeeping requirements identified in the PBR Supplemental Table or explain why they are insufficient to assure compliance with any particular applicable requirement. Furthermore, to the extent the Petitioner believes the phrase “where applicable” creates “ambiguity or enforceability issues” with respect to the identified emissions units, the Petitioner does not explain how this terminology is ambiguous or unenforceable in the context of each relevant emission unit and relevant limit.

TCEQ explains in its RTC that “the applicable PBR and/or the PBR registration number list . . . itself references the ‘where applicable’ requirement such as the stored chemicals.”<sup>89</sup> The Petitioner does not dispute this statement or provide additional analysis of the applicable monitoring and recordkeeping requirements established under the applicable PBR or registered PBRs. Finally, the EPA observes that the

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<sup>85</sup> *Id.* at 7.

<sup>86</sup> 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).

<sup>87</sup> See 40 C.F.R. § 70.12(a)(2)(iii) (requiring that petitioners provide “[a]n explanation of how the term or condition in the permit . . . is not adequate . . .”).

<sup>88</sup> Petition at 7.

<sup>89</sup> RTC at 29.

identified emissions units are subject to other various monitoring, recordkeeping, reporting, and testing requirements, including those listed under the Applicable Requirements Summary Table and New Source Review Authorization References of the Permit.<sup>90</sup> The Petitioner fails to consider and evaluate the Permit's broader monitoring and recordkeeping regime and, therefore, fails to demonstrate its claim that the Permit's terms are insufficient to assure compliance with any individual applicable requirement. Therefore, the EPA denies the Petitioner's request for an objection on this claim.

**C. Claim 3: The Petitioner Claims That the "EPA Must Object to the Draft Permit Due to Its Unlawful Administrative Delay and Lack of Adherence to Title V Timelines."**

**Petition Claim:** The Petitioner claims that the CAA "requires TCEQ to create rules that protect against unreasonable delay in processing permit applications, and for expeditious renewals and revisions" but that "these rules were not adhered to."<sup>91</sup> Specifically, the Petitioner claims that TCEQ did not adhere to several Texas State requirements that establish deadlines for renewing title V permits, including renewing title V permits every five years and taking final action on a renewal application no later than 18 months after a complete application is received.<sup>92</sup>

The Petitioner states that "almost nine years had elapsed" between the June 24, 2015, permit renewal application date and the February 5, 2024, public hearing date, which "is significantly more time than Texas law contemplates."<sup>93</sup>

The Petitioner claims that "during the time it has taken TCEQ to review the permit, the permit should have already been up for renewal twice" but that the renewal process was subject to lengthy "unexplained 'Management Holds.'"<sup>94</sup> The Petitioner quotes TCEQ's statements in its RTC that "FOP O1553 is a large complex permit . . . TCEQ has been continually working with [Exxon] to process the revisions to the permit [and] address public comments . . . [and] [d]uring this time period, there were many changes to federal rules and programmatic policy changes that had to be addressed."<sup>95</sup> The Petitioner claims that these are "practical, not legal, reasons" that TCEQ could not meet its 18-month deadline to take final action on the permit renewal.<sup>96</sup>

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<sup>90</sup> See e.g., Permit at 509, 514, 520, 527, 316, 388.

<sup>91</sup> Petition at 9.

<sup>92</sup> *Id.* at 8–9 (citing Tex. Health & Safety Code § 382.0542(b)(1); Tex. Health & Safety Code § 382.0543(a), (c); 30 TAC § 122.110; 30 TAC § 122.134(a); 30 TAC § 122.139(3)).

<sup>93</sup> *Id.* at 8.

<sup>94</sup> *Id.* (quoting "Tex. Comm'n on Env't Quality, Air Permits Project Record, Title V Permit O1553, [https://www2.tceq.texas.gov/airperm/index.cfm?fuseaction=tv.project\\_report&proj\\_num=23071&status\\_txt=ACTI](https://www2.tceq.texas.gov/airperm/index.cfm?fuseaction=tv.project_report&proj_num=23071&status_txt=ACTI))."

<sup>95</sup> *Id.* at 8–9 (quoting RTC at 32).

<sup>96</sup> *Id.* at 9.

The Petitioner requests that the EPA object to the permit and that the Agency, in the Agency's objection, "admonish TCEQ for flagrantly violating Texas law, Texas' SIP, and its own regulations."<sup>97</sup> The Petitioner notes that the EPA's objection "does not necessarily require EPA to reject the Draft Permit (thereby causing further delay) but should at least entail an admonishment of TCEQ and EPA could consider taking action to overhaul TCEQ's Title V program."<sup>98</sup>

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

The Petitioner does not identify a specific requirement under the CAA or 40 C.F.R. part 70 that would provide a basis for the EPA to object to the Permit.<sup>99</sup> Even if TCEQ's delayed Permit issuance could have presented a basis for the EPA to object to the Permit, this claim was rendered moot when TCEQ issued a final permit in 2025.<sup>100</sup> The EPA's objection to the Permit could provide no further relief.

Notably, the Petitioner acknowledges that it does not necessarily want the EPA to "reject" this particular Permit, which would cause further delays, but instead suggests the Agency "admonish" TCEQ and "overhaul" the State's title V program more generally. The Petitioner, again, does not identify any Federal legal authority that would form a basis for such an action. To the extent that the Petitioner is raising broader programmatic oversight issues not specific to this Permit, such issues are beyond the scope of issues properly addressed in a petition under CAA section 505(b)(2) requesting the EPA's objection to an individual title V permit. Therefore, the EPA denies the Petitioner's request for an objection on this claim.

## V. CONCLUSION

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

Dated: May 27, 2026

  
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Lee M. Zeldin  
Administrator

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> 40 C.F.R. § 70.12(a)(2)(ii).

<sup>100</sup> See *In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII-2022-13 & VIII-2022-14 at 94 (July 31, 2023) (denying as moot a similar request for the EPA's objection under CAA section 505(b)(2), as well as a request that the Agency "terminate, modify, or revoke and reissue a permit" under CAA section 505(e), related to a State's failure to timely issue a title V permit.)