UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit No. O3454	§	
	§	
Issued to Flint Hills Resources Ingleside, LLC	§	Permit No. O3454
	§	
Issued by the Texas Commission on Environmental Quality	§	
	§	
	§	

PETITION TO OBJECT TO TITLE V PERMIT NO. O3454 ISSUED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Pursuant to section 42 U.S.C. § 7661d(b)(2), Ingleside on the Bay Coastal Watch Association ("IOBCWA") and Environmental Integrity Project ("EIP") petition the Administrator of the U.S. Environmental Protection Agency ("Administrator" or "EPA") to object to Proposed Federal Operating Permit No. O3454 (proposed "Permit")[1] issued by the Texas Commission on Environmental Quality ("TCEQ" or "Commission") authorizing operation of Flint Hills Resources Ingleside Oil Terminal, in San Patricio County, Texas.

Flint Hills Resources (FHR) Ingleside, LLC applied to the TCEQ for a renewal of their Title V Permit, to authorize continued operation at the Ingleside Terminal, located at 103 FM 1069 in Ingleside, San Patricio County, Texas 78362. According to Statement of Basis, the Terminal includes marine loading and unloading as well as storage tanks for petroleum products and crude oil. In March 2024, FHR sold the docks to Enbridge, making the two docks a part of the

[1] Permit No: O3454 Issuance Date: May 23, 2024, signed by TCEQ Executive Dir. ("ED") Terry Keel; TCEQ Central Records Online: Search Results (texas.gov)

neighboring Enbridge facility.[2] Notwithstanding that FHR sold their docks, the proposed Permit includes the ship and barge dock for loading and unloading bulk liquids. The proposed Permit also includes seventeen crude or petroleum products storage tanks, and ancillary equipment. An onshore vapor combustor controls VOC emissions during marine loading.

I. PETITIONERS

Ingleside on the Bay Coastal Watch Association is a non-profit organization formed in 2019 to mitigate negative effects on this bayfront community due to rising sea levels, larger and more frequent ship traffic, and rapid industrialization. Association members include Ingleside on the Bay residents, educators, engineers, business owners, elected officials, and other individuals who support the goal to decrease the negative impacts on the area and to preserve and enhance the local environment.

Environmental Integrity Project is a non-profit, non-partisan organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or comply with environmental laws; and (3) to help communities obtain protections guaranteed by environmental laws. EIP has staff and programs in Texas. EIP staff-member Ilan Levin is also a member of IOBCWA.

I. PROCEDURAL BACKGROUND

On March 22, 2024, TCEQ mailed to FHR a Notice of Proposed Permit and Executive Director's Response to Public Comment Renewal Permit Number O3454 for Flint Hills Resources

[2] FHR recently announced the sale of its marine loading operations to the adjacent Enbridge Ingleside Energy Center, while retaining the company's storage tank facility. *See*, Release Details - Enbridge Inc. "Acquisition of 2 marine docks and land from Flint Hills Resources ("FHR"); adjacent to Enbridge Ingleside Energy Center ("EIEC") terminal for ~US$0.2 billion."

Ingleside, LLC Ingleside Terminal Ingleside, San Patricio County (TCEQ Regulated Entity Number: RN100222744 Customer Reference Number: CN605721935) (hereinafter, the Response to Comments, or "RTC").[3] As of March 26, 2024, the proposed Permit was subject to an EPA review for 45 days, ending on May 10, 2024. Because EPA did not file an objection to the proposed Permit, Petitioners may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with 40 CFR Part 70 and Texas' Title V rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)].

This Petition is based on objections to the permit raised with reasonable specificity during the public comment period, except for the objection involving FHR's non-ownership of the docks, the grounds for which arose after the public comment period. This Petition follows content and formatting guidelines specified in Title 40 Code of Federal Regulations Part 70 (40 CFR § 70.12). The EPA should object to the issuance of this proposed Permit because it is not in compliance with the applicable requirements of 40 CFR Part 70 or the requirements of 30 TAC Chapter 122.

The 60-day public petition period began on May 11, 2024, and ends on July 10, 2024, according to EPA.

TCEQ lists five modifications in its Cover letter to FHR regarding the Notice and Response to Comments, stating that the "Modifications Made from the Draft to the Proposed Permit" are:

1. "Revised Special Term and Condition 9 in the proposed permit as follows: "Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated November 10, 2023 in the application for project 33957), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment."

[3] The Response to Comments was downloaded from TCEQ's Central Records Online database, Search Results (texas.gov), TCEQ document: *AIR OP_3454-33957_Permits_Public_20240322_Agency Review_6975127_.pdf, ("RTC").

2. New Source Review Authorization References by Emissions Unit table in the proposed permit (pages 21-22) has been updated to include the emission units listed in the OP-PBRSUP tables.

3. New Source Review Authorization References table was updated to list NSR Permit Number 6606, effective 10/11/2022.

4. Revised the SOB to include a reference to the PBR Supplemental Table and Special Term and Condition 9 and an updated reference to NSR Permit Number 6606.

5. The Proposed Permit is revised to delete the MACT Y permit shield that was previously granted for GRP DOCK unit."

TCEQ also re-stated this explanation of changes within their Response to Comments as follows:

"RESPONSE TO COMMENT 1:

The proposed permit (PP) and statement of basis (SOB) are revised as follows:

1. Consistent with the permits by rule (PBR) related programmatic changes made to Title V permits, the applicant has submitted a "PBR Supplemental Table" (OP-PBRSUP) dated November 10, 2023 in the application for project 33957 to list all PBRs applicable to the site, which include registered PBRs, claimed PBRs, and claimed PBRs for insignificant emission units. In addition, the PBR Supplemental table includes PBRs where applicability under 30 TAC Chapter 106 may be the only requirements applicable to an emission unit or an activity.

2. As shown in OP-PBRSUP Table, which is part of the permit record, the site lists registered PBRs in Table A, claimed but not registered PBRs in Table B, and PBRs for insignificant sources in Table C. Table D lists the monitoring requirements of PBRs listed in Tables A and B. In addition to monitoring information listed in Table D, the ED notes that detailed information about emission calculations, emission factors, etc., is accessible to the public as application representation for PBR registration number 161793 (see WCC content ID 5373769), for PBR registration number 160536 (see WCC content ID 4665103), and for PBR registration number 107625 (see WCC content ID 3845117).

3. Revised Special Term and Condition 9 in the proposed permit as follows: "Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated November 10, 2023 in the application for project 33957), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment."

4. New Source Review Authorization References by Emissions Unit table in the proposed permit (pages 21-22) has been updated to include the emission units listed in the OP-PBRSUP tables.

5. New Source Review Authorization References table was updated to list NSR Permit Number 6606, effective 10/11/2022.

6. Revised the SOB to include a reference to the PBR Supplemental Table and Special Term and Condition 9. In addition, the Insignificant Activity list in the SOB has been expanded to include a link to the de minimis source list and references to PBRs that are not listed on the OP REQ1."

Notwithstanding TCEQ's enumerated explanations directly quoted above, the Petitioners have been able to ascertain *only one* actual change to the proposed Permit itself, that being revised Special Condition No. 9, under the *New Source Review Authorization Requirements*:

> "Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated November 10, 2023 in the application for project 33957), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment."

Importantly, no *Additional Monitoring Requirements* have been added to the proposed Permit, nor to the Statement of Basis.

II. LEGAL REQUIREMENTS

Title V permits are the primary method for enforcing and assuring compliance with the Clean Air Act's pollution control requirements for major sources of air pollution. Operating Permit Program, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). Prior to enactment of the Title V permitting program, regulators, operators, and members of the public had difficulty determining which requirements applied to each major source and whether sources were complying with applicable requirements. This was a problem because applicable requirements for each major source were spread across many different permits, rules and orders, some of which did not make it clear how general requirements applied to specific sources.

The Title V permitting program was created to improve compliance with and to facilitate enforcement of Clean Air Act requirements by requiring each major source to obtain an operating permit that (1) lists all applicable federally-enforceable requirements, (2) contains enough information for readers to determine how applicable requirements apply to units at the permitted source, and (3) establishes monitoring requirements that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) ("The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source."); *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008) ("But Title V did more than require the compilation in a single document of existing applicable emission limits . . . . It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions").

The Title V permitting program provides a process for stakeholders to resolve disputes about which requirements should apply to each major source of air pollution outside of the enforcement context. 57 Fed. Reg. 32,266 ("Under the [Title V] permit system, these disputes will no longer arise because any differences among the State, EPA, the permittee, and interested members of the public as to which of the Act's requirements apply to the particular source will be resolved during the permit issuance and subsequent review process."). Accordingly, federal courts do not generally second-guess Title V permitting decisions made by state permitting agencies and will not enforce otherwise-applicable requirements that have been omitted from or displaced by conditions in a Title V permit. See, 42 U.S.C. § 7607(b)(2); see also, *Sierra Club v. Otter Tail,* 615 F.3d 1008 (8th Cir. 2008) (holding that enforcement of New Source Performance Standard omitted from a source's Title V permit was barred by 42 U.S.C. § 7607(b)(2)). Because courts rely

on Title V permits to determine which requirements may be enforced and which requirements may not be enforced against each major source, state-permitting agencies and EPA must exercise care to ensure that each Title V permit includes a clear, complete, and accurate account of the requirements that apply to the permitted source.

The Act requires the Administrator to object to a state-issued Title V permit if they determine the permit fails to include and assure compliance with all applicable requirements. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If the Administrator does not object to a Title V permit, "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. The Administrator "shall issue an objection... if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the... [Clean Air Act]." 42 U.S.C. § 7661d(b)(2); see also, 40 C.F.R. § 70.8(c)(1). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

III. GROUNDS FOR OBJECTION

This section specifically deals with the objections raised by the Commenters and addressed in TCEQ's Responses to Comments[4] under TCEQ's responses to: "COMMENTS FILED ON 05/25/2023 BY ENVIRONMENTAL INTEGRITY PROJECT AND [Ingleside on the] BAY COASTAL WATCH ASSOCIATION."

A. The Proposed Permit fails to include adequate monitoring sufficient to assure compliance with incorporated Permits-by-Rule ("PBR").

[4] Notice of Proposed Permit and Executive Director's Response to Public Comment, Renewal Permit Number O3454, Mar. 22, 2024 (From Jesse Chacon, TCEQ to Thomas Baldassare, FHR); Search Results (texas.gov); *AIR OP_3454-33957_Permits_Public_20240322_Agency Review_6975127_.pdf ("RTC")

TCEQ responded in two parts, recognizing the two specific objections the Commenters raised regarding PBRs.[5]

TCEQ tried to address the part of the Commenters' objection that all active PBRs were not included, by adding revised PBR Supplemental Tables. Petitioners appreciate that the inclusion of all active PBRs, and the additional information in the supplemental PBR tables is an intended improvement. However, the Petitioners note that all TCEQ has done is to incorporate by reference existing requirements in the most general manner, but has not addressed the issue. TCEQ failed to do *anything* to address the specific objection that the proposed Permit still fails to assure compliance with these multiple PBRs. Instead, TCEQ essentially doubles down, and the RTC reflects the state Agency's clear disagreement with the objection. TCEQ's RTC re-states their position: that *no* additional monitoring or reporting is needed to assure compliance with applicable requirements. In TCEQ's view, it's all good; the Title V Permit meets the statutory requirements. However, TCEQ's RTC merely refers to the very same, problematic, PBRs and assumes that their blanket policies satisfy more specific Title V rules. Ultimately TCEQ relies on the PBR registrations themselves to ensure enforceability, and assure compliance. But this response is precisely the objection that the Comments laid out, and now this Petition re-urges EPA to agree: TCEQ's PBRs do not, in and of themselves, meet the requirements of Title V.

EPA needs to insist that FHR do more to deliver on the Clean Air Act Title V's guarantees for Ingleside on the Bay residents, fishers, boaters and visitors.

1. Specific Grounds for Objection, Including Citation to Permit Term

[5] TCEQ RTC, "Comment 1" includes sections (A) the draft Permit suffered from inadequate monitoring for all applicable Permits-by-Rule, and (B) The draft Permit fails to include all active PBRs.

Flint Hills claims that its emissions are authorized via, among other permits, several Permits by Rule. The specific Permit Term to which Comments were addressed includes the table specifying monitoring requirements for FHR's PBRs. Application, Table D, *Monitoring Requirements for registered and claimed PBRs for the Application Area*. As noted in the Comments, the monitoring requirements for many of the units identified in that table merely require Flint Hills to keep records of the duration of the event and "any other inputs needed to calculate emissions." These requirements are so vague as to be meaningless. In addition, the Commenters specifically noted they are unable to ascertain what monitoring, if any, Flint Hills is using to determine compliance with the limits in PBR No. 107625.

2. Applicable Requirement of Part 70 Requirement Not Met

30 Tex. Admin. Code § 122.142(b)(2)(B) requires Title V permits to include monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards sufficient to ensure compliance with the permit. 40 C.F.R. § 70.6(a)(1) provides that "[e]ach permit issued under this part shall include … [e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." These requirements have not been met.

40 C.F.R. § 70.6(a)(1) provides that "[e]ach permit issued under this part shall include … [e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."

42 U.S.C. § 7661c(c) requires that each Title V permit "set forth monitoring sufficient to assure compliance with all applicable requirements." *See also* 42 U.S.C § 7661c(a); 40 C.F.R. § 70.6(a), (a)(3), (c); 30 TAC 122.142(c).

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. §

70.6(a)(3) and (c)(1). Conditions in NSR permits incorporated by reference into the proposed Permit are applicable requirements. 40 C.F.R. § 70.2; proposed Permit, Special Condition No. 9. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.5(a)(5); *In the Matter of United States Steel, Granite City Works* ("Granite City I Order"), Order on Petition No. V-2009-03 at 7-8 (January 31, 2011).

TCEQ's modifications to the proposed Permit do not address this deficiency. Modifications to Special Condition No. 9 are inadequate. Further, by doubling down on their reliance on PBR registration representations and the enforceability of Texas PBRs in and of themselves, TCEQ has not only failed to specify monitoring, testing, and recordkeeping requirements that assure compliance with emission limits and operating requirements in the incorporated New Source Review permits; and the permit record does not provide any additional explanation or clear up the deficiency. Instead, TCEQ's RTC essentially doubles down on the State's position that PBRs are, in and of themselves, adequately enforceable—a position with which EPA disagrees.[6]

3. Inadequacy of the Permit Term

The proposed Permit's PBR monitoring terms fail to assure compliance with applicable requirements. As EPA has stated, when "TCEQ relies on [the PBR Supplemental Table] Table D to incorporate additional monitoring requirements, the monitoring and recordkeeping terms must be sufficient to assure compliance with emission limitations and operational requirements.[7]" However, Flint Hills' PBR Supplemental Table simply references the PBRs themselves; these are the same vague and generic monitoring, reporting, and recordkeeping requirements EPA has previously determined to be inadequate. The monitoring requirements do not specify what is being

[6] EPA, Objection to Title V Permit No. O1426, Equistar Chemicals, LP. Channelview Facility (May 18, 2023).
[7] *Id* at 4.

monitored, at what frequency, or how that information is used to estimate emissions. The terms allow Flint Hills to collect as much or as little information as it desires.

4. Issues Raised in Public Comments

This issue was raised in the May 2023, Comments of IOBCWA and EIP, pp. 2-4, as evident by the TCEQ's specific reference to, summary of, and response to the comment. In Comments, IOBCWA suggested a possible remedy: to update the PBR table to indicate 1) how the monitoring is to be performed, 2) the frequency for performing any monitoring, and 3) what emission factors and calculation methodology are used to determine the emissions.

5. Analysis of State's Response

The TCEQ Executive Director made cosmetic modifications to the proposed Permit in response to this objection, but failed to address the deficiency. The only TCEQ Responses that touch on the Commenters' PBR-related objections are:

1. That FHR listed all applicable PBRs in a **revised PBR Supplemental Table**: "Consistent with the permits by rule (PBR) related programmatic changes made to Title V permits, the applicant has submitted a 'PBR Supplemental Table' (OP-PBRSUP) dated November 10, 2023 in the application for project 33957 to list all PBRs applicable to the site, which include registered PBRs, claimed PBRs, and claimed PBRs for insignificant emission units. In addition, the PBR Supplemental table includes PBRs where applicability under 30 TAC Chapter 106 may be the only requirements applicable to an emission unit or an activity."

2. That the revised PBR Supplemental Table includes a Table D, **listing the monitoring requirements for PBRs,** and that detailed representations such as emission factors and calculation methods **can be found in the original PBR applications.** "As shown in OP-PBRSUP Table, which is part of the permit record, the site lists registered PBRs in Table A, claimed but not registered PBRs in Table B, and PBRs for insignificant sources in Table C. Table D lists the monitoring requirements of PBRs listed in Tables A and B. In addition to monitoring information listed in Table D, the ED notes that detailed information about emission calculations, emission factors, etc., is accessible to the public as application representation for PBR registration number 161793 (see WCC content ID 5373769), for PBR registration number 160536 (see WCC content ID 4665103), and for PBR registration number 107625 (see WCC content ID 3845117)."

3. That **revised Special Term and Condition number 9** in the proposed Permit **enhances PBR monitoring and enforceability**: "Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR

Supplemental Tables dated November 10, 2023 in the application for project 33957), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment."

4. That the New Source Review Authorization References by Emissions Unit table in the proposed Permit (pages 21-22) was updated to **include the emission units listed in the OP-PBRSUP tables**.

5. And, that the **Statement of Basis was revised to include a reference to the PBR Supplemental Table and Special Term and Condition 9.** In addition, the Insignificant Activity list in the SOB has been expanded to include a link to the de minimis source list and references to PBRs that are not listed on the OP REQ1.

Not one of these purported modifications address the specific objection. They merely incorporate by reference the active PBRs. None of these responses address the inadequate monitoring and related lack of enforceability of the incorporated PBRs. Absent the inclusion of additional, meaningful, monitoring, the objection remains unresolved. As EPA has previously explained:

> "When TCEQ relies on Table D to incorporate additional monitoring requirements, the monitoring and recordkeeping terms must be sufficient to assure compliance with emission limitations and operational requirements. When records are identified as being maintained, it would be practical and necessary to include a frequency for the recordkeeping. Table D for Equistar contains very simplistic monitoring that does not establish a practically enforceable permit limit or condition. **The monitoring requirements are vague without specifying what exactly is being monitored, at what frequency, and how that information is used to determine the emissions. The table should be updated to indicate how the monitoring is to be performed, the frequency for performing any monitoring, and specify what emission factors are being used (if applicable) and the calculation methodology for determining the emissions**.[8]"

Monitoring, recordkeeping, and reporting adequacy in New Source Review permits, including minor NSR permits such as PBRs, that are incorporated by reference into a title V permit

[8] *Id.*

are considered part of the Title V permitting process. Therefore, EPA reviews whether a Title V permit contains adequate monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction, or NSR, permits. The statutory obligations to ensure that each Title V permit contains "enforceable emission limitations and standards" supported by "monitoring . . . requirements to assure compliance with the permit terms and conditions," 42 U.S.C. § 7661c(a), (c), apply *independently from and in addition to* the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit." *See, South Louisiana Methanol* Order at 10; *Yuhuang II* Order at 7-8; *PacifiCorp-Hunter* Order at 16, 17, 18, 18 n.33, 19; *Big River Steel* Order at 17, 17 n.30, 19 n.32, 20. Therefore, regardless of the monitoring, recordkeeping, and reporting initially associated with a minor NSR permit including a PBR, TCEQ has a statutory obligation independent of the process of issuing those permits to evaluate monitoring, recordkeeping, and reporting in the Title V permitting process to ensure that these terms are sufficient to assure compliance with all applicable requirements. *Sierra Club v. EPA,* 536 F.3d 673 (D.C. Cir. 2008); *see, Motiva* Order at 25-26.

TCEQ failed to meet its obligation. In its RTC, TCEQ simply re-states their position that the incorporated PBRs are fine as-is. For example, in the Statement of Basis, TCEQ explains that the state Agency simply applies existing policy that PBRs are sufficiently enforceable:

> "This interpretation is **consistent with how TCEQ has historically determined compliance** with the emission limits…This interpretation also provides for effective and practical enforcement of 30 TAC §106.4(a), …
>
> "The permit holder is required to keep records for demonstrating compliance with PBRs in accordance with 30 TAC § 106.8 for the following categories: • As stated in 30 TAC § 106.8(a), the permit holder is **not required to keep records for de minimis sources** as designated in 30 TAC § 116.119. • As stated in 30 TAC § 106.8(b) for PBRs on the insignificant activities list, the permit holder is **required to provide information** that would demonstrate compliance with the general requirements of 30 TAC § 106.4. • As stated in 30 TAC § 106.8(c) **for all other PBRs, the permit**

> **holder must maintain sufficient records to demonstrate compliance** with the general requirements specified in 30 TAC § 106.4 and to demonstrate compliance with the emission limits and any specific conditions of the PBR as applicable.
>
> SOB at p.17.

EPA's recent Title V Objection based on inadequate monitoring for compliance with a General Permit – analogous to Texas' PBR – Issued by the Alabama environmental agency to a DCP facility in Mobile Bay, Alabama, is instructive.[9] In that Objection, EPA agreed with the petitioners that the Title V Permit's General Permit proviso failed to establish monitoring, recordkeeping, or reporting requirements to assure compliance. Notably, EPA agreed that the permit record did not provide a reasoned explanation as to how the lack of these requirements assures compliance. Moreover, EPA agrees that "**each title V permit** must contain monitoring, recordkeeping, and reporting that assure compliance with all applicable requirements." *Id* at 11-12, citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *In the Matter of Wheelabrator Baltimore, L.P.*, Permit No. 24-510-01886 at 10 (Apr. 14, 2010))(emphasis added). Additionally, EPA agreed with the Petitioners claim that under title V, "testing, monitoring, and reporting requirements **must be included in the title V permit itself**." *Id*, citing *In the Matter of Valero Refining-Texas, L.P.* Valero Houston Refinery, Order on Petition No. VI-2021-8 at 23 (June 30, 2022))(emphasis added). Ultimately, EPA objected on the grounds that "Petitioners have demonstrated that [Alabama]DEM has failed to respond to significant public comments as required by 40 C.F.R. § 70.7(h)(6). ADEM appears to have not addressed the Petitioner's public comments regarding the need for supplemental monitoring, recordkeeping, and reporting for fugitive dust provisions, and did not provide any response to these concerns in the RTC, simply restating language provided in the SOB." *Id* at 12.

[9] 2024 Order Granting in Part and Denying In Part a Petition for Objection to a Title V Operating Permit for DCP Mobile Bay (epa.gov) (The "2024 DCP Mobile Bay Order")

Similarly, with respect to the Flint Hills Terminal, Texas points to the underlying PBR, and directs Commenters to the PBR permit application files should they attempt to check on compliance.

B. The Permit Fails to Assure Compliance with Emissions Limits for the Marine Vapor Combustion Units

1. Specific Grounds for Objection, Including Citation to Permit Term

Incorporated NSR permit No. 6606 fails to assure compliance with emission limits for the marine vapor combustor. Permit 6606 is incorporated into the Title V permit, as shown in the proposed Permit's *New Source Review Authorization References table*:

> "The New Source Review authorizations listed in the table below are applicable requirements under 30 TAC Chapter 122 and enforceable under this operating permit.
> Authorization No.: 6606 Issuance Date: 10/11/2022
> Permits By Rule (30 TAC Chapter 106) for the Application Area
> Number: 106.261 Version No./Date: 11/01/2003
> Number: 106.262 Version No./Date: 11/01/2003
> Number: 106.263 Version No./Date: 11/01/2001
> Number: 106.472 Version No./Date: 09/04/2000"

In addition, the proposed Permit Special Condition 9 incorporates Flint Hills' NSR permits listed in New Source Review Authorization References, including NSR Permit No. 6606.

Permit No. 6606 authorizes numerous emissions sources at the Flint Hills Terminal, including three marine vapor combustion units. These units are a significant source of criteria pollutants, and the largest source of non-volatile organic compounds (VOC), at the site. The proposed Permit offers no monitoring or reporting related to emissions from the marine vapor combustion units. And Permit No. 6606 only specifies monitoring to demonstrate initial compliance with some of the emission limits at the marine vapor combustion units. Permit No. 6606 requires only a single, initial stack test for carbon monoxide ("CO"), nitrogen oxides ("NOx"), sulfur dioxide ("SO_2"), and VOC, performed shortly after construction of the units. Thus, the proposed Permit is deficient in that it does not assure continuous compliance with hourly and annual limits on emissions from the marine vapor combustion units.

2. Applicable Requirement of Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). Emission limits in NSR permits incorporated by reference into the proposed Permit are applicable requirements. 40 C.F.R. § 70.2; proposed Permit, NSR Authorization Table, Special Condition No. 8. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.5(a)(5); In the Matter of United States Steel, Granite City Works ("Granite City I Order"), Order on Petition No. V-2009-03 at 7-8 (January 31, 2011).

As explained below, the proposed Permit is deficient because (1) it fails to specify monitoring, testing, and recordkeeping requirements that assure compliance with emission limits and operating requirements in incorporated NSR Permit No 6606; and (2) the permit record does not contain a reasoned justification for the Executive Director's determination that monitoring, testing, and recordkeeping requirements in the proposed Permit assure compliance with emission limits established in NSR Permit 6606.

3. Inadequacy of the Permit Term

Permit No. 6606 is an Applicable Requirement. It authorizes numerous emissions sources at the Flint Hills Terminal, including three marine vapor combustion units. These units are a significant source of criteria pollutants, and the largest source of pollutants excluding volatile organic compounds (VOC) at the site. The proposed Permit offers no additional monitoring and provides no assurance of compliance with emission limits for the marine vapor combustion units. Permit No. 6606 only specifies monitoring to demonstrate initial compliance with some of the emission limits at the marine vapor combustion units. Permit No. 6606 requires only a single, initial stack test for carbon monoxide ("CO"), nitrogen oxides ("NOx"), sulfur dioxide ("SO_2"), and VOC, performed shortly after construction of the units. Thus, the

proposed Permit is deficient in that it does not assure continuous compliance with hourly and annual limits on emissions from the marine vapor combustion units.

EPA raised this very objection in comments on Permit 6606, and TCEQ has included the RTC for Permit 6606 as an attachment to the FHR Title V application. TCEQ responded:

> "(Aimee Wilson) RESPONSE 13: The vapor combustion units (VCUs) are required to achieve 99.9-percent control of the waste gas. The VCU has a combustion chamber firebox temperature monitor. The pilot flame is also required to be monitored. The applicant is required to perform sampling after achieving the maximum operation rate to establish the minimum temperature at which the VCUs must operate to achieve the required minimum control efficiency. After sampling is conducted, the minimum actual temperature must be maintained above the minimum temperature established during the stack test during loading operations. Additionally, per Special Condition 20(D), if the "maximum…crude oil and stabilized condensate loading operations recorded…is greater than that recorded during the test periods, stack sampling shall be performed at the new operating conditions…" The applicant is restricted from installing (and operating) an atmospheric bypass without a flow monitor or installing car-seals, a physical restriction to operating the bypass, on the bypass. Car-seals must be inspected monthly to verify the position of the values and that flow out of the bypass is prevented.[10]"

TCEQ also responded:

> "(Patrick Arnold Nye) RESPONSE 22: The MVCUs are control devices that are subject to Title V Compliance Assurance Monitoring (CAM) requirements. CAM is a federal monitoring program established under 40 CFR Part 64 that ensures control devices have sufficient monitoring, testing, and recordkeeping requirements to show compliance with an emission limitation or standard. The MVCUs meet CAM requirements by continuously monitoring the firebox temperatures at an averaging period of 6 minutes or less with an accuracy of the greater of the plus or minus 2 percent of the temperature being measured expressed in degrees Celsius or plus or minus 2.5 ºC. This ensures that the average firebox temperature is kept at a minimum of 1600 °F, which translates into a minimum of 99.9 percent waste gas destruction efficiency and the minimum conversion of 98 percent H_2S into SO_2 in crude oil through combustion. The monitoring, testing, and recordkeeping requirements for MVCUs can be found in Special Conditions 24, 25, and 26 of the permit.[11]"

Thus, TCEQ relies on the existing permit conditions in Permit 6606 incorporated by reference into this proposed Title V Permit to assure compliance with marine vapor combustor limits. Specifically, TCEQ relies on these two parameters: (1) the temperature of the firebox, and (2) existence of the pilot flame to assure compliance.

[10] TCEQ Response to Comments on Permit 6606, attached to RTC for Title V proposed Permit.
[11] *Id.*

However, TCEQ makes no attempt to verify nor explain their statement that an average firebox temperature at a "minimum of 1600 °F *translates into* a minimum of 99.9 percent waste gas destruction efficiency and the minimum conversion of 98 percent H_2S into SO_2 in crude oil through combustion." (RTC) This is not

4. Issue Raised in Public Comments

This issue was raised in IOB and EIP Comments, pp. 6-8, and TCEQ's RTC purports to respond what TCEQ describes as "*COMMENT 2: Assurance of Compliance with Emissions Limits for the Marine Vapor Combustion Units, C. The Draft Permit Fails to Assure Compliance with Emissions Limits for the Marine Vapor Combustion Units.*"

5. Analysis of State's Response

The TCEQ disagrees with the assertion that the draft Permit fails to assure compliance with emission limits for the marine vapor combustion units. TCEQ points in its RTC to:

- Special Condition 6 of the proposed Permit (listing sitewide requirements specified in 40 CFR Part 63, Subpart Y),
- Applicable Requirements Summary table (listing the applicable requirements for GRP MVCU on page 14 of proposed Permit), and
- Periodic Monitoring requirements listed on page 16 of the proposed Permit.

TCEQ argues that the marine vapor combustion units demonstrate compliance by continuously monitoring the firebox temperatures at an averaging period of 6 minutes or less with an accuracy of the greater of the plus or minus 2 percent of the temperature being measured expressed in degrees Celsius or plus or minus 2.5 ºC. According to TCEQ, this ensures that the average firebox temperature is kept at a minimum of 1600 °F, which "translates into" a minimum of 99.9 percent waste gas destruction efficiency and the minimum conversion of 98 percent H_2S into SO_2 in crude oil through combustion. In addition to these terms in the proposed Permit No. O3454, TCEQ relies on the ***monitoring,***

testing, recordkeeping, reporting, emissions factors and calculations, and emissions controls stated in NSR permit 6606 conditions 8, 9.A through 9.E, 10.A through 10.E, 11 through 14, 24-25 and 26.A through 26.C. TCEQ also relies on "other requirements in NSR permit 6606 that ensures compliance include ***routine maintenance*** of the MVCUs and ***equipment design*** and ***vessel loading interlocks*** that ensure proper collection and combustion of VOCs." (Emphases added.) And so, at the end of the day, TCEQ clearly relies solely on "MVCU stack temperatures … recorded continuously while loading," as the method to assure compliance. But, on what does TCEQ rely for this supposedly critical compliance condition? TCEQ's RTC cites the source:

> "Application representation for NSR permit 6606 dated April 2021, version 4.1, page 34-36 document monitoring requirements for MVCUs on a per pollutant basis (see monitoring tab in 20210422_143525_ATTACH_20210408-03_PI-1 Workbook.xlsx). Emission rates are calculated using the methodology summarized on pages 17-20 of the application representation (WCC content ID 6476737, see pdf document AIR NSR_6606- 327436_Permits_Public_20221011_Agency Review_6476737_ .pdf) including stack testing data, manufacturer's specifications, engineering estimates, mass balances, TCEQ guidance, and EPA's Compilation of Air Emission Factors (AP-42). These approaches and emission factors were determined to be correct and applicable by TCEQ staff during the technical review based on standard industry air permitting practices. The Applicant represented the appropriate methodologies to control and minimize emissions and utilized corresponding control efficiencies when calculating the emission rates. As provided in 30 TAC § 116.116(a), the Applicant is bound by this representation, including the represented performance characteristics of the control equipment. In addition, the permit holder must operate within the limits of the permit, including the emission limits as listed in the MAERT."

In short, to those of us who desire to check whether the marine vapor combustors comply with permitted emission limits, TCEQ tells us to dig up the incorporated permit's (No. 6606) Application representations. But wasn't the entire purpose of Title V to avoid exactly that?[12]

C. The Draft Permit Fails to Assure Compliance with Emission Limits for All Storage Tanks.

1. Specific Grounds for Objection, Including Citation to Permit Term

[12] *See*, May 24, 2024, EPA Objection In the Matter of Mountain Coal Co., LLC, West Elk Mine, Permit No. 20OPGU411, Issued by the Colorado Department of Public Health and Environment, (One purpose of the title V 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." 57 Fed. Reg. 32250, 32251 (July 21, 1992). 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."

The Draft Permit specifies the use of unreliable and inappropriate emission factors to calculate emission from Flint Hills' many storage tanks. The storage tanks are the largest source of VOCs at the Flint Hills Terminal. The proposed Permit Special Condition 9 incorporates New Source Review Permit No. 6606 in the New Source Review Authorization References table. Permit No. 6606 Special Condition 6 authorizes the storage of fuel products with a vapor pressure less than crude oil, including but not limited to naptha, diesel, No. 6 oil, and coker gas oil. Permit No. 6606 Special Condition 17 lists monitoring requirements for heated and unheated tanks, which suggests that some tanks at Flint Hills' Terminal are heated at least some of the time, depending on what kind of oil they are storing. Permit No. 6606 Special Condition 15(F) states that emissions from tanks shall be calculated using "AP-42 Compilation of Air Pollution Emission Factors, Chapter 7 - Storage of Organic Liquids" and the TCEQ publication, titled "Technical Guidance Package for Chemical Sources-Storage Tanks." Permit No. 6606 Special Condition 18 lists fifteen tanks subject to additional monitoring and recordkeeping for a period of five years to assure that the synthetic minor Ingleside Terminal Expansion Project (amendment to Permit No. 6606) does not trigger major New Source Review.

2. Applicable Requirement or Part 70 Requirement Not Met

42 U.S.C. § 7661c(c) requires that each Title V permit "set forth monitoring sufficient to assure compliance with all applicable requirements." See also 42 U.S.C § 7661c(a); 40 C.F.R. § 70.6(a), (a)(3), (c); 30 TAC 122.142(c).

3. Inadequacy of the Permit Term

The Draft Permit's reliance on AP-42 emission factors is inadequate to assure compliance with storage tank emission limits at Flint Hills' Terminal. According to EPA, AP-42 factors are based on averages from multiple sources and "are not likely to be accurate predictors of emissions from any one specific source, except in very limited scenarios.[13]" Rather than calculating emissions from a single specific source like Flint Hill's Terminal, AP-42 emission factors are "intended for use in developing area-wide annual or triannual inventories." The AP-42 manual itself includes this disclaimer:

> "Use of these factors as source-specific permit limits and/or as emission regulation compliance determinations is not recommended by EPA. Because emission factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor and the other half will have emission rates less than the factor. As such, a permit limit using an AP-42 emission factor would result in half of the sources being in noncompliance."

TCEQ's reliance on AP-42 factors to demonstrate compliance is, therefore, misplaced. By its authors' own admissions, AP-42 factors are not appropriate for use in determining source-specific emissions, as Flint Hills proposes in the proposed Permit. EPA has repeatedly warned against using AP-42 emission factors to demonstrate compliance with emission limits. The EPA Enforcement Alert specifically referenced No. 6 oil being stored in heated tanks as an example of the absurd undercounting of emissions that can result from reliance of AP-42 emission factors: One example of a present-day concern is the use of a default vapor pressure value for estimating VOC emissions from heated tanks that store heavy refinery liquids such as No. 6 fuel oil. The true vapor pressure (TVP) of a stored liquid is important when calculating the emissions from tanks using the equations in AP-42, Chapter 7, Liquid Storage Tanks. The default vapor pressure is only an estimate and may not be correct for every blend of No. 6 fuel oil. Direct emissions testing of No. 6 fuel oil tanks and TVP testing in 2012 and 2013, suggested that in those cases the use of the default vapor

[13] EPA Enforcement Alert, Publication no. EPA 325-N-20-001 (November 2020) at 1.

pressure in AP-42 had resulted in emissions estimates that were understated by a factor of 100 for permitting and reporting purposes. Use of AP-42 factors to calculate emissions from heated storage tanks storing No. 6 oil – which all tanks at Flint Hills' Terminal are authorized to store – undercounted VOC emissions by a factor of 100. The actual emissions in that test were 100 times what the company was reporting by using AP-42 emission factors. This example illustrates why Flint Hills' use of AP-42 emission factors is inappropriate for determining compliance with hourly and annual emissions limits from its storage tanks.

In addition, it is worth recalling that Flint Hills' synthetic minor amendment (Permit No. 6606) is based on maintaining emissions from its tanks below certain levels, and so even minor inaccuracies in calculating those emissions could subject the surrounding community to impermissible levels of air pollution. Because neither TCEQ nor Flint Hills can accurately determine compliance based only on AP-42 emission factors, the proposed Permit is deficient. Accurate emissions estimates based on AP-42 are even more unlikely given the large variety of products Flint Hills is allowed to store at various pressures and temperatures. The proposed Permit fails to identify all the products Flint Hills is allowed to store, and further fails to specify the vapor pressures and temperatures necessary for those unnamed products. To remedy this deficiency, TCEQ must require Flint Hills to amend its Draft Permit to include monitoring and reporting sufficient to assure compliance with hourly and annual limits from all storage tanks. This monitoring and reporting must be based on identified, source-specific information, and not merely the reference to unidentified and unreliable AP-42 emission factors currently included in the proposed Permit. There are multiple demonstrated monitoring technologies that could help Flint Hills accurately measure storage tank emissions while protecting the community from harmful

emissions. These include open-path optical monitoring in wide use in California's South Coast Air Quality Management District, and regular use of optical gas imaging to detect leaks.

4. Issue Raised in Public Comments

This issue was raised in EIP and IOB Comments at pp.8-11, and TCEQ's RTC acknowledges this at "COMMENT 3: Assurance of Compliance with Emissions Limits for All Storage Tanks, D. The Draft Permit Fails to Assure Compliance with Emissions Limits for All Storage Tanks."

5. Analysis of State's Response

TCEQ disagrees with this objection, and responded that in the state Agency's view, existing rules and permit conditions suffice to ensure compliance with tank limits. TCEQ cites to the proposed Permit's Applicable Requirements Summary table as documenting applicable standards, including monitoring and reporting, for storage tanks subject to the requirements of 30 TAC Chapter 115, as well as NSPS Ka, and NSPS Kb. NSPS Ka and Kb require storage tank visual inspections and seal gap measurements to verify fitting and seal integrity. In addition, TCEQ points to NSR permit 6606 conditions 6, 7, 15.A through 15.F, 17, and Attachment A, to document requirements of the storage tank units including sampling methods, emission calculations, control requirements, and recordkeeping requirements.

But, at the end of the day, TCEQ admits: "TCEQ requires NSR permit holders to use AP-42 factors per TCEQ guidance document APDG 6419 – Short-term Emissions from Floating Roof Storage Tanks to determine permitted hourly emissions rates. Emissions from the tank units were determined by using AP-42, Compilation of Air Pollutant Emission Factors, 5th Edition, Volume I, Chapter 7 Liquid Storage Tanks, Section 7.1 Organic Liquid Storage Tanks, following TCEQ guidance for marine loading and vapor combustion unit (VCU) control emissions, stack testing data, and TCEQ's fugitive guidance document APDG 6422." RTC. TCEQ assumes that, because 30 TAC § 116.116(a) binds an Applicant to the level of performance represented in the

application, it follows that these same factors should be used to determine compliance. There's no logic in that assumption.

TCEQ's response to the use of a default vapor pressure value for estimating VOC emissions from heated tanks that store heavy refinery liquids such as No. 6 fuel oil, is a red herring. TCEQ responded that all storage tank units at the site operate at ambient temperature, presumably to differentiate the FHR tanks from those tanks included in the cited study. Petitioners note that ambient temperatures in the summer in Corpus Christi likely reach the same or higher temperature as the heated storage tanks referenced in the EPA study which include tanks located in Maine (hence they are heated). Lastly, TCEQ dismisses Optical Gas Imagery (OGI) as a potential complement to existing monitoring with no consideration of this technology – or any other one – as a compliance aid. (The ED notes OGI is not used to determine compliance.") However, OGI can and is in use at many facilities as a way to spot leaks, and then fix them. TCEQ makes no response to the Commenters' proposed use of OGI as a compliance tool and instead overly simplifies the obvious: "the detection of emissions is not an indication of being out of compliance." That statement is not entirely correct, because in some cases the detection of emissions is an indication of noncompliance, for example detecting gas leaking from a flange or broken seal. In addition, the same can be said for any optical detection method, including the visual inspection methods specified in the proposed Permit.

In summation, TCEQ responds that compliance with tank limits is determined by "performing the proper inspections of the floating roof required by the permit and federal rules and limiting withdrawal rates to the maximum permitted rates." In other words, TCEQ relies on the permit Application representations (withdrawal rates and AP-42 Factors). That method to

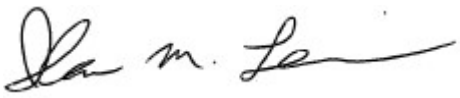
determine compliance, i.e., withdrawal rates x AP-42 factors, simply perpetuates the myth of compliance. There is no meaningful assurance of compliance with FHR's tank limits.

IV. CONCLUSION

For the foregoing reasons, the proposed Permit is deficient. Accordingly, the Clean Air Act requires the Administrator to object to the proposed Permit.

Respectfully,

ENVIRONMENTAL INTEGRITY PROJECT



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