

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

January 27, 2014

Anne Idsal  
General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

***Re: SOAH Docket No. 582-13-4611; TCEQ Docket No. 2013-0657-AIR; In Re: Application of ExxonMobil for Air Quality Permit No. 102892 for the Construction of a New Ethylene Production Unit at ExxonMobil's Baytown Olefins Plant, located in Harris County, Texas***

Dear Ms. Idsal:

Having considered the exceptions and replies to the Proposal for Decision and Proposed Order issued on December 18, 2013, the Administrative Law Judges recommend the following changes to the Proposal for Decision and to the Proposed Order.

Finding of Fact No. 26A should be added: "The Notice of Application and Preliminary Decision contained all required language properly notifying members of the public how to request a contested case hearing. There was no duty to notify members of the public that they had until 30 days after issuance of the Executive Director's Response to Comments to request a contested case hearing."

Finding of Fact No. 27 should be amended to clarify that Protestants are the Sierra Club and Air Alliance Houston.

Finding of Fact No. 43: Delete "Actual impacts from the proposed EPU will only be a fraction of the impacts estimated by the model."

Finding of Fact No. 47: Delete the word "[d]emonstrating," so that the Finding reads: "Compliance with all rules and regulations of TCEQ demonstrates that the Application both protects public health and welfare and that the Application complies with the intent of the Texas Clean Air Act (TCAA)."

Finding of Fact No. 50: Delete the words, "such as asthmatics," and insert, "those with respiratory illnesses," so that the Finding reads as follows: "Primary NAAQS are health-based standards set to protect the health of sensitive individuals, such as those with respiratory illnesses, children, and the elderly."

Finding of Fact No. 53: Delete the phrase, “exceeding NAAQS” and insert the phrase, “an exceedance of the NAAQS,” so that the Finding reads: “Air dispersion modeling is used to determine whether predicted ground level concentrations (GLCs) of air contaminants will cause or contribute to an exceedance of the NAAQS.”

Finding of Fact No. 55: Delete the phrase, “State NAAQS analysis” and insert, “minor NSR NAAQS analysis.”

Finding of Fact No. 58: Delete the clause, “therefore, a further site-wide Refined Screening Analysis was performed,” and insert the clause, “therefore, a Full Impacts Analysis was performed.”

Finding of Fact No. 59: Delete “Applicant’s Refined Screening Analysis” and insert “Applicant’s Full Impacts Analysis.” Additionally, delete the words, “a few” in the first sentence, so that the clause after the conjunctive reads, “and sources at off-site locations recently permitted but not constructed.”

Finding of Fact No. 60: Delete “Applicant’s Refined Screening Analysis” and insert “Applicant’s Full Impacts Analysis.”

Finding of Fact No. 64: Substitute the word “exceeding” with “exceedance.”

Finding of Fact No. 65: Substitute the word “exceeding” with the phrase “in exceedance of.”

Finding of Fact No. 91A should be added, stating: “There is no evidence demonstrating that the addition of cooling tower PM emissions to the SARS, based on monitoring and calculation methods used to determine PM emissions for SAR purposes, would result in exceeding the PM PAL limit in PAL6.”

Finding of Fact No. 92 should state: “The Annual Emissions Inventory Update (AEIU) is not used to determine compliance with PAL6. The emissions reported in the AEIUs are based on different emissions sources, monitoring, and calculation methods than those required for PAL6 compliance demonstrations. The AEIU annual reports are not accurate or representative for purposes of determining PM PAL compliance.”

Finding of Fact No. 96: Insert the word “operationally” before the word, “manage.”

Finding of Fact No. 97: Insert the word “operationally” before the word, “managed,” and delete the word “fit,” so that the Finding reads: “This Application does not trigger federal nonattainment NSR and is not subject to federal PSD permitting requirements because emissions proposed to be authorized in the Application for the EPU will be operationally managed by Applicant such that they fit under the existing PAL caps.”

Finding of Fact No. 122 should be revised to read: “Applicant will control SO<sub>2</sub> emissions from the MPGF flare through an Alternative Method of Control (AMOC) approved by the appropriate regulatory authority, either the EPA or the TCEQ. If Applicant is unable to get the AMOC approved, then Applicant will control SO<sub>2</sub> emissions by the use of low sulphur natural gas as the pilot, comply with 40 CFR 60.18, and continuously monitor for presence of flame, which is BACT for SO<sub>2</sub> for flares.”

Finding of Fact No. 166: Delete the word “it” in the phrase, “it is a closed-loop system.”

Finding of Fact No. 167: Insert the phrase, “For the purpose of this permitting action,” at the beginning of the Finding, so that the Finding reads: “For the purpose of this permitting action, there will be no increase in allowable emissions resulting from the proposed addition of the duct burners to the heat recovery steam generator section of the gas turbine generator train 5 at Applicant’s existing BOP, which will provide supplemental heat and incremental steam. The

duct burners are an upstream source that is properly considered in the authorization for Permit No. 3452, but not in the Application in the proposed EPU.”

Finding of Fact No. 168A should be added, stating: “Planned MSS activities are appropriately addressed in the Application, were properly modeled, and meet BACT. Where appropriate, planned MSS activities are included in Permit No. 3452. Planned MSS activities associated with the proposed EPU and their emissions either are already authorized under Permit No. 3452 or will be properly authorized once the Final Draft Permit is issued.”

Finding of Fact No. 173: Replace the word “unrefined” with the word “other.”

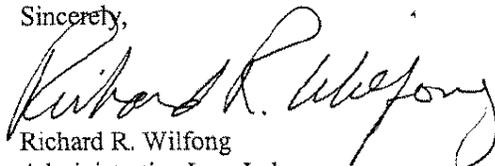
Conclusion of Law No. 20A should be added, stating: “Protestants cannot collaterally attack Applicant’s existing PAL permit, PAL6, in this administrative proceeding.”

Conclusion of Law No. 21A should be added, stating: “The TCEQ BACT evaluation is conducted using a tiered analysis approach, involving three tiers. In the first tier, controls accepted as BACT in recent permit reviews for the same process or industry are approvable as BACT in a current review if no new technical developments have occurred that would justify additional controls as economically or technically reasonable.”

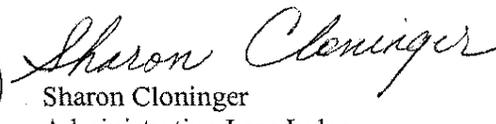
In addition, the second sentence of the first paragraph on page 13 of the Proposal for Decision should be changed. The words “For these reasons, the ED denied Protestants’ assertion that” should be deleted and replaced with “However, the ED admitted that” so that the sentence reads: “However, the ED admitted that the combined PM emissions from all facilities at BOP have exceeded 365.62 tons during at least one 12-month period since September 1, 2005.”

The Administrative Law Judges recommend no further changes to the Proposal for Decision and Proposed Order.

Sincerely,



Richard R. Wilfong  
Administrative Law Judge



Sharon Cloninger  
Administrative Law Judge

SC/lh  
cc: Mailing List

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**STYLE/CASE:** EXXON MOBIL CORPORATION  
**SOAH DOCKET NUMBER:** 582-13-4611  
**REFERRING AGENCY CASE:** 2013-0657-AIR

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
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