

SOAH DOCKET NO. 582-13-4611  
TCEQ DOCKET NO. 2013-0657-AIR

APPLICATION OF EXXONMOBIL FOR §  
ISSUANCE OF AIR QUALITY PERMIT §  
NO. 102982 FOR THE CONSTRUCTION §  
OF A NEW ETHYLENE PRODUCTION §  
UNIT AT EXXONMOBIL'S BAYTOWN §  
OLEFINS PLANT, LOCATED IN §  
HARRIS COUNTY, TEXAS §

BEFORE THE  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

**EXXONMOBIL'S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

ExxonMobil (the "*Applicant*") agrees with the Honorable Administrative Law Judges' (the "*ALJs*") Proposal for Decision (the "*PFD*") and Proposed Order issued in the above referenced matter on December 18, 2013. Applicant files these Exceptions only for purposes of clarification.

**Finding of Fact No. 26A**

The ALJs' finding on page 86 of the PFD is supportive of proposed Finding of Fact No. 26 in the Proposed Order. Applicant requests that language from page 50 of the PFD be included in a new proposed Finding of Fact No. 26A, so that proposed Finding of Fact No. 26A reads as follows:

26A. 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**

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

## **Finding of Fact Nos. 88 - 97 Relating to Nonattainment Review and Prevention of Significant Deterioration Review**

Finding of Fact Nos. 88 - 97 reflect that the ALJs appropriately conducted a serious appraisal of the facts and the basis for the proposed decision<sup>1</sup> relating to how emissions from Applicant's proposed permit will fit within the limits of Applicant's existing Plantwide Applicability Limit ("PAL") permit ("PAL6"). As described more fully below, Applicant excepts to Finding of Fact Nos. 88 through 97 only for purposes of clarification and requests that certain findings that the ALJs made in the PFD be included as findings of fact or as a conclusions of law (see discussion below relating to Conclusion of Law No. 20A) in the Proposed Order.

### **Finding of Fact No. 91A**

The ALJs' finding in the 8<sup>th</sup> bullet on page 22 of the PFD is supportive of proposed Finding of Fact No. 91 in the Proposed Order. Applicant requests that language in the 8<sup>th</sup> bullet be included in a new proposed Finding of Fact No. 91A, so that proposed Finding of Fact No. 91A reads as follows:

91A. 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**

The ALJs' findings in the 2<sup>nd</sup> and 3<sup>rd</sup> bullets on page 21 of the PFD are supportive of proposed Finding of Fact No. 92 in the Proposed Order. Applicant requests that language in the 2<sup>nd</sup> and 3<sup>rd</sup> bullets be added to the end of proposed Finding of Fact No. 92, so that proposed Finding of Fact No. 92 reads as follows:

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<sup>1</sup> *Texas Health Facilities Com'n v. Charter Medical-Dallas*, 665 S.W.2d 446, 452 (Tex. 1984)(findings are necessary to establish that the agency acted after full consideration of the evidence and a serious appraisal of the facts); *United Resource Recovery Inc., v. Texas Water Com'n*, 815 S.W.2d 797 (Tex. App. - Austin 1991, writ denied, rehearing of writ of error overruled)(findings must ensure a serious appraisal of facts by the agency and inform the parties and courts of the basis for the agency's decision).

92. 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. 166**

Applicant suggests deleting the word “it” before the phrase “is a closed-loop system” in Finding of Fact No. 166.

**Finding of Fact No. 168A**

The ALJs’ findings on page 78 of the PFD relating to planned Maintenance, Startup, and Shutdown (“MSS”) emissions are supportive of adding a new finding of fact. Applicant requests that proposed Finding of Fact No. 168A be added to read as follows:

168A. 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**

Applicant suggests replacing the word “unrefined” with the word “other” in Finding of Fact No. 173.

**Conclusion of Law No. 20A**

The ALJs’ findings in the 10<sup>th</sup> - 14<sup>th</sup> bullets on page 22 of the PFD are supportive of proposed Conclusion of Law No. 20 in the Proposed Order since PAL6 is the basis for why the Application is a minor NSR application. Applicant requests that language describing the 10<sup>th</sup> -

14<sup>th</sup> bullets be added as a new proposed Conclusion of Law No. 20A, so that proposed Conclusion of Law No. 20A reads as follows:

Protestants cannot collaterally attack Applicant's existing PAL permit, PAL6, in this administrative proceeding.

**Conclusion of Law No. 21A**

The ALJs' findings on page 50-51 of the PFD relating to Best Available Control Technology ("**BACT**") for NOx for the furnaces is supportive of proposed Conclusion of Law No. 21 in the Proposed Order. Applicant requests that proposed Conclusion of Law No. 21 be clarified by adding Conclusion of Law No. 21A to read as follows:<sup>2</sup>

21A. The TCEQ BACT evaluation is conducted using a tiered analysis approach, involving three different 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.<sup>3</sup>

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<sup>2</sup> The conclusions of law requested by the Applicant correlate to proposed conclusions of law 30-31 in the Proposed Findings of Fact and Conclusions of Law filed by the Applicant on October 16, 2013, with modifications.

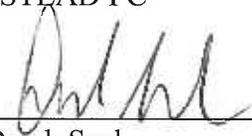
<sup>3</sup> PFD at 50-51.

**CONCLUSION AND PRAYER**

For the reasons stated herein, Applicant agrees with the ALJs' PFD and Proposed Order, and prays that the ALJs clarify the ALJs' Proposed Order as requested herein.

Respectfully submitted,

WINSTEAD PC

By:  \_\_\_\_\_

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State Bar No. 00797404

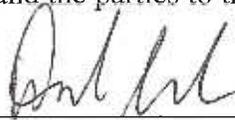
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ATTORNEYS FOR EXXONMOBIL

**CERTIFICATE OF SERVICE**

I certify that I have served true and correct copies of ExxonMobil's Exceptions to the Proposal for Decision on the Administrative Law Judges and the parties to this matter as identified below, on this the 7<sup>th</sup> day of January, 2014.



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