

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 7, 2013

The Honorable Administrative Law Judges  
Sharon Cloninger and Richard A. Wilfong  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

**Re: Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, Order, and Findings of Fact and Conclusions of Law for NSR Permit Registration No. 102982, TCEQ Docket No. 2013-0657-AIR; SOAH Docket No. 582-13-4611**

Dear Judge Cloninger and Judge Wilfong:

Enclosed please find the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, Order, and Findings of Fact and Conclusions of Law for the contested case hearing listed above. If you have any questions, please do not hesitate to contact me at (512) 239-0649.

Sincerely,

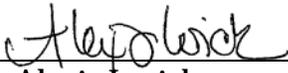
A handwritten signature in cursive script that reads "Alexis Lorick".

Alexis Lorick, Staff Attorney  
Environmental Law Division

Enclosure  
cc All parties (as indicated on the service list)

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic filing, electronic mail, first class mail, interagency mail, and/or overnight mail as indicated on this 7th day of January, 2014, on the attached service list.

  
\_\_\_\_\_  
Ms. Alexis Lorick  
State Bar No. 24070174  
Staff Attorney, Environmental Law Division

## SERVICE LIST

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

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>EXXON MOBIL CORPORATION</b>	<b>§</b>	<b>OF</b>
<b>FOR PROPOSED AIR</b>	<b>§</b>	
<b>QUALITY PERMIT NO. 102982</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**EXECUTIVE DIRECTOR’S PROPOSED REVISIONS TO THE**  
**ADMINISTRATIVE LAW JUDGES’ PROPOSAL FOR DECISION AND ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES SHARON CLONINGER  
AND RICHARD A. WILFONG:

COMES NOW, the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files the Executive Director’s Proposed Revisions to the Administrative Law Judge’s (ALJ) Proposal for Decision and Order, and in support thereof shows the following:

**I. Introduction and Background**

On May 22, 2012, ExxonMobil Corporation (ExxonMobil or Applicant) applied to the TCEQ for issuance of Air Quality Permit Number 102982 under Texas Clean Air Act (TCAA) § 382.0518, authorizing the construction of an ethylene production unit (EPU) at its existing Baytown Olefins Plant (BOP), in Harris County, Texas.

TCEQ received hearing requests for ExxonMobil’s permit application, and on March 27, 2012, ExxonMobil formally requested TCEQ’s Office of the Chief Clerk to directly refer the permit application to the State Office of Administrative Hearings (SOAH) for a contested case hearing. A preliminary hearing for the permit application was held in Baytown, Texas on July 8, 2013. The hearing on the merits was held at SOAH’s offices in Austin, Texas on October 1-2, 2013. The court issued a Proposal for Decision (PFD) and Proposed Order including Conclusions of Law and Findings of Fact

on December 18, 2013. The ALJs' PFD recommends granting the draft permit, and the ED agrees with that recommendation.

## **II. Proposed Exceptions, Corrections and Additions**

Upon reviewing the Proposed Order and Findings of Fact and Conclusions of Law, the ED offers limited exceptions consisting of mainly typographical and technical corrections to the PFD and Proposed Order; therefore, the ED recommends that the following portions of the PFD and the Findings of Fact and Conclusions of Law be adjusted as follows:

### Proposed Exceptions, Corrections, and Additions

1. In the Proposed Order on page 6, Finding of Fact 43, delete, "Actual impacts from the proposed EPU will only be a fraction of the impacts estimated by the model."
2. Also in the Proposed Order on page 6, Finding of Fact 47, delete the word, "[d]emonstrating," so that the Finding of Fact 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)."
3. In the Proposed Order on page 7, Finding of Fact 50, delete the words "such as asthmatics," and insert, "those with respiratory illnesses," so that the entire 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."
4. In the Proposed Order on page 7, Finding of Fact 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."

**EXXONMOBIL CORPORATION, INC.**  
**APPLICATION FOR AIR QUALITY PERMIT NO. 102982**  
**SOAH DOCKET NO. 582-13-4611; TCEQ DOCKET NO. 2013-0657-AIR**  
**THE EXECUTIVE DIRECTOR'S PROPOSED REVISIONS TO THE ADMINISTRATIVE LAW**  
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5. In the Proposed Order on page 7, Finding of Fact 55, delete the phrase, "State NAAQS analysis," and insert "minor NSR NAAQS analysis."
6. Also in the Proposed Order on page 8, Finding of Fact 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."
7. In the Proposed Order on page 8, Finding of Fact 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."
8. In the Proposed Order on page 9, Finding of Fact 60, delete, "Applicant's Refined Screening Analysis," and insert "Applicant's Full Impacts Analysis."
9. In the Proposed Order on page 9, Finding of Fact 64, substitute the word, "exceeding," with "exceedance."
10. Also in the Proposed Order on page 9, Finding of Fact 65, substitute the word, "exceeding," with the phrase, "an exceedance of."
11. In the Proposed Order on page 13, Finding of Fact 96, insert the word, "operationally," before the word, "manage."
12. Also in the Proposed Order on page 14, Finding of Fact 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."
13. In the Proposed Order on page 17, revise Finding of Fact 122, to read as follows: "The 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 the Applicant is unable to get an AMOC approved, then the

Applicant will control SO<sub>2</sub> emissions by the use of low sulfur 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.”

14. In the Proposed Order on page 24, Finding of Fact 166, delete the word, “it,” in the phrase, “it is a closed-loop system.”
15. In the Proposed Order, also on page 24, Finding of Fact 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 for the proposed EPU.”

### **III. Conclusion**

Based on evidence admitted and disputed issues identified in the record, the ED contends that all procedures and analysis required for an air quality permit review were followed in accordance with applicable rules and guidance established by the TCEQ. Therefore the TCEQ ED respectfully requests that the Commission include his revisions to the PFD and the Findings of Fact and Conclusions of Law, and issue the Proposed Order.

**EXXONMOBIL CORPORATION, INC.**  
**APPLICATION FOR AIR QUALITY PERMIT NO. 102982**  
**SOAH DOCKET NO. 582-13-4611; TCEQ DOCKET NO. 2013-0657-AIR**  
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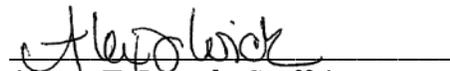
Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar, P.G., Executive Director

Caroline Sweeney, Deputy Director  
Office of Legal Services

Robert Martinez, Division Director  
Environmental Law Division



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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY