

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



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
*Protecting Texas by Reducing and Preventing Pollution*

September 27, 2013

MR DENNIS PAYNE  
VICE PRESIDENT & GENERAL MANAGER  
VALERO REFINING-TEXAS, L.P.  
PO BOX 9370  
CORPUS CHRISTI TX 78469-9370

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment  
Renewal  
Permit Number: O2238  
Valero Refining-Texas, L.P.  
Valero Corpus Christi Refinery East Plant  
Corpus Christi, Nueces County  
Regulated Entity Number: RN100211663  
Customer Reference Number: CN600127468  
Account Number: NE-0043-A

Dear Mr. Payne:

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered. In addition, TCEQ received a letter from EPA dated November 20, 2009 which is being treated as additional comments. All comments are addressed in the enclosed Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

As of October 1, 2013 the proposed permit is subject to an EPA review for 45 days, ending on November 15, 2013.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration. The petition shall be based only on comments to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such comments within the public comment period, or the grounds for such comments arose after the public comment period. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period begins on November 16, 2013 and ends on January 14, 2014. Public petitions should be

Mr. Dennis Payne  
Page 2  
September 27, 2013

submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Texas Commission on Environmental Quality  
Office of Air  
Air Permits Division  
Technical Program Support Section, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

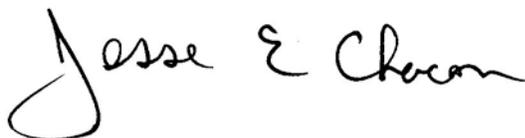
U.S. Environmental Protection Agency  
(EPA)  
Attn: Air Permit Section Chief (6PD-R)  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency  
Administrator Mike O. Leavitt  
Ariel Rios Building (AR 1101A)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Mr. Dennis Payne  
Vice President & General Manager  
Valero Refining-Texas, L.P.  
Po Box 9370  
Corpus Christi TX 78469-9370

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Ms. Kim Strong, P.E. at (512) 239-0252.

Sincerely,



Jesse E. Chacon, P.E., Manager  
Operating Permits Section  
Air Permits Division  
Texas Commission on Environmental Quality

JEC/kds

cc: Mr. Michael D. Cox, Manager of Environmental Engineering, Valero Refining-Texas, L.P.,  
Corpus Christi  
Mr. Joe M. Almaraz, Environmental Manager, Valero Refining-Texas, L.P., Corpus Christi  
Air Section Manager, Region 14 - Corpus Christi  
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas  
(Electronic copy)

Enclosures: Executive Director's Response to Public Comment  
Proposed Permit  
Statement of Basis

Project Number: 12654

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 27, 2013

ENVIRONMENTAL INTEGRITY PROJECT  
1303 SAN ANTONIO STREET  
SUITE 200  
AUSTIN TX 78701

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment  
Renewal  
Permit Number: O2238  
Valero Refining-Texas, L.P.  
Valero Corpus Christi Refinery East Plant  
Corpus Christi, Nueces County  
Regulated Entity Number: RN100211663  
Customer Reference Number: CN600127468  
Account Number: NE-0043-A

Dear Environmental Integrity Project :

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered. In addition, TCEQ received a letter from EPA dated November 20, 2009 which is being treated as additional comments. All comments are addressed in the enclosed Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable. The proposed permit and statement of basis are available through the TCEQ Web site and can be accessed at <https://webmail.tceq.texas.gov/gw/webpub>.

As of October 1, 2013 the proposed permit is subject to an EPA review for 45 days, ending on November 15, 2013.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration. The petition shall be based only on comments to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such comments within the public comment period, or the grounds for such comments arose after the public comment period. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period

Environmental Integrity Project  
Page 2  
September 27, 2013

begins on November 16, 2013 and ends on January 14, 2014. Public petitions should be submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Texas Commission on Environmental Quality  
Office of Air  
Air Permits Division  
Technical Program Support Section, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

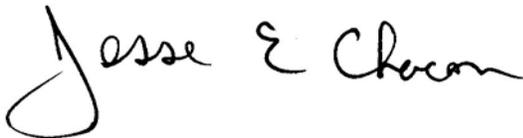
U.S. Environmental Protection Agency  
(EPA)  
Attn: Air Permit Section Chief (6PD-R)  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency  
Administrator Mike O. Leavitt  
Ariel Rios Building (AR 1101A)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Mr. Dennis Payne  
Vice President & General Manager  
Valero Refining-Texas, L.P.  
Po Box 9370  
Corpus Christi TX 78469-9370

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Ms. Kim Strong, P.E. at (512) 239-0252.

Sincerely,



Jesse E. Chacon, P.E., Manager  
Operating Permits Section  
Air Permits Division  
Texas Commission on Environmental Quality

JEC/kds

cc: Mr. Michael D. Cox, Manager of Environmental Engineering, Valero Refining-Texas, L.P.,  
Corpus Christi  
Mr. Joe M. Almaraz, Environmental Manager, Valero Refining-Texas, L.P., Corpus Christi  
Air Section Manager, Region 14 - Corpus Christi  
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas  
(Electronic copy)

Enclosures: Executive Director's Response to Public Comment

Project Number: 12654

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 27, 2013

MR WREN STENGER  
DIRECTOR  
MULTIMEDIA PLANNING AND PERMITTING DIVISION  
US ENVIRONMENTAL PROTECTION AGENCY REGION 6  
1445 ROSS AVE STE 1200  
DALLAS TX 75202-5766

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment  
Renewal  
Permit Number: O2238  
Valero Refining-Texas, L.P.  
Valero Corpus Christi Refinery East Plant  
Corpus Christi, Nueces County  
Regulated Entity Number: RN100211663  
Customer Reference Number: CN600127468  
Account Number: NE-0043-A

Dear Mr. Stenger:

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered. In addition, TCEQ received a letter from EPA dated November 20, 2009 which is being treated as additional comments. All comments are addressed in the enclosed Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

As of October 1, 2013 the proposed permit is subject to an EPA review for 45 days, ending on November 15, 2013.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration. The petition shall be based only on comments to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such comments within the public comment period, or the grounds for such comments arose after the public comment period. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period begins on November 16, 2013 and ends on January 14, 2014. Public petitions should be submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Mr. Wren Stenger  
Page 2  
September 27, 2013

Texas Commission on Environmental Quality  
Office of Air  
Air Permits Division  
Technical Program Support Section, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

U.S. Environmental Protection Agency  
(EPA)  
Attn: Air Permit Section Chief (6PD-R)  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency  
Administrator Mike O. Leavitt  
Ariel Rios Building (AR 1101A)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Mr. Dennis Payne  
Vice President & General Manager  
Valero Refining-Texas, L.P.  
Po Box 9370  
Corpus Christi TX 78469-9370

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Ms. Kim Strong, P.E. at (512) 239-0252.

Sincerely,



Jesse E. Chacon, P.E., Manager  
Operating Permits Section  
Air Permits Division  
Texas Commission on Environmental Quality

JEC/kds

cc: Mr. Michael D. Cox, Manager of Environmental Engineering, Valero Refining-Texas, L.P.,  
Corpus Christi  
Mr. Joe M. Almaraz, Environmental Manager, Valero Refining-Texas, L.P., Corpus Christi  
Air Section Manager, Region 14 - Corpus Christi  
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas  
(Electronic copy)

Enclosures: Executive Director's Response to Public Comment  
Proposed Permit  
Statement of Basis

Project Number: 12654

**bcc:** Mr. Brian Christian, Public Education Program, MC-108, Austin  
Ms. Deanna Avalos, Final Documents Team, TCEQ Office of the Chief Clerk, MC-105,  
Austin  
Ms. Amy Browning, TCEQ Environmental Law Division (MC-173), Austin  
File Copy

## **EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (RTC or Response) on the application for a Federal Operating Permit (FOP) Permit No. O2238 filed by Valero Refining-Texas, L.P. (Applicant).

As required by Title 30 Texas Administrative Code (TAC) § 122.345 the Executive Director shall send a notice of the proposed final action, which includes a response to any comments submitted during the comment period. These comments are summarized in this response. The Office of Chief Clerk (OCC) timely received comment letters from the Environmental Integrity Project EIP on behalf of Citizens for Environmental Justice and itself. In addition, TCEQ received comments from EPA. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our Web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

### **BACKGROUND**

#### **Procedural Background**

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site, and ultimately must obtain the FOP in order to operate. Valero Refining-Texas, L.P. applied to the TCEQ for a FOP renewal for a Petroleum Refining plant located in Corpus Christi, Nueces County on October 17, 2008, and notice was published on September 29, 2009. The public comment period ended on October 29, 2009. Comments were received from the Environmental Integrity Project (EIP) on October 29, 2009. In addition, EPA submitted comments in a letter dated November 20, 2009.

Since comments were received, numerous changes at the site and in the applicable regulations occurred prompting the need to incorporate these changes into the FOP renewal. On May 7, 2013 a second notice was published incorporating these changes. The comment period ended on June 6, 2013. No additional comments were received during the second notice period.

#### **Description of Site**

Valero Refining-Texas, L.P. has applied to the TCEQ for an FOP Renewal that would authorize the applicant to operate the Valero Corpus Christi Refinery East Plant. The facility is located 1300 Cantwell Lane in Corpus Christi, Nueces County, Texas 78407.

The site processes crude oil into products, including, but not limited to gasoline, diesel fuel, and kerosene.

East Plant Process Units. The East Plant Process Units includes: the Quintana Plant Reformer Area with the #2 Reformer and the #4 Platformate Splitter; the Quintana Hydrocracker Area with the Hydrocracker Unit and the Steam Methane Reformer; the Gas Oil Treater; the Platformer Area with the #4 Platformer, the #2 LEU, and the FCC Gasoline Merox; the Coker

Area with the Coker #1 Unit and the Sludge Concentration Unit; the Crude/Vacuum Area with atmospheric distillation and vacuum distillation; the Diesel/Kerosene HDS Area with the Diesel HDS Unit and the Kerosene HDS Unit; the Sulfur Recovery Complex Area with the Amine Regeneration Unit, the Sulfur Recovery Unit, the Sour Water Stripper, and the Benzene Water Stripper; the FCCU Area with the FCCU and the MTBE Fractionator; the Alkylation Area with the Alkylation Unit, the #1 Light Ends Unit, the Nonene Unit, #1 and #2 Gasoline Splitter, the MTBE Debutanizer, and the AV Gas Splitter; the Sulfolane/BTX Area with the Sulfolane Unit, the BTX (benzene, toluene, xylene) Unit, the TBA (t-Butyl Alcohol) Unit, the #2 Naptha HDS Unit, and the #2 Reformate Splitter; the Visbreaker Area with the Visbreaker, Aromatic Saturation Unit, Premium Raffinate Tower, Xylene Tower, Asphalt Blow Still and the MTBE Unit; the Raffinate Processing Area with the Hydrodealkylation (HDA) Unit, the BTX Unit, the Isomerization Unit, Prep Tower, Tetramer Splitters, and the Sulfolane Unit; and the Polymer Modified Asphalt Unit.

East Plant Utilities. The East Plant Utilities includes: the Complex 8 Utilities (formerly known as the East Plant Utilities), Complex 7 Utilities (formerly known as the West Plant Utilities), Complex 6B Utilities (formerly known as the Quintana Plant Utilities), and the Wastewater Treating System.

The Complex 8 Utilities includes a flare, cooling towers, and steam boilers. The Complex 8 (East Plant) Flare receives flow from process vents from petroleum refining process units and chemical manufacturing process units. The flare burns the vent gases at a destruction efficiency of at least 98%. The plant has two cooling towers that provide cooling water to heat exchangers in chemical manufacturing process units. The two towers are the Main Cooling Tower (83-CT-1) and the Preflash Cooling Tower (87-CT-6). The Complex (East Plant) has three fuel gas fired boilers that provide steam to the process units. The boilers are EP-B-1, EP-B-2, and EP-B-5.

The Complex 7 Utilities includes a flare and steam boiler (B-14). The Complex 7 (West Plant) Flare receives flow from process vents from petroleum refining process units. The flare burns the vent gases at a destruction efficiency of at least 98%.

The Complex 6B Utilities has two flares, a cooling tower, and steam boilers. The #2 Reformer Flare and the HCU Flare receive flow from process vents from petroleum refining process units. The flares burn the vent gases at a destruction efficiency of at least 98%. The plant has one cooling tower that provides cooling water to heat exchangers in chemical manufacturing process units. This tower is the TBA/Sulfolane/BTX Cooling Tower (Q-CT-8). The Complex 6B Utilities has two fuel gas fired boilers that provide steam to the process units. The boilers are B-4 and B-5.

Wastewater is collected from throughout the refinery. Oil is removed from the water in a separator. Further removal of oil is accomplished in two dissolved air floatation units (DAFs). The DAF effluent is cooled in a cooling system before going to two bioreactors. The bioreactor effluent flows to two clarifiers. The treated water is discharged via an NPDES permit. Sludge from these processes goes to the coker for processing.

East Plant Tank Farm Areas. The East Plant Tank Farm Areas includes: the Complex 6B (formerly Quintana) Tank Farm, the Complex 8 (formerly East Plant) North Tank Farm, the Complex 8 (formerly East Plant) South Tank Farm and the Complex 7 (formerly West Plant) Tank Farm.

The Complex 6B Tank Farm can be divided into six areas which include: Sulfolane/BTX unit tanks, Naptha HDS/Reformer tanks, slop oil tanks, gas oil tanks, jet fuel tanks, and a sour water

tank. The tanks associated with the sulfolane/BTX units include TK-310, TK-311, TK-312, TK-320, TK-321, TK-322, TK-323, TK-324, TK-325, TK-327, TK-328, TK-331, TK-333, TK-336, and TK-356. These tanks hold the sulfolane unit feed, BTX unit feed, sulfolane solvent, benzene, toluene, and mixed xylene for sales or future processing. The tanks associated with the #2 Naphtha HDS unit and #2 Reformer include TK-330, TK-331, TK-352, TK-355, TK-357, TK-358, TK-370, and TK-371. These tanks hold naphtha and gasoline for sales or future processing. Slop oil tanks, TK-326 and TK-329, store oil recovered from operations for future use or processing. TK-353, TK-359, and TK-360, hold gas oil for future processing. TK-334, TK-335, TK-350, and TK-351 receive jet fuel from process units and store it for sales or future processing. Tank 29-TK-101 holds sour water prior to treatment in the sour water stripper.

The Complex 8 North Tank Farm can be divided into nine areas which include: Sulfolane/BTX unit tanks, Nonene/Tetramer and Raffinate unit tanks, gasoline tanks, heavy oil tanks, aviation gasoline tanks, waste water tanks, mid-range oil tanks, miscellaneous raw material tanks and a product loading rack. The tanks associated with the sulfolane/BTX units include TK-102, TK-106, TK-107, TK-111, TK-112, TK-138, TK-142, TK-202, TK-207, TK-210, and TK-211. These tanks hold the sulfolane unit feed, BTX unit feed, sulfolane solvent, benzene, toluene, and mixed xylene for sales or future processing. The tanks associated with the Nonene/Tetramer and the raffinate units include TK-7, TK-108, TK-118, TK-143, TK-147, TK-151, TK-152, TK-153, TK-208, TK-209, TK-212, TK-213, and TK-214. These tanks hold tetramer, natural gasoline, premium gasoline, nonene, alkylate and heavy raffinate for sales or future processing. Gasoline tanks, TK-144, TK-145 and TK-146, store premium gasoline for future use or for sales. TK-113, TK-114, and TK-128 hold the heavy oil stream such as slop oil and slurry which can be used in #6 fuel oil for future processing or for sales. TK-141, TK-501, and TK-508 receive aviation gasoline from process units and store it for sales. Tanks TK-200, TK-212, TK-213, TK-201, and TK-206 hold either untreated waste water, storm water or recovered ground water prior to treatment. TK-103, TK-104, and TK-502 hold additives used in the blending of streams such as diesel or fuel oil. The products are cetane improver and pour point improver. The tanks that hold mid-range oils such as cutter stock, #2 fuel oil, slop oil and kerosene prior to sales or future processing include TK-115, TK-116, TK-203, TK-204, TK-215, TK-503, TK-504, TK-505, TK-509, and TK-510. The loading dock is used to load into trucks the following products: kerosene, diesel, gasolines and heavy raffinate. Thermal oxidizer TO-2 is used to destroy the vapors from the truck loading. #2 fuel oil, kerosene, and diesel fuel are loaded into trucks without controls. TO-2 is also used to destroy vapors from TK-108 and from some groundwater recovery wells.

The Complex 8 South Tank Farm can be divided into six areas which include: asphalt tanks, kerosene and jet fuel tanks, gasoline/naphtha tanks, heavy oil tanks, crude oil tanks, and medium range oil tanks. The tanks that store asphalt for sales or for future processing include TK-53, TK-54, TK-70, TK-71, TK-81, TK-82, and TK-83. The tanks that store kerosene and jet fuel for sales or for future processing include TK-14, TK-20, TK-21, TK-22, TK-74, TK-88, TK-89, and TK-90. Tanks TK-57, TK-72, TK-73, TK-76, TK-79, TK-84, and TK-92 store naphtha and gasoline for sales or future processing. Heavy oil tanks, TK-50, TK-51, TK-52, TK-55, TK-77, TK-80, TK-81, TK-86 and TK-87, hold the heavy oil streams such as gas oil and #6 fuel oil for future processing or for sales. TK-85, TK-91, and TK-93 store crude oil for processing in the crude unit. TK-15, TK-17, TK-19, and TK-205 hold mid-range oils such as #2 oil and slop oil prior to sales or for future processing.

The Complex 7 Tank Farm can be divided into five areas which include: sour water tanks, a benzene water tank, crude oil tanks, and #6 fuel oil tanks. Tank TK-3 stores sour water prior to processing in the sour water stripper. 43-TK-2 and TK-9 store benzene water prior to processing in the benzene water stripper. TK-9 is a backup for 43-TK-2. TK-93, TK-96, TK-97,

TK-98, TK-99, TK-100 and TK-110 store crude oil received prior to processing in the crude unit. TK-94 and TK-95 receive diesel from process units and store it for sales or future processing.

**All comments were submitted by EIP on behalf of Citizens for Environmental Justice and itself.**

**COMMENT 1:** TCEQ continues to release draft permits in direct violation of recent orders from the EPA administrator.

The proposed renewal permit does not identify the emission limitations associated with several NSR permits that are incorporated by reference into the renewal draft. These permits are: PSDTX1023M1, PSDTX243M2, 2937, 9344, 87486. (See New Source Review Authorization References) The Applicable Requirements Summary, in turn, relies extensively on incorporation by reference, thus basing the entire permit's emission limitations on incorporation by reference. This does not "assure compliance". To the contrary, it poses a significant barrier to members of the public who wish to discover and/or comment on whether the permit assures compliance.

As explained in the EPA Administrator's May 28, 2009 Order Granting in Part and Denying in Part Petition for Objection to Permit, response to Petition Number VI-2007-01 (CITGO Order), other than minor NSR permits and permits by rule "EPA did not approve (and does not approve of) Texas' use of incorporation by reference of emissions limitations for other requirements." CITGO Order at 11.

Consistent with EPA's previous statements on the use of incorporation by reference, I agree that the applicable emissions limits (MAERT) should be explicitly identified in CITGO's Title V permit. It is especially important here where the Title V permit incorporates requirements from several permits (including two PSD permits, several federal regulations, and other requirements). Moreover, the Title V permit cross references the PSD permits in their entirety. Thus, EPA grants the petition on this issue with regard to TCEQ's use of incorporation by reference for emissions limitations, with the exception of those emissions limitations from minor NSR permits and permits by rule. EPA directs TCEQ to reopen the permit and ensure that all such emissions limitations are included on the face of the title V permit. (CITGO Order at 11.)

In addition, the courts make clear that the compilation of emission limits and monitoring requirements in one place is a fundamental piece of the permit and should be done in a manner so as to easily identify these limits and requirements. "Title V did more than require the compilation in a single document of existing applicable emission limits, id. [42 U.S.C.] §7661c(a), and monitoring requirements, id. [42 U.S.C.] § 7661c(c). It also mandated that "[e]ach permit issued under [Title V] shall set forth...monitoring...requirements to assure compliance with the permit terms and conditions." Id. See, *Sierra Club, et al., v. EPA*, 536 F.3d 673 (D.C. Cir. 2008). TCEQ should correct this fundamental flaw in the draft renewal and require Valero to re-publish the revised draft for public comment.

**RESPONSE 1:** The federally approved operating permit program for Texas has allowed for applicable requirements to be incorporated by reference into the FOP since 1996. See Final Interim Approval, 61 Fed. Reg. 32693, (June 25, 1996); Final Full Approval, 66 Fed. Reg. 63318, (December 6, 2001); and Final Approval of Resolution of Deficiency, 70 Fed. Reg. 16134, (March 30, 2005). Title 30 TAC §122.142 states that the operating permit shall contain the specific

regulatory citations in each applicable requirement identifying the emission limitations and standards. Additionally, EPA discussed the use of incorporation by reference in the preamble to the final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating: “Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to provisions of the Act is critical in defining the scope of the permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program.” See 57 Fed. Reg. 32250, 32275, (July 21, 1992).

In comments on the proposed final interim approval of the operating permit program, in 1995, the commission (then-TNRCC) proposed to include a standardized permit provision that incorporated by reference all preconstruction authorizations, both major and minor, to resolve the EPA-identified deficiency of Texas’ failure to include minor NSR as an applicable requirement. In the June 25, 1996 Final Interim Approval, EPA directed, “the State must be quite clear in any standardized permit provision that all of its major ‘preconstruction authorizations including permits, standard permits, flexible permit, special permits, or special exemptions’ are incorporated by reference into the operating permit as if fully set forth therein and therefore enforceable under regulation XII (the Texas Operating Permit Regulation) as well as regulation VI (the Texas preconstruction permit regulation).” (61 Fed. Reg. at 32695). Given this explicit direction in EPA’s 1996 final interim approval of the Texas program, TCEQ understood that the standardized permit provision for preconstruction authorizations incorporated all NSR authorizations by reference, including major NSR.

As a result of Texas’ initial exclusion of minor NSR as an applicable requirement of the Texas Operating Permit program, and EPA’s final interim approval of a program that provided for a phase-in of minor NSR requirements using incorporation by reference, EPA was sued by various environmental groups. See *Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449 (5th Cir. 2003). The petitioner’s brief raised several issues, including the use of incorporation by reference of minor NSR, because the exclusion of minor NSR as an applicable requirement was a program deficiency identified by EPA. The petitioner’s brief acknowledges that Texas’ Operating Permit program incorporates all preconstruction authorizations by reference through the use of a table entitled “Preconstruction Authorization References.” The Petitioner’s brief includes an example of this table, which clearly contains sections for Prevention of Significant Deterioration (PSD), nonattainment (NA), 30 TAC Chapter 116 Permits, Special Permits and Other Authorizations, and Permits by Rule under 30 TAC Chapter 106. See Brief of Petitioners, p. 30. The brief goes on to discuss the sample permit, Permit No. O-00108, which documents “six different minor NSR authorizations and one PSD permit” requiring one to look at each of the underlying permits in addition to the Title V permit. The Department of Justice (DOJ), in its reply brief for EPA, responded to this allegation of improper use of IBR in the context of the specific allegation whether “EPA reasonably determined that Texas corrected the interim deficiency related to minor new source review”, answering unequivocally “yes.” “Nothing in the statute or regulations prohibits incorporation of applicable requirements by reference. The Title V and Part 70 provisions addressing the content of Title V permits specify what Title V permits ‘shall include,’ but do not speak to how the enumerated items must be included.” See, Brief of Respondents, pp. 25-26. The Court did not distinguish between minor and major NSR when concluding that IBR is permissible under both the CAA and Part 70.

Thus, it is the ED’s position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA’s differing opinion,

as reflected in the Premcor and CITGO orders, this comment, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O2238 to include, in Appendix B of the permit, a “Major NSR Summary” table, which was initially suggested by EPA as adequate to resolve this issue. Inclusion of the major NSR permits and the “Major NSR Summary” table as an appendix addresses EPA’s comment and ensures that the Title V permit is clear and meaningful to all affected parties. EPA has approved this method to resolve IBR of major NSR permits in a letter dated August 22, 2012.

Additionally, Special Term and Condition 24B requires Valero to collocate all NSR permits with this operating permit – thereby providing inspectors easy access to all authorizations. These authorizations, emission limits, terms and conditions, and monitoring requirements are all enforceable terms of the operating permit in which they are incorporated. Unlike many other states, this technique is particularly appropriate in Texas where the preconstruction permits are a separate authorization from the operating permit. The procedures for issuance, amendment, and renewal of preconstruction permits are also separate and distinct from the operating permits program; and these larger facilities frequently make changes at their sites requiring changes to NSR permits. Cutting and pasting emission limit tables or monitoring terms from the NSR to operating permit creates potential inaccuracies as to what specific requirement the site is subject to at a given point in time. Keeping these limits and terms in one document rather than two (and referencing by permit number in the operating permit) better ensures both the TCEQ and permit holder are aware of which requirements must be followed.

**COMMENT 2:** The draft permit impermissibly incorporates permits by rule (PBRs). The draft permit incorporates (8) PBR authorizations, the text of which never appear in the draft renewal or its statement of basis. See the New Source Review Authorization References Table, incorporating among others, PBRs 106.261 and 106.263. These particular PBRs, do not include specific emission limits and fail to include adequate monitoring and reporting requirements and compliance timeframes that violate EPA guidance and prior SIP approvals. Although TCEQ currently allows major sources to authorize emission through PBRs, EPA has stated that it was approving the use of PBRs only for non-major facilities. See EPA’s approval of Texas’ general PBR provisions into the SIP. 68 Fed. Reg. 64543, 64544(Nov. 14, 2003).

EPA guidance provides that facilities with emissions even approaching the major source threshold must authorize emissions through a case-by-case review of an individual permit. Potential to Emit Guidance for Specific Source Categories (April 14, 1998) p. 2. (Case-by-case reviews are “essential for complex sources warranting close scrutiny . . . and sources that limit their emissions to near-major amounts.”) Incorporating PBRs in the manner proposed makes the case-by-case review nearly impossible. The Texas Health and Safety Code likewise prohibits the use of PBRs by “major” facilities. Tex. Health & Safety Code § 382.05196(a). These limits are intended to both ensure that federal major NSR requirements are met and to protect the NAAQS. Despite these limits, Texas allows major sources to authorize increases in emissions through PBRs. As a result, sources are allowed to modify their major source NSR permit requirements without complying with federal public participation requirements.

The Clean Air Act requires SIPs to include provisions for regulating the modification and construction of stationary sources as necessary to assure compliance with the NAAQS. 42 U.S.C. §§ 7410(a)(2)(A)-(C). Texas PBRs must, therefore, include provisions to assure such compliance, including provisions making the permits practicably enforceable.

EPA, however, has repeatedly notified Texas that its existing PBRs are inconsistent with the approved SIP and EPA policy and do not assure compliance. PBRs cannot be used to authorize emissions from major sources, cannot be used to amend individual permits, must be source

specific, and must not be incorporated into the proposed renewal draft. If PBRs are incorporated into this Title V permit in the way suggested by the draft permit, air quality will be jeopardized, public participation will be thwarted. Furthermore, this incorporation conflicts with Texas' statutory law, EPA guidance, and EPA action on Texas' and other states' SIPs.

Specific problems with the incorporation of PBRs into the Title V permit include the following:

- **Interference with attainment or maintenance of the NAAQS.** In order to assure protection of the NAAQS, Texas' PBR program must include a mechanism for denying PBR authorizations for cause. CAA § 110(a)(2)(c); 40 C.F.R. § 51.160. There must be preauthorization review of applications for coverage under individual PBRs to assure the emissions authorized by PBRs will not contribute to violations of control strategies or interfere with attainment or maintenance. See 71 Fed. Reg. 14439, 14441 (March 22, 2006) ("EPA proposes a conditional approval because this rule, as adopted by the Missouri Air Conservation Commission on June 26, 2003, does not expressly include a mechanism for pre-construction review of [PBR] applications ...") Texas rules include no provision for pre-construction review of PBR applicability claims.
- **Lack of Adequate Public Participation:** Because PBRs do not contain detailed provisions relating to emission limits and compliance (these are often found in the registrations, which are submitted after the close of public comment), the public is not given an adequate opportunity to comment when PBR rules are issued. Further, Texas rules expressly require PBRs to be "incorporated" into a facility's permit when the permit is amended or renewed. 30 Tex. Admin. Code § 16.116(d). Texas "incorporation" procedures do not provide adequate public participation or meet other requirements for permit amendments.

To the extent PBRs are used at a major facility, used to amend an individual permit, or are non-source category specific, they violate the Texas SIP and EPA policy and prior SIP decisions. To assure compliance with the Act, Valero must obtain valid authorizations, such as permit amendments, for any emissions currently authorized through illegal PBRs. Until it does so, Valero is in ongoing noncompliance with the Clean Air Act.

**RESPONSE 2:** Texas' approved program appropriately allows for incorporations by reference. General PBR rules (30 TAC Chapter 106, Subchapter A) are approved as part of the Texas SIP. In addition, Chapter 106, Subchapter A is a defined applicable requirement under Chapter 122 and the EPA-approved Texas operating permit program. Subchapter A includes applicability, requirements for permitting by rule, registration of emissions, recordkeeping and references to standard exemptions and exemptions from permitting. Additionally, PBR authorizations can apply to distinct, insignificant sources of emissions (i.e. engine, production process, etc.) at a Title V site. As such PBRs do not violate the SIP, EPA policy, or prior SIP decisions; nor is incorporation of PBRs into Valero Refining's operating permit impermissible. All current and historical PBRs and standard exemptions (predecessors to PBRs) are available on the TCEQ website for review.

Historical PBRs are available for review at

[http://www.tceq.state.tx.us/permitting/air/permitbyrule/historical\\_rules/oldselist/se\\_index.html](http://www.tceq.state.tx.us/permitting/air/permitbyrule/historical_rules/oldselist/se_index.html) and current PBRs are available for review at

[http://www.tceq.texas.gov/permitting/air/nav/numerical\\_index.html](http://www.tceq.texas.gov/permitting/air/nav/numerical_index.html).

Title 30 TAC Chapter 106 provides types of authorizations for certain types of facilities or changes within facilities which the Commission has determined will not make a significant contribution of air contaminants to the atmosphere. A PBR is a permit which is adopted under Chapter 106, and is only available to sources which belong to categories for which the

Commission has adopted a PBR in that chapter. A PBR cannot be used to amend an individual NSR permit. TCEQ rule 30 TAC § 116.116(d), which is SIP-approved, sets forth that all changes authorized under Chapter 106 to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed. Therefore, PBR incorporation into FOPs is permissible.

The NSR Authorization References table in the draft Title V permit incorporates the requirements of NSR Permits, including PBRs by reference. All "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance" are specified in the PBR incorporated by reference or cited in the draft Title V permit. When the emission limitation or standard is not specified in the referenced PBR, then the emissions authorized under permit by rule from the facility are specified in §106.4(a)(1). Additional requirements for PBRs are found in the Special Terms and Conditions under New Source Review Authorization Requirements. In the Valero Refining Texas, L.P. draft Title V permit, these requirements are found in Special Terms and Conditions 25 and 26, relating to PBRs. The ED does not agree that the emission limitations and standards for PBRs should be listed on the face of the Title V permit, as the EPA has supported the practice of incorporation by reference for the purpose of streamlining the content of the Part 70 permit. See Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards to EPA Regions, *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995 (White Paper No. 1) and Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards to EPA Regions, *White Paper 2 for Improved Implementation of the Part 70 Operating Permits Program*, March 5, 1996 (White Paper No. 2).

The EPA has also supported the practice of not listing insignificant emission units for which "generic" requirements apply. See "*White Paper No. 2*". The NSR Authorization References table identifies preconstruction authorizations at the site that are required to be listed in the draft permit. The NSR Authorizations are applicable requirements and incorporated by reference.

Regarding specific problems the commenter describes with PBRs (i.e. public participation, interference with the NAAQS using PBRs to amend facilities), these issues are beyond the scope of this FOP action because they are arguments concerning the PBR authorization and not the FOP authorization.

**COMMENT 3:** The draft renewal permit fails to require adequate compliance certification.

Article 6 of Senate Bill 12, passed by the Texas legislature in 2007, limits TCEQ's ability to take formal enforcement action for violations "based on information it receives as required by Title V of the federal Clean Air Act ... from a person, as defined in Section 382.003, Health and Safety Code." TCEQ amended its enforcement guidance in June 2007 to implement this statute and apply this limit on formal enforcement action to any deviations reported pursuant to Title V.

Pursuant to the above legislation and TCEQ's revised guidance, TCEQ is only allowed to take formal enforcement action for: (1) violations that require initiation of formal enforcement action (i.e. Category A High Priority Violations), (2) repeat Category B and C violations due to the same root cause from two consecutive investigations that have not been corrected within a time frame specified by TCEQ. This clearly violates the NSR and Title V requirements that TCEQ have adequate enforcement authority, including the authority to recover civil penalties for each violation. 42 U.S.C. §§ 7410(A)(2)(E) and 7661a(b)(5).

The compliance certification provision in the Title V permit must meet the requirements set out at 30 Tex. Admin. Code § 122.146 and 40 C.F.R. § 70.5(c)(9). The compliance certification should, at a minimum, certify compliance with the monitoring method for every limit. Specifically, the certification should be “a statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.” 40 C.F.R. § 70.5(c)(9)(ii). These statement requirements should be clarified and referenced in draft renewal permit.

**RESPONSE 3:** The TCEQ has authority to initiate formal enforcement for all violations within its regulatory purview. Violations are usually addressed with a notice of violation that allows the operator time to correct the problem. The violation is resolved upon timely corrective action. A formal enforcement referral will be made if the cited problem is not timely corrected, if the violation is repeated, or if a violation is causing substantial impact to the environment or neighbors. In most cases, formal enforcement results in an agreed enforcement order including penalties and technical requirements for corrective action. Penalties are based upon the severity and duration of the violation(s). Violations are maintained on file and are included in the calculation of a facility and a person’s compliance history. Compliance history ratings are considered during permit application reviews. This enforcement process does not substantively impact the commission’s administrative and civil penalty authority.

The compliance certification provision of the draft permit is in compliance with the specific requirements of the EPA-approved Federal Operating Permit program, as found in 30 TAC Chapter 122. Specifically, § 122.146(5), requires the annual compliance certification to include or reference the specified elements, including:

- The identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data;
- For emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period;
- For any emission unit addressed in the permit for which one or more deviations occurred over the certification period, specific information indicating the potentially intermittent compliance status of the emission unit, and;
- The identification of all other terms and conditions of the permit for which compliance was not achieved.

All permit holders are required to comply with the requirements of 30 TAC § 122.146, as well as all other rules and requirements of the commission.

In addition, in 2006, EPA’s Title V Task Force endorsed the ‘short-form’ approach used by TCEQ, as an option for compliance certification. (See Title V Task Force, Final Report to the Clean Air Act Advisory Committee, page 108 (April 2006)).

However, in order to help clarify any confusion, Special Condition 28 has been revised to read as follows:

“The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting,

or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.”

**COMMENT 4:** The draft renewal permit impermissibly uses the permit shield provisions.

The Valero Corpus Christi East draft renewal permit O2238 includes over 150 individual permit shields. There is little explanation of the justification for these shields. The Statement of Basis fails to adequately explain the numerous shields purported authorized in this permit. For example, the Statement of Basis explains:

### **Basis for Applying Permit Shields**

An operating permit applicant has the opportunity to specifically request a permit shield to document that specific applicable requirements do not apply to emission units in the permit. A permit shield is a special condition stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements. A permit shield has been requested in the application for specific emission units. For the permit shield requests that have been approved, the basis of determination for regulations that the owner/operator need not comply with are located in the "Permit Shield" attachment of the permit.

It is important that the public is able to discern how the agency decided which conditions to consider for a shield. If conditions are clearly not applicable to the facility, why do they need to be included in the shield? If the shield is being granted based on a representation by Valero – for example GRP1ABOIL does not have a heat input of greater than 250 MMBtu/hr. If GRP1ABOIL does not have a heat input greater than 250 MMBtu/hr then that should be clearly made a condition of the permit. Texas should not be granting permit shields on the basis of conditions that could change unless such conditions are made a requirement of the permit.

Furthermore, the permit includes shields that purport to ‘grandfather’ facilities. For example, there are two shields for Unit GRP1ABOIL, based on a commencement of construction date. EPA objected to a negative applicability determination, like that used by Texas, in a permit issued by Colorado. EPA objected to the Colorado permit because Colorado did not adequately investigate whether the facility in question qualified for the negative applicability determination that Colorado included in its permit. The permit stated that certain boilers were "grandfathered" because there had been no construction or major modifications that would have triggered New Source Review (NSR) applicability, and no modifications had occurred at any boiler since the specified New Source Performance Standards (NSPS) applicability dates. In its objection, EPA stated:

This blanket statement cannot be made unless the Division has been provided all of the potentially relevant facts regarding new source review and NSPS applicability in TriGen's operating permit application. While the Division may have reviewed its files for TriGen to make these determinations, the source may not have notified the Division of all changes that could have triggered PSD or NSR, or that could be considered a modification subject to NSPS. Thus, even an exhaustive review of the Division's files is not sufficient to determine whether a facility may have undergone a modification that should have triggered major modification permitting requirements or the NSPS. . . . Last, this shield for TriGen is not consistent with the permit shield provisions in 40 CFR § 70.6(f)(3)(ii) . . . which state that the permit shield shall not alter or affect the liability of

an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance." EPA [Region 8] *Objection Issues and Comments Regarding the Proposed Title V Operating Permit for TriGen-Colorado Energy Corporation*, Sept. 13, 2000, p.8.

Similarly, EPA issued a letter to the Oregon Department of Environmental Quality that stated: EPA shares the Department's concerns about the significant resources that may be required for the Department to make non-applicability determinations in the new source review context for the purposes of the permit shield, especially with respect to minor new source review. Any additional expenditures relating to such determinations must, of course, be considered title V related activities in any future evaluation of the adequacy of a state's title V fees. Letter from Ann Pontius, Chief Air Compliance and Permitting Section, EPA to John Ruscigno, Oregon Department of Environmental Quality, dated June 29, 1995.

Neither the proposed permit nor the Statement of Basis provides an adequate justification or documentation of investigation of whether the units qualify for a negative applicability determination. While the Statement of Basis does include a table titled "Determination of Applicable Requirements", the table does not provide any additional information other than the assertion that the construction or modification date was on or before a certain date. See negative applicability determinations for GRP1ABOIL.

Similar problems exist for numerous other units in the permit shield.

Finally, language must be added stating that the permit shield cannot excuse past violations. 40 C.F.R. § 70.6(f)(3)(ii). The language at draft renewal permit condition 33 does not comply with this requirement.

**RESPONSE 4:** The ED disagrees that the permit shield does not meet the requirements of 40 CFR § 70.6(f). Special Term and Condition 34 was drafted in compliance with the requirements of the EPA approved federal operating permit program for the State of Texas, 30 TAC Chapter 122. Section 122.142(f), Permit Content Requirements, clearly allows the ED discretion to grant a permit shield for specific emission units at the request of an applicant. Additionally, § 122.148, Permit Shield, provides the requirements for the exercise of discretion by the ED, including that specific information be submitted by the applicant, in addition to other requirements. The ED determined that the application information submitted by Valero Refining – Texas, L.P. and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O2238 provides a "concise summary" of the negative applicability determination for each regulation that may potentially apply to emission units listed in the Permit Shield table as required by 40 CFR § 70.6(f)(1)(ii). This concise summary contains both the determination and the relevant facts upon which the determination was based, as supported by a certification by the responsible official as to the truth, accuracy and completeness of the facts for which the responsible official is liable both civilly and criminally. The SOB notes that a permit shield was requested and granted. The ED has exercised his discretion, as allowed under the EPA-approved operating permit program, and the permit shield is not an unsupported or unenforceable "blanket statement". The ED is aware of no provision in 40 CFR Part 70 stating that a permit shield cannot be granted based on certified representations regarding construction, modification, or reconstruction date information.

Lastly, 30 TAC § 122.148(g)(2), specifies that nothing in that section alters or affects the “liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.” There is no requirement under 30 TAC § 122.148 that requires the permit to include language that the permit shield cannot excuse past violations since 30 TAC § 122.148(g)(2) explicitly states this.

**COMMENT 5:** The draft renewal impermissibly incorporates and relies on a non-SIP approved flexible permit and fails to assure compliance with federal new source review.

The proposed renewal of Valero’s Title V permit relies extensively on the incorporation of permit terms from Valero’s flexible permit No. 2937. Flexible permits are state-only requirements and not appropriate for inclusion in Title V permits. The rules that govern Valero’s flexible permit no. 2937 have never been approved for incorporation into the Texas SIP. The terms of permit no. 2937 are not federally-enforceable.

Not only is 2937 improperly incorporated into the Title V permit, but permit 2937 was originally a permit that covered tanks at the refinery site. Today, it includes a number of sources and emissions that were rolled into 2937 as TCEQ converted NSR permits into flex permits. Nineteen (19) permits were incorporated in 2937 in 2004. These permits are listed on the page 10 of the “Flexible Permit Source Analysis and Technical Review” at Attachment B. It is worth noting that in the same permitting action a number of permits by rule were also rolled into 2937; these too are found at p. 10 of Attachment B.

EPA has repeatedly notified Texas that the flexible permit rules (and thus permits) must be revised before the rules can be approved into the Texas SIP. In addition, EPA has notified the individual permit holder of flexible permits, such as Valero, that:

EPA maintains that SIP permits issued to a source remain effective until amended, modified, or revoked in accordance with the SIP-approved methods for effecting such permit changes. This means that all SIP permit conditions and terms, including any representations upon which the SIP permit was issued, are not, and have not been, superseded, voided, or replaced by the terms, conditions, or permit application representations associated with a flexible permit.

Thus, the proposed renewal of Valero’s operating permit cannot incorporate the requirements of permit No. 2937 in lieu of SIP-approved permit terms and conditions. The Clean Air Act requires Valero to have a federal New Source Review permit. The terms and conditions of such permit, as well as monitoring sufficient to assure compliance with those terms and conditions, must be included in Valero’s Title V permit. If Valero does not have such a permit, it must obtain one and is in ongoing noncompliance with the Clean Air Act until it does.

Extensive deficiencies with Texas flexible permit program have been outlined by EPA. Most recently, EPA has explicitly informed Texas through a proposed disapproval of SIP provisions that the flexible permit program does not comply with federal requirements. 74 Fed. Reg. 48480 (September 23, 2009). In agreement with many of the concerns being raised yet again in this comment letter, EPA explained in the proposed disapproval that the flexible permit program does not comply with federal requirements because:

[i]t fails to include, among other things, adequate accountability provisions, compliance determination procedures, replicable implementation procedures, sufficient monitoring, recordkeeping, and reporting requirements so that issued permits incorporate emission limitations and other requirements of the Texas SIP that ensure protection of the

national ambient air quality standards (NAAQS), and noninterference with the Texas SIP control strategies and reasonable further progress (RFP). It lacks the necessary more specialized monitoring, recordkeeping, and reporting (MRR) requirements required for this type of Minor NSR program, as selected by Texas, to ensure accountability and provide a means to determine compliance. 74 Fed. Reg. 48480, 48482 (Sept. 23, 2009).

**RESPONSE 5:** Valero converted NSR permit no. 2937, which was a flexible permit, to a 30 TAC Chapter 116, Subchapter B permit on December 16, 2010; therefore, FOP O2238 incorporates a SIP approved new source review permit.

**COMMENT 6:** Title V permits must include monitoring sufficient to assure compliance.

As the TCEQ is aware, Title V permits must include monitoring requirements sufficient to assure compliance with applicable emission limits and standards. On August 19, 2008, the D.C. Circuit Court of Appeals vacated an EPA rule that would have prohibited TCEQ and other state and local authorities from adding monitoring provisions to Title V permits if needed to "assure compliance." *Sierra Club, et al., v. EPA*, 536 F.3d 673 (D.C. Cir. 2008). The Court emphasized the statutory duty to include adequate monitoring in Title V permits:

Title V is a complex statute with a clear objective: it enlists EPA and state and local environmental authorities in a common effort to create a permit program for most stationary sources of air pollution. Fundamental to this scheme is the mandate that '[e]ach permit... shall set forth ...monitoring....requirements to assure compliance with the permit terms and conditions.' 42 U.S.C. § 7661c(c). By its terms, this mandate means that monitoring requirement is insufficient 'to assure compliance' with emission limits has no place in a permit unless it is supplemented by more rigorous standards." *Id.* at 677.

In addition, the Court acknowledged that the mere existence of periodic monitoring requirements may not be sufficient. *Id.* at 676-677.

Has TCEQ conducted a review of the monitoring provisions for the renewal draft permit to ensure that it complies with the court ruling and recent orders from the Administrator? Similarly, has TCEQ conducted a review of the monitoring provisions of the multiple permits that are incorporated by reference into the renewal draft permit? Moreover, Commenters are concerned that flexible permit 2937, in particular, does not include adequate monitoring. TCEQ should review and implement the Title V monitoring provisions to ensure that each provision is in compliance with the CAA and the Court's recent opinion. Wherever possible, the permit should require continuous emission monitoring that clearly measure compliance based on the averaging period in the underlying standard. For example, compliance with an emission limit that has to be met on a daily basis should be measured every day, not once a year. Where continuous monitoring is not available, the permit should require alternative methods that more closely match monitoring frequency to the averaging time for compliance.

**RESPONSE 6:**

Consistent with 40 Code of Federal Regulation (CFR) Part 70, the ED has determined that Valero's permit includes monitoring requirements sufficient to yield reliable data that assures compliance with applicable state and federal regulations and terms and conditions of the permit.

For those requirements that do not include monitoring, or where the monitoring is not sufficient to assure compliance, the federal operating permit includes such monitoring for the emission units affected. Additional periodic monitoring or CAM was identified for emission units after a

review of applicable requirements determined that additional monitoring was needed to assure compliance. Emission units were reviewed and additional monitoring was incorporated for many of the units. This additional monitoring is included in the “Additional Monitoring Requirements” attachment of the permit and the basis of the monitoring is included in the Statement of Basis, pages 111-178. Monitoring for new source review permits, such as NSR permit no. 2937, is addressed in the NSR permit. NSR permit no. 2937 is evaluated during the technical review of each amendment for monitoring.

FOP O2238 includes sufficient monitoring in the terms and conditions and in the Additional Monitoring Summary attachment of the Title V permit for those requirements in the Applicable Requirement Summary that require additional monitoring to satisfy the periodic monitoring requirement of 30 TAC Chapter 122. This permit demonstrates compliance to the applicable state and federal requirements, and specific monitoring issues are discussed further below and in the statement of basis. FOP O2238 requires the use of a CEMS to measure and record the sulfur dioxide emissions in the exhaust stream for the sulfur recovery units. The combustion temperature is monitored four times per hour for the incinerator. The monitoring frequencies are consistent with 40 CFR Part 64. Consistent with federal rules, units controlled by a heater with a heat input greater than 44MW have demonstrated to meet 98% reduction efficiency and therefore, Valero is only required to document the period of operation of the control equipment. The exhaust gas temperature of the condenser system is monitored. A common way to control VOC emissions is to route emissions through a chiller and recovery unit. In order for the chiller system to function properly a maximum temperature or lower must be maintained that will condense the VOC so it is removed from the gas stream. When using a carbon adsorption system, the VOC concentration must be monitored at the outlet of a control device by use of a portable analyzer. Outlet VOC concentration has been used as an indicator of VOC emissions in many federal rules. The internal and external floating roofs of tanks are required to be inspected to ensure they are operating in accordance with its design. Flares are required to be monitored for the presence of the pilot flame. The presence of the pilot flames demonstrates that VOC emissions routed to the flare will be properly combusted. Monitoring the presence of a pilot flame is required in many federal rules. Visible emissions observations and opacity readings are required for vents to demonstrate compliance with opacity standards. Units controlled by a thermal incinerator or vapor combustor are required to monitor the combustion temperature in order to ensure proper destruction efficiency for a period of time sufficient to meet the requirements for determining compliance.

**The following comments were submitted by the U.S. Environmental Protection Agency (EPA).**

**COMMENT 1:** Objection to the incorporation of Flexible Permit 2937 into the Title V permit. The New Source Review (NSR) Authorization References table in the draft Title V permit incorporates by reference Flexible Permit No. 2937, most recently amended on February 2, 2009. Flexible permits are issued pursuant to 30 TAC Chapter 116, Subchapter G; however, those provisions have not been approved, pursuant to Section 110 of federal Clean Air Act (CAA), 42 U.S.C. § 7410, as part of the applicable implementation plan for the State of Texas (Texas SIP). Therefore, pursuant to 40 CFR § 70.8 (c) (1), EPA must object to the issuance of this Title V permit because the terms and conditions of the incorporated flexible permit cannot be determined to be in compliance with the applicable requirements of Texas SIP. The failure to have submitted information necessary to make this determination constitutes an additional basis for this objection, pursuant to 40 CFR § 70.8(c)(3)(ii). In order to respond to this objection, additional information must be provided by the applicant showing how the emissions authorized by the flexible permit meet the air permitting requirements of the federally-approved

provisions of the Texas SIP. Furthermore, the Title V permit must include an additional condition specifically requiring the source to prepare and submit to TCEQ a written analysis of any future change/modification to ensure that minor and/or major new source review requirements under the federally-approved Texas SIP have not been triggered. Finally, the terms and conditions of the flexible permit, based upon the requirements of 30 TAC Chapter 116, Subchapter G must be identified as State-only terms and conditions, pursuant to 40 CFR § 70.6(b)(2).

**RESPONSE 1:** Valero converted NSR permit no. 2937, which was a flexible permit to a 30 TAC Chapter 116, Subchapter B permit on December 16, 2010; therefore, FOP O2238 incorporates a SIP approved new source review permit.

**COMMENT 2:** Objection to the incorporation by reference of PSD Permits. The *New Source Review Authorization References* table of the draft Title V permit incorporates PSD-TX-1023M1 (February 2, 2009) and PSD-TX-234M2 (July 27, 2009) permits by reference. EPA has discussed the issue of incorporation by reference (IBR) in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (March 5, 1996) (*White Paper 2*). As EPA explained in *White Paper 2*, IBR may be useful in many instances, though it is important to exercise care to balance the use of IBR with the obligation to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. *Id.* at 34-38. See also *In the Matter of Tesoro Refining and Marketing*, Petition No. IX-2004-6 at 8 (March 15, 2005) (*Tesoro Order*). As EPA noted in the *Tesoro Order*, EPA's expectations for what requirements may be referenced and for the necessary level of detail are guided by Sections 504(a) and (c) of the CAA and corresponding provisions at 40 CFR § 70.6(a)(1) and (3). *Id.* Generally, EPA expects that Title V permits will explicitly state all emission limitations and operational requirements for all applicable emission units at a facility. *Id.* We note that the TCEQ's use of IBR for emissions limitations from minor NSR permits and Permits by Rule is currently acceptable. See 66 Fed. Reg. 63318, 63324 (Dec. 6, 2001); see also, *Public Citizen v. EPA*, 343 F.3d 449, at 460-61 (5th Cir. 2003) (upholding EPA's approval of TCEQ's use of incorporation by reference for Texas's limited use of incorporation by reference of emissions limitations from minor NSR permits and Permits by Rule).<sup>1</sup> In approving Texas' limited use of IBR of emissions limitations from minor NSR permits and Permits by Rule (PBR), EPA balanced the streamlining benefits of IBR against the value of a more detailed Title V permit and found Texas' approach for minor NSR permits and PBR acceptable. See *Public Citizen*, 343 F.3d, at 460-61. EPA's decision approving this use of IBR in Texas' program was limited to, and specific to, minor NSR permits and Permits by Rule in Texas. EPA noted the unique challenge Texas faced integrating requirements from these permits into Title V permits. See 66 Fed. Reg. at 63,326; 60 Fed. Reg. at 30,039; 59 Fed. Reg. 44572, 44574. EPA did not approve (and does not approve of) TCEQ's use of IBR of emissions limitations for other requirements. See *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11. Pursuant to 40 CFR §70.8(c)(1), EPA objects to the issuance of the Title V permit because it incorporates by reference the major New Source Review permits PSD-TX-1023M1 and PSD-TX-243M2 and fails to include emission limitations and standards as necessary to assure compliance with all applicability requirements. See 40 CFR § 70.6(a)(1). In response to this objection, TCEQ must include (as conditions of the Title V permit) all the emission limitations and standards of PSD-TX-1023M1 and PSD-TX-243M2 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could add conditions to the Title V permit that

---

<sup>1</sup> Please note that in the *Matter of Premcor Refining Group, Inc.* Petition No. VI-2007-02 at 6, fn 3 (May 28, 2009) and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11-12, fn 45 (May 28, 2009) EPA stated that the Agency will be evaluating the use of incorporation by reference for emissions limitations in minor NSR permits and Permits by Rule to determine how well this practice is working.

specify those provisions of the PSD permits necessary to ensure such compliance with all applicable requirements and physically attach a copy of the PSD permits to the Title V permit.

**RESPONSE 2:** The federally approved operating permit program for Texas has allowed for applicable requirements to be incorporated by reference into the FOP since 1996. See Final Interim Approval, 61 Fed. Reg. 32693, (June 25, 1996); Final Full Approval, 66 Fed. Reg. 63318, (December 6, 2001); and Final Approval of Resolution of Deficiency, 70 Fed. Reg. 16134, (March 30, 2005). Title 30 TAC §122.142 states that the operating permit shall contain the specific regulatory citations in each applicable requirement identifying the emission limitations and standards. Additionally, EPA discussed the use of incorporation by reference in the preamble to the final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating: “Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to provisions of the Act is critical in defining the scope of the permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program.” See 57 Fed. Reg. 32250, 32275, (July 21, 1992).

In comments on the proposed final interim approval of the operating permit program, in 1995, the commission (then-TNRCC) proposed to include a standardized permit provision that incorporated by reference all preconstruction authorizations, both major and minor, to resolve the EPA-identified deficiency of Texas’ failure to include minor NSR as an applicable requirement. In the June 25, 1996 Final Interim Approval, EPA directed, “the State must be quite clear in any standardized permit provision that all of its major ‘preconstruction authorizations including permits, standard permits, flexible permit, special permits, or special exemptions’ are incorporated by reference into the operating permit as if fully set forth therein and therefore enforceable under regulation XII (the Texas Operating Permit Regulation) as well as regulation VI (the Texas preconstruction permit regulation).” (61 Fed. Reg. at 32695). Given this explicit direction in EPA’s 1996 final interim approval of the Texas program, TCEQ understood that the standardized permit provision for preconstruction authorizations incorporated all NSR authorizations by reference, including major NSR.

As a result of Texas’ initial exclusion of minor NSR as an applicable requirement of the Texas Operating Permit program, and EPA’s final interim approval of a program that provided for a phase-in of minor NSR requirements using incorporation by reference, EPA was sued by various environmental groups. See *Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449 (5th Cir. 2003). The petitioner’s brief raised several issues, including the use of incorporation by reference of minor NSR, because the exclusion of minor NSR as an applicable requirement was a program deficiency identified by EPA. The petitioner’s brief acknowledges that Texas’ Operating Permit program incorporates all preconstruction authorizations by reference through the use of a table entitled “Preconstruction Authorization References.” The Petitioner’s brief includes an example of this table, which clearly contains sections for Prevention of Significant Deterioration (PSD), nonattainment (NA), 30 TAC Chapter 116 Permits, Special Permits and Other Authorizations, and Permits by Rule under 30 TAC Chapter 106. See Brief of Petitioners, p. 30. The brief goes on to discuss the sample permit, Permit No. O-00108, which documents “six different minor NSR authorizations and one PSD permit” requiring one to look at each of the underlying permits in addition to the Title V permit. The Department of Justice (DOJ), in its reply brief for EPA, responded to this allegation of improper use of IBR in the context of the specific allegation whether “EPA reasonably determined that Texas corrected the interim deficiency related to minor new source review”, answering unequivocally “yes.” “Nothing in the statute or

regulations prohibits incorporation of applicable requirements by reference. The Title V and Part 70 provisions addressing the content of Title V permits specify what Title V permits ‘shall include,’ but do not speak to how the enumerated items must be included.” See, Brief of Respondents, pp. 25-26. The Court did not distinguish between minor and major NSR when concluding that IBR is permissible under both the CAA and Part 70.

Thus, it is the ED’s position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA’s differing opinion, as reflected in the Premcor and CITGO orders, this comment, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O2238 to include, in Appendix B of the permit, a “Major NSR Summary” table, which was initially suggested by EPA as adequate to resolve this issue. Inclusion of the major NSR permits and the “Major NSR Summary” table as an appendix addresses EPA’s comment and ensures that the Title V permit is clear and meaningful to all affected parties. EPA has approved this method to resolve IBR of major NSR permits in a letter dated August 22, 2012.

Additionally, Special Term and Condition 24B requires Valero to collocate all NSR permits with this operating permit – thereby providing inspectors easy access to all authorizations. These authorizations, emission limits, terms and conditions and monitoring requirements are all enforceable terms of the operating permit in which they are incorporated. Unlike many other states, this technique is particularly appropriate in Texas where the preconstruction permits are a separate authorization from the operating permit. The procedures for issuance, amendment and renewal of preconstruction permits are also separate and distinct from the operating permits program; and these larger facilities frequently make changes at their sites requiring changes to NSR permits. Cutting and pasting emission limit tables or monitoring terms from the NSR to operating permit creates potential inaccuracies as to what specific requirement the site is subject to at a given point in time. Keeping these limits and terms in one document rather than two (and referencing by permit number in the operating permit) better ensures both the TCEQ and permit holder are aware of which requirements must be followed.

**COMMENT 3:** Objection to General Recordkeeping Provision. Under the *General Terms and Conditions* provision of the draft Title V permit, reference is made to 30 TAC § 122.144 of the Texas FOP program which requires records be kept for 5 years; however, Special Condition 20(G) of Flexible Permit No. 2937 and PSD-TX-1023M1 only requires records to be kept for two years. This condition is inconsistent with the 5 year recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B) and cannot be carried forward into the Title V permit. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since the recordkeeping requirements of PSD-TX-1023M1 are not in compliance with the requirements of 40 CFR § 70.6(a)(3)(ii)(B). In response to this objection, TCEQ must revise the Title V permit to include a condition that states that records of monitoring data and supporting information must be maintained for a minimum of five years from the date of monitoring, notwithstanding the requirements of any other permit conditions or applicable requirements.

**RESPONSE 3:** The TCEQ requires five-year recordkeeping for all FOPs. Pursuant to 30 TAC §122.144(1), all records of required monitoring data and other permit support information must be kept for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. This is consistent with the recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B). The requirements of 30 TAC § 122.144(1) have been and will continue to be incorporated for all FOPs through the general terms and conditions of the FOP, which specifically require “The permit holder shall comply with all terms and conditions contained in 30 TAC § 122.143 (General Terms and Conditions), 30 TAC § 122.144 (Recordkeeping Terms and Conditions), and 30 TAC

§ 122.146 (Compliance Certification Terms and Conditions).” These requirements were (and still are) also reiterated on the cover page of the FOP.

As all terms and conditions of preconstruction authorizations issued under 30 TAC Chapter 106, PBR and 30 TAC Chapter 116, NSR are applicable requirements and enforceable under the FOP, the five year record retention requirement of 30 TAC § 122.144(1) supersedes any less stringent data retention schedule that may be specified in a particular PBR or NSR permit. To further clarify the five year recordkeeping retention schedule for the FOP, the following text was added to the General Terms and Conditions of the FOP.

“In accordance with 30 TAC § 122.144(1), records of required monitoring data and support information required by this permit, or any applicable requirement codified in this permit, are required to be maintained for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. The five year record retention period supersedes any less stringent retention requirement that may be specified in a condition of a permit identified in the New Source Review Authorization attachment.”

**COMMENT 4:** Objection to Special Permit Condition 3. Under the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates comply with identified provisions of 30 TAC Chapter 111 of the Texas SIP. However, there is no identification of the specific stationary vents that are subject to those requirements. As such, this condition fails to meet the requirement of 40 CFR § 70.6(a)(1), in that the condition lacks the specificity to ensure the compliance with the applicable requirements associated with those unidentified emission units. In addition, the Statement of Basis document for the draft Title V permit does not provide the legal and factual basis for Condition 3, as required by 40 CFR § 70.7(a)(5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since Condition 3 is not in compliance with the requirements of 40 CFR §§ 70.6(a)(1) and 70.7(a)(5). In response to this objection, TCEQ must revise Condition 3 of the draft Title V permit to list the specific stationary vents that are subject to the specified requirements of 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for Condition 3.

**RESPONSE 4:** With regard to stationary vents, there are three basic opacity requirements in 30 TAC § 111.111 that may apply, depending upon specific applicability criteria. Stationary vents constructed on or before January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(A), which states that opacity shall not exceed 30% averaged over a six-minute period. Stationary vents constructed after January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(B), which states that opacity shall not exceed 20% averaged over a six-minute period. Lastly, stationary vents where a total flow rate is greater than or equal to 100,000 actual cubic feet per minute (acfm) may not exceed 15% opacity averaged over a six minute period, unless that source has an installed optical instrument capable of measuring opacity that meets specified requirements, specified in 30 TAC § 111.111(a)(1)(C). Subsection 111.111(b) merely states that any of the emission units subject to section 111.111 (for this permit area, this would include all stationary vents and gas flares) shall not include contributions from uncombined water in determining compliance with this section.

The EPA has previously supported the practice of not listing emission units in the permit that only have site-wide or “generic” requirements. See White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995. The ED documented in the draft FOP that the Chapter 111 visible emission requirements for stationary vents were site-wide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its

application that only the Chapter 111 site-wide requirements apply to these stationary vents and other sources, the applicant is not required to list these smaller units individually in the unit summary, and therefore, these emission units did not appear in the applicable requirements summary table in the draft FOP.

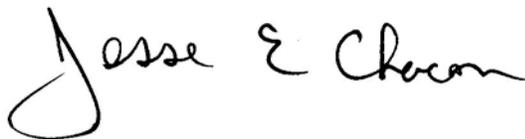
However, the ED does agree that the FOP could be revised to more clearly group stationary vents according to which opacity limit applies. The site does not have any vents constructed prior to January 31, 1972, therefore, no vents are subject to the 30% opacity requirement of 30 TAC § 111.111(a)(1)(A). The term and condition for §111.111(a)(1)(A) has been removed. All other vents at the site are subject to 20% opacity, as noted in the revised Special Condition 3.A, which is a site-wide term and condition, as allowed in the *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

A determination of the legal and factual basis for Condition 3 was added to the Statement of Basis document for the draft Title V permit.

### **ADDITIONAL CONCERNS**

TCEQ acknowledges the additional concerns EPA has with the Valero Corpus Christi Refinery East Plant FOP and will address these issues as appropriate.

Respectfully submitted,

A handwritten signature in black ink that reads "Jesse E Chacon". The signature is written in a cursive style with a large initial "J" and "C".

Jesse E. Chacon, P.E., Manager  
Operating Permits Section  
Air Permits Division